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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. 2019103306
)	
Hui Xia, NetVenture Farms)	
)	
For Approval of a)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop a commercial intertidal geoduck farm on two acres of private tidelands at 7646 Sandy Point Beach Road NE is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Hui Xia of NetVenture Farms (Applicant) requested approval of a shoreline substantial development permit (SSDP) to develop a commercial intertidal geoduck farm on two acres of private tidelands at 7646 Sandy Point Beach Road NE, Olympia, Washington (Tax Parcel Number 72100003100).

Hearing Date:

The Thurston County Hearing Examiner held a virtual open record hearing on the request on November 10, 2020. The record was held open for two business days, through November 13, 2020, to allow any parties who had difficulty joining the meeting to submit written comments. No post-hearing public comment was submitted and the record closed on November 13, 2020.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County

Dawn Peebles, Senior Environmental Health Specialist, Thurston County

Hui Xia, Applicant

Exhibits:

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

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

- A Notice of Hearing
- B Zoning / Vicinity Map
- C Master Application, submitted on July 3, 2019
- CC JARPA Application, submitted on July 3, 2019
- D SEPA MDNS issued May 8, 2020 with adjacent property owners list dated November 26, 2019
- E SEPA Environmental Checklist, submitted July 3, 2019
- F Notice of Application, dated December 5, 2019 with adjacent property owners list, dated November 26, 2019
- G Comment letter from the WA Dept. of Ecology, dated August 6, 2019
- H Email from the Squaxin Tribe, dated August 6, 2019
- I Email from Cailan Nealer with WA Dept. of Natural Resources, dated July 25, 2019
- J Comment letter from the Nisqually Tribe, dated December 10, 2019
- JJ Comment letter from the Nisqually Tribe, dated July 23, 2019
- K Biological Evaluation by Soundview Consultants, dated June 2019
- L Cultural Resources Survey, dated May 21, 2019
- M Approval memo from Dawn Peebles with TC Env. Health, dated April 22, 2020

Exhibit 2 Environmental Sediment Assessment by Associated Earth Sciences, dated May 30, 2019

Exhibit 3 Hui Xia hearing comments

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

FINDINGS

1. The Applicant requested approval of a shoreline substantial development permit (SSDP) to develop a commercial intertidal geoduck farm on two acres of private tidelands at 7646 Sandy Point Beach Road NE, Olympia, Washington.¹ *Exhibits 1, 1.C, and 1.CC.*
2. The upland portion of the subject property is zoned Rural Residential Resource (RRR 1/5) and is developed with a single-family residence. *Exhibits 1, 1.B, and 1.CC.* Primary permitted uses in the RRR 1/5 zone include single and two-family residences, agriculture, home occupations, and farm housing. *Thurston County Code (TCC) 20.09A.020.* The zoning ordinance defines "agriculture" as including raising, harvesting, and processing clams. *TCC 20.03.040(3).* The proposed use is allowed in the RRR 1/5 zone. *Exhibit 1.*
3. Surrounding land uses include Tolmie State Park, which is immediately to the south of the subject property and to the west of Sandy Point Beach Road, and single-family residences to the north of the subject property along the Puget Sound Shoreline. Although there are no geoduck farms immediately adjacent to the subject property, there are tidelands farther to the northwest that have been used to farm geoducks for more than ten years. The Applicant proposes to provide a one-acre buffer of unplanted tidelands between the project area and Tolmie State Park to avoid conflict with park users. *Exhibits 1, 1.B, 1.CC, and 3; Hui Xia Testimony.*
4. The subject property is within the Nisqually Reach of Puget Sound and is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR designates the site as a Rural shoreline environment, within which aquaculture is an allowed use. Non-exempt development within the shoreline jurisdiction that exceeds \$7,047.00 in fair market value requires review and approval of an SSDP. In this case the proposed geoduck farm is not an exempt activity and the fair market value would exceed \$7047.00. *Exhibits 1 and 1.CC; SMPTR, Section 3.III.D; Exhibit 1; Washington State Register (WSR) 17-17-007.*
5. The subject beach is considered to have high aquaculture potential due to its shallow slope and soft sediment. *Exhibit 1.*
6. The proposed geoduck culture area is the portion of the tidelands between -4.5 feet MLLW to +3.0 feet MLLW. The geoducks would be planted in eight- to 12-inch lengths of four- to six-inch diameter flexible polyethylene mesh tube that would be placed in the substrate with the upper two to four inches tubes exposed. The purpose of the tubes is to exclude predators, as the geoduck seed are vulnerable due to their small size and shallow depth. The tubes would be placed at a density of one per 1.4 square feet, and after

