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BEFORE THE HEARING EXAMINER FOR MASON COUNTY

RE: Taylor Shellfish Farms Shoreline Substantial Development Permit SHR2023-00003	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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INTRODUCTION

Taylor Shellfish Farms has applied for a shoreline substantial use permit to install and operate a 50-acre floating oyster bag system in the middle of Oakland Bay just south of Chapman Cove. The proposal is approved subject to conditions. Two significant conditions added to those recommended by staff are a requirement that the black color of the oyster bags be replaced with blue and/or green and that specified environmental impacts be subject to monitoring.

Note that any requests for reconsideration will not be individually distributed to the parties of record. Rather, they will be posted on the Hearing Examiner webpage of Mason County’s website. Motions for reconsideration must be emailed or otherwise delivered to Luke Viscusi in Mason County Community Services by 5 pm October 19, 2023. Mr. Viscusi’s email address is LViscusi@MasonCountyWA.gov. Unless otherwise expressly authorized, requests for reconsideration must be based upon the exhibits and testimony admitted into the record of this proceeding. No new evidence will be considered.

This is a highly significant decision for Mason County. Mason County has the second most shorelines in the State of Washington, behind San Juan County. Its bays, straits and inlets create some of the most beautiful scenic landscapes in the state. Those scenic resources will make the county an increasingly sought after place for people to live, recreate and retire as rapid urbanization continues to crowd out the rest of Puget Sound. Projects of the unprecedented scale proposed by the Applicant have the potential to seriously degrade the scenic and environmental resources of the County and the promise it holds to enrich the lives of current and future residents. For these reasons, great care has been taken to ensure that the policy choices made by the state and county are properly applied as intended by our elected representatives.

1 Unfortunately for those advocating against the project, aquaculture has a preferred use
2 status in County and state shoreline regulations. A close examination of those regulations
3 reveals that while preservation of scenic resources is important, they do not prevail over
4 the economic benefits of aquaculture. How those regulations play out when applied
5 between competing aquaculture and residential interests was well exemplified in the 2008
6 Shoreline Hearings Board decision of *John Marnin and Juyné Cook v. Mason County and*
7 *Ecology*, SHB No. 07-021, Modified Findings of Fact, Conclusions of Law and Order
8 (February 6, 2008). In that case impacts to homeowners were far more severe than those
9 of this case, but for a much smaller number of people with a much smaller aquaculture
10 operation. The case involved a proposed tidelands geoduck farm, to be located just a few
11 dozen feet from the bedrooms of adjoining home owners. The Applicant proposed to
12 work all hours of the evening and to place garish black vinyl fencing across the view scape
13 of their tidelands operations. This hearing examiner of this case imposed numerous
14 conditions limiting hours noise and aesthetic impacts. The Shoreline Hearings Board
15 struck down several of those conditions, finding that aesthetics alone were not sufficient
16 to impose any significant limitations on the proposed operation and that overall
17 aquaculture is a preferred shoreline use. Overall, conditions mitigating impacts were only
18 allowed to the extent that they didn't unreasonably interfere with the proposal aquaculture.
19 The *Marnin* case has set a strong precedent for restraint in conditioning aquaculture
20 projects that extends to this project 15 years later.

21 As identified in the staff report, the proposal is subject to review by numerous other public
22 agencies including the Washington State Department of Ecology, the Army Corps of
23 Engineers and the Washington State Department of Health. Those agencies have
24 substantial expertise in the ecological and health impacts of the proposal. The two areas
25 that they do not focus upon and that is likely the greatest areas of concern for adjoining is
aesthetics and public access. To that end, aesthetics and public access are a primary focus
of this Decision.

As to aesthetics, this Decision places great reliance upon DOE guidelines prepared in 1986
to assess aesthetic impacts of floating aquaculture. Although the guidelines are fairly
dated and have not been adopted by the County or State, they are based upon a substantial
amount of research and provide clear and specific criteria that can be applied in an
objective manner. There has been no better way presented in this proceeding to
objectively and fairly assess aesthetic impacts. The DOE guidelines rate aesthetic impacts
on a scale of low, moderate or high. These impacts are assessed under seven categories,
such as the environmental condition of the bay, surrounding scenery and number of
affected viewers. Without much room for debate, impacts qualify as moderate for each
of these seven categories. The reason for this uniform finding is that the surrounding area
is rural in a fairly homogenous natural setting, there are no major public vantage points,
and the bay is of "moderate size" with the project taking up only a small portion of the
field of vision.

As a proposal that is considered to have moderate aesthetic impact, the DOE guidelines
require reasonable mitigation to make the project blend into the surrounding environment.

1 The Applicants have proactively limited aesthetic impacts by selecting a site that is much
2 less populated than others that could have accommodated a project of this scale. Moving
3 the proposal further off-shore is not found to make any appreciable difference in aesthetic
4 impact as established in the Applicant's renderings. The one area that is found to make a
5 difference is color choice. The DOE guidelines favor green and blue colors, finding that
6 those colors are best suited to blend into the environment. The guidelines note that black,
7 the color proposed by the Applicant, has variable impact dependent upon surrounding
8 conditions. Notably, all the photographs and renderings presented by the Applicant
9 involve grey skies reflected off dark waters. Of course, the Applicant's proposed black
10 gear is well camouflaged amongst these dark colors. The contrast of the black against
11 reflections of green trees and blue skies is not depicted in any of the Applicant's
12 submissions. Given the findings of the DOE guidelines, green and/or blue gear is required
13 for the proposal.

14 For public access, there is no question that the proposal has a significant physical impact
15 on public access of the public waters. The proposal's impact is not limited to 9.1 acres as
16 asserted by the Applicant, but rather a 50-acre rectangle in the center of Oakland Bay that
17 creates a detour for those trying to travel east-west across that part of the Bay and as an
18 impediment to those travelling north-south.

19 Although the proposal creates a large physical obstacle to public access, it currently only
20 affects a modest number of persons who use that part of the Bay. Persons travelling north-
21 south can fairly easily navigate around the facility by using the 900 feet of water to the
22 shoreline on both sides. The most significantly affected individuals will be persons trying
23 to kayak or canoe across the Bay, which is most likely to be limited to a small number of
24 people living along the shoreline in that area.

25 The proposal involves extensive mitigation to compensate for the modest impact on
current users. The lease rental the Applicant will pay will be legally required to be at a
fair market value rate, which should compensate the public directly and completely for
the loss of public space. At least a portion of those funds will be used for public access
improvements. The Applicant has also committed to \$75,000 worth¹ of boat launch
improvements, expanding the time that a boat launch is available to access the waters of
the Bay. Finally, the Applicant will also be providing access to 16.6 acres of tidelands.
The tidelands will only be accessible by rope from Sunset Park bluffs or the Oakland Bay
waters. However, given the other amenities provided by the Applicant, the mitigation is
reasonable compensation for loss of public access. It should also be noted that County
regulations do not, as some argued, require complete mitigation for loss of access.
However, the rent paid in conjunction with other mitigation arguably qualifies as complete
compensation in any event.

¹ The Applicant has, however, left itself with the option of making the monetary contribution "in-kind."

1 Unquestionably, environmental impacts such as water quality and fish impacts are still a
2 serious subject of permit review, even if they are already reviewed by other agencies. The
3 County’s Shoreline Master Program has a plethora of overlapping regulations that require
4 such impacts to be addressed. The extensive amount of regulation already baked into
5 project design and the volumes of scientific research on aquaculture impacts puts the
6 Applicant in a very strong position to establish that all conceivable environmental impacts
7 for this proposal have been fully addressed and mitigated. However, the proposal creates
8 some fairly unique environmental conditions given its unprecedented size coupled with
9 the modest size of Oakland Bay and its low flushing action. These unique conditions and
10 the lack of peer review of the Applicant’s environmental assessment leaves a reasonable
11 possibility of unanticipated impacts. To assure this doesn’t happen, the proposal is
12 conditioned for the Applicant to pay for monitoring plan prepared by a third-party
13 qualified expert that monitors for pertinent potential impacts along with performance
14 standards that compel mitigation as necessary to reasonably address such impacts.

9 As is fairly common for a project of this scale, some persons questioned why no
10 environmental impact statement (EIS) was prepared for this project. The hearing
11 examiner has no authority to address that issue because no timely appeal was filed
12 challenging the determination that no EIS was required.

12 A condition of approval has also been added to the staff recommendation requiring that
13 navigation lights be configured to avoid light spillage into surrounding residences, to the
14 extent permitted by law.

14 The written comments appeared to express some confusion about a couple project
15 impacts. As to noise, the Applicant will not be operating a generator 24 hours a day. As
16 to hours of operation, the Applicant is not seeking any waiver to the County’s noise
17 standards. The Applicant was merely requesting that it be authorized to conduct work
18 hours an hour before dawn and after sunset during the fall/winter months. Any noise
19 generated by the project would still have to conform to County noise standards.

18 **TESTIMONY**

19 A computer-generated transcript accompanies this decision as Appendix A. The
20 transcript is provided for informational purposes only.

21 **EXHIBITS**

22 Exhibits 1-30 identified in the “Case Index” of the July 31, 2023 staff report were admitted
23 during the hearing. Additionally, the following exhibits were entered into the record either
24 at the hearing itself or after the hearing.

25 Post Staff Report Public Comments due by August 16, 2023

- 1 31. Public Comments Received July 31, 2023 – August 9, 2023
2 32. Public Comments Received August 9, 2023 – August 15, 2023
3 33. Additional Written Comments Received at Hearing
4 34. Public Comments Received August 15, 2023 – August 16, 2023
5 35. Public Comments Received via Zoom Chat August 16, 2023

6 Applicant Response August 30, 2023

- 7 36. Cover Letter
8 37. Appendix A: Comment Response Matrix
9 38. Appendix B: Confluence Environmental Response to Scientific and Technical
10 Comments
11 39. Appendix C: Aesthetics Analysis
12 40. Appendix D: Updated Public Access Memorandum

13 Post Hearing Public Comments due by September 11, 2023

- 14 41. Public Comments Received August 31, 2023 – September 4, 2023
15 42. Public Comments Received September 6, 2023 – September 7, 2023
16 43. Public Comments Received September 7, 2023 – September 11, 2023

17 Applicant Response September 18, 2023

- 18 44. Cover Letter
19 45. Appendix 1: Comment Response Matrix
20 46. Appendix 2: Confluence Environmental Response to Scientific and Technical
21 Comments
22 47. Appendix 3: Aesthetics Analysis
23 48. Appendix 4: Updated Public Access Memorandum

24 Post Hearing Order

- 25 49. Order Extending Post Hearing Comment Period August 23, 2023

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is Taylor Shellfish Farms, represented by Erin Ewald, 411 N 5th Street, Shelton, WA 98584.
2. Hearing. A hybrid hearing on the application was held on August 9, 2023 at 1:00 p.m. via the Zoom application and was continued for further hybrid testimony to August 16, 2023. The hearing was left open for written comment through September 14, 2023. By written order dated August 23, 2023, the deadlines for written submissions were extended until August 30, 2023 for Applicant written comment, public response

1 until September 11, 2023 and Applicant reply by September 18, 2023. The Applicant
2 agreed to a final decision deadline of October 6, 2023 by email dated September 29,
2023.

3 **Substantive:**

4 3. Site/Project Description. Taylor Shellfish Farms has applied for a shoreline
5 substantial development permit to install and operate a floating oyster bag system on
6 three subtidal parcels owned by the Washington Department of Natural Resources
7 (DNR) in Oakland Bay. The property is located in the subtidal area of Oakland Bay
8 between E. Bell Road and Chapman Cove (APN 3010-13-70590, 32015-22-22222 and
32016-22-22222 and operating under DNR Lease #20-104436). The current use of the
site is low intensity recreation (recreational boating, fishing, etc.) and occasional tribal
fishing.

9 The project will encompass an approximately 50 acre leased area from the Washington
10 State Department of Natural Resources (DNR). The project will consist of
11 approximately 30 double-lines of oyster bags floating just at the surface and will include
12 60 anchors installed with approximately 30-foot spacings between the rows of
13 4'x4' oyster bags. The Applicant testified that the project would be comprised of about
14 30,000 oyster bags. There could be up to 30 screw anchors installed in the center of
15 each line. The oyster bags are made of UV-resistant, high-density polyethylene (HDPE)
16 mesh. The oyster bags will be arranged in a set of double-rows oriented in a northeast-
17 southwest direction. Each row of bags will be secured by a headline that runs for
approximately 1,800 feet. The oyster bags and gear will cover a total surface area of
about 9.1 acres. The farm will be used for oyster seed (Pacific and Kumamoto varieties)
and oyster grow-out cultivation intended for human consumption. Taylor Shellfish has
applied to DNR for a ten-year lease for the operation, see Ex. 13, and testified that DNR
indicated it would grant a 10-12 year lease.

18 The gear is anticipated to remain continuously but can be removed periodically for
19 fishing access in coordination with the Squaxin Island Tribe. In the Memo from Taylor
20 Shellfish Regarding Relocating Gear to Parcel 32015-10-80160 (Ex. 15), the Applicant
21 outlines that in the case of the Squaxin Island Tribe requesting unimpeded fishing
22 access, the aquaculture gear would be temporarily moved to Mason County parcel
23 32015-10-80160, within Chapman Cove. The parcel is owned by the Applicant and is
24 the site of an existing shellfish farm. Chapman Cove is intertidal, as seen on the low-
tide aerial views in Ex. 28 (to the east of Chapman Peninsula), so the gear would be
laying on the substrate for a portion of the time. As seen on the Washington Department
of Natural Resources' Bush and Callow Act, Aquatic Lands in Mason County (Ex. 16),
almost the entirety of Chapman Cove was included in the Bush Act of 1895.

25 The details of the proposal are well documented and analyzed in the Applicant's Habitat
Management Plan (HMP), Ex. 8. Section 4 of the HMP, adopted by reference, should

1 be consulted first before reading this Decision by anyone who does not have a basic
2 understanding of how the Applicant conducts its operations.

3 The proposal requires a Coastal Zone Management Consistency decision from the WA
4 Department of Ecology, an Aquatic Use Authorization from the WA Department of Fish
5 & Wildlife, a Section 10 Rivers & Harbors Act permit from U.S. Army Corps of
6 Engineers, a Private Aids to Navigation permit from the US Coast Guard, a Section 6.3
7 Notice to the Squaxin Island Tribe, and eventually a Harvest Site Certification from the
8 WA Department of Health.

