



Project No. _____
Appeal Sequence No. _____

APPEAL OF AN ADMINISTRATIVE DECISION

TO THE THURSTON COUNTY HEARING EXAMINER COMES NOW Taylor Shellfish Company, Inc., d/b/a Taylor Shellfish Farms, on this 6th day of July 2010, as an APPELLANT in the matter of an administrative decision rendered on June 30, 2010, by Thurston County Resource Stewardship Department (Mike Kain, Thurston County Planning Manager), relating to Project #2010100540; Request for Authorization to Install a Geoduck Bed at Tax Parcel #11905230300.

THE APPELLANT, after review and consideration of the reasons given by the administrative official for his/her decision, does now, give written notice of APPEAL to the Hearing Examiner of said decision under the provision(s) of the ordinances marked below.

- | | |
|--|---|
| <input type="checkbox"/> 17.09.160 SEPA | <input type="checkbox"/> 18.10.070 PLATTING & SUBDIVISION |
| <input type="checkbox"/> 17.15.410 CRITICAL AREAS | <input checked="" type="checkbox"/> 19.12.010 SHORELINE PROGRAM |
| <input type="checkbox"/> 20.60.060 ZONING | <input type="checkbox"/> 21.81.070 LACEY UGA ZONING |
| <input type="checkbox"/> 22.62.050 TUMWATER UGA ZONING | <input type="checkbox"/> 23.72.190 OLYMPIA UGA ZONING |

STATE THE BASIS OF THE APPEAL AS OUTLINED IN SECTION "A" ON REVERSE SIDE OF THIS FORM.

See attached Notice of Appeal on Administrative Decision dated July 6, 2010.

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

AND REQUESTS that the Hearing Examiner, having responsibility for review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the administrative decision.

William Taylor

APPELLANT NAME PRINTED

William J. Taylor

SIGNATURE OF APPELLANT

Address SE 130 Lynch Road, Shelton, WA 98584

Phone: 360-426-6178

Please do not write below - for Staff Use Only:

Filed with Development Services this ____ day of _____ 20__, by _____

Filing fee deposit of \$1710.00*, receipt no. _____ by _____.

*The filing fee deposit will cover staff time (for Planning, Environmental Health & Development Review), and Hearing Examiner time to hear the appeal and issue a decision.

THURSTON COUNTY
PROCEDURE FOR APPEAL OF ADMINISTRATIVE DECISION TO HEARING EXAMINER

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

The following is a description of the rules of procedure for appeals before the Hearing Examiner.

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1. A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;
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F. Hearing Examiner Decision will be issued within **ten (10) working days of the hearing unless additional time is agreed to by the parties.**

BEFORE THE HEARING EXAMINER
OF THURSTON COUNTY

TAYLOR SHELLFISH FARMS,

Appellant.

No.

NOTICE OF APPEAL OF
ADMINISTRATIVE
DECISION

I. IDENTIFICATION OF APPELLANT

1. Appellant. Appellant Taylor Shellfish Company, Inc., dba Taylor Shellfish Farms, is a Washington corporation. Taylor's mailing address and telephone number are as follows:

Taylor Shellfish Farms
c/o William Taylor, Vice-President
SE 130 Lynch Road
Shelton, WA 98584
Telephone: (360) 426-6178
E-mail: BillT@taylorshellfish.com

2. Appellant's Representative. Name, mailing address, and telephone number for Appellant's attorneys are as follows:

Samuel W. Plauché
Amanda M. Stock
Plauché & Stock LLP
811 First Avenue, Suite 320
Seattle, WA 98104
Telephone: 206-588-4188
Fax: 206-588-4255
E-mail: billy@plauchestock.com
amanda@plauchestock.com

NOTICE OF APPEAL OF ADMINISTRATIVE
DECISION - 1

PLAUCHÉ & STOCK LLP
811 First Avenue, Suite 320
Seattle, WA 98104
Phone: 206-588-4188 / Fax: (206) 588-4255

II. DECISION APPEALED

1
2 1. Taylor appeals an Administrative Decision issued by Thurston County's
3 Resource Stewardship Department for Project #2010100540; Request for Authorization to
4 Install a Geoduck Bed at Tax Parcel #11905230300. Thurston County issued the
5 Administrative Decision in the form of a June 30, 2010, letter from Mike Kain, Thurston
6 County Planning Manager, to Diane Cooper, Taylor's Agent, for the above-referenced
7 project. This letter is attached hereto as Exhibit A.

8 2. Thurston County issued the Administrative Decision in response to a
9 Master Application and supporting documentation Taylor submitted to the County on
10 February 25, 2010, for a proposed geoduck aquaculture operation on private tidelands.
11 Despite Taylor's position that a permit is not required for this operation, Taylor submitted
12 these materials at the County's request so that the County could initiate a review to
13 determine whether it agreed with Taylor's position. A copy of the Master Application and
14 supporting documentation is attached hereto as Exhibit B.

15 3. Thurston County's Administrative Decision concluded that a Shoreline
16 Substantial Development Permit is required for Taylor's proposed geoduck aquaculture
17 operation because that operation meets the County Shoreline Master Program definition of
18 "substantial development."

19 4. Taylor, as the Applicant for Project #2010100540, is significantly and
20 adversely affected by the Administrative Decision.

III. ISSUES ON APPEAL

21
22 1. The County's determination that Taylor's proposed geoduck bed requires a
23 substantial development permit is contrary to applicable law, including the Washington
24 Shoreline Management Act ("SMA") and the Thurston County Shoreline Master Program,
25

1 and is not supported by the factual record before the County.

2 2. In addition, the County's Administrative Decision is the result of an
3 improper and unlawful procedure that violated the Planning Enabling Act, the Thurston
4 County Code, and the appearance of fairness doctrine. The process that led to the
5 County's Administrative Decision denies Taylor its constitutional guarantee of due
6 process.

7 IV. **GROUNDS FOR APPEAL**

8 **A. The County's determination that Taylor's proposal constitutes** 9 **"development" under the SMA is contrary to law and unsupported by the** 10 **facts.**

11 1. The County's determination that Taylor's proposed geoduck bed requires a
12 substantial development permit is inconsistent with applicable law, including the SMA.
13 Under the SMA, a Substantial Development Permit is only required for activities that
14 meet the definition of "development." "Development" is defined in the SMA as follows:

15 a use consisting of the construction or exterior alteration of structures;
16 dredging; drilling; dumping; filling; removal of any sand, gravel, or
17 minerals; bulkheading; driving of piling; placing of obstructions; or any
18 project of a permanent or temporary nature which interferes with the
19 normal public use of the surface of the waters overlying lands subject
20 to this chapter at any state of water level.

21 RCW 90.58.030(3)(s). As discussed in detail below, each of the County's bases for
22 determining that Taylor's proposed geoduck bed constitutes "development" is contrary to
23 the SMA definition of that term.

24 2. The County's first basis for determining that Taylor's proposed geoduck
25 bed is "development" is that the placement of tubes and netting on the beach constitutes
"construction of a structure." This issue was previously considered by the Washington
Attorney General in AGO 2007 No. 1 (January 4, 2007). In that Opinion, the Washington

1 Attorney General found that the placement of geoduck tubes and netting on beaches does
2 not constitute "construction of a structure" under the Shoreline Management Act.

3 3. The County's Administrative Determination cites to the definition of
4 "structure" in the County's Shoreline Master Program, which is different from the
5 definition of "structure" in the Washington Department of Ecology's Shoreline
6 Guidelines. Ecology Guidelines define "structure" as follows:

7 [A] permanent or temporary edifice or building, or any piece of work
8 artificially built or composed of parts joined together in some definite
9 manner, whether installed on, above, or below the surface of the ground
or water, except for vessels.

10 WAC 173-27-030(15). The County Shoreline Master Program provides a different, and
11 arguably broader, definition of "structure":

12 Anything constructed in the ground, or anything erected which requires
13 location on the ground or water, or is attached to something having
14 location on or in the ground or water.

Thurston County Shoreline Master Program, Section 4.

15 4. The County's Administrative Determination implies that these definitional
16 differences provide a basis for the County's disregard for the conclusions in AGO 2007
17 No. 1. However, the County is constitutionally prohibited from adopting local ordinances
18 that conflict with the SMA. To the extent the County's Shoreline Master Program
19 requires a Substantial Development Permit for activities that are not "development" under
20 the SMA, the County's Master Program is unconstitutional.

21 5. In addition, the County's use of the SMP definition of "structure" instead
22 of the definition of "structure" in Ecology's Shoreline Guidelines violates the County's
23 own SMP. The County's SMP prohibits application of Master Program provisions that
24 conflict with Ecology Guidelines and the SMA. In the event of a conflict between a local
25

1 or "Regional" rule and a WAC, the SMP provides that the WAC prevails. The County's
2 definition of structure is in conflict with the definition of structure in Ecology's
3 Guidelines and apparently resulted in a different result as to whether certain activities are
4 development (and therefore require a substantial development permit). Under the
5 County's own SMP, the definition of "structure" in Ecology's Guidelines should prevail.

6 6. The County's second basis for determining that Taylor's proposed geoduck
7 bed is "development" is that the method of harvest will remove some amount of sand and
8 other minerals from the seabed. Again, the Attorney General expressly rejected this
9 argument in AGO 2007 No. 1, finding:

10 Finally, if sediment is disrupted during harvest, only a minimal amount
11 of sediment is actually removed with the clam. This minimal amount
12 of materials removed does not comport with a reasonable interpretation
13 of the statutory language concerning "removal of materials." See
Black's Law Dictionary 464 (8th ed. 2004), "*de minimis non curat lex*"
(the law does not concern itself with trifles).

14 In addition, the Department of Ecology has separately opined that the harvest of wild
15 geoduck, which employs the same method as that proposed by Taylor, does not constitute
16 "development" under the SMA. In accordance with these authorities, the harvest of
17 geoducks, as proposed by Taylor, does not constitute "development" requiring a
18 Substantial Development Permit.

19 7. Third, the County contends in its Administrative Determination that the
20 tubes and netting employed in geoduck farming "serve as an obstruction on the beach."
21 However, the tidelands on which Taylor proposes to place its geoduck farm are privately
22 owned tidelands. The Attorney General found, in AGO 2007 No. 1, that even if a
23 proposed geoduck farm hypothetically blocks passage on a beach, "it is not a cognizable
24 obstruction of the public, because the person is there at the farmer's express or implied
25

1 permission.” That is because, under Washington law, “the private property interest in a
2 shellfish farm allows the farmer to restrain the general public from interfering with the
3 farm.” AGO 2007 No. 1. Thus, the hypothetical obstruction on the beach posed by
4 geoduck tubes and netting does not constitute “development.”

5 8. Finally, the County contends in its Administrative Determination that the
6 tubes and netting proposed for Taylor’s geoduck bed will potentially interfere with the
7 public’s use of surface waters, particularly at low tide. When reviewing whether a project
8 interferes with normal public use of surface waters, the County must first determine the
9 nature of the public use at issue. The County failed to make that determination; it has not
10 engaged in the required analysis of the nature of the public use.

11 9. A review of the specific facts relevant to Taylor’s proposed geoduck bed
12 demonstrates that the farm will not interfere with the public’s use of surface waters, for a
13 number of reasons, including: the farm’s distance from public points of access; the limited
14 extent and duration of the operator’s use of boats for harvesting activities; and the limited
15 use of gear on the project site (and the security of the gear that is used). Taylor will also
16 not take any affirmative action to exclude the public from using the surface waters in the
17 area of its proposal. The facts relating to potential interference with the public’s use of
18 surface water are discussed in more detail in a letter Taylor provided to the County last
19 year. A copy of that letter is included in Attachment B and incorporated herein by this
20 reference.

21 10. Based on the foregoing, the County’s Administrative Determination
22 requiring that Taylor obtain a Substantial Development Permit for its proposed farm is
23 contrary to law and unsupported by the facts because Taylor’s proposal does not constitute
24 “development” under the SMA that would require a Substantial Development Permit.
25

1 **B. The County's determination was procedurally and substantively unlawful**
2 **and improper, and violated Taylor's due process rights.**

3 11. The County's determination that Taylor's proposed geoduck bed requires a
4 substantial development permit is inconsistent with applicable law, including the
5 constitutional guarantee of due process, the Planning Enabling Act, Thurston County
6 Code, and the appearance of fairness doctrine. As discussed in further detail below, the
7 Administrative Decision that Taylor's proposed geoduck bed constituted "development"
8 was improperly made by Thurston County Commissioners rather than Thurston County
9 staff. County Commissioners directed County staff to determine that Taylor's proposed
10 project constituted "development" and therefore required a Substantial Development
11 Permit.

12 12. The process for administrative decisions and code interpretations is set
13 forth in the Thurston County Code. Those Code provisions implement various
14 Washington State laws, including the Planning Enabling Act (Ch. 36.70 RCW), the Local
15 Project Review Act (Ch. 36.70B RCW), and Shoreline Management Act (Ch. 90.58
16 RCW). Under County zoning regulations, the development services department is to issue
17 decisions on administrative decisions and code interpretations. Administrative decisions
18 and code interpretations are ministerial decisions subject to clear, objective and
19 nondiscretionary standards or standards that require the development services
20 department's exercise of professional judgment about technical issues. The staff decision
21 on such a code interpretation is appealable to the Hearing Examiner, and the Hearing
22 Examiner's decision is further appealable to the Board of County Commissioners.

23 13. Here, the County failed to follow that process. Instead, the County
24 Commissioners, after conferring with project opponents, directed staff to make the
25 decision that the Taylor's proposal is "development." Such willful and unreasoning action

1 constitutes unlawful and improper interference with established County procedure for
2 issuing code interpretations.

3 14. As demonstrated above, the Commissioners' decision that Taylor's project
4 is "development" under the SMA was not based on applicable law. Instead, after
5 conferring with project opponents, the Commissioners directed the planning department to
6 determine that Taylor's project was "development" based on policy determinations. As a
7 result, the County's action in issuing the Administrative Determination is unreasonable,
8 arbitrary and capricious, unconstitutional.

9 15. If the Hearing Examiner's decision in this appeal of the County's
10 Administrative Decision is further appealed, that appeal will be heard by the Board of
11 Thurston County Commissioners. That the Commissioners have already weighed in on
12 the Administrative Decision by dictating its outcome demonstrates that the
13 Commissioners have prejudged the issue. That the Commissioners' decision was made
14 after conferring with project opponents demonstrates, or at least creates an appearance,
15 that the Commissioners acted out of improper motives. For these reasons, Taylor will not
16 be afforded the opportunity to a fair and impartial hearing on appeal.

17 16. Based on the foregoing, the County's Administrative Determination
18 requiring that Taylor obtain a Substantial Development Permit for its proposed farm is
19 contrary to law including the Planning and Enabling Act and Thurston County Code, and
20 was improperly issued in violation of the appearance of fairness doctrine and
21 constitutional guarantees of due process.

