

**April 21, 2006**

**Star Value Herring Sales  
Attn: Derwin H. Hostetler  
15 Lorenz Road KPN  
Lakebay, WA 98349**

**RE: ADMINISTRATIVE APPEAL: CASE NO. AA4-05  
Herring Pen Operation in Mayo Cove  
Application Number 530906**

Dear Appellant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

**MARK E. HURDELBRINK  
Deputy Hearing Examiner**

MEH/dd

cc: Parties of Record  
PIERCE COUNTY PLANNING AND LAND SERVICES  
PIERCE COUNTY CODE ENFORCEMENT  
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT  
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT  
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT  
FIRE PREVENTION BUREAU  
PIERCE COUNTY PARKS AND RECREATION  
PIERCE COUNTY COUNCIL  
PIERCE COUNTY RESOURCE MANAGEMENT

**OFFICE OF THE HEARING EXAMINER**

**PIERCE COUNTY**

**REPORT AND DECISION**

**CASE NO.:** ADMINISTRATIVE APPEAL: Case AA4-05  
Herring Pen Operation in Mayo Cove  
Application Number 530906

**APPELLANTS:** Star Value Herring Sales  
Attn: Derwin H. Hostetler  
15 Lorenz Road KPN  
Lakebay WA 98349

**SUMMARY OF REQUEST:**

The appellant is appealing the Cease and Desist Order by the Pierce County Planning and Land Services, Code Enforcement Supervisor, for the operation of herring pens in Mayo Cove, adjacent to Parcel Number 0020012021.

The business is located near the Lakebay Marina, 15 Lorenz Road KPN, in the NW Quarter of Section 1, Township 20N, Range 1W, Willamette Meridian, in Council District Number 7.

**SUMMARY OF DECISION:**

The appeal is denied.

**PUBLIC HEARING:**

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on December 12, 2005, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

**EXHIBIT "1" - Planning and Land Services Staff Report and Attachments**

- EXHIBIT "1A"** - **Completed Appeal Application and Materials (Number 530906)**
- EXHIBIT "1B"** - **Hearing Agenda and Parties of Record**
- EXHIBIT "1C"** - **Citizen Correspondence, Petition and Photos**
- EXHIBIT "1D"** - **Attorney Correspondence**
- EXHIBIT "1E"** - **Aquatic Lease #20-009973 with the Department of Natural Resources**
- EXHIBIT "1F"** - **Miscellaneous E-mail Correspondence**
- EXHIBIT "1G"** - **Miscellaneous Correspondence, E-mails, Pictures, and SRS Documentation from Mark Luppino, Code Enforcement Officer**
- EXHIBIT "1H"** - **Correspondence to Attorney and Appellant**
- EXHIBIT "1I"** - **Hearing Notice, Agendas and Mailing Labels**
- EXHIBIT "1J"** - **Newspaper Articles**
- EXHIBIT "1K"** - **Miscellaneous Photos**
- EXHIBIT "1L"** - **Aerial Photos**

Appearing was DEIRDRE WILSON who presented the Planning Division Staff Report. This case concerns an appeal of a cease and desist order that was issued by Pierce County Planning and Land Services. This order issued relates to the operation of herring pens in Mayo Cove. Notice was provided according to Pierce County Code. This appeal is exempt from SEPA review. A history of what led to the cease and desist order was provided. In May 2004 code enforcement was notified that there was a herring pen operation that did not have appropriate permits. The allegation was that the herring pen had been abandoned for a period of time. The code enforcement officer eventually wrote a letter to Derwin Hostetler, the owner of the pens, alleging violation of the Pierce County Code by constructing and/or installing herring pens in a Rural 10 zone without obtaining required shoreline permits. This was followed up with a letter from planning staff. The letter was given to Mr. Hostetler explaining that this violation is potentially a criminal offense. Mr. Hostetler's attorney sent a letter to the planning staff department outlining that the herring pens have never been abandoned for more than one (1) year. Various supporting documents were provided. One staff member agreed with the appellant's attorney. A phone call from planning staff to the appellant's attorney confirmed that this was staff's position. A letter was suppose to be sent by planning staff, but the letter was never sent to the appellant. The information previously submitted by the appellant's attorney was apparently lost. He had to resubmit this information. After this re-submittal, a new planning staff representative, Deirdre Wilson, determined that this was not a legal nonconforming use. A cease and desist order was issued and this appeal followed. There have been many comments received from the public and from the Department of Natural Resources. Comments from the public include concerns regarding noise, stench and the decrease in property values. The Department of Natural Resources has indicated that there has not been specific provisions allowing herring pens within the lease agreements of Mr. Hostetler. The crux of this entire matter regards whether or not the appellant has nonconforming rights established. After reviewing all information, planning staff has concluded that the appellant does not have nonconforming rights. There are two conditions that are

