ORDINANCE NO. 2019-59

An Ordinance of the Pierce County Council Amending the Pierce County Shoreline Master Program in Response to the Final Decision and Order Issued by the Growth Management Hearings Board in Case No. 18-3-0013c; Amending Title 18S of the Pierce County Code (PCC), "Development Policies and Regulations – Shorelines," and Title 18E PCC, "Development Regulations – Critical Areas"; Adopting Findings of Fact; and Setting an Effective Date.

Whereas, the Pierce County Council adopted Ordinance No. 2013-45s4 on March 10, 2015, establishing "Title 18S" of the Pierce County Code (PCC), "Development Policies and Regulations – Shorelines"; and

Whereas, pursuant to Ordinance No. 2013-45s4, the Pierce County Council updated various Chapters and Titles of the Pierce County Code including Title 18E PCC, "Development Regulations – Critical Areas," for compliance with the Washington State Shoreline Management Act; and

Whereas, Revised Code of Washington (RCW) 90.58.090 requires the Washington State Department of Ecology (DOE) to review and approve locally adopted Shoreline Master Programs (SMP) before they can become effective; and

Whereas, on May 31, 2018, Pierce County received "conditional approval" of its SMP update from the DOE as adopted pursuant to Ordinance No. 2013-45s4; and

Whereas, the DOE's conditional approval of Pierce County's SMP update included a list of required and recommended changes; and
Whereas, the Pierce County Council adopted Ordinance No. 2018-57s on October 2, 2018, incorporating all of the DOE's required changes and many of the DOE's recommended changes into the Pierce County Shoreline Master Program update; and

Whereas, following final approval from the DOE on October 12, 2018, the Pierce County's Shoreline Master Program Comprehensive Update and Periodic Review became effective on October 26, 2018; and

Whereas, on December 19, 2018, Taylor Shellfish Company, Inc. and Seattle Shellfish, LLC jointly filed a petition for review to the Growth Management Hearings Board (GMHB) challenging adoption of the Pierce County Shoreline Master Program; and

Whereas, on December 19, 2018, North Bay Partners, LLC filed a petition for review to the GMHB challenging adoption of the Pierce County Shoreline Master Program; and

Whereas, on December 28, 2018, the GMHB consolidated the various appeals under Case No. 18-3-0013c; and

Whereas, on May 7, 2019, the GMHB held a hearing on the merits of Case No. 18-3-0013c, and on June 17, 2019, issued a Final Decision and Order (FDO) finding certain aspects of the County's SMP did not comply with the SMA and applicable guidelines; and

Whereas, pursuant to the GMHB's FDO, a total of 31 legal issues were evaluated (two legal issues raised constitutional claims outside of the Board's jurisdiction and were not addressed), seven legal issues were explicitly abandoned by the petitioners and were dismissed, and seven legal issues were dismissed by the Board having found the Petitioners failed to meet their burden; and

Whereas, the GMHB remanded various Sections of the Pierce County Shoreline Master Program back to the County to take action to comply with RCW 90.58.020 and RCW 90.58.100, and WAC 173-26-176, 173-26-186, 173-26-191, 173-26-201, 173-26-221 and 173-26-241 based on the Board's analysis of the remaining legal issues; and

Whereas, on June 27, 2019, the Attorney General of Washington State filed a Motion for Reconsideration on behalf of the DOE requesting the GMHB delete or modify specific language in the FDO that the DOE believes is inconsistent with the SMP and the requirements of the SMP guidelines; and
Whereas, on August 9, 2019, the GMHB, in response to the Motion for Reconsideration, clarified its FDO related to priority of water dependent uses and the hierarchal order of preference of Statewide interest over local interest applicable to shorelines of statewide significance under the SMA and corrected Scrivener's errors; and

Whereas, the GMHB's compliance schedule includes a September 16, 2019, due date for the County to comply with the FDO; and

Whereas, the amendments included in this proposal are within the scope of the State Environmental Policy Act analysis and range of alternatives considered in adoption of Ordinance No. 2013-45s4 and Ordinance No. 2018-57s and are more protective of the environment than Title 20 PCC, "Shoreline Master Program for Pierce County," originally adopted on March 4, 1974, which has been repealed in its entirety; and

Whereas, immediate action to comply with the GMHB's order is needed to ensure continued support of the County government and its existing institutions; Now Therefore,

BE IT ORDAINED by the Council of Pierce County:

Section 1. Title 18S of the Pierce County Code, "Development Policies and Regulations - Shorelines," is hereby amended as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 2. Title 18E of the Pierce County Code, "Development Regulations - Critical Areas," is hereby amended as shown in Exhibit B, which is attached hereto and incorporated herein by reference.

