BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY

In the Matter of the Application of	)	No. 2015102245
	)	
Anne and Greg Reub,	)	
Geoducks Unlimited LLC	)	
	)	
For Approval of a	)	
Shoreline Substantial Development Permit	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop a commercial intertidal geoduck operation on approximately 0.5 acres of leased tidelands at 10221 Steamboat Island Road NW is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Anne and Greg Reub of Geoducks Unlimited LLC (Applicant) requested approval of a shoreline substantial development permit (SSDP) to develop a commercial intertidal geoduck operation on approximately 0.5 acres of leased tidelands at 10221 Steamboat Island Road NW (Tax Parcel Number 39000006000). The subject property, which is on the Steamboat Island peninsula of Totten Inlet of Puget Sound, is designated as a Rural Shoreline Environment by the Shoreline Master Program for the Thurston Region.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on September 26, 2017. On the record, the Applicant agreed to extend the decision issuance deadline by five business days.

Testimony:

At the hearing the following individuals presented testimony under oath:

Leah Davis, Associate Planner, Thurston County

Dawn Peebles, Thurston County Environmental Health Division
Greg Reub, Applicant
Anne Rueb, Applicant
Wendy Hughes
Randy Tompkins
Jim Gibbons
Greg Dibble, Property Owner
Cindy Womack
Zina Mosey
Douglas DeForest
Shina Wysocki
Deborah Petersen
Marianne Tompkins
Tris Carlson
Erin Ewald
Vernon Jensen
Lisa Redfern
Kyle Lentz
Marty Beagle

Exhibits:
At the hearing the following exhibits were admitted in the record:

EXHIBIT 1 Resource Stewardship Staff Report, including the following attachments:

Attachment a	Notice of Public Hearing
Attachment b	Master Application dated March 18, 2015
Attachment c	JARPA Application dated March 18, 2015
Attachment d	SEPA Checklist dated March 18, 2015
Attachment e	Biological Evaluation dated March 2015
Attachment f	Revised pages for Biological Evaluation (p. 9 and p. 17)
Attachment g	Notice of Application, January 28, 2016
Attachment h	Mitigated Determination of Non-Significance dated April 21, 2017
Attachment i	Memo from WA Department of Ecology dated April 8, 2015
Attachment j	Email communication with WDFW
Attachment k	Comment letter from Nisqually Indian Tribe dated April 20, 2017

Attachment l Memo from Thurston County Public Works recommending approval dated April 24, 2015

Attachment m Memo from Thurston County Public Health and Social Services recommending approval dated June 1, 2015

Attachment n Geoduck Aquaculture Research Program, Final Report to the Legislature

Attachment o Comments from the public

1. Email from Deb Petersen
2. Email from Elizabeth Hummel
3. Email from Marianne Tompkins
4. Email from Bruce Hargrave
5. Email from Wendy Hughes
6. Email from Steve and Julie Kirkwood
7. Email from Chad Clinton
8. Email from Randy Tompkins
9. Email from Deb Petersen
10. Email from Marilyn Walther
11. Email from Dan McFarland
12. Email from Jessica Czajkowski
13. Email from Marianne and Randy Tompkins
14. Email from Marianne David [Tompkins]
15. Email from Deborah Petersen
16. Email from Marianne David Tompkins with 3 attachments
17. Email from DL (Zina Losey) with photo and attachments
18. Email from DL (Zina Losey) with photo and attachments
19. Email from Marianne Tompkins with photo
20. Email from Wendy Hughes with photos
21. Assorted photos from DL (Zina Losey)
22. Email from Marianne Tompkins with attachments
23. Email from Marianne Tompkins with attachments
24. Email from Marianne Tompkins with missing photos

EXHIBIT 2 Photo of posted hearing notice

EXHIBIT 3 Applicant PowerPoint presentation dated September 26, 2017

EXHIBIT 4 Memorandum from Greg and Anne Reub dated September 26, 2017 (response to public comment)

EXHIBIT 5 Email from Sean McDonald, PhD to Marlene Meaders, with Memorandum from Confluence Environmental Company to Bridget Ferriss et. al. dated November 28, 2016

EXHIBIT 6 Observations by Dr. Gordon Robiliard of Proposed Geoduck Farm Project #2015102245

EXHIBIT 7
- A. Letter from Army Corps of Engineers dated September 30, 2015
- B. Letter from Squaxin Island Tribe dated July 14, 2015
- C. Letter from William Stelle, NMFS to Michelle Walker, ACOE, dated July 24, 2015 (re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation)