22 V. RELIEF REQUESTED

23 Taylor requests the following relief:
24
25

1. An order and judgment that Thurston County's June 30, 2010, Administrative Decision for Project #2010100540 is contrary to law, not supported by evidence, is arbitrary and capricious, and was improperly issued;

2. An order and judgment reversing the Administrative Decision, and finding that Taylor's proposed geoduck aquaculture operation is not substantial development under the Shoreline Management Act, and as such, does not require a Substantial Development Permit; and

3. Any other relief as the Hearing Examiner may find just and equitable.

Dated this 6th day of July, 2010.

PLAUCHÉ & STOCK LLP

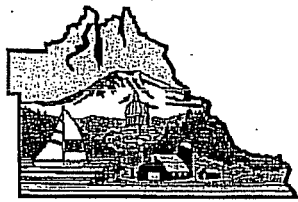
By:

Samuel W. Plauché, WSBA #25476

Amanda M. Stock, WSBA #38025

Attorneys for Appellant

EXHIBIT A



THURSTON COUNTY
WASHINGTON
SINCE 1852

COUNTY COMMISSIONERS

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

RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Cliff Moore
Director

June 30, 2010

Diane Cooper
Taylor Shellfish
129 State Avenue NE
Olympia, WA 98501

SUBJECT: Project #2010100540; Request for Authorization to Install a Geoduck Bed at
Tax Parcel #11905230300

Dear Ms Cooper:

This letter will serve to formalize our recent discussions regarding the proposed geoduck bed on Henderson Inlet. The subject application was submitted so the county could evaluate and formally determine the appropriate review process for that proposal.

The county evaluates each shellfish project on a case by case basis. Each case is evaluated against the applicable sections of the Shoreline Master Program for the Thurston Region (SMP). Section One.II.A requires that any development that exceeds a specified dollar amount obtain a substantial development permit (SDP). That amount is currently set at \$5,718 by the state. The total cost of the proposed project easily exceeds that amount. The next consideration is whether the project is by definition, "development".

The SMP, in Section IV, defines development as:

A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; 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 the waters overlying lands subject to this chapter at any state of water level.

Also instructive is the SMP definition of structure:

Anything constructed in the ground, or anything erected which requires location on the ground or water, or is attached to something having location on or in the ground or water.

Based on the cost and these definitions, the county has determined that the proposed geoduck operation meets the definition of substantial development, therefore requiring an SDP.

Following are the specifics that compelled that determination.

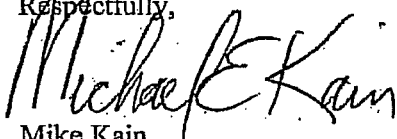
1. The placement of tubes and netting on the beach constitutes construction of a structure.
2. The method of harvest will remove some amount of sand and other minerals from the seabed.
3. The tubes and netting serve as an obstruction on the beach.
4. The tubes and netting, even though temporary, will potentially interfere with the normal public use of the surface waters, particularly during low tides.

The process to move forward would require submittal of an additional fee of \$5,620 and a letter requesting conversion of the subject request into a substantial development permit application. Because the project is proposed on lands covered by water, WAC 197-11-800 would also require submittal of an environmental checklist. The SDP review process involves a public hearing before the county Hearing Examiner after an environmental determination is issued by staff.

If you wish to appeal this determination, please do so in writing on the enclosed administrative appeal form, accompanied by a nonrefundable fee of \$1710.00. Any appeal must be received in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. on **July 14, 2010**. Postmarks are not acceptable. If your fee and completed appeal form are not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

If you have questions, I can be reached at (360) 786-5471 or kainm@co.thurston.wa.us.

Respectfully,



Mike Kain
Planning Manager

cc: Cliff Moore
Jeff Fancher



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TO THE THURSTON COUNTY HEARING EXAMINER COMES NOW _____
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SIGNATURE OF APPELLANT

Address _____

Phone: _____

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EXHIBIT B



February 25, 2010

Thurston County Permit Assistance Center
2000 Lakeridge Drive, SW
Olympia, Washington 98502

Subject: Review of Taylor Shellfish Geoduck Farm on Lockhart Tidelands

Dear Reviewer:

Please find attached a Master Application with supporting documents and a check for \$1110.00 to initiate review of a geoduck aquaculture operation on private tidelands.

As stated and documented in the attached letter submitted to Mr. Cliff Moore on December 18, 2009, by Samuel W. Plauché, Plauché & Stock LLP, Taylor Shellfish does not believe a permit is required for this activity, but at the request of Thurston County, Taylor Shellfish is submitting this Master Application and fee so that a review can be initiated.

We understand that if Thurston County agrees that a permit is not required for this activity, we will receive a full refund of the application fee.

Thank you for your review.

Sincerely,

Diane Cooper
Taylor Shellfish Company, Inc.

C: Plauché & Stock LLP



To: Mike Kain

Thurston County Permit Assistance Center
2000 Lakeridge Dr. SW, Olympia, WA 98502
(360)786-5490 / (360)754-2939 (Fax)
TDD Line (360) 754-2933
Email: permit@co.thurston.wa.us
www.co.thurston.wa.us/permitting

MASTER APPLICATION

STAFF USE ONLY	DATE STAMP
<p style="text-align: center; font-size: 2em; font-weight: bold;">LABEL</p> <p style="text-align: center;">PLEASE NOTE: ALL APPLICATIONS AND SITE PLANS MUST BE COMPLETED IN BLACK OR BLUE INK <u>ONLY</u></p>	<p>Intake by: _____</p>

The Master Application is required for all projects and shall accompany a project-specific supplemental application(s). The Master Application may not be submitted alone. Check the appropriate box for each supplemental application being submitted with this Master Application.

Type of Project (check all that apply):

Building:

- ☐ Residential (form SA001)
- ☐ Non-Residential (form SA002)
- ☐ Non-Residential Hood & Duct (form SA003)
- ☐ Non-Residential Sign (form SA004)
- ☐ Manufactured Home Placement (form SA005)
- ☐ Minor Permit (form SA006)
- (Mechanical/Plumbing/Fire/Re-roof /Re-siding/Demo)
- ☐ Adult Family Home Inspection (form SA007)
- ☐ Fire Code Permit (form SA008 – SA012)

Roads:

- ☐ Encroachment Permit (form SA013)
- ☐ Construction Permit (form SA014)
- ☐ Variance (form SA015)
- ☐ Scoping Review Request (form SA015a)
- ☐ Access Permit (form SA015b)

Environmental Health:

- ☐ On-Site Sewage System (form SA016)
- ☐ On-Site Sewage System Abandonment (form SA017)
- ☐ On-Site Sewage Evaluation (form SA018)
- ☐ Water System Design (Group B or 2 Party) (form SA019)
- ☐ Well Site (form SA020)

Planning:

- ☐ Administrative Variance (form SA021)
- ☐ Binding Site Plan (form SA022)
- ☐ Boundary Line Adjustment /Lot Consolidation (form SA023)
- ☐ Critical Area Review (form SA024)
- ☐ Design Review (form SA025)
- ☐ Division of Land (form SA026)
- ☐ Division of Land Final Map (form SA026a)
- ☐ Environmental Checklist (SEPA) (form SA027)
- ☐ Forest Practice Activities (form SA028)
- ☐ Innocent Purchaser (form SA029)
- ☐ Joint Aquatic Resources Permit Application (JARPA) (form SA030)
- ☐ Legal Lot Determination (form SA031)
- ☐ Other Administrative Actions (form SA032)
- ☐ Presubmission Conference (form SA033)
- ☐ Reasonable Use Exception (form SA034)
- ☐ Release of Moratorium (form SA035)
- ☐ Rezone, Comp Plan Amendment, Open Space (form SA036)
- ☐ Shoreline Administrative Variance (form SA037)
- ☐ Site Plan Review (form SA038)
- ☐ Special Use Permit (form SA039)
- ☐ Variance – Hearing Examiner (form SA040)

PROJECT DESCRIPTION: Review Only.

See attached letter dated 2/25/10.

Property Tax Parcel Number(s): <u>11905230300</u>	
(Attach separate sheet if needed) 	
Lot # and Subdivision Name (if applicable): <u>Tidelands (Pts Lot 1)</u>	Total Acreage: <u>0.25</u>
Property Address: <u>9000 NE Libby Road</u> City: <u>Olympia</u> State: <u>WA</u> Zip Code: <u>98506</u>	
Directions to the Property:	
<u>North on Libby Road toward Dickenson Point to 9000 address. This property is on Henderson Inlet.</u>	
Nearest Cross Street: <u>Greenfield Drive</u>	
Property Access Issues (locked gate, code required, dogs or other animals): <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (360)	
Describe: <u>Contact Diane Cooper, Taylor Shellfish, prior to visit 432-3340</u>	
OWNER IS RESPONSIBLE FOR SECURING ANIMALS BEFORE SITE VISIT.	
Property Owner(s):	
(Attach separate sheet if needed) <u>John C. Lockhart (And Barbara)</u> (Type or Print)	
Mailing Address: <u>120 State Ave NE</u> City: <u>Olympia</u> State: <u>WA</u> Zip Code: <u>98501</u>	
Phone #: <u>360 754-6549</u> Ext. <u>PMB 1191</u>	Fax #: <u>NA</u>
Cell #: <u>NA</u>	E-mail: <u>NA</u>
Signature: <u>Lease Authorization - See attached *</u> Date: <u>2/25/10</u>	
<small>Required for Planning Applications Only</small>	
Applicant (if different than owner): <u>Diane Cooper, Taylor Shellfish</u> (Type or Print)	
Mailing Address: <u>SE 130 Lynch Rd</u> City: <u>Shelton</u> State: <u>WA</u> Zip Code: <u>98584</u>	
Phone #: <u>360 426 6178</u> Ext. _____	Fax #: <u>360 427-0327</u>
Cell #: <u>360 490-4800</u>	E-mail: <u>DianeC@taylorshellfish.com</u>
Signature: <u>Diane Cooper</u> * Date: <u>2/25/10</u>	
Point of Contact: <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Other (If "Other" complete this section)	
Name: <u>See above</u> (Type or Print)	
Mailing Address: _____ City: _____ State: _____ Zip Code: _____	
Phone #: _____ Ext. _____	Fax #: _____
Cell #: _____	E-mail: _____
Signature: <u>Diane Cooper</u> Date: <u>2/25/10</u>	
<small>*(Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in the application and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made or forwarded, the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work only after all necessary permits/approvals have been received.)</small>	
<small>NOTE: The point of contact will be the person receiving all County correspondence and invoices regarding this application.</small>	

PLAUCHE & STOCK LLP

811 First Avenue, Suite 320

Seattle, WA 98104

Phone: 206-588-4188

Facsimile: 206-588-4255

Samuel W. Plauché

Amanda M. Stock

December 18, 2009

Mr. Cliff Moore, Director
Thurston County Courthouse
Building 1, Second Floor
2000 Lakeridge Dr. SW
Olympia, Washington 98502

RE: Taylor Shellfish Farms/Lockhart Tidelands

Dear Mr. Moore:

We have prepared this letter on behalf of Taylor Shellfish Farms ("Taylor:"). Pursuant to a conversation with Assistant County Prosecutor Jeff Fancher, we are enclosing a copy of the application materials Taylor submitted to the U.S. Army Corps of Engineers in order to obtain Corps permits for a proposed geoduck farm to be located in Thurston County, Washington. Several months ago, Jeff requested that growers provide notice to the County of any applications for new farms proposed in Thurston County.

The enclosed application is for a geoduck and manila clam farm proposed to be located on tidelands owned by John and Barbara Lockhart, bearing Thurston County Parcel Number 11905230300. The physical address for the property is 9000 NE Libby Road, Olympia, Washington. The enclosed application for Corps permits describes the proposal in more detail.

We are also enclosing a Biological Assessment of the property performed by ENVIRON International, as well as the Biological Opinions prepared by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (collectively "the Services") for implementation of the Corps' Nationwide Permit 48, which covers existing shellfish farms in Washington State. While the proposed Lockhart farm is not covered by Nationwide Permit 48, the Services' affects analysis in the enclosed Biological Opinions provides relevant information related to the potential impacts of shellfish farming operations on various fish species and their habitat. As you will see, both Services concluded that existing shellfish farming operations in Washington, including existing geoduck farms, do not result in a "take" of any threatened or endangered species or in an adverse modification of habitat critical to any threatened or endangered species.

We understand that the County's request for copies of applications for new geoduck farms proposed in Thurston County is intended to provide the County with information that will

allow the County to determine whether a proposed geoduck farm requires a Thurston County Shoreline Substantial Development Permit. For the reasons discussed below, we do not believe that the proposed Lockhart geoduck farm meets the definition of "development" under the SMA or Thurston County's Shoreline Master Program. We therefore do not believe that a Thurston County Shoreline Substantial Development Permit is required for this proposal.

I. Geoduck Farming as Development Under the SMA.

The SMA defines development as:

a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; 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 the waters* overlying lands subject to this chapter at any state of water level.

RCW 90.58.030(3)(d) (emphasis added). See also WAC 173-27-030(6); Thurston County Shoreline Master Program, Chapter IV, page 126. Accordingly, a project can be development if: (1) it interferes with normal public use of surface waters; or, (2) it constitutes one of the listed activities.

Two legal authorities have applied this definition in the context of geoduck farming operations. First, in 2006, the Court of Appeals upheld the Pierce County Hearing Examiner's decision that a particular geoduck operation interfered with normal public use of surface water such that it constituted development and required a shoreline substantial development permit. *Washington Shell Fish v. Pierce County*, 132 Wn. App. 239, 131 P.3d 326 (2006). In reaching its decision, the Court in *Washington Shell Fish* reviewed the facts specific to the particular operation at issue. The Court did not determine that all geoduck operations interfere with normal public use of surface waters.

More recently, the Attorney General reviewed geoduck operations on a broader scale and in light of the Court's holding in *Washington Shell Fish*. See AGO 2007 No. 1 ("AGO").¹ The AGO first determined, consistent with *Washington Shell Fish*, that the question of interference with normal public use of surface waters is the fundamental inquiry in reviewing whether a geoduck farm is development. *Id.* at 7. This is a fact-specific inquiry. *Id.* at 7. The AGO specifically notes that "nothing in the description of geoduck aquaculture necessitates such interference [with surface waters]." *Id.* at 8.² The Attorney General then concluded that

¹ An AGO is entitled to considerable weight. See, e.g., *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, 63, 847 P.2d 440 (1993); *Holbrook, Inc. v. Clark County*, 112 Wn. App. 354, 362-63, 49 P.3d 142 (2002). Moreover, the Attorney General opinion constitutes notice to the Legislature of the interpretation of the law, and the Legislature has not acted since the AGO to overturn that interpretation. Greater weight attaches to an interpretation when the Legislature acquiesces in that interpretation. *Id.*

² See AGO at 8. ("The PVC pipes protrude only inches and have no more interference with use of the surface waters than bags of oysters, clam nets, or a small rock on the shoreline.")

geoduck farming activities do not constitute any of the activities specifically listed in the definition of development. *See Id.* at 8-10.