Section 3. Findings of Fact are hereby adopted as shown in Exhibit C, which is attached hereto and incorporated herein by reference.

Section 4. The Council recognizes that formatting, numbering, and citation modifications to Exhibits A and B may be necessary as a result of amendments made during the legislative process. To this extent, the Clerk of the Council is hereby authorized to modify Exhibits A and B prior to final printing so that the Council's amendments are accurately reflected throughout the document and formatting, numbering, and citations are correctly shown.

Section 5. This Ordinance shall become effective 14 days following written notice of final action by the Washington State Department of Ecology.
Section 6. If any provisions of this Ordinance are found to be illegal, invalid, or unenforceable, the remaining provisions of this Ordinance shall remain in full force and effect.

PASSED this 10th day of September, 2019.

ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

Denise D. Johnson
Clerk of the Council

Douglas G. Richardson
Council Chair

Bruce F. Dammel
Pierce County Executive
Approved __ Vetoed _______ , this ___
 day of September, 2019.

Date of Publication of Notice of Public Hearing: August 21, 2019

Effective Date of Ordinance: See Section 5.
Chapter 18S.10

INTRODUCTION

18S.10.055 Recognition of Legally Established Development.

This Section provides standards for legally established development subject to this Title.

B. General. Existing legally established structures and uses may continue to exist, be used, maintained and repaired. That is the case even if the Master Program includes regulations that would not allow new uses or development to be configured or built as they exist.

1. For purposes of this Section, "expanded" or "expansion" means to expand into undeveloped portions of the lot or parcel, expansion of the use onto another parcel, an increase of the square footage of a building or the expansion of a building's footprint or height, an increase in number of buildings/structures, an increase in the hours of the operation, an increase in the noise, an increase in the total area under active cultivation, an increase in the number of motor vehicles associated with the use, an increase in the areas used for storage of equipment or materials, or an expansion of parking areas.

2. The burden shall be on the property owner and/or applicant to prove that a use or structure was lawfully constructed or established.

3. If a nonconforming use or use of a nonconforming structure is abandoned or discontinued for more than three years, the nonconforming rights shall expire and any subsequent use or structure shall be conforming. Aquaculture operations in a dormant or fallow status are not considered abandoned or discontinued. A use authorized pursuant to subsection E.3. of this Section shall be considered a conforming use for purposes of this subsection.

Chapter 18S.20

SHORELINES OF STATEWIDE SIGNIFICANCE AND SHORELINE ENVIRONMENT DESIGNATIONS

18S.20.030 Natural Shoreline Environment Designation (SED).

The intent of the Natural SED is to ensure long-term preservation of shorelines that are ecologically intact or minimally degraded, sensitive to human influence, or retain value because of their natural unaltered condition.
A. **Designation Criteria.** The following criteria apply to Natural shoreland areas.
1. The shoreline is ecologically intact and, therefore, currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;
2. One of the following apply:
   a. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
   b. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.
3. Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats.
4. Ecologically intact shorelines, as used herein, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development.
5. The term ecologically intact shorelines applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas of a single property and may be inside or outside urban growth areas.

B. **Management Policies.**
1. Any use that would degrade ecological functions, natural features, and overall character of the shoreline area shall not be allowed.
2. Single-family residential development may be allowed if the density and intensity of the use is limited to protect ecological functions and is consistent with the intent of the natural shoreline environment.
3. New land divisions shall be developed consistent with low impact development (LID) techniques.
4. Private and public enjoyment should be facilitated through low-intensity development such as passive, recreational, scientific, historical, cultural, and educational uses; provided, that no net loss in ecological function and processes will result.
5. Low intensity aquaculture, agricultural and forestry uses may be allowed-consistent when they are limited to ensure no net loss of ecological functions that the intensity remains low.

6. Commercial, industrial, multi-family residential, and non water-oriented recreation uses should not be permitted.

7. New roads, utility corridors, and parking areas should not be permitted, except as necessary to support uses otherwise allowed by this Title.

8. New development or vegetation removal that would reduce ecological functions or processes should not be permitted.

9. Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed; provided, that no significant ecological impact on the area will result.

C. Maps. Natural Shoreline Environment Designation maps are found in Chapter 18S.70 PCC – Appendix F.

Chapter 18S.40

USE AND DEVELOPMENT POLICIES AND REGULATIONS

18S.40.040 Aquaculture.

