

November 30, 2006

Taylor Shellfish Farms
Attn: Ms. Diane Cooper
130 SE Lynch Rd.
Shelton, WA 98584

RE: SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: CASE NO. SD53-05 (TAYLOR SHELLFISH FARMS/ MEYER), Case No. SD55-05 (TAYLOR SHELLFISH FARMS / STRATFORD)

Dear Applicants:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request in the above-entitled matter.

A copy of this action will be forwarded to the State Department of Ecology and the State Attorney General's Office for their review. The Department of Ecology will notify you of the expiration of the review period or of any further considerations.

The Shoreline Management Act requires that you may not begin development prior to the expiration of the Department of Ecology's review period.

Very truly yours,

TERRENCE F. McCARTHY
Deputy Hearing Examiner

TFM/dc

cc: Pierce County Planning
Pierce County Development Engineering
Pierce County Code Enforcement
Pierce County Utilities
Tacoma Pierce County Health Dept.
Fire Prevention Bureau
Pierce County Parks and Recreation
Pierce County Council
Department of Ecology
Attorney General's Office

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: **SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: CASE NO. SD53-05 (TAYLOR SHELLFISH FARMS/ MEYER), Case No. SD55-05 (TAYLOR SHELLFISH FARMS / STRATFORD)**

APPLICANT: Taylor Shellfish Farms
Attn: Ms. Diane Cooper
130 SE Lynch Rd.
Shelton, WA 98584

OWNERS: Arvin and Janice Meyer
6912 – 190th Avenue KPN
Vaughn, WA 98394

David and Sabra Stratford
6812 190th Ave KPN
Vaughn, WA 98394

SUMMARY OF REQUEST:

The applicant requests a Shoreline Substantial Development Permit for the purpose of planting, cultivating, and harvesting geoduck clams for commercial purposes on approximately 1.89 acres in the intertidal zone of private tidelands along the east shore of Case Inlet in the Rural Shoreline Environment and Rural 10 (R10) classification. The site is located in tidelands abutting 6912 and 6606 – 190th Avenue KPN, in front of Parcel Number 0021103032 and 0021103030, within the SW 1/4 of Section 10, T21N, R1W, W.M., in Council District #7.

The applicant also requests a Shoreline Substantial Development Permit for the purpose of planting, cultivating, and harvesting geoduck clams for commercial purposes on approximately 1.89 acres (82,125 square feet) in the intertidal zone of private tidelands along the east shore of Case Inlet in the Rural Shoreline Environment and Rural 10 (R10) classification. The site is located in tidelands abutting at 6812 and 6606 – 190th Avenue KPN, in front of parcels 0021103030 and 0021103031, within the SW 1/4 of Sec. 10, T21N, R1W, W.M., in Council District #7.

SUMMARY OF DECISION: Request granted subject to conditions

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on July 5, 2006 at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning and Land Services Staff Report and Attachments**
- EXHIBIT "2" - Replacement of Condition 27 and adding additional condition**
- EXHIBIT "3" - Letters from interested parties**
- EXHIBIT "4" - Testimony of Dr. Ron John**
- EXHIBIT "5" - Photo of Otter and Memo**
- EXHIBIT "6" - Overview Photograph of farm**
- EXHIBIT "7" - SEIS Geoduck**
- EXHIBIT "8" - State of Washington Geoduck Management Plan, May 23, 2001**
- EXHIBIT "9" - Key Peninsula Water Habitat Assessment**
- EXHIBIT "10" - Photo of large net size**
- EXHIBIT "11" - Photos of immature eagle and mother**
- EXHIBIT "12" - Letter from Ms. Brown dated July 5, 2006**
- EXHIBIT "13" - Letter from Betty Garrison**
- EXHIBIT "14" - Photo of "Rebar Jungle" (Toten Inlet)**
- EXHIBIT "15" - Key Peninsula Water Habitat Assessment with Final Report**
- EXHIBIT "16" - Letter-Committee from Toten Inlet**
- EXHIBIT "17" - Letter from scuba diver**
- EXHIBIT "18" - Series of photos concerning debris**
- EXHIBIT "19" - State of Washington Geoduck Management Plan**
- EXHIBIT "20" - Sample Contract**
- EXHIBIT "21" - State of Washington Geoduck Management Plan**
- EXHIBIT "22" - Geoduck Acqualculture Environmental Monitoring Program**
- EXHIBIT "23" - Letter from Examiner to Applicant dated July 11, 2006**
- EXHIBIT "24" - Email from Laurie Brauneis dated July 9, received July 12, 2006**
- EXHIBIT "25" - Email from Sylvia Haase dated July 11, 2006**
- EXHIBIT "26" - Letter from Diane Cooper to Parties of Record dated July 27, 2006**

