



## Staff Report for the Hearing Examiner

Report Date: February 1, 2017

Application Submittal Date: September 29, 2016

Hearing Date: February 9, 2017

Application Complete Date: September 29, 2016

**Permit Number:** 16 04402

**Project Name:** Suquamish Seafood Cultch & Single Oyster Cultivation

**Type of Application:** Shoreline Substantial Development Permit (SSDP)

*This staff report was prepared by Steve Heacock, Planner, based on information available up until the time the report was prepared. New information relevant to review of this application may become available prior to the hearing or at the hearing. Staff may wish to change their analysis based upon that new information, and reserves the right to do so.*

### Proposal Summary:

The proposed project is the installation of an aquatic-based aquaculture project for oyster cultch and single-oyster cultivation for the Suquamish Seafood Enterprises, located at the Old Suquamish Tribal Center beach at 15838 Sandy Hook Road NE, Poulsbo, WA. The proposal is located in the aquatic zone of Port Orchard Bay, Puget Sound. The project proposes a new cultivation operation for growing oysters, using oyster spat seeded bags (oyster larva) purchased from a certified shellfish hatchery. The bags will be tied onto non-treated wood pallets placed on the beach between -2 and +2 feet at Mean Lower Low Water. The spat will be allowed to grow for approximately 12 months in protective mesh bags. After this initial growth period oysters will be taken out of their mesh bags and spread on the beach by hand. Bags and pallets will be recycled when possible or disposed of properly on land. Oysters will grow to commercial size for another 12 to 24 months. They will be harvested by hand in cages and picked up by an oyster barge or other floating work platform at high tide. Planting will be staggered over a ten year period to occupy a total of approximately one acre.

The Single Oyster Culture component of the project is also located in the aquatic zone at the Old Tribal Center and uses a flip-flop/tumble technique. This process requires bagging approximately 200 oysters in semi-rigid mesh bags or purses and tying them to an anchored rope or wire system. Floatation is added to each bag to allow them to flip back and forth with the tide. A maximum of 16,000 bags will be used at this location, occupying approximately two acres. PVC pipes will be used for anchoring this system.

The Suquamish Tribe has developed an Oyster Culture Operational Plan, with collaboration from the Washington State Department of Natural Resources, and their consultant Anchor QEA, Inc. The plan has been guided through the biological evaluation for this specific operation.

The potential, direct impacts caused by the proposed project include: (1) increased turbidity from installation, (2) increased noise during installation, and (3) impacts to eelgrass beds. Indirect effects are effects of the project that occur later in time. Potential indirect effects of the proposed project are: (1) migratory pathway alteration, (2) increased predation, and (3) increase noise from operation. In the subject case, review of the application materials and above cited environmental regulations indicates that there is *not* likely to be more than a moderate adverse impact in these areas of concern. For example, all floating structures in this project are proposed to be located in

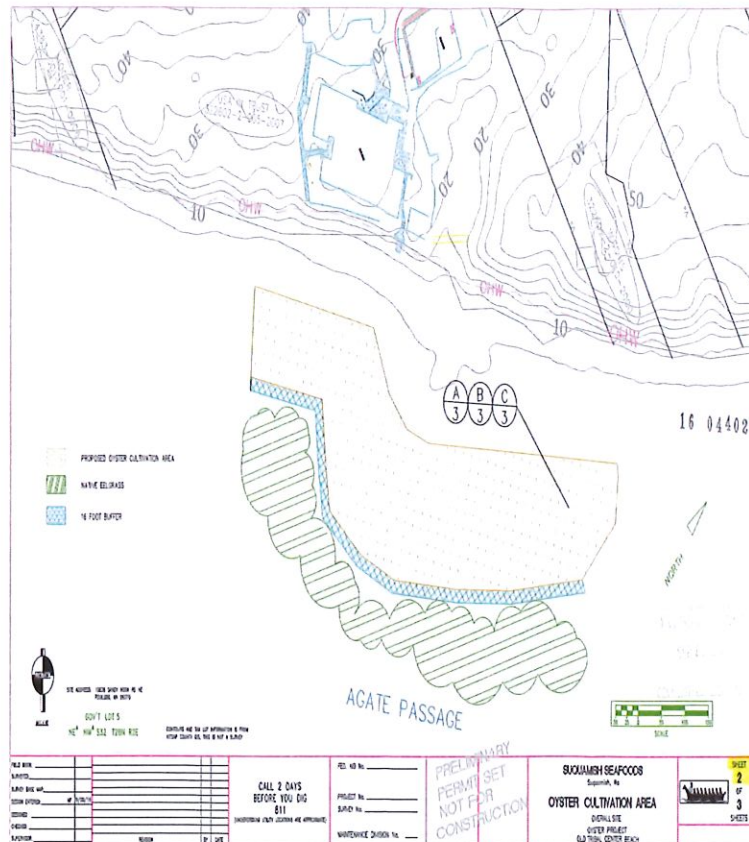
deeper waters where no migratory path alteration impacts are expected to occur. Regarding setback to eelgrass beds, a 16 foot setback is proposed within proximity of any eelgrass beds, and is further guided in the BE (Exhibit 8) and associated Operational Plan (Exhibit 7).

To ensure that there is no net loss in ecosystem functions resulting from this project, all efforts have been taken to avoid and minimize any potential impacts. Measures to mitigate for unavoidable impacts have been recommended in Section 2 of the Biological Evaluation, (2.4 Impact avoidance and Minimization Measures and Conservation Measures). In addition to mitigation measures, it is expected that the proposed operation will provide ecosystem benefits in terms of water quality (increased circulation and filtration). Furthermore, the proposed seeding outcome will aid in the establishment of a healthy shellfish population in Port Orchard Bay and the greater Puget Sound region, where possible. Given the above circumstances, no net loss of ecosystem function is expected to occur as a result of this proposed project.

**Project Request:**

The Suquamish Tribe is requesting approval of a Shoreline Substantial Development Permit under the Shoreline Management Master Program, Title 22 of the Kitsap County Code (KCC) in order to install a Pacific oyster cultch and single oyster cultivation project within a three-acre portion of the tidelands in Port Orchard Bay, Puget Sound.

**Site Description:** As the project is located in water, we are providing a primary description of the aquatic environment surrounding the project area.



Upper intertidal has a mix of sediment grain sizes (rocks, cobble, gravel and sand). Mid intertidal is mainly sand and gravel. This area is fairly exposed to prevalent winds and sediments shift a great deal seasonally which makes it difficult for some infauna to reside permanently. The lower intertidal is a mix of sand and finer sediments that support clams (macoma, butter clams, littleneck clams, and some geoduck) and other infauna such as worms. There are two main native eelgrass beds on site and the operation will provide at least a 16 foot buffer from all eelgrass on site.

**Project Location:**

The proposed Shellfish Nursery will be located in Port Orchard Bay, Puget Sound The project area is located in North Kitsap County; Commissioner District 1 (Section 32, Township 26 North, Range 02 East). The proposal is located at the Old Suquamish Tribal Center at 15838 Sandy Hook Road NE, Poulsbo.

