

To: Thurston County Community Planning & Economic Development, Joshua Cummings, Director

From: William and Sherry Reus, Ron Smith and Deb Hall

Date: November 26, 2022

Re: Public comments on Project No. 2022103702

Attn: Ron Buckholt

THURSTON COUNTY
RECEIVED
NOV 30 2022
DEVELOPMENT SERVICES

The purpose of this letter is focus attention on a potential reason to disqualify parcel 93000100000 from geoduck cultivation according to RCW 79.135.010.

The legislature of the state of Washington in 2002 made a move to encourage shellfish cultivation by clarifying and even changing the Bush and Callow acts. They clarified some uncertainty surrounding reversion of the oysterlands if not used. They also extended the rights for cultivation of clams and other shellfish. A copy of RCW 79.135.010 is attached.

We want to call attention to (2). This says, "(t)he rights granted under subsection (1) ... do not include the right to use ...subtidal ... lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001."

The next paragraph, (3), clarifies the meaning of "not be deemed to have commenced unless the ... land had been planted with that species of shellfish prior to December 31,2001."

Generally, "commence" means to start, to begin and can occur relative to a date such as December 31, 2001, either prior to or after. "Planted" means to place or set in the ground to grow, to introduce into an area, to establish. It usually involves a human activity.

To our reading, cultivating geoduck in parcel 93000100000 should only be allowed if that species was specifically planted in that parcel before December 31, 2001. We have talked to the long-term residents in this parcel's area. We all are skeptical it was ever planted. Proving a negative by bring forth evidence is impossible as much as we might want to do it.

The shellfish grower or the parcel owner would need to provide positive evidence that this had been done. Of note is that the current owner did not acquire the parcel until 2017. We would hope that the burden would be indisputable proof of geoduck planting prior to December 31, 2001.



William & Sherry Reus
9611 Johnson Point Loop NE
Olympia, WA 98516

reusters@comcast.net

360 789 5911

Bush act/Callow act lands.

(1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts.

[2002 c 123 § 2. Formerly RCW 79.90.570.]

NOTES:

Findings—2002 c 123: "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]