



2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7210 • FAX (253) 798-7425

August 18, 2008

Mr. Samuel Plauche
Attorney at Law
GordonDerr LLP
2025 First Avenue, Suite 500
Seattle, WA 98121-3140

RE: Taylor Shellfish (Foss Property)
Administrative Determination RE Substantial Development Permit (SD22-00)

Dear Mr. Plauche:

We have reviewed your August 5, 2008, request for an Administrative Determination as to whether SD22-00 authorizes the harvest of geoduck that Taylor previously planted on the North Bay (Foss property) tidelands pursuant to SD22-00.

Permit SD22-00 was approved by the Pierce County Hearing Examiner on December 28, 2000. On August 8, 2007, the Planning and Land Services Department (PALS) issued an Administrative Determination finding that the permit had expired (the 2007 Administrative Determination). Earlier this year, the Hearing Examiner upheld the 2007 Administrative Determination. That Hearing Examiner Decision is currently on appeal in Thurston County Cause No. 08-2-00904-9, and Shorelines Hearings Board Cause Nos. 08-010 and 08-017.

The present issue involves the uncertainty of the Hearing Examiner's decision as to the harvest of geoduck currently planted in the Foss tidelands. At present, we understand that those tidelands contain several acres of geoduck seeds that were planted in tracts under SD22-00, before the 2007 Administrative Determination was issued. We further understand that the geoduck tracts are comprised of several age classes, and will mature to harvest size at various times over the next five (5) years. The specific question currently before PALS is whether the harvest of those geoduck is allowed in light of the Examiner's 2008 decision on the expiration issue.

PALS has reviewed this matter and concludes that the harvest of the geoduck planted on the Foss tidelands after SD22-00 was issued (12/28/00) and before the 2007 Administrative Determination was issued (8/8/07) are authorized under SD22-00. The expiration of SD22-00 means only the permit no longer authorizes ongoing or further planting activities on the Foss tidelands.

Our position is based upon RCW 90.58.143(3) which provides that authorization for construction activities shall terminate five years after the effective date of a shoreline substantial development permit, with a possible one year extension:



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(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit.

WAC 173-27-090(3) and PCC 20.76.030.G.3 essentially parallel RCW 90.58.143, except that they refer to “development” activities as opposed to “construction” activities.”

As noted in our 2007 Administrative Determination, the effect of these provisions is that SD22-00 has expired. In order to plant new geoduck seed on the Foss property, Taylor must obtain a new shoreline substantial development permit.¹

Our determination also considers the nature of Taylor’s geoduck operations as we understand them:

- Geoduck cultivation operations occur on a four-to-six-year crop cycle, meaning geoduck clams are harvested from four to six years after they are planted; and,
- Geoduck farms typically contain more than a single crop cycle. Each crop is planted in a tract and is harvested when it grows to maturity (four to six years after planting).

With regard to the harvest of the geoduck currently planted on the Foss tidelands, we note that the planting of those geoduck was expressly authorized under SD22-00, and that the geoduck seed was planted while the permit was in effect (2001 – 2006). The Examiner’s 2000 decision approving SD22-00 did not address the timing of planting of geoduck seed. Nor did it address the issue of whether seed that was planted during the life of the permit could be harvested when the geoducks matured, if maturity occurred after expiration of the permit.

Likewise, the Examiner’s 2008 decision did not specifically address this issue. If the authorization to harvest geoduck planted during the life of the permit expired five years after the permit was issued then, considering the length of time it takes for a geoduck to mature (four to six years), it would not authorize the planting of geoduck seed after the first year of the permit. We do not believe that such an irrational result is an appropriate interpretation of the law or the Examiner’s decisions.

In summary, SD22-00 authorizes Taylor Shellfish to harvest geoduck that were planted on the Foss tidelands pursuant to that permit. All conditions of that permit continue to apply to the harvest of those geoduck. As noted in our 2007 Administrative Determination (and in the Hearing Examiner decision upholding that determination), the planting of any new geoduck on the Foss tidelands requires a new shoreline substantial development permit.

¹ We note that Taylor Shellfish applied for a new shoreline substantial development permit to continue farming the Foss tidelands in February of 2008. This Administrative Determination has no bearing on the validity of that application.

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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 South 35th Street, Tacoma, Washington.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Kleeberg". The signature is stylized and cursive, with the first name "Chuck" written in a larger, more prominent script than the last name "Kleeberg".

Chuck Kleeberg
Director, PALS

CK:cla

c: Jill Guernsey, Pierce County Deputy Prosecuting Attorney