

Appendix 3

Shoreline Substantial Development Permit #SHR2023-00003
Taylor Shellfish – Oakland Bay Floating Oyster Farm
Aesthetic Analysis – Response to Comments

I. Overview

Taylor Shellfish submitted a memorandum on August 30, 2023 that provides supplemental information regarding the aesthetic impacts associated with Taylor Shellfish’s proposal (“Proposal”) to install and operate a floating oyster farm in Oakland Bay under Shoreline Substantial Development Permit #SHR2023-00003. That memorandum was attached as Appendix C to Taylor Shellfish’s response to comments that were submitted through the hearing in this matter. The memorandum addressed the Proposal’s impacts under relevant regulations and policies in the Mason County Shoreline Master Program (“SMP”) and provided information requested by the Hearing Examiner at the conclusion of the August 16, 2023 hearing.

Taylor Shellfish’s August 30 submittal was followed by a subsequent round of public comments, which ran until September 11. This memorandum supplements Taylor’s August 30 memorandum and provides information and analysis responsive to recent public comments.

II. Shoreline Laws and Policies Addressing Aesthetic Review of Aquaculture

As discussed in Taylor Shellfish’s August 30 aesthetics memorandum, the SMP contains a section specifically focused on views and aesthetics (MCC 17.50.145), and aesthetics are further addressed within the SMP’s aquaculture section (MCC 17.50.210). These views and aesthetics provisions are consistent with those in the Shoreline Management Act, chapter 90.58 RCW (“SMA”) and the implementing guidelines developed by the Department of Ecology. Collectively, they focus on the extent to which aquaculture projects will align with the aesthetic qualities of the surrounding area, and other than a prohibition on structures over 35 feet tall in certain situations, they do not specifically protect against impacts to views from upland residences. RCW 90.58.320; WAC 173-26-241(3)(b)(i)(C); WAC 173-26-211(5)(c)(ii)(D). Further, they expressly state that in the event of a conflict between water-dependent shoreline uses, such as aquaculture, and maintenance of views from adjacent properties, the water-dependent uses shall have priority, unless there is a compelling reason to the contrary. MCC 17.50.145(6); WAC 173-26-221(4)(d)(iv). Finally, in developing its comprehensive update to the Mason County SMP, Mason County and the Department of Ecology chose not to adopt or incorporate the measures listed in the 1986 Aquaculture Siting Study as criteria for permit approval. In fact, the siting study is nowhere referenced in the SMP. Additionally, the analytical scope of that study—which focuses on impacts to views from upland properties—is narrower than the SMP, which more broadly addresses how an aquaculture proposal aligns with the aesthetic qualities of the surrounding area. MCC 17.50.210(b)(1).

Commenters do not provide information or analysis demonstrating that the above framework under which the Proposal’s aesthetic impacts are evaluated is incorrect. However, some commenters continue to criticize the Proposal by arguing that it does not comply with all recommendations in the 1986 Aquaculture Siting Study, including siting projects more than 1,500 feet away from the shoreline and not occupying more than 10% of the cone of vision.

David Douglas, 09/10/23 (pp. 3-4, 13-14). As discussed in Taylor's August 30 submittal, the recommendations in the Siting Study are provided as alternative measures for effectively minimizing aesthetic impacts. Commenters do not contravene this position. Taylor Shellfish is employing several minimization recommendations in the Siting Study. Taylor Shellfish August 30, 2023 Response, Appendix C, pp. 7-8. Further, renderings demonstrate that moving the Proposal out further from the east shore would not appreciably reduce aesthetic impacts. *Id.* at Attachment C.¹

III. Aesthetic Qualities of the Surrounding Area

As discussed in Taylor Shellfish's August 30 submittal, the surrounding area is characterized by a wide variety of uses and developments, including a gravel mine, port facilities, forestry, timber production, low-density residential development, and a state highway.

Commenters do not provide information demonstrating that the Proposal would substantially detract from the aesthetic qualities of Oakland Bay. Rather, they focus on potential impacts of the area of the Proposal from some residential properties. Commenters submit photographs of Oakland Bay from specific residential properties and contend that these views would be destroyed or that the impacts would be massive.² Bricklin & Newman, LLP, 09/10/23 (pp. 3-4); Mark Herinckx, 08/31/23 (pp. 3-8); Mark Herinckx, 09/03/23 (p. 1); Bella Greaves, 09/06/23; Ginny Douglas, 09/06/23; Tom and Melanie Nevares, 09/06/23 (p. 2); David Barnett, 09/07/23 (p. 1); Bill Morissette, 09/08/23 (pp. 1-2); Kevin Renso, 09/10/23; Nancy & James Hancharik, 09/10/23; Melissa Kennedy, 09/10/23 (pp. 1-3); David and Kristina Stolte, 09/11/23; Nancy Wilner, 09/01/23. Commenters' argumentative position that these views would be destroyed does not provide a basis for denying the permit. Additionally, commenters' photographs are consistent with those submitted by Taylor Shellfish. They show an area characterized by a mix of uses, including aquaculture, gravel mining (shown in many photos with a large section of trees cut down), forestry, residences, and a state highway.

