ISLAND COUNTY PLANNING COMMISSION

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To: **Board of Island County Commissioners**

From: **Island County Planning Commission**

RE: **Findings of Fact – Shoreline Master Program Update – Final Adoption**

Date: **September 28, 2015**

Summary

On August 17, 2015 The Washington State Department of Ecology (DOE) preliminarily approved Island County's updated Shoreline Master Program (SMP) subject to a number of conditions. Pursuant to RCW 90.58.090(2)(e), Island County must either accept the conditional changes requested by DOE or propose alternative changes to address DOE's concerns. The Island County Planning Commission recommends that the Board of Island County Commissioners accept of all the changes requested by DOE in their conditional approval letter.

History & Regulatory Requirements:

The Shoreline Management Act (SMA) was approved by Washington voters in 1972. The SMA requires that each city and county in the state develop a local Shoreline Master Program (SMP) (RCW 90.58.080) and also requires that local SMPs be periodically reviewed and updated (RCW 90.58.080(2)(a)(iv)). The purpose of the periodic review and update requirement is to ensure that local SMPs are consistent with current regulatory requirements and incorporate current scientific and technical information. Importantly, pursuant to RCW 90.58.090, the Department of Ecology is required to review and approve (or reject) locally adopted SMPs or SMP updates.

In 2010, Island County began the process of updating the SMP. This work was largely funded by a $450,000 grant provided by the Department of Ecology. On December 27, 2012 the Board of Island County Commissioners voted to approve a revised SMP and forward it to the Department of Ecology for review (Resolution C-125-12). In accordance with SMA requirements (WAC 173-26-120), DOE provided an opportunity for public comment on the proposed update and held a public meeting in Coupeville on May 1, 2013. Following this meeting, and the conclusion of the public comment period,

DOE provided Island County with a summary of the comments received during the comment period. Public participation in this process was substantial; DOE received approximately 339 comments from 79 individuals and 16 organizations. Pursuant to WAC 173-26-120(6) Island County prepared a detailed response to these comments and made a number of changes to the proposed SMP. The County's comments and proposed changes were submitted to DOE on August 30, 2013.

Following the County's submittal of comment responses and proposed changes, DOE advised Island County that additional changes would be required in order to achieve compliance with the Shoreline Management Act. Most of the changes requested by DOE were easily addressed; however, there was significant disagreement between the County and DOE regarding the regulatory status of "net-pen" aquaculture. As submitted to DOE, the County's SMP prohibited net-pen aquaculture in marine waters. During the ensuing public comment period a large number of comments were submitted in support of banning net-pen aquaculture. Following a series of protracted discussions, DOE advised Island County that they would accept a prohibition on net-pen aquaculture provided the issue was revisited during future periodic update efforts, thereby removing the final obstacle to DOE approval.

Recommendation:

In accordance with Washington State law (RCW 90.58.090(2)(d)), DOE is required to take action on locally adopted SMPs by either: (1) approving the proposed update, (2) approving the proposed update with conditions or required changes, or (3) rejecting the proposed update. DOE has conditionally approved Island County's SMP. A letter from DOE dated August 17, 2015 outlines the changes requested by DOE (GMA Record No. 11528). In addition, the attached documents identified by GMA Record Numbers 11530, 11529 and 11531 show where revisions would need to be made to the SMP regulations, policies, and environment designations in order to implement the changes requested by DOE.

Because the changes requested by DOE in their approval letter were developed in consultation with Island County staff and the Board of Island County Commissioners, the Island County Planning Commission recommends that the Board of Island County Commissioners accept all of the proposed changes and move forward with the process of implementing the updated SMP by codifying the necessary changes to the Island County Code and Comprehensive Plan.

Findings

1. Island County conducts planning activities in accordance with Chapter 36.70 RCW (The Planning Enabling Act).

2. The planning activities of Island County, and the planning activities of municipalities within Island County, are further regulated by the provisions of Chapter 36.70A RCW (The Growth Management Act).

3. Island County is also required to comply with the requirements of the Washington State Shoreline Management Act (SMA).

4. In 1995, the State Legislature amended the Growth Management Act (RCW 36.70A [GMA]) and the SMA to partially integrate the provisions of the two statutes. The amendments collectively added the goals and policies of the SMA as a 14th planning goal under the GMA and clarified that the goals and policies of an approved SMP shall constitute a shoreline element of the County's Comprehensive Plan (RCW 36.70A.480).