9 4. Characteristics of the Area. The project is located in state waters leased
10 through the DNR (Ex. 13) within Oakland Bay of the South Puget Sound. Upland
11 properties along Oakland Bay are single family residential with Rural Residential 5 Acre
12 (RR5) zoning. The predominant uses of Oakland Bay as a whole are industrial,
13 residential, recreational, and shellfish aquaculture. However, non-aquaculture
14 commercial and industrial uses are only located on the south end of the bay, more than
15 a mile from the project site. Oakland Bay County Park, Walker Park, Sunset Bluff
16 County Park, Oakland Bay Recreational Area, and Bayshore Preserve provide public
17 access to the shoreline. Oakland Bay Marina, Port of Shelton, Shorecrest County Park,
18 and Arcadia Point provide public boat launches. The bay is largely characterized by
19 calm waters and soft sedimented bottoms. In Mason County's 2012 Shoreline Inventory
20 and Categorization Report, Oakland Bay was identified as the only major industrial area
21 in Mason County, which includes the City of Shelton. Oakland Bay is an active shellfish
22 aquaculture bay with a wide variety of shellfish species that support tribal harvest,
23 recreational harvest, commercial harvest, and restoration activities.

24 5. Adverse Impacts. As outlined in the Conclusions of Law, impacts are
25 designed and/or mitigated to the levels required by the County's Shoreline Master
Program (SMP). A State Environmental Policy Act (SEPA)² determination of non-
significance was issued on April 19, 2023 with a comment period ending May 4, 2023
(Ex. 6). Though there was extensive public comment (Ex. 18 and 20-22), the SEPA
determination was not appealed. Pertinent impacts are addressed as follows:

A. *Aesthetics.* As conditioned, the proposal will not significantly and/or substantially
detract from the aesthetic qualities of the surrounding area, including shoreline scenic
and aesthetic qualities.

² SEPA is the legal authority used to assess environmental impacts and whether an
environmental impact statement (EIS) is required. An EIS is required if County staff
determine that the proposal creates probable significant adverse impacts. Staff
determined that the impacts did not reach that level and hence did not require an EIS.

1 The conclusion above is largely based upon the finding that the proposal will have a
2 “moderate” aesthetic impact under the Washington State Department of Ecology (DOE)
3 Aquaculture Siting Study, Ex. 21. The DOE study provides detailed guidelines on
4 assessing aesthetic impacts for over-water aquaculture and rates the overall impact as
5 low, moderate or high. The Applicant’s application of these guidelines does on a couple
6 points overly minimize the aesthetic impacts of the project. However, even when
7 correcting for these discrepancies, the proposal solidly meets the “moderate” rating of
8 the study. It is recognized that the County and State have no formally adopted the DOE
9 study. However, the study serves as the most directly applicable, well researched and
10 objective set of standards available. The DOE study serves as a useful platform for
11 evaluating all significant components of aesthetic impacts and so are applied in detail in
12 this Decision.

13 The DOE guidelines involve several categories of assessment with the
14 high/moderate/low ranking generally applicable to each. As outlined in detail below,
15 each category results in a finding of moderate impact. Even if one or two categories
16 rated as high impact, the proposal would still qualify as creating moderate impacts under
17 the DOE study scoring criteria. DOE categories are addressed individually below as
18 follows:

19 Environmental Condition: Environmental condition impacts are moderate.
20 Environmental condition refers to the developed condition of the shoreline. Areas
21 of high condition are composed of exceptional natural landscape character or
22 habitat, or areas set aside by law to be preserved in a natural state. Areas of
23 moderate condition are areas with public parks or areas with visible evidence of
24 human activity but not at a dominating level. The project area is clearly within a
25 moderate condition. The homes at rural density are visible evidence of human
activity but not at a dominating level.

The Applicant references log booms that apparently³ used to be in the project area
as well as commercial and industrial development located in the south end of the
bay. These features are not a part of the scenic landscape and thus found to be
irrelevant. Any log booms that used to be in the project area are irrelevant since
they haven’t been there for at least 30 years. See 9/7 comments, p. 28. As far as
industrial and commercial development, those uses are concentrated within the
south end of the bay, more than a mile from the project area. The record is replete
with photographs, including several from the Applicant (see Appendix C), with
shoreline views from several vantage points along the project shoreline with no
trace of commercial or industrial development in view. There are two overwater
shellfish operations in proximity to the project site, but they are not anywhere

³ One commentator asserts that the log booms were never placed as far north into the bay as the project area, but many other comment letters appear to recognize that log booms were in the area up until about 1990.

1 near the scale of the proposal and fit well within the moderate characterization of
2 the DOE guidelines. See Ex. 19, p. 3.

3 Spatial Definition. Spatial definition impacts are moderate. The DOE study
4 defines high spatial definition impacts as embayments less than ½ mile across
5 and moderate impacts for embayments ½ mile to 2 miles across. Oakland Bay at
6 the project site is ¾ miles across. 8/31 comments, p. 93; 9/7 comments, p. 13.
7 This qualifies it as moderate.

8 Adjacent Scenery. Adjacent scenery impacts are moderate. The DOE guidelines
9 define high impact for areas with a rich combination of form, line, color and
10 texture, views of snow-capped peaks, exposed rock outcrops etc. Moderate
11 impacts involve scenery of some variety of form, line, color and texture with
12 limited rock outcrops or exposed cliffs, mature vegetation but generally
13 continuous pattern. The project scenery is largely composed of trees and some
14 residences. The curvature of the bay and nearby inlet creates some variation, but
15 overall the scenery is fairly homogeneous and therefore moderate.

16 Potential Viewers⁴. Potential viewer impact is moderate. The DOE guidelines
17 identify areas of high impact as those involving water bodies with a high number
18 of potential viewers with time for sustained views, such as high-density
19 residential development, resorts and park and recreation sites. The guidelines
20 identify moderate impacts as including areas with adjacent travel routes and
21 moderate density residential development. The project area is of low-density
22 development along with an adjacent travel route with limited visibility. The
23 number of residents within view of the project area is not entirely clear from the
24 record. The Applicant asserts in Appendix C that roughly 69 residences are
25 within view whereas a nearby resident counts 400 lots with full or partial views,
9/6 comments, p. 27. The number is likely somewhere in-between. Even with
400 lots, the overall development density would still not qualify as high density
and impacts still qualify as moderate.

There are a couple parks addressed in the written comments as potential vantage
points. One is Sunset Bluff County Park located to the southeast of the project
site. The Applicant points out the park is gated shut, but one other commentator
noted that the park is still used. Regardless, the park likely does not have a large
number of users given it is gated. Reference was also made to the Bayshore

⁴ It's unclear if the DOE guidelines consider persons recreating within the Bay as
persons who's vantage points are subject to the guidelines. In any event, the number of
people who recreate within the surface of the Bay are marginal. An employee of the
Applicant testified that perhaps only one boat per day was used the Bay and neighbors
provided evidence that sometimes what appear to be a handful of people used the Bay
over a day. August 9, 2023 Hearing Audio: 50:15-51:00

1 Preserve. The preserve has 1.5 miles of trails. See 9/6 comments, p. 41.
2 However, the preserve is more than a mile away and its views towards the project
3 area include the commercial and industrial development to the south. App. 3, fn.
4 2. For these reasons, neither of these recreational areas adds sufficiently to the
5 potential number of views to make the impact high.

6 View Obstruction. View obstruction impacts are moderate. The DOE guidelines
7 identify high impact as open view of the water and moderate impacts as some
8 view obstruction from “key viewing points.” For this proposal, viewpoints are
9 dispersed amongst the residences and intermittent views seen by passersby
10 travelling along SR 3 and other adjoining roads. Trees obscure the views of many
11 of these potential viewpoints. The trees create an overall partially obstructed
12 view, which qualifies as moderate under the DOE guidelines.

13 Visibility. Visibility impacts are moderate. The DOE guidelines rank visibility
14 as moderate if vantage points are 30 or 55 feet above sea level for features located
15 750-1500 feet offshore and low for projects five feet above sea level and more
16 than 300 feet from a project site. The record does not contain much information
17 on the elevation of surrounding homes. The Applicant has found that of the 69
18 homes it considers to be in the viewshed of the project, only 20 are above 30 feet.
19 The pictures in the record tend to show that surrounding homes are at a low
20 elevation. More likely than not, the majority of homes within view of the project
21 site, as well as roads within view, are at an elevation of less than 55 feet and all
22 vantage points are more than 900 feet from the project site. Under the parameters
23 of the visibility guidelines, the impacts are at most moderate.

24 Viewshed Coverage. The proposal likely has moderate viewshed coverage
25 impacts. The DOE guidelines define moderate viewshed coverage impacts as the
project covering less than 10% of the cone of vision⁵ as viewed from 25-75% of
key observation points. The Applicant’s visual assessment, Ex. 25, p 5, asserts
that the standard is met. Given that the project lies a maximum of one foot above
water surface, it is more likely than not that the proposal will take up less than
10% of the cone of vision from most key observation points, which are considered
to be single-family homes and the adjoining roads for this project, most of which
are at low (less than 30 feet) elevation. This position is supported by the
renderings of the proposal as shown in Figures 1-3 of Appendix C, which shows
the project area as a small fraction of line of sight from the southeast and
northwest shores of the project sit.

Given that the proposal has moderate impacts under all aesthetic categories, the proposal
qualifies as a Class III “moderate visual impact” project under the guidelines. See Ex.

⁵ “Cone of vision” is not defined in the guidelines. However, it is represented throughout
the guidelines as a 60% field of vision. See, e.g. Ex. 24, ,p. 18.

1 24, p. 88. Even if one of the categories qualified as high impact, the overall impact
2 would still amount to moderate. As a Class III project, the guidelines recommend the
3 following mitigation:

4 *To mitigate impact, project should remain visually subordinate to the project*
5 *setting. Project design should borrow from the colors of the natural setting.*
6 *Scale should be small enough so not to cover more than 10% of the cone of vision*
7 *as seen from key observation points.*

8 Ex. 24, p. 82.

9 To not substantially detract from visual aesthetics to the “maximum extent practicable,”
10 there are two design features that could potentially be altered to minimize impacts: (1)
11 move the project further from the shoreline to reduce cone of vision; and (2) change the
12 color of the bags to blend in better with the natural setting.

13 The DOE guidelines directly suggest aesthetic impacts can be further minimized by
14 moving the proposal further from the shoreline. As noted in the guidelines:

15 *Distance offshore to the aquaculture facility is a major determinant of visual*
16 *impact. In general, the computer and photo renderings indicate that at distances*
17 *greater than 1,500 to 2,000 feet offshore, a facility is visually evident but not*
18 *obtrusive. This distance varies with the bank height. At an observer position at*
19 *or near sea level, a facility 300 feet offshore is a broad line on the horizon. At*
20 *an observer position 105 feet above sea level, the same facility fills twenty-five*
21 *percent of the cone of vision; when moved 1,500 feet offshore, it becomes a line*
22 *in the horizon.*

23 The DOE guidelines further provided that “at distances greater than 1,500 feet to 2,000
24 feet, size doesn’t seem to affect visual impact.” Ex. 24, p. 71. The guidelines
25 recommend to locate facilities 1,500 to 2,000 feet offshore “when feasible.”

Minimizing impacts to the “maximum extent practicable” as required by the SMP could
involve moving the project 1,500 feet from the shoreline. As noted by the Applicant,
most homes are located more than 1,500 feet from the shoreline already, with points on
the shoreline located as close as 901 feet to the shoreline⁶. As shown in Ex. 29, there is
less than 1,500 feet on both longitudinal sides of the project area. Increasing the
separation from the shoreline on these sides would necessitate the Applicant to extend
the length of the project site to accommodate the same number of oyster bags. The
Applicant has suggested this would cause some economic hardship, but has not
indicated to what extent. Ultimately, the narrowing of the project will just serve to

⁶ See Ex. 29. As shown in that Ex. 29, areas closer than 1,000 feet are not the location
of homes but rather portions of the extended undeveloped beaches of Oakland Bay.

1 displace public access and aesthetic impacts longitudinally, with negligible reduction in
2 aesthetic impacts. The Applicant's renderings, Appendix C, Figures 2 and 3, show that
3 moving the project site from 1,300 to 1,500 offshore from the southeast shores make a
minor difference in aesthetic impacts. According to the rendering, the project isn't
limited to a "line in the horizon" at the 1,500 foot distance.

4 A more effective and likely more feasible added mitigation measure would be to change
5 the color of the oyster bags from black to greens and/or blues. The Applicant's bag
6 color is not optimally selected to blend in with the shoreline environment. The DOE
7 guidelines note that blues and greens complement the natural setting and that white and
8 black are highly variable in their response to lighting conditions. Ex. 24, p. 12. All of
9 the Applicant's renderings and pictures of similar operations are taken in grey sky
10 conditions with the dark skies reflected off the water. See, e.g., Appendix C, Figures 1-
11 3. These lighting conditions are, of course, compatible with black bags. As shown in
12 the submissions such as one of the Bricklin letters, Ex. 19, p. 82, the Bay waters are a
13 mix of blue from the skies and green from the trees on sunny days. The black bags
14 would likely create an unaesthetic contrast with these sunny colors as suggested by the
15 "variable" characterization of the DOE guidelines.

16 The Applicant identifies that its proposed uniform coloring is an aesthetic benefit, but
17 doesn't otherwise identify how greens and/or blues would be impracticable for its
18 operation. The Applicant cites to a finding in a shoreline hearings board case that
19 supports the use of black gear color. See *John Marnin and Juyne Cook v. Mason County*
20 *and Ecology*, SHB No. 07-021, Modified Findings of Fact, Conclusions of Law and
21 Order (February 6, 2008). That case did not hold that black has to be accepted as the
22 only gear color for aquaculture. In that case, the hearing examiner prohibited the use of
23 black poly-vinyl fencing on tidelands because of its aesthetic impacts. The examiner
24 did not specify that another color should be used and simply prohibited the fencing
25 altogether. The Shoreline Hearings Board overruled the restriction, finding that the
color was "*relatively unobtrusive and blends with colors in the natural landscape.*" To
blend into the environment, the Hearings Board further required that the fencing be dark
in color, such as black or brown. See *Id.*, Finding No. 17.

In this case the Applicant is not being prohibited from using gear because of its color,
but is only being required to change the color. Just like the Hearings Board in Marnin,
the gear color that the Applicant is allowed to use is limited to a couple colors, to blend
in with the environment. If blue or green coloring is not commercially viable, the
Applicant is authorized to request reconsideration accompanied with new information
pertinent to that issue.

In assessing appropriate mitigation, the efforts to minimize impacts already built into
the project should also be recognized. The Applicant asserts that one of the reasons they
selected the proposal location was because other potential sites potentially affected more
viewers. See App. C, p. 25-28. It's unclear whether there may be other even more
suitable sites with less people affected, but it's obvious that it's in the Applicant's

1 interest to select a site that will trigger the least community opposition, which will
2 usually correlate with sites that affect the least number of people.