- EXHIBIT "27" - Letter to Diane Cooper from Henderson Bay Shoreline Association dated August 4, 2006**
- EXHIBIT "28" - Letter from Delores Brown to Diane Cooper dated August 8, 2006**
- EXHIBIT "29" - Letter to Examiner from Laurie Brauneis dated August 11, 2006**
- EXHIBIT "30" - Series of emails re: August 16 meeting**
- EXHIBIT "31" - Memo to Parties of Record from Diane Cooper re 8-16 Meeting, dated August 11, 2006**
- EXHIBIT "32" - Draft meeting notes submitted from Diane Cooper**
- EXHIBIT "33" - Meeting notes submitted by Diane Cooper dated September 15, 2006**
- EXHIBIT "34" - Letter from Diane Cooper dated September 21, 2006**
- EXHIBIT "35" - Meeting notes submitted by Parties of Record dated September 22, 2006**
- EXHIBIT "36" - Email from Linda Peterson to Mojgan Carlson dated October 5, 2006**
- EXHIBIT "37" - Series of emails from Chris Fitzgerald**
- EXHIBIT "38" - Series of emails from Parties of Record**
- EXHIBIT "39" - Letter from Kirk Kirkland of Tahoma Audobon Society dated October 6, 2006**
- EXHIBIT "40" - Letter from Sherilee Luedtke to Examiner dated October 23, 2006**
- EXHIBIT "41" - Letter from Tahoma Audubon Society dated October 24, 2006**
- EXHIBIT "42" - Email from Diane Cooper re: leaving the record open dated October 27, 2006**
- EXHIBIT "43" - Memo from Examiner ordering the record open until November 15, 2006**
- EXHIBIT "44" - Series of emails to Examiner re record from Betty Garrison**
- EXHIBIT "45" - Letter from Sherilee Luedtke re record dated November 13, 2006**
- EXHIBIT "46" - Email from Diane Cooper**
- EXHIBIT "47" - Letter from Diane Cooper dated November 13, 2006**
- EXHIBIT "48" - Email with report from Laura Hendricks dated November 14, 2006**
- EXHIBIT "49" - Letter from Sherilee Luedtke dated November 14, 2006**
- EXHIBIT "50" - Email from Betty Garrison dated November 15, 2006**
- EXHIBIT "51" - Series of emails dated November 16, 2006**
- EXHIBIT "52" - Letter from Mojgan Carlson dated November 16, 2006**

Case SD53-05 was heard first, followed by SD55-05. The Examiner initially started out holding separate hearings but eventually all of the testimony and documents in each of the hearings were incorporated by reference into the other hearing.

Appearing was MOJGAN CARLSON who presented the staff reports, with which their attachments, were admitted into evidence as Exhibit 1. The applicant is requesting a

shoreline substantial development permit for purposes of cultivating and harvesting geoducks and manila clams. The property is adjacent to single-family residences, Ms. Carlson indicated that both cases were nearly exactly the same. The parcels are long, rectangular sites. A Determination of NonSignificance was issued on both of the cases on May 9, 2006. No appeals were filed in either case. There were no adverse comments received from any other governmental agencies. The sites are located in the rural environment. Pursuant to Pierce County Code 20.24.030, aquaculture harvesting is allowed in the rural shoreline environment, subject to the granting of a substantial development permit. The issues before the Examiner are not approval but rather conditions. Ms. Carlson submitted Exhibits 2-4. Adequate notice was given pursuant to the Pierce County Code. On June 30, 2006 the County received letters from community members who received notice concerning safety for wildlife and beaches. Ms. Carlson pointed out Conditions 6, 9, 11, 18, and 27 which were designed to handle the concerns expressed in the letters received. The recommended conditions are more strict than in previous cases due to the increased science and knowledge of this field. Staff has done extensive research to come up with these conditions. Geoducks are planted inside a tube, which is removed two years after the initial planting. The tube is designed to protect the young geoducks from predators. It has been indicated that harvesting can begin as soon as three years after planting. The average harvest appears to be six years. No eelgrass is in the immediate vicinity of the site. DNR requires a 10-foot buffer from any eelgrass in the area. The applicant intends to use best management practices. The Hearing Examiner asked whether or not a survey had been done to determine how much of the native stock belonged to Indian Tribe and the County was unsure. A survey had not been done.

Appearing was JOHN MERRIWEATHER, environmental biologist for Pierce County Planning and Land Services. No wetland or fish and wildlife review will be required, provided that all activities are conducted from the water. No access or activity is allowed near the shoreline without first obtaining wetland review/approval. Applicant is required to provide a scaled site plan that depicts the boundaries of all eelgrass beds identified within 180 feet of the proposed aquaculture project. The site plan will include the boundaries for the proposed activities. He spoke about Conditions 28-41 which address fish and wildlife concerns. DNR requires Best Management Practices to be used at all times.