The intent of the Aquaculture policies and regulations is to manage the culture and farming of fish, shellfish, or other aquatic plants and animals. Aquaculture is a water-dependent use. Local government shall consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions. When properly managed, aquaculture can result in a long-term over short-term benefit and can protect the resources and ecology of the shoreline.

B. Policies.

1. Consider both the potential beneficial impacts and the potential adverse impacts that aquaculture might have on the physical environment, other existing and approved land and water uses, and on the aesthetic qualities of a project area.

2. Give preference to aquaculture projects that do not involve the placement of tubes, structures, or alterations to the shoreline.

23. Give preference to projects that involve minimal or no supplemental food sources, pesticides, herbicides, or antibiotic applications.

34. Design, locate, and operate aquaculture activities in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. 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 Federal and State listed species and species of local importance including native eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas or connectivity between such areas; or significantly interfere with navigation or other water-dependent uses.

45. Individual aquaculture uses and developments should be separated from submerged aquatic vegetation or adjoining parcels by a sufficient distance when...
project specific review demonstrates it is necessary to ensure that significant adverse cumulative effects do not occur.

56. Design and locate aquaculture facilities so as not to spread disease to native aquatic life, establish new non-native species which cause significant ecological impacts, nor significantly impact the aesthetic qualities of the shoreline.

67. Monitor and identify aquaculture project environmental impacts. Monitoring protocols should be consistent with the recommendations of local, State, and Federal agencies with expertise. The results of monitoring shall be used to identify necessary changes to project-specific aquaculture operations and to aquaculture permitting requirements.

78. Give flexibility to aquaculture practices; provided, that the overarching concern shall be avoidance or minimization of negative impacts as set forth in this Title. The County shall establish monitoring procedures to ensure that aquaculture operations are in compliance with permit conditions.

89. Limit the scale and period of operation of aquaculture practices that are unproven or that involve impacts of an indeterminate nature.

10. Encourage aquaculture activities proposed solely for purposes of shoreline restoration and enhancement.

914. The County shall require an analysis of the cumulative impacts of aquaculture activities for more complex projects, including but not limited to farms on shorelines of statewide significance; multi-species farms; farms proposed within enclosed waters; farms proposed in locations where similar farms exist or are proposed; or farms that would be the first of their kind in the area.

12. Pierce County shall adopt a prohibition on new commercial marine aquaculture operations in the Aquatic Environment adjacent to areas designated Natural. Pierce County will revisit this prohibition as part of the 2027 periodic review required under RCW 90.58.080(4)(b)(ii). The prohibition is intended to provide time for the County to implement the comprehensively updated Shoreline Master Program and evaluate the impacts of aquaculture projects resulting from monitoring reports. The prohibition will also allow the County to review other scientific and technical information specific to Natural areas. The prohibition shall not apply to farms with existing aquaculture permits or to designated Bush Act Lands.

C. Regulations – General.

1. Applications for aquaculture shall be subject to the Aquaculture Application Requirements of Chapter 18S.70 PCC – Appendix C.

2. Aquaculture operations are subject to all applicable State approved management guidelines. Where such guidelines are less restrictive than the County requirements, the County's requirements shall apply.

3. The proposed project location shall be suitable for aquaculture with little or no modification to the shoreline environment. Mechanized grading shall not be permitted.

4. Aquaculture activities shall be set back a minimum of 10 feet from adjacent parcels not associated with the aquaculture activity. The 10-foot setback requirement shall be increased when the shoreline contains multiple individual aquaculture activity areas and it is demonstrated that a greater distance is needed between areas or adjacent parcels to ensure maintenance of other shoreline uses, such as recreation or public access, or to ensure protection of shoreline functions and processes. The
expanded setback required shall be based upon water body and shoreline
characteristics and an analysis of legally established shoreline development.

45. Aquaculture activity boundaries shall be illustrated on a site plan that includes a
depiction of the real property boundaries consistent with the legal description of the
property. Aquaculture activity boundaries and property corners shall be marked. At
its discretion, the County may require traditional survey methods or allow GPS
methodology.

56. Aquaculture activity area boundaries shall be identified through the life of the
aquaculture operation. Markers are to be visible when the tidelands are exposed.
Projects that utilize submerged structures and/or tubes, stakes, racks, or bags shall
also provide floating markers to identify the boundary at higher tides. All markers
shall provide the applicant's contact information and a description of aquaculture
activities and any associated navigation hazards. Markers in navigable waters shall
conform to any applicable U.S. Coast Guard requirements. Floating markers may be
removed when the submerged structures and equipment are removed.

