

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a
Washington corporation, also known as
TAYLOR SHELLFISH FARMS,

Petitioners,

v.

PIERCE COUNTY, a political
subdivision of the State of Washington,

Respondent,

and

NORTH BAY PARTNERS, a family
partnership; FOSS M. LESLIE ET
AL., Taxpayers of record for the
property at issue,

Additional Parties.

NO. 08-2-00904-9

RESPONSE OF INTERVENOR
COALITION TO PROTECT PUGET
SOUND HABITAT TO MOTIONS
TO CONSOLIDATE AND FOR
ENTRY OF SETTLEMENT
AGREEMENT

I. OPPOSITION TO MOTION FOR ENTRY OF SETTLEMENT AGREEMENT

This lawsuit arises out of a dispute between Taylor Shellfish Farms, beach owners,
and other residents in Pierce County concerned about the impact of geoduck aquaculture on

1 the natural and built environment. The latter group is represented in this action by the
2 Coalition to Protect Puget Sound Habitat.

3 Taylor has been operating a geoduck farm on the Foss ("North Bay Partners")
4 property in Pierce County for a number of years. The Coalition asserted that Taylor's
5 permit from Pierce County for the operation had expired and that a new permit was needed.
6 Taylor disputed that. Ultimately, the County Planning Department issued a determination
7 that the permit had expired.¹

8
9 As expected, Taylor appealed the County Planning Department's determination that
10 the permit had expired to the County Hearing Examiner. The Coalition's partners requested
11 that the County shut down Taylor's operation if and when the Examiner upheld the Planning
12 Department's determination.² The County agreed that this would be the proper course of
13 action if its Administrative Determination were upheld.

14
15 After a lengthy evidentiary hearing, the Hearing Examiner rendered a decision
16 confirming the Planning Department's determination. At this point, given the Planning
17 Department's prior statement that it would act to terminate Taylor's operations if and when
18 the Hearing Examiner confirmed the determination that the permit had expired, the Coalition
19 anticipated that Taylor would cease operations or that the County would issue a stop work
20 order. Neither of these expected outcomes has resulted.
21
22
23
24

25 ¹ Declaration of Devon N. Shannon, Ex. 1 (Administration Determination, SD 22-00).

26 ² Shannon Dec., Ex. 2 (Bricklin letter of Jun. 15, 2007).

1 With the Hearing Examiner's ruling confirming the Department's determination in
2 place, Taylor's next step should have been to apply for a permit to resume/continue its
3 operations. Indeed, Taylor has filed such a permit application.³ The County's processing
4 of that permit application should have resulted in a determination of whether the operations
5 can resume and, if so, on what conditions.
6

7 However, in addition to filing an application, Taylor also sued the County. In
8 addition to challenging the County's determination that the permit had expired, the County
9 also included a claim for substantial damages. In response, and instead of continuing with
10 the processing of the pending permit application, the County entered into a deal with Taylor
11 to allow the operation to resume. Taylor and the County now ask the Court to confirm the
12 legitimacy of this irregular proceeding.
13

14 Rather than perfunctorily cutting a deal with Taylor, the County should (and must)
15 make its decisions regarding whether to allow operations to continue and, if so, on what
16 conditions, by continuing the processing of the pending application. That process would
17 allow for public input and a reasoned decision based on all the facts and circumstances.
18 Taylor and the County seek to end run that process and, now, seek to obtain the Court's
19 approval for that end run. The Court should not be a part of this travesty.
20
21

22 We understand Taylor's interest in seeking to circumvent the regular permit process.
23 It certainly is in Taylor's interest to avoid public scrutiny of its ongoing operations.
24 However, the County's motivation is inconsistent with its public responsibilities. The
25

26
27 ³ Shannon Dec., Ex. 3 (Taylor SDP Application SD/CP 6-08).

1 County can negotiate a resolution of Taylor's damage claims against it, **but not at the**
2 **expense of avoiding the regular permit process** which assures that the public (and other
3 agencies with expertise) are provided notice and an opportunity to be heard.
4

5 While we have been unable to find any case in Washington where an agency has
6 attempted to circumvent its permit process in this manner, there is a case remarkably similar
7 recently decided by the United States Ninth Circuit Court of Appeals. In *League of*
8 *Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007),
9 the City denied a conditional use permit to a congregation which was interested in operating
10 a synagogue in a residentially zoned area. The congregation then sued the City, alleging
11 the permit had been denied in violation of constitutional rights. "Seeking to avoid further
12 litigation, the City entered into a settlement agreement" that allowed the League to operate
13 a synagogue on the premises. *Id.* at 1053.
14

15
16 The Court considered whether the City could enter a settlement agreement with the
17 permit applicant to avoid the City's prior permitting decision. The Court concluded that the
18 settlement agreement was invalid and unenforceable because it "granted use permission
19 outside of the required statutory process" and an "agreement to circumvent applicable
20 zoning laws is invalid and unenforceable." *Id.* at 1056. "[T]he pendency of litigation is not
21 a blank check for a City when it comes to the rights of its residents." *Id.* at 1053.
22

23 The Court determined that the settlement agreement allowed the congregation to
24 engage in uses that are permitted only by first obtaining a conditional use permit. The City
25 was therefore required to comply with the local zoning code and "statutory framework" for
26
27

1 a conditional use permit "in full." *Id.* at 1056. Because the City failed to "comply with the
2 ordinance's procedural formalities," the Court deemed the settlement agreement "invalid and
3 unenforceable." *Id.* See also *Transcas Property Owners Association v. City of Malibu*, 138
4 Cal. App. 4th 172 (2006) (City cannot contract out of zoning requirements).