Based on the record developed at hearing, the following findings and conclusions are entered:

FINDINGS

1. The Applicant requested approval of an SSDP to develop a commercial intertidal geoduck operation on approximately 0.5 acres of leased tidelands at 10221 Steamboat Island Road NW (Tax Parcel Number 39000006000). The subject property, which is on the Sreamboat Island peninsula of Totten Inlet of Puget Sound, is designated as a Rural Shoreline Environment by the Shoreline Master Program for the Thurston Region (SMPTR). *Exhibit 1, pages 1-2; Exhibit 1, Attachments b and c.*

2. The uplands portion of the subject property (0.3 acres) is developed with a single-family residence and is zoned Residential Limited Area of More Intense Rural Development Two Dwelling Units per Acre (RL 2/1). Primary permitted uses in the RL 2/1 zone include single and two-family residences, agriculture, and home occupations. *Thurston County Code (TCC) 20.10A.020.* The zoning ordinance defines "agriculture" as including raising, harvesting, and processing clams. *TCC 20.03.040(3).* Consequently, the proposed use is allowed in the RL 2/1 zone. *Exhibit 1, page 3.*

3. Surrounding land uses include residences and aquacultural activities, including geoduck farms to the south of the subject property. *Testimony of Greg Dibble; Testimony of Jim Gibbons.*

4. As intertidal lands in Totten Inlet, the project site is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *SMPTR, Section 4, Definitions*. The SMPTR designates the site as Rural Shoreline Environment. Aquaculture is allowed in this environment. The proposed geoduck operation requires the installation of equipment on the tidelands that constitutes a “structure” and is considered “development” for the purposes of the SMPTR. Non-exempt development in the shoreline jurisdiction that exceeds $6,412.00 in fair market value requires a shoreline

substantial development permit (SSDP). *SMPTR, Section 1.II.A*; *Exhibit 1, pages 3-4; Washington State Register (WSR) 12-16-035.*[1]

5. The shoreline on and adjacent to the subject property is bulkheaded. Riparian vegetation above the bulkhead consists of manicured grasses and shrubs, with mixed deciduous and coniferous trees farther inland. *Exhibit 1, Attachment E, page 13.*

6. The intertidal habitat on the subject property consists of an upper intertidal habitat area, measured from the bulkhead down to a sediment transition boundary that roughly coincides with the ordinary high water mark (OHWM), and a lower intertidal habitat area. The upper intertidal habitat declines at an estimated 10% gradient between the bulkhead and the sediment transition boundary at approximately +4.0 feet MLLW. The habitat is generally free of macroalgae cover, containing trace occurrences of rockweed and a thin band of *ulvoids*. The substrate consists of 70% gravel and 30% sand, with fine gravel dominating closest to the bulkhead and grading into course gravel and up to 10% cobble near the sediment transition boundary. The majority of the substrate is larger than 0.3 inches in diameter, which is the upper limit preferred by sand lance for upper beach spawning. Sand lance spawning habitat has been documented in the vicinity. However, the upper limit of the geoduck beds would be a 67-foot horizontal distance and two-foot vertical distance from the sediment transition boundary, thus avoiding sand lance habitat. *Exhibit 1, Attachment E, page 16.*

7. The lower intertidal habitat, classified as a sandflat, is relatively homogeneous and composed primarily of sand and shell material. Sand dollars and oysters are present just below the sediment transition boundary. Substrate within the oyster and sand dollar habitat contains up to 30% gravel mixed with sand. Macroalgae, which ranges up to 75% coverage within a ten-square-foot area, is dominated by *ulvoids*. The area of macroalgae accumulation at the time of survey was above +2.0 MLLW (i.e., above the uppermost extent of the proposed culture area). *Exhibit 1, Attachment E, page 16; Exhibit 1, Attachment F.*

8. Submerged aquatic vegetation is associated with invertebrates that are an important element of the diets of juvenile Pacific salmonids, herring, smelts, and flatfishes, and that provide critical habitat for juvenile canary and bocaccio rockfish. Of note, there is no eelgrass within the proposed planting area, but there are sporadic occurrences of rockweed, Turkish towel, *Gracilaria sp*., sea noodles, and sugar kelp. The nearest documented eelgrass beds are approximately ten miles away. If eelgrass were present in the project area, typical conditions of the U.S. Army Corps of Engineers for necessary federal permits would require a minimum 16-foot setback. *Exhibit 1, Attachment E, page 41; Exhibit 6 (no eelgrass in vicinity during more recent survey); Exhibit 7c; Exhibit 3.*

