



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. 2019102462
)	
Northwest Shellfish Company, Inc.)	
)	
)	
for approval of a)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit for the development of a commercial intertidal geoduck bed at 5603 Countryside Beach Drive NW in Olympia, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Mark Schaffel, on behalf of Northwest Shellfish Company (Applicant), proposes a commercial intertidal geoduck farm within a 42,800 square foot area of tidelands on Eld Inlet at 5603 Countryside Beach Drive NW in Olympia, unincorporated Thurston County, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record hearing on the application on February 9, 2021. The record was held open until February 11, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing comments were submitted, and the record closed on February 11, 2021.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County
Dawn Peebles, Environmental Health Specialist, Thurston County Public Health and Social Svcs
Arthur Saint, Civil Engineer, Thurston County Public Works Department
Mark Schaffel, Applicant Representative
Chris Cziesla, Confluence Environmental Company, Applicant consultant

Jesse DeNike, Attorney, represented the Applicant at hearing.

Exhibits:

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, submitted May 24, 2019
 - D. JARPA Application, submitted May 24, 2019
 - E. Site plans
 - F. Habitat Assessment Report, submitted May 24, 2019 and dated April 2019
 - G. Cultural Resources Report, dated October 9, 2019
 - H. SEPA Mitigated Determination of Non-Significance, issued May 1, 2020 with adjacent property owners list, dated July 29, 2019
 - I. SEPA Environmental Checklist, submitted May 24, 2019
 - J. Notice of Application, dated August 8, 2019 with adjacent property owners list, dated July 29, 2019
 - K. Comment letter from the Nisqually Tribe, dated December 19, 2019
 - L. Approval memo from Amy Crass, Thurston County Environmental Health, dated September 3, 2019
 - M. Comment letter from the Nisqually Tribe, dated June 14, 2019
 - N. Comment email from the Squaxin Tribe, dated August 8, 2019
 - O. Email from Cailan Nealer with Washington Department of Natural Resources, dated August 8, 2019
 - P. Email from Cailan Nealer with Washington Department of Natural Resources, dated June 10, 2019
 - Q. Full sized site plan

- Exhibit 2 Applicant’s memorandum “Consistency Analysis” by Jesse DeNike, submitted February 8, 2021
- A. Applicant’s PowerPoint presentation (“Who We Are”) by Mark Schaffel, submitted February 8, 2021
 - B. Applicant’s “Proposed Geoduck Farm” PowerPoint presentation by Chris Cziesla, submitted February 8, 2021

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

FINDINGS

1. Mark Schaffel, on behalf of Northwest Shellfish Co. (Applicant) and property owners Justin Hjelm and Desiree Lee-Hjelm, requested approval of a shoreline substantial development permit (SSDP) to install and operate a commercial intertidal geoduck farm within a 42,800 square foot area of tidelands on the west side of Cooper Point on Eld Inlet at 5603 Countryside Beach Drive NW in Olympia in unincorporated, rural Thurston County.¹ *Exhibits 1, 1.C, 1.D, and 1.E.*
2. Located on the west side of Cooper Point on Eld Inlet, the subject property and surrounding parcels are zoned Residential LAMRD 1/1 (RL 1/1). Surrounding properties are developed with single-family residences on shoreline lots of similar size as the subject parcel. The upland portions of these properties are mapped as containing potential landslide hazards. The proposed intertidal use would not impact these upland areas and aside from the shoreline, there are no other critical areas on-site. *Exhibits 1 and 1.B.*
3. The subject shorelands are within the jurisdiction of the Washington State Shoreline Management Act, as implemented through the County’s Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR designates the site’s shoreline as Rural shoreline environment, within which aquaculture is an allowed use. The subject shorelines are not designated shorelines of statewide significance. Non-exempt development within the shoreline jurisdiction that exceeds \$7,047.00 in fair market value requires review and approval of an SSDP. The proposed geoduck farm has a fair market value exceeding \$7,047.00 and requires approval of an SSDP. *Exhibits 1, 1.D, and 2; SMPTR, Section 3.III.D; Washington State Register (WSR) 17-17-007.*
4. The Thurston County Code (TCC) defines agriculture to include shellfish or fish farming, and raising, harvesting, and processing of clams, oysters, and mussels. *TCC 20.03.040(3)*. The RL 1/1 zoning district includes agriculture among the permitted uses that do not require land use authorization. No land use permit is required for the proposal. *TCC 20.11A.020.*

