



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. 2022105810
)	
Seattle Shellfish, LLC)	James II Geoduck Farm
)	
)	
for approval of a)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The request for a shoreline substantial development permit to develop a commercial intertidal geoduck farm at 7624 and 7640 Sandy Point Beach Road NE, Olympia, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Seattle Shellfish, LLC (Applicant) requested a shoreline substantial development permit to develop a commercial intertidal geoduck farm on 5.3 acres of leased tidelands at 7624 and 7640 Sandy Point Beach Road NE, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on July 25, 2023. At the conclusion of the hearing, the record was held open to allow completion of the SEPA appeal period, which was due to expire July 26, 2023. The record was also held open through July 27, 2023 to allow any members of the public who were unable to participate in the virtual hearing due to technology issues to submit written comments, with time scheduled for responses from the parties. The record was also held upon through July 27, 2023 to allow the Applicant to respond in writing to pre-hearing public comment. No SEPA appeals were filed, as confirmed via email from the Hearing Clerk, and no post-hearing public comments were submitted, and the record closed on July 27, 2023.

Findings, Conclusions, and Decision
Thurston County Hearing Examiner
Seattle Shellfish Company/James II SSDP, No. 2022105810

Testimony:

At the hearing the following individuals presented testimony under oath:

Heather Tschaekofske, Associate Planner/Biologist, Thurston County Community Planning and Economic Development Department

Derek Epps, Seattle Shellfish LLC, Applicant Representative

Jim Gibbons, Seattle Shellfish LLC, Applicant

Ian Gibbons, Seattle Shellfish LLC

Kelly McDonald, Confluence Environmental Company, Project Ecologist

Jesse DeNike, Attorney, represented the Applicant at hearing.

Exhibits:

The following exhibits were admitted into the record:

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

- A. Notice of Hearing, issued July 10, 2023
- B. Zoning / Vicinity Map
- C. Master Application, submitted on November 18, 2022
- D. JARPA Application, submitted on November 18, 2022, revised April 17 2023
- E. Narrative description and site plans, dated August 13, 2022
- F. Site photos, submitted April 17, 2023
- G. SEPA Mitigated Determination of Non-Significance, issued July 5, 2023
- H. SEPA Environmental Checklist, submitted November 18, 2022
- I. Notice of Application, dated December 28, 2022
- J. Comments from Department of Ecology: email dated December 28, 2022, letter dated January 27, 2023 and follow up email dated April 27, 2023
- K. Preliminary Eelgrass Survey, dated August 13, 2022, and US Army Corp of Engineers Components of a Complete Eelgrass Delineation Report, dated January 9, 2018
- L. Approval memo from Dawn Peebles, Thurston County Environmental Health, dated June 23, 2023
- M. Comment letters from the Nisqually Indian Tribe, dated January 3 and 4, 2023, and May 2, 2023
- N. Comment email from the Squaxin Island Tribe, dated January 3, 2023

- O. Consistency Analysis of the Proposal for the SMA and SMPTR, dated May 16, 2022
 - P. Cultural Resource Assessment, dated March 19, 2023
 - Q. Pacific Coast Shellfish Growers Association Environmental Policies, dated June 2001
 - R. ESA Programmatic Verification: US Army Corp of Engineers: Enclosure 1. Conservation Measures and applicable terms and conditions from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502)
 - S. Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature, dated November 2013
 - T. Harvest Site Certificates and Lease Agreement, dated March 17, 2022
 - U. NOAA Programmatic Biological Opinion, dated September 2, 2016
 - V. US Army Corp of Engineers Programmatic Biological Assessment, dated October 2015
 - W. US Department of Commerce Revised ITS and Biological Opinion Errata, dated September 30, 2016
 - X. USFWS Biological Opinion, dated August 26, 2016
 - Y. Applicant response to Planning requests in matrix, submitted April 17, 2023
 - Z. Corrected JARPA application, dated February 2, 2023
- Exhibit 2 Comments received after publication of staff report
- A. Comment from Betsy Norton, received July 17, 2023
- Exhibit 3 PowerPoint Presentation
- Exhibit 4 Kelly McDonald Resume
- Exhibit 5 Applicant response to public comment dated July 27, 2023
- Exhibit 6 Declaration of Michelle Walker, U.S. Army Corps of Engineers
- Exhibit 7 Programmatic Consultation Annual Report to USFWS and NMFS