applicable when determining whether a use is legally nonconforming. First, the person asserting the right must show that they had a legally established use when the use began and second that the use has not ceased for more than one continuous year. It appears that Mr. Hostetler operated this herring pen operation since 1968 or 1969. Pierce County does not have any record of shoreline permitting for herring pens or other aquacultural uses within Mayo Cove. The Department of Natural Resources lease only includes uses associated with commercial moorage float and marina services dock. There was not a specific provision relating to a herring pen operation. No evidence shows that the herring pen was ever legally established at the marina or elsewhere in Mayo Cove. It also appears that the location of the herring pens is outside the current leased area. Both photographic evidence and testimony from neighboring property owners indicate that the herring pen uses have not been continuous since 1969 which is a requirement for nonconforming rights to remain established. The cease and desist order should be upheld. Upon questioning of the appellant's attorney, Michael McKasy, Deirdre Wilson did agree that Department of Natural Resources apparently would now lease this area for herring pens. She believed it would be subject to appellant obtaining appropriate permits. She took over from the previous planner, Steven Kamieniecki, who did believe that the appellant had a valid nonconforming use. Mr. Kamieniecki indicated that she should just approve the pens and "go home". The matter was re-reviewed. She could not point to any code sections stating that the use of the herring pens in 1969 was an illegal use. She was asked about Terry Lee and his input in this case. She stated that she was contacted by Cindy Willis who is Terry Lee's assistant. She was asked to send the council's office any correspondence regarding this case. Upon questioning of Jill Guernsey, Deirdre Wilson indicated that the council had not directed planning staff to do anything specific. She has received nothing from the council's office.

Appearing was MARK LUPPINO who is the code enforcement officer who issued the cease and desist order. Photographs were examined of the site. These are shown as Exhibit "1L". There were herring pens in 1976 or 1977. Sometime between 1992 and 1997 the herring pens can still be seen. In 1998 the herring pens can still be seen. In April 2002 there are no herring pens located on site. The picture that is from the time period of 2000 to 2002 shows that the pens are in disrepair. The location of the pens in July 2005 appear to be the same as what was previously observed. Upon questioning of Michael McKasy, Mr. Luppino agreed that it is unclear when the picture used for the postcard was taken. It is possible that the pens were being repaired at that time. Mr. Luppino agreed that he had not talked to the park ranger. He was asked whether this would have been an illegal use in 1969. He also asked what specific one (1) year time period when the pens were not being used. The Exhibit relating to commercial moorage floats and marina services was discussed. The pens do appear to be outside of the leased area. Upon questioning of James Handmacher, Mr. Luppino did admit that the only lease that they are aware of is from 1982 to 1994. No HPA permits have been provided. There has not been a Core of Engineers Permit provided by the appellant or his attorney. Upon questioning of Jill Guernsey, Mr. Luppino stated that he had received complaints that between 2000 and 2003 there had not been continuous use. He also stated that he has never been instructed by Terry Lee or Kathy Willis to do

anything regarding this proposal.

