



Notice of Hearing Examiner Decision

04/01/2019

To: Interested Parties and Parties of Record

RE: Project Name: Suquamish Tribe – Shoreline Substantial
Development Permit
Applicant: Suquamish Seafood Enterprises/Suquamish Tribe c/o
Anthony Forsman
P.O. Box 1413
Poulsbo, WA
Application: Conditional Use Permit – Accessory Dwelling Unit
Permit Number: 18-01521

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant: Suquamish Seafood Enterprises/Suquamish Tribe c/o Anthony Forsman, tforsman@suquamish.nsn.us
Owner: USA IN TRUST, P.O. Box 498, Suquamish WA 98392
Authorized Agent: Anchor QEA, voster@anchorqea.com
Health District
Public Works
Parks
Kitsap Transit
City of Poulsbo, Planning Director

Water Purveyor
Sewer Purveyor
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
Point No Point Treaty Council
Suquamish Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
Suquamish CAC

Interested Parties:

Timothy McMahon & Cynthia Montagne, 6505 216th St SW Unit 205,
Mountlake Terrace WA 98043

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shoreline Substantial Development Permit - Commercial,
Suquamish Tribe, File No. 18-01521**

March 26, 2019

1. FINDINGS OF FACT

1.1 Proposal. Improvements to an existing Pacific oyster cultivation project in the Port Orchard Bay tidelands. The project replaces and expands a saltwater intake system to improve upland seafood wet-storage.

Applicant: Suquamish Seafood Enterprises/Suquamish Tribe, c/o Anthony Forsman.

Location: State Owned Tidelands abutting 15836 Sandy Hook Road NE, Poulsbo, WA 98370.

Assessor's Number: 322602-2-005-2007

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-30 before the hearing, which included the Staff Report. At the hearing, the Department of Community Development ("DCD") submitted a Power Point presentation as Exhibit 31. All exhibits were admitted.

1.3 SEPA. DCD issued a Mitigated Determination of Non-Significance, which was not appealed.¹ No specific comments were received during the comment period; one call was received from a neighbor requesting to be an interested party of record. A pre-application staff consultation was held with the Washington Departments of Fish and Wildlife, Ecology, and Natural Resources. The Determination includes these conditions:

- This project shall be constructed, mitigated and monitored as provided in the Biological Evaluation Addendum (Anchor QEA, 3/20/2018) and subsequent Eelgrass Mitigation and Monitoring Plan (Anchor QEA, 11/2018).
- A mitigation bond of 1.5 times the estimated cost of mitigation will be required.
- Other regulatory agencies may require additional or varied mitigation or project design. Changes in project design or mitigation shall be submitted to Kitsap County for review consideration. Amendments or addendums may be required to the Shoreline Substantial Development Permit and/or this SEPA determination.

1.4 Hearing. The open record public hearing was held on March 14, 2019. DCD, through Ms. Barnhart, summarized the proposal and how it meets code requirements. As DCD found the proposal consistent with requirements, it recommended approval with conditions.

¹ Exhibit 27.

After being sworn in, the Applicant, through Mr. Forsman, further addressed the project. No person present indicated a wish to comment. At DCD's request, the record was kept open through March 21, 2019; no further comments were received.

1.5 Agency Comment. The proposal was broadly circulated. As long as requirements are met, there were no objections to approval.

1.6 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.² Given a delay of several days in providing hearing notice (mailing/posted notice on March 5 and 6), DCD requested that the record be kept open for a week. There were no objections and the record was kept open through March 21. Nothing further was received. Due to the extended comment period and lack of objections, any potentially interested parties were adequately notified and there has been substantial compliance with KCC notice requirements.

1.7 Project Description. The proposal includes the replacement and expansion of an existing saltwater intake system to support upland wet-storage of seafood. The new intake will follow the existing pipe system alignment. The new system will consist of a concrete pad and pump manifold (upland and not subject to review), and a dual eight inch 610 foot long PVC pipe intake. 450 feet will be buried two feet under, with day lighting for about the last 150 feet. The intake will lie at the seabed or slightly elevated via helical anchor suspension. The intake includes screening to minimize fish entrainment, which will be maintained. After circulating upland, the water will be discharged through the existing outfall. A marking buoy is included (to be coordinated with the U.S. Coast Guard). 408 square feet of permanent and temporary eelgrass impacts are expected. An Eelgrass Mitigation and Monitoring Plan has been provided, with plans also including removal of additional intertidal debris to mitigate for temporary trenching impacts.