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

FINDINGS

1. Seattle Shellfish, LLC (Applicant) requested a shoreline substantial development permit (SSDP) to develop a commercial intertidal geoduck farm on 5.3¹ acres of leased tidelands at 7624 and 7640 Sandy Point Beach Road NE, Olympia, Washington.² *Exhibits 1.C, 1.D, 1.E, and 1.Z.*
2. The SSDP application was received on November 18, 2022 and deemed complete on December 28, 2022. *Exhibit 1.I.*
3. Located on the Nisqually Reach of Puget Sound a short distance north of Tolmie State Park, the subject parcels (both owned by Paul and Gloria James) are zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5) and developed with residential improvements. Adjacent shoreline parcels to the north and south are zoned RRR 1/5 and are developed with single-family residential uses. There is an existing shellfish farm operated by the Applicant on the tidelands to the north of the subject property. Agriculture (which is defined to include shellfish farming) is an allowed use in the RRR 1/5 zone. *Exhibits 1, 1.B, 1.D, and 1.L; Thurston County Code (TCC) 20.09A.020; TCC 20.03.040.3; Derek Epps Testimony.*
4. 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 a Rural shoreline environment, within which aquaculture is an allowed use. Non-exempt development within the shoreline jurisdiction that exceeds \$8,504.00 in fair market value requires review and approval of an SSDP. The proposed geoduck farm has a fair market value exceeding \$8,504.00 and requires approval of an SSDP. *Exhibits 1 and 1.D; SMPTR, Section 3.III.D.*
5. Geoducks would be planted from -4.5 to +5 mean lower low water (MLLW). At that elevation, project activities would avoid documented sand lance spawning habitat found above +5 MLLW and documented surf smelt spawning habitat found above +7 MLLW. There is no eelgrass present in the project area, nor kelp beds.³ The beach has the physical characteristics needed for aquaculture, and it is ready for planting in its current condition; no clearing, modification of the substrate, or other preparatory action is required. The site has been approved by the Washington Department of Health for shellfish harvesting. *Exhibits 1, 3, 1.K, 1.O, and 1.T; Testimony of Kelly McDonald and Derek Epps.*

¹ Although the project area is described as 5.3 acres, the area proposed for cultivation is 4.1 acres, with the remainder to remain fallow. *Exhibit 3; Derek Epps Testimony.*

² The tidelands proposed to be leased are located on tax parcel numbers 72100002900 and 72100003000. *Exhibit 1.D.*

³ TCC 24.25.090.F requires that all uses and activities occurring in marine intertidal and submerged lands avoid impacts to eelgrass and kelp beds. *Exhibit 1.*

6. Consistent with industry standard practices, geoduck “seeds” would be planted by hand in PVC or flexible mesh tubes placed at a density of one tube per square foot within the cultivation area. The tubes would be up to six inches in diameter and up to 13 inches in length and would be inserted into the substrate such that the top third would be visible. The PVC tubes would be covered by individual nets secured with UV-resistant bands (individual nets would not be used with mesh tubes). Area nets might also be used. When used, area nets would be secured with U-shaped rebar stakes placed into the substrate. *Exhibit 1.E; Derek Epps Testimony.*
7. During the growing period, Applicant crews would inspect the site regularly to ensure that the tubes and other gear are secure, and to remove debris. The tubes would be removed after approximately two years, but the area nets might be retained to provide longer protection against predators depending on the maturity of the geoduck at the time. Once predation is no longer a concern, the nets would be removed and the farm would be invisible until harvest occurs. Harvest would occur when geoducks reach approximately 1.5 to two pounds in weight, up to eight years after planting. *Exhibit 1.E; Testimony of Derek Epps Testimony and Kelly McDonald.*
8. Mature geoducks would be harvested using a hand-operated water wand, which is an 18- to 24-inch-long pipe with a nozzle on one end that releases surface-supplied seawater from a hose at a pressure of 40 pounds per square inch and a flow of 20 to 30 gallons per minute. The water intake hose would include a 2.38-millimeter wire mesh screen to prevent fish entrainment. Engines running the pumps would be enclosed in sound-proof housing. *Exhibit 1.E; Derek Epps Testimony.*
9. The indentations in the sand remaining after harvest are typically present only a short period of time (i.e., within two to three tidal cycles). Often the harvested area is replanted within the same tidal cycle. Due to the firmness of the beach within the proposed planting area, the Applicant anticipates that replanting would immediately follow harvest. *Derek Epps Testimony; Exhibit 3.*
10. There would be no lighting installed for the use. If harvest activities occur after dark, individual workers would use headlamps for visibility. *Derek Epps Testimony.*
11. No evidence was submitted that the project would affect navigational access, commercial boat traffic, or recreational uses. The project area consists of private tidelands, and the tubes would extend only a few inches above the beach surface. The tubes would be several vertical feet below the high tide line of +14 feet. There are no public boat docks in the vicinity that might attract boaters to the project area. There are no established commercial navigation channels over the property. No buoys or concrete markers are proposed. *Exhibits 1, 1.D, and 1.O; Derek Epps Testimony.*
12. Based on the testimony of a professional ecologist, the PVC tubes would have little effect on currents, and would accumulate minimal amounts of sediment. Sediments accumulated would return to baseline conditions upon removal of the tubes. With respect to species impacts, the PVC tubes would create an artificial hard substrate that would

