

Initial Project Review

Shoreline Substantial Development Permit / Shoreline Conditional Use Permit: Case Number: SD/CP15-14 Burley Lagoon Geoduck Farm (Taylor Shellfish Farms)

Application Numbers: 778791 – Shoreline Substantial Development Permit
778792 – Shoreline Conditional Use Permit
778793 – Environmental Checklist
778794 – Critical Fish and Wildlife Habitat Area Review
823304 – Environmental Impact Statement
1004944 – Appeal of Final Environmental Impact Statement

Tax Parcel Numbers: 0122133078, 0122231065, 0122231067, 0122231071

Key Peninsula (KPAC) and Gig Harbor Peninsula (PAC) Land Use Advisory Commissions Public Meetings: The proposal will be considered at the following meetings:

Monday, May 22, 2023, at 6:00 p.m. - 9:00 p.m.:

- This meeting will be held in person at the Key Peninsula Civic Center, Gymnasium, 17010 S. Vaughn Rd. NW, Vaughn, WA 98394. One may also participate in this meeting remotely. Visit www.Zoom.com and click “Join A Meeting”, or call 253-215-8782, then enter the Meeting ID: 915 5550 6834, and Passcode: 253, or follow this link: <https://piercecountywa.zoom.us/j/91555506834?pwd=WEIxeDQ4TFU5VDdnaFZFy1JuZXJSQT09>
- This will be a joint meeting before the KPAC and PAC. The meeting will first consist of KPAC, PAC and staff introductions, 10-minute overview presentations by the County and Applicant, ground rules, and thereafter public testimony. Of the three meetings, this will be the only one where the public may testify. Instructions to sign up to provide public testimony will be provided upon arrival at the meeting venue and provided online for virtual participants wishing to provide testimony. Testimony will be limited to 2 minutes per individual, slideshows will not be allowed, and this will not be a question/answer session. If possible, please have one spokesperson for those with similar views.

Wednesday, May 24, 2023, 6:30 p.m. - 8:30 p.m.:

- This meeting will be held in person at the City of Gig Harbor, City Council Chambers, 3510 Grandview St., Gig Harbor, WA 98335. This meeting will not be held remotely.
- This meeting is only before the PAC. The public may attend but there will be no additional public testimony. The primary purpose is for the PAC to ask questions of the County and Applicant, to deliberate, and make a recommendation on the proposal.

Thursday, May 25, 2023, 6:00 p.m. - 8:00 p.m.:

- This meeting will be held in person at the Key Peninsula Civic Center, Gymnasium, 17010 S. Vaughn Rd. NW, Vaughn, WA 98394. This meeting will not be held remotely.
- This meeting is only before the KPAC. The public may attend but there will be no additional public testimony. The primary purpose is for the KPAC to ask questions of the County and Applicant, to deliberate, and make a recommendation on the proposal.

Proposal: Convert existing shellfish beds from the cultivation of Manila clams and Pacific oysters to geoduck clams planted in rigid polyvinyl chloride (PVC) nursery tubes and/or HDPE flexible mesh nursery tubes throughout a 25.5-acre project area. Predator exclusion netting may also be utilized during some portion of the generalized 6-year grow-out cycle. Planting would be done in phases.

Proposal Location: Burley Lagoon. It is a saltwater body within south Puget Sound and located immediately north of and connecting (under the Purdy bridge) with Henderson Bay. The two waterbodies are divided by the Purdy sandspit and State Route 302. The proposal would be located within the southern half of the lagoon within the Key Peninsula and Gig Harbor Peninsula Community Plan areas. At the time of application, the shoreline environment designations for this portion of the lagoon were Urban, Rural Residential, and Natural. The northern third of the lagoon is located within unincorporated Kitsap County. The proposal would be located approximately $\frac{3}{4}$ mile from Kitsap County, within Sections 13 and 23, Township 22 North, Range 1 East, in Pierce County Council District #7.

Review Summary: The KPAC/PAC are being asked to make a recommendation as to whether the shoreline permit(s) required for the proposal should be approved, modified, or denied. They will make separate recommendations.

County Staff prepared this report. This report makes no recommendation as is standard practice when presenting development proposals for Land Use Advisory Commission consideration.

Prior to scheduling the meetings, the County conducted an environmental review of the proposal pursuant to the State Environmental Policy Act (SEPA). In January 2023, the review concluded when the County issued a Final Environmental Impact Statement (FEIS). The FEIS has been appealed. The KPAC/PAC are not being asked to make a recommendation regarding the appeal. Appeals are outside their code authority and may only be considered by the Pierce County Hearing Examiner.

The Examiner will consider the shoreline permit(s) and appeal at a future public hearing(s) which have yet to be scheduled. The recommendations of the KPAC/PAC will be considered by County staff and Examiner. The Examiner will be the final County decision maker regarding this proposal.

County Contacts: Ty Booth, Planner, ty.booth@piercecountywa.gov
Dave Risvold, Environmental Biologist 3, dave.risvold@piercecountywa.gov

Pierce County Online Permit Information:

<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/departmentStatus?applPermitId=778791>



Application Data:

Application Complete: May 28, 2014

Report Mailed: May 12, 2023

Property Owners: Western Oyster Properties LLC
3229 Selwyn Farms Lane
Charlotte, NC 28209

Stout Property Investments LLC
117 East Louisa Street, PMB 735
Seattle, WA 98102

Applicant: Taylor Shellfish Farms
Attn: Erin Ewald
SE 130 Lynch Road
Shelton, Washington 98584
erine@taylorshellfish.com

Applicant's Agent: Plauché & Carr, LLP
Attn: Jesse DeNike
1218 3rd Avenue, Suite 2000
Seattle, Washington 98101-3235
jesse@plauchecarr.com

Public/Legal Notice

Notice of the above public meetings was provided as follows:

1. *May 2, 2023*: Mailed and/or emailed to the following:
 - A. Applicant;
 - B. Appellant;
 - C. Property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the proposal location;
 - D. Those who have previously submitted written comments;
 - E. Local, State, and Federal agencies; Tribes; organizations; media, etc.; and
 - F. Those on a shellfish interested parties list that the County started and then discontinued years ago regarding all aquaculture proposals in unincorporated areas.
2. *May 8, 2023 and May 18, 2023 (respectively)*: Published in the official County newspaper (The News Tribune) and Peninsula Gateway.

Notice has also been posted in the County's on-line permit system and on the webpage the County created for this proposal: www.piercecountywa.gov/burleylagoonfarm.

County notice requirements are primarily located in Pierce County Code, Chapters 18.80.

Comments Received

Throughout the review process, the County has received a voluminous number of comments addressing a voluminous number of topics. Most comments oppose the proposal and/or find that additional studies should be required. A summary of the comments received, during the EIS process specifically, may be found in the FEIS.

Staff Comment: The County has previously provided notices (including the posting of public notice signs) during the following key stages of the review process:

- 2014: Notice of Application (NOA);
- 2016: SEPA Determination of Significance (DS)/public open house;
- 2021: SEPA Draft Environmental Impact Statement (DEIS) issuance; and
- 2023: SEPA Final Environmental Impact Statement (FEIS) issuance.

In 2014, 2016, and 2021, the public was notified of their opportunity to provide written comments. In 2016, public testimony was also received at the open house. An opportunity for additional public testimony will be available at the Examiner's public hearing(s). Until then, written comments regarding the shoreline permit(s) are still being accepted.

County Roles

PIERCE COUNTY PLANNING AND PUBLIC WORKS DEPARTMENT (PPW):

PPW is where development applications are submitted. PPW facilitates applications through the review process including sending out notices, receiving/reviewing comments, conducting reviews, etc. PPW also serves as staff to LUACs and Examiner.

Staff Comment: For this proposal, PPW is not the final decision maker but did supervise the preparation/issuance of the DEIS/FEIS and prepared this Initial Project Review report.

