

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2011104210

SEQUENCE NO.: 21 108021 XC

TAX PARCEL NO.: 11905230300

LOCATION ADDRESS: 9000 N.E. Libby Road, Olympia, WA 98506

OWNER: Barbara Lockhart
120 State Avenue N.E., PMB 1191
Olympia WA 98501

APPLICANT: Taylor Shellfish
Attn: Erin Ewald
130 S.E. Lynch Road
Shelton, WA 98584

PLANNER: Scott McCormick, Associate Planner, MES

SUMMARY OF REQUEST:

Re-review of a Shoreline Substantial Development Permit for a commercial intertidal geoduck operation on approximately 0.90 acres of cultivable, intertidal land located at S5 T19 R1W LOT 1 S 100F EX S10.83A & 2ND CL TDLS ADJ.

SUMMARY OF DECISION: Approved.

DATE OF DECISION: September 23, 2021

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 31, 2021, at 12:00 p.m.

Parties wishing to testify were sworn in by the Examiner.

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

- EXHIBIT 1 - Community Planning and Economic Development Department Staff Report**
- Att. a - Notice of Hearing and Application, with list of property owners within 500 feet**
- Att. b - Zoning / Vicinity Map**
- Att. c - Master Application**
- Att. d - Tideland Lease Agreement**
- Att. e - Hearing Examiner Decision for original SSDP dated January 25, 2013**
- Att. f - Supplemental Information**
- Att. g - Geoduck Aquaculture Research Program Final Report**
- Att. h - Shellfish Aquaculture in Washington State, Final Report to the Washington State Legislature**
- Att. i - Email from the Squaxin Island Tribe**
- Att. j - Email from the Nisqually Tribe**

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

SCOTT McCORMICK, Associate Planner, appeared and presented the Staff Report regarding the re-review of a Shoreline Substantial Development Permit (SSCP) for a commercial intertidal geoduck operation on approximately 0.90 acres of cultivable, intertidal land located at 9000 N.E. Libby Road, Olympic. The subject parcel is within the Rural LAMIRD One Dwelling Unit per Acre (RL-1/I) zoning located along Henderson Bay in which aquaculture is permitted which includes harvesting of clams and other shellfish. The property is also within the Thurston County Shoreline Master Program in the Rural Shoreline environment Aquaculture. The surrounding land uses are residential with Henderson Inlet to the east. Condition 10 of the 2013 Hearing Examiner's decision required the re-review prior to the subsequent replanting season or within seven years, whichever comes first. Notice of the hearing was properly published. No SEPA review is required as it was completed under the original permit approval process. The SSCP conditions of approval mitigated certain potential impacts to nearby property owners. The State legislature funded the Washington Sea Grant (WSG) to assess possible negative and positive effects including cumulative and economics of the evolving State shellfish aquaculture. The study issued a final report in December 2015 and found that there are few if any long term impacts to the environment from practices such as geoduck farming as the harvest of geoducks mimics natural beach processes which do disturb the shoreline

such as storm events but the beach environment recovers relatively quickly. Since few geoduck farms have been approved in the County since 2013, Staff determined no analysis additional to the WSG was necessary. No public comments were received. The Squaxin Island Tribe and the Nisqually Tribe did comment and had no concerns regarding cultural resources. The County recommends approval of the SSDP re-review, no additional/future re-reviews are required nor any additional conditions necessary.

JESSE DENIKE, Attorney at Law, appeared on behalf of Taylor Shellfish and provided introductory remarks. He stated the public hearing was required by Condition 10 to review the emerging shellfish industry and was intended to review the final results of the WSG to ensure they did not conflict with the Examiner's decision. In 2019, the County sent questions to the Applicant which the Applicant answered in Attachment f and also filed two WSG final studies in Attachments g and h. Attachment f primarily discusses the final results of the 2013 WSG study as being consistent with the preliminary results that the Examiner considered and had contemplated in Conclusion 5 in the SSDP. Generally, the study confirmed that geoduck farming would result in temporary effects only to the shoreline environment. There have been no changes in the law that would require additional or more robust conditions to be imposed than the County has already placed on the Applicant. The Applicant has reviewed and agreed with the analysis of the County in the Staff Report including the recommendation that given the few number of geoduck farm permits issued by the County that no further cumulative impacts analysis beyond the WSG report are necessary. He noted that the study on page 11 of Attachment f was not included in the WSG Final Report to the Washington State Legislature.

ERIN EWALD, Director of Regulatory Affairs for Taylor Shellfish, appeared and testified that she had drafted the narrative in Attachment f that the Applicant is not aware of any environmental research or issues that have arisen from the subject operation nor of any issues regarding compliance with conditions have occurred and that no complaints have been received regarding activities on the geoduck farm. She noted that the recent harvest was completed in the spring of 2021 and that planting is scheduled for spring of 2022. In regard to any new scientific studies or information relative to geoduck farming becoming available since March 2012 when the Applicant submitted the SEPA application, she noted that Condition 5 of the Hearing Examiner's decision explained that the re-review was specifically intended to review the final results of the WSG geoduck aquaculture research program. Therefore, the Applicant submitted the two final reports from the WSG to the County which were issued in November 2013 and December 2015. (Att. g and h) to support the Applicant's presentation, Thurston County's recommendation and the Hearing Examiner's decision that the subject geoduck farm, as conditioned, has minimally adverse to beneficial impacts on the environment. The WSG 2013 Geoduck Aquaculture Research Program (Att. g) confirmed the interim study reviewed by the Hearing Examiner in approving the SSDG that there are few if any long term impacts to the environment from practices such as geoduck farming as the harvest of geoducks mimics natural beach processes which do disturb the shoreline such as storm events but the beach environment recovers relatively quickly. She then summarized and explained the WSG studies that served as the basis for this conclusion. In regard to the comments by the Squaxin Island

and Puyallup Tribes, she stated that the Applicant works closing with the Tribes to respect their rights and address any concerns they may have. She noted that they did not have any specific concerns and that a cultural resource survey had been completed during the initial permit processing and had not found any evidence that the beach was used for shellfish gathering or off-shore fishing.