temporarily increase habitat diversity. Certain species might be attracted to the area, while others might use the area less. There is not expected to be a difference in use by juvenile salmonids. With respect to water quality, geoducks may provide water quality benefits by removing anthropogenic nutrient contributions through filtration. With respect to harvest activities, resulting turbidity would be similar to natural disturbances such as wind and storms. The physical effects would be localized and limited in duration to approximately two to three tidal cycles. *Exhibit 3; Kelly McDonald Testimony.*

13. The US Army Corps of Engineers (ACOE) regulates shellfish activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. When issuing permits, the ACOE must ensure compliance with the Endangered Species Act (ESA), including requirements to consult with the National Marine Fisheries Service and/or US Fish and Wildlife Service (USFWS) on actions that may affect an ESA-listed species or designated critical habitat. To meet these consultation requirements, the Seattle District of the ACOE developed a Programmatic Biological Assessment (PBA) for shellfish activities in Washington. USFWS and NMFS issued Biological Opinions in response to the PBA, which evaluated the effects of shellfish operations on regulated species and habitat (see Exhibits 1.U and 1.X). For an individual project to be authorized by ACOE under the programmatic consultation, it must fall within the scope of activities and geographic area described in the documents and comply with a series of conservation measures. For geoduck culture, the scope of activities includes (among other things) installing PVC tubes or flexible mesh tubes, installing area nets, harvesting the geoducks by hand, using pressured water to liquify the substrate, and use of vessel support. *Exhibit 1.V; Exhibit 1.O.* Required conservation measures include, among other things, measures to protect native eelgrass and surf smelt and sand lance spawning habitat, measures to ensure that aquaculture gear (tubes, nets, etc.) is labeled and secured, a requirement that beaches be patrolled at least once every three months for purposes of debris retrieval, and a requirement that state and federal agencies be notified if wildlife becomes entangled in nets and other equipment. *Exhibit 1.R.*
14. The Applicant proposes to use the methods and materials described in the programmatic consultation and comply with the required conservation measures. *Exhibits 1.E and 1.O; Exhibit 5.* Compliance with these measures is a mandatory mitigation measure imposed by the mitigated determination of non-significance that was issued for the proposal by Thurston County. *Exhibit 1.G.*
15. One of the concerns raised in public comment on the proposal related to plastics pollution. *Exhibit 2A.* The potential for plastic pollution was evaluated in the NMFS Biological Opinion, which contains the following conclusions regarding plastic:

From this literature, it appears that the material (PVC) is inert, and sediment near tubes on geoduck farms has not shown any evidence of microplastics or leaching of metals (Schenck, 2011). Laboratory analysis indicates PVC is sensitive to temperatures above about 122°F and high ultraviolet light exposure, and that these are the conditions where some leaching may occur (CEPA 2006, Younan et al, 1985). Neither of these conditions occur during shellfish culture. Further, if

