



COUNTY COMMISSIONERS

Cathy Wolfe
 District One
 Sandra Romero
 District Two
 Karen Valenzuela
 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	Project No. 2011-104210
)	
Taylor Shellfish)	Taylor/Lockhart SSDP
)	
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested substantial shoreline development permit to allow development of a 0.9-acre intertidal geoduck bed along Henderson Inlet on leased tidelands at 9000 Libby Road NE in Olympia, Washington is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Taylor Shellfish (Applicant) requested approval of a substantial shoreline development permit to develop a 0.9-acre geoduck bed on tidelands leased from the owners of the residential parcel at 9000 Libby Road NE in Olympia. The proposed project area is designated as a Rural Shoreline Environment by the Shoreline Master Program for the Thurston Region.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on November 26, 2012. The instant application was heard simultaneously in a consolidated open record hearing with two applications for shoreline substantial development permit for geoduck beds on nearby parcels submitted by Arcadia Point Seafood. Per pre-hearing agreement of the parties on the record, all testimony and evidence offered at the consolidated hearing is included in the record for each of the three applications. At the conclusion of the hearing, the record was held open for submission of five additional documents from a member of the public and for response from both Applicants and the County to comments submitted at and after the hearing. Items identified as Exhibits 19 through 26 were timely submitted and are admitted.¹ Due to the

¹ Per the November 27, 2012 Post Hearing Order, the record was held open until December 6th for responses from

volume and technical complexity of the evidence submitted, the Applicants agreed to extend the time for issuance of the decisions until January 10, 2013.

Testimony:

At the hearing the following individuals presented testimony under oath:

Mike Kain, Planning Manager, Resource Stewardship
Diane Cooper, Director of Regulatory Affairs, Taylor Shellfish, Inc.
Vicki Wilson, Arcadia Point Seafood
Steve Wilson, Arcadia Point Seafood
Brian Phipps, Geoduck Division Manager, Taylor Shellfish
Marlene Meaders, Fisheries Biologist, Environ (Applicant consultant)
Matt Buldis
Susan Shotwell
Shina Wysocki
Mike Elston
Susan Macomson
Laura Hendricks
Ian Child
Mark Schaffel
Don Gillies
Jim Gibbons
Tom Bloomfield

Attorney Representation:

Thurston County:

Jeff Fancher, Deputy Prosecuting Attorney

Taylor Shellfish, Inc.:

Samuel W. Plauché, Plauché & Carr, LLP

Jesse DeNike

Exhibits:²

At the hearing the following exhibits were admitted in the record:

Exhibit 1 Arcadia Point Seafood/Thiesen, No. 2010100420: Resource Stewardship
Department Staff Report including the following exhibits:

Attachment a	Legal notice
Attachment b	JARPA Application, February 17, 2010
Attachment c	Determination Letter, July 1, 2010

the Applicants and County to documents submitted at and after the hearing by members of the public. The County submitted comments dated December 6th and December 7, 2012. The December 7th document was not timely and is not admitted.

² Note: The findings begin on page twelve.

- Attachment d Hearing Examiner Order on Cross-Motions for Summary Judgment, January 21, 2011
- Attachment e Board of Commissioners Decision, April 13, 2011
- Attachment f Combined Notice of Application, April 25, 2012
- Attachment g Mitigated Determination of Non-Significance, October 11, 2012
- Attachment h Addendum to Mitigated Determination of Non-Significance, October 19, 2012
- Attachment i MDNS Attachment of Information Reviewed including the following:
1. Department of Ecology Water Quality Certification Order for Geoduck Bed in Mason County dated August 1, 2011
 2. National Marine Fisheries Service Consultation Letter for Nationwide Permit 48 Activities in Washington State dated April 26, 2011.
 3. Memo from Kevin Chambers, Thurston County Public Works, Recommendations for Approval dated March 4, 2010.
 4. Memo from Kevin Chambers, Thurston County Public Works, SEPA Recommendation dated December 6, 2011.
 5. Email from Steve Wilson, Arcadia Point Seafood dated April 30, 2012.
 6. Various site visits in 2010 and 2011.
 7. Environmental Checklist dated November 18, 2011.
 8. Biological Evaluation of Potential Impacts from a Proposed Manila and Geoduck Clam Farm to ESA-listed Species, Essential Fish Habitat, and Forage Fish in Henderson Inlet, Thurston County, Washington, by Environ International Corporation dated November 11, 2010.
 9. Programmatic Biological Assessment of Potential Impacts from Geoduck Aquaculture Sites to Essential Fish Habitat Endangered Species, and Forage Fish in Puget Sound, Washington, by Environ International Corporation dated July 2009.
 10. Pacific Coast Shellfish Growers Association Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture dated June 14, 2011.
 11. Aquaculture Review Article in Journal *Aquaculture*, published by Elsevier dated February 22, 2009.
 12. Slide Presentation: Assessing Potential Benthic Impacts of Subtidal Geoduck Clam Harvesting, by Wenshan Liu and Chris

- Pearce of Fisheries and Oceans Canada, research completed October 2010.
13. Letter from Laura Hendricks, Sierra Club dated May 22, 2012.
 14. Nationwide Permit 48 Terms and Conditions, from US Army Corps of Engineers dated June 15, 2012.
 15. Unsustainable Shellfish Aquaculture, from Sierra Club Washington State Chapter dated April 2012.
 16. Unnatural High Densities of Shellfish Aquaculture in Priority Intertidal Habitats, from Sierra Club Washington State Chapter undated.
 17. Nitrogen Removal by Shellfish Aquaculture, from Sierra Club Washington State Chapter undated.
 18. National Marine Fisheries Service Recommendations Jeopardize ESA Species, from Sierra Club Washington State Chapter dated April 2012.
 19. Shellfish Industry Increases Marine Plastic Pollution, from Sierra Club Washington State Chapter, dated October 3, 2011.
 20. Industrial Shellfish Aquaculture Practices Degrade Water Quality, from Sierra Club Washington State Chapter dated October 3, 2011.
 21. PVC, by Steven Gilbert dated January 30, 2011.
 22. Salish Sea Biological Memo, by Dan Pentilla dated March 24, 2012.
 23. Sierra Club Marine Campaign Memo dated April 23, 2012.
 24. Interim Progress Report Geoduck Aquaculture Research Program, by University of Washington through the Sea Grant Program dated December 2009
 25. Interim Progress Report Geoduck Aquaculture Research Program, by University of Washington through the Sea Grant Program dated March 2011.
 26. Interim Progress Report Geoduck Aquaculture Research Program, by University of Washington through the Sea Grant Program dated February 2012
 27. Effects of Geoduck Aquaculture on the Environment: A Synthesis of Current Knowledge, by Washington Sea Grant, University of Washington dated October 27, 2009
 28. Marine Forage Fishes in Puget Sound, by Dan Pentilla WDFW dated 2007.

29. Forage Fish Studies Relevant to Geoduck Aquaculture Impacts, by Dan Pentilla dated March 20, 2012.
30. Typical Intensive Geoduck Operation, from Sierra Club Washington State Chapter undated.
31. Letter from Sierra Club Washington State Chapter Laura Hendricks Chair RE: Taylor Lockhart Geoduck Development undated.
32. Protecting America's Water Campaign, from Sierra Club Washington State Chapter dated November 17, 2011.
33. The Use of PVC Plastics for Aquaculture in Puget Sound, prepared by Case Inlet Shoreline Association, dated June 2010.
34. Industrial Shellfish Aquaculture Feedlots, a slideshow by Sierra Club Washington State Chapter, Laura Hendricks, chair dated July 22, 2010.
35. Memo from Sierra Club, Laura Hendricks, Chair dated December 11, 2011.
36. Shellfish Industry Plans to Eradicate Japonica Eelgrass, from Sierra Club Washington State Chapter dated December 4, 2011
37. Unnatural High Densities of Shellfish Aquaculture, from Sierra Club Washington State Chapter undated.
38. Article from *Science Daily*, Ecosystem Effects of Biodiversity Loss Could Rival Impacts of Climate Change, Pollution dated May 2, 2012.
39. Pest Management Strategic Plans for Bivalves in Oregon and Washington, by Joe DeFrancesco and Katie Murray of Oregon State University dated July 2010.
40. Permit Data Sheet and Transmittal Letter for Longbranch Geoduck Bed in Pierce County dated July 27, 2011.
41. Pierce County Determination of Non-significance for Aquaduck LLC to Conduct Geoduck Harvest dated September 12, 2005 with various attachments.
42. Environmental Policy, by Pacific Shellfish Growers Association dated June 2001.
43. "Geoduck" from Wikipedia September 2012.
44. Geoduck Environmental Codes of Practice, undated but likely from late 1990's.
45. Shoreline Hearings Board, Findings of Fact, Conclusions of Law, and Order for Coalition to Protect Puget Sound Habitat and Case

Inlet Shoreline Association versus Pierce County and Longbranch Shellfish, LLC, dated July 13, 2012.

46. FAQ's on PCV Tubes in Puget Sound Geoduck Aquaculture: Toxics, by A. Johnson/ P. Norton of Washington State Department of Ecology, draft dated September 13, 2010.
 47. Report and Decisions on Shoreline Substantial Development Permit for Longbranch Shellfish dated June 29, 2011.
 48. Appendix 5, DNR's Geoduck Aquaculture Best Management Practices dated June 13, 2006.
 49. Pierce County Determination of Non-significance for Longbranch Shellfish dated May 26, 2010.
 50. Email from Nancy Eggleston dated September 25, 2010.
 51. Letter from Washington State Department of Ecology dated December 12, 2011.
 52. Email from Jules Michel dated April 8, 2012.
 53. Email from Curt Puddicombe dated April 9, 2012.
 54. Letter from Paul and Bonnie Bunning dated May 16, 2012.
 55. Environmental Checklist dated March 29, 2012
 56. Email from Steve Wilson dated October 17, 2012
 57. Letter from the Department of the Army dated February 9, 2012
- Attachment j 2009 Aerial Photo showing three sites
- Attachment k 2009 Aerial Photo of Project Site
- Attachment l Puget Sound Shoreline Description of Geoduck Clam
- Attachment m Color Photos of Project Site
- Attachment n Two Photos of Public Notice Posting on Site
- Attachment o Comment E-mail from Attila and Katalin Talaber, November 18, 2012

Exhibit 2 Arcadia Point Seafood/McClure, No. 2010100421: Resource Stewardship Department Staff Report including the following exhibits:

- Attachment a Legal notice
- Attachment b JARPA Application, February 17, 2010
- Attachment c Determination Letter, July 1, 2010
- Attachment d Hearing Examiner Order on Cross-Motions for Summary Judgment, January 21, 2011
- Attachment e Board of Commissioners Decision, April 13, 2011

- Attachment f Combined Notice of Application, April 25, 2012
- Attachment g Mitigated Determination of Non-Significance, October 11, 2012
- Attachment h Addendum to Mitigated Determination of Non-Significance, October 19, 2012
- Attachment i MDNS Attachments [repeating the same 57 attachments listed in **Exhibit 1, Attachment I** above]
- Attachment j 2009 Aerial Photo showing three sites
- Attachment k 2009 Aerial Photo of Project Site
- Attachment l Puget Sound Shoreline Description of Geoduck Clam
- Attachment m Color Photos of Project Site
- Attachment n Two Photos of Public Notice Posting on Site

