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BEFORE THE HEARING EXAMINER
FOR MASON COUNTY

RE: Taylor Shellfish Farms)
Shoreline Substantial) TAYLOR SHELLFISH FARMS'
Development Permit) REPLY ON MOTION FOR
SHR2023-00003) RECONSIDERATION

I. INTRODUCTION

The responses submitted with respect to Taylor Shellfish’s October 19, 2023, motion for reconsideration (“Motion”) fail to demonstrate that Taylor is not entitled to relief. Many responses simply request the Hearing Examiner deny the Motion without providing supporting analysis. The responses that do offer arguments specifically addressing Taylor’s requested changes frequently mischaracterize Taylor’s revisions or the conditions of approval as currently drafted. And no response contains information or analysis demonstrating that conditions 5, 13, 16, 24, and 25 are, as currently drafted, supported by the record and consistent with the Mason County Shoreline Master Program and the Shoreline Management Act.

For the reasons set forth below and in the Motion, Taylor respectfully requests that the Hearing Examiner grant the Motion, revising conditions 5, 13, 16, and 24, and striking condition 25.

1
2 **II. ARGUMENT**

3 **A. The Motion Is Procedurally Proper and Supported by the Record.**

4 Several responses simply oppose Taylor’s motion and request the Hearing
5 Examiner to not grant it, while not offering any specific analysis or argument. A. Parker
6 Response at 1; B. Olson Response at 1; B. Morisette Response at 1; G. and S. Gonzales
7 Response at 1; S. Campbell Response at 1. Many responses also mischaracterize the
8 Motion, inaccurately contending that Taylor is unwilling to comply with the conditions in
9 the Decision, seeks to operate with no oversight, or requests to eliminate all conditions
10 imposed by the Hearing Examiner. D. and G. Douglas Response at 4; D. and D. Barnett
11 Response at 1; B. and F. Fierst Response at 2; M. Kennedy Response at 1. Other
12 responses request the Hearing Examiner to deny the project’s permit, impose more
13 onerous conditions, or request the project to be moved outside of Oakland Bay. D. and G.
14 Douglas Response at 2-3; T. and M. Nevares Response at 1-2; B. and F. Fierst Response
15 at 2. These requests are procedurally improper, as they were not supported by a timely
16 reconsideration motion. Decision at 1.

17 Two responses complain that Taylor submitted information with its Motion
18 concerning the commercial viability of blue and green oyster bags and a specific
19 monitoring plan for incorporation in condition 24, contending such information is
20 procedurally improper.¹ P. and E. Pattillo Response at 1; D. and G. Douglas Response at
21 1. This complaint is meritless, as the Hearing Examiner specifically invited such
22 information to be provided in Taylor’s Motion. Findings of Fact, Conclusions of Law and

23 _____
24 ¹ One of these responses, while mistakenly critiquing Taylor for providing information
25 expressly authorized in the Decision, improperly attempts to supplement the record with
purported expert qualifications. E. and P. Pattillo Response at 2. This supplemental
information should not be considered. Regardless of whether this information is
considered, for the reasons discussed below, the arguments offered in this response lack
substantive merit and provide no grounds for denying the Motion.

1 Final Decision, SHR2023-00003 (“Decision”) at 12, 33 n.26. Allowing this information
2 also makes practical sense. While the question of bag color was raised during County staff
3 review of the project, and Taylor addressed this question in its aesthetic analysis (Ex. 25 at
4 5-6), the effectiveness and viability of using green and blue gear was not a focus of the
5 Hearing Examiner proceeding. Therefore, it is reasonable to allow Taylor to provide such
6 information in response to outstanding questions the Hearing Examiner has regarding this
7 issue. Similarly, given the Decision expresses a potential desire for some additional
8 monitoring, it questions whether such monitoring should be required, and it is reasonable
9 for the Hearing Examiner (and the public) to consider a specific monitoring proposal in
10 light of the findings and conclusions in the Decision. Decision at 33.