¹ The legal description of the subject property is a portion of Section 23, Township 19 North, Range 1 West, W.M., Plat of Sandy Point Beach Lot 31; also known as Tax Parcel Number 72100003100. *Exhibit 1.*

seeding each would be closed by write-on zip ties that have been labeled with company information. The planting would be done by hand. *Exhibit 1.CC.*

7. The proposed mesh tubes differ from the commonly used PVC tubes in that they do not require rebar to secure, nor do they require large area nets. Once installed, mesh tubes visually blend with and stay anchored in the substrate better than PVC tubes. They are less likely to cause marine debris than PVC tubes, and the flow-through design minimizes alteration of the substrate. The Applicant first started using mesh tubes on other properties in 2018 and has found that they are less likely to produce micro-plastic debris, and that they require less relocation of natural resources on the site. *Exhibits 1.CC and 3; Hui Xia Testimony.*
8. While mesh tubes are in place, the Applicant's crew would patrol the area (including within one-half mile of the farm, as allowed by property owners) at least every other week and within 24 hours of a severe storm to retrieve any farm or marine debris. *Exhibit 3.*
9. Due to tides and the day-use restriction of the adjacent park, the tubes would not be visible or accessible to the public from October to March. *Exhibit 3; Hui Xia Testimony.*
10. The tubes would be removed approximately two years after planting, after the clams have burrowed to a sufficient depth to provide natural protection from predators. From the time of tube removal until harvest, the geoduck farm would be invisible. Workers would periodically visit the site to check growth rates, patrol the site for marine debris, and assure that there has been no damage to the farm. No engines, air compressors, or other noise generating equipment would be used for these activities. *Exhibit 1.CC.*
11. The geoducks would be harvested approximately three to four years after the mesh tubes are removed. Depending on the tides, harvest would be accomplished "in the dry" (i.e., when the beds are exposed during low tide), or "in the wet" (i.e., using divers during high tide). In either case, workers would approach the geoduck beds from the water. Harvest would take place by use of hand-held low-pressure water jets designed to loosen the clams from the sand. The pumps, and the small combustion engine powering the pumps, would be vessel-mounted, and the intake lines on the pumps would be fitted with mesh screens to prevent intake of fish and other wildlife. The engine and pump would be fitted with a muffler and kept inside an insulated box to minimize sound. To avoid conflict with users of adjacent Tolmie State Park, the Applicant proposes to minimize harvest during summer months. *Exhibits 1.C and 1.K.*
12. The project area consists of sandy substrate. Bands of sea lettuce have been observed within the project area, but no eelgrass. *Exhibit 1.K.*
13. There are several species of wildlife listed as threatened or endangered in the Endangered Species Act (ESA) that may occur in the project area, including: bull trout, Puget Sound Chinook salmon, Puget Sound steelhead, bocaccio rockfish, yelloweye rockfish, marbled murrelet, humpback whale, and southern resident killer whale. In addition, the site

vicinity contains critical habitat for bull trout, bocaccio rockfish, yelloweye rockfish, Chinook salmon, and southern resident killer whales. *Exhibit 1.K.*