Appearing was DIANE COOPER on behalf of the applicants. This is a new, developing industry. There is a lot of growth and it is a lucrative industry. The market is 50% international and 50% within the United States. Taylor Shellfish has received an environmental stewardship award from NOAH. They are the leaders in shellfish production. Ms. Cooper believes that their approach demonstrates environmental stewardship. The single, biggest, limiting factor in the geoduck industry is the need for seed. The quality of water for raising geoducks is declining because of the intensive use of the shoreline. Geoducks are filter feeders. They stimulate eelgrass growth. Taylor Shellfish Farms will pick up any debris from any company. They are patrolling the area

for debris. They have noise regulations and requirements. They choose highbank, low residential recreational sites. The Hearing Examiner questioned her concerning water surface safety. She indicated that they were willing to mark buoys indicating the placement of geoduck farms. Ms. Cooper stated that DNR has chosen Taylor Shellfish to do research for them. The tubes which are used to protect the young geoducks are removed after two years. The Tribes are supportive of Taylor Shellfish. She requested the opportunity to respond to comments at the end of the hearing. Harvesting of geoducks begins three to six years from the planting of the geoducks.

Appearing was DAVID HOWE who spoke in opposition to the project. He brought in a bag full of netting and debris from geoduck farming that he and his wife have collected on their beachfront. He is surprised by the low number of people responding to today's hearing. He does not feel that Taylor Shellfish is in compliance with keeping things clean. The system is not working. The nets are not staying in place. Taylor's method of keeping tubes in place is not working. The conditions need to have teeth. Taylor may be the largest producer of plastic trash in the area.

Appearing was SHERRI LUEDKE who spoke in opposition to the project. She brought in four bags of debris she stated came from Taylor Shellfish Farms over the past two years. She feels that aquaculture is allowed pollution. She is concerned about the impact on wildlife. She submitted photographs as Exhibits 5 and 6. She is concerned that the method that Taylor uses does not work. She feels that this is government sanctioned littering. The nets do not stay in place, neither do the tubes. She feels the conditions are a good start but feels more should be done. Who will monitor these sites? What is the penalty for violation? Who will enforce the conditions?

Appearing was DALE WHEELER who spoke in opposition to the project. He has observed that the water by Taylor Shellfish Farms is very silty. During harvesting, there is a lot of silt and sand in the water for about two to three weeks. He feels that harvesting has an adverse affect on crabs and anything that gets inside the nets.

Appearing was STAN CUMMINGS, a member of Citizens for a Healthy Bay. He is concerned about pollution in Commencement Bay. He recommends Condition No. 12 of the staff report. He asked that the Hearing Examiner require approval after a harvest cycle. Two major concerns are debris and harvesting methods. He is requesting a moratorium until more is known about the environment.

Appearing was LAURIE BRAUNEIS, from Save Our Shoreline. She talked about eelgrass. She agreed with staff conditions and submitted Exhibits 7 and 8. She requested another eelgrass study and suggested a health department study done during the summer. She asked for an independent study 180 feet from the site. Spawning grounds for fish need to be protected. She asked for limitation on the hours of harvest.

Appearing was KURT KIRKLAND, from the Audubon Society. He discussed the affect on the birds due to the geoduck farming. His concerns regarding the netting used in the farming system. He feels that the anchors of netting are dangerous. He would like the nets to be marked and he would like another hearing after more information is developed. He recommended the size of mesh be extremely small to protect bird life. He suggested a bond be posted that would be forfeited if the clean up is improper. If there is not enough information about commercial geoduck farming to issue a permit at this time, he suggested a moratorium.

Appearing was DELORES BROWN, who read from a prepared statement. She spoke about netting and the effects of netting on her beach. She is also concerned about whether geoducks are native to the area. She is concerned about wind surfers getting entangled in the netting and believes that there needs to be a moratorium in order to develop a safer and better method of farming. Planting of geoducks displaces the native growing species in the area.

Appearing was BETTY GARRISON who read her prepared statement which was submitted as Exhibit 13 and admitted into evidence.

Appearing was LAURA HENDRICKS from Henderson Bay Association. They are concerned about the activity of the Department of Fish and Wildlife as they are going into the geoduck business themselves. Ms. Hendricks submitted Exhibit 15 and she read a letter submitted as Exhibit 16 about Toten Inlet. She also submitted Exhibits 17 and 18. She would like every piece of equipment marked and bonded. She wants geoduck farming monitored and regulations enforced.

Reappearing was MOJGAN CARLSON who responded to some of the concerns raised.

Reappearing was JOHN MERRIWEATHER who responded to some of the citizens concerns.

Reappearing was DIANE COOPER who responded to the concerns raised by the public. The Hearing Examiner asked if she kept a log of all complaints, to which she responded yes. The Hearing Examiner also asked that the log be made available to the County and she agreed to do so.

Appearing was SHERILEE LUEDKE. She requested that her testimony be made part of the next hearing. The Hearing Examiner said she would need to stay until at least the opening of the hearing. She would like notice to be expanded and submitted Exhibit 19.

Appearing was CLIFFORD RENKE. He spoke about property owner's rights.