Exhibit 3 Taylor Shellfish/Lockhart, No. 2011104210: Resource Stewardship Department Staff Report including the following exhibits:

- Attachment a Legal notice
- Attachment b JARPA Application, November 21, 2011
- Attachment c Determination Letter, June 30, 2010
- Attachment d Hearing Examiner Order on Cross-Motions for Summary Judgment, January 21, 2011
- Attachment e Board of Commissioners Decision, April 13, 2011
- Attachment f Revised Notice of Application, April 17, 2012
- Attachment g Mitigated Determination of Non-Significance, October 11, 2012
- Attachment h Addendum to Mitigated Determination of Non-Significance, October 19, 2012
- Attachment i MDNS Attachments [repeating the same 57 attachments listed in **Exhibit 1, Attachment I** above]
- Attachment j Archaeological Reconnaissance Survey, May 4, 2009
- Attachment k 2009 Aerial Photo showing three sites
- Attachment l 2009 Aerial Photo of Project Site
- Attachment m Puget Sound Shoreline Description of Geoduck Clam
- Attachment n Color Photos of Project Site
- Attachment o Two Photos of Public Notice Posting on Site

Exhibit 4 Staff Report Summary, November 26, 2012

Exhibit 5 Thurston County Health Department Comment Letter, February 6, 2012

- Exhibit 6 Comment Letters a - h:
- a. Nancy Eggleston Comment E-mail, November 22, 2012
 - b. Harry Branch Comment E-mail, November 23, 2012
 - c. Paul J. Allen and Harry Branch Comment E-mails, November 23, 2012
 - d. Linda Lentz Comment E-mail, November 23, 2012
 - e. Marry Skelton Comment E-mail, November 23, 2012
 - f. Pat Rasmussen Comment E-mail, November 23, 2012
 - g. Wis Macomson Comment E-mail, November 23, 2012
 - h. John Watts Comment E-mail, November 22, 2012
 - i. Darell & Nancy Midles Comment E-mail, November 23, 2012
 - j. Chris & Susan Leffler Comment E-mail, November 23, 2012
 - k. Walt Jorgensen Comment E-mail, November 23, 2012
 - l. Rick & Kathy Bogrand Comment E-mail, November 21, 2012
 - m. Lou Smith Comment E-mail, November 21, 2012
- Exhibit 7 Taylor Shellfish Company Submittal with Attachments, November 26, 2012
- Exhibit 8 Taylor Resources Inc. vs. Pierce County Superior Court Decision, No. 08-2-00904-9, August 25, 2009
- Exhibit 9 Taylor Resources, Inc. vs. Pierce County and Coalition to Protect Puget Sound Habitat Shorelines Hearing Board Decision, SHB No. 08-010 and No. 08-017, November 7, 2008
- Exhibit 10 Recommended Condition 10
- Exhibit 11a Lockhart Property Vicinity Map
- Exhibit 11b Lockhart Property Site Map
- Exhibit 12 Geoduck Culture
- Exhibit 13 Marlene D. Meaders Curriculum Vitae
- Exhibit 14 Power Point Presentation including the following attachments:
- a. U.S. Army Corps of Engineers, Reissuance of Nationwide Permits, 77 Fed. Reg. 10184, February 21, 2012
 - b. U.S. Army Corps of Engineers, Decision Document Nationwide Permit 48, February 13, 2012
 - c. Biological Opinion for Nationwide Permit 48 for Shellfish Aquaculture in the State of Washington, Conducted by U.S. Fish and Wildlife Service for U.S. Army Corps of Engineers, March 24, 2009

- d. NMFS, 2009. Endangered Species Act – Section 7 Programmatic Consultation Biological and Conference Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation. Nationwide Permit 48 Washington, April 28, 2009
- e. Letter from S. Landino, WA State Director for Habitat Conservation, NOAA, to M. Walker, U.S. Army Corps of Engineers, re: conservation measures in Addendum to Nationwide 48 Biological Assessment, October 13, 2011
- f. Decision on Reconsideration of the Pierce County Hearing Examiner re Longbranch Shellfish Geoduck Farm, July 14, 2011
- g. Rosalind A. Schoof, Ph.D. – Curriculum Vitae
- h. Rosalind A. Schoof, Ph.D. – Expert Report Submitted to Pierce County Hearing Examiner re Longbranch Shellfish Farm; Companion Charts to Report, February 15, 2011
- i. Rita Schenck, Ph.D. – Curriculum Vitae
- j. Rita Schenck, Ph.D. – Expert Report Submitted to Pierce County Hearing Examiner re Longbranch Shellfish Farm, February 15, 2011
- k. Jeffrey Fisher, Ph.D. – Memorandum on Sediment Analysis for Metals, Foss Geoduck Farm, Key Peninsula, Pierce County, WA. Prepared for Plauché & Stock LLP, February 15, 2011
- l. Phil Osborne, Ph.D. – Curriculum Vitae
- m. Phil Osborne, Ph.D. – Expert Report Submitted to Pierce County Hearing Examiner re Longbranch Shellfish Farm, February 15, 2011
- n. Phil Osborne, Ph.D. – Hard Copy of PowerPoint Presentation: Assessment of Coastal Sediments and Shoreline Morphology, February 2012
- o. Jonathan P. Davis, Ph.D. – Curriculum Vitae
- p. Jonathan P. Davis, Ph.D. – Expert Report Submitted to Pierce County Hearing Examiner re Longbranch Shellfish Farm, February 2011
- q. Jonathan P. Houghton, Ph.D. – Curriculum Vitae
- r. Jonathan P. Houghton, Ph.D. – Expert Report Submitted to Pierce County Hearing Examiner re Longbranch Shellfish Farm, February 15, 2011
- s. Glenn R. VanBlaricom, Ph.D. – Curriculum Vitae
- t. Glenn R. VanBlaricom, Ph.D. – *Geoduck Aquaculture Harvest Impacts*, Presentation Made at Shorelines Hearings Board Hearing for Longbranch Shellfish Farm, March 1, 2012
- u. VanBlaricom, G.R., A.W.E. Galloway, K.C. McPeck, J.L. Price, J.R. Cordell, M.N. Dethier, D.A. Armstrong, and P.S. McDonald. 2012. *Effect of predator exclusion structures as agents of ecological disturbance to infaunal communities in geoduck clam (Panopea generosa) aquaculture plots in*

southern Puget Sound, Washington, USA. Presentation at State of Washington, Environmental and Land Use Hearings Office, Pollution Control Hearings Board, November 1, 2012

- v. Joel E. Baker, Ph.D. – Curriculum Vitae
- w. Joel E. Baker, Ph.D. Power Point Microplastic Encounter Rate
- x. Joel E. Baker, Ph.D. – Transcript of Testimony before the Shorelines Hearings Board
- y. Fisher, J.P., K. Mueller, S. Luchessa, and J. Davis. 2008. An Analysis of the Environmental Concerns Associated with Intertidal Geoduck Clam Aquaculture. Technical memorandum prepared by ENVIRON International Corp. for Taylor Shellfish Farms, Shelton, Washington, April 14, 2008
- z. Liu, Wenshan and Pearce, C. 2011. Assessing Potential Benthic Impacts of Subtidal Geoduck Clam Harvesting. Abstract, National Shellfisheries Association 103rd Annual Meeting, Baltimore, MD, March 27-31, 2011
- aa. Price, J. et al. 2011. Benthic Community Structure and Response to Harvest Events at Geoduck (*Panopea generosa*) Aquaculture Sites in Southern Puget Sound, Washington. Abstract, National Shellfisheries Association 103rd Annual Meeting, Baltimore, MD, March 27-31, 2011
- bb. Price, J. 2011. Quantifying the Ecological Impacts of Geoduck (*Panopea generosa*) Aquaculture Harvest Practices on Benthic Infauna. A thesis submitted in partial fulfillment of the requirements for the degree of Master of Aquatic and Fisheries Science, University of Washington, 2011
- cc. Letter from Samuel W. Plauché to K. Larrabee, Pierce County Planning responding to potential concerns raised by the County regarding the Foss farm, October 22, 2008
- dd. Short, K.S. and R. Walton. 1992. The transport and fate of suspended sediment plumes associated with commercial geoduck harvesting, Final Report. Prepared for the State of Washington Department of Natural Resources. Prepared by Ebasco Environmental, Bellevue, Washington
- ee. Gregory, R.S. and T.G. Northcote. 1993. Surface, Planktonic, and Benthic Foraging by Juvenile Chinook Salmon (*Oncorhynchus tshawytscha*) in Turbid Laboratory Conditions. Canadian Journal of Fisheries and Aquatic Sciences. 50: 233–240
- ff. Fisheries and Oceans Canada (DFO). 2012. Assessing potential benthic habitat impacts of small-scale, intertidal aquaculture of the geoduck clam (*Panopea generosa*). Pacific Region, April 2012
- gg. Higgins, C.B., K. Stephenson, and B.L. Brown. 2011. Nutrient bioassimilation capacity of aquacultured oysters: Quantification of an ecosystem service. J. Environ. Qual. 40: 271-277

- hh. Shumway, S.E., C. Davis, R. Downey, R. Karney, J. Kraeuter, J. Parsons, R. Rheault, and G. Wikfors. 2003. Shellfish aquaculture – In praise of sustainable economics and environments. *World Aquaculture*. 34(4): 15-18
- ii. Newell, R.I.E. 2004. Ecosystem influences of natural and cultivated populations of suspension-feeding bivalve molluscs: A review. *Journal of Shellfish Research*. 23(1): 51-61
- jj. Cornwell, J. and R. Newell. 2010. Assessing ecosystem effects of harvesting geoducks. Washington Sea Grant (R/GD – 1b) Annual Report 2010. Reporting period September 30th, 2009 through September 30th, 2010
- kk. Straus, K. M., L. M. Crosson, and B. Vadopalas. 2008. Effects of geoduck aquaculture on the environment: a synthesis of current knowledge. Washington Sea Grant, Seattle, Washington
- ll. Rice, C. Effects of Shoreline Modification on a Northern Puget Sound Beach: Microclimate and Embryo Mortality in Surf Smelt (*Hypomesus pretiosus*), *Estuaries and Coasts*, Vol. 29, NO. 1, p. 63-71, February 2006
- mm. VanBlaricom, G.R. 2011. Evaluation of ecological effects of geoduck aquaculture operations in intertidal communities of southern Puget Sound. Presentation for Environmental Program Seminar Series, University of Washington, Tacoma, February 7, 2011

- Exhibit 15 Two photographs submitted by Mr. Wilson showing kayakers over geoduck beds
- Exhibit 16 Arcadia Point Seafood Consistency Statement
- Exhibit 17 Sierra Club Comment Letter, November 24, 2012
- Exhibit 18 Comment Letters a - l:
 - a. Debra Jaqua, November 26, 2012
 - b. Sherri Goulet
 - c. Gary A. Ritchie, PhD, November 26, 2012
 - d. Jules Michel, November 23, 2012
 - e. Kris Mansfield
 - f. Marta McClure, November 26, 2012
 - g. Janet Thompson, November 26, 2012
 - h. Bruce Theis, November 26, 2012
- Exhibit 19 "Modeling Nitrogen and Carbon Removal by Pacific Oysters in Hood Canal", Echels, Prigmore, Thatcher, UW Dept. of Civil and Environmental Engineering, 2012
- Exhibit 20 "Contrasting the community structure and select geochemical characteristics of three intertidal regions in relation to shellfish farming", Bendell, Young, Simon Fraser University, 2005

- Exhibit 21 "Application of aerial photography in combination with GIS for coastal management at small spacial scales: a case study of shellfish aquaculture", Bendell, Wan, 2009
- Exhibit 22 "Changes in geochemical foreshore attributes as a consequence of intertidal shellfish aquaculture: a case study", Bendell, Duckham, Esperance, Whitely, Simon Fraser University
- Exhibit 23 "This isn't your grandfather's farm", Sierra Club brochure
- Exhibit 24 Taylor Shellfish's Memorandum in response to Exhibits 17 through 23, submitted by Mr. Plauché, dated December 6, 2012 with one attachment³:
- a) Memorandum by Marlene Meaders in response to Exhibits 19 through 23, dated December 5, 2012
- Exhibit 25 Arcadia Point Seafood Response to Exhibits 17 through 23, December 6, 2012
- Exhibit 26 County Response to Exhibits 17 through 23, December 6, 2012
- Exhibit 27 County Clarification to December 6, 2012 Response to Exhibits 17 through 23, December 7, 2012

The December 27, 2012 Post-Hearing Order Setting Submission Schedules is also included in the record of this matter.