3 A final issue regarding the project is the accuracy of the Applicant's renderings of the
4 project site, specifically those in Figures 1-3 of Appendix C. The Applicant has not
5 provided any information on how the renderings were put together, but no one has
6 contested their accuracy either. Comparing the renderings to actual floating bag culture
as photographed in Page 8 of the Applicant's habitat management plan, Ex. 8, the
renderings do appear to provide a generally accurate depiction of the scale and aesthetics
of the proposal.

7 *B. Public Access and Navigation.* As conditioned, the proposal will not materially
8 impede navigation or public access and is reasonably conditioned to off-set impacts on
navigation and public access.

9
10 The proposal takes up about a third of the width and 50 acres of the central and one of
11 the widest portions of Oakland Bay and runs 1,800 feet in length north to south. Persons
12 wishing to cross the Bay from one side of the project to the other would have to detour
13 around the 1,800 length. The Applicant has volunteered a condition of approval
14 requiring the oyster bags to be spaced 30 feet apart between double bag centers to
15 facilitate navigation between the bags. See App. 4, FN No. 3. This should leave at least
16 20 feet or more of space for vessels to traverse through the project site. It is still doubtful
that high speed vehicles or tacking sailboats would find it feasible to run in this
constrained width. However, at least 900 feet of water is separates the project from the
shoreline from all sides. Ex. 29. From a site evaluation done by the Applicant, the Bay
is about eight feet deep at the project site and up to ten feet deep further to the north.
App. D, p. 9.

17 To mitigate against impacts to navigation, the Applicant proposes to grant public access
18 to some 16.6 acres of its tidelands and to make at least \$75,000 in improvements to the
Oakland Bay Marina.

19
20 The proposed 16.6 acre tideland access is from two areas, one on the east side of the
21 project and the other to the northwest. On the east side, Taylor owns the tidelands in
22 front of many of the homes along the south side of the Proposal and towards Chapman
23 Cove. These tidelands are adjacent to the Mason County Sunset Bluff Park which only
24 extends to the ordinary high water mark. Further, the park is currently in disuse and the
25 public does not have the right to publicly access the shoreline at or near this location in
any manner. Taylor Shellfish is willing to formally grant the public the right to access
15 acres of Taylor's tidelands in this area—which extend from OHWM to the extreme
low tide line for the life of the proposal. The public will have the right to access the
tidelands by kayak or other watercraft and to recreate on the tidelands in a manner that
does not disrupt Taylor's farming operations.

1 Taylor will also grant public access to 1.6 tideland acres it owns to the north of the
2 project in an area that is in between Capitol Land Trust's Bayshore Preserve and lands
3 managed by the Washington Department of Fish and Wildlife. According to the
4 Applicant, the public has demonstrated an interest in utilizing Area 3 for public access
5 in the past, with individuals utilizing this area in conjunction with the Bayshore Preserve
6 and WDFW properties. Similar to the other 15 acres, Taylor Shellfish has allowed the
7 public to use this property in the past, but the public has no current right of public access
8 on this property. Taylor Shellfish is willing to formally provide the public with the right
9 to access this area for the life of the Proposal to further offset the Project's minor impacts
10 on public access.

11 The Applicant is also offering to assist the Shelton Yacht Club with improvements to
12 the Oakland Bay Marina. The Club purchased the Oakland Bay Marina and is in the
13 process of making significant improvements to the marina, which is located a short
14 distance to the south of the Proposal. Those improvements include replacing the existing
15 boat ramp. The boat ramp is open for public use, but it currently is composed of gravel
16 and only extends to +10 feet above the mean lower low water ("MLLW") line.
17 Therefore, the boat launch can only be used by the public during limited hours when the
18 tide is very high. The Club is planning to rebuild the boat launch with concrete and
19 extend it by 10 vertical feet, rendering it more durable and, more importantly, accessible
20 for public use many more hours each day. In App. C, p. 4, the Applicant has committed
21 to spending \$75,000 of in-kind or direct financial support towards improving the boat
22 launch at the marina to mitigate for public access impacts.

23 Several residents asserted that the tidelands mitigation was inadequate, because it was
24 largely composed of mudflats that could only be accessed by a rope from the bluffs of
25 Sunset Bluff Park, see e.g. 9/6/23 comments p. 28, or bay surface waters because
adjoining uplands are private. In App. 4, p. 4, the Applicant responds that it is
collaborating with the Washington Water Trails Association to include the 16.6 acres of
tidelands as points of interest on the 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.

The funds of the lease may also be potentially used to improve public access. According
to the Applicant, funds paid by the Applicant to DNR for the project lease are directed

1 to community grants and projects benefitting state shorelines, habitats and public access
2 through DNR's Aquatic Lands Enhancement Account. In the 2022-2027 Mason County
3 Parks, Recreation, Open Space and Trails Plan, Mason County identifies this account as
4 a potential source of funds to support county priorities for public access projects.

5 For purposes of mitigating public access impacts, the Applicant takes the position that
6 it is only taking up 9.1 acres of water surface for its oyster farm. It points out that the
7 16.6 acres in tideland access mitigation exceeds this impact. This is a false equivalency.
8 Persons crossing the bay at the project site in the east-west direction are not confronted
9 with 9.1 acres of oyster bag obstacles. They're confronted with a 50-acre rectangle they
10 must circumvent to get to the other site. Further, sailboats and power boats going north-
11 south are not limited in their movement by a 9.1-acre area at the project site, but rather
12 20-30⁷ foot wide transportation lanes over a 50 acre area. Finally, although the
13 Applicant's 16.6 acres of tidelands may be of interest to persons who traverse the
14 Cascade Marine Trail into the dead end of Oakland Bay, the recreational opportunities
15 lost within the 50 acres overtaken by the Applicant can be used by a far wider range of
16 recreational pursuits. The persons most likely directly affected by the loss of access, the
17 surrounding residents, likely do not stand to gain much from the proffered tideland
18 access.

19 Overall, it is difficult to assess how to off-set the impacts created by the proposal.
20 Arguably, the rental amount paid by the Applicant to DNR establishes the monetary
21 value of the project area. The loss of public resources to the public could then be fully
22 compensated for by spending an equivalent amount on public access improvements. In
23 point of fact, that is what the Applicant is already doing, since at least a portion of the
24 rent it will be paying does go towards DNR shoreline access projects, albeit not any in
25 Oakland Bay. Ultimately, however, since the DNR rent goes towards public DNR
projects and support and under the state constitution the rent must be set at fair market
value⁸, the rental amount alone is arguably full mitigation for depriving the public of its
public access.

In addition to rent, the Applicant has done all it reasonably can to offset public access
impacts. The Applicant has offered use of its available property, agreed to commit to
provide for widened spaces between its oyster lines and added \$75,000 in compensation
for boat launch improvements. Other than reducing the size of the project, no one has
come up with any other actions the Applicant can take to mitigate its public access and
navigation impacts. The amount of the boat launch financial commitment can be

⁷ This is a very rough estimate of travel width based upon the condition that oyster bags
be space 30 feet apart from their double-bag centers. The width of the travel lanes will
likely vary as caused by the currents.

⁸ Article 8, Section 5 of the Washington State Constitution prohibits any gift or loan of
public funds to individuals or corporations.

1 disputed, but it is the County that arguably⁹ has the burden of proof in establishing what
2 the Applicant's share should be, factoring in that the mitigation must be necessary to
3 mitigate project impacts and be proportionate to that impact. Overall, given the rent,
4 tidelands, boat launch improvements, navigable space around the project area and
5 current limited use of the project area, the proposed and required mitigation more likely
6 than not compensates for the access and navigation impacts of the proposal.

7 One final issue regarding access should be addressed, even though surprisingly not
8 raised in any level of detail by project opponents. That issue is the future use of the
9 project area for public access. Oakland Bay is adjacent to the most heavily populated
10 portion of Mason County, the City of
11 Shelton. As room to live and recreate in the Puget Sound area continues to dwindle with
12 its high population growth, Mason County and its extensive natural resources will
13 become increasingly attractive to persons looking for a less crowded place to live,
14 recreate and retire. Although the Bay may not be in great demand currently, that could
15 change significantly as Mason County attracts both more residents and more recreators.
16 To resolve this issue, some reliance can be placed upon the fact that the DNR lease will
17 only be for a term of ten or twelve years. DNR will have the discretion to refuse to
18 extend the lease term if it finds that the Bay as a recreational resource is too much in
19 demand.

20 C. *Water Quality.* The proposal will likely not adversely affect water quality.
21 The Habitat Management Plan (Ex. 8) identifies several potential impacts to water
22 quality associated with the proposal. These include water circulation, contaminants, and
23 suspended particulates/turbidity. As noted in the HMP, shellfish aquaculture has both
24 positive and negative effects on water quality. The negative effects are seen as brief
25 disturbances that do not have continuing effect on water quality. These negative effects
are negligible and are within anticipated parameters for a permitted use. The anticipated
positive effect from the proposal would provide ongoing improvements to water quality
as shellfish remove excess nutrients and filter the water.

The proposal will not likely adversely affect water circulation. Oakland Bay is a shallow
estuary approximately 4 miles long and 0.75 mile wide with water depths averaging 10
feet to 35 feet (MCPH 2007). Water circulation influences sediment distribution and
dissolved oxygen concentrations. Aquaculture projects can potentially influence water

⁹ In the case of private property development, the permitting authority has the burden of
proof in establishing that a condition requiring dedication of land or a monetary
equivalent is necessary to mitigate a project impact and is proportionate to that impact.
See, e.g., Benchmark Land Co. v. City of Battle Ground, 94 Wn. App. 537, 545 (1999).
This case involves the development of public land as opposed to private, which may
provide for more flexibility in regulatory authority.

1 circulation by adding culture equipment. The HMP cites several studies¹⁰ that assess the
2 magnitude in changes in water circulation and concluded that the proposal would have
3 a negligible influence on water circulation due to the shallow draft of the proposed
4 floating culture.

5 The proposal will not likely adversely increase contamination. Oakland Bay is an
6 important shellfish production area that has a history of closures in portions of the Bay
7 from high fecal coliform levels. Pre-existing contamination is likely a result of poor
8 water quality from the many creeks connected to Oakland Bay as well as urban and
9 industrial run-off and historical discharge from the City of Shelton. The HMP cites
10 several studies that conclude that the presence of a bivalve community (such as found
11 in the proposed project) may positively address human nutrient loading in waterbodies
12 as bivalves remove more nutrients from the water column than they input as feces or
13 pseudofeces (also known as biodeposits), which can have a net benefit to water quality.¹¹

14 The proposal will not likely adversely increase suspended particulates or turbidity. The
15 proposal includes the installation of anchors, floating lines, and oyster bags. The effect
16 to water quality during gear installation from these actions is the generation of
17 suspended sediments or turbidity during the placement of anchoring systems. The
18 placement of anchors is not likely to generate enough sediment disturbance to release
19 any potential contaminants from sediments. Therefore, disturbance of sediments is
20 unlikely to result in the release of contaminated sediments during installation. Short-
21 term increases in suspended sediment may occur during anchor installation, but these
22 impacts are expected to be negligible compared to existing movement of sediments.
23 Although protected, this area is an estuarine environment that has regular short-term
24 increases in suspended sediment from wind-wave action, creek inputs, and longshore
25 sediment transport.

Concerns were raised through comment and testimony that the proposed project would
adversely affect water flow and circulation in Oakland Bay. Specifically, the proposed
project would add drag and reduce water velocities due to the lines and floating bags.
Additionally, concerns (comment letter from Black Hills Audubon Society, page 12,
August 7, 2023) identified the low “flushing” rate of Oakland Bay. Flushing provides
*“...water movement that moves bacteria, biodeposits, organic pollutants, dissolved O2,
Nitrogen, Phosphorus, etc. in and out of the bay to re-establish balance in the ecosystem
when something happens to disturb it.”* The same comment cites a 2015 Washington

¹⁰ (Turner, et.al. 2019; NewFields 2009)

¹¹ (Shumway et al. 2003; Newell 2004; Newell et al. 2005; National Research Council and Ocean Studies Board 2010; Burkholder and Shumway 2011; Kellogg et al. 2013; Banas and Cheng 2015)

1 Sea Grant report that measured relative flushing rates of water bodies in South Puget
2 Sound and ranked Oakland Bay as having a low rate. Audubon concludes that a low
3 flushing rate requires more careful analysis as the system may be more fragile and the
4 addition of aquaculture may be adverse. In response, the Applicants have cited relevant
5 studies in the HMP and in Appendix B (8/30/23 Taylor Shellfish Responses) that contain
6 similarities with the proposal. These studies state that the water residence time (i.e. how
7 long it takes to “flush”) is 6 days for Oakland Inlet (Banas and Cheng 2015). Citing a
8 study for Totten Inlet (Newfields 2009) whose residence time is 5 days, they conclude
9 that studies performed at that site are a “suitable surrogate for potential effects to water
10 flow and circulation in Oakland Bay.”¹² The Totten Inlet Study concluded that the
11 floating aquaculture facility had “little influence on surrounding water quality
12 parameters such as dissolved oxygen.” The Applicant then infers that if Totten Inlet is
13 successfully functioning for aquaculture, Oakland Bay would similarly follow. In
14 regard to changing currents, the Totten Inlet study and the other cited studies referenced
15 in the HMP (Exhibit 8) assessed the effect on water flow and circulation and concluded
16 that differences in current speeds are confined to near the area where the aquaculture
17 facilities are deployed, and that difference are minor and within the range of natural
18 variation. Additionally, the proposed design of the facility will be compliant and move
19 with surface waves and would have a lesser impact on water movement than the rigid
20 facilities that were evaluated in the studies.

13 Concerns were raised through comment and testimony that the beneficial effects of
14 oysters on water quality were overstated. Specifically, the proposal would be growing
15 seed oysters which have a lower feeding rate than adult oysters and would be less
16 effective in improving water quality. While the Applicant has acknowledged that seed
17 oysters have a lower feeding rate than adult oysters, they have concluded that their
18 remains a net positive effect (Appendix 2 – 9/18/23 Taylor Shellfish Responses).

17 Concerns were raised through comment and testimony that the installation of the
18 anchors used to secure the proposed facility would increase suspended particulates and
19 turbidity and would potentially release toxins present in the sediment. The Applicants
20 indicate in the HMP and Appendix B (8/30/23 Taylor Shellfish Responses) that anchor
21 installation is done in a slow and controlled fashion and that benthic sediment will
22 remain in place and will not be mobilized or transported to other areas. Once the anchors
23 are set, further movement of the sediment is not anticipated to occur. Toxicity concerns
24 are addressed at Finding of Fact 5D below.