As discussed below, unlike the operation in *Washington Shell Fish*, the proposed Lockhart geoduck farm does not interfere with public use of surface waters. Accordingly, a Thurston County Shoreline Substantial Development Permit is not required for operation of that farm.

A. Taylor's operations at the Lockhart Farm do not interfere with normal public use of the water and are therefore not development.

When reviewing whether a project interferes with normal public use, the County must first determine the nature of the public use at issue. *Cowiche Canyon*, 118 Wn.2d 801, 818, 828 P.2d 549 (1992) (when determining whether a project constitutes development under the SMA, "it is plain that normal public use must be established"). As noted above, the Court of Appeals used such a fact-specific analysis when it determined that the geoduck farm at issue in the *Washington Shell Fish* case constituted interference with public use of surface waters and therefore required a Shoreline Substantial Development Permit.

A comparison of the farm discussed in *Washington Shell Fish* and the proposed Lockhart geoduck farm demonstrates that the proposed Lockhart farm does not substantially interfere with the public's use of surface waters and, therefore, does not constitute "development" under the SMA. There were seven specific aspects of the farm at issue in the *Washington Shell Fish* case that led to the conclusion that the farm interfered with normal public use of surface waters: (1) the farm's location in proximity to points of access of public use; (2) the extent and duration of the operator's use of boats for harvesting activities; (3) the operator's use of thousands of feet of rope; (4) the operator's use of cement-filled garbage cans and signs as boundary markers; (5) the operator's use of sharp steel pins; (6) the operator's use of a specific type of cover netting; and (7) the operator's deliberate and apparently malicious efforts to exclude the general public from the surface waters. As discussed below, none of these seven aspects of interference are triggered by the proposed Lockhart farm.

1. Location in proximity to public use points of public access

In *Washington Shell Fish*, the Court found that there was sufficient evidence of an established normal public use of the surface waters in the immediate vicinity of the farm and that the farm's location inhibited that use. The *Washington Shell Fish* ("WSF") farm was located immediately in front of prime public points of access for recreational use of the water. *See* AGO at 6 ("The neighboring public park appears to trigger the interference with public use of the surface waters"). Some of the parcels of the WSF farm were on County property. However, even those parcels that were on private tidelands had a history of public access. For example, the WSF farm was a premier windsurfing location in Washington, and the access point for windsurfers was directly upland of the farm. To access Puget Sound, windsurfers had to go out over the tube fields and past WSF's moored boats, ropes and buoys. The WSF farm was only several hundred feet away from a public boat launch that WSF used for its commercial operations, blocking access to the launch by other vehicles.

The waters in the vicinity of the proposed Lockhart Farm are not used for similar recreational purposes, nor is the Farm located in such a way as to interfere with any recreational uses of the surface waters. The upland areas in the vicinity of the Lockhart Farm are privately owned, with the immediately adjacent uplands owned by the same entity that owns the leased tidelands. There is no public boat launch in the vicinity of the Lockhart Farm. And, as noted in the sections that follow, because of the way Taylor will conduct its operations at the Lockhart Farm, there is significantly less potential for the Farm to interfere with public use of surface waters.

2. Extent and duration of the operator's use of boats for harvesting activities

The conclusion that the WSF Farm constituted "development" was based in part on WSF's use of boats that interfered with public use of surface waters. WSF's use of boats is unique to its operation. WSF relied exclusively on dive harvests. During a dive harvest, boats stay moored in the water above the divers, thereby blocking passage. Flags are flown to notify the public of the divers below and that the area should be avoided.

By contrast, Taylor will rely predominantly on low-tide harvests at the Lockhart Farm. Harvesters will be on the tidelands during extremely low tides and will not require boats to the same degree as required for exclusively dive harvests. Boats are used only for transportation of supplies and tubes during planting, tube removal, to operate water pumps and occasionally for dive harvests during those limited seasons when low tides are not as common.

In addition to the fact that WSF's harvesting activities themselves were more likely to interfere with normal public use of surface waters, the duration of WSF's harvesting activities was significantly longer than the harvest activities that will occur at the Lockhart Farm. WSF was harvesting wild geoduck in addition to their cultured geoduck. During wild harvest, the harvesters are in the water for long periods of time searching for mature geoduck. WSF's boats and equipment were used weeks and even months at a time. Indeed, WSF kept boats moored at the site even when operations on the farm were not occurring.

By contrast, Taylor will harvest only cultured geoduck from the Lockhart Farm. The geoduck mature at largely the same time, such that the harvest of a particular tract occurs at extremely low tide and lasts for three to four hours each. Because of the way it will operate the Lockhart Farm, Taylor will not moor boats at the Farm overnight. With regard to scows or barges, Taylor will not leave those moored at the Farm for more than a week, and it will only rarely moor scows or barges continuously for a week.

3. Use of thousands of feet of rope

WSF utilized "thousands of feet" or "miles" of nylon rope at its farm. That rope, which was left in the water, frequently came loose and floated in the water, entangling windsurfers and boaters. Taylor's use of ropes at the Lockhart Farm will be very limited, and any ropes that are used will not be left in the water.

During planting, Taylor uses approximately 100 feet of bailing twine to measure out rows for tubes to ensure that they are planted in straight lines. The twine is not left at the site. Because planting occurs at extremely low tides, the twine does not enter the water. In the rare instances that Taylor conducts dive harvests, Taylor also uses lengths of rope as a guide on the bottom to keep the diver from straying out of the vicinity of the planted tract, but those ropes are also removed after the harvest. Accordingly, Taylor's operations at the Lockhart Farm will not create the same risk as the ropes used WSF farm.

4. Use of cement-filled garbage cans and signs used as boundary markers

WSF marked its farm with navigational hazards. Specifically, WSF dropped garbage cans filled with cement to mark the boundaries of the farm. Additionally, WSF used "signs" consisting of smaller cement-filled cans with five-foot long PVC pipes sticking out. The sole purpose of these markers was to exclude other users from the surface waters above the farm.

The objects WSF used to mark its boundaries posed a severe hazard to recreational users of the waters. In particular, at higher tides, those objects sat just below the surface of the water and could harm boats and windsurfers.

By contrast, Taylor will make no efforts to exclude people from using the surface waters above the Lockhart Farm. Taylor does not use any objects to mark the bounds of the farm that would cause interference with public use or that could potentially cause harm to recreational uses.

5. Use of sharp steel pins

WSF also used steel pins to mark the bounds of individual geoduck beds; these sharp straight pins were left in the tidelands, causing injury to people when they stepped on them. Taylor does not use any similar pins or metal that could harm pedestrians if left in the water. While Taylor uses surveyor's pins to mark its geoduck beds, these pins are capped and do not pose a threat to pedestrians or swimmers. Taylor uses only bent rebar to hold its predator exclusion nets in place. The bent rebar is buried leaving only the curved surface exposed. The impact of stepping on this bent rebar would be no different than stepping on a rock on the beach.

6. Type of cover netting

The cover nets used by WSF were different than those typically used by geoduck farms. These different types of nets were more likely to become loose under water and entangle boats, windsurfers, swimmers or other recreational uses of the surface water. The netting Taylor will use at the Lockhart Farm will not present a similar safety risk to the public. Indeed, the net system Taylor will use at the Lockhart Farm is designed so that it will not become loose, thus avoiding interference with recreational use of surface waters.

7. Deliberate and apparently malicious efforts to exclude the general public from the surface waters

Finally, in *Washington Shell Fish*, there was substantial testimony that WSF purposefully excluded the public beyond what was necessary to conduct its farming operations. WSF's boats stayed moored in the water even when they were not in use. WSF flew diver flags, even when there were no divers in the water. One witness testified that WSF flew the flags seven months straight, such that the public was effectively excluded from the waters overlying the WSF farm for the entire seven months. WSF was openly hostile to windsurfers and purposefully created safety hazards for recreational users to exclude those users from the surface waters in the vicinity of the farm. Taylor will not engage in such actions at the Lockhart Farm.

In short, the Court of Appeals' conclusion that WSF's operations interfered with normal public use of surface waters (and therefore required a Shoreline Substantial Development Permit) are not applicable to Taylor's Lockhart operations.

B. Geoduck farming operations are not development because they do not constitute any of the other activities listed in the statutory definition of development.

The Attorney General concluded that geoduck farming activities do not constitute any of the other activities listed in the definition of "development." AGO at 8-10. Specifically, the AGO determined that geoduck aquaculture does not constitute dredging, construction of structures, drilling, removal of materials, or placing obstructions. *Id.* Accordingly, the County need not consider whether the geoduck farming operations at the Lockhart Farm will constitute any of the listed activities. However, if the County chooses to address these arguments, the County should adopt the AGO's conclusion and determine that geoduck farming does not meet any of the other elements of the SMA's definition of development.

1. Geoduck Operations do not constitute dredging.

As noted in the AGO, geoduck operations do not constitute "dredging." According to Webster's II New College Dictionary, dredging means "to clean, deepen, or widen *with a dredge*" or "to bring up *with a dredge*." No dredge is used in geoduck operations. During harvesting, geoduck farm operators loosen the substrate. However, the effects of that activity are temporary and the tidelands are restored within one to two tidal cycles. Geoduck farming clearly does not constitute dredging.

A determination that harvesting constitutes dredging would be inconsistent with the AGO and would lead to absurd and overly broad conclusions. As noted by the AGO:

disruption of substrate around a geoduck, considered in isolation, cannot be legally distinguished from general clam digging or raking. Any clam harvest disrupts the substrate around the buried clam. We find no indication that the SMA has ever treated clam harvesting, alone, as development. Moreover, it would lead to a burdensome and apparently unintended

consequence where substantial development permits would be required for all significant clam beds, both commercial and recreational.

AGO at 8.

2. Geoduck Operations do not constitute construction of structures.

RCW 90.58.030(3)(d) includes "the *construction* or exterior alteration of *structures*" as "development." The Attorney General determined that geoduck tubes do not constitute construction of "structures" under the SMA. AGO at 9.

Geoduck operations do not constitute "construction." Webster's II New College Dictionary defines "construct" as "to put together by assembling parts: BUILD." Thus, "construction" focuses on joining constituent parts together to form a single structure, not the disconnected placement of PVC pipes in intertidal areas, as is done in geoduck culture.

Also, as noted in the AGO, geoduck tubes are not "structures." AGO at 9. Ecology's regulations define "structures" as:

a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels.

WAC 173-27-030(15). The Thurston County Shoreline Master Program defines a "structure" as "anything constructed in the ground, or anything erected which requires location on the ground or water, or is attached to something having location on or in the ground or water." Thurston County Shoreline Master Program, Chapter IV, page 137.

The use of the term "structure" in the SMA and the County's SMP was intended to cover items like buildings and docks that are constructed out of individual constituent parts to create a new object. That is clear from the definitions of the other terms used in Ecology's definition of structure. Webster's II New College Dictionary defines "edifice" as "a building, especially one of imposing size or appearance." "Building" is defined as "a structure that is built." "Build" is defined as "to form by combining materials or parts." These definitions refer to the joining together of parts to create something new.

Ecology's definition of structure includes "a piece of work artificially built." As stated above, Webster's II New Riverside University Dictionary defines "build" as "to form by combining materials and parts." See also Webster's Ninth New Collegiate Dictionary (defining "build" as "to form by ordering and uniting materials by gradual means into a composite whole"). The key in determining whether something is "built" is the joining of materials together to form a whole.

Placing individual PVC pipe into the intertidal area as part of a geoduck farming operation does not meet the definition of "structure" because the tubes are not joined together to form something new. While Taylor covers the tubes with canopy nets, the purpose of the canopy

netting is to exclude predators. The netting does not "join" the tubes together in a definite manner to create a "composite whole" or a structure, as the term is defined.³

Thus, the statutory coverage of structures that are "constructed," as well as Ecology's definition of "structure," demonstrate that the structures regulated as "development" under the SMA are structures where constituent parts are assembled or joined together in some ordered manner to create a new item – a "composite whole." The PVC pipes used in geoduck farming are not joined together in any way – they are placed independently into intertidal areas (and then individually removed after one to two years). As such, as the Attorney General recognized, geoduck farming does not involve "the construction or exterior alteration of structures."

3. Geoduck Operations do not constitute drilling.

As noted in the AGO, geoduck farming does not constitute drilling. According to Webster's II New College Dictionary, drilling is "to make a hole in with a drill." A drill "is an implement with cutting edges or a pointed end for boring holes in hard materials, usu. by a rotating abrasion or repeated blows." The placement of tubes does not meet the dictionary definition of "drilling," because no hole is created. The tube constitutes a temporary barrier to protect the juvenile geoduck. Nor does the use of low-pressure water jets during harvesting constitute "drilling," as that term is commonly defined and understood. Geoduck farmers use the low-pressure water jets to loosen substrate so that the mature geoduck can be extracted. The tidelands return to their pre-harvest condition within one to two tidal cycles.

4. Geoduck Farming does not involve removal of materials.

As noted by the AGO, geoduck farming operations do not involve the removal of materials. During the geoduck harvest, the substrate is softened, but not removed. To the extent that any sediment is removed with the removal of each clam, the amount is minimal. As noted by the AGO, such a "minimal amount of materials does not comport with a reasonable interpretation of the statutory language concerning 'removal of materials. See *Black's Law Dictionary* 464 (8th ed. 2004), "*de minimis non curat lex*" (the law does not concern itself with trifles)." AGO at 9.

An interpretation to the contrary that the mere loosening of the substrate would constitute "removal" of materials is unworkable. Such a conclusion would require clam digging and raking to constitute "development." See AGO at 8 ("We conclude that disruption of substrate around a geoduck, considered in isolation, cannot be legally distinguished from general clam digging or raking.").

5. Geoduck Farming does not involve placing obstructions.

The County should adopt the Attorney General's conclusion that geoduck farming does not involve placing obstructions. According to Webster's II New College Dictionary, to obstruct

³ Taylor primarily uses canopy nets instead of smaller cover nets on individual tubes because neighbors have expressed a preference for canopy nets. The canopy nets reduce the visual profile of the operation. The canopy nets are easier to secure, thereby decreasing the probability of nets coming loose and creating marine debris.

is "to clog or block (a passage) with obstacles." As described in further detail in section 1, above, the operations do not interfere with public use, in part, because they do not obstruct the public's use of the surface waters.

Shellfish culture that takes place on private tidelands does not block public passage. As noted by the Attorney General:

Washington common law also shows that the private property interest in a shellfish farm allows the farmer to restrain the general public from interfering with the farm. Thus, even if the PVC tubes might hypothetically affect a person crossing a shellfish farm, it is not a cognizable obstruction of the public because the person is there at the farmer's express or implied permission.

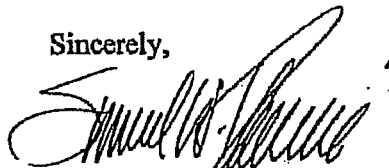
See AGO at 10, n. 8 (citations omitted).