[1] The cost threshold for the SSDP requirement is adjusted every five years. The $6,412.00 threshold was in effect at the time the subject application was submitted in 2015. Effective September 2, 2017, the threshold increased to $7,047.00. *WSR 17-17-007.*

9. The proposed geoduck culture area is the portion of the tidelands between -4.5 feet MLLW to +2.0 feet MLLW. The geoducks would be planted in 12-inch lengths of four to six-inch diameter PVC pipe, placed on end and pushed into substrate by hand or foot, leaving approximately three inches of height exposed. The purpose of the tubes is to exclude predators, as the geoduck seed are vulnerable due to their small size and shallow depth. The tubes would be placed at a density of approximately one per square foot, and three to four geoduck seed would be planted in each tube. Tube placement and seeding would require a team of five to eight people working four to eight hours for approximately eight days. After planting, predator exclusion netting would be placed over the tubes. After the geoduck have dug to a depth sufficient to evade predators (at least one and up to two years after planting), the tubes would be removed. *Exhibit 1, Attachment E, pages 5- 8; Exhibit 1, Attachment F; Exhibit 1, Attachment C.*

10. Best management practices to be implemented to protect the sand dollars present in the culture area at the time of geoduck planting would be to, first, attempt to plant through/around the sand dollars, and second, to push them aside by hand if densities are too thick. After tube placement, the sand dollars would be able to move to an orientation that allows for feeding. *Exhibit 1, Attachment E, pages 6 and 12; Greg Rueb Testimony.*

11. The geoducks would be harvested approximately five to seven years after planting. Harvest would take place by hand with the aid of a pressurized hose and nozzle system designed to loosen the clams from the sand. Small combustion engines, located in a boat offshore, would power the saltwater pumps. Water intake lines on the pumps would be fitted with screens to prevent fish entrapment. Most of the harvest would occur at low tide, with the remaining occurring at high tide by divers. Harvest would require approximately two to four workers working three to four hours a day for approximately 12 days total. The scale of sediment disturbance from geoduck harvest is similar to a storm event. However, harvest is much more limited in frequency and duration, as it only occurs once at the end of a five to seven-year growing period. The sediment would be expected to settle rapidly. *Exhibit 1, Attachment E, pages 5, 7, 32 and 33; Exhibit 1, Attachment C; Exhibit 3.*

12. The project's Biological Evaluation (BE), submitted on March 7, 2015 (Bradley et al. 2015), contains an extensive analysis of expected impacts to fish, fish habitat, benthic invertebrates, and aquatic vegetation. Specifically, the BE evaluated project effects on the following parameters:

    - Noise
    - Water Quality
    - Sediment Quality
    - Sediment Transport and Bathymetry
    - Migration, Access, and Refugia
    - Forage Fish
    - Benthic Fauna and Community and Fish Use
    - Aquatic Vegetation
    - Macroplastics, Microplastics, and Toxicity

The conclusion of the BE was that the effects of the project on the studied parameters would be insignificant, minor, or discountable, and even beneficial with respect to certain aspects of water quality (due to filtration effects and potential for increased foraging), sediment quality (due to potential improvement in aerobic layer), and microplastics (with beach cleanup as mitigation). *Exhibit 1, Attachment E, pages 44-45.*

13. Several species of wildlife listed as threatened or endangered under the Endangered Species Act may occur in the project area, including bull trout, Chinook salmon, steelhead, boraccio rockfish, canary rockfish, yelloweye rockfish, marbled murrelets, and southern resident killer whales. The BE concluded as follows with respect to effect on these listed species, which conclusion the undersigned finds credible:

> The proposed action will not affect the viability, persistence, or distribution of ESA-listed species potentially present in the project or action area. The effects of the proposed action are unlikely to injure or kill individual listed species, and are therefore unlikely to affect the continuing status of the populations. There may be temporary avoidance during harvest operations, but there are no anticipated reduction in numbers, reproduction, or distribution of the species. Therefore, the proposed action may affect, but is not likely to adversely affect ESA-listed species.

