



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	Project No. 2010100420
)	
Arcadia Point Seafood)	Thiesen Geoduck Farm Re-Review
)	
)	
For Review of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

Review of the approved shoreline substantial development permit for the intertidal geoduck farm at 8940 NE Libby Road is **GRANTED**. Operations may continue per the 2013 Hearing Examiner decision without additional conditions of approval or future reviews.

SUMMARY OF RECORD

Request:

Arcadia Point Seafood (Applicant) operates a 1.2-acre commercial intertidal geoduck farm on Henderson Inlet at 8940 NE Libby Road in Olympia, which is authorized pursuant to a shoreline substantial development permit approved by the Hearing Examiner on January 25, 2013 and finalized at the termination of subsequent review proceedings on September 3, 2014. Condition number 10 of the original permit includes the following requirement:

The subject operation shall be reviewed by the Resource Stewardship Department through an open record review hearing in front of the Thurston County Hearing Examiner prior to subsequent replanting or within seven years, whichever occurs first. Review shall assess emerging environmental research and environmental issues arising from the approved operation, if any. If facts at the time of the review warrant cumulative impact analysis under then-applicable law, it shall be conducted during the review. The hearing shall be held within 60 days following an application for review filed by the Applicant with the Thurston County Resource Stewardship Department.

The Applicant applied for the required review on July 1, 2021.

Hearing Date:

The Thurston County Hearing Examiner held a virtual open record hearing on the request at 10:00 am on September 14, 2021. The record was held open through September 16, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for written responses by the parties. No post-hearing public comment was submitted and the record closed on September 16, 2021.

A re-review on another shoreline substantial development permit for a different intertidal geoduck operation by the Applicant also on Henderson Inlet not far from the instant property was conducted at 11:00 am on the same day. Because of substantial overlap in testimony by the parties, and because both hearings were on the same audio recording created by the Zoom platform, in order to avoid redundancy and inefficient use of time, and with the agreement of Planning Staff and legal counsel for the Applicant, the testimony by Planning Staff and Applicant representatives in both matters is accepted as pertaining to both applications for SSDP re-review.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County
Vicki Wilson, Owner, Arcadia Point Seafood

Attorney Jesse DeNike represented the Applicant at the hearing.

Exhibits:

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

- Exhibit 1 Community Planning and Economic Development Department Staff Report to the Hearing Examiner, including the following attachments:
- A. Notice of Hearing
 - B. Zoning / Vicinity Map
 - C. Master Application, received July 1, 2021
 - D. Cover letter, dated June 29, 2021
 - E. Hearing Examiner Decision for original SSDP, dated January 25, 2013
 - F. Applicant's Supplemental Information, received July 1, 2021
 - G. Geoduck Aquaculture Research Program Final Report, November 2013
 - H. Shellfish Aquaculture in Washington State, Final Report to the Washington State Legislature, December 2015
 - I. Notice of application, dated August 13, 2021 with list of property owners within 500 feet, dated August 9, 2021

J. Comment letter from the Nisqually Tribe, dated August 16, 2021

Based on the record developed through the virtual hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Background on Condition No. 10

1. The Applicant operates a 1.2-acre commercial intertidal geoduck farm on Henderson Inlet at 8940 NE Libby Road in Olympia, which is authorized pursuant to a shoreline substantial development permit approved by the Thurston County Hearing Examiner on January 25, 2013 and finalized at the termination of subsequent review proceedings on September 3, 2014. *Exhibits 1, 1.D, and 1.E.* Condition number 10 of the original permit includes the following requirement:

The subject operation shall be reviewed by the Resource Stewardship Department through an open record review hearing in front of the Thurston County Hearing Examiner prior to subsequent replanting or within seven years, whichever occurs first.¹ Review shall assess emerging environmental research and environmental issues arising from the approved operation, if any. If facts at the time of the review warrant cumulative impact analysis under then-applicable law, it shall be conducted during the review. The hearing shall be held within 60 days following an application for review filed by the Applicant with the Thurston County Resource Stewardship Department.

