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BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

BAINBRIDGE ALLIANCE FOR
PUGET SOUND; ASSOCIATION OF
BAINBRIDGE COMMUNITIES; and
COALITION TO PROTECT PUGET
SOUND HABITAT,

Petitioners,

v.

CITY OF BAINBRIDGE ISLAND and
THE WASHINGTON DEPARTMENT
OF ECOLOGY,

Respondents.

NO.

PETITION FOR REVIEW

1. The petitioners are:

Bainbridge Alliance for Puget Sound
321 High School Rd NE, Ste. D3
PMB # 149
Bainbridge Island WA 98110-2648
(206) 842-4112
bapugetsound@gmail.com

1 Association of Bainbridge Communities
2 Charles Schmid, Secretary-Treasurer
3 P.O. Box 10999
4 Bainbridge Island, WA 98110
5 (206) 842-6001
6 ceschmid@att.net

5 Coalition to Protect Puget Sound Habitat
6 PO Box 228
7 Vaughn, WA 98394-0228
8 (253) 509-4987
9 Laura.L.Hendricks@gmail.com

2. The petitioners are represented in this proceeding by:

10 David A. Bricklin
11 Bricklin & Newman, LLP
12 1001 Fourth Avenue, Suite 3303
13 Seattle, WA 98154
14 (206) 264-8600 Telephone
15 (206) 264-9300 Facsimile
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3. This petition challenges the changes in the Bainbridge Island Shoreline Master
17 Program relating to aquaculture which were forced on the City by the Washington Department of
18 Ecology. The changes were mandated by DOE in a letter to the City dated June 23, 2014. The City
19 adopted the changes on July 15, 2014 with the adoption of Ordinance 2014-04. DOE issued its letter
20 granting final approval to Bainbridge Island's SMP by letter dated July 16, 2014. A copy of the
21 SMP is submitted with this petition.

4. The City's SMP would have allowed aquaculture as a conditional or permitted use on
22 approximately 40% of the city's shorelines below the ordinary high water mark (OHWM). DOE
23 insisted that aquaculture be allowed on 100% of the City's shorelines below the OHWM. DOE
24 insisted on other changes, too, all or most of which would reduce limitations on aquaculture.

5. The issues presented for resolution by the Board include:

1 5.1 Whether the changes forced on the City by DOE are in conflict with WAC
2 173-26-211(5)(e)(iii) which provides, in part, that shorelines designated Urban Conservancy are not
3 generally suitable for water-dependent uses?
4

5 5.2 Whether the changes forced on the City by DOE are in conflict with WAC
6 173-26-211(5)(c)(ii)(D) which provides, in part, that in the Aquatic environment all developments
7 and uses should be located to minimize interference with surface navigation and to allow for the
8 safe, unobstructed passage of fish, especially migratory species?

9 5.3 Whether the changes forced on the City by DOE are inconsistent with WAC
10 173-26-211(5)(c)(i) which provides, in part, that the purpose of the Aquatic environment is to
11 protect, restore, and manage the unique characteristics and resources below the ordinary high water
12 mark?
13

14 5.4 Whether the changes forced on the City by DOE are inconsistent with WAC
15 173-26-211(5)(e)(i) which provides, in part, that the purpose of the Urban Conservancy environment
16 is to protect and restore ecological functions of open space, flood plain and other sensitive lands in
17 urban areas while allowing for compatible uses?

18 5.5 Whether the changes forced on the City by DOE are inconsistent with WAC
19 173-26-211(5)(e)(ii)(A) which provides, in part, that primary uses in the Urban Conservancy
20 environment are those that preserve the natural character of the area or promote preservation of open
21 space, flood plain and sensitive lands?
22

23 5.6 Whether the changes forced on the City by DOE are inconsistent with WAC
24 173-26-211(5)(e)(ii)(D) which provides that in the Urban Conservancy environment, water-oriented
25 uses should be given priority over non-water-oriented uses, but not over the conservation of the
26 natural character of the area and the preservation of open space and sensitive lands?