22 As a final measure of security, a condition of approval prohibits degradation in water
23 quality. Should the proposal degrade water quality the County will have the ability to
24 enforce that condition through its code enforcement process.

25 ¹² Related issues associated with inferred conclusions and post-deployment monitoring are discussed at Finding 5(P).

1 D. *Sediment Quality and Potential Toxicity.* The proposal will likely not
2 adversely affect sediment quality or disturb toxins. The proposal may have a limited
3 disturbance of substrate during installation of anchors necessary to secure the proposed
4 facility. The subject site is a uniform mixture of fine/clay/mud habitat (Taylor Shellfish
5 2019). The floating bags and lines will use anchors, including a 20- to 30-foot spacing
6 between headlines. Midline floats will prevent the anchor lines from contacting the sea
7 floor. The anchors are a combination of both wedge and screw anchors and represent a
8 small amount of surface area (approximately 0.02 acre). The HMP cites relevant studies
9 associated with brief, short term “pulse” disturbances that may temporarily alter the
10 benthic substrate, similar to that which occurs naturally during storm events.¹³ The HMP
11 concludes that while sediment dynamics respond to a variety of influences over time,
12 the data suggests that sediment changes due to shellfish aquaculture are likely minor in
13 relationship to natural sediment dynamics that drive the geophysical structure and
14 functions of nearshore habitats.¹⁴ In this case, the main disturbance to the substrate
15 would only be during initial installation of anchors. As noted at Finding 5A above,
16 anchor installation is done in a slow and controlled fashion and that benthic sediment
17 will remain in place and will not be mobilized or transported to other areas.

11 The HMP states that shellfish aquaculture has been reported to result in increased
12 biodeposition that may lead to changes in sediment characteristics conditions that result
13 in increased sedimented organic enrichment. Characteristics that support increased
14 sediment include weak currents, shallow water depths, and intense culture operations.
15 Oakland Bay is a protected embayment that results in a lower energy environment.
16 While there are identified sediment quality concerns, especially along the shoreline and
17 associated with the City of Shelton, there are also improvements and positive
18 contributions over time. The proposed Project adds approximately 0.3% of culture
19 surface area to the bay and the combined amount of existing and proposed culture in the
20 subtidal zone in Oakland Bay and Hammersley Inlet would result in less than 1% surface
21 area. Overall, the proposed project is unlikely to result in increased sediment organic
22 enrichment. Additionally, any biodeposition from the proposed project is not expected
23 to accumulate and would not affect sediment quality beneath the facility (Exhibit 8, page
24 32).

20 As stated in a 2014 Department of Ecology Report (Budd Inlet and Oakland Bay Dioxins
21 and Furans – 2011 Sediment Results), Dioxins and toxins are acknowledged to be
22 present in Oakland Bay. These results indicate levels of dioxins and furans above
23 acceptable levels throughout the Bay, with the highest mean levels of dioxins and furans

23 ¹³ Dumbauld et al. (2009)

24 ¹⁴ (Forrest and Creese 2006; Forrest et al. 2009)

1 (polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans; collectively,
2 PCDD/Fs) in Shelton Harbor (at the other end of the Bay from the proposed project).
3 The potential for the proposed project to interact with or influence dioxin levels relies
4 on the assumption that there would be significant sediment disturbance. Such
5 disturbance could release toxins within the substrate into the water column. However,
6 sediment disturbance would be limited to the installation of anchors and disturbed
7 sediments are expected to remain within the vicinity of the anchor footprint. Therefore,
8 there would not be displacement of sediments or introduction of toxins to the water
9 column.

6 Concerns were raised that the proposed project would cause significant sediment
7 disturbance, releasing toxins and adversely effecting water quality. As described above,
8 only a very limited disturbance of the sediment is proposed to install anchors and that
9 disturbance will not displace sediment or introduce toxins to the water column. As noted
10 by the Applicant, dioxins continue to be a concern within Oakland Bay and are
11 monitored by both Ecology and the Washington Department of Health to ensure that
12 shellfish grown in Oakland Bay are safe for consumption.

11 E. *Erosion/Accretion and Currents.* The proposal will not accelerate erosion,
12 redirect accretion nor adversely affect currents. As discussed in the HMP (Exhibit 8,
13 page 29) and the Circulation Response Memo submitted by the Applicant, effects to
14 circulation and water flow are minimal and limited to areas immediately within and near
15 the floating bags and lines. As such, the potential for alteration of currents, erosion or
16 other shoreline damage from the proposed project are negligible.

15 Concerns were raised during comment that the floating aquaculture would reduce the
16 strength of currents and thereby have a collateral effect on erosion and accretion patterns
17 in the Bay. A study was submitted to support this conclusion. However, the submitted
18 HMP assesses an intertidal installation using a different system of floating aquaculture
19 which incorporates fixed trestles. The proposed project differs as it would be located
20 within a subtidal area and use a floating bag system. Due to the shallow intertidal
21 locations where trestles in the study were installed, they intercepted a much larger
22 proportion of the water column and is much more likely to have an effect on the strength
23 of tidal currents. The proposed floating bags are approximately 6 inches tall. In an
24 intertidal area where water depth ranges between 0 to 15 feet, the bags would intercept
25 3 to 25% (assuming trays hold bags approximately 2-feet above the seabed) of the water
column. However, floating bags occurring at water depths of -5 to -10 feet MLLW, as
in the proposed project, will intercept far less of the water column, between
approximately 2% and 10% of the water column depending on tidal elevation. That
smaller fraction of the water column intercepted reduces the potential for effects.
Additionally, the proposed floating bag system is not fixed which offers less friction or
drag in response to water movements. Acknowledging these differences in both the type
of facility and location, the conclusions reached in the HMP regarding the potential for
erosion, accretion and currents remain valid.

1 F. *Fish and Wildlife Habitat.* The proposals will not adversely affect any fish
2 or wildlife habitat. As noted in the HMP, various fish and wildlife species use Oakland
3 Bay in a variety of ways. Consistent with the requirements of MCC 8.52.170, emphasis
has been placed on the analysis of potential effects of the proposal on Fish and Wildlife
Habitat Conservation Areas (FWHCAs).

- 4 1. *Fish Habitat.* As noted in the HMP, shellfish aquaculture activities can be
5 best characterized as short, discrete (“pulse”) disturbances. The overall
6 impact to FWHCA’s varies on the type of fish, location in the water column
7 and potential habitat changes that result from the addition of shellfish
8 aquaculture operations. Migration along the shoreline is a major component
9 of management concerns associated with ESA-listed fish. The proposed
project does not constitute a barrier to fish during their migration, or impacts
to spawning areas, foraging areas, or rearing habitat. The proposed project is
sited away from the shoreline and outside of migration channels. The project
is to be located within a sub-tidal area. which avoids spawning areas.

10 The HMP concludes that the available evidence suggests that fish will
11 encounter, and may feed, in the proposed project site in Oakland Bay.
12 However, interactions are largely avoided because of where the proposed
13 project is located (i.e., subtidal areas). While there may be some short-term
14 disturbances (i.e., pulse disturbances) associated with human presence,
ultimately the areas have similar functions compared to the same habitats
without shellfish aquaculture. Overall, the effects to habitats associated with
fish are considered minor.

15 Concerns were raised by several commentors (Letter from Black Hills
16 Audubon Society; Mr. Pattillo, et.al.) that the proposed project would impede
17 salmonid (chinook, steelhead, chum, coho, etc.) migration and negatively
18 impact behavior and habitat. Specifically, concerns were raised that the
19 proposed lines and floating bags would impede steelhead outmigration as
20 juvenile steelhead use open water areas and are known to use surface layers
21 of the water column. Additionally, many of the commentors made
comparisons to fish passage blockage at the Hood Canal Bridge and the
potential effect for the proposed facility to similarly block out-migrating
salmon.

22 In response to these concerns, the Applicant’s consultant has provided
23 detailed analysis supported by studies (Taylor Shellfish Responses 9/18/23
24 – Appendix 2 and 9/30/23 – Appendix B). They have stated that smaller size
25 classes of fish are more shoreline and shallow water orientated and that the
vast majority would not interact with the floating bags and lines. Larger fish
may use the deeper waters of Oakland Bay and pass through the proposed
facility. However, as the floating bags and lines only occupy the top several
inches of the water column and there remains large amounts of open area

1 below and around them, there would likely be little influence on migratory
2 behavior. These responses, together with the discussion and conclusions
3 reached in the HMP and the detailed and compelling qualifications of the
4 Applicant's HMP expert are credible and supported and this concern has
5 been adequately addressed

6 In regard to the comparison with fish blockage observed at the Hood Canal
7 bridge, the Applicant's consultant has noted the intrinsic differences between
8 the proposal and that structure. The Hood Canal bridge is a significantly
9 longer and larger structure that extends 15 feet into the water column. The
10 proposal would extend 6 inches into the water column with open areas
11 between floats. This shallow profile and the non-continuous nature of the
12 proposed facility are a significantly different circumstance than that found at
13 the Hood Canal bridge. The Applicant's consultant have reasonably
14 concluded that salmonids could navigate under, around and through the
15 proposed facility and that the suggested blockage does not appear likely¹⁵.

- 16 2. *Bird Habitat.* Although marine birds feed at shellfish aquaculture farms, the
17 farms themselves do not necessarily attract larger numbers of birds compared
18 to other areas in the marine environment. The HMP concludes that the effects
19 on foraging for seabirds would largely be avoided based on the location of
20 the proposed project. In addition, potential disturbance from noise would be
21 temporary and minimal because of the long distances from nesting or
22 foraging locations. Therefore, the Project would have minor to negligible
23 impacts on seabird habitat areas. Norton bird discussion – problems in east
24 coast

25 Concerns were raised through testimony that the project site was frequented
by bald eagles and should be protected. While the Mason County's Critical
Area regulations do protect Fish and Wildlife Habitat Conservation Areas,
they only apply to areas having a primary association with fish and wildlife
species that are in danger of extinction or threatened to become endangered.
The bald eagle is not listed as being in danger of extinction or threatened to
become endangered.

3. *Marine Mammal Habitat.* Marine mammals that are common in Oakland
Bay include harbor seals, sea lions, and porpoises (harbor and Dall's).
However, the presence of most whale species is considered to be rare to
uncommon. There are two ecotypes of Killer Whales which occur in Puget
Sound composed of Transient Killer Whales (also know as Bigg's Killer
Whales) and Southern Resident Killer Whales (SRKW; comprised of J, K,

¹⁵ Taylor Shellfish Response to Comments, August 30, 2023, Appendix B, page 9)

1 and L pods). While both stocks are protected under the Marine Mammal
2 Protection Act, only the Southern Resident Killer Whale stock is listed under
3 the Endangered Species Act. SRKW, the ESA-listed population of killer
4 whales that rely on salmon for prey (rather than other marine mammals like
5 the transient population), occur primarily in north Puget Sound around the
6 San Juan Islands during summer months and are rare throughout the year in
7 south Puget Sound. SRKW are highly unlikely to occur in Oakland Bay.
8 Similarly, the shallow and narrow passage through Hammersley inlet to
9 access Oakland Bay makes it unlikely for whales to occur there.

10 As noted in the HMP, the primary potential impact mechanism identified by
11 the Army Corps (85 FR 57332) of existing shellfish aquaculture activities or
12 future similar actions on marine mammals is entanglement. The
13 preponderance of entanglements that have been reported are with fishing
14 gear or crab/ shrimp pot gear, which are characterized by lose lines that can
15 become entangled. However, evidence suggests that the potential for
16 entanglement in the proposed facility is low for the proposed project,
17 especially considering the shallow draft of floating culture gear and the taut
18 nature of the lines uses to secure them.

19 Concerns were raised through both comment and testimony that the proposed
20 facility would pose an entanglement risk to the ESA-listed population of
21 killer whales. Pictures and video were presented of killer whale sightings.
22 The Applicant has provided information that supports the conclusion that
23 due to the nature of the proposed facility and its taut lines, the proposed risk
24 of entanglement risk is not significant to killer whales. Additionally, the
25 Applicant has provided substantial evidence that the killer whales that are
infrequently observed in Oakland Bay are not the ESA-listed SRKW, but are
in fact transient killer whales.¹⁶

18 G. *Invertebrates.* The proposal will not likely adversely affect invertebrates. As
19 stated in the HMP, the small scale of the proposed project (0.02 acre of benthic habitat
20 for anchors), combined with its location in subtidal areas, means that impacts to benthic
21 fauna are expected to be minor. There would be no impact to public beaches that support
22 the recreational, tribal, and commercial harvest locations because the proposed project
23 is located more than 1,000 feet away and no activities would extend into these locations.
24 In addition, shellfish are grown in highly productive systems that do not appear to be
25 food limited for the commercial, recreational, or native species present in the estuary.
Effects to commercial and recreational shellfish areas and mobile invertebrates (e.g.,
crab) within Oakland Bay are expected to be minor or even beneficial considering the
lack of food limitation by the cultured species and evidence that shellfish aquaculture

¹⁶ Taylor Shellfish Response to Comments, August 30, 2023, Appendix B, page 11)

1 gear or additional of biodeposits can provide habitat and food for many species. Overall,
2 the effects to the invertebrate community under the proposed project are expected to be
3 minor.

4 Concerns were raised through comment and testimony that an effect of the proposed
5 facility would adversely drawdown phytoplankton levels which would have an adverse
6 effect on the Oakland Bay food chain inclusive of invertebrates and salmonid prey. The
7 HMP assessed the carrying capacity of the Oakland Bay to support the proposed project.
8 Using applicable studies as a basis, they concluded that the turnover of phytoplankton
9 resources in Oakland Bay would not be impacted by the addition of 0.3% of commercial
10 shellfish operations in the estuary.

11 H. *Submerged Aquatic Vegetation.* The proposal will not likely adversely effect
12 Submerged Aquatic Vegetation (SAV). As stated in the HMP, SAV is important as both
13 food and critical habitat for salmonids. Floating structures can adversely affect primary
14 production for SAV in the area shaded by solid structures. However, the type of facility
15 used in the proposed project is not solid and will not impact SAV. The gear will be
16 constantly moved by wind, waves, and currents, which will further distribute any
17 shading effects across the benthic portion of the project site. As noted in the HMP, the
18 proposed project does not overlap with SAV areas. The Macroalgae and Eelgrass Study
19 (Exhibit 7) states that no significant macroalgae, no native eelgrass, limited instances of
20 drift algae, and minimal instances of attached macroalgae were found within the survey
21 area. Access to the proposed Project site will also not affect existing macroalgae in
22 Oakland Bay. Therefore, there would be no effects to SAV from the proposed Project.

