



COUNTY COMMISSIONERS

John Hutchings

District One

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. 2016105519
)	
Chelsea Farms)	
)	
)	
For Approval of a)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop commercial intertidal geoduck beds on approximately 10 acres of private tidelands on Gallagher Cove of Totten Inlet of Puget Sound is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Martin Beagle of Chelsea Farms (Applicant) requested a shoreline substantial development permit to develop commercial intertidal geoduck beds on approximately 10 acres of private tidelands on Gallagher Cove of Totten Inlet of Puget Sound, on the northwest side of the Steamboat Island peninsula (Tax Parcel 93011100000).

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on February 13, 2018.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County
Dawn Peebles, Thurston County Environmental Health Division
Martin Beagle, Applicant Representative
Kyle Lentz, Applicant
Linda Lentz, Applicant

Shina Wysocki, Applicant
Tim McMillan, Olympia Oyster Company (owner of subject property) representative
Greg Rueb
Tim Nord
Preston Troy
Dale Norton
Becky Mabardy
Joe Scharf
Audry Lamb
Diani Taylor Eckerson
Dave Harkema
Lee Ruddy
Sheila Norton
Robert Sapp
Steve Wilson

Exhibits:

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

EXHIBIT 1 Community Planning and Economic Development Department Report, including the following attachments:

Attachment a	Notice of Hearing
Attachment b	Master Applications submitted February 2, 2017.
Attachment c	JARPA Application submitted February 2, 2017.
Attachment d	Vicinity Map
Attachment e	Site Plan and profile view
Attachment f	Site plan of Project and Culture Area
Attachment g	Site Survey dated 11/10/17
Attachment h	Site photos by applicant dated October 10, 2016
Attachment i	Quit Claim Deed for property dated July 19, 1960
Attachment j	Notice of Application dated May 18, 2017 with 500' adjacent property owners list
Attachment k	Notice of Application dated April 13, 2017 with 500' adjacent property owners list

Attachment l	Mitigated Determination of Non-Significance, issued on November 7, 2017 with 500' adjacent property owners list
Attachment m	SEPA Environmental Checklist dated February 2, 2017
Attachment n	Biological Evaluation for Chelsea Farms Gallagher Cove Aquaculture Species Conversion (undated)
Attachment o	US Army Corps of Engineers Nationwide Permit (NWP) 48 dated August 24, 2017
Attachment p	Thurston County data sheet for Shoreline Substantial Development Permit no. 1857, SDP 880014 (Totten Inlet Aquaculture District Designation [multiple parcels, including subject parcel]).
Attachment q	Approval memo from Kyle Overton, TC Environmental Health dated October 25, 2017
Attachment r	Email from Kyle Lentz, President, Chelsea Farms dated October 16, 2017
Attachment s	Email from Tim Rubert, TC Resource Stewardship dated April 12, 2017
Attachment t	Email from Marty Beagle dated April 10, 2017
Attachment u	Letter from Scott McCormick, TC Resource Stewardship dated March 31, 2017
Attachment v	Email from Eric Sparkman, Squaxin Indian Tribe dated November 28, 2012
Attachment w	NHPA Compliance Review for Olympia Oyster Co. dated November 27, 2012
Attachment x	<ol style="list-style-type: none"> 1. Comment Letter from Nisqually Tribe dated February 27, 2017 2. Comment Letter from Michelle De Bell dated November 21, 2017 3. Email from Kathryn Townsend dated May 5, 2017 4. Email from David Gerdes dated May 3, 2017 5. Email from David Gerdes dated May 3, 2017 6. Email from Tim Nord dated May 3, 2017 7. Letter from Tim Nord dated May 2, 2017

8. Letter from Michelle De Bell dated May 2, 2017
9. Email from Ric and Lesley Weatherman dated April 27, 2017 via email from Kaycee Hathaway dated April 28, 2017
10. Letter from Kim and Steve Contris dated April 25, 2017
11. Letter from Joanie Hanke and Sparky Stacy dated April 2017
12. Letter from Dale Norton dated April 23, 2017
13. Letter from Charleen Emmons dated April 30, 2017
14. Email from Steve Contris dated April 18, 2017

