

**From:** [BrownScott, Jennifer](#)  
**To:** [Stenvall, Charlie](#)  
**Subject:** IMPORTANT: DCD Staff Report and Exhibit Log SHR 2017-11 JST Oyster Farm  
**Date:** Tuesday, November 19, 2019 12:18:35 PM  
**Attachments:** [DCD Staff Rpt & Exhibit Log JST Oyster Farm.pdf](#)

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Read the last page of the attachment. Give me a call.

-jennifer

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~~Dungeness NWR~Protection Island NWR~San Juan Islands NWR~~  
~~Copalis NWR~Flattery Rocks NWR~Quillayute Needles NWR~~

----- Forwarded message -----

From: **Ballard, Greg** <[gballard@co.clallam.wa.us](mailto:gballard@co.clallam.wa.us)>  
Date: Thu, Nov 14, 2019 at 4:59 PM  
Subject: [EXTERNAL] FW: DCD Staff Report and Exhibit Log SHR 2017-11 JST Oyster Farm  
To: Ballard, Greg <[gballard@co.clallam.wa.us](mailto:gballard@co.clallam.wa.us)>

Attached is the DCD Staff Report and Exhibit Log for SHR 2017-11.

Most of the Exhibits should be available on-line below

related to this case:

**[A9. DCD Staff Report & Ex. Log SHR 2017-11 \(DCD STAFF RPT & EXHIBIT LOG JST OYSTER FARM\)](#)**

**[A9.1 Exhibits 101 to 147 for JST Oyster Farm SHR 2017-11 \(EX 101 TO 147\)](#)**

**[A9.2 Exhibits 148 to 177 JST Oyster Farm SHR 2017-11 \(EX 148 TO 177\)](#)**

**[B0. MDNS, SEPA Checklist for JST Oyster Farm in Dungeness Bay \(MDNS, SEPA MEMO & CHKLST JST OYSTER FARM\)](#)**

**[B0.5 Notice of Application, Application, JARPA & Site Plans \(NOA & APP JST OYSTER FARM\)](#)**

**B1.0 Notice of Application Oyster Farm Hearing on 11-21-19 (NOA JST OYSTER FARM 10-21-19)**

**B1.01 Lawsuit of Corp of Eng. Nationwide 48 permits (NWP 48 CORP)**

**B1.1 Revised Shoreline and SEPA Application (REVISED ECL & SMP APP 12-11-18)**

**B1.2 Revise Joint Aquatic Permit Resource Appl. 12-11-18 (REVISED JARPA)**

**B1.3 Revised SEPA Checklist 12-11-18 (REVISED CHKLST)**

**B1.4 Revised Drawing for JST Oyster Proposal 12-11-18 (SITE PLANS JST OYSTER)**

**B1.5 Dungeness Bay Field Report 12-11-18 (DB FIELD REPORT)**

**B1.6 Shellfish Operation & Bird Interaction Rpt 12-11-18 (S & B INTERACTION RPT)**

**B1.7 Info on Micro-Plastics (MICRO-PLASTICS)**

**B1.8 Mitigation and Monitoring Plan revised 3/1/19 (MITIGATION & MONITORING PLAN)**

**B1.81 Visual Assessment (VISUAL ASSESSMENT)**

**B1.82 JST Operation Plan (JST OPERATIONAL PLAN)**

**B1.83 JST Resp USFW, Dung Bird Study & Resp to Corp comments (JST RESP. TO USFA & BIRD STUDY)**

**B1.84 Corp Nationwide 48 JST Sequim Bay Shellfish Oper (NWP 48, OPOR PLAN, & PDN)**

**B1.85 DNR Covered Lease Letter dated 1-10-19 (DNR LETTER)**

**B1.855 DNR Lease with JST for 50 acre in Dungeness Bay (DNR LEASE OYSTER FARM)**

**B1.86 NOAA Importance of Eelgrass (NOAA EELGRASS)**

**B2.1 Letters from U.S. Fish & Wildlife regarding oyster farm (USFW LETTERS REGARDING JST OYSTER FARM)**

**B2.2 DCD e-mail to Ecology dated 1-25-19 (DCD E-MAIL TO ECOLOGY)**

**B2.3 U.S. Army Corp of Engineers Notice (CORP NOTICE)**

**B2.4 Comments received by the Corp for their permit (COMMENTS ON CORP PERMIT TO 3-11-19)**

**B2.5 Comments received from 5-10-18 to 4-19-19 - SHR 2017-11 (COMMENTS 5-10-18 TO 4-19-19)**

**B2.6 Comments received from 4-19-19 to 9-27-19 (COMMENTS 4-19-19 TO 9-27-19)**

Thanks

**Greg Ballard**

Senior Planner

Clallam County Department of Community Development

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## EXHIBIT LOG

Shoreline Substantial Development application # SHR 2017-00011  
**Jamestown S'Klallam Tribe Re-establishment of an Oyster Farm  
off Dungeness Spit in Dungeness Bay  
November 21, 2019 Hearing**

**Exhibits below were received after April 4, 2019 Postponed Hearing  
(items at end in parentheses are listing from on-line permit page)**

<u>Exhibit 78</u>	DCD Staff Report dated November 14, 2019 (A 9)
<u>Exhibit 79</u>	MDNS issued October 31, 2019, SEPA Memo dated October 3, & SEPA Checklist (B0)
<u>Exhibit 80</u>	E-mail Notice of MDNS dated 10/31/19 to interested parties and agencies
<u>Exhibit 81A</u>	Email of Notice of Application dated 10/21/19 to interested parties and agencies
<u>Exhibit 81B</u>	Notices that were posted on October 18, 2019
<u>Exhibit 81C</u>	Affidavit of publications
<u>Exhibit 82</u>	Revised Clallam County Shoreline Substantial Development and CUP Application (B1,1)
<u>Exhibit 83</u>	Revise Joint Aquatic Permit Resource Application (B1.2)
<u>Exhibit 84</u>	Revised SEPA Checklist (B1.3)
<u>Exhibit 85</u>	Revised Drawing for JST Oyster Proposal (B1.4)
<u>Exhibit 86</u>	Dungeness Bay Field Report prepared by Confluence Environmental Company (B1.5)
<u>Exhibit 87</u>	Shellfish Operation & Bird Interaction Report by Confluence Environmental Co. (B1.6)
<u>Exhibit 88</u>	Information on Micro-Plastics (B1.7)
<u>Exhibit 89</u>	Monitoring & Mitigation Plan prepared by the JST (B1.8)
<u>Exhibit 90</u>	Visual Assessment prepared by the JST (B1.81)
<u>Exhibit 91</u>	Operation Plan prepared by the JST (B1.82)
<u>Exhibit 92A</u>	JST Response to USFWS May 22, 2019 letter;
<u>Exhibit 92(B)</u>	DNWR Technical Memo Bird Survey Data;
<u>Exhibit 92(C)</u>	JST Response to Comments on Corp Individual Permit (B1.83)
<u>Exhibit 93</u>	U.S. Army Corps of Engineers Nationwide 48 Permit # NWS-2007-1215 for the JST shellfish operation in Sequim Bay dated March 28, 2017 (B1.84)
<u>Exhibit 94.</u>	DNR Letter dated January 10, 2019 that the lease area "covered" by the 2007 Shellfish Settlement agreement (B1.85)
<u>Exhibit 95</u>	Lawsuit on the Corps of Engineers Nationwide 48 Permit (B1.01)
<u>Exhibit 96</u>	NOAA Fisheries Importance of Eelgrass Fall 2014 (B1.86)
<u>Exhibit 97</u>	DNR Lease with JST of 50 acres in Dungeness Bay (B1.855)
<u>Exhibit 98</u>	Clallam County Critical Area Map, 2015 Aerial Photo, length of Dungeness and Graveyard Spit, & area calculations of Dungeness Bay.
<u>Exhibit 99</u>	USFWS DNWR Comprehensive Conservation Plan – October 2013
<u>Exhibit 100</u>	ECY Coastal Zone Atlas Oblique Maps dated 1977, 1994, 2002, 2006, 2016

<u>Exhibit 101</u>	Email from Michael Sullivan dated May 3, 2018
<u>Exhibit 102</u>	Email from Darlene Schanfald dated June 29, 2018 with attachment
<u>Exhibit 103</u>	Email from Joe Gaydos dated February 27, 2019
<u>Exhibit 104</u>	Email from Jennifer Brown-Scott dated March 5, 2019 with attachments
<u>Exhibit 105</u>	Email from Hansi Hals dated March 5, 2019 with attachments
<u>Exhibit 106</u>	Email from Leslie Aickin dated March 6, 2019
<u>Exhibit 107</u>	Email from Grant Rollins dated March 7, 2019
<u>Exhibit 108</u>	Email from Wendy Falham dated March 7, 2019
<u>Exhibit 109</u>	Email from Marc Sullivan dated March 8, 2019
<u>Exhibit 110</u>	Email from Richard Hynes dated March 11, 2019
<u>Exhibit 111</u>	Email from Pat Schoen dated March 11, 2019
<u>Exhibit 112</u>	Email from Michael Barry dated March 8, 2019
<u>Exhibit 113</u>	Email from Elisabeth Duval dated March 14, 2019
<u>Exhibit 114</u>	Email from Peter McCallum dated March 14, 2019
<u>Exhibit 115</u>	Email from Margaret Brede dated March 14, 2019
<u>Exhibit 116</u>	Email from John Gussman dated March 16, 2019
<u>Exhibit 117</u>	Letter from Steven & Kathleen McPherson dated March 21, 2019
<u>Exhibit 118</u>	Email from Cheryl Loran dated March 23, 2019 with attached letter
<u>Exhibit 119</u>	Email from Friends DNWR dated April 1, 2019 with attached letter
<u>Exhibit 120</u>	Email from Cindy Corrigan dated April 2, 2019
<u>Exhibit 121</u>	Email from Susan Savage dated April 3, 2019
<u>Exhibit 122</u>	Email from Jesse Piedfort dated April 5, 2019 with attached letter
<u>Exhibit 123</u>	Email from Terri Tyler dated April 8, 2019
<u>Exhibit 124</u>	Email from Mylee Khristoforov dated April 19, 2019
<u>Exhibit 125</u>	Letter from Karen Goschen, Port of Port Angeles, dated April 9, 2019
<u>Exhibit 126</u>	Email from Terry Martin dated April 28, 2019
<u>Exhibit 127</u>	Email from Linda Lenore dated May 1, 2019
<u>Exhibit 128</u>	Email from John & Renee Jones dated May 9, 2019
<u>Exhibit 129</u>	Email from Craig Miller dated May 14, 2019 with attachment
<u>Exhibit 130</u>	Email from Jennifer Brown-Scott dated May 22, 2019 with attached letter
<u>Exhibit 131</u>	Email from Susan Shafroth dated June 6, 2019
<u>Exhibit 132</u>	Email from Jeni Woock dated June 6, 2019
<u>Exhibit 133</u>	Email from Teri Pieper dated June 6, 2019
<u>Exhibit 134</u>	Email from Ann Prezyna dated June 6, 2019
<u>Exhibit 135</u>	Email from Kathleen Bentley dated June 7, 2019
<u>Exhibit 136</u>	Email from Neil & Lisa Koseff dated June 8, 2019
<u>Exhibit 137</u>	Email from Shana Kelly dated June 10, 2019
<u>Exhibit 138</u>	Email from Marilyn Showalter dated June 12, 2019
<u>Exhibit 139</u>	Email from Jennifer Brown-Scott dated June 17, 2019