On July 11, 2006, the Hearing Examiner sent out a letter to all parties of record asking that they get together and help develop a system for inventorying all items which are used on

the site for raising geoducks. The Hearing Examiner also asked the parties develop some sort of checklist that could be used by Taylor Shellfish for inspection of the site and other areas. Thereafter, the parties did get together in Gig Harbor on August 16, 2006 to discuss the issues raised in hearing. Thereafter, Krystal Kryer of Tahoma Audobon and Laurie Brauneis of Save Our Shoreline met with Ms. Cooper on October 2, 2006. On October 24, 2006 they agreed to the following conditions:

- 1) Taylor Shellfish agreed to stop using rebar and metal anchors, and replace them with plastic anchors. This means that the anchor will not be visible above surface and only the loops would stick out of the ground for attachment of netting.
- 2) Taylor Shellfish agreed to a condition of only using nylon net. It does not deteriorate or pull away during wave action. This will resolve the problem of nets washing up on beaches, causing navigational hazards when floating on water surface or creating underwater hazards for diving birds or fish.
- 3) Taylor Shellfish agreed to a condition to not use individual nets and rubber bands to cover the tubes after planting. This will eliminate the problems with wildlife getting caught in rubber bands and eliminates beach litter and debris, a major concern of adjacent neighbors.
- 4) Taylor Shellfish agreed at the previous meeting in August with other interest groups to label their tubes and nets with an identification marker. In October they agreed to use their name rather than an identifying stamp. The name should appear at eight places on each net and once on each tube.
- 5) Taylor Shellfish agreed to a condition of removing area nets over geoduck tubes during the period when eagle fledglings are present. Fledgling period is from May to August of each year. During this period, nets will be placed over the tops of the tubes with rubber bands. This remedy will be applied only on beaches where fledglings are present or where either Taylor Shellfish or Audobon Society has identified an eagle's nest in the vicinity of the beach.
- 6) Taylor Shellfish agreed to a condition to use one-inch stretch nets, $\frac{1}{2}$ x $\frac{1}{2}$ inch mesh at the time of planting. After the initial geoduck growing period, Taylor agrees to replace the stretch nets with a wider mesh of $1 \frac{1}{2}$ x $1 \frac{1}{2}$ inch or larger. The larger mesh size is less likely to cause a bird predation.

During the meeting on August 16, 2006, Taylor Shellfish agreed to maintain a log of all debris removed from offsite areas. Taylor Shellfish also indicated that they clean and maintain their farms at a minimum weekly and during seasonal periods, daily. They also agree that they will record the number of tubes installed on each farm and the number of tubes removed from the respective farms. They also agreed to develop a computer

program that will alert geoduck managers of any discrepancy between the number of tubes installed in the farm and the number of tubes removed from the farm. They also agreed that they will mark all tubes with Taylor Shellfish identification and color code or other coding to identify site and farm location. They agreed to maintain a website with a permit link which would have a record of complaints, including date and time and response. The name of the complainant would not be on the website for privacy purposes. Taylor Shellfish has also agreed to mark the perimeter of each farm with buoys.

The Examiner received a substantial amount of correspondence from all parties involved and hereby expresses his appreciation to all for their effort and their contributions.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded at 1:30 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Pursuant to the State Environmental Policy Act and the Pierce County Environmental Regulations (Section 18D, Pierce County Code), the Pierce County Environmental Official designate has reviewed this project and issued a Determination of Nonsignificance (DNS) on May 9, 2006, with a comment period ending on May 24, 2006. The DNS was issued after it was determined that there would be no probable significant adverse environmental impacts as a result of this proposal. No appeal was filed.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper. Property owners within 300 feet of the site were sent written notice. On November 16, 2005, Taylor Shellfish Farms posted a public notice sign on the beach facing waterward. An affidavit was submitted to the County stating such.
4. The applicants Taylor Shellfish/Strafford have a possessory interest in two separate parcels of property, which make up approximately 1.9 acres or 82,125 square feet in the intertidal zone of private tidelands along the east shore of Case Inlet in the

rural shoreline environment and R10 classification. The site is located in tidelands abutting 6812 and 6606-190th Avenue KPN, in front of parcels 0021103030 and 021103031. The topography of the intertidal zone has a gradual slope that consists of gravel, sand and compact mud.

5. The applicants Taylor Shellfish/Meyer have a possessory interest in parcel 3022 located in the same environment which is a long, rectangular parcel, 30,000 square feet of which is in the intertidal zone of private tidelands along the east coast of Case Inlet and would be used for purposes of geoduck cultivating and harvesting. The site is located in tidelands abutting 2912-190th Avenue KPN, in front of parcel 0021103032 and 021103031. The topography of the intertidal zone has a gradual slope that consists of gravel, sand and mud.
6. The applicant is requesting a shoreline substantial development permit for purposes of planting, cultivating, and harvesting geoduck clams for commercial purposes on both sites. The DNS indicates that the proposal is to conduct geoduck clam aquaculture for future harvests for human consumption. Small geoduck clams will be planted on privately owned tidelands. The activity will occur on each parcel. The work will occur from between +3 and -2.5 tidal elevations. The geoducks will initially be protected from predators by planting them in nine inch long by four to six inch diameter tubes that are pushed by hand into the tideland about six inches. The tubes are spaced about 12 inches apart and are then covered with caps secured by bands. The entire farm is then covered by large nets to insure tubes remain in place. The tubes are exposed at low tides. The netting is removed just prior to the tubes being pulled up by hand, which will take place up to two years after the planting date. The geoducks will continue to grow for a total of up to six years. Harvest days and times will vary. Harvest is conducted by utilizing a hand held water jet to loosen the sand immediately surrounding the geoduck so that they can be removed by hand. The geoducks will then be packed into crates on a boat, ready for transport to the plant. A small, diesel powered pump in the boat is utilized to power the water jet. It will be housed within a sound dampening container and exhaust muffle. After harvest, there will be an emulsified area which will be slightly softer after the harvest than the unharvested beach but will be able to be walked on a few minutes after harvest. The beach level would be lowered temporarily one to two inches after harvest. The level will normally be restored naturally by wave action and settlement movement during the following few tidal cycles. Cultivation will occur in the intertidal zone that consists of gravel, sand, and mud. After harvesting, activities will be repeated.
7. Pierce County Shoreline Master Program indicates that these sites are located in the rural environment, see page 17. The rural environment is intended for those areas which are presently used for intensive agricultural and recreational purposes, for those areas having the potential for supporting intensive agricultural and