¹ The legal description of the subject property is a portion of Section 21 Township 19 Range 2W Plat COUNTRYSIDE BEACH SS2112 LT 1 Document 8511250016; also known as Tax Parcel 42900001400. *Exhibit 1.*

5. The project is comprised of a commercial intertidal geoduck operation to occupy 42,800 square feet of tidelands on-site. Juvenile geoduck “seeds” are to be planted by hand in PVC tubes placed at a density of one tube per square foot, three seeds per tube, at a depth of approximately seven inches. Each tube is proposed to be netted individually, with the individual nets held in place by marine grade rubber bands. The proposed farm would occupy the site at elevations between -4.5 to plus 5 mean lower low water (MLLW). After the juveniles mature in place for 12 to 24 months, the tubes and nets would be removed and the “yearlings” are left alone to mature. Geoducks are harvested at between five to seven years after planting. Worker access to the farm would be from either uplands or by boat/barge. Harvesting would be conducted using low-pressure water pumped through a hose with a three-eighths- to one-inch PVC pipe at the end, used as a wand to loosen the substrate and lift the geoducks. Water intake for the pump would be fitted with a screen compliant with National Marine Fisheries Services (NMFS) standards to exclude living organisms. Farm equipment and supplies would be stored off-site and brought to the farm by boat/barge. The operation would only be visible during daylight hour low tides while the tubes are in place and when workers are on-site. The tubes and nets would be in place for a maximum of 24 months out of each 60- to 72-month culture cycle. The project involves no clearing or construction on the uplands portion of the subject property; no structures over 35 feet in height would be developed. There are no anticipated impacts to views aside from the proposed PVC with net covers tubes for the portion of the growing cycle they are in place. As shown on photographs presented at hearing, the tubes and net quickly become “biofouled,” which means encrusted with marine organisms, to the point that their color and shape are no longer visible and the beach has regular rows of lumps encrusted with plant and animal life, which draw crabs, birds, and other predators. Throughout the life of the operation, Applicant employees would visit the site at least once per month to walk the beach, collect any manmade debris (not just aquaculture gear), and remove it to an appropriate upland disposal facility. *Exhibits 1, 1.D, 1.E, 2.A, and 2.B; Testimony of Mark Schaffel and Chris Cziesla.*
6. Community Planning and Economic Development (CPED) Department Staff (Planning Staff) noted that the Washington State Department of Ecology has acknowledged that Puget Sound harbors have the highest concentration of geoducks in the contiguous United States, with the most abundant concentrations in southern Puget Sound specifically on beaches with the appropriate shallow slope and soft sediment, like the subject shoreline. The commercial geoduck aquaculture industry has a local history of 18 to 20 years; the techniques used are evolving on a continual basis. The Applicant would incorporate new techniques learned over time. *Exhibits 1 and 1.D; Mark Schaffel Testimony.*
7. The Applicant commissioned a professionally prepared habitat assessment report addressing the requirements of the project’s needed US Army Corps of Engineers permit process for avoidance of impact to species listed in the federal Endangered Species Act. Planning Staff accepted the report as meeting County environmental assessment requirements (under the State Environmental Policy Act, addressed below). According to the consultant, the project area is primarily comprised of sandy mud substrate. There is

no eelgrass present, and the macroalgae present are limited to *Ulva* species. The upper intertidal zone (above +7 feet MLLW) contains surf smelt spawning habitat, and there is documented surf smelt spawning habitat in the upper intertidal zone of the site. Other forage fish are found farther away, with documented Pacific sand lance spawning habitat located approximately one mile (or slightly less) north of the site, and documented Pacific herring spawning locations more than four miles to the north. The consultant enumerated the following ESA-listed species as known to be or potentially found at the subject beach: anadromous fish, including several species of Chinook and chum salmon and cutthroat trout, rock fish, forage fish, marbled murrelet, bald eagle, blue heron, and osprey. *Exhibit 1.F; Chris Czesla Testimony.*

