



COUNTY COMMISSIONERS

John Hutchings
District One
Gary Edwards
District Two
Bud Blake
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	Project No. 2017104964
)	
Chelsea Farms, Inc.)	
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop commercial intertidal geoduck beds on 1.8 acres of leased tidelands at 7132, 7144, and 7210 Puget Beach Road NE is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Chelsea Farms, Inc. (Applicant) requested approval of a shoreline substantial development permit (SSDP) to develop commercial intertidal geoduck beds on 1.8 acres of leased tidelands at 7132, 7144, and 7210 Puget Beach Road NE. The subject property, which is within the Nisqually Reach 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 August 14, 2018.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Tony Kantas, Senior Planner, Thurston County
- Dawn Peebles, Thurston County Environmental Health Division
- Linda Lentz, Chelsea Farms, Inc.
- Kyle Lentz, Chelsea Farms, Inc.

Shina Wysocki, Chelsea Farms, Inc.
Marty Beagle, Chelsea Farms, Inc.
Cornelis Bakker, owner of Parcel No. 69600001800
Gifford Pinchot IV

Exhibits:

At the hearing the following exhibits were admitted into the record:

- Exhibit 1 Community Planning and Economic Development Department Staff Report, including the following attachments:
- A. Notice of public hearing
 - B. Master application, resubmitted May 4, 2018
 - C. JARPA application, resubmitted May 4, 2018
 - D. Vicinity map
 - E. Site plan (9 pages)
 - F. Notice of application, mailed April 17, 2018
 - G. Notice of application, mailed May 17, 2018
 - H. Mitigated Determination of Non-Significance (MDNS), issued July 3, 2018
 - I. Comment letter from Department of Ecology (DOE), dated May 7, 2018
 - J. Comment letter from Nisqually Tribe, dated May 17, 2018
 - K. Comment letter from Nisqually Tribe, dated October 9, 2017
 - L. Email from Federal Emergency Management Agency (FEMA)
 - M. Letter from Marty Beagle, dated May 3, 2018
 - N. Washington Sea Grant final report
- Exhibit 2 Memorandum from Dawn Peebles, dated July 27, 2018
- Exhibit 3 Site photos taken by Tony Kantas
- Exhibit 4 2015 aerial photo of site
- Exhibit 5 Applicant PowerPoint presentation
- Exhibit 6 US Army Corps of Engineers (USACOE) Nationwide Permit 48 authorization letter, dated June 27, 2018

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

FINDINGS

1. The Applicant requested approval of a shoreline substantial development permit (SSDP) to develop commercial intertidal geoduck beds on 1.8 acres of leased tidelands at 7132, 7144, and 7210 Puget Beach Road NE.¹ The subject property, which is within the Nisqually Reach of Puget Sound, is designated as a Rural shoreline environment by the Shoreline Master Program for the Thurston Region, Thurston County's shoreline master program. *Exhibits 1, 1.C, 1.D, and 1.E.*
2. The upland portions of the three subject parcels are 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. *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 outright in the RL 2/1 zone. *Exhibit 1.*
3. Two of the three subject parcels are developed with single-family residences. Surrounding land uses include single-family residential and aquacultural activities. There are existing geoduck farms approximately 490 feet to the south and 2,850 feet to the north of the subject property. *Exhibits 1, 1.C, and 4.*
4. As intertidal lands in the Nisqually Reach, the project site is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *SMPTR, Section 4, Definitions.* As noted previously, the SMPTR designates the site as Rural shoreline environment. Aquaculture is an allowed use 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 \$7,047.00 in fair market value requires a shoreline substantial development permit (SSDP). *SMPTR, Section 1.II.A; Exhibit 1; Washington State Register (WSR) 17-17-007.*
5. The upper intertidal area of the subject property is sandy and generally free of macroalgae. There are trace amounts of rockweed and a thin band of ulvoids. The lower intertidal area is sandy and bare of vegetative cover, with macroalgae dominated by ulvoids. There is no rooted vegetation or eel grass within the project area; the nearest eel grass beds are approximately one mile from the subject property. *Exhibits 5 and 1.C.*
6. The proposed geoduck culture area is the portion of the tidelands between -4.5 feet mean lower low water (MLLW) to +2.0 feet MLLW.² The geoducks would be planted in 10-inch lengths of four-inch diameter PVC pipe, placed on end and pushed into substrate, leaving approximately three to four inches exposed. The purpose of the tubes is to