67. Shellfish aquaculture projects located below the Ordinary High Water Mark
(OHWM) shall not involve the use of supplemental feed, pesticides, herbicides,
antibiotic, vaccines, growth stimulants, antifouling agents, or other chemicals
waterward of the OHWM in marine waters. When such products are used for finfish
aquaculture, usage data shall be maintained by the applicant/operator and shall be
provided to the County upon request.

78. Finfish aquaculture that uses or releases herbicides, pesticides, fertilizers,
pharmaceuticals, non-indigenous species, parasites, viruses, genetically modified
organisms, feed, or other materials known to be harmful into surrounding waters
shall not be allowed unless significant impacts to surrounding habitat and conflicts
with adjacent uses are effectively mitigated.

89. Aquaculture activities shall not substantially and materially conflict with areas
devoted to legally established water-dependent uses of the aquatic environment.
Such uses include but are not limited to navigation, moorage, recreation, sport or
commercial fishing, underwater utilities, and scientific research.

910. The operator of any aquaculture activity shall provide contact information to
abutting waterfront property owners and shall, in a timely manner, respond to and
rectify any complaint relating to materials, equipment, or operation activities as
necessary to comply with permit conditions.

10Hi. Predator control shall not involve deliberate killing or harassment of birds, non-
invasive invertebrates, or mammals. Control of invasive species such as the oyster
drill snail is acceptable. Approved controls include but are not limited to plastic
tubes or netting. Predator control equipment shall be removed as defined within the
approved schedule.

1112. Rebar shall be bent so exposed ends are no longer upright.

1244. The duration and frequency of aquaculture monitoring shall be unique to each farm.
A monitoring plan shall be submitted consistent with Chapter 18S.70 PCC –
Appendix C, Aquaculture Application Requirements. A monitoring schedule shall be
established as a condition of each permit approval. At a minimum, monitoring shall
occur prior to bed preparation and prior to subsequent cycles of planting and harvest.
More frequent monitoring may be required based on the complexity or intensity of
the proposal.
1344. Introduction of a new shellfish species, changing the shellfish species cultivated, expansion of the physical area cultivated or relocation of the aquaculture operation shall require notification to the County. The County shall review the proposal consistent with permit revision criteria in PCC 18S.60.080 B. Proposals that do not meet revision criteria shall require a new permit and compliance with this SMP.

1445. Introduction of a new finfish species, changing the finfish species cultivated, expansion of the physical area cultivated or relocation of the finfish aquaculture operation is considered a new use/development, and shall require a new permit and compliance with this SMP.

1546. Aquaculture activities allowed pursuant to an approved Shoreline Conditional Use Permit shall not be subject to review of a new Shoreline Conditional Use Permit for subsequent cycles of planting and harvest. Activities shall be subject to reviews in accordance with an approved monitoring plan, and the permit is subject to rescinded per PCC 18S.10.070 I. should reviews find that aquaculture activities are being exercised contrary to approval conditions.

1617. Olympia Oyster propagation and other activities supporting the enhancement and/or recovery of native shellfish, finfish and aquatic plant species is allowed within the Nisqually Reach Aquatic Reserve.

1718. Aquaculture applications shall be reviewed for consistency with the mitigation sequence in PCC 18S.30.030 C.1. Aquaculture proposals that will result in significant adverse environmental impacts that cannot be mitigated shall be prohibited.

19. New aquaculture is prohibited in the Aquatic SED abutting the Natural SED on marine waters. Existing or permitted aquaculture operations in areas subject to the prohibition shall be considered conforming uses. Designated Bush Act Lands (Chapter 79.135 RCW) abutting the Natural SED are not included in this prohibition.

D. Regulations – Impact Avoidance.
1. Proposals shall minimize adverse impacts from noise, light, and glare on nearby properties to the extent feasible.
2. To the degree practicable, materials and colors that blend into their surroundings shall be utilized.
3. Permanent lighting shall not be permitted except as required for navigation.
4. Tools shall be put away when the aquaculture activity area is not being actively worked.
5. All equipment and structures and/or tubes, nets, and bands shall be marked to identify ownership, and shall be removed as defined by a County approved schedule.
6. Proposals shall demonstrate methods to be used to secure tubes, nets, bands and other equipment and structures so that they will not escape from the site during the life of the operation.
7. Operators shall regularly patrol for aquaculture-related materials and debris. The distance to be patrolled will be based on site attributes, such as drift cell (a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift) patterns and degree of enclosure, adjacent land use patterns, and ability to legally access adjacent properties.
F. Regulations – Structures.

1. The installation of structures and/or equipment shall demonstrate the following:
   a. The structures and/or equipment proposed are the minimum necessary for feasible aquaculture operations;
   ab. The design and location of such structures and/or equipment does not effectively preclude surface navigation, recreational boating, and other public use of shoreline waters; and
   be. Safe and unobstructed passage is provided for fish and wildlife.

