Staff Report

Appeal of Final Environmental Impact Statement (FEIS)
Burley Lagoon Geoduck Farm (Taylor Shellfish Farms)

Application Number: 1004944

Tax Parcel Numbers: 0122133078, 0122231065, 0122231067, 0122231071

Examiner’s Hearings: March 20, 21, 22, 25, 26, 27, 28, and 29, 2024, at 9:00 a.m.
These hearings are being held remotely, via Zoom, and at the Pierce County Public Services Building (Annex), public meeting room, 2401 South 35th Street, Tacoma, WA. To participate in the virtual hearings, visit www.Zoom.com and click “Join A Meeting” or call 253-215-8782, then enter the Meeting ID: 955 1213 2885, and Passcode: 183209, or follow this link: https://piercecountywa.zoom.us/j/95512132885?pwd=ejBhYkk1OS9KcEttR1BUIIFFvcUdpQT09
For additional questions regarding the virtual meeting process, please contact Amalia Lehmann at amalia.lehmann@piercecountywa.gov or at (253) 798-3292, for instructions.

Appeal Request: Appellants appeal the County’s Final Environmental Impact Statement (FEIS), issued on January 6, 2023. The FEIS involves a proposal requiring a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, to 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 ¾ mile from Kitsap County, within Sections 13, 14, and 23, Township 22 North, Range 1 East, in Pierce County Council District #7.
**Staff Recommendation:** The County is required to conduct a State Environmental Policy Act (SEPA) review of the proposal pursuant to Chapter 197-11 (SEPA Rules) of the Washington Administrative Code (WAC) and Title 18D (Development Regulations – Environmental) of the Pierce County Code (PCC). The most extensive SEPA review process involves the preparation of an Environmental Impact Statement (EIS). An EIS is prepared when the lead agency determines a proposal is likely to have probable significant adverse environmental impacts.

For this proposal, Pierce County is the lead agency and prepared an EIS. The Final Environmental Impact Statement (FEIS) is a companion document to the Draft Environmental Impact Statement (DEIS). The two, along with the DEIS Technical Appendices (prepared by experts in their respective fields), constitute the EIS. The EIS studied sediments, aquatic vegetation, water quality, fish and wildlife, noise, recreation, aesthetics, as well as cumulative impacts and marine debris. It also studied three alternatives consisting of the proposal (Alternative 1), 17-acre proposal (Alternative 2), and no action (Alternative 3).

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 Appellants have filed an appeal challenging the adequacy of the FEIS. As required by Section 1.22.090(G), Pierce County Code, the Appellants have the burden of proving that the decision of the Environmental Official (EO) in issuing the FEIS was clearly erroneous. After reviewing the information provided by the Appellants, the EO has concluded that they have not met their burden of proof. Accordingly, the EO recommends that the adequacy of the FEIS be upheld.

The EIS is not a permit approval itself, but the information it contains is to be considered in conjunction with other relevant information by, at a minimum, County Staff, Land Use Advisory Commissions, and the Pierce County Hearing Examiner in determining whether the two required shoreline permits should be approved. A separate report has been prepared for the shoreline permits.

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Jake Layman, Environmental Biologist, jacob.layman@piercecountywa.gov

Note: Dave Risvold was the assigned Environmental Biologist when the proposal was submitted. On December 29, 2023, he retired, and Mr. Layman assumed responsibilities for this proposal.

**Pierce County Online Permit Information:**
https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/departmentStatus?applPermitId=1004944
Application Data

Application Complete: January 20, 2023
Report Mailed: February 21, 2024
Appellants: Coalition to Protect Puget Sound Habitat, Friends of Burley Lagoon, Tahoma Audubon Society, and Friends of Pierce County
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Notice

As of the issuance date of this report, the County has not yet provided formal public notice of the upcoming hearings. This will occur, in accordance with applicable County regulations, prior to the hearings. However, the hearing dates have been posted for some time under the applicable application numbers (in the County permit system) and on the webpage created for this proposal (on the Planning and Public Works Department website).

Appeal Procedures (PCC 18D.10.080)

The procedures governing an appeal of a threshold determination, DEIS, FEIS, or SEIS are set forth in Pierce County Code, Chapter 1.22

Examiner – Powers and Duties (PCC 1.22.080 B.1.k.)

Appeals from the following environmental determinations: Appeals of final and revised threshold determinations; determinations of adequacy of final and supplemental environmental impact statements; and the exercise of SEPA substantive authority to condition or deny actions.
Appeals of Administrative Decisions to the Examiner (PCC 1.22.090 A.)

Right to Appeal. Any person aggrieved, or any officer, department, board, agency, district or bureau of the County or State affected by any decision of an administrative official, as set forth in Section 1.22.080 B., may file a notice of appeal.

Appellants’ Burden of Proof (PCC Section 1.22.090(G))

The appellant shall have the burden of presenting the evidence necessary to prove to the Hearing Examiner that the Environmental Official's determination is clearly erroneous.

Selected SEPA Rule/Law Provisions

Impacts (WAC 197-11-060(4))

(a) SEPA’s procedural provisions require the consideration of "environmental" impacts (see definition of "environment" in WAC 197-11-740 and of "impacts" in WAC 197-11-752), with attention to impacts that are likely, not merely speculative.

(b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal’s impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal’s effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (WAC 197-11-660). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant’s proposal, and the capability of

Threshold determination process (WAC 197-11-330)

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

(1) In making a threshold determination, the responsible official shall:

(a) Review the environmental checklist, if used:

(i) Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist; and
(ii) Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant.

(b) Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (WAC 197-11-960), and any additional information furnished under WAC 197-11-335 and 197-11-350; and
(c) Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws.

(2) In making a threshold determination, the responsible official should determine whether:
   (a) All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Part Six).
   (b) Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with WAC 197-11-055 through 197-11-070 and Part Six.

(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that:
   (a) The same proposal may have a significant adverse impact in one location but not in another location;
   (b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;
   (c) Several marginal impacts when considered together may result in a significant adverse impact;
   (d) For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.
   (e) A proposal may to a significant degree:
      (i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;
      (ii) Adversely affect endangered or threatened species or their habitat;
      (iii) Conflict with local, state, or federal laws or requirements for the protection of the environment; and
      (iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

(4) If after following WAC 197-11-080 and 197-11-335 the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.

(5) A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

**Impacts (WAC 197-11-752)**

"Impacts" are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in WAC 197 11-444.