Exhibit 1.E. The Applicant applied for the required review on July 1, 2021. *Exhibit 1.C.*

2. As described in the Hearing Examiner's January 25, 2013 findings, in the original hearing on Project No. 2010100420, County Planning Staff:
[C]oncluded that with conditions, the proposal would comply with SSDP criteria. Among other conditions of approval, Staff recommended condition number 10 requiring the project to be reviewed for impacts and potential additional mitigation through an open record public hearing process before the County hearing Examiner after five years and/or before replanting, stating:

Although existing biological information generally concludes that geoduck aquaculture results in no long-term significant impacts to the marine environment, there are some areas of on-going research related to water quality and the effect on ESA-listed species in particular. The Washington Sea Grant program is conducting that research at the direction of the Washington State Legislature.... Combined with the relative modernity of geoduck aquaculture in the form proposed, it is prudent to

¹ The Resource Stewardship Department is the prior name of the Community Planning and Economic Development Department, the County department that reviews development applications.

reassess the biological research at a specified time in the future as it relates to the subject bed.

Exhibit 1.E, Finding 35 (internal citations omitted).

3. In the January 25, 2013 decision, the Hearing Examiner adopted an alternative version of the condition recommended by Planning Staff, which provided for review in seven years or prior to replanting. Conclusion 5 of the decision described the rationale for and intended scope of the condition as follows:

[B]ecause the Sea Grant study is not completed, because commercial geoduck aquaculture is a relatively new enterprise, and because many citizens of Thurston County and Resource Stewardship Staff are concerned about any potential long term adverse effects to Henderson Inlet, the recommended condition that would require review of the SSDP in seven years or prior to replanting is adopted. Review will look at the final report of the Sea Grant study and will consider impacts shown to be occurring on-site. If facts at the time merit cumulative impact analysis, it shall be conducted during the review.

Exhibit 1.E, Conclusion 5 (emphasis added).

4. The Hearing Examiner's 2013 SSDP decision contained the following findings related to then-current environmental research on geoduck operations:

42. 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. One of the research efforts granted access to the site by MDNS measure #3 is the Washington Sea Grant program. Sea Grant established six priority objectives to assess:
 - 1) The effects of structures commonly used in the aquaculture industry to protect juvenile geoducks from predation;
 - 2) 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;
 - 3) 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;
 - 4) 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;
 - 5) Genetic interactions between cultured and wild geoducks, including measurement of differences between cultured and wild geoduck in term of genetics and reproductive status; and

- 6) The impact of the use of sterile triploid geoducks and whether triploid animals diminish the genetic interactions between wild and cultured geoducks.

Exhibit 1, Attachment I.26.

43. Through a competitive bidding process, Sea Grant selected from among proposed studies to address the objectives, choosing three:
 - Geochemical and Ecological Consequences of Disturbances Association with Geoduck Aquaculture Operations in Washington (G. VanBlaricom, UW, J. Cornwell, UM): assessing all phases of geoduck aquaculture in terms of effects on plant and animal communities (fish, shellfish, and plant) and physical/chemical effects to beaches.
 - Cultured-Wild Interactions: Disease Prevalence in Wild Geoduck Populations (C. Friedman, UW): developing baseline information on pathogens to improve understanding of geoduck health and management of both wild and cultured stocks.
 - Resilience of Soft Sediment Communities after Geoduck Harvest in Samish Bay (J. Ruesink, UW): examining the effect of geoduck aquaculture on soft-sediment tide flat and eelgrass meadow habitats.

Interim reports summarizing research to date have been submitted to the Legislature in 2009, 2011, and 2012. The final results of the three funded studies will be reported to the Legislature in December 2013. *Exhibit 1, Attachment I.26.*

44. The 2012 interim report contains the following summary of preliminary research observations from study inception to date:
 - Benthic infaunal communities are not significantly altered;
 - Current practices have minimal impacts on benthic communities of infaunal invertebrates, with no spillover into adjacent habitats, suggesting that the disturbance occurring on the scale of current harvest practices is within the range of natural variation;
 - Significant differences in the structure of mobile macrofauna communities between planted and nonplanted areas do not persist once tubes and nets are removed during the grow out phase;
 - Nutrients released from geoduck operations are low with localized effects likely to be negligible, and the overall rate of nutrient release is not changed from the natural rate;
 - No distinct patterns have been observed in the distribution of disease organisms as a function of geographic location or water depth; and
 - In Fisk Bar, where eelgrass recruited after geoducks were planted, harvest activities significantly impacted the eelgrass, with limited spillover effects

to adjacent, non-farmed sites; however, within one year, eelgrass recovery had begun on the harvested site, suggesting that current practices do not render sites unsuitable for later eelgrass colonization.

