

Appendix 4

**Shoreline Substantial Development Permit
Taylor Shellfish – Oakland Bay Floating Oyster Farm
Public Access – Response to Comments**

I. Overview

Taylor Shellfish submitted a memorandum on August 30, 2023 that provided supplemental information regarding public access 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 D to Taylor Shellfish’s response to comments that were submitted through the hearing in this matter.

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 these recent public comments.

II. The Proposal Will Have a Minor Impact on Public Access.

Taylor Shellfish agrees with commenters that the Proposal’s “impacts to public access must be viewed as a whole.” Bricklin & Neman, LLP, 09/10/23 (p. 2). The only negative impact that the Proposal would have on public access would be limiting boaters’ ability to traverse across Oakland Bay in the specific location of the site and recreate in this area with no limitations. Bricklin & Neman, LLP, 09/10/23 (p. 2); Mark Herinckx, 08/31/23 (pp. 1-2); Bella Greaves, 09/06/23 (p. 1); Ginny Douglas, 09/06/23 (p. 4); Tom and Melanie Nevares, 09/06/23 (p. 1); Bill Morisette, 09/08/23 (p. 3). This impact will not affect numerous recreational users within Mason County. Taylor Shellfish employees who have spent extensive time working in Oakland Bay and observing boating activities within the Bay testified that recreational boating activity is very infrequent and extremely limited in duration. Most boating activity in Oakland Bay is work boats—either Taylor Shellfish, other growers, or the Squaxin Island Tribe. Taylor’s Chapman Cove farm manager, Ana Andres, testified that she might see one recreational boat per week in Oakland Bay, and recreational users tend to spend less than one hour per day recreating in the Bay. She does not see much of any recreation in the winter, and while there is some recreational fishing in the fall, this typically occurs around Bayshore, which is approximately 1/2 mile to the north of the Proposal site. August 9, 2023 Hearing Audio: 50:15-51:00.

Some commenters disagreed that recreational boating in Oakland Bay is extremely infrequent and limited, but they did not provide specific information as to the number of boaters that recreate through the site of the Proposal or the frequency of such use. *E.g.*, Bill & Florence Fierst, 09/06/23 (p. 5). And nobody testified to spending as much time being physically present on Oakland Bay and observing typical activities as Ms. Andres.¹ Additionally, Taylor Shellfish’s characterization of recreational use within Oakland Bay is consistent with the Mason County Shoreline Inventory and Characterization Report developed as part of the comprehensive SMP

¹ Contrary to commenters’ contention that Ms. Andres only spends 20 hours out on the farm each week, Kim Robison, 09/02/23 p. 3, Ms. Andres testified that she spends at least 40 hours per week on the farm. August 9, 2023 Hearing Audio: 49:45-49:55.

update, which documents that Oakland Bay is renowned for its aquaculture and industrial activities, not recreational boating. Taylor Shellfish August 30 Response, Appendix D at 3.

Nor did commenters undermine the information provided by Taylor Shellfish demonstrating that the Proposal would not be located in the deepest portion of Oakland Bay. And, as illustrated in Appendix C to Taylor's August 30 submittal, the Proposal will not impede access to the shoreline or impact the public's ability to access recreation or navigation opportunities within Oakland Bay. The Proposal is located over 1,000 feet from all neighboring upland areas, facilitating travel and recreation through and within Oakland Bay. The Proposal will not prevent the public from recreating and navigating in Oakland Bay, even during low tide.

Comments contending the Proposal will occupy a majority of the width of Oakland Bay and substantially impede navigation are not supported in fact. *E.g.*, David Douglas, 09/10/23 (p. 3, 11). Oakland Bay is over 3,500 feet even at its narrowest location in the area of the Proposal, *id.* (p. 65) and the width of the Proposal's lease is only 1,000. Further, the Proposal's outside anchors and lines will be installed 100 feet from the outer edge of the lease boundary. Thus, substantial and sufficient area will remain unimpacted by the Proposal, allowing for continued recreational activities in Oakland Bay consistent with current and planned use levels.

III. Taylor Is Proposing to Provide Additional Public Access that Will More than Offset Any Minor Impacts from the Proposal.

While the Proposal will have limited adverse impact to public access, it will significantly improve public access in Oakland Bay for the following reasons:

- The Proposal's cultivated oysters will filter nutrients from the water, helping reduce nutrient loading through anthropogenic sources such as residential development. This filtration will help protect and improve water quality in Oakland Bay so that the waters remain healthy for recreational uses including swimming and recreational shellfish harvesting.
- Water quality must remain at a high level to allow for commercial shellfish harvesting. Accordingly, shellfish farmers are at the forefront of local efforts to protect and improve water quality in the areas that they farm. This is particularly true in Oakland Bay, where shellfish farmers have successfully advocated to improve water quality, resulting in the reopening of areas that were historically closed due to pollution. The Proposal, which will provide valuable oyster seed to Taylor Shellfish along with other farmers, will create an additional incentive for the shellfish industry to continue fighting for water quality in Oakland Bay.
- Shellfish farms typically provide a point of interest to recreational users. Taylor Shellfish has reported that this holds true for existing farms in Oakland Bay, including Chapman Cove, where kayakers have enjoyed coming up to the farms and discussing their operations with Taylor employees. Taylor anticipates that kayakers and other recreational users will be interested in viewing and exploring the Proposal, similar to the company's similar farms in Washington and Canada.
- Taylor Shellfish will lease the site of the Proposal from DNR prerequisite to installing and operating the farm. Funds paid from Taylor to DNR from this lease are directed to

community grants and projects benefiting state shorelines, habitats and public access through DNR's Aquatic Lands Enhancement Account. In the 2022-2027 Mason County Parks, Recreation, Open Space and Trails Plan, Mason County identifies this account as a potential source of funds to support county priorities for public access projects. *See also* comment letter from Phil Wolf, 09/04/23.

- Taylor has proposed to grant the public the right to use over 16.6 acres of the company's private tidelands in Oakland Bay, including tidelands to the east (Sunset) and north (Bayshore). To encourage water access use of these tidelands, Taylor is collaborating with Washington Water Trails Association (WWTA) to include these 16.6 acres as points of interest on their Cascadia Marine Trail. The addition of the Sunset and Bayshore tidelands would extend the existing water trail, which stops at Walker Park in Shelton, out over 4 miles, link 3 launch and access points between Jacoby Shorecrest Park and Bayshore, and call out scenic and historical points of interest. By working with the WWTA and helping to develop an interest in Oakland Bay and its long history of aquaculture and the rich natural resource industry of the area, this trail would expand public access interest to Washington Water Trail's over 900 paid members and 4,000 Facebook followers. Importantly, the Mason County Parks, Recreation, Open Space and Trails Plan emphasizes the growing popularity and importance of water trails in providing valuable recreational opportunities for the broader public in Mason County. Mason County Park, Recreation, Open Space and Trails Plan² at 39-40. It further highlights that "Oakland Bay is listed on the Washington Water Trails Association points of interest for water access." *Id.* at 34. Thus, Taylor's proposed mitigation will provide valuable public access benefits recognized by Mason County.
- Taylor is also offering to assist the Shelton Yacht Club with improvements to the Oakland Bay Marina. The Club purchased the Oakland Bay Marina and is in the process of making significant improvements to the marina, which is located a short distance to the south of the Proposal. Commenters requested additional information regarding this assistance. Kim Robison, 09/02/23 (p. 2). The Club recently held a groundbreaking ceremony to launch a major restoration project at the marina, which is fully funded. Subsequent phases of improvements include improving the parking lot and boat ramp. The boat ramp is open for public use, but it currently is composed of gravel and only extends to +10 feet above the mean lower low water ("MLLW") line. Therefore, the boat launch can only be used by the public during limited hours when the tide is very high. The Club is planning to rebuild the boat launch with concrete and extend it by 10 vertical feet, rendering it more durable and, more importantly, accessible for public use many more hours each day. See below photo of existing boat launch and drawing of planned extension. The boat launch project is not fully funded, however, and absent funding, it will not move forward. As discussed at hearing, Taylor has been working with the Club to better understand funding shortfalls and needs. Taylor has continued those discussions with the Club since the hearing, and Taylor has committed to providing \$75,000 of in-kind or direct financial support for the boat launch improvement project as a component of the public access mitigation for the Proposal.

² <https://masoncountywa.gov/forms/parks/2022-2027-park-plan.pdf>



Figure 1: Photograph of existing boat launch at the Oakland Bay Marina. The gravel boat launch ends at +10 MLLW, and below that the substrate is too soft to launch boats.

IV. The Proposal Satisfies the SMP's Public Access Provisions

Appendix D 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 17.50.020

One commenter erroneously contends that the site of the Proposal is located within "shorelines" as that term is defined in the SMP, and that accordingly it must preserve or enhance or increase public access to the site. Bricklin & Newman, LLP, 09/10/23 (p. 6). But "shorelines" excludes shorelines of statewide significance. MCC 17.50.020, "Shorelines." *See also* RCW 90.58.030(2)(f). The site of the Proposal is below the line of extreme low tide is hence a shoreline of statewide significance. MCC 17.50.20, "Shorelines of Statewide Significance"; Hearing Exhibit 13. Accordingly, the commenter's contention that "[t]he entirety of Oakland Bay is a shoreline as defined in the code," Bricklin & Newman, LLP, 09/10/23 (p. 6, n.10), is false.

MCC 17.50.140(b)(16)

One commenter contends that it is impossible for the Proposal to comply with MCC 17.50.140(b)(16), which states: "Existing, formal public access shall not be eliminated unless the applicant shows there is no feasible alternative and replaces the public access with access of comparable functions and value at another location."