**Assessor's Account #:**

322602-2-005-2007

**Applicant/Owner of Record:**

U S A IN TRUST  
PO BOX 498  
SUQUAMISH, WA 98392

The land portion of the project is owned by the Suquamish Tribe, USA Trust Lands. The project area includes Tribal Trust tidelands and also includes lands under an agreed land trade performed with Washington State Department of Natural Resources and the Bainbridge Island Land Trust. An associated Three Party Agreement is provided as part of the operational plan (Exhibit 7).

**Applicant:**

Suquamish Tribe, Suquamish Seafood Enterprises

**Project Representative:**

Tony Forsman, Suquamish Seafood Enterprises  
PO Box 1413  
Suquamish, WA 98392

**SEPA (State Environmental Policy Act):**

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct an environmental impact review of any action that might have a significant, adverse impact on the environment. The review includes the completion of an Environmental Checklist by the applicant and a review of that checklist by the County. If it is determined that there will be environmental impacts, conditions are imposed upon the applicant to mitigate those impacts below the threshold of "major" environmental impacts. If the impacts cannot be mitigated, an environmental impact statement (EIS) must be prepared. The decision following environmental review, which may result in a Determination of Non-significance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

The SEPA Comment period previously occurred concurrent with the Notice of Application dated October 18, 2016 (Exhibit 9). One comment was received and has been addressed by the

applicant via e-mail (Exhibit 18). After the comment period ended, the Responsible SEPA Official issued a Mitigated Determination of Non-Significance (MDNS) on December 21, 2016 (Exhibit 10). There was no SEPA appeal.

**Physical Characteristics:**

Port Orchard Bay is classified as a shoreline habitat (Washington Department of Fish and Wildlife (WDFW, 2014) with several creeks that drain into it. There are several smaller creeks with salmonid use within the proximity of the project area, including a small F-typed stream toward the northern extent of the property. Port Orchard Bay is located within Water Resource Inventory Area (WRIA) 15, East Kitsap Basin.

A habitat survey was conducted in June of 2016. A map of the delineated eelgrass bed can be seen in Figure 4 of the Biological Evaluation (Exhibit 8) and the detailed findings of this survey can be found in Attachment 1 of the same document. In general, the shoreline was pristine and contained many native trees on and above the bluff areas to the north and south of the tribal center development. The littoral zone (close to shore) begins from the bottom of the bluff where the Ordinary High Water Mark (OHWM) is located. The substrate in the supralittoral (splash or spray zone) primarily consisted of sand, pea gravel, and some shell hash. From the eulittoral zone waterward, or the habitat formed on the lower shore of an aquatic ecosystem and below the littoral zone, the substrate consisted of sand and silt. *Zostera marina* (common eelgrass) occupied the depths below approximately -3.0 feet MLLW.

According to the BE (Exhibit 8), this project is located within the proposed/existing critical habitat of the following listed species of concern: Puget Sound Chinook Salmon, Puget Sound Steelhead Trout, Hood Canal Summer-run Chum Salmon, nearshore Georgia Basin Rockfish, and Southern Resident Orca Whales. As described in the BE, impacts to fisheries is not anticipated due to the operation, and will likely not be altered through consultations with the ACOW Nationwide 48 permitting process.

**Comprehensive Plan Designation and Zoning:**

The project is located in waters of Puget Sound and does not have a comprehensive plan designation or an existing zoning designation. In addition, the nearest adjacent upland area is part of Suquamish Tribal Reservation and has no zoning designation. However, beyond the reservation boundaries to the north and south along the shoreline are zoned Rural Residential (RR).

**Surrounding Land Use and Zoning:**

Area parcels are developed with single-family residences, zoned Rural Residential (one dwelling unit perm 5-acres).

**Shoreline Environment Designation:**

Under the Kitsap County Shoreline Management Master Program (SMP), the affected shoreline designation is Aquatic. The closest upland designation with similar descriptive qualities is Shoreline Residential. Moderate slopes above the shoreline are a common attribute.

**Public Utilities and Services:**

Water: PUD #1

Power: Puget Sound Energy  
Sewer: On-Site Septic  
Police: Suquamish Police Department  
Fire: North Kitsap Fire and Rescue  
School District: North Kitsap School District #400

**Access:**

Access to the site is off Sandy Hook Road NE

**Policies and Regulations Applicable to the Subject Proposal:**

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan  
Adopted December 11, 2006 (Amended December 2012)

The following Comprehensive Plan goals and policies are most relevant to this application:

**Natural Systems**

**Policy NS-42**

Encourage developers to protect continuous corridors of native vegetation wherever possible, to disturb as little natural vegetation as feasible, and to enhance or restore wildlife habitat by transplanting or planting native vegetation in the developed landscape.

**Economic Development**

**Policy ED-1**

Balance business and industrial development with environmental protection and the provision of recreational open space.

**Policy ED-5**

Encourage business diversification to reduce dependence on government spending, commuter jobs outside of the county, and to minimize cyclical unemployment.

**Rural and Resource Lands**

**Policy RL-4**

Limit development only to that which serves rural residential or resource needs and not draw people from UGAs.

**Policy RL-39**

Require that land use activities within or adjacent to resource lands are sited and designed to minimize conflicts with and impacts on resource lands. Minimization of impacts may be accomplished through the use of setbacks, buffers and other requirements.

**Policy RL-42**

Encourage the use of Best Management Practices (BMPs) for all resource activities.

Shorelines

Policy SH-1

Shoreline characteristics such as scenic vistas, estuarine areas, biological wetlands, beaches, and other unique biological functions, valuable natural systems and aesthetic features should be preserved and restored.

Policy SH-2

Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, resource values, and environmental protection.

Policy SH-7

Encourage and support water related and water dependent commercial uses that are environmentally compatible.

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Kitsap County Code (KCC)

*Title 17, Zoning*

*Title 19, Critical Areas Ordinance*

*Title 21, Chapter 21.04 - Land Use and Development Procedures*

*Title 22, Kitsap County Shoreline Management Master Program*

**Documents Consulted in the Analysis:**

A complete index of exhibits is located in the project file. To date, the index to the record consists of 14 Exhibits.

Exhibit #	Document	Date or date stamped
<u>1</u>	Project Application	<u>09/28/16</u>
<u>2</u>	Joint Aquatic Resources Permit Application (JARPA)	<u>09/28/16</u>
<u>3</u>	Construction Plans	<u>09/28/16</u>
<u>4</u>	Site Photographs	<u>09/28/16</u>
<u>5</u>	Project Narrative	<u>09/28/16</u>
<u>6</u>	State Environmental Protection Act (SEPA) Checklist	<u>09/28/16</u>
<u>7</u>	Suquamish Tribe Oyster Culture Operation Plan	<u>09/28/16</u>
<u>8</u>	Biological Evaluation	<u>09/28/16</u>
<u>9</u>	Notice of Application – Type III	<u>10/24/16</u>
<u>10</u>	SEPA Mitigated Determination of Non-Significance	<u>12/21/16</u>
<u>11</u>	Certification of Public Notice	<u>01/11/17</u>
<u>12</u>	Public Comment: Tribal Response and McMahon Comment	<u>12/12/16</u>
<u>13</u>	Public Comment: Beck	<u>01/27/17</u>
<u>14</u>	Staff Report	<u>02/02/17</u>

**Communication:**

On December 21, 2016, the Mitigated Determination of Non-Significance was mailed to multiple parties. No comments were received during the NOA process. One landowner within the area had questions regarding the operation of the facility related to intertidal work. The staff planner asked the tribal representative to provide the information and this was done in a memo form as Exhibit 12. After the public posting occurred, an additional neighbor in the area also provided comment regarding views and project appearance (exhibit 13, Beck letter).

