December 13, 2010

Re: SHB No. 10-009
CASE INLET SHORELINE ASSOCIATION v. MASON COUNTY and SEATTLE SHELLFISH, LLC

Dear Parties:

Enclosed is an Order of Dismissal. Thank you for your efforts in settling this matter.

Sincerely,

Andrea McNamara Doyle, Presiding

AMD/dj/S10-009
Enc.
cc: Don Bales, Ecology
    Mason County Dept of Community Development

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through State Consolidated Mail Services to the attorneys of record herein. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.
DATED 12/14/2010, at Lacey, WA.
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

CASE INLET SHORELINE ASSOCIATION,
Petitioner,

v.
MASON COUNTY and SEATTLE SHELLFISH, LLC,
Respondents.

The parties having reached a settlement in this matter, and having presented a stipulation and joint request for dismissal at the status conference held on November 30, 2010, and it appears that there is no contested case remaining for hearing, IT IS ORDERED that the case is DISMISSED.

DONE this 11th day of December, 2010.

SHORELINES HEARINGS BOARD
ANDREA McNAMARA DOYLE, Presiding
WILLIAM H. LYNCH, Member
KATHLEEN MIX, Member

ORDER OF DISMISSAL
SHB No. 10-009
ORDER OF DISMISSAL
SHB No. 10-009
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between Case Inlet Shoreline Association ("CISA"), Seattle Shellfish, LLC ("Seattle Shellfish"), Mason County ("County"), and the State of Washington, by and through the Washington State Department of Ecology ("Ecology").

I. Recitals

Seattle Shellfish applied to the County for a Shoreline Substantial Development Permit and a Conditional Use Permit for a floating shellfish nursery system.

The Mason County Hearing Examiner issued Shoreline Substantial Development Permit/Conditional Use Permit No. SHR2008-00016, with conditions, on May 26, 2010.

CISA appealed the County's issuance of the Shoreline Substantial Development Permit by filing a Petition for Review with the Shorelines Hearings Board (SHB No. 10-009) on June 28, 2010.

Ecology approved the Conditional Use Permit on June 24, 2010.


The Parties desire to enter into this Agreement to provide for full settlement and the release and discharge of all claims which are, or might have been, the subject matter of the Petition for Review, upon the terms and conditions set forth below.

II. Agreement

The Parties agree as follows:

1. The monitoring program that is required by Condition 1, p. 23, of the Hearing Examiner's decision regarding Shoreline Substantial Development Permit/Conditional Use Permit No. SHR2008-00016, shall be conducted by a suitably qualified expert independent from and with no affiliation with Seattle Shellfish or CISA. The Parties agree that the independent expert shall not be ENVIRON or be employed by ENVIRON. Seattle Shellfish shall fund the preparation and implementation of that monitoring program. The results of that monitoring program shall be made available to any member of the public by the County upon request, and the County shall post the results of that monitoring program on its website on a quarterly basis.

2. All documents excluding journal articles and other public information, released by Seattle Shellfish to CISA during the discovery process in this matter, and all information contained in those documents, shall not be further released, disseminated or used by CISA or its officers, agents, members or volunteers for any purpose.
3. All Parties agree to cooperate fully and execute any and all supplementary documents, including a Stipulated Order of Dismissal with Prejudice, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

4. Each of the Parties represents that each person executing this Agreement has full and complete legal and corporate authority to bind each of the Parties to this Agreement and that this Agreement is binding on and inures to the benefit of their principals, officers, employees, members and/or agents.

5. For the convenience of the Parties, this Agreement may be signed in one or more counterparts. The combination of all the signed counterparts together shall have the status of an executed original.

6. This Agreement represents the entire agreement and understanding of the Parties. All previous negotiations and verbal and/or written agreements or correspondences are superseded by this Agreement.

7. This Agreement shall be interpreted and enforced according to the laws of the State of Washington.

8. This Agreement shall become effective immediately following execution by each of the Parties.

Case Inlet Shoreline Association

By: Curt Puddicombe
Title: Vice President
Date: 11/24/2010

Seattle Shellfish, LLC

By: __________________________
Title: __________________________
Date: __________________________

Mason County

Washington State, Department of Ecology

By: __________________________
Title: __________________________
Date: __________________________
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[Signature]
11-24-2010
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Case Inlet Shoreline Association

By: __________________________
Title: __________________________
Date: __________________________

Seattle Shellfish, LLC

By: [Signature]
Title: President
Date: 1/24/2010

Mason County

By: __________________________
Title: __________________________
Date: __________________________

Washington State, Department of Ecology

By: __________________________
Title: __________________________
Date: __________________________
June 24, 2010

Seattle Shellfish
Attn: Jim Gibbons
2101 4th Ave E Ste 201
Olympia, WA 98506

Subject: Mason County Local Permit # SHR2008-00016
Seattle Shellfish - Applicant
Shoreline Conditional Use Permit 46 - APPROVED

Dear Mr. Gibbons:

Purpose: Notification of Receipt and Approval of Conditional Use Permit

On June 7, 2010, the Department of Ecology (Ecology) received the Mason County decision on your Shoreline Conditional Use Permit for the installation of a log boom, pilings, and floating shellfish nursery system that will cover approximately half an acre. The nursery is for geoduck clam seed for the purpose of boosting seed size prior to out-planting the seed to the company's various farm sites.

By law, Ecology must review all Conditional Use Permits for compliance with the following:

- The Shoreline Management Act (Chapter 90.58 RCW)
- Ecology's Conditional Use Permit approval criteria (Chapter 173-27-160 WAC)
- The Mason County Local Shoreline Master Program

After reviewing Conditional Use Permits for compliance, Ecology must decide whether to approve, approve with conditions, or disapprove a Conditional Use Permit.

Our Decision:

Ecology approves your Conditional Use Permit provided your project complies with the conditions required by Mason County. Please note, however, that other federal, state, and local permits may be required in addition to this shoreline permit.

What Happens Next?

Before you begin activities authorized by this permit, the law requires you to wait at least 21 days from the mailing date of this letter (see certification above). This waiting period allows
appeal the decision to the state Shorelines Hearings Board. If no appeal is submitted you may
begin activities any time after June 28, 2010. You must wait for the conclusion of an appeal
before you can begin the activities authorized by this permit.

The Shorelines Hearings Board will notify you by letter if they receive an appeal. We
recommend, however, you contact the Shorelines Hearings Board before you begin permit
activities to ensure no appeal has been received. They can be reached at (360) 459-6327 or

If no appeal is submitted you may begin activities any time after June 28, 2010.

If you want to appeal this decision, you can find appeal instructions (Chapter 461-08 WAC) at
the Shorelines Hearings Board website above. They are also posted on the website of the

Please Be Advised:

A Shoreline Conditional Use Permit was concurrently filed with your substantial development
permit. The Conditional Use component is for establishment of floating aquaculture. Within 30
days we will notify you by letter of our decision on your Conditional Use Permit. This permit has
its own 21-day appeal period. You may not begin this portion of your project until that appeal
period has ended.

Other federal, state and local permits may be required in addition to this shoreline permit.

If you have any questions about this letter, please contact Rick Mraz at (360) 407-6221.

Sincerely,

Rick Mraz, Shorelands Specialist
Shorelands and Environmental Assistance Program

cc: Grace Miller, Mason County
    Samuel W. Plauche', Applicant's Representative
NOTIFICATION OF SHORELINE PERMIT APPROVAL

June 15, 2010

SEATTLE SHELLFISH
2010 4TH AVE E STE 201
OLYMPIA WA 98506

Case No.: SHR2008-00016
Parcel No.: 221250083081
Project Description: Installation of log boom, pilings and Floating Goeyduck Seed Nursery System. Floating nursery system for geoduck clam seed for the purpose of boosting the seed size prior to out-planting the seed to the company's various farm sites. This is a Revised Application from the original submittal in 2008.

Dear Applicant:

Your Conditional Use/Substantial Development was approved at the county level. Shortly after the approval was granted, you received or will receive a letter from the Department of Ecology (DOE) indicating that a 30-day review period has been initiated.

Upon completion of the review period, it is your responsibility to obtain any building permits needed. If you submitted a building permit prior to the granting of your Conditional Use/Substantial Development, please notify us so that we can pull your folder and circulate the building permit to the appropriate departments for their approval. Construction will not be authorized until completion of the review period or resolution of any appeals.

A building permit is good for six months, with one six month extension possible if requested prior to termination of the initial six month period. With a Conditional Use/Substantial Development, construction must begin within two years of approval and be completed within five years from the date of approval.

Please contact me at (360) 427-9670, ext. 360 if you have questions.

Sincerely,

Grace Miller
Land Use Planner
Mason County Planning

cc: Billy Plante
MASSON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Planning Division
P O Box 279
Shelton, WA 98584
(360)427-9670

SHORELINE PERMIT

Case No.: SHR2008-00016

Received: 8/22/2008
Issued: 6/1/2010
Expires: 6/1/2012

Type of Permit: Sub. Dev./Conditional Use
Applicant: SEATTLE SHELLFISH
2010 4TH AVE E STE 201
OLYMPIA, WA 98506

Location of Project: Address: 609 E Yates RD, Shelton
47.27187 N lat./ -122.86578 W long..
NE side of Harstine Island, within Spencer Cove.
Within Case Inlet and/or its associated wetlands. The project will not be
within shorelines of statewide significance.

Shoreline Designation: Rural
Parcel Number: 221250083081
Address:
Legal Description: TAX 408 E

Project Description: Installation of log boom, pilings and Floating Geoduck Seed Nursery
System. Floating nursery system for geoduck clam seed for the purpose of
boosting the seed size prior to out-planting the seed to the company’s
various farm sites. This is a Revised Application from the original submittal
in 2008.

CONDITIONS:

This permit has been granted by Mason County pursuant to the Shoreline Management Act of 1971
and nothing in this permit shall excuse the applicant from compliance with any other federal, state or
local statutes, ordinances or regulations applicable to this project but not inconsistent with the
Shoreline Management Act. (Chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to
comply with the terms and conditions hereof.
BEFORE THE HEARING EXAMINER FOR MASON COUNTY

RE: Seattle Shellfish

Shoreline Substantial Development/Conditional Use Permit (SHR2008-00016)

CLARIFICATION

In its review of the conditional use permit for the above-captioned matter the Washington State Department of Ecology has requested that the Examiner clarify whether he approved the request for a conditional use permit. The Examiner’s decision did not expressly approve the conditional use application. To remove any ambiguity, the Examiner clarifies it was his intent to approve the conditional use permit application. The Examiner’s decision expressly concludes that all criteria for conditional use permit are satisfied. The hearing was advertised to include a conditional use permit and the application included a request for a conditional use permit. The conditional use permit is approved.

Dated this 10th day of June, 2010.

Phil A. Olbrechts
Mason County Hearing Examiner

SSD – Seattle Shellfish

Findings, Conclusions and Decision
June 10, 2010

Seattle Shellfish
Attn: Jim Gibbons
2101 4th Ave E Ste 201
Olympia, WA 98506

Subject: Mason County Permit # SHR2008-00016 - Applicant
Shoreline Substantial Development Permit # 173 – APPROVED
Concurrent filing of Conditional Use Permit and pending review

Dear Mr. Gibbons:

Purpose: Notification of Receipt and Filing of Approved Substantial Development Permit (SDP) and Notification of Concurrent Receipt of Conditional Use Permit (CUP).

On June 07, 2010, the Department of Ecology received notice that Mason County approved your application for a substantial development permit. Your permit authorizes the installation of log boom, pilings, and a floating shellfish nursery system that will cover approximately half an acre. The nursery is for geoduck clam seed for the purpose of boosting seed size prior to out-planting the seed to the company's various farm sites within shoreline jurisdiction of Puget Sound (Chapter 90.58, RCW).