1 5.7 Whether the changes forced on the City by DOE are inconsistent with WAC
2 173-26-211(2)(c)(iii)(B) which provides that reserving shoreline areas for protecting and restoring
3 ecosystem functions should be done prior to reserving shoreline areas for lesser preferred uses
4 identified in WAC 173-26-201(2)(d)(i)-(iv)?
5

6 5.8 Whether the changes forced on the City by DOE are in conflict with WAC
7 173-26-221(2)(c)(iii)(C) which provides, in part, that in critical saltwater habitats, human structures
8 shall not intrude unless all of numerous criteria are met including a clearly demonstrated public
9 need; no alternative; no net loss; and consistency with resource protection and species recovery?
10

11 5.9 Whether the changes forced on the City by DOE are in conflict with WAC
12 173-26-231(2)(a) which provides, in part, that shoreline modifications are allowed only if necessary
13 to support or protect an allowed primary structure or legal existing shoreline use and, then, only
14 upon a showing of no net loss?

15 5.10 Whether the changes forced on the City by DOE are in conflict with WAC
16 173-26-241(3)(b)(i)(A) which identify geoduck aquaculture as a preferred use only when that use is
17 consistent with the control of pollution prevention of damage to the environment?
18

19 5.11 Whether the changes forced on the City by DOE are inconsistent with WAC
20 173-26-241(e)(b)(i)(A) which provides, in part, that geoduck aquaculture should be limited and
21 conditioned to assure appropriate compatible types of aquaculture for the local conditions as
22 necessary to assure that no net loss of ecological functions and in consideration of local ecological
23 conditions?
24

25 5.12 Whether the changes forced on the City by DOE are in conflict with WAC
26 173-26-241(3)(b)(i)(C) which provides, in part, that geoduck aquaculture should not be permitted in

1 areas where it would result in a net loss of ecological function, adverse impacts to eelgrass or macro-
2 algae, conflict with navigation, or conflict with other water-dependent uses?

3 5.13 Whether the changes forced on the City by DOE are in conflict with the
4 SMA which, in the words of DOE's guidelines, makes protection of the shoreline environment an
5 "essential statewide policy goal" "[t]hrough numerous references to and emphasis on the
6 maintenance, protection, restoration, and preservation of 'fragile' shoreline, 'natural resources,'
7 'public health,' 'the land and its vegetation and wildlife,' 'the waters and their aquatic life,'
8 'ecology,' and 'environment, . . .'"?

9
10 5.14 Whether the changes forced on the City by DOE are in conflict with WAC
11 173-26-186(8)(b) which provide that local master programs shall include policies and regulations
12 designed to achieve no net loss?

13
14 5.15 Whether the changes forced on the City by DOE are in conflict with WAC
15 173-26-211(5)(c)(2) which provides that uses in the Aquatic environment which adversely impact
16 ecosystem functions of critical saltwater habitat should not be allowed except when necessary to
17 accomplish statutory objectives? Whether the changes forced on the City by DOE are inconsistent
18 with RCW 90.58.020 which provides, in part, that alterations to the shoreline, in the limited
19 instances where alterations are allowed, shall give priority to single-family residential development?

20
21 5.16 Whether the changes forced on the City by DOE are inconsistent with WAC
22 173-26-211(2)(a) which requires, in part, that environmental designations shall be based on existing
23 use patterns and the goals and aspirations of the community as expressed in the Comprehensive
24 Plan?

25 5.17 Whether the changes forced on the City by DOE are inconsistent with the
26 internal consistency provisions of RCW 36.70A.070 and RCW 36.70A.040(4)?

1 5.18 Whether the changes forced on the City by DOE are inconsistent with WAC
2 173-26-211(4)(c)(ii) which provides, in part, that where parallel environments are used, they should
3 not allow for inconsistent uses?

4 5.19 Whether the changes forced on the City by DOE are inconsistent with WAC
5 173-26-241(3)(b)(i)(C) which provides, in part, that geoduck aquaculture should not be permitted in
6 areas where there will be significant impacts to the aesthetic qualities of the shoreline?
7

8 5.20 Whether the changes forced on the City by DOE are in conflict with RCW
9 90.58.020 which provides that the public's opportunity "to enjoy aesthetic qualities shall be
10 preserved to the greatest extent feasible consistent with the best interests of the state . . ."?
11

12 5.21 Whether the changes forced on the City by DOE are in conflict with WAC
13 173-26-211(5)(c)(ii)(D) which provides, in part, that in the Aquatic environment all development
14 and uses should be located to minimize interference with impacts to public views?