14. Forage fish, including sand lance, surf smelt, and Pacific herring, are an important prey resource for several ESA-listed species. Within the action area defined by the Applicant's biologist (the project area as well as the geographic area within which certain impacts such as noise can be expected), there are documented sand lance spawning areas, documented surf smelt spawning areas, and mapped pre-spawning Pacific herring holding areas. *Exhibit 1.K.* The conditions of the County's mitigated determination of non-significance (addressed more fully below in Findings 23 and 24) prohibit project activities within forage fish spawning grounds); the mitigation measures were incorporated into the recommended conditions of SSDP approval. *Exhibit 1.D.*
15. The Applicant submitted a Biological Evaluation (BE) for the project, which evaluated potential impacts to identified threatened and endangered species and critical habitat. The conclusion of the BE was that the project "may affect, but is not likely to adversely affect" southern resident killer whales, humpback whales, Puget Sound steelhead trout, Puget Sound Chinook salmon and its habitat, bull trout, bocaccio rockfish, yelloweye rockfish, and marbled murrelets; and will have "no effect" on southern resident killer whale critical habitat, bull trout critical habitat, bocaccio rockfish critical habitat, and yelloweye rockfish critical habitat. *Exhibit 1.K.*
16. The project will require an individual (not nationwide) permit from the US Army Corps of Engineers. The permit application has been submitted and was pending at time of hearing. *Exhibit 3; Hui Xia Testimony.*
17. The project is not expected to interfere with navigational access of shoreline owners and commercial traffic. There are no public docks in the vicinity, and the project would not involve the placement of buoys, concrete markers, or other potentially dangerous objects on the tidelands. *Exhibit 1.*
18. Although the geoduck farm would be on private tidelands, it would be adjacent to state-owned aquatic lands that are part of the Nisqually Reach Aquatic Reserve. The Washington Department of Natural Resources requested that every precaution be taken to prevent trespass. *Exhibit 1.I.* The conditions of the mitigated determination of non-significance and the recommended conditions of SSDP approval require installation of leasehold boundary markers during site preparation, planting, and harvest. *Exhibits 1 and 1.D.*
19. Thurston County Environmental Health Division of the Public Health and Social Services Department reviewed the proposal and determined that it would meet the requirements of the Thurston County Sanitary Code; EHD Staff recommended approval of the SSDP. Sanitary facilities would be available on the barge for workers' use. *Exhibit 1.M; Dawn Peebles Testimony.*

20. The Nisqually Tribe and the Squaxin Island Tribe submitted comments indicating that they do not have concerns about the project; however, both tribes requested that they be informed if archaeological resources or human burials are discovered on site. These requests were incorporated into the conditions of the mitigated determination of non-significance and the recommended conditions of SSDP approval. *Exhibits 1, 1.D, 1.H, 1.J, and 1.JJ.*
21. The Applicant had a cultural resources assessment prepared for the site. This assessment, which was prepared by a professional archaeologist, did not find evidence of historic or precontact cultural materials or deposits within the project area, but recommended that an inadvertent discovery plan (IDP) be implemented. The IDP includes stop work and notification requirements, which were incorporated into the conditions of the mitigated determination of non-significance and the recommended conditions of SSDP approval. *Exhibits 1, 1.D, and 1.L.*
22. The subject property is located within an area that might have been contaminated with heavy metals from air emissions from the old Asarco smelter in Tacoma. Because arsenic has been known to accumulate in geoduck tissue (posing a potential health threat when consumed), the Washington Department of Ecology (DOE) recommended that the Applicant have the sediments on site evaluated. In accordance with the DOE's recommendation, the Applicant submitted an Environmental Sediment Assessment prepared by Associated Earth Sciences, which demonstrated that arsenic and lead concentrations within the subject tidelands are far below the cleanup thresholds established in state law. For arsenic, concentrations of 1.03 to 1.47 milligrams per kilogram (mg/kg) were found, as compared to a cleanup standard of 93 mg/kg. The DOE determined that no remediation is required. *Exhibits 1.G and 2.*
23. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). In making its environmental determination, the County considered the following:
- Master Application
 - SEPA Environmental Checklist
 - JARPA Application
 - Notice of Application
 - Letter from WA DOE dated August 6, 2019
 - Letter from Nisqually Tribe dated July 23, 2019
 - Email from the Squaxin Tribe dated August 6, 2019
 - Memo from Thurston County Environmental Health dated April 22, 2020
 - Email from WA DNR dated July 25, 2020
 - Pacific Coast Shellfish Growers Association Environmental Policies
 - Sea Grant Washington, Geoduck Aquaculture Research Program, Final Report to the Washington Legislature dated November 2013
 - Effects of Geoduck Aquaculture on the Environment: A Synthesis of Current Knowledge, by Washington Sea Grant, University of Washington, dated