Again, final results would be reported to the Legislature in December 2013.
Exhibit 1, Attachment 1.26, page 4.

Exhibit 1.E.

Current Review of the SSDP

5. The subject geoduck farm was planted between June and July of 2014. By May of 2016 the tubes and other gear had been removed. The geoducks from the 2014 planting were recently harvested. *Exhibit 1.F; Vicki Wilson Testimony.*
6. The Shoreline Master Program for Thurston County (SMPTR) designates the subject property as a Rural shoreline, in which aquaculture remains an allowed use. *Exhibit 1.*
7. The subject property is zoned Residential LAMIRD (RL) 1/1. Agriculture - which includes raising, harvesting, and processing clams and oysters - is an allowed use in the zone. *Exhibit 1.*
8. A Final Report of the Geoduck Aquaculture Research Program to the Washington State Legislature was issued by Sea Grant in November of 2013. It includes peer-reviewed research articles on the selected study topics (see Finding 4 above), some of which have been published in scientific journals. The completed research is consistent with the 2013 SSDP's conclusion that the Thiesen geoduck farm would not have significant long-term impacts on Henderson Inlet or marine wildlife. The following excerpts from the research articles have particular relevance to the SSDP review:
 - Ecological effects of the harvest phase of geoduck clam (*Panopea generosa* Gould, 1850) aquaculture on infaunal communities in southern Puget Sound, Washington USA (Glenn R. VanBlaricom, Jennifer L. Price, Julian D. Olden, and P. Sean McDonald):²

... there was scant evidence of effects on the community structure associated with geoduck harvest disturbances within cultured plots. Likewise, no indications of significant "spillover" effects of harvest on uncultured habitat adjacent to cultured plots were noted. Complementary univariate approaches revealed little evidence of harvest effects on infaunal biodiversity and indications of modest effects on populations of individual infaunal taxa. Of 10 common taxa analyzed, only three showed evidence of reduced densities, although minor, after harvests whereas the remaining seven taxa indicated either neutral responses to harvest disturbances or increased abundance either

² Also published in *Journal of Shellfish Research* Mar/Apr 2015: Vol. 34, Issue 1, pages 171-187, doi: 10.2983/035.034.0121. *Exhibit 1.F.*

during or in the months after harvest events. It is suggested that a relatively active natural disturbance regime, including both small-scale and large-scale events that occur with comparable intensity but more frequently than geoduck harvest events in cultured plots, has facilitated assemblage-level infaunal resistance and resilience to harvest disturbances. *Exhibit 1.F, page 9; Exhibit 1.G, Appendix 1, page 20.*

- Effects of geoduck (*Panopea generosa* Gould, 1850) aquaculture gear on resident and transient macrofauna communities of Puget Sound, Washington, USA (McDonald, P. Sean, Aaron W.E. Galloway, Kathleen C. McPeck, and Glenn R. VanBlaricom):³

No consistent differences in the community of resident macrofauna were observed at culture plots or reference areas at the three sites during any year. Conversely, total abundance of transient fish and macroinvertebrates were more than two times greater at culture plots than reference areas when aquaculture structures were in place. Community composition differed ... between culture and reference plots during the gear-present phase, but did not persist to the next farming stage (postgear). *Exhibit 1.F, page 10; Exhibit 1.G, Appendix 1, page 50.*

9. A Final Report to the Washington State Legislature from Sea Grant entitled *Shellfish Aquaculture in Washington State* was issued in December of 2015. This report was commissioned by the legislature in 2013 to “examine possible negative and positive effects, including the cumulative effects and the economic contribution, of evolving shellfish aquaculture techniques and practices on Washington’s economy and marine ecosystems.” *Exhibit 1.H, page ii.* The research presented in the report includes modeling tools “to study potential interactions between aquaculture and the environment” (*Id.*), including a food web model, which “suggests that, at a basin scale, the food web can support a substantial increase in geoduck aquaculture over current production levels, with only minor changes in the biomass of individual species. Nearly all the observed changes were due to the effects of predator exclusion devices as opposed to the effects of geoduck grazing on phytoplankton or acting as prey to other species.” *Exhibit 1.H, page iii.*⁴
10. In 2016, the US Army Corps of Engineers, National Marine Fisheries Services, and US Fish and Wildlife Service completed a programmatic Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation on aquaculture in Washington’s inland marine waters. The programmatic consultation evaluated impacts to species over a 20-year planning horizon and resulted in more than 30 conservation measures designed to ensure compliance with ESA and EFH requirements. *Exhibit 1.F, pages*