**Public Comments:**

The Notice of Application was sent to the applicant and their representative, property owners within an 800 foot radius, as well as the Suquamish Tribe, Point-No-Point Treaty Council, the Department of Ecology, the Department of Fish and Wildlife, Department of Natural Resources, Department of Transportation, Naval Base Kitsap, Kitsap County Public Works, Kitsap Public Health District, Kitsap Transit, North Kitsap Fire District, North Kitsap School District, Water Purveyor, and Kitsap Parks and Recreation. We received no comments. Two comments were received after the SEPA decision was issued. At the request of County staff, the Suquamish Seafood Enterprises project lead has created a Memo (Exhibit 12) explaining the operation plan, potential impacts, visual impacts and mitigation methods that will be implemented to reduce the visual concerns. A second written comment expresses a similar concern and has been addressed by the same memo. Further details of the impacts and required mitigation for the project are provided in the operational plan.

**Analysis:**

**KCC 22.400.105(B) Standards for Work Waterward of OHWM:**

1. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers established in this program.

**Staff Comment:** *Shoreline buffers and setbacks are not a part of this proposal.*

2. Projects involving in-water work must obtain all applicable state and federal permits or approvals, including those from the U.S. Army Corps of Engineers, Ecology, Washington Department of Fish and Wildlife (WDFW), and/or Washington Department of Natural Resources.

**Staff Comment:** *In the JARPA application and on page 1 (1.2) of the Biological Evaluation (Exhibit 8), the applicant has listed all local, state and federal permits that they will need to obtain in order to have the shellfish aquaculture project; thus, the applicant is aware of these requirements.*

3. Projects involving in-water work must comply with timing restrictions as set forth by state and federal project approvals.

**Staff Comment:** *As Endangered Species Act (ESA) listed species are found within the proposed project's action area, installation should only take place during work windows when these species are not migrating or spawning near the action area. According to the BE and associated Nationwide Permit 48, there are no timing restrictions related to the operation.*

4. Protection of Bank and Vegetation.
  - a. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
  - b. All disturbed areas must be restored and protected from erosion using vegetation or other means.
5. If, at any time, water quality problems develop as a result of in-water work, immediate notification must be made to any appropriate state or federal agency, e.g., Ecology, WDFW, National Marine Fisheries Service, U.S. Fish and Wildlife Service, etc. Affected

tribes shall also be notified.

**Staff Comment:** *This is a low impact project where little or no bank alteration or impact to vegetation will occur.*

### **KCC 22.300.145 Shorelines of Statewide Significance.**

**Designation.** The Act designated certain shoreline areas as shorelines of statewide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people of the state derive benefit, the statewide interest should be recognized and protected over the local interest.

Those areas that have been designated as shorelines of statewide significance (RCW 90.58.030) in Kitsap County are:

1. Puget Sound: those areas lying seaward from the line of extreme low tide.
2. Hood Canal: from Kitsap-Mason line to Foul Weather Bluff, from the line of extreme low tide to the OHWM, and associated shore lands.

Goal: To ensure that the statewide interest is recognized and protected over the local interest in shorelines of statewide significance, the county shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.020 and the following policies (in order of preference):

#### B. Countywide Policies.

1. Policy SH-47. Recognize and protect the statewide interest over local interest.
  - a. The Washington Departments of Fish and Wildlife (WDFW) and Ecology (DOE), affected tribes, other resources agencies, and interest groups should be consulted for development proposals that could affect anadromous fisheries or other priority species or habitats.
  - b. Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations

**Staff Comment:** *The Notice of Application and SEPA determination were mailed to all listed parties and no comments were received. Staff also personally contacted, the WDFW, DOE, ACOE, Department of Natural Resources, and Kitsap Public Health to listen to their views of the proposal. No one expressed concerns about the proposal.*

2. Policy SH-48. Preserve the natural character of the shoreline.
  - a. Administer shoreline environments and regulations to minimize damage to the unique character and ecology of shorelines of statewide significance.
  - b. Where natural resources of statewide importance are being diminished over time by human activities, restoration of those resources should be facilitated.
  - c. In order to reduce adverse impacts to the environment while accommodating future growth, new intensive development activities should upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.
3. Policy SH-49. Result in the long-term over short-term benefit.
  - a. Preserve sufficient shore lands and submerged lands to accommodate current and projected demand for economic resources, such as shellfish beds and navigable harbors.



- b. Actions that would convert resources into irreversible uses or detrimentally alter natural conditions that are characteristic of shorelines of statewide significance should be severely limited.
  - c. Evaluate the short-term economic gain or convenience of developments in relationship to long-term and potentially costly impairments to the natural environment.
  - d. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities, or for the general enhancement of shoreline areas.
4. Policy SH-50. Protect the resources and ecology of the shoreline.
- a. Projects shall be required to consider incremental and cumulative impacts while ensuring no net loss of shoreline ecosystem processes and functions.
  - b. In order to ensure the long-term protection of ecological resources of statewide importance, activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments should be severely limited.
  - c. Limit public access where improvements would result in a loss of shoreline ecological functions, such as in priority or sensitive habitats.

**Staff Comments for Items 2, 3 and 4:** *The status of each of the listed species in the action area has been provided in the Biological Evaluation. The proposed project has been described and the action area defined. A habitat survey was provided. When reviewing all the data, the scientists who studied this proposal identified the potential direct and indirect effects of the proposed action on the listed species and their critical habitat.*

**Direct Effects:** *They found that when considering the direct effects of the proposed project on the listed species and habitats one must determine if the proposed project will immediately reduce or destroy the listed species and/or their habitat. The potential, direct impacts caused by the proposed project include: (1) increased turbidity from installation, (2) increased noise during installation, (3) impacts to eelgrass bed from project installation.*

**Turbidity:** *Increased turbidity caused by installation has adverse effects on salmonid species. The impact level depends on duration of exposure, concentration of turbidity, the life stage during the increased exposure and the options available for the fish to avoid the plumes. The effects can be discussed in terms of lethal, sub-lethal, or behavioral. For this project, turbidity effects are expected to be localized and brief.*

**Noise:** *All components on the proposed project will either be pre-manufactured or assembled out of the water; therefore, noise impacts should only result from the installation of the proposed floating structures. The increase in noise as a result of installation is expected to be minimal and short lived. No species in the action area are expected to be impacted due to increased noise during installation. Minimal noise will result from operations on the proposed floating structures.*