Moreover, geoduck culture takes place on intertidal areas that are exposed only at low tide and therefore are not areas that typically provide aquatic passage. The PVC tubes protrude only several inches above the sand. Their impact is no different than rocks or other naturally-occurring beach materials. For the short time tubes are actually in the ground, they are almost always covered by water. Moreover, the mere fact that geoduck farms use predator exclusion netting does not constitute obstructions. The inquiry is not whether predators are prohibited from capturing and feeding on the juvenile geoduck. Instead, the question is whether passage over and through the waters is obstructed by the operations. As indicated above, geoduck farming operations do not obstruct passage.

For the foregoing reasons, the County should conclude that geoduck farming operations do not constitute any of the activities listed in the SMA's definition of "development." To hold otherwise would be inconsistent with the AGO.

Please don't hesitate to call me if you would like to discuss this matter further.

Sincerely,



Samuel W. Plauché
Amanda M. Stock

SWP:tt

Enclosures

cc: Jeff Fancher (w/encs.)

Lockhart Geoduck Farm

**Second-class tidelands – Parcel Number 11905230300
Parts of Section 5, Township 19 North, Range 1 West, W.M.**

Site Address: 9000 NE Libby Road, Olympia

Proposal: Plant and cultivate 0.13 acres of Manila clams and 0.12 acres of geoduck. Hatchery seed will be used for both types of cultivation.

Manila clams are hand planted on the upper intertidal area of the site at standard densities. Netting is used to cover the seed beds and protect the clams from predation during their grow-out. Manila clams are manually harvested on a two-year rotation using hand tools. Primary access is from the water by boat.

For geoduck clams, PVC tubes are placed in the substrate on 1.2 foot centers. The tubes extend from the substrate approximately 2-3 inches. Three to four geoducks are planted by hand in each tube. Netting is used to cover the tubes and protect them from dislodging. The netting also mitigates potential visual impacts. After the juvenile geoducks have matured for approximately two years, the tubes are removed and grow-out continues for approximately 4-7 years. During this period, there will be nothing extending up from the substrate. Harvest occurs when the geoducks reach marketable size (between 1-2 pounds). Harvest is done using a hydraulic wand inserted into the substrate directly adjacent to individual geoduck. The geoducks are gently removed from the substrate by hand and placed in baskets for transport to the processing plant.

Site Characteristics: This site currently has no aquaculture on it, but Henderson Inlet in general is an historic shellfish farming area. The southern portion of Henderson Inlet has been designated as a Shellfish Protection District. Additionally, the State of Washington and treaty tribes co-manage the wild geoduck beds in this area. The State of Washington, Department of Natural Resources, has also identified the adjacent state-owned aquatic tidelands as a potential location for leasing for geoduck aquaculture. (See attached letter from Department of Resources, dated May 10, 2007).

The beach characteristics meet the necessary biophysical requirements for successful Manila clam and geoduck farming. Water quality is still good at this location. The uplands are high bank and well vegetated. There is no public access from the uplands. Adjacent properties are privately owned.

Regulatory Overview: This proposal has been evaluated by the Army Corps of Engineers. As part of that process, a Biological Assessment was done to ensure compliance with ESA and protection of Essential Fish Habitat.

This proposal has also had an Archeological Reconnaissance Survey done by Dr. Richard D. Daugherty on May 4, 2009 to ensure activities associated with this project do not impact cultural or archaeological resources.

Agency reference # _____

Date received: _____

Circulated by: _____

Project Tracking #: _____



WASHINGTON STATE

Joint Aquatic Resources Permit Application Form [\[help\]](#)



Part 1—Project Identification

1a. Unique Project Identifier

Don't have one yet? Get one at www.epermitting.wa.gov or call the Office of Regulatory Assistance at 1-800-917-0043.

474863-08-01

1b. Project Name (Examples: Smith's Dock or Seabrook Lane Development) [\[help\]](#)

Lockhart Geoduck Farm

Part 2—Applicant

Person or organization legally responsible for the project. [\[help\]](#)

2a. Name (Last, First, Middle) and Organization (if applicable)

Taylor Shellfish Farms

2b. Mailing Address (Street or PO Box)

SE 130 Lynch Road

2c. City, State, Zip

Shelton, WA 98584

2d. Phone (1)

360 426-6178

2e. Phone (2)

360 432-3340

2f. Fax

360 427-0327

2g. E-mail

DianeC@taylorshellfish.com

Part 3—Authorized Agent or Contact

Applicants can authorize someone else to represent them. If you use an authorized agent or contact for this project, please fill out the section below. Authorized agent(s) must sign Part 10.b. of the JARPA. [\[help\]](#)

3a. Name (Last, First, Middle) and Organization (if applicable)

Cooper, Diane -Taylor Shellfish Farms

3b. Mailing Address (Street or PO Box)

SE 130 Lynch Road

3c. City, State, Zip

Shelton, WA 98584

3d. Phone (1)

360 426-6178

3e. Phone (2)

360 432—3340

3f. Fax

360 426-6178

3g. E-mail

DianeC@taylorshellfish.com

Part 4—Property Owner [\[help\]](#)

- ☐ Same as applicant. (Please skip to Part 5.)
- ☐ Repair or maintenance activities on existing rights of way or easements. (Please skip to Part 5.)
- ☐ There are multiple property owners. (Please provide the information requested below for each property owner. Please attach an additional sheet to the form if necessary.)

4a. Name (Last, First, Middle) and Organization (if applicable)			
Lockhart, John C.			
4b. Mailing Address (Street or PO Box)			
120 State Avenue NE PMB1191			
4c. City, State, Zip			
Olympia, Washington 98501			
4d. Phone (1)	4e. Phone (2)	4f. Fax	4g. E-mail
360 754-6549	()	()	

Part 5—Property and Project Locations

- ☐ There are multiple properties or project locations (e.g., linear projects). For each property, please include the information below in an attachment.

5a. Street Address (Cannot be a PO Box. If there is no address, please provide other location information in 5k.) [help]			
9000 Libby Road NE			
5b. City, State, Zip (If the project is not in a city or town, please provide the name of the nearest city or town.) [help]			
Olympia, Washington 98506			
5c. County [help]			
Thurston			
5d. Please provide the section, township, and range for the project location. [help]			
¼ Section	Section	Township	Range
Parts of N1/2	05	19 North	1 West, W.M.
5e. Please provide the latitude and longitude of the project location. [help]			
▪ Example: 47.03922 N lat. / -122.89142 W long			
47.16129N lat. / -122.84242W long.			
5f. List the tax parcel number for the project location. [help]			
▪ The local county assessor's office can provide this information.			
11905230300			
5g. Identify the type of ownership of the property. (Check all that apply.) [help]			
<input type="checkbox"/> State Owned Aquatic Land <input type="checkbox"/> Tribal land <input checked="" type="checkbox"/> Private land			
<input type="checkbox"/> Other publicly owned land (federal, state, county, city, special districts like schools, ports, etc.)			

5h. Contact information for all adjoining property owners, lessees, etc. (If more space is needed, please attach a separate piece of paper.) [\[help\]](#)

Name	Mailing Address	City, State, Zip
See Attached List.		

5i. Is any part of the project area within a 100-year flood plain? [\[help\]](#) ☐ Yes ☒ No

5j. Briefly describe the vegetation and habitat conditions on the property. [\[help\]](#)

This project takes place on private tidelands. This is a sandy beach with minimal structure. There are no eelgrass beds or other priority habitat features. The uplands are vegetated with some clearing for single family residence. The surrounding upland is rural residential.

5k. Describe how the property is currently being used. [\[help\]](#)

The property is currently used for low intensity private recreation including beach walking and boating.

5l. Describe how the adjacent properties are currently being used. [\[help\]](#)

The tidelands to the north and south are used for low-intensity private recreation, including beach walking, aquaculture and boating.

5m. Describe the structures (whether above or below ground) currently located on the property, including their purpose. [\[help\]](#)

None.

5n. Provide driving directions from the closest major highway to the project location, and attach a map.

- Include other information about the property location (e.g. mileposts, river miles) [\[help\]](#)

Exit I-5 at 109 toward Sleater Kinney Road North

Stay on Sleater Kinney and 56th Avenue

Turn on Shinke Road NE

Continue through to Woodard Bay Road NE

Turn on Libby Road

Part 6—Project Description

6a. Provide a very brief description of the overall project. [\[help\]](#)

This project is for commercial intertidal culture of geoduck. Juvenile clams will be planted in the substrate by hand. PVC tubes are inserted into the substrate, planted with geoduck "seed," and netted. Clams are harvested approximately 5-7 years after planting. See Project Overview and other documents for additional detail.

6b. What is your project category? [\[help\]](#)

- Check all that apply.

☒ Commercial ☐ Residential ☐ Institutional ☐ Transportation ☐ Recreational
☐ Maintenance ☐ Environmental Enhancement & Restoration

6c. Please indicate the major elements of your project. [\[help\]](#)

- Check all that apply. Use "Other" to identify pertinent elements not listed.

<input checked="" type="checkbox"/> Aquaculture	<input type="checkbox"/> Culvert	<input type="checkbox"/> Ferry Terminal	<input type="checkbox"/> Pier / Dock
<input type="checkbox"/> Bank Stabilization	<input type="checkbox"/> Dam / Weir	<input type="checkbox"/> Fishway	<input type="checkbox"/> Piling
<input type="checkbox"/> Boat Launch	<input type="checkbox"/> Dike / Levee / Jetty	<input type="checkbox"/> Float	<input type="checkbox"/> Road
<input type="checkbox"/> Bridge	<input type="checkbox"/> Ditch	<input type="checkbox"/> Geotechnical Survey	<input type="checkbox"/> Scientific Measurement Device
<input type="checkbox"/> Bulkhead	<input type="checkbox"/> Dredging	<input type="checkbox"/> Marina / Moorage	<input type="checkbox"/> Stormwater facility
<input type="checkbox"/> Buoy		<input type="checkbox"/> Mining	<input type="checkbox"/> Utility Line
<input type="checkbox"/> Channel Modification		<input type="checkbox"/> Outfall Structure	

☐ Other:

6d. Please describe how you plan to construct each project element checked in 6c. Include the specific construction methods and equipment that will be used. [\[help\]](#)

- Identify where each element will occur in relation to the nearest waterbody.
- Indicate whether each activity is within the 100-year flood plain.

Six inch PVC tubes (approximately 9") will be manually placed in the lower intertidal substrate at a density of one tube per 1.2 square feet. Three to four geoduck "seed" will be placed in the tubes and netted for protection from predation. After approximately 12-15 months, the tubes are removed and the farm re-netted. Harvest occurs hydraulically using a high-volume, low pressure water hose. Individual geoducks are manually removed from the beach and packed for transport. Depending on seed availability, the farm may be planted on a rotational basis. However, the completed farm will cover approximately two acres.

6e. What are the start and end dates for the construction of the project? (month/year) [\[help\]](#)

- If the project will be constructed in phases/stages, attach an outline of the construction sequence and the timing of activities, including the start and end dates of each phase/stage.

Start date: Summer 2009 End date: On-going ☐ See attached

6f. Describe the purpose of the work and why you want or need to perform it. [\[help\]](#)

Commercial cultivation of geoduck clams.

6g. Fair market value of the project, including materials, labor, machine rentals, etc. [\[help\]](#)

\$5000-\$10,000

6h. Will any portion of the project receive federal funding? [\[help\]](#) ☐ Yes ☒ No

- If yes, list each agency providing funds.

6i. Compliance with the State Environmental Policy Act (SEPA) [\[help\]](#) NA

- Check the box(s) below that applies to the project.
- For more information about SEPA, go to www.ecy.wa.gov/programs/sea/sepa/e-review.html.

☐ A copy of the SEPA determination or letter of exemption is included with this application.

☐ A SEPA determination is pending with _____ (lead agency); expected decision date is _____.

☐ I am applying for a Fish Habitat Enhancement Exemption. Please submit the Fish Habitat Enhancement Project form with this application.

☐ This project is exempt.

☐ Categorical Exemption. Under what section of the SEPA administrative code (WAC) is it exempt?

☐ Other: _____

☐ SEPA is pre-empted by federal law.

Part 7—Wetlands: Impacts and Mitigation

If the project will not impact wetlands or wetland buffers, please skip to Part 8.

7a. Will the project impact wetland buffers? [\[help\]](#) ☐ Yes ☒ No

7b. Will the project impact wetlands? [\[help\]](#) ☐ Yes ☒ No

7c. Describe how the project has been designed to avoid and minimize adverse impacts to wetlands. [\[help\]](#)

NA

7d. If you have already worked with any government agencies to reduce or avoid impacts, please list them below. [\[help\]](#)

Name	Agency	Phone	Most Recent Date of Contact
		()	
		()	

7e. Has a wetland delineation report been prepared? [\[help\]](#) ☐ Yes ☒ No

- If yes, submit the report with the application. Include copies of delineation data sheets.

7f. Have the wetlands been rated using the Washington State Wetland Rating System? [\[help\]](#)

☐ Yes ☐ No ☒ Not applicable

- If yes, submit the wetland rating forms, including figures, with the application.

7g. Have you prepared a mitigation plan to compensate for the project's adverse impacts to wetlands? [\[help\]](#)

☐ Yes ☐ No ☒ Not applicable

- If yes, submit the plan with the application.

7h. For each project activity that will adversely impact wetlands, list the type and rating of each wetland to be impacted, the extent and duration of the impact, and the type and amount of compensatory mitigation proposed. If you are submitting a compensatory mitigation plan that includes a similar table, you may simply state (below) the page number in the mitigation plan where this information can be found. [\[help\]](#)

Activity causing Impact (filling, draining, flooding, etc.)	Wetland Type and Rating Category ¹	Impact Area (sq ft. or acres)	Duration of Impact ²	Proposed Mitigation Type ³	Wetland Mitigation Area (sq ft. or acres)
NA					

¹ Ecology wetland category based on current Western Washington or Eastern Washington wetland rating system. If impacting wetlands, please include copies of wetland rating forms with application.

² Indicate the time (in months or years, as appropriate) the wetland will be measurably impacted by the work. Enter "permanent" if applicable.

³ Creation (C), Re-establishment/Rehabilitation (R), Enhancement (E), Preservation (P), Mitigation Bank/In-lieu fee (B)

Reference to a similar chart/table in mitigation plan, if available.

NA

7i. Provide a summary of what the compensatory mitigation plan is intended to accomplish, and describe how a watershed approach was used to design the plan. [\[help\]](#)

NA

7j. For all filling activities identified in 7h., please describe, in detail, the source and nature of the fill material, the amount that will be used, and how and where it will be placed into the wetland. [\[help\]](#)

NA

7k. For all excavating activities identified in 7h., please describe the type of material proposed to be excavated, the methods to be used, the amount of material to be removed, and where the material will be disposed. [\[help\]](#)

NA

Part 8. – Waterbodies (other than wetlands): Impacts and Mitigation

If the project will not impact waterbodies or areas around waterbodies, please skip to Part 9.

