

**Patrick and Kathryn Townsend**  
**7700 Earling Street NE**  
**Olympia, WA 98506**

Thurston County Resource Stewardship Department  
Building #1-Administration  
2000 Lakeridge Drive SW  
Olympia, WA 98502  
Via email: [peterscs@co.thurston.wa.us](mailto:peterscs@co.thurston.wa.us)

Board of County Commissioners  
Thurston County Courthouse  
Building 1, Room 269  
2000 Lakeridge Drive SW  
Olympia, WA 98502

**Project No. 214108800, Townsend/Jensen v. Sohn**  
**Sequence No. 17-103426 VS**  
**Appellants' Response to Applicant's Responsive Memorandum**

Dear Commissioners,

Thank you for the opportunity to respond to the Applicant's Responsive Memorandum in relation to the above matter. We hope, upon review of our original comments, you will understand that we do not intend to go down the already mind-numbing path of analysis of our failures by Applicant's attorney. Mr. Plauche appears satisfied that he has put down every argument we made, without exception, and not only that, he has put down our plain language and lack of legal expertise. But with his putting down of our arguments he has also put down the following:

- Common sense
- Community and neighborhood values
- Historical values of Zangle Cove

Is this really what we want to prevail in our County? Is this really the direction we want to go in? We respectfully suggest that this type of situation, where one person intends to industrialize their tidelands in direct view of an entire neighborhood is destructive of more than the tideland—it is destructive of our community values. Public comments to the Hearing Examiner were overwhelmingly against the Sohn application (thirty to one) as were the more than 100 letters written by concerned citizens against the proposed Zangle Cove project and a petition with 70 signatures. Facts and direct observations provided by our community members were basically ignored.

Zangle Cove is a bigger issue than all Mr. Plauche's permutations of "improper challenges," "failure to allege errors to specific findings," and "lack of merit." We speak to long time community values that are being met with tortured legalities that have no meaning to the ordinary person. Our neighborhood group includes a banker, computer scientist, librarian, former attorney, state employees, doctor, diplomatic consultant, artist and others. We fundamentally disagree with Applicant's characterization of our concerns and his interpretation of the Shoreline Management Act.

We do not agree that it is acceptable to put every available tideland in Puget Sound into shellfish and specifically geoduck aquaculture. Introducing geoduck aquaculture to Zangle Cove, a recreational and

aesthetic gem, will be one more step towards losing what is considered “the nursery” of Puget Sound—the tidelands. Totten Inlet tidelands are some 85% filled with shellfish aquaculture, despite the legal objections of the citizens of Totten Inlet (APHETI) 10 years ago. A Department of Ecology employee told members of the Zangle Cove community that Totten Inlet is “productive,” a clear message that our state’s actual priorities related to Puget Sound are not “protection.”

There are many native geoducks on Zangle Cove. After the permit application was submitted, tribal members came to Zangle Cove to count the number of native geoducks and specific conversation ensued regarding their rights to 50% of the harvest of the native geoducks. It is unclear how the industry would allow tribal rights if they do not harvest before planting. However, whether the industry harvests all the natively recruited geoducks prior to planting or at the end of the 6 year production cycle, it is still “clear-cutting” of the tideland. It not only impacts this parcel itself, but everything else around it. Geoducks can live up to 168 years so there are likely many old timer geoducks in Zangle Cove that have existed since before statehood. Once a forest is “clear-cut” and planted with a monoculture, it will never be the same and that is also true for “clear-cutting” of geoducks from the tidelands. The geoduck operation, contrary to Mr. Plauche’s attempts at minimization, is a fundamental change in the use of the tideland, with approximately 48,000 PVC tubes, about 7 miles of PVC weighing some 16 tons, in the 1.1 acre Sohn parcel, along with high pressure water jet harvest up to a depth of 3 feet. **This monoculture operation will not preserve the natural character of the shoreline and will result in a net loss of ecological functions of the intertidal zone.**

We question the unrelenting promotion by the industry that installing seven miles of PVC pipe per acre on Puget Sound tidelands “creates habitat.” (Decision, at Finding 93, Page 11, paragraph 2 of Applicant Response). Acceptance of this idea by authorities is indicative of a reality that can only be called “alternative.” For those of us lucky enough to be able to watch on a daily basis the tides coming in and going out, it is unthinkable.

Some arguments not addressed specifically by Mr. Plauche are: (1) allowing the industry to determine the operation’s “consistency with the character of the community” without asking the community itself; (2) failure to understand the significance of the eelgrass restoration project in Zangle Cove; (3) granting of routine illegal trespass onto neighboring properties to pick up aquaculture trash; (4) failure to consider the recreational and aesthetic value of Zangle Cove to residents who are willing to pay high property taxes for the privilege of living here; (5) misrepresentation of the visibility of the operation by averaging in winter months when the lowest tides are in the middle of the night; (6) failure to acknowledge four geoduck farms to the east of Zangle Cove which have no County permits along with the fact that one of Applicant’s witnesses owns one of these tidelands.

Of particular note is the testimony of Tony Kantas, Thurston County Planner, that Thurston County does not know how many geoduck operations exist in Thurston County and where they all are. This goes to RCW 90.58.020 related to “inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” **No permit applications for geoduck operations should be allowed until Thurston County has full documentation of existing operations and requires them all to go through the permit application process.**

All our arguments, as outlined in our Notice of Appeal dated 3/23/17, are the point of view of multiple property owners living on Zangle Cove. While the County requirements and rules are stringent for upland

building projects, the County allows industrial use of tidelands that will seriously impact others' tideland properties, the quiet enjoyment of our properties and our aesthetic appreciation of Zangle Cove.

Historical records gathered by title expert Nancy Moore (now deceased), of Thurston County Title, and Jack Marshall, Boston Harbor Historian, show that Zangle Cove was never an oyster growing area and significantly, was specifically described in 1927 as being sold NOT for oyster growing. These documents are in the record.

The Thurston County SMP provisions setting forth the County's 1990 Policy on aquaculture, pages 39-43, "encourage" commercial aquaculture if it broadens and diversifies the County's economy. We do not believe this operation will in any way "broaden and diversity" the County's economy and, in fact, as part of the geoduck aquaculture expansion movement, will actually interfere with higher economic value recreational use, as our expert, David Batker, testified.

The idea that "geoducks clean the water" is myth. Geoducks expel faeces and pseudofaeces, i.e., poop, like any other organism and 43,560 geoducks in one acre poop a lot. The actual fact is that geoduck operators **require** clean water to get a permit for aquaculture. The only reason that Dr. Sohn can contemplate a geoduck operation on his tideland is because the Boston Harbor Sewer System has given us clean water in Zangle Cove. Community members each made a large initial investment in the Boston Harbor Sewer System as well as ongoing monthly payments. Dr. Sohn is not even on the sewer system, so the community is, in effect, subsidizing at a high cost per household, his operation.

Ironically, Mr. Plauche opines that evidence is substantial when "it is sufficient to persuade a fair-minded, rational person of the truth of the declared premise." (Page 4, paragraph 3 of Applicant Response.) We suggest that the many people who live in this neighborhood who we represent are all fair-minded, rational people who agree that the permit for an industrial operation in their front yard should be denied, just as many types of upland development in this neighborhood would be prohibited.

The Applicant fails to point out the dissent of one member of the Shoreline Hearings Board in the case they cite, SHB No. 11-019. (Page 3 of Applicant Response). The warning of this SHB member is particularly relevant as Taylor Shellfish has already staked out an approximate 4 acre farm in Dickenson Cove, just northeast of Zangle Cove, also directly in front of an entire neighborhood.

*In regard to SEPA...the project represents a significant impact to the site. Further, there would be no basis for assuming future projects ad infinitum of the same nature and magnitude would not also have to be permitted. There would be no reason to deny any similar or larger project. I think it is self-evident that while 2.5 acres might not seem to be a large impact; the record is clear there will be some significant changes on the site. While the impacts from a 2.5 acre farm might seem acceptable to many, I think any decision maker's comfort level would wane and disappear when similar activities occurred on 5, 10, 20, 40 or 200 acres or more in the nearshore Chinook critical habitat area. It is clear to me that there are impacts, and it is reasonable (given the approval of this project and the very strong market demand) to assume more similar projects will be proposed and permitted, and that the impacts will accumulate as the area under cultivation grows. Although the majority states that each separate geoduck aquaculture proposal will need to be reviewed on its own particular site characteristics, I am concerned that this decision will be looked to as precedent for approval of other projects. (Our emphasis).*

*--Dissent of SHB Member, Dave Somers, July 13, 2012, SHB No. 11-019.*

It must also be noted that the tribes fish for Chinook and Coho Salmon every fall in Zangle Cove for several weeks.

Bill Dewey, chief spokesman for Taylor Shellfish, is quoted in The Olympian in 2006 saying: "siting a geoduck farm on a beach lined with waterfront homes is asking for trouble. We try to avoid the firefights by looking for areas without multiple use. But those areas are getting harder and harder to find." Currently lacking these scruples, the industry is now intent on installing a geoduck farm directly in front of some 15 waterfront homes in Zangle Cove.

Our neighborhood questions whether County staff and the Hearing Examiner gave equal weight to scientific documents submitted by the Coalition to Protect Puget Sound Habitat, documents that show harm and detriment from geoduck aquaculture. We are aware of no written analysis of all the documents submitted. Both ACERA and Confluence work for the shellfish industry. Our letters to the County pointed out many errors in the ACERA and Confluence documents.