Based on the record developed at hearing, the following findings and conclusions are entered:

FINDINGS

Procedural Background and Site Information

1. The Applicant requested approval of a substantial shoreline development permit to develop a 0.9-acre geoduck bed on tidelands leased from the owners (Lockharts) of the residential parcel at 9000 Libby Road NE in Olympia.^{4,5} The proposed project area is designated as a Rural Shoreline Environment by the Shoreline Master Program for the Thurston Region. *Exhibit 3, page 1; Exhibit 1, Attachment b, Joint Aquatic Resources Permit Application (JARPA); Exhibit 7.*

³ The November 27, 2012 Post-Hearing Order specified as follows: "...2) ...As contemplated in the conversations on the record, Applicant and County responses may consist of general written comments (in the vein of argument in rebuttal) or of comments from experts who testified at hearing. 3) Only the documents identified above shall be admitted into the record of this matter. The record is closed as to any other evidence ..." (emphasis in the original). The memoranda from Mr. Plauché and Ms. Meaders comply with the Post-Hearing Order and are admitted. The 25 documents offered as attachments to the Meaders memo and two additional attachments Mr. Plauché's memo do not comply and they are not admitted.

⁴ The legal description of the property is a portion of Section 5, Township 19, Range 1W; known as Tax Parcel #11905230300. *Exhibit 1, page 1.*

⁵ Geoducks are large, edible, burrowing clams native to Puget Sound. For general information on geoducks, see the Department of Ecology brochure at Exhibit 3, Attachment M and the brochure entitled "Geoduck Culture" prepared by the Applicant at Exhibit 12.

2. The subject property is located on Dana Passage in Henderson Inlet. *Exhibits 11a and 11b*. The uplands are separated from the beach by a 36-foot high bluff. The residence atop the bluff enjoys views of the expanse of Henderson Inlet and of Mt. Rainier. *Exhibit 3, page 5*. The record contains color photos of the proposed intertidal geoduck bed, the upland bluff and residential development, and views from the beach. *Exhibit 3, Attachment N*.
3. The intertidal area proposed for development consists of sandy mud. Species commonly witnessed there include moon snails, various clams, pea crabs, sand dollars, sunstars, and large algae, which turns the exposed intertidal zone bright green in low tides. The upper beach declines at a 12% grade toward the water's edge. Within the area proposed for the operation, the slope becomes almost flat, with slopes averaging 1.8% and with water and macroalgae accumulated in shallow depressions. *Exhibit 3, Attachment I.8; Exhibit 3, Attachment J*.
4. The subject parcel is zoned Rural LAMIRD One Dwelling Unit per Acre (RL-1/1). *Exhibit 3, page 2*. The Thurston County Code includes aquaculture in its definition of agriculture⁶, and agriculture is a permitted use in the RL1/1 zone. The geoduck bed proposed is allowed as an agricultural use without a land use permit. *Thurston County Code (TCC) 20.11A.020*.
5. Surrounding land uses are residential to the north, south and west, with Henderson Inlet to the east. Parcels range from one to two acres in size. Nearly all lots in the vicinity were developed with residences more than twenty years ago. The residences sit on the top of a low, vegetated, gently sloping bank demarked at its base by bulkheads. *Exhibit 3, pages 3, 6; Exhibit 3, Attachments J and N*. There are two existing geoduck farms within a quarter of a mile. *Phipps Testimony*. Arcadia Point Seafood requested approval of a permit to develop and operate a geoduck bed at 8940 NE Libby Road on the intertidal portion of the lot abutting the subject property to the south and a permit for a second intertidal geoduck bed approximately one-quarter mile south at 8702 Libby Road NE. The two Arcadia Point Seafood applications were heard together in a consolidated proceeding with the instant application from Taylor Shellfish. *Exhibits 1 and 2; Exhibit 3, Attachments K and L*.
6. As intertidal lands in Henderson Inlet, the project site is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *SMPTR, Section 4, Definitions*. The SMPTR designates the site as Rural Shoreline Environment. Aquaculture is allowed in this shoreline environment. *SMPTR, Section 3.II.D*. The proposed geoduck operation requires the installation of equipment on the tidelands that constitutes a "structure" and is considered "development" for the purposes of the

⁶ Pursuant to TCC 20.03.040(3), "Agriculture" means the use of a tract of land for (a) the tilling of the soil; (b) the raising, harvesting and processing of crops or plant growth of any kind, including forest practices; (c) pasturage; (d) horticulture including wholesale greenhouses; (e) dairying; (f) raising of poultry and livestock; (g) shellfish or fish farming, including finfish in upland hatcheries; or (h) raising, harvesting and processing of clams, oysters and mussels. (emphasis added)

SMPTR.⁷ Development in the shoreline jurisdiction that exceeds \$6,412.00 in fair market value requires a shoreline substantial development permit (SSDP). *SMPTR, Section 1.II.A.* The value of the proposed project is greater than that amount. *Exhibit 3, pages 2-3; Exhibit 3, Attachment B.*

The Applicant's Proposal

7. The proposal includes approximately 0.13 acres of manila clams planted near the shore with approximately 0.90 acres planted with geoducks waterward adjacent to the clam bed. Only the geoduck portion of the operation requires SSDP approval. The manila bed would begin at the approximate mean high water mark and extend about 65 feet out.⁸ The geoduck bed would begin where the manila bed ends and would extend about 425 additional feet out to the line of mean lower low water (MLLW). The bed would be approximately 100 feet wide. Geoducks would be planted by hand in nine-inch long by six-inch diameter PVC tubes on 1.2 foot centers. Tube placement occurs between April and September. The tubes would be installed by hand into the substrate, leaving about two to three inches of tube extending above the seabed. Three geoduck seeds would be planted per tube. The tubes would be covered with an area net secured at the perimeter with rebar, which serves to keep the tubes in place, to protect the seeds from predators, and to reduce the visibility of the tubes. Tubes and netting would be hauled off-site by boat within 24 months of planting. Tube removal happens between October and March. Harvest typically comes four to seven years later when the geoducks are mature (1.5 to two pounds each). Those higher on the beach typically grow more slowly. No feed or additives are used to grow the shellfish and no pesticides are applied. Tube placement and tube removal are estimated to take about 15 days each per acre. Between gear removal and the beginning of harvest, periodic maintenance would be the only on-site aquaculture activity. Harvest typically starts in late autumn and is accomplished with a hand-held pressurized hose and nozzle system that loosens geoducks from the sand, after which they are removed by hand. Small combustion engines in small offshore boats power the saltwater pumps. Harvest would take 12 to 18 months depending on the market and growth rate of the geoducks. No upland construction or mitigation is proposed. No staging or access area on the beach is proposed. Night time work is lit by headlamps worn by individual workers. *Exhibit 3, page 1; Exhibit 3, Attachment b; Exhibit 7; Exhibit 3, Attachment I.8; Phipps Testimony.*
8. Work on the beach (tube placement, planting, net maintenance, tube removal, harvest) would occur during low tides (below 0 feet MLLW) when water levels allow access to

⁷ On March 1, 2010, Taylor Shellfish applied for an exemption from the requirement to obtain a shoreline permit for the proposal. The County notified the Applicant, in a letter dated June 30, 2010, that the proposed installation of tubes and netting on the beach was considered to be a "structure" and therefore was "development" for the purposes of the SMPTR. Taylor Shellfish appealed to the Thurston County Hearing Examiner, which body affirmed the administrative determination. The Applicant appealed the Hearing Examiner decision to the Board of County Commissioners, which body also upheld the administrative determination. The Applicant then applied for the instant permit. *Exhibit 3, page 2; Exhibit 3, Attachments c, d, and e.*

⁸ The manila clam bed does not require a shoreline permit, but this portion of the proposal was nevertheless included in the environmental review of the site. The manila clams would be hand planted in the beach sand and covered with netting, hand harvested, and the bed replanted on a two-year cycle. *Exhibit 3, page 1.*

the culture area. Low tide cycles occur during daylight hours only between April and September. The majority of the cultivated area would be underwater 90% of the year. While in place, the tubes and netting would be visible during low tide for a total of approximately five percent of daylight hours. After the equipment is removed, the geoduck bed would be invisible until harvest. *Exhibit 3, Attachment I.8; Exhibit 7; See Exhibit 14, Sheet 7.*

9. PVC tubes protect the geoducks from predators. They are covered with a mesh canopy net, which increases predator protection, minimizes the visibility of the tubes, and holds the tubes in place. After the geoducks have attained a certain size, the canopy netting and tubes are removed. Aquaculture gear is monitored by employees, who would visit the site once per week to ensure gear is not displaced and escaping into the environment. *Phipps Testimony.*
10. Access to the farm would be by both land and water. By land, employees may use an existing path through the upland vegetation to access a trail on the beach. Access to the site would primarily be by boat for crew, gear and material, and product transport. As a small site, it would be served by small, open boats with four-stroke outboard motors. To load/offload crew and materials, vessels would be grounded on the sand at a location chosen to minimize impacts and turbidity. Boats would be maintained and fueled off-site. Once boats reach the site, the motors would be turned off. Pumps used for harvest would typically be stationed on the boats, or floating platforms next to the boats. Pump intakes are screened to exclude wildlife and sea plants. The project would use a diesel operated, enclosed pump that is the industry standard for generating the minimum noise above ambient conditions. *Exhibit 3, Attachment I.8; Phipps Testimony.*
11. After harvest, the rate at which the beach returns to normal varies depending on the makeup of the substrate. If there is a high proportion of sand, the beach can recover by the next day. If there is more clay, it can take a couple weeks for the substrate to return to its previous flat level. On the day of harvest, the surface can be soft enough that a person walking on it could sink in about six or nine inches. By the next day, the surface has firmed up so a person walking on it would sink in to the ankle. *Phipps Testimony.*
12. The instant proposal would utilize aquacultural techniques that have been proven effective for years, including PVC pipes and area netting, water access, and water pumps during harvest. No experimental techniques would be used. Occasionally the PVC tubes come loose. Canopy netting is installed over the geoduck bed with an 18-inch margin around the edges and staked into the substrate with a rebar "J" staple. The use of canopy nets functions to contain the loosened tubes to prevent their escape. *Exhibit 7; Exhibit 3, Attachment B; Phipps Testimony.*
13. There are no established commercial navigation channels over the site. The Applicant's existing geoduck operation within a quarter mile of the proposal site has not experienced any use conflicts at that location with navigation or recreational uses. *Exhibit 3, page 5; Phipps Testimony; Exhibit 7.*