5
6 Like the Court in *League of Residential Neighborhood Advocates*, this Court should
7 find the proposed settlement agreement is an "invalid and unenforceable" attempt to
8 "circumvent" the shoreline regulations and permitting process that are currently in play in
9 Pierce County. The Court should refuse to accept or "enter" the settlement agreement and
10 instead should direct Taylor and Pierce County to continue the processing of the pending
11 application.

12 13 II. NO OBJECTION TO CONSOLIDATION

14
15 After the initial Hearing Examiner decision was entered, Taylor appealed that
16 decision with the filing of an action that bears Cause No. 08-2-00904-9. Subsequently, the
17 Hearing Examiner made some minor revisions to his decision. Taylor filed a new action
18 challenging the revised decision (Cause No. 08-2-01571-5). Taylor seeks to consolidate the
19 two actions. The Coalition has no objection.⁴
20
21
22
23
24

25 ⁴ The Coalition has already been granted intervention status in the first cause of action.
26 The paperwork stipulating that the Coalition may intervene in the second action is currently
27 circulating. No party has indicated any objection to that.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a
Washington corporation, also known as
TAYLOR SHELLFISH FARMS,

Petitioners,

v.

PIERCE COUNTY, a political
subdivision of the State of Washington,

Respondent,

and

NORTH BAY PARTNERS, a family
partnership; FOSS M. LESLIE ET
AL., Taxpayers of record for the
property at issue,

Additional Parties.

NO. 08-2-00904-9

DECLARATION OF DEVON N.
SHANNON

I, DEVON N. SHANNON, declare as follows:

1. I am one of the attorneys for intervenor Coalition to Protect Puget Sound
Habitat in this matter. I make this declaration based on my personal knowledge.

Bricklin Newman Dold, LLP
Attorneys-at-Law
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
Tel. (206) 264-8600
Fax (206) 264-9300

1 2. Attached hereto as Exhibit 1 is a true and correct of the County's
2 Administrative Determination that Taylor's SD 22-00 permit had expired.

3 3. Attached hereto as Exhibit 2 is a true and correct copy of David Bricklin's
4 June 15, 2007 letter to the County requesting the County to shut down Taylor's operations.
5

6 4. Attached hereto as Exhibit 3 is a true and correct copy of Taylor's SDP
7 Application SD/CP 6-08.

8 I declare under penalty of perjury under the laws of the State of Washington that the
9 foregoing is true and correct.
10

11 Dated this 16 day of July, 2008, at Seattle, Washington.

12
13
14
15 
16 DEVON N. SHANNON

17 CPPSH\Superior\Shannon Dec

18
19
20
21
22
23
24
25
26
27
28

Bricklin Newman Dold, LLP
Attorneys-at-Law
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
Tel. (206) 264-8600
Fax (206) 264-9300

**Pierce County**

Department of Planning and Land Services

CHUCK KLEEBERG
Director2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7210 • FAX (253) 798-7425

August 8, 2007

CERTIFIED MAIL
7005 3110 0001 9661 4204Taylor Shellfish, Inc.
Attn: Diane Cooper
SE 130 Lynch Road
Shelton, WA 98584RE: Administrative Determination, SD22-00
Taylor Shellfish (Foss Property)

Dear Ms. Cooper:

As you know an issue has arisen regarding your Shoreline Substantial Development Permit (SSDP) to cultivate the intertidal zone of private tidelands for the commercial production of geoduck clams along the east side of Case Inlet/North Bay, commonly known as the Foss Property, SD22-00. This permit was approved by the Hearing Examiner on December 28, 2000. No appeals were filed.

The present issue involves whether the permit has expired. Planning and Land Services has reviewed this matter and concludes that the permit was issued for five years, and that a one-year extension was granted, thereby extending the life of the permit to six years. Accordingly, the permit has expired and further work at the site will require application for and approval of a new shoreline substantial development permit (SSDP).

Our position is based upon Revised Code of Washington (RCW) 90.58.143, Washington Administrative Code (WAC) 173-27-090, Pierce County Code (PCC) 20.76.030, the Hearing Examiner's December 28, 2000, decision, 2007 Attorney General's Opinion (AGO) No. 1, and the Court of Appeals decision in *Washington Shell Fish, Inc. v. Pierce County*, 132 Wn. App. 239 (2006), as set forth below. In addition, we have reviewed the letter from Samuel W. Plauche at Gordon Dorr, L.L.P., dated June 26, 2007.

I. RCW 90.58.143.

RCW 90.58.143(1) sets forth time requirements for SSDPs and other shoreline permits. Subsection 1 provides that these time requirements apply to all shoreline permits and that upon a finding of good cause, local governments may adopt different time limits from those set forth in this statute:

Exhibit 1

Taylor Shellfish, Inc.
Administrative Decision
August 8, 2007
Page 2

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

Subsection 2 of RCW 90.58.143 requires that construction activity or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a SSDP. A one-year extension of the commencement date may be approved.

