

## Willis, Maxine (ECY)

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**From:** Pineo, Doug (ECY)  
**Sent:** Tuesday, January 30, 2007 11:35 AM  
**To:** Clingman, Tom (ECY); Lynn, Brian (ECY); Skowlund, Peter (ECY); Bales, Don (ECY); Anest, Jim (ECY); Young, Tom (ATG); Niles, Matthew (ECY); Wenger, Barry (ECY); Lund, Perry  
**Subject:** RE: Geoduck AGO

This opinion raises a number of questions for me. The Clamshacks case comes immediately to mind, since I am having difficulty reconciling that historic decision with the subject AG's opinion.

Anyone who ever fly fished the south Puget Sound nearshore for sea run cutthroat and silvers (coho salmon), or has ambitions to do so, will tell you that the first point bulleted below, is also suspect, and probably outright erroneous. The opinion contains a very familiar error in conceiving that *normal public use* is always associated with a park or similar public facility. The public trust doctrine rests on, and arises from, the fact that ancient and modern societies have used, and continue to use the entire surface and water column of marine and fresh waters for many millennia, albeit at varying degrees of intensity for different purposes.

Given the language in WAC 173-27-160 regarding Conditional Use Permits, I believe they should be required for all geoduck farms. Updated SMPs should specifically identify geoduck farms as uses which require a CUP. Here is an activity with a strong likelihood to proliferate on both privately owned and publicly owned tidelands (can you say \$\$\$\$\$\$?), and therefore demands a cumulative impact analysis, probably at a cross-jurisdictional or inter-jurisdictional level. Even at the single project level, a cumulative impact analysis is required at WAC 173-27-160(2). This is a definitive "shoreline issue of concern", (see Shoreline use analysis and priorities, WAC 173-26-201[3][d][ii], and Addressing Cumulative Impacts In Developing Master Programs, WAC 173-26-201[3][d][iii]), which should be addressed in SMP updates for shorelines throughout the Puget Sound region and other marine waters which might be subject to geoduck farming proposals.

There are two tiers to the issue, within the SMA context: Tier one is environmental review and permitting under existing SMPs; tier two is properly assessing geoduck farming in updated SMPs. All new SMPs covering shorelines where geoduck farming could be feasible should contain policies and use regulations addressing this specific use, based on its analysis as required in the SMP Guidelines WACs cited above. The second tier is environmental planning in this context which includes analysis and efficient approval of any geoduck aquaculture which will be allowed, about which I wrote yesterday.

Tubes may not be structures, but they constitute substantial potential to interfere with normal public use of shorelines.

Doug

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**From:** Clingman, Tom  
**Sent:** Friday, January 05, 2007 8:31 AM  
**To:** Lynn, Brian (ECY); Skowlund, Peter; Bales, Don (ECY); Anest, Jim (ECY); Young, Tom (ATG); Niles, Matthew (ECY); Wenger, Barry (ECY); Pineo, Douglass A. (ECY); Lund, Perry  
**Subject:** FW: Geoduck AGO

Highlights of the opinion relating to SMA:

- Case-specific consideration is necessary to determine if a particular geoduck operation interferes with normal public use of the surface waters - and this is properly determined by local government. They specifically note the proximity of a public park in the recent Court of Appeals case.
- Tubes are not structures under SMA.
- Harvesting geoducks using water jets is not development, dredging or filling under SMA.
- The SMA farming practices exemption does NOT apply to aquaculture.
- CUPs are a potential "means for managing existing and future operations" if this is provided in an SMP.

I await your commentary and perspectives. We do need to finish up and distribute our (revised) guidance to local governments at the earliest opportunity.

Tom C.

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**From:** Wilson, Mary Sue (ATG)  
**Sent:** Thursday, January 04, 2007 10:04 PM  
**To:** White, Gordon (ECY); Koenings, Jeanne (ECY); Clingman, Tom; Niles, Matthew (ECY); Zehm, Polly (ECY)  
**Cc:** Young, Tom (ATG)  
**Subject:** Geoduck AGO

Here it is. I'd say more, but don't have a good email connection right now so I want to get it out before I lose my connection. Tom or I will be in touch tomorrow.

Mary Sue

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