¹ The subject parcels are known as Tax Parcel Numbers 69600001700, 69600001800, and 69600001900. *Exhibits 1 and 1.B.*

² In a few places, the staff report (Exhibit 1) mistakenly describes the proposed culture area as extending from -4.5 feet MLLW to 0.0 feet MLLW. The correct culture area elevations are -4.5 feet MLLW to +2.0 feet MLLW. *Exhibits 1 and 1.C; Tony Kantas Testimony.*

exclude predators, as the geoduck seed are vulnerable to predation when first planted due to their small size and shallow depth. The tubes would be placed at a density of approximately one per square foot, and each would be covered by a mesh cap secured by a UV-resistant rubber band. No area netting would be used. *Exhibit 1.C.*

7. It is expected that planting of all three parcels would occur within a single spring to fall planting season, and planting would not occur again for at least six years. Access to the tidelands would be by boat, and the work would be performed manually. *Exhibit 1.C.*
8. The proposed planting area would require no site preparation. No benthic organisms or substrate material would be removed, and there would be no redirection of upland runoff. *Exhibit 1.C.*
9. Once the area is planted, maintenance activities would include site inspections (by boat) and removal of loose tubes, nets and fasteners. Any live entangled fish or wildlife would be released. *Exhibit 1.C.*
10. The tubes would be removed approximately 18 to 24 months after planting, once the clams have burrowed to a sufficient depth to provide protection from predators. Workers would remove all materials from the farm by boat. Prior to tube removal, the site would be inspected to determine if herring, sand lance, or surf smelt stocks have used the site materials as spawning substrate. If spawn is found, removal would be delayed until the eggs have hatched. *Exhibit 1.C.*
11. The geoducks would be harvested starting approximately five to seven years after planting. It is expected that a “wet” harvesting technique (i.e., using divers) would be used most of the time. Harvest would take place by hand with the aid of low-pressure water pumps coupled to hoses and nozzles, which are designed to loosen the clams from the substrate. The pumps would be vessel-mounted, and the nozzles would be hand-held by the operator. Water intake lines on the pumps would be fitted with mesh screens to prevent intake of fish and other wildlife. *Exhibit 1.C.*
12. Harvest activities would disturb sediment in the area, but the impact would be localized and limited in duration. The impact would be similar in duration to a storm event, with the majority of disturbed sediment redeposited within three feet of the harvest hole. *Exhibit 5; Marty Beagle Testimony.*
13. The Washington State Department of Fish and Wildlife (WDFW) identifies the subject tidelands as providing documented and potential spawning area for sand lance. However, spawning forage fish would be protected from project impacts due to the lack of spatial overlap between farm operations and spawning areas. Spawning occurs between +5 to +11 feet MLLW, whereas farming would occur between -4.5 to +2 feet MLLW. The project area lacks aquatic plants that would attract herring spawning. *Exhibits 1.C and 5.*
14. During the grow-out period, water quality in the immediate vicinity of the aquaculture operation can be improved through the filtration action of the geoducks. *Exhibit 5.*