To summarize based on the issues allowed by the Hearing Examiner in this matter:

1. **Recreation.** Zangle Cove is a high use recreational area for boaters, kayakers, paddle boarders and canoers, both from the neighborhood and as a primary destination from the Boston Harbor Marina and public boat launch area, as well as boaters from all over Puget Sound. The value to the community, County and State of recreation is far greater than the value of a geoduck operation, which benefits primarily one individual and a shellfish industry with few employees on the particular job.
2. **Aesthetics.** There is no way to "hide" or "make invisible" a commercial industrial activity in a small cove with a pristine tideland. Because the Hearing Examiner allowed the topic of Aesthetics to be part of the Hearing, Appellants have every right to define that term from our point of view and argue for it. Appellants have every right to vehemently object to an industrial geoduck operation being allowed in our front yard. The Hearing Examiner, the shellfish industry and a single individual cannot define aesthetic value for an entire neighborhood. Applicant continues to average visibility of the geoduck operation over the year, completely disregarding the fact that the lowest tides during the winter are in the middle at night and thus the tubes will rarely be seen between October 1 and March 31. On the other hand, tubes will be visible for 1 – 5 hours a day during 83-87% of the days between April 1 and September 30 when people are most likely to be engaging in recreation on the tidelands. The applicant's attorneys continue to obfuscate this fact by averaging.
3. **Plastics.** This operation will use approximately 48,000 PVC tubes (the typical number is one per square foot, as stated in the ACERA and Confluence documents.) This is approximately 7 miles of PVC in Zangle Cove weighing approximately 16 tons. Brian Phipps of Taylor Shellfish testified on behalf of the Applicant and stated that Taylor uses PVC tubes over and over again, tubes that were originally produced about 18 years ago. Thus their PVC is more susceptible to degradation. This also means that their PVC pipes meet the standard for sewer pipe but do not meet newer PVC standards for potable water or food supply.
4. **Eelgrass.** Zangle Cove is noted for self-recruitment of native eelgrass, the furthest beyond Dana Passage that this has occurred since anyone can remember according to DNR, and that is a significant fact. Do we actually want to restore Puget Sound, a project that involves protecting and restoring

eelgrass, or do we want to quibble about how far away the eelgrass is in inches to the farm. With clockwise tidal current, the harvest sediment will not only go onto neighbors' properties without their consent, a form of trespass, it will go towards and over the eelgrass. Eelgrass was documented by DNR on the Sohn tideland in 2007. DNR has been monitoring eelgrass in Zangle Cove since 2006 and Zangle Cove is part of a multi-million dollar Federal and State eelgrass restoration project managed by DNR and Pacific Northwest National Laboratories (Battelle) and funded by the United States Department of Energy. This alone should have precluded any thought of an industrial geoduck operation in Zangle Cove.

The Applicant's attorneys like to quote from the Haley Case, which they won, but they significantly fail to cite the Appeals Court of Washington regarding the denial of a permit in the DeTienne case, November 14, 2016:

Appeals Court of Washington:

*The SHB [Shorelines Hearings Board] concluded the permit did not appropriately balance statewide interests and was inconsistent with RCW 90.58.020*

*The SMA [Shoreline Management Act] is liberally construed "to give full effect to the objectives and purposes for which it was enacted." RCW 90.58.900. The essential purpose of the SMA is to protect the shorelines of the state because they are "among the most valuable and fragile of its natural resources." RCW90.58.020. Permitted shoreline uses must be designed and conducted in a manner that minimizes damage to the ecology, damage to the environment, and **interference with the public's use of Washington's water.** RCW 90.58.020.*

Shorelines Hearings Board: There is more to the Shoreline Management Act than aquaculture.

*"Particular consideration must be given to balancing the interests of aquaculture as **one statewide interest**, with other statewide interests like the shoreline's ecological values and the public's recreational use"*

In conclusion, we state again that we are not attorneys and we do not intend to belabor all the twists and turns of the Applicant's legal arguments or all of their contentions of our failures to cite this or defend that. Instead, we want to call upon common sense and community priorities. This is a neighborhood which is thoroughly circumscribed by County rules related to upland property. Yet until the advent of geoduck aquaculture no one thought twice about the tidelands or the use of the tidelands by neighbors and folks simply boating in. We request that the permit be denied outright and/or an Environment Impact Study from an independent consultant be required.

We also request oral argument before the Board of County Commissioners within the 15 minutes allowed by the Board for each side's testimony, on May 3, 2017 at 10:30 am.

Sincerely,

Patrick and Kathryn Townsend  
Anneke Jensen