LAND USE ADVISORY COMMISSIONS (LUACs):

Pierce County Code, Title 2, Chapter 2.45

LUACs have been created within defined geographic areas, primarily those areas for which a community plan has been adopted. One of their functions is to review applications for proposed developments within their represented community and convey such recommendations to the County and Examiner. LUACs consists of members broadly representative of the community. Members must reside in, own a business, own property, or work within their respective community plan. Members are appointed by the County Executive (elected) and confirmed by the County Council (also elected). Note, the appointment process is slightly different for the KPAC. All are volunteers and serve without compensation.

Staff Comment: The Key Peninsula and Gig Harbor Peninsula have community plans and LUACs (KPAC/PAC). The boundary between them is the Purdy bridge.

PIERCE COUNTY HEARING EXAMINER (EXAMINER)

Pierce County Code, Title 1, Chapter 1.22

The Examiner is selected by the County Council and serves at the pleasure of the Council. The Examiner and Deputy Examiners are to have training or experience that will qualify them to conduct administrative or quasi-judicial hearings utilizing land use and other regulatory codes. Once selected, no Councilmember, County official, or any other person shall interfere or attempt to interfere with the Examiner or Deputy Examiner in the performance of their duties.

Staff Comment: The Examiner has appointed a Deputy Examiner to hear this proposal. They will be the final County decision maker for this proposal. The future public hearing(s) are yet to be scheduled.

Site Description

Burley Lagoon is a shallow barrier estuary approximately 2 miles long and 0.7 mile wide at its widest point (south end). The total area of the lagoon is 410 acres, of which 300 acres are within unincorporated Pierce County. The southern half of the lagoon is primarily surrounded by residential uses, commercial uses in Purdy, State Route 302, Purdy bridge, Purdy sandspit park, and power transmission tower/lines. To the north of the proposal, there is an undeveloped island. A variety of recreational uses occur in the lagoon. Two creeks flow into the lagoon (Purdy Creek and, in Kitsap County, Burley Creek). The lagoon supports a variety of fish/wildlife and/or their habitats.

Staff Comment: Staff has walked the lagoon at low tide and navigated it by boat at high tide.

Existing Clam/Oyster Farm

The Applicant operates an existing clam/oyster farm in the lagoon. It is located entirely within Pierce County. The Applicant leases 300 acres of the lagoon from the property owners. The farm has been in existence for more than 100 years. In 2012, the Applicant took over operations.

Staff Comment: In 2015, in response to a formal complaint(s), the County issued two letters stating, in part, that the existing farm is legal, and the Applicant's activities did not result in an expansion of farm activities. The determination was not appealed. However, the County (and other governmental agencies) routinely receive complaints regarding a variety of farm activities (wildlife impacts/harassment, navigation concerns, debris, noise, lights, odors, etc.). It is difficult for the County to address the concerns as the farm was established, for the most part, decades before there were requirements for County shoreline permits. As such, there are no permit conditions for the County to enforce. The existing farm is not before the KPAC/PAC, only the proposed conversion of a portion of the farm.

Area Aquaculture Activity

In the Key Peninsula and Gig Harbor Peninsula areas, County known shellfish aquaculture activity is summarized as follows:

1. Pending applications: Other than this proposal, the County has no other pending applications for shellfish farms within the community plan areas.
2. Approved applications: Since the mid-1990s, the County has approved approximately a dozen farms. Most have been in Case Inlet (west shoreline of the Key Peninsula) and primarily consist of geoduck farms. Those in Carr Inlet (between the Key Peninsula and Gig Harbor Peninsula) are located near the tip of the Key Peninsula (Devil's Head). The closest farm, to Burley Lagoon, consisted of a 10-acre manila and littleneck clam farm within Henderson Bay (near the mouth of McCormick Creek) on the Gig Harbor Peninsula.

One geoduck proposal was denied. It was a proposed 5-acre geoduck farm known as the deTienne farm. It was primarily subtidal. It was located just west of the Purdy sandspit on the Henderson Bay side. It received approval by the Examiner but was subsequently appealed to the Washington State Shorelines Hearings Board and denied. Note, a prior leaseholder conducted unpermitted work on the tideland parcel (including within eelgrass beds) that was a contributing factor in its denial.

3. Historical oyster growing areas: These exist in Burley Lagoon, Minter Bay, and Rocky Bay.
4. Washington State Wildstock Geoduck Fishery: This fishery occurs on publicly owned subtidal tracts. The fishery involves the harvest of wild geoducks (with harvest jets) but does not involve planting/use of gear. The fishery is managed by the State and Indian Tribes. It is not regulated by the County.
5. Tribal Treaty Rights: Tribes harvest wild (not farmed) shellfish (potentially including geoducks) in other locations throughout Puget Sound based on their treaty rights. It is not regulated by the County.
6. Illegal farming and poaching: These activities occur but to what extent is unclear.

On the Purdy sandspit, years ago an unpermitted geoduck farm, involving tubes, was established (Washington Shellfish/McRae). It occurred on the sandspit itself (Henderson Bay side) on tidelands leased from the County and on other privately owned tidelands to the west (including deTienne). Enforcement action ensued and much of the farm (tubes) was later removed by volunteers (on at least the County site).

Proposal Summary:

According to the Applicant, it is not yet known with certainty whether they would relocate existing clam and oyster culture currently occurring within the 25.5-acre project area. However, this was conservatively assumed for the analysis in the EIS.

Geoducks are planted between subtidal habitat (down to approximately -10 feet mean lower low water (MLLW) and intertidal habitat (up to +3 feet MLLW). Planting may occur in a series of 1.5- to 2.0-acre plots within the 25.5-acre area, depending on site conditions. Planting in smaller plots allows spatial separation between the various plots. Gear placement and planting may also occur over multiple years to allow temporal separation between culture activities. Geoduck grow-out typically requires a period of 5 to 7 years but can vary depending on specific site and seasonal growing conditions. A generalized 6-year geoduck culture cycle is assumed. Either gear type used for predator exclusion (i.e., PVC nursery tubes or flexible mesh nursery tubes) would be positioned 1.0 to 1.5 square feet apart (i.e., 12 to 18 inches on-center between nursery tubes). If PVC nursery tubes are used, the entire plot would be covered with predator exclusion netting. After PVC or flexible mesh nursery tubes are removed, netting would be placed on the sediment surface for a period of time. Overall, predator exclusion gear (nursery tubes and/or netting) would be present for 3 years or more. Thereafter, no other predator exclusion gear would be used for the remainder of the culture cycle (2 to 4 years) through harvest. PVC nursery tubes with predator exclusion netting are most commonly used. As an option, flexible mesh nursery tubes made from high-density polyethylene (HDPE) may be used. Geoduck aquaculture is a cyclical activity, rather than an ongoing daily operation. The four activities associated with the geoduck culture cycle include: (1) gear placement and planting, (2) maintenance and grow-out, (3) gear removal, and (4) harvesting:

1. Gear Placement and Planting: Gear placement and planting activities include the installation of geoduck nursery tubes and predator exclusion netting (if utilized), and planting geoduck seed in nursery tubes. Three or four geoduck seed would be planted in each nursery tube. Sandflat substrate is selected for geoduck aquaculture and little bed preparation is typically required. If any larger features are present (e.g., woody debris), this material would typically be moved by hand to a new location or left in-place and planted around. Within the area proposed for conversion to geoduck aquaculture, clam and oyster harvesting would need to occur on the 25.5-acre project site prior to planting Sites A and B with geoduck. PVC nursery tubes are installed manually by pushing them into the substrate. Flexible mesh (HDPE) nursery tubes may be installed hydraulically, using low-pressure water pumped through a hose. The amount of physical disturbance that would be caused by installing nursery tubes would be similar for either PVC tubes or mesh HDPE tubes. The dense sandy substrate settles around the tubes quickly. The tubes extend a few inches above the tidelands. Predator exclusion nets would be installed in the same approximate timeframe, and within the same area as that disturbed during the installation of PVC nursery tubes.

