



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

BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

COALITION TO PROTECT PUGET
SOUND HABITAT, SUSAN
MACOMSON and LAURA
HENDRICKS

Appellants,

v.

THURSTON COUNTY and TAYLOR
SHELLFISH

Respondents.

NO.

PETITION FOR REVIEW

1. Identity of Appealing Parties

The appellants are:

Coalition to Protect Puget Sound Habitat
Susan Macomson, member
Laura Hendricks, member

The designated representative for the appellants is:

Laura Hendricks
Coalition To Protect Puget Sound Habitat
Box 228
Vaughn, WA 98494

Application and Permit Decisions

Attached hereto are the following documents as required by WAC 461-08-350:

Exhibit A Taylor Shellfish's Application for a Shoreline Substantial Development

Permit, Project No. 2011-104-210

1 Exhibit B Thurston County Hearing Examiner Decision, originally issued January 10,
2 2013; modified decision issued January 25, 2013.

3 Exhibit C Thurston County Hearing Examiner Decision on Reconsideration, issued
4 January 25, 2013

5 Exhibit D Thurston County Board of County Commissioners Decision, issued March
6 26, 2013

7
8 2. A Short and Plain Statement Showing the Grounds Upon Which the Appealing Party
9 Considers the Decisions to be Unjust or Unlawful and a Clear Statement Upon Which
10 the Appealing Party Relies to Sustain the Grounds for the Appeal

11 The Thurston County Board of County Commissioners (County Commissioners) erred in
12 denying Appellants' appeal and affirming the Thurston County Hearing Examiner's decision on
13 the shoreline permit at issue in this appeal. The County Commissions also erred in affirming the
14 Hearing Examiner's decision regarding mitigation and conditions attached to the permit.

15 A Shoreline Substantial Development Permit is required for aquaculture operations within
16 Thurston County, SMPTR, Section 1.II.A. WAC 173-27-150 requires any substantial
17 development permit to be consistent with the policies and procedures of the Shoreline
18 Management Act and its implementing regulations and with the Thurston County Shoreline
19 Master Program.

20 A. During the public hearings before the County Commissioners and the Hearing, the
21 Appellants clearly demonstrated that the geoduck and clam development violates the Shoreline
22 Management Act (SMA) and the Thurston County Shoreline Master Program (TCSMP). These
23 industrialized operations not only cause harm, damage and loss of ecological functions and values
24 of the shorelines, both short-term and long-term, but create water/land marine plastic pollution.
25 Recreational usage of the shoreline will be restricted and these operations pose safety risks for the
26

1 public. These impacts are viewed both in isolation and cumulatively. Impacts include, but are not
2 limited to the following:

- 3 • There will be harm, damage and loss of Puget Sound natural plant and animal life that
4 are integral components of the natural biodiversity and marine food web.
- 5 • There will be adverse impacts on forage fish and species that rely on forage fish
6 (including endangered salmon). The high intensity of the planted number of geoducks
7 and clams growing in this development will deprive juvenile forage fish of their
8 necessary food source. The geoducks also will consume or otherwise kill a multitude
9 of spawning species eggs and larvae in the intertidal project area including forage fish
10 eggs and larvae. In-water harvesting of geoducks will deplete prey resources and
11 create sediments that are harmful to juvenile salmon. These impacts, individually and
12 cumulatively, will be adverse to forage fish, endangered salmon, and other species.
- 13 • Degrading plastic debris, including small particles of plastic, will be released from the
14 facility into Puget Sound causing adverse impacts on various marine species
15 including, but not limited to forage fish.
- 16 • Degrading plastic netting will decrease biodiversity, increase siltation/sedimentation,
17 increase organic matter, entangle aquatic life as well as pose a safety risk for the
18 public.

19 Yet, despite substantial, scientific-based evidence demonstrating commercial geoduck and clam
20 aquaculture degrades the ecological functions and values of the shoreline environment in direct
21 violation of the Shoreline Management Act, the Commissioners and the Hearing Examiner
22 approved the permit.

23 B. The County Commissioners and the Hearing Examiner erroneously based their
24 approval on unsubstantiated and/or inadequate information.

- 25 • Many of the impacts of a facility of this type on the environment are not well known
26 or studied. Faced with these important data gaps, the County Commissioners should
have required additional studies. Both the County Commissioners and the Hearing
Examiner made their decision before the data gaps were filled in violation of WAC
197-11-080(1).

1 C. The County Commissioners, in affirming the Hearing Examiner, authorized the
2 issuance of a shoreline permit that violates: the Shoreline Management Act, Shoreline Master
3 Program Section 2, V, Regional Criteria (B), Aquacultural Practices Element of the Thurston
4 County Shoreline Master Program and the related development guideline in the Shoreline
5 Management Use Regulations, Section 3 (II), Policy (B) 8. All of these provide that aquacultural
6 operations must be conducted in a manner that precludes damage to specific fragile areas and
7 existing aquatic resources and that such operations must maintain the highest possible levels of
8 environmental quality. While aquaculture may be considered a preferred use of the shoreline
9 according to the SMA and TCSMP, every preferred use shall be permitted only when consistent
10 with control of pollution and prevention of damage to the natural environment.
11

12
13
14 D. The County Commissioners, by affirming the decision of the Hearing Examiner,
15 failed to properly mitigate for impacts to the shoreline area as to ensure no harm, no loss of
16 ecological function and minimize insofar as practical, any resultant damage to the ecology and
17 environment of the shoreline area and any interference with the public's use of the water.
18

19 E. The County Commissioners erred by approving the Hearing Examiner's decision to
20 eliminate a condition proposed by the Thurston County Resource Stewardship Department that
21 would have required the applicant to: Perform a pre-harvest forage fish egg site survey and no
22 harvesting would be allowed when eggs of forage fish were found to be present. This proposed
23 condition included all three types of forage fish which was revised at the request of the applicant
24 to only include herring.
25
26

1 F. The County Commissioners erred by approving the Hearing Examiner’s decision to
2 not include a permit condition precluding in-water harvesting. Sediment generated during in-
3 water harvesting is very harmful to juvenile salmon, in particular. The Washington State
4 Department of Natural Resources has prohibited in-water harvesting in areas with less than eight
5 feet of water because of the sediment impacts in shallow water. Harvesting will occur in waters
6 less than this depth.
7

8 G. The County Commissioners erred by ignoring cumulative impacts that would arise
9 from the permitted operation. This permit (2011-104210), in conjunction with the other two
10 permits approved by Thurston County for the Taylor and Arcadia farms (Project Nos.
11 2010-100420 and 2010-100421) essentially authorize a single 3 acre farm within Henderson
12 Inlet. According to the Thurston County Resource Stewardship Department’s staff report, “The
13 sites and projects are similar and are all within one-quarter mile of one another and the
14 environmental and operational issues are nearly identical.” While the property leaseholders may
15 be separate, their impacts will be cumulative. Puget Sound shorelines of this proximity do not
16 operate in isolation, the waters, sediment, chemicals, etc to not respect property lines. The
17 impacts of one development will spill outside of its borders. Aquatic life eradicated or displaced
18 from one farm will experience a similar fate at the adjacent farm-pushing them into other areas
19 of the shoreline with domino effects in those areas.
20
21

22
23 In Henderson Inlet, aquaculture activities have been occurring for decades. However, none of
24 the existing aquaculture operations were ever subjected to any type of environmental review so
25 as to determine if the activity would have a detrimental effect on the ecological functions and
26 values of the shoreline. Thus, the historic and future impacts of these operations are simply

1 unknown, especially when these sites are no longer just oysters on a beach, but high intensity
2 clam and geoduck developments. The aquaculture industry within Thurston County continues to
3 convert natural shorelines into intensive operations and unnaturally high shellfish densities with
4 no limit in sight.
5

6
7 While these operations are now individually subject to the Shoreline Management Act's
8 regulatory provisions, their cumulative impact, both in relationship to the historic, un-permitted
9 operations and to newly sought operations, must be analyzed to fully understand the effect on the
10 shoreline environment. The Shoreline Management Act recognizes that harm can arise from the
11 cumulative effects of many projects, especially smaller projects in close proximity. The Shoreline
12 Management Act makes it clear that there is a need to "prevent the inherent harm" that comes
13 from "uncoordinated and piecemeal development." RCW 90.58.020. It is this type of
14 development-piecemeal, incremental development-that degrades the shoreline ecosystem by
15 allowing impacts to go unnoticed when they are viewed in isolation. Thus, Ecology's regulations
16 recognize the interconnectedness of the ecosystem. WAC 173-26-201(2) (c) and require policies
17 and regulations to address the cumulative impacts on shoreline ecological functions. WAC 173-
18 26-201(d) (iii). These same considerations need to be given during the permit approval process
19 and Thurston County failed to adhere to this primary mandate of the Shoreline Management Act.
20 By allowing for review in isolation, the County Commissioners are permitting the degradation of
21 its shorelines on a piecemeal basis-a death incurred by a "thousand cuts"-farm by farm.
22
23
24
25
26

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

Relief Requested

The Appellants' request that the Shoreline Hearing Board rescind the permit because the project, as proposed by applicant and conditioned by Thurston County, does not preclude damage to fragile areas and existing aquatic resources and, thus, violates the policies of the Shoreline Management Act, RCW 90.58.020, Thurston County's SMP Regional Criteria Section 2, (V) (B) and Thurston County's Aquacultural Practices Element of the SMP and Development Criteria in Thurston County's Shoreline Management Use Regulations, Section 3 (II), Policy (B) 8.

Dated this 15th day of April, 2013.

COALITION TO PROTECT PUGET SOUND HABITAT,
SUSAN MACOMSON, LAURA HENDRICKS

By: _____
Appellants Representative: Laura Hendricks