By law, local governments must review all SDPs for compliance with the following:

- The Shoreline Management Act (Chapter 90.58 RCW)
- Ecology's Substantial Development Permit approval criteria (Chapter 173-27-150 WAC)
- The Mason County Local Shoreline Master Program

Local governments, after reviewing the SDP for compliance, are required to submit the SDPs to Ecology for filing.

Your approved SDP has been received and filed by Ecology.

What Happens Next?

Before you begin activities authorized by this permit, the law requires you to wait at least 21 days from the date we received the decision letter from Mason County on June 7, 2010. This waiting period allows anyone who may disagree with any aspect of this permit, including you, to
anyone (including you) who disagrees with any aspect of this permit, to appeal the decision to the state Shorelines Hearings Board. You must wait for the conclusion of an appeal before you can begin the activities authorized by this permit.

The Shorelines Hearings Board will notify you by letter if they receive an appeal. We recommend, however, you contact the Shorelines Hearings Board before you begin permit activities to ensure no appeal has been received. They can be reached at (360) 459-6327 or http://www.eho.wa.gov.

If you want to appeal this decision, you can find appeal instructions (Chapter 461-08 WAC) at the Shorelines Hearings Board website above. They are also posted on the website of the Washington State Legislature at: http://apps.leg.wa.gov/wac.

If you have any questions, please contact Rick Mraz at (360) 407-6221.

Sincerely,

Perry J. Lund, Unit Manager
Shorelands and Environmental Assistance Program

cc: Grace Miller, Mason County
    Samuel W. Plauche’, Applicant’s Representative
June 1, 2010

NOTICE OF FINAL DECISION

Case Number: SHR2008-00016 - Shoreline Substantial Development/Conditional Use Permit for floating shellfish nursery.
Applicant: Seattle Shellfish.

Notice is hereby given that Seattle Shellfish, applicant for the above referenced Shoreline Permit, has been granted conditional approval for the project. The Decision was dated 5/26/10 and conditionally approves the permit by the Hearing Examiner. The conditions are listed within the staff report and the Hearing Examiner added four conditions within his Decision.

The request for the Shoreline Substantial Development/Conditional Use Permit was approved pursuant to the Mason County Development Regulations specifically for the installation of log boom, pilings and floating shellfish nursery system.

If you have any questions or require clarification on this issue please contact Grace Miller, Planner with the Mason County Department of Community Development at (360) 427-9670, x 360.

This is a final decision. No further appeals to the County are available. Appeals may be made to the appropriate state administrative agency or superior court pursuant to RCW 36.70C. It is the appellant’s responsibility to meet all legal requirements of any appeal process.
BEFORE THE HEARING EXAMINER FOR MASON COUNTY

RE:  Seattle Shellfish

Shoreline Substantial Development/Conditional Use Permit (SHR2008-00016)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

INTRODUCTION

The applicant has applied for a shoreline substantial development permit for the installation of log boom, pilings, and floating shellfish nursery system that will cover approximately half an acre. The nursery is for geoduck clam seed for the purpose of boosting seed size prior to out-planting the seed to the company’s various farm sites. The Examiner approves the application, subject to conditions.

TESTIMONY

Grace Miller – Mason County Staff

Ms. Miller began by giving an overview of the staff report, as well as a description of the documents and letters that the County staff wanted entered into evidence. Specifically, Ms. Miller gave overviews of the comments received from the public. It is staff’s opinion that the proposal meets the necessary requirements to be approved.

The lighting at the site is not for 24-hour operation, but rather to meet the Coast Guard requirements. Additionally, the majority of work will take place during the day, but some work will take place at night.

Samuel Plauche – Representative of the Applicant

Mr. Plauche began by stating the applicant’s support of the staff recommendation for approval, as well as support of the conditions recommended by staff for such approval. He also stated that the SEPA MDNS was issued in March of this year, and that the appeal deadline had passed as of April, and no appeals were received. However, the applicant has addressed all of the specific comments received regarding the SEPA MDNS as well as other issues raised by the comments.

In regards to Mr. Burrow’s deed concerns, this pertains to reversionary deeds from the State of Washington to tideland property owners for the farming of shellfish. The legislation to which Mr. Burrows refers is an interpretation of these deeds, and is similarly to a restrictive covenant; neither of which is appropriate material for the Hearing Examiner to review during these land use proceedings, nor is it relevant.
Although analysis of these issues is not appropriate, if such analysis is made, it is important to note that these tidelands were transferred in 1921, after the adoption of the 1919 Clam Act, with the ability to cultivate all edible shellfish, and so the provision Mr. Burrows mentions is not really applicable.

In regards to cumulative impacts concerns, the requirement is to look to the likelihood of additional uses like this in the area; and because Seattle Shellfish owns the large majority of property in the area for such uses, in addition to the testimony given regarding the current proposal being sufficient to meet future growth needs, the potential for cumulative impacts has been adequately addressed.

Mr. Plauche pointed out that in Washington, the case law is clear, that unsupported or unsubstantiated fears about the diminution of property value is not relevant. Additionally, any title search will show when purchasing neighboring properties, that the tidelands are being used for aquaculture and shellfish cultivation. Under Mason County aquaculture policies, priority should be given to areas with demonstrated use of aquaculture. It should be noted that property owners that actually live in the area have noted a reduction in aesthetic disruption, and have not objected to the aesthetic issues. Rather it is the property owners that have yet to live on or develop their properties in the area that are objecting to the aesthetic changes. Aesthetic uses must be evaluated with the traditional uses taken into consideration. As such, this is not a pristine cove, but rather an area that has been used heavily for aquaculture in the past. This entire project will actually be an overall reduction in aesthetic impacts because boat traffic will not increase, and nighttime activities will be drastically reduced.

As a clarification, the project has not yet been approved by the Army Corps of Engineers, and it is currently going through the approval process.

In regards to statements by the Sierra Club regarding pesticide usage, such practices are not used by Seattle Shellfish generally, and especially not at this level. Additionally, such information was presented regarding intertidal geoduck farming, not the nursery proposed. No chemicals are actually associated with this type of farming.

In regards to herring spawn issues, the applicant submitted an Army Corps permit that addresses how to handle the presence of herring when found.

In regard to the Sierra Club statement that a similar project was just recently shut down, that was actually a result of an Endangered Species Act problem, not the farming itself.

On the applicability of the commercial development provisions of the SMP, the Mamin v. Mason County case was directly on point and found that the commercial regulations do not apply.

Jim Gibbons – President and founder of Seattle Shellfish

Seattle Shellfish employs 48 employees of Mason County, all of which are very well paid, and they have not seen any employment turnover in the last year even with the downturn in the economy. The company has about 100 investors, most of which are family and friends of Mr. Gibbons, and they have seen a return on their
investment in the last 12 years. Most of the products the company farms are exported to China, and Mr. Gibbons likes to believe that he is helping with the US trade deficit as such. He also appreciates he ‘green’ aspect of the industry.

Initial farming began in Spencer Cove in 1998, on a 23 acre portion of what was a 93 acre oyster tract. There are about a dozen homes in the area, many of which have contracted leases with the company for tidelands. After the first season, the company realized that only large seeds would survive, at which point they began using ‘kiddie pools’ in order to help grow bigger seeds, which has about doubled survival rates.

The proposed rafts and floats will be black, and will be minimally visible in the water. The pilings will be steel, and there will be 6 floats. But the 6 floats are the maximum number during the year, and this number will be lower during the winter. Additionally, in regard to lighting, this project will allow the work to all be done during the day. The prior site necessitated working at night due to tide levels, and as such there was night work with tractors. Aesthetically, this project will likely be more attractive than the other sites. Small boats will be used to maintain the structures as well as farm the seeds. Overall, this project will cost approximately $200,000, including construction and lawyers fees.

The company is hopeful that the log booms will significantly increase their results, and allow for the continued environmental stewardship they provide.

Mr. Gibbons became aware, and interested in geoduck farming in 1996, and became aware of subtidal geoduck farming at that time. Such farming has been taking place since the 1990’s. In late 2000, Seattle Shellfish began farming on the lands they own, and during that same year they notified the State of Washington that they were farming geoducks on the property. They began planting geoducks on the project property, which they did not own at the time, in November of 2001. The December 31, 2001 deadline was actually placed into the legislation to accommodate Seattle Shellfish.

Currently 98% of the oyster tract in the tidelands of Spencer Cove is currently operated for geoduck farming. Seattle Shellfish controls about 94% of that. The need for the 6 rafts was calculated for the long-term goal of planting about 2.1 or 2.2 million seeds each year.

A Bush Act tidelands deed requires you to plant shellfish, otherwise you lose the tidelands.

In regards to the pristine nature of the cove, and uses during the last decade, Mr. Gibbons believes that his usage is less visible and less intrusive than the oyster farming that takes place higher up on the beaches; whereas his farming is lower on the beach. The other properties doing oyster farming during the 1980’s, prior to Seattle Shellfish purchasing the property, were much more intrusive in the cove.

Diane Cooper - Taylor Shellfish Farms

Ms. Cooper, in her representation of Taylor Shellfish Farms, supports the application before the Hearing Examiner. She states that the technology being used in the proposal is proven technology within the aquaculture community, but is relatively new for geoduck farming. However, the technology has been reviewed by
the State and found to be environmentally sound. Additionally, Taylor Shellfish Farms were approved for a similar permit in 1996, and have been utilizing that technology in Mason County successfully since then. Washington is the leading producer of geoducks, and Taylor and Seattle Shellfish together are helping to bring that economic success to Mason County.

In regards to the upland-type operations, there appears to be a bit of confusion about what a hatchery is versus a nursery. An upland hatchery is specific to the purpose of breeding and spawning animals in tanks. Those can be in tanks because they are small and there are a minimal number of animals. Nurseries on the other hand are not feasible upland because of the large number of animals as well as the necessity of having the marine environment to raise those animals. Additionally, the State has designated such use as water-dependent in the leases. Having such facilities upland would actually be convenient if feasible, because greater control would be gained over the process, but no such operations are feasible due to the number of animals and the large supply of water that would be necessitated. No such nursery facilities exist upland in the industry.

Clayton Johnson – Community Member

The least of Mr. Johnson’s concerns is that he has a vacation home that would look down onto the proposed site. This project will not be small, it will essentially be the size of a football field. He believes that the structures will be a visual eyesore. The shellfish industry in Washington State has been loosely regulated, and has been able to get away with too much in the past. As a high school biology and chemistry teacher he has some knowledge of the environmental issues. Mr. Johnson believes that the environmental impacts should not be addressed or presented by Seattle Shellfish, but rather need to be evaluated by a completely neutral party like the University of Washington. Issues such as shading for cutthroat trout are clearly going to have impacts, but we simply do not know the extent of these impacts yet.

Mr. Gibbons has a lot to gain economically from this project, and the people of Mason County are the ones that are going to be harmed. Also, the farming of the geoducks is problematic, because the farming essentially just plows the beach, and we simply don’t know the final results that such farming will cause; and we need to know these impacts before such projects are allowed to go forward. These impacts affect all members of Washington State, not just of Mason County because of the wide ranging effects to the entire Puget Sound. A moratorium needs to be placed on the growth of this industry until the full impacts can truly be understood.