Exhibit 1, Attachment E, pages 3, 47-49. The BE further concluded that the project "may affect, but is not likely to adversely affect" the species' designated critical habitat. *Exhibit 1, Attachment E, page 49.*

14. On July 24, 2015, the National Marine Fisheries Service (NMFS) issued a written concurrence to the Army Corps of Engineers that the project would not likely adversely affect listed species or critical habitats. Specially, after analysis of the project and potential effects, NMFS concluded that "all potential effects of the proposed action are insignificant, and concurs with the ACOE that proposed permits are not likely to adversely affect the subject ESA listed species or designated critical habitat." *Exhibit 7C.* In order to proceed, the project must obtain approval of a permit from the ACOE under Nationwide Permit 48 (Commercial Shellfish Aquaculture Activities); however, the Applicant cannot apply for the permit before the Applicant obtains approval of the Thurston County shoreline permit. *Exhibit 7A.*

15. In addition to the federally listed species, the subject property contains potential spawning habitat for surf smelt, Pacific sand lance, and Pacific herring. These habitats are classified by the state of Washington as "Marine Habitat of Special Concern." There is documented spawning habitat for sand lance adjacent to the proposed culture area, and spawning habitat for surf smelt has been documented beginning 225 feet north of the and 920 feet south of the project area. Documented spawning for the Squaxin Pass Herring stock is located approximately 630 feet north of the subject property on the Squaxin Pass side of the peninsula. The conclusion of the BE was that the potential effects of the project on these forage fish would be insignificant. The geoduck culture area would be at a lower shoreline elevation than the spawning habitat for surf smelt and sand lance,

which is in the upper intertidal zone at or above +5 MLLW. The culture area would be accessed by boat. With respect to herring, an Army Corps of Engineers conservation measure that would apply to the project is that a spawn survey would be conducted prior to commencing placement of tubes, and if herring spawn are present, activities would be prohibited until the eggs have hatched and the spawn are no longer present. *Exhibit 1, Attachment E, pages 11 and 37.*

16. At the time the BE was prepared, there were an estimated 12 shellfish growing areas within a two-mile radius of the project area, and 41 total in Totten Inlet. The BE considered the carrying capacity of Totten Inlet, as exceeding carrying capacity can promote competition for phytoplankton and organic matter resources used as food by other native species. The BE's analysis supports the conclusions that it is unlikely the project would cause Totten Inlet to reach or exceed its carrying capacity. *Exhibit 1, Attachment E, page 46.*

17. One of the primary concerns raised in public comment on the application was the aesthetic and environmental impact of the plastic tubes and nets associated with shellfish farming. Testimony was provided that project opponents have found tubes and other litter on beaches, and photos were submitted purporting to depict the visual impacts of other shellfish operations. There was testimony to the contrary as well, that the litter found on the beach is mostly garbage and is not associated with aquaculture, and that the Applicant operates another shellfish farm that does not result in PVC waste and that does not prevent wildlife usage of the shoreline. Further testimony was provided that the proposed area netting and other geoduck gear attracts sea life, such that the gear is not visible after a couple weeks and there is a net increase in biodiversity while the tubes and nets are in place. *Exhibit 1, Attachment O; Testimony of: Zina Mosey, Wendy Hughes, Cindy Womack, Douglas DeForest, and Kyle Lentz.*

18. The aesthetic impact of tubes would be limited in duration. The tubes would only be in place between 12 and 24 months of the entire five- to seven-year culture cycle. While in place, the tubes would be entirely underwater for the majority of daylight hours. The tubes are not expected to be visible at all during daylight hours during the months of October through February. Aesthetics associated with debris (loose tubes) would be addressed by the conditions contained in the County's mitigated determination of non-significance, which require (in relevant part), at least twice a month and following severe storm events, the Applicant inspect the project area and tidelands within a half mile for debris, and remove aquaculture debris regardless of source, and secure loose nets and tubing. This condition exceeds the standard set forth in the U.S. Army Corps of Engineers Special Conditions for Aquaculture Operation, which only requires the project area to be patrolled for debris once every three months. It also exceeds the recommendation of one inspection per month contained the BE. *Exhibit 1, Attachment E, page 11; Exhibit 1, Attachment H; Exhibits 4 and 7C; Exhibit 3.*

19. The Applicant, through the BE and authorities submitted in Exhibit 4, presented credible evidence that the PVC tubes are not likely to create microplastics or to leach chemicals into marine waters. PVC is a stable material that is unlikely to release metals or

chemicals into the environment. While high UV exposure can cause degradation of plastics, in this particular application the plastic is mostly underwater and within a short period of time after planting would be encrusted by marine organisms to an extent that it would be protected from UV exposure. The MDNS requirement to remove plastic debris from the beach would further prevent plastic from contaminating the marine environment. *Exhibit 1, Attachment E, pages 42-43; Exhibit 4.*