11 Another response mischaracterizes the Motion as merely rearguing issues that
12 have already been fully considered and summarily asserts none of the grounds for granting
13 reconsideration have been adequately explained. D. and G. Douglas Response at 2.² In
14 fact, Taylor’s Motion clearly explains and substantiates each requested change. With
15 respect to emergency responses (conditions 5 and 13) and gear maintenance (condition
16 16), Taylor requested changes to ensure the Decision is consistent with legal requirements
17 that conditions of approval be feasible, reasonable, and supported by the record. Motion at
18 2-4. *See also* Hearing Examiner Rule 2.30(b)(2)-(4); Decision at 38-39; MCC
19 17.50.210(b)(I). Taylor provided information addressing these issues during the hearing
20 process, and no conflicting information or analysis was presented demonstrating the
21 conditions should not be revised consistent with Taylor’s initial request. Ex. 31. With

22 ² This commenter also erroneously argues that the Motion should not be granted
23 regardless of the Hearing Examiner’s consideration of additional information because
24 either (i) such information should have been submitted previously or (ii) the Hearing
25 Examiner already considered all pertinent information in the record. D. and G. Douglas
Response at 1. This same reasoning would apply to any reconsideration motion and, as
such, would essentially eliminate the reconsideration process in conflict with Hearing
Examiner Rule 2.30.

1 respect to the gear color and monitoring requirements, Taylor’s Motion is similarly based
2 on a lack of information in the record supporting the conditions at issue, along with
3 specific invitations from the Hearing Examiner to submit additional information
4 addressing these conditions. Motion at 5-12. With respect to all requested changes,
5 Taylor’s Motion is factually and legally supported, and therefore it should be granted.

6 **B. Conditions 5 and 13 Should Be Revised to Allow for Emergency Responses.**

7 Many responses oppose Taylor’s request to modify conditions 5 and 13 to allow
8 for emergency responses on an as-needed basis, including at night. However, no response
9 provides sound reasoning that emergency responses should not be allowed at night.

10 Instead, responses contend that Taylor failed to explain what an “emergency” consists of
11 or erroneously assert that Taylor is requesting unlimited work hours. W. Lanning
12 Response at 1; D. and G. Douglas Response at 2-3; B. and F. Fierst Response at 1; M.
13 Kennedy Response at 1. Relatedly, some responses state that emergency activities should
14 not include normal cultivation actions undertaken to account for production deficiencies
15 or to compensate for poor planning. K. Kent-Lanning Response at 1; B. and F. Fierst
16 Response at 1; T. and M. Nevares Response at 1.

17 Taylor Shellfish explained the need for an allowance to conduct emergency
18 activities at night—and in so doing, clearly explained what an emergency consists of—in
19 its prehearing letter to the Hearing Examiner as well as through hearing testimony.
20 Emergency responses and activities do not include routine cultivation actions, but rather
21 are activities that must be undertaken “immediately in order to prevent loss or harm . . . or
22 system failure due to extreme weather or accidents.” Decision, App. A at 87. *See also* Ex.
23 31 at 2 (describing illustrative emergency responses those undertaken “in response to
24 severe weather events”). As such, an “emergency” under this revision request is an
25 extreme weather event or accident, and emergency responses and activities are limited to

1 actions that must be undertaken immediately to prevent loss or harm from such events or
2 accidents. Emergency responses and activities do not include routine cultivation actions,
3 and Taylor is not requesting unlimited working hours through this revision as some
4 responses inaccurately contend.

5 As stated in the Motion, there is no strong reason to prohibit allowing for limited
6 emergency response activities at night, and there are compelling policy and legal grounds
7 for allowing such activities. Accordingly, Taylor respectfully requests that the Hearing
8 Examiner revise conditions 5 and 13 as set forth in the Motion.³

9 **C. Condition 16 Should Be Revised to Ensure Feasibility.**

10 Limited responses addressed Taylor's request to modify condition 16. One
11 response states that Taylor should inspect gear on a weekly basis, which is consistent with
12 Taylor's requested revision to the condition. B. and F. Fierst Response at 2. Another
13 response states that Taylor should monitor the area outside of the lease area. N. Wilner
14 Response at 1. Patrols in response to identified missing gear or complaints would be
15 conducted outside of the lease area as appropriate, consistent with this response.