Appearing was STEFAN KAMIENIECKI who was the previous planning staff representative on this case. He was asked questions by Michael McKasy. Mr. Kamieniecki did handle this case. He originally thought there was over a one (1) year abandonment of use of the herring pens. He received materials from Mr. Hostetler's attorney that showed there had not been this break in use of over a year. He stated to the appellant that he would approve his nonconforming rights and provide a letter to him. This letter did not go out. He sent an E-mail to Deirdre Wilson stating he did approve the nonconforming rights. He is not aware of any permits that were required in 1969 for this use. Upon questioning of James Handmacher, Mr. Kamieniecki stated that he had never seen an HPA or Core of Engineers permit. He also acknowledged that there has been additional information submitted since he recommended sending a letter of approval. Upon questioning of Jill Guernsey, he acknowledged that he was focusing on the abandonment issue rather than whether or not there was legally established nonconforming rights. He based his decision on the information that was provided by the appellant about whether or not he had legal rights at the time he installed the herring pens. A lease is required from the state because these are state waters. He is not sure whether in 1969 an HPA permit was required. He left the department in May 2005. He did not talk to his supervisors about this issue. It is a two-part issue. The appellant has to show that he had legally established rights and that the legally established rights were not abandoned for more than one year. He did not contact the Core of Engineers or any other agencies.

Appearing was RICHARD KAUPILLA who was asked questions by Michael McKasy. He is associated with Lakebay Marina. In 2002 he subleased the herring pens from Mr. Hostetler. He entered into the lease agreement in October because Mr. Hostetler had leased the area for a period of time to someone else. He is experienced in herring pen operations. He described a little bit about how it works. Upon questioning of James Handmacher he acknowledged that he did not use the pens until after October 2002. They were in need of repair at that time. Upon questioning of Jill Guernsey, Richard Kaupilla said he did not use the pens until October 2002. The pens are tied down. They are actually 40 foot by 80 foot. He is not aware of any permits that have been obtained.

Appearing was LORI KENNEDY who is a deputy prosecuting attorney for Pierce County. She was asked questions by Michael McKasy. She gave a brief history of this case and her involvement. The main concerns by planning staff seemed to be about the abandonment issue. She could not recall any discussions regarding the placement of the herring pens and whether the pens were in the leased area. She did have meetings with planning staff. She talked with Steven Kamieniecki and he stated that he would be sending a letter of approval to the appellant. This apparently was not done. When the case was re-reviewed and she was told the nonconforming use would not be approved, she suggested in an E-mail that time be given to the appellant before a Cease and Desist Order was issued. It seemed a fair thing to do considering that the

appellant was under the impression that staff would provide a letter confirming with his nonconforming rights. Upon questioning of James Hanmacher, she stated that the information that was relied on initially was information provided by appellant. Upon questioning of Jill Guernsey, she gave a brief description of her background and her job description.

Appearing was RENEE WRIGHT who is a representative from the Department of Natural Resources. She was asked questions by Michael McKasy. She has been the Department of Natural Resources representative since October 2003. The Department of Natural Resources representatives prior to this time were Lindee Schmidt and Kathy Marshall. A survey of this site was requested. She is aware that the herring pens were in existence from at least 2002. Mr. Hoestetler is currently paying fines for unauthorized occupancy of state waters because the herring pens are outside the leased area. He needs to submit a new application and obtain the appropriate permits. Her predecessor did know about the pens. Department of Natural Resources would be willing to lease this area if the appropriate permits are granted. Upon questioning of James Handmacher, she believes the pens are outside of the leased area. The previous leases did have the same legal description. The leases did not include herring pens as a use. Upon questioning of Jill Guernsey, she was asked again to clarify the location of the pens. She also went through the requirements needed to obtain permits. Upon further questioning of Michael McKasy, she referred to a 1976 lease that does refer to herring pens.

Appearing was VICKI DIAMOND who is the planning staff supervisor. Upon questioning of Michael McKasy, she provided a brief description of her history with this case. In June 2005 she received a call from George Christnacht requesting that the letter granting his client verification that nonconforming rights are valid be sent to him. Stefan Kamieniecki was at that time authorized to issue this type of letter. It was a mistake of Mr. Kamieniecki to state that this was a legally established nonconforming use. She reviewed the documents and came to a different conclusion. They had an internal staff meeting about the issue. Her office was contacted by Councilman Lee and Cindy Willis, but they were never instructed to do anything in particular. The issue appears to be the fact that there was never a legally established use to begin with. Upon questioning of James Handmacher, she believes that this is not a legally established nonconforming use. There has not been evidence provided showing that the applicant meets the two (2) requirements; namely, that there was a legally established use when created and that it has not been abandoned for more than one (1) year. A letter was sent to the appellant stating that he does not have a legal right to be using the herring pens until appropriate permits have been granted. Upon questioning of Jill Guernsey, she again reviewed the two (2) part test of nonconforming uses. Ms. Diamond again confirmed that the council did not suggest either way on how to decide this case. She has received nothing from the appellant indicating he satisfies the test for nonconforming uses.