2. Over-water structures and/or equipment, and any items stored upon such structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height above water for permanent structures shall be limited to three feet from the deck surface of the float or dock unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development). Height limitations do not apply to materials and apparatus removed from the site on a daily basis or to required safety-related equipment.

G. Regulations – Species.

1. Aquaculture activities shall not be located within tidal channel portions of streams and rivers with direct utilization by anadromous species.

12. New aquatic species that have not been previously cultivated in Washington State shall not be introduced into the County without prior written approval of the Director of the Washington Department of Fish and Wildlife.

23. New finfish aquaculture involving net pens for anadromous species shall be prohibited throughout Pierce County marine waters located south and west of the Tacoma Narrows Bridge.

34. Finfish aquaculture involving net pens for anadromous species are prohibited in all marine waters of Pierce County where there are aquatic reserve areas in place.

Chapter 18S.60

PERMITS AND APPROVALS

18S.60.030 Shoreline Permit Table.

A. The following symbols are employed in Table 18S.60.030-1, the Shoreline Permit Table:

1. Table header symbols indicate the following Shoreline Environment Designations:
   "N" = Natural, "C" = Conservancy, "R" = Residential, "H" = High Intensity, "AF" = Aquatic Freshwater, "AM" = Aquatic Marine.

2. A shaded cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Substantial Development Permit provisions specified in PCC 18S.60.040 or the criteria for an SD Exemption pursuant to PCC 18S.60.020.
3. An "AC" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Administrative Conditional Use Permit provisions specified in PCC 18S.60.050. Such uses must obtain an Administrative Conditional Use Permit even if the development does not require a Substantial Development Permit.

4. A "C" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Conditional Use Permit provisions specified in PCC 18S.60.060. Such uses must obtain a Conditional Use Permit even if the development does not require a Substantial Development Permit.

5. A blank cell on the table indicates that the use, modification, or development is prohibited in the SED listed at the top of the column, or that the cell is not applicable. Prohibited development may also be called out in notes (1) through (8).

<table>
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<th>Uses, Modifications and Development</th>
<th>Shoreline Environment Designation (SED)</th>
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<tr>
<td><strong>N= Natural, C= Conservancy, R= Residential, H= High Intensity, AF= Aquatic Freshwater, AM= Aquatic Marine</strong></td>
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<td><strong>Agriculture (See PCC 18S.40.030 for Agriculture Policies and Regulations)</strong></td>
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<td>Low Intensity Agriculture</td>
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<td>All other Agriculture</td>
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<tr>
<td><strong>Aquaculture (See PCC 18S.40.040 for Aquaculture Policies and Regulations)</strong></td>
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<td>Water-Oriented</td>
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<td>Non Water-Oriented</td>
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<tr>
<td>Mixed-use Development (commercial/residential)</td>
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<tr>
<td><strong>Excavation, Dredging, Filling and/or Grading (See PCC 18S.30.040 for Policies and Regulations)</strong></td>
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<td>Excavation Landward of OHWM</td>
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<td>Dredging Waterward of OHWM</td>
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<td>Filling Landward of OHWM</td>
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<td>Grading</td>
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<td>State Dredge Material Disposal</td>
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<td><strong>Flood Hazard Management (See PCC 18S.40.060 for Flood Hazard Management Policies and Regulations)</strong></td>
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<td><strong>Forest Practices (See PCC 18S.40.070 for Forest Practice Policies and PCC Title 18H for Regulations)</strong></td>
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<td>Uses, Modifications and Development</td>
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<td><strong>Shoreline Permit Table</strong></td>
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<td>Water-Oriented trail, boardwalk, viewpoint, walk/boat-in primitive campsite</td>
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<td>All other Non Water-Oriented Recreational Development (4)</td>
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<td><strong>Residential and Land Divisions</strong> (See PCC 18S.40.100 for Residential Policies and Regulations)</td>
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<td>Single-Family and accessory uses/structures</td>
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<td>Other Housing Types and accessory uses/structures</td>
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<td>Land Divisions for Detached Single-Family with infrastructure</td>
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<tr>
<td>All other Land Divisions with infrastructure</td>
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<td><strong>Restoration and Enhancement</strong> (See PCC 18S.40.110 for Restoration and Enhancement Policies and Regulations)</td>
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<td>Public Linear Utility Facility</td>
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<td><strong>Water Access Facilities</strong> (See PCC 18S.40.140 for Water Access Facilities Policies and Regulations)</td>
<td></td>
</tr>
<tr>
<td>Residential Water Access Facility (serves 4 or fewer parcels)</td>
<td>(8)</td>
</tr>
<tr>
<td>Other Water Access Facilities</td>
<td>(8)</td>
</tr>
<tr>
<td>Use of Water Access Facility for Home Occupation/Cottage Industry</td>
<td>(8)</td>
</tr>
</tbody>
</table>