**Mitigation (WAC 197-11-768)**

"Mitigation" means:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;
(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
(6) Monitoring the impact and taking appropriate corrective measures.

Probable (WAC 197-11-782)
“Probable” means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment” (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

Significant (WAC 197-11-794)
(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.
(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.
(3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

EIS Purpose (WAC 197-11-400)
(1) The primary purpose of an environmental impact statement is to ensure that SEPA's policies are an integral part of the ongoing programs and actions of state and local government.
(2) An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.
(3) Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis. The purpose of an EIS is best served by short documents containing summaries of, or reference to, technical data and by avoiding excessively detailed and overly technical information. The volume of an EIS does not bear on its adequacy. Larger documents may even hinder the decision making process.
(4) The EIS process enables government agencies and interested citizens to review and comment on proposed government actions, including government approval of private projects and their environmental effects. This process is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.
EIS Adequacy


In order for an EIS to be adequate under this rule, the EIS must present decisionmakers with a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. The rule of reason is "in large part a broad, flexible cost-effectiveness standard", in which the adequacy of an EIS is best determined "on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives."

Klickitat County Citizens, 122 Wn.2d at 633 (internal citations omitted). Procedural errors occurring during the EIS process are also reviewed under the rule of reason. Where such errors are not consequential, they must be reviewed as harmless. Klickitat County Citizens v. Klickitat County, 122 Wn. 2d at 637-38. Furthermore, SEPA does not require that every remote and speculative consequence of an action be included in the EIS. Cheney v. City of Mountlake Terrace, at 641. The "EIS is not a compendium of every conceivable effect or alternative to a proposed project, but is simply and aid to the decision making process." Id. at 641 (quoting R Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis § 14(a)(i) at 157 (4th ed. 1993)).

SEPA Requirements on Adequacy

The SEPA Rules contain the requirements for preparation of an adequate EIS. The FEIS was reviewed by the EO for compliance with these requirements prior to its release. Accordingly, the FEIS complies with WAC 197-11-402 (General requirements), 197-11-440 (EIS contents), and 197-11-448 (Relationship of EIS to other considerations).

WAC 197-11-448 seems particularly important in this appeal. It states "[t]he environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decision makers. Rather, an environmental impact statement analyzes environmental impacts and must be used by agency decision makers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgement mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decision making document."

Responsible Official’s Procedural Determinations Given Substantial Weight

RCW 43.21C.075(3)(d) requires that the Responsible Official's procedural determinations under SEPA be given substantial weight.
Summary of Appeal

The Appellants filed an appeal identifying 40 alleged errors. They assert that the proposed Burley Lagoon Geoduck Farm Environmental Impact Statement (EIS) determination of adequacy was based upon an erroneous interpretation of the law (SEPA) not supported by substantial evidence and clearly constituted an erroneous application of laws to facts.

Staff Comment: Many of the alleged errors are interrelated and/or provide no specifics as to how the EIS is deficient (other than alleging it is). Staff provides responses to all the alleged errors. However, to reduce repetition in this report, many responses may refer to the response in a related allegation and/or where the information is already found/reasonably addressed in the DEIS, FEIS and/or Technical Appendixes. Note, Staff has not identified every single location where a topic is addressed in the EIS. For the most part, the report only identifies those locations where it finds there is a more robust discussion. Note, the Technical Appendixes provide a “deeper dive” regarding certain topics that are summarized in the DEIS and/or FEIS.

Alleged Errors:

- 2.1.: The FEIS incorrectly determined the baseline condition of this entire FEIS as it starts with the wrong assumption: “to convert 25.5 acres from clam and oyster aquaculture to geoduck aquaculture.” The FEIS includes multiple statements referring to the “conversion” of clam and oyster aquaculture, when no legal or environmental conversion occurred or can occur on at least 16.6 sub-tidal acres of the 25.5 acres. DEIS p. 3.2.5-5 3rd line: “…subtidal areas where clams and oysters cannot be grown.” Page 3.1-2, paragraph 3 and 6-“Geoduck culture occurs between subtidal habitat (down to approximately -10 feet mean lower low water (MLLW) and intertidal habitat (up to +3 feet MLLW).”…”Clam and oyster culture typically occurs within the tidal range of approximately 0 feet MLLW to +5 feet MLLW.”

Staff Comment: The baseline condition of the site, upon which the environmental review has been based, is addressed at the following locations:

1. DEIS:
   A. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Page 3.1-1 / Section 3.1 (Affected Environment)

Conversion is addressed at 2.2.

- 2.2.: The FEIS erred with its statement: “This would not be new shellfish aquaculture area, but rather a conversion from clam and oyster culture to geoduck.” Page 1-3. This is inaccurate and contradicted by another statement in the FEIS where it does acknowledge geoduck was not planted as of the date of this application in the 25.5 acre 2012 application. According to RCW 79.135.010 (3) for the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.
Staff Comment: 2.2 is addressed at the following locations:

1. DEIS:
   A. Proposal and Alternatives:
      (1) Pages 2-5 to 2-8 / Section 2.4
   B. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Page 3.4-6 / Item 5
      (2) Page 3.4-8 / Item 1 (first paragraph)
      (3) Page 3.5-3 / Item 3 (first paragraph)

2. FEIS:
   A. Responses to DEIS Comments:
      (1) Pages 2-8 to 2-9 / Comments 21, 22, and 25
      (2) Pages 2-14 to 2-15 / Section 2.2.2
      (3) Page 2-90 / Comment 285
   B. Additions/Corrections to DEIS:
      (1) Pages 3-2 to 3-3 / DEIS Page 2-5

2.3.: The FEIS did not adequately address nonconforming uses. A claim of nonconforming use or development rights must be verified by Pierce County Planning and Public Works through an application for confirmation of legal nonconforming uses or development rights. (PCC 18.140.030 D).

Staff Comment: 2.3 does not state what nonconforming uses the EIS did not address. However, nonconforming is touched on in the following location:

1. FEIS:
   A. Responses to DEIS Comments:
      (1) Page 2-90 / Comment 284

2.4.: The FEIS was not prepared nor reviewed by the Responsible Official in an impartial manner, per WAC 197-11-420. SEPA was enacted specifically to protect public health, welfare, safety, and the environment. In the passage of SEPA, for example, the legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and was enacted to protect those rights, per RCW 43.21C.020. The response to comments received on the DEIS were not prepared by the County’s Responsible SEPA Official, and the County failed to adequately scrutinize drafts prepared by the Applicant to assure that the FEIS was objective, complete, and accurate. Therefore, the FEIS was not in-keeping with the intent of SEPA; in that, the environmental review be impartial nor found to be in the public's best interest by circumventing the purpose of SEPA.