<u>Exhibit 140</u>	Email from Darlene Schanfald dated August 1, 2019
<u>Exhibit 141</u>	Email from Darlene Schanfald dated August 5, 2019 with attachments
<u>Exhibit 142</u>	Email from Judith White dated August 11, 2019
<u>Exhibit 143</u>	Email from Neil & Lisa Koseff dated August 19, 2019
<u>Exhibit 144</u>	Email from Kathy Trainor dated August 19, 2019
<u>Exhibit 145</u>	Email from Terri DiMartino dated August 19, 2019
<u>Exhibit 146</u>	Email from Elizabeth Tobin dated August 7, 2019
<u>Exhibit 147</u>	Email from Elizabeth Tobin dated September 9, 2019
<u>Exhibit 148</u>	Email from Elizabeth Tobin dated September 20, 2019
<u>Exhibit 149</u>	Email from Neil & Lisa Koseff dated September 27, 2019
<u>Exhibit 150</u>	Email from Darlene Schanfald dated October 11, 2019 with attachment
<u>Exhibit 151</u>	Email from Darlene Schanfald dated October 22, 2019 with attachment
<u>Exhibit 152</u>	Email from Janet Marx dated October 25, 2019
<u>Exhibit 153</u>	Email from Janet Max dated October 25, 2019 with attached letter
<u>Exhibit 154</u>	Email from Karl Pohlod dated October 26, 2019
<u>Exhibit 155</u>	Email from Neil Koseff dated October 31, 2019
<u>Exhibit 156</u>	Email from Darlene Schanfald dated October 28, 2019
<u>Exhibit 157</u>	Email from Darlene Schanfald dated October 31, 2019 with attachment
<u>Exhibit 158</u>	Email from Terri DiMartino dated November 5, 2019
<u>Exhibit 159</u>	Email from Sarah Schmidt dated June 6, 2019
<u>Exhibit 160</u>	Letter from Darlene Schanfald dated November 7, 2019 with a book submittal titled "Toxic Pearl A True Story"
<u>Exhibit 161</u>	Email from John Gussman dated November 7, 2019
<u>Exhibit 162</u>	Email from Robert Phreaner dated November 11, 2019 with attached letter
<u>Exhibit 163</u>	Email from Julia Spencer dated November 7, 2019
<u>Exhibit 164</u>	Email from Carl Siver dated November 12, 2019
<u>Exhibit 165</u>	Email from Judith White dated November 8, 2019 with attached letter
<u>Exhibit 166</u>	Post-Hearing Order dated April 6, 2018
<u>Exhibit 167</u>	Revised Post-Hearing Order dated April 11, 2018
<u>Exhibit 168</u>	Order on Request for Continuance dated May 9, 2018
<u>Exhibit 169</u>	Second Post-Hearing Order dated May 11, 2018
<u>Exhibit 170</u>	Corrected Post-Hearing Order dated May 11, 2018
<u>Exhibit 171</u>	Order on Second Request for Continuance dated October 10, 2018
<u>Exhibit 172</u>	Order on Third Request for Continuance dated December 13, 2018
<u>Exhibit 173</u>	Order on Fourth Request for Continuance dated February 22, 2019
<u>Exhibit 174</u>	Order on Fifth Request for Continuance dated March 18, 2019
<u>Exhibit 175</u>	Order on Sixth Request for Continuance dated October 31, 2019

Exhibit 176

Email from Deb Avila dated November 14, 2019

Exhibit 177

U.S. Fish & Wildlife Service "Dungeness National Wildlife Refuge" documents

**Staff Report to the Hearing Examiner**  
**Shoreline Substantial Development Permit**  
**Application No. SHR2017-00011**  
Jamestown S'Klallam Tribe Oyster Farm In Dungeness Bay

November 14, 2019

*Prepared by the Clallam County Department of Community Development, Planning Division  
223 East Fourth Street, Port Angeles (360) 565-2616*

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**FINDINGS**

**A. PROJECT INFORMATION:**

1. **LANDOWNER:** Washington State Department of Natural Resources  
Aquatic Resources Division Orca – Straits Division  
411 Tillicum Lane  
Forks, WA 98331

**APPLICANT:** Jamestown S'Klallam Tribe (JST)  
1033 Old Blyn Highway  
Sequim, WA 98382

2. **Location:** The 50 acre leased area is located approximately 5.5 miles northwest of the City of Sequim. The leased area is 731 feet wide by 2,977 feet long starts at the approximate mean lower low water (MLLW) and extends approximately 731 feet (waterward) into Dungeness Bay (Latitude 48.024N, Longitude -123.004W). This proposal is located at the northwest corner of Dungeness Bay south of the Dungeness Spit. Although DNR owns the aquatic lands, the 50 acre leased area is contained within the boundary of Dungeness National Wildlife Refuge (Exhibits 85 and 177).
3. **History:** (from Page 12 of JARPA – Exhibit 83 )
- Prior to 1953: Oyster farming in Dungeness Bay occurred through a succession of private owners.
  - 1953: The first lease of tidelands for oyster farming was granted. Oyster seed was brought from Japan since Olympia Oysters had been harvested out of Washington Waters.
  - 1968: Oysters were grown as bottom culture using seed naturally spawned and set on oysters in Quilcene and Dabob Bay. Mature oysters (2 to 3 years) were harvested by hand or by an oyster “dredge”, sometimes called a shallow dredge, on a barge like boat.
  - 1972: Long line oyster cultivation occurred. This entailed lines being strung 2 feet off the substrate with oyster seed on shell hung from it. They strung 100,000 oyster seed on shells and continued bottom cultivation.
  - 1990: Jamestown S'Klallam Tribe (JST) purchased the oyster operation and continued bottom culture and shucking operation. The company was called JKT Oyster Company, Dungeness Oyster House.
  - 1995: WA State Department of Health (DOH) warned about deteriorating water quality in Dungeness Bay.
  - 1997, 1999, and 2003: Portions of Dungeness Bay were closed mostly due to fecal coliform.
  - 2001: The Sequim Dungeness Clean Water District (SDCWD) was formed by Clallam County Environmental Health, DOH, WA State Department of Ecology, Clallam Conservation District, and the Jamestown Tribe to improve water quality for shellfish areas. This was accomplished through the Pollution Identification and Correction (PIC) Plan.
  - 2005: Oyster Operation closed and PVC and ropes removed, but JST continue their lease of the 50 acre area, where this proposal is located.
  - 2005 to 2011: The SDCWD worked to improve the fecal coliform issue in Dungeness Bay. This included monthly monitoring of the water quality of the Dungeness Bay.

- 2011: DOH upgraded 500 acres of Dungeness Bay from Prohibited to Conditionally Approved.
  - 2015 to Present: DOH upgraded 688 acres from Conditionally Approved to Approved. This includes the proposed site.
4. Permit History: This site had been utilized as an Oyster Farm since the 1950's, which entailed oysters on long lines and mechanical harvesting by shallow dredge. The JST acquired the 50 acre leased area in 1990 and operated a long line operation until 2005 when water quality issues closed Dungeness Bay to commercial oyster production. Recently the water quality of Dungeness Bay has improved and this area is now open to commercial oyster production.

The JST submitted an application on December 29, 2017 to re-establish oyster production using on-bottom bags. The Clallam County Department of Community Development (DCD) issued a DNS for this proposal on February 23, 2018. A Public Hearing was held on April 5, 2018. At the hearing the following issues were raised: impacts to birds; compatibility with the Dungeness National Wildlife Refuge. The U.S. Army Corps of Engineers also determined that this proposal would be subject to an Individual Section 10/404 permit and not a Nationwide Permit 48 (NWP48). This means that an Individual ESA Consultation and NEPA would be required for the Individual 10/404 Permit instead of the Programmatic Biological Assessment for Shellfish Operation for a NWP48 permit.

As a result, the case was placed on hold, and DCD withdrew the DNS on May 10, 2018. The project was revised in December 11, 2018 to reduce the maximum number of 4,000 bags per acre over 20 acres from the 6,000 bags per acre with a maximum number of bags ranging from 75,000 to 150,000 throughout the 34 acre farming area that were initially proposed through the December 29, 2017 application. The applicant also submitted a Monitoring and Mitigation Plan (Exhibit 89), Visual Assessment (Exhibit 90), and Operation Plan (Exhibit 91). A subsequent April 4, 2019 hearing was continued to allow consultation between the JST and the U.S. Fish & Wildlife Service to conduct Government to Government Consultation to address potential impacts to DNWR.

On August 6, 2019 the U.S.F.W.S. provided a letter dated August 6, 2019 to the U.S. Army Corps of Engineers (Exhibit 98) that stated: "By this letter, we are withdrawing the U.S.F.W.S. comment letters dated February 27, 2019, and May 22, 2019, regarding the Jamestown S'Klallam Tribe's application for a commercial oyster operation within the Dungeness National Wildlife Refuge (Refuge). After participating in Government-to-Government Consultation with the Jamestown S'Klallam Tribe, we have a better understanding of their proposed aquaculture operation. Therefore please replace the previous two letters (referenced above) with this letter as the official comments from the U.S.F.W.S."