14. No aquaculture processing plant, hatchery, or nursery operation is proposed. The project does not constitute urban expansion or intensive development. There would be no impact to existing vehicular or pedestrian circulation systems. No residential development or land clearing is proposed. *Exhibit 3, Attachment b; Exhibit 7; Exhibit 3, Attachment I.8.*
15. The proposed site on Henderson Inlet is within an "Approved" growing area according to recent surveys conducted by the State Department of Health. Upland development is on a bluff raised up from the beach, and the surrounding privately owned properties are well vegetated. There is no established public access to the beach from the private properties. The beach characteristics satisfy the particular needs of geoducks, having the correct mix of sand and silt, and the water quality is good. Henderson Inlet houses several geoduck aquaculture operations. The State of Washington and Tribes co-manage wild geoduck beds in the area. Adjacent state-owned tidelands have been identified by DNR as a potential location for leasing geoduck aquaculture. *Exhibit 3, page 5; Exhibit 7; Exhibit 3, Attachment I.8.*
16. The Applicant contended that the project would not adversely affect recreation along the shoreline. The proposed geoduck bed would begin about 100 feet waterward of the existing bulkhead and continue for about 425 feet waterward. There is no established historic public use of the subject beach. There are no parks or public boats in the vicinity of the site that would attract boaters to the subject beach. The proposal would not place buoys, concrete markers, structures, equipment, or other potentially dangerous objects on the beach to interfere with beach access. A nearby private dock about 140 feet to the south would not be impacted. The dock extends 100 feet waterward from the ordinary high water mark. When the tide is high enough for boats to use the dock, the proposed geoduck tubes would be approximately five to twelve feet under water, causing no obstruction to use of the dock. Arcadia Point Seafood representatives concurred that neither recreational kayaking nor boating has presented a conflict with their geoduck operations. *Exhibit 3, pages 5-6; Exhibit 7; Exhibit 25; Steve Wilson Testimony.*
17. According to the Applicant, market studies indicate an increased demand for geoducks grown in Washington for distribution in local, national, and international markets. The proposal would produce 66,000 to 75,000 pounds of geoduck per crop cycle. The Applicant, Taylor Shellfish, is the leading producer of farmed shellfish on the west coast of the United States, employing hundreds of permanent and seasonal employees in the Puget Sound region. Many of these are family wage jobs, providing medical and dental benefits. Each new acre of farmed shellfish adds one 3/4-time position. The Applicant asserted that the proposal would increase the Applicant's operational efficiencies in the vicinity, add jobs, support a leading employer, and increase tax revenues. Finally, the Applicant contended that the proposal would help to reduce our nation's nine billion dollar seafood trade deficit. *Exhibit 7; Phipps Testimony; Cooper Testimony.*
18. The site is not known for its historic qualities, but files at the Department of Archeology and Historic Preservation (DAHP) identify eight archeological sites in the Woodard Bay area south of the project site. Several of these sites include beach lag and some have evidence of shellfish harvest. The Applicant commissioned a professionally prepared archeological reconnaissance survey of the proposed intertidal operation. During a low

tide, consultants walked the length of the proposed bed checking for fire-modified rock, charcoal, ground-tone tools, and other common evidence of historic native use of the site. The survey found no evidence of the on-site beach having been used for extensive shellfish gathering or offshore fishing. It noted that no National Register-eligible site, structure, or object is found in the area and concluded that there are no apparent or likely pre-Western contact cultural resources in the permit area. The survey concluded no further archeological study or mitigation is needed. *Exhibit 3, Attachment J.*

19. The Applicant commissioned a professionally prepared biological evaluation (BE, prepared November 11, 2010) of the proposed manila/geoduck clam operation on-site to assess its impacts to Endangered Species Act (ESA)-listed species, essential fish habitat, and forage fish populations in Henderson Inlet. The BE concluded that turbidity creation would be the primary impact of the farming operation within the evaluated project/action area.⁹ The BE selected as a conservative "worst case scenario" a turbidity plume of 150 feet outside the project in which to review potential impacts to ESA-listed species known or suspected to possibly occur within the action area. The species evaluated included bull trout, Chinook salmon, steelhead, bocaccio rockfish, canary rockfish, yelloweye rockfish, and marbled murrelet. All of the study species are listed as threatened except the bocaccio rockfish, which is endangered. *Exhibit 3, Attachment I.8, pages 7, 9.*
20. The BE primarily focused on field reconnaissance, habitat-forming processes, water quality, sediment quality, and the presence/location of fish and wildlife species. Field reconnaissance began with a site survey to record the presence of shoreline hardening, stormwater inputs, beach slope, aquatic macro algae, and eelgrass, and to collect five samples of benthic infauna. The survey confirmed the absence of eelgrass over and adjacent to the site during low tide, concurring with a 2009 determination of the Department of Ecology. *Exhibit 3, Attachment I.8, pages 11-15.*
21. The BE reviewed the proposed aquaculture operational methods to discern effects to federally listed species and their critical habitat within the action area. Direct, indirect, interdependent, and cumulative effects were considered in a framework of pathways and indicators including: physical habitat condition, water quality, sediment quality, and biological condition. The BE concluded that the project would have likely benign effects¹⁰ on: (physical habitat condition) geomorphology, tidal circulation, sediment compaction/grain size, and migration corridors; (water quality) dissolved oxygen; (sediment quality) presence of contaminants; and (biological condition) prey base, benthic faunal community, and vegetation community. Beneficial effects¹¹ would be

⁹ The project area is any area directly affected by the proposed activities, including placement of temporary or permanent gear, access paths, and any affected upland areas (the geoduck farm footprint). The action area consists of all areas outside the project area that may be affected directly or indirectly by the proposal. The National Marine Fisheries Service (NMFS) has indicated that the maximum extent of expected disturbance outside a shellfish operation is an area five percent greater than the footprint. *Exhibit 3, Attachment I.8, page 7.*

¹⁰ Benign effects means "not likely to alter existing conditions." *Exhibit 3, Attachment I.8, pages 47-48.*

¹¹ Beneficial effects means "action may potentially contribute to an improvement over the existing condition." *Exhibit 3, Attachment I.8, pages 47-48.*

anticipated to water quality through removal of water column nutrients. The project could result in potential adverse effects¹² to: physical habitat condition through noise; water quality through suspended sediments and turbidity; and to sediment quality through addition of sediment nutrients. *Exhibit 3, Attachment I.8, pages 25 - 48.*

22. The BE concluded that the proposal:

- "[M]ay affect but is not likely to adversely affect" Puget Sound bull trout, Chinook salmon, steelhead, bocaccio, yelloweye, or canary rockfish;
- "[M]ay affect but is not likely to adversely affect" marbled murrelets;
- "[M]ay affect but is not likely to adversely affect" critical habitat for ESA-listed Chinook, bull trout, or marbled murrelet; and
- "[M]ay affect but is not likely to adversely affect" Puget Sound essential fish habitat .

Exhibit 3, Attachment I.8, pages 49-57.

23. The 2012 project-specific BE concurred with an earlier Programmatic Biological Assessment of Potential Impacts from New Geoduck Aquaculture (BA), prepared in July 2009 on behalf of the Applicant, Arcadia Point Seafood, and six other shellfish producers assessing the impacts of all existing aquaculture in Washington state for compliance with Nationwide Permit 48. In light of these background conditions, the 2009 BA determined that the geoduck operations proposed in the instant application:

- "[M]ay affect but are not likely to adversely affect" Puget Sound bull trout, Chinook salmon, steelhead, or Hood Canal summer run chum salmon;
- "[M]ay affect but are not likely to adversely affect" ESA-listed salmonid critical habitat;
- "[M]ay affect but are not likely to adversely affect" marbled murrelets; and
- "[M]ay affect but are not likely to adversely affect" essential fish habitat in Puget Sound.

Exhibit 3, Attachment I.9, pages 111-118. The 2009 BA was reviewed and accepted by the United States Fish and Wildlife Service, the ACOE, and other federal agencies in review and reissuance of the Nationwide Permit 48. *Meaders Testimony.*

24. At hearing, the Applicant's fisheries biology consultant, Marlene Meaders, made a presentation regarding potential impacts and benefits from the proposed operation on-site to address concerns raised in public comment before the hearing, offering the information in findings 24 through 30. She confirmed the absence of eelgrass on-site through the spring of 2012. According to her testimony the site is already modified by the presence of a bulkhead, which is known to impact spawning rates of common forage fish. The site may be used as a migration corridor or for foraging by juvenile Chinook salmon,

¹² Adverse effects means "action may potentially contribute to short-term, episodic adverse effects over the existing condition..." *Exhibit 3, Attachment I.8, pages 47-48.*

steelhead, and sea lion. Although it is near known surf smelt spawning habitat, the proposed bed has no spatial overlap with and is not located within any known/identified priority habitats for species of concern during sensitive life stages, specifically sand lance, surf smelt, and rock sole spawning areas, herring holding areas, and bald eagle nest buffer areas. If Pacific herring spawn is observed on or near the bed, harvest would be suspended until eggs have hatched (about two weeks). *See Exhibit 14, See slides 5, 11; Meaders Testimony; Exhibits 14, 14.C, 14.D, 14.L, 14.M, 14.N, 14.O, 14.P, 14.Q, and 14.R.*

25. The Applicant's consultant acknowledged that some nitrogen and phosphorous would be released into the water at harvest, but as shown by a Puget Sound study, she opined that only a very small amount would be released and it would be rapidly diluted through wave action and tidal exchange. The record contains studies that show shellfish aquaculture can remove nitrogen and phosphorus from anthropogenic sources from the water; these nutrients are sequestered in the geoducks as biomass and permanently removed from the ecosystem at harvest. Excess nitrogen and phosphorous feed phytoplankton blooms that deprive the marine environment of oxygen. According to sources cited by Ms. Meaders, shellfish harvest is the only known method for removing nitrogen once it has entered a system. *Meaders Testimony; Exhibits 14, 14.B, 14.O, 14.P, and 14.II.*
26. Harvest is proposed to occur only when tide levels allow access to the cultured bed, and these tides only last approximately four hours. Approximately 0.15 to 0.3 acres would be able to be harvested at any one time. According to Ms. Meaders, turbidity resulting from harvest would be highly localized and temporary (not extending beyond two to three tide cycles) and would be similar to that caused by natural disturbances, such as storms. Cited studies indicate that this level of turbidity is not a threat to foraging juvenile salmonids, that post-harvest loss of substrate elevation recovers within one month, and the sediment grain size returns to baseline conditions within 123 days of harvest. *Meaders Testimony; Exhibit 1, Attachment I.26; Exhibits 14, 14.DD, and 14.FF.*
27. The Applicant consultant testified that PVC tubes have little effect on waves and currents. Studies in the record support her contention that sediment accumulation at the site of PVC tubes is minor, and effects of sediment accumulation and scouring return to baseline conditions shortly upon removal of tubes. During harvest, there is some erosion of beach sand but after several tide cycles the beach returns to pre-harvest conditions. *Exhibit 3, Attachments I.8 and I.9; Meaders Testimony; Exhibits 14, 14.L, 14.M, 14.N, 14.Q, 14.R.*
28. Macroplastics (PVC tubes) tend to wash up on the beach and regular patrol of farms while gear is in place would reduce the risk of tube escape. The Applicant offered several studies and information sources supporting the position that PVC is stable and does not leach into the environment. According to that information, due to low UV exposure, low wave energy, and debris management efforts, the PVC is not likely to release chemicals into the water that could gather in the sediments or be ingested by wildlife or the farmed geoducks. Ms. Meaders offered one study that examined the contents of the stomachs of 235 fish caught in geoduck farms and found no macroplastics or microplastics ingested. *Exhibits 14, 14.G, 14.H, 14.I, 14.J; 14.K, 14.V, 14.W, and 14.X; Exhibit 3, Attachment I.46; Meaders Testimony.*