Noise-generating activities during gear placement and planting would include the operation of boats and/or barges to transport the crew and gear, workers on-site installing nursery tubes and/or predator exclusion nets, and motors to operate low-pressure hoses for hydraulic gear placement (when this method is used). The number of workers would depend on the amount of area where gear placement and planting were to occur.

2. Maintenance and Grow-Out: Maintenance involves visiting the geoduck culture area when gear is present to survey for damaged gear or debris, checking the growth of geoducks, and surveying for debris when predator exclusion gear is not present. Nursery gear would be present for 3 years or more of the generalized 6-year geoduck culture cycle. PVC nursery tubes with predator exclusion netting would be used for approximately 2 years of growth during this time, after which the netting would be placed directly on the substrate of the geoduck bed following removal of the tubes. Similarly, flexible mesh nursery tubes would

be used for approximately 3 years of growth. Predator exclusion netting would not typically be used while HDPE flexible mesh tubes are present; however, similar to geoduck beds with PVC nursery tubes, predator exclusion netting would be placed directly on the substrate for a period of time following the removal of either type of nursery tubes so that juvenile geoducks could adjust to the lack of protection from predators. Netting at this stage of the grow-out cycle would be removed after approximately 6 months.

Gear would be added over approximately a 3-year period within the 25.5-acre proposed geoduck culture area, and gear would be present for approximately 3 years within each culture plot under a generalized 6-year culture cycle during grow-out. Based on this 3-year development schedule, there would be 1 year out of every 6 years when there would be no gear present on any of the culture plots, and 1 year when the entire 25.5-acre culture area would have predator exclusion gear. The remaining years in a generalized 6-year cycle would have some variation of these book-end conditions. Geoduck nursery gear may include a combination of PVC nursery tubes, predator exclusion nets, and HDPE flexible mesh nursery tubes. When predator exclusion gear is removed, the geoduck growing area would have a visual appearance comparable to other intertidal areas for the last half of the grow-out period.

Maintenance activities would be performed a minimum of once per month and directly following storm events. When gear is present, the project site would be visited more frequently.

Boats or barges utilized to transport crew and gear would be utilized. These trips would likely often be combined with crew transport to clam and oyster beds (existing operation) within the lagoon.

3. Gear Removal: Predator exclusion netting would be removed after the geoducks are of a size and depth in the sediment where additional protection from predators would not be necessary. Young clams usually bury themselves to a depth of about 14 inches for predator evasion. Geoduck gear removal would consist of removing nursery tubes and predator exclusion netting (if present). This activity would follow a similar pattern and level of disturbance to that described for gear placement and planting, with slightly more sediment disturbed during removal of nursery tubes compared to installation. Nursery tubes stabilize the sediment, which can make them more difficult to remove compared to initial installation.

The general rate of gear removal would be similar to the estimated rate of gear placement. Gear removal may occur in phases over the grow-out period.

Gear removal would involve the use of boats to transport the crew and gear, and operation of a pump and crane to remove the predator exclusion net (if used). For the most part, geoduck culture gear removal would be done by hand and with the aid of hand tools. Crew size would depend on the amount of area covered.

4. Harvesting. Harvesting would entail removing geoducks from the sediment using hand-operated water jet probes. The probe is a pipe about 18 to 24 inches long with a nozzle on the end that releases surface-supplied seawater from a one-inch diameter hose at a pressure approximately equivalent to that of a standard garden hose (e.g., 20 gallons per minute). Harvesting either “in the dry” (i.e., beach harvest during a low tide) or “in the wet” (i.e.,

dive harvest when the area is inundated) would be accomplished by 2- to 4-person teams. Harvesting in the dry would occur during a minus tide series (typically lasting 3 to 4 hours). Harvesting in the wet would occur during a high tide series, also lasting up to 4 hours. The time associated with harvesting on a daily basis would typically be shorter than geoduck gear placement and planting for technical and safety reasons, especially for harvesting in the wet.

Geoduck harvesting occurs year-around and is not limited by tidal height. Dive harvesting tends to be the dominant method during winter months (November through February) due to the prevalence of high daytime tides, the absence of suitable low tides for daytime beach harvest, and generally favorable market conditions during that period. Geoduck growth rates differ with the result that culture plots have a mix of harvest-sized and under-sized geoduck clams. Harvesters remove harvestable-sized geoduck, typically one per hole, and leave the under-sized clams for a later harvest. One or two harvest crews may work on a harvest plot at the same time.

Geoducks are harvested after 5 to 7 years of growth. For the purpose of this analysis, a generalized 6-year cultivation cycle was assumed, with the result that harvest would occur approximately once every 6 years within a culture plot. The overall area disturbed during harvest would be smaller on a daily basis compared to gear placement and planting; however, it would take longer, and the effort would be spread over a longer portion of a year. Harvesting would occur in the same basic pattern in which gear placement and planting occurred.

Small diesel- or gasoline-powered water pumps with hoses would be used in the geoduck harvest process, similar to the equipment described above for hydraulic gear placement activities. The pumps would be operated by small engines located on a barge offshore near the harvest plot. Based on the location of the proposed geoduck culture area, the pump barge would be anchored offshore a minimum of 375 feet from the nearest residential properties.

In Purdy, the Applicant has an existing upland facility utilized for the existing farm as a storage/transport facility. This upland facility would also be utilized for the current proposal. However, processing of the harvested aquacultural products (existing and proposed) is, and would continue to be, handled off-site.

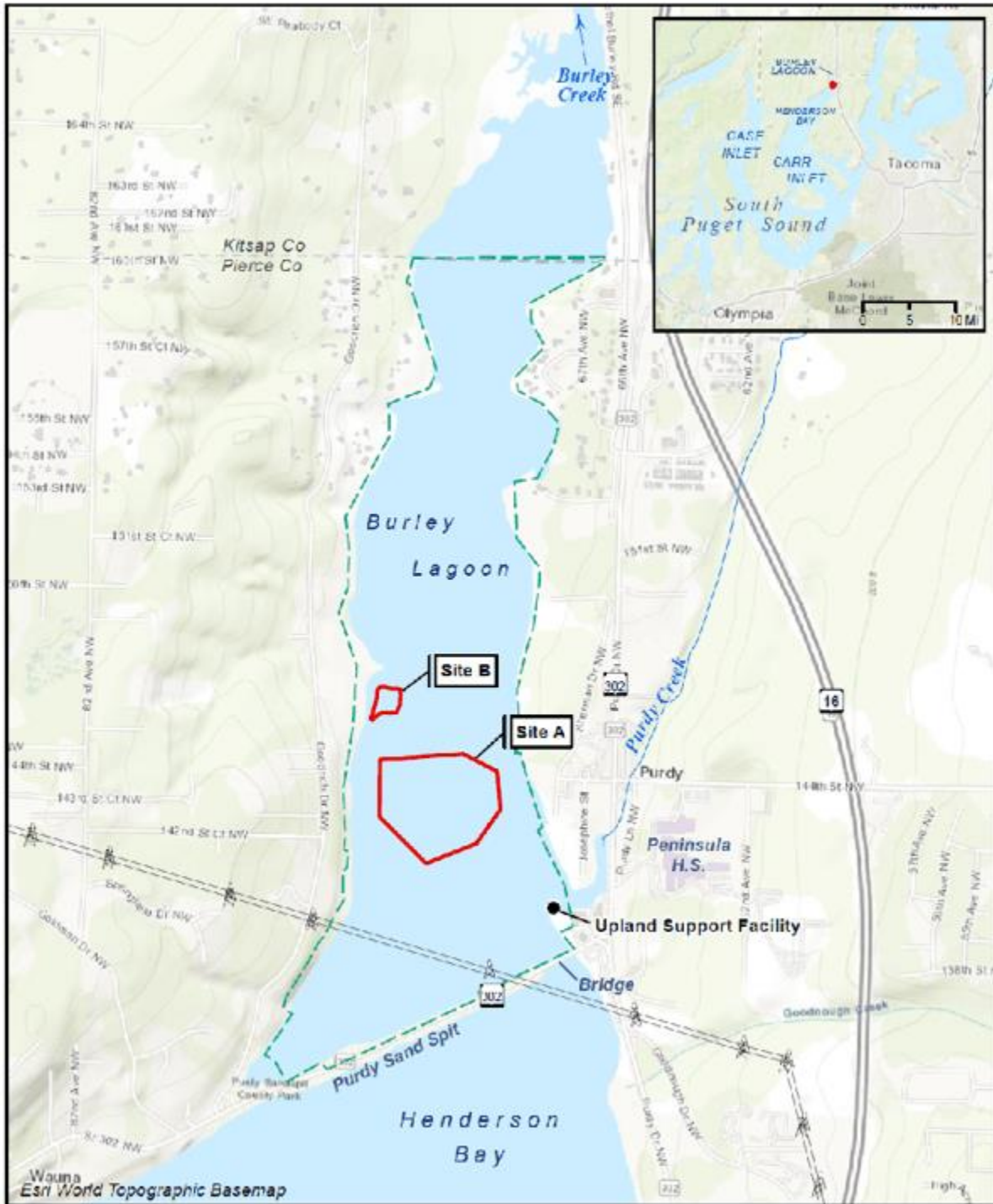
Staff Comment: The proposal would constitute cultivating geoduck with predator exclusion gear not previously done in the lagoon. Therefore, the proposal requires a shoreline permit(s).