20. The project would not conflict with recreation or navigation. During the period of time that the tubes are in place, they would only extend a few inches above the substrate; during high tide the water above the tubes could be used. The private Carlyon Beach Home Owners Association Marina is on the opposite side of a point from the proposed project area, and the project area is outside of frequently used navigation channels. The Boston Harbor Marina is approximately three miles away. *Exhibit 4.*

21. The Thurston County Environmental Health Division reviewed the proposal and determined that it would not pose a risk to the existing on-site sewage system or well located on the upland portion of the subject property. Environmental Health did recommend that, if upland access to the project area is needed, no vehicles be allowed to travel over or park on septic system components or near the well. *Exhibit 1, Attachment M.*

22. As of the date of the BE, water quality in the vicinity satisfied National Shellfish Sanitation Program water quality standards and the surrounding waters were considered an "approved" growing area. *Exhibit 1, Attachment E, page 25.* No evidence was presented that water quality has degraded to an extent that would prevent shellfish farming since the BE was issued.

23. The Squaxin Island Tribe does not object to the project proposal, due to the low density of naturally occurring geoducks on the tideland. *Exhibit 1, Attachment 7B.*

24. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). In making its environmental determination, the County considered the following:

- Master Application submitted March 18, 2015
- SEPA Environmental Checklist submitted March 18, 2015
- JARPA Application submitted March 18, 2015
- Site Plans submitted March 18, 2015
- Site Visit conducted March 9, 2016
- Notice of Application mailed January 28, 2016

- Biological Evaluation prepared by Tina Bradley, received March 18, 2015

- Cultural Resource Survey Report prepared by Maurice Major, received March 18, 2015

- Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature dated November 2013[2]

The County determined that, with mitigation and compliance with applicable County, state, and federal laws, the project would not have a probable, significant adverse effect on the environment. The County SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on April 21, 2017. While numerous public comments were submitted on the application, these were not received prior to the May 5, 2017 SEPA comment deadline, and no appeals were filed. The MDNS became final after the close of the appeal period on May 12, 2017. The comments that were submitted were considered by the County in its review of the shoreline permit rather than of the environmental threshold determination. *Exhibit 1, Attachments H and O; Testimony of Leah Davis.*

25. The MDNS contains 14 mitigating measures which require: compliance with the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture; installation of unobtrusive signage notifying of a contact person for operation; grant of access to researchers and government officers to gather

[2] In 2007, the Washington state legislature passed a law directing Washington Sea Grant to study key uncertainties as to the impacts of geoduck cultivation on the Puget Sound ecosystem and on wild geoduck populations. Sea Grant established six priority objectives to assess:

- The effects of structures commonly used in the aquaculture industry to protect juvenile geoducks from predation;
- The effects of commercial harvesting of geoducks from intertidal geoduck beds, focusing on current prevalent harvesting techniques, including a review of the recovery rates for benthic communities after harvest;
- The extent to which geoducks in standard aquaculture tracts alter the ecological characteristics of overlying waters while the tracts are submerged, including impacts on species diversity and the abundance of other organisms;
- Baseline information regarding naturally existing parasites and diseases in wild and cultured geoducks, including whether and to what extent commercial intertidal geoduck aquaculture practices impact the baseline;
- Genetic interactions between cultured and wild geoducks, including measurement of differences between cultured and wild geoduck in term of genetics and reproductive status; and
- The impact of the use of sterile triploid geoducks and whether triploid animals diminish the genetic interactions between wild and cultured geoducks.

Sea Grant issued its final report to the legislature in December of 2013. The report supports the findings of the site-specific Biological Evaluation that there would not be long-term significant impacts associated with the project. *Exhibit 1, page 8; Exhibit 1, Attachment N; Exhibit 4.*

information on geoduck aquaculture; labeling of gear with contact information; inspection of the project area at least twice per month, with documentation and reporting of entangled fish and wildlife and removal of debris; removal of all tubes and netting within two years of installation; recording of all gear placed on site and removed during farming practices or patrols; use of gear that blends with the environment; placement of tubes below +3 MLLW, and avoidance of areas where herring spawn are observed; maintenance of a minimum distance of 150 feet from the shoreline for washing, storing, fueling, or maintaining land vehicles; minimization of glare for temporary lighting (permanent lighting not allowed); minimization of noise through use of fully enclosed and insulated motors with approved muffled exhaust systems; stopping work if archaeological resources are observed; and waiting for all required state and federal approvals prior to commencing work. *Exhibit 1, Attachment H.*