Staff Comment: 2.4 is addressed at the following locations:

1. FEIS
   A. Responses to DEIS Comments:
      (1) Pages 2-3 and 2-4 / Comments 5 and 6
Note, the EIS identifies the County Responsible Official as being Sean Gaffney. However, it was two of his staff, Ty Booth and Dave Risvold, who led the review of this proposal. Since 2000, they have handled multiple geoduck farm applications. Some applications have involved days long public hearings before the Examiner and Washington State Shorelines Hearings Board. They reviewed and edited the DEIS and FEIS prior to their issuance (and reviewed all the technical appendixes).

County Staff sought to have an EIS prepared due to the likelihood of the proposal having probable significant adverse environmental impacts. An EIS is a time and labor-intensive process for Staff. Staff did not seek to go through that process simply to “rubber-stamp” the drafts. Staff finds that the EIS reasonably addresses the issues, that it was prepared in a professional manner, and with appropriate interdisciplinary methodology. The fact that the Appellants disagree with aspects of the EIS does not equate to the EIS being impartial or biased.

- **2.5. (as revised by the Appellants):** The Pierce County SEPA Responsible Official incorrectly concluded that the FEIS was adequate to evaluate the geoduck proposal’s probable significant impacts while dismissing net loss of ecological functions and mitigation.

  **Staff Comment:** 2.5 is addressed in the following locations:

  2. Net Loss (No Net Loss):
     A. FEIS
        (1) Responses to DEIS Comments:
           (a) Pages 2-84 to 2-88 / Section 2.5.1
  3. Mitigation:
     A. DEIS
        (1) Summary:
           (a) Pages 1-4 to 1-24 / Section 1.6
        (2) Affected Environment, Potential Impacts, and Mitigation Measures:
           (a) Page 3.1-5 / Section 3.1 (Mitigation Measures)
           (b) Pages 3.3-1 to 3.3-5 / Section 3.3
     B. FEIS
        (1) Summary:
           (a) Pages 1-10 to 1-31 / Section 1.6

- **2.6. (as revised by the Appellants):** The FEIS erred by too narrowly applying/interpreting SEPA’s significance standard and failed to address and integrate SEPA review and the Shoreline Management Act regarding all impacts to the land vegetation, wildlife and aquatic habitats.

  **Staff Comment:** 2.6 is addressed at the following locations:

  1. SEPA significance standard:
A. DEIS:
   (1) Affected Environment, Potential Impacts, and Mitigation Measures:
       (a) Pages 3.1-1 to 3.1-2 / Section 3.1 (Potential Impacts)

B. FEIS:
   (1) Responses to DEIS Comments:
       (a) Page 2-6 / Comment 15

2. SEPA and Shoreline Management Act (SMA) integration:
   A. DEIS:
      (1) Affected Environment, Potential Impacts, and Mitigation Measures:
          (a) Page 3.1-5 / Section 3.1 (Relationship to Plans/Policies)
          (b) Pages 3.4-3 to 3.4-14 / Sections 3.4.2 to 3.4.6
   B. FEIS:
      (1) Responses to DEIS Comments:
          (a) Page 2-85 / Comment 266

• 2.7.: Staff Comment: The Appellants deleted this appeal item since filing their application.

• 2.8.: The FEIS failed to include an adequate alternatives analysis. The FEIS is required to look at alternatives “that would avoid, or minimize adverse impacts, or enhance environmental quality” as is required by SEPA.

Staff Comment: 2.8 is addressed at the following locations:

1. DEIS:
   A. Summary:
      (1) Page 1-3 / Section 1.4
      (2) Page 1-4 / Section 1.5
      (3) Pages 1-25 to 1-27 / Section 1.7
   B. Proposal and Alternatives:
      (1) Page 2-19 to Figure 2.6-3 / Section 2.6

2. FEIS:
   A. Summary:
      (1) Pages 1-5 to Figure 1-5 / Section 1.5
      (2) Pages 1-32 to 1-34 / Section 1.7
   B. Responses to DEIS Comments:
      (1) Pages 2-19 to 2-20 / Comment 72
      (2) Pages 2-20 to 2-21 / Section 2.2.4
   C. Additions/Corrections to DEIS:
      (1) Page 3-1 / DEIS Page 1-3
      (2) Page 3-2 / DEIS Page 1-26
      (3) Pages 3-4 to 3-5 / DEIS Pages 3.4-11, 3.5-1, and 3.5-3
In addition, Washington Administrative Code (WAC) 197-11-440 (5) addresses the analysis of alternatives. Item (b) states “Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.” The same WAC Section, item (d), states, in part, that “When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal’s objective on the same site.” Taylor Shellfish confirmed over the years that the 25.5-acre site identified in the current application is the only area within the estuary that presently/currently has suitable substrate, water quality, and other biophysical characteristics for cultivating geoduck.

- 2.9.: The FEIS failed to address an alternative that fully protects eelgrass production, protects the subtidal refugia area, or provides additional enhancement of the environment to offset direct, indirect, and cumulative impacts while minimizing impacts upon these resources as required under SEPA/SMA.

**Staff Comment:** 2.9 is addressed at 2.8.

- 2.10.: The FEIS failed to adequately address the disappearance of eelgrass between 2013 and 2017 in the Project Area, Site A, and an area near the head of Purdy Creek estuary, which is when shellfish operations were in effect, as documented by surveys conducted by the applicant and submitted to Pierce County (FEIS 2.3.4; Wenman-Morse-McDonell, December 2, 2021, Section D).

**Staff Comment:** 2.10 is addressed at 2.12.

- 2.11.: The FEIS erred by not identifying and discussing reasonable mitigation to address adverse impacts to eelgrass and the implement the No Net Loss requirements of the eelgrass found in the Project Area, Site A, as well as the eelgrass at the head of Purdy Creek estuary (WAC 173-26-241, WAC 173-26-221, WAC 173-26-231, WAC 173-26-201).

**Staff Comment:** Eelgrass is addressed at 2.12. No-Net Loss is addressed at 2.5.

- 2.12.: The FEIS selectively and misleadingly referenced studies on the dispersal and habitat of eelgrass in the Project Area and ignored studies to show that the Project Area habitat is conducive to eelgrass meadows and colonization from nearby sites (Comment #143. FEIS 2.3.4) (Sumoski, SE, RJ Orth, 2012; Orth, RJ, e.al., 1994; Johnson, A.J., et. al., 2020; Tubbs, C.R. and J.M. Tubbs, 1983; Thom, R.M., et. al., 2021).