Some commenters also criticize the information provided by Taylor Shellfish estimating the number of homes that would have a view of the Proposal. *E.g.*, Kim Robison, 09/02/23 (p. 2); Ginny Douglas, 09/06/23 (p. 8). Taylor was clear that the number of homes with views of the Proposal was approximate. Taylor Shellfish August 30 Response, Appendix C, p. 6. This is true with respect to the Proposal as well as the other locations provided by Taylor for purposes of comparison. If the potential area of viewshed affect should be expanded for these locations, the

¹ Additionally, moving the Proposal further out from the east shore would push it closer than 1,500 from the west shore and also result in the Proposal occupying the deepest portion of Oakland Bay in the area.

² One commenter contends that the Proposal would impact views from the Bayshore Preserve. Francesca Ritson, 09/07/23. Views from the Preserve to the south are currently characterized by a mix of uses and development, including commercial and residential. In addition, the Preserve is approximately 1 mile from the Proposal and not elevated. Given these factors and the numerous measures included in the Proposal to reduce aesthetic impacts, views from the Preserve would be insignificantly impacted by the Proposal. Additionally, contrary to comments otherwise, the only park in the vicinity of the Proposal, Sunset Bluff, is gated off and has a forested shoreline. Melissa Kennedy, 09/10/23 (p. 2).

overall conclusion would remain the same that the Proposal is within the viewshed of relatively fewer houses when compared to other potential locations for floating aquaculture in the County.³

IV. The Proposal Satisfies SMP Regulations Addressing Aesthetics

Appendix C to Taylor Shellfish’s August 30 submittal contains a detailed discussion of the Proposal’s consistency with relevant aesthetics policies and regulations. This Appendix supplemented prior information that Taylor Shellfish provided to the County supporting the Proposal’s consistency with aesthetics policies and regulations, along with the information in the staff report. The following discussion responds to SMP provisions that commenters contend the Proposal is incompatible with.

MCC 17.50.145(1)

One commenter contends the Proposal fails to satisfy MCC 17.50.145(1), which is expressly a general policy preference of the SMP to “minimize obstructions of the public’s visual access to the water and shoreline from new shoreline developments while recognizing private property rights.” Bricklin & Newman, LLP, 09/10/23 (p. 8). This contention is meritless. This policy expresses a goal of the SMP, not an approval criterion for specific projects. Additionally, as recognized by the commenter, the Proposal will not obstruct any views. It will protrude only inches above the water surface. The commenter’s complaint that it “makes no sense” to allow the Proposal because it will have an aesthetic impact does not demonstrate that the Proposal does not comply with the SMP; it is an argument that must be advanced to the legislature to prohibit projects that have aesthetic impacts. *Id.* This is not the current law, however, as the state and county have appropriately determined that shellfish aquaculture is a preferred, water-dependent use that has statewide benefit and is given priority over impacts to views from neighboring properties in the event of conflict. RCW 90.58.020; WAC 173-26-221(4)(d)(iv); WAC 173-26-241(3)(b); MCC 17.50.145(6); MCC 17.50.210(a)(1).

MCC 17.50.145(2)

Commenters contend that the Proposal will conflict with MCC 17.50.145(2), which states: “Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities (as seen from land or from water) that are derived from natural or cultural features, such as estuaries, bluffs, beaches, vegetative cover and historic sites/structures.” Commenters contend that Oakland Bay is a “natural feature,” Bricklin & Newman, LLP, 09/10/23 (p. 8), but provide no information to support this assertion, and as discussed in Taylor Shellfish’s August 30 response and earlier submittals, it is false. Oakland Bay is characterized by a mix of uses including hundreds of acres of shellfish aquaculture, a port, mining operations, forestry, residences, and a state highway. Commenters do not provide any information

³ Commenters did not provide credible alternative calculations as to the specific number of homes that would have a view of the Proposal. For example, one commenter contends closer to 400 parcels would view the Proposal, but many of the homes identified by the commenter are located far away and are geographically situated such that the Proposal would not be in their viewshed. Ginny Douglas, 09/06/23 (p. 8; highlighting homes located significant distances to the south and north of the proposal and around geographic features that would prevent a view of the Proposal).

demonstrating that the Proposal will significantly detract from the aesthetic qualities of the area, other than arguing that it will be present in their viewshed. While Taylor Shellfish disagrees with commenters' characterization of the extent of this impact, Taylor acknowledges that the Proposal will be visually evident. However, this is not an impermissible impact. It is an acknowledged and appropriate impact under the SMA and SMP, which prioritizes water-dependent uses that are of statewide interest over residential aesthetic interests. RCW 90.58.020; WAC 173-26-221(4)(d)(iv); WAC 173-26-241(3)(b); MCC 17.50.145(6); MCC 17.50.210(a)(1), (13).