8a. Will your project impact a waterbody or the area around a waterbody? [\[help\]](#) ☐ Yes ☐ No

8b. Summarize the impact(s) to each waterbody in the following table. [\[help\]](#)

Activity causing Impact (clearing, dredging, filling, pile driving, etc.)	Waterbody name	Impact location ¹	Duration of Impact ²	Amount of material to be placed in OR removed from waterbody	Area (sq ft. or linear ft.) of waterbody directly affected
Minimal and localized negative effects or impacts. Positive effects may also be expected.	Case Inlet	Marine tidelands	Temporary effects may occur during farming phases	See Project Overview for description	Approximately two acres

¹ Indicate whether the impact will occur in the waterbody, or provide the distance to the waterbody and indicate whether it will occur within the 100-year flood plain.

² Indicate the time (in months or years, as appropriate) the waterbody will be measurably impacted by the work. Enter "permanent" if applicable.

8c. Describe how the project has been designed to avoid and minimize adverse impacts to the aquatic environment. [\[help\]](#)

Shellfish aquaculture has been considered a beneficial use of the shoreline area by providing three-dimensional structure, filtering water, and facilitating benthic-pelagic coupling of nutrients. Shellfish culture requires a healthy marine ecosystem to be successful.

8d. Have you prepared a mitigation plan to compensate for the project's adverse impacts to non-wetland waterbodies? [\[help\]](#)

☐ Yes ☐ No ☒ Not applicable

- If yes, submit the plan with the application.

8e. Provide a summary of what the compensatory mitigation plan is intended to accomplish, and describe how a watershed approach was used to design the plan. If you have already completed 7i, you do not need to restate your answer here. [\[help\]](#)

NA

8f. Please describe in detail the source and nature of the fill material, the amount that will be used, and how and where it will be placed into the waterbody. [\[help\]](#)

NA

8g. For excavating or dredging impacts, please describe the type of material proposed to be excavated or dredged, the methods to be used, the amount of material to be removed, and where the material will be disposed. [\[help\]](#)

NA

Part 9-Additional Information

Providing answers to the questions below is optional, but will help the review of your application.

9a. What is the zoning designation for the project location? [\[help\]](#)

- You can get this information from the local city or county planning department.
- Zoning designation examples include, but are not limited to, residential, rural, agricultural, and general commercial.

Rural Residential

9b. What US Geological Survey Hydrological Unit Code (HUC) is the project in? [\[help\]](#)

- Go to <http://cfpub.epa.gov/surf/locate/index.cfm> to help identify the HUC.

17110019

9c. What Water Resource Inventory Area Number (WRIA #) is the project in? [\[help\]](#)

- Go to www.ecy.wa.gov/services/gis/maps/wria/wria.htm to find the WRIA #.

WRIA 15

9d. Are any of the waterbodies identified in 7h. or 8b. on the WA Dept. of Ecology 303(d) List? [\[help\]](#)

☒ Yes ☐ No

- If yes, list the parameter(s) below.
- If you don't know, use WA Dept. of Ecology's Water Quality Assessment tools at: <http://www.ecy.wa.gov/programs/wq/303d/>.

Fecal Coliform

9e. For in-water construction work, will the project comply with the State of Washington water quality standards for turbidity (WAC 173-201A)? [\[help\]](#) ☒ Yes ☐ No

9f. If the project is within the jurisdiction of the Shoreline Management Act, what is the local shoreline environment designation? [\[help\]](#)

- If you don't know, contact the local planning department.
- For more information, go to: www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/211_designations.html.

☒ Rural ☐ Urban ☐ Conservancy ☐ Natural ☐ Other _____

9g. What is the Department of Natural Resources Water Type? (Check all that apply.) [\[help\]](#)

- Go to http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesApplications/Pages/fp_watertyping.aspx for the Forest Practices Water Typing System.

☒ S ☐ F ☐ Np ☐ Ns

9h. Will this project be designed to meet the WA Dept. of Ecology's most current stormwater manual? [\[help\]](#)

☐ Yes ☐ No

- If no, and it is designed to a different manual, provide the name of the WA Dept. of Ecology approved manual the project is designed to meet.

NA

9i. If you have any historical knowledge of what the property was used for before identifying it for this project, please describe it below. [\[help\]](#)

NA

9j. Has a cultural resource survey been performed on the project area? [\[help\]](#)


☐ Yes ☒ No

- If yes, please attach to your application.

10a. Applicant Signature (required)

I hereby authorize the agent named in Part 4 to act on my behalf in matters related to this application.

 (initial)


Applicant

12/18/08
Date

Diana Cooper
Authorized Agent

12/18/08
Date

Six attached lease
Property Owner

Date

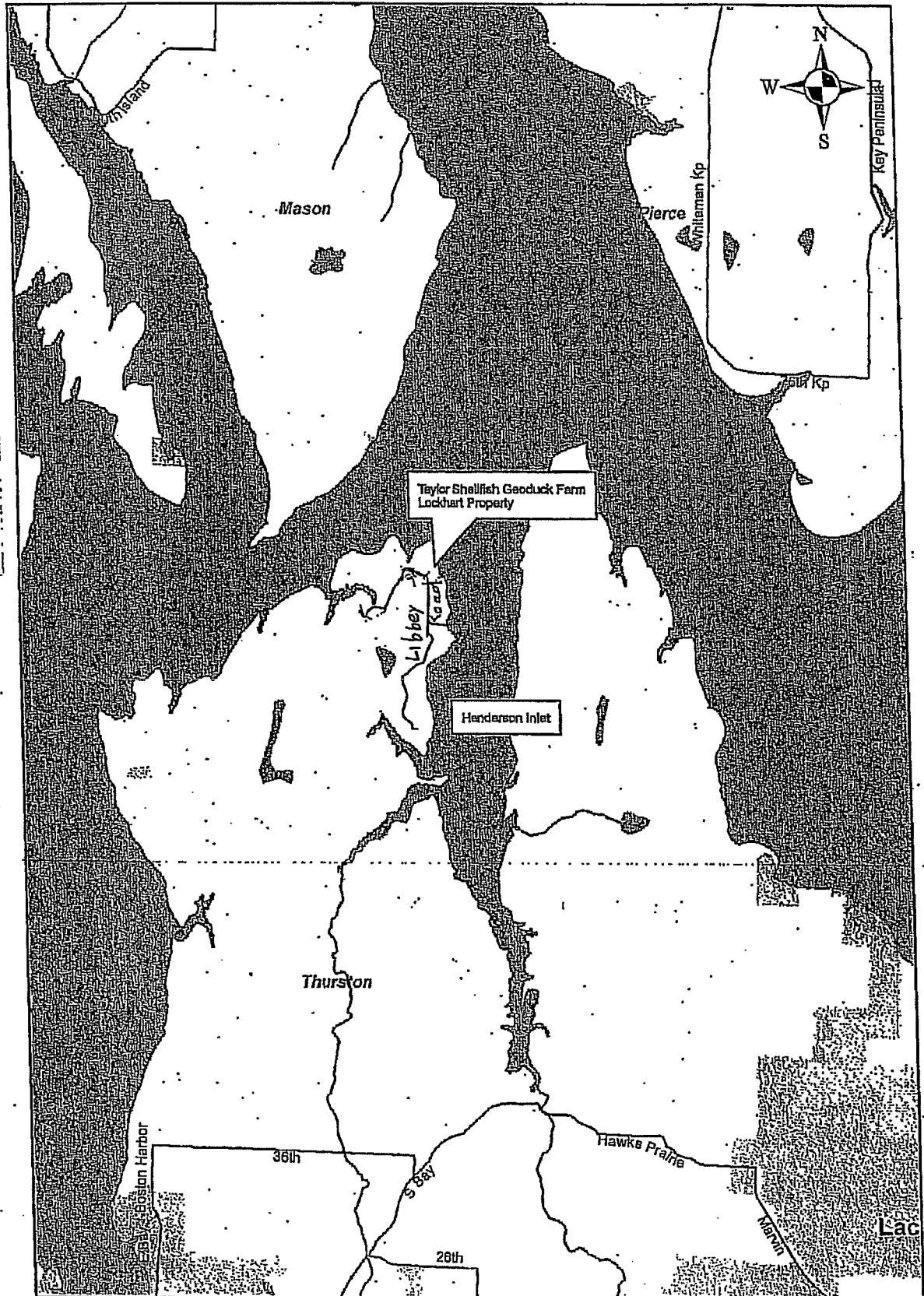
Last Update: 10/22/08

Lockhart Adjacent Property Owners

11905230200 – Bunning, Paul
9026A Libby Road NE
Olympia, WA 98506

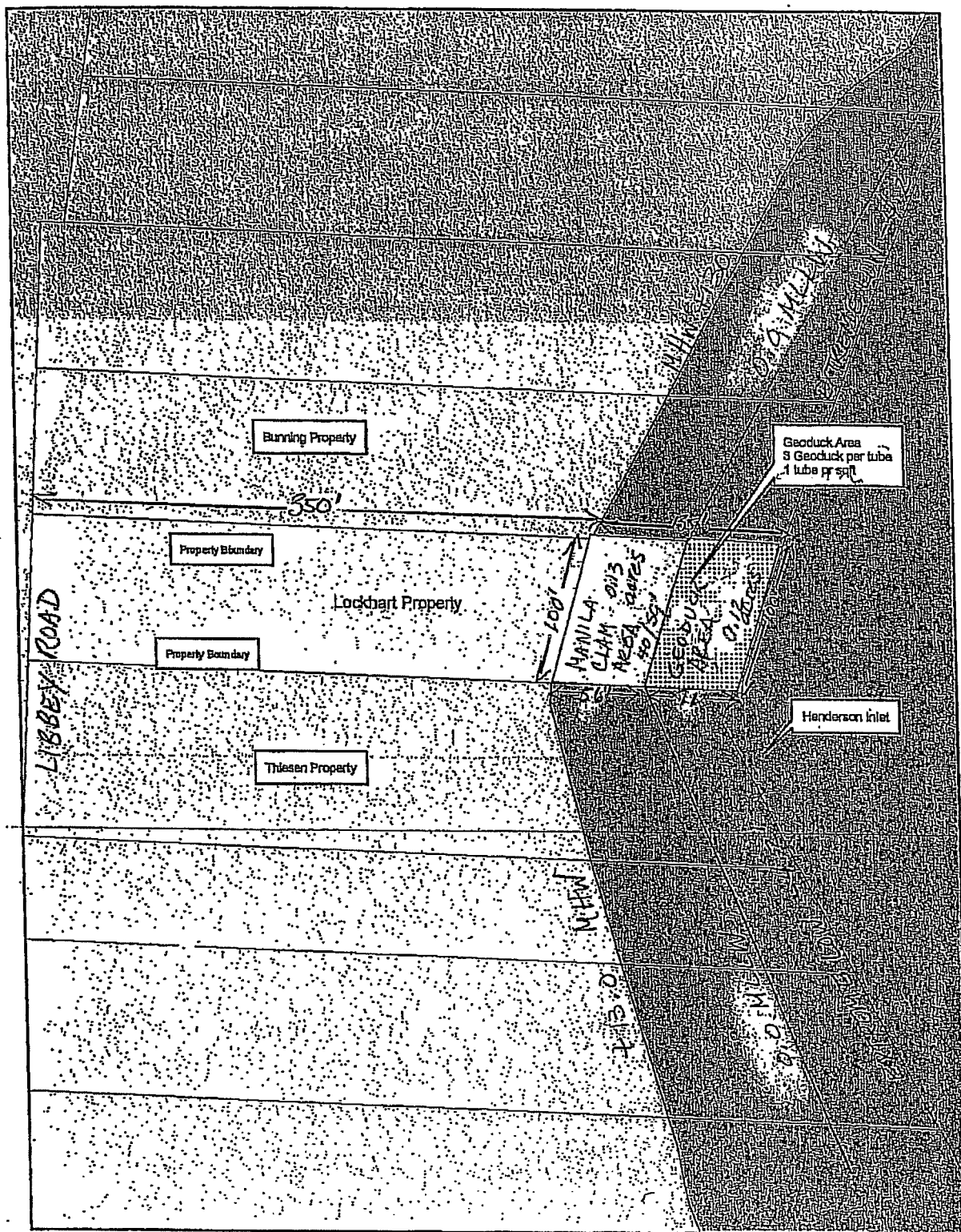
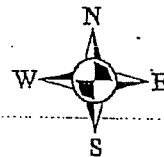
11905230400 – Thiesen, Thomas A and Carolyn G
8940 Libby Road NE
Olympia, WA 98506