The commenter's reasoning appears to be that because the Proposal is occupying a portion of the marine waters in Oakland Bay, and Taylor Shellfish cannot create new marine waters, the Proposal violates this code provision. The commenter thus asks the Hearing Examiner to adopt an extremely constrained view of MCC 17.50.140(b)(16) that would prohibit projects that occupy the surface of marine waters. This, however, is not the law. Rather, the Mason County Code expressly allows projects occupying marine waters, and most pertinent here, it allows floating aquaculture projects in Oakland Bay. MCC 17.50.090. Thus, the commenter's position would prohibit floating aquaculture projects despite the fact that they are expressly allowed under the SMP. This interpretation must be rejected. *Fraternal Ord. of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Ord. of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002) (interpretations that result in unlikely, absurd, or strained consequences must be avoided).

MCC 17.50.210(a)

Commenters contend the Proposal is inconsistent with aquaculture policy 12, which states: "Aquacultural activities should be operated in a manner that allows navigational access to shoreline owners and commercial traffic." MCC 17.50.210(a)(12). Bricklin & Newman, LLP,

09/10/23 (p. 10); Bill & Florence Fierst (09/06/23 (pp. 5, 8, 12, 15). The Proposal is located more than 1,000 from all adjacent shorelines and will allow navigational access to shoreline owners. Further, other than aquaculture activities, there is no commercial traffic in the area of the Proposal, and the Proposal will allow for continuation of all boating activity as it is not located in the deepest area of Oakland Bay.

Commenters also contend that the Proposal is inconsistent with aquaculture policy 13, which states: “Floating aquaculture should be reviewed for conflicts with other water dependent uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installation shall incorporate features to reduce use conflicts.” MCC 17.50.210(a)(13). Bricklin & Newman, LLP, 09/10/23 (p. 11); Bill & Florence Fierst, 09/06/23 (pp. 5, 8, 12, 15). The County and Taylor Shellfish have extensively reviewed the Proposal’s potential to conflict with other water-dependent uses. And the Proposal is incorporating features to reduce use conflicts, including siting the Proposal away from adjacent shorelines, thereby allowing navigational access to shoreline owners, and spacing the rows of oysters bags on 30-foot centers, facilitating use of the water between the lines.³

MCC 17.50.210(b)

The Proposal complies with MCC 17.50.210(b)(1)(E), which states “aquacultural uses and developments may be required to provide mitigation where necessary to offset significant adverse impacts to normal public use of surface waters.” For reasons discussed above and in prior submittals, the Proposal will not have significant adverse impacts to normal public use of surface waters. And to the extent that it is having any adverse impacts, they are more than offset by the mitigation that Taylor Shellfish has agreed to provide. Hence, commenters’ contention that this regulation cannot be met is incorrect. Bricklin & Newman, LLP, 09/10/23 (p. 11); Bill & Florence Fierst, 09/07/23 (p. 1).

The Proposal complies with MCC 17.50.210(b)(1)(K), which states: “Aquacultural structures shall be placed in such a manner, and be suitably sized and marked, so as to minimize interference with navigation.” Contrary to commenters’ contention, the Proposal’s placement away from adjacent shorelines minimizes interference with navigation as it allows for navigational access to shoreline owners and commercial traffic. *E.g.*, Bricklin & Newman, LLP, 09/10/23 (p. 12). The Proposal’s gear will be of suitable size for oyster bag cultivation and the rows of bags will be placed on 30-foot centers, allowing for recreational use between the rows. And the Proposal will be marked with navigation aids consistent with Coast Guard requirements.

V. Conclusion

³ One commenter complains about Taylor’s clarification that the Proposal’s oyster bags would be located on 30-foot centers, contending it is inconsistent with other materials in the record. Patrick Pattillo, 09/10/23 (p. 2). Given questions were raised regarding the spacing between the bags, and Taylor will install the bag system on the higher end of the spacing range thereby facilitating greater public access between the bags, one would expect this clarification would be welcomed rather than criticized. Regardless, to the extent that the County desires this issue to be further resolved, Taylor Shellfish would be comfortable with a permit condition requiring the double-rows of oyster bags to be located on 30-foot centers.

For the reasons set forth above and in Taylor Shellfish's prior submittals, the Proposal will have a minor impact on public access. This minor impact will be self-mitigated by the project's design allowing for boating between lines and the beneficial water quality and recreational shellfish harvest protections proposed by the Proposal. Any remaining public access impacts will be more than offset by the tidelands that Taylor Shellfish is proposing to make formally available for public access in the area for the life of the Proposal, Taylor's coordination with the WWTa to extend the water trail into Oakland Bay, and Taylor's commitment to provide \$75,000 in financial assistance to improve and extend the boat launch at the Oakland Bay Marina.

The Proposal satisfies all permit issuance criteria, including those relating to public access, and accordingly Taylor Shellfish respectfully requests issuance of the requested shoreline substantial development permit.