EXHIBIT 2 Email comment from Stephen Butter, including attached photographs

EXHIBIT 3 Email comment from Sheryl Ahlblad

EXHIBIT 4 Email comment from Shelby Hentges

EXHIBIT 5 Photos of public notice posting, including maps

EXHIBIT 6 Applicant PowerPoint presentation

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

FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to develop commercial intertidal geoduck beds on approximately 10 acres of private tidelands on Gallagher Cove of Totten Inlet of Puget Sound, on the northwest side of the Steamboat Island peninsula. The tidelands are identified as Tax Parcel 93011100000. *Exhibit 1, page 1.*
2. The subject property consists of 26.7 acres of tidelands owned by Olympia Oyster Company, but only 10 acres of tidelands - roughly centered within the boundaries - are proposed for geoduck cultivation. As indicated by the Applicant, the subject property is currently used for aquaculture; the proposal would result in a conversion from oyster cultivation to geoduck cultivation. The subject property is surrounded by tidelands that are part of a 370-acre shellfish farm. *Exhibit 1, page 3; Exhibit 1, Attachments B and C.*
3. Upland land uses include single-family residences with typical lot sizes ranging from one to two acres. The nearest uplands - to the east - are zoned Rural Residential Resource (RRR) 1/5. Primary permitted uses in the RRR 1/5 zone include single and two-family residences, agriculture, farm housing, and home occupations. *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 use is allowed in the RRR 1/5 zone. *Exhibit 1, pages 4-5 and 8.*

4. Surrounding upland areas are privately owned. Currently, there is no public access from the uplands to the shoreline in the project vicinity. The project area within Gallagher Cove is not used for commercial navigation. Small recreational boats would still be able to use the water overlaying the culture area if approval is granted. *Exhibit 1, Attachment N; Exhibit 6.*
5. No aquaculture processing plant or other upland structures are proposed. No residential development, land clearing, beach fill, or excavation is proposed. *Exhibit 1, Attachment C; Exhibit 1.*
6. The project site is within the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *SMPTR, Section 4, Definitions*. The SMPTR designates the shoreline nearest the site as a Conservancy Shoreline Environment, an environment in which aquaculture is allowed. The proposed geoduck operation requires the installation of equipment on the tidelands that constitutes a “structure” and is considered “development” for the purposes of the SMPTR. Non-exempt development in the shoreline jurisdiction that exceeds \$7,057 in fair market value requires a shoreline substantial development permit (SSDP). *SMPTR, Section 1.II.A; Exhibit 1, pages 4-6; Exhibit 1, Attachment B.*
7. Although details were not available at the hearing, there is evidence that the project area was designated as an Aquaculture District in 1988. *Exhibit 1, page 10; Exhibit 1, Attachment P.*
8. The Thurston County Comprehensive Plan recognizes the importance of aquaculture for the County's rural character and economy. The Plan contains a policy that "marine aquacultural activities should not be considered a nuisance if carried out in a reasonable manner and within applicable regulations. Restrictions should not be imposed on aquaculture activities unless they are necessary for preserving the public health, welfare, and safety." *Thurston County Comprehensive Plan, pages 3-9 and 3-22; Exhibit 1, page 13.*
9. In the proposed geoduck planting, four-inch diameter by ten-inch length tubes made of PVC would be pushed into the intertidal substrate by hand, extending two to four inches above the surface. The tubes would be marked with company name and contact information and maintained in place for 18 to 24 months. Tubes would be installed at a density of one per square foot, and two to three geoduck seed would be placed in each tube. Either area anti-predator netting or individual tube nets may be employed; this is to be decided in consultation with the Services. If used, area netting would be staked with rebar to ensure that it is secure. The proposed geoduck planting area would extend between -4.5 to +2 mean lower low water (MLLW). Tube placement and planting would take place at a rate of approximately one acre per year over a ten-year period during suitable tides by crews of four to six persons. All project access would be by boat.

Exhibit 1, page 2; Exhibit 1, Attachments C, N, and L; Kyle Lentz Testimony.