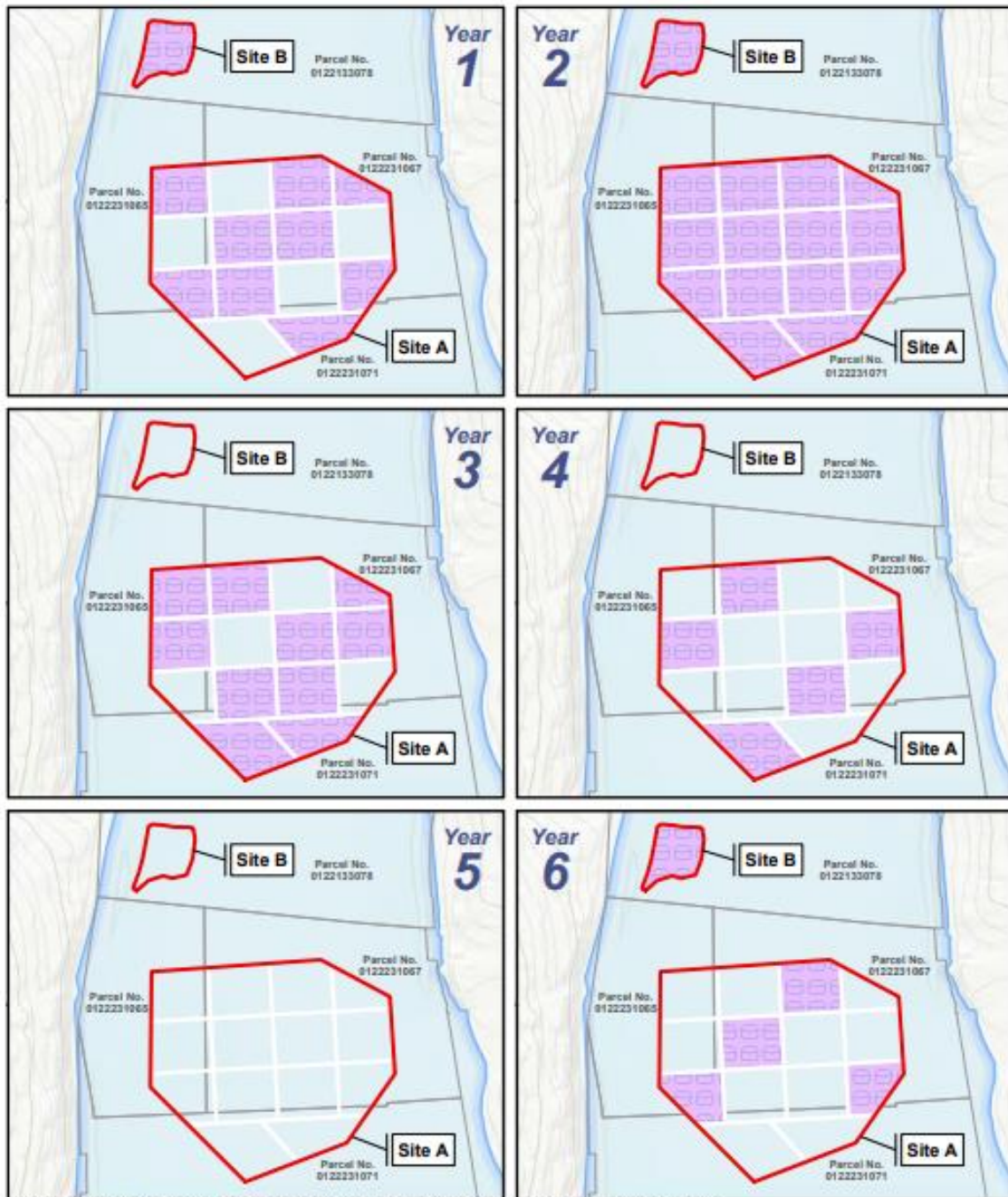
However, some allege that it is not accurate to call this a conversion as, they claim, aquaculture has never occurred in the deeper parts of the lagoon as is proposed. This concern was raised prior to the January 2023, issuance of the FEIS. FEIS section 2.2.2. states:

“A Taylor Shellfish representative responded to Pierce County that conversion in the context of this application is a change in culture type from an area currently approved for and used as clam and oyster culture to geoduck culture using predator exclusion gear for a portion of the grow-out period. The entire 300- acre clam and oyster farm within Burley Lagoon, including the subtidal area, is approved for continuing shellfish aquaculture activities. For this reason, the portion proposed for geoduck culture, whether currently active or not, is a conversion area. Farming activities have occurred throughout the 300-acre farm for almost 100 years. According to Taylor

Shellfish, there is no area within the Burley Lagoon farm footprint that has not had some type of farming activity over the years. The previous owner indicated that his farming practices included dredging for oysters in the deeper areas of the project site. Designating fallow ground within an active farm footprint is a viable farming practice, and still part of the authorized farm.”

Proposal Site Plans: The proposal would consist of sites A and B:





Note 1: Activities with no gear present include grow out and harvest. Planting and maintenance require gear.
 Note 2: Culture plots and activity per year are theoretical.

Gear Presence

- Absent
- Present
- Proposed Geoduck Culture Area



Figure 1-5.
Conceptual Cultivation Scheme
for Generalized 6-Year
Geoduck Culture Cycle
 2022

PPW Staff Review for Consistency with Plans, Policies, and Regulations

Staff Comment: This report lists (primarily) County codes (consisting of plans, policies, and/or regulations) that Staff finds are most pertinent to the review of this proposal. DEIS Section 3.4 (Regulatory Status, Regulatory Control, and Policy Background) contains some preliminary discussion regarding most of the codes listed below.

PIERCE COUNTY COMPREHENSIVE PLAN

Pierce County Code, Title 19A

In 1994, this plan was adopted. It is a policy document that guides growth and future land use decisions within all of unincorporated Pierce County.