5. The Washington State Legislature passed the Washington State Shoreline Management Act (RCW 90.58) in June 1971 and it was passed by public initiative in 1972. Under the SMA, each county and city is required to adopt and administer a local shoreline master program (SMP) to prevent the uncoordinated and piecemeal development on shorelines of the state consistent with the Act.

6. The SMA requires that locally adopted SMPs be periodically reviewed and updated (RCW 90.58.080(2)(a)(iv)).

7. In 2010, Island County began the process of updating the SMP. This work was largely funded by a $450,000 grant provided by the Department of Ecology.

8. On December 27, 2012 the Board of Island County Commissioners voted to approve a revised SMP and forward it to the Department of Ecology for review (Resolution C-125-12).

9. In accordance with SMA requirements (WAC 173-26-120), DOE provided an opportunity for public comment on the proposed update and held a public meeting in Coupeville on May 1, 2013. Following this meeting, and the conclusion of the public comment period, DOE provided Island County with a summary of the comments received during the comment period.

10. Public participation in the process required by WAC 173-26-120 was substantial; DOE received approximately 339 comments from 79 individuals and 16 organizations. Pursuant to WAC 173-26-120(6) Island County prepared a detailed response to these comments and made a number of changes to the proposed SMP. The County's comments and proposed changes were submitted to DOE on August 30, 2013.

11. Following the County's submittal of comment responses and proposed changes, DOE advised Island County that additional changes would be required in order achieve compliance with the Shoreline Management Act. Most of the changes requested by DOE were easily addressed; however, there was significant disagreement between the County and DOE regarding the regulatory status of "net-pen" aquaculture. As submitted to DOE, the County's SMP prohibited net-pen aquaculture in marine waters.

12. During the public comment period required by WAC 173-26-120 a large number of comments were submitted in support of banning net-pen aquaculture. Following a series of protracted discussions, DOE advised Island County that they would accept a prohibition on net-pen aquaculture provided the issue was revisited during future periodic update efforts, thereby removing the final obstacle to DOE approval.

13. Pursuant to the SMA, at RCW 90.58.050, Island County and the State Department of Ecology share joint authority and responsibility for the administration of the Island county SMP. Because the Island County Shoreline Master Program is approved by the State Department of Ecology, it has the authority of state law.

14. Pursuant to RCW 90.58.090, the Department of Ecology is required to review and approve (or reject) locally adopted SMPs or SMP updates.

15. In accordance with Washington State law (RCW 90.58.090(2)(d)), DOE is required to take action on locally adopted SMPs by either: (1) approving the proposed update, (2) approving the proposed update with conditions or required changes, or (3) rejecting the proposed update.

16. On August 17, 2015 The Washington State Department of Ecology (DOE) preliminarily approved Island County's updated Shoreline Master Program (SMP), subject to a number of conditions.

17. In accordance with SMA, Island County may (1) accept the changes requested by DOE, or (2) appeal DOE's decision to the Growth Management Hearings Board. Island County may also propose alternatives to DOE's changes if they address the underlying concerns raised by DOE; however, this would trigger an additional round of DOE review.

18. The Island County Planning Commission finds that the changes requested by DOE are acceptable and do not alter the fundamental policy direction expressed by SMP submitted to DOE for review.

19. The Island County Planning Commission finds that the prohibition on net-pen aquaculture authorized by DOE is consistent with strong opposition to this use expressed by the public during the development and review of the SMP.

20. The Island County Planning Commission finds that the timely adoption of the updated SMP is important in order to provide certainty and clarity to the public, shoreline property owners, and permit applicants; and therefore, accepting the changes requested by DOE is in the public interest.

Conclusion

The Island County Planning Commission has reviewed the Department of Ecology's conditional approval letter (GMA Record No. 11528), and hereby recommends the Board of Island County Commissioners adopt the updated SMP with the changes requested by DOE as shown in the documents identified by GMA Record Numbers 11529, 11530 and 11531.

Respectfully submitted through the Island County Planning Department to the Board of Island County Commissioners, pursuant to RCW 36.70.430, this 28 day of September, 2015 by,

Jeffery D. Wallin
Chair, Island County Planning Commission