15. There are several species of wildlife that are listed as threatened or endangered under the Endangered Species Act that may occur in the project area, including bull trout, Chinook salmon, steelhead, bocaccio rockfish, canary rockfish, yelloweye rockfish, marbled murrelets, and southern resident killer whales. *Exhibit 1.C.*
16. On June 27, 2018, the U.S. Army Corps of Engineers reviewed the application and determined that the project is authorized under 2017 Nationwide Permit 48 (*Commercial Shellfish Aquaculture Activities*), subject to compliance with the terms of the permit and with the measures contained in programmatic Biological Opinions issued by the National Marine Fisheries Service and United States Fish and Wildlife Service. Compliance with these measures would satisfy the requirements of the Endangered Species Act. The Applicant has designed the project to comply with Nationwide Permit 48 and the associated Biological Opinions. *Exhibits 1.C and 6; Marty Beagle Testimony.*
17. Aesthetic impacts of the tubes and nets would be limited in duration. Tubes would be in place no more than 24 months of the entire culture cycle. While in place, the tubes would be entirely underwater for the majority of daylight hours and are not expected to be visible at all during daylight hours from October through February. Aesthetic impacts associated with debris (loose tubes or nets) would be addressed by the mitigation measures imposed by the mitigated determination of non-significance (MDNS, addressed further in Findings 22-23 below), which require the Applicant to patrol the tidelands for geoduck debris and remove all aquaculture debris regardless of source. *Exhibits 1.H and 5.*
18. The PVC tubes used in the geoduck farming operation are not known to degrade in the marine environment. While high UV exposure can cause degradation of plastics, in this application the plastic is largely underwater, and the tubes become encrusted by marine organisms quickly after being installed, which further prevents UV exposure. The MDNS mitigation measures also require the removal of plastic debris from the beach. *Exhibits 1.H and 5; Marty Beagle Testimony.*
19. The project would not conflict with recreation or navigation. While the tubes are in place, they would only extend a few inches above the substrate and would not interfere with recreational use of the overlying water during higher tides. The subject intertidal tidelands are not used for commercial navigation. *Exhibit 5.*
20. The Thurston County Environmental Health Division reviewed the proposal and determined that it would meet the requirements of the Thurston County Sanitary Code. This determination was based on evidence that access to the geoduck farm would be by boat, that no motorized machinery would be operated on the beach, that no refueling would occur on the beach, that no equipment would be stored on-site, that motors would be sound-insulated and have hospital grade exhaust systems, and that the operator is registered as a shellfish shipper with an approved Hazard Analysis and Critical Control Point plan on file with the Washington Department of Health. *Exhibit 2; Dawn Peebles Testimony.*

21. The Nisqually Island Tribe submitted comments indicating the Tribe does not have concerns about the project but requesting to be informed if there are inadvertent discoveries of archaeological resources or human burials. *Exhibits 1.J and 1.K.*
22. The Thurston County Community Planning and Economic Development Department 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 Department considered the following:
 1. Master application, submitted September 11, 2017, revision submitted on May 4, 2018
 2. SEPA environmental checklist, submitted September 11, 2017, revision submitted on May 4, 2018
 3. JARPA application, submitted September 11, 2017, revision submitted on May 4, 2018
 4. Site plans, submitted May 4, 2018
 5. Notice of application, mailed May 17, 2018
 6. Comment letter from Nisqually Indian Tribe, dated May 17, 2018
 7. Comment letter from Nisqually Indian Tribe, dated October 9, 2017

The Department determined that, with mitigation and compliance with applicable county, state, and federal laws, the project would not have probable, significant adverse impacts on the environment and issued a mitigated determination of non-significance (MDNS) on July 3, 2018. The MDNS was not appealed and become final on July 24, 2018. *Exhibits 1 and 1.H.*

23. The MDNS contains 16 mitigating measures which require the following: compliance with the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture; installation of unobtrusive signage listing a contact person for operation; 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 tubes within two years of installation; weekly patrols of tidelands to collect debris when gear is present, plus patrols to collect debris the day following severe storms; recording of all gear placed on-site and removed during farming practices or patrols; use of gear that blends with the environment; adherence to 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; use of UV-resistant fasteners to secure screens placed on tubes; stopping work if archaeological resources are observed; using only washed gravel for shellfish bed preparation; and waiting for all required state and federal approvals prior to commencing work. *Exhibit 1.H.*

24. Notice of the original application, which included only one of the three subject parcels, was issued on April 17, 2018. The Applicant subsequently revised the application to incorporate the two additional parcels under review, and a revised notice of application was issued on May 17, 2018. *Exhibits 1.F, 1.G, and 1.M; Tony Kantas Testimony.*
25. Notice of the open record hearing was mailed to owners of properties within 500 feet of the subject property on July 27, 2018, published in *The Olympian* on August 3, 2018, and posted on-site on August 3, 2018, in accordance with County code. *Exhibits 1 and 1.A.* No public comment was submitted on the application prior to hearing. *Tony Kantas Testimony.*
26. At hearing, one of the owners of the underlying properties testified as to his personal consent to have tidelands on his parcel farmed by Chelsea Farms. *Cornelius Bakker Testimony.* One employee of Chelsea Farms appeared at hearing, testifying that he is proud to work for what he characterized as a well-run, family owned business and that his employment with the Applicant was economically important to his family. *Gifford Pinchot IV Testimony.*
27. At hearing, Applicant representatives addressed the family's history in commercial shellfish production, as well Chelsea Farms' methods and practices for operation and maintenance of its aquaculture operations as responsible stewards of tidelands. The Applicant waived objection to the recommended conditions of approval. *Testimony of Linda Lentz, Kyle Lentz, Shina Wysocki, and Martin Beagle.*

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.

SMPTR Section Three, II, Aquacultural Activities

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 SMPTR provisions. As mitigated through the MDNS and the conditions imposed in this decision, as well as those required by state and federal 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, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and*

23; WAC 173-27-241(3)(b); *Cruver v. San Juan County and Webb*, SHB No. 202 (1976); *Penn Cove 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 would 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 2, 3, and 6.*
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 project is designed and conditioned to be protective of water quality and the aquatic environment. The aesthetic qualities of the shoreline would be preserved. No evidence in the record suggests the proposal would result in any adverse effects to public health. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied. *Findings 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.*
 - 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 clean up escaped gear and debris on a regular basis, 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 a condition of approval is included to ensure that activities do not impact the septic system of that development, thereby protecting the project from water quality degradation. The project area is generally free of vegetation, and planting would occur at a lower elevation than is used for forage fish spawning. No material would be removed from the shoreline, and sediments disturbed during harvest would settle relatively close to their point of origin. These features, along with the conditions of approval, would minimize impacts to plants, animals, and the physical characteristics of the shoreline. *Findings 3, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, and 23.*
 - C. As conditioned, the project is consistent with shoreline regulations. No evidence in the record suggests that extensive erosion or accretion along the shoreline would occur. No processing plant, residential development, or land clearing is proposed. *Findings 8 and 12.*

DECISION

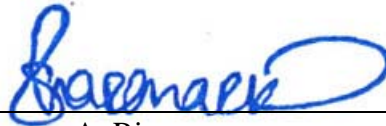
Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to develop commercial intertidal geoduck beds on 1.8 acres of leased tidelands at 7132, 7144, and 7210 Puget Beach Road NE (Tax Parcel Numbers 69600001700, 69600001800, and 69600001900) is **GRANTED** 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. The Applicant shall comply with all conditions of the Mitigated Determination of Non-Significance, dated July 3, 2018 (Exhibit 1.H).
3. 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 the Thurston County Community Planning and Economic Development or any other required government permits.
4. 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.
5. No physical work on the aquaculture beds shall be initiated until all required state and federal permits and approvals have been granted.
6. The Applicant shall ensure that all anti-predator nets and tubes are secured in place to prevent them from escaping from the project area.
7. 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 filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
8. There shall be no removal of shrubbery or fallen trees located in the buffer of the toe of the marine bluff or on the beach during placement of the bed.
9. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan submitted and made part of this staff report, including modifications as required by this approval. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit.
10. If access to the beach for planting geoduck tubes, netting, pumps, or any other equipment will be over the upland portion of this property, it must be done so as to prevent any

vehicle or equipment traffic or parking on any portion of the septic system, the septic system components, or near the well. Staging of equipment and materials for this project shall also not be done on any portion of the septic system or its components.

11. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
12. Prior to commencement of the geoduck operation, the Applicant shall confirm approval of the U.S. Army Corps of Engineers NWP 48 Permit or the Corps Individual Permit with the Community Planning and Economic Development Department.
13. A construction stormwater permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit, if required.

Decided August 27, 2018.



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 Community Planning & Economic Development 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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.