**Staff Comment:** 2.12 is addressed at the following locations:

1. DEIS:
   A. Summary:
2.13.: The FEIS failed to adequately disclose and address the total number of polluting plastics required for geoduck operations. These numbers not only include PVC, but also the number of polyethylene (HDPE) tube caps, HDPE zip ties, and predator nets. Furthermore, the FEIS failed to adequately disclose and address the massive number and size of the HDPE polluting predator nets and rebar metal pieces. The FEIS has not shown or mitigated the total environmental impact of placing 37,026 PVC tubes/mesh tubes over 25.5 acres for a total of 944,163 tubes over the life of the growing seasons, plus another 944,163 tube caps, plus another 944,163 zip ties and the undisclosed number of predator nets and rebar. This massive addition of fragmenting, degrading HDPE and cracking, and slow sanding of PVC aquaculture gear results in significant release of microplastics that have probable, significant, and adverse environmental impacts that cannot effectively be mitigated through industry practices and compliances. These massive number of plastic gear is also the source of debris that not only washes up on the shoreline, but also sinks to the Lagoon bottom sheading plastic particles and scouring the bottom ecosystem while continuing to shed plastic particles. (FEIS 2-71, Responses to Comment #208; FEIS 3.2.8-10, 3.2.8.3 Debris, 1) (WAC 197-11-060, WAC 197-11-330).

Staff Comment: 2.13 is addressed in the following locations:

1. Gear:
   A. DEIS:
      (1) Proposal and Alternatives:
         (a) Pages 2-10 to 2-15 / Section 2.5.1
         (b) Figure 2.6-3
      (2) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.1-2 to 3.1-4 / Section 3.1
B. FEIS:
   (1) Summary:
       (a) Figure 1-4
   (2) Responses to DEIS Comments:
       (a) Page 2-10 / Comment 31
       (b) Page 2-12 / Comment 42
       (c) Pages 2-17 / Comments 60 to 63
       (d) Pages 2-31 to 2-32 / Comment 99
       (e) Pages 2-49 to 2-50 / Comment 144
       (f) Page 2-59 / Comment 170
       (g) Pages 2-69 to 2-70 / Comments 203 and 204
       (h) Pages 2-71 to 2-72 / Comment 209
   (3) Additions/Corrections to DEIS:
       (a) Page 3-3 / DEIS Page 2-10
       (b) Page 3-4 / DEIS Page 3.2.7-2

2. Plastics, microplastics, debris, etc.:
   A. DEIS:
      (1) Summary:
          (a) Pages 1-23 to 1-24 / Table 1-1
      (2) Proposal and Alternatives:
          (a) Pages 2-29 to 2-30 / Section 2-7
          (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
          (a) Pages 3.2.8-10 to 3.2.8-16 / Section 3.2.8.3
          (b) Page 3.5-8 / Section 3.5.2
   B. FEIS:
      (1) Summary:
          (a) Pages 130 to 131 / Table 1-1
      (2) Responses to DEIS Comments:
          (a) Page 2-16 / Comments 56 and 59
          (b) Page 2-17 / Comment 62
          (c) Pages 2-46 to 2-47 / Comment 139
          (d) Pages 2-70 to 2-72 / Section 2.3.16
          (e) Pages 2-73 to 2-78 / 2.3.18
          (f) Page 2-106 / Comment 330

The issues related to plastics, microplastics, and debris are raised on nearly every geoduck farm proposal that the County has processed. As noted in FEIS and DEIS Table 1-1, while there have been reports of aquaculture debris for years throughout the beaches of South Puget Sound, neither the County nor State have prohibited the use of aquaculture gear as it would effectively result in a geoduck farm moratorium. Regardless, the EIS extensively addressed the topics. Further, since the FEIS was issued, the Applicant has informed the County that it will not be installing PVC tubes at the farm. Instead, only flexible and/or rigid HDPE mesh tubes will be utilized.

- 2.14.: The FEIS fails to adequately address this proposed singular impact and the cumulative impact on marine species to adding the undisclosed massive number of HDPE oyster bags, HDPE clam nets and oyster polyolefin 3 strand rope that are already used in Burley Lagoon.
Staff Comment: Cumulative impacts related to gear, plastic, etc. are addressed at 2.13. Cumulative impacts, in general, are addressed at 2.16. In addition, the following is of note regarding wildlife:

1. FEIS:
   A. Responses to DEIS Comments:
      (1) Page 2-18 / Comments 65
      (2) Pages 2-49 to 2-50 / Comment 144
      (3) Page 2-58 / Comment 165
      (4) Pages 2-59 to 2-60 / Comment 171

   • 2.15.: The FEIS erred in not considering the plastic polluting aquaculture gear singular impact (non-recycling debris) and cumulative impact from plastics in the waters known to attract and concentrate toxic chemicals.

Staff Comment: Singular and cumulative impacts related to gear, plastic, etc. are addressed at 2.13. Cumulative impacts, in general, are addressed at 2.16. In addition, the following is of note:

1. FEIS:
   A. Responses to DEIS Comments:
      (1) Pages 2-62 to 2-63 / Comment 178
      (2) Pages 2-73 to 2-74 / Comment 215
      (3) Pages 2-75 to 2-76 / Comments 222 and 224

   • 2.16.: The FEIS has failed to adequately address the cumulative impact issues as described in the DEIS comments: including baseline, past impacts, likely impacts, buildout, critical habitat, forage fish/salmon, subtidal refugia (located in site A, FLUPSY, and channels), birds, restoration (Wenman-Morse-McDonell, December 2, 2021, page 4).

Staff Comment: 2.16 is addressed, in a general sense, in the following locations. More focused cumulative impact discussion occurs under other allegations (such as 2.13):

1. DEIS:
   A. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Page 3.1-5 / Section 3.1
      (2) Pages 3.5-1 to 3.5-8 / Section 3.5

2. FEIS:
   A. Responses to DEIS Comments:
      (1) Pages 2-93 to 2-102 / Sections 2.6 to 2.6.1

   • 2.17.: The FEIS inadequately considered the impact on threatened and endangered species and their food source. The marbled murrelet, a State endangered and federally threatened species whose numbers dropped 14.9% annually in Central Puget Sound from 2012-2020 (see Jan Wold DEIS comments) preys primarily upon forage fish, including sand lance, anchovy, herring, and juvenile rockfish. The western grebe is a State candidate for listing as endangered, threatened or sensitive and the common loon, a State sensitive species, also both feed primarily on forage fish.
**Staff Comment:** A variety of fish and wildlife, including Endangered Species Act (ESA) listed, are addressed in the following locations.

1. **DEIS:**
   A. Forage Fish:
      (1) Summary:
         (a) Pages 1-12 to 1-13 / Section 1.6
      (2) Proposal and Alternatives:
         (a) Pages 2-26 to 2-27 / Section 2-7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.4-1 to 3.2.4-12 / Section 3.2.4
         (b) Page 3.5-6 / Section 3.5.2
   B. Non-ESA-Listed Fish
      (1) Summary:
         (a) Pages 1-13 to 1-15 / Section 1.6
      (2) Proposal and Alternatives:
         (a) Page 2-27 / Section 2-7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.5-1 to 3.2.5-10 / Section 3.2.5.1
         (b) Pages 3.5-6 to 3.5-7 / Section 3.5.2
   C. Non-ESA-Listed Birds (including Western Grebe)
      (1) Summary:
         (a) Pages 1-15 to 1-17 / Section 1.6
      (2) Proposal and Alternatives:
         (a) Pages 2-27 to 2-28 / Section 2-7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.5-10 to 3.2.5-17 / Section 3.2.5.2
         (b) Pages 3.5-6 to 3.5-7 / Section 3.5.2
   D. Non-ESA-Listed Mammals:
      (1) Summary:
         (a) Pages 1-17 to 1-18 / Section 1.6
      (2) Proposal and Alternatives:
         (a) Page 2-28 / Section 2-7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.5-17 to 3.2.5-22 / Section 3.2.5.3
         (b) Pages 3.5-6 to 3.5-7 / Section 3.5.2
   E. ESA-Listed Species (including Chinook Salmon and Marbled Murrelet):
      (1) Summary:
         (a) Pages 1-18 to 1-20 / Section 1.6
      (2) Proposal and Alternatives:
         (a) Page 2-28 / Section 2-7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.5-22 to 3.2.5-35 / Section 3.2.5.4
         (b) Pages 3.5-6 to 3.5-7 / Section 3.5.2
2. FEIS:
   A. Forage Fish:
      (1) Summary:
         (a) Pages 1-18 to 1-19 / Section 1.6
      (2) Response to DEIS Comments:
         (a) Pages 2-44 to 2-46 / Section 2.3,8
   B. Non-ESA-Listed Fish
      (1) Summary:
         (a) Pages 1-19 to 1-21 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Page 2-18 / Comment 65
         (b) Page 2-29 / Comment 95
         (c) Pages 2-51 to 2-53 / Section 2.3.10
   C. Non-ESA-Listed Birds (including Western Grebe)
      (1) Summary:
         (a) Pages 1-21 to 1-23 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Pages 2-53 to 2-59 / Section 2.3.11
   D. Non-ESA-Listed Mammals
      (1) Summary:
         (a) Pages 1-23 to 1-24 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Pages 2-59 to 2-60 / Section 2.3.12
   E. ESA-Listed Species (including Chinook Salmon and Marbled Murrelet)
      (1) Summary:
         (a) Pages 1-24 to 1-26 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Pages 2-46 to 2-51 / Section 2.3.9
         (b) Pages 2-60 to 2-64 / Section 2.3.13
      (3) Additions/Corrections to DEIS:
         (a) Page 3-3 / DEIS Section 3.2.5.4
         (b) Pages 3-5 to 3-6 / DEIS Page 3.5-9

3. Technical Appendixes
   A. Biological Resources Technical Report / Appendix 1

   - 2.18.: The FEIS did not adequately address continued disturbance on 25.5 acres of this forage fish critical habitat. The decrease in forage fish numbers and the impact on this decrease on the many species that rely on them for food have not been adequately addressed in the FEIS. The numbers of forage fish are declining, and some are threatened, or endangered. The Burley Lagoon shellfish farm is partially in a herring spawning area, about four miles from a sand lance spawning area, and one mile for a surf smelt spawning area.

   Staff Comment: 2.18 is addressed at 2.17.
2.19.: The FEIS depends heavily on information in very outdated Biological Opinions provided for shellfish farming for the Army Corps of Engineers by the U.S. Fish and Wildlife Service (USFWS, Reference Number 01EWFW00-2016-F-0121) and the National Marine Fisheries Service (NMFS, Reference Number WCR-2014-1502). The FEIS relies incorrectly on these extremely old and out-of-date Biological Opinions, started in 2014 and 2016, to determine the impact on a number of Threatened and Endangered Species in this permit areas as well as in Burley Lagoon (Comments #59, 144, 151, 263, 296, 312, 313). These Biological Opinions were also based on far less acreage than has now been approved in Puget Sound for shellfish farming. There would need be a re-initiation of formal consultations (see 50 CRF 402.16) to be completed before Biological Opinions could be relied upon for species impacted by this geoduck farm.

Staff Comment: 2.19 is addressed in the following locations:

1. DEIS:
   A. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Pages 3.4-1 to 3.4-3 / Section 3.4.1
   B. FEIS:
      (1) Responses to DEIS Comments:
         (a) Page 2-18 / Comment 64
         (b) Page 2-84 / Comment 263
         (c) Pages 2-88 to 2-92 / Section 2.52
         (d) Page 2-95 / Comment 296
         (e) Page 2-101 / Comment 312
         (f) Page 2-102 / Comment 314

In addition, the County sent notice of the DEIS to the United States Army Corps of Engineers (Corps), United States Fish and Wildlife Services (USFWS), and National Marine Fisheries Service (NMFS). The County received no comments from the Corps and USFWS.

WAC 197-11-545, states that, for consulted agencies, “If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part Four of these rules.”

In contrast, the NMFS Aquaculture Coordinator for Oregon and Washington did provide the following comment:

“I've reviewed the Taylor Shellfish draft EIS for the Burley Lagoon Geoduck Farm, and talked with our staff that oversee shellfish and ESA/EFH consultations. I thought it would be helpful for you to know that each of the proposed alternatives within the draft EIS would fit within our ESA/EFH Programmatic Consultation with the Army Corps of Engineers (WCR 2014-1502). The existing Floating Upwell System as part of Taylor operations in Burley Lagoon that would need individual consultation (FLUPSY’s are not covered within the existing programmatic). The Draft EIS provides a thorough analysis of the range of effects to ESA and EFH under the jurisdiction of NOAA Fisheries.”
• 2.20.: The *FEIS* has not shown that the proposed acres of geoducks, when added to the other shellfish farming in Burley Lagoon, will not have a negative impact on species in the food chain residing in Burley Lagoon and Puget Sound (Comments #105, 106, 107, 109). Zooplankton are also filtered out by geoducks, but this additional impact on the food chain has not been adequately addressed.