recreational development. The rural environment is intended to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines and encourage the preservation of open spaces and opportunities for recreational uses, compatible with agricultural activities. Preferred uses include intensive agricultural uses; intensive recreational uses, and low density residential uses.

8. Aquaculture is not a preferred use in the Rural Environment. It is similar in nature to agricultural uses which are a preferred use. The shoreline is planted and the product is commercially sold to feed the populace. The site would be relatively free from human elements and alteration once the tubes are removed.
9. Pierce County Code (PCC) 20.24.030(A) provides that geoduck harvesting is permitted outright in all shoreline environments, subject to the guidelines for reviewing substantial development permits.
10. PCC 20.24.030(B) of the Pierce County Shoreline Management Use Regulations states that aquaculture operations are allowed in the Rural Shoreline Environment subject to the granting of a shoreline substantial development permit.
11. The Shoreline Master Program for Pierce County sets out classifications of various types of development activities that can be carried out on or occupy shoreline locations. There are 25 activities listed in the Shoreline Master Program. Each use on the shoreline has its own policies that have been developed by the program on the premise that all appropriate shoreline uses require some degree of control in order to minimize the adverse effects to the shoreline environment and adjoining properties. The Shoreline Master Program, on page 22, sets out the guidelines, which govern aquacultural practices. Findings with reference to each of those guidelines follow:
 1. Geoduck and manila clam aquaculture are proposed for human consumption.
 2. Conditions herein are designed for purposes of preserving and protecting Pierce County's aquacultural potential.
 3. The aquacultural operation is located on the shoreline area.
 4. As conditioned, the proposal meets this policy.
 5. As conditioned, these operations will maintain the highest possible levels of environmental quality. Pierce County issued a DNS after it determined that there would be no probable adverse environmental impacts as a result of the proposal. In addition, a recommended condition of approval requires the

applicant comply with the Washington State Geoduck Growers Environmental Code of Practice. This document is contained within the staff report and is hereby incorporated by reference. Moreover, the applicant is required to comply with each of the conditions herein in order to minimize environmental impact.

6. As conditioned, the proposal complies with this provision; these operations are located adjacent to high bank areas and should not interfere with commercial traffic upon the Sound.
 7. The shoreline consists of single-family residences, farms, and vacant land. The shoreline is high bank and tends to be heavily vegetated. With regard to aesthetic quality of the shoreline area, PVC pipe and mesh would be visible at very low tide. If the Applicant complies with the conditions herein, detrimental impact and visual impact on upland owners will be minimized and temporary only.
 8. The pipe and mesh will be visible at low tides, however if they are properly placed and the height of the tubes is minimized, the temporary visual impact will be minimized.
12. PCC 20.24.020 contains the guidelines for reviewing substantial development permits. PCC 20.24.020(A) contains the specific guidelines that are applied by the Examiner in considering an application for a substantial development permit for purposes of complying with the policies of PCC 20.30 which governs commercial and light industrial development. Findings with reference to the provisions of PCC 20.24.020(A) that apply to the application before the Examiner follow:
1. The aquaculture harvesting of geoducks and manila clams is consistent with the use of the shoreline area for production of commodities for human consumption and utilization.
 2. Staff has indicated that the proposed harvesting will not cause extensive erosion or accretion along adjacent shorelines.
 3. A DNS was issued after it was determined that there would be no probable, significant adverse environmental impact as a result of the Applicant's proposal. A condition of approval herein requires the Applicant comply with the Washington State Geoduck Growers Environmental Code of Practice and that the Applicant use best management practices. During the hearings, substantial evidence was produced indicating that some of the current practices may hurt or endanger birds, sea otters, or other wildlife in the immediate area of the geoduck operations. Given the evidence submitted,

the Examiner, with the assistance of the parties, fashioned conditions to minimize the impact of geoduck operations upon the environment and surrounding property owners.