**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. Aquaculture is prohibited in the Aquatic SEDs abutting the Natural SEDs on Marine waters (see PCC 18S.40.040 B. and C).
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.
Table 18S.60.030-1. Shoreline Permit Table

<table>
<thead>
<tr>
<th>Uses, Modifications and Development</th>
<th>Shoreline Environment Designation (SED)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
</tr>
<tr>
<td>N = Natural, C = Conservancy, R = Residential, H = High Intensity, AF = Aquatic Freshwater, AM = Aquatic Marine</td>
<td></td>
</tr>
</tbody>
</table>

(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.

Interpretation:
- A shaded cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Substantial Development Permit (SD) provisions specified in PCC 18S.60.040 or the criteria for an SD Exemption, see PCC 18S.60.020.
- An "AC" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Administrative Conditional Use Permit provisions specified in PCC 18S.60.050. Uses that are listed as requiring an AC in the table must obtain an Administrative Conditional Use Permit even if the development doesn't require an SD.
- A "C" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Conditional Use Permit provisions specified in PCC 18S.60.060. Uses that are listed as requiring a C in the table must obtain a Conditional Use Permit even if the development does not require a Substantial Development Permit.
- A blank cell on the table indicates that the use, modification, or development is prohibited in the SED listed at the top of the column, or that the cell is not applicable. Prohibited development may also be called out in notes (1)-(7).

Chapter 18S.70 – Appendix C
Aquaculture Application Requirements

Applications for aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity. Information required of all applicants shall include a Site Plan, a Description of the Project, a Baseline Information Study, an Assessment of Impacts, and documentation of property ownership or of owner permission to conduct activities. Applicants proposing more complex projects may be required to provide an expanded list of information. The results of the Baseline Information Study and Assessment of Impacts shall be used to determine monitoring requirements.

E. Performance Standards and Monitoring Plan necessary to ensure compliance with a Shoreline Permit Application.
1. A monitoring plan shall be developed that includes project-specific performance standards shall be created that are specific to the aquaculture proposal and the results of the baseline review of the proposed farm site.
2. The monitoring plan shall be prepared provided by a qualified independent third party professional to determine compliance with the established performance standards or conditions of the shoreline permit and land use approval.
a. The County will establish a monitoring schedule as a condition of each permit approval. Performance standards, monitoring protocols and contingencies shall be included in the monitoring plan. Compliance with performance standards will generally be met by demonstrating no statistically significant changes to baseline conditions as a result of individual harvest activities or by demonstrating...
that no consistent adverse changes occur over the course of multiple harvest
activities. The results of the operational monitoring may trigger a range of
actions, including, but not limited to, changes to:
(1) The allowable size of the operation;
(2) The planting or harvest schedule; and
(3) The width of required buffers or setbacks.

b. The duration and frequency of monitoring shall be unique to each proposal;
however, in general, monitoring shall occur in conjunction with bed preparation,
staging, seeding, and harvest activities and for a period of time sufficient to
verify compliance with performance standards. Duration and frequency shall be
reduced when the applicant demonstrates that, relative to their proposal, these
activities, whether singly or in combination, do not serve as a potential stressor to
the following functional attributes of the intertidal zone: reduction in forage fish
habitat, alteration to benthic community structure, reduction in forage availability
and migration habitat, or reduction in water quality.

c. Monitoring frequency should be increased commensurate with the complexity
and intensity of the aquaculture method(s) utilized and the sensitivity of the
shoreline.

d. The results of the monitoring program may affect the scale or frequency of
harvest activities. Monitoring may result in a reduction to harvest activities or it
may allow an expansion within the limits of the approved permit, depending
upon the Performance Standards established.
Only those portions of Title 18E that are proposed to be amended are shown. Remainder of text, tables, maps and/or figures is unchanged.

18E.40.020 Fish and Wildlife Species and Habitat Conservation Areas.