Jeff Roberts – Neighboring Property Owner

Mr. Roberts lives about 300-400 yards from the proposal site, and will be looking right down at it. He and his wife have lived there for about 12 years, and as such have seen before and after effects of the geoduck farming. There have been lighting problems, smells, and noise during the middle of the night. But pumps have been developed to reduce noise, and you can barely even hear when they are farming.
Also, netting has been added to the tubes, so less mess appears on the beaches, and they also clean up a lot of the other debris that shows up on the beach that isn’t even a result of their farming. Since the geoduck farming started, there haven’t been algae blooms in the summer and the water has generally just been cleaner; the geoduck farming is benefitting the cove. He would like to see this project go forward, because it will allow the entire project to be in one place instead of scattered about. Visually the project is not obtrusive, and the company is very concerned about the cove, and they have been excellent neighbors.

John Noble – Neighboring Property Owner

Mr. Noble lives near the project site, and essentially looks south across the site. His current view is essentially a pristine forested piece of property. The proposed float seems large, and he doubts that anything of its size has ever been in Case Inlet. However, the profile is very low, and he doubts that he would ever see it. With approval of the permit, the boats the company uses would be tidier and grouped together more with the boom.

Chris Carlson – Managing Operator for the Shellfish Systems

The float is designed to be approximately 3 feet above the water, but may be lower at times due to the weight load of the seeds. The design provides that the maximum depth of the system is 40 inches so that there is always at least 2 feet of clearance during low tide, so that the structures never ground out. The units are strictly floating units, and will not have any further upward structures; everything will be collapsible down to the 3-foot profile, so that there is minimal aesthetic impact for the neighbors.

Tom Pearson – Son of a property owner

Mr. Pearson thanked Ms. Miller for keeping in contact with all of the neighboring property owners, and also to Seattle Shellfish for being responsive to all questions addressed to them. Specifically, Mr. Pearson came to speak on behalf of his mother and the changes that are going to be occurring to her property without her permission; both environmentally and physically. If the project had no effect on the property he would not be speaking out, as he believes that shellfish are an important addition to the area. However, he is requesting that further proceedings are necessary prior to any further progress on this application takes place, as allowed by MCC 15.09.090. Specifically, the view from her property will be altered and the tidal alterations will produce unknown impacts. He would like to see Seattle Shellfish dock their vessels on property they own, he disagrees with the light pollution, and he disagrees with the lack of reasonable controls of work hours on site rather than the simple good faith assurances provided. He does not believe that the project meets the SEPA requirements, and that by removing waves from the area we do not know what impacts will occur to his mother’s property. Wind impacts were never addressed in
any of the applications or evaluations. He does not consider it his mother’s responsibility to investigate these changes, but there are laws to protect her from these changes. As far as property rights are concerned, his mother has chosen not to lease her property to aquaculture. Basically, this project moves the property from a natural to an unnatural state because of the breakwater; actual damage is not an issue. She has chosen something for her property, and Seattle Shellfish is removing that choice regarding the breakwater. There are going to be changes, there are no doubts about it. In summary, Mr. Pearson’s mother is being required to subsidize Seattle Shellfish against her will.

In regards specifically to a remanded hearing pursuant to MCC 15.09.090, he essentially just wants more environmental issues to be resolved. He believes the evaluation is incomplete because it only includes evaluation of the project site, and not evaluation of the impacts to other areas. In summary, there are environmental and property right concerns raised by this project that simply have not been addressed.

MaryLou Pearson – Neighboring Property Owner

Ms. Pearson began by making some clarifications regarding the joint public notice that was sent out, as the graphic attached on page 2 does not show her parcel, and is misleading because there are actually 4 parcels involved and not just the 2 shown. In regards to the historic use of the area, she does not recall any visual signals that there was aquaculture activity in the area prior to her purchase of her property. She was also approached in the past to sign a lease for aquaculture use of her property, and has declined to do so as she does not generally support having industrial activities in the area. Additionally, the minimal noise and training for noise reduction is not the same as silence. Similarly regarding light, minimal light throughout the night is not the same as natural darkness. She mourns the loss of her natural area.

Additionally, in regards to Exhibit 3, page 15, the plan view of the project site, fails to demonstrate the existence of her parcel.

Lois Halsinger – Neighboring Property Owner

Ms. Halsinger’s family owns 366 feet of waterfront property, about 7 acres in the area. However, she was not given notice of the hearing. Her biggest concern is a decrease in value of her property; which is currently undeveloped. The plan for the site in the future is as a retirement home within her family. She had hoped when she bought the property that her view corridor would remain undisturbed. She does not believe that any structure that is 300 plus feet long is going to be an attractive feature to anyone that owns property in the cove. She bought her property for the beauty of the cove, and wants to ensure that continued beauty as well as the quality of the water in the cove. She encourages the Hearing Examiner to consider the people that live in the cove and the beauty of the area. Although the kiddie pools are great, this structure will be visible all of the time and can’t be considered attractive.

David Halsinger – Neighboring Property Owner

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Mr. Halsinger’s property was purchased as an investment and a probable location for a retirement home. Essentially, the project is at a minimum an eyesore. If they choose to resell their property, they will have to do so at a diminished value because of the presence of the aquaculture.

Additionally, Mr. Halsinger owns 3 lots where the project is located. And potentially he could lose $50,000 to $100,000 if he needs to sell his property with a geoduck farm in the front yard essentially removing all value from his property.

Bill Burrows – Resident of Harstine Island

Mr. Burrows began by describing the documents entered as Exhibit 19. Specifically there was a bill passed to allow aquaculture beyond just oyster farming, to further shellfish in the area. However, cultivation must have commenced prior to December 31, 2001 in order to be currently permitted. The first time that geoducks were mentioned in any documentation regarding the specific piece of property was following the December 31, 2001 critical date. It is his claim then, that the activity being proposed is contrary to state law, and as such the proposed activity should not be permitted. Additionally, Mr. Burrows believes that the Hearing Examiner has the authority to act on such matters of State law, and that such authority requires him to not permit the activity proposed for the site.

Laura Hendricks – Representing the Sierra Club

The concern is the change in the past decade from natural farming operations on a beach to the industrial operations being proposed. Many have argued that Mason County has traditionally been home to aquaculture business, but there is a distinct difference between that traditional business and the industrial nature of what is being proposed. There have been similar, even smaller, operations recently turned down in federal courts because they are simply environmentally unsound; and this putting this project in a pristine cove appears also to be unsound. It becomes necessary to draw a line between the businesses profiting from these ventures and the citizens that pay taxes and are interested in the preservation of the area rather than the industrialization. Additionally, although aquaculture is a preferred use for the area in the SMP, it is only if there is no net loss of ecological function, and there simply cannot be no net loss as a result of this project. A point not mentioned in the record is that the environmental analysis was performed by geoduck farmers. It seems hard to believe that any unbiased analysis would not state that no environmental impact is present as a result of this project. Water columns are also a hazard from this project. This project isn’t entirely inappropriate, but needs to be done in an appropriate area, not in a pristine cove surrounded by residential housing. Instead, find an industrial area to place this project, and don’t allow it to impact the residential nature of the area.

David Bricklin – Case Inlet Shoreline Association
Mr. Bricklin began by stating that as an original hearing, and not an appeal, the burden is on the applicant to prove their compliance, and not on the public or anyone else to disprove compliance. He then discussed whether the use was truly water-dependent as necessitated by the Code. Mr. Bricklin stated that the applicant has not sufficiently established the use as water-dependent, and that evidence he will provide will disprove such a determination. Most of the nursery seed is actually produced in upland facilities, but such facilities are not actually dependent upon being in the water. Although such a location may be more efficient or economical, it is not necessary, as established by the many documents that he provided into evidence.

He next addressed the statement in the Staff Report stating that water-dependency is not a necessary element of approval, as it is only necessary for commercial developments; which a recent Shoreline Hearings Board decision determined operations similar to this project were not. In this regard, water-dependency is also a requirement of the aquaculture policies and regulations, not just commercial use policies and regulations. Also, in the Shoreline Hearings Board case, they failed to consider 7.04.033, and that a project may be subject to more than one use under the code provisions. Finally, the Shoreline Hearings Board decision was based on a finding that the use was not a business, whereas Seattle Shellfish has openly identified them as such.

In regards to expansion, it seems clear that once one facility is present, it will become that much easier to add another facility or to expand the current one. Arguments being raised regarding the pristine nature of the cove will no longer be available in the future against future expansions, if such a use is permitted now. The point being, it is necessary to consider not just the impacts of this facility, but of turning the cove into a full aquaculture industrial area in the future.

Additionally, the kiddie pools are no longer present on the site, and were never permitted to be there in the first place. Comparison to such a use is not appropriate. Also, no real visual depictions of the proposal, besides an engineer's drawing have been provided, nor have any actual usage standards regarding lighting been provided. In the absence of such information, the applicant has simply not satisfied their burden of proof. Further, once the aquaculture use is permitted, the neighbors are essentially blocked from making complaints regarding the use.

The SMP designates the site as a conservancy area, which requires maintaining the existing character of the cove. A football field sized structure, that is 3 or more feet high, with 8-24 foot pilings, is a significant change in the visual quality of the cove.

Mr. Bricklin presented a letter which critiques the environmental analysis provided by the applicant. Specifically, the cumulative impacts have not been sufficiently addressed. The activity being proposed has not been adequately analyzed. A report has been provided that salmon have been found in the area, but that no further analysis has been provided. All that has been said is that there are no certain adverse impacts.

Although he does not believe that a permit should be issued, if one is, it is very important that it include two elements. First, as the technique is rather new, there...
need to be monitoring requirements for impacts. Second, the permit should be subject to a periodic review because the proposal is a novel use in an unprecedented setting. That way, if the impacts are more severe than anticipated, then the County ought to have an opportunity to review this. This facility is fairly removable, unlike many other permit required uses, the County should have the opportunity to require changes or have it removed if adequate changes cannot be made.

Steve Blumfield – Seattle Shellfish Employee

Mr. Blumfield became aware of the cove in the 1960’s, and has worked at the site, prior to Seattle Shellfish purchasing it doing farming activities. This included driving tractors on the beach, farming oysters, and other activities related to the intensive cultivation of the tidelands up until Seattle Shellfish purchased the property.

Jeff Fisher – Fisheries Biologist

He has been evaluating such sites for a little over a decade. The purpose of the biological evaluation that has already taken place is to make a determination of the impacts on the species and habitats in the area from the proposed project. The statements regarding fish impacts by some of the public fail to take into consideration that the structure is only 14 feet wide, even though it is about the length of a football field, and also fail to understand the habits of fish in a shoreline environment like the one present on the site. There will be a shade affect, but understanding how fish move in such an environment is important to understanding how the project will not actually impact the fish. As such, there is no direct interference in the near-shore environment. Additionally, much of the analysis is species specific. In regards to comments by the Sierra Club, the open-piling system proposed does not have scouring as a significant issue based on analysis of nearby areas.

In regards to lighting impacts, docks can shade aquatic vegetation, which is addressed in the evaluation. There is no eelgrass, and the algae and vegetation that was found is known to survive at much lower light levels than is being proposed. There is no indication from what has been seen thus far, that there will be any significant effect to the grasses and habitats below the structures.

EXHIBITS

See “Exhibits for Shoreline Permit SHR2008-00006” for a list of exhibits 1-11. In addition, the following exhibits were also admitted during the hearing:

Exhibit 12: Comment Letters received by the County
Exhibit 13: Comment letter from Jules Michel
Exhibit 14: Aerial Photos
Exhibit 15: DNR map
Exhibit 16: Diagram of Float
Exhibit 17: Mr. Pearson speaking notes

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FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Seattle Shellfish.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on May 11, 2010, at 1:00 p.m. in the Mason County Commissioners Meeting Room.

Substantive:

3. Project/Site Description. The site is located on the northeast side of Harstine Island. The property is currently used as a shellfish aquaculture farm with an existing kiddie pool nursery system, manila clam, and oyster production.