10. Geoduck harvesting would utilize low-pressure water pumped through a one to two-inch diameter hand-operated hose and infused through a 1/2-inch to 5/8-inch diameter by three-foot probe. The probe would be inserted into the sediment adjacent to the geoduck siphon visible at the surface. Pumps and hoses would be powered by fossil fuel engines located on the harvest vessel and water intake for the pumps would be fitted with screens that meet or exceed National Marine Fisheries Service (NMFS) screening criteria to prevent wildlife entrainment. Harvest (wet or dry) is generally done by two to four-person teams. All fueling would be done on dry land; no fueling or refueling would take place on the water. All project-related supplies would be stored at an off-site upland location and brought to the site by boat. *Exhibit 1, page 2; Exhibit 1, Attachments C, N, and L.*
11. With respect to the estimated timing of project elements, tube installation would require eight days annually, geoduck planting would require between eight and 14 days annually, maintenance would require 14 days annually, and harvest (beginning at year six), would require 14 to 28 days annually. *Exhibit 6.*
12. The shoreline in the vicinity of the project site is not bulkheaded. Riparian vegetation on the uplands is typical of manicured habitat, with grass, shrubs, and mixed deciduous and coniferous tree species. The upper intertidal sediments (above the project area) are primarily muddy sand. The project area is a mud flat, with a sediment transition boundary from mud to muddy sand occurring at approximately +5 feet MLLW. At the time of an intertidal survey of the project site conducted in May of 2016, the upper beach habitat was generally free of macroalgae, with some scattered presence of rockweed and a wrack line consisting of a slight band of ulvoids. The survey found no instances of eelgrass, surfgrass, kelp, salt marsh, or riparian wetlands. *Exhibit 1, Attachment N.*
13. The project is not expected to adversely affect forage fish such as surf smelt, Pacific sand lance, and Pacific herring. Surf smelt and sand lance spawn in sand to pea-gravel sized sediments at elevations from +5 feet MLLW to mean higher high water. Herring typically spawn on aquatic plants. The upper extent of the culture area would be three feet in elevation lower than the spawning habitat. There is very little aquatic vegetation in the project area. *Exhibit 1, Attachment N; Exhibit 6.*
14. The action area for the project, defined as including those areas potentially affected by turbidity from harvesting activities and underwater noise by boat use, is a 150-foot radius surrounding the culture area, or approximately 26 acres total. The action area contains critical habitat for Puget Sound Chinook, Puget Sound bull trout, juvenile canary and bocaccio rockfish, and southern resident killer whale.¹ The professionally prepared project Biological Evaluation (BE) concluded that the project "may affect, but is not

¹ The Hearing Examiner notes that the BE contains conflicting info on Puget Sound bull trout habitat, with page 8 saying no designated habitat, but page 9 saying there is designated habitat. *Exhibit 1, Attachment N.*

likely to adversely affect" these habitats. With respect to the fish species, this determination was based on the following findings: only short-term changes in prey species would occur during harvest; tube presence may increase prey species abundance; no obstruction to migration would be manifested; possible short-term increase in available cover/refugia because of tubes; no salinity changes; only short-term changes in water quality; and no eelgrass or attached kelp in the action area. With respect to the southern resident killer whale, this determination was based on findings that only short-term changes in water quality would occur; that no changes in forage fish species would occur; and that no obstructions to migration would be present. *Exhibit 1, Attachment N.*

15. The BE concluded that the project would not affect the viability, persistence, or distribution of ESA-listed species potentially present either in the project area or the action area, and that the project is highly unlikely to injure or kill individual listed species. Similar to the determination regarding critical habitat, the conclusion was that the project "may affect, but is not likely to adversely affect" the ESA-listed species. *Exhibit 1, Attachment N.*
16. With no structures taller than four inches, the project would not obstruct shoreline views from upland properties. *Exhibit 1, page 2.* During the portion of the culture cycle that tubes are in place on a given acre (no more than 24 months out of a maximum 84-month cycle), the aesthetic impacts of the project would be limited to certain times of year and times of day. From October through February, the tubes would be submerged during daylight hours. From March through September, the tubes would be visible during only a small fraction of the daylight hours. A chart in Exhibit 6, page 12 depicts that during the months of highest visibility (May - July), the tubes would be visible approximately one-sixth of daylight hours. *Exhibit 6.*
17. One of the issues of concern raised in public comment on the application was pollution caused by plastic debris. The Applicant presented credible evidence that the PVC tubes are not likely to create microplastics. While high UV exposure can cause degradation of plastics, in this particular application the plastic is mostly underwater; exposed portions tend to be quickly encrusted by marine organisms that obstruct UV exposure. Further, the plastic gear is designed to not degrade in the marine environment. The MDNS requirement to remove or secure plastic debris during twice monthly site visits would further prevent this process², as would recommended conditions of SSDP approval, which require equipment to be kept in good repair and replaced as needed to minimize microplastics in the marine environment. *Exhibit 6; Exhibit 1, Attachments L and X; Exhibit 1, page 14.*
18. All access to the proposed geoduck beds for planting, maintenance, periodic inspection, and harvesting would be accomplished by boat; there would be no road vehicles used to access the farm at any time. The Applicant anticipates that the project would require one boat trip per day during planting and harvest. Airborne noise from boat engines and the pumps used at harvest time is not expected to exceed 60 dBA. *Exhibit 1, Attachments M*