Taylor Shellfish Geoduck Farm Lockhart Property

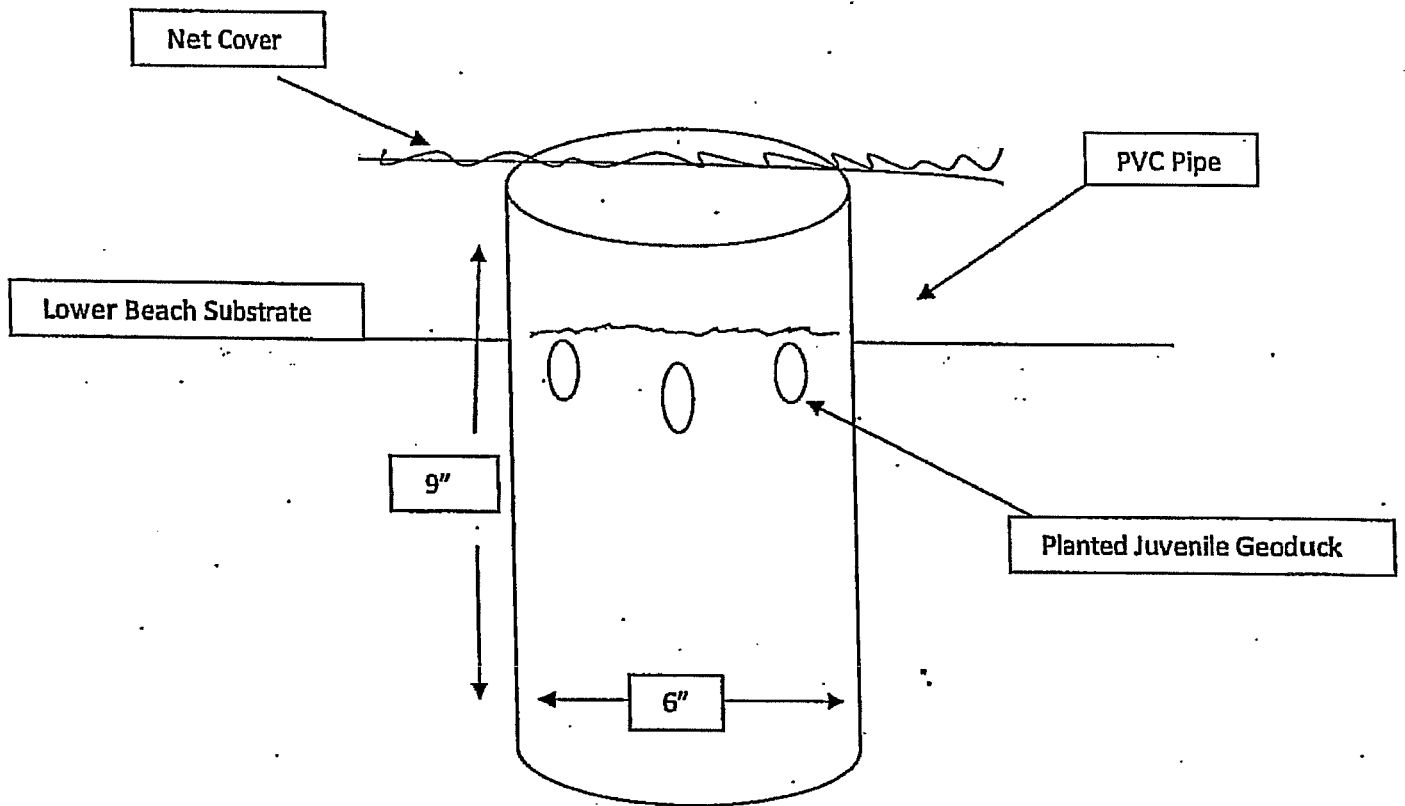


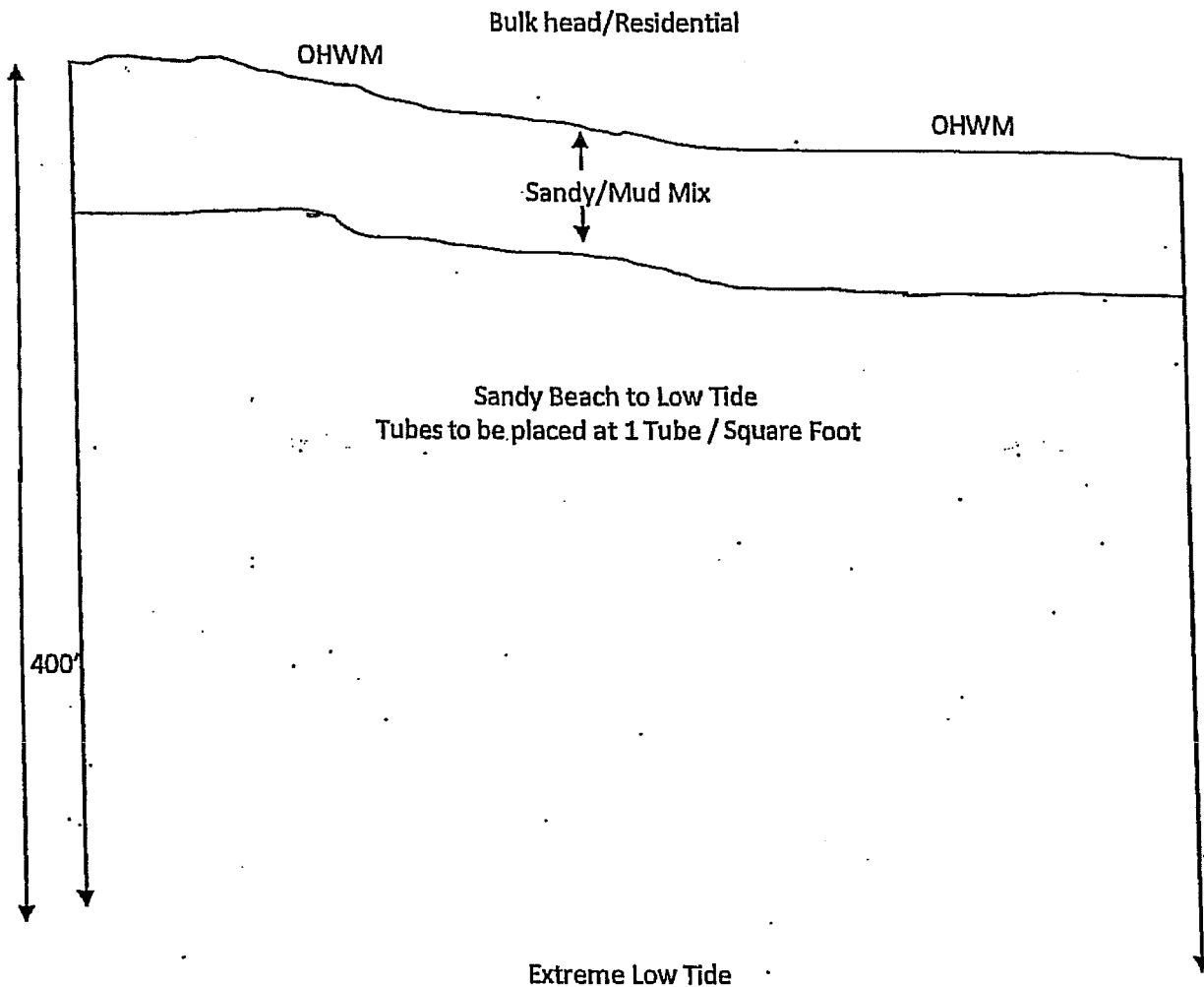
8,000 4,000 0 8,000 Feet

Taylor Shellfish Geoduk Farm Lockhart Property



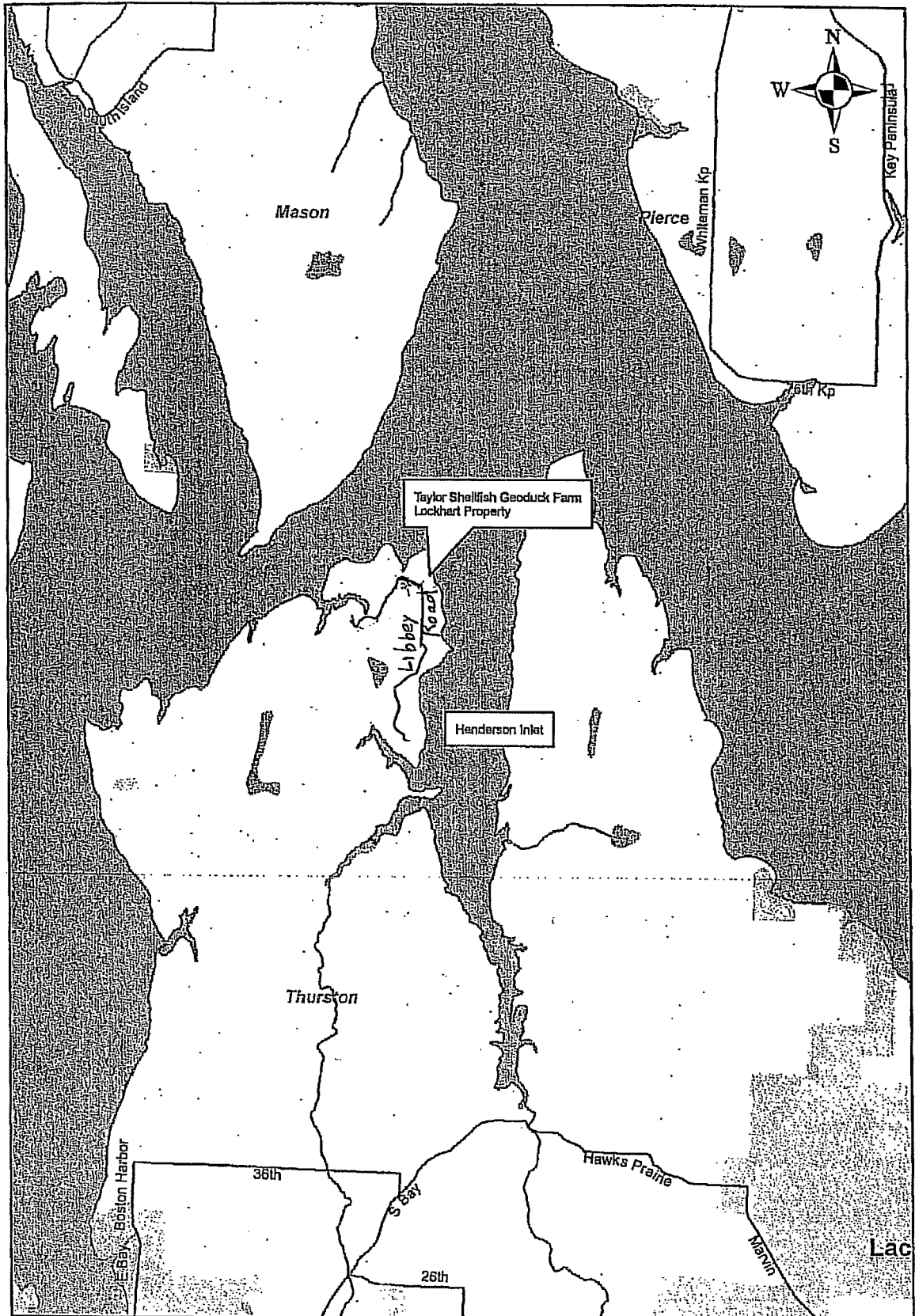
Taylor Shellfish Farms
Geoduck Culture
Cross-Section of Typical
Geoduck Tube





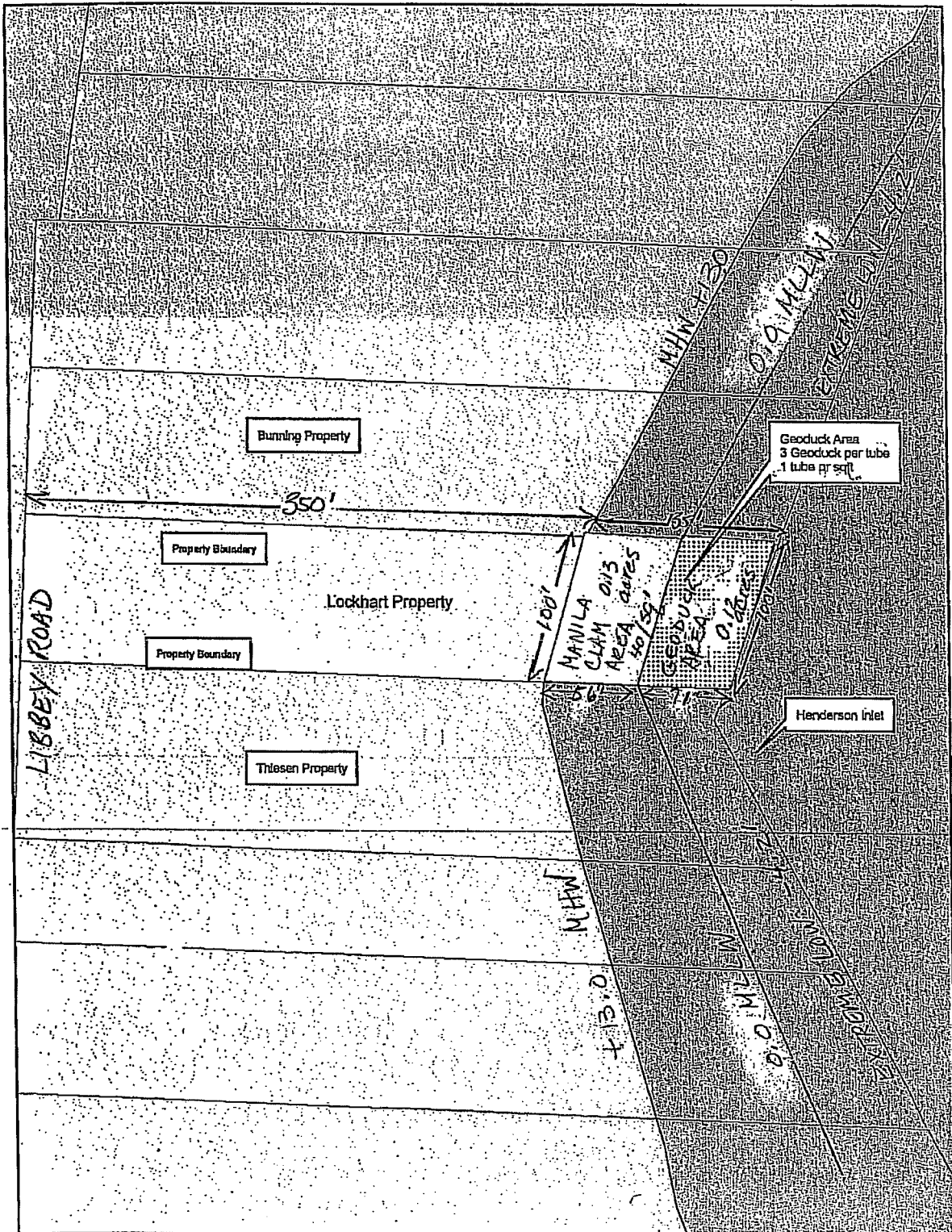
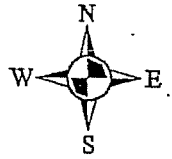
The site extends approximately 105 feet horizontally and approximately 400 feet to Extreme Low Tide. The upper beach consists of a mixed sand and mud substrate leading waterward into gently sloping (<5%) sandy tidelands. Tubes will be placed in the substrate approximately 5 inches. Each tube will be planted with 3 juvenile geoduck clams. The clams will be monitored for growth and predator evasion. Tubes will be removed approximately one year after placement.

Taylor Shellfish Geoduck Farm Lockhart Property



8,000 4,000 0 8,000 Feet

Taylor Shellfish Geoduck Farm Lockhart Property



Thurston County Assessor

Parcel Number: 11905230300

Date: 10/29/2008

Situs Address:	9000 NE LIBBY RD	Sect/Town/Range:	05 19 1W
Owner:	LOCKHART, JOHN C	Size:	1.13 Acres
Address:	120 STATE AVE NE PMB 1191 OLYMPIA, WA 98501	TCA Number:	150
Taxpayer:	LOCKHART, JOHN C	Neighborhood:	1725
Address:	120 STATE AVE NE PMB 1191 OLYMPIA, WA 98501	Property Type:	RESIDENTIAL
Legal Description:	5-19-1W LOT 1 S 100F EX S10.83A & 2ND CL TDLS ADJ	Taxable:	YES
		Active Exemptions:	None
		Fire District:	FIRE DISTRICT #07
		School District:	OLYMPIA S.D. #111
		Water Source:	WELL
		Sewer Type:	SEPTIC

Market Values

Tax Year Assessment Year	2009 2008	2008 2007	2007 2006	2006 2005	2005 2004	2004 2003
Market Value Buildings	\$423,800	\$415,800	\$276,700	\$241,800	\$219,300	\$190,600
Market Value Land	\$318,200	\$335,100	\$226,800	\$194,650	\$186,200	\$172,900
Market Value Total	\$742,000	\$751,000	\$503,500	\$436,450	\$405,500	\$363,500

Residential Structures

Year Built	1995	Fireplaces/Wood Stoves	1
Construction	RAMBLER	Heat Type	FORCED-AIR
Construction Quality	AVE/GOOD	Fuel Type	GAS
Physical Condition	AVERAGE	Foundation Type	CONCRETE
Number of Bedrooms	2	Exterior Wall Type	WOOD-SIDING
Full Baths	2	Roofing Material	OTHER
Partial Baths	0		
Residence Square Footage			
Main Finished Area	1992		
Attached Garage Square Footage			
Attached Garage Area	624		

Detached Structures

Code	Year Built	Square Feet	Quality	Condition
CANOPY-COVER	2000	64	AVERAGE	AVERAGE
GEN-PUR-BLDG	2000	192	AVERAGE	AVERAGE

Permits

Permit Issue Date:	06/22/1999	07/01/1994
Permit Number:	76167	57469 C
Permit Type:	RESIDENTIAL-DET-STR	RESIDENTIAL-NEW
Amount:		\$114,697
Jurisdiction:	COUNTY	County
Builder:		

Please note: permits issued within the past two weeks or before 1996 may not be included.