Staff Comment: The plan is broadly written. The lagoon is abutted by the Key Peninsula Community Plan, Gig Harbor Peninsula Community Plan, and Pierce County Shoreline Master Program. All are subsets of the Comprehensive Plan and more directly pertinent to the proposal. However, one big takeaway from the Comprehensive Plan is that it has designated the unincorporated areas as being rural or urban. The lagoon is abutted by both.

PIERCE COUNTY COMMUNITY PLANS

Pierce County Code, Title 19A Chapter 14

Many parts of unincorporated Pierce County have community plans. These plans provide a more detailed sense of how a particular community wants to develop. These plans are created through a partnership between community members and the County.

Staff Comment: The lagoon is abutted by two community plans. The lagoon is not shown as being within the boundary maps of either. With that said, no Puget Sound shorelines abutting these two plans are shown as being within their boundaries. However, the intent of the plans is to apply to Puget Sound. In the case of the Burley Lagoon though, it is unclear where the boundary between the two is located (if there is one).

KEY PENINSULA COMMUNITY PLAN

Appendix G

In 2008, the plan went into effect. This plan applies to the area west of the Purdy bridge. The Comprehensive Plan has designated the area as rural. The most sizeable reference to aquaculture is on Pages 29-30 and states the following:

“The Key Peninsula has extensive marine shorelines containing high bluffs, bays and lagoons, sand spits, mud flats, sandy beaches, and many other features. These shoreline areas have historically offered locations for aquaculture, primarily the cultivation of oysters. Recently geoduck farmers have discovered that certain tidelands provide prime habitat for the cultivation of their product. This new aquaculture industry has the potential to create land use conflicts with upland homeowners as the beaches used for geoduck farming are altered during the initial state of the young geoducks lifecycle. Hundreds of tubes that are used to protect the geoduck protrude out of the sand and create a visual impact at low tide as well as inhibit the ability of people to walk on

the beach through the farm. The community planning board chose to encourage aquaculture activities throughout the Key Peninsula provided that farmers utilize best management practices and mitigate impacts to the environment and upland property owners.”

Staff Comment: This is a good summary of the issues at hand. However, the proposal would not involve hundreds of tubes but 37,026 tubes per acre. Topics related to best management practices and impacts to the environment/upland property owners are addressed later in this report.

GIG HARBOR PENINSULA COMMUNITY PLAN

Appendix E

In 2002, the plan went into effect. This plan applies to the area east of the Purdy bridge. The Comprehensive Plan has designated this area as having both rural and urban areas. Where abutting the lagoon, the east shoreline is primarily rural except for Purdy which is urban. Purdy is within the City of Gig Harbor’s urban growth area and therefore could potentially be annexed in the future.

There are references to aquaculture in multiple pages. However, the vast majority are brief references and not all are actual policies but instead background information. The most sizeable references are as follows:

A. Page 15: “The area was named Purdy in the 1880s when Joseph Purdy, a grocery store owner from Tacoma, offered to provide lumber for a school if the area were named after him. Four men, including Joseph Purdy, constructed a mill in the area in 1885. The mill complex also included a post office, grocery store, and workers’ housing. Mr. Ouelette, “the Frenchman,” opened the first Oyster Company in the area around 1900 processing and canning the oysters from the land on the spit he owned. In the 1890s, a drawbridge was constructed across Henderson Bay at Purdy. In 1919, another bridge was provided. The present bridge was constructed in 1938. In the early 1900s, most settlers in the area were in diversified farming, including fruit, dairy, and poultry farming. Oysters and clams were also important products from Purdy from the early settlement period.”

B. Page 102:

GOAL GH EC-2 Encourage, when and where economically and ecologically feasible, the retention and development of locally-oriented marine industry, aquaculture, local agriculture, and local forest products management.

GH EC-2.1 Recognize the importance of the natural resource industries of aquaculture, forestry, and marine resources.

GH EC-2.2 Encourage well-balanced and varied economic development which is clean, pollution free, and provides for employment opportunities.

Staff Comment: The plan acknowledges the historical use of the lagoon for aquaculture and has policies that conditionally support aquaculture.

The position of the Applicant is that a wide range of aquacultural practices (species and operations) have historically occurred in the lagoon. Therefore, they contend, the existing farm operations and proposed conversion are within this range. While the practices may have evolved over time, the

Applicant contends they have not expanded and are operated in a cleaner/more ecologically friendly manner. For example, they cite the tons of debris that they removed from the farm after taking over from the prior operator.

While the aquacultural practices in the lagoon have evolved over time, so have abutting upland land uses. Single-family residences are the main land use abutting the existing/proposed farm. Residences were located along the lagoon prior to the existing farm. However, their number has expanded/intensified.

The lagoon has experienced water quality issues over the years. Development/land uses abutting the lagoon and/or within the watersheds of the two creeks that feed into the lagoon, have resulted in adverse water quality impacts that have fluctuated over time. In addition, abutting upland property owners' express concerns that the farm has worsened water quality issues itself, and point to periodic algae blooms/crashes, as a sign that the lagoon has too much aquaculture as is. The Applicant and upland property owners have been working for years to address the water quality concerns.

The position of many opposed to the proposal is that the existing farm operations have expanded/intensified over the years (since the Applicant assumed operations) to the detriment of everything else in the lagoon (fish/wildlife, fish/wildlife habitat, recreation, abutting residences/residents, etc.). The proposed conversion of a portion of the farm to geoducks would make a bad situation worse they argue.

PIERCE COUNTY CRITICAL AREAS CODE

Pierce County Code, Title 18E:

Chapter 18E.40 of this Title regulates fish and wildlife species and habitats and establish habitat protection procedures and mitigation measures that are designed to achieve no "net loss" of species and habitat due to new development or regulated activities.

Staff Comment: The Applicant submitted a Critical Fish and Wildlife Habitat Area Review application (778794). This review has been substantially expanded upon by the various documents prepared through the course of the EIS. The following information is with regards to regulated features:

1. Estuarine wetland areas are present in scattered locations along the lagoon but, these wetlands are confined to the upper shoreline area and they are not within, or close enough to be impacted by, the proposal footprint.
2. The lagoon is regulated for a variety of reasons by Chapter 18E.40 -Regulated Fish and Wildlife Species and Habitat Conservation Areas:
 - A. The lagoon is a regulated estuary;
 - B. The lagoon provides habitat, or potential habitat, for a number of species regulated by PCC18E.40, including: Bull trout, Chinook/Coho/Chum/Pink salmon, forage fish, coastal cutthroat trout, and marbled murrelet (nesting sites are approximately 2 ½ miles inland from the ;lagoon); and
 - C. There is a heron rookery within several hundred feet of the proposal.

A full discussion of fish and wildlife species presence is found in Section 4.1.9 (Fish and Wildlife) of the Confluence Environmental Biological Resources Technical Report of the EIS.

3. The lagoon contains floating aquatic vegetation, such as Ulva but, submerged, rooted, vegetation such as eelgrass and kelp is lacking in the proposal area. Isolated occurrences of single turions of eelgrass (i.e. an individual blade of grass) have been identified approximately 150 feet south of the proposed farm site but, eelgrass * beds (i.e. areas large enough to be accurately defined as a “habitat” area) have been found only as close as the power transmission lines, several hundred feet to the south of the proposed farm. *Guidance from the Washington State Department of Natural Resources and United States Army Corps of Engineers explains that a “bed” of eelgrass consists of 3 turions within 1 meter of another turion.
4. The EIS concludes there will be minor to moderate impacts from the proposal to sediments, water quality, macroalgae, invertebrates, birds, certain marine mammals, and ESA listed species. The EIS discusses these impacts and related mitigation measures in detail in Chapter 3 of the DEIS, and, in summary, in Table 1-1 of Chapter 1 of the FEIS.