Subsection 3 provides that authorization for construction activities shall terminate five years after the effective date of the SSDP, with a possible one year extension:

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department. [Emphasis added.]

Subsection 4 addresses the effective date of SSDPs in light of appeals, etc. Of note is that part of this section which provides that the time periods for commencing the construction or activity, and the five year period in subsection (3) do not run where other governmental permits/approvals are required:

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in Subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued, due to the pendency of administrative appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

II. WAC 173-27-090.

WAC 173-27-090 parallels RCW 90.58.143. WAC 173-27-090 Subsections 1-4 appear to be identical to Subsections 1-4 in RCW 90.58.143, except that WAC 173-27-090(3) refers to conducting "development" activities, as opposed to "construction" activities.

Taylor Shellfish, Inc.
Administrative Decision
August 8, 2007
Page 3

III. PCC 20.76.030.

PCC 20.76.030.G sets forth time limitations for SSDPs as well as other shoreline permits (shoreline conditional use permits, shoreline variances, etc.). Subsection G.2 requires that "construction or substantial progress toward construction of a project shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a permit." This subsection goes on to allow the Hearing Examiner to authorize a single one-year extension.

Like WAC 173-27-090(3) subsection G.3 states that "[a]uthorization to conduct development activities shall terminate five years after the effective date of a permit. The Examiner may authorize a single, one-year extension as set forth in Subsection 2, above." Other subsections in G address the date of filing, the effect of appeals and litigation, revisions, etc.

IV. 2007 AGO No. 1.

In January of this year the Attorney General issued an opinion (2007 AGO No. 1) regarding the need for SSDPs for geoduck planting, growing and harvesting activities. Although the opinion did not address the time limitation for SSDPs, the opinion is helpful in that it discusses the activity itself.

In this opinion the Attorney General questioned whether geoduck farming is, in and of itself, a "development" under the SMA.¹ The Attorney General concludes that geoduck tube aquaculture does not necessarily fall within the definition of "development."

Therefore, although hypothetically a project may interfere with use of surface waters, we conclude that the SMA addresses permitting of actual "projects" and involves a concrete examination of whether the project interferes with normal public use of surface waters. The Washington Shell Fish case illustrates this approach by examining the facts of a particular project. Accordingly, we conclude that whether a particular geoduck farm interferes with normal public use of Taylor Shellfish, Inc. surface waters will depend on the facts, which should be determined by local government when deciding if a permit is required. See RCW 90.58.140(1).²

¹ RCW 90.58.030(3)(d) defines "development" to mean: a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level[.]

² The Attorney General also states that geoduck tubes do not fall within the ordinary meaning of the word "structures" referred to in the definition of "development." If tubes are not "structures," then placing them does not appear to amount to "construction."

Taylor Shellfish, Inc.
Administrative Decision
August 8, 2007
Page 4

V. **Washington Shell Fish, Inc. v. Pierce County, Court of Appeals Decision.**³

As noted in the AGO, the Court of Appeals recently interpreted Pierce County's shoreline regulations with respect to geoduck activities in *Washington Shell Fish, Inc. (WSF) v. Pierce County*, 132 Wn. App. 239 (2006). A brief recap of that decision may be helpful. In this case, Washington Shell Fish (WSF) leased County Park property (tidelands) at the Purdy Spit as well as other nearby privately owned tidelands. After receiving numerous complaints about WSF's harvesting and aquaculture activities, PALS issued Cease and Desist (C&D) orders applicable to all 11 leased properties, requiring WSF to stop its geoduck operations because they did not have SSDPs. WSF appealed the C&D orders and the Hearing Examiner upheld the C&D orders. WSF filed a judicial appeal (LUPA) and the Pierce County Superior Court upheld the Examiner's decision. WSF appealed to the Court of Appeals.

WSF argued before the Court of Appeals that it was not required to obtain a SSDP before engaging in geoduck planting and harvesting on leased shorelines because such activities are not "development." The Court of Appeals disagreed:

In these ways, WSF's activities prevented the general public from using certain areas of the water: (1) WSF's geoduck planting and harvesting equipment posed a safety risk to the public; and (2) WSF's activities and fixed objects occupied shoreline water, thereby excluding others. The testimony and exhibits provided substantial evidence to support the hearing examiner's finding that WSF's geoduck activities interfered with the normal public use of the surface water. Therefore, under PCC 20.76.030, WSF engaged in "development" when it harvested and planted geoducks on the leased properties.

WSF also argues that it merely disrupted, but did not remove, sand when it used water jets to harvest geoducks. But the hearing examiner did not expressly address WSF's sand removal; rather, he based his decision on WSF's interference with the public's use of the surface water. Interfering with public use of the surface water is a sufficient ground, standing alone, to support the hearing examiner's findings and the cease and desist orders as they relate to geoduck planting and harvesting. Thus, we do not address whether disrupting sand provides a separate basis for requiring a substantial development permit under Pierce County's shoreline regulations.

The Court of Appeals further found that the activities involving the harvesting and planting of geoducks constituted "substantial" development:

³ A petition for review of this case is pending before the Washington Supreme Court.