November 2013

- WA DNR's Geoduck Aquaculture Best Management Practices dated October 15, 2007

The County determined that, with mitigation, the project would not have a probable, significant adverse effect on the environment and issued a mitigated determination of non-significance (MDNS) on May 8, 2020. The MDNS was not appealed and become final on May 29, 2020. *Exhibits 1 and 1.D.*

24. The MDNS contains 20 mitigating measures which require the Applicant to do the following: comply with the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture; maintain a ten-foot buffer between the planting area and Tolmie State Park and between the planting area and any eelgrass or kelp; install leasehold boundary markers; move any sea life from the planting area by hand instead of with tools; place shellfish below the tidal elevation of +5 MLLW and outside of herring or smelt spawning grounds; use UV-resistant fasteners; install unobtrusive signage notifying of contact person for operation; label gear with contact information; remove tubes within 2.5 years of installation; harvest the geoducks during low tides when possible; patrol the tidelands for debris; use gear that blends with the environment and that is arranged so as to be appealing to upland observers; maintain a minimum distance of 150 feet from the shoreline for washing, storing, fueling, or maintaining land vehicles; minimize glare for temporary lighting (permanent lighting not allowed); minimize noise; and obtain all required state and federal approvals prior to commencing work. *Exhibit 1.D.*
25. Notice of the application was mailed to property owners within 500 feet of the subject property on December 5, 2019. *Exhibits 1 and 1.F.*
26. Notice of the open record hearing was mailed to property owners within 500 feet of the subject property on October 22, 2020 and was published in The Olympian on October 30, 2020. There was no public comment on the application. *Exhibits 1 and 1.A.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide substantial shoreline development applications pursuant to TCC 2.06.010(C), RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

Pursuant to WAC 173-27-150, in order to be approved by the Hearing Examiner, a shoreline substantial development permit application must demonstrate compliance with the following:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of applicable regulations; and

3. The Shoreline Master Program for the Thurston Region.

(a) Shoreline Management Act

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

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

(b) Applicable regulations from the Washington Administrative Code

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

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

WAC 173-27-150

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

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

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

twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(c) Shoreline Master Program for the Thurston Region

SMPTR Section Two, V, Regional Criteria

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

SMPTR Section Three, II, Aquacultural Activities

A. Scope and Definition

Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, bays and estuaries. Aquacultural practices include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

B. Policies

- 1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
- 2. Aquacultural use of areas with high aquacultural potential should be encouraged.
- 3. Flexibility to experiment with new aquaculture techniques should be allowed.

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

C. General Regulations

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

Conclusions Based on Findings

1. As conditioned, the project would comply with the policies and procedures of the Shoreline Management Act. As the Shoreline Hearings Board has acknowledged, the Washington State Legislature has identified aquaculture as an activity of statewide interest that is a preferred, water dependent use of the shoreline, which when properly managed can result in long-term over short-term benefits and protect the ecology of the shoreline. Aquaculture is allowed outright in the underlying zoning district and in the Rural shoreline environment upon review for compliance with applicable provisions in the Shoreline Master Program for the Thurston Region. Compliance with the conditions contained in the County's MDNS and in the instant decision would ensure that the use does not trespass onto the Nisqually Reach Aquatic Reserve or conflict with adjacent recreational uses. 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 2, 4, 7, 15, 16, 18, 23, and 24; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008); Coalition v. Pierce County, SHB No. 14-024 (Findings of Fact, Conclusions of Law, and Order, May 15, 2015) at 34.*

2. As conditioned, the project would comply with applicable shoreline regulations. No residence would have its view obstructed by the proposal and no structure taller than 35 feet would be built. During a substantial portion of the planting cycle the use would not be visible from upland areas. *Findings 6, 9, and 10.*
3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.
 - A. With respect to the regional criteria, the project would not hinder existing nor create new public access to shorelines, as the site is comprised of privately owned tidelands and aquaculture access would be by water. The buffer between the planting area and the adjacent park would ensure that the project does not conflict with recreational uses. The project would be protective of water quality and the aquatic environment, and the aesthetic qualities of the shoreline would be preserved. Consistent with protection of public health, the site was assessed for arsenic and lead contamination and the measured levels of these contaminants is low relative to state thresholds. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied. *Findings 3, 7, 8, 9, 10, 11, 15, 17, 19, 22, 23, and 24.*
 - 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 use incorporates the newer technique of using mesh tubes for geoduck planting, which is expected to benefit the environment and reduce visual impacts. The project would not interfere with navigation of shoreline owners or commercial traffic. As proposed and conditioned, the project would minimize visual impacts to surrounding properties because the Applicant would remove debris on a regular basis, and because the tubes would not be visible most of the time. The project has been designed to avoid conflicts with the adjacent state park. The use of mesh tubes would be protective of the physical characteristics of the shoreline. According to a credible professional biologist consultant, adverse effects to threatened and endangered species of wildlife are not likely. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, and 24.*
 - C. With respect to the aquaculture regulations, there is no evidence that extensive erosion or accretion along the shoreline would occur. No processing plant, residential development, or land clearing is proposed. *Findings 6, 7, 10, and 11.*