Appearing was DERWIN HOSTETLER who is the owner of the herring pens. In

October 1968 he purchased Lakebay Marina. A building was located on site at that time. The pens were constructed in 1969. The pens were attached to the actual dock for a period of time until 1976 and 1977. The pens have been used continually since they were first used in 1969. He has always paid his fish taxes and obtained a license to fish for herring. He has leased this area from the State since 1969. It is his understanding that he has obtained all permits necessary to operate his herring operation including operating the pens. There has never been an absence of the herring pens for longer than one (1) year since 1969. He has had to repair the floats from time to time, but the pens have never been out of use for more than for more than one (1) year. He submitted a picture showing snow on the dock and the pens are observed. This occurred in November 2001. He knows it was then because there is never snow at the Marina. No one from the county or state has contacted him about needing additional permits of any kind. Upon questioning of Jill Guernsey, he stated that the pens were pulled out in January or February 2002 when he signed the lease with someone prior to Mr. Kaupilla. The pens have been taken out of the water for periods of time. The length of time would depend on the demand for herring. It could be anywhere from one month to three or four months. When he first started, the pens were attached to the dock. They have been moved out. They are approximately 80 foot by 40 feet. He thought he had up to 124 feet off of the float as his leased area. He has never had any problems with neighbors until recently. Thor Tolleffson, a state representative, is very aware of the pens. Mr. Hostetler has operated Star Value Herring Sales from 1969 to 2002. He has always had the appropriate fishing licenses. He went through the timeline once again. Upon questioning of James Handmacher, Mr. Hostetler said he was not aware that he needed to obtain any more permits. He was shown pictures of the site and the different locations.

Appearing was DILLON STANLEY who owns waterfront property close to the herring pen operation. He purchased this property in May 2001. At that time there were no herring pens. It wasn't until November 2002 when the herring pens reappeared. He testified about the problems he has had, including the noise and the smell created by the herring pens. Upon questioning of Michael McKasy, he restated some of his concerns. Upon questioning of Jill Guernsey, he again stated the times when the herring pens were there and when they were not.

No one spoke further in this matter and the Examiner took the matter under advisement.

The hearing was concluded at 4:55 p.m.

**NOTE:** A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

### **FINDINGS, CONCLUSIONS AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. This request is exempt from SEPA review.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper.
4. The appellant, Derwin H. Hostetler, appeals a determination of a Pierce County Administrative Official regarding his use of herring pens in Mayo Cove. Deirdre Wilson, associate planner, in a letter to George Christnacht, attorney for the appellant at that time, dated July 8, 2005, determined that the appellant did not have nonconforming rights to use his herring pens.
5. Despite the letter, the herring pen use continued. On July 29, 2005 a Cease and Desist Order was issued against Derwin H. Hostetler preventing any storing, harvesting and/or processing of herring without first obtaining a shoreline substantial development permit, shoreline conditional use permit and SEPA permits. On August 10, 2005 an appeal of the Cease and Desist Order was filed by Mr. Hostetler. The appellant was granted a stay of the Order until the matter could be decided on the merits.
6. Since 1969 the appellant has been operating a herring pen operation at the Lakebay Marina in Mayo Cove. It is undisputed that no permits were ever obtained by the appellant to operate the pens. The appellant argues that state representatives, along with Department of Natural Resources representatives, have been aware of the herring pen operation and have never requested any additional permits. The State has leased property to the appellant. The appellant also runs Lakebay Marina. There is an issue of whether or not the uses allowed in the lease included herring pens and whether the herring pens have ever been located in the designated leased area.
7. The current zoning, Rural 10, would not allow the herring pens use unless a shoreline substantial development permit, shoreline conditional use permit and SEPA permits have been granted. The issue is whether nonconforming use rights exist which would allow the continued use of the herring pens in this area. Testimony was provided from the Department of Natural Resources representative indicating that that Department of Natural Resources would lease the waters to the appellant to operate the herring pen operation. This new lease would only be approved if the appellant was granted nonconforming use rights or was granted all necessary permits.