8. The habitat assessment report concluded that the proposed PVC tubes (in place for approximately 30% of the time the farm is in operation) would have little effect on waves and currents, and sediment accumulation and scouring effects would return to baseline conditions when the tubes are removed, such that there is negligible impact to the site physically. Regarding impacts to protected (and other) species, the presence of the PVC tubes creates an artificial hard substrate, temporarily increasing habitat diversity and augmenting foraging opportunities for all species. The Applicant's consultant indicated that the data available shows geoduck aquaculture results in no difference in use by juvenile salmonids, which are the species of primary concern, because they continue to be able to migrate nearshore unimpeded. Geoduck tubes are known to provide good habitat and prey resources for other fish species, for resident and/or commonly migrating birds, and to have no impact on mammal species aside from increased foraging opportunities. Because the proposed farm site would not overlap the beach elevation where forage fish are known to be present, because the farm area avoids eelgrass and sensitive kelp, and because the farm would employ best management practices (BMPs) and known effective conservation measures, it is not anticipated to affect the viability, persistence, or distribution of protected species at the project site. The planting and harvesting phases of the proposed operation would result in temporary impacts, including primarily turbidity and some minor accretion, which after careful study on a statewide basis have been found to be localized and limited in effect, with the substrate returning to pre-farming conditions within a couple of tide cycles. These temporary impacts have consistently been found to be similar in magnitude as, if not less than, seasonal and weather effects. In fact, as submitted by the Applicant's consultant, geoduck aquaculture generally has been shown to improve water quality through biofiltration and removal of excess nutrients. *Exhibits 1, 1.F, and 2.B; Chris Czesla Testimony.*
9. There are no public docks in the vicinity that would attract boaters to the farm. The proposal does not include the placement of buoys, concrete markers, or other potentially dangerous objects on the beach that could interfere with public access to the shoreline. The proposed farm is located a significant distance waterward of the ordinary high water mark, meaning the upper beach would not be obstructed for walking or other recreational activities. Because of these facts, the Applicant submitted and Planning Staff agreed that the proposed aquaculture operation would not interfere with commercial fishing, other commercial traffic, or public recreational use of the shoreline. Because the subject property's owners have given their consent to the aquacultural use of their tidelands and

are leasing the project site to the Applicant, it is anticipated that the farm would not be detrimental to the nearest landowners. The Applicant has other active farms in the area and employees are present nearly every day to observe conditions and maintain the farms. *Exhibits 1 and 1.I; Mark Schaffel Testimony.*

10. The project does not include land clearing, nor do Staff and the Applicant know of any future land clearing or other development incompatible with aquaculture in the project vicinity. As noted previously, surrounding parcels are developed with residential uses. No processing plant is proposed. *Exhibits 1, 1.D, and 1.I.*
11. Both the Applicant and Planning Staff made reference to the Washington Sea Grant program, which began a study of the impacts of geoduck aquaculture in 2007 and issued a final report to the state legislature in December 2016. The final report concluded generally that geoduck farming is an important form of aquaculture, which contributes economically to the region which can be done in a sustainable manner if conditioned to require implementation of the best available science, best management practices, and careful site selection to avoid critical habitats. Although the study has now concluded, additional research will continue through the Washington Sea Grant and within the shellfish industry.² *Exhibits 1, 1.F, and 2.B; Testimony of Mark Schaffel and Chris Cziesla.*
12. Thurston County CPED assumed the role of Lead Agency for review of the proposal's impacts on the environment pursuant to the State Environmental Policy Act (SEPA). The SEPA Responsible Official considered the following information in conducting its environmental review:
 - Master Application
 - SEPA Environmental Checklist submitted February 5, 2016
 - JARPA Application submitted February 5, 2016
 - Site Plans submitted February 5, 2016
 - Habitat Assessment Report
 - Notice of Application issued August 8, 2019
 - Letter from the Nisqually Tribe, dated June 14, 2019
 - Email from Washington Department of Natural Resources, Aquatics, dated June 10, 2019
 - Pacific Coast Shellfish Growers Association Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture
 - Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature, dated November 2013
 - Effects of Geoduck Aquaculture on the Environment: A Synthesis of Current Knowledge, by Washington Sea Grant, University of Washington, dated November 2013

² <https://www.sciencelawenvironment.com/2013/12/washington-sea-grant-releases-final-report-to-the-washington-state-legislature-on-geoduck-aquaculture-research/>

- Washington Department of Natural Resource's Geoduck Aquaculture Best Management Practices, dated October 15, 2007

Exhibits 1, 1.H, and 1.I.