29. The Applicant submitted studies which concluded that geoducks are relatively dormant in the winter months when forage fish spawn and feed and they do not compete directly with forage fish or salmonids for food. The Applicant's consultant stated that geoducks target phytoplankton rather than zooplankton when feeding. Typically, phytoplankton are many, many (even hundreds of) times smaller than zooplankton such as fish larvae. The consultant testified that while a limited amount of fish larvae ingestion is possible, it would not be a significant percentage of the geoducks' total intake and would not significantly impact fish populations. *Exhibits 14, 14.O, and 14.P; Meaders Testimony.*
30. Ms. Meaders offered her professional opinion that potential negative impacts of geoduck farming at the subject property are overshadowed by the benefits that would be derived in terms of water quality (removal of excess nutrients) and the creation of habitat benefits. Citing studies that confirm her opinion, she testified that PVC tubes create a temporary hard substrate, increasing habitat diversity and augmenting forage opportunities. Some species may be displaced during times when equipment is in place and others may be attracted. *Exhibit 14; Exhibits 14.B, 14.L, 14.M, 14.N, 14.Q, 14.R; Exhibit 3, Attachment I.26; Meaders Testimony.*
31. Aquaculture has played a role in the history and culture of Puget Sound. The Applicant has been farming shellfish in the region for more than 100 years, managing a renewable resource effectively throughout that time. The Applicant has historically promoted scientific research relating to shellfish in Puget Sound by opening its operations to various agencies including The Evergreen State College, South Sound Estuary Association, Pacific Shellfish Institute, New Market Skills Center, South Sound Green, and the Sea Grant Study. *Exhibit 7.*

County Review

32. Pursuant to the State Environmental Policy Act (SEPA), Thurston County acted as lead agency for review of Taylor/Lockhart project's impacts on the environment. Review included the 56 documents detailed in the exhibits list at Exhibit 3, Attachment I and several site visits over a two-year period. Documents reviewed included the three Washington Sea Grant Interim Reports (detailed in findings 44, 45, and 46 below), the BE, the BA, and numerous other studies and articles on shellfish farming submitted by the Applicant and by the Sierra Club, in addition to agency comments from County, State, and Federal agencies. The SEPA Responsible Official determined that, with mitigation, the proposal would not result in probable, significant, adverse impacts to any element of the environment, including: erosion, water quality, habitat for plants and animals, unique species, migration routes, noise, toxic releases, light and glare, aesthetics, recreation, and cultural preservation. The County issued a mitigated determination of non-significance (MDNS) on October 11, 2012. An Addendum MDNS was issued October 19, 2012, incorporating the review of two additional documents and adding one mitigation measure. No appeal of the MDNS was filed and compliance with SEPA is not at issue in the instant proceedings. *Exhibit 3, pages 3, 6; Exhibit 1, Attachments G and H.*

33. The MDNS imposed eight mitigation measures requiring:
- 1) Compliance with the most current version of the Pacific Coast Shellfish Growers Association Environmental Codes of Practice (ECOP) for Pacific Coast Shellfish Aquaculture;
 - 2) Installation of a sign listing the name and contact information for a person designated to immediately address problems associated with the operation detected by government agents or citizens;
 - 3) Recording of a document granting access to the operation for researchers affiliated with state or federal government agencies gathering information related to geoduck aquaculture;
 - 4) Monthly patrol of the project area and the beach within 1,000 feet, as well as the area within the associated littoral drift cell, and patrol of the same area with 24 hours after a severe storm event, to clear escaped aquaculture equipment or debris including tubes and netting, and should compliance with this measure not result in a no-debris condition, the measure authorized future additional review and other mitigation to address debris;
 - 5) Prohibition of permanent lighting and control of temporary lighting to prevent off-site glare;
 - 6) The use of UV-resistant fasteners to attach individual tube screens, if used;
 - 7) The cessation of work and contacting DAHP and appropriate authorities in the event that artifacts of archeological or historic significance are discovered during operations; and
 - 8) Approval of all required State and Federal permits prior to commencement of operations.

Exhibit 3, Attachments G and H.

34. The Pacific Coast Shellfish Growers Association Environmental Codes of Practice referenced in MDNS condition #1 were designed to protect harvest areas through sound environmental practices.¹³ While mandating this compliance, Resource Stewardship Staff acknowledged that geoduck growers are dependent on clean water to produce economically viable products, giving them a strong motivation to maintain a clean environment. *Exhibit 3, page 6; Exhibit 3, Attachment I.10.*
35. Thurston County Environmental Health Division (EHD) submitted comments indicating that the proposed project is not subject to any water supply or septic system requirements and does not require review pursuant to the Thurston County Sanitary Code. EHD recommended SSDP approval. *Exhibit 5.*

¹³ The ECOP were developed with input from growers in Alaska, Washington, Oregon, California, and Hawaii and are intended to serve as the basis for establishing best management practices for all stages of shellfish aquaculture. In keeping with shellfish growers' historic role as stewards of the estuaries and watersheds in which they operation, the ECOP identify farming practices that affect the ecosystem with a goal of minimizing adverse effects and maximizing beneficial effects. *Exhibit 3, Attachment I.10, page 3.*

36. The project is exempt from the standards in the Thurston County Drainage and Erosion Control Manual (DDECM) because it is considered commercial agriculture. *DDECM Volume I, Section 2.2.2*. Public Works Staff recommended approval without conditions. *Exhibit 3, page 8*.
37. Upon completing review of the application, Resource Stewardship Staff concluded that with conditions, the proposal would comply with SSDP criteria. Among other conditions of approval, Staff recommended condition number 10 (*Exhibit 3, page 11*) requiring the project to be reviewed for impacts and potential additional mitigation through an open record public hearing process before the County hearing Examiner after five years and/or before replanting, stating:

Although existing biological information generally concludes that geoduck aquaculture results in no long-term significant impacts to the marine environment, there are some areas of on-going research related to water quality and the effect on ESA-listed species in particular. The Washington Sea Grant program is conducting that research at the direction of the Washington State Legislature. ...Combined with the relative modernity of geoduck aquaculture in the form proposed, it is prudent to reassess the biological research at a specified time in the future as it relates to the subject bed.

Exhibit 3, pages 6-7, 11.

38. Staff contended that its recommendation for re-review prior to replanting is supported by WAC 173-27-090(3), which states: "Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit." Because the Department interprets "development activity" to include placement of structures (tubes and netting) on the beach, that each planting cycle would essentially require new review and authorization to "develop" the shoreline. Staff argued that according to the WAC, permission to conduct development activity terminates after five years, with a potential one-year extension upon application. Staff characterized its recommendation as requiring a perpetual five year review and renewal. *Exhibit 3, pages 6-7, 11; Kain Testimony.*
39. The Applicant argued that the cited WAC does not require reauthorization of the SSDP every five to six years, or every planting cycle (noting that full growth of a crop once planted can take up to six to seven years, and planting can take up to two years). The Applicant contended that the Shorelines Hearings Board *Taylor Resources v. Pierce Co/Coalition to Protect Puget Sound Habitat* [SHB08-010/SHB08-017] decision, upheld by Thurston County Superior Court, specifically found that the five year construction approval limit did not apply to another of the Applicant's SSDPs for geoduck operations. Arcadia Point Seafood noted that shellfish growing is both a farming and a business enterprise that must be able to recover costs over more than one crop cycle. Arcadia contended that the ability to get to know a site and rely on repeated plantings at that site enable them to make needed investments in infrastructure, including diesel harvest motors with hospital grade mufflers, and enable them to have the support of financial

institutions. Both Arcadia and the Applicant objected to perpetual five year reviews and to condition number 10 as proposed in the staff report. *Plauché Argument; Exhibits 8 and 9; Vicki Wilson Testimony; Exhibit 16.*

40. Prior to adjournment of the public hearing, Resource Stewardship Staff, Arcadia, and counsel for the Applicant agreed to revised language for condition number 10 which requires, if the SSDP is approved, a review of the instant project prior to subsequent replanting or before seven years, whichever comes first. The request for requiring perpetual five year review was withdrawn by Staff. *Exhibit 10; Kain Testimony; Plauché Comments.*
41. The remaining conditions of approval recommended by Staff require: compliance with the MDNS conditions; obtaining all required state and federal permits and providing copies of approval documents to the County prior to site preparation; prohibiting fill on the beach and advance approval by the ACOE should any beach excavation become necessary; prohibition of release of sediments into Puget Sound; prohibiting tree and shrubbery removal from the toe of the marine bluff; site preparation must commence within two years and initial installation of "structures" (tubes and netting) must be completed within five years of final approval; compliance with the approved site plan and advance review of any deviation therefrom; control of lighting to prohibit off-site glare; compliance with County noise standards and control of noise within allowed standards such that it does not rise to a level found "persistently annoying" by receiving properties; and prohibition of hard structures or markers on the beach. *Exhibit 3, pages 10-12.*

Pertinent Information from Other Governmental Agencies

42. In 2007, the U.S. Army Corps of Engineers (ACOE) issued Nationwide Permit 48 (NWP 48), which authorized existing aquaculture activities under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. In 2012, the ACOE reviewed and revised NWP 48, establishing conditions governing all commercial shellfish aquaculture activities in waters under their control. In the reissued permit, the ACOE stated:

Properly sited, operated, and maintained commercial shellfish aquaculture activities support populations of shellfish that provide important ecological functions and services for coastal waters and should be authorized by a single NWP. ... The shellfish populations... authorized by this NWP help support the objective of the Clean Water Act because they improve water quality through conversion of nutrients into biomass (i.e., shellfish growth) and the removal of suspended materials through filter feeding. Commercially grown shellfish also provide some habitat functions for the aquatic environment. ... Commercial shellfish aquaculture activities have minimal adverse effects to aesthetics and are likely to result in little change in local baseline levels of noise, odor, or views when compared to other waterfront uses in coastal residential areas... .