26. While the County's conditions of SSDP approval incorporate the MDNS mitigation measures as well as mitigation identified by reviewing agencies, it also includes protections that exceed these requirements.[3] The County recommended that, in addition to conducting a herring spawn survey prior to commencing work, the Applicant conduct a sand lance and surf smelt spawn survey. *Exhibit 1, pages 9-11.*

27. Notice of the open record hearing was mailed to properties within 500 feet of the subject property on September 12, 2017, published in *The Olympian* on September 15, 2017, and posted on site on September 14, 2017 in accordance with ordinance standards. *Exhibit 1, Attachment A; Exhibit 2.* Written public comment on the application included opinion that the 500-foot notice radius was inadequate, and that the methodologies used to provide notice of the April 21 SEPA determination were inadequate; however, no evidence was presented that the County failed to provide the notice that was required by County ordinance or state law. *Exhibit 1, Attachment o.*

28. At hearing, several neighboring property owners and residents appeared to present testimony in opposition to the permit. Testimony opposed to approval cited the following concerns: the dangers and visual impacts of shellfish gear washing up on the beach; plastics leaching into marine waters from gear; the volume of PVC to be used; impacts to sand dollars and other native species; alleged inadequacy of notice of SEPA consideration; visual impacts of the tubes when planted; allegations that there are "enough" geoduck farms in Thurston County already; impacts to property values; allegations of excess boat traffic in Totten Inlet; loose geoduck gear; the allegation that aquaculture creates "deadzones" in Puget Sound; noise from boats working at the site; that PVC used for geoducks is not able to be recycled; the adequacy of SEPA notice, in order to allow public comment during the SEPA review process; concern about the cumulative impacts of aquaculture; and concern about the impacts of reusing PVC. *Testimony of: Wendy Hughes, Randy Thompkins, Zina Mosey, and Deborah Petersen.*

[3] Recommended Condition 9 was withdrawn by the County at the hearing. *Testimony of Ms. Davis.*

29. Other public comment at the hearing expressed support for the proposal, including the following: allegation that shellfish growers put the environment first and that shellfish benefit water quality; concern that SSDP is too onerous an application for the proposed use, that the review process should require a lesser process and lower cost; allegation that the market for recycled PVC is poor; general support for small, independent shellfish operators; assertion that PVC used in geoduck aquaculture lasts for about 20 years; assertion that geoduck PVC is recycled on a regular basis; invitation for concerned neighbors to participate in the beach cleanup carried out by the shellfish growers association bi-annually; assertion from a neighbor that they received all the notices the County stated were sent; assertion that if approved, a neighbor believes the farm would be good for the community; a personal opinion from someone with geoducks on their tidelands that planting and harvesting do not interfere with their enjoyment of their property; assertion that geoduck gear increases wildlife presence and makes for better recreation opportunities; assertion that the Applicant is a good steward of the community resources; corroboration that no pesticide is applied in geoduck aquaculture; allegation that the majority of garbage that washes up in the project vicinity is not geoduck gear but general garbage; allegation that most marine traffic in the vicinity is from native tribal fishermen; allegation that property values go up, not down, as a result of geoduck aquaculture; assertion that sand dollars are proliferating in south Puget Sound; and assertion that PVC must be safe since it conveys something approaching 80% of the nation's domestic water supplies. *Testimony of Jim Gibbons, Greg Dibble (owner of the subject tidelands), Cindy Womack, Douglas DeForrest, Shina Wysocki, and Kyle Lentz*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide substantial shoreline development applications pursuant to TCC 2.06.010(C), RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

Shoreline Substantial Development Permit

Pursuant to WAC 173-27-150, in order to be approved by the Hearing Examiner, an SSDP application must demonstrate compliance with the following:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of applicable regulations; and
3. The Shoreline Master Program for the Thurston Region.

(a) Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory

standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster "all reasonable and appropriate uses" and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses that (in the following order of preference): recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

(b) Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

(1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

(2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

(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.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(c) Shoreline Master Program for the Thurston Region

SMPTR Section Two, V, Regional Criteria

A. Public access to the shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existing prior to establishment of public access.