The Assessor's Office maintains property records on approximately 112,000 parcels in Thurston County for tax purposes. Though records are updated regularly, the accuracy and timeliness of published data cannot be guaranteed. Any person or entity that relies on information obtained from this website does so at his or her own risk. Neither Thurston County nor the Assessor will be held liable for damage or losses caused by use of this information. All critical information should be independently verified.

Office of the Assessor

Patricia Costello, Assessor
2000 Lakeridge Drive SW - Olympia, WA 98502
Customer Service (360)786-5410 -- Fax (360)754-2958 -- TDD (360)754-2933

LEASE AGREEMENT

THIS LEASE, made and entered into this 14 day of August, 2008, by and between Roberta Kohler Leckie hereinafter, Lessor, and TAYLOR RESOURCES, INC., a Washington corporation, hereinafter, Lessee.

WITNESSETH:

That Lessor, in consideration of the mutual covenants and conditions as hereinafter provided, agrees to lease to Lessee the real property described on Exhibit "A" attached hereto and by this reference incorporated upon the following terms and conditions.

1. This lease shall commence upon the completion of required permits and run for six years, provided, however, that the lease will sooner terminate at the discretion of the Lessee if the tidelands are decertified by operation of federal, state or local law or if the Lessee is disposed of harvest rights, partial or complete. Lessee will inform lessor when initiation of the project is permitted to begin. If in the final year of the lease harvest is delayed by a PSP closure or any other health closures the lessor has up to 1 additional year to complete the harvest.
2. Lessee shall pay base rent of [REDACTED] for each acre under cultivation per year. Fractional acreage shall have rent prorated at the \$ [REDACTED] per acre. Lessee shall also pay as additional rent an amount based upon the production of shellfish harvested from the leased premises in intervals of one month commencing one month after the beginning of harvesting and calculated by multiplying the total harvest produced monthly of geoduck clams (in pounds) times [REDACTED] of the lessee's farm price for geoducks. Farm price is [REDACTED] per pound less than the Taylor Shellfish's FOB wholesale price.
3. Lessor warrants that it has title to said property and Lessee will apply for Washington State Department of Health certification. If part or all of the property itself is condemned by a public agency, Lessor and Lessee shall have the right to proceed against the public agency for their respective damages.
4. The Lessee will use the property described on Exhibit "A" only for the care, cultivation, and removal of shellfish and agrees to abide by all governmental laws and regulations pertaining to such business.
5. The Lessee agrees that it will indemnify and hold and save Lessor whole and harmless of, from and against all suits, loss, cost, liability, claims, demand, actions and judgments of

every kind and character by reason of any breach, violation, or non-performance of any term, provision, covenant, agreement or condition on the part of Lessee hereunder. All claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments suffered by, recovered from or asserted against Lessor on account of injury or damage to person or property, to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act, omission, negligence or misconduct on the part of Lessee or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees or of any other person entering upon the leased property under or with the express or implied invitation or permission of Lessee, or when any such injury or damage is the result, proximate or remote, of the violation by Lessee or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees of any law, ordinance or governmental order, or when any such injury or damage may in any other way arise from or out of the occupancy of use by Lessee, its agents, servants, employees, contractors, patrons, guests, licensees, or invitees of the leased property. Such indemnification of Lessor by Lessee shall be effective without regard to whether such damage or injury may result in whole or in part from the negligence of Lessee or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees. Lessee shall procure general liability insurance of not less than Five Hundred thousand Dollars (\$500,000.00) combined single limit. The insurance shall name the Lessor as additional insured and shall provide thirty (30) days notice of cancellation or nonrenewal. Lessee shall furnish certificate of said insurance to Lessor.

6. Lessor shall pay the real estate taxes.
7. The Lessee shall not allow or cause waste to occur upon the property or in any way damage the ground except as is required in the course of conducting its business as described in paragraph 6 above.
8. Should the nonpayment of rent remain in default after written notice from the Lessor to the Lessee at the Lessee's address, Taylor Resources, Inc., SE 130 Lynch Road, Shelton, Washington 98584, for a period of thirty (30) days, it shall be lawful for the Lessor to re-enter the property, and to remove all persons and property belonging to the persons other than Lessor therefrom, being understood that in the event the Lessor exercises its right

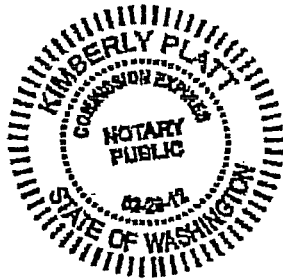
STATE OF WASHINGTON)

COUNTY OF Thurston)

:ss.

On this day personally appeared before me John Lockhart to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14th day of August, 2008.



Kimberly Platt
NOTARY PUBLIC IN AND FOR THE
STATE of Washington, residing at WA
My commission expires: 29 Feb. 2012

STATE OF WASHINGTON)

COUNTY OF MASON)

:ss.

On this day personally appeared before me _____ to me known to be the _____ of TAYLOR RESOURCES, INC., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN under my hand and official seal this _____ day of _____, 2008.

NOTARY PUBLIC IN AND FOR THE
STATE of Washington, residing at _____
My commission expires: _____

under this paragraph it will not waive or lose its right of action against the Lessee for all rentals due at the time of said removal. In the event either party engages an attorney to enforce any covenant of this Lease or breach thereof Lessee agrees to pay reasonable sums for attorney's fees and costs. Venue for any such action or breach of the Lease shall be in Mason County Superior Court.

9. At the expiration of the term of this Lease the Lessee will quit and surrender up the premises and all property leased hereunder in its present condition, ordinary wear and tear or ordinary damage by the elements excepted.
10. This Lease shall be binding upon the parties hereto, their heirs, executors and assigns.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

Barnes C. Lyckhart
John C. Lyckhart
LESSOR:

Mailing Address: 120 State Ave. # 1191
Olympia, WA 98501
Telephone: 360-754-6549

W. J. Taylor
LESSEE:

TAYLOR RESOURCES, INC.



WASHINGTON STATE DEPARTMENT OF
Natural Resources

DOUG SUTHERLAND
Commissioner of Public Lands

May 10, 2007

John C. Lockhart
120 State Ave NE PMB 1191
Olympia, WA 98501

CERTIFIED MAIL
7006 0100 0003 6471 9107

Dear Mr. Lockhart:

The State of Washington Department of Natural Resources has identified certain state owned tidelands throughout Puget Sound that would be amenable for intertidal geoduck aquaculture, one of which is located nearby your residence (please see map enclosed).

The department has received and accepted an offer to make use of approximately one acre of this tideland parcel for geoduck aquaculture.

The present timeframe for planting the parcel is at least one year out.

If you would like to know more about our program, please feel free to call me at (360) 732-7411.

Sincerely,

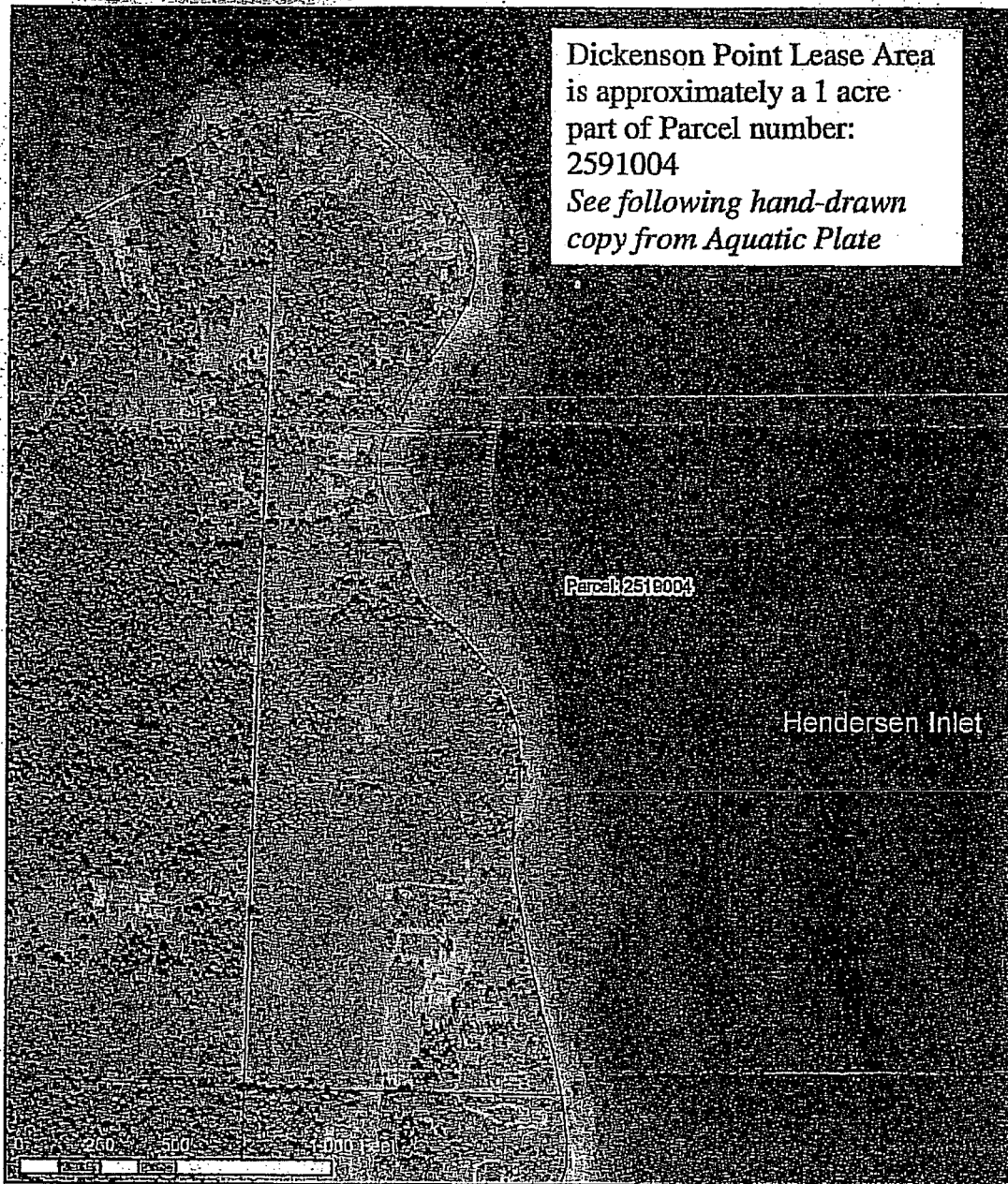
Jodi Darkness

for Jeffrey Schreck, Aquatic Lands Manager
Aquatic Region, Orca Straits District

Enclosure

cc: File – NW, Oly

GEODUCK AQUACULTURE LEASE AREA #2—DICKENSON POINT



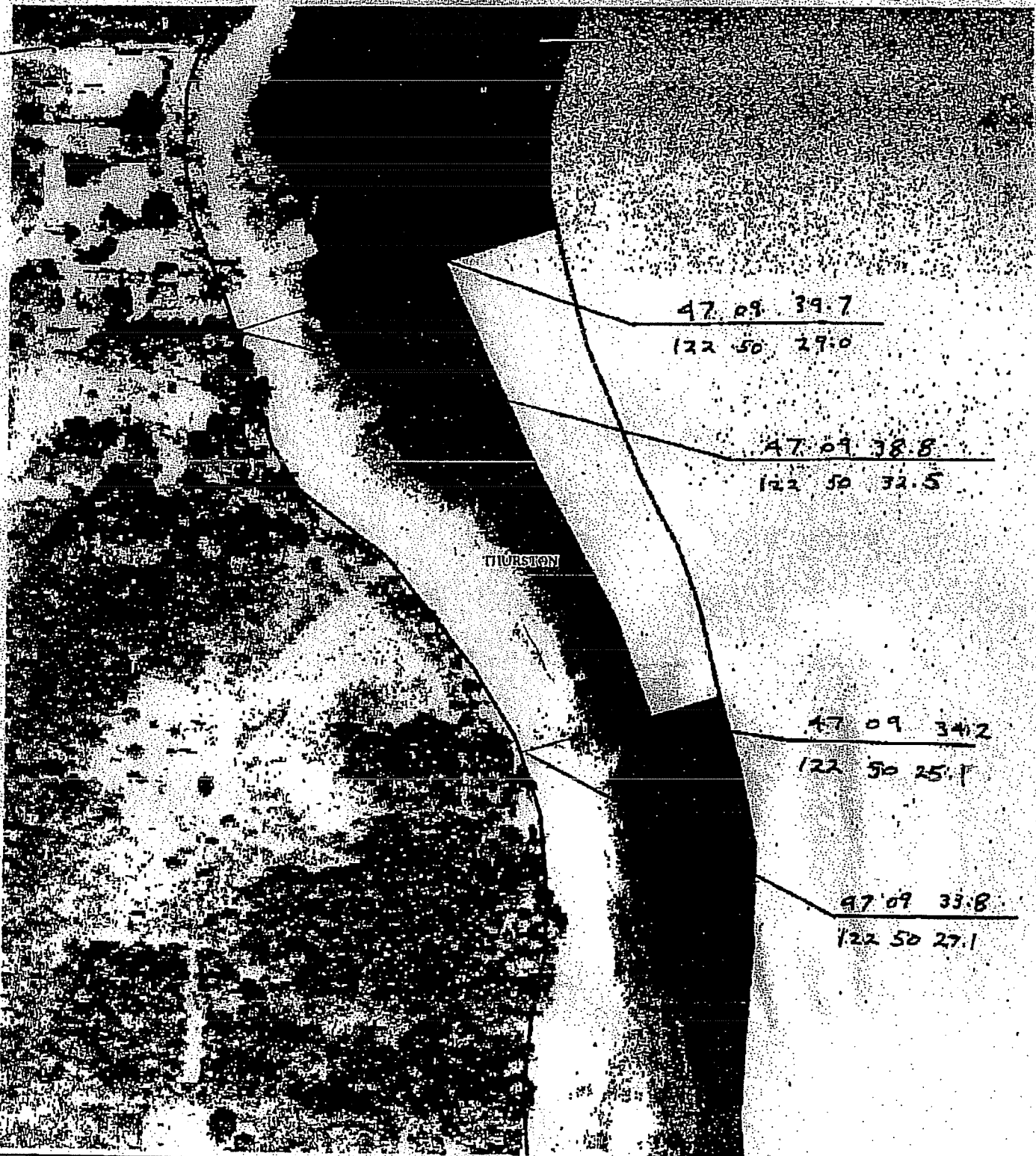
Map Legend		Eel Grass	Spawners
	Geoduck Bed	Absent	mmmm Herring Spawning
	Aquatic Parcels	Continuous	mmmm Rock Sole Spawning
		Patchy	mmmm Smelt Spawning
			mmmm Sanddane Spawning