PIERCE COUNTY ENVIRONMENTAL CODE

Pierce County Code, Title 18D:

The purpose of this code is to provide County regulations implementing the State Environmental Policy Act (SEPA). The purpose of SEPA is to identify and analyze environmental impacts associated with governmental decisions (such as for this proposal). The SEPA review process helps identify how a proposal will affect the environment.

The most extensive SEPA review process consists of an EIS. An EIS is prepared when the lead agency determines a proposal is likely to have significant adverse environmental impacts. The EIS process is a tool for identifying and analyzing probable adverse environmental impacts (notably significant impacts), reasonable alternatives, and possible mitigation.

Staff Comment: When presented with the proposal, the County had some uncertainties about the potential for significant unavoidable adverse impacts, citing concerns that the size of the proposal (25 1/2 acres) would be large compared to other existing/approved geoduck farms and the site would be within a relatively enclosed waterbody with known opposition from shoreline residents. Impact analysis information available to the County at that time was based on smaller geoduck farms along exposed shorelines and did not include sites with multi-species aquaculture (clam, oyster, and geoduck). Therefore, the County and Applicant agreed that an EIS would be prepared. The EIS evaluated the proposal and two alternatives:

- Alternative 1 (Proposal): Geoduck aquaculture on 25.5-acres.
- Alternative 2: Geoduck aquaculture on 17 acres. An alternative of less environmental impact would allow geoduck farming anywhere within the 25.5-acre footprint, with no more than 17 acres under geoduck culture at any given time.

- Alternative 3: No Action. This alternative would continue existing shellfish aquaculture practices for clams and oysters on the 25.5-acre site.

For all three alternatives, several technical studies were performed by experts in their respective fields. The EIS studied sediments, aquatic vegetation, water quality, fish and wildlife, noise, recreation, aesthetics, as well as cumulative impacts and marine debris. The environmental baseline for the analysis were those conditions within the lagoon between approximately 2012 (when the Applicant assumed operations) and 2016 (when the EIS process commenced).

Section 18D.40.040 B. states, in part, that an EIS “shall be prepared by County staff, the applicant, or by a consultant selected by the County or the applicant.” For this proposal, the Applicant selected the author/consultants that prepared the EIS. It further states that preparation of the EIS shall be under the direction of the County. On that note, the County conducted extensive reviews of the DEIS and FEIS prior to issuance. Once the EIS was issued, it is a County document. The following are some key dates of the EIS process:

1. May 28, 2014: SEPA application (778793) submitted.
2. December 3, 2015: EIS application (823304) submitted.
3. October 5, 2016: County issues a DS, which started the EIS process.
4. October 25, 2016: Public meeting, regarding the DS/EIS, held at Peninsula High School to allow the public to comment on the proposed scope of the EIS.
5. September 30, 2020: Applicant submittal of the preliminary DEIS to the County.
6. October 4, 2021: DEIS issued.
7. January 6, 2023: FEIS issued.
8. January 20, 2023: FEIS appealed.

The FEIS is a companion document to the DEIS. The two documents together constitute the environmental review document (EIS). For most elements of the environment evaluated, the potential impacts of Alternative 1 were determined to range from negligible (at the lowest levels of detection, barely measurable, with no perceptible consequences) to minor (a detectable change, but the change would be localized, small, and temporary) in the context of the lagoon as a whole. No impacts were shown to have more than a temporary moderate impact based on best available science. While there would be notable differences with the alternative of less environmental impact (Alternative 2), the potential impacts of this alternative were also determined to be negligible to minor. With the mitigation listed in the EIS, it was determined that there would be no significant unavoidable adverse impacts. The mitigation will be included as recommended conditions of approval when the proposal is presented to the Examiner.

An EIS is not a permit approval itself, but the information it contains is to be considered (in conjunction with other relevant information (notably the codes listed in this report) by County Staff, KPAC/PAC, and Examiner.

The FEIS was appealed by the Coalition to Protect Puget Sound Habitat, Friends of Burley Lagoon, Tahoma Audubon Society, and Friends of Pierce County. They combined to file one appeal (application #1004944). The appeal alleges, in part, that the County EIS (DEIS/FEIS) is biased toward the Applicant and contains numerous untruths, defects, and flaws. The Examiner will consider the shoreline permit(s) and EIS appeal at the same public hearing(s). Staff will defend the EIS.

PIERCE COUNTY ZONING CODE

Pierce County Code, Title 18A:

The Comprehensive Plan has zoned the parcels abutting the lagoon as follows:

1. West shoreline: Rural 10 (R10) and, where some drainages are located, Rural Sensitive Resource (RSR).
2. South shoreline: Park and Recreation (PR) for publicly owned parcels and, where privately owned, R10.
3. East shoreline: R10. However, Community Center (CC) in Purdy. In addition, an Urban Sensitive Resource Overlay applies to the CC zone where Purdy Creek connects with the lagoon.

Staff Comment: This Code does not apply because it states that it does not apply in the water or to water dependent uses.

WASHINGTON STATE SHORELINE MANAGEMENT ACT

Revised Code of Washington (RCW), Chapter 90.58

Washington Administrative Code (WAC), Chapter 173-27

In 1971, the State Shoreline Management was passed by the Legislature. In 1972, it was affirmed by voters. RCW Section 90.58.020 states, in part, the following:

“It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall

be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state”.

Staff Comment: The Act gives the proposal preferential treatment as it is water dependent use. The Act also gives other uses preferential treatment. Such uses include, but are not limited to, single-family residences, recreation, and public access. This raises the potential for conflict. The Act acknowledges that there are competing uses for shorelines. At the same time, the lagoon is environmentally sensitive and its protection is paramount. This also raises the potential for conflict.

Tidal elevations in the lagoon below extreme low tide, subtidal areas deeper than approximately -4.5 feet Mean Lower Low Water (MLLW), meet the definition of a Shoreline of Statewide Significance. Approximately 6 to 7 acres of Site A proposed for conversion to geoduck culture have subtidal elevations that range from approximately -4.5 feet MLLW to approximately -23.1 feet MLLW). This area is a pool-like feature within Burley Lagoon, surrounded on all sides by more shallow intertidal areas.

PIERCE COUNTY SHORELINE CODES (SHORELINE MASTER PROGRAM)

Pierce County Code, Title 19D, Chapter 19D.190 (Policies)

Pierce County Code, Title 20 (Regulations)

In the 1970s, in response to the State Shoreline Management Act, the County adopted its own Shoreline Codes (known as the Shoreline Master Program). The code applies to the lagoon itself and the uplands within 200 feet of the lagoon.

Staff Comment: In 2014, when the proposal was submitted and deemed complete by the County, the Codes listed above were in effect. In 2018, the County adopted a new Shoreline Code (Title 18S). However, this proposal is vested to the prior Codes.

SHORELINE ENVIRONMENT DESIGNATIONS:

Policies (pages 14-20) / Regulations (Chapter 20.06)

In order to more effectively plan and manage shoreline resources through the development of a Shoreline Master Program, a system of categorizing shoreline areas through a classification called "Environments" has been utilized. This system is utilized as a mechanism for applying appropriate land and water use policies and regulations to distinctively different shoreline areas. The placement of an environment designation on a specific area or site was based on the existing development pattern, the biophysical limitations and capabilities of the shoreline area, and the goals and aspirations of the citizens.