4. Staff has indicated that the operations will be in conformance with local, state and federal regulations governing water quality, noise, and odor and waste management. Conditions of approval herein are designed to protect those recreational uses such as kayaking, wind surfing, water skiing, swimming, and other recreational activities conducted in the immediate area.
5. These operations will not interfere with navigational access to the beach. Geoduck preparation will not interfere with navigational access to the beach and the applicant is not proposing any permanent structures or materials on the water, thereby preserving the aesthetic quality of the shoreline, although tubes four to six inches in height will be observed for about a two-year period every six to ten years, when there is a low tide.
6. The proposal does not involve any permanent structures or materials on the water, thereby preserving the aesthetic quality of the shoreline. These small tubes and any mesh and other tools used to protect the individual young geoducks, will be removed to insure they will interfere will navigation or impair the aesthetic quality of the shoreline.
7. As previously stated, the application does not involve any type of permanent structure. Applicants are using small tubes and mesh which will be removed and will use boats which will not interfere with navigation or impair the aesthetic quality of the shoreline.
8. During the two years when tubes are in existence, they will be monitored weekly and maintained to assure that they stay in place. Each monitored visit will be logged.
9. This site is not on a constricted body of water.
10. The site is appropriate for aquacultural use.
11. A condition of approval will be that appropriate permits from the Department of Fisheries and all other regulatory agencies are obtained.
12. As previously stated, this is a big, wide beach and the proposal is in proportion to the size of the beach.
13. No water-related or non-water related structures are contemplated.

14. No facilities such as boat launches or storage buildings are proposed.
13. PCC 20.30 governs commercial and light industrial development with reference to the shoreline. PCC 20.30.010 defines commercial development. PCC 20.30.010 indicates that commercial developments are those uses which are involved in wholesale or retail trade or business activities. PCC 20.30.010(C) indicates that aquacultural practices are examples of water dependant commercial use. PCC 20.30.020(C) provides that application for a Substantial Developments for commercial or light industrial developments will be approved only upon the determination that:
 - (1) The proposal is also consistent with the area's zoning designation, or in the case of the Gig Harbor Peninsula, the areas environmental designation;
 - and (2) the proposed intensity of use is compatible with surrounding area and the intent of the environment as stated in the master program. To this end, the appropriate reviewing authority may adjust and/or prescribe project dimensions, intensity of use, screening and setbacks, as deemed appropriate.

Acquaculture is a permitted use. It is commercial in nature and its commercial nature is inconsistent with the surrounding Rural Residential uses. Planting and harvesting of geoducks involves a number of individuals on property immediately adjacent to residential uses. The noise and occupation is inconsistent with the surrounding Rural Residential environment. To that extent, the conditions herein are designed to minimize the conflict between the commercial nature of acquaculture and the residential uses adjacent to the site. Conditions herein are also designed to minimize adverse affects upon the environment as demonstrated by the various individuals throughout the hearing process. The applicant has demonstrated their intent to minimize the impact and work to preserve the environment. The parties have met to discuss their differences and with the applicant's good faith attempt, the following conditions will work to minimize impacts and the different interests of the parties.

14. The Department of Natural Resources has substantial experience in monitoring harvesting of geoducks and has drafted a monitoring program which is designed to protect the shoreline environment and minimize the impact of geoduck harvesting upon adjacent property owners. Conditions of approval herein parrot their program in efforts to minimize the impacts of geoduck acquaculture upon adjacent property owners and the environment.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The Applicant has established that the request for Shoreline Substantial Development Permit satisfies the criteria set forth in the Shoreline Master Program for Pierce County, as well as Pierce County Code Sections 20.24 and 20.30 and therefore Shoreline Substantial Development Permit should be granted for the planting and harvesting of geoducks and manila clams on the above described sites, subject to the following conditions:
 1. The applicant shall be required to obtain permits from all agencies with jurisdiction including, but not limited to, US Army Corps of Engineers and the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources prior to construction. It shall be the sole responsibility of the applicant to secure all required permits
 - A. Construction or substantial progress toward construction/activity of a project for which a permit has been granted pursuant to the Act must be undertaken within two (2) years after the approval of the permit. Substantial progress toward activity shall include, but not be limited to, the letting of bids, making of contracts, and purchase of materials involved in development, but shall not include development or uses which are inconsistent with the criteria set forth in WAC 173-27-090. Provided, that in determining the running of the two (2) year period hereof, there shall not be included the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided further, that local government may, at its discretion, extend the two (2) year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.
 - B. If a project for which a permit has been granted pursuant to the Act has not been completed within five (5) years after the approval of the permit by local government, the local government that granted the permit shall, at the expiration of the five (5) year period, review the permit, and upon a showing of good cause, do either of the following:
 - 1) Extend the permit for one (1) year; or
 - 2) Terminate the permit; provided that nothing herein shall preclude local government from issuing Substantial

Development Permits with a fixed termination date of less than five (5) years.