The project will consist of the installation of log boom, pilings, and floating shellfish nursery system. The system is for a nursery to grow geoduck clam seed prior to out-planting the seed to the company's various farm sites. This is a revised application from the original submitted in 2008. A series of floating rafts will replace the intertidal nursery pool system currently in use by the company. A permanent log boom structure will be placed in the project area to protect seed in the nursery system from the northeasterly storms commonly occurring during the winter. The location is on a portion of an oyster tract owned by the applicant. The size of the log boom and floating nursery will be approximately half an acre in size.

The proposed log boom will be located approximately 270 feet from the southeasterly corner of the shoreline boundary and run 15 feet parallel to the outer boundary line of the oyster tract. It will consist of six pairs of 60 foot logs anchored between six pairs of 8 foot by 12 foot galvanized steel pilings. The logs will be attached to the pilings using steel collars, which will allow the logs to move up and down with the tide. The pilings will project up above the water surface from 8 to 24 feet depending on the tide level. The pilings will be driven into the substrate using vibratory pile driving methods to point of refusal. The floating raft system to be anchored to the log boom will be constructed upland.

The proposed project area for the floating nurseries is adjacent to the proposed log boom. The floating nursery system will consist of up to six rafts moored to the log boom. A Gantry crane for lifting is proposed to be attached to the rafts or on a

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separate work platform, which will be moved beside a raft during the seed recovery process. A total of 6 rafts are proposed for the project area. The rafts will be approximately 24 feet by 40 feet and will rise to a height of 3 feet above the water surface and will extend to a depth of no more than 70 feet below the water surface. Water depth of the project ranges from -7 to -13.

Each raft will have a capacity of 400,000 seeds. Seed will be placed in plastic trays approximately 1-2.4 square feet in area containing 2 feet 4 inches of washed sand. Seed will be recovered in a manner similar to the intertidal nursery, reclaiming and reusing the sand.

4. Characteristics of the Area. The site is on the northeast side of Harstine Island. All adjacent intertidal and subtidal properties, excepting DNR owned property, are under lease to the company for shellfish aquaculture. The company owns the adjacent upland property that is used for storage and access to its shellfish operation in the Spencer Cove area. The upland areas are comprised of low density residential uses. Seattle Shellfish currently has several floating structures/crafts moored in the general location, including existing nursery rafts as well as boat and barge moorage.

5. Adverse Impacts of Proposed Use.

A. View Impacts. The comments by members of the public during the hearing related generally to three potential adverse impacts; visual or aesthetic concerns, property value concerns, and environmental concerns. In regards to the visual impacts, testimony presented by both the applicant and some current residents makes clear that although there will clearly be a visual element to the project, it is likely to be less noticeable than other activities that have taken place on the property in the past. Even discounting some of these activities (the kiddie pools in particular) as potentially unpermitted, the aesthetic impacts of the project cannot be considered significant. The floating nurseries will project a maximum of three feet above the water surface level and twelve steel pilings will be up to 24 feet above sea level. The proposal will also allow for the consolidation of multiple already existing moored watercraft into a single location, reducing the footprint of Seattle Shellfish operations. Given that the structure will be about 270 feet from the shoreline boundary and that the project takes up less than 8% of the length and 0.2% of the area of Spencer Cove, the visual impacts of the project are minor within the context of the subjectivity involved in an aesthetics evaluation.

B. Lighting. Related to aesthetic concerns was the issue of lighting. As compared to prior nursing activities, no night work will be necessary for the proposal. The lighting is only necessary to identify the structures as a navigational hazard, as required by Coast Guard regulations. The Applicant has not identified what lighting will be required for the proposal, so it is not possible to evaluate the aesthetic impacts. Consequently, the shoreline permit will be conditioned to maintaining the least lighting required.

C. Property Values. In regards to property value concerns, the applicant correctly stated that general concerns regarding potential decline in property value are
not properly considerable during the evaluation of such a permit. There was no specific evidence presented to demonstrate actual decline in any property value, or even how the project would impact property values due to proximity, visual appeal, or otherwise.

D. Shading. The most significant environmental concerns raised during the hearing concern shading impacts to endangered fish. The Examiner and the Shoreline Hearings Board has denied several pier, ramp float structures on the basis that shading impacts could harm endangered fish. The basis of the endangered fish concern was succinctly summarized by the Shoreline Hearings Board as follows:

Shorelines consist of discrete segments, and uninterrupted sections of the beach are an important part of the near shore environment. Shallow water has been recognized as refuge from predation for smaller fish, especially when there is an absence of complex habitat features such as woody debris or submerged vegetation. The Board, therefore, finds it logical to assume that the near shore area of Hood Canal provides much of the refuge area for juvenile fish from predators.

Juvenile fish will often try to avoid PRFs by swimming around them. The increased energy for the fish to avoid the PRFs and the greater potential for predation eventually leads to a decrease in their survivability. The recovery of near shore functions is part of the salmon recovery plan for this area.

*Fladseth v. Mason County*, Finding of Fact No. 18 (citations omitted), SHB No. 05-026.

The key point of the analysis for purposes of the Seattle Shellfish application is that shading impacts are of concern for the near shore of Hood Canal, because shallow areas are recognized as a refuge from predation for smaller fish, of most concern endangered juvenile salmonids. As noted in the Environ Biological evaluation, the nurseries will be positioned in deeper waters offshore that are not utilized significantly by endangered juvenile salmonids. Ex. 6, p. 25. For those salmonids that are out as far as the nurseries, there is no evidence that the impacts on migration routes and other impacts associated with shading increase the mortality of the salmonids. See Ex. 6, p. 29. As to lighting impacts on fish habitat, there is no eelgrass, and the algae and vegetation that was found, according to the testimony of the Applicant’s biologist, is known to survive at much lower light levels than is being proposed. Despite the general findings by the Applicant that shading will not create any adverse impacts, the expert did find there was still a potential for adverse impacts. See Ex. 9, p. 14. Consequently, a monitoring plan will be required, as further discussed below, to identify and mitigate any impacts that do occur.

E. Scouring. Concerns were also raised about scouring impacts. The Applicant provided a detailed response to the scouring issue at Ex. 9, p. 3. The
Applicant concluded that scouring would be reduced due to the addition of the log boom. The Applicant’s analysis of scouring caused by the floating structures was not based upon any scientific study or observations of other floating nurseries, but neither were the concerns raised by project opponents on this issue. Given the expertise of the Applicant’s biologist, the plausibility of the Applicant’s analysis and the absence of any scientific basis for the concerns of the project opponents, the Examiner finds that more likely than not the floating nurseries will not create any materials scouring impacts. The Applicant did conclude, based upon several studies, that the pilings may create some minor scouring, but that the scouring and adverse impacts would be nominal and not significant adverse. The Examiner agrees with this analysis.

F. Herring. Concerns were also raised about herring spawning in the area. The Applicant’s point out that the most recent Washington State herring stock status report completed by WDFW shows no herring spawning areas in the near area. The project will also be conditioned to prohibit use of aquaculture gear if spawn has been deposited upon it until the eggs have hatched.

G. Noise. Past attempts by the Examiner to reduce noise impacts have been rejected out of hand by the Shorelines Hearings Board. See Marnin v. Mason County, SHB No. 07-021, p. 27. The Shoreline Hearings Board ruled that noise can only be limited to adopted County and state noise standards. Id.

H. Sierra Club Comments. The Sierra Club provided some materials, Ex. 7, outlining several impacts of geoduck operations. However, many of these impacts concerned geoduck farming operations, which are not within the purview of this application for a nursery operation. The impacts germane to the nursery operation have been addressed in this Finding of Fact.

I. Monitoring. The Applicant has provided a very thorough and credible analysis of all adverse impacts. It’s analysis was highly credible, based on scientific studies when available and identified problems where they occurred. However, the Applicant was also at a significant advantage in this proceeding in that it was the only party to offer expert testimony or analysis of environmental impacts. The proposed nursery also constitutes a fairly new form of aquaculture and there are no studies that directly relate to the impacts of suspending several hundred feet of geoduck nurseries across an area potentially accessed by endangered fish. As consistent with past practice, Mason County required no peer review and allowed the Applicant to commission its own studies. Even the Applicant’s own expert admitted that shading impacts had a potential adverse impact. See Ex. 9, p. 14. For these reasons a monitoring plan, prepared and implemented by an independent third party expert, should be required to ensure that this new form of aquaculture does in fact not create any adverse impacts.

CONCLUSIONS OF LAW

Procedural:
1. Authority of Hearing Examiner. MCC 15.03.050(10) authorizes the Examiner to review and issue a final decision regarding shoreline substantial development permit requests and conditional use permits.

Substantive:

2. MCC 15.09.55(A) requires a substantial development permit for any substantial development within the shoreline jurisdiction. MCC 17.50.040 defines a substantial development as one with a cost or fair market value exceeding $5,000. The proposal will cost $200,000. MCC 15.09.055(F)(2)(c) provides that the Examiner shall base a decision on a substantial development permit application on the Shoreline Master Program for Mason County and the policies and procedures of Chapter 90.58 RCW (the Shoreline Management Act). The Mason County Shoreline Master Program is codified as Title 17.50 of the Mason County Code and Chapter IX of the Mason County Comprehensive Plan. The applicable shoreline policies and use regulations are quoted and addressed below. Finally, the generic review criteria for all Mason County permits reviewed by the Hearing Examiner, MCC 15.09.055(C) also apply and are addressed below.

Mason County Comprehensive Plan, Chapter IX (MCCP IX) Aquaculture Policy No. 1:

*Potential locations for aquaculture practices are relatively restricted due to specific biophysical requirements such as water quality, temperature, substrate, dissolved oxygen, and salinity. Priority should be given to off-culture uses in areas having a high potential for such uses.*

3. The area has been used for shellfish farming throughout the last century, and specifically for geoduck farming during the past decade. Although farming of the type proposed has not taken place on the site, similar types of geoduck farming have; which speak to the potential success of the new technology. According to the staff report, uncontested on this issue, the site possesses the specific biophysical requirements of water quality, temperature, substrate, dissolved oxygen and salinity necessary to support the growth of geoduck seed. The site’s historical use for shellfish farming, and more recently for geoduck, establishes it as an area having a high potential for such continued aquaculture use.

MCCP, Aquaculture Policy No. 2:

*The County should strengthen and diversify the local economy by encouraging aquaculture uses.*

4. As described by Mr. Gibbons during his testimony, and in the staff report, Seattle Shellfish employs 48 full time employees in Mason County, and all are generally highly paid. The approval of this permit would strengthen the local...
economy by providing further opportunity for Seattle Shellfish to increase its 
production and bring on additional Mason County citizens as employees.

**MCCP, Aquaculture Policy No. 3:**

*Shoreline and upland land development in productive aquaculture areas or those 
areas with a high potential for aquaculture uses should be reviewed for detrimental 
impacts on aquaculture.*

5. This element is not applicable, as no development is taking place, and the 
permit is for aquaculture use.

**MCCP Aquaculture Policy No. 4:**

*Recognition should be given to the possible detrimental impacts that aquacultural 
activities might have on the aesthetic quality of the shoreline area.*

6. As discussed in Finding of Fact No. 5(A), the project will not create any 
significant adverse aesthetic impacts.

**MCCP Aquaculture Policy No. 5:**

*Structures or activities associated with aquaculture should be located inland from 
shoreline areas unless clearly shoreline-dependent.*

7. MCC 17.50.040 defines a water dependant use as a “use that cannot exist 
in other than a waterfront location and is dependent on the water by reason of the 
intrinsic nature of its operation. Examples include...aquaculture.”. The location 
within the water is necessary, because the nursery will house geoduck seed, which 
require saltwater to grow and mature. Mr. Bricklin asserted that the nursery operation 
is not water-dependant, because it can be conducted in upland areas. Mr. Bricklin 
cited the Lummi shellfish operation, Ex. 20, as an example, and some literature from 
Vancouver BC, Ex. 21, on geoduck hatcheries. However, the Lummi and BC 
literature concerns geoduck hatcheries, not nurseries. As testified by Ms. Cooper, 
who operates geoduck nurseries for Taylor Shellfish, it is not economically feasible to 
operate a nursery in upland areas and there is no shellfish operator that operates a 
nursery in upland areas.