A. RURAL RESIDENTIAL: The west shoreline of the lagoon has this designation:

- (1) Definition and Purpose: The Rural-Residential Environment is an area of medium intensity land use: that is, having use types and densities which do not imply large-scale alterations to the natural environment. It is an area that will serve as a buffer between the highly intensive development of the urban environment and the non-intensive development of rural environment. It is an Environment Designation that will allow medium intensity residential, commercial and agriculture development. The purpose of assigning an area to a Rural-Residential Environment is to allow for a natural transitional area between the sometimes incompatible intensive land uses of urban areas and the agricultural uses, recreational uses, and open space found in the rural environment.
- (2) General Regulations and Policies: The following general regulations and policies should apply to all shoreline areas classified in a Rural-Residential Environment:
 - (a) Existing land use patterns that reflect a suburban environment and also by virtue of existing development do not have the potential for supporting intensive agricultural or recreational activities should be designated as a Rural-Residential Environment if urban expansion is not anticipated;
 - (b) Medium intensity residential uses should be encouraged in the Rural-Residential Environment in order to relieve pressure from urbanized areas and provide living area for those wishing to enjoy a less densely developed shoreline.
- (3) Preferred Uses.
 - (a) Single family residence.
 - (b) Neighborhood commercial uses such as small service establishments

B. URBAN: The east shoreline of the lagoon has this designation:

- (1) Definition and Purpose: The Urban Environment is an area of high intensity land use including residential, commercial and industrial development. It is an environment designation that is particularly suitable for those areas which are presently subjected to intensive use pressure as well as those areas planned to accommodate urban expansion. The objective of assigning an area to an Urban Environment is to ensure optimum utilization of shorelines occurring within areas which are either presently urbanized or projected to be urbanized. This should be done by identifying areas physically suited to intensive use providing for intensive public use and by managing development so that it enhances and maintains the shorelines for a variety of urban uses.
- (2) General Regulations and Policies: The following general regulations and policies should apply to all shoreline areas classified as belonging in an Urban Environment:
 - (a) Shorelines planned for future urban expansion should present few biophysical limitations for urban activities.
 - (b) Because shorelines suitable for urban uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water dependent industrial and commercial uses requiring frontage on navigable waters.
 - (c) Priority should be given to urban developments for public visual and physical access to water in the urban environment.

- (d) Planning for the acquisition of urban land for permanent public access to the water in the urban environment should be encouraged.
- (e) To enhance waterfront and ensure maximum public use, industrial and commercial facilities should be designed to permit pedestrian waterfront activities. When practical, access points should be linked to non-motorized transportation routes.
- (f) Designation for future urban expansion should include provisions for maintaining those features unique to urban shoreline areas.

C. NATURAL: The south shoreline (Purdy sandspit) of the lagoon has this designation.

- (1) Definition and Purpose: The Natural Environment classification is intended to preserve those dynamic natural systems in a manner relatively free of human influence and to discourage or prohibit those activities which might alter the natural characteristics which make these shoreline areas unique and valuable. The designation of an area as a Natural Environment should be based on one or more of the following criteria:
 - (a) There should be present some unique natural or cultural feature considered valuable in its natural or original condition.
 - (b) The natural shoreline is relatively intolerant of intensive human use.
 - (c) The shoreline is valuable as a historical, cultural, scientific or educational site by virtue of its natural unaltered original condition.
 - (d) The site is unaltered and graphically depicts prevailing local physical systems such as feeder cliffs and spits.
 - (e) The shoreline area, which by virtue of strongly expressed local and/or statewide need, should be preserved in its original condition.
- (2) General Regulations and Policies: The following general regulations and policies should apply to all shoreline areas classified as Natural Environments:
 - (a) All developments which would potentially degrade or significantly alter the natural character should be regulated.
 - (b) The main emphasis of regulation in these areas should be on the preservation of natural systems and resources which will not allow man to consider any type of development which will effect the natural condition of the area.
 - (c) Physical alterations should only be considered when they serve to protect a significant, unique or highly valued feature which might otherwise be destroyed.
- (3) Natural Resource Systems to be Considered: The following is a partial list of natural or cultural features which might be preserved through inclusion in a Natural Environment: Spits, Bars, Lagoons, Typical river segments, High bank shorelines, Low bank shorelines, Sandy beaches, Wildlife habitats, Coves, Lakes, Marshlands, Swamps, Estuaries, Educational features, Scientific features, Historical features.

Staff Comment: Five designations were created. The designations apply to both the water and the uplands within 200 feet. From least to most restrictive they are Urban, Rural-Residential, Rural, Conservancy and Natural. The lagoon is surrounded by three different designations: Urban (east), Rural Residential (west), and Natural (south). For the island (north), the code is silent.

While the extent of their boundaries along the shoreline (land/water interface) is defined, the extent of their boundaries into the water is unclear. The codes do not address how to handle a situation where a lagoon, and a proposal in the middle, are abutted by three designations. What can be said though is that the proposal would be significantly closer to the east and west shorelines than the south shoreline. The proposal would be approximately 1,200 feet (at its closest point) from the Natural designation (sandspit).

The policies listed above for all three designations do not address aquaculture. For these reasons, Staff finds that the proposal is not inconsistent with those designations, especially given the distance from the Natural designation.

SHORELINE OF STATEWIDE SIGNIFICANCE:

Policies (pages 2-3)

In addition to the Shoreline Environment Designations listed above, certain shorelines also have been designated Shorelines of Statewide Significance.

Staff Comment: This was addressed previously in this report under the Washington State Shoreline Management Act section.

AQUACULTURAL PRACTICES: The following regulations and policies exist specific to aquaculture:

A. Definitions (20.24.010)

- (1) Aquaculture: The commercial culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, estuaries, and other natural or artificial water bodies.
- (2) Aquacultural Practices: The hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings, and growing areas. Methods of aquaculture include but are not limited to fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters in tidal and other shoreline areas.
- (3) Water Dependent Aquaculture Uses: All uses that cannot exist in any other location and are dependent on the water by reason of the intrinsic nature of the operation. Examples of water dependent uses include but are not limited to the following: 1. Boat launch facilities. 2. Fish pens. 3. Shellfish and seaweed rafts and floats. 4. Racks and longlines.
- (4) Water Related Aquaculture Uses: Those uses which are not intrinsically dependent on a waterfront location to continue their operation, but whose operation in Pierce County cannot occur economically at this time without a shoreline location. Examples of water related uses include but are not limited to the following: 1. Aquaculture commodities processing plants. 2. Culturing facilities. 3. Boat storage facilities.
- (5) Nonwater Related Aquaculture Uses. Those uses which do not need a waterfront location to operate though easements or utility corridors for access to the water may be desired. Examples of nonwater related uses include but are not limited to the following: 1. Warehouses and storage areas. 2. Office buildings. 3. Parking lots.

Staff Comment: The proposal meets the definitions of aquaculture, aquacultural practices, and water dependent aquacultural uses.

B. Policies (Pages 22-23)

- (1) The use of shoreline areas for aquaculture should be encouraged for the production of commodities for human consumption and utilization.
- (2) Shoreline areas having the extremely high prerequisite qualities for aquacultural uses should be preserved in order to protect Pierce County's aquacultural potential.
- (3) Aquacultural operations should be encouraged to locate at the above-mentioned sites in order to effectively maximize our use of the shoreline resource.
- (4) Aquacultural operations should be encouraged to locate and operate in a manner which will preclude damage to specific fragile areas and existing aquatic resources. These operations should generally maintain the highest possible levels of environmental quality.
- (5) The processing of aquacultural products should not have significant detrimental effects on adjacent water areas and wetlands.
- (6) Aquacultural enterprises should be located in areas where the navigational access of upland owners and commercial traffic are not significantly restricted.
- (7) Recognition should be given to the possible detrimental impact aquacultural development might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.
- (8) As aquaculture technology expands with increasing knowledge and experience, preference should be placed on underwater structures which do not interfere with navigation or impair the aesthetic quality of Washington shorelines.

C. Regulations/Guidelines for Reviewing Shoreline Substantial Development Permits (Chapter 20.24). In lieu of specific standards relating to design, bulk, and use, the following guidelines shall be applied to the County's reviewing authority to a site specific project application for a substantial development permit in arriving at a satisfactory degree of consistency with the policies and criteria set forth in this Chapter and Chapter 20.30. To this end, the County may extend, restrict, or deny an application to achieve said purpose.