MCC 17.50.145(6)

One commenter contends that the Proposal is inconsistent with MCC 17.50.145(6), which states “Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.” Bricklin & Newman, LLP, 09/10/23 (p. 9). The commenter’s contention that there is a compelling reason to deny the Proposal because it will be viewable from more than one direction has no support in the SMP and must be rejected. Similarly, the commenter misconstrues this provision as pitting water-dependent uses against public access. *Id.* The provision states that water-dependent uses or public access is prioritized over views from adjacent properties. MCC 17.50.145(6). The Proposal is a water-dependent use in an area that has historically, and is currently, highly utilized for shellfish aquaculture. See Taylor Shellfish August 30, 2023 Response to Comments, Appendix C. See also:

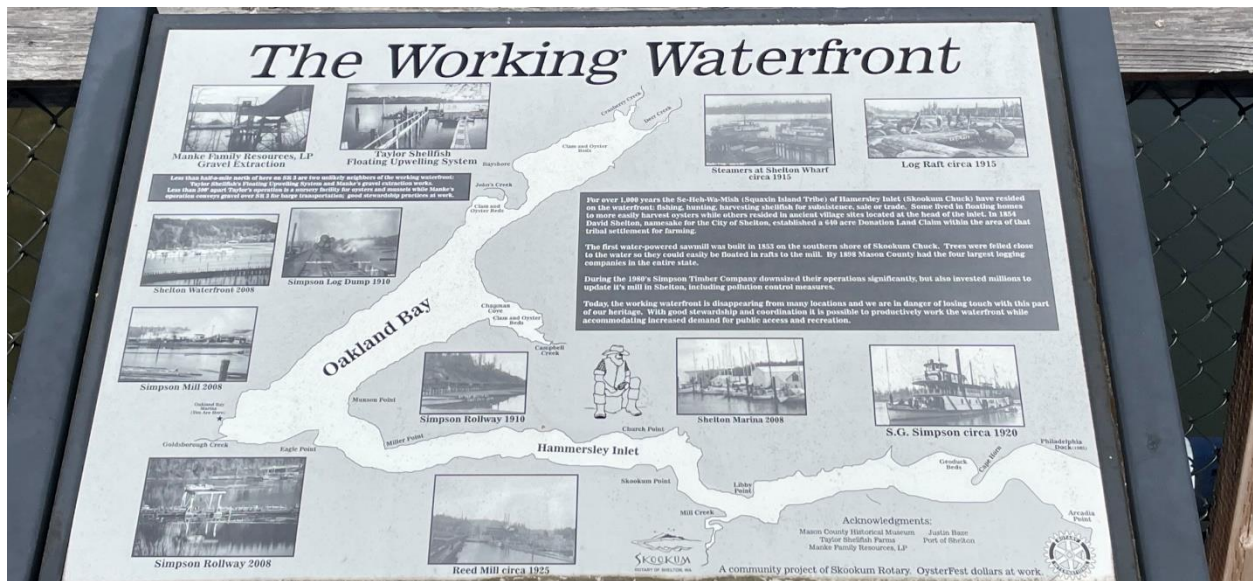


Figure 1: Educational signage at the Oakland Bay Marina characterizing the bay as “The Working Waterfront” and identifying numerous industrial and aquacultural activities and development within the Bay.

MCC 17.50.210(a)

Commenters contend the Proposal is inconsistent with aquaculture policy 10. Bricklin & Newman, LLP, 09/10/23 (p. 10); Bill & Florence Fierst, 09/07/23 (p. 1). But this policy only calls for the County to recognize the possible impacts that aquaculture might have on aesthetic qualities. It does not require any particular outcome. And the County and Taylor Shellfish have given extensive consideration to aesthetic impacts associated with the Proposal.

MCC 17.50.210(b)

Commenters' contentions that the Proposal is inconsistent with the aquaculture use regulations addressing aesthetics are similarly without merit.