D. Habitats of Local Importance. Documented habitat areas or potential habitat areas and point locations for fish and wildlife species. These areas include specific habitat types, which are infrequent in occurrence in Pierce County and may provide specific habitats with which endangered, threatened, sensitive, candidate, or monitor fish and wildlife species have a primary association, such as breeding habitat, winter range, and movement corridors. These areas include the following:

1. Oregon white oak trees and woodlands. Oregon white oak woodlands, stands, and individual trees meeting the following criteria shall be considered priority habitat and shall be subject to protection under the provisions of this Chapter:
   a. Priority Oregon White Oak Woodlands. Stands of Oregon white oak or oak/conifer associations where the stand is at least one acre in size and the canopy coverage of the oak component of the stand is greater than or equal to 25 percent. (See Figure 18E.40-1 in Chapter 18E.120 PCC.)
   b. Significant Oaks and Stands. Within the urban growth area, single oaks or stands of oaks smaller than one acre in size when any of the following criteria are met:
      (1) Individual trees having a diameter at breast height of 20 inches or more; or
      (2) Oregon white oak stands in which the oak trees have an average diameter at breast height of 15 inches or more regardless of stand size.

2. Prairies.

3. Old growth/mature forests.


5. Cliffs.

6. Snag-rich areas and downed logs. Priority logs are $\geq 30$ cm (12 in) in diameter at the largest end, and $\geq 6$ m (20 feet) long. Priority snag and downed log habitat includes individual snags and/or logs, or groups of snags and/or logs of exceptional value to wildlife due to their scarcity or location in a particular landscape. Areas with abundant, well-distributed snags and logs are also considered priority snag and log habitat. Examples include large, sturdy snags adjacent to open water, remnant snags in developed or urbanized settings, and areas with a relatively high density of snags.

7. Elk herd winter range.

8. Talus. Talus areas that support pica or rock rabbit, Van Dyke's salamander, western redback salamander, northern alligator lizard, or western fence lizard.

9. Commercial and recreational shellfish areas.


11. Herring, smelt, and sandlance spawning areas.

12. Natural waters and adjacent riparian-shoreline areas including:
   a. All water bodies classified by the Washington Department of Natural Resources (DNR) water typing classification system as detailed in WAC 222-16-030 and 222-16-031.
b. All waters that support regulated fish or wildlife species (i.e., areas that have connectivity to fish bearing waters and may potentially provide habitat given no natural barriers to fish passage).

c. Ponds and their submerged aquatic beds.
d. Side channels and/or off-channel habitat.

13. Estuaries and tidal marshes.

14. Connectable relic channels and oxbows. A relic channel or oxbow may be considered connectable when any of the following criteria are met:
a. The channel or oxbow is associated with the river during high flow events;
b. The depth of the channel or oxbow is at or very near the groundwater elevation;
c. The channel or oxbow is likely to be captured by the river during high flow events;
d. Excavation between the channel or oxbow and river will not result in adverse impacts to local groundwater levels or adjacent wetlands.

15. Wetlands (refer to Chapter 18E.30 PCC).

16. Heron rookeries.

17. Cavity nesting duck habitat.

18. Western bluebird non-artificial nesting sites.


20. Critical saltwater habitats include all kelp beds, native eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial, and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

18E.40.040 Fish and Wildlife Habitat Conservation Area Standards.

D. Submerged Aquatic Vegetation (SAV). Native eelgrass, kelp, and intertidal vascular plants shall be protected by maintaining an undisturbed area between regulated activities described in Table 18E.40.040-1 and the boundary of the bed. Limited activity may occur within the undisturbed area (i.e., foot traffic and temporary storage of materials associated with permitted activities). Table 18E.40.040-1 indicates the baseline undisturbed area width for each type of regulated activity. These widths may be adjusted by the Department during the review process to reflect site specific conditions, current research, and advances in technology.

<table>
<thead>
<tr>
<th>Regulated Activity</th>
<th>Required Undisturbed Area Widths*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shellfish Aquaculture Harvest</td>
<td>16-feet</td>
</tr>
<tr>
<td></td>
<td>Intertidal Manual Harvest: 25-feet</td>
</tr>
<tr>
<td></td>
<td>Intertidal Mechanical Harvest: 50-feet</td>
</tr>
<tr>
<td></td>
<td>Subtidal: 180-feet</td>
</tr>
<tr>
<td>Mussel Rafts</td>
<td>50-feet within low-energy shoreline areas including, but not limited to bays, coves, and estuaries.</td>
</tr>
<tr>
<td>Fish Pens</td>
<td>300-feet</td>
</tr>
</tbody>
</table>

Table 18E.40.040-1. Submerged Aquatic Vegetation
Table 18E.40.040-1. Submerged Aquatic Vegetation

<table>
<thead>
<tr>
<th>Regulated Activity</th>
<th>Required Undisturbed Area Widths*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Docks and Floats</td>
<td>4-feet vertical separation or 25-feet horizontal separation, whichever is greater.</td>
</tr>
<tr>
<td>Other</td>
<td>A minimum separation of 25-feet shall be required for all other activities.</td>
</tr>
</tbody>
</table>

*Required undisturbed area widths do not apply to eelgrass that establishes naturally following commencement of approved aquaculture activities.