**Eelgrass:** *The proposed project is within proximity of known eelgrass beds (*Zostera marina*). The beds have been identified, mapped and will be offset by 16 feet per the operational plan and See Section 2.4 of the Biological Evaluation for proposed management of impacts to the *Zostera marina* bed.*

**Indirect Effects:** *Indirect effects are effects of the project that occur later in time. Potential indirect effects of the proposed project are: 1) Migratory pathway alteration, 2) Increased predation, 3) Increase noise from operation.*

*Migratory pathway alteration: It is generally accepted that overwater/floating structures can alter migration behavior of juvenile salmon (though the effects may vary depending on the design and orientation of the structure, degree of shading, and presence of artificial light), and reduce salmon prey resources and refugia by shading aquatic plant life; however, the significance of these effects is not clear. The applicant found no studies that described empirical evidence supporting or refuting that modification of juvenile salmon behavior in shoreline habitats was reflected in changes in survival. Presently, although it is understood that under some conditions small juvenile salmon will delay or otherwise alter their shoreline movements when encountering an overwater/floating structure, the conditions under which this behavioral modification is significant to the fishes' fitness and survival is relatively unknown.*

*Scientific studies have found that salmon fry were observed in all nearshore habitats during each transect sampling period (day and night). The fry were observed under a wide range of PAR values (0.0001  $\mu\text{mol m}^{-2} \text{s}^{-1}$  to 2370  $\mu\text{mol m}^{-2} \text{s}^{-1}$ ). Fry were observed both outside the terminal (Mukilteo ferry terminal) and underneath the terminal at all times, and shadows produced by the 10-m-wide terminal structure did not appear to act as barriers to fry movement at this location.*

*There is no question that underwater structures may alter migration patterns – that is not in dispute. As seen in studies, there is evidence that indicate that salmon migration is not affected by the presence of overwater/floating structures. Of course, there are other studies indicating migration patterns are altered by overwater/floating structures.*

*This issue is that no one has shown that these migration changes lead to increased mortality or decreased fitness. None of the studies that report changes in salmonid migration patterns caused by overwater/floating structures have reported that these changes have a negative impact on salmonids.*

*Nevertheless, the Services (National Marine Fisheries and US Fish and Wildlife Service) have chosen to accept the hypothesis that overwater/floating structures will have negative impacts on salmonids, even though there is no current scientific research proving that this hypothesis is true. Impact minimization recommendations are based on this assumption. With that said, all floating structures in this project are proposed to be located in deeper waters where none of the above impacts are expected to occur (Washington State Department of Transportation 2001).*

5. Policy SH-51. Increase public access to publicly owned areas of the shorelines.
  - a. Preserve and encourage public access with special scenic or cultural qualities.

**Staff Comment:** *Beach access is limited at the project site due to steep bluffs adjacent to the shoreline. The shoreline at this location is under tribal jurisdiction and is not open to public access.*

- b. Give priority to developing paths and trails to shoreline areas and linear access along the shorelines, where appropriate.

**Staff Comment:** *No paths or trails are proposed at this location due to the restricted access at steep shoreline bluffs. The shoreline at this location is under tribal jurisdiction and is not open to public access. Therefore, paths and trails are not appropriate.*

- c. Locate development, including parking, as far inland from the OHWM as is feasible so that access is enhanced.

**Staff Comment:** *No parking or development is proposed at the near upland portion of the project site. Parking for employee access is existing at the Tribal Campus. No new parking is required for this project as adequate parking is existing.*

6. Policy SH-52. Increase recreational opportunities for the public in the shoreline.
  - a. Public access and recreation requirements should take into account the activities of state agencies and the interests of the citizens of the state to visit public shorelines.

**Staff Comment:** *The shoreline at this location is under tribal jurisdiction and is not open to public access.*

- b. Plan for and encourage development of facilities for recreational use of the shorelines, but reserve areas for lodging and related facilities on uplands well away from the shoreline, with provisions for non-motorized access to the shorelines.

**Staff Comment:** *No recreational development is included in this proposal. Beach access is limited at the project site due to steep bluffs adjacent to the shoreline. Development of facilities for recreational use or non-motorized access is not appropriate adjacent to the shoreline area.*

#### **KCC 22.200.135 Aquatic**

- A. Purpose. To protect, restore, and manage the unique characteristics and resources of the areas waterward of the OHWM.
- B. Designation Criteria. Lands waterward of the OHWM, which include tidelands, bedlands, and lands beneath freshwater shorelines of the state.
- C. Management Policies.
  1. New over-water structures and development on navigable waters and their beds should be allowed only for water-dependent uses, public access or ecological restoration, and when:
    - a. They do not preclude attainment of ecological restoration; and
    - b. The size of the new over-water structure is limited to the minimum necessary to support the structure's intended use; and
    - c. Multiple use of the over-water facility has been encouraged; and
    - d. The structure or use is located and designed to minimize interference with surface navigation, to consider impacts to public views, to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration, and to ensure that the project does not conflict with existing water-dependent uses; and
    - e. The use or modification is designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

**Staff Comment:** *The proposed project is a water dependent use and will be guided by the associated Operational plan (Exhibit 7). Please refer to page 11, Section 2.4 of the attached Biological Evaluation for more details (Exhibit 8).*

2. When new over-water structures are proposed for residential development of two or more dwellings, joint use or community dock facilities should be utilized rather than single-use facility

**Staff Comment:** *This item is not applicable to this aquaculture proposal.*

3. Development should be compatible with the adjoining upland designation.

**Staff Comment:** *The upland land designation is Tribal. The closest shoreline jurisdiction is Shoreline residential. The adjoining upland is currently a Tribal Facility with no plans for future development. The shellfish processing facility is located offsite, and Shellfish aquaculture is an allowed use in the associated Shoreline residential designation with an approved Shoreline Substantial Development Permit. The applicant has applied for this SSDP application.*

*The purpose of the Shoreline residential designation is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities. The project meets these requirements, as appropriate.*

4. Existing over-water residences may continue through normal maintenance and repair, but should not be enlarged or expanded. New over-water residences should be prohibited.

**Staff Comment:** *No residences are proposed.*

5. Applicants for any use or modification should schedule a staff consult to review the site conditions, and potential habitats and species. This consult should result in a general understanding of applicable development standards for the proposal.

**Staff Comment:** *No meeting was held, but the applicants did contact Kitsap staff for assistance and were made aware of the permit requirements for their project.*

6. Development over or in critical freshwater or saltwater habitats should be limited to those which mitigate impacts according to mitigation sequencing, and development standards for that development activity.