1.8 Mitigation. An Eelgrass Mitigation and Monitoring Plan was prepared, with eelgrass planting and monitoring to address temporary and permanent impacts. Mitigation cost is estimated at \$145,000, with a performance bond for 1.5 times the amount required.³ Based on the analysis provided and mitigation incorporated into the project, there will be no net loss of ecological functions and processes.

1.9 Access. Access is from Sandy Hook Road NE, a paved County-maintained right-of-way. Paved driveway and parking areas provide continued access to the upland facilities. Pedestrian and vehicle access to the beach (separately approved for harvest purposes) provide further access to the project location.

1.10 Comprehensive Plan Designation, Zoning, and Surrounding Land Use. The project is in Puget Sound and does not have a comprehensive plan or zoning designation. The adjacent upland area is part of Suquamish Tribal Reservation and has no County zoning designation as it is under tribal jurisdiction. Beyond Reservation boundaries to the north and south along the shoreline, zoning is Rural Residential (one dwelling unit per five acres).

² Exhibits 13, 28 and 29.

³ Mitigation is detailed in Exhibits 11, 12, 20, and 22. The conditions require project design and mitigation consistent with these reports.

1.11 Shoreline Environment Designation. The SMP designation is Aquatic. As it is outside County jurisdiction, there is no adjoining upland shoreline designation. Shoreline Residential is the closest upland designation.

1.12 Incorporation of Staff Report. Except as this Decision modifies it, the Staff Report, which provides considerable project detail, is incorporated.

2. CONCLUSIONS OF LAW

2.1 Examiner Review. The Hearing Examiner reviews SSDP applications.⁴ Approval requires consistency with shoreline policies and regulations.

2.2 Existing Structures. Lawfully constructed conforming structures may be expanded or redeveloped consistent with mitigation designed to achieve no net loss.⁵ The salt-water intake is an existing structure which will be rebuilt and expanded. The existing pipe has been in place since at least 1990, and possibly longer.⁶ Consistent with Ch. 22.800 KCC, Appendix B and SMC 22.400.110 mitigation provisions and .115(D) on critical saltwater habitats, mitigation has been carefully designed by qualified professionals to achieve the "no net loss" standard for temporary and permanent impacts.⁷

2.3 Aquatic Policies, KCC 22.200.135. The project facilitates the core objective of these policies, which is to support water dependent uses in an ecologically sound manner. The project makes use of shoreline resources, consistent with environmental mitigation requirements.

2.4 Aquaculture, SMC 22.600.115. SMP application requirements were met, with the surveys, development of an operational plan, and extensive coordination with other agencies.⁸ The project is necessary to facilitate shoreline utilization, and impacts are minimized and mitigated. The Applicant will coordinate with the U.S. Coast Guard to determine buoy location and marking (*see* Condition 3).

2.5 Work Waterward of OHWM. Water dependent structures are not subject to shoreline buffers, but all work must obtain required permits, in-water work must comply with construction timing restrictions, and the bank and vegetation must be protected.⁹ The project has been designed and mitigated to meet these requirements.

2.6 Shorelines of Statewide Significance, KCC 22.300.145. Areas in Kitsap County and in Puget Sound which lie "seaward from the line of extreme low tide" are designated as shorelines of statewide significance. To recognize and protect statewide interests over the local, development proposals with this designation are reviewed for consistency with RCW 90.58.020 and various shoreline policies. Primary considerations are summarized below.

⁴ KCC 21.04.100; *see also* KCC 22.500.105(E).

⁵ SMC 22.400.100(B)(1)(c).

⁶ Exhibit 1.

⁷ Exhibits 11, 12, 20, and 22.

⁸ *See* Exhibits 11, 12, 20, and 22.

⁹ SMC 22.400.105(B).

