

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2014103643 Shoreline Substantial Development Permit

PARCEL NO.: 12903241700

LOCATION: 9230 Hunter Point Road N.W., #A
Olympia, WA 98502

APPLICANT: Henderson Shellfish
Attn: Hui Xia
8822 Libby Road N.E.
Olympia, WA 98506

OWNER: John H. Connolly
4725 East Enid Avenue
Mesa, AZ 85206-2719

PLANNER: Scott McCormick, Associate Planner, M.E.S.

SUMMARY OF REQUEST:

Shoreline Substantial Development Permit to allow commercial, intertidal, geoduck operations on private tidelands. An application for the project was submitted to Thurston County on August 1, 2014, by Henderson Shellfish (applicant) and John Connolly (owner). The proposed, geoduck, aquaculture farm totals 0.35 acres of tidelands. The geoduck farm will be located at 9230 Hunter Point Rd N.W. #A, Olympia.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: June 2, 2016

PUBLIC HEARING:

After reviewing the Planning and Land Services Staff 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 May 16, 2016, at 10:35 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" - Resource Stewardship Department Staff Report**
- Attachment a - Notice**
- Attachment b - Application**
- Attachment c - JARPA**
- Attachment d - SEPA**
- Attachment e - Zoning Map**
- Attachment f - Biological Evaluation**
- Attachment g - Notice**
- Attachment h - MDNS**
- Attachment i - Memo from Public Works dated October 2, 2014**
- Attachment j - Letter from DOE dated October 6, 2014**
- Attachment k - Memo from TC Environmental Health dated October 14, 2014**
- Attachment l - Letter from DOE dated August 26, 2015**
- Attachment m - Letter from Nisqually Indian Tribe dated December 29, 2015**
- Attachment n - Photograph of Notice**
- Attachment o - Letter from Squaxin Island Tribe dated March 16, 2016**
- Attachment p - MFR from EPA dated May 13, 2014**
- Attachment q - Written Testimony from Hui Xia**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

SCOTT McCORMICK appeared, presented the Resource Stewardship Department Staff Report, and testified that the applicant had submitted a completed application for a substantial development permit on August 1, 2014. The parcel consists of a residential property located within the Rural designation of the Shoreline Master Program. The parcel is improved with a single-family residential dwelling and accessory structures. The area is improved with single-family dwellings on small lots except for larger parcels to the north. The responsible official issued a MDNS following SEPA review. The County provided proper notice and the site was posted on May 6, 2016. The parcel is located to the south of the Duncan parcel and the proposed farm is about half the size of the Duncan farm. The beach and proposal is nearly identical to Duncan. He also requested that the same change be made to Condition 4 as in Duncan.

HUI XIA appeared on behalf of the applicant and testified that there are no differences in the operations of this farm and the Duncan farm except that the size is smaller. The Duncan farm already has received Corps of Engineers approval. However, they have not

received the Corps approval for this farm as the Corps has changed its procedures and now wants to receive the County approval first. All conditions are acceptable.

The testimony of Mr. McCormick, Hui Xia, and Environmental Health as presented in Application 2014101114 for Russell Duncan are hereby incorporated by this reference as set forth in full.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:45 a.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

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 project required review pursuant to the State Environmental Policy Act (SEPA) because of the proposed work in and over surface waters. Thurston County Resource Stewardship acting as the Responsible Official (RO) issued a threshold Mitigated Determination of Significance (MDNS) on December 22, 2015 (Attachment h). The SEPA determination was not appealed and became final on January 12, 2016, and imposed 15 mitigating measures.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on May 6, 2016, at least ten (10) days prior to the hearing. The site was also posted on May 6, 2016.
4. The underlying property owner, John H. Connolly, has a possessory ownership interest in a long, narrow, rectangular parcel of property that includes .35 acres of tidelands that are proposed for geoduck cultivation. Improvements on the site include a single-family residential dwelling and accessory structures. The parcel is located within the Rural Residential Resource One Dwelling Unit Per Five Acres (RRR 1/5) zone classification of the Thurston County Code (TCC). The parcel extends from Hunter Point Road on the west to Eld Inlet on the east and then onto the tidelands. The parcel is within the Rural Shoreline designation of the Shoreline Master Program for the Thurston Region (SMP).
5. Improvements on the site include a single-family residential home and accessory structures. The Russell Duncan parcel, also proposed for a geoduck farm, abuts the north property line. Smaller lots with single-family residential homes are located

to the south. The owners of the adjacent parcel to the south have also submitted an application for a shoreline substantial development permit to allow commercial, intertidal, geoduck operations on their tidelands.

6. The applicant, Henderson Shellfish, Inc., has acquired a leasehold interest in approximately .35 acres of Connolly's tidelands. On March 27, 2014, the applicant submitted an application for a shoreline substantial development permit to establish a commercial, intertidal, geoduck operation on said tidelands. The farm is proposed in the intertidal zone between plus three feet and minus four feet of water depth as measured at mean lower low water (MLLW). The farm would involve placement of approximately 15,000, ten inch long, six inch diameter, gray, PVC tubes at a density of one tube per square foot of tideland. The applicant would cover each PVC tube with an individual net and would also install area wide, 40 foot by 40 foot, predator nets over the entire farm. The nets and tubes would protect the geoduck seed from predators.
7. The initial farming activities will include site preparation, seed planting, predator net placement, and tube placement. The tubes and netting would remain on the tidelands for approximately 12 to 18 months, at which time the applicant would remove them. After three to five years the applicant would harvest the geoducks utilizing a hand pressurized, hose and nozzle system with muffler and insulation box. The applicant would mount the pumps on a non-propelled barge and anticipates that harvesting would occur over a seven day period. The applicant would install the tubes in straight lines and anticipates that water would cover the tubes approximately 80 percent of the time. In addition to the substantial development permit, the applicant must also acquire State and Federal permits.
8. As previously found the RO issued a MDNS following SEPA review and imposed 15 mitigating measures. The MDNS was largely based upon a Biological Evaluation (BE) prepared by Greenland Solutions dated January, 2014 (Attachment f to Exhibit 1). The BE addresses impacts of the farm on endangered species and essential fish habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and the 1996 Sustainable Fisheries Act. The BE addresses potential effects of the farm on several endangered and threatened species to include Chinook salmon, steelhead, and bull trout. The BE also satisfies the requirements of a Habitat Assessment required by FEMA for non-exempt projects within the 100 year floodplain. The BE sets forth a list of 20 conservation measures that may become project conditions or otherwise integrated into recommended conditions. The RO also considered the final Washington Sea Grant Report to the Washington State Legislature for Geoduck Aquaculture as well as other available documents. Said studies show that farm impacts will be of short duration and limited intensity and do not rise to a significant level as defined in Section 197-11-794 of the Washington Administrative Code (WAC). The BE also shows an absence of native eelgrass on the entire site.

9. Section 20.09A.020 TCC provides that agriculture is an allowed use within the RRR 1/5 zone classification. Section 20.03.040(3) TCC includes in the definition of agriculture the raising, harvesting, and processing of clams and oysters. Therefore, the proposed geoduck farm is an outright permitted use in the RRR 1/5 classification. However, because of the farm's location within the jurisdiction of the SMP, the applicant must acquire a shoreline substantial development permit. The County may attach conditions as necessary to assure consistency of the project with the State Shoreline Management Act (SMA) and the SMP.
10. The project satisfies applicable policies of the SMP as set forth on pages 8-10 of the Staff Report. The site is located within an area of high aquaculture potential, and policies encourage aquaculture uses in such areas. The farm will not impact navigational access nor commercial traffic due to its location in Eld Inlet on the northeast side of the Steamboat Island Peninsula approximately 3,000 feet south of Hunter Point. Views from upland properties should not be unduly adversely impacted since the tubes will be visible for only 20 percent of the 24 hour cycle (approximately five hours) for an approximately 18 month period.
11. The project likewise satisfies all General Regulations for aquaculture as set forth on pages 40-41 of the SMP and as discussed on pages 10-14 of the Staff Report. According to the Sea Grant Final Report, geoduck farms do not cause extensive erosion or accretion along the shorelines, and any such action that does occur is quickly disbursed by tides upon removal of the tubes. The applicant proposes no upland activities and thus many of the general regulations are not applicable. No land clearing will occur, and therefore the storm drainage criteria are not applicable. The Thurston County Environmental Health Department has reviewed the project and determined that because no project related activities will occur on or near the on-site septic system and well, it will have no impacts thereon. The Washington Sea Grant Study performed by the University of Washington and the shellfish industry determined that the aquaculture industry in south Puget Sound is of significant economic and environmental importance and can be part of a sustainably managed shoreline environment.
12. As requested by the applicant and staff, the Examiner has modified proposed Condition 4.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a shoreline substantial development permit to allow establishment of a commercial, intertidal, geoduck farm satisfies all criteria set forth in the SMP and therefore should be granted subject to the following conditions:

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
2. Aquaculture preparation, planting, maintenance and harvesting shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture except as otherwise conditioned or required by Thurston County Resource Stewardship.
3. An unobtrusive but visible sign shall be placed at each aquaculture bed listing the name and contact information for a person designated to immediately address problems associated with the aquaculture bed when discovered by citizens or agency representatives.
4. The applicant shall submit its Surf Smelt and Sandlance Survey to the Thurston County Resource Stewardship Department prior to any aquacultural activities on the site.
5. The applicant / operator shall routinely inspect, document, and report any fish or wildlife found entangled in anti-predator nets or other culturing equipment. At least twice a month during the time the nets are installed, they shall be inspected and a record of observations maintained. Live entangled fish and wildlife shall be released upon observation. During the required bi-monthly site visits the applicant / operator shall remove from the beach or secure any loose nets, tubing or aquaculture related debris.
6. Only washed gravel shall be used for shellfish bed preparation. Unsuitable material (e.g., trash, debris, concrete, asphalt, tires) shall not be discharged, used as fill or in aquaculture operations.
7. Bed preparation must commence within two years and all tubes and netting must be installed within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
8. All protective tubes and netting related to the proposed Geoduck aquaculture shall be removed from the shoreline within twenty-four (24) months of installation.
9. Shellfish culturing shall not be placed above the tidal elevation of +5 MLLW in order to minimize potential impacts to forage fish habitat.


10. Land vehicles and equipment will not be washed, stored, fueled, or maintained within 150 feet of any waterbody. All vehicles will be inspected for fluid leaks daily within 150 feet of any waterbody.
11. Harvest activities will occur during low tides where the least amount of turbidity will occur.
12. Permanent lighting of the aquaculture beds shall not be permitted. Any temporary lighting shall be directed such that off-site glare is minimized to the extent possible.
13. All individual screens placed on tubes shall be secured with UV-resistant fasteners.
14. If archaeological artifacts are observed during any phase of the aquaculture operation, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Resource Stewardship Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.
15. No physical work on the aquaculture beds shall be initiated until all required State and Federal permits and approvals have been granted.
16. All tubes, mesh bags, and nets used on the tidelands below the ordinary high water mark (OHWM) shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address and mailing address). On area nets, if used, identification markers will be placed with a minimum of one identification marker for each 100 square feet of net.
17. Ensure that all anti-predator nets and tubes are secured in place to prevent them from escaping from the project area.
18. The property owner and applicant shall consider requests by researchers affiliated with federal, state and County governments to conduct research related to geoduck aquaculture at the site. Access shall be granted by the owner and applicant if the research will not disrupt farming activities.
19. If access to the beach for planting geoduck tubes, netting, pumps or any other equipment will be over the upland portion of the property, it will need to be done so as to prevent any vehicle or equipment travel or parking over any portion of the septic system or system components or near the well. Staging or equipment and materials for this project also should not be done on any portion of the septic system or system components.

20. The following Conservation Measures per the project Biological Evaluation (Attachment f. pg. 24) shall be followed during the life of the project.
- a) Work will be completed in the dry during periods of tidal exposure wherever possible.
 - b) Equipment will be vessel-based and will not operate on the beach.
 - c) Compliance with applicable State water quality standards (WAC 173-201A)
 - d) Spill cleanup materials shall be available on vessels used in project operations.
 - e) Use only approved screens on water pumps.
 - f) Use of hand-operated hand jets per (WAC 220-52-019)
 - g) Regular inspection and maintenance of fuel hoses, oil valves and fittings for leaks.
21. Physical activities on the beach pursuant to this permit shall not begin and are not authorized until 21 days from the date of filing of the Hearing Examiner decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filings have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
22. **Note:** The subject Shoreline Substantial Development Permit shall also act as the project FEMA 100-Year Floodplain Permit as conditioned herein.
23. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
24. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a shoreline substantial development permit to allow establishment of a commercial, intertidal, geoduck operation on 0.35 acres of private tidelands at a site located at 9230 Hunter Point Road N.W., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 2nd day of June, 2016.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 2nd day of June, 2016, to the following:

APPLICANT: Henderson Shellfish
Attn: Hui Xia
8822 Libby Road N.E.
Olympia, WA 98506

OWNER: John H. Connolly
4725 East Enid Avenue
Mesa, AZ 85206-2719

OTHERS:

THURSTON COUNTY

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

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

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$651.00** for a Request for Reconsideration or **\$866.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

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

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20__, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20__, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

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

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

 APPELLANT NAME PRINTED

 SIGNATURE OF APPELLANT

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$651.00 for Reconsideration or \$866.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20__.