**Staff Comment:** *The following are mitigation and management measures to minimize or avoid impacts.*

**A. Work Windows:** *As ESA listed species are found within the proposed project's action area, installation should only take place during work windows when these species are not migrating or spawning near the action area. There are no regulatory work windows imposed on the project at this time. Should the ESA consultation change, work windows may be altered*

**B. Marine Construction and Operation Management:** *Although the proposed structures in this project will all be pre-manufactured and assembled out of the*

*water, the guidelines below are required to prevent and minimize any potential environmental impacts as a result of the installation of these structures.*

1. *Timing of the in-water work will be as specified in the JARPA, Biological Evaluation, HPA, Corps of Engineers or other authorized regulatory agencies.*
2. *Where forage fish spawning is documented or reported, additional testing may be requested of WDFW to vary work windows. Site inspection, notification and scheduling will be per WDFW procedures, if applicable.*
3. *Work on projects will be accomplished per the submitted and approved drawings and specifications.*
4. *All man made debris involved in the construction process will be removed from the site and disposed in approved upland site.*
5. *All required in-water construction will be conducted within the permitted work window.*
6. *In-water construction may need to be completed after in-water work windows. This work may include installation of the floating shellfish structures. Over-water work will be conducted under the following procedures:*
  - a. *All materials will be moved by hand equipment or small barges that will bring materials to the site but will not be allowed to ground or in any way be detrimental to the site.*
  - b. *The floating structures will be constructed at an upland off-site location and installed as modular units.*
  - c. *All over-water remaining construction completed with hand tools and small relatively quiet power tools, i.e. skill saw, ½" electric drill, etc.*
  - d. *Typical construction may be seasonal and dependent on harvest timing.*
7. *All possible precautionary measure will be taken to contain material, material wastes or any other foreign material on project site.*
8. *Over-water structures and/or equipment, and any items stored upon such structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height for items stored upon such structures shall be limited to three feet, as measured from the surface of the raft or barge, unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development), but in no case shall the height exceed six feet. Height limitations do not apply to materials and apparatus removed from the site on a daily basis. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.*

**C. Siltation Management:** *Siltation management is not expected to be a concern for the installation or operation of the shellfish facilities.*

*Please refer to Volume II "Construction Stormwater Pollution Prevention" in the Stormwater Management Manual for Western Washington for BMP details.*

**D. Eelgrass Management:** *It is expected that impacts to *Zostera marina* bed caused by oyster facilities within proximity (within 16 feet) will be minimal. Again, all efforts have been made to avoid and minimize the amount of *Zostera marina* that will be impacted.*

### **KCC 22.600.115 Aquaculture**

A. Where aquaculture is proposed in the following upland designations, the identified permit requirements shall apply. Where proposed in the adjacent aquatic designation, the corresponding upland designation shall be used to determine permit requirements:

1. High intensity, shoreline residential, urban conservancy, rural conservancy, and natural: Except as otherwise stated in this section, an SDP shall be required for new aquaculture activities that meet the definition of substantial development under the Shoreline Management Act and this shoreline master program.

**Staff Comment:** *The closest shoreline designation is Shoreline Residential. An SDP is required and the applicant has applied for the permit – SSDP 16 04402.*

2. Natural: A CUP shall be required where the proposal requires new structure or facilities.

**Staff Comment:** *The project area is not within a Natural shoreline designation; thus, a shoreline CUP is not required.*

3. Geoduck Aquaculture in All Designations.

- a. A CUP shall be required for all new commercial geoduck aquaculture and existing aquaculture being converted to commercial geoduck aquaculture.
- b. An SDP shall be required for the planting, growing and harvesting of farm-raised geoducks only if the specific project or practice causes substantial interference with normal public use of the surface waters.
- c. Wild stock geoduck harvest associated with the state and tribal co-managed geoduck fishery is not aquaculture. Since a fishery does not constitute development under this program, it is not subject to its regulations.

**Staff Comment:** *Geoduck harvests are not a part of this proposal.*

4. Certain aquaculture developments and supplemental wild stock seeding may be exempt from SDP requirements pursuant to the exemption criteria at Section 22.500.100(C) of this program. Such activities shall also comply with all state and federal requirements, including but not limited to Department of Health certification and license, or shellfish import or shellfish transfer permits, where applicable.

**Staff Comment:** *This project is the installation of an Oyster cultch and single oyster cultivation facility and not related to the identified categories.*

B. Application Requirements. In addition to the minimum application requirements in Section 22.500.105(C), aquaculture applications shall include the following information if not already provided in the local, state or federal permit applications. Where requested information is not applicable to a specific proposal, the application shall not be required to include all items listed under this section as long as it is demonstrated why the information does not apply, with concurrence from the department.

1. A site plan, including:

- a. The perimeter of the proposed aquaculture operation area;

**Staff Comment:** *The site plan can be found on Exhibit 3.*

- b. Existing bathymetry depths based on mean lower low water (MLLW datum);

**Staff Comment:** *The Bathymetry map can be found in the Biological Evaluation, (Exhibit 8).*

- c. Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications.

**Staff Comment:** *The adjacent upland use is Tribal facilities. Within the project area there are no docks and no bulkheads.*

- d. Areas where specific substrate modification will take place or structures will be constructed or installed.

**Staff Comment:** *No substrate modification is proposed or anticipated. Floating structures are located in substrate sediments between -2 and +2 Ft. MLLW. Anchors will be required to secure the floating structures in place. There will be minimal impact from the helix screw type anchors, which have a minimal footprint.*

- e. Access provisions for marine or vehicle traffic, processing structures or facilities; and

- f. Location of storage or processing structures or facilities.

**Staff Comment:** *Minimal effects expected and will be managed per the Operational Plan. Processing will be located off site.*

2. A baseline description of existing and seasonal conditions, including best available information. Where applicable to the subject proposal, the following note shall be included on the site plan. Note: information regarding wind conditions, current flows and flushing rates (subsections (B) (2) (c) through (e) of KCC 22.500.100(C) will generally not be applicable to shellfish aquaculture applications.)

- a. Water quality;

**Staff Comment:** *The proposed Shellfish operation will provide ecosystem benefits in terms of water quality such as increased circulation and filtration.*

- b. Tidal variations;

**Staff Comment:** *Not applicable.*

- c. Prevailing storm wind conditions;

**Staff Comment:** *Not applicable.*

- d. Current flows at each tidal cycle;

**Staff Comment:** *Not applicable.*

- e. Flushing rates;

**Staff Comment:** *Not applicable.*

- f. Littoral drift;

**Staff Comment:** *Not applicable.*

- g. Sediment dispersal, including areas of differing substrate composition.

**Staff Comment:** *The littoral zone begins from the bottom of the bluff where the OHWM is located. The substrate in the supralittoral primarily consists of sand, pea gravel, and some shell hash. From the eulittoral zone waterward of the substrate consisted of sand and silt. No change is anticipated to the substrate.*

- h. Areas of aquatic, intertidal and upland vegetation complexes; a vegetation habitat survey (see Section 22.700.145, Biological and Habitat Surveys) must be conducted according to the most current WDFW eelgrass and macro algae survey guidelines;

**Staff Comment:** *A habitat survey was conducted in June of 2016. A map of the delineated eelgrass bed can be seen in the Biological Evaluation (Exhibit 8). Implementation of the proposed mitigation measure will ensure that no net-loss will result from the proposed project.*

- i. Aquatic and benthic organisms present, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site;

- j. Probable direct, indirect and cumulative impacts to items (B)(2)(a) through (i) of this section; and

**Staff Comment:** *The project is designed to avoid direct, indirect and cumulative impacts to items (B)2(a) through (i) wherever possible. Also, an eelgrass mitigation plan has been prepared to mitigate any direct impacts.*

- k. Visual assessment, including photo analysis/simulation of the proposed activity demonstrating visual impacts within one thousand five hundred feet of the proposed project site. Where predator exclusion devices are proposed, the assessment shall include an analysis of visual impacts of proposed predator exclusion devices at mean high and mean low tides.