Given the testimony from Ms. Cooper, it is likely that the Shoreline Hearings 
Board would find that the proposal qualifies as water dependant. In paring down the 
restrictions imposed by the Examiner upon aquaculture operations, the Shoreline 
Hearings Board concluded as follows:

The Board concludes that he work hours imposed in this case are 
unreasonable, and inconsistent with the recognized statewide 
interest in properly managed aquaculture, as set forth in Ecology

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regulations and the MCSMP [Mason County Shoreline Master Program]. Restrictions which make successful aquaculture operations impossible should only be imposed if no other alternative can adequately assure compliance with shoreline regulations and attendant protections for nearby property owners.


The quoted ruling above was in response to a condition limiting most shellfish operations to daytime hours, since the operation was conducted immediately adjacent to single-family residences located directly on the waterfront. The adverse impacts in the _Marnin_ case were significantly more extensive than those in this case. Due to the Hearings Board decision, several workers in the _Marnin_ operation are allowed to work all hours of the evening just a few dozen feet from where people are sleeping in their homes. Although the holding above deals with conditions, the same general considerations will probably apply to the interpretation of shoreline regulations, i.e. they should not be interpreted in a manner that makes shellfish operations impossible, even if this would adversely affect adjoining property owners. “Water-dependant”, as used in the Mason County Shoreline Master Program, should include geoduck nursery operations because the best (and only) evidence in the record establishes that upland nurseries are not economically feasible.

**MCCP Aquaculture Policy No. 6:**

_Aquacultural activities should be operated in a manner that allows navigational access to shoreline owners and commercial traffic._

8. The proposal will not significant impede navigational access. The shorelines in the vicinity of the project site are owned and managed by the applicant, and the proposed site is not used for commercial boat traffic beyond that of the applicant. Additionally, boat traffic associated with the nursery will not increase beyond current levels. The nearby property owner’s ability to access the water from their privately-owned shorelines will not be impacted.

**MCCP Aquaculture Policy No. 7:**

_Flexibility to experiment with new aquaculture techniques should be allowed._

9. The floating nursery is a new, and somewhat experimental technique in the geoduck field, although it has been used in other forms of shellfish farming for many years. This technique was developed to replace the use of sand-filled nursery pools in intertidal areas. One of the reasons why the applicant is making the substantial investment required to develop the new nursery technique is to address concerns regarding the impacts of the former intertidal nursery system. As such, the new technique allows experimentation with more productive and environmentally
friendly farming while also eliminating the need for techniques that are becoming obsolete due to environmental as well as business reasons.

MCCP Aquaculture Policy No. 8:

*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 shall incorporate features to reduce use conflicts.*

10. The project site was selected in part because of its location that minimizes the chance that use conflicts will occur. There is minimal moorage, recreational boating, sport fishing, commercial fishing, or commercial navigation at the project site or in the general vicinity. Additionally, because the applicant owns much of the area, there will be minimal opportunity for conflict with neighboring water uses.

MCCP Aquaculture Policy No. 8:

*Maximum effort to protect water quality should be made in areas with high potential for aquaculture and current aquaculture areas which have been identified as sensitive areas.*

11. Geoduck aquaculture provides a valuable benefit to Puget Sound through the ability of the shellfish to filter excess algae in the water thereby moderating the algae production and mitigating oxygen depletion. Additionally, shellfish gear provides three-dimensional habitat for a variety of aquatic life. As stated in the testimony, the nursery will increase the water quality, and no pesticides or other chemicals are used for the maturation of the geoducks.

MCC 17.50.060, Aquaculture Use Regulation No. 1:

*Shoreline developments adjacent to areas especially suitable for aquacultural shall practice strict pollution control procedures.*

12. The floating nursery will practice strict pollution control procedures. All equipment will have approved exhaust systems, and the nursery will comply with the State water quality standards for turbidity.

MCC 17.50.060, Aquaculture Use Regulation No. 2:

*Proposed residential subdivisions and other developments which may impact aquacultural operations shall install storm drainage and water disposal facilities to prevent any adverse water quality impacts in such operations.*

13. No residential developments are being proposed.
MCC 17.50.060, Aquaculture Use Regulation No. 3:

Site preparation in the vicinity of aquacultural operations shall not result in off-site erosion, siltation, or other reductions in water quality.

14. No site preparation of these types will take place.

MCC 17.50.060, Aquaculture Use Regulation No. 4:

Aquacultural practices shall be located and conducted so as to provide reasonable navigational access to waterfront property owners and along the shoreline.

15. Proposed modifications will not impede navigational access to waterfront property owners or along the shoreline. As previously address in Policy No. 8, the applicant owns the large majority of property in the area, and there is not a significant volume of water navigation in the area other than of the applicant. Neighboring property owners will still have access to their property and the shoreline generally.

MCC 17.50.060, Aquaculture Use Regulation No. 5:

Aquacultural development shall not cause extensive erosion or accretion along adjacent shorelines.

16. The nursery will not cause extensive erosion or accretion along adjacent shorelines. The adjacent shorelines consist of gently sloping tidelands, with heavily forested and very lightly developed uplands, with slopes projecting downwards to the ordinary high water line up to approximately 10%. There are no surface indications or history of unstable soils in the projects vicinity. Additionally, activity on the site during the past decade has not cause any such erosion or accretion activities along adjacent shorelines.

MCC 17.50.060, Aquaculture Use Regulation No. 6:

Aquaculture structures and activities that are not shoreline dependent shall be located to minimize the detrimental impact to the shoreline.

17. As established in Aquaculture Policy No. 5, the use is water-dependent.

MCC 17.50.060, Aquaculture Use Regulation No. 7:

The proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.

18. There are no processing plants being proposed in the application.
MCC 17.50.060, Aquaculture Use Regulation No. 8:

Aquacultural structures and fisheries enhancement activities shall, to the greatest extent feasible with regard to the economic viability of the operation and protection of the environment, be located, designed and operated so that native plant and animal populations and their respective habitats and the local ecological balance are maintained. Disease and pest control may be authorized.

19. The applicant has submitted a biological evaluation (Exhibit 6), which considers the potential impacts from the proposed nursery to threatened and endangered species and their habitats from the installation and operation of the proposed system. Based on such evaluations, the local ecological balance shall be maintained during the operation of the nursery as well as during its construction.

MCCP 17.50.060, Aquaculture Use Regulation No. 9:

Floating aquacultural structures shall not unduly detract from the aesthetic qualities of the surrounding area.

20. As previously addressed in Finding of Fact No. 5, the nursery will have minimal visual impacts.

MCCP 17.50.060, Aquaculture Use Regulation No. 10:

Aquacultural structures shall be placed in such a manner, and be suitably marked, so as to minimize interference with navigation.

21. As previously discussed, there is very minimal navigational conflicts which could occur on this site due to limited commercial and recreational navigation that takes place in the area. Additionally, as the applicant owns and operates the surrounding tidelands, only their boats tend to be operating in the water.

MCCP 17.50.060, Aquaculture Use Regulation No. 11:

Aquacultural development shall be designed and constructed to harmonize as far as possible with the local shoreline environment and shall be maintained in a neat and orderly manner.

22. The floating nursery system will allow for natural hydrological processes within the intertidal and subtidal environment. Additionally, the nursery will be operated so as to minimize impacts with the environment and will be run in a neat and orderly manner.

MCCP 17.50.060, Aquaculture Use Regulation No. 12:
The proposed aquacultural development shall make adequate provisions to control noise factors such as excessive noise and odor and excessive lighting.

23. According to the Staff Report, the existing operation will not create any excessive noises, odors, or lighting. There will be no long-term increase in noise associated with the project, and construction noise should be limited to less than a week. Lighting will be kept to the minimum necessary for safe and efficient operation and navigation. And there are no excessive odors associated with the nursery.

MCCP 17.50.060, Aquaculture Use Regulation No. 13:

Aquaculture discards shall be disposed of in a manner that will not degrade associated uplands, wetlands, shorelines, or water environments. Discards shall not be disposed of in a manner that results in offensive odors, increases the vector population.

24. During seed removal for outplanting, sand is filtered through water pumped from on site through a screened intake that meets NOAA criteria, and is retained for repeated use. When the sand becomes no longer usable, it is stockpiled upland for other uses and landscaping. Additionally, no feed is used in the nursery operation, so no waste as such is produced from feeding; and the geoducks actually consume marine algae for nutrition and as such increase the water quality.

MCCP 17.50.060, Aquaculture Use Regulation No. 14:

Equipment, structures and materials shall not be abandoned in shoreline or wetland area.

25. All equipment and material will be removed from the area and stored outside of the shoreline environment.

MCCP 17.50.060, Aquaculture Use Regulation No. 15:

Special precautionary measures shall be taken to minimize the risk of oil or other toxic materials from entering the water or shoreline area. Precautionary measures are subject to approval by the County Environmental Health Specialist.

26. Spill management provisions will follow a pollution prevention plan. An emergency oil spill response kit and absorbent pads will be maintained on site to allow fast response to small oil spills and accidental discharge of hydrocarbon contaminated bile waters.

MCCP 17.50.060, Aquaculture Use Regulation No. 16:
Landfills are prohibited waterward of the ordinary high water mark or on biological wetlands, except that they may be permitted for aquacultural practices and water-dependent uses where no upland or structural alternative is possible.

27. No fill has been proposed.

Conditional Uses

MCC 17.50.080(1):
That the proposed use will be consistent with the policies of RCW 90.58 and the policies of the master program;

28. The proposed use will be consistent with the policies of RCW 90.58, as discussed in depth above, and the policies of the Master Program. This project will not adversely affect the shoreline. However, through the MDNS as well as conditions of approval, there is no foreseeable damage that will occur to the shoreline as a result of this project. The use is water-dependent as a use that can only exist in a waterfront location and is dependent upon the water by reason of the intrinsic nature of the operation. As a water dependent use, geoduck farming is a preferred use of the shoreline environment under the policies of RCW 90.58.020. Additionally, the nursery allows for the natural hydrologic processes within the intertidal and subtidal environments while still allowing the applicant to maintain a healthy stock of geoduck seed.

MCC 17.50.080(2):
That the proposed use will not interfere with the normal public use of the shorelines;

29. Normal public use will not be impacted. The shorelines in this area are generally privately owned, the applicant owns most of which, and there is limited public use; as such the project neither increases nor decreases public use of the shoreline.

MCC 17.50.080(3):
That the proposed use of the site and design of the project will be compatible with other permitted uses within the area;

30. The site was selected in part because the nursery will be compatible with the existing uses in the area. The upland area is very low density, the applicant owns and manages the adjacent tidelands, and the project is located on a privately owned oyster tract. Additionally, this area is currently being used for shellfish aquaculture and has historically been used as such.

MCC 17.50.080(4):
That the proposed use will cause no unreasonable adverse effects to the shoreline environment in which it is to be located;

31. As discussed in further depth in Finding of Fact No. 5, as conditioned the project will create no unreasonable adverse environmental impacts.