We recognize there is little site-specific research available on impacts of commercial, on-bottom bag aquaculture to bird species found on the Refuge (DNWF) and noted that different parties can derive divergent conclusions from the same studies. Nevertheless, we are concerned about potential impacts to the Refuge wildlife and habitat based on the proposed location for this activity. We recommend operations and monitoring activities occur outside of the migration and wintering periods for shorebirds and waterfowl, should a permit be provided. The attached reference list may be of assistance in understanding Refuge habitat, management, and wildlife use and assessing potential impacts from human disturbance and in-water structures."

After the Government to Government consultation was completed, the applicant requested that the application be processed.

5. Proposal: The JST has a 50 acre Aquatic Lease from the DNR. A 25 foot buffer was provided from eelgrass patches determined through an eelgrass survey. This eliminated 16 acres from being utilized for oyster production. For the 34 acres remaining, on-bottom bag culture methods will be used by anchoring lines of black mesh oyster bags to the substrate. The bags would contain naturalized Pacific oyster seed. The on-bottom bags would be approximately 2 ft. wide by 3 ft. long by 0.5 ft. high. There would be an approximate 10 feet of separation between each row of bags (based on visual representation). The applicant estimates that the bags would be located between a +1 and the -2 tidal elevation, and would only be visible from a close proximity (<100 yards) during minus tides. The bags would be exposed on average 10 percent of the time during daylight hours, and only visible from a few viewing locations on the Dungeness Spit as addressed in the Visual Analysis.

The on-bottom bag density is estimated to be approximately 4,000 bags per acre with a maximum number of 80,000 bags throughout the 34 acre farming area. The project would be development in 3 phases: Phase 1: (years 1 & 2) 5 acres of on-bottom bags; Phase 2 (Years 3 to 5) up to 10 acres of bags; Phase 3 (Years 5 and beyond) maximum of 20 acres of on bottom bags over the 34 acre area. If impacts to bird or eelgrass beds occur from the initial phases of the project, the placement of additional bags may be reduced as outline in the Monitoring and Mitigation Plan. Each bag would contain from 100 to 200 single oyster seed. The single oyster seed is intended for the fresh shucked oyster market, and would grow out for approximately 14 months in bags. The mature oysters may be spread onto the upper portions of the beach's natural substrate to achieve desired characteristics. The applicant has estimated that the proposal would have 3 to 15 employees that would access the site by a small (~30 ft) marine vessel as addressed in the Operation Plan. (Exhibits 82 to 91)

6. Shoreline Designation: This proposed Oyster Farming Area is located waterward of the Ordinary High Water Mark (OHWM) of Dungeness Bay, which is regulated by the Clallam County Shoreline Master Plan (SMP). Dungeness Spit and Graveyard Spit are designated Natural by the SMP (Exhibit 13). The shoreline designation for proposals located waterward of the OHWM is based on the extension of the landward shoreline designation. Dungeness Bay is also a Shoreline of Statewide Significance. The Shoreline Management Act (RCW 90.58.020) provides a list of preference for uses along shorelines of state wide significance.

The placement of oyster bags (structures) is an aquaculture use and is subject to the Aquaculture Policies and Regulations found in Section 5.02 of the SMP. Because this proposal does not meet the criteria for a Shoreline Exemption found in WAC 173-27-040, this proposal is subject to a Shoreline Substantial Development Permit. The use of subtidal oyster bags is not a specific use addressed in the Natural section of the SMP (Section 5.02(C)(4)(a) of the SMP), therefore this activity requires a Shoreline Conditional Use (per WAC 173-27-160(3)). This proposal is subject to the criteria for a Shoreline Substantial Development Permit found in WAC 173-27-150 and a Shoreline Conditional Use found in WAC 173-27-160.

7. Other Required Permits: A Section 10/404 will be required from the U.S. Army Corp of Engineers. The Corps will ensure compliance with the Endangered Species Act, and Section 106 of the National Historic Preservation Act (NHPA) for the regulated activities and area within Corps jurisdiction. An Aquatic Lease is required from the WA State Department of Natural Resources. An Aquatic Farm Registration and Shellfish Import/Transfer Permit will be required from the WDFW. A Shellfish Operation License will be required from the WA State Department of Health.

8. Zoning/Comprehensive Plan Designation: There is no Comprehensive Plan or zoning designation for the proposal located within the open water area of the Strait of Juan de Fuca.
9. Critical Areas: The Critical Area Policy Goals Number 15 (Section 27.12.020(15)) is to "Implement the policies of the Environmental Policy Act, Chapter [43.21C](#) RCW; the Growth Management Act, Chapter [36.70A](#) RCW; the Floodplain Management Code, Chapter [86.16](#) RCW; the Water Pollution Control Act, Chapter [90.47](#) RCW; the Groundwater Quality Standards, Chapter [173-200](#) WAC; the Clallam County Shoreline Master Program and State Shoreline Management Act, Chapter [90.58](#) RCW; the Clallam County Charter; the Clallam County Code and all adopted County functional and community plans." This Policy indicates that the Critical Areas Code implements the goals of the Shoreline Master Plan, which is the focus of this review.

a. Aquatic Habitat Conservation Areas (AHCA) - This proposal is located overwater within the Strait of Juan de Fuca (Type 1 Water) and is classified as AHCA per Section 27.12.310(1)(a) CCC. Based on this in-water use, no AHCA buffers apply to this proposal. The only applicable AHCA protection standard is Section 27.12.315(3) CCC which states that docks, piers, moorage, float or launch facilities may be permitted subject to the criteria from the SMP. This policy states that no petroleum based treatments or preservatives (including creosote, arsenic or copper) are permitted.

b. Wildlife Habitat Conservation areas (WHCA) - This proposal is also located in Class I WHCA per Section 27.12.310(1)(b)(1) CCC because Dungeness Bay is connected to the Strait of Juan de Fuca, which contains federal and state endangered, threaten and sensitive species and their critical habitat. The Strait of Juan de Fuca contains the following ESA Species: Puget Sound (PS) Chinook, Hood Canal (HC) summer run Chum, PS steelhead, Georgia Basin (GB) bocaccio, GB yelloweye rockfish, GB canary rock fish, Green sturgeon, South resident killer whale, Humpback whale, and Coastal Puget Sound (CPS) bull trout.

The Dungeness Spit is also considered Class I WHCA because it contains habitat targeted for preservation by federal, State and/or local government which provide fish and wildlife habitat benefits, such as important waterfowl areas identified by the U.S. Fish and Wildlife Service per Section 27.12.310(1)(b)(ii) CCC.

Section 27.12.320(1)(b) CCC states

All sites with known locations of Class I wildlife species or sites adjacent to known locations of Class I wildlife species shall require the withholding of all development permits without the filing and approval of a Habitat Management Plan (HMP) as specified in Part Eight of this chapter. HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural vegetation.

c. HMP – The U.S. Army Corps of Engineers Regulatory Program prepared a Programmatic Biological Assessment (BA) Shellfish Activities in Washington State Inland Marine Waters dated October 2015 (Exhibit 18). This BA addresses the specific impacts of the use of mesh bags in Dungeness Bay, and will be utilized by the Corp of Engineers for their Nationwide Permit or Section 10/404 permit. Chapter 7 of the BA addresses the Effects of the Proposed Action and includes tables that summarize worst-case effects and also primary effects by region. To avoid or minimize any effects Section 3.5 of the BA lists Conservation Measures that would apply to all shellfish activities. These Conservation Measures will be Permit Conditions that are tied to individual permits.

As part of the Corp of Engineers permit they will ensure that the proposal will not impact Endangered Species Act (ESA) or their critical habitat. An ESA Section 7 Consultation Biological Opinion (BiOp) done by the U.S. Fish and Wildlife Service for a Programmatic Consultation for Shellfish Activities in Washington State Inland Marine Waters was prepared on August 26, 2016 (Exhibit 19). This BiOp specifically addressed shellfish activities in Dungeness Bay. The BA and BiOp meet the requirement for a Habitat Management Plan found in Section 27.12.830 CCC.

Because an Individual Section 10/404 Permit is required from the Corps of Engineers, the applicant has provided a custom Monitoring and Mitigation Plan (Exhibit 89) that establishes Conservation Measures from the Programmatic BiOp (Exhibit 18), Site Specific Stewardship Measures, and Monitoring Plans.

d. Mitigation Plan – A Mitigation Plan is required for any alteration within 200 feet of a Class I WHCA, which is areas containing critical habitat for threaten or endangered species. The BA and BiOp address impacts associated with the farming of oyster in mesh bags in Dungeness Bay. The BA and BiOp prepared for the Army Corp Section 10/404 permit address the requirement found in Section 27.12.835, 840 & 850 CCC per Section 27.12.835(3) CCC.

e. 27.12.515 Frequently Flooded Areas Protection Standards. This proposal is located within Dungeness Bay which is marine waters connected to the Strait of Juan de Fuca. This proposal does not include any fill or permanent structures and would not be subject to the protections standards. The applicant would have to demonstrate that the oyster bags will be adequately secured to withstand storm surges and tidal action. This would be addressed in the Corp of Engineers permit.

10. Conformance with the Consolidated Development Permit Process, Chapter 26.10, CCC. Shoreline Substantial Development and Conditional Use Permits (CUP) are both Type III permits. This proposal is subject to the criteria for permit requirements in Clallam County Shoreline Management Section 35.01.040(2) and the Shoreline Substantial Development and CUP criteria found in WAC 173-27-150 & WAC 173-27-160.

- The JST submitted an application to DCD on December 29, 2017 to re-establish oyster production using on-bottom bags.
- DCD scheduled hearings for this proposal, which were placed on hold to address the compatibility with the Dungeness National Wildlife Refuge; and individual Section 10/404 Permit from the Corp of Engineers.
- The government-to-government consultation between the JST and USFWS has been completed. On August 6, 2019 USFWS submitted a letter to the Army Corp of Engineers that withdrew their detailed comments in their February 27, 2019 and May 22, 2019 letters and substituted new general concerns regarding JST Oyster Farm proposal.
- On August 8, 2019 the JST requested that DCD proceed with the processing of the permit.
- DCD determined that the application was complete for processing on September 5, 2019.

The application and studies were e-mailed to agencies and interested parties e-mail list for preliminary comments on September 27, 2019 (Exhibit 81A). The agencies contacted were the WA State Department of Fish & Wildlife, Ecology, U.S. Army Corp of Engineers, and U.S. Fish and Wildlife Service Dungeness National Wildlife Refuge. On October 18, 2019 two signs were posted outlining this proposal at the following locations: the intersection of Marine Drive and Cline Spit Road; and at county parking area near the Dungeness National Wildlife Refuge Trail Head to Dungeness Spit and the Refuge Office (Exhibit 81B). DCD published a notice in the

Peninsula Daily News on October 20, 2019 and November 6, 2019, and in the Sequim Gazette on October 23, 2019 (Exhibit 81C). On October 21, 2019 the Notice of Application was sent to agencies and interested parties (Exhibit 81A). On October 31, 2019 the MDNS was sent to agencies and interested parties (Exhibit 80)

As of the date of this staff report there were approximately comments was received regarding this proposal. The vast majority of these comments were in opposition of this proposal. It is the responsibility of the applicant to address comments received and clarify the details of the proposal. DCD has attempted to address relevant comments in this staff report.

11. Agency Comments & SEPA: On October 31, 2019, DCD issued a Mitigated Determination of Non-Significance (MDNS) (Exhibit 79). The justification of the MDNS was addressed in the October 30, 2019 SEPA Memo, which addressed the potential impacts to the environment from the proposal as designed and based on the studies and reports submitted, and other information in the record, which is adopted by reference in this report. The SEPA Memo specifically addresses eelgrass in Section 4 –Plants, and Forage Fish and Birds in Section 5, and Micro-Plastics in Section 7. Mitigation Measure 2 of the MDNS requires that the proposal to comply with the Monitoring and Mitigation Plan prepared by the Jamestown S’Klallam Tribe that was submitted on March 1, 2019. This shall include the implementation of the: 1). Established Conservation Measures; 2). Site Specific Stewardship Measures; 3). The Monitoring Plan.

The MDNS, SEPA Memo, SEPA Checklist, and links to all exhibits were e-mailed (Exhibits 80) to the following agencies: Corp of Engineers; U.S. Fish & Wildlife Nation Wildlife Refuge; WA State Department of Natural Resources, Ecology, and Fish & Wildlife; Jamestown and Elwha Tribes; Clallam County Road Department, Environmental Health, and interested parties (people who have e-mailed DCD on this proposal). The 14 day comment of the MDNS ends on November 14, 2019.

As of the date of this staff report, the no comments have been received from agencies regarding the MDNS.

## B. ANALYSIS:

Relationship with Land Use Regulations: All land uses within Clallam County are subject to the policies of the Title 31, the Clallam County Comprehensive Plan, and the requirements of Title 33, the Clallam County Zoning Ordinance, except as limited by RCW 76.09. All development within the shorelines of the County shall be conducted in a manner consistent with the policy declared in section 2 of the Shoreline Management Act and consistent with the Clallam County Shoreline Master Program. The following is an analysis of the applicable statutory requirements for this proposal.

Chapter 35.01 CCC, Clallam County Shoreline Management Code: All development within the shorelines of the County shall be conducted in a manner consistent with the policies of the Shoreline Management Act and the Clallam County Shoreline Master Program (CCSMP). The following is an analysis of the applicable statutory requirements for this proposal.

### 1. SHORELINE

#### a. C.C.C. 35.01.040. Applicability and Permit Requirements:

Staff Report to the Hearing Examiner  
Shoreline Conditional Use & Substantial Development Permit No. SHR2017-00011  
Jamestown S’Klallam Tribe Oyster Farm Proposal within Dungeness Bay near Dungeness Spit

- (1) Applicability: The requirements set forth by this Chapter apply to those lands within 200 feet of the ordinary high water mark of a shoreline and any associated wetland, floodway, or 100-year floodplain where applicable.
- (2) Permit Requirements. Any development regulated by this Chapter requires one of the following types of permit approvals prior to site preparation or construction of said activity:
  - \* Substantial development permit (Type III permit pursuant to CCC 26.10), and/or
  - \* Conditional use (Type III permit pursuant to CCC 26.10), and/or
  - \* Variance (Type III permit pursuant to CCC 26.10), or.
  - \* Exemption to a substantial development permit (Type I permit pursuant to CCC 26.10).
- (3) Review Criteria for all proposed developments which are subject to this Chapter includes the following:
  - (i) All developments proposed on the shorelines of the county shall be consistent with the policies of the Shoreline Management Act of 1971, Chapter 90.58 RCW and the Clallam County Shoreline Master Program.

Staff Comment: *The analysis of this proposal compliance with the SMP policies and regulations, and Shoreline CUP and Substantial Criteria are addressed in Sections B(1), (2), & (3) of this report.*

- (ii) All developments proposed on the shorelines of the county shall be consistent with the Chapter 27.12, Critical Areas Code as it applies, as amended.

Staff Comment: *See Critical Areas in Section A(9) above.*

- (iii) All developments proposed on the shorelines of the county shall be consistent with the Chapter 32.01, Floodplain Management Code as it applies, as amended.

Staff Comment: *This proposal is consistent with the Flood Protections Protection Standards as addressed in the Critical Areas in Section A(9) above.*

- (iv) All developments proposed on the shorelines of the county shall be consistent with the Title 31 Clallam County Comprehensive Plan as it applies, as amended.

Staff Comment: *The following Comprehensive Plan policies apply to this proposal:*

*Section 31.02.310 CCC - Natural Resources indicates that commercial shellfish have economic benefits, but more importantly indicate the overall health of our watersheds.*

*Section 31.02.320(7)(b) CCC- Habitat states "Clallam County should protect, maintain and enhance fish and shellfish spawning, rearing, and migration habitat, and work to ensure harvestability of fish and shellfish. Damaged and degraded habitat should be identified, prioritized and restored. Recognize the various levels of government which have a vested interest in protection, maintenance and restoration of habitat."*

*Section 31.02.620(1)(j)(i) CCC – Economic Development states "Encourage growth of aquaculture and shellfish industries, consistent with regional comprehensive plans, and within the limits of applicable local, state and federal regulations;"*

- (v) All developments proposed on the shorelines of the county shall be consistent with Title 33, Clallam County Zoning Code as it applies, as amended.

Staff Comment: *Aquaculture is the production of animal products and is considered an agricultural product. Agriculture is a permitted use in all zones of the county.*

- (vi) All developments proposed on the shorelines of the county shall be consistent with Chapter 27.01, Clallam County Environmental Code as it applies, as amended.

Staff Comment: DCD issued a MDNS on October 31, 2019 for this proposal. This meets the SEPA and Clallam County Environmental Code requirement for this proposal.

(vii) All development proposed on the shorelines of the County shall be consistent with adopted watershed plans, flood management or reduction plans as they apply.

Staff Comment: Flood Management and Reduction Plans are addressed in the Critical Areas Frequently Flooded Areas protections standards and the Clallam Building Code requirements. The County established a Shellfish Protection District (Section 27.16 CCC) to address the closure of the shellfish area in Dungeness Bay due to water quality issues in conformance with RCW 90.72.030. This plan is a watershed management/protection plan. In 2001 the Sequim Dungeness Clean Water District (SDCWD) was formed to improve water quality for shellfish areas. This was accomplished through the Pollution Identification and Correction (PIC) Plan. In 2015 DOH upgraded approximately 660 acres of the Dungeness Bay Shellfish Growing Area from Conditionally Approved to Approved and 40 acres from Prohibited to Conditionally Approved.

This proposal is also to be reviewed for compliance Clallam County's Comprehensive Plan, Zoning, Critical Area, & Environmental Protection requirements. The proposal as designed and conditioned will comply with all Clallam County Codes.

b. Clallam County Shoreline Master Program: Chapter 90.58 RCW, the Washington State Shoreline Management Act of 1971, establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of the Shoreline Management Act of 1971. The Clallam County Shoreline Master Program provides goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is conducted in compliance with the policies and provisions of Chapter 90.58 RCW. An analysis of these policies as they relate to the proposal is provided in the following sections of this report.

c. 3.02 NATURAL ENVIRONMENT

A. DEFINITION - A shoreline of Natural Environment is distinguished by one or more of the following criteria:

1. The presence of some unique or cultural features considered valuable because of its natural or original condition.
2. A shoreline which is relatively intolerant of intensive human use.
3. A shoreline which is valuable for historical, cultural, scientific or educational considerations by virtue of its natural, unaltered original condition.
4. A shoreline which should be maintained or restored in its original condition for the benefit and pleasure of future generations.
5. A shoreline which, based on local citizen opinion, and the needs of the people of the rest of the state, should be preserved in its original condition.

Staff Comment: The Dungeness and Graveyard Spit meet the criteria for being designated Natural by the SMP. The proposed oyster operation is located off-shore of these areas and is subject to policies and regulations of the Natural shoreline environmental designation.

- B. OBJECTIVE - In placing a shoreline in the category of a Natural Environment, it is intended to preserve, maintain or restore such a shoreline as a natural resource relatively free of human influence; to discourage or prohibit those activities which might destroy or degrade the natural characteristics which make these shorelines unique and valuable.

*Staff Comment: The applicant is required to demonstrate how the re-establishment of the commercial oyster farm will not impact the Dungeness Spit and the Dungeness National Wildlife. The April 4, 2019 public hearing before the Hearing Examiner on this matter was continued to allow consultation between the JST and the U.S. Fish & Wildlife Service to conduct Government to Government Consultation to address potential impacts to DNWR.*

*On August 6, 2019 the U.S.F.W.S. provided a letter dated August 6, 2019 to the U.S. Army Corps of Engineers (Exhibit 98) that stated "By this letter, we are withdrawing the U.S.F.W.S. comment letters dated February 27, 2019, and May 22, 2019, regarding the Jamestown S'Klallam Tribe's application for a commercial oyster operation within the Dungeness National Wildlife Refuge (Refuge). After participating in Government-to-Government Consultation with the Jamestown S'Klallam Tribe, we have a better understanding of their proposed aquaculture operation. Therefore please replace the previous two letters (referenced above) with this letter as the official comments from the U.S.F.W.S.*

*"We recognize there is little site-specific research available on impacts of commercial, on-bottom bag aquaculture to bird species found on the Refuge (DNWF) and noted that different parties can derive divergent conclusions from the same studies. Nevertheless, we are concerned about potential impacts to the Refuge wildlife and habitat based on the proposed location for this activity. We recommend operations and monitoring activities occur outside of the migration and wintering periods for shorebirds and waterfowl, should a permit be provided. The attached reference list may be of assistance in understanding Refuge habitat, management, and wildlife use and assessing potential impacts from human disturbance and in-water structures.*

*We are committed to assist with finding the lease resource-disturbing approaches to this potential use. Thank you for accepting these comments in lieu of the aforementioned letters. If you have any questions regarding these comments, please contact Jennifer Brown-Scott at (360) 457-8451."*

*The applicant should address how the operations and monitoring activities would occur outside of the migration and wintering periods for shorebirds and waterfowl as recommended in the amended U.S.F.W.S. letter dated August 6, 2019.*

*The U.S.F.W.S. DNWR Comprehensive Conservation Plan (CCP) (Exhibit 99) addresses the U.S.F.W.S. management of the DNWR. The applicant should address how this proposal is consistent with the CCP.*

d. 4.01 MARINE BEACHES

A. Natural Environment

1. The building of structures such as jetties, groins, and bulkheads is prohibited.
2. Piers and jetties of historic value or those built before 1971 shall be allowed to remain.

3. The accumulation of driftwood or other material washed in from the sea must not be disturbed.
4. Removal of sand and rock is prohibited.
5. The dumping of any material is prohibited.
6. The forest and vegetation and cliffs and benches within the wetlands behind the beach shall not be disturbed.
7. Excavations or the removal of material from the shoreline or the cliffs behind are prohibited.
8. Any activity which would contribute to erosion along the shoreline is prohibited.
9. Priority shall be given to the development of paths and shoreline trails; roads shall be severely restricted and parking areas must be located on uplands invisible from the shore.
10. Facilities for recreational uses shall be permitted if they do not degrade the natural conditions.
11. Areas for lodging and related facilities must be located on uplands well away from the shorelines with provisions for non-motorized access only to the shoreline.
12. Any activity which could convert a Natural Environment to an irreversible condition or detrimentally alter the natural conditions is prohibited.
13. Those marine beaches which contain a unique or fragile natural resource shall remain undeveloped.

*Staff Comment: This proposal does not include any permanent structures and is located in the inter-tidal area. Most of these requirements are not applicable to this proposal. This proposal complies with these 1 to 11 marine beach requirements for the Natural designation. The applicant should address how the proposal complies with items 12 and 13.*

#### e. 4.02 SPITS AND BARS

##### A. Natural Environment

1. Regulations applicable to marine beaches shall apply to spits and bars.

*Staff Comment: Address in Section B(1)(d) above.*

2. The area inland from a spit or bar is protected from wave action, allowing such forms as shellfish to reproduce and live protected from the violence of the open coast. No activity which would jeopardize the ecology of this area is permitted.

*Staff Comment: This section acknowledges that this is area within the Dungeness Spit would be conducive for shellfish production and harvesting. This proposal would not impact the erosion or deposition of material that forms the Dungeness and Graveyard Spit.*

3. The removal of sand for commercial purposes, rock, driftwood, or an attempt to cut a passageway across a spit or bar will not be permitted.

Staff Comment: N/A.

f. 4.12 SUBTIDAL SHORELINES

A. Natural Environment

1. Prime consideration must be given to the preservation of subtidal shorelines for future generations.
2. Any activity which could convert a subtidal shoreline to an irreversible condition or detrimentally alter the natural conditions is prohibited.
3. Aesthetic considerations shall be of prime importance in such shoreline decisions.
4. No new development or redevelopment shall be permitted unless it provides for the general enhancement of the natural shoreline.
5. Those subtidal shorelines which contain a unique or fragile natural resource shall remain undeveloped.
6. While wishing to maintain broad public access to the shoreline areas, it is possible that if certain fragile areas in the natural environment are overly accessible, the resource will be destroyed. Therefore, the volume of access should be only that which the waters and shoreline can withstand.

Staff Comment: *This proposal does not include any permanent structures. However, the temporary placement of up to 80,000 bags over a 20 acre portion of the 34 acre oyster farm within the subtidal (intertidal) over the lifetime of the proposal would have similar impacts as permanent structures. The Corp BA for shellfish (Exhibit 18) address issues related to activities waterward of the OHWM, and the USFW BiOp (Exhibit 19) addresses how the proposal will not impact ESA Species or their critical habitat. However the recent lawsuit against the Corp of Engineers (Exhibit 95) Nationwide 48 permit (shellfish operation) has brought into questions the impacts associated with shellfish operations on ESA species and their habitat.*

g. 5.02 AQUACULTURE

- A. DEFINITIONS - Aquaculture is the farming or culturing of game and food fish, or aquatic plants and animals in fresh or salt water areas, and may include such developments as fish hatcheries, rearing pens, shore based structures and shellfish rafts. Excluded from this definition is the private husbanding or harvesting of anadromous fish, as prohibited by Washington State Law.

Aquaculture practices pertain to any activity directly related to growing, handling, or harvesting of aquaculture produce, including, but not limited to, propagation, enhancement and rehabilitation of said fisheries resources. Excluded from this definition are related commercial uses such as wholesale and retail sales, processing, packaging or freezing facilities.

Staff Comment: *This proposal would raise oysters in mesh bags, which meets the definition of aquaculture. It does not include the shucking or selling of oyster at the 50 acre leased area.*

B. POLICIES

Staff Report to the Hearing Examiner  
Shoreline Conditional Use & Substantial Development Permit No. SHR2017-00011  
Jamestown S'Klallam Tribe Oyster Farm Proposal within Dungeness Bay near Dungeness Spit

1. Aquaculture activities and structures should be located in areas where vessel navigation is not severely restricted.

Staff Comment: *This proposal is located near the northwestern edge of Dungeness Bay within tidal elevations ranging from 3 to -2. The mesh bags would be 0.5 feet above the substrate and should not impact navigation.*

2. Potential locations for aquaculture enterprises and practices are relatively restricted, due to specific biophysical requirements, such as water quality, temperatures, substrate, dissolved oxygen and, in coastal waters, salinity. Therefore, special emphasis and consideration should be given to these factors when considering other water dependent uses in those areas having high potential for aquaculture.

Staff Comment: *This proposal would cover approximately 34 acres of the approximate 768 acres of Dungeness Bay, which is roughly 4.4 percent. The appropriateness of the sheltered areas within Dungeness Bay is acknowledged based on the Shellfish Protection District that addresses Dungeness Bay and the Sequim Dungeness and Clean Water District.*

3. Due to the formative and experimental nature of aquaculture technology and practices, attention should be given to encouraging the introduction of, and experimentation with, new aquaculture methods, devices, and practices in designated areas only.

Staff Comment: *This proposal is not an experimental technology rather is standard practice for oyster farming in the state.*

4. Particular attention should be addressed toward the possible effects that aquaculture practices may have on the long term ecological stability of the aquatic ecosystem and any secondary detrimental effects that could arise as a result of various aquacultural practices.

Staff Comment: *The proposed mesh bags would be located 25 feet from all eel grass areas per the eel grass survey. The potential impacts of the mesh bag placement on eel grass areas would be considered long term ecological stability of the aquatic ecosystem. Bird species such as the brant geese also depend on eelgrass for a source of food. The impacts of this proposal on forage fish, migratory birds, water fowl, and shorebirds could be considered a secondary effect. The Mitigation and Monitoring Report has: 1). Established Conservation Measures; 2). Site Specific Stewardship Measures; 3). Monitoring Plan: which are intended to address impacts to eelgrass forage fish, and birds.*

5. Development ancillary to aquaculture should be located inland off the shorelines, unless clearly dependent upon a shoreline or overwater location.

Staff Comment: *This proposal only entails the raising of oyster in the inter-tidal area and does not include any ancillary activities.*

6. The enhancement or rehabilitation of water bodies and their adjacent habitat by public or private entities for purposes of increasing yields or production of fisheries resources should be encouraged.

Staff Comment: *In 2001 The Shellfish Protection District and the Sequim Dungeness Clean Water District (SDCWD) was formed by Clallam County Environmental Health, DOH, WA State Department of Ecology, Clallam Conservation District, and the Jamestown Tribe to improve water quality for shellfish areas. Since this time, most of water quality for shellfish harvesting in Dungeness Bay has been elevated from Prohibited to Approved.*

7. Aquaculture structures and facilities should be located and designed to not significantly degrade unique scenic aspects of the area.

Staff Comment: A Visual Assessment (Exhibit 90) indicates that the black mesh bags will be visible only during extreme low tides, and should only be visible within 100 yards.

### C. REGULATIONS

1. Shoreline permits - The following aquacultural activities and practices require the issuance of a shoreline substantial development permit.
  - a. The use of mechanical or hydraulic dredging equipment for the harvesting of hardshell clams.
  - b. Construction and placement of structures, either fixed or floating.
  - c. Excavation and grading for the construction of rearing ponds or channels.

Staff Comment: The placement of mesh bags affixed to the substrate is a structure. A structure is any defined as an assembly of parts. This proposal is not exempt from a Substantial Development per WAC173-27-040.

2. Exemptions - The following activities and practices do not require the issuance of a shoreline substantial development permit:
  - a. Propagation, cultivation, or feeding of aquatic life.
  - b. The harvesting of aquatic life not using mechanical or hydraulic dredging equipment.
  - c. Normal equipment and area maintenance.

Staff Comment: This proposal does not meet the criteria for an exemption. These criteria would only be applicable if there were not bags attached to the substrate.

#### 3. General

##### a. Mechanical-Hydraulic Harvesting:

1. Mechanical or hydraulic dredge harvesting operations for hardshell clams shall be restricted to those subtidal zones (waterward of extreme low water) identified by Washington Department of Fisheries as having known commercial potential.
2. Mechanical-hydraulic harvester, either singularly or in aggregate, shall adhere to the noise standards established under W.A.C. 173-60- 040(2)(a) for EDNA Class B Source - Class A receiving, as measured from the affected shoreline.
3. Applicants will be required to show that the proposed clam harvesting operation will not lead to harmful increases in siltation or turbidity on surrounding property and will adequately protect other fish or shellfish resources from significant or long term harm.

##### b. Mussel/Oyster/Seaweed Rafting

1. Rafting structures which could pose a navigational hazard shall be required to display markers at 100 foot intervals along the perimeter of the rafting area, and shall be clearly visible at high tide.
2. Markers shall comply with applicable federal regulations.
3. Rafting structures shall be designed so as to cause minimal interference with littoral drift.
4. Water quality standards as established under WAC 173-201 shall not be exceeded due to rafting development.

*Staff Comment: This site had been utilized as an Oyster Farm from 1953 to 2005, which entailed oysters on long lines and mechanical harvesting by shallow dredge. This current proposal does not include rafting, or mechanical harvesting by shallow dredge.*

c. Hatcheries/Rearing Ponds

1. Shoreline protection structures are permitted if consistent with this program and where stream bank erosion is seriously threatening an established development. New developments shall be located and constructed so as to minimize the need for shore defense structures.
2. Shore support structures shall not be located within 100 feet of mean higher high water unless it is adequately demonstrated that a reduced setback is essential to hatchery operations.
3. Hatchery operations shall be required to maintain a minimal 50 foot wide vegetated buffer zone along the affected streamway, PROVIDED that the minimal clearing of vegetation shall be permitted for essential water access points.
4. Water quality for the affected streamway shall not exceed the standards established under WAC 173-201.

d. Shore Support Structures - General

1. Structures located over water shall only be permitted if it is clearly demonstrated that the use is dependent upon the location for normal aquaculture operations.
2. Structures shall be limited to a maximum height of 25 feet, as measured from the average grade level.
3. Non-shoreline dependent structures shall be located a minimum of 50 feet landward from mean higher high water.

*Staff Comment: a., b., c., & d. This proposal complies with these regulations. Most of these regulations are not applicable to this proposal as it does not include structures (besides mesh bags) or mechanical harvesting and/or shallow dredge.*

4. Environments

- a. Natural:
  1. Permitted aquaculture uses are limited to:
    - a. Propagation, enhancement or rehabilitation of naturally occurring stocks.
  2. Aquaculture developments which may be authorized as conditional uses are:
    - a. Mechanical/hydraulic dredge harvesting of subtidal hardshell clam beds.
  3. Aquaculture developments which may not be permitted are:
    - a. Shore based structures.

*Staff Comment: Typically shellfish operations are reviewed through a Shoreline Substantial Development Permit and not a Shoreline CUP throughout Puget Sound. Because the use of sub tidal oyster bags is not a specific use addressed in the Natural section of the SMP (Section 5.02(C)(4)(a)), DCD has determined that this proposal requires a Shoreline Conditional Use (per WAC 173-27-160(3)).*

## 2. SHORELINE CONDITIONAL USE CRITERIA

CCSMP Appendix B: Review Criteria for Conditional Use Permits (WAC 173-14-140)

Note: Since the adoption of the Clallam County Shoreline Master Program, WAC 173-14 has been repealed and replaced with WAC 173-27. This current statute citation is WAC 173-27-160 (1).

The purpose of a [shoreline] conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020: PROVIDED, that conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use. Permits for a conditional use must be submitted to the Department of Ecology for approval or disapproval.

1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

- (a) That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the master program.

*Staff Comment: The purpose of the Shoreline CUP application is to provide an opportunity for the applicant to address how they believe their proposal complies with the CUP Criteria. This should include addressing how the proposal is compatible with the Dungeness National Wildlife Refuge. The questions for this application are not the same as the criteria for approval of a CUP found in Appendix B & in WAC 173-27-160. DCD placed the applicant's response under the most applicable criteria, however the responses may apply to more than one of the criteria.*

### **Applicant's response to Question 1 from CUP Application:**

Staff Report to the Hearing Examiner  
Shoreline Conditional Use & Substantial Development Permit No. SHR2017-00011  
Jamestown S'Klallam Tribe Oyster Farm Proposal within Dungeness Bay near Dungeness Spit

That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the master program.

The applicant cited Goal 1.5.5 and Policy 3.2.1.1 of the 2018 SMP adopted by the BOCC but not ratified by the WA State Department of Ecology.

The proposed project in Dungeness Bay is a reasonable and appropriate use of the shoreline because the project site has been leased from DNR by the Jamestown S'Klallam Tribe for cultivating oysters for 27 years and has historically be used for oyster aquaculture for over 60 years. Hence, this proposal is consistent with prior use of the shoreline that successfully co-existed with the USFWS Wildlife Refuge since the 1950's.

With recent improvement in water quality in Dungeness Bay, the Tribe will resume oyster cultivation at the project site, but has proposed to use an alternate cultivation method - the "on-bottom bag" cultivation method - from what was used before water quality impairments throughout Bay required the Tribe to cease operations in 2005. The "on-bottom bag" method has commonly been employed by shellfish growers in Washington State, has low visual impact (vertical relief of < 1ft.) and the dark-colored mesh bags blend in with the substrate (see project drawings). Therefore, the proposed oyster cultivation activities will not result in functional or aesthetic impacts to the shoreline.

**Applicant's response to Question 4 from CUP Application:**

The Tribe recognizes the importance of managing Clallam County's shorelines in a way that maximizes public interest and preserves the scenic, aesthetic and ecological qualities of shorelines in Clallam County. On-bottom oyster cultivation will be employed so as not to disrupt public access to, the ecological health, or scenic nature of Dungeness Bay (see Dungeness Bay Field Report; Shellfish Aquaculture and Bird Interaction Report; 2015 USAGE Programmatic Biological Assessment conservation measures).

*Staff Comment: If the long line oyster farm with mechanical dredge harvest had continued on the 20 acre site then this proposal could have been reviewed as modification and improvements to a pre-existing non-conforming use. Since the JST Oyster Farm has not operated for over 14 year at this location, this proposal is not considered a pre-existing non-conforming use per WAC 173-27-080(3) and is being reviewed as a new use.*

*As provided above, Chapter 90.58 RCW, the Washington State Shoreline Management Act of 1971, establishes a cooperative program of shoreline management between local government and the state. Local government has the primary responsibility for initiating the planning required by Chapter 58.17 RCW and administering the regulatory program consistent with the policy and provisions of the Shoreline Management Act of 1971. The Clallam County Shoreline Master Program provides the goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is conducted in compliance with the policies and provisions of Chapter 90.58 RCW.*

(b) That the proposed use will not interfere with the normal public use of public shorelines.

**Applicant's response to Question 2 from CUP Application:**

This project will not limit or reduce the rights of the public. The project site is located to the south of Dungeness Spit which is only accessible by seasonal boat access. On-bottom bag cultivation will occur within the lower elevations of the leased parcel. Given the shallow, intertidal location of the site, and low profile of the on-bottom bag method, the proposed farming

activities will not limit or reduce the right of the public in the navigable waters of Dungeness Bay.

This project will promote public interest given that shellfish aquaculture is a designated "preferred use" of Washington State waters as part of Gov. Inslee's Shellfish Initiative. Oysters are "filters feeders" and known to have remarkable water filtration capabilities, clearing the water of sediment, nutrient pollution, etc. Therefore, cultivation of oysters at this site has the potential to benefit water quality in Dungeness Bay. Further, mollusk aquaculture is recognized to be one of the most sustainable and least environmentally impacting methods of animal sourced protein, since shellfish feed naturally and, comparatively, operations require low energy and have low emissions (<https://sustainablefisheries-uw.org/eating-plants-and-sea-food/> and references within).

**Applicant's response to Question 5 from CUP Application:**

The proposed project activities are restricted to the intertidal DNR-leased parcel and will not interfere with normal public use of the shoreline (see site map). The public will still have full access to all recreational activities provided by the Refuge, along Dungeness Spit and in the Bay.

*Staff Comment: The Dungeness National Wildlife Refuge is a public shoreline that is enjoyed by approximately 75,000 visitors annually. The Oyster Farm is located in on the interior portion of the Dungeness Spit within the DNWR that is only accessible by seasonal boat access (Exhibit 177). This interior portion of the spit is not accessible to the public because of concerns of impacts from pedestrians on wildlife.*

*The impacts of an average of 6,250 visitors per month to the refuge as compared to 6 to 36 JST employees visits (inner portion of the Dungeness Spit) to the site for 4 to 6 hours per month for bag maintenance and harvest (per Operation Plan) should be considered when considering the impacts of people on wildlife within the DNWR. Gear maintenance would occur year round and would occur within the migration and wintering periods for shorebirds and waterfowl. If bird or wildlife use is diminished by the proposal this could reduce the public's desire to visit the DNWR.*

*This proposal would occupy 34 acres of approximately 768 acres of Dungeness Bay, which encompasses an area on the inside of Dungeness and Graveyard Spit (Exhibit 13). This equates to 4.4 percent of the area being encompassed by this proposal. The oyster bags would only be 0.5 feet high and would not impact navigation. Because the Jamestown S'Klallam Tribe has leased this 50 acre area, this area is not available for recreational shellfish. The leased area is 731 feet wide by 2,977 feet long. The remaining 23,000 linear feet (4.3 miles) of the inside of Dungeness and Graveyard Spit is still available for recreational shellfish as allowed by law. This proposal would encompass approximately 13 percent of the beach area along the inside Dungeness Bay (Exhibit 13).*

*In 2011 Washington State, under Governor Gregoire, was the first state in the nation to launch the National Shellfish Initiative. Governor Inslee's Shellfish Initiative promoted clean-water commerce, elevates the role that shellfish play in keeping marine waters healthy and creating family wage jobs. RCW 90.72.030 the legislature found that shellfish harvesting is important to our economy and way of life (Exhibit 20).*

*In 2001 the Shellfish Protection District (Section 27.16 CCC) was established to address the closure of the shellfish area in Dungeness Bay due to water quality issues in conformance with RCW 90.72.030. The Sequim Dungeness Clean Water District (SDCWD) was formed by Clallam County Environmental*

Health, DOH, WA State Department of Ecology, Clallam Conservation District, and the Jamestown Tribe to improve water quality for shellfish areas. The SDCWD was formed to improve water quality for shellfish areas. This was accomplished through the Pollution Identification and Correction (PIC) Plan. Oysters are filter feeder that improve water quality, which is in the public's interest. Oysters are also an efficient source of protein that don't require feeding and do not promote greenhouse gas emissions as compared to production of chicken, pork, and beef.