8. A nonconforming use is defined in terms of the properties lawful use established and maintained at the time the zoning was imposed. Miller v. City of Bainbridge Island, 111 Wn. App. 152, 43 P.3d 1250 (2002). Nonconforming uses are vested property rights that are protected and cannot be lost or voided easily. Summit-Waller Citizens Association v Pierce County, 77 Wn. App. 384, 895 P.2d 405 (1995). The initial burden of proving a nonconforming use is on the party asserting the nonconforming use. Van Sant v. Everett, 69 Wn. App. 641, 849 P.2d 1276 (1993); McGuire v. University Place, 144 Wn.2d 640, 30 P.3d 453 (2001). It is undisputed that this property was within the general use zone of the applicable Pierce County Code in 1969. The general use zone would allow this type of use. The appellant is correct in that assertion. Just because the use would be allowed according to Pierce County Code does not end the inquiry. This case is unlike the situation in Miller v. City of Bainbridge Island because this use is subject to other requirements and laws.
9. The appellant was also subject to all state and federal laws that concern his use. A Hydraulic Project Approval was required by the State of Washington when the use was commenced in 1969. The applicable statute, RCW 75.20.100 states in part as follows:

In the event that any person, government or agency desires to construct any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any waters of the state..., such person or government agency shall...secure the written approval of the director of fisheries and the director of game as to the protection of fish life in connection therewith...before commencing construction or work thereon...

The statute goes on to state that it is unlawful for any person or government agency to commence construction without first obtaining this written approval. It is undisputed that the appellant did not obtain Hydraulic Project Approval for the herring pens. Clearly, this is, and was, a hydraulic project because it is work that would use waters of the State. While the letter denying nonconforming rights did not specifically mention the necessity of Hydraulic Project Approval, the fact is that it was required and was not obtained.

11. The appellant was also subject to any federal requirements. A Section 10 Permit from the United States Army Core of Engineers was required to be obtained before the herring pens could be constructed. Section 10 Permits were required as far back as 1899. They are required when there would be a creation, via construction, of any obstruction to the navigable capacities of any waters in the United States. It is unlawful to build any structure within the navigable waters of the United States except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army. It is undisputed that no United States Army Core of Engineers Section 10 Permit was obtained by the appellant prior to

construction of the herring pens. This, again, would make the use unlawful because no permits were obtained.

12. The original 1969 lease was not presented into evidence. It is unclear whether the herring pen operation was allowed under that lease. The signed lease that was entered into evidence stated that the appellant could use the leased area for "commercial moorage and marina services dock". There was testimony and exhibits submitted attempting to show that this permitted use included a herring pen operation. The testimony from the Department of Natural Resources representative seemed to indicate that the Department of Natural Resources was aware of the herring pen operation. Although the representative that testified was fairly new on this case, she did indicate that the prior representative was aware of the herring pen operation. There also appeared to be an issue about whether or not the pens were in the leased area currently. The pens have moved from various areas since 1969. I cannot find, other than the fact that no Hydraulic Project Approval, nor Section 10 United States Core of Engineers Permits were not obtained, that the applicant did anything wrong or unlawful. The Department of Natural Resources representative indicated that the State would lease the area requested for the pens. No finding can be made that the use of the pens outside of the leased area would prohibit or nullify any potential nonconforming use.
13. The appellant argues that whether a Hydraulic Project Approval or a United States Core of Engineers Section 10 Permit was required when the use commenced is irrelevant because they were not part of the decision of the administrative official. The appellant has the burden to show that a nonconforming use exists. The law is very specific in that the use must be shown to be lawful and the use has not been abandoned for more than one (1) year. Even if the administrative official did not state specifically the grounds for denial of the nonconforming use rights, any justification for that denial can be considered by the hearing examiner. This would include issues related to other permits that were required but not obtained. The County is not barred by laches. The appellant would be required to obtain the appropriate permits whenever requested. The appellant is required to obtain everything necessary to ensure that he lawfully uses property. He should have obtained those permits long ago. The use of the pens would require Hydraulic Project Approval. The argument that a Hydraulic Project Approval and/or a Section 10 Army Core of Engineers Permit would not be required because the pens were just attached to the dock and were not on any actual bed is without merit. Even if this argument was valid, as soon as the nets or the pens were anchored to the beds a Hydraulic Project Approval would be necessary. It is not a valid argument of the appellant that the herring pens did not require permits at the time because they are anchored to the dock. If that argument is taken to its fullest extent, the appellant could have initially had the herring pens attached to the docks and shortly thereafter anchored them and could then claim that this is a lawful use because no permits

were required at the time that the pens were attached to the dock. Clearly, this is not appropriate.

