



COUNTY COMMISSIONERS

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Gary Edwards
District Two

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District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	Project No. 2019106534 (Lewis Property)
)	
Chelsea Farms, Inc.)	
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop commercial intertidal geoduck beds on 0.75 acres of leased tidelands at 7435 Cooper Point Road is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Chelsea Farms, Inc. (Applicant) requested approval of a shoreline substantial development permit to develop commercial intertidal geoduck beds on 0.75 acres of leased tidelands at 7435 Cooper Point Road, Olympia, Washington. The subject property, which is on Eld Inlet of Puget Sound, is designated as a Rural shoreline environment by the Shoreline Master Program for the Thurston Region.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on February 23, 2021. The record was held open until February 25, 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 public comment was submitted and the record closed on February 25, 2021. The record was also held open for the Applicant to submit proposed alternative language for recommended Condition 14 of the Staff Report, and for Staff to respond to the proposed alternate language, without a specific timeline established. The alternative language and Staff’s response were timely submitted and admitted.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County
Linda Lentz, Chelsea Farms, Inc.
Kyle Lentz, Chelsea Farms, Inc.
Shina Wysocki, Chelsea Farms, Inc.
Martin Beagle, Chelsea Farms, Inc.

Exhibits:

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

EXHIBIT 1 Community Planning & Economic Development Department Report including the following exhibits:

- A. Notice of Hearing
- B. Zoning / Vicinity Map
- C. Master Application submitted December 23, 2019
- D. JARPA Application submitted December 23, 2019
- E. Narrative description (undated)
- F. Site plans and photos
- G. SEPA Mitigated Determination of Non-Significance issued May 8, 2020 with adjacent property owners list, dated February 10, 2020
- H. SEPA Environmental Checklist submitted December 23, 2019
- I. Notice of Application, dated March 5, 2020 with adjacent property owners list, dated February 10, 2020
- J. Comment email from Phyllis Farrell, dated February 12, 2020 forwarded by Andrew Deffobis on February 25, 2020
- K. Email from Tim Rubert, Community Planning & Economic Development Floodplain Manager, dated February 24, 2020
- L. Approval memo from Amy Crass, Thurston County Environmental Health, dated February 14, 2020
- M. Comment letter from the Nisqually Tribe, dated January 23, 2019 (date assumed to be January 23, 2020)
- N. Comment email from the Squaxin Tribe, dated January 22, 2020
- O. Email from Cailan Nealer, Washington Department of Natural Resources, dated January 21, 2020

- EXHIBIT 2 Letter from Washington Department of Ecology, dated January 29, 2021 re: Water Quality Certification with attached Order No. 19582
- EXHIBIT 3 Email from Marty Beagle to Scott McCormick, dated February 25, 2021 re: Chelsea Farms Condition No. 14
- EXHIBIT 4 Email from Scott McCormick, dated February 25, 2021, accepting proposed revised condition 14 language

Based on the record developed at hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Chelsea Farms, Inc. (Applicant) requested approval of a shoreline substantial development permit (SSDP) to develop commercial intertidal geoduck beds on 0.75 acres of leased tidelands at 7435 Cooper Point Road, Olympia, Washington.¹ The subject tidelands, do not include any upland areas within the subject property, are located on Eld Inlet of Puget Sound. *Exhibits 1, 1.C, and 1.D.*
2. The subject property and surrounding parcels are zoned Rural Residential Resource (RRR 1/5). *Exhibits 1 and 1.B.* Primary permitted uses in the RRR 1/5 zone include single and two-family residences, agriculture, home occupations, and farm housing. *Thurston County Code (TCC) 20.09A.020.* The zoning ordinance defines "agriculture" as including raising, harvesting, and processing clams. *TCC 20.03.040(3).* Consequently, the proposed aquaculture use is allowed in the RRR 1/5 zone. *Exhibit 1.*
3. Surrounding upland parcels are developed with single-family residences. Adjacent tidelands to the south of the project area contain a commercial shellfish farm. *Exhibit 1.D.*
4. The subject Puget Sound shoreline is under the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR), which designates the site as a Rural shoreline environment. Aquaculture is an allowed use in the Rural shoreline environment. Non-exempt development within shoreline jurisdiction that exceeds \$7,047.00 in fair market value requires an SSDP. In this case the proposed geoduck farm is not an exempt activity and the fair market value would exceed \$7,047.00. *Exhibits 1 and 1.D; SMPTR, Section 3.III.D; Exhibit 1; Washington State Register (WSR) 17-17-007.*
5. The proposed geoduck culture area is the portion of the tidelands between -4.5 feet mean lower low water (MLLW) to +1.0 feet MLLW. The geoducks would be planted in 10-inch lengths of four-inch diameter PVC pipe, placed on end and pushed into substrate,