PVC pipe was exposed to enough ultra-violet sunlight that the PVC did depolymerize, the chlorine in the PVC might release as chloride ions. This is a relatively non-toxic form of chlorine and is a major constituent of seawater, composing over 1 percent of the weight of seawater. As such, any increase in chloride from PVC depolymerization would be undetectable (Schenck, 2011). Other constituents of concern in PVC are lead, silver, and chromium. Sediment testing around both new and used PVC tubes after 20 months in typical geoduck sediment revealed metals are not detectable in sediment regardless of what pipe was used (Schenck, 2011). Further, Pearce et al. (2007) detected no significant differences in percent organics, oxidation reduction potential, total organic carbon, and total nitrogen immediately before or up to 12 months after the geoduck clam seeding process. We also looked at the potential for leaching of phthalates, a plasticizer used in the production of PVC. However, rigid PVC, including the pipe material used in geoduck culture, does not contain phthalates. As discussed above in the conservation measures section, best management practices including securing cover nets and labeling of geoduck PVC tubes are intended to avoid and minimize the loss of tubes into Puget Sound.

Exhibit 1.U, page 74. As described previously, the required conservation measures dictate that the Applicant must patrol the area at least once every three months to pick up loose plastic. *Exhibit 1.R.* However, the Applicant conducts such patrols on a monthly basis. *Exhibit 5; see also Derek Epps Testimony.*

16. 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 November of 2013. The findings of the Sea Grant research included the following:
 - Geoduck harvest practices have minimal impacts on benthic communities of infaunal invertebrates, with no observed “spillover effect” in habitats adjacent to cultured plots, suggesting that disturbance is within the range of natural variation experienced by benthic communities in Puget Sound.
 - Differences in the structure of mobile macrofauna communities between planted areas with nets and tubes and nearby reference beaches do not persist once nets and tubes are removed during the grow-out culture phase.
 - Nutrients released from a typical commercial geoduck operation are low and localized effects are likely to be negligible.

Exhibits 1.O and 1.S.

17. As requested by the Nisqually Indian Tribe, due to the presence of cultural resources in and around Tolmie State Park, the Applicant commissioned a cultural resources assessment for the subject property, which did not identify cultural resources on site. The Tribe concurred with the conclusions and recommendations of the assessment and requested to be informed of any inadvertent discoveries of archaeological resources. This request was incorporated into the conditions of the mitigated determination of non-

significance. *Exhibits 1.M, 1.P, and 1.G; Heather Tschaekofske Testimony.*

18. Thurston County Public Health and Social Services Environmental Health Division reviewed the proposal for compliance with the Thurston County Sanitary Code and did not identify any issues of concern with respect to the proposed use or existing upland wells and septic systems. Environmental Health recommended approval without conditions. *Exhibit 1.L.*
19. 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
 - JARPA Application
 - Site Plans
 - Project Description
 - Notice of Application issued December 28, 2022
 - Letters from the Nisqually Tribe
 - Email from the Squaxin Tribe
 - Department of Ecology letter and comments
 - Approval memo from Thurston County Environmental Health dated June 23, 2023
 - Army Corps Components of a Complete Eelgrass Delineation Report
 - Consistency Analysis of the Proposal for the SMA and SMPTR
 - Cultural Resource Assessment dated March 19, 2023
 - Pacific Coast Shellfish Growers Association Environmental Policies
 - ESA Programmatic Verification
 - Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature, dated November 2013
 - Harvest Site Certificates and Lease Agreement
 - NOAA Programmatic Biological Opinion
 - Army Corps Programmatic Biological Assessment
 - US Department of Commerce Revised ITS and Biological Opinion Errata

- USFWS Biological Opinion
- US Army Corps of Engineers: Enclosure 1: Conservation Measures and applicable terms and conditions from the Programmatic Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502)

Exhibit 1.G.