² This clean-up schedule exceeds the requirements of the National Marine Fisheries Service in its programmatic biological opinions for shellfish activities in Washington State inland marine waters. *Exhibit 1, Attachment O.*

and N; Kyle Lentz Testimony.

19. Another concern raised in public comment was the environmental impact of increased suspended sediments caused by hydraulic harvesting of the geoducks, and concern that the impact would not be confined to the project area. *Exhibit I, Attachment X*. Based on the submitted maps, the cultivation area of 10 acres would be buffered by tidelands totaling 26 acres. The transect map indicates a distance of approximately 180 feet between the cultivation boundary and the exterior site boundary. According to the BE, "minimal increases in turbidity after harvest activities are expected immediately following tidal inundation in areas where sediments have been disturbed, but this would be localized, temporary, and likely limited to the mixing zone defined by the Department of Ecology criteria (typically 150 ft.)." *Exhibit I, Attachment N, page 16*. The sediment plume generated during "wet" harvest events is generally limited to within approximately 16 feet of the harvest plot, resulting in turbidity levels similar to storm events. *Exhibit I, Attachment N, page 17; Exhibit 6*.
20. Water circulation influences water quality in Puget Sound, and Totten Inlet has a faster average flushing rate (1.2 days) than other inlets, which helps to maintain good water quality. The Washington Department of Health identifies the project area as "approved" for shellfish growing. *Exhibit I, Attachment N*.
21. On August 24, 2017, the Applicant received verification from the U.S. Army Corps of Engineers that the project is authorized by Nationwide Permit (NWP) 48 for Commercial Shellfish Aquaculture Activities, subject to numerous terms and conditions designed to protect water quality and aquatic habitat. *Exhibit I, Attachment O*.
22. Pursuant to the State Environmental Policy Act (SEPA), Thurston County acted as lead agency for review of the project's impacts on the environment. The County based its review on the following documents:
 1. Master Application submitted February 2, 2017
 2. SEPA Environmental Checklist submitted February 2, 2017
 3. JARPA Application submitted February 2, 2017
 4. Site Plans submitted February 2, 2017
 5. Draft Biological Evaluation, submitted February 2, 2017
 6. Notice of Applications issued April 13, 2017 and May 18, 2017
 7. US Army Corps Permit, Ref. no. NWS-2016-1096 – Chelsea Farms (Gallagher Cove) dated August 24, 2017
 8. Letter from the Nisqually Tribe dated February 27, 2017
 9. Pacific Coast Shellfish Growers Association Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture
 10. Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature dated November 2013
 11. Effects of Geoduck Aquaculture on the Environment: A Synthesis of Current Knowledge, by Washington Sea Grant, University of Washington dated October 27, 2009

12. Forage Fish Studies Relevant to Geoduck Aquaculture Impacts, by Dan Pentilla dated March 20, 2012
13. FAQ's on PCV Tubes in Puget Sound Geoduck Aquaculture: Toxics, by A. Johnson/ P. Norton of Washington State Department of Ecology, draft dated September 13, 2010
14. WA DNR's Geoduck Aquaculture Best Management Practices dated October 15, 2007.

Based on its review, the SEPA Responsible Official determined that while the project may result in some impacts, with mitigation, such impacts would be of short duration and limited intensity and would not rise to the level of probable, significant, adverse impacts to any element of the environment, including: erosion, water quality, habitat for plants and animals, unique species, migration routes, noise, toxic releases, light and glare, aesthetics, recreation, and cultural preservation. The County issued a mitigated determination of non-significance (MDNS) on November 7, 2017. The MDNS was not appealed and became final on November 28, 2017. *Exhibit 1, page 4; Exhibit 1, Attachments M and L.*

23. The MDNS imposed the following 16 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. All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.
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 property owner and applicant should consider requests by researchers affiliated with federal, state, and County governments to conduct research related to geoduck aquaculture at the site. Access should be granted by the owner and applicant if the research will not disrupt farming activities.
5. The applicant / operator shall routinely inspect, document, and report any fish or wildlife found entangled in anti-predator nets or other culturing equipment. At least twice a month during the time the nets are installed, the applicant shall inspect the nets and maintain a record of observations. Live entangled fish and wildlife shall be released upon observation. During the required bi-monthly site visits the applicant / operator shall remove from the beach or secure any loose nets, tubing or aquaculture related debris.