23 I. *Mitigation and No Net Loss.* The SMP provides that new or expanded
24 aquaculture shall be located, designed, and maintained to assure no net loss of ecological
25 functions, as demonstrated in a HMP or equivalent report (MCC 17.50.210(b)(1)(I)).
The HMP (Exhibit 8) that was prepared for the proposal is consistent with, and builds
upon, the analysis and evaluation of impacts associated with shellfish activities in
Washington State inland marine waters described in the Corps (2015) Programmatic
Biological Assessment (PBA) and the associated programmatic consultation (USFWS
2016; NMFS 2016). The programmatic consultation covers continuing shellfish farming
activities along with new shellfish farming, commercial harvest, recreational harvest,
tribal harvest, and restoration activities over an anticipated 20-year timeline and is
considered a state-wide cumulative impacts assessment. The programmatic consultation
resulted in 32 conditions designed to avoid and limit impacts to listed species, critical
habitat, and essential fish habitat. This was revised to 31 conditions after the delisting
of canary rockfish (*Sebastes pinniger*) on January 23, 2017 (82 FR 7711). The proposed
project would comply with all the programmatic consultation conditions.

County staff has reviewed the HMP and supporting materials submitted by the Applicant
in their staff report and found that the project as conditioned is consistent with the
policies of the SMP, incorporates effective avoidance and minimization measures, and
will result in a no net loss of ecological functions. While there are other identified

1 shellfish activities in Oakland Bay that include commercial, tribal, and recreational
2 shellfish harvest, there are no interactions with these other activities for water quality,
3 sediment quality, fish and wildlife habitat, or SAV that would result in cumulative
4 impacts. While there are minor impacts that can occur during shellfish aquaculture
5 operations, these impacts are well within the natural variability of the system and still
6 maintain the natural functioning of that system. Standard BMPs and the conservation
7 measures in the programmatic consultation, which the project will follow, also help to
8 help to avoid or minimize potential impacts, thereby eliminating the need for further
9 mitigation. Ultimately, after a detailed assessment of all pertinent environmental
10 impacts and heavy reliance upon numerous scientific studies, the HMP, written by a
11 highly qualified fisheries biologist, concludes that the proposal will result in no net loss
12 of ecological functions. See Ex 8, p. 49-50. The findings of the HMP are well supported
13 in the record with added monitoring mitigation. As conditioned, proposal will result in
14 no net loss of ecological functions.

9 *J. Potential Impacts Associated with the Use of Plastic Gear.* The proposal will not
10 adversely affect water quality or wildlife through its use of plastic bags as part of its
11 aquaculture facility. The materials that will be used for the proposed project are not
12 considered to result in leaching of chemicals or introducing microplastics into the
13 environment.¹⁷ Specifically, the materials to be used for the proposed project (i.e.,
14 HDPE) are not considered to result in leaching of chemicals or introduction of
15 microplastics. Taylor Shellfish employs gear management protocols throughout its
16 farms, the proposed farm being no exception, and closely manages the age and condition
17 of gear. Phthalates are “plasticizers” which help make plastic materials flexible. The
18 HDPE containers and other materials proposed as part of the floating farm do not contain
19 significant levels of phthalates. Additionally, the primary concern with polycyclic
20 aromatic hydrocarbons (PAHs) is not leaching from the plastic material, but absorption
21 or adsorption of these hazardous materials to the plastic from the environment.¹⁸

18 Current research¹⁹ suggests that marine shellfish aquaculture does not significantly
19 increase microplastics load in marine water. Given that gear is not allowed to escape
20 and is properly disposed of at the end of its life cycle, aquaculture is not expected to
21 increase microplastics load in the future. There is also no current evidence to suggest
22 that marine microplastics found in bivalves originate predominately from aquaculture.²⁰

23 ¹⁷ Taylor Shellfish Response to Comments – August 30, 2023, Appendix B, page 6.

24 ¹⁸ Taylor Shellfish Response to Comments – September 18, 2023, page 4.

25 ¹⁹ Taylor Shellfish Response to Comments – August 30, 2023, Appendix B, Attached Memorandum “Microplastics Literature Update” page 14.

²⁰ Taylor Shellfish Response to Comments – August 30, 2023, Appendix B, Attached Memorandum “Microplastics Literature Update” page 14.

1 Concerns were raised through comment and testimony that the plastic bags proposed to
2 be used in the facility would breakdown in the marine environment leaching harmful
3 chemicals and releasing microplastics over time. This would have a harmful effect on
4 the ecosystem. However, the materials used in the manufacture of the plastic
5 bags/baskets proposed to be used in the facility are not considered to result in the
6 leaching of chemicals or in the release of microplastics.²¹ A further concern was debris
7 that would be introduced as the plastic components failed and were dispersed throughout
8 Oakland Bay. These components would entrap or entangle birds or other wildlife.
9 However, the loss or failure of component parts would adversely affect the Applicant
10 through loss of capital equipment and potential revenue. As such, they have indicated
11 that they by policy and practice engage in preventative and on-going maintenance of
12 their facilities to reduce the risk of component failure and seek to replace plastic (and
13 other) components before they become susceptible to degradation or failure.

14 K. *Noise.* The proposal will not adversely increase noise within the project area.

15 Noise levels generated by the proposal will generally be limited to daytime hours, except
16 one hour before and after daylight hours during fall/winter months. The noise generated
17 by the proposal will only be about 3 decibels above background noise for uses located
18 more than 1,200 feet from the project site, which should be most neighboring residents.

19 As outlined in p. 17 of App. B, The only noise generated from this farm activity is
20 expected to originate from the boat motors of one scow and a harvest/maintenance boat.
21 A small generator will be installed on the harvest boat to power a pulley that pulls the
22 bags onto the platform to flip or access the bags for seed maintenance or harvest. Based
23 on recent noise measurements (collected on 8/24/23), noise generation from boats and
24 equipment associated with the proposed farm would be within the range of background
25 noise at a distance of approximately 1,000 feet. With the boat and generator running (to
simulate a maximum noise level), decibel (dB) readings were: 77-89 dB on the boat, 38-
47 dB at 500 feet, 43-50 dB at 1,000 feet, and 45 dB at 1,200 feet. Background noise
was measured at 42 dB. For reference, normal conversation is at 50 dB. All noise-
generating activities will be required to comply with applicable Mason County
regulations.

26 The hours of operation for the proposed facility will be more predictable than some
27 intertidal aquaculture facilities, due to the proposal's subtidal location. Hours of
28 operation will generally be during daylight hours. The Applicants have requested the
29 ability to perform work one hour before sunrise and after sunset during the portion of
30 the year when there are relatively few daylight hours, along with response activities at

31 ²¹ Taylor Shellfish Response to Comments – August 30, 2023, Appendix B, page 5: “In fact, a recent literature review
of microplastics in oysters found that, on average, wild caught oysters contained more microplastics than farmed
oysters. There is evidence that oysters in Puget Sound and the Salish Sea have very low microplastic concentrations
(average of less than 1 particle per oyster; Covernton et al. 2019; Martinelli et al. 2020) and that clams have slightly
higher microplastic concentrations (0 to 3 average particles per clam) because they are less selective about what they
ingest (Bendell et al. 2020).”

1 night when there is a need. Comments in 9/6, p. 25 appear to confuse one hour before
2 and after daylight as times before allowed construction in noise ordinance. That was
3 not part of the Applicant's request. The Applicant will be required to comply with the
4 County's noise ordinance.

5 L. *Odors.* The proposal will not generate significant adverse odors. As
6 proposed, the project would emit exhaust from diesel and gasoline engines used in boat
7 operation. Odors at shellfish facilities are generally associated with exposed tides over
8 extended periods, dead shellfish or algae blooms (see Finding of Fact 5(N)). The
9 likelihood of these and other potential odors would be significantly minimized due to
10 the proposed subtidal location of the project and its distance from shore. Additionally,
11 no storage of equipment and materials is proposed at the site.

12 Concerns were raised through comment and testimony that the proposal would generate
13 odors. However, the source of the odors were not specifically described and it is unlikely
14 that any odor generation from the proposal would be significant.

15 M. *Light and Glare Impacts.* As conditioned, the proposal will minimize light
16 impacts. Lighting would be limited to that required by the U.S. Coast Guard (USCG),
17 who have recommended one lighted regulatory buoy at each of the facility corners, and
18 another in the center of the line on the longer sides for a total of six lighted buoys. These
19 buoys will have 2" reflective tape. LED or incandescent and flashing white light every
20 6 seconds, with 10 flashes per minute. Lights must be USCG approved and visible up
21 to one nautical mile, which can be accommodated by lighting that is limited to
22 approximately 6 lumens.

23 Concerns were raised through comment and testimony that the proposal would generate
24 adverse lighting impacts on adjacent shoreline properties. The limited use of lighting
25 and its proposed intensity is not likely to create off-sight light impacts on surrounding
26 shoreline properties. The primary purpose of the required lighting is safety for marine
27 traffic, which is a paramount consideration on navigable waterways. The Applicants
28 state that USGC lighting requirements are intended to minimize impacts to the
29 surrounding environment while meeting marine traffic safety needs (Taylor Shellfish
30 Responses – 8/30/2023 Appendix B, page 7). A condition of approval requires that,
31 within required federal parameters, the lighting be configured to minimize light spillage
32 into surrounding residences.

33 N. *Harmful Algal Blooms and Vibrio.* The HMP states that the project will not
34 contribute to conditions conducive to Harmful Algal Blooms (HAB) and will not
35 through its establishment create additional risks of *Vibrio*. HABs occur largely due to
36 an excess of nutrients (primarily, nitrogen, phosphorous, and carbon) in aquatic systems.
37 Algae are able to utilize the excess nutrients and available sunlight to reproduce rapidly
38 in a bloom. Excess nutrients typically originate from terrestrial sources (e.g.,
39 agriculture) and enter aquatic systems in runoff. The proposed facility will not

1 contribute to conditions which create HAB's. *Vibrio* can be a risk to human health,
2 although proper management of harvested shellfish can appropriately minimize the risk.
3 Although there are two locations within Hammersley Inlet and Oakland Bay that are
4 included on Ecology's 303(d) list for high concentrations of bacteria related to fecal
5 matter (Ecology 2023), such exceedances according to the HMP do not indicate an
6 increased risk of *Vibrio* at the project location and are likely a result of terrestrial runoff.

7 Concerns raised during comment and testimony that the proposed facility would
8 increase the potential for harmful algal blooms (HABs) by releasing excess nutrients
9 (primarily, nitrogen, phosphorous, and carbon) into Oakland Bay. However, because the
10 Applicant is focusing on seed oysters at the proposed floating farm, the accumulation of
11 excess nutrients from the cultured shellfish is unlikely.²² Regardless of whether seed or
12 adult shellfish are cultivated, the net effect from shellfish aquaculture is removal of
13 nutrients (via feeding on phytoplankton) from the water column and from the aquatic
14 system when the mature shellfish is harvested. The subject site does not have
15 characteristics that present a greater risk of *Vibrio*. Industry standard operational
16 practices will be applied to significantly reduce the potential for human health risks
17 associated with *Vibrio*.

18 O. *Chemicals and Additives*. The project will not pose a risk due to harmful
19 chemicals and additives. The Applicant is not proposing to use chemicals, pesticides, or
20 additives as part of this project.²³ Use of chemicals is limited to those associated with
21 operating and maintaining the boats used to access and conduct maintenance at the
22 proposed facility. Boats are maintained using best management practices to minimize
23 the risk of leaks or spills.

24 Concerns were raised through comment and testimony that there is a significant risk
25 associated with the use of chemicals and additives. However, shellfish aquaculture does
not require any inputs of nutrients or chemicals to grow the cultured organisms (in
contrast to finfish aquaculture).

P. *Monitoring*. The proposed project will be subject to conditions requiring
on-going testing and monitoring of arguably uncertain environmental impacts created
by the proposal.

In summary, the record of this proceeding strongly supports the findings of no
significant adverse environmental impacts given the heavily regulated and researched
aquaculture industry and the detailed and compelling work of the Applicant's biologist,
Chris Cziesla. However, the unprecedented large project size, the modest size of the
bay and its associated low flushing combine in a unique fashion to create vulnerabilities

²² Taylor Shellfish Response to Comments – August 30, 2023, Appendix B, page 12

²³ Taylor Shellfish Response to Comments – August 39, 2023, Appendix B, page 6)

1 to significant impacts that may not have not been anticipated in the numerous studies
2 and regulations relied upon by Mr. Czesla. The potential for unanticipated impacts has
3 been well documented by numerous commentators, in particular Mr. Pattillo and Ms.
4 Norton. To assure that the unique attributes of the proposal do not surprise with
5 significant impacts, the proposal is conditioned upon adherence to a monitoring plan
6 prepared by an independent third party consultant.

7 The HMP of this case plays a central and determinative role in assessment of
8 environmental impacts. That is not surprising. Overall, the environmental impacts of
9 the aquaculture industry have been heavily researched and regulated. Oyster culture is
10 not unfamiliar or unique in Washington State (45,000 acres of shellfish) or in the South
11 Puget Sound (5,000 acres of shellfish) and is a known practice. Issues related to oyster
12 culture operations and their potential adverse effects have been extensively studied and
13 those studies informed the regulations that have been established for monitoring.
14 Largely for this reason, despite the extraordinary efforts of commentators such as Ms.
15 Norton and Mr. Pattillo in researching and evaluating project impacts, Mr. Czesla has
16 been able to respond with studies, regulations and design features that address every
17 conceivable environmental impact.

18 Despite the extensive research and regulatory requirements available to Mr. Czesla,
19 there are a couple factors that still leave room for some uncertainty in potential project
20 impacts. The first is the unique large scale of the project coupled with its location in a
21 modest size bay subject to low flushing action. This combination of features may result
22 in unique conditions that the studies relied upon by the Applicant are not designed to
23 address. The second is that the Applicant's analysis has not been subject to peer review.
24 As to the unique scale of the project, it was very difficult to get a clear answer from the
25 Applicant as to whether there are any other existing floating oyster farms in the United
States as large as the proposed 30,000 bag oyster farm. Several commentators asserted
that the proposal is the largest oyster farm in USA, but didn't cite any source for this
position. *See, e.g.* 9/10/23 Bricklin & Neuman letter. Ms. Ewald, Applicant
representative, identified the existence of oyster farms as large 300 acres in size. *See*
hearing testimony, 51 minutes. However, it's not clear if these oyster farms are floating
farms. The Applicant identified a floating farm on 161.3 acres in Willapa Bay, WA
(Exhibit 47) that is larger than the proposal. However, that project hasn't been
constructed yet. The Willapa Bay project is not of significant use to the proposal
because its actual impact upon the environment has not yet been assessed.