MCC 17.50.080(5):
That the public interest suffers no substantial detrimental effect.

32. The conditions of approval are meant to prevent substantial detrimental effect to the public interest. In addition, no adverse impacts to the public interest are anticipated as a result of this project. The site is currently and has historically been used for aquaculture practices and is located in an area with low residential development that is not adjacent to any highly recreational areas. Other elements of public interest have been addressed in more depth in the other areas of this decision.

**Required Review**

MCC 15.09.055(C): Required Review: The Hearing Examiner shall review proposed development according to the following criteria:

1. The development does not conflict with the Comprehensive Plan and meets the requirements and intent of the Mason County Code, especially Title 6, 8, and 16.

2. Development does not impact the public health, safety and welfare and is in the public interest.

3. Development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan.

33. As noted in the Staff Report, the project does not conflict with the Comprehensive Plan. Title 16 does not apply to the project. SEPA review has already been completed for the project, and a MDNS was issued. As discussed at length in other parts of this decision, all adverse impacts have been thoroughly mitigated under the conditions of approval and the project will have a positive economic impact upon the community. For this reason, the project does not adversely impact the public health, safety and welfare and is in the public interest. As further noted in the Staff Report, the proposal will not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan.

34. Bush Act/Deed Restrictions. The Examiner has no authority to rule upon the title issues raised by Mr. Burrows. See, e.g., Bellevue v. Halverson, 41 Wn. App. 457 (1985) (city has no authority to resolve adverse possession claim).
DECISION

The Shoreline Substantial Development is approved, subject to the conditions of approval recommended by staff in the April 29, 2010 Staff Report as well as the following:

1. The County shall hire a suitably qualified expert to devise and implement a five year monitoring plan at the expense of the Applicant. The monitoring plan shall identify and assess impacts to endangered fish and its habitat. Additional mitigation shall be imposed by staff as necessary to mitigate impacts identified in the monitoring of the plan.

2. Lighting shall be the minimum required by applicable regulations for navigation safety, unless additional lighting is deemed necessary by staff for safe navigation.

3. The floating nurseries shall never reach less than three feet above ground level.

4. Areas and gear subjected to herring spawn shall not be disturbed until the eggs have hatched, unless the Applicant establishes to staff that compliance with this condition would unreasonably interfere with aquaculture operations.

5. Sand for the nurseries stored in upland areas shall be covered to prevent adverse impacts to water quality.

Dated this 26th day of May, 2010.

[Signature]
Phil A. Olbrechts
Mason County Hearing Examiner
TO: Mason County Hearing Examiner  
FROM: Planning staff, Grace Miller  

STAFF REPORT

I. APPLICANT. The applicant is Seattle Shellfish. Their authorized representative is Samuel Plauche.

II. PROPERTY LOCATION. The property is located on the northeast side of Harstine Island, on Case Inlet, Puget Sound.


IV. EVALUATION.

PROPOSAL: The project will consist of the installation of log boom, pilings and floating shellfish nursery system. The nursery system is for geoduck clam seed for the purpose of boosting seed size prior to out-planting the seed to the Company's various farm sites. This is a revised application from the original submitted in 2008. A series of floating rafts will replace the intertidal nursery pool system currently in use by the Company. A permanent log boom structure will be placed in the project area to protect seed overwintered in the nursery system from the northeasterly storms commonly occurring during the winter. The location is on a portion of an oyster tract owned by the applicant. The size of the log boom and floating nursery will approximate 1/2 acre.

The proposed log boom will be located approximately 270' from the southeastern corner of the shoreline boundary and run 15' parallel to the outer boundary line of the oyster tract. It will consist of six pairs of 60' logs anchored between six pairs of 8" to 12" galvanized steel pilings. The logs will be attached to the pilings using steel collars which will allow the logs to move up and down with the tide. The pilings will project up above the water surface from 8 to 24 feet depending on the tide level. The pilings will be driven into the substrate using vibratory pile driving methods to the point of refusal. The floating raft system to be anchored to the log boom will be constructed upland. The project is further defined in the attached project description and drawings (Exhibit 3).

The proposed project area for the floating nurseries is adjacent to the proposed log boom. The floating nursery system will consist of up to six rafts moored to the log boom. A Gantry crane for lifting is proposed to be attached to the rafts or on a separate work platform which will be moved beside a raft during the seed recovery process. A total of 6 rafts are proposed for the project area. The rafts will be approximately 24' X 40' and will rise to a height of 3' above the water surface and will extend to a depth of no more that 70'' below the water surface. Water depth of the project ranges from -7 to -13.

Each raft will have a capacity of 400,000 seed. Seed will be placed in plastic trays approximately
1-2.4 square feet in area containing 2'4" of washed sand. Seed will be recovered in a manner
similar to the intertidal nursery, reclaiming and reusing the sand.

A. Characteristics of the site and area. The site is on the northeast side of Harstine Island. The
property is currently used as a shellfish aquaculture farm with an existing kiddie pool nursery
system, manila clam and oyster production. All adjacent intertidal and subtidal properties,
excepting DNR owned property, are under lease to the Company for shellfish aquaculture. The
company owns the adjacent upland property that is used for storage and access to its shellfish
operation in the Spencer Cove area.

B. Zoning: The Zoning is Rural Residential 10.

C. Shoreline Designation. The shoreline environment of the uplands and the marine waters, to a
depth of one fathom, is Rural. The marine waters adjacent to Rural Environments, between one
fathom and ten fathoms in depth shall be considered a Conservancy Environment. The definition
of Conservancy Environment is further addressed within this report.

D. Comprehensive Plan Designation. The Comprehensive Plan designation is Rural.

E. SEPA COMPLIANCE. A Mitigated Determination of Nonsignificance was issued by Mason
County on March 11, 2010. Comments were received from the State Dept of Ecology and
three members of the public. Comments are within Exhibit 7. The Applicant's responses to
those comments are within Exhibit 9.

F. OTHER PERMITS. The proposal is exempt from Hydraulic Project Approval from the
Washington State Dept of Fish & Wildlife (see attached Exhibit 11). The project will require
approval from the US Army Corps of Engineers and a Coastal Zone Management Act
Consistency Statement from the Dept of Ecology. The project also requires a Mason County
Building Permit.

V. ANALYSIS.

A Substantial Development Permit is required because the value of the proposal exceeds $5,718 and a
Conditional Use Permit is required for floating aquaculture in Mason County. This proposal is reviewed
under the Aquaculture and Conditional Use Sections of the Mason County Shoreline Master Program
Policies and Use Regulations which are included within the Mason County Comprehensive Plan IX-2,
Shoreline Management Program Policies and IX-3 Conditional Uses as well as Chapter 17.50 Mason
County Shoreline Master Program Use Regulations, 17.50.060 Aquaculture and 17.50.080 Conditional
Uses, as adopted. The applicable Policies and Use Regulations with response follow:

AQUACULTURE POLICIES:

1) Potential locations for aquaculture practices are relatively restricted due to specific biological
requirements such as water quality, temperature, substrate, dissolved oxygen and salinity. Priority
should be given to aquaculture uses in areas having a high potential for such uses.

The project area is currently and has historically been used for aquaculture activities, including geoduck
nursery activities for the past ten years, and as a result has demonstrated that it is among the relatively
restricted potential locations for aquaculture practices. And possesses a high potential for aquaculture
uses. This site possesses the specific biophysical requirements of water quality, temperature, substrate,
dissolved oxygen and salinity necessary to support the grow out of geoduck seed prior to its out planting in
the Applicant's farms.

2) The County should strengthen and diversify the local economy by encouraging aquacultural uses.

The proposed nursery system strengthens the local economy by supporting the Applicant's ability to
provide consistent employment to its 40 year round employees and 20 seasonal employees throughout its
farm sites in Mason County and south Puget Sound. The Applicant's farming operations are dependent
upon hatchery-raised seed for production. Its supply of geoduck seed must remain constant during the
critical spring and summer planting season. As the hatchery produces seed, nurseries must be set up to
hold the young geoduck prior to out planting. The Applicant's proposed nursery provides a valuable
function by allowing seed to grow out to a size that allows the geoduck to survive the first vulnerable
months of its life. Seed received from the hatchery is generally 3mm to 5 mm in shell length. The Applicant
has found that the seed has a much better survival rate if out planted at a 10-15 mm shell length. The seed
is held for a period of 8 weeks to 6 months depending on the time of year when the seed is obtained from
the hatchery. Without nursery capacity, the Applicant would not be able to sustain production at current
levels.

4) Recognition should be given to the possible detrimental impacts that aquacultural activities might have
on the aesthetic quality of the shoreline area.

The nursery would have very minimal view impacts because the surrounding upland area is very low
density. Seattle Shellfish owns and manages the adjacent tidelands and the project area and vicinity are
currently used for shellfish aquaculture practices. Seattle Shellfish currently has several floating
structures/crafts moored in this general location, including existing nursery rafts as well as boat and barge
moorage. The log boom that is part of the proposed floating nursery would provide a single moorage
location for these various activities, which will ultimately reduce the footprint of the operation and
consequently any aesthetic impacts.

5) Structures or activities associated with aquaculture should be located inland from shoreline areas unless
clearly water dependent.

The proposed nursery is a water dependent use. Mason County Code defines "water dependent use" as a
use that cannot exist in other than a waterfront location and is dependent on the water by reason of the
intrinsic nature of its operation. Examples include but are not limited to cargo terminal loading areas,
barge loading, ship building, repair, servicing and dry docking, aquaculture and log booming. The
Applicant's nursery will hold geoduck seed after it leaves the hatchery until it is of sufficient size to enable
its survival when out planted. Geoduck seed requires saltwater; therefore the nursery operation is water
dependent.

6) Aquacultural practices should be operated in a manner that allows navigational access to shoreline
owners and commercial traffic.

Access from the site will be from the water and upland private roads. The shorelines in the vicinity of the
project site are owned and managed by the applicant. The proposed project site is within Spencer Cove
which is not used for commercial boat traffic (other than the activities conducted by the applicant). The
proposal therefore will not interfere with commercial traffic.

Boat traffic associated with the proposed floating nursery will not increase as a result of the project
because the floating nursery is replacing an existing intertidal pool-based nursery system at the project site
and the site currently supports aquaculture practices. The project will not interfere with nearby property
owner's ability to access the water from their privately-owned shoreline.
In addition, Seattle Shellfish currently has several floating structures/crafts moored in this general location, including existing nursery rafts as well as boat and barge moorage. The log boom that is part of the proposed floating nursery would provide a single moorage location for these various activities which will ultimately reduce any impacts on commercial boat traffic or water access.

7) Flexibility to experiment with new aquaculture techniques should be allowed.

The Applicant’s floating nursery is a new, experimental technique and was developed to replace the use of sand-filled nursery pools in intertidal areas. The proposed floating geoduck seed system represents a very unique approach to nurturing geoduck seed that is in response to an ever-evolving process of developing best management practices for the geoduck industry. Indeed, one of the primary reasons that the application is making the substantial investment required to develop this new nursery technique is to address concerns raised with regard to the impacts of the applicant’s former intertidal nursery system. The County should allow (and encourage) flexibility to experiment with this new technique, particularly in an area like Spencer Cove that is a well-established and existing location for shellfish aquaculture practices.

This Mason County SMP Policy is further supported by policy language in Ecology's Guidelines for local governments' updates to their shoreline master programs: "The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. SMP's should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems." See WAC 173-26-241(3)(b).

8) 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.