6. Only washed gravel shall be used for shellfish bed preparation. Unsuitable material (e.g., trash, debris, concrete, asphalt, tires) shall not be discharged or used as fill (e.g., to secure nets, create berms or provide nurseries).
7. Shellfish culturing (e.g. culturing by rack and bag, raft, long-line or ground methods) shall not occur within 10 horizontal feet of eelgrass (*Zostera marina*) or kelp.
8. 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.
9. Shellfish culturing shall not be placed above the tidal elevation of +5 MLLW³ in order to minimize potential impacts to forage fish habitat.
10. Vehicles and equipment will 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.
11. Harvest activities will primarily occur during low tides where the least amount of turbidity will occur.
12. 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.
13. All individual screens placed on tubes shall be secured with UV-resistant fasteners.
14. 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 Resource Stewardship Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.
15. No physical work on the beds shall be initiated until the applicant obtains all required local, State and Federal permits and/or approvals.
16. All tubes, mesh bags, and 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

³ Mean Lower Low Water.

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

Exhibit 1, Attachment L.

24. Thurston County Environmental Health Division (EHD) submitted comments acknowledging that sanitary service for employees would be provided in accordance with the Hazard Analysis and Critical Control Point plan on file with the Washington State Department of Health. EHD submitted that the project meets the requirements of the Thurston County Sanitary Code and recommended approval of the SSDP. *Exhibit 1, Attachment Q; Dawn Peebles Testimony.*
25. The project is exempt from the standards in the Thurston County Drainage and Erosion Control Manual (DDECM) because it is considered commercial agriculture. *DDECM Volume I, Section 2.2.2; Exhibit 1, page 11.*
26. Notice of the application was mailed to all property owners within 500 feet of the site. A first notice, providing for a 20-day comment period ending May 3, 2017, was sent on April 13, 2017. When it was discovered that the April 13 notice did not include all properties within 500 feet of the site, a second notice was issued on May 18, 2017. The second notice provided for a 20-day comment period ending June 7, 2017. *Exhibit 1, Attachments J and K; Exhibit 1, page 4; Scott McCormick Testimony.*
27. Notice of the public hearing was mailed to all property owners within 500 feet of the site and parties of record on January 30, 2018, published in The Olympian on February 2, 2018, and posted at three locations (intersection of 75th Avenue NW & Mirimichi Drive NW, intersection of Steamboat Island Road NW & Stibgen Road NW, and intersection of 79th Avenue NW & Hargus Street NW) on February 2, 2018. *Exhibit 1, page 3; Exhibit 5; Exhibit 1, Attachment A; Scott McCormick Testimony.*
28. Several area residents submitted written comments in objection to the proposal. One of the comments - relating to deficiencies in the Notice of Application - was addressed by the second mailing. Some of the other issues raised in public comment include habitat impacts from siltation, noise and light pollution, ecosystem impacts from species gaining protection from netting, adverse impacts to property values, adverse impacts to wildlife from microplastics, the aesthetic and environmental impact of beach debris, and recreational boat safety. *Exhibit 1, Attachment X.*
29. At hearing there was testimony opposing the application, including the following concerns and questions: that because one acre at a time of the ten acres are to be planted, and the pipes would be in place for 18 to 24 months, this farm will continuously have PVC in the view of surrounding properties; how do they track inspections and is inspection information available to the public; Totten Inlet is already 90% occupied by shellfish operations and geoducks are the worst in terms of impacts; assertion that forage fish were not fully addressed in the project's biological evaluation; the tubes would prevent recreational use of the site; negatively impacts to property values are a result of

