



**STATE ENVIRONMENTAL POLICY ACT (SEPA), CHAPTER 43.21C RCW
WITHDRAWAL OF A DETERMINATION OF NON-SIGNIFICANCE (DNS)**

Applicant: The Jamestown S'Klallam Tribe (JST)

SEPA Project #: SEP 2017-00027

CLALLAM COUNTY DCD
EXHIBIT 77
DATE 5-10-18

Land Use Permit Case #: SHR 2017-00011 Shoreline Conditional Use and Substantial Development Permit

RE: Clallam County Department of Community Development (DCD) withdrawal of the DNS issued on February 23, 2018 for the preparation of a site specific Environmental Assessment to address impacts to the Dungeness National Wildlife Refuge and other issues raised. A six months continuance was approved by the Clallam County Hearing Examiner for the preparation of this information.

Description of Proposal: The Jamestown S'Klallam Tribe (JST) is proposing to re-establish oyster aquaculture in Dungeness Bay. This would entail the placement of on-bottom mesh bags containing oyster seed and growing oysters on the natural substrate. This activity would occur 25 feet from where eelgrass has determined through an eelgrass survey.

Location of Proposal: The 50 acre leased area is located approximately 5.5 miles northwest of the City of Sequim. The leased area is 731 feet wide by 2,977 feet long starts at the approximate mean lower low water (MLLW) and extends approximately 731 feet (waterward) into Dungeness Bay (Latitude 48.024N, Longitude - 123.004W). This proposal is located at the northwest corner of Dungeness Bay south of the Dungeness Spit and the Dungeness National Wildlife Refuge.

SEPA Threshold Determination: DCD is the lead agency and is withdrawing the SEPA threshold determination of a DNS issued on February 23, 2018. This decision was made after review of a completed environmental checklist and other information on file and as outline in the DCD SEPA Memo dated May 9, 2018 (attached). This information is available to the public upon request during normal business hours *(and can be found on the Clallam County Online Permit website at www.clallam.net/Permits)*.

Comment Period: DCD will re-notice the open record hearing dated and threshold determination in the newspaper, postings, and e-mail notice to agencies and people who provided comment on this application in compliance with Chapter 26.10 Clallam County Codes.

Staff Contact: For additional information, contact Greg Ballard, Senior Planner at the address below or at (360) 565-2616.

Responsible Official: Steve Gray, Deputy Director/Planning Manager

Address: Clallam County Department of Community Development
RE: SEPA COMMENTS
223 E. 4th Street, Suite 5
Port Angeles, WA 98362

Date:

5/10/18

Signature:


Steve Gray, Deputy Director/Planning Manager




CLALLAM COUNTY
Department of Community Development
County Courthouse
223 E. 4th St., Suite 5
Port Angeles, WA 98362-3015
Phone: (360) 565-2616
Fax: (360) 417-2443
gballard@co.clallam.wa.us

Mary Ellen Winborn, Director

SEPA MEMO

DATE: May 9, 2018

TO: Applicant, Agencies with Jurisdiction and Interested Parties

FROM: Greg Ballard, Senior Planner 

RE: Withdrawal of the Threshold Determination of a Determination of Non-Significance (DNS) for a Shoreline Conditional Use and Substantial Development Permit (SHR 2017-11) proposed by the Jamestown S'Klallam Tribe (JST) to re-establish oyster aquaculture on a 50 acre area located in the northwest corner of Dungeness Bay near the Dungeness Spit. The Hearing Examiner also granted a 6 month extension of time for the open record Public Hearing to prepare a site specific Environmental Assessment.

Exhibit numbers for SHR 2017-00001 referenced below are available at *Clallam County Online Permit website at www.clallam.net/Permits*. The Clallam County Department of Community Development (DCD) issued a Determination of Non-Significance (DNS) on February 23, 2018 (Exhibit 8) for the above referenced proposal. The DNS relied that the project would be subject to the following:

- The Corp of Engineers would review the application through a Nationwide Permit;
- The Programmatic Biological Assessment for Shellfish Activities in Washington State Inland Marine Waters would be applicable to the Nationwide Permit (Exhibit 18);
- That impacts to Endangered Species Act would be addressed for the Biological Opinion (BiOp) issued by the U.S. Wildlife Service for Shellfish Activities in WA State Inland Marine Waters (Exhibit 19);

DCD received approximately 50 comments (Exhibits 24 to 73) after the DCD Staff Report was issued on March 29, 2018.

These comments included an e-mail (Exhibit 24) from the Corp of Engineers that the project would be reviewed as a Standard Individual Permit, as the proposed impacts are considered more than minimal and therefore not eligible for processing as a nationwide permit.