Taylor Shellfish, Inc.
Administrative Decision
August 8, 2007
Page 5

WSF admitted engaging in both planting cultivated geoducks and harvesting wild geoducks on the leased lands (except for the Tellefson and Ohlson properties). Neither activity is exempt from substantial development permit requirements under PCC 20.24.030: Harvesting activities are subject to PCC 20.24.030(A), and planting activities are subject to PCC 20.24.030(B) through (D). Because WSF's geoduck activities constituted substantial developments, WSF had to apply for and to obtain the required permits before planting or harvesting geoducks.

Washington Shell Fish, Inc. v. Pierce County, 132 Wn. App. at 250 - 253.

VI. Taylor Shellfish's Position.

In the case at hand, a SSDP was issued on December 28, 2000. More than six years have passed since the permit was issued. In his June 26, 2007, letter, Samuel W. Plauche, Taylor Shellfish's attorney, argues that Condition 5 of the Examiner's decision requires that the approved project be completed within five years, with an option for a one-year extension; and that they have met condition 5 by building/creating/installing the Foss geoduck farm within five years. Mr. Plauche further argues that they do not need a SSDP for continued geoduck farming under the criteria set forth in the AGO discussed above.

Taylor Shellfish describes the process by which it constructed the geoduck farm as establishing the boundaries of the Foss farm, registering it with the WDFW, and planting the entire farmable area with geoduck seed. Although not specifically mentioned, the actual construction appears to refer to the installation of PVC tubes and netting. While Taylor Shellfish considers such activities to be "construction" of structures as required by RCW 90.58.143(3), the Attorney General Opinion referenced above appears to be to the contrary. ("Geoduck tubes do not fall within the meaning of the word 'structures' referred to in the definition of development.")

Regardless of whether the installation of geoduck tubes constitutes "structures" and/or "construction", WAC 173-27-090(3) and PCC 20.76.030.G(3) limit "development" activities to a five year period. Since the Washington Shell Fish case determined geoduck aquaculture falls within the definition of "development," the SSDP approved for this geoduck farm is limited to a five-year period.

Taylor Shellfish also argues that even if a SSDP was required to establish the operation, they do not need a SSDP for continued operation based upon the criteria set forth in the Attorney General Opinion.

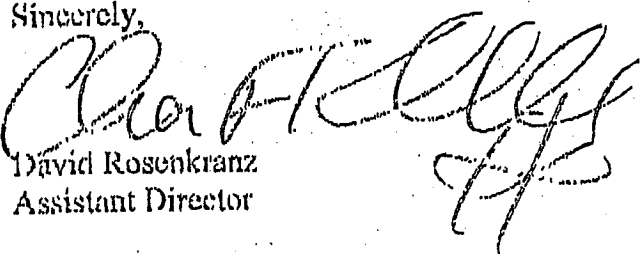
Taylor Shellfish, Inc.
 Administrative Decision
 August 8, 2007
 Page 6

The Planning and Land Services Department disagrees with Taylor Shellfish's interpretation of the *Washington Shell Fish* Court of Appeals decision. The decision was not limited to public lands. The Court of Appeals specifically upheld the requirement for SSDPs on public and private tidelands based upon the wording in Pierce County's shoreline regulations. In the present case, the activities of Taylor Shellfish are similar to the activities of Washington Shell Fish. It is this activity that necessitates the SSDP, both in 2000 and now.

In conclusion, under applicable provisions of the PCC shoreline regulations, Taylor Shellfish was properly required to obtain a SSDP in 2000 for its activities at the Foss property. The permit that Taylor obtained in 2000 expired pursuant to the applicable RCW, WAC, PCC provisions and Hearing Examiner decision. To continue operation of its geoduck farm at this location, Taylor must obtain a new SSDP from the Hearing Examiner.

In accordance with PCC 1.22, Appeals of Administrative Decisions to the Examiner, any person aggrieved or affected by any decision of an administrative official may file a notice of appeal. A notice of appeal, together with the appropriate appeal fee, shall be filed within 14 days of the date of an Administrative Official's decision, at the Public Services Building, 2401 So. 35th Street, Tacoma, Washington.

Sincerely,


 David Rosenkranz
 Assistant Director

IC/TIV/ela

ADMIN/PLANNERS/BYERS/Taylor Shellfish AD 2.doc

c: Samuel W. Plauche, Attorney at Law, Gordon Derr, 2025 - 1st Avenue, Suite 500,
 Seattle, WA 98121-3140
 Tadas Kisielius, Attorney at Law, Gordon Derr, 2025 - 1st Avenue, Suite 500,
 Seattle, WA 98121-3140
 Perry Lund, Unit Supervisor, Department of Ecology, Southwest Region,
 PO Box 47775, Olympia, WA 98504-7775
 Jill Guernsey, Deputy Prosecuting Attorney
 Vicki Diamond, Supervisor, Current Planning
 Kathleen Larrabee, Supervisor, Resource Management
 Ty Booth, Senior Planner
 Trish Myers, Associate Planner
 Mark Luppino, Code Enforcement Officer

Bricklin ♦ Newman ♦ Dold, LLP

DAVID A. BRICKLIN
CLAUDIA M. NEWMAN
JENNIFER A. DOLD
DEVON N. SHANNON

ATTORNEYS-AT-LAW
1001 FOURTH AVENUE
SUITE 3303
SEATTLE, WA 98154
TEL. (206) 264-8600
FAX (206) 264-9300
<http://www.bnd-law.com>