The project site was selected in part because its location minimizes the chance that use conflicts occur. There is minimal moorage, recreational boating, sport fishing, commercial fishing or commercial navigation at the project site or in the general vicinity of the project site. The proposed project site is within Spencer Cove and therefore will not interfere with commercial traffic. There is very little recreational activity in the vicinity of the project site due to the low density of residential development in the area and because the site is not located in the vicinity of state parks or other well-established recreational areas. Aside from the surface water footprint of the floating nursery, the project will not interfere with any recreational activities that do take place around the project site.

In addition, Seattle Shellfish currently has several floating structures/crafts moored in this general location, including existing nursery rafts, as well as boat and barge moorage. The log boom that is part of the proposed floating nursery would provide a single moorage location for these various activities which will ultimately reduce the footprint of the operation and, consequently any impacts on other water uses.

9) Maximum effort to protect water quality should be made in areas with high potential for aquaculture and current aquaculture areas which have been identified as sensitive areas.

Shellfish aquaculture, including geoduck, provides a valuable benefit to Puget Sound through the ability of shellfish to filter excess algae in the water thereby moderating the algae production and mitigating oxygen depletion. Additionally, shellfish gear, including nursery systems, provide three-dimensional habitat for a variety of aquatic life.

The Applicant supports this policy being applied to all shoreline activities including residential development.
AQUACULTURE USE REGULATIONS:

1) Shoreline developments adjacent to areas especially suitable for aquaculture shall practice strict pollution control procedures.

The Applicant supports this use regulation being applied to all shoreline activities including shoreline residential development, particularly when such development is located adjacent to areas suitable for aquaculture. The floating nursery will practice strict pollution control procedures. All equipment will have approved exhaust systems. The nursery will comply with the State of Washington water quality standards for turbidity (WAC 1730-201A-410). This issue is further addressed in the applicant's response to public comments on the County's SEPA DNS.

4) Aquacultural practices shall be located and conducted so as to provide reasonable navigational access to waterfront property owners and along the shoreline.

The project site was selected in part because its location minimizes the chance that use conflicts will occur. The applicant owns and manages the adjacent tidelands and there is minimal moorage, recreational boating, sport fishing, commercial fishing, or commercial navigation at the project site or in the general vicinity of the project site. The proposed project site is within Spencer Cove and therefore will not interfere with commercial traffic. There is very little recreational activity in the vicinity of the project site due to low density of residential development in the area and because the site is not located in the vicinity of state parks or other well-established recreational areas. Aside from the surface water footprint of the floating nursery, the project will not interfere with any recreational activities that may take place around the project site.

Seattle Shellfish currently has several floating structures/crafts moored in this general location, including existing nursery rafts, as well as boat and barge moorage. The log boom that is part of the proposed floating nursery would provide a single moorage location for these various activities, which will ultimately reduce the footprint of the operation and consequently any navigational impacts.

5) Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.

The nursery will not cause extensive erosion or accretion along adjacent shorelines. The adjacent shorelines consist of gently sloping tidelands, with heavily forested and very lightly developed uplands, with slopes projecting downward to the ordinary high water line up to approximately 10%. There are no surface indications or history of unstable soils in the project's vicinity. No erosion will occur as a result of clearing, construction, or use. This issue is further addressed in the applicant's response to public comments on the County's SEPA DNS.

8) Aquaculture structures and fisheries enhancement activities shall, to the greatest extent feasible with regard to the economic viability of the operation and protection of the environment, be located, designed and operated so that native plant and animal populations, their respective habitats and the local ecological balance are maintained. Disease and pest control may be authorized.

The Applicant has submitted a Biological Evaluation as part of its application packet that considers the potential impacts from the proposed nursery to threatened and endangered species and their critical habitat from the installation and operation of the system, as well as any potential effects from the proposed nursery on essential fish habitat as defined under the Magnuson-Stevens Fisheries Conservation Act. This evaluation considered both short and long term effects of the construction and ongoing operation of the nursery and concluded that the project was not likely to adversely affect Threatened and Endangered species and their critical habitat. Proposed conservation and minimization measures for the project are set forth on pp 33-36 of the Biological Evaluation. Please consult the Biological Evaluation for additional information.
This floating system would allow for natural hydrologic processes within intertidal and subtidal environments.

No feed is used in the floating nursery operation. Bivalves consume marine algae for nutrition.

9) Floating aquaculture structures shall not duly detract from the aesthetic qualities of the surrounding area.

The project site was selected in part because its location minimizes aesthetic impacts. The project area and vicinity are currently being used for shellfish aquaculture practices. The nursery would have very minimal view impacts because the surrounding upland area is very low density. Seattle Shellfish owns and manages the adjacent tidelands.

In addition, Seattle Shellfish currently has several floating structures/crafts moored in this general location, including existing nursery rafts, as well as boat and barge moorage. The log boom that is part of the proposed floating nursery would provide a single moorage location for these various activities, which will ultimately reduce the footprint of the operation and, consequently, any aesthetic impacts.

10) Aquacultural structures shall be placed in such a manner and be suitably marked so as to minimize interference with navigation.

The project site was selected in part because its location minimizes the chance that use conflicts will occur, including conflicts related to navigation. The Applicant owns and manages the adjacent tidelands and there is minimal moorage, recreational boating, sport fishing, commercial fishing or commercial navigation at the project site or in the general vicinity of the project site. The proposed project site is within Spencer Cove and therefore will not interfere with commercial traffic. There is very little recreational activity in the vicinity of the project site due to the low density of residential development in the area and because the site is not located in the vicinity of state parks or other well-established recreational areas. Aside from the surface water footprint of the floating nursery, which is a total of 0.5 acres, the project will not interfere with any recreational activities that do not take place around the project site.

11) Aquaculture development shall be designed and constructed to harmonize as much as possible with the local shoreline environment and shall be maintained in a neat and orderly manner.

This floating system would allow for natural hydrologic processes within the intertidal and subtidal environments. The proposed nursery will be maintained in a neat and orderly manner.

12) Proposed aquacultural developments shall make adequate provisions to control nuisance factors such as excessive noise and odor and excessive lighting.

The nursery will not cause excessive noise, odor or lighting. There will be no long-term increase in noise associated with the proposed project. Proposed measures to reduce or control noise impacts include the use of muffler systems on equipment and employee training in reducing noise impacts to adjacent properties. The floating nursery will not result in excessive odor. Lighting will be kept to the minimum necessary for safe and efficient operations. These issues are further addressed in the applicant’s response to public comments on the SEPA DNS for this project.

13) Aquacultural discards shall be disposed of in a manner that will not degrade associated uplands, wetlands, shorelines, or water environments. Discards shall not be disposed of in a manner which results in offensive odors or increases the vector population.

During seed removal for out planting, sand is filtered through water pumped from on site through a screened intake that meets NOAA fish screening criteria, and is retained for repeat use. When sand
becomes unusable, it is stockpiled upland for other uses in landscaping. This issue is further addressed in the applicant's response to public comments on the SEPA DNS for this project.

No feed is used in the floating nursery operation. Bivalves consume marine algae for nutrition.

14) Equipment, structures and materials shall not be abandoned in the shoreline or wetland area.

Equipment, structures and materials will not be abandoned in the shoreline or wetland areas. Extra materials will be removed from the site after use and stored outside of the shoreline environment.

15) Special precautionary measures shall be taken to minimize the risk of oil or other toxic materials from entering the water or shoreline area. Precautionary measures are subject to approval by the county environmental health specialist.

Spill management provisions will follow a pollution prevention plan. All precautions will be taken to prevent incidental and accidental discharge of petroleum products and other contaminants associated with pile driving. An emergency oil spill response kit and absorbent pads will be maintained on site to allow fast response to small oil spills and accidental discharge of hydrocarbon contaminated bilge waters. This issue is further addressed in the applicant's response to public comments on the SEPA DNS for this project.

Commercial Development Policies and Use Regulations - Mason County SMP:

Seattle Shellfish is proposing to engage in aquaculture practices and as such, its project application should be evaluated for consistency with Mason County's development policies and use regulations for Aquaculture only. Commercial development policies and use regulations are not applicable to this application.

The Shoreline Hearings Board recently directly addressed this issue in the context of a clam and oyster farm in Mason County. In Mamin v. Mason County, SHB NO. 07-021, a shellfish company challenged Mason County's determination that a clam and oyster farming operation must be evaluated under both the aquaculture and commercial development sections of Mason County's Shoreline Master Program. The Board determined that the entirety of the farming operation was included in the County's definitions of "aquaculture" and "aquaculture practices." As a result, the Board determined that "the regulations governing aquaculture under the MCSMP cover the range of activities he is undertaking, and they are the proper source for conditioning the substantial development permit in this case." Mamin v. Mason County, SHB No.07-021, Modified Findings of Fact, Conclusions of Law, and Order; Conclusion of Law 8 at pp. 21-22 (Feb. 6, 2008).

The Board also noted that its conclusion that the shellfish farming activities at issue were properly governed by the aquaculture regulations, rather than commercial development regulations, was consistent with prior Board decisions on this issue. See Mamin v. Mason County, SHB No. 07-021, Conclusions of Law 9, at p. 22 (citing to and discussing Fisheries v. Mason County, SHB 91-33 (1992)); Jamestown Klallam Tribe et al. v. State of Washington, Department of Natural Resources et. al., SHB Nos. 88-4/5 (1989); Cruver v. San Juan County, Webb. SHB 202 (1976). A copy of Mamin v. Mason County is attached for your convenience.

Seattle Shellfish's proposed nursery fits entirely within the definition of aquaculture and aquaculture practices set forth in the Mason County SMP:

"Aquaculture" involves the culture and farming of food fish, shellfish, and other aquatic animals and plants in lakes, streams, inlets, bays and estuaries. Methods of aquaculture include but are not limited to fish pens, shellfish rafts, racks and longlines seaweed floats, and the culture of clams and oysters on tidelands and
subtidal areas. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final processing and freezing.

"Aquaculture practices" means any activity directly pertaining to growing, handling, or harvesting of aquaculture produce including but not limited to propagation, stocking, feeding, disease and pest treatment, waste disposal, water use, development of habitat, maintenance and construction of necessary equipment building and growing areas.

The purpose of the proposed nursery system is to allow seed received from the shellfish hatchery to grow to a size large enough to ensure its survival when it is out planted at the Applicant’s farm sites. This activity constitutes the culture and farming of shellfish in marine waters and as such falls under the County’s definition of aquaculture. The proposed activity involves no wholesale or retail sales or final processing and freezing. As an activity directly pertaining to the growing of aquaculture produce, the nursery also falls under the County’s definition of aquaculture practices. As such, the nursery is properly governed by the County’s aquaculture regulations and not the commercial development regulations.

17.50.080 Conditional Uses:

Floating aquaculture requires a Conditional Use Permit as specified within the project classification table Chapter 17.50.050. The purpose of a Conditional Use Permit is to allow greater flexibility in varying the new application of the use regulations of the Master Program. Conditional uses should also be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58. In authorizing a Conditional Use, special conditions may be attached to the permit by local government or the Department to prevent undesirable effects of the proposed use. Uses which are classified or set forth in the Master Program as conditional uses may be authorized provided the applicant can demonstrate all of the following. The criteria and the applicant and staff response follows:

1. Show that the proposed use will be consistent with the policies of RCW 90.58 and the Policies of the Master Program.

Mason County Code defines "water dependent use" as a use that can only exist in a waterfront location and is dependent on the water by reason of the intrinsic nature of its operation. Shellfish farming entails growing shellfish in marine waters; it is a water dependent use. It cannot exist in a location that is not adjacent to or located in marine waters by reason of its intrinsic nature of its operation. As a water dependent use, shellfish farming is a preferred use of the shoreline environment under the policies of RCW 90.58.020.