¹ The subject property is legally described as: Section 16 Township 19 Range 2W; TIDELANDS SUITABLE FOR THE CULTIVATION OF OYSTERS IN FRONT OF TR 72 BOSTON HARBOR WATERFRONT TRACTS DIV 1 TGW PTN OF OYSTERLANDS DAF: PTN CONVEYED TO MORRIS; also known as Tax Parcel Number 93019300000. *Exhibits 1 and 1.D.*

leaving approximately three to four inches of each pipe exposed. The purpose of the tubes is to exclude predators, as the geoduck seed are vulnerable due to their small size and shallow depth. The tubes would be placed at a density of approximately one per square foot, and each would be covered by a mesh cap secured by a UV-resistant rubber band. Area netting, if used, would consist of 40- by 40- foot squares secured to the sand with rebar spaced every five feet around the perimeter. *Exhibit 1.D.*

6. The proposed planting area would require no site preparation. No benthic organisms or substrate material would be removed, and there would be no redirection of upland runoff. *Exhibit 1.D.*
7. After planting, site maintenance would include routine inspections by boat at least twice a month while tubes are present. Maintenance would include documentation and release of any live entangled fish or wildlife found within the netting and the removal of any loose nets, tubes, and other debris (including garbage from offsite). The inspections would include not only the planting area but an area at least 1,000 feet downdrift of the planting area. Site visits would also occur after major storms. *Exhibit 1.D.*
8. The tubes and any netting used would be removed approximately 18 to 24 months after planting, once the clams have burrowed to a sufficient depth to provide protection from predators. Workers would remove all materials from the area by boat. Prior to tube removal, the site would be inspected to determine if herring have used any materials on the site as spawning substrate. If herring spawn is found, aquaculture gear removal would be delayed until the eggs have hatched. *Exhibit 1.D.*
9. The geoducks would be harvested starting approximately five to seven years after planting. It is expected that a "wet" harvesting technique (i.e., using divers) would be used most of the time. Harvest would take place by hand with the aid of low-pressure water pumps coupled to hoses and nozzles, which are designed to loosen the clams from the sand. The pumps would be vessel-mounted and equipped with a muffler, and the nozzles would be hand-held by the operator. Water intake lines on the pumps would be fitted with mesh screens to prevent intake of fish and other wildlife. There would be no overland access to the project area; all access would be by boat. No motorized equipment would be operated or refueled on the beach, and no equipment would be stored on site. *Exhibit 1.D.*
10. There is no eelgrass or rooted kelp in the project area. The nearest eelgrass is approximately ten miles to the north. *Exhibit 1.D; Marty Beagle Testimony.*
11. With respect to potential forage fish impacts, the subject property is within an area that has been documented by the Washington Department of Fish and Wildlife (WDFW) as spawning area for surf smelt (but not for herring or sand lance). The project is not expected to conflict with surf smelt spawning because its spawning typically occurs above +5.0 feet tidal elevation, landward of the proposed planting area. The Applicant's staff (who are certified by WDFW for identification of forage fish eggs) would survey the planting area prior to planting. *Kyle Lentz Testimony.*

12. The project would not cause extensive erosion or accretion along the shoreline. While some erosion of beach sand occurs during harvest, it returns to pre-harvest levels after several tide cycles. Any sand accreted while tubes are in place would be dispersed after the tubes are removed. *Exhibit 1.*
13. The aesthetic impact of tubes would be limited in duration. Marine organisms and algae would cover the tubes within weeks of planting, causing them to blend with the beach. The tubes and area netting would be in place no more than 24 months of the five to seven-year culture cycle. While in place, the visibility of the tubes would depend on the tides. According to the Applicant's joint aquatic resources permit application (JARPA), the tubes would be visible above the water level approximately 21% of daylight hours over the course of a year. *Exhibit 1.D.*
14. The project would not conflict with recreation or navigation. There is no public marine access point within the immediate vicinity of the subject property. The upper beach would remain available for walking or other activities. The water overlying the tubes would be usable for water activities. *Exhibits 1 and 1.D.*
15. The project is consistent with aquaculture activities and locations that were included in the 2015 Programmatic Biological Assessment of the US Army Corps of Engineers (ACOE) and the subsequent reviews and biological opinions conducted by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service. Consequently, those documents serve as the reference biological evaluation for the project and no further biological assessment was required as long as project activities occur within ACOE's jurisdiction and within the extent of the biological opinion issued by NMFS. The Applicant intends to follow all of the conditions for aquaculture established by the review agencies, which conditions are designed to protect species listed under the Endangered Species Act, critical habitat of protected species, and essential fish habitat. Species listed as threatened or endangered that occur in the vicinity of the project area include bull trout, Chinook salmon, steelhead, Bocaccio rockfish, yelloweye rockfish, marbled murrelet, and southern resident killer whale. The project would be reviewed by ACOE through an individual project permitting process under Section 10 of the Rivers and Harbors Act. *Exhibits 1.D and 1.K; Kyle Lentz Testimony.*
16. The Washington Department of Ecology (DOE) determined that the project would comply with state water quality requirements and issued a Section 401 Water Quality Certification on January 29, 2021. *Exhibit 2.*
17. The Thurston County Public Health and Social Services Environmental Health Division reviewed the proposal and determined that it meets the requirements of the Thurston County Sanitary Code. Environmental Health did not identify any issues of concern and recommended approval of the SSDP. *Exhibit 1.1.*²