20. Upon concluding its SEPA review, the County issued a mitigated determination of non-significance (MDNS) for the project on July 5, 2023. Although public comment objecting to aspects of the environmental review was submitted during the comment period (Exhibit 2A), the MDNS was not appealed and became final on July 26, 2023.⁴ *Exhibit 1.G; Exhibit 5.* The MDNS imposed the following mitigation measures:

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. Project shall comply with all conservation measures and applicable terms and conditions from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Army Corps of Engineers: Enclosure 1: Conservation Measures and applicable terms and conditions from the Programmatic Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502)
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 citizens or agency representatives.
4. The Applicant and subsequent property owners must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
5. No physical work on the beds shall be initiated until the applicant obtains all required local, State and Federal permits and/or approvals.
6. All removed debris resulting from this project must be disposed of at an approved site. Contact the Department of Ecology or the local jurisdictional health department for proper management of these materials.

⁴ The Hearing Clerk confirmed by email that no SEPA appeal was filed by July 26, 2023.

7. 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. Rebar will not be used for markers.
8. 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 I.G.

21. Notice of the application was sent to all owners of property within 500 feet of the site on December 28, 2022. Notice of the public hearing was sent to all owners of property within 500 feet of the site on July 10, 2023 and published in The Olympian on July 14, 2023. *Exhibits I, I.A, and I.I.*
22. 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 and public and agency comment, 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 Zoning Ordinance. Planning Staff recommended that if approval is granted, the conditions detailed in the staff report should be imposed. *Exhibit I; Heather Tschaekofske Testimony.* The Applicant waived objection to the recommended conditions. *Jesse DeNike 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.

1. 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 with 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.

2. 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).

3. 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 existed 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. The state's policy to encourage the development and expansion of aquaculture is codified in RCW 15.85.010. Aquaculture is allowed outright in the underlying zoning district and in the Rural shoreline environment, subject to compliance with the applicable provisions of the Shoreline Master Program for the Thurston Region. Compliance with the conditions contained in MDNS, which incorporate the conservation measures specified in the programmatic ESA consultation, would ensure that the use is protective of the ecology of the shoreline. 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, 12, 13, 14, 15, 16, 19, 20, and 22; 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, either because of high tide or because the tubes and nets have been removed. *Findings 6, 7, and 11.*
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. Based on the ESA programmatic consultation and associated conservation measures, the findings of Sea Grant, the site-specific eelgrass survey, and the testimony provided at hearing, the Applicant has demonstrated that the project would be protective of water quality and the aquatic environment. The shoreline was not identified as being notable for aesthetic, scenic, historic, or ecological qualities. A cultural resource survey was conducted, and no cultural resources were identified in the project area. Because the tubes would extend only a few inches above the beach, and the tubes and nets would be visible during only a portion of the growing cycle, there would not be significant adverse aesthetic impacts. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied. *Findings 1, 5, 6, 7, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 22.*
 - 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 property 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. No permanent lighting would be installed. No conflicts with moorage, recreational boating, sport fishing, commercial fishing or commercial navigation were identified during the review process. The adjacent upland is already developed, and no issues of concern were raised by the Environmental Health Division. The use has been thoroughly reviewed for impacts on plants, animals, and the physical characteristics of the shoreline. There is no eelgrass within the project area, and the project area avoids forage fish spawning areas. Impacts to the physical characteristics of the shoreline would be temporary. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, and 22.*

- C. With respect to the aquaculture regulations, the 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 and 12.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to develop a commercial intertidal geoduck farm at 7624 and 7640 Sandy Point Beach Road NE, Olympia, Washington is **APPROVED** subject to the following conditions.

1. The project must be operated in a manner that is consistent with all applicable policies and provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
2. The preparation, planting, maintenance, and harvesting of 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. The project shall comply with all conservation measures and applicable terms and conditions from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Army Corp of Engineers: Enclosure 1. Conservation Measures and applicable terms and conditions from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (US Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502) (Exhibit 1.R).
4. 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.

5. The Applicant and any subsequent operators must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
6. No physical work on the beds shall be initiated until the Applicant obtains all required local, state, and federal permits and/or approvals.
7. All removed debris resulting from this project must be disposed of at an approved site. Contact the Department of Ecology or the local jurisdictional health department for proper management of these materials.
8. 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. Rebar will not be used for markers.
9. 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.
10. 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.
11. Bed preparation must commence within two years and initial 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.
12. 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.

13. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
14. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.

Decided August 10, 2023.



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 **\$821.00 for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.