13. Upon concluding review, the County issued a mitigated determination of non-significance (MDNS) for the project on May 1, 2020. The MDNS was not appealed by the Applicant or any other party and became final on May 22, 2020. The MDNS imposed the following mitigation measures, to which the Applicant will remain bound for the life of the operation absent a subsequent approval with alternate conditions:
1. The preparation, planting, maintenance and harvesting at the subject sites shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture.
 2. An unobtrusive but visible sign shall be placed at each aquaculture bed listing the name and contact information for a person designated to immediately address problems associated with the aquaculture bed when discovered by citizens or agency representatives.
 3. Shellfish culturing shall not occur within 10 horizontal feet of eelgrass (*Zostera marina*) or kelp.
 4. All protective tubes and netting related to the proposed Geoduck aquaculture shall be removed from the shoreline as soon as they are no longer needed to perform protective functions, and in no case later than two and one-half (2.5) years from installation.
 5. Shellfish culturing shall not be placed above the tidal elevation of +5 Mean Lower Low Water (MLLW) in order to minimize potential impacts to forage fish habitat.
 6. Vehicles and equipment shall not be washed, stored, fueled, or maintained within 150 feet of any waterbody. All vehicles will be inspected for fluid leaks daily within 150 feet of any waterbody.
 7. Harvest activities will primarily occur during low tides where the last amount of turbidity will occur.
 8. Permanent lighting of the aquaculture beds shall not be permitted. Any temporary lighting shall be directed such that off-site glare is minimized to the extent possible.
 9. All individual screens placed on tubes shall be secured with UV-resistant fasteners.
 10. If archaeological artifacts are observed during any phase of the aquaculture operation, all work shall be immediately halted. The Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department and affected Tribes shall be contacted to assess the situation prior to resumption to work.
 11. No physical work on the beds shall be initiated until the Applicant obtains all required local, state, and federal permits and/or approvals.
 12. All tubes, mesh bags, and area nets used on the tidelands below the ordinary high-water mark (OHWM) shall be clearly, indelibly and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address and mailing address). On area nets, if used, identification markers will be placed

with a minimum of one identification marker for each 100 square feet of net.

13. Boundary Markers. Leasehold boundary corners will be assigned GPS coordinates during the land survey. Corner markers shall be in place during site preparation and planting. They may be removed during the grow out period, but the corner marker positions must be replaced at the GPS coordinates recorded by the land survey prior to any harvest activities. They must remain in place during harvest activities.
14. Install pipe or other predator exclusion devices in straight rows or blocks that are appealing to upland observers.
15. Whenever and wherever possible, use pipe colored to blend into the surrounding environment.
16. No seeding, culture, or other operations are to be done in biologically sensitive areas of the beach such as herring or smelt spawning grounds.
17. No materials should escape from the farm. Every effort must be made that tubes, nets, and fasteners should not wash off the farm area. Patrol area beaches on a regular basis to retrieve debris that does escape the farm as well as other non-natural debris. Due to wave, current or wind action, debris tends to accumulate in certain areas. These areas should be identified early in the growing cycle and crews shall patrol these areas after weather events to pick up debris.
18. 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.

Exhibit 1.H.

14. In addition to the County review for SSDP approval, the aquaculture operation must obtain and remain compliant with conditions imposed by the following additional permits and authorizations: a Department of Ecology Section 401 Clean Water certification and a US Army Corps of Engineers individual permit under Section 10 of the Rivers and Harbors Act. *Exhibits 1.D and 2.*
15. Notice of application was sent to all owners of property within 500 feet of the site on August 8, 2019. Notice of the public hearing was sent to all owners of property within 500 feet of the site, published in The Olympian, and posted on site on January 29, 2021. *Exhibits 1 and 1.J.* No public comments from neighboring property owners or Thurston County residents generally were submitted.
16. The Squaxin Indian Tribe submitted comment on the application stating the area within or adjacent to the proposed site contained one identified cultural resource of undetermined boundary. The Tribe requested a cultural resources survey and report be provided. *Exhibit 1.N.* The Nisqually Indian Tribe reviewed the assessment and expressed no issues of concern. *Exhibits 1.K and 1.M.*
17. At the request of the Squaxin Island Tribe, the Applicant commissioned a professionally

prepared cultural resources survey of the subject tidelands, which were rated by the Washington State Department of Archaeology and Historic Preservation (DAHP) as having a “very high risk” for the presence of cultural resources. The survey conducted included background research and a field investigation. The cultural consultant recommended a “no historic properties affected” rating for the site, but did recommend the implementation of an inadvertent discovery plan to address resources encountered during site work by the Applicant. *Exhibit 1.G.*