3. An operational plan, which includes the following, when applicable:

- a. Species, and quantity to be reared;

**Staff Comment:** *The Pacific oyster will be the primary target for use due to its availability and marketability. The operation intends to use muted colors for*



*buoys markers and floats (white has been suggested) to keep visual impacts to a minimum.*

- b. Source of aquatic product;

**Staff Comment:** *Shellfish seed will mostly be purchased from either the Taylor Shellfish or Coast hatcheries in Quilcene, WA, or the Lummi Shellfish Hatchery in Bellingham, WA. Seed may also be purchased from the Puget Sound Restoration Fund or other regional producers.*

- c. Implementation methods, including density, schedule, phasing options, time of day, and anticipated lighting and noise levels;

**Staff Comment:** *the operation is planning to commence as soon as permits are issued. The operation plan (Exhibit 7) details the planned hours of operation, work schedules and timing. Some winter work will entail nighttime activities, which will be lighted by personal headlight lamps or beach lanterns. Noise is not expected as the oyster operations will not generate noise.*

- d. Number of employees/workers necessary for the project, including average and peak employment;

**Staff Comment:** *The number of employees will range from five to ten people depending on the workload.*

- e. Methods and location of waste disposal and sanitation facilities;

**Staff Comment:** *Any waste products created by the operation or employees will be removed by day's end. Any disposal will occur offsite and all foreign materials will be taken to an on-site garbage facility, with ultimate disposal to Waste Management. The tribal Center has existing restroom facilities available to employees.*

- f. Methods for planting and harvest;

**Staff Comment:** *No planting or harvesting is part of this proposal.*

- g. Methods for predation control, including types of predator exclusion device;

**Staff Comment:** *None required beyond the structure of the mesh bags and facility. Shellfish seed attract few predators, but covers may be placed to protect screens from absorbing damage or fouling from above.*

- h. Food and equipment storage;

**Staff Comment:** *The shellfish seed eat naturally occurring phytoplankton in the water so food storage is not needed. Equipment will be stored in containers at the Tribal Center.*

- i. Anticipated use of any feed, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals and an assessment of predicted impacts;

**Staff Comment:** *Not applicable.*

- j. Methods to address pollutant loading, including biological oxygen demand (BOD);

**Staff Comment:** *Not applicable.*

- k. A schedule for water quality monitoring, where required; and

**Staff Comment:** *Not applicable.*

- l. Other measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC 173-26-201(2)(e).

**Staff Comment:** *An Eelgrass mitigation plan will be implemented to achieve no net loss of ecological functions.*

- 4. Other applications and reports, when applicable or requested, to ensure compliance with permit conditions, which may include:

**Staff Comment:** *Application has been made for a WDFW HPA, WDOE – 401 water quality and CZM, USACE – JARPA ( Section 10 and 404).*

- a. An accepted Washington Department of Natural Resources lease application, including a waiver of preference rights to access for navigation from the upland property owner, if applicable;

**Staff Comment:** *An application through DNR may be required, but an existing Three Party Agreement with DNR, Bainbridge land Trust and the Suquamish Tribe has been formalized and signed October 2002, which includes the shellfish area (provided in the Operational Plan, Exhibit 7).*

- b. An accepted Washington Department of Ecology National Pollutant Discharge Elimination System (NPDES) permit, if applicable;

**Staff Comment:** *Not applicable.*

- c. An accepted Washington Department of Health beach certification number;

**Staff Comment:** *Not applicable. The Beach Certification number appears to be required for shellfish harvest. This project is not proposing a shellfish harvest from a beach.*

- d. An accepted WDFW aquatic farm permit, and/or fish transport permit;

**Staff Comment:** *The application is not part of a farm permit.*

- e. Water quality studies;

**Staff Comment:** *Not applicable.*

- f. Reports on solids accumulation on the bottom resulting from the permitted activity along with its biological effects;

**Staff Comment:** *Operation of the tribal oyster culture project produces minimal waste. Biological waste products created as feces and pseudo feces will be insignificant.*

- g. Report on growth, productivity, and chemical contamination of shoreline plants and animals within or adjacent to the proposed site;

**Staff Comment:** *No effect on shoreline plants and animals is anticipated. The Shellfish operation is located at the furthest extent, approximately 250 feet from the shoreline.*

- h. Noise level assessments, including mitigation measures to ensure compliance with Chapter 10.28; and/or

**Staff Comment:** *Under normal operation, the shellfish operation will not be heard from the shoreline. Some additional noise will also be produced by employees during the sorting and screening process. Motorized Gator vehicles may be used, but are proposed for used during daylight hours.*

- i. Monitoring and adaptive management plan for introduction of aquatic species not previously cultivated in Washington State.

**Staff Comment:** *Not applicable.*

## C. Development Standards.

### 1. General Standards.

- a. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, shall be a preferred use.

**Staff Comment:** *Aquaculture use is already present on the site. The Oyster cultch and single oyster culture systems will cover approximately 3 acres of the site. No pollution or damage to the environment is anticipated from the new Shellfish operation.*

- b. When a shoreline substantial development or conditional use permit is issued for a new aquaculture use or development, that permit shall apply to the initial siting, construction, and planting or stocking of the facility or farm. Authorization to conduct such activities shall be valid for a period of five years with a possible extension per Section 22.500.105(H). After an aquaculture use or development is established under a shoreline permit, continued operation of the use or development, including, but not limited to, maintenance, harvest, replanting, restocking or changing the culture technique shall not require a new or renewed permit unless otherwise provided in the conditions of approval, or if required pursuant to permit revision criteria in WAC 173-27-100 or this program. Changing of the species cultivated shall be subject to applicable standards of this program, including, but not limited to, monitoring and adaptive management in accordance with subsection (C)(1)(g) of this section.

**Staff Comment:** *This use will remain the same and has no continued or cumulative impact.*

- c. Aquaculture shall not be permitted in areas where it would result in a net loss of shoreline ecological functions, or where adverse impacts to critical saltwater and freshwater habitats cannot be mitigated according to the mitigation sequencing requirements of this program (see Section 22.400.110(A)).

**Staff Comment:** *No net loss of shoreline ecological functions is anticipated. An eelgrass mitigation plan will confirm that no net loss occurs.*

- d. Aquaculture shall not significantly conflict with navigation and other water-dependent uses.