Exhibit 14.B, pages 5, 12. The instant proposal requires certification by the ACOE that the terms and conditions of NWP 48 will be met. ACOE certification would require the Applicant to demonstrate that impacts to ESA-listed species, navigation, and water quality are mitigated or found to be not significant by the Corps. Nationwide Permit 48

in turn certification requires review and approval by DOE of a Section 401 water quality certification. Resource Stewardship Staff contended that these certifications ensure an additional review for environmental impacts that supplement the County review. *Exhibit 3, page 10; Exhibit 3, Attachment I.14; Kain Testimony; Exhibit 14.A, 14.B, and 14.C.*

43. The Washington State Department of Ecology submitted comments noting that the proposal would be required to comport with the requirements of the Shoreline Management Act and the SMPTR. No other comments were offered. *Exhibit 3, Attachment I.51.*
44. In 2007, the Washington state legislature passed a law directing Washington Sea Grant to study key uncertainties as to the impacts of geoduck cultivation on the Puget Sound ecosystem and on wild geoduck populations. One of the research efforts granted access to the site by MDNS measure #3 is the Washington Sea Grant program. Sea Grant established six priority objectives to assess:
- 1) The effects of structures commonly used in the aquaculture industry to protect juvenile geoducks from predation;
 - 2) The effects of commercial harvesting of geoducks from intertidal geoduck beds, focusing on current prevalent harvesting techniques, including a review of the recovery rates for benthic communities after harvest;
 - 3) The extent to which geoducks in standard aquaculture tracts alter the ecological characteristics of overlying waters while the tracts are submerged, including impacts on species diversity and the abundance of other organisms;
 - 4) Baseline information regarding naturally existing parasites and diseases in wild and cultured geoducks, including whether and to what extent commercial intertidal geoduck aquaculture practices impact the baseline;
 - 5) Genetic interactions between cultured and wild geoducks, including measurement of differences between cultured and wild geoduck in term of genetics and reproductive status; and
 - 6) The impact of the use of sterile triploid geoducks and whether triploid animals diminish the genetic interactions between wild and cultured geoducks.

Exhibit 3, Attachment I.26.

45. Through a competitive bidding process, Sea Grant selected from among proposed studies to address the objectives, choosing three:
- Geochemical and Ecological Consequences of Disturbances Association with Geoduck Aquaculture Operations in Washington (G. VanBlaricom, UW, J. Cornwell, UM): assessing all phases of geoduck aquaculture in terms of effects on plant and animal communities (fish, shellfish, and plant) and physical/chemical effects to beaches
 - Cultured-Wild Interactions: Disease Prevalence in Wild Geoduck Populations (C. Friedman, UW): Developing baseline information on pathogens to improve understanding of geoduck health and management of both wild and cultured stocks.
 - Resilience of Soft Sediment Communities after Geoduck Harvest in Samish Bay (J.

Ruesink, UW): examining the effect of geoduck aquaculture on soft-sediment tide flat and eelgrass meadow habitats.

Interim reports summarizing research to date have been submitted to the Legislature in 2009, 2011, and 2012. The final results of the three funded studies will be reported to the Legislature in December 2013. *Exhibit 3, Attachment I.26.*

46. The 2012 interim report contains the following summary of preliminary research observations from study inception to date:
- Benthic infaunal communities are not significantly altered;
 - Current practices have minimal impacts on benthic communities of infaunal invertebrates, with no spillover into adjacent habitats, suggesting that the disturbance occurring on the scale of current harvest practices is within the range of natural variation;
 - Significant differences in the structure of mobile macrofauna communities between planted and nonplanted areas do not persist once tubes and nets are removed during the grow out phase;
 - Nutrients released from geoduck operations are low with localized effects likely to be negligible, and the overall rate of nutrient release is not changed from the natural rate;
 - No distinct patterns have been observed in the distribution of disease organisms as a function of geographic location or water depth; and
 - In Fisk Bar, where eelgrass recruited after geoducks were planted, harvest activities significantly impacted the eelgrass, with limited spillover effects to adjacent, non-farmed sites; however, within one year, eelgrass recovery had begun on the harvested site, suggesting that current practices do not render sites unsuitable for later eelgrass colonization.

Again, final results would be reported to the Legislature in December 2013. *Exhibit 3, Attachment I.26, page 4.*

47. In December 2011, Governor Christine Gregoire's Office unveiled the Washington Shellfish Initiative, calling it a "convergence of the National Oceanic and Atmospheric Administration's National Shellfish Initiative and the State's interest in promoting a critical clean water industry." The initiative recognizes that "shellfish aquaculture and commercial and tribal harvest of wild shellfish resources are water-dependent uses that rely on excellent water quality." Calling shellfish "critical to the health of Washington's Marine waters and the state's economy", the initiative is intended to protect and enhance a resource that is important for jobs, industry, citizens, and tribes. Washington Shellfish growers directly and indirectly employ over 3,200 people and generate an estimated annual economic contribution of \$270 million statewide. A top employer in Mason and Pacific Counties, shellfish growers generate \$27 million annually in payroll in just those two counties. The Initiative targets a net increase from 2007 to 2020 of 10,800 harvestable shellfish acres, including 7,000 acres where harvest is currently prohibited. Goals include: creating a public/private partnership including federal, state, tribal, and local government permitting; promoting restoration of native shellfish (particularly the Olympia oyster and the pinto abalone) and recreational shellfish harvest; and directing

\$4.5 million in EPA funding to protect and improve marine water quality. *Exhibit 7, Attachment B, page 1.*

Public Comment

48. Notice of the public hearing was sent to all property owners within 500 feet of the site and published in The Olympian on November 16, 2012 at least ten (10) days prior to the hearing. The site was posted with hearing notice on November 16, 2012. *Exhibit 3, page 3; Exhibit 13; Exhibit 3, Attachments A and O.*
49. One adjacent property owner (9026A Libby Road NE) submitted comments indicating they did not oppose the SSDP but noted that property boundaries on tidelands are difficult to identify with accuracy and requested that the permit be conditioned to require a setback from their parcel to prevent any geoduck farming from taking place on their tidelands. *Exhibit 3, Attachment I.54, Bunning Comment.*
50. There was a considerable amount of public comment in opposition to the requested SSDP. Issues of concern alleged in public comment included: inadequate analysis of cumulative effects based on the three related applications within a half mile as well as other proposed and existing geoduck beds in the vicinity; inadequate analysis of the impacts of geoduck aquaculture on the ecosystem generally; harm to tidelands caused by harvest; aquaculture debris causing pollution and danger to recreational users of the shoreline, including walkers, swimmers, and divers; noise and odor from the vessels; impacts to views from adjacent properties; reduction in property values as a result of the impacts of aquaculture; obstructions to walking on the beach; pesticide application; illegal removal and killing of species (sand dollars, sea birds, etc) from farm sites; reduction in overall wildlife presence in and adjacent to aquaculture beds; disapproval of the percentage of geoduck product sold overseas; questioning local tax revenues as a benefit of the proposal due to export of crops; inaccuracy and bias in the scientific studies offered by the Applicant; long term effects on the ecosystem; and failure of the application to demonstrate compliance with the SMPTR and the Shoreline Management Act policies that mandate protection of the ecology of the shoreline environment and recreational uses of the shoreline. Testimony included photos of shellfish beds with exposed, broken and escaped tubes in disarray at a location not operated by either the Applicant or Arcadia Point Seafood. One member of the public brought a trash bag of aquaculture debris she said she'd picked up personally on the beach in front of her home, which has geoduck beds on either side. The debris included broken PVC tubes, netting, rubber bands, and an oyster octagon with float. *Exhibits 6.a, 6.b, 6.c, 6.e, 6.f, 6.g, 6.k, 18.a, 18.b, 18.c, 18.d, and 18.e; Exhibit 17; Testimony of Macomson and Hendricks.*
51. A number of persons who submitted public comment were shellfish operators or employees or landowners who lease the tidelands on their residential properties to shellfish growers. Comments from this group generally attested to the Applicant's responsible business practices and stewardship of the Sound and urged approval of the instant application. Several commenters voiced support of the shellfish industry in terms of its economic benefits to the community through family wage jobs, payroll taxes, and purchase of local goods and services. Testimony was provided noting that shellfish

leases provide needed income to the owners of leased tidelands. Several operators spoke to the long term sustainability of beds they have personally worked on for up to 20 years and of personally witnessing the compatibility of aquaculture with native wildlife, including flat fish and birds. One member of the public pointed out that shellfish have been acknowledged by governments on the east coast for their capacity to clean up polluted waters, including Chesapeake Bay and New York Harbor. One shellfish operator who farms beds near a couple of state parks in Thurston County noted that his farms act as a draw to recreational users. The same operator noted that near Tolmie State Park, geoduck farms have not had any apparent negative effect on real property values based on property taxes. *Exhibits 6.d and 6.j; Testimony of Bulldis, Shotwell, Wysocki, Elston, Child, Schaffel, Gillies, Gibbons, and Bloomfield.*

52. The Applicant participates in the bi-annual Puget Sound shellfish growers garbage cleanup, which was started approximately six years ago to address aquaculture debris. The cleanup is conducted by all the growers and covers 125 miles of shoreline. According to the Applicant's geoduck division manager, on the first clean up approximately 800 pieces of PVC pipe were picked up. On the most recent cleanup, about six pieces of PVC pipe were collected. According to public comment from another operator, since 2005 the cleanup has removed 90 dump trucks of trash - 15% of which was aquaculture-related - and 1,000 tires from the shores of Puget Sound. *Phipps Testimony; Exhibit 6d.*

Response to Public Comment

53. In response to public comment, Resource Stewardship Staff noted that conditions imposed by the MDNS require patrol of the beach in the vicinity for escaped geoduck equipment after each storm event and on a monthly basis to prevent pollution. Further, the MDNS stipulates that if equipment does escape and the required patrols are not adequate, the County has ongoing authority to impose additional measures including but not limited to marking equipment with company ID, alternate means of securing gear while in place, increasing frequency of patrols, and others. Staff opined that compliance with this MDNS measure would adequately control the project's gear and prevent marine pollution. *Kain Testimony.*
54. Resource Stewardship Staff disputed the suggestion that cumulative impacts were not considered, arguing that the Applicant's BE and the 2009 BA both reviewed the cumulative impacts of multiple shellfish operations in the vicinity and found impacts to be of short duration and limited in area. However, in response to the public concern over long term cumulative impacts, Staff recommended that condition number 10 be further revised to require cumulative impact review of these three related SSDPs at the time of the seven year/prior to next crop review. Regarding the remaining concerns in public comment, Staff noted that the same concerns had been forwarded and considered during the SEPA review and application review process prior to the hearing. After considering public comment at the hearing, Staff remained convinced that, as conditioned, the project is compliant with the SMPTR, the policies and intent of the SMA, and the SSDP criteria for approval. *Kain Testimony; Exhibit 26.*

55. Pursuant to RCW 15.85.010,

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

Resource Stewardship Staff and the Applicant contended that this declaration by the state legislature is a clear directive to local governments that aquaculture has a preferred status similar to agriculture and is a desirable land use. *Exhibit 3, page 4; Kain Testimony; Exhibit 7.*

56. In response to Susan Macomson's comments, photos, and physical demonstration exhibits regarding aquaculture debris washed up on the beach, Steve Wilson (applicant in the related Arcadia Point Seafood applications) submitted his opinion that the costs involved in the instant regulatory permitting process are high and delays are lengthy, which he suspects has caused some operators to farm without permits and oversight. He suggested that the collected debris is from unregulated operations. He also noted for the record that for some period of time in the past, Arcadia Point Seafood participated in a joint venture that operated beds on either side of this member of the public's property. He testified that while he was involved in that operation near her residence, he never saw evidence of aquaculture debris washed up on her beach. *Steve Wilson Testimony.*