B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
C. Future water-dependent or water-related industrial uses shall be ....
D. Residential development shall be undertaken in a manner that will maintain existing public access....
E. Governmental units shall be bound by the same requirements as private interests.
F. Applicants for permits shall have the burden of proving a proposed substantial development is consistent with the criteria which must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180(1), the person requesting the review shall have the burden of proof.
G. Shorelines of this Region which are notable for their aesthetic, scenic, historic, or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
H. Protection of public health is recognized as a primary goal. All applications for development of use of shorelines shall be closely analyzed for their effect on the public health.

<u>SMPTR Section Three, II, Aquacultural Activities</u>

A. Scope and Definition
Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, bays and estuaries. Aquacultural practices include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

B. Policies
1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
2. Aquacultural use of areas with high aquacultural potential should be encouraged.
3. Flexibility to experiment with new aquaculture techniques should be allowed.
4. Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.
5. Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property.
6. Proposed surface installations should be reviewed for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installations should incorporate features to reduce

use conflicts. Unlimited recreational boating should not be construed as normal public use.

7. Areas with high potential for aquacultural activities should be protected from degradation by other types of uses which may locate on the adjacent upland.
8. Proposed aquacultural activities should be reviewed for impacts on the existing plants, animals and physical characteristics of the shorelines.
9. Proposed uses located adjacent to existing aquaculture areas which are found to be incompatible should not be allowed.

C. General Regulations

1. Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.
2. Aquacultural structures and activities that are not shoreline dependent (e.g., warehouses for storage of products, parking lots) shall be located to minimize the detrimental impact to the shoreline.
3. Proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.
4. Proposed residential and other developments in the vicinity of aquaculture operations shall install drainage and waste water treatment facilities to prevent any adverse water quality impacts to aquaculture operations.
5. Land clearing in the vicinity of aquaculture operations shall not result in offsite erosion, siltation or other reductions in water quality.

Conclusions Based on Findings

1. As conditioned, the project would comply with the policies and procedures of the Shoreline Management Act. As the Shoreline Hearings Board has acknowledged, the Washington State Legislature has identified aquaculture as an activity of statewide interest that is a preferred, water-dependent use of the shoreline, which when properly managed can result in long-term over short-term benefits and protect the ecology of the shoreline. Aquaculture is allowed outright in the underlying zoning district and in the Rural Shoreline Environment upon review for compliance with applicable provisions in the Shoreline Master Program for the Thurston Region. With the conditions contained in the MDNS and in this decision, and those required by other agencies with jurisdiction, the proposal would be consistent with the policies of the SMA and would be a reasonable and appropriate use of the shoreline. *Findings 2, 4, 8, 12-16, 20-22, 24-26; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Penn Cover Seafarms v. Island County, SHB No. 84-4(1984); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008).*

2. As conditioned, the project would comply with applicable shoreline regulations. A condition of approval is included to ensure that project activities do not commence until 21 days after filing or until after all review proceedings have terminated. No residence

would have its view obstructed by the proposal and no structure taller than 35 feet would be built. *Findings 3, 5, 9, and 18.*

3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.

   A. With regard to regional criteria, the project would not hinder existing, nor create new, public access to shorelines, as the site is comprised of privately owned tidelands and aquaculture access would be by water. The site-specific BE concluded that the potential effects of the project on water quality and aquatic habitat would be insignificant, and that the project is not likely to adversely impact ESA-listed species or critical habitat. No evidence in the record suggests the proposal would result in any adverse effects to public health. *Findings 1-3, 6-16, 19 and 21.*

   B. Approval of the requested permit would support the SMPTR's stated policy of encouraging aquacultural uses for the sake of strengthening the local economy. The record demonstrates that the site is an area with high aquaculture potential. The project would not interfere with navigation of shoreline owners or commercial traffic. As proposed and conditioned, the project would minimize visual impacts to surrounding properties because the Applicant would be required to cleanup escaped gear and debris on a regular basis (including debris in the area that is generated by other uses), and because the tubes would not be visible most of the time. The water above the tubes would be usable during high tide. There is existing residential development on the upland portion of the parcel, and the condition of the Environmental Health Division would protect the on-site septic system, thereby protecting the project from water quality degradation. The proposal was reviewed in a site-specific study that considered impacts to endangered and threatened species and critical habitats. The site-specific study concluded that impacts to the existing natural environment would be insignificant. The culture area would be at a lower tidal elevation than the sand lance and surf smelt spawning habitat, and a spawn survey would be conducted for these species as well as Pacific herring prior to commencing tube placement. *Findings 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 25 and 26.*