16 One response contends that Taylor's proposal to conduct patrols within 48 hours
17 of identified missing gear or complaints is inadequate and that Taylor should be required
18 to conduct patrols within eight hours of inventories identifying missing gear and two
19 hours within complaints. T. and M. Nevares Response at 1.⁴ This change is based on the

20 ³ Given Taylor clearly explained emergency situations and response actions, conditions 5
21 and 13 should be revised as set forth in the Motion. Nonetheless, if the Hearing Examiner
22 deems it necessary to expressly state that emergency activities do not include routine
cultivation actions, Taylor would not oppose incorporating such language into these

23 ⁴ This response requests the Hearing Examiner impose various additional conditions,
24 including a bizarre prohibition on other individuals from using aquatic areas within 1,000
25 feet of the project's lease boundary and a requirement to inventory gear on a daily basis.
T. and M. Nevares Response at 1-2. These requested changes are legally and factually
baseless, and they must also be rejected because they are unsupported by a timely
reconsideration motion.

1 unsupported assertion that the project's gear would cause harm, *id.* at 1-2, whereas as
2 discussed at hearing and in the Motion, project gear is designed to withstand degradation
3 in the marine environment and follows conditions of approval developed by expert
4 resource agencies to minimize and avoid adverse effects. While Taylor will undertake best
5 efforts to conduct patrols as soon as possible after gear is identified as missing or in
6 response to complaints, and anticipates most patrols will be conducted well before the
7 48-hour window expires, an eight-hour response requirement—let alone a two-hour
8 requirement—may not always be safe or feasible (e.g., during severe weather events).

9 A prohibition on any Project materials leaving the lease boundary is unsupported
10 by the record and infeasible. Responses failed to demonstrate otherwise or that Taylor's
11 proposed revisions to condition 16 are inappropriate. Therefore, Taylor respectfully
12 requests that the Hearing Examiner revise condition 16 as set forth in the Motion.

13 **D. Condition 24 Should Be Revised to Adopt Confluence's Monitoring Plan.**

14 Many responses opposed Taylor's proposed revision to condition 24, under which
15 the project would be required to comply with a specific monitoring plan developed by
16 Confluence Environmental Company rather than be subject to a future analysis as to the
17 need for and development of a monitoring plan by an additional consultant. As set forth in
18 Confluence's technical response memorandum attached as Appendix A to this reply,
19 public responses addressing its proposed monitoring plan fall within two groupings. First,
20 several responses contend monitoring needs to be conducted by a qualified, independent
21 third party. Second, some responses contend Confluence's proposed monitoring plan is
22 technically inadequate. Neither contention has merit.

23 With respect to the first contention, the responses are misguided from the outset
24 because condition 24 as currently drafted does not even necessarily require additional
25 monitoring, let alone require any future monitoring to be conducted by a third party. It

1 simply requires Taylor to pay for a third-party consultant to investigate the need for
2 additional monitoring and to develop a monitoring plan if warranted. Decision at 33, 47.
3 Further, for the reasons set forth in Confluence’s technical memorandum, it is normal and
4 most effective to have project monitoring performed by qualified staff members of a
5 permittee. App. A at 1-3. Requiring monitoring to be conducted by an independent third
6 party is typically reserved for the rare instances where willing and known violations have
7 occurred or when there is direct evidence of fraudulent behavior on the part of the
8 applicant. *Id.* at 2. Such a situation is not present here, and requiring outside monitoring
9 would result in delays, thereby limiting the effectiveness of the monitoring and potentially
10 result in greater impacts. *Id.*

11 With respect to the second contention, Confluence’s proposed monitoring plan is
12 appropriate because it “focuses on the potential mechanisms of impact most directly
13 associated with the project and uses comparisons to control areas, when appropriate.
14 These features of the monitoring plan are intentional and allow for the direct association
15 between the project and the potential impact being monitored.” *Id.* at 3. In contrast,
16 alternative monitoring proposals recommended in responses (e.g., measuring contaminant
17 levels between pre- and post-project conditions, or attempting to quantify erosion along
18 the shoreline) would provide unclear or confusing results “and make the determination of
19 changes due to the project array virtually impossible.” *