57. At the conclusion of public comment, Ms. Hendricks from the Sierra Club requested to add five additional documents into the record. The parties waived objection to their admission. *Hendricks Testimony; Kain Testimony; Plauché Comment; Steve Wilson Testimony; See Post-Hearing Order, dated November 27, 2012.*

58. Ms. Hendricks's five post-hearing documents are briefly summarized as follows:

The first was a study modeling the removal of nitrogen and carbon by Pacific oysters in hood canal. The study concluded that even at very high densities, the Pacific oyster's capacity to remove total nitrogen and carbon from Hood Canal is limited throughout most of the year and that the grazing rate and its response to water temperature are the two most important factors in predicting removal rates. *Exhibit 19.*

The second document was a study contrasting the community structure and select geochemical characteristics of three intertidal regions in relation to shellfish farming on Baynes Sound off the east side of Vancouver Island, British Columbia. The study found that "the greatest intensity of farming was associated with a decrease in species richness, altered species abundance and distribution, change in intertidal community structure..., and greater accumulations of surface sediment silt and organic matter." It also noted that anti-predator nets could restrict access of shore birds and sea ducks to the intertidal region, possibly during

key periods of their life history, such as before and after breeding and during migration, which could prove detrimental to existing populations. It concluded that more study is needed to understand the role of shellfish farming in intertidal ecology. *Exhibit 20.*

The third document was a study that mapped the extent of the anthropogenic footprint of the shellfish industry on an ecologically important region on the British Columbian coast and compared it to bird count data to attempt to define the shorebird habitat put at risk due to shellfish farming. *Exhibit 21.*

The fourth document reviewed differences in geochemical composition between farmed and unfarmed sites in Baynes Sound. Results showed statistically significantly more ammonium, organic matter, and silt on farmed versus unfarmed sites, and they also showed that natural populations of various species were responsible for contributing some of the increased values. *Exhibit 22.*

The final document offered by the Sierra Club was a brochure with photographs and information regarding the organization's position on aquaculture in Puget Sound. *Exhibit 23.*

59. Consistent with the Post-Hearing Order, the Applicant submitted a memorandum from the consultant who prepared the BE at Exhibit 3, Attachment I.8 and the BA at Attachment I.9, and who testified on behalf of the three related SSDP applications at hearing. The Applicant's consultant's responses to the documents submitted at and after the hearing included the following (paraphrased):

Exhibit 19 appears to be a student report for a UW civil and environmental engineering class, which would not receive review by other experts. The consultants contrasted this with the Sea Grant studies, which receive "rigorous internal review". This said, they noted that Exhibit 19 does not contradict their own conclusion (Exhibit 3, Attachment I.8) that more nutrients are removed by shellfish than are added during harvest activities. While shellfish cannot keep up with all of the excess nitrogen added to waters from upland sources except during the months of mid-July through August when temperature increases shellfish grazing rates, still shellfish removed nitrogen from the waters, providing a benefit that will increase as shellfish aquaculture is increased. Further, the consultants noted that harmful algal blooms are most prevalent in July and August, when shellfish feed most, and that therefore additional shellfish in the environment could reduce harmful algal blooms.

Exhibit 20 is a peer reviewed study. It concluded that as aquaculture intensity increased, there was a decrease in species richness, abundance, and distribution; a change in community intertidal structure from one composed of surface, sub-surface, and bivalve species to one composed of primarily bivalves; and an increase in surface sediment, silt, and organic matter accumulation. This study conjectures that netting could prevent access by shore birds, although it

referenced no studies addressing the issue. In response, the Applicant's consultants agreed that there are short-term changes to sedimentation and benthic faunal communities as a result of aquaculture's use of netting; however, they argue that other research shows that the effects do not persist after removal of the nets and they recover quickly after harvest.

Exhibit 21 is a peer-reviewed article on bird use associated with commercial shellfish in Baynes Sound. Data in the article suggests that there might be a slight shift in habitat use for one of the six surveyed species of shorebirds (dunlin), and the data is unclear with two other species (scoters, potentially a positive change). Based on pattern use data in the article, the Applicant's consultants concluded that it does not appear that shellfish aquaculture is restricting the distribution or use of shorebirds or wading birds.

Exhibit 22 is a peer-reviewed article which concludes that the netting used in Manila clam aquaculture leads to increased percent plant cover and accumulation of inorganic nutrients (particularly nitrogen and phosphorous), silt, and organic matter. The Applicant's consultants noted that though these changes were statistically significant, the article did not then posit that they resulted in significant effects to water quality or wildlife.

Exhibit 24.a.

60. In review of the studies offered by the Sierra Club at Exhibits 19 through 22, counsel for the Applicant argued that they fail to undermine the credibility of the scientific evidence offered by the Applicant. Counsel argued instead that the studies and articles offered confirm that geoduck aquaculture can remove excess nitrogen from marine waters. Reviewing Exhibit 18c, Counsel for the Applicant argued that the comments in that document provide no basis for denying the SSDP or excluding any of the scientific evidence offered in the Applicant's presentation.¹⁴ Regarding Exhibits 17, 18.a-b, 18.d-h, and 23, Counsel for the Applicant argued that the concerns raised in these comment letters were considered by Resource Stewardship Staff in conducting SEPA review on the proposal and when reviewing the SSDP application. The Applicant argued that none of the public comments demonstrate the instant application fails to comply with applicable criteria for SSDP approval. Finally, the Applicant representative contended that the debris and other environmental impacts referenced in testimony and evidence submitted in opposition to the application were attributed generally to shellfish or geoduck farming, rather than to the Applicant's operations or to operations on this property. *Plauché Argument; Exhibit 24.*
61. In response to the studies discussing netting submitted by the Sierra Club, Steve and Vickie Wilson from Arcadia Point Seafood noted that canopy nets are not new in the

¹⁴ Counsel went further and offered argument supported by documents from other proceedings intended to discredit the content and/or the expertise of the author of Exhibit 18c; however, the documents from other proceedings were not timely and are not admitted. *Exhibit 24.*

shellfish industry. They pointed out that during ACOE's review and revision of NWP 48, the ACOE completed consultations with the National Marine Fisheries Service and the US Fish and Wildlife Service for potential impacts of commercial shellfish activities, including use of nets, on endangered species, critical habitat, and essential fish habitat, and that both Services concurred with ACOE's finding of "may affect but not likely to adversely affect". The Wilsons noted that two of the 16 conditions in NWP 48 relate to nets: one requires labeling of gear and the other requires monitoring beaches for washed up equipment including nets. All three of the geoduck farms considered in these proceedings are subject to the conditions of NWP 48. *Exhibit 25.*

62. The Applicant recently received third party certification from Food Alliance for its farmed mussels, clams, oysters, and geoducks, endorsing the Applicant's products as grown, processed, and handled in accordance with environmentally and socially responsible agricultural practices. The Applicant also received a 2012 Seafood Champion award at SeaWeb's 10th international seafood summit in Hong Kong in recognition of industry-leading efforts towards environmental, societal, and economic sustainability in shellfish farming focusing on three areas: certification, political advocacy for clean water, and environmental education and community engagement. *Exhibit 7, pages 7-8; Exhibit 7, Attachment D.*
63. Regarding questions in public comment about whether geoduck farming really represents an economic benefit, Arcadia Point Seafood offered the following information. The business is headquartered in Mason County. In 2011, about 30% of their basic operating budget (equipment, maintenance, and repair) was spent at 44 businesses in Thurston County. For "big ticket items" (capital expenses), approximately one-third of their budget was spent in Thurston County. Although Arcadia has "a handful of employees", the family wage jobs and benefits provided are perceived as benefits to those individuals and their families and in the communities in which they live. Moneys paid to lessors also benefit people and the economy of Mason and Thurston Counties. Regarding overseas export of crops, Arcadia contended that this practice generates new money pumped into the local economy, rather than recirculated wealth. Finally, Arcadia sympathized with citizens who noted in public comment that they are not able to afford attorneys and biologists to testify on behalf of their point of view at proceedings such as these. Arcadia, as a small business, is similarly unable to afford going through this process on its own. They extended gratitude to Taylor Shellfish for allowing them to "piggy back" on their application and its legal and scientific support. *Exhibit 25.*
64. After SSDP approval, geoduck aquaculture operations must obtain, at a minimum, the following State and Federal permits: ACOE NWP 48 Certification or Individual Permit under Section 10; DOE Section 401 Water Quality Certification, DOE Coastal Zone Management Certification, State Department of Health Harvest Site Certification, State Department of Health Shellfish Operation License, and Washington State Department of Fish and Wildlife Aquatic Farm Permit. The proposal may be required, by the ACOE, to obtain a Section 404 Clean Water Act Permit. Each of these permits would contain specific required mitigation to protect public health, safety, and general welfare. *Exhibit 3, Attachment I.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide substantial shoreline development and reasonable use exception applications pursuant to TCC 2.06.010(C) and (F), TCC 17.15.415, RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

Shoreline Substantial Development Permit

Pursuant to WAC 173-27-150, in order to be approved by the Hearing Examiner, an SSDP application must demonstrate compliance with the following:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of applicable regulations; and
3. The Shoreline Master Program for the Thurston Region.

(a) Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses that (in the following order of preference): recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

(b) Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(c) Shoreline Master Program for the Thurston Region

SMPTR Section Two, V, Regional Criteria

- A. Public access to the shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existing prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be
- D. Residential development shall be undertaken in a manner that will maintain existing public access....
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving a proposed substantial development is consistent with the criteria which must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180(1), the person requesting the review shall have the burden of proof.
- G. Shoreline of this Region which are notable for their aesthetic, scenic, historic, or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development of use of shorelines shall be closely analyzed for their effect on the public health.

SMPTR Section Two, VII.C, Rural Shoreline Environment

Purpose. The primary uses of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding areas.

Definition. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban area and the shoreline proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment.

SMPTR Section Three, II, Aquacultural Activities

A. Scope and Definition

Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, bays and estuaries. Aquacultural practices include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

B. Policies

1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
2. Aquacultural use of areas with high aquacultural potential should be encouraged.
3. Flexibility to experiment with new aquaculture techniques should be allowed.
4. Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.
5. Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property.
6. Proposed surface installations should be reviewed for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installations should incorporate features to reduce use conflicts. Unlimited recreational boating should not be construed as normal public use.
7. Areas with high potential for aquacultural activities should be protected from degradation by other types of uses which may locate on the adjacent upland.

8. Proposed aquacultural activities should be reviewed for impacts on the existing plants, animals and physical characteristics of the shorelines.
9. Proposed uses located adjacent to existing aquaculture areas which are found to be incompatible should not be allowed.

C. General Regulations

1. Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.
2. Aquacultural structures and activities that are not shoreline dependent (e.g., warehouses for storage of products, parking lots) shall be located to minimize the detrimental impact to the shoreline.
3. Proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.
4. Proposed residential and other developments in the vicinity of aquaculture operations shall install drainage and waste water treatment facilities to prevent any adverse water quality impacts to aquaculture operations.
5. Land clearing in the vicinity of aquaculture operations shall not result in offsite erosion, siltation or other reductions in water quality.