**Staff Comment:** *The Shellfish operation will be located at -2 to +2 foot MLLW. Navigation aids will be located on the outer portion of the operating area and installed to indicate no wake, per Coast Guard standards (operation plan, exhibit 7).*

- e. Aquaculture activities proposed within shorelines of statewide significance shall first be subject to the policies for shorelines of statewide significance contained in Chapter 22.300 (General Goals and Policies), and then the policies and regulations contained in this section, in that order of preference.

**Staff Comment:** *Staff considered these General Goals and Policies earlier in the staff report.*

- f. In general, when considering new aquaculture activities refer to policies at Sections 22.300.125(E) through (K) for siting and design preferences.

- E. Policy SH-24. Aquaculture is of statewide interest. Properly managed, it can result in long-term, over short-term, benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with the control of pollution and prevention of damage to the environment, is a preferred use of the water area.

**Staff Comment:** *This is a low impact aquaculture project that has long term ecological benefits for Port Orchard Bay and other areas of Puget Sound.*

- F. Policy SH-25. Potential locations for aquaculture activities are relatively restricted by water quality, temperature, dissolved oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration. However, experimental aquaculture projects in water bodies should include conditions for

adaptive management. "Experimental aquaculture" means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in Washington.

**Staff Comment:** *The shellfish cultch and single oyster system technology is well established and in extensive use (see Taylor shellfish as an example at <http://www.taylorshellfishfarms.com/>). Staff has determined this section does not apply as there is no experimental aquaculture proposed.*

- G. Policy SH-26. Aquaculture activities should be located, designed and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.

**Staff Comment:** *The Suquamish Tribe's Sustainable Shellfish Program (SSP) will work to ensure that healthy marine resources will be available locally into the future. By managing resources with a sustainable approach, the program will benefit tribal and non-tribal shellfish harvesters for many years to come. The SSP is consistent with Governor Gregoire's vision for a "swimmable, diggable, fishable" Puget Sound by 2020.*

- H. Policy SH-27. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions and processes, adversely impact eelgrass and macro algae, or significantly conflict with navigation and other water-dependent uses. Aquaculture is not required to protect state-listed noxious weed species when control methods are conducted within applicable agency standards. In general, the following preferences apply when considering new aquaculture activities:
1. Projects which are not likely to negatively impact critical saltwater habitats.
  2. Projects that involve little or no substrate modification.
  3. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application.

**Staff Comment:** *The project meets these requirements.*

- I. Policy SH-28. Aquaculture facilities should be designed and located to avoid:
1. The spread of disease to native aquatic life;
  2. The establishment of new nonnative species, which cause significant ecological impacts; and
  3. Significant impact to the aesthetic qualities of the shoreline.

**Staff Comment:** *The proposed shellfish operation will supply mature native shellfish seed and will not spread disease to native aquatic life. The project will not have a significant impact to aesthetic qualities of the shoreline. Many people, tribes, local, state, and federal agencies were notified and none expressed a concern.*

- J. Policy SH-29. Upland uses and modifications should be properly managed to avoid degradation of water quality of existing shellfish areas.

**Staff Comment:** *The upland area is already developed and there are no plans to expand at this time.*

- K. Policy SH-30. Planting and harvesting by boat shall be preferred over low-tide harvest methods where feasible.

**Staff Comment:** *The shellfish operation plan will guide the operation timing for maintenance and harvest.*

- g. Project applicants proposing to introduce aquatic species that have not previously been cultivated in Washington State are responsible for pursuing required state and federal approvals relating to the introduction of such species, as determined by applicable state and federal agencies. A plan for monitoring and adaptive management shall also be submitted for county review, unless the operation is conducted in a fully contained system with no water exchange to the shoreline. The county shall provide notice and time to comment for appropriate agencies in accordance with county procedural requirements, and shall circulate the monitoring and adaptive management plan. Upon approval, the plan shall become a condition of project approval.

**Staff Comment:** *Not applicable.*

- h. Over-water structures and/or equipment, and any items stored upon such structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height for items stored upon such structures shall be limited to three feet, as measured from the surface of the raft or the dock, unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development), but in no case shall the height exceed six feet. Height limitations do not apply to materials and apparatus removed from the site on a daily basis. Materials that are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.

**Staff Comment:** *Adjacent shoreline conditions are moderate sloped areas, which limits the visual impact of the individual floats and buoys for the Shellfish operation. The upland area immediately adjacent to the project is a tribal development.*

- i. Aquaculture structures and equipment used on tidelands below ordinary high water shall be of sound construction, with the owners' identifying marks where feasible, and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be promptly removed or repaired by the owner.

**Staff Comment:** *All structures will bear the owner's identifying marks and be maintained by the owner. Unsafe or unused structures will be removed promptly or repaired by the owner.*

- j. No processing of any aquaculture product, except for the sorting and culling of the cultured organism and the washing or removal of surface materials or

organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and related facilities shall be located on land and shall be subject to the regulations for commercial development (Section 22.600.130) and industrial development (Section 22.600.150), in addition to the provisions of this section.

**Staff Comment:** *Work on the growing facilities will use a saltwater rinse process to prevent the growth of fouling organisms and the screening of seed to cull dead or slow-growing seed.*

- k. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation, except for in proper receptacles.

**Staff Comment:** *Any waste products created by employees will be removed by day's end. Any disposal will occur offsite and all foreign materials will be taken to the Tribe's Natural Resources garbage facility, with ultimate disposal to Waste Management.*

- l. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

**Staff Comment:** *Navigation buoys will be installed and are required to meet U.S. Coast Guard requirements.*

- m. The rights of treaty tribes to aquatic resources within their usual and accustomed areas are addressed through direct coordination between the applicant/proponent and the affected tribe(s). Kitsap County will notify affected tribes of new shoreline permit applications utilizing the applicable notification process in Title 21 (Land Use and Development Procedures).

**Staff Comment:** *This is a tribal project for the Suquamish Tribe. All affected tribes and the Point-No-Point Treaty Council were notified through the NOA and SEPA process. We received no comments.*

- n. In order to avoid or limit the ecological and aesthetic impacts from aquaculture siting and operations, the following shall apply:

- i. Predator exclusion devices shall be firmly attached or secured so as not to become dislodged.

**Staff Comment:** *Shellfish seed attract few predators, but covers may be placed to protect screens from absorbing damage or fouling from above. No additional predation control is required. The operation does not require any herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals.*

- ii. Predator exclusion devices shall blend with the natural environment.

**Staff Comment:** *Not applicable.*

- iii. Aquaculture operators shall routinely inspect and maintain predator exclusion devices.

**Staff Comment:** *The employees shall regularly check the operation devices.*

- iv. Predator exclusion devices such as rubber bands, small nets, and area netting can be dislodged and pose a hazard to birds, marine mammals, and other wildlife and domestic animals, and thus are subject to Kitsap County public nuisance regulations (Chapter 9.56).

**Staff Comment:** *Shellfish seed attract few predators, but covers may be placed, if deemed necessary.*

- v. Predator exclusion devices shall be removed as soon as they are no longer needed to perform protective functions.