² The undersigned takes note that an Environmental Health Division representative attended the hearing and was available in case questions, but did not feel the need to offer any testimony.

18. The Nisqually Indian Tribe and the Squaxin Island Tribe commented that they have no issues of concern; however, both requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. This request was incorporated into the conditions of the mitigated determination of non-significance (MDNS) and the recommended conditions of SSDP approval. *Exhibits 1, 1.G, 1.M, and 1.N.*
19. The Washington Department of Natural Resources (DNR) manages state-owned land waterward of the project area, as well as a portion of the intertidal area shoreward of the project area. DNR submitted comments requesting that the Applicant be careful to stay within the parcel boundaries (defined by metes and bounds and not by elevation of tidelands) and not trespass onto state-owned lands. *Exhibit 1.O.* The Applicant agreed to a condition of SSDP approval requiring verification of property boundaries and identification of boundaries during activity periods. *Exhibit 3.*
20. Thurston County Community Planning and Economic Development Department (CPED, the Department) acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). In making its environmental determination, the Department considered the following:
 - Master Application
 - SEPA Environmental Checklist
 - JARPA
 - Site Plans
 - Notice of Application
 - Comment emails from adjacent property owners
 - Comment letter from Nisqually Indian Tribe, dated January 23, 2020
 - Email from the Squaxin Tribe, dated January 22, 2020
 - Memo from Thurston County Environmental Health, dated February 14, 2020
 - Email from Washington Department of Natural Resources, dated January 21, 2020
 - Pacific Coast Shellfish Growers Association Environmental Policies
 - 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
 - Washington DNR's Geoduck Aquaculture Best Management Practices dated October 15, 2007

The County determined that, with mitigation and compliance with applicable County, state, and federal laws, the project would not have a probable, significant adverse effect on the environment, and issued a mitigated determination of non-significance (MDNS) on May 8, 2020. The MDNS was not appealed and become final on May 29, 2020.

Exhibits 1 and 1.G.

21. The MDNS contains 18 mitigating measures which require the Applicant to perform or ensure the following: comply with the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture; maintain a 10-foot buffer between the planting area and any eelgrass or kelp; install leasehold boundary markers; place shellfish below the tidal elevation of +5 MLLW and outside of herring or smelt spawning grounds; use UV-resistant fasteners; install unobtrusive signage notifying of contact person for operation; label gear with contact information; remove tubes and netting within 2.5 years of installation; harvest the geoducks during low tides when possible; patrol the tidelands for debris; use gear that blends with the environment and that is arranged to be appealing to upland observers; maintain a minimum distance of 150 feet from the shoreline for washing, storing, fueling, or maintaining land vehicles; minimize glare for temporary lighting (permanent lighting not allowed); minimize noise; halt work and provide notice if archaeological artifacts are observed during operations; and obtain all required state and federal approvals prior to commencing work. *Exhibit 1.G.*
22. Notice of the open record hearing was mailed to property owners within 500 feet of the subject property on February 5, 2021 and published in *The Olympian* on February 12, 2021. *Exhibits 1 and 1.A.* One public comment letter was received in February of 2020 in opposition to the permit, arguing that industrial aquacultural operations threaten forage fish habitat, and salmon and orca recovery, and requesting that use of plastics be prohibited. *Exhibit 1.J.* No additional public comment was presented at the open record hearing. There was no post-hearing written comment submitted following the virtual hearing.
23. With respect to the use of plastics, the Applicant submitted that PVC does not contribute to microplastics, and that biodegradable alternatives create debris. *Kyle Lentz Testimony.* Mesh alternatives to PVC pipe have been considered, but these are more difficult to remove than PVC pipe and they conflict with beach seining, which is an issue of concern to tribes. *Shina Wysocki Testimony.*
24. At the conclusion of testimony, Planning Staff recommended approval subject to the conditions in the staff report. *Exhibit 1; Scott McCormick Testimony.* The Applicant requested an opportunity to fashion an alternate requirement to that recommended in condition 14 as stated in the staff report; this opportunity was provided and a timely alternate condition 14 was submitted for the Department's consideration. *Marty Beagle Testimony; Exhibit 3.* The Department accepted the alternate language for condition 14 as proposed by the Applicants. *Exhibit 4.*

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 Shoreline Master Program for the Thurston Region.