- (1) The use of shoreline areas for aquaculture shall be encouraged for the production of commodities for human consumption and utilization.
- (2) Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelands.
- (3) Aquacultural operations shall be conducted in a manner which precludes damage to specific fragile areas and existing aquatic resources. These operations shall maintain the highest possible levels of environmental quality and compatibility with native flora and fauna.
- (4) Aquaculture operations shall be in conformance with the most current applicable local, state and federal regulations for water quality, noise, odor, and waste management. Where water withdrawal is required, a water registration permit must be obtained.
- (5) Conflicts between the aquaculture use and the navigational access of current upland residents, and intense recreational boating, commercial fishing, and other commercial traffic can be minimized.
- (6) Conflicts between the aquaculture use and the visual access of current upland residents or the general aesthetic quality of the shoreline can be minimized.

- (7) As technology expands with increasing knowledge and experience, preference shall be placed on feasible structures which minimize interference with navigation or the impairment of the aesthetic quality of the shoreline.
- (8) A baseline study at or near the proposed aquaculture site may be required only when the permit reviewing authority deems necessary.
- (9) Where an aquaculture operation is proposed for a constricted body of water, a flushing study may be required when the permit reviewing authority deems necessary.
- (10) Shoreline areas having the prerequisite qualities for aquacultural uses shall have priority in order to protect Pierce County's aquacultural potential.
- (11) Prior to beginning aquaculture operations, aquaculture permits must be obtained from the State Department of Fisheries.
- (12) The scale of aquaculture operations shall be in proportion with the surface area and configuration of the affected water body.
- (13) All water related and non-water related aquaculture structures may be required to be landscaped to screen them from adjacent uses to the shoreline.
- (14) Joint use of facilities such as boat launches and storage buildings is encouraged.
- (15) Aquaculture developments are to be maintained in a safe and sound condition.

Staff Comment: It appears that the proposal may meet all the policies (1-8) and regulations (1-15) notably provided the Applicant operates the farm in an environmentally responsible manner and/or based on the EIS conclusions (that the proposal would not result in any significant unavoidable adverse environmental impacts).

However, others assert that the proposal will result in significant impacts, the Applicant does not operate in a responsible manner, and/or the proposal/operations would impact other uses/abutting uses.

Regarding regulation 12 (above), from the perspective of Staff, this is the main issue at hand. Specifically, would the proposal, in conjunction with the existing farm, monopolize the lagoon to the detriment of everything else (fish/wildlife species/habitat, recreation, health/welfare of abutting residents, etc.). In other words, is there is a point when there is too much aquaculture within a particular body of water? This is a difficult question to answer considering that aquaculture has occurred in the lagoon for over 100 years, there are policies/regulations that encourage aquaculture, and the EIS determined that the proposal would not result in any probable significant adverse environmental impacts.

Note, the preface to the regulations above also references Chapter 20.30 (Commercial and Light Industrial Development). Staff has not included any policies and regulations related to that chapter because it does not appear applicable as this proposal does not involve the construction of a building, parking lot, etc. (that is more what that chapter is focused on). Further, Staff has also not included such criteria in past geoduck farm applications it has processed.

D. Uses Permitted (20.24.030):

- (1) Rural Residential and Urban designations: Aquaculture operations are permitted subject to approval of a Shoreline Substantial Development Permit. Section 20.76.030 A.1. states that "A substantial development permit shall be obtained for any development or use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel, or mineral, bulkheading, driving of piling, placing of obstructions, or any project of a permanent

or temporary nature which interferes with the normal public use of the surface of waters overlying lands subject to the Shoreline Management Act at any state of water level, and which development or use exceeds a cost or fair market value of \$2,500.00.” (Note, the fair market value amount has increased since the code was written).

- (2) Natural designation: Aquaculture operations are limited to fishing and the harvesting of wild and planted stocks for recreation and commercial purposes. Operations which do not involve the placement of structures or fill in the aquatic or terrestrial environment will be allowed as a Shoreline Conditional Use Permit, upon showing the activity will not substantially change the character of the site or adversely affect natural populations. Operations involving structural developments are prohibited. Note, a Shoreline Substantial Development Permit is also required.

Staff Comment: Both permit applications have been submitted and are addressed in the next section of this report.

SHORELINE PERMITS

A. Shoreline Substantial Development Permit:

Staff Comment: This report has previously addressed the codes that Staff finds are applicable to the review of this permit application. In addition, Staff provided comments regarding the proposal’s level of applicability and/or consistency with them.

Of note, under the Shoreline Code (Title 20) in effect at the time of application, the Examiner makes the final County decision on Shoreline Substantial Development Permits (unlike the current Shoreline Code).

B. Shoreline Conditional Use Permit (20.72.030): The following additional criteria apply to this permit application:

- (1) County Criteria (Section 20.72.030): The objective of a Conditional Use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses within each of the five environments can be expanded to include many uses. Uses considered to be Conditional Uses are those which may be permitted provided all of the following criteria are met:
 - (a) That there is some necessity for a shoreline site for the proposed use or that the particular site applied for is essential for this use.
 - (b) The use will cause no unreasonably adverse effects on the environment or other uses.
 - (c) That water, air, noise and other classes of pollution will not exceed the level customarily found in that particular environment.
 - (d) Design of the site will be compatible with the Master Program.
 - (e) The use will not interfere with public use or public shorelines.

(2) Additional State Criteria (WAC, Chapter 173-27, Section 173-27-160)

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the policies of the master program.
- (b) That the proposed use will not interfere with normal public use of the shorelines.
- (c) That the proposed use of the site and design of the project is compatible with other permitted uses within the area.
- (d) The use will cause no unreasonable adverse effects on the environment in which it is located.
- (e) That the public interest suffers no substantial detrimental effect.
- (f) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Staff Comments: The Shoreline Conditional Use Permit application is only required in the Natural designation. This designation does not allow aquacultural practices involving the placement of structures, fill, or structural developments. There has been debate over the years (in various jurisdictions and/or agencies) as to if tubes/nets are structures and/or fill. While the proposal would be approximately 1,200 feet to the north of the sandspit, as addressed previously in this report, the codes do not address how to handle a situation where a lagoon, and a proposal in the middle, are abutted by three designations.

Otherwise, it appears that the proposal may meet both the County and State Shoreline Conditional Use Permit criteria notably provided the Applicant operates the farm in an environmentally responsible manner and/or based on the EIS conclusions (that the proposal would not result in any significant unavoidable adverse environmental impacts).

However, again, others assert that the proposal will result in significant impacts, the Applicant does not operate in a responsible manner, and/or the proposal/operations would impact other uses/abutting uses.

Regarding State criteria (f), it addresses cumulative impacts. Section 3.5-1 of the FEIS states, in part, that: "Taylor Shellfish has indicated to Pierce County that the tideland parcels comprising the 25.5-acre site proposed for conversion to geoduck aquaculture currently constitute the only area within Burley Lagoon that has suitable substrate, water quality, and biophysical parameters for geoduck. All Burley Lagoon commercial shellfish tidelands are under the ownership of Yamashita family-held companies (Western Oyster Properties and Stout Property Investment), and Taylor Shellfish is the sole lessee responsible for shellfish aquaculture on these tidelands. Taylor Shellfish has confirmed to Pierce County that future applications for additional geoduck culture within Burley Lagoon are not foreseeable." Further, other area aquaculture activity was addressed previously in this report.

Unlike a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit also requires approval by the Washington State Department of Ecology after issuance of the County decision.

Recommended Conditions of Approval

For the report that will be prepared for the Examiner, it will include recommended conditions of approval should the Examiner choose to approve the proposal. The mitigation measures contained within the EIS will be included.

Burley Lagoon-Taylor Shellfish Farms IPR KPAC-PAC TB.docx