18. Thurston County Public Health and Social Services, Environmental Health Division, reviewed the proposal and recommended approval without conditions. *Exhibit 1.L.* At hearing, an EHD representative testified that the single-family residence on the subject property is served by an individual on-site septic system (OSS) that requires operational certification, with a process of ongoing monitoring and maintenance and certificate renewal every three years. Based on the proposal’s project description indicating that all access to the farm would be by boat or through already-developed travel paths on the property, EHD Staff determined that the aquacultural use would not impact the OSS. EHD Staff also noted that the proposal calls out sanitation facilities on the Applicant’s boat(s) for use by employees, addressing the potential for public health concerns for users of the waters of the site and for the Applicant’s product. *Dawn Peebles Testimony.*
19. Thurston County Public Works Department Development Review Services reviewed the project for access and storm water control requirements. Public Works Staff determined that the project is exempt from the standards in the Thurston County Drainage Design and Erosion Control Manual because it is considered commercial agriculture, and they submitted no comments.³ *Exhibit 1.*
20. The Washington State Department of Natural Resources (DNR) submitted comments primarily regarding the need for the Applicant to ensure that farming activities do not exceed the property’s tideland boundaries and extend into public aquatic lands. *Exhibits 1.O and 1.P.* Acknowledging these concerns, the Applicant indicated they take DNR’s comments seriously and stated that they intend to work with a surveyor to ensure geoducks are planted only on private tidelands. *Exhibit 2.*
21. Planning Staff noted that the Thurston County Comprehensive Plan recognizes the importance of aquaculture resources in Thurston County and expressly states that “aquaculture practices should not be considered a nuisance unless they threaten the public health and safety.” Having reviewed all application materials, comments by agencies, and having heard all testimony at hearing, Planning Staff maintained the position that, as proposed and conditioned, the Applicant’s project would be consistent with the Thurston County Comprehensive Plan, the Shoreline Master Program for the Thurston Region, and the property’s zoning. Planning Staff recommended approval with conditions detailed in the staff report. *Exhibit 1; Scott McCormick Testimony.*

³ The undersigned takes note that a Public Works Staff member attended the hearing and declined the opportunity to comment.

22. Having reviewed the staff reviewed the staff report, Applicant representatives requested a minor modification to recommended condition 20, for the purpose of clarifying the requirements imposed under the federal Clean Water Act Section 401. The Applicant otherwise waived objection to the recommended conditions. *Exhibit 2*. Planning Staff agreed to the requested modification. *Scott McCormick Testimony*.

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

Pursuant to WAC 173-27-150, in order to be approved by the Hearing Examiner, a shoreline substantial development permit 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 provisions in the Shoreline Master Program for the Thurston Region. Compliance with the conditions contained in the County's MDNS and in the instant decision would ensure that the use does not trespass off site onto DNR owned and controlled tidelands. The record submitted demonstrates that the proposal would be consistent with the policies of the SMA and would be a reasonable and appropriate use of the shoreline. *Findings 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 20, and 21; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008); Coalition to Protect Puget Sound Habitat v. Pierce County, SHB No. 11-019 (July 13, 2012); Coalition to Protect Puget Sound Habitat v. Thurston County, SHB No. 13-006c (October 11, 2013); Coalition to Protect Puget Sound Habitat v. Pierce County, SHB No. 13-016c (January 22, 2014); and Coalition to Protect Puget Sound Habitat v. Pierce County, SHB No. 14-024 (May 15, 2015).*
2. As conditioned, the project would comply with applicable shoreline regulations. No structure taller than 35 feet would be built. During a substantial portion of the planting cycle the use would not be visible from upland areas. *Findings 3, 5, 6, 7, 8, 9, and 10.*
3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.
 - A. With respect to the 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 primarily by water. There are no adjacent uses that attract public recreationalists or commercial activities with which the proposed farm activities could conflict. Based on the balance of best available science, the project would be protective of water quality and the aquatic environment. Visible only a portion of the total farm cycle, and willingly leased to the Applicant by the owner of the tidelands, surrounding property owners would not experience significant adverse aesthetic impacts. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied.