MCC 17.50.210(b)(1)(J) states: "To the maximum extent practicable, floating aquaculture structures shall not substantially detract from the aesthetic qualities of the surrounding area, provided methods are allowed by federal and state regulations and follow best management practices." As discussed in Taylor Shellfish's August 30 response, the analytical focus of this regulation is the Proposal's relationship to the aesthetic qualities of the surrounding area, not simply impacts on views from residential properties. Commenters contend that the Proposal will impact views from residential properties. *E.g.*, Mark Herinckx, 08/31/23 (pp. 1-2); Bricklin & Newman, LLP, 09/10/23 (pp. 11-12); Bill & Florence Fierst, 09/07/23 (p. 1). Both the County and Taylor Shellfish have acknowledged that there will be some impacts. And, as set forth in Taylor's August 30 response, the Proposal will complement the aesthetic qualities of the surrounding area, which is characterized by a mix of uses including hundreds of acres of aquaculture production, forestry, mining, a marina, and a state highway, in addition to residences. Further, even if the Proposal were to substantially detract from the aesthetic qualities of the surrounding area, which it will not, it would still satisfy regulation (1)(J) because it reduces such impacts to the maximum extent practicable by incorporating numerous minimization strategies, including: use of uniform gear colors that have been recognized to minimize potential aesthetic impacts; having a neat and orderly layout of farming operations; using best management practices to reduce potential noise and lighting impacts; and frequent monitoring to help ensure that shellfish aquaculture gear remains secured and maintains its integrity.

MCC 17.50.210(b)(1)(L) states: "Aquaculture development shall be designed and constructed with best management practices to minimize visual impacts and shall be maintained in a neat and orderly manner. Aquaculture facilities, except navigation aids, shall use colors and materials that blend into the surrounding environment where practicable." The Proposal will comply with best management practices ("BMPs") for floating aquaculture, including all conditions of the programmatic consultation for shellfish farming activities in Washington State. Hearing Exhibit 8 at 10-12; Hearing Exhibit 14. The Proposal will be constructed and maintained in a neat and orderly manner, with rows of oyster bags secured at regular 30-foot intervals. The oyster bags will be composed of black, marine-grade plastic. Black gear can be produced with the most uniformity in color, best maintains its integrity in the marine environment, and has been recently acknowledged as effectively minimizing potential aesthetic impacts. *John Marnin and Juayne Cook v. Mason County and Ecology*, SHB No. 07-021, Modified Findings of Fact, Conclusions of Law and Order (February 6, 2008), Conclusion of Law 17. While commenters contend that the Proposal does not comply with this regulation, they fail to identify specific best management

practices that the Proposal does not incorporate. Bricklin & Newman, LLP, 09/10/23 (p. 12); David Douglas, 09/10/23 (p. 4). Rather, their opposition to the Proposal on the basis of this regulation is on account of its size. But the overall size of a floating aquaculture project is not a BMP. And to the extent that the SMA or SMP require the size of a structure to be reduced, such reduction is only required “to support the structure’s intended use.” WAC 173-26-211(5)(c)(ii)(A). The size of the Proposal is the minimum necessary to support its intended use. The Proposal’s gear is limited to oyster bags and buoys, which will be used to contain and float the cultivated oysters, along with lines and anchors, which will hold the system in place. No unnecessary or oversized structures are proposed to support the Proposal’s intended use, and the SMA and SMP do not require the overall size of the Proposal to be reduced. MCC 17.50.210(b)(1)(L); WAC 173-26-211(5)(c)(ii)(A). *Cf. Citizens to Save Pilchuck Creek v. Skagit County*, SHB No. 98-004, 1999 WL 160036 *6 (holding that a scaled down alternative to a proposal need not be considered in an environmental impact statement because it would not meet the objectives of the project).

V. Conclusion

The Proposal satisfies the standards in the SMP for appropriately addressing aesthetic impacts of aquaculture projects. The Proposal is sited in an area characterized by a wide variety of uses and developments, including shellfish aquaculture, and it will complement the aesthetic qualities of the surrounding area. Further, Taylor Shellfish is employing all appropriate and practicable management measures to effectively reduce the Proposal’s aesthetic footprint.

Taylor Shellfish recognizes that some nearby property owners continue to oppose the Proposal due to its aesthetic impacts. This is an anticipated outcome when planning for and fostering water-dependent uses, including floating shellfish aquaculture, which are present in the viewshed of residential properties. The state legislature, Department of Ecology, and Mason County addressed this tension in the SMA and SMP by requiring consideration to be given to the aesthetic impacts of aquaculture projects and calling for impacts to be reduced through design features and best management practices. Taylor Shellfish has incorporated appropriate features and practices into the Proposal, and commenters have not provided information otherwise or that demonstrates the Proposal will have impermissible impacts under the SMP. The Proposal satisfies all permit issuance criteria, including those relating to aesthetics, and accordingly Taylor Shellfish respectfully requests issuance of the requested shoreline substantial development permit.