2. Puget Sound Treaty Indian Tribes have the right to 50 percent of natural, existing shellfish stocks located on-site. The Tribes do not have rights to cultivated stocks and do not have regulatory/permitting authority for the subject proposal. The applicant shall contact the applicable tribes for the subject area (Squaxin Island and Nisqually Tribes) prior to commencing work to determine what, if any, interest they might have in any of the natural existing geoducks, if any, on site.
3. A Memorandum of Agreement, which shall include the Examiner's conditions of approval, shall be executed and recorded with the Pierce County Auditor prior to initiation of activities allowed by this permit.
4. The applicant is required to obtain permits from all agencies with jurisdiction including, but not limited to, U.S. Army Corps of Engineers and the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources prior to construction. It shall be the applicant's responsibility to secure any required permits.
5. The applicant shall comply with the Washington State Geoduck Growers Environmental Code of Practice and Best Management Practices.
6. The applicant shall submit a survey of the leased intertidal area identifying the corners, and permanent markers shall be placed at said location in order to eliminate possible injury to the public. Buoys shall mark the boundaries as long as tubes and nets are in the area. This provision is designed to give notice to recreational users of the surface of the water of the existence of the tubes and nets.
7. Unnatural materials (pipes, nets) shall be removed as soon as practical when young geoducks are no longer vulnerable to predators.
8. Area beaches within ½ mile on either side of the project site shall be patrolled by the applicant every other week to retrieve debris that escapes from the farm.
9. The color of tubes shall be gray or beige to match the beach area and they shall be marked with the applicant's name and telephone number.
10. All tubes and nets and any other equipment used on the beach shall be marked so as to identify that they are owned by Taylor Shellfish Farms. The

marking or identification of equipment shall be substantial enough to withstand the natural elements.

11. No activity or access by the applicant is allowed nor shall it take place near the shoreline until the County approves the appropriate permits.
12. Harvesting times are limited as follows: Monday through Friday, 8:30 a.m. to 4:30 p.m. with no harvest permitted on Saturday, Sunday or state holidays.
13. Excess and/or non-secured tubing, netting and other materials must be removed from the beach prior to the next incoming tide so that all unnatural debris, nets, bands, etc., are maintained and prevented from littering the waters or the beaches.
14. Harvest can only be undertaken using low-pressure water-jets with a nozzle inside tip diameter of 5/8-inch (WAC 220-52-019(2a)) or less. The nozzles will be hand held and controlled by the operator; the nozzle pressure is limited to about 100 psi measured at the pump.
15. Noise abatement devices must be used on all equipment including, but not limited to pumps, generators, radios and other mechanical devices. The applicant shall maintain and operate equipment so as not to exceed 50 dBA at 200 yards from the source. Taylor Shellfish employees must be aware of and consider the potential of harvest noise and the impact of their voices on the nearby residences and eagle nesting sites.
16. All tools and products of harvest activities must be removed from the site when each day's harvest is completed.
17. The adjoining neighbors must be informed of upcoming harvest activities, at least five days in advance if possible.
18. Harvest time must be timed to avoid spawning and incubation periods for sand lance, surf smelt, and herring if they are documented by WDFW to occur in the farm area.
19. If the applicant will be farming on leased beaches, they must train employees in meeting the environmental objectives through a standardized training program. These companies shall be responsible for their employees' environmental performance and noise production.
20. The applicant must ensure that pumps, boat motors, and harvesting

equipment are routinely serviced in order to avoid/minimize the loss of fluids.

21. Where petroleum products are used, the applicant must have in their possession, at harvesting sites, equipment necessary to address spills of hydraulic fluids and fuels including absorbent materials.
22. A contingency plan for addressing vehicle breakdowns in the intertidal area must be prepared by the applicant.
23. Access to the site by the applicant and the applicant's employees shall be from the water only. The use of vehicles and other heavy equipment on intertidal areas and beaches must be avoided or minimized.
24. This project shall be reviewed in three years from the effective date of approval by the Hearing Examiner to examine impacts of operations, and each of these conditions. If the County passes regulations governing geoduck aquaculture, either party may request a review.
25. The applicant/property owner must obtain a bond or financial guarantee in the amount of \$1.00 per tube placed. This is to ensure that all aquaculture equipment, specifically the tubes, netting and net securing devices will be completely removed from the site, at a length of time not to exceed 2 years plus 6 months, of placement. Pierce County Planning and Land Services must be notified as to the exact date of tube placement so a specific date for removal can be established. Pierce County shall also be notified of the exact number of tubes being used and a list of all equipment being used and left onsite or removed from the site. All approvals granted to harvest the geoduck will become null and void if the applicant fails to remove all of the tubes, netting and netting securing devices.
26. The applicant shall use small mesh netting only.
27. No wetland or Fish and Wildlife review will be required provided that all activities are conducted from the water. No access or activity is allowed near the shoreline without first obtaining wetland review/approval.
28. Applicant shall provide a scaled site plan that depicts the boundaries of all eelgrass beds identified within 180 feet of the proposed aquaculture project area. The site plan shall include the boundaries for the proposed activities.
29. Prior to initiation of the proposed aquaculture activities, a 10- foot baseline buffer shall be established around occurrences of rooted eelgrass beds with densities greater than four turions per square meter. The established buffer

area shall be depicted on the site plan, and the final site plan shall be recorded on the property titles.

