

January 19, 2007

Taylor Shellfish Farms
Attn: Ms. Diane Cooper
130 SE Lynch Rd.
Shelton, WA 98584

RE: **SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: CASE NO. SD53-05
(TAYLOR SHELLFISH FARMS/ MEYER), Case No. SD55-05 (TAYLOR
SHELLFISH FARMS / STRATFORD)**

Dear Applicant:

Transmitted herewith is the decision of the Pierce County Hearing Examiner regarding the reconsideration filed in above-entitled matter.

Very truly yours,

TERRENCE F. McCARTHY
Deputy Hearing Examiner

TFM/dc

cc: Parties of Record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY CODE ENFORCEMENT
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

DECISION ON RECONSIDERATION

CASE NO.: **SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: CASE NO. SD53-05 (TAYLOR SHELLFISH FARMS/ MEYER), Case No. SD55-05 (TAYLOR SHELLFISH FARMS / STRATFORD)**

APPLICANT: Taylor Shellfish Farms
Attn: Ms. Diane Cooper
130 SE Lynch Rd.
Shelton, WA 98584

OWNERS: Arvin and Janice Meyer
6912 – 190th Avenue KPN
Vaughn, WA 98394

David and Sabra Stratford
6812 190th Ave KPN
Vaughn, WA 98394

DECISION:

On the 30th day of November, 2006, the Examiner issued a decision approving a Shoreline Substantial Development permit in the above entitled matter. On the 11th day of December, 2006, Pierce County through Mojgan Carlson, timely filed a Motion for Correction and/or Reconsideration of the Examiner's decision. On the same date Diane Cooper timely filed a Motion for Reconsideration on behalf of the applicants. The Hearing Examiner will first address the issues raised by the County. There were no other properly filed motions.

The County has indicated that a mistake exists on page 2 under Summary of Request of the Examiner's decision and requested removal of parcel number 002110303030. The Examiner, upon review, will order removal of that parcel from the decision.

The County requested that on page 5 in the first full paragraph the statement "no wetland or fish and wildlife will be required provided that all activities are conducted from the water" be removed. Staff has indicated that a fish and wildlife permit is necessary. Given the

explanation of the County, that language will be removed.

Staff has also indicated that a typographical error exists on page 10, paragraph number five and the address will be corrected to read "**6912 – 190th Avenue KPN.**" The subject site will also include only one parcel, parcel number **002110303032.**

In reviewing the conditions, the County has requested that the Examiner revise Condition No. 2. The language in Condition 2 was proposed by the County. The Examiner assumes that the Puyallup Tribe is included within the ambit of Puget Sound Treaty Indian Tribes and therefore denies the same request.

The County asks the Examiner to look at Condition 7 on page 16. Condition 7 is exactly as proposed by the County and the Examiner therefore denies reconsideration of the same. Any request to change a condition has to be made before the record is closed. Condition 25 was also proposed by the County and the Examiner therefore declines to change the language in that condition.

The County asks that the Examiner reconsider Condition 11. The language in Condition 11 which the County wishes to change was proposed by the County and the Examiner therefore declines to change the same. The County also asks the Examiner to review Condition 14. Condition 14 was proposed by the County and therefore the Examiner declines to change the same.

The staff also requested the Examiner review Condition 17. Condition 17 was proposed by the County and therefore the Examiner declines to change the same. Staff also asked the Examiner to reconsider Condition 22 and to add a condition to the report. These provisions were not requested by the staff at the time of hearing and therefore the request is denied.

Staff asks the Examiner to reconsider Condition 23. The language which the Staff is asking the Examiner to reconsider was proposed by the Staff and therefore the request is denied.

Staff requests that the Examiner reconsider Condition 24. In Condition 24 the Examiner suggested that he review this matter after three years because this is a new type of operation and after three years it will have completed a geoduck harvest cycle. The Examiner was of the opinion that at the completion of the cycle, both the applicant and the County would like to refine the conditions herein. The Examiner attempted to use the provisions for revisions to provide for the review. Given the fact that both the County and the applicants object to a review in three years, the provision will be stricken. This matter will be reviewed in five years. Condition 24 will be revised to read: **This project shall be**

reviewed in five years from the effective date of approval by the Hearing Examiner to examine the impacts of operations and each of these conditions.

The County requested the Examiner reconsider Condition 26 and similarly finds a conflict between Condition 26 and 33. A review of the entire decision will reflect that normally the applicant will use small mesh but as expressed in Condition 43, in the limited circumstances where fledgling eagles are present or where the applicants or Tacoma Audubon Society have identified eagles nests in the immediate vicinity, then for the time period of May through August of each year, individual nets will be used on tubes and larger nets for that period and that period only. The Conditions 43 and 44 are specifically designed as an exception to Condition 26.

Staff has also asked that the Examiner reconsider Condition 27. This Examiner will agree to delete the words "or fish and wildlife" even though the same was proposed by staff. Condition 27 is hereby revised to read that **"no access or activity by the applicant shall be allowed near the shoreline without the applicant first obtaining wetland review and approval."**

The language in Condition 36 was proposed by staff and therefore the Examiner declines to revise the same.

The language in Condition 38 was proposed by staff and therefore the Examiner declines to revise the same.

Condition 18 and 39 were proposed by staff and therefore the Examiner declines to change the same.

The staff has requested that the Examiner revise Condition 41. Upon reading staff's proposal, there appears to be but one word difference, replacing an "or" with an "and" which appears to be a distinction without a difference and the Examiner therefore denies the same.

Staff also requests in their Request for Reconsideration the addition of two new conditions which were not subject to the hearing and therefore their request on each is denied.

Taylor Shellfish also submitted a Request for Reconsideration, as stated above. They requested reconsideration of the following:

Condition 1 and 4. Condition 1 and 4 appear to be duplicative. This request should have been made during hearing. The provisions do not conflict with each other and therefore the request to change either of the conditions is denied.

The applicant also asked for reconsideration of Condition 9. The Examiner agrees that in order to ease the plight of Taylor Shellfish, Condition 9 will be revised to read as follows: **"The color of tubes shall be gray or beige to match the beach area and they shall be marked with the applicant's name and telephone number or name and website address."**

The applicant also requests reconsideration of Condition 11. Condition 11 indicates that no activity or access by the applicant, that is Taylor Shellfish shall take place near the shoreline until the County approves the appropriate permit. There is nothing within Condition 11 that speaks to the owner's activities.

The applicant also requests reconsideration of the limitation upon hours of operation in Condition 12. A time limitation upon hours of operation is not an unusual condition where two incompatible uses exist side by side. The Department of Natural Resources has, contrary to the representations of the applicant, adopted an 8:30 a.m. to 4:30 p.m program, Monday through Friday, with no holidays in order to minimize the impact of noisy geoduck harvesting upon upland residents. The Examiner has adopted this limitation to minimize the impact of noisy geoduck operations upon the residents living in the area of operation. Waking up individuals at all times of the night with talking and the use of equipment intensifies a built-in conflict between the residential use and the applicant's operations. The applicant has the same ability to harvest as do individuals operating under DNR leases. From the description of operations, Taylor Shellfish is using the same process as DNR is using in harvesting. The DBA limitation does not prohibit talking and other accidental noises which, in a rural residential area located adjacent to the water, will carry for long distances. From the description of the work, it would appear that planting would be done during the day time because of light and the harvesting would benefit from being done during the day time also. The applicant's proposal to use lights to harvest at night time or other activities at night, would be an additional annoyance to the residents in the immediate area. This limitation not only protects the individuals that live in the area from noise of operation, it also allows for ease of enforcement of county regulations for county officials. Taylor Shellfish has the ability to operate in an identical manner as does DNR. The time limitations are used to minimize conflicts between two incompatible uses, that of noisy commercial farming and the quiet residential life in the rural area. Having time limitations upon noisy operations at night is one of the prime basis for helping to eliminate problems between these two uses. Limiting the hours of operation along with the applicant maintaining and controlling their equipment should aid in minimizing the differences between residential uses and noisy aquaculture operations. The DBA limitation in and of itself, is not sufficient to eliminate or minimize the impact of commercial geoduck operations upon the residents in the area.

The applicant is also requesting a clarification of Condition 17, asking for a definition of the word "adjoin." When the Examiner used the language, it was to mean anything adjacent to the site. Based upon the applicant's request for clarification, the Examiner revises Condition 17 to read as follows: **"Neighbors within 300 feet of the proposed site must be informed of upcoming harvest activities at least five days in advance."**

Condition 23 can be clarified as follows: **"In using the word applicant, it is the intent of the Examiner to refer to Taylor Shellfish. Access to the site by employees of Taylor Shellfish shall be from the water only. The use of vehicles and other heavy equipment on intertidal areas and beaches must be avoided or minimized."**

As previously explained in the County's portion of this Reconsideration Decision, this Examiner's reasoning for calling for a three year review gives both the applicant and the County a chance to take a second look after one complete rotation to determine if any changes should be implemented. However, based upon the applicant's request and the County's request, the Examiner has changed the language regarding the same.

Condition 25 was proposed during the hearing and there was no objection to the same and therefore it will stand as drafted.

Condition 43 is based upon the agreement of Tahoma Audubon Society.

Condition 26 is based upon the Taylor Shellfish agreement with the parties of record.

Conditions 28-37 were presented during the hearing and no objections were made during the hearing and therefore the conditions will remain as drafted.

Condition 42 is an overall condition. Condition 43 and 44 are exceptions to Condition 42. They apply when, and only when, eagles or an eagle nest are in the area. Condition 43 will be revised based upon the applicant's request to read as follows: **"The nets shall be one-half inch by one-half inch mesh or one inch stretch at the time of planting. After initial geoduck growing period, the applicant has agreed to replace these nets with a wider mesh of one and a half by one and a half-inch to minimize bird predation. This provision is designed for the limited purpose only of a situation where an eagle's nest or fledgling eagles are in the immediate area. In all other cases, Condition 42 shall apply."**

Based upon the above, the Examiner has revised the decision in accordance with the above and issues an amended Report and Decision.

ORDERED this ____ day of January 2007.

TERRENCE F. McCARTHY
Deputy Hearing Examiner

TRANSMITTED this _____ day of January 2007, to the following:

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Vaughn, WA 98394

David and Sabra Stratford
6812 190th Ave KPN
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APPEAL OF EXAMINER'S DECISION: The final decision by the Examiner may be
appealed in accordance with ch. 36.70C RCW.