DCD received a comment from the Dungeness National Wildlife Refuge (Refuge) on April 4, 2018 (Exhibit 29). This Refuge raised the concerns of the impacts of 150,000 on-bottom oyster bags would have on wildlife and their habitat. They also indicated that the shore and tidelands adjacent to this proposal supports the highest density of waterfowl and shorebird with the Refuge. In addition, they indicated that the BiOp does not specifically address the Refuge.

The Refuge also questioned whether mechanical harrowing, grueling or frosting would occur as part of growing oysters on the natural substrate. Furthermore, they also had concerns about operational measures (such as when personnel would visit the site) could impact the wildlife at the Refuge. The Refuge comments also included five attachments that included: A. Impacts to Wildlife, Habitat, and the Public; B. Restricted Actions and Conservation Measures to Reduce Impacts to Wildlife from the BiOp; C. Recommended Refuge Specific Conservation Measures to Reduce Impacts to Wildlife, Habitat, and the Public; D. Status of Effected Species and Habitat. E. References (Exhibit 29).

A Public Hearing was held before the Clallam County Hearing Examiner on April 5, 2018. In the Hearing Examiner Revised Post Hearing Notice (Exhibit 48), the Hearing Examiner left the open comment period until April 27, 2018, and the applicant had until May 18th to respond to the issues raised at the April 5th Hearing and to comments received. In an e-mail dated May 7, 2018 from the Jamestown S'Klallam Tribe (Exhibit 75) asked to place the application on hold for 6 months in order to prepare an Environmental Assessment for the Standard Individual Permit for the Corp of Engineers, and to address the comments received from the Dungeness National Wildlife Refuge and the public.

The Clallam County Hearing Examiner issued an order of continuance of May 9, 2018 (Exhibit 76). In this order the Hearing Examiner granted a six months continuance for the Jamestown S'Klallam Tribe to prepare a site specific Environmental Assessment. A tentative date new hearing date has been scheduled for 10 a.m. on **November 15, 2018**. DCD will re-notice the hearing dated and threshold determination in the newspaper, postings, and e-mail notice to agencies and people who provided comment on this application in compliance with Chapter 26.10 Clallam County Codes.

Based on these comments received, and a review of information in the record, **the SEPA Responsible Official withdrew the threshold determination DNS** on May 10, 2018 (Exhibit 77) per WAC 197-11-340(2)(f) & (3)(a)(ii).

DCD has identified the following issues to be addressed prior to the issuance of a new threshold determination and SEPA comment period:

- Potential impacts to wildlife and their habitat at the Dungeness National Wildlife Refuge.
- Project specific conservation and operational measures to reduce impacts on wildlife and Impacts to the visitors of Refuge and to residents of the area.
- Relevant issues raised by the public (such as micro-plastics, compatibility with the Refuge, etc).

Please contact Greg Ballard, Project Planner at (360) 565-2616, or by e-mail at gballard@co.clallam.wa.us if you have any questions, comments, or would like to be put an e-mail distribution list for this matter.

Attachments: Exhibits 75 & 76

Ballard, Greg

From: Gray, Steve
Sent: Wednesday, May 02, 2018 12:19 PM
To: 'Elizabeth Tobin'
Cc: Winborn, Mary Ellen; Hansi Hals; Ballard, Greg
Subject: RE: Shoreline Permit: SHR2017-00011 (External Email: USE Caution)

Importance: High

CLALLAM COUNTY DCD
EXHIBIT 75
DATE 5-8-18

Hi Elizabeth,

Based on your below correspondence, it is our understanding that the Tribe is requesting to put their shoreline application on "Hold" while you move forward with federal permitting process and preparation of a Biological Evaluation/Assessment. Please be aware that it is our understanding that the federal permit process will not be finalized until County shoreline permit process is completed related to the coastal zone management certification.

You also asked if there are any specific procedural measures that the Tribe needs to take to put the application on hold. The Tribe's request for a "hold" on the shoreline application will need to be considered by the Hearing Examiner. At the April 5 public hearing, the Tribe and County agreed to a time extension. This agreement, and the requests by the public for additional time to review and comment, resulted in the Hearing Examiner agreeing to continue the public hearing to June 7 and to issue his Post Hearing Order (Revised April 11, 2018). That order set a continued open record public hearing to June 7, 2018 at 1:00 pm. In addition, it set a deadline of May 18, 2018 for the Tribe to provide any response to public comments received thru April 27, 2018, and for a County supplemental staff report by May 31, 2018.

CCC 26.10.540 directs that final decisions on County permits should be made within 120-days of determination of application completeness. Additional County procedures for determining completeness are found in CCC 26.10.320 of the Clallam County Code. The objective of these provisions is to provide for timely permit processing. Please note that excluded time periods such as any extension of time mutually agreed upon by the applicant and the County; and periods during which applicant has been requested by the County to correct plans, perform required studies, or provide additional required information (CCC 26.10.540(2)).

In review of the Tribe's request, and in light of the Post-Hearing Order, it would be helpful to have the following information:

- Rationale to further delay County review and decision on the shoreline permit application to pursue federal permit process. For example, how will pursuing federal permits address comments received or the County's recommendation to the Hearing Examiner to supplement information related to specific analysis and impacts of the proposal and related operations to non-ESA species and the Dungeness Wildlife Refuge at the project location?
- What specifically is the period of additional time being requested (e.g., 60-days, other) to prepare and submit Tribe response to public comments, Dungeness Wildlife Refuge comments, and County staff report and/or to submit any new related supporting documents to support the Tribe's shoreline application.

Based on the above, please confirm your request to put your shoreline permit application on hold. We will send to the Hearing Examiner for review and decision.

Please contact me if you have any questions. My direct number is 360-417-2520.

Thanks, Steve

Steve Gray
Deputy Director/Planning Manager
Clallam County Department of Community Development
360-417-2520; sgray@co.clallam.wa.us

From: Elizabeth Tobin [<mailto:etobin@jamestowntribe.org>]
Sent: Tuesday, May 01, 2018 9:44 AM
To: Ballard, Greg
Cc: Gray, Steve; Winborn, Mary Ellen; Hansi Hals
Subject: Shoreline Permit: SHR2017-00011 (External Email: USE Caution)

Hello Greg,

Thank you for taking the time to talk with me yesterday.

As we discussed, the Jamestown S'Klallam Tribe will be pursuing a federal Standard Individual permit for the Dungeness Bay aquatic lease site. At this time, the Tribe would like to put our Shoreline Permit application on hold as we move forward with the federal permitting process and preparation of a Biological Evaluation/Assessment.

Please let me know if there are any specific procedural measures that we need to take to put this permit application on hold. It would also be greatly appreciated if you would send confirmation that you received this request.

Thank you very much for your assistance,
Liz

Elizabeth Tobin
Shellfish Biologist
Jamestown S'Klallam Tribe
Office: 360-681-4656
Cell: 360-912-2961
etobin@jamestowntribe.org

**BEFORE THE HEARING EXAMINER
FOR CLALLAM COUNTY**

In the Matter of the Application of)
)
Jamestown S’Klallam Tribe)
)
For a Shoreline Substantial Development)
Permit and a Shoreline Conditional)
Use Permit)

No. SHR2017-00011

CLALLAM COUNTY DCD
EXHIBIT 54-76
DATE 5-9-18

**ORDER ON REQUEST FOR
CONTINUANCE**

TO: PARTIES OF RECORD

The Hearing Examiner held an open record hearing on April 5, 2018, on the above referenced request for a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit. On April 6, 2018, the Hearing Examiner issued a post-hearing order on the matter, and a revised post-hearing order on April 11, 2018, setting a continued hearing date of June 7, 2018.

On May 7, 2018, the Jamestown S’Klallam Tribe (Applicant) submitted an email request to continue the hearing for six months to allow the Tribe adequate time to prepare a site-specific Environmental Assessment as required by the U.S. Army Corps of Engineers for an Individual Corps Permit, rather than a General Permit. The County’s Department of Community Development (DCD) provided an email response that it has no objection to the Tribe’s request. DCD further indicated that it plans to withdraw the existing Determination of Nonsignificance (DNS) it issued under the State Environmental Policy Act (SEPA) and that it would conduct a new SEPA review based on the completed Environmental Assessment being prepared by the Applicant.

The Clallam County Rules of Procedure for Proceedings Before the Hearing Examiner on Hearings on Permit Applications and Other Hearing Matters, Sec. 9.7(2) provides that any party of record may request continuance of a hearing based on reasonable grounds and that the Hearing Examiner shall have discretion to grant or deny the request.

The Applicant has provided reasonable grounds for the requested continuance and, accordingly, the request is **GRANTED**. Unless otherwise agreed to by the County and the Applicant, the open record hearing will be held at **10:00 AM on November 15, 2018**. In addition, the County shall provide additional notice of the new SEPA determination and continued hearing.

SO ORDERED this 9th day of May 2018.



Andrew M. Reeves
Hearing Examiner
Sound Law Center