aquacultural activities; the proposal would be more impactful and more disruptive than oyster farming of the same area; a challenge to the claim that harvest impacts are short in duration and that they actually disrupt use of the tidelands for a long time; potential harm to migratory birds if the nets are only inspected every two weeks; homeowners' access to the shoreline would be negatively affected; that the use would impact rights of recreation and navigation over the farm; impacts to nearby eagle habitat; that farm activities would create noise that will deprive residents on the cove of quiet enjoyment of their property; that those recreating over the farm would get snagged in the nets and be injured; potential impacts to searun cutthroat trout, which are becoming less common and therefore less available to recreational fishermen; plastics in the marine waters impacting the health of aquatic species because Totten Inlet is narrow and there is incomplete flushing; while the owner of the tideland and the farm operator may receive financial benefit, neighbors of geoduck farms receive no financial benefits; that the cove is too small for that many tubes; that a neighbor currently allows his boat to rest on the tidelands during the summer; and that the farm would prevent area residents from being able to harvest their own steamer clams and oysters. *Testimony of Tim Nord, Preston Troy, Dale Norton, Dave Harkema, Lee Ruddy, Shiela Norton, and Robert Sapp.*

30. Members of the public also testified in support of the proposal, offering the following: geoduck farming is beneficial to the environment because they are filter feeders, and because growers must be careful stewards of the environment to protect their product; geoduck farming is good for the economy because it creates local jobs and generates revenues that are new money in the local economy by selling sustainable food products; testimony that the Applicant, Chelsea Farms, is an active participants in the semi- annual beach clean ups by the Pacific Coast Shellfish Growers Association; praise for the Applicant as an operator of a geoduck farm on the tidelands owned by the person testifying and that they are responsive if he calls with a concern or to let them know of issues; that Chelsea Farms is a good steward of Puget Sound Testimony and employs all industry best management practices; that the substrate returns completely to its pre-planted state within weeks or months; that there is an increase in abundance and diversity of wildlife where geoduck farms are planted; and that Chelsea Farms has a track record of exceptional farm management. *Testimony of Greg Rueb, Becky Mabardy, Joe Scharf, Audry Lamb, Diani Taylor Eckerson, and Steve Wilson.*
31. In response to public testimony regarding concerns, County Staff noted that impacts to property values are not a factor considered in determining whether an SSDP can be approved. *Scott McCormick Testimony.*
32. A representative from Olympia Oyster Company, which owns the project site, was present and addressed the question about converting tidelands from oyster production, which has been in place for about 50 years, to geoducks. Tim McMillan testified that the reason for the conversion is because the substrate is marginal oyster ground the mucky, muddy substrate is marginal oyster ground and is actually excellent substrate for geoduck farming. *Tim McMillan Testimony.*

33. In response to public comment, the Applicants offered the following. Chelsea Farms has never encountered bird entanglement at its farms. Geoduck actually capture and sequester nitrogen that is contributed to Puget Sound from upland sources, rather than releasing any nitrogen into marine waters. Applicant staff would visit the farm at least twice per month for inspection of gear, and all visits would be by water. The PVC pipe they use is white but it becomes greyish in color within days or weeks of being installed due to being encrusted by marine organisms. Area nets, if used, would be anchored and would not float up and entangle swimmers or boaters. They have never seen a recreational user get caught in geoduck gear. The Applicant would be happy to work with neighboring property owners regarding their boats. Staff would visit the site after storm events and for regular inspections between times when more active engagement is required (planting/harvest). All tubes and nets would be marked with their contact information and neighbors are welcome to contact Chelsea Farms regarding concerns. With regard to cumulative impacts of geoduck farming in Puget Sound, the scientific community has reviewed geoduck farming intensively and in the Final Sea Grant study determined that there are no cumulative impacts. This conclusion was not reached by consultants paid by shellfish growers, but rather is unbiased scientific opinion. The Sea Grant study concluded that the beach fully recovers within one month of harvest. There is a potential for about a six month overlap between two plantings (one acre each); however, there would never be all ten acres planted with tubes at once. Again, regarding the short term visual impacts of white PVC tubes, they are obvious at planting but they begin to blend in within one tide cycle. There is no conflict between manila clams, oysters, and geoducks being farmed in tandem and there would be no impacts to private harvests from neighboring tidelands. *Testimony of Kyle Lentz, Linda Lentz, Shina Wysocki, and Marty Beagle.*
34. Specifically in regard to concerns for impacts to forage fish or salmonids, the Applicants contended that while there is documented surf smelt spawning habitat to the northwest of Gallagher cove, it is around the point and on the east side about 500 feet distant from the project site but there is none within the cove. There are no salmon bearing streams in the cove. The Applicant contended that the project is typical of geoduck activities as contemplated in the US Army Corps of Engineers programmatic biological evaluation, which was accepted by “the services” (National Marine Fisheries and US Fish and Wildlife). The Services produced a biological opinion in 2016 addressing Nationwide Permit 48. Nationwide Permit 48 (NWP 48) includes 31 general conditions, 10 Seattle District-specific conditions, one regional condition for shellfish, and 33 conservation measures all designed to ensure protection of species protected in the federal Endangered Species Act and the Magnusson Stevens Fisheries Act. The Applicant has applied for and has been issued coverage under NWP 48. *Martin Beagle Testimony; Exhibit 1, Attachments N and O.*