15 5.22 Whether the changes forced on the City by DOE are inconsistent with WAC
16 173-26-176(2) which provides that water dependent uses shall be allowed only where reasonable,
17 appropriate, and consistent with avoiding adverse effects to wildlife and vegetation, aquatic life, and
18 public navigation?

19 5.23 Whether the changes forced on the City by DOE are inconsistent with the
20 policy in RCW 90.58.020 which "contemplates protecting against adverse effects to the public
21 health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life,
22 while protecting generally public rights of navigation and corollary rights incidental thereto?"
23

24 5.24 Whether the changes forced on the City by DOE are inconsistent with the
25 policy in RCW 90.58.020 "the public's opportunity to enjoy the physical and aesthetic qualities of
26

1 natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the
2 overall best interest of the state and the people generally?”

3 5.25 Whether the changes forced on the City by DOE are in conflict with WAC
4 173-26-211(3) which provides, in part, that the Comprehensive Plan is “the underlying framework
5 within which master program provisions should fit?”

6 5.26 Whether the changes forced on the City by DOE are in conflict with the
7 City’s Comprehensive Plan, including the first principle in the Land Use Element (“Preserve the
8 special character of the Island which includes . . . marine views”); Policy LU 1.1 (“land use
9 designations should reflect the priority of Bainbridge Island to remain primarily residential, with
10 nonresidential development outside of the Winslow area concentrated in the service centers and
11 at the designated Business/ Industrial areas”); Policy LU 1.6 (“Development outside of Winslow
12 and the neighborhood centers should be compatible with the distinctive features of the Island’s
13 open spaces, harbors, winding roads, small-scale agricultural establishments, natural landscape,
14 and distinctive communities”); Policy B/I 3.1 (“Isolated Business/Industrial zones are designated
15 to reflect historical use and the designation should not be expanded”); Residential Open Space
16 Goal 1 (“Preserve the open space area outside Winslow and the Neighborhood Service Centers
17 through a development pattern which will enhance the character of the area – forested areas,
18 meadows, farms, narrow roads bordered by dense vegetation – and the valuable functions the
19 open space area serves on the Island (i.e., aquifer recharge, fish and wildlife habitat,
20 recreation”); Policy OS 1.5 (“New development should strive to be responsive to the natural
21 landscape and should be sited so as to have the least visual and environmental impact on the
22 Island landscape. Features which enhance the Island’s character, such as barns, fences, fruit or
23 agricultural stands, should be retained and encouraged”); Policy OS 3.3 (“ . . . the landscape
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1 should maintain the natural and scenic qualities of the Island”); Policy OS 4.1 and Policy 4.2 (R-1
2 and R-2 designations intended to recognize the “existing development pattern”); Environment
3 Goal 1 (“Preserve and enhance Bainbridge Island’s natural systems, natural beauty, and
4 environmental quality”); Policy EN 1.1 (“Land use decisions shall be made seriously considering the
5 overall goal of the Comprehensive Plan in protecting the Island’s natural environment”); Policy EN
6 1.4 (“Encourage community land use plans and development patterns that maintain, enhance or
7 restore natural systems, and protect wildlife, fish resources and open spaces”); Policy EN 1.6 (“The
8 City will use the City’s Shoreline Management Master Program to address and protect marine fish
9 and marine shoreline habitat”); and Aquatic Resources Goal 1 (“Preserve and protect the Island’s
10 remaining aquatic resources’ functions and values”)?
11

12 5.27 Whether the changes forced on the City by DOE are in conflict with and/or
13 failed to consider WAC 173-26-211(3)(c) which provides, in part, that shoreline uses should not be
14 allowed where the Comprehensive Plan does not provide for sufficient roads, utilities, and support
15 services?
16

17 5.28 Whether the changes forced on the City by DOE are in conflict with or failed
18 to consider WAC 173-26-221(4)(d)(iv) which provides, in part, that an SMP must include provisions
19 to minimize view impacts from substantial numbers of residences and that water-dependent uses are
20 subject to these provisions when there are compelling reasons?
21