Findings 5, 6, 7, 8, 9, 11, 12, 13, 18, and 21.

- B. With respect to the aquaculture policies of the SMPTR, approval of the requested permit would support the 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 remove debris on a regular basis, and because the tubes would not be visible most of the time. According to a credible professional biologist consultant, adverse effects to threatened and endangered species of wildlife are not likely. *Findings 5, 6, 7, 8, 9, 11, 12, and 13.*

- C. With respect to the aquaculture regulations, the balance of the best available scientific evidence supports the conclusion that the project would not result in extensive erosion or accretion along the shoreline. No processing plant, residential development, or land clearing is proposed. *Findings 5, 6, 7, 8, 9, 10, and 11.*

DECISION

Based upon the preceding findings and conclusions, review of the shoreline substantial development permit for the intertidal geoduck bed at 5603 Countryside Beach Drive NW in Olympia is **APPROVED** 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 preparation, planting, maintenance and harvesting at the subject site shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture.
3. An unobtrusive but visible sign shall be placed at each aquaculture bed listing the name and contact information for a person designated to immediately address problems associated with the aquaculture bed when discovered by a citizen or agency representatives.
4. Shellfish culturing shall not occur within 10 horizontal feet of eelgrass (*Zostera marina*) or kelp.
5. All protective tubes and netting related to the proposed Geoduck aquaculture shall be removed from the shoreline as soon as they are no longer needed to perform protective functions, and in no case later than two and one-half (2.5) years from installation.
6. Shellfish culturing shall not be placed above the tidal elevation of +5 MLLW in order to minimize potential impacts to forage fish habitat.

7. Vehicles and equipment shall not be washed, stored, fueled, or maintained within 150 feet of any waterbody. All vehicles will be inspected for fluid leaks daily within 150 feet of any waterbody.
8. When possible, harvest activities should occur during low tides where the least amount of turbidity will occur.
9. Permanent lighting of the aquaculture beds shall not be permitted. Any temporary lighting shall be directed such that off-site glare is minimized to the extent possible.
10. Any individual screens placed on tubes shall be secured with UV-resistant fasteners.
11. If archaeological artifacts are observed during any phase of the aquaculture operation, all work shall be immediately halted. The Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.
12. No physical work on the beds shall be initiated until the Applicant obtains all required local, State, and Federal permits and/or approvals.
13. All tubes, mesh bags, and area nets used on the tidelands below the ordinary high-water mark (OHWM) shall be clearly, indelibly and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address and mailing address). On area nets, if used, identification markers will be placed with a minimum of one identification marker for each 100 square feet of net.
14. Boundary Markers: Leasehold boundary corners will be assigned GPS coordinates during the land survey. Corner markers shall be in place during site preparation and planting. They may be removed during the grow out period, but the corner marker positions must be replaced at the GPS coordinates recorded by the land surveyor prior to any harvest activities. They must remain in place during harvest activities. Rebar will not be used for markers.
15. Install pipe or other predator exclusion devices in straight rows or block that are appealing to upland observers.
16. Whenever and wherever possible, use pipe colored to blend into the surrounding environment.
17. No seeding, culture or other operations are to be done in biologically sensitive areas of the beach such as herring or smelt spawning grounds.
18. No materials should escape from the farm. Every effort must be made that tubes, nets and fasteners should not wash off the farm area. Patrol area beaches on a regular basis to

retrieve debris that does escape the farm as well as other non-natural debris. Due to wave, current or wind action, debris tends to accumulate in certain areas. These areas should be identified early in the growing cycle and crews shall patrol these areas after strong weather events to pick up debris.

19. 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.
20. Washington State Water Quality Laws, Chapter 90.48 RCW, Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. The project shall obtain and maintain compliance with a Clean Water Act Section 401 certification from the Department of Ecology. Any violation of these state laws and the project's CWA Section 401 certification may be subject to enforcement action.
21. 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.
22. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plans 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 as determined by the Community Planning & Economic Development Department.
23. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
24. 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 February 26, 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___.