The proposed floating nursery system is also designed in a manner that minimizes potential damage to the ecology and environment of the shoreline area consistent with the policies of RCW 90.58.020. The applicant is proposing to alter its method of rearing geoduck seed to a floating geoduck seed nursery system. In response to concerns regarding potential impacts created by the prior intertidal pool-based system. This floating system would allow for natural hydrologic processes within the intertidal and subtidal environments, while still allowing the Applicant to maintain healthy stocks of geoduck seed that will have a higher chance of survival following planting

As discussed in further detail below, the proposed nursery is consistent with the applicable policies of the County’s Shoreline Master Program.

2. Show that the proposed use will not interfere with normal public use of the shoreline.

The project site was selected in part because its location minimizes the chance that use conflicts will occur, including conflicts related to public use. Normal public use of the shoreline in this area is minimal and is primarily conducted by the applicant, who owns and manages the majority of the adjacent shorelines and tidelands, which are used for shellfish aquaculture practices. The surrounding upland area is very low
density. The proposed site is within Spencer Cove; it is not located in the vicinity of state parks or well established recreational areas. To the extent that occasional boating or other recreational activities occur in the vicinity of the project site, the nursery will not interfere with those activities outside of the footprint of the nursery itself.

Seattle Shellfish currently has several floating structures/crafts moored in this general area, including existing nursery rafts, as well as boat and barge moorage. The log boom that is part of the proposed floating nursery would provide a single moorage location for these various activities, which will ultimately reduce any impact on other uses of the waters.

3. Show that the proposed use of the site and design of the project will be compatible with other permitted uses in the area.

The project site was selected in part because the nursery will be compatible with the existing uses in the area. The surrounding upland area is very low density and the Applicant owns and manages the adjacent tidelands. The project is located on a privately owned oyster tract in Spencer Cove on Harstine Island. These lands were sold by the State into private ownership for the express purpose of shellfish farming. This area is currently and has historically been used for shellfish aquaculture practices.

4. Show that the proposed use will cause no unreasonable adverse effects to the shoreline environment in which it is to be located.

The Applicant has submitted a Biological Evaluation as part of its application packet that considers the potential impacts from the proposed nursery to threatened and endangered species and their critical habitat from the installation and operation of the system, as well as any potential effects from the proposed nursery on essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act. This evaluation considered both short and long term effects of the construction and ongoing operation of the nursery and concluded that the project was not likely to adversely affect threatened and endangered species and their critical habitat. Proposed conservation and minimization measures for the project are set forth on pp 35-36 of the Biological Evaluation. Please consult the Biological Evaluation for additional information.

Shellfish and shellfish farms actually provide a number of valuable ecological functions. Shellfish filter nutrients such as nitrogen and phosphorus in the water, reducing nutrient pollution and improving water quality. This filtering improves water clarity, allowing more sunlight to penetrate. This process can aid the growth of eelgrass, which in turn provides valuable habitat for salmon and other marine life. The US Army Corps of Engineers has stated that "because shellfish require healthy ecosystems for their growth and productivity, in addition to providing the aquatic ecosystem services of improved water quality and increased food production, we believe that there is generally a net overall increase in aquatic resources in estuaries or bays where shellfish are produced." Because they filter water and improve habitat, shellfish are used in restoration activities in many bays and estuaries nationwide.

Additionally, shellfish gear, including nursery systems, provide three dimensional habitat for a variety of aquatic life. The specific habitat benefits of pilings that will be used in the floating nursery system are further discussed in the applicant's response to public comments on the SEPA DNS for this project.

5. Show that the public interest suffers no substantial detrimental effect.

The project site was selected in part because its location minimizes the potential that use conflicts will occur, including use conflicts related to noise and lighting, aesthetic impacts, navigational impacts and other conflicts with residential and recreational uses. The site is currently and has historically been used for aquaculture practices and is located in an area with low residential development that is not adjacent to state parks or other well-established recreational areas.
This proposed floating nursery is therefore consistent with the policies of the Shoreline Management Act and the Mason County Shoreline Master Program that call for coordinated planning and management of the shoreline to allow and foster all reasonable and appropriate uses in a manner that minimizes use conflicts. To ensure that the public interest suffers no substantial detrimental effect.

6. Cumulative Impacts.

Mason County requires a Conditional Use Permit for floating aquaculture including the Applicant's proposed floating nursery. In granting a Conditional Use permit for the floating nursery, the County is required to consider "the cumulative impact of additional requests for like actions in the area." For this application, therefore, Mason County is required to consider additional requests for floating aquaculture in Spencer Cove, the area of this project, to ensure that the total of those conditional uses would remain consistent with Shoreline Master Program policies and not produce substantial adverse effects to the shoreline environment.

The threshold question in this analysis is whether there is likelihood that there will be additional requests for like actions in the area. See, e.g., Iddings v. Griffith, SHB No. 08-031, Findings of Fact, Conclusions of Law, and Order; evaluating a shoreline conditional use permit is the cumulative impact of additional requests for like actions in the area. MCSMP 17.50.080; WAC 173-27-160(2). Ecology concluded that the likelihood of further requests for driveways along Dewatto Beach drive was small.

In this case, because the Applicant has ownership and control over much of the surrounding area, and because the project is unique in nature, additional requests for like actions in the area are highly unlikely.

The potential for additional requests for floating aquaculture in Spencer Cove is greatly minimized because Seattle Shellfish owns and manages the project area and surrounding areas and is designing the floating nursery to serve as a single location for various floating aquaculture activities. This will ultimately reduce any impact on other uses of the waters, and to the shoreline environment. Furthermore, the project is designed to meet the Applicant's existing and reasonable projected future needs for geoduck seed, significantly reducing the likelihood that additional floating structures would be necessary in Spencer Cove.

The applicant is the only individual conducting aquaculture activities in Spencer Cove. To the Applicant's knowledge, outside of the Applicant's farm there are no other existing or proposed farms in Spencer Cove and therefore the likelihood of additional requests for floating aquaculture in Spencer Cove are extremely minimal.

From an industry-wide perspective, this project is unique in nature because nearly all other geoduck farmers have operations that are small enough to allow nursery activities to take place in the intertidal areas of their individual farms on a much smaller scale. Seattle Shellfish is one of only two companies in Washington State that are considering floating seed nurseries for geoduck seed.

CONSERVANCY ENVIRONMENT:

The shoreline environment for the proposed floating shellfish nursery project site is designated as Conservancy. Mason County's SMP defines Conservancy environment as follows:

"Conservancy environment" means that environment in which the objective is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are by nature non-consumptive of the physical and biological resources of the area.
The proposed floating nursery is a non-consumptive use. The SMP defines non-consumptive uses as those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the resources in the area. The SMP provides examples of non-consumptive uses; this list includes timber harvesting on a sustained yield basis and passive agricultural uses such as pasture and range land and other related uses and activities.

The floating shellfish nursery is a form of passive aquaculture wherein seed received from the hatchery is held at the nursery and allowed to grow out to a 10-15mm shell length to help ensure survival and minimize the need for predator control. The seed is held for a period of eight weeks to 6 months depending on the time of year when the seed is obtained from the hatchery. The seed does not require the artificial addition of any feed or other nutrients because the shellfish feed on algae filtered naturally from the water. In fact, because it filters nutrients from the water, the seed actually improves water quality while it grows out.

The floating nursery also maintains the existing character of the project site and surrounding areas. Much of the tidelands and shoreline area in the vicinity of the project site is owned by the Applicant and the project area and vicinity are currently already used for shellfish aquaculture practices.

The proposed floating nursery system helps to ensure a continuous flow of recreational activities due to its location and design. As discussed above, there is very little recreational activity in the vicinity of the project site due to the low density of residential development in the area and because the site is not located in the vicinity of state parks or other well-established recreational areas. Aside from the surface water footprint of the floating nursery, the project will not interfere with any recreational activities that may take place around the project site.

VI. CONCLUSION.

The Hearing Examiner shall review proposed development according to the following criteria:

(1) The development does not conflict with the Comprehensive Plan and meets the requirements and intent of the Mason County Code, especially Title 6, 8 and 16.

(2) Development does not impact the public health, safety and welfare and is in the public interest.

(3) Development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan.

Staff has verified that the proposed development does in fact comply with the Mason County Code, including Title 6 (Sanitary Code, enforcement only), 8 (Environmental Policy) and 16 (Subdivisions.). The project is not subject to Title 6 or 16. The project met the requirements of the MC Environmental Policy and the SEPA review was completed on March 25, 2010. The project will not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. The project will also have no adverse impact upon health, safety and welfare.

Public Notice procedures were followed in accordance with Sections 15.07.010 and 15.07.030 of Mason County Title 15. The Shoreline Master Program states that priority shall be given to aquacultural uses in areas having a high potential for such uses. Aquaculture is a preferred use of Mason County shorelines and is encouraged as a means of strengthening and diversifying the local economy. The shellfish nursery, as proposed, requires that water quality be monitored and maintained consistent with the County Master Program and the Shoreline Management Act. There are no navigational impacts from this proposal due to its location. Because the proposal is consistent with all applicable policies and use regulations, staff recommends approval of the permit with the following conditions:
CONDITIONS:

1) Water quality is not to be degraded to the detriment of the aquatic environment as a result of this project. Special precautionary measures to be taken to minimize risk of oil or other toxic materials from entering the water or shoreline area.

2) Debris or deleterious material resulting from the construction shall be removed from the beach area and project site and shall not be allowed to enter waters of the State.

3) The project will be constructed in a manner that minimizes habitat impacts as specified within the Biological Evaluation prepared by Environ and dated 3/3/10 as modified by Appendix D to that Biological Evaluation (April 26, 2010) and Environ's April 20, 2010 response to SEPA comments.

4) Applicant to monitor turbidity during construction to ensure that turbidity levels do not exceed State water quality standards. Should monitoring indicate a concern, corrective action will immediately occur to reduce construction related water quality impacts.

5) No discharge of water or sediment from the floating geoduck seed nursery system may occur in Spencer Cove due to project actions. Sediment that cannot be reused in floating geoduck seed nursery system would be stock-piled and re-used at appropriate upland facilities.

6) Periodic inspection of plastic-covered logs used for log boom and immediate repairs of plastic tears or abrasions to ensure that borer damage does not occur.

7) Facility to be suitably marked and lighting installed to Coast Guard requirements to minimize interference with navigation.

8) Aquacultural discards shall be disposed of in such a manner that will not degrade associated shoreline.

9) Equipment, structures and materials shall not be abandoned in the shoreline area.

10) All construction materials will either be treated sufficiently to standards to prevent leaching or will remain untreated.

VII. CHOICE OF ACTION:

1. Approval of Shoreline Substantial Development/Conditional Use Permit #SHR2008-00016.
2. Approve with conditions.
3. Deny permit (reapplication or resubmittal is permitted).
4. Remand for further proceedings and/or evidentiary hearing in accordance with section 15.09.090 of Title 15.
EXHIBITS FOR SHORELINE PERMIT SHR2008-00006:

1. Staff Report.
2. Shoreline Permit Application w/additional info for Conditional Use & SHB case.
3. JARPA w/Project description, Site Plans & Vicinity Map.
4. Public Notice
5. SEPA MDNS.
7. SEPA Comments received by Planning Department.
8. Appendix D of Biological Evaluation & 4/26/10 letter from Environ to Corps of Engineers.
9. Responses to SEPA Comments by Applicant & staff letters to those who commented.
10. Comments from public after they received applicant's SEPA responses.
11. Letter (4/21/10) from WDFW regarding HPA.
12. May 11, 2010 Additional information presented by staff as Exhibit #12 during hearing.