DIANI TAYLOR, appeared and said she was attending because she is a fifth generation of the Taylor family and general counsel for Taylor Shellfish.

VICKI WILSON, appeared to observe because she was interested in the public hearing process.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 1:30 p.m.

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

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner had admitted documentary evidence into the record, heard testimony and had taken this matter under advisement.
2. This is a re-review of a previously approved geoduck farm. No SEPA review is required. SEPA review was conducted under the original permit.
3. Written notice of the public hearing was published in The Olympian on August 20, 2021, at least ten (10) days prior to the hearing. A combined Notice of Application and Notice of Public Hearing was issued on August 6, 2021.
4. In response to Notice, no comments were received from the public. The Squaxin Island Tribe and the Nisqually Tribe did comment and neither had any concerns regarding cultural resources at the Applicant's geoduck farm.
5. The Applicant's commercial intertidal geoduck operation on approximately 0.90 acres of cultivable, intertidal land was approved pursuant to Shoreline Substantial Development Permit (SSDP) #2011104210 in the Hearing Examiner's Decision on Reconsideration issued on January 25, 2013, and is located at 9000 N.E. Libby Road, Olympia, Legal Description being S5 T19 R1W LOT 1 S 100F EX S10.83A & 2ND CL TDLS ADJ and Parcel No. 11905230300 owned by Barbara Lockhart.
6. The site of the operation is located on the tidelands of a developed residential property which is within the Rural LAMIRD One Dwelling Unit per Acre (RL-1/I) zoning district located along Henderson Inlet. The entire geoduck bed is within the

subject parcel. Aquaculture is permitted as an agricultural use within this zone. The definition of “agriculture” in Thurston County Code (TCC) 20.03.040(3)(h) includes harvesting of clams and other shellfish.

7. The property is also located within the jurisdiction of the Shoreline Master Program for the Thurston Region (SMP). The SMP shows this site to be within the Rural Shoreline Environment. Aquaculture is allowed in this shoreline designation per Section 3.II.D of the SMP. Surrounding land uses are residential to the north, south and west, with Henderson Inlet to the east.
8. The SSDP Decision on Reconsideration issued on January 25, 2013, included Condition 10 which stated:

The subject operation shall be reviewed by the Resource Stewardship Department through an open record 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.

9. Due to Thurston County recognizing the seven-year period began to run on September 3, 2014, Thurston County commenced the Review by sending the Applicant a letter dated November 7, 2019 directing the Applicant to submit a Master Application and to answer a series of questions. The Applicant submitted the Application on July 1, 2021, (Att. c) and submitted answers to the County’s questions (Att. f). In addition, the Applicant submitted two final Studies on geoduck research conducted by Washington Sea Grant (WSG) and filed with the Washington State Legislature in 2013 and 2015, respectively: “Geoduck Aquaculture Research Program” (Att. g) and “Shellfish Aquaculture in Washington State.” (Att. h)
10. The public hearing required by Condition 10 verbiage to “assess emerging environmental research and environmental issues arising from the approved operation, if any” was intended to determine if the final results of the WSG research of the shellfish industry were consistent and did not conflict with the Examiner’s decision.
11. The studies supported the Applicant’s presentation during the initial SSDP process, Thurston County’s recommendation and the Hearing Examiner’s decision that the subject geoduck farm, as conditioned, has minimally adverse to beneficial impacts on the environment. The WSG 2013 “Geoduck Aquaculture Research Program”

(Att. g) confirmed the interim study reviewed by the Hearing Examiner in approving the SSDG that there are few if any long term impacts to the environment from practices such as geoduck farming because the harvest of geoducks mimics natural beach processes which do disturb the shoreline such as storm events and the beach environment recovers relatively quickly.

12. In addition, one finding in the WSG 2015 "Shellfish Aquaculture in Washington State" (Att. h) was that "the aquaculture gear had stronger ecosystem impacts than the farmed geoduck themselves points to development of innovative gear and new culture techniques as a promising approach to minimizing impacts."
13. In regard to cumulative impacts of geoduck farms in Thurston County, County Staff has determined that few geoduck farms have been approved since 2014, being less than 12, and, therefore, concluded that there was no need for any in depth cumulative impacts analysis beyond what was provided in the WSG reports to the State legislature.


CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request
2. The Applicant has demonstrated that the Review of the Shoreline Substantial Development Permit should be approved, that no additional or future reviews are required and that no additional conditions are imposed.

DECISION:

Re-Review of SSDP No. 2011-104210 is approved, no additional or future reviews are required and no additional conditions are imposed. .

ORDERED this 23rd day of September, 2021.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this day of September, 2021, to the following:

OWNER: Barbara Lockhart
 120 State Avenue N.E., PMB 1191
 Olympia WA 98501

APPLICANT: Taylor Shellfish
 Attn: Erin Ewald
 130 S.E. Lynch Road
 Shelton, WA 98584
 ErinE@TaylorShellfish.com

OTHERS:

THURSTON COUNTY

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

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

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

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

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

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

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

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the 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___.