Recognize and protect state over local interests. These policies provide for consulting with WDFW, Ecology, affected tribes and other agencies/interest groups on proposals that could affect anadromous fisheries or other priority species or habitats; and, considering state agencies' relevant policies and recommendations. Outreach was conducted, and the project incorporates current agency approaches to shoreline mitigation and ecological restoration, thus protecting both state and local interests in encouraging responsible shoreline access. The project would facilitate tribal access to shoreline resources located adjacent to Reservation boundaries.

Preserve shoreline natural character. These policies provide for administering regulations to minimize damage to shoreline ecology; to facilitate restoration where natural resources are being diminished; and new intensive development "should upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas." The project is not an intensive development or high intensity use, and is fully mitigated to address shoreline ecology issues. Also, the use as it is proposed is consistent with the Tribe's historic use of the shoreline area.

Protect long-term over short-term benefit. These policies provide for preserving sufficient areas to accommodate "current and projected demand for economic resources such as shellfish beds and navigable harbors;" strictly limit actions that would convert resources into irreversible uses or detrimentally alter natural conditions; evaluate short term economic gain/convenience over long term and costly environmental impairment; and promote aesthetic considerations. As the use is for shellfish cultivation, it is consistent with the types of uses contemplated by these policies. The use would not be detrimental to natural conditions or result in irreversible, adverse shoreline impacts. Also, the proposed use would make economic use of the shoreline.

Protect shoreline resources and ecology. These policies provide for considering "incremental and cumulative impacts while ensuring no net loss of shoreline ecosystem processes and functions;" ensuring "the long-term protection of ecological resources of statewide importance, activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments;" and limiting "public access where improvements would result in a loss of shoreline ecological functions, such as in priority or sensitive habitats." The project is for shellfish cultivation and would build on the fertile environment at this location for same. The project as proposed and mitigated would not have significant adverse impacts on ecosystem processes and functions.

Increase public access to publicly owned areas of the shorelines. These policies provide for preserving/encouraging public access to areas with scenic or cultural qualities; giving priority to paths, trails, and linear shoreline access; and, locating development inland to enhance access. By promoting a traditional tribal activity at this location and supporting shellfish cultivation, the proposal increases the productive use of the shoreline area. Shoreline access is not impeded and mitigation addressing aesthetic concerns was incorporated into the proposal.

Increase recreational opportunities for the public in the shoreline. These policies provide for accounting for state agencies/citizen interests in visiting public shorelines regarding public access/recreation requirements; and encouraging "development of facilities for recreational use of the shorelines," while reserving upland areas for lodging, with provisions for nonmotorized shoreline access. The proposal does not impede recreational use of the shoreline.

Also, although the oyster cultivation would be commercial, given the importance of shellfish locally and to the Tribe, the project has cultural and recreational elements.

The project is consistent with these policies, and also furthers their underlying objectives to support environmentally responsible utilization of shoreline resources and water dependent uses. The identified location is particularly well suited for the use, which the County's SMP, and the SMA more generally, both support. The project is consistent with the County's shoreline regulations and policies, and the Shoreline Management Act, Ch. 90.58 RCW, and should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested SSDP, provided these conditions are adhered to.

1. Permit approval is subject to conditions in the Hearing Examiner Decision.
2. Permit approval is subject to the approval and conditions of the Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife.
3. Permit approval is subject to the approval and conditions from the Washington Department of Natural Resources, the U.S. Army Corps of Engineers, and the U.S. Coast Guard.
4. Any changes to the plans as approved in this permit shall be provided to DCD for review. Revisions to this permit approval may be required if substantial changes are made which will increase the impacts to shoreline ecological functions.
5. This project shall follow the Biological Evaluation (Anchor QEA, LLC; 9/2016), Biological Evaluation Addendum (Anchor QEA, LLC; 3/2018), Memorandum: Project Modification (Anchor QEA, LLC; 11/26/2018), and the Eelgrass Mitigation and Monitoring Plan (Anchor QEA, LLC; 11/2018).
6. Permit approval is subject to the Applicant providing a Mitigation Bond at 1.5 times the estimate for the eelgrass mitigation project as proposed in the Eelgrass Mitigation and Monitoring Plan (Anchor QEA, LLC; 11/26/18).

THIS DECISION is entered this 26th day of March, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond