

1 **SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 COALITION TO PROTECT PUGET
4 SOUND HABITAT and CASE INLET
5 SHORELINE ASSOCIATION,

6 Petitioners,

7 v.

8 PIERCE COUNTY and LONG BRANCH
9 SHELLFISH, LLC,

10 Respondents,

11 STATE OF WASHINGTON,
12 DEPARTMENT OF ECOLOGY,

13 Intervenor/Respondent.

SHB NO. 11-019

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

DISSENT

14 After review of the record and consideration of the hearing testimony, I believe Pierce
15 County made an error in approving the shoreline Substantial Development Permit (SDP) because
16 the Petitioners have proven their case that the project is inconsistent with the Pierce County
17 Shoreline Master Program. I am also troubled that the SDP approval occurred prior to the
18 County's issuance of a separate fish and wildlife permit. The project's impact to the nearshore
19 critical habitat is also a significant adverse impact under SEPA.

20 I think it is clear the project is inconsistent with PCC 20.24.020, which mandates that
21 aquaculture operations "maintain the highest possible levels of environmental quality and
compatibility with native flora and fauna." I agree with the Petitioners' position that

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1 “aquaculture operations are to be *compatible, not conflicting, with native species.*” *Petitioners’*
2 *Closing Brief at 3.* The proposed project is in direct competition with native species, and at
3 levels not found in nature. The site will be colonized with a species not found in any significant
4 numbers in this intertidal zone – approximately 300,000 geoducks on the 2.5 acre site. These
5 geoducks represent 300,000 hungry mouths that will feed on plankton that in natural conditions
6 provides for fish and shellfish found naturally on the site. This **competition** for food on this site
7 is well outside any level found naturally in nature.

8 When harvested, each geoduck weighs between 2-3 lbs. *Penttila Testimony.* For each 1 acre
9 harvested, this represents approximately over 600,000 lbs of biomass that has been essentially
10 withdrawn from the food supply which normally would be available and used by naturally
11 occurring species on and adjacent to the site. Native species relying on this same food supply
12 include salmon and forage fish. *Ex. P-15.*

13 Geoducks are indiscriminant feeders, feeding on free floating plankton. *Penttila Testimony.*
14 During part of the year, surf smelt have been documented to spawn on the site, and adjacent to
15 the site, at a higher elevation. For several weeks after hatching, surf smelt larvae are not motile
16 and float with the currents as part of the plankton community. They are of the size of plankton
17 that geoducks are known to ingest. It is evident that larval surf smelt will be ingested by the high
18 concentration of geoducks in the nearshore zone, and either digested or ejected as pseudo feces.
19 The geoducks represent an unnatural concentration of **predation** not present in nature. In fact
20 concentrations of geoducks are normally found below the intertidal nearshore, not right in the
21 middle of it.

1 Surf smelt are an important food source for other species such as juvenile salmonids
2 including juvenile Chinook, which are listed under the federal Endangered Species Act. The site
3 is classified as “critical habitat” for Chinook salmon precisely because of the importance of the
4 nearshore zone for the early rearing and growth of juvenile Chinook. Early growth is critical to
5 the long term survival of a Chinook salmon and having an abundant food supply is essential for
6 this early growth. *Daley Testimony; Exs. P-49, P-80.*

7 This predation again is not naturally found in this concentration and at this location in the
8 nearshore zone. This is not compatible with naturally occurring species in this area, and
9 particularly with surf smelt of juvenile Chinook salmon. One witness for the applicant, Dr.
10 VanBlaricom, testified that geoducks are dormant for part of the year, and particularly the time
11 when surf smelt larvae are present. He concluded the ingestion of surf smelt larvae by geoducks
12 was therefore unlikely. Outside his brief oral testimony that this was his observation, I could find
13 no corroborating information in the record.

14 On the basis of the very intense levels of competition and predation on native species
15 found on the site, I cannot reach the conclusion that this project is compatible with the
16 requirement of the Pierce County Shoreline Master Program that a project “maintain the highest
17 possible levels of environmental quality and compatibility with native flora and fauna.” PCC
18 20.24.020.

19 I also note that both Petitioners and the applicant agree that the placement of thousands of
20 plastic predator exclusion tubes would change the character of the habitat on the site and
21 therefore the biological communities using the site. *Houghton Testimony; Daley Testimony; Ex.*

1 P-19. Most obviously, the predator exclusion tubes would be a negative influence on naturally
2 occurring species who would like to avail themselves of the new and very concentrated food
3 source. While understandable from an economic standpoint, the fact that they are exclusion
4 tubes means they are detrimental to the naturally occurring predators. The placement of these
5 tubes may also affect the migratory patterns of salmon because the juvenile fish imprint their
6 route as they migrate. Again, it is not possible for me to reach a conclusion that the project is
7 compatible with the native flora and fauna as required by the PCSMP.

8 I am troubled by the discussion at the hearing regarding the future “Fish and Wildlife
9 Approval” by the County. If conditions will be applied to the operation, and those conditions are
10 necessary to protect the environment and biological resources on and near the site, why are those
11 conditions not part of the Shoreline Permit and the staff recommendations to the permit, so that
12 they can be reviewed by the public, discussed and debated and made a part of the public
13 Shoreline Permit Process? If these conditions are necessary, but have not yet been fully
14 identified (*Risvold Testimony*), then how can the Shoreline Permit be issued? Putting off
15 important permit conditions to a later date, and conditioning them in a non-public process,
16 clearly undermines the Shoreline Permit process. WAC 173-27-180 requires an SDP to be
17 complete. *North Park Neighbors v. City of Long Beach*, SHB No. 05-030 (Findings of Fact,
18 Conclusions of Law, and Order) at 10.

19 In regard to SEPA – I believe for the reasons stated earlier in this memo, the project
20 represents a significant impact to the site. Further, there would be no basis for assuming future
21 projects ad infinitum of the same nature and magnitude would not also have to be permitted.

1 There would be no reason to deny any similar or larger project. I think it is self evident that
2 while 2.5 acres might not seem to be a large impact; the record is clear there will be some
3 significant changes on the site. While the impacts from a 2.5 acre farm might seem acceptable to
4 many, I think any decision maker's comfort level would wane and disappear when similar
5 activities occurred on 5, 10, 20, 40 or 200 acres or more in the nearshore Chinook critical habitat
6 area. It is clear to me that there are impacts, and it is reasonable (given the approval of this
7 project and the very strong market demand) to assume more similar projects will be proposed
8 and permitted, and that the impacts will accumulate as the area under cultivation grows.

9 Although the majority states that each separate geoduck aquaculture proposal will need to be
10 reviewed on its own particular site characteristics, I am concerned that this decision will be
11 looked to as precedent for approval of other projects. Again, in regards to SEPA, the issue of
12 having some undefined, unidentified future conditions applied to the project through the "Fish
13 and Wildlife Approval" process seems to undermine the SEPA process.

14 I do not think the Petitioners made their case in regard to the effects of harvesting on
15 sediment movement offsite and the possible associated impacts. I agree with the majority's
16 decision to clearly make the non-mandatory elements of the Pacific Coast Shellfish Growers
17 Association Environmental Code of Practice as it applies to geoduck culture a mandatory
18 condition of the SDP.

19 If the SDP is to be granted, I would have also made mandatory the marking of the predator
20 exclusion tubes as contained in the original Pierce County staff recommendation. The record
21 shows that tubes have been lost by other similar operations. Freeing plastic tubes to the

1 environment is a discharge of litter/marine debris. It would be beneficial to identify at a later
2 date, tubes that might be lost from the operation. This not only provides a way of identifying
3 their origin, but also serves as a crude monitoring tool, enables the tubes to be returned, and
4 enables regulatory agencies to take appropriate action. I was not swayed by the argument that
5 marking the tubes would make it inconvenient to loan the tubes to a competitor. I am sure the
6 operator could make a record of such loans and assure the prompt return of the tubes at the
7 appropriate time. The marking need not be highly detailed or expensive. I believe adequate
8 marking could be achieved with a permanent marker in the same way we are all required to mark
9 our floats for recreational and commercial crab and shrimp potting. Even better might be a brand
10 distinctive to each grower that could be applied in seconds. I see no compelling reason to
11 override the recommendation of the Pierce County staff on this issue.

12 Dated this 13th day of July, 2012.

13 **SHORELINES HEARINGS BOARD**

14 *Dave Somers*

15 _____
Dave Somers, Member