DECISION

Based on the preceding findings and conclusions, the request for a shoreline substantial development permit to develop a commercial intertidal geoduck farm on two acres of private tidelands at 7646 Sandy Point Beach Road NE is **GRANTED** subject to the following conditions:

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
2. The preparation, planting, maintenance and harvesting at the subject site shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture.
3. An unobtrusive but visible sign shall be placed at each aquaculture bed listing the name and contact information for a person designated to immediately address problems associated with the aquaculture bed when discovered by a citizen or agency representatives.
4. Shellfish culturing shall not occur within 10 horizontal feet of eelgrass (*Zostera marina*) or kelp.
5. A minimum of a ten-foot buffer shall be maintained between the geoduck planting area and the property line with Tolmie State Park to help avoid or limit conflicts between the park use and the geoduck farming activities.
6. The site is in a sensitive area immediately adjacent to Tolmie State Park. All live sea life, including sand dollars shall be moved by hand if necessary for planting so as to avoid damaging or killing such sea life. No hand tools, i.e. rakes etc. shall be used for this purpose. Rakes and other hand tools may be used for other debris, i.e. loose kelp, rocks and wood debris etc.
7. 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.
8. Shellfish culturing shall not be placed above the tidal elevation of +5 MLLW² in order to minimize potential impacts to forage fish habitat.
9. Vehicles and equipment shall not be washed, stored, fueled, or maintained within 150 feet of any waterbody. All vehicles will be inspected for fluid leaks daily within 150 feet of any waterbody.

² Mean Lower Low Water

10. When possible, harvest activities should occur during low tides where the least amount of turbidity will occur.
11. 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.
12. Any individual screens placed on tubes shall be secured with UV-resistant fasteners.
13. If archaeological artifacts are observed during any phase of the aquaculture operation, all work shall be immediately halted. The State Dept. of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.
14. No physical work on the beds shall be initiated until the Applicant obtains all required local, State, and Federal permits and/or approvals, including the required US ACOE permit.
15. All equipment (including tubes, mesh bags, and area nets) used on the tidelands below the ordinary high-water mark (OHWM) shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address and mailing address). On area nets, if used, identification markers will be placed with a minimum of one identification marker for each 100 square feet of net.
16. Boundary Markers: Leasehold boundary corners will be assigned GPS coordinates during the land survey. Corner markers shall be in place during site preparation and planting. They may be removed during the grow out period, but the corner marker positions must be replaced at the GPS coordinates recorded by the land surveyor prior to any harvest activities. They must remain in place during harvest activities. Rebar will not be used for markers.
17. Install pipe or other predator exclusion devices in straight rows or block that are appealing to upland observers.
18. Whenever and wherever possible, use pipe colored to blend into the surrounding environment.
19. No seeding, culture, or other operations are to be done in biologically sensitive areas of the beach such as herring or smelt spawning grounds.
20. No materials should escape from the farm. Every effort must be made that tubes, nets and fasteners should not wash off the farm area. Patrol area beaches on a regular basis to retrieve debris that does escape the farm as well as other non-natural debris. Due to wave, current or wind action, debris tends to accumulate in certain areas. These areas should be identified early in the growing cycle and crews shall patrol these areas after strong weather events to pick up debris.

21. 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.
22. 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.
23. 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.
24. 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.
25. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
26. 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 November 25, 2020.



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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** 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 ☐ \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____ 20____.