*Staff Comment:* A variety of fish and wildlife utilize Burley Lagoon. They are addressed at 2.17. Plankton, including Zooplankton, is addressed in the following locations:

1. **DEIS:**
   A. Summary:
      (1) Pages 1-8 to 1-9 / Section 1.6
   B. Proposal and Alternatives:
      (1) Pages 2-26 / Section 2-7
      (2) Pages 2-31 to 2-32 / Table 2-2
   C. Affected Environment, Potential Impacts, and Mitigation:
      (1) Pages 3.2.3-1 to 3.2.3-13 / Section 3.2.3
      (2) Page 3.5-5 / Section 3.5.2

2. **FEIS:**
   A. Summary:
      (1) Page 1-14 to 1-15 / Table 1-1
   B. Responses to DEIS Comments:
      (1) Pages 2-33 to 2-36 / Section 2.3.3

3. **Technical Appendixes:**
   A. Biological Resources Technical Report / Appendix 1
      (1) Carrying Capacity Analysis / Appendix C
      (2) Response to Scoping Comments / Appendix F

Related discussion occurs in 2.27 under the topic of Water Quality.

• 2.21.: The *FEIS* did not adequately analyze Pacific Herring, a State candidate species for listing in Washington as endangered, threatened, or sensitive and a federal species of concern. In the areas of South Puget Sound that were sampled in 2012, the herring numbers were depressed or declining and in the 2016 sample numbers in one area were depressed and were critical in two areas.

*Staff Comment:* 2.21 is addressed at 2.17.

• 2.22. (as revised by the Appellants): The *FEIS* failed to adequately respond to comments on the DEIS regarding the evaluation of all indirect and cumulative impacts of the proposed geoduck farm together with unauthorized expansion of the shellfish operation by the applicant without baseline studies outside of the 25.5 acre tract project area.

*Staff Comment:* 2.22 is addressed at the following locations:
1. Cumulative impacts: Addressed at 2.16.

2. Unauthorized expansion: Addressed at 2.34


- **2.23.:** The FEIS failed to address the comment letters that addressed the impact of both the ESA-listed threatened and endangered Chinook Salmon, along with the hatchery-raised Chinook Salmon, which are both found in Burley Lagoon (Comments #140, 141, 142, 143, 144, 147).

  *Staff Comment:* 2.23 is addressed at 2.17.

- **2.24.:** The FEIS failed to consider impacts of geoduck operations found within the *Cumulative Impacts Analysis for 2017 Nationwide Permit 48* prepared by U.S. Army Corps of Engineers, especially considering the lack of rigor and lack of validation of the Conservation Measures employed by the shellfish operations within Burley Lagoon (Comments #314).

  *Staff Comment:* 2.24 is addressed at the following locations:

  1. Impacts: On October 5, 2016, the County issued a Determination of Significance (DS). The DS started the EIS process. The DS included the scope of, or elements of the environment to be studied in, the EIS. The DS was not appealed.

  2. Cumulative impacts: Addressed at 2.16.

  3. Violations: Addressed at 2.34

- **2.25.:** The FEIS did not adequately address the impact of the introduction of HDPE mesh tubes, nor the impact compared to the use of rigid polyvinyl chloride (PVC) tubes. Each type of tube is made from different types of plastics, and each behave differently in the water column when displaced (floating vs. sinking). (FEIS Page 1-34, para. 2).

  *Staff Comment:* 2.25 is addressed at 2.13.

- **2.26.:** The FEIS neglected to consider adverse environmental cumulative impacts of plastic debris in Burley Lagoon. This plastic used during shellfish operations is and will be found in the project areas, debris washed up on the beach, and debris sunk to the bottom. (WAC 197-11-330(3)(c), WAC 197-11-330(3)(a)(e)(d)(ii)).

  *Staff Comment:* 2.26 is addressed at 2.13.
• **2.27.:** The FEIS did not adequately address the impact of shellfish operations on changing current and movement of sediment. The sediment transport model did not account for the entrapment and restrictive movement of sediment caused by the predator exclusion netting (Comment #274). The FEIS failed to address the raising of sediment temperature from the proposed canopy/predator netting.

*Staff Comment:* 2.27 is addressed in the following locations:

1. **DEIS:**
   A. Sediments:
      (1) Summary:
         (a) Pages 1-5 to 1-7 / Table 1-1
      (2) Proposal and Alternatives:
         (a) Page 2-25 / Section 2.7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.1-1 to 3.2.1-18 / Section 3.2.1
         (b) Pages 3.5-4 / Section 3.5.2
   B. Water Quality:
      (1) Summary:
         (a) Page 1-7 / Table 1-1
      (2) Proposal and Alternatives:
         (a) Pages 2-25 to 2-26 / Section 2.7
         (b) Pages 2-31 to 2-32 / Table 2-2
      (3) Affected Environment, Potential Impacts, and Mitigation Measures:
         (a) Pages 3.2.2-1 to 3.2.2-7 / Section 3.2.2
         (b) Pages 3.5-4 to 3.5-5 / Section 3.5.2

2. **FEIS:**
   A. Sediments:
      (1) Summary:
         (a) Pages 1-11 to 1-13 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Pages 2-13 to 2-14 / Comment 47
         (b) Pages 2-21 to 2-27 / Section 2.3.1
         (c) Pages 2-28 to 2-29 / Comment 94
         (d) Page 2-87 / Comment 274
         (e) Pages 2-96 to 2-98 / Comment 298
      (3) Additions/Corrections to DEIS:
         (a) Pages 3-5 to 3-6 / DEIS Section 3.5.3
   B. Water Quality:
      (1) Summary:
         (a) Pages 1-13 to 1-14 / Section 1.6
      (2) Responses to DEIS Comments:
         (a) Pages 2-27 to 2-33 / Section 2.3.2

3. **Technical Appendixes:**
   A. Biological Resources Technical Report / Appendix 1
   B. Hydrodynamic and Sediment Transport Modeling Study / Appendix 3
• 2.28.: The FEIS did not adequately address the impact of many years of shellfish operations across large acreages on the decline of biodiversity within Burley Lagoon (Comments #309, 310).