   C. As conditioned, the project is consistent with the shoreline regulations. No evidence in the record shows extensive erosion or accretion along the shoreline would occur. The site-specific evaluation in the record finds that water quality impacts would be short-term and minimal. No processing plant, residential development, or land clearing is proposed. *Findings 11 and 12.*

DECISION

Based upon the preceding findings and conclusions, the request for a shoreline substantial development permit to develop a commercial intertidal geoduck operation on 0.5 acres of leased tidelands at 10221 Steamboat Island Road NW (Tax Parcel Number 39000006000) is **GRANTED,** subject to the following conditions:

1. Prior to and in conjunction with the commencement of bed preparation, and during operation, all regulations and requirements of the Thurston County Resource Stewardship Department, and the April 21, 2017 Mitigated Determination of Non-Significance shall be met.

2. A survey by a licensed professional surveyor must be completed prior to the onset of geoduck farming activities. This survey is to ensure that the geoduck farms are limited to the tideland area for which the property owners have a right to lease.

3. 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.

4. This approval does not relieve the Applicant from compliance with all other local, state, and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.

5. This proposal does not include using fill, such as gravel, on the beach. A permit from the U.S. Army Corps of Engineers shall be obtained prior to any beach fill or excavation if such permit is required. It is the responsibility of the Applicant to investigate the need for this permit.

6. No discharge of sediments into Puget Sound shall be permitted at any time except as approved by the US Army Corps of Engineers and Washington Department of Ecology.

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. 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. Inspections of tidelands within a half-mile of the geoduck farm shall also be conducted. During those patrols, all geoduck debris must be collected regardless of its source**. Patrols to search for and collect geoduck debris must also be conducted within a day**

following a severe storm event. Netting shall also be inspected to ensure that it is secure.

9. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan in the record. Any expansion or alteration of this use will require approval of a new or amended shoreline substantial development permit.

10. Any lighting associated with the operation shall be designed and placed to avoid direct or reflected glare onto nearby residences.

11. Noise from equipment or personnel engaged in the operation shall not rise to the level of persistently annoying as reported by any nearby property owner. Although this level of noise is subjective, the County will investigate and may require appropriate mitigations. Additionally, noise from machinery and equipment shall not exceed 60 decibels at the property line during daylight hours and 50 decibels from 10:00 PM to 7:00 AM as limited by WAC 173-60-040.

12. All tubes and nets used on the tidelands below the ordinary high water mark shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information. On area nets, if used, identification markers will be placed with a minimum of one identification marker for each 100 square feet of net.

13. Hard markers or structures on the beach and in the water shall be avoided where possible. This includes but is not limited to property boundary markers and equipment to hold down netting.

14. 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's 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 filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).

15. Unsuitable material (such as debris, concrete asphalt, tires) shall not be used for any purpose below ordinary high water mark.

16. Pacific sand lance and Surf smelt spawn surveys shall be conducted prior to undertaking activities listed in the Biological Evaluation.

17. New geoduck aquaculture activities shall not be placed within 16 horizontal feet of eelgrass or kelp.

18. New geoduck aquaculture activities shall not be placed above the tidal elevation of +5 feet mean lower low water—**this area is documented surf smelt spawning habitat.**

19. New geoduck aquaculture activities shall not be placed above the tidal elevation of +5 feet mean lower low water—**this area is documented Pacific sand lance spawning habitat.**

20. No aquaculture gear shall be stored landward of the line of mean higher high water for a period exceeding 7 consecutive days.

21. All pumps that use seawater shall be screened in accordance with NMFS and WDFW criteria.

22. No vehicle or equipment shall be washed within 150 feet of any stream, waterbody, or wetland.

23. Land vehicles shall be stored, fueled, and maintained in a vehicle staging area placed at least 150 feet from any stream, water body, or wetland.

24. The Applicant shall inspect all vehicles, including watercraft, daily for fluid leaks before leaving the staging area and repair any leaks before the vehicle resumes operation.

25. Vessels used for shellfish culturing in the action area shall not ground in eelgrass.

Decided October 17, 2017.

Sharon A. Rice
Thurston County Hearing Examiner

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 $669.00 for a Request for Reconsideration or $890.00 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.

THURSTON COUNTY
WASHINGTON
SINCE 1852

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 ☐ $669.00 for Reconsideration or $890.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Resource Stewardship Department this _____ day of _____ 20__.