³ Also published in *Journal of Shellfish Research* Mar/Apr 2015: Vol. 34, Issue 1, pages 189-202, doi: 10.2983/035.034.0122. *Exhibit 1.F.*

⁴ This quotation was from the Sea Grant report’s summary of the research presented in Evaluating Trophic and Non-Trophic Effects of Shellfish Aquaculture in the Central Puget Sound Food Web (Bridget Ferriss, Jonathan Reum, P. Sean McDonald, Dana Farrell, and Chris J. Harvey).

3, 4, and 5. The Applicant's shellfish operation is consistent with the conservation measures. These measures were incorporated into the Applicant's federal permits when the NationWide Permit 48 was renewed by the federal agencies. Conservation measures can be amended at renewal of the federal permits going forward based on developing science. *Jesse DeNike Comments; Vicki Wilson Testimony.*

11. Since the 2013 SSDP decision, not more than 12 permits for geoduck aquaculture have been approved. County Planning Staff submitted that this number does not warrant a current cumulative impacts analysis. Staff is not aware of any environmental issues of concern with respect to the existing operation. Neither the County nor the Applicant has received complaints from neighbors regarding operations on site. *Exhibits 1 and 1.F; Testimony of Scott McCormick ad Vicki Wilson.*
12. Notice of the virtual public hearing was sent to all owners of property within 500 feet of the site on August 26, 2021 and published in The Olympian on September 3, 2021. There was no public comment on the review application. Comments submitted by the Nisqually Indian Tribe did not identify any issues of concern. *Exhibits 1, 1.A, and 1.J.*
13. Having reviewed all evidence submitted and heard Applicant's presentation, at the conclusion of the hearing, Planning Staff maintained the recommendation for approval of the instant five year review without additional conditions and without future re-reviews.⁵ *Exhibit 1; Scott McCormick Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide shoreline substantial 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

The scope of review is as described in Condition number 10 of the 2013 approval:

Review shall assess emerging environmental research and environmental issues arising from the approved operation, if any. If facts at the time of the review warrant cumulative impact analysis under then-applicable law, it shall be conducted during the review... .

Exhibit 1.E.

Conclusions Based on Findings

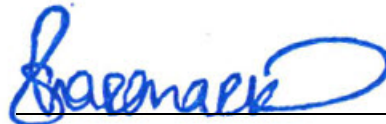
⁵ On the record, Planning Staff clarified that the reference on page 5 in the recommendation section referencing Taylor Shellfish was a cut and paste error, and Staff affirmed their recommendation of approval of the Thiesen farm SSDP review. *Scott McCormick testimony.*

1. Relevant environmental research published by Sea Grant in 2013 and 2015 support the original 2013 permit approval and do not warrant any new conditions of approval. *Findings 4, 8, 9, and 13.*
2. Since the 2013 permit approval, the record demonstrates that cumulative impacts on wildlife have been addressed in at least two ways: in modeling demonstrating that the food web can tolerate a substantial increase in shellfish production without significantly impacting the biomass of individual species, and in the programmatic ESA/EFH consultation, which considered impacts over a 20-year time horizon. No evidence was submitted suggesting the need for further cumulative impacts analysis as part of this review process. *Findings 9, 10, and 11.*
3. Nothing in the record suggests any need for additional future reviews of the approved 2013 permit and none are imposed by the instant review. Any potential future impacts arising from this geoduck operation would be reviewed and addressed in the Applicant's federal permitting, which is periodically renewed and would provide an opportunity for federal agencies to require updated mitigation should evidence demonstrate a need for further action to protect the shoreline environment. *Findings 11, 12, and 13.*

DECISION

Based on the preceding findings and conclusions, review of the shoreline substantial development permit for the intertidal geoduck farm at 8940 NE Libby Road is **APPROVED**. Operations may continue per the 2013 Hearing Examiner decision without additional conditions or future reviews.

Decided September 30, 2021.



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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.