_Staff Comment:_ Cumulative impacts are addressed, in general, at 2.16.

• 2.29.: The FEIS did not adequately address the impact of expansion of shellfish farming to include new species (geoducks) into new areas (subtidal waters) within Burley Lagoon (Comments #295, 296, 297).

_Staff Comment:_ The EIS addressed both intertidal and subtidal areas. This is related to the conversion issue in 2.2.

• 2.30.: The FEIS did not adequately address the impact of physical damage to the benthic ecosystem by the trampling from ongoing and increased shellfish operations nor mitigate the damage caused by site preparation (Comment #123, 124).

_Staff Comment:_ 2.30, regarding invertebrates, is addressed at the following locations:

1. **DEIS:**
   A. Summary:
      (1) Pages 1-11 to 1-12 / Section 1.6
   B. Proposal and Alternatives:
      (1) Page 2-26 / Section 2.7
      (2) Pages 2-31 to 2-32 / Table 2-2
   C. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Pages 3.2.4-1 to 3.2.4-12 / Section 3.2.4
      (2) Page 3.5-6 / Section 3.5.2

2. **FEIS:**
   A. Summary:
      (1) Pages 1-17 to 1-18 / Section 1.6
   B. Responses to DEIS Comments:
      (1) Pages 2-39 to 2-44 / Sections 2.3.5 to 2.7.7

• 2.31.: The FEIS did not adequately address the impact from the disturbance and the re-suspension/release and bioavailability of potential toxins (natural or man-made) found in the sediment layers during geoduck planting and harvesting (Comment #215) (Eggleton, J. and K.V. Thomas, 2002).

_Staff Comment:_ 2.31 is addressed at 2.27.

• 2.32.: The FEIS did not provide an adequate analysis of the impacts of this 25.5 acres of geoduck farming and harvesting on carbon release, nor does it adequately review how much carbon will be released over the life of this geoduck farm (Comment #319). (Garbutt, A., et.al., 2014)
Staff Comment: 2.32 is addressed at 2.33.

- 2.33.: The FEIS did not provide an adequate analysis of where this released carbon goes and its effect on the dissolved oxygen and acidification of Burley Lagoon and South Puget Sound. The Washington Department of Ecology has already recognized Burley Lagoon as a degraded waterbody due to low oxygen levels. The total cumulative impact of carbon release from this farm in combination with all other shellfish farms into the waters of Puget Sound is not addressed adequately in the FEIS (Comment #319).

Staff Comment: As noted previously in this report, an “EIS is not a compendium of every conceivable effect or alternative to a proposed project”. With that said, carbon is primarily considered relative to the Carrying Capacity Analysis in the Technical Appendix listed below:

1. FEIS:
   A. Responses to DEIS Comments:
      (1) Pages 2-102 to 2-103 / Comments 315 and 319

2. Technical Appendixes
   A. Biological Resources Technical Report / Appendix I
      (1) Carrying Capacity Analysis / Appendix C

- 2.34.: The FEIS misrepresented the comment that Conservation Measures will be used to mitigate several impacts/concerns (Comment #138, Errata Page 1-3, FEIS 1.1, FEIS Table 1.1); yet violations reported to Pierce County in the last few months demonstrate that these conservations Measures are not followed. Additional reports of violations of the applicant have been submitted since 2013, including debris, noise, sea lion harassment (Comment #26). A responsible official failed to consult with the public to investigate the physical site to determine veracity (RCW 43.21C.031).

Staff Comment: Pierce County Code Enforcement is responsible for investigating complaints of alleged violations. For the existing farm, in September 2013, and December 2014, two formal complaints were submitted. The complaints alleged that the existing farming activity was not legal, and that Taylor Shellfish had expanded existing farming activities. The County investigated these allegations. In 2015, the County issued two letters stating, in part, that the existing farm is legal, and that Taylor’s activities did not result in an expansion of farm activities. The determination was not appealed.

For the existing farm, no further formal complaints have been filed with Code Enforcement. Regardless, for the proposed farm, Staff processing those applications routinely receive complaints regarding the existing farm activities (wildlife impacts/harassment, navigation concerns, debris, noise, lights, odors, etc.). Staff considers the allegations. However, the existing 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. Finally, absent any additional formal complaints being received, Staff have not determined whether the allegations are violations. The existing farm is not before the Examiner, only the proposed conversion of a portion of the farm. This topic is addressed in the following locations:
1. FEIS
   A. Responses to DEIS Comments:
      (1) Pages 2-4 to 2-5 / Comment 9
      (2) Page 2-9 / Comment 26
      (3) Page 2-55 / Comment 156
      (4) Page 2-82 / Comment 256
      (5) Page 2-86 / Comment 271
      (6) Page 2-87 / Comment 275
      (7) Pages 2-95 to 2-96 / Comment 297

   • 2.35.: The FEIS did not seek clarification of comments from authors, thus updated the FEIS while not fully understanding the issues and impacts (Comments #148, 32, 45, 124). This concern was raised to Pierce County on 9/12/2002.

   **Staff Comment:** The County SEPA regulations are contained in Pierce County Code, Title 18D. They do not address this appeal item. The State SEPA regulations are contained in Washington Administrative Code (WAC), Chapter 173-27. Sections 197-11-500 to 197-11-570 address comments. Notably see Sections 197-11-550 to 560. The regulations also do not address the issue of “seeking clarification” from authors.

   At the State level, the Department of Ecology is responsible for SEPA. On their website, Ecology has a webpage with a wealth of information regarding SEPA. One such document is their SEPA Handbook. Pages 71-72 provide additional guidance on commenting effectively. Pages 59-60 address FEIS and responding to comments on the DEIS. The handbook also does not address the issue of “seeking clarification” from authors other than providing the following tip:

   “It may be appropriate to respond to a comment on the draft EIS with “comment noted” when the comment lacks substance (e.g. “I don’t want the proposal”). If the comment is generic or nonspecific (e.g., “There will be unacceptable air quality impacts”), the response might be: “Your comment was noted, but the comment was not specific enough to respond to. Please see Section XX of the final EIS for a discussion of air quality impacts and possible mitigation.”

   The County considered the comments as written and did not seek clarification from the authors. However, since the proposal was submitted in 2014, the County has gained “context” regarding many topics. The context has been gained due to the voluminous comments received at various steps along the review process, from multiple authors, and often regarding similar topics. Further, Staff has experience dealing with many (not all) of the same topics on past geoduck applications it has processed.