14. Those permits were required at the time the use was commenced. It is the appellant who must prove laches, and not enough evidence was presented. There simply was not enough evidence about what the County representatives knew about the granting of permits. The County must have had knowledge of no permits being obtained and then unreasonably delayed causing prejudice to the appellant. No evidence was presented showing that the County knew of the lack of permits.
15. There was uncontroverted testimony that associate planner Steven Kamieniecki was going to approve the nonconforming rights of the appellant prior to him leaving the planning staff department. This would have been an act done contrary to the underlying facts. This would have been done without legal authorization and in direct violation of existing statutes. Dykstra v. Skagit County, 97 Wn. App. 670, 677, 985 P.2d 424 (1999). review denied, 140 Wn.2d 1016, 5 P.3d 8 (2000). The evidence and submittals were later reviewed again and planning staff representatives found that nonconforming rights do not exist. This decision was made independently. There is no evidence that shows any influence from any County Councilman.
16. As stated above, if the appellant could show that there was lawful use at the time of initial use, then nonconforming rights are granted unless the appellant abandoned the use for more than one (1) consecutive year. Because no legal use can be established, the issue of abandonment is moot. Despite the above findings, the Examiner will make findings on the abandonment issue.
17. It is the burden of the County to show that there has been an abandonment for more than one (1) year if the appellant satisfies the first prong establishing a lawful use. Van Sant v. Everett, 69 Wn. App. 641, 849 P.2d 1276 (1993); McGuire v. University Place, 144 Wn.2d, 30 P.3d 453 (2001). There was conflicting testimony regarding the abandonment issue. Numerous pictures were presented both showing the herring pens located at the property and photographs showing the pens not at the property. The applicable time period for possible abandonment appears to be the times between 2000 and 2003. The appellant submitted a photograph that was allegedly taken on November 28, 2001 showing the dock in existence at that time. There is snow on the dock. There was apparently a snow storm on that date. There was also a sublease submitted for the periods from April 2002 to October 2002. It is conceded that the pens were not used during that time period. Testimony was also provided from Mr. Kaupilla stating that he started using the pens in October 2002 and used the pens continuously since that date. The appellant acknowledges that the pens are taken out of the water occasionally for repair and maintenance. The appellant also stated that it has never been more than a year between uses. The only evidence presented in support of the abandonment issue was from a neighboring property owner stating that the pens were

not there from the time he moved there in May 2001 until November 2002. There were also pictures that were entered into evidence, but it is unclear of when exactly the pictures were taken. It is the burden of the County to establish abandonment. No finding can be made either way, thus the burden has not been satisfied.

**CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. Based on the appellant not obtaining Hydraulic Project Approval or obtaining a Section 10 Permit from the United States Army Core of Engineers, no lawful use existed at the time the pens were constructed and used. It is the appellant's burden to show that the administrative officials determination was clearly erroneous and this burden has not been satisfied.

**DECISION:**

The appellants' appeal is denied.

**ORDERED** this \_\_\_\_ day of April, 2006.

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**MARK E. HURDELBRINK**  
Deputy Hearing Examiner

**TRANSMITTED** this \_\_\_\_ day of April, 2006, to the following:

**APPELLANT:** Star Value Herring Sales  
Attn: Derwin H. Hostetler  
15 Lorenz Road KPN  
Lakebay WA 98349

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PIERCE COUNTY PLANNING AND LAND SERVICES  
PIERCE COUNTY BUILDING DIVISION  
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT  
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT  
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PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO: ADMINISTRATIVE APPEAL: CASE NO. AA-4-05  
Herring Pen Operation in Mayo Cove  
Application Number 530906**

**NOTICE**

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

**NOTE:** In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.