As previously noted, the bay is subject to low flushing. The huge size of the proposal,
coupled with the modest size of the bay and its low flushing, could create unique
environmental conditions that have not yet been adequately assessed in the studies relied
upon in the HMP. The potential inapplicability of these studies was effectively
encapsulated in a quote from a Chesapeake Bay study presented by Mr. Patillo and the
Bricklin firm. The Applicant's biologist concludes that project impacts upon water
circulation will be minor relying heavily upon the Chesapeake Bay study, Turner et al.
(2019). That Chesapeake Bay study qualified its findings as follows:

1 *The negligible impact of oysters at these sites is almost certainly due in part to*
2 *the use of relatively low-density culture methods at sites with relatively high*
3 *flushing rates. All farms in this study were situated in well-flushed areas with*
4 *relatively short water residence times due to tidal currents and wave action.*
5 *Farms in this study were also relatively low-density operations, with well-spaced*
6 *cages resulting in < 60 oysters m⁻² (Table 4). This combination of growing*
7 *conditions at the sites in this study are likely beneficial for both minimizing any*
8 *potentially detrimental impacts of oyster aquaculture and maximizing oyster*
9 *growth.*

6 According to Pattillo, 7/31/23 comments, p. 85, the oyster density of the project is
7 significantly greater than that of the Chesapeake Bay operations. As noted in the
8 quotation, the results of the study are “*almost certainly due in part*” to the low density
9 and high flushing rate of Chesapeake Bay. As previously noted, Oakland Bay is
10 distinguished by a low flush rate. Further, Chesapeake Bay is significantly larger than
11 Oakland Bay. The proposal takes up a third of the width of Oakland Bay. The facilities
12 in the Chesapeake Bay study likely don’t take up anywhere near this proportion of
13 Chesapeake Bay. Given these distinguishing factors, some amount of skepticism is
14 warranted as to how much such studies can be relied upon to predict impacts for the
15 subject proposal.

13 The second cause for some uncertainty in project impacts is the lack of peer review for
14 the proposal. Most of the ecological findings of this decision are based upon the
15 conclusions of the HMP and the follow-up of Mr. Czesla. As previously discussed, this
16 is largely attributable to the fact that aquaculture impacts have been intensely studied
17 and regulated. Every impact imaginable has been anticipated and addressed to the extent
18 feasible with the Applicant’s development objectives. However, the Applicant is also
19 placed at an additional advantage because the Applicant’s biologist was the most
20 qualified expert in this proceeding to offer opinions on environmental impacts. Mr.
21 Pattillo’s background at the Washington Department of Fish and Wildlife is certainly
22 impressive, *see* 8/9 comments, p. 77, but he didn’t share his educational background or
23 provide much detail on his area of expertise at WDFW. Ms. Norton gave an
24 exceptionally well researched and compelling analysis of potential project impacts, but
25 didn’t provide any background in her expertise and qualifications. The Soundkeeper’s
written comment was written by an attorney, with no indication that any biologist has
assessed the impacts of the project. In contrast, the Applicant’s biologist, Mr. Czesla,
presented a 10-page resume detailing years of experience and training focused on the
environmental impacts of aquaculture operations. In assessing reasonable conflicting
opinions on project impacts, Mr. Czesla’s opinion often proved to be the most
compelling because he is the most qualified, to the extent documented in the record, to
provide an opinion.

25 A common practice amongst many Puget Sound cities and counties is to require peer
review for projects that involve potentially contested or questionable studies and reports,

1 at least for issues such as traffic impacts and wetland delineation²⁴. Peer review usually
2 involves the hiring of a third-party consultant by the City or County at the Applicant's
3 expense to verify that the Applicant's reports and studies are accurate and complete. In
4 this case Mr. Czesla is extremely well qualified for his work and has presented no
5 reason to conclude that his opinions are unreasonably biased or unfounded. Overall,
6 the preponderance of evidence and substantial evidence supports Mr. Czesla's
conclusions as adopted in this Decision. However, the unique environmental conditions
of this proposal can lead to reasonably based conflicting opinions amongst qualified
experts. This leaves the door open, that despite the well supported position of the
Applicant, that some adverse impacts could still occur.

7 A competently developed monitoring plan put together by a third-party qualified expert
8 is well suited to ensure that the uncertainties of project impacts are fully addressed and
9 mitigated. As succinctly noted in the written comment received from the Puget
Soundkeepers (Exhibit 19, page 43):

10 *Monitoring helps to detect any potential pollution or negative impacts*
11 *resulting from oyster farming activities. Implementing monitoring programs*
12 *can provide early warning signs and enable appropriate action to mitigate*
13 *pollution.*

14 Although monitoring presents an opportunity for some needed peer review and is the
15 most ideal means of addressing gaps in environmental studies, it is also essential to
16 recognize that the Applicant is already subject to rigorous and detailed environmental
17 oversight²⁵ and regulation by other agencies with greater resources and expertise than

16 ²⁴ It is recognized that peer review likely is not as commonly used for review of shoreline permits or
17 perhaps even not at all as it is for issues that touch on matters such as wetland delineations and traffic
18 impacts. The latter issues involve much more detailed and precise standards that lend themselves to more
19 objectively focused peer analysis than the more broad-based standards and studies involved in shoreline
review. Nevertheless, in a highly contested case such as this with so many well-documented conflicting
opinions, a third-party expert opinion on the applicability of the scientific studies of this case would have
been useful in assessing potential impacts.

20 ²⁵ The Applicant will be required to conduct numerous monitoring actions, including those associated
21 with the Programmatic Consultation²⁵, the anticipated DNR lease, and from additional monitoring
22 conditions imposed as part of the Shoreline Permit. The Applicant has prepared a listing of anticipated
23 conditions for monitoring (Exhibit 46). The Programmatic Consultation meets the ESA Section 7
consultation Biological Opinion requirements for non-discretionary "incidental take" provisions with
specific required mandatory terms and conditions. These mandatory conditions implement the reasonable
and prudent measures associated with the specified "incidental take." The Programmatic Consultation
Conservation Measures require surveying or monitoring which includes the following:

- 24 1. Pre-disturbance survey of potential spawning areas for pacific herring (*Clupea pallasii*);
- 25 2. Spawn survey for sand lance (*Ammodytes hexapterus*) and surf smelt (*Hypomesus pretiosus*);
3. Patrolling of beaches in the project vicinity to retrieve debris at a frequency of at least once every
three months. A detailed record of this activity is required and would be available upon request to
Agencies with jurisdiction;

1 Mason County to both assess impacts and enforce compliance. The County's SMP
2 expressly recognizes this in 17.50.210(a)(5), which provides that the County "*should*
3 *minimize redundancy of aquaculture permit application requirements required by this*
4 *program and other county, state and federal standards.*" For these reasons, it is
important that this Decision not require the Applicant to duplicate monitoring efforts
already required by other agencies, or made unnecessary because of other agency
requirements.

5 In sum, to compensate for the lack of peer review and project uncertainty, the project is
6 conditioned to have the Applicant pay for a third-party expert hired by the County to put
7 together a monitoring plan designed to assess uncertain project impacts that don't
8 duplicate monitoring requirements of other permitting agencies. The third-party
9 reviewer shall identify impacts subject to monitoring and set performance and reporting
10 requirements. Project impacts shall be limited to those not already subject to monitoring
11 by other agencies. The impacts shall be those that are reasonably uncertain and can be
12 reasonably assessed and mitigated. Installation of the proposal shall not commence until
13 all pre-installation baseline conditions are measured as found necessary by the third-
14 party expert.

15 Identification of project impacts subject to monitoring are left to the expertise of the
16 third-party consultant. However, project opponents have already identified several
17 issues that should be considered as monitoring candidates by the consultant.
18 Specifically, impacts to dissolved oxygen, increased nitrogen and potential algal blooms
19 as detailed by Ms. Norton, impacts to passage of protected fish as identified by Mr.

4. Routine inspection and documentation by the Applicant of any fish or wildlife found entangled in
equipment and if discovered immediate notice to Agencies with jurisdiction.

The Applicant has included likely monitoring requirements that would be associated with the DNR lease.
While these are anticipated, the final monitoring conditions have not been issued. The anticipated
conditions associated with monitoring include:

1. Routine inspection of wedge anchors to ensure that they remain in place.
2. The Applicant must maintain a record of all oyster bags installed at the project and routinely
monitor gear to ensure that it does not exceed authorized quantities.
3. Production surveys must be submitted to Washington DNR to both calculate rent and/or provide a
tool to measure production trends.

The Applicant has adopted its own code of practices for their shellfish activities. These were submitted
in support of their proposal and are considered part of the application. The monitoring requirements
include:

1. Monitoring of the seed that will be used at the proposed facility. The seed would be cultivated at
the Applicants Quilcene Hatchery, which is inspected annually by the USDA.
2. The proposed facility will be monitored by a dedicated crew several times each week to prevent
debris occurring from equipment wear. The Applicant is proposing debris patrols of surrounding
are every tide cycle (approximately every 2 weeks). Debris patrols would include expedient
response to community concerns.
3. On-going gear monitoring of lines, bags and floats as well as moorings.
4. Routinised vessel maintenance to avoid the risk of spills.

1 Patello, impacts to protected whales and impact on water quality due to disturbance of
2 contaminated sediments.

3 It should be emphasized that monitoring should only be required for impacts that clearly
4 need more evaluation and where the information acquired from the monitoring can be
5 used as a basis of effective mitigation. The purpose of the monitoring should be limited
6 to ensuring that project impacts are reasonably mitigated as required by shoreline
7 regulations. Given the thorough environmental review conducted by the Applicant and
8 the large number of aquaculture research studies, there should be no surprise if the
9 independent reviewer hired by the County concludes that no monitoring is necessary²⁶.

10 R. *Equipment Management.* The proposed project will employ reasonable
11 measures to prevent and minimize lost equipment. The Applicant will follow all
12 conservation measures from the Programmatic Consultation to ensure all equipment will
13 be appropriate for use in the marine environment, properly secured, and responsibly
14 maintained and monitored. Additionally, the Applicant will conduct more frequent
15 patrols of the farm than required under the Programmatic Consultation to further
16 respond to concerns regarding potential equipment loss.²⁷ Additionally, the Applicant
17 proposes to conduct site inspections (including the farm and adjacent areas) following
18 storms to ensure that any equipment that may have come loose is retrieved.

19 Concerns were raised through comment and testimony that equipment used in the
20 proposed facility would become separated and would through current and tidal action
21 become hazards to marine traffic and/or become deposited on the shoreline. However,
22 it is in the Applicant's interest to minimize lost equipment and they have proposed to
23 inspect the facility frequently to substantially reduce the risk of this occurring.
24 Additionally, all equipment used on the proposed farm would be labeled to identify the
25 owner of the gear (i.e., Taylor Shellfish). Such labeling is intended to allow loose
26 equipment to be identified to an owner, thereby limiting future issues.

27 S. *Economic Impacts to Adjacent Properties.* Property values are not a decision
28 criterion for shoreline permit approval. However, no evidence has been provided
29 demonstrating the proposal would adversely impact property values.²⁸ Taylor Shellfish
30 farms shellfish in many areas of Washington State that have residential use and
31 development nearby and has never been provided with information demonstrating the
32 presence of shellfish farms adversely impacts property values. (Taylor Shellfish
33 Response to Comment - August 30, 2023, Appendix A). The only person with expertise

34 ²⁶ If the applicant wishes to contest the monitoring condition, one option would be to submit a
35 reconsideration request with proposed monitoring conditions. Through the reconsideration process with
36 responses from the other parties of record the Examiner may be able to issue a final ruling on more specific
37 monitoring measures that would not need to involve peer review.

38 ²⁷ Exhibit 46, Section C: " Debris patrols surrounding the floating farm as well as Taylor's other operations will occur
39 every tide cycle (approximately 2 weeks)."

40 ²⁸ This claim has been rejected in at least one Shoreline Hearings Board appeal. *Coalition to Protect Puget Sound
41 Habitat v. Pierce County*, SHB No. 14-024 (May 15, 2015) (FF 48-49, 51 and COL 13, 21).

1 on property value impacts, a realtor, wrote that she didn't anticipate any adverse
2 impacts. See 7/31 comments, p. 162.

3 T. *Inappropriate Use of Public Land for Private Benefit.* The proposed use is
4 allowed at this location by both the Zoning Code and Shoreline Master Plan, provided
5 that appropriate permits and approvals are successfully obtained. The proponents have
6 submitted applications for said approvals which are subject to review consistent with
7 processes and procedures established through adopted regulations.

8 Concerns were raised through comment and testimony that the Applicants were solely
9 looking for their financial gain at the expense of community interests and that the
10 proposal would be an inappropriate use of public land. The subject site is owned by
11 Washington State and managed by DNR under its aquatic leasing program to ensure it
12 will appropriately balance numerous objectives according to legislatively-adopted
13 standards. Under state law, shellfish aquaculture is a preferred, water-dependent use that
14 is in the statewide interest and has significant environmental and economic benefits.
15 RCW 90.58.020; WAC 173-26-241(3)(b); MCC 17.50.210. Floating shellfish projects
16 such as this are expressly allowed in Oakland Bay pursuant to a shoreline substantial
17 development permit. MCC 17.50.090.

18 U. *Construction.* Noise impacts during construction will be regulated by the
19 County's noise ordinance and thus will be regulated to legislatively accepted noise
20 levels. The duration of construction is subject to some conflict in the record, but at most
21 will be three years.

22 The SEPA Checklist (Exhibit 6) provides the proposed installation of anchors and main
23 float lines is anticipated to occur within a 6-month period. At hearing the Applicant's
24 testimony conflicted with this, where Ms. Ewald testified full build out was expected at
25 2-3 years. Hearing testimony, 29:36. The anchors will be installed by cranes and
hydraulic machinery for a vessel. Floats and bags will be deployed and installed by boat.
All construction vessel activity will be restricted to daylight hours. The installed
equipment is intended to remain continuously in use (repaired as needed in situ) but can
be removed for a few weeks for fishing access when coordinated with the Squaxin Island
Tribe. After initial installation, ongoing operations will include maintenance of
equipment, harvest, transfer of oysters and the addition of new oyster seed to floating
baskets. All on-going work will be done by boat.

Concerns were raised through public comment and testimony regarding noise associated
with initial construction and ongoing operation of the facility. During construction,
engine noise will be generated by work boats. However, the Applicants state that the
noise will be similar to that generated by recreational boating activities (Exhibit 6).