- (c) That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

**Applicant's response to Question 6 from CUP Application:**

This proposal is compatible with authorized uses within this area. Oyster aquaculture at this site has successfully co-existed with the USFWS Wildlife Refuge since 1953 and the Jamestown S'Klallam Tribe has leased this site for pacific oyster cultivation since 1990. Over the 50+ year history of oyster cultivation at this Dungeness Bay site, USFWS has never reported shellfish activities to be incompatible with Refuge functions, and the Tribe has worked with Refuge staff to survey the project site for critical eelgrass habitat and ensure conservation measures for shellfish activities can be met. Further, the project site is identified as a state-owned "covered tideland" for the purpose of shellfish cultivation per Section 6 of Settlement Agreement (United States, et al. v. State of Washington, et al., No. C70-9213. June 20, 2007), and as a location of continuing active shellfish aquaculture in the 2015 USAGE Programmatic Biological Assessment.

This proposal is compatible with uses planned for under the Comprehensive Plan: Section 31.02.310 CCC (Natural Resources - commercial shellfish have economic benefits and indicate overall health of our watersheds) and Section 31.02.620(1)U(i) CCC (Economic Development - encouraging growth of aquaculture and shellfish industries). Shellfish aquaculture is considered an agricultural product and permitted in all zones of Clallam County.

The proposal is also compatible under the Shoreline Master Program and is consistent with the policies outlined under Section 3.2.1 for Aquaculture. The proposed project will not cause pollution or introduce chemicals into the environment. No permanent structures are being proposed, so there will be no interference with navigation or normal public use. Measures have been incorporated to avoid adverse impacts to the environment and wildlife (see above), and the project has been limited in scale, with operational growth planned in phases, to properly monitor to prevent any adverse impacts and allow for adaptive farm management.

*Staff Comment: It was beyond the applicant's control to cease the oyster operation because of water quality concerns within Dungeness Bay. The applicant's desire to re-establish this operation is event through the JST efforts to clean up the waters of Dungeness Bay through the participation in the Shellfish Protection District and the Sequim Dungeness Clean Water District, and through maintaining a portion of their DNR lease in Dungeness Bay since 1990's. However, since the oyster farm had ceased operation for over 14 years it is not considered a pre-existing non-conforming use per WAC 173-27-080(3).*

*The DNWR Comprehensive Conservation Plan (CCP) (Exhibit 99) (based on the Alternative B selected) indicates that the Refuge will be managed in a manner that:*

- *Achieves the mission of the National Wildlife Refuge System, and the purpose, vision, and goals of the refuge.*
- *Maintains and restores the ecological integrity of the Refuge's habitat and populations.*
- *Addresses the importance issues identified during the CCP scoping process.*
- *Addresses the legal mandates of the Service and the Refuge.*
- *Is consistent with the scientific principles of sound wildlife management and endangered species recovery.*
- *Facilitates priority public uses appropriate and compatible with the Refuge's purpose and Refuge System Mission.*

*The applicant should address how the operations and monitoring activities are appropriate and compatible with the Refuge's purpose and Refuge System Mission addressed above.*

- (d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.

**Applicant's response to Question 3 from CUP Application:**

Several aspects of this proposal explicitly protect against adverse effects to Dungeness Bay vegetation and wildlife by: 1) buffering eelgrass habitat from all shellfish activities; 2) employing on-bottom cultivation methods; 3) implementing phased operations with commitment to adaptive management; 4) non-interference with the USFWS Refuge functions related to migratory birds, and 5) implementing all applicable conservation measures (see JARPA 6e) as outlined in the USACE Programmatic Biological Assessment.

With the understanding that native eelgrass provides critical habitat for various species of birds (e.g., Brant) and forage fish (e.g., herring) within Dungeness Bay, this project will buffer against any adverse effects on eelgrass by restricting all shellfish activities to a minimum distance of 25 ft. from identified eelgrass patches ( $\geq 3$  shoots per square meter). Eelgrass observations and survey data collected between 2011 - 2018 show consistent patterns in eelgrass distribution with smaller, ephemeral patches located within the project site and two larger, persistent beds outside (~100 ft.) of the project site (see Field Survey Report). Hence, the proposed eelgrass protection area (area of no activity) within the lease site, as well as the site access considerations (see project drawings), will circumvent any damage or disruption to this important habitat and the wildlife that use it.

Project operations are proposed in phases starting with 5 acres of on-bottom bag cultivation and incrementally working up to a maximum of 20 acres of on-bottom bag cultivation over a 5 year period. It is not anticipated that the project will have adverse impacts to vegetation or wildlife; however, the proposed phased operations will allow any potential unforeseen impacts to be identified and responded to through adaptive management.

The decision to use on-bottom methods of oyster cultivation was made, in part, to minimize potential impacts to vegetation and wildlife. By electing to use on-bottom cultivation, interactions with eelgrass habitat, and associated wildlife, would be avoided as opposed to alternate suspension cultivation methods (i.e., longlines, tumble bags). The low relief (< 1 ft.) and spacing of the on-bottom bag cultivation (see project drawings) will not

impede access or foraging of migratory birds at or adjacent to the project site. On-bottom oyster harvest requires no gear and distributed oysters behave similar to a natural oyster reef until they are harvested by hand.

Over the 50+ year history of commercial oyster farming that occurred at the project site in Dungeness Bay, no reports were made from USFWS indicating that commercial shellfish operations were incompatible or interfered with Refuge functions, particularly regarding migratory birds. To supplement the lack of documented information on this issue, the Tribe acquired a Shellfish Aquaculture and Bird Interaction Report from Confluence Environmental. The report documents Dungeness Bay is an important use area for many species of birds, including black brant, but ultimately concludes that the proposed project is unlikely to have adverse effects on migratory birds stating the following:

- *The scientific record does not support a conclusion that shellfish farming negatively impacts bird use of estuaries.*
- *Brant foraging is not expected to be impacted because of eelgrass conservation measures and low profile of oyster bags.*
- *Most birds do not flush from boats passing at 25 meters or greater distance.*
- *Scientific findings show that shorebird foraging occurs irrespective of aquaculture and that presence of benthic invertebrates in oyster culture areas of West Coast are comparable to other structured habitats like eelgrass. Oyster habitat had the highest values for mean species richness, abundance and biomass for benthic invertebrates.*
- *Successful co-occurrence of aquaculture and waterfowl (including Brant) at Samish and Willapa Bays for more than 60 years.*
- *Based on over 100 years of aquaculture in Puget Sound and California, and observations in and around aquaculture gear, the potential for negative interactions appears to be an insignificant risk with proper farm management.*
- *While there is the potential to negatively affect behavior and foraging for certain species through disturbance (e.g., noise) related to farm activities, these effects are expected to be minimal at this site due to the limited scale of activities, the limited total area where activities will occur, and the lack of eelgrass forage resources on-site for brant.*

It is recognized that forage fish spawning habitat is located in proximity to the project site (see Dungeness Bay Field Report). There is documented spawning habitat for surf smelt and sand lance at higher tidal elevations (above +5 MLLW) than the proposed shellfish cultivation area (+3 feet to -2 feet MLLW). The Dungeness/Sequim Bay Pacific herring stock is understood to spawn in eelgrass in inner Dungeness Bay. All proposed activities will occur at lower tidal elevations and avoid eelgrass habitat, thereby protecting against adverse impacts on forage fish. The gear and methods proposed have been approved by USFSW and NMFS which reviewed possible effects to forage fish.

The project site is explicitly identified as continuing active shellfish aquaculture (10 - 100 acres) in the 2015 USACE Programmatic Biological Assessment which identifies conservation measures to protect against adverse impacts to vegetation and wildlife. The Tribe is working closely with the Refuge to ensure all terms and conditions of conservation measures applicable to this project (see JARPA 8c) will be met.

**Applicant's response to Question 7 from CUP Application:**

The proposal will not cause significant adverse effects to the shoreline environment. Any potential impacts associated with proposed shellfish activities are anticipated to be minimal and temporary (i.e., structures are removable and human activity is intermittent). The proposed maximum density of on-bottom bags for oyster cultivation is 4000 bags per acre (up to a total of 20 acres – see JARPA 6e) which provides adequate spacing between rows of bags allowing for approximately 50% of the bottom sediments within the cultivation acreage to remain uncovered at any given time (see project drawings).

The project site is characterized by silty sand, a benthic faunal community typical of mudflat habitats (e.g., bivalves, annelids, small crustaceans and fish, and small patches of eelgrass) and strong tidal influence with 100% flushing rates occurring the on order of 3 - 4 days (see Dungeness Bay Field Report 2018 and Rensel 2003 cited within). Circulation in Dungeness Bay is primarily influenced by tidal exchange of coastal marine waters where seasonal upwelling drives nutrient fluxes and primary productivity. Given the strong tidal influence, it is unlikely that the proposed scale of oyster cultivation (-3% of Inner Bay) would have a measurable effect on nutrient concentrations and primary production within Inner Dungeness Bay. Oyster biodeposits (i.e., waste) directly enter the sediments and either undergo long-term burial or denitrification to nitrogen gas which is released into the atmosphere. Both processes result in a net loss of nitrogen to the system (Dumbauld et al. 2009; Newell 2004). Hence, waste from cultivated oysters does not result in excess nitrogen "pollution" to the benthos and enhances nitrogen cycling.