June 15, 2007

Vicki Diamond
Pierce County Planning and Land Services Department
2401 S. 35th St., Room 175
Tacoma, WA 98409-7490

Re: Taylor Shellfish SD 22-00

Dear Ms. Diamond:

I am writing on behalf of my clients, John McCormick and Mary Lou Xitco, regarding the commercial geoduck operation at the Foss property currently operating under SD 22-00. My clients live adjacent to the Foss property and are concerned about the significant adverse impacts the Taylor shellfish operation is having on their property. The geoduck operation appears to be causing a significant movement of sand in the intertidal zone. Suspended sand and sediment is re-settling in different locations, re-shaping the beach. In the process, important biological resources are being lost and the wave action along the toe of the bluff is being altered. While my clients may be able to protect their interest through private means, they also seek to assure that the County's regulation of this operation is valid. Currently, that does not appear to be the case.

This letter, in part, follows up on the email sent to you by my associate, Devon Shannon, on June 6, 2007. Our primary objective is to determine the County's position on whether the Taylor Shellfish SD 22-00 permit has expired, whether Taylor Shellfish is currently operating without a permit, and whether the County will shut down the operation because it does not have a valid permit.

You stated in your June 8, 2007 response to Ms. Shannon's email that the County is currently reviewing the regulations and consulting with DOE and the Prosecuting Attorney's Office regarding the proper interpretation of "20.76.330B," and that no decision had yet been made by the County. First, I would like to point out that this issue has been in front of the County for over a month now. While we appreciate the County's efforts to ensure correct code interpretation, we are asking that the County commit to making a decision within the next week. It has had ample time to make a decision in this matter.

Exhibit 2

Vicki Diamond
June 15, 2007
Page 2

Second, the code section cited in your June 8 email is not found in the Pierce County Code available online. It is unclear from where this section or language was derived. Please clarify this at the same time you provide a decision as to whether SD 22-00 is expired.

Third, the relevance of the code section is not immediately obvious. The County should be interpreting the terms and conditions of the permit itself. It is clear from the language of SD 22-00 that it is now expired. Under the permit, Taylor had five years from "the approval of the permit," here January 2001, to complete the project. If the project was not completed within 5 years, the County could either "extend the permit for one (1) year; or [t]erminate the permit...." There is no ambiguity in these conditions. There is no current opportunity to extend the permit because it has been over six years since the permit was issued. The permit has expired.

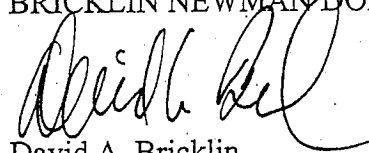
Finally, the June 6, 2007 email also asked whether Taylor Shellfish had provided any of the information requested by Mr. Booth regarding ongoing nature of Taylor's aquaculture operations at the Foss property. You did not respond to this question in your email response and I would ask that you do so now. Moreover, if any information has been provided by Taylor Shellfish, I would like a copy of those documents.

If we have not heard from you within a week, we will proceed with a compliance action before the Hearing Examiner pursuant to PCC 18.140.060. As we believe it is clear the permit has expired, we hope the hearing process will be avoided by the County's issuance of a decision that the permit has expired and issuance of a stop-work order to Taylor Shellfish.

Thank you for your consideration and cooperation.

Very truly yours,

BRICKLIN NEWMAN DOLD, LLP



David A. Bricklin

DAB:kmw
cc: Clients



Planning and Land Services
2401 South 35th Street, Suite 2
Tacoma, Washington 98409
www.piercecountywa.org/pals
Information: (253) 798-3739

Application No: 627965
Application Date: 02/19/2008
Approved Date:

Shoreline Substantial Develop Application

This applicant is applying to: SD/CP6-08 SHORELINE PERMIT FOR COMMERCIAL INTERTIDAL
GEODUCK FARM

Site Address: 0	212TH AV KPS	Inspection Area:	1
Proj. Appl Name: SD/CP6-08 (FOSS GEODUCK FARM - TAYLOR SHELLFISH)		RTSQQ:	00200932
		Parcel No(s):	0020084002
			0020093002
			0020093008
			0020162000

Property Owner: FOSS M LESLIE ETAL
211 S 6TH ST
Mount Vernon WA 98274

Phone No: 360-336-9981

Applicant: TAYLOR SHELLFISH FARMS
130 SE LYNCH RD
SHELTON WA 98584

Phone No: 360-426-6178

Zone 1: Rural Ten

Community Area: Key Peninsula, Islands

Acres: 0 No. of Lots: Sq Ft: Project Value: \$10,000.00

<u>Fee Amount</u>	<u>Fee Description</u>	<u>Quantity Feet (Sq/Ln)</u>	<u>Valuation</u>
\$2,205.00	Planning Review - Shoreline Substantial Development		10000.00
\$2,205.00	Total Fees		
\$2,205.00	Total Paid		
\$0.00	Balance Due		



Planning and Land Services
2401 South 35th Street, Suite 2
Tacoma, Washington 98409
www.piercecountywa.org/pals
Information: (253) 798-3739

Application No: **627958**
Application Date: 02/19/2008
Approved Date:

Shoreline Conditional Use Application

This applicant is applying to: SD06-08 SHORELINE PERMIT FOR COMMERCIAL INTERTIDAL
GEODUCK FARM

Site Address: 0 214TH AVE KPS	Inspection Area: 1
Proj Appl Name: SD/CP6-08 (FOSS GEODUCK FARM - TAYLOR SHELLFISH)	RTSQQ: 00200841
	Parcel No(s): 0020093008
	0020093002
	0020162000
	0020084002

Property Owner: FOSS M LESLIE ETAL
211 S 6TH ST
Mount Vernon WA 98274

Phone No: 360-336-9981

Applicant: TAYLOR SHELLFISH FARMS
130 SE LYNCH RD
SHELTON WA 98584

Phone No: 360-426-6178

Zone 1: Rural Ten

Community Area: Key Peninsula, Islands

Fee Amount	Fee Description	Quantity Feet (Sq/Ln)
\$1,800.00	Shoreline Conditional Use	
(\$1,800.00)	Shoreline Conditional Use - fee exempt per Carolyns S	
<hr/>		
\$0.00	Total Fees	
\$0.00	Total Paid	
<hr/>		
\$0.00	Balance Due	

AGENCY USE ONLY

JARPA EXPIRES LAST UPDATE: MARCH 19, 2007

Agency Reference No.

Date Received:

Created by:

(local govt. or agency)

FEB 21 2008

Project Tracking Number



Washington State JOINT AQUATIC RESOURCES PERMIT APPLICATION (JARPA) Form

Fish Habitat Enhancement Projects per RCW 77.55.181. You must submit copy of completed JARPA form and Fish Habitat Enhancement JARPA Addition to your Local Government Planning Dep't and WA Dep't of Fish and Wildlife (WDFW) Area Habitat Biologist on same day. Note for Local Governments: You must submit comments to WDFW within 15 working days.

Based on instructions at www.ecypermits.org, I am sending copies of this application to the following: (check all that apply)

Local Government for Shoreline: Substantial Development Conditional Use Variance Exemption Revision
 Floodplain Management Critical Areas Ordinance

Washington Department of Fish and Wildlife for Hydraulic Project Approval (Submit 2 copies to WDFW Region)

Washington Department of Ecology for 401 Water Quality Certification (to Regional Office-Federal Permit Unit)

Washington Department of Natural Resources for Aquatic Resources Use Authorization Notification

Corps of Engineers for: Section 404 permit Section 10 permit

Coast Guard for: General Bridge Act Permit Private Aids to Navigation (for non-bridge projects)

For Department of Transportation projects only: This project will be designed to meet conditions of the most current Ecology/Department of Transportation Water Quality Implementing Agreement

PROJECT TITLE: Intertidal Culture of Gooduck - Foss Farm

PROJECT DESCRIPTION: The planting and harvesting of gooduck in the lower intertidal zone of Cass Inlet.

SECTION A - Use for all permits covered by this application. Be sure to ALSO complete Section C (Signature Block) for all permit applications.

1. APPLICANT Taylor Shellfish

MAILING ADDRESS - 5E 130 Lynch Road, Shelton, WA 98584

WORK PHONE
360 426-6178

E-MAIL ADDRESS
DianeC@taylorshellfish.com

HOME PHONE
360 490-4800

FAX #
360 427-0327

If an agent is acting for the applicant during the permit process, complete #2. Be sure agent signs Section C (Signature Block) for all permit applications

2. AUTHORIZED AGENT - Diane Cooper

MAILING ADDRESS

Same

WORK PHONE
Same

E-MAIL ADDRESS
Same

HOME PHONE
Same

FAX #
Same

3. Relationship of applicant to property: OWNER PURCHASER LESSEE _____

4. Name, address and phone number of property owner(s) if other than applicant: North Bay Partnership, Leslie Foss, 211 South 6th Street, Mount Vernon, WA 98273 (360) 336-9981

5. Location (street address, including city, county and zip code, where proposed activity exists or will occur) Tidelands abutting Parcels 0020093002, 0020093008, 002016200, 0020084002, north of Joemma State Park on the west side of Key Peninsula in Pierce County.

Local government with jurisdiction (city or county)

Pierce County

Waterbody you are working in		Case Inlet		Tributary of	WRIA #
Is this waterbody on the 303(d) list <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Puget Sound		15	
If YES, what parameter(s)? DO, Fecal Coliform		Shoreline designation-Natural and Conservancy		Zoning designation-Rural Residential	
1/4 Section	Section	Township	Range	Government Lot	DNR stream type if known
	8, 9, an 16	20 North	1 West		1+
Latitude and Longitude:				Tax Parcel Number	
				0020093003, 0020093008	

6. Describe (a) the current use of the property, (b) structures existing on the property, and (c) existing environmental conditions. Have you completed any portion of the proposed activity on this property? YES NO
 For any portion of the proposed activity already completed on this property, indicate month and year of completion.
This is an established geoduck farm and has been ongoing for almost eight years. See attached overview and supporting technical documents for additional detail.

Is the property agricultural land? YES NO Are you a USDA program participant? YES NO

7a. Describe the proposed work that needs aquatic permits: Complete plans and specifications should be provided for all work waterward of the ordinary high water mark or line, including types of equipment to be used. If applying for a shoreline permit, describe all work within and beyond 200 feet of the ordinary high water mark. If you have provided attached materials to describe your project, you still must summarize the proposed work here. Attach a separate sheet if additional space is needed.
Juvenile clams are planted in PVC tubes buried in the substrate. The tubes are removed within two years and the geoduck continue to grow until harvest at approximately 4-6 years. Harvest occurs by removing the adult geoduck from softened substrate. The substrate around the adult geoduck is softened by inserting water with a hydraulic wand around the geoduck. The area is then replanted.

PREPARATION OF DRAWINGS: See applicable drawings and guidance for completing the drawings. ONE SET OF ORIGINAL OR GOOD QUALITY REPRODUCIBLE DRAWINGS MUST BE ATTACHED. NOTE: Applicants are encouraged to submit photographs of the project site, but these DO NOT substitute for drawings. THE CORPS OF ENGINEERS AND COAST GUARD REQUIRE DRAWINGS ON 8-1/2 X 11 INCH SHEETS. LARGER DRAWINGS MAY BE REQUIRED BY OTHER AGENCIES.

7b. Describe the purpose of the proposed work and why you want or need to perform it at the site. Please explain any specific needs that have influenced the design.
Continuation of the commercial cultivation of geoduck clams.

7c. Describe the potential impacts to characteristic uses of the water body. These uses may include fish and aquatic life, water quality, water supply, recreation and aesthetics. Identify proposed actions to avoid, minimize, and mitigate detrimental impacts and provide proper protection of fish and aquatic life. Identify which guidance documents you have used. Attach a separate sheet if additional space is needed.
Shellfish aquaculture is a preferred use under the State's Shoreline Management Act and Pierce County's Shoreline Master Program. The nature of the operation and shellfish farming in general require clean water and a healthy marine ecosystem to be successful. See attached overview and supporting technical documents for additional detail.

7d. For in-water construction work, will your project be in compliance with the State of Washington water quality standards for turbidity (WAC 173-201A-410)? YES NO

8. Will the project be constructed in stages? YES NO
 Proposed starting date:
 Estimated duration of activity: This is an established farm and activities are ongoing.

9. Check if any temporary or permanent structures will be placed: **N/A**
 Waterward of the ordinary high water mark or line for fresh or tidal waters AND/OR
 Waterward of the mean higher high water for tidal waters?

10. Will fill material (rock, fill, bulkhead, or other material) be placed: **No.**
 Waterward of the ordinary high water mark or line for fresh waters?
 If YES, VOLUME (cubic yards) / AREA (acres)
 Waterward of the mean higher high water for tidal waters?
 If YES, VOLUME (cubic yards) / AREA (acres)

11. Will material be placed in wetlands? YES NO
 IF YES:
 A. Impacted area in acres:
 B. Has a delineation been completed? If YES, please submit with application. YES NO
 C. Has a wetland report been prepared? If YES, please submit with application YES NO
 D. Type and composition of fill material (e.g., sand, etc.)
 E. Material source:
 F. List all soil series (type of soil) located at the project site, and indicate if they are on the county's list of hydric soils. Soils information can be obtained from the natural Resources Conservation Service (NRCS).
 G. WILL PROPOSED ACTIVITY CAUSE FLOODING OR DRAINING OF WETLANDS? YES NO
 IF YES, IMPACTED AREA IN ACRES OF DRAINED WETLANDS.
 NOTE: If your project will impact greater than 1/10 of an acre of wetland, submit a mitigation plan to the Corps and Ecology for approval along with the JARPA form.
 NOTE: A 401 water quality certification may be required from Ecology in addition to an approved mitigation plan if your project wetland impacts are greater than 1/10 acre in size.
 Please submit the JARPA form and mitigation plan to Ecology for 401 certification review.

12. Stormwater Compliance: This project is (or will be) designed to meet ecology's most current N/A stormwater manual, or an Ecology approved local stormwater manual. YES NO
 If YES -- Which manual will your project be designed to meet?
 If NO -- For Clean Water Act Section 401 and 404 permits only -- Please submit to Ecology for approval, along with this JARPA application, documentation that demonstrates the stormwater runoff from your project or activity will comply with the water quality standards; WAC 173-201(A)

13. Will excavation or dredging be required in water or wetlands? YES NO
 IF YES:
 A. Volume: (cubic yards) /area (acre)
 B. Composition of material to be removed:
 C. Disposal site for excavated material:
 D. Method of dredging:

14. Has the State Environmental Policy Act (SEPA) been completed? YES NO Previous (Previous DNS 10/13/01)
 SEPA Lead Agency: Pierce County
 SEPA Decision: DNS, MDNS, EIS, Adoption, Exemption Decision Date (end of comment period)
 SUBMIT A COPY OF YOUR SEPA DECISION LETTER TO WDFW AS REQUIRED FOR A COMPLETE APPLICATION

15. List other Applications, approvals or certifications from other federal, state or local agencies for any structures, construction discharges or other activities described in the application (i.e. preliminary plat approval, health district approval, building permit, SEPA review, federal energy regulatory commission license (FERC), Forest practices application, etc.). Also, indicate whether work has been completed and indicate all existing work on drawings. NOTE: For use with Corps Nationwide Permits, identify whether your project has or will need an NPDES permit for discharging wastewater and/or stormwater.

TYPE OF APPROVAL	ISSUING AGENCY	IDENTIFICATION NO.	DATE OF APPLICATION	DATE APPROVED	COMPLETED?
SEBP	Pierce County	SD22-00	4/00	10/00	Yes
Nationwide Permit 4B	Army COE	NWP4B			Yes
Harvest Site Approval	State DOH	46SP	10/00	10/00	Yes
Aquatic Farm Registration	State DFW	8256	10/00	10/00	Yes

16. Has any agency denied approval for the activity you're applying for or for any activity directly related to the activity described herein?
 YES NO
 If YES, explain:

SECTION B - Use for Shoreline and Corps of Engineers permits only:

17a. Total cost of project. This means the fair market value of the project, including materials, labor, machine rentals, etc. *This is an established farm and therefore has a substantial investment of materials and labor that have been incurred to date. For continuing operations the value is approximately \$20M. in QADNR Form 15 & 10,000 \$0*

17b. If a project or any portion of a project receives funding from a federal agency, that agency is responsible for ESA consultation. Please indicate if you will receive federal funds and what federal agency is providing those funds.

FEDERAL FUNDING YES NO If YES, please list the federal agency.

18. Local government with jurisdiction: Pierce County

19. Provide names, addresses and telephone numbers of adjoining property owners, lessees, etc. *Please note: Shoreline Management Compliance may require additional notice -- consult your local government.*

NAME	ADDRESS	PHONE NUMBER
See attached property listing.		

SECTION C - This section MUST be completed for any permit covered by this application

20. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made, the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work ONLY after all necessary permits have been received.

<i>Carol J. Taylor</i> SIGNATURE OF APPLICANT	DATE <u>2/14/08</u>
<i>Diane Cooper</i> SIGNATURE OF AUTHORIZED AGENT	DATE <u>2/14/08</u>
I HEREBY DESIGNATE <u>Diane Cooper</u> TO ACT AS MY AGENT IN MATTERS RELATED TO THIS APPLICATION FOR PERMIT(S). I UNDERSTAND THAT IF A FEDERAL PERMIT IS ISSUED, I MUST SIGN THE PERMIT.	
<i>Carol J. Taylor</i> SIGNATURE OF APPLICANT	DATE <u>2/14/08</u>
<i>on file</i> SIGNATURE OF LANDOWNER (EXCEPT PUBLIC ENTITY LANDOWNERS, E.G. DNR)	

THIS APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AGENT, IF AN AUTHORIZED AGENT IS DESIGNATED.

18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

COMPLETED BY LOCAL OFFICIAL

- A. Nature of the existing shoreline. (Describe type of shoreline, such as marine, stream, lake, lagoon, marsh, bog, swamp, flood plain, floodway, delta; type of beach, such as accretion, erosion, high bank, low bank, or dike; material such as sand, gravel, mud, clay, rock, riprap; and extent and type of bulkheading, if any)
- B. In the event that any of the proposed buildings or structures will exceed a height of thirty-five feet above the average grade level, indicate the approximate location of and number of residential units, existing and potential, that will have an obstructed view:
- C. If the application involves a conditional use or variance, set forth in full that portion of the master program which provides that the proposed use may be a conditional use, or, in the case of a variance, from which the variance is being sought:

These Agencies are Equal Opportunity and Affirmative Action employers.
For special accommodation needs, please contact the appropriate agency in the instructions

1 I am the legal assistant for Bricklin Newman Dold, LLP, attorneys for the Coalition
2 to Protect Puget Sound Habitat. On the date and in the manner indicated below, I caused
3 the Response of Intervenor Coalition to Protect Puget Sound Habitat to Motions to
4 Consolidate and for Entry of Judgment and Declaration of Devon N. Shannon to be served
5 on:
6

7 Samuel "Billy" Plauché, WSBA No. 25476
8 Amanda M. Carr, WSBA No. 38025
9 GordonDerr LLP
10 2025 First Avenue, Suite 500
11 Seattle, WA 98121-3140
12 bplauche@GordonDerr.com
acarr@GordonDerr.com
(Attorneys for Taylor Resources, Inc. and
Taylor Shellfish Farms)

13 By United States Mail
14 By Legal Messenger
15 By Facsimile
16 By Federal Express/Express Mail
17 By E-Mail

Jerry Kimball
Law Office of Jerry R. Kimball
1200 Fifth Avenue, Suite 2020
Seattle, WA 98101-3132
jkimballaw@seanet.com
(Attorney for North Bay Partners)

By United States Mail
 By Legal Messenger
 By Facsimile
 By Federal Express/Express Mail
 By E-Mail

Jill Guernsey
Pierce County Prosecuting Attorney
955 Tacoma Avenue S., #301
Tacoma, WA 98402

By United States Mail
 By Legal Messenger
 By Facsimile
 By Federal Express/Express Mail
 By E-Mail

21 DATED this 16th day of July, 2008, at Seattle, Washington.

23 
24 _____
KATHLEEN M. MILLER

25 CPPSH\Superior\Decsv

26
27
28
Bricklin Newman Dold, LLP
Attorneys-at-Law
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
Tel. (206) 264-8600
Fax (206) 264-9300