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CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. MCC 15.03.050(10) authorizes the Examiner to review and issue a final decision regarding shoreline substantial development permit applications.

Substantive:

2. Shoreline Designation. The shoreline designation of the project site is Aquatic. This shoreline designation is defined by MCC 17.50.080(a)(6) as all areas waterward of the ordinary high water mark.

3. General Review Criteria for Shoreline Substantial Development Permit. MCC Table 17.50.090(A) requires a shoreline substantial development permit for floating aquaculture in the Aquatic shoreline designation. In consultation with the Washington Department of Ecology (Ex. 17), this project is considered to be floating aquaculture.

Shoreline substantial development criteria are governed by MCC 17.50.400(C)(3)(A)(ii). MCC 17.50.400(C)(3)(A)(ii) requires compliance with the policies of the County's shoreline master program. This is construed to include the program's shoreline use regulations. Applicable regulations and policies contested by project opponents are addressed individually below in quotations and applied via associated conclusions of law.

MCC 17.50.140(a)(1): *This program is intended to preserve and enhance the public's opportunity to enjoy the physical and aesthetic qualities of county shorelines*

4. Policy met. The policy is met. As noted in the staff report and Applicant comments, "shorelines" as defined by MCC 17.50.020 doesn't include shorelines of the state, which includes Oakland Bay surface waters. The space occupied by the project is thus not a shoreline subject to MCC 17.50.140(a)(1). Such a result is fairly nonsensical. Of all the shorelines to which the public should enjoy, the most significant shorelines, i.e. shorelines of statewide significance, would presumably have the most as opposed to least priority. In any event, the extensive mitigation required and volunteered from the Applicant still serves to preserve and enhance public enjoyment of the valuable natural resource that is Oakland Bay.

MCC 17.50.140(a)(2): *Increasing all types of public access is a priority for the County. Strategic efforts to find and fund new shoreline public access are encouraged to meet increasing demands. The county should cooperate with appropriate local, state, tribal and non-governmental organizations to preserve and enhance lands that provide physical access to public waters for public use.*

1 5. Policy met. The policy is met. The policy above is primarily directed at the County
2 in its management and proprietary capacity, as opposed to regulatory. In any even, the
3 \$75,000 commitment by the Applicant to enhance Oakland Bay Marina boat launch for
greater hours of operation serves as a strategic effort to fund new shoreline public access
as contemplated in the policy.

4 **MCC 17.50.140(a)(4):** *Private entities should provide public access when the*
5 *development would . . . impair existing legal access opportunities or rights.*

6 6. Policy met. The policy is met. The proposal will impair legal public access to the
7 middle of Oakland Bay and mitigates for that impact as outlined in Finding of Fact No.
8 5B. Note that the policy does not require full mitigation, but only that some amount of
public access be provided. No SMP policy or use regulation directly requires full
mitigation for loss of public access.

9 **MCC 17.50.140(b)(1):** *Public access shall be required to the extent allowed by law in*
10 *the review of shoreline substantial development or conditional use permits in the*
11 *following circumstances:*

- 11 . . .
- 12 *c. The project is a private water-dependent or water-related use or development and*
one of the following conditions exists:
 - 13 *i. The project increases or creates demand for public access;*
 - 14 *ii. The project impacts or interferes with existing access by blocking access or*
discouraging use of existing access;
 - 15 *iii. The project impacts or interferes with public use of waters subject to the*
Public Trust Doctrine.

16 7. Regulation met. The regulation is met. As identified in the language quoted above,
17 public access must be required “to the extent allowed by law” for projects that block
18 access or interfere with public use of waters subject to the public trust doctrine. MCC
19 17.50.020 defines “public access” to travel on the waters of the state, which includes
20 Oakland Bay. The staff report concludes that the project site is not subject to the public
21 trust doctrine because of case law that held that construction of public docks is consistent
22 with the public trust doctrine. However, that is not the issue with the regulation quoted
23 above. The case law cited by staff does not stand for the proposition that waters
24 underlying docks are not subject to the public trust doctrine, but rather that the docks
25 don’t violate the public trust doctrine. The sole issue for purposes of the regulation above
is whether the waters underlying the project area are subject to the public trust doctrine.
There’s no question that the surface waters of Oakland Bay are subject to the public trust
doctrine. The public trust doctrine is the right of navigation, together with its incidental
rights of fishing, boating, swimming, water skiing, and other related recreational
purposes generally regarded as corollary to the right of navigation and the use of public
waters. *State v. Longshore*, 141 Wn. 2d 414, 427 (2000). As subject to the public trust
doctrine, the Applicant under the regulation above is required to mitigate for loss of
public access to the fullest extent of the law.

1 Even if the waters in the middle of the bay weren't subject to the public trust doctrine,
2 mitigation is still required under MCC 17.50.140(b)(1)cii because the proposal blocks
3 access to the middle of the bay within its 50-acre lease area.

4 The project site is clearly subject to MCC 17.50.140(b)(1) because it qualifies under
5 subsections cii and ciii. As subject to this regulation, the Applicant is required to provide
6 access to the extent allowed by law. As outlined in Finding of Fact No. 5B, impacts to
7 public access are arguably fully mitigated with the combination of rental payment,
8 tideland access and boat launch improvement. Beyond this, as outlined in Footnote No.
9 7, no further public access could be legally required. As noted in Footnote No. 7, the
10 County arguably has the burden of establishing a specific need for access mitigation. No
11 additional public access mitigation has even been identified for this project, let alone
12 proven to be necessary.

13 **MCC 17.50.140(b)(16):** *Existing, formal public access shall not be eliminated unless*
14 *the Applicant shows there is no feasible alternative and replaces the public access with*
15 *access of comparable functions and value at another location.*

16 8. Regulation inapplicable. The regulation does not apply because the public access in
17 the middle of Oakland Bay does not qualify as “formal” public access. “Formal” is not
18 defined in the SMP. Black’s law dictionary defines “formal” as “[o]f or relating to, or
19 involving established procedural rules, customs and practices.” It is difficult to apply
20 such a definition to public access. The most logical functional definition is to distinguish
21 access points that are “formally” dedicated either by designation through some regulatory
22 process or as a constructed shoreline improvement. The loss of such a formally
23 designed/designated access point, which would usually be a sole access point along a
24 stretch of shoreline, would have far greater impact than the diffuse reduction in access
25 rights occasioned by something like the proposal, which serves to limit and impair
shoreline access as opposed to eliminate it all together from a particular shoreline area.
In this regard, the space occupied by the proposed oyster bags does not constitute a
“formal” access point and hence is not subject to the regulation.

26 **MCC 17.50.145(1):** *This program seeks to minimize obstructions of the public’s visual*
27 *access to the water and shoreline from new shoreline developments while recognizing*
28 *private property rights.*

29 9. Policy met. The policy is met. The policy only seeks to “minimize” obstructions to
30 public visual access, not eliminate them entirely. As outlined in Finding of Fact No. 5A,
31 the projects aesthetic impacts have in fact been minimized by the low elevation of the
32 gear, the relatively high separation from the shoreline and the condition of approval
33 requiring color camouflage with the surrounding view scape. No additional mitigation

1 short of significantly reducing the project scope and objectives is apparent. In this regard,
2 visual access impacts have been minimized as required.

3 Some commentators have expressed the opinion that economic impacts to their
4 residences violate their property rights. Absent view easements, applicable zoning
5 restrictions or similar applicable entitlements, impairment of views and resulting
6 reductions in property value are not legally protected private property rights. The
7 property rights referenced above are those of the developer in its right to develop property
8 even though sometimes that right may be at the expense of views or other amenities of
9 surrounding property owners.

10 **MCC 17.50.145(2):** *Shoreline use and development should not significantly detract*
11 *from shoreline scenic and aesthetic qualities (as seen from land or from water) that are*
12 *derived from natural or cultural features, such as estuaries, bluffs, beaches, vegetative*
13 *cover and historic sites/structures.*

14 10. Policy met. The policy is met. As identified in Finding of Fact No. 5E, under DOE
15 guidelines the proposal only qualifies as having “moderate” aesthetic impacts. As
16 conditioned and designed, the proposal would likely be construed²⁹ as “not significantly”
17 detracting from scenic and aesthetic qualities. In addition, the policy is only a permissive
18 “should” statement as opposed to a mandatory “shall.” Given that

19 MCC 17.50.210(a)(1) designates aquaculture as a preferred use when consistent with
20 control of pollution and prevention of damage to the environment, the proposal should
21 be construed as compliant with the policy even if it did significantly detract from scenic
22 and aesthetic values, since as determined in Finding of Fact No. 5 all impacts are
23 mitigated with monitoring and the proposal has been optimally designed for its scale
24 and objectives too minimize aesthetic impacts.

25 **MCC 17.50.145(6):** *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

11. Policy met. The policy is met. The policy is limited to providing that if there are
conflicts between residential views and public access or water-dependent uses, the
residential views have the lower priority. The policy doesn’t address irreconcilable
conflicts between public access and water-dependent use. As determined in Finding of
Fact No. 5A, the view impacts are moderate and only require reasonable mitigation under
DOE guidelines. In this regard, it appears that there is no irreconcilable conflict between

²⁹ A criterion as subjective as “*not significantly detract from shoreline scenic and aesthetic qualities*”
legally must be interpreted in a permissive fashion. A strict interpretation subject to reasonable disagree
would likely not be enforceable. *See Anderson v. Issaquah*, 70 Wn. App. 64, 75 (1993)(Ordinances
subject to more than one reasonable interpretation can be voided for vagueness under constitutional due
process).

1 views and the proposal. Given that the proposal has been mitigated to the extent
2 reasonable, if the aesthetic impacts are construed as an irreconcilable conflict with
3 residential views, the policy dictates that the project has priority and the impacts should
4 be found acceptable.

5 **MCC 17.50.210(a)(9):** *The county should consider local ecological conditions and*
6 *provide limits and conditions to assure appropriate compatible types of aquaculture for*
7 *the local conditions as necessary to assure no net loss of ecological functions.*
8 *Aquaculture should not be permitted in areas where it would result in a net loss of*
9 *ecological functions or adversely impact eelgrass and macro-algae. Aquacultural*
10 *facilities should be designed and located so as not to spread disease to native aquatic*
11 *life, or establish new nonnative species which cause significant ecological impacts.*
12 *Unavoidable impacts to ecological functions shall be mitigated.*

13 12. Policy met. The policy is met. The proposal will result in no net loss of ecological
14 function as determined in Finding of Fact No. 5I. As determined in 5H, there is no
15 eelgrass or macro-algae at the project site. As recognized in the staff report, The
16 Applicant will comply with all regulatory requirements governing the cultivation and
17 transport of species so as not to spread disease to native aquatic life. The proposal will
18 cultivate established species of oysters, including Pacific and Kumamoto oysters, which
19 have been cultivated within Mason County for decades.

20 **MCC 17.50.210(a)(10):** *Recognition should be given the possible impacts that*
21 *aquacultural activities might have on the aesthetic quality of the shoreline area.*

22 13. Policy met. The policy met. The possible aesthetic impacts have been thoroughly
23 assessed in Finding of Fact 5A.

24 **MCC 17.50.210(a)(12):** *Aquacultural activities should be operated in a manner that*
25 *allows navigational access to shoreline owners and commercial traffic.*

14. Policy met. The policy is met for the reasons identified in Finding of Fact No. 5B.

MCC 17.50.210(a)(13): *Aquacultural activities 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.

15. Policy met. The policy is met. The proposal's most pertinent impacts associated
with those identified in the above-quoted regulation are recreational use and those
impacts have been addressed in Finding of Fact No. 5B.

MCC 17.50.210(b)(1)(D): *Existing aquaculture activities include areas that are*
actively cultivated and/or dormant. It is presumed that the following areas are dormant
and hence existing: areas acquired under the Bush Act of 1895; areas undergoing crop

1 rotation; and areas dormant due to market conditions, seed or juvenile availability, past
2 and current pest infestations or control issues, water quality issues, and other
3 cultivation factors beyond the control of the operator. A presumptively dormant area
4 may, on a case-by-case basis as determined by the administrator, be deemed abandoned
5 provided clear and affirmative information evidencing intent to abandon the area for
6 shellfish farming is provided. Existing or permitted aquaculture operations are not
subject to Section 17.50.120, Existing Structures and Uses, and shall not be considered
nonconforming or abandoned. Ongoing maintenance, harvest, replanting, restocking or
changing the culture technique or species cultivated for any existing or permitted
aquaculture activity shall not require shoreline review or a new permit, unless or until:

- 7 (i) The operation changes the scope and intent of the original permit as defined in
8 17.50.400; or
9 (ii) The facility proposes to cultivate non-native species not previously cultivated in
the State of Washington.

10 16. Regulation met. This regulation is met. The project itself is exempt from this
11 regulation. However, as noted in Finding of Fact No. 3 and in Ex. 4, 6, 8 and 11, the
12 gear is anticipated to remain continuously but can be removed periodically for fishing
13 access in coordination with the Squaxin Island Tribe. Taylor Shellfish has coordinated
14 with the Squaxin Island Tribe to ensure it will not adversely impact the Tribe's fishing
rights. To do this, Taylor has agreed to remove or relocate the proposal's gear for a few
weeks upon the Tribe's request to provide unimpeded fishing access (Ex. 11).

15 When the fishing gear is moved for the Squaxin Tribe, it will be relocated to parcel
16 32015-10-80160, within Chapman Cove. Ex. 15. As seen on the Washington
17 Department of Natural Resources' Bush and Callow Act Aquatic Lands in Mason
18 County (Exhibit 16), almost the entirety of Chapman Cove was included in the Bush
19 Act of 1895. As noted in the regulation quoted above, ongoing maintenance, harvest,
replanting, restocking or changing the culture technique or species cultivated for any
aquaculture activity on APN 32015-10-80160 does not require shoreline review or a
new permit because the parcel is governed by the Bush Act.

20 At least one commentator has asserted that the relocation should be assessed for
21 shoreline impacts, but due to the regulation above, the proposal is exempt from shoreline
22 review, which would include shoreline impacts. The Act of moving the gear from its
23 location to the edges of Bush Act jurisdiction could be subject to review, but no impacts
24 from the record are apparent for that limited activity.

25 **MCC 17.50.210(b)(1)(E):** *Consistent with mitigation sequencing, aquacultural uses
and developments may be required to provide mitigation where necessary to offset
significant adverse impacts to normal public use of surface waters.*

1 17. Regulation met. The regulation is met for the reasons identified in Finding of Fact
2 No. 5B.