Dickenson Pt Parcel #2591004

S5-T19N-R1W



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Soil, Water, and Fishery Resources



For DNR Internal Use Only



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Doug Sutherland Commissioner of Public Lands

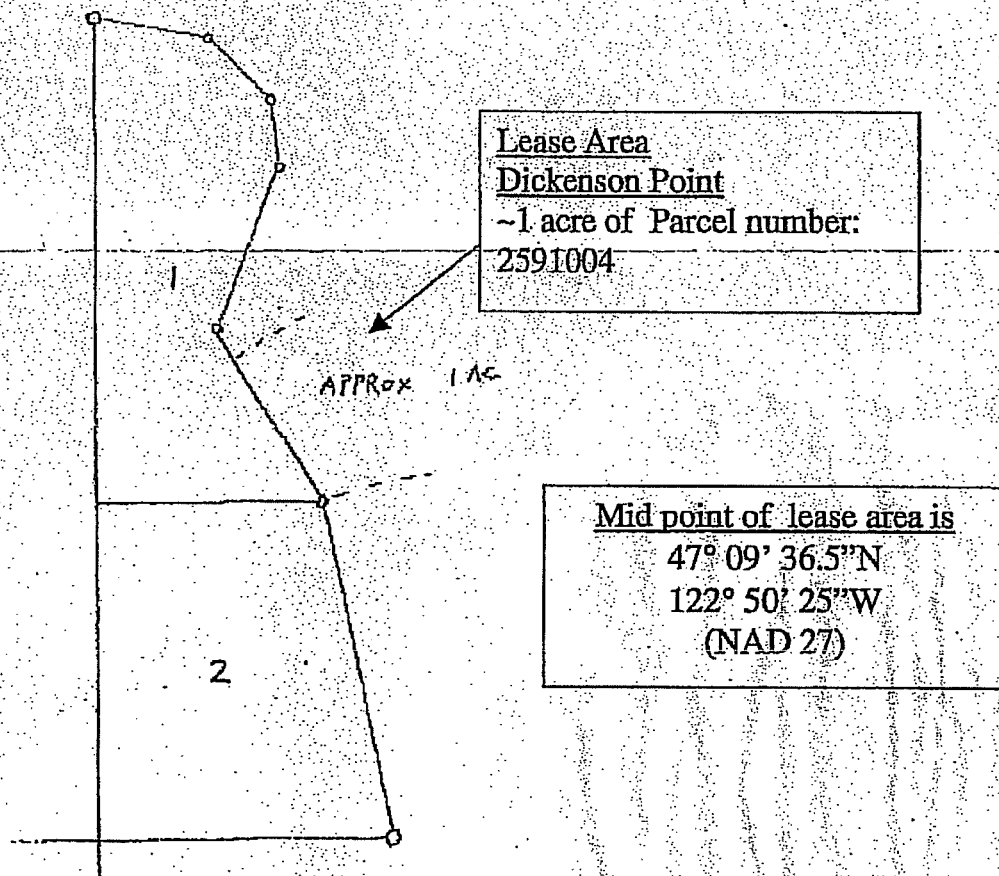
02040 80 120 160
Feet

DICKINSON



Dickenson Point

A portion of Government Lot 1, Section 5,
T19N, R1W, W.M.



ARCHAEOLOGICAL RECONNAISSANCE SURVEY
for Taylor Shellfish Proposed Geoduck Farm,
Lockhart Property

Prepared for Taylor Shellfish Farms
130 SE Lynch Road, Shelton, WA 98584

by
Richard D. Daugherty, PhD
and Ruth Kirk
2231 Marina Lane SE
Lacey, WA 98503

May 4, 2009

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INTRODUCTION

Project Background

The property owned by John and Barbara Lockhart on Henderson Inlet near Dickenson Point in Thurston County (9000 NE Libby Road, Olympia, WA 98506) is proposed for use by Taylor Shellfish as a geoduck farm. There, on April 26, 2009, archaeologist Dr. Richard D. Daugherty and his associate Ruth Kirk conducted the archaeological survey reported here.

Brian Phipps, Geoduck Division Manager for Taylor Shellfish took Daugherty and Kirk to the site by boat. Investigation focused primarily on the sandy subtidal zone where the geoducks are to be planted. The upper beach also was checked for lag material.

Access to the area proposed for geoduck farming is now and will continue to be by water; no construction or staging areas are to be involved.

Environmental Setting

At the proposed Lockhart shellfish farm, and adjacent to it, houses line the top of a low, vegetated, gently sloping bank that is edged at the base with bulkheads. In recent post-Pleistocene time a forest of western hemlock and redcedar plus Douglas-fir most likely characterized the area.

Moon snails abound in the sandy mud of the lower beach along with hard-shell clams. Algae, especially the leafy *Ulva lactuca* and filamentous *Intermorpha*(?) are present in the minus-tide zone, turning a wide expanse a bright green.

Cultural Setting

Puget Sound as a whole consists of interconnected waterways reaching from Admiralty Inlet north of Seattle to Budd Inlet at Olympia, an area 170 miles long by 40 miles wide (Nelson, 481). It holds "islands, deltas, tide-flats and marshes, estuaries, the tidal portions of rivers, shallow bays, open water, and beaches of many varieties" (Nelson, 481). As such, it offers scores of environments and habitats, and consequently is rich in resources both aquatic and terrestrial. This richness made it possible for a non agricultural society to achieve stable villages and what was perhaps North America's greatest aboriginal population density outside of Mexico.

For the Puget Sound Basin, human presence stretches back at least as early as 9,000 years ago, a date based on archaeological discoveries on stream terraces away from present-day salt water. Along Puget Sound shores the earliest site known so far is 6,500 years old, a shell midden on a bluff south of Tacoma near the Fort Nisqually fur-trade post (Kirk and Daugherty, 75).

Coast Salish people were occupying the area when EuroAmerican explorers began coming in the late 1700s soon followed by British fur traders and American settlers. Indeed, at this time of early contact there were at least 50 autonomous Coast Salish groups living along Puget Sound waterways and in its surrounding lake-studded hills and prairies (Suttles and Lane, 485). All spoke essentially the same language—*Lushootseed*—and shared a common culture. Multiple families lived together in cedar plank houses 60 or 70 feet long, or more, storing enough food to offset winter scarcity and permit hosting large gatherings at elaborate ceremonials. Seaworthy dugout canoes facilitated widespread travel and people met their needs through knowledge hundreds and thousands of years old of where to go, when, in order to gather and hunt what.

Then, within a period no greater than a single lifetime, the presence of the newcomers irrevocably changed Native life. Diseases for which the Puget Sound people had no immunity ravaged the population, and alien goods began influencing daily life. Also, Indian people increasingly switched to

relying on wages for livelihood rather than solely on traditional economic pursuits such as fishing, hunting, gathering plant materials, and trading with other Native groups.

METHODOLOGY

Background Research

Files at the Department of Archaeology and Historic Preservation (DAHP) list eight archaeological sites in the Woodard Bay area south of the Lockhart property. These were recorded in 1991 and 2007 by Lee Stilson, archaeologist with the Washington Department of Natural Resources. Several of them include beach lag. All are prehistoric ranging from barely pre-contact to an estimated 4,000 to 8,000 BP.

Site 45-TN-219 lies on a remnant terrace on the northern shore of upper Chapman Bay where a small stream empties from a minor drainage. Although at present only about 22 square meters in extent, this site appears to have been diminished by erosion; dense concentrations of fire-modified rock occur as beach lag. At least three hearths with ash and fire-modified rock were eroding from the bank when the site was examined in 1991. Soil is dark and greasy. Shells were not abundant but included littleneck clam, butter clam, and whelk. A comparative age estimate places the site at 2,000 BP. Depth is about 75 centimeters.

With a comparative age estimated as 2,000 BP—and eroding into the bay—site 45-TN-220 is on the southern shore of Chapman Bay; only about 20 square meters with a depth of about 75 centimeters remained when examined in 1991. A small stream flows nearby. Fire-modified rock and charred shell fragments were present with butter clams seemingly dominant.

Site 45-TN-222 on the south side of Chapman Bay is covered by 60 centimeters of gray clay or silt slumped as a block from the cliffs behind it.

Fire-modified rock and charcoal were present along with shells of Olympia oysters, basket cockles, barnacles, mussels, and butter clams. Soil is dark. Depth seemed to be about 75 centimeters. Estimated age: 2,000 BP.

Site 45-TN-223 is on a Woodard Bay terrace about 10 meters above the beach, facing Henderson Inlet and the Weyerhaeuser log dump site. At this site a probable cobble chopper and three primary flakes lay entwined in the roots of a large redcedar. Fire-modified rock and charcoal also were present along with some shell in too poor condition to be readily identified (but most likely mainly butter clam). The site extended about 10 meters north-south and the same east-west. Depth: about 10 centimeters. Age estimate: 4,000 to 8,000 BP.

45-TN-224 faces Henderson Inlet on a small terrace just north of a creek that flows into northern Woodard Bay. It consists of a 25-square-meter terrace area largely invaded by redcedar roots and there is also beach lag covering about 20 square meters. Depth of the more or less intact terrace component is only about 5 centimeters. Soil is dark. Fire-modified rock and charcoal and small amounts of shell dominated by butter clam characterized the cultural material there in 1991. The beach lag included quartz cobbles, siltstone flakes, fire-modified rock, basalt flakes, and a cobble pecked along one edge. Age estimate: 4,000 to 8,000 BP.

Site 45-TN-225 consists of beach surface lag lying on the western shore of the Woodard Bay Conservation Area about 1,200 feet inside the northern boundary. Only fire-modified rock and some flakes remained in 1991 and there was no evidence of cultural material on the terrace above the lag, quite possibly owing to erosion. Age appeared pre-historic to Stilson but could not be estimated further.

About 15 square meters in size, 45-TN-226 is located within the Woodard Bay Conservation Area in what was a small clearing on a terrace that overlooks Henderson Inlet. It is situated about 17 meters in from the edge of the terrace and 70 meters south of the Conservation Area's northern boundary. About 5 centimeters deep, the site consists of fire-modified rock,

charcoal, and shell (with littleneck clams the dominant species). Age: prehistoric.

Shell midden 45-TN-352 is on the north shore of Chapman Bay stretching for about 26 meters in length and 3 meters in width; depth is 15 to 20 centimeters. Fire-modified rock, shells and darkened soil were present. Age is listed as prehistoric.

Selected texts dealing with the cultural background of the region were consulted in addition to the research at DAHP.

Fieldwork

On a midday minus 2.8 tide, Dr. Richard Daugherty and associate Ruth Kirk examined the sandy intertidal beach by repeatedly walking the length of the property, parallel to each other and 15 to 20 paces apart, watching for fire-modified rock, charcoal, lithic flaking debris, ground-stone tools, net weights, bone fragments, shell concentrations, etc. They also checked along the base of the high bank and Daugherty hand-faced representative portions to observe soil profiles.

Brian Phipps estimates the proposed Lockhart geoduck farm area as a bit more than an acre, based on pacing its length as 300 feet and width as 160 feet.

Conclusions

No evidence of the beach having been used for extensive shellfish gathering or offshore fishing was found; had there been, it might indicate use of the area for a campsite or village, or of an occupation site having eroded onto the beach. Two rusty iron rods a foot or two long lay on the surface of the upper beach, washers on each end plus one end with a nut.

No National-Register-eligible site, structure, or object is present nor are there apparent or likely pre-contact cultural resources in permit area. No upland construction or mitigation is planned. No staging or access areas are needed; the approach is by water.

Standards and Guidelines for Archaeology Historic Preservation:

- a. Kinds of properties looked for: See above.
- b. Boundaries of area surveyed: Upper beach line to lower edge of intertidal. See above.
- c. Method and extent of survey: Examination of exposed beach surface at minus tide.
- d. Historic properties present: None.
- e. Categories of information collected: Field observation and DAHP records.
- f. Places examined that have no historic properties: Entire beach area.

Recommendations

No further archaeological investigation or monitoring is needed.

REFERENCES

Kirk, Ruth and Richard D. Daugherty

2007 *Archaeology In Washington*; Seattle: University of Washington Press

Nelson, Charles M.

1990 "Prehistory of the Puget Sound Region" In Smithsonian *Handbook of North American Indians* Vol. 7: The Northwest Coast, edited by Wayne Suttles

Suttles, Wayne and Barbara Lane

1990 "Southern Coast Salish" In Smithsonian *Handbook of North American Indians* Vol. 7: The Northwest Coast, edited by Suttles



Photo 1 - A small stream fans out across the beach a short distance north of the Lockhart property. Photo is facing south.



Photo 2 - A steep bank backs the Lockhart beach. Photo is immediately south of the property where exposed soils dramatically indicate the bank's height.

RECEIPT

Thurston County

Resource Stewardship Department
2000 Lakeridge Drive
Olympia, WA 98502
(360) 786-5490

Taylor Shellfish Farms (Diane Cooper)

SE 130
Lynch RD
Shelton WA 98584

Project Type: JARPA - Exemption

PAYMENT #: 91563

Application/Permit #: 10101666

This number should be used to check the status of your project or when calling in for any inspection or information after a permit is issued.

Memo: 164173

Fee Description	Paid
Land Use Application - Planning	\$495.00
Land Use Application - Health	\$365.00
DevRev-Land Use Application	\$250.00
Paid:	\$1,110.00 (Check)

Received by: T. Trager

(Signature)

Date: March 1, 2010



2010100540

10 101666 XL

Site Address: 9000 LIBBY RD NE OLYMPIA WA 98506

Parcel #: 11905230300

10 101666 XL

Permit Type: JARPA - Exemption

Sub Type: Restoration

Work Type: New Construction

Site: 9000 LIBBY RD NE OLYMPIA WA 98506

Assessor Property ID: 11905230300

Applicant: Diane Cooper/Taylor Shellfish Farms

Owner: JOHN C & BARBARA A LOCKHART