E. Forage Fish Spawning and Herring Holding Areas.

1. Regulated activities waterward of the ordinary high water mark (OHWM), in areas of confirmed spawning habitat, shall be prohibited suspended during spawning periods unless the applicant demonstrates a survey by a qualified professional confirms that spawning is not occurring or approval is obtained from WDFW.

2. Regulated activities in areas where a survey demonstrates that no spawning is occurring are still subject to avoidance and minimization requirements of PCC 18E.40.050.
FINDINGS OF FACT

The Pierce County Council finds that:

1. The Pierce County Council adopted Ordinance No. 2013-45s4 on March 10, 2015, establishing "Title 18S" of the Pierce County Code (PCC), "Development Policies and Regulations – Shorelines".

2. Pursuant to Ordinance No. 2013-45s4, the Pierce County Council updated various Chapters and Titles of the Pierce County Code including Title 18E PCC, "Development Regulations – Critical Areas," for compliance with the Washington State Shoreline Management Act.

3. Revised Code of Washington (RCW) 90.58.090 requires the Washington State Department of Ecology (DOE) to review and approve locally adopted Shoreline Master Programs (SMP) before they can become effective.

4. On May 31, 2018, Pierce County received "conditional approval" of its SMP update from the DOE as adopted pursuant to Ordinance No. 2013-45s4.

5. The DOE's conditional approval of Pierce County's SMP update included a list of required and recommended changes.

6. The Pierce County Council adopted Ordinance No. 2018-57s on October 2, 2018, incorporating all of the DOE's required changes and many of the DOE's recommended changes into the Pierce County Shoreline Master Program update.

7. Following final approval from the DOE on October 12, 2018, the Pierce County's Shoreline Master Program Comprehensive Update and Periodic Review became effective on October 26, 2018.

8. On December 19, 2018, Taylor Shellfish Company, Inc. and Seattle Shellfish, LLC jointly filed a petition for review to the Growth Management Hearings Board (GMHB) challenging adoption of the Pierce County Shoreline Master Program.

9. On December 19, 2018, North Bay Partners, LLC filed a petition for review to the GMHB challenging adoption of the Pierce County Shoreline Master Program.

10. On December 28, 2018, the GMHB consolidated the various appeals under Case No. 18-3-0013c.
11. On May 7, 2019, the GMHB held a hearing on the merits of Case No. 18-3-0013c, and on June 17, 2019, issued a Final Decision and Order (FDO) finding certain aspects of the County's SMP did not comply with the SMA and applicable guidelines.

12. Pursuant to the GMHB's FDO, a total of 31 legal issues were evaluated (two legal issues raised constitutional claims outside of the Board's jurisdiction and were not addressed), seven legal issues were explicitly abandoned by the petitioners and were dismissed, and seven legal issues were dismissed by the Board having found the Petitioners failed to meet their burden.

13. The GMHB remanded various Sections of the Pierce County Shoreline Master Program back to the County to take action to comply with RCW 90.58.020 and RCW 90.58.100, and WAC 173-26-176, 173-26-186, 173-26-191, 173-26-201, 173-26-221 and 173-26-241 based on the Board's analysis of the remaining legal issues.

14. On June 27, 2019, the Attorney General of Washington State filed a Motion for Reconsideration on behalf of the DOE requesting the GMHB delete or modify specific language in the FDO that the DOE believes is inconsistent with the SMP and the requirements of the SMP guidelines.

15. On August 9, 2019, the GMHB, in response to the Motion for Reconsideration, clarified its FDO related to priority of water dependent uses and the hierarchal order of preference of Statewide interest over local interest applicable to shorelines of statewide significance under the SMA and corrected Scribner's errors.

16. The GMHB's compliance schedule includes a September 16, 2019, due date for the County to comply with the FDO.

17. The amendments included in this proposal are within the scope of the State Environmental Policy Act analysis and range of alternatives considered in adoption of Ordinance No. 2013-45s4 and Ordinance No. 2018-57s and are more protective of the environment than Title 20 PCC, "Shoreline Master Program for Pierce County," originally adopted on March 4, 1974, which has been repealed in its entirety.

18. Immediate action to comply with the GMHB's order is needed to ensure continued support of the County government and its existing institutions.