Criteria for Review

Shoreline Substantial Development Permit

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

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

(a) Shoreline Management Act

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

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

(b) Applicable regulations from the Washington Administrative Code

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

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

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

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

(c) Shoreline Master Program for the Thurston Region

SMPTR Section Two, V, Regional Criteria

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

SMPTR Section Three, II, Aquacultural Activities

A. Scope and Definition

Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, bays and estuaries. Aquacultural practices include the

hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

B. Policies

1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
2. Aquacultural use of areas with high aquacultural potential should be encouraged.
3. Flexibility to experiment with new aquaculture techniques should be allowed.
4. Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.
5. Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property.
6. Proposed surface installations should be reviewed for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installations should incorporate features to reduce use conflicts. Unlimited recreational boating should not be construed as normal public use.
7. Areas with high potential for aquacultural activities should be protected from degradation by other types of uses which may locate on the adjacent upland.
8. Proposed aquacultural activities should be reviewed for impacts on the existing plants, animals and physical characteristics of the shorelines.
9. Proposed uses located adjacent to existing aquaculture areas which are found to be incompatible should not be allowed.

C. General Regulations

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

Conclusions Based on Findings

1. As conditioned, the project would comply with the policies and procedures of the Shoreline Management Act. As the Shoreline Hearings Board has acknowledged, the Washington State Legislature has identified aquaculture as an activity of statewide interest that is a preferred, water-dependent use of the shoreline, which when properly managed can result in long-term over short-term benefits and protect the ecology of the shoreline. Aquaculture is allowed outright in the underlying zoning district and in the Rural shoreline environment upon successful demonstration of compliance with applicable provisions in the Shoreline Master Program for the Thurston Region. With the conditions contained in the MDNS and in this decision, and those required by other agencies with jurisdiction, the proposal would be consistent with the policies of the SMA and would be a reasonable and appropriate use of the shoreline. *Findings 2, 4, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 24; 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 residence would have its view obstructed by the proposal and no structure taller than 35 feet would be built. *Findings 5 and 13.*
3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.
 - A. With regard 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 by water. The project is designed to be protective of water quality and the aquatic environment. The aesthetic qualities of the shoreline would be preserved. No evidence in the record suggests the proposal would result in any adverse effects to public health. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied. *Findings 1, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17.*
 - B. With regard to the aquaculture policies, approval of the requested permit would support the SMPTR's stated policy of encouraging aquacultural uses for the sake of strengthening the local economy. The record demonstrates that the site is an area with high aquaculture potential, as the adjacent tidelands are already used in that manner. 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 clean up escaped gear and debris on a regular basis, and because the tubes would not be visible for the vast majority of each growth cycle. The project would not conflict with recreational uses, and a condition of approval is included to prevent trespass onto state-managed lands.

Upland properties are already developed residentially, and there is no evidence suggesting that the aquaculture operation would require protection from the residential uses. The project area is free of eelgrass and rooted kelp, and planting would occur at a lower elevation than is used for forage fish spawning. No material would be removed from the shoreline, except for garbage and escaped aquaculture gear. These features, along with the conditions of approval and ACOE review process, would minimize impacts to plants, animals, and the physical characteristics of the shoreline. *Findings 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, and 24.*

- C. With regard to the aquaculture regulations, the use would not cause extensive erosion or accretion along the shoreline. No processing plant, residential development, or land clearing is proposed. *Findings 1, 6, and 12.*

DECISION

Based upon the preceding findings and conclusions, the request for a shoreline substantial development permit to develop commercial intertidal geoduck beds on 0.75 acre of leased tidelands at 7435 Cooper Point Road is **GRANTED** subject to the following conditions:

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
2. The 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 Growers Association.
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 MLLW³ in order to minimize potential impacts to forage fish habitat.

³ Mean Lower Low Water

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. 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. Any 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 State 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.
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: Chelsea Farms shall verify property boundaries prior to planting or harvesting activities on site. Lease boundaries will be determined by conversion of survey coordinates to latitude/longitude decimal degrees. Markings shall be deployed for personnel to clearly identify property boundaries during these activity periods.⁴
14. Install pipe or other predator exclusion devices in straight rows or block 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

⁴ In the exhibit list, this is referred to as condition 14; however, proposed condition 8 was stricken by agreement of the parties on the record at hearing, resulting in this being number 13.

should be identified early in the growing cycle and crews shall patrol these areas after strong 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.
19. 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. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.
20. 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.
21. 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.
22. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
23. 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 March 9, 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___.