**Staff Comment:** *The applicant commits to this requirement.*

- vi. Predator exclusion methods shall not be designed to intentionally kill or injure birds or mammals. Predator exclusion methods shall comply with federal and state regulations as determined by applicable federal and state agencies.

**Staff Comment:** *The applicant commits to this requirement.*

- vii. When determined necessary to minimize aesthetic and habitat impacts of large-scale projects, the county may require a phased approach to operation. This includes planting and harvesting areas on a rotational basis within the same tideland parcel.

**Staff Comment:** *This operation may be phased, but is not proposed at this time.*

- o. Where aquaculture occurs on state-owned aquatic lands, the project proponent shall contact and adhere to Washington Department of Natural Resources requirements.

**Staff Comment:** *The applicant commits to this requirement.*

## 2. Additional Standards for Commercial Geoduck Aquaculture.

**Staff Comment:** *Not applicable to this proposal.*

- a. In addition to the general development standards above, commercial geoduck aquaculture shall only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

**Staff Comment:** *Not applicable to this proposal.*



- b. All permits shall take into account that commercial geoduck operators have the right to harvest geoduck once planted.

**Staff Comment:** *This is not applicable to this application.*

- c. All subsequent cycles of planting and harvest shall not require a new CUP, subject to WAC 173-27-100.

**Staff Comment:** *Not applicable to this proposal.*

- d. A single CUP may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the program's jurisdiction.

**Staff Comment:** *Not applicable.*

- e. Commercial geoduck aquaculture workers shall be allowed to accomplish on-site work during low tides, which may occur at night or on weekends. Where such activities are necessary, noise and light impacts to nearby residents shall be mitigated to the greatest extent practicable.

**Staff Comment:** *This is not applicable.*

- 3. Additional Standards for Net Pens. Fish net pens and rafts shall meet the following criteria:

**Staff Comment:** *This project is not proposing new fish net pens.*

- a. Fish net pens shall meet, at a minimum, state approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive shall prevail.

**Staff Comment:** *This project is not proposing new fish net pens.*

- b. Alternative facilities and technologies that reduce ecological and aesthetic impacts shall be preferred to traditional floating net pens.

**Staff Comment:** *This project is not proposing new fish net pens.*

- c. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed.

**Staff Comment:** *The application meets this requirement.*

- d. Net pen facilities shall be located no closer than one thousand five hundred feet from the OHWM, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis or due to potential impacts to navigational lines.

**Staff Comment:** *This project is not proposing new fish net pens.*

- e. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards.

**Staff Comment:** *This project is not proposing new fish net pens.*

- f. In the event of a significant fish kill at the site of the net pen facility, the facility operator shall submit a timely report to the Kitsap public health district and the Kitsap County department of community development stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.

**Staff Comment:** *Not applicable.*

- g. Floating net pens shall be prohibited in Kitsap County's Hood Canal jurisdictional area south of the east-west line between Hazel Point (Jefferson County) and the corresponding easterly shoreline in Kitsap County. (Citation: Recommended Interim Siting Guidelines for the Management of Salmon Net Pen Culture in Puget Sound, p. 7.)

**Staff Comment:** *The project is not located in Kitsap County's Hood Canal jurisdiction.*

#### **Staff Evaluation of Decision Criteria for SSDP:**

1. The Hearing Examiner has review authority for this Shoreline Substantial Development Permit application under KCC 21.04.030 and KCC 22.500.105(E)(1 and 2)

#### **Recommendation:**

Based upon the information above, the Department of Community Development recommends that the Shoreline Substantial Development Permit (SSDP) request for Suquamish Seafood Cultch & Single Oyster Cultivation be **approved**, subject to the following 22 conditions:

#### **GENERAL**

1. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.
2. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
3. All disturbed areas must be restored and protected from erosion using vegetation or other means.
4. If, at any time, water quality problems develop as a result of in-water work, immediate notification must be made to any appropriate state or federal agency, e.g., Ecology, WDFW, National Marine Fisheries Service, U.S. Fish and Wildlife Service, etc. Affected tribes shall also be notified.
5. Upon final SSDP issuance, all construction within the shoreline jurisdiction must commence within two years and be complete within five years. A one-time one year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
6. The project shall comply with all state and federal requirements, including but not limited to Department of Health certification and license, or shellfish import or shellfish transfer permits, where applicable.
7. The project is to be served by an approved public water system.
8. Upland solid waste disposal containers and staff restrooms should be provided.

## PLANNING/ZONING

9. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
10. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (KCC). Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.
11. The decision set forth herein is based upon representations made and exhibits contained in the project application for the Shoreline Substantial Development Permit (SSDP) 16 04402. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
12. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.
13. Any violation of the conditions of approval shall be grounds to initiate revocation of this Shoreline Substantial Development Permit and Conditional Use Permit.

## ENVIRONMENTAL

14. Timing of the in-water work shall be as specified in the JARPA, Biological Evaluation, HPA, Corps of Engineers or other authorized regulatory agencies.
15. Where forage fish spawning is documented or reported, additional testing may be requested of WDFW to vary work windows. Site inspection, notification and scheduling shall be per WDFW procedures.
16. Work on projects shall be accomplished per the submitted and approved drawings and specifications.
17. All man made debris involved in the construction process shall be removed from the site and disposed in approved upland site.
18. All required in-water construction shall be conducted within the permitted work window.
19. In-water construction may need to be completed after the in-water work window (if applicable). This work may include installation of the floating structures, or maintenance of facilities. In-water work shall be conducted under the following procedures:
  - a. All materials shall be moved by hand equipment or small barges that shall bring materials to the site but shall not be allowed to ground or in any way be detrimental to the site.
  - b. The floating structures shall be constructed at an upland off-site location and installed as modular units.
  - c. All over-water remaining construction completed with hand tools and small relatively quiet power tools, i.e. skill saw, 1/2" electric drill, etc.
20. All possible precautionary measure will be taken to contain material, material wastes or any other foreign material on project site.
21. Over-water structures and/or equipment, and any items stored upon such

structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height for items stored upon such structures shall be limited to three feet, as measured from the surface of the raft or barge, unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development), but in no case shall the height exceed six feet. Height limitations do not apply to materials and apparatus removed from the site on a daily basis. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.

22. Lastly, the **Best Management Practices for Marinas** produced by the U.S. Environmental Protection Agency (U.S. EPA, 2012) as well as the **Marina Best Management Practice (BMPs)** by Clean Marina Washington (Clean Marina Washington, 2015) are required for in-water work and operation of the proposed floating structures.

  
\_\_\_\_\_  
Steve Heacock, Staff Planner

2/1/2017  
Date

  
\_\_\_\_\_  
Scott Diener, Development Services and Engineering Manager

2-2-17  
Date

CC: **Applicant/Owner:** USA in TRUST  
**DCD DSE Supervisor / Manager:** Shawn Aire and Scott Diener  
**Point No Point Treaty Council:** Cynthia Rossi, [crossi@pnptc.org](mailto:crossi@pnptc.org)  
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