22 5.29 Whether the changes forced on the City by DOE are in conflict with RCW
23 90.58.100 which authorizes the use of conditional use permits “only if extraordinary circumstances
24 are shown and the public interest suffers no substantial detrimental effect” and only when
25 necessary to avoid “unnecessary hardships” or thwart the policies in RCW 90.58.020?”
26

1 5.30 Whether the changes forced on the City by DOE are in conflict with WAC
2 173-26-201(2)(a) and (3)(c) which requires that SMPs be developed only after the jurisdiction has
3 acquired inventory and other data including data regarding aquatic wildlife habitat, native aquatic
4 vegetation, aquaculture operations, and shellfish beds and only after the jurisdiction has identified
5 and addressed gaps in the relevant information?
6

7 5.31 Whether the changes forced on the City by DOE are in conflict with WAC
8 173-26-201(3)(d)(ii) which provides, in part, that an SMP must be based on the estimated future
9 demand for shoreline space and potential use conflicts?
10

11 5.32 Whether the changes forced on the City by DOE are in conflict with WAC
12 173-26-201(3)(g) which provides that, in general, the less that is known about existing resources, the
13 more protective the SMP should be?
14

15 5.33 Whether the changes forced on the City by DOE are in conflict with WAC
16 173-26-201(3)(d)(iii) that requires that the SMP be adopted only after there has been an assessment
17 of cumulative effects including impacts on allowed uses?
18

19 5.34 Whether the changes forced on the City by DOE are in conflict with WAC
20 173-26-186(8)(d) and with WAC 173-26-186(8)(b) which provide, in part, that master programs
21 shall contain policies, programs, and regulations that not only address adverse cumulative impacts,
22 but fairly allocate the burden of addressing cumulative impacts among development opportunities
23 and that the master program shall be based upon consideration of, among other things, current
24 circumstances affecting the shorelines and natural processes and reasonably foreseeable future
25 development and use of the shoreline?
26

 5.35 Whether DOE violated RCW 90.58.050, RCW 90.58.090(2) & (3), and
WAC 173-26-120(7) when it mandated the City to make changes in its SMP related to aquaculture

1 contrary to the statute's and regulation's authorization that DOE may "recommend" (not mandate)
2 changes and contrary to the statute's and regulation's authorization that DOE can only recommend
3 changes when the SMP is inconsistent with the policies of RCW 90.58.020 and the applicable
4 guidelines?

5
6 6. Standing. The petitioners have standing pursuant to RCW 36.70A.280(2). Each of
7 the petitioners participated orally and/or in writing before the City regarding the matter on which
8 review is being requested. Further, each of the petitioners has standing pursuant to RCW 34.05.530.
9 The petitioners have members who reside, own property, recreate, and/or work on Bainbridge Island
10 in and around its shorelines. Ownership of their property and their use and enjoyment of the
11 shorelines will be impaired if the City is forced to comply with Ecology's demands to open up the
12 entire shoreline to aquaculture. The interests of the petitioners and their members are among those
13 that the City of Bainbridge Island was required to consider when it adopted the SMP. Indeed, the
14 City considered those interests and originally adopted an SMP with provisions relating to
15 aquaculture that would not have been appealed by these petitioners. When Ecology forced the City
16 to adopt far more lenient aquaculture provisions, it is not clear whether the Department of Ecology
17 took account of the petitioners' interests, even though it was required to do so. A final order by the
18 Board in favor of the petitioners would substantially eliminate or redress the prejudice that the
19 petitioners would otherwise suffer as a result of the City's acquiescence in Ecology's demands.
20

21
22 7. Petitioners seek an order finding that the changes to the SMP related to aquaculture
23 in Ordinance 2014-04 are not in compliance with the requirements of Chapter 90.58 RCW, the
24 policy of RCW 90.58.020, the applicable DOE guidelines, and the internal consistency provisions of
25 RCW 36.70A.070 and RCW 36.70A.040(4).
26

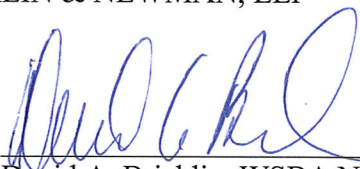
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8. I affirm that I have read the foregoing petition, believe the contents to be true, and that I am authorized by the petitioners to sign this petition on their behalves.

Dated this 6th day of October, 2014.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 
David A. Bricklin, WSBA No. 7583
Attorneys for Petitioners