3 **MCC 17.50.210(b)(1)(F):** *Aquaculture development shall not cause extensive erosion
4 or accretion along adjacent shorelines.*

5 18. Regulation met. The regulation is met for the reasons identified in Finding of Fact
6 No. 5E.

7 **MCC 17.50.210(b)(1)(I):** *Aquaculture activities shall, to the greatest extent feasible
8 with regard to the economic viability of the operation and protection of the environment
9 be located, designed and operated so that native plant and animal populations, their
10 respective habitats and the local ecological balance are maintained.*

11 *i. New or expanded aquaculture shall be located, designed and maintained to
12 assure no net loss of ecological functions, as demonstrated in a HMP or
13 equivalent report (e.g. biological assessment or biological evaluation).*

14 *ii. Aquaculture use and development shall minimize shading and other adverse
15 impacts to macro-algae and eelgrass beds. If eelgrass or macro-algae is
16 known or suspected, an aquatic vegetation survey is required. Unavoidable
17 impacts shall be addressed in a HMP or equivalent report (e.g. biological
18 assessment or biological evaluation) that presents an acceptable mitigation
19 plan. NOTE: regulatory protections do not apply to eelgrass or macro-algae
20 that colonize a shellfish farm.*

21 *iii. Floating aquaculture uses and developments that require attaching
22 structures to the bed or bottomlands shall use anchors, such as helical
23 anchors, or other methods that minimize disturbance to substrate. Potential
24 adverse impacts shall be mitigated.*

25 *iv. Disease and pest control may be authorized, provided methods are allowed
by federal and state regulations and follow best management practices. To
the maximum extent practicable, aquaculture use and development shall
employ the least harmful best management practices to control birds and
mammals.*

19. Regulation met. The regulation is met. The Applicant prepared a Habitat
Management Plan (Ex. 8). As determined in Findings of Fact No. 5 (F) and (G), the
proposal will be located in an area that does not adversely affect any protected or
sensitive aquatic wildlife and habitat. As determined in Findings of Fact No. 5(C) and
(D) the project will not significantly affect water quality, so no significant adverse
impacts to native plant and animal populations are anticipated (See also Ex. 3). As
determined in Finding of Fact No. 5(I), the proposal will result in no net loss of
ecological function. No shading impacts are anticipated since the proposed opaque

1 elements will be constantly moved by wind, waves and currents. As determined in
2 Finding of Fact No. 5(H), there is no eelgrass at the project site. No macro-algae are
3 noted in the project site (Finding of Fact No. 5(H) and Ex. 7). As described in Finding
4 of Fact No. 3, the project will use concrete wedge anchors. No adverse impacts are
5 anticipated from the use of these anchors (Finding of Fact 5(D) and Ex. 4 and 8). As
6 determined in Finding of Fact No. 5D and the Habitat Management Plan (Ex. 8), no
7 impacts to the sediment are anticipated. The Applicant is not proposing any disease and
8 pest control measures (Finding of Fact No. 5(O)). The oyster bags themselves will be
9 compliant with Conservation Measures of the Programmatic Consultation (Ex. 14). For
10 these reasons, this regulation is satisfied.

11 **MCC 17.50.210(B)(1)(J):** *To the maximum extent practicable, floating*
12 *aquaculture structures shall not substantially detract from the aesthetic qualities of the*
13 *surrounding area, provided methods are allowed by federal and state regulations and*
14 *follow best management practices.*

15 20. Regulation met. The regulation is met for the reasons identified in Finding of Fact
16 No. 5A.

17 **MCC 17.50.210(B)(1)(K):** *Aquacultural structures shall be placed in such a manner,*
18 *and be suitably sized and marked, so as to minimize interference with navigation.*

19 21. Regulation met. The regulation is met. As determined in Finding of Fact
20 No. 5(B), the proposal is designed to minimize impacts to navigation.

21 **MCC 17.50.210(B)(1)(L):** *Aquaculture development shall be designed and*
22 *constructed with best management practices to minimize visual impacts and shall be*
23 *maintained in a neat and orderly manner. Aquaculture facilities, except navigation aids,*
24 *shall use colors and materials that blend into the surrounding environment where*
25 *practicable.*

26 22. Regulation met. The regulation is met. Exhibit 11, Permit Application
27 Addendum, page 8, (L) provides that Taylor Shellfish will use best management
28 practices to minimize visual impacts and will monitor the proposal regularly to ensure
29 gear is maintained in a neat and orderly manner. These statements in the application are
30 considered to be part of the proposed design and any deviation will be considered a
31 violation of the approved permit. The proposal is conditioned to have its gear in green
32 and/or blue colors to blend into the surrounding environment as required.

33 **MCC 17.50.210(B)(1)(M):** *Proposed aquacultural developments shall make*
34 *adequate provisions to control nuisance factors such as excessive noise and odor and*
35 *excessive lighting. Permits shall include allowance for work at night or on weekends*
but may require limits and conditions to reduce impacts, such as noise and lighting, to
adjacent existing uses.

1 23. Regulation met. The regulation is met for the reasons identified in Finding of Fact
2 No. 5K, L and M.

3 **MCC 17.50.210(B)(1)(N):** *Aquacultural discards shall be disposed of in a manner
4 that will not degrade associated uplands, wetlands, shorelines, or aquatic environments.
5 Discards shall not be disposed of in a manner which results in offensive odors or
6 increases the vector population. All waste-materials and discards shall be disposed of
in strict compliance with all applicable governmental waste disposal standards,
including, but not limited to, the Federal Clean Water Act, Section 401, and the
Washington State Water Pollution Control Act (RCW 90.48).*

7 24. Regulation met. The proposal is conditioned to comply with the standard
8 quoted above.

9 **MCC 17.50.210(B)(1)(O):** *Equipment, structures and materials shall not be
abandoned in the shoreline or wetland area.*

10 25. Regulation met. The proposal is conditioned to comply with the regulation.

11 **MCC 17.50.210(B)(1)(P):** *Precautionary measures shall be taken to minimize the
12 risk of oil or other toxic materials from entering the water or shoreline area.*

13 15. Regulation met. No vessel fueling will occur at the site. Vessels will be
14 monitored and maintained daily to minimize the risk of oil or other toxic materials from
15 entering the water or shoreline area. Food grade, biodegradable oil is used in the
16 hydraulic systems. A spill kit and notification procedures are kept on-board vessels.
17 Marine pollution insurance is carried. The applicant shall comply with all following
Programmatic Consultation Conservation Measures (Exhibits 14) that address this
concern: #5, #13, #14, #15, #16, and #17.

18 16. RR5 zoning. One argument submitted by project opponents is that proposed
19 aquaculture use is prohibited because it's not authorized in the RR5 zone. It is correct
20 RR5 applies to the project. However, since aquaculture is specifically authorized by the
21 SMP for project area, there is no question that it qualifies as a legal permitted use.
22 That issue is easily addressed by basic rules of statutory construction. Where one statute
deals with a subject in a general way and another deals with a part of the same subject in
a more detailed fashion, the two should be harmonized if possible. If the two conflict,
however, the more specific statute prevails. *Estate of Sigurdson*, 44 Wn. App. 731, 734
(1986).

23 In this case, it is uncontested that the RR5 zone applies within Oakland Bay. The
24 properties adjoining Oakland Bay in the vicinity of the project site are zoned RR5. MCC
25 17.02.062(1) provides that all water areas, if not specifically designated, shall be deemed
to be in the same zoning district as the properties abutting the water area. The project
area, in the middle of Oakland Bay, is thus subject to the RR5 zoning district. The RR5

1 zoning district doesn't include aquaculture in its list of authorized uses, MCC 17.04.222.
2 As such, if the project was located outside shoreline jurisdiction and hence not subject to
3 the SMP, there would be no question that the proposed aquaculture would not be a
4 permitted use.

5 However, the proposal is located within shoreline jurisdiction, specifically the aquatic
6 environment designation. Table 17.50.090-A of the SMP authorizes floating aquaculture
7 in the aquatic shoreline environment designation.

8 In short, the County SMP expressly authorizes aquaculture and the RR5 district does not.
9 The County SMP is a narrowly tailored set of zoning standards that regulates uses within
10 specified water bodies of the County and areas within 200 feet of those waterbodies. The
11 RR5 district is a much more broadly applicable County zoning code, which encompasses
12 all of the County's water bodies in addition to almost all areas within Mason County
13 outside of those water bodies. Under the terms of the rule of statutory construction
14 summarized above, the zoning code deals with authorized uses in a general way and the
15 SMP deals with them in a more specific way. The two provisions can be easily
16 harmonized by interpreting the SMP as adding to the uses authorized by the RR5 district.
17 If the two sets of regulations are deemed to conflict with each other by reading the zoning
18 code as prohibiting aquaculture, then the SMP's authorization of the use would prevail
19 since it qualifies as the more specific of the two sets of regulations.

20 **DECISION**

21 The shoreline substantial permit application as depicted in exhibits submitted into the
22 record by the Applicant is consistent with all applicable review criteria for the reasons
23 identified in the Conclusions of Law and is approved, subject to the following conditions:

- 24 1. New public access, including alternatives to on-site, physical access, shall be
25 required as specified in the Public Access Memorandum (Exhibit 23) and and
Appendix 4 and shall be available for public use prior to the completion of
construction. Construction of the project shall not commence until all required
state and federal permits are obtained by the Applicant.
2. All of the Conservation Measures listed in the Programmatic Consultation
(Exhibit 14), must be implemented throughout the life of the project.
3. Regular maintenance and operation activities, as described in the Permit
Application Addendum (Exhibit 11), shall utilize best management practices.
4. All vessels shall be in compliance with Mason County Code Title 9, and
specifically Sections 9.04 and 9.36.

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5. All vessel activity shall be restricted to daylight hours, including weekends. No work at night shall occur. Work and vessel hours may extend to an hour before and after daylight hours between October and April of each year.
6. The public access easements proposed in the Public Access Memorandum (Exhibit 23) and the permit conditions shall be recorded with the Mason County Auditor on the deed of title and/or the face of a short or long plat. Recordation shall occur prior to the completion of construction.
7. Ongoing maintenance of the public access sites proposed in the Public Access Memorandum (Exhibit 23) shall be the responsibility of the Applicant unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Mason County Auditor's office.
8. Signage that clearly identifies the location of the new public access sites proposed in the Public Access Memorandum (Exhibit 23) shall be installed and maintained by the Applicant in conspicuous locations. The signs shall indicate the public's right of access, hours of access, and other information as specified in the Public Access Memorandum (Exhibit 23).
9. Construction of the project shall not commence until all required state and federal permits are obtained by the Applicant.
10. All of the Conservation Measures listed in the Programmatic Consultation (Exhibit 14), must be implemented throughout the life of the project.
11. Regular maintenance and operation activities, as described in the Permit Application Addendum (Exhibit 11), shall utilize best management practices.
12. All vessels shall be in compliance with Mason County Code Title 9, and specifically Sections 9.04 and 9.36.
13. All vessel activity shall be restricted to daylight hours, including weekends. No work at night shall occur except that in the months from October through April the Applicant vessel activity may occur one hour before dawn to one hour after dusk to the extent consistent with the County's noise ordinance.
14. Navigational lighting shall be installed and limited to the minimum necessary per U.S. Coast Guard requirements. To the extent any flexibility is provided in location, navigation lights shall be configured to avoid light spillage in surrounding residences.
15. Navigational aids, such as marker buoys, shall be installed in compliance with U.S. Army Corps of Engineers and U.S. Coast Guard requirements.

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- 16. Debris or deleterious material resulting from installation and maintenance of the farm shall be removed from the project site and shall not be abandoned along adjacent shorelines or allowed to enter waters outside of the DNR lease boundary (Exhibit 9). Equipment and structures shall also not be abandoned in the shoreline area.
- 17. All waste materials and discards shall be disposed of off-site in strict compliance with all governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48). Aquacultural discards shall be disposed of in a manner that will not degrade associated uplands, wetlands, shorelines, or aquatic environments. Discards shall not be disposed of in a manner which results in offensive odors or increases the vector population.
- 18. Materials used for components that may come in contact with water shall be made of materials approved by applicable state agencies for use in water. Wood treated with creosote, chromated copper arsenate, pentachlorophenol, or other similarly toxic materials is prohibited for use in the aquatic environment. Where chemically-treated materials are the only feasible option, materials shall use the least toxic alternative approved by applicable state agencies for use in water. Treated wood elements shall incorporate design features to minimize abrasion by vessels, pilings, floats or other objects.
- 19. The project shall comply with the conditions recommended by the WA Department of Ecology in their response to the SEPA Determination of Non-Significance (Exhibit 18).
- 20. Water quality is not to be degraded to the detriment of the aquatic environment as a result of this project.
- 21. Precautionary measures shall be taken to minimize the risk of oil or other toxic materials from entering the water or the shoreline area. If any contamination is unexpectedly encountered from sites located around the project, it must be reported to Ecology (per WAC 173-340-300) via the online ERTS.
- 22. Construction of the project and ongoing project activities shall not cause extensive erosion or accretion along the adjacent shorelines.
- 23. If any archaeological or cultural resources are uncovered during construction or throughout the life of the project, please halt work in the area of discovery and contact DAHP and the Squaxin Island Tribe's Cultural Resources Director, Rhonda Foster at rfoster@squaxin.us.

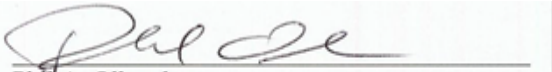
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24. As outlined in Finding of Fact No. 5P, the Applicant shall pay for a third-party qualified expert hired by the County to formulate a monitoring plan that monitors uncertain environmental impacts that are attributable to the proposal. The third-party expert shall identify impacts that are potentially significant and reasonably uncertain due to gaps/deficiencies in scientific literature, regulation and/or the unique environmental conditions of the proposal. The monitoring plan shall include performance standards that trigger mandatory mitigation. Project impacts shall be limited to those not already subject to monitoring by other agencies. The impacts shall be those that can be reasonably assessed as attributable to the proposal and addressed by additional project mitigation. Installation of the proposal shall not be allowed until baseline conditions are measured as found necessary prior to installation by the third-party expert.

25. All visible floating project gear shall be green and/or blue in color. The oyster bags may not be black as proposed.

26. Oyster bag lines shall be spaced 30 feet between the centers of the double bags to maximize navigation space between the lines.

Dated this 9th day of October, 2023.



Phil A. Olbrechts

Mason County Hearing Examiner

Appeal Right and Valuation Notices

The shoreline substantial development permit is a final land use decision of Mason County, subject to appeal to the Washington State Shoreline Hearings Board as regulated by the Shoreline Management Act, Chapter 90.58 RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.