   • 2.36.: The FEIS is not clear in defining the scope of operations and implies that it will increase the scope outside of the project area by modifying the suitable substrate through the addition of shell/gravel (Comment #290; Errata Page 1-3 & Errata Page 3.5-1; and DEIS page 3.2.5-5 Maintenance and Grow-out).

   **Staff Comment:** Shell/gravel are addressed at 2.37. Scope is addressed at the following locations:
1. DEIS:
   A. Proposal and Alternatives:
      (1) Page 2-19 to Figure 2.6-3 / Section 2.6

2. FEIS:
   A. Summary:
      (1) Page 1-5 to Figure 1-5 / Sections 1-4 and 1-5
   B. Responses to DEIS Comments:
      (1) Pages 2-19 to 2-20 / Comment 72
      (2) Pages 2-91 to 2-92 / Comments 289 and 290
   C. Additions/Corrections to DEIS:
      (1) Page 3-1 / DEIS Page 1-3
      (2) Pages 3-4 to 3-5 / DEIS Pages 3.5-1 and 3.5-3

- 2.37.: The FEIS mischaracterized that spat spread on the bottom does not have the same impact as gravel (Comment #35, 45). Throughout the DEIS, the spread (frosting) of gravel and shells is mentioned as a means for site preparation and their impact must be addressed.

   *Staff Comment:* For the existing farm, the EIS addresses the addition/potential addition of gravel/shell to the substrate. Further, the EIS includes mitigation (for the proposed farm) regarding the use of gravel/shell. The origin of this mitigation is from Federal permitting. However, the EIS mitigation regarding this topic appears redundant as the Applicant asserts that they do not use gravel/shell for the existing farm and would not be utilized for the proposed farm. Further, Staff have never seen gravel/shell proposed for any other geoduck farm applications it has processed. The following are some locations where the topic is addressed:

1. DEIS:
   A. Proposal and Alternatives:
      (1) Page 2-15 / Section 2.5.2
   B. Affected Environment, Potential Impacts, and Mitigation Measures:
      (1) Pages 3.3-1 to 3.3-5 / Section 3.3

2. FEIS:
   A. Responses to DEIS Comments:
      (1) Page 2-10 / Comment 32
      (2) Page 2-13 / Comment 45
      (3) Page 2-27 / Comment 90
      (4) Pages 2-39 to 2-40 / Comment 123

- 2.38.: The FEIS did not accurately measure noise and sound level use all types of actual equipment used in geoduck operations (e.g., barge, compressors, hydraulic pumps, etc.).

   *Staff Comment:* 2.38 is addressed at the following locations:

1. DEIS:
A. Summary:
   (1) Pages 1-20 to 1-21 / Section 1-6
B. Proposal and Alternatives:
   (1) Pages 2-28 to 2-29 / Section 2.7
   (2) Pages 2-31 to 2-32 / Table 2-2
C. Affected Environment, Potential Impacts, and Mitigation Measures:
   (1) Pages 3.2.6-1 to 3.2.6-10 / Section 3.2.6
   (2) Page 3.5-7 / Section 3.5.2

2. FEIS:
   A. Summary:
      (1) Pages 1-26 to 1-28 / Section 1.6
   B. Responses to DEIS Comments:
      (1) Pages 2-52 to 2-53 / Comment 151
      (2) Page 2-59 / Comment 169
      (3) Page 2-61 to 2-62 / Comment 177
      (4) Pages 2-64 to 2-68 / Section 2.3.14
   C. Additions/Corrections to DEIS:
      (1) Page 3-3 / DEIS Section 3.2.6

3. Technical Appendixes:
   A. Biological Resources Technical Report / Appendix 1
   B. Noise Assessment / Appendix 2

- **2.39.:** The FEIS misrepresented Wester Oyster Properties harvesting methods to include the use of dredges (Errata Page 2-5). Jerry Yamashita’s video interview stated that he only harvested by hand and rakes (Jerry Yamashita’s video interview 2013).

  **Staff Comment:** On March 1, 2014, Mr. Yamashita also provided a written declaration. There are 15 items in the declaration. Item 12 states “Western Oyster Company harvested oysters by various methods, including by hand and with the use of dredges.” Item 14 states “Western Oyster Company used various types of gear and equipment at the Burley Lagoon farm, including dredge barges, baskets, grow-out bags, and clam netting. The company also used poles with markers to identify areas for setting the barges and for planting.”

1. FEIS
   A. Responses to DEIS Comments:
      (a) Pages 2-8 to 2-9 / Comment 25
   B. Additions/Corrections to DEIS:
      (a) Pages 3-2 to 3-3 / DEIS Page 2-5.

- **2.40.:** The FEIS mischaracterized and minimized the primary impacts on the interests of the Burley Lagoon residents and mitigation measures that could reduce or eliminate those impacts; ownership of subtidal lands, debris, escapement, non-permitted expansion, degradation of marine fish and bird habitat. (FEIS Cover Memo; Comment #208).
Staff Comment: Staff disagrees for the reasons addressed throughout this report.

- 3.1.: The Appellants respectfully request that the Hearing Examiner find that the FEIS is inadequate and inconsistent with SEPA’s requirements and remand the EIS to staff for preparation of an adequate FEIS.

Staff Comment: Staff disagrees for the reasons addressed throughout this report.

Burden of Proof

According to the Pierce County Code, Chapter 1.22.090.G., "A decision of the Administrative Official shall be entitled to substantial weight. Parties appealing a decision of the Administrative Official shall have the burden of presenting the evidence necessary to prove to the Hearing Examiner that the Administrative Official's decision was clearly erroneous." Further, RCW 43.21C.075(3)(d) requires that the Responsible Official's procedural determinations under SEPA be given substantial weight.

Staff Comment: The Appellants have not met their burden of proof in presenting the evidence necessary to prove that the Administrative Official's (the Environmental Official's) decision is clearly erroneous. The EIS analysis meets all requirements of SEPA and the test for adequacy. The appeal should be denied, and the adequacy of the EIS upheld.

List of Exhibits Provided to Pierce County Hearing Examiner:

Please note: the Staff Report, Exhibit List, and complete set of exhibits may be found at this link: https://piercecounty.imagerelay.com/fl/edab381c0bd4ecd89366d3de60036ff

Burley Lagoon Geoduck Farm-Taylor Shellfish Farms Appeal SR-TB.docx