Conclusions Based on Findings

1. Cumulative impact analysis is not required for shoreline substantial development permits pursuant to the Shoreline Management Act. The Shoreline Hearings Board has concluded that each geoduck aquaculture proposal must be reviewed on the merits of its own site, and only in projects proposed on shorelines of statewide significance or in cases where there is proof of impacts that risk harm to habitat, loss of community use, or a significant degradation of views or aesthetic impacts, a cumulative impacts analysis is warranted. Although the record contains opinion testimony from people concerned that the project on its own or in combination with existing, proposed, and possible future shellfish operations would result in harm to wildlife and habitat, this evidence is not sufficiently credible to outweigh the scientific evidence in the record that finds geoduck aquaculture generally and as proposed to be operated at this site specifically is not a significant concern for long-term risk to the plants, animals, and physical characteristics of the shoreline. On the contrary, the record supports the conclusion that effects of the proposal would be highly localized and short in duration. Studies and articles offered in opposition to the application do not controvert the findings of the site specific evaluations in evidence. No substantial evidence was offered in support of alleged impacts to recreational values and community use of the shoreline. The project would not interfere with navigation, with any existing public recreational facilities, or with community use of the tidelands via boats, kayaks, or beach walking. Reasonable minds can differ on questions of aesthetics, but the record contains no evidence indicating that noteworthy views would be marred by the proposal. The unchallenged MDNS found no unmitigated impacts to any element of the environment, aesthetics, or recreation. No cumulative impacts analysis is required under the SMA. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 40, 41, 53,*

54, 55, and 64; *Coalition to Protect Puget Sound et al v. Pierce County and Longbranch Shellfish, SHB No.11-019 (2011)*).

2. Aquaculture has been identified by the Washington State Legislature, the Governor's Office, and the Shoreline Hearings Board as an activity of statewide interest that is a preferred, water-dependent use of the shoreline, which when properly managed can result in long-term over short-term benefits and protect the ecology of the shoreline. Geoduck aquaculture is allowed outright in the underlying zoning district and, upon review for compliance with applicable provisions in the Shoreline Master Program for the Thurston Region, in the Rural Shoreline Environment. (Review of SMPTR criteria is addressed in conclusion 4 below.) The proposal was reviewed for compliance with the requirements of SEPA and an MDNS was issued finding that the project as conditioned would not result in probable, significant, adverse impacts to the environment. No party challenged this environmental determination and it is not in question in this proceeding. As conditioned, the project would be required to comply with the Nationwide Permit 48 terms and conditions, a DOE Section 401 Water Quality certification, the Pacific Coast Shellfish Growers Association Environmental Codes of Practice (ECOP) for Pacific Coast Shellfish Aquaculture, the conditions imposed by the MDNS, and conditions of the instant permit approval. So conditioned, the project is consistent with the policies of the SMA and would be a reasonable and appropriate use of the shoreline. *Findings 1, 2, 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 32, 33, 34, 35, 36, 40, 41, 47, 53, 54, 55, and 63; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Penn Cover Seafarms v. Island County, SHB No. 84-4(1984); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008)*.
3. No residence would have its view obstructed by the proposal. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. *Findings 2, 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, and 15*.
4. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.
 - A. With regard to regional criteria, the proposal would not add new or alter existing public access to shorelines. The proposal was carefully analyzed for effects on the aquatic environment, with site specific studies concluding as follows: The proposal is likely to result in impacts on habitat-forming processes, water quality, and sediment make up which would in turn impact habitat on and immediately adjacent to the site and the species that occur there. These impacts are anticipated to be localized in nature and of relatively short duration, similar to impacts from storm events. After planting, the tubes and netting would provide additional structure, creating habitat for some species while in place. While feeding, geoducks remove excess nutrients from the water, improving water quality to a greater extent than they contribute nutrients. After harvest, the site is anticipated to recover quickly. The proposal may affect but is not likely to adversely affect threatened and endangered species and critical habitat for endangered species and their prey. The findings of the site specific studies are

consistent with the results to date of the Washington Sea Grant study, which is evaluating geoduck aquaculture at the behest of the State Legislature. Conditions imposed by the NWP 48, the MDNS, and the instant approval would act to further ensure that the project would not result in ecological harm. One SSDP condition would require re-review of the project's impacts in light of the final results of the Sea Grant study prior to replanting the bed. The subject property is not notable for ecological values as identified in the biological evaluation, and is not notable for historic qualities as identified in the archeological survey. The proposal was reviewed for compliance with the requirements of the State Environmental Policy Act and an MDNS was issued. The MDNS was not challenged. The MDNS concluded that the project would have minimal impacts to scenic or aesthetic values. The Thurston County Environmental Health Division recommended approval of the application, and the project would have to receive multiple approvals from the State Department of Health prior to operating. There is no evidence of adverse impacts to public health. *Findings 2, 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 53, 54, 55, 61, and 64.*

- B. The proposal is consistent with the policies applicable to the Rural Shoreline Environment. It does not constitute urban expansion or intensive development of the shoreline. As cultivation and development of aquatic resources, aquaculture is permitted in the Rural Environment and the instant proposal would be compatible with existing shellfish operations in the vicinity. Relative to the impacts of other water-dependent shoreline uses, such as marinas or industrial ports, it is a moderate to low intensity use of the shoreline. It promotes economic development of the rural shoreline environment without interfering with public access, existing circulation systems, recreational uses, intensive public use, or historic and cultural values. As described above, the project would not harm the shoreline environment and would provide some beneficial values. As conditioned, the project would conserve and protect the site while managing its capacity for sustainable resource use. *Findings 2, 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 42, 47, 53, 54, 55, 59, 60, 61, and 63.*
- C. The proposal is consistent with the aquaculture activities goals and policies of the SMPTR. The proposal would create employment opportunities and strengthen an existing shellfish growing operation that employs hundreds while producing sustainable goods in high demand for export. It would utilize a site that is uniquely situated for aquaculture. The project would not interfere with commercial navigation or with shoreline access by the property owners. Shellfish equipment would be in place for approximately 24 months and would be visible in the intertidal zone for approximately five percent of daylight hours between March and September and would not be visible the rest of the time. No beach structures or storage are proposed to impact views or beach access. As described in detail above, the proposal was carefully reviewed for impacts to the environment. Evidence in the record shows the project would have localized impacts of a short duration. As conditioned, it may affect but is not likely to adversely affect the plants, animals, and physical

characteristics of the shoreline. *Findings 2, 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 47, 59, 60, and 63.*

- D. As conditioned, the project would be consistent with the applicable general regulations of the SMPTR's aquaculture section. The use is shoreline dependent. No excavation is proposed that could result in erosion. Evidence shows that geoduck farming results in minor, short term impacts on intertidal sediments. No processing plant, residential development, land clearing, or nonaquacultural development is proposed. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 59, and 60.*
5. The peer reviewed scientific studies and articles offered in opposition to the proposal appear to be based in sound scientific methods and their results, and results of further studies on the same topics, would be appropriately considered in review of individual geoduck farm applications. However, the weight of scientific evidence in favor of the project is found to be greater for the following reasons: The Applicant brought the fisheries biologist who conducted the biological evaluation of the site to hearing; she was available for cross examination. The Applicant offered studies by other scientists, the findings of which support the opinions forwarded by the biologist who testified at hearing that the proposal would result in temporary effects in a limited, very local fashion. The findings of the site specific studies offered by the Applicant are consistent with the interim findings of the Washington Sea Grant Study and the Nationwide Permit 48 issued by the ACOE. However, because the Sea Grant study is not completed, because commercial geoduck aquaculture is a relatively new enterprise, and because many citizens of Thurston County and Resource Stewardship Staff are concerned about any potential long term adverse effects to Henderson Inlet, the recommended condition that would require review of the SSDP in seven years or prior to replanting is adopted. Review will look at the final report of the Sea Grant study and will consider impacts shown to be occurring on-site. If facts at the time merit cumulative impact analysis, it shall be conducted during the review. *Findings 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 37, 38, 39, 40, 44, 45, 46, 50, 51, 53, 54, 59, and 60.*
6. Additional conditions of approval are necessary to ensure that the Applicant's stated practices become requirements of the permit. A pre-harvest site survey is required and no harvesting may occur when eggs of forage fish are found to be present. The Applicant shall take whatever action necessary to ensure the operation, including the staking of canopy netting into the substrate, does not extend outside of the lease area on the underlying property. *Findings 24 and 49; WAC 173-27-150.*

DECISION

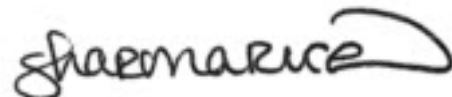
Based upon the preceding findings and conclusions, the requested shoreline substantial development permit allow development of a 0.9-acre geoduck bed in the intertidal lands associated with the residential parcel at 9000 Libby Road NE within the Rural Shoreline Environment associated with Henderson Inlet is **GRANTED** subject to the following conditions:

1. Prior to or in conjunction with the commencement of bed preparation, and during operation, all regulations and requirements of the Thurston County Resource Stewardship Department, and the October 11, 2012 Mitigated Determination of Non-Significance, along with the SEPA Addendum of October 19, 2012 shall be met.
2. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region. As proposed and mitigated, it will comply.
3. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.
4. Prior to beach preparation for planting the geoduck bed, copies of applicable state and federal approvals shall be provided to the Resource Stewardship Department.
5. No fill shall be placed on the beach. A permit from the U.S. Army Corps of Engineers shall be obtained prior to any beach excavation if such permit is required. It is the responsibility of the Applicant to investigate the need for this permit.
6. No discharge of sediments into Puget Sound shall be permitted at any time.
7. There shall be no tree removal on the marine bluff face or the buffer from the toe of the marine bluff during project implementation.
8. There shall be no removal of shrubbery or fallen trees located in the buffer of the toe of the marine bluff or on the beach during placement of the bed.
9. Bed preparation must commence within two years and all tubes and netting for the initial planting must be installed within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
10. The subject operation shall be reviewed by the Resource Stewardship Department through an open record review hearing in front of the Thurston County Hearing Examiner prior to subsequent replanting or within seven years, whichever occurs first. Review shall assess emerging environmental research and environmental issues arising from the approved operation, if any. If facts at the time of the review warrant cumulative impact analysis under then-applicable law, it shall be conducted during the review. The hearing shall be held within 60 days following an application for review filed by the Applicant with the Thurston County Resource Stewardship Department.
11. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan submitted and made part of this staff report, including modifications as

required by this approval. Any expansion or alteration of this use will require approval of a new or amended shoreline substantial development permit.

12. Any lighting associated with the operation shall be designed and placed to avoid direct or reflected glare onto nearby residences.
13. Noise from equipment or personnel engaged in the operation shall not rise to the level of persistently annoying as reported by any nearby property owner. Even though this level of noise is subjective, the County will investigate and may require appropriate mitigations. Additionally, noise from machinery and equipment shall not exceed 60 decibels at the property line during daylight hours and 50 decibels from 10:00 PM to 7:00 AM as limited by WAC 173-60-040.
14. Hard markers or structures on the beach and in the water shall be avoided where possible. This includes but is not limited to property boundary markers and equipment to hold down netting.
15. A pre-harvest site survey is required. No harvesting may occur when eggs of forage fish are found to be present on-site or within the action area.
16. Approval for the operation is limited to intertidal lands on the subject property. The Applicant shall take whatever action necessary to ensure the operation, including the staking of canopy netting into the substrate, does not extend outside of the lease area on the underlying property.
17. Physical activities on the beach pursuant to this permit shall not begin and are not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).

Decided January 10, 2013.



Sharon A. Rice
Thurston County Hearing Examiner



Project No. 201104210 SSDP
Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20____.

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.