30. Prior to harvest activities within 180' of the established buffer, the applicant shall resurvey (monitor) the eelgrass areas, and submit to the county an appropriate monitoring report that describes the status and extent of the eelgrass areas.
31. There is no authorization of net loss of eelgrass from the baseline conditions. If a net loss of eelgrass is determined, the applicant shall submit a habitat assessment report to the county prior to replanting within 180-feet of the established baseline buffer. The report shall utilize the best available science and any updated BMP's available. The report shall establish a modified protective buffer that reflects current science and site specific conditions.
32. If the additional survey indicates that the eelgrass remains as originally mapped, the applicant shall be allowed to harvest and replant within the established project area.
33. If the additional survey indicates an expansion of the eelgrass areas, the applicant shall be allowed to harvest and replant within the established project area.
34. Prior to the second cycle harvest activities within 180' of the established buffer, the applicant shall resurvey (monitor) the eelgrass areas, and submit to the County an appropriate monitoring report that describes the status and extent of the eelgrass areas.
35. If the second monitoring survey indicates a net loss of eelgrass from the baseline conditions, the applicant shall submit a habitat assessment report to the County prior to replanting within 180-feet of the established baseline buffer. The report shall utilize the best available science and any updated BMP's available. The report shall establish a modified protective buffer that reflects current science and site specific conditions.
36. Prior to planting the third cycle, the applicant shall submit for staff review of a Habitat Assessment Study or Report, as appropriate.
37. Geoducks planted within 50-feet of eelgrass may only be harvested when exposed at low tide (dry harvest).
38. Predator exclusion nets should be designed so they do not break free and cause

beach littering onsite or offsite. Individual tube netting shall be employed and secured with UV-resistant fasteners. Any large-cover nets employed shall be designed to minimize the risk to wildlife and humans. Any netting used shall be tagged for identification purposes.

39. No seeding, culture, or harvest is done in biologically sensitive areas such as herring, sand lance, or smelt spawning grounds.
40. Pursuant to Chapter 18E.40.030, the proponent is required to submit for staff review of a Habitat Assessment Study or Report, as appropriate. The applicant must be issued a Critical Fish and Wildlife Habitat Conservation Area Approval prior to the initiation of any regulated activities within the project site. Compliance with Title 18E - Critical Areas and conditions of Approval will adequately mitigate for any significant adverse environmental impacts to the Fish and Wildlife Habitat Conservation Area.
41. The applicant shall maintain an activity log of all activities on or adjacent to the site. The activity log will include the time, location, and event which occurred. As agreed, the activity log shall contain a list of all complaints received. It also shall contain the number of tubes and other equipment on site and their location. A site plan demonstrating the approximate location of all tubes, nets, and anchoring devices shall be maintained on the log. This activity log shall be maintained on the website by agreement of the parties and shall be available to the County at all time for inspection. The activity log shall include a list of all items on site and should be updated at least monthly to indicate losses and whether or not equipment which has been lost has been retrieved. The applicant may maintain a separate log with the names of all employees on site.
42. The applicant shall use woven, nylon mesh nets that do not deteriorate or pull away during wave action. No individual nets and rubber bands shall be used on site. A large stretch, nylon mesh cover will be used over the entire area. The applicant's name shall appear on eight different locations on each net and at least once on each tube for identification.
43. The net shall be $\frac{1}{2}$ x $\frac{1}{2}$ inch mesh at the time of planting. After initial geoduck growing period, the applicant has agreed to replace these nets with a wider mesh of $1 \frac{1}{2}$ x $1 \frac{1}{2}$ inch to minimize bird predation.
44. The applicant and the Tahoma Audubon Society have agreed that in areas on beaches where fledgling eagles are present or where either the applicant or the Tahoma Audubon Society has identified an eagle's nest in the immediate vicinity of the beach, then for the time period of May through August of each year,

individual nets will be used on tubes and larger nets will not be used. This condition is limited to the very narrow areas for purposes of protecting eagles.

45. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
46. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The applicant's request for Shoreline Substantial Development Permit in order to operate geoduck harvesting on three parcels of land located in the tidelands in Case Inlet is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this _____ day of November, 2006

TERRENCE F. McCARTHY
Deputy Hearing Examiner

TRANSMITTED this _____ day of November, 2006, to the following:

APPLICANT: Taylor Shellfish Farms
Attn: Ms. Diane Cooper
130 SE Lynch Rd.
Shelton, WA 98584

OWNER: Arvin and Janice Meyer
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Vaughn, WA 98394

David and Sabra Stratford
6812 190th Ave KPN
Vaughn, WA 98394

OTHERS:

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Lakebay, WA 98349

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT

FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO: SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT: CASE NO. SD53-05 (TAYLOR SHELLFISH
FARMS/ MEYER), Case No. SD55-05 (TAYLOR
SHELLFISH FARMS / STRATFORD)**

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.