He questioned about the possibility of the Board remanding the matter to the Hearing Examiner to put such a comment in some more forceful terms as opposed to a comment form the Board on an appeal decision.

Commissioner Colby believed that to put it more forcefully, the Board would have to adopt a change to our Shoreline Master Program.

The seated board of county commissioners has the opportunity to rule under various circumstances on an application and the current Board cannot tie the hands of some future board as how that Board might rule on an application. The current Board can make it plain to future boards that it is this Board's opinion that the promise of the Shoreline Master Program was fulfilled with this density in this area.

With regard to a question from the Chair as to whether or not there were any permitted rafts that have not been constructed or not in operation now, both Ken Pickard and Ian Jefferds replied in the negative.

Commissioner McDowell suggested the comment be placed in the Findings as opposed to the Decision with regard to the fact of looking at the overall density versus individual lease density and this Board finds it is at maximum.

Although it was referred to in item D, Commissioner Colby agreed that it could be stated in stronger terms.

Motion, seconded by Commissioner McDowell.

Commissioner McDowell suggested that the comment under <u>III Decision,</u> "...the Shoreline Master Program's promise to this aquaculture district has been fulfilled with the siting of rafts in Tracts 11 and over-all raft density of about 44 rafts" should be added to Item D.

Commissioner McDowell moved that the sentence "The Shoreline Management Program's promise to this aquaculture district has been fulfilled with the siting of rafts in Tract #11 and an over-all raft maximum density of about 45 rafts has been achieved.".

Ken Pickard called for a point of order, in that it was his opinion that amendments to the Master Plan were not before the Board and the Board could not regulate change to the Master Program when considering a decision on a single permit.

Commissioner Colby indicated that as far as the particular appeal was concern, the Board was finished with the taking of public testimony, noting that the Board was announcing an opinion and decision being made.

Commissioner McDowell suggested if the Board could not make that finding, he would consider reintroducing his recommendation in the statement he made for the record and remand the matter back to the Hearing Examiner.

Commissioner Colby's opinion was that the Board was able to make that finding. Obvious there was no question that it would not act as a modification to the Shoreline Master Program but a finding on this proposal.

The Chair viewed what the Board to be saying was that in the opinion of this Board this aquaculture district had been filled.

Commissioner McDowell's motion to amend the Findings was seconded by Commissioner Colby, and carried unanimously.

Motion, as made and amended, carried unanimously.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

FINDINGS OF FACT

IN RE: APPEAL OF ISLAND COUNTY HEARING)
EXAMINER FINDINGS OF FACT, CONCLUSIONS)
OF LAW AND DECISION ENTERED NOVEMBER)
19, 1993 REGARDING SHORELINE SUBSTANTIAL)
DEVELOPMENT PERMIT NUMBERS (SDP) 015/92)
AND SDP 025/92)
_____)

I. INTRODUCTION

While the appeal is the same in both cases, the cases are separate and conclusions of this Board shall be separate for the two cases though comment on the appeal points will be combined.

The appellant, "Friends of Penn Cove", a non-profit corporation submitted it's appeal to subject decision on December 6, 1993, 17 days after the Hearing Examiner rendered his decision. Island County Code limits the appeal period in shoreline cases to 15 days. In this case, the 15th day fell on Saturday, a non-working day. Pursuant to long-standing county practice, the appeal was allowed to go forward since it was received on the following working day.

Both applicants moved to dismiss the appeal as not being timely. The question was referred to the Island County Civil Prosecuting Attorney for advice. In his response, he stated that the Board would have to determine the deadline for filing when the 15th day falls on a day when the county is not open for business. He further points out that Island County Code does not address this situation.

After the above comment and analysis, the Civil Prosecuting Attorney suggests that the Board follow the past practice of the county land use review agencies.

The Director of the Island County Planning and Community Development Department provided a memorandum stating that the Department and the Hearing Examiner have historically accepted appeals on the next working day if the deadline fell on a non-working day.

II. FINDINGS

Based on the above advice the Board, in open public session, denied the motion to dismiss and went on to hear the appeal.

The appeal is based on 11 points. They have been lettered A through K and will be discussed as received.

A. The application is <u>not</u> consistent with the goals, policies and requirements for development within Shorelines of Statewide Significance.

<u>Comment:</u> It is noted that aquaculture is listed in the Shoreline Management Act as a primary or preferred use of public waters. It is further noted that the Hearing Examiner adopted 16 conditions of approval to ensure that the goals, policies and requirements for development within Shorelines of Statewide Significance are met. The Board, therefore, finds appeal point A to be without merit.

B. The application is not consistent with the Shoreline Management Act or with the goals and policies of the Island County Shoreline Management Master Program.

<u>Comment:</u> As noted above, aquaculture is a preferred use of State waters under the Shoreline Management Act, and aquaculture within already approved districts is a primary use in the aquatic environment pursuant to Island County Code 16.21.035 (G). Many of the