Ortho and oblique air photos of the Dungeness Bay oyster farm vicinity dated 1990, 2002, 2005, 2006, and 2017 were reviewed. There is no visible evidence that the circa 1990 to 2005 oyster farm had any observable effect on longshore sediment transport along Dungeness Spit. The oyster farm site is located adjacent to a 3.1 mile drift cell on the inside strand of Dungeness Spit, between the base of the spit and Graveyard Spit. The sediment source is likely over-wash from the outside strand of the main spit. The depositional part of the drift cell appears to extend from the down-drift end, Drift Cell Mile (DCM) 0.0, to approximately DCM 1.3. The oyster farm site is located between DCM 0.6 and 0.8, within the depositional area. The site is generally a few hundred feet water-ward of the inside strand, and thus the larger grain sized sediments likely travel between the site and the shoreline. Fine grained sediment might move within the immediate vicinity of the site, but no impacts to this this process can be observed in the photo record. The accretionary landform at the end of the drift cell is a 0.2 mile-long spit. It appears unchanged between 2005 (the end of the oyster operation) and 2017, 12 years afterwards. If the operation had caused sediment to artificially accumulate updrift, a response at the accretionary landform would have been expected. However, no response can be observed.

Changes in sedimentation processes (i.e., littoral drift or accumulation) in proximity to on-bottom oyster bags is not well understood and likely to be highly site-specific. Given the limited foot-print of proposed on-bottom bag cultivation, and direct observations from on-bottom bag cultivation in Sequim Bay, any sedimentation effects are anticipated to be minimal and highly localized around the bags, and will not result in adverse changes to the benthic faunal community. Scientific studies, along with direct observations from oyster cultivation in Sequim Bay, have reported abundant, high diversity infaunal & meiofaunal communities associated with on-bottom & bag oyster culture (Dumbauld et al. 2009; Dealteris et al. 2004; Bourdon 2012; Powers et al. 2007; Pinnix et al. 2004; Trianni 1996; Jamestown Natural Resources pers. comm.)

For references above, see literature cited: A9.52 Exhibit 26.

Staff Comment: Issues related to impacts are addressed in the Programmatic BA for Shellfish Activity in Washington State Inlands Marine Waters (Exhibit 18). An ESA Section 7 Consultation Biological Opinion (BiOp) done by the U.S. Fish and Wildlife Service for Shellfish Activities in Washington State Inland Marine Waters was prepared on August 26, 2016 (Exhibit19). The Corp of Engineers Process will also ensure that the proposal will not impact ESA Species or their Critical Habitat through their Section 10/404 permit.

There are no documented adverse impacts from the oyster farm that has been operating for over 50 years. The County's MDNS issued on October 31, 2019 and the documentation provided in the DCD SEPA Memo dated October 30, 2019 indicates that the proposal will not result in probable significant adverse impacts.

The objective of the Natural designation are intended to preserve, maintain or restore such a shoreline as a natural resource relatively free of human influence; to discourage or prohibit those activities which might destroy or degrade the natural characteristics which make these shorelines unique and valuable. The applicant should address how the proposal with up to 80,000 on-bottom bags with year round gear maintenance of up to 6 people visiting the site for up to 6 hours 6 times a month within the migration and wintering periods for shorebirds and waterfowl is an appropriate use in the Natural Designation located off the Dungeness National Wildlife Refuge.

(e) That the public interest suffers no substantial detrimental effect.

**Applicant's response to Question 8 from CUP Application:**

The public interest will not suffer any detrimental effect. Please see responses above regarding the advancement of the public interest due to "prefer use" of Washington waters, compatibility with shoreline master program, low profile culture methods, limited activity on project site, and unrestricted access of the public to the surrounding Dungeness Wildlife Refuge.

Also see detailed responses provided in the SEPA Environmental Checklist sections for this proposal.

Staff Comment: The applicant should address what measures would be implemented to ensure that birds and wildlife will not be impacted from this proposal. Gear maintenance would occur year round and could have up to 6 people visit the site for up to 6 hours 6 times a month within the migration and wintering periods for shorebirds and waterfowl. Based on the density of birds that visit the DNWR and their sensitivity for disturbance while migrating and foraging, even small impacts at this wildlife refuge could result in substantial detrimental effects to the public interest.

2. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in WAC 173-14-140(1)]1 above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

Staff Comment: Aquaculture is a use specifically addressed in Section 5.02 (Aquaculture) of the Clallam County SMP. Therefore, this standard is not applicable to this proposal.

3. Uses which are specifically prohibited by the master program may not be authorized.

*Staff Comment: The Clallam County Shoreline Master Program does not prohibit aquaculture development in the Natural designation, but does require that this activity obtain a Shoreline CUP and Substantial Development permit. This is the subject of this review.*

4. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of RCW 90.58.020 and should not produce substantial adverse effects to the shoreline environment. (Statutory Authority: Chapters 90.22 and 90.54. RCW 81-04-027 (Order DE 80-42), Section 173-14-140, filed 2/2/81. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7). Section 173-14-140, filed 6/14/78; Order DE 75-22, Section 173-14-140, filed 10/16/75).

**Applicant's response to Question 9 from CUP Application:** No other developments similar to the circumstances of this proposal are located in Clallam County.

*Staff Comment: There are only few areas within Clallam County that are protected from wave and tidal action and have good water quality suitable for shellfish operation. The Corps programmatic BA addresses existing shellfish operations differently than new shellfish operations. This is one of the few areas identified in Clallam County (North Puget Sound) that was addressed in the BA. In addition, this area has been leased from DNR for an oyster farm for approximately 65 years. The DNR would also have to decide whether they would be willing to issue new aquatic leases in Dungeness Bay. Based on tribal rights outlined in the Treaty of 1855, DNR has different consideration for the lease of areas to the Tribes vs non-tribal entities. Therefore, it is unlikely that this proposal would result in proliferation of additional shellfish proposals in Dungeness Bay or the area. There should be no cumulative impacts from this proposal on Dungeness Bay or the area.*

### 3. SUBSTANTIAL DEVELOPMENT PERMIT

WAC 173-27-150 states the review criteria for substantial development permits.

(1) A substantial development permit shall be granted only when the development proposed is consistent with:

(a) The policies and procedures of the act;

(b) The provisions of this regulation; and

(c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

(2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

**Applicant's response to the Shoreline Substantial Development Application:**

The Jamestown S'Klallam Tribe's proposal is "aquaculture" as defined in (current) Chapter

5.02 of the Clallam County Shoreline Master Program (SMP). The proposed oyster farming operation is in compliance with the policies (section B) and regulations (section C) as follows.

Chapter 5.02 B.2 encourages cautious approaches to "experimentation" and "new aquaculture methods." This project will produce oysters by employing the on-bottom bag culture method, which is commonly employed by shellfish growers in Washington State. There will not be any "experimentation" in production methods. On-bottom bags will be firmly secured to the substrate within the intertidal zone and have low vertical relief of (< 1 ft.), and therefore, will not restrict vessel navigation within Dungeness Bay.

The project is located on a DNR-managed tideland parcel that has historically been leased for aquaculture. The Jamestown Tribe previously engaged in oyster cultivation on a similar scale (~20 acres) at this site but had to cease operations due to the water quality impairments (unrelated to prior oyster operation) in Dungeness Bay. Consistent with Chap. 5.02 B.4 and 6, the Tribe is focused on retaining the water quality standards and furthering the goals of the Clean Water District in Dungeness Bay, and to that extent, the Tribe has and will continue to invest significant resources and effort to assist in improving the water quality standards. Jamestown supports Washington's Department of Health (DOH) monthly marine water quality sampling of Dungeness Bay stations. In April 2011, the DOH upgraded approximately 500 acres of the Dungeness Bay growing area from Prohibited to Conditionally Approved for commercial shellfish harvest. In 2015 DOH upgraded approximately 660 acres of the Dungeness Bay Shellfish Growing Area from Conditionally Approved to Approved and 40 acres from Prohibited to Conditionally Approved.

The SMP states that projects "should be designed to not significantly degrade unique scenic aspects of the area" Chap. 5.02 B.7. This project is located on DNR aquatic lands within the boundaries of USFWS Dungeness Wildlife Refuge. The Tribe recognizes that this area is particularly scenic because of those related restraints on development. The Tribe will employ the on-bottom culture method of cultivation in an effort to minimize the effect on the scenic aspects of the Refuge. The Tribe also recognizes the critical ecosystem services provided by eelgrass and the goals of the Dungeness Wildlife Refuge in protecting critical habitat of migratory birds in Dungeness Bay. It is with conservation in mind that farming will not take place within 25 feet of eelgrass observed within the project site. In addition, this project is employing an alternate method of cultivation than what the Tribe employed before the water quality impairments required the Tribe to cease its production efforts at this site. During that period, there were no obvious concerns regarding the scenic aspect or impacts to critical habitat of both the Refuge and Dungeness Bay.

This project will be the cultivation of naturally occurring stocks, in accordance with Chap. 5.02 C.4.a.1. All requisite shoreline permits will be acquired.

*Staff Comment: This proposal does not meet criteria for developments exempt from substantial development permit requirements found in WAC 173-27-040. However, this oyster farming proposal in the Natural Shoreline Environment is reviewed through a Shoreline Substantial Development Permit. Provided this proposal, as designed & conditioned, complies with the SMP as addressed in the Shoreline Analyst in Section B(1)&(2) above), this proposal would be consistent with the Washington State Shoreline Management Act (RCW 90.58), the Shoreline Management Permit and Enforcement Procedures (WAC 173-27), and the Clallam County Shoreline Management Plan.*

*Therefore, provided this proposal, as designed & conditioned, complies with the SMP as addressed in the Shoreline Analyst in Section B(1)&(2) above)the re-establishment of this oyster farm on the proposed 50 acre leased area, as designed & conditioned, meets the Substantial Development Criteria of WAC 173-27-150.*

**C. RECOMMENDATION BASED ON ANALYSIS:**

Based on the foregoing findings, analysis, and conclusions that this proposal is not consistent with the Natural Shoreline Designation, does not meets the Shoreline CUP Criteria, and will negatively impact wildlife at the Dungeness National Wildlife Refuge, the Planning Division recommends that the Hearing Examiner **DENY** the application for Shoreline CUP and Substantial Development Permit (SHR2017-00011) proposed by the Jamestown S'Klallam Tribe to re-establish an oyster farm using on-bottom mesh bags within a 50 acre leased area located south and east of the Dungeness Spit.