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

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 Conservancy Shoreline Environment upon review for compliance with applicable provisions in the Shoreline Master Program for the Thurston Region, and is the historic use of the project area. 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, 3, 6, 7, 8, 22, and 23; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Penn Cover Seafarms v. Island County, SHB No. 84-4(1984); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008).*
2. As conditioned, the project would comply with applicable shoreline regulations. A condition of approval is included to ensure that project activities do not commence until 21 days after filing or until after all review proceedings have terminated. No residence would have its view obstructed by the proposal and no structure taller than 35 feet would be built (or actually, no structure over approximately four inches would be placed on site. *Findings 3, 16.*
3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.
 - A. With regard to 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 site-specific BE concluded that the potential effects of the project on water quality and aquatic habitat would be insignificant, and that the project is not likely to adversely impact ESA-listed species or critical habitat. No evidence in the record supports the contention that the proposal would result in any adverse effects to public health. The State Department of Health identifies the project area as an approved shellfish growing area. *Findings 1, 2, 4, 13-15, 17-25.*
 - B. 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. 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 be required to clean up escaped

gear and debris on a regular basis, and because the tubes, even if installed continually on the site one acre at a time, would not be visible during the majority of daylight hours. The water above the tubes would be usable during higher tides. The proposal was reviewed in a site-specific study that considered impacts to endangered and threatened species and critical habitats. The site-specific study concluded that impacts to the existing natural environment would be insignificant. The culture area would be at a lower elevation than the sand lance and surf smelt spawning habitat, which the record shows does not occur in the immediate project vicinity. *Findings 2, 4, 7, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, and 34.*

- C. As conditioned, the project is consistent with the shoreline regulations. No evidence in the record shows extensive erosion or accretion along the shoreline would occur. The site-specific evaluation in the record finds that water quality impacts would be short-term and limited in extent. No processing plant, residential development, or land clearing is proposed. *Findings 5, 14, and 19.*

DECISION

Based upon the preceding findings and conclusions, the request for a shoreline substantial development permit develop commercial intertidal geoduck beds on approximately 10 acres of private tidelands on Gallagher Cove of Totten Inlet of Puget Sound on the northwest side of the Steamboat Island peninsula 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. Keep all aquaculture equipment in good repair and replace equipment such as tubes, netting or tie downs as necessary to minimize microplastics in the marine environment.
3. Ensure that all anti-predator nets and tubes are secured in place to prevent them from escaping from the project area.
4. To ensure the geoduck operation is properly managed, routine inspections and patrols at least once per month and after each storm event shall occur to ensure that nets, tubes and any related equipment are secured.
5. All equipment, including tubes and netting is to be tagged with the operator's name and contact information.
6. Tubes and related equipment are to be colored to blend in with the surrounding environment.
7. Tubes, netting and related aquaculture gear shall be removed within two years of planting.
8. Any motors used for aquaculture or harvest operations must be muffled to reduce noise

impacts. To minimize associated noise, all farming and harvest activities shall fully comply with noise limitations outlined in WAC 173-60 – Maximum Environmental Noise Levels.

9. Aquaculture preparation, planting, maintenance and harvesting shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture except as otherwise conditioned or required by Thurston County Resource Stewardship or any other required government permits.
10. 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.
11. No physical work on the aquaculture beds shall be initiated until all required State and Federal permits and approvals have been granted.
12. Physical activities on the beach pursuant to this permit shall not begin and are not authorized until 21 days from the date of filing of the Hearing Examiner decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filings have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
13. There shall be no removal of shrubbery or fallen trees located on the beach during placement of the bed.
14. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan 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.
15. Any revision to the shoreline permit must be in compliance with WAC 173-27-100: Revisions to permits.
16. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.

Decided February 28, 2018.



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 **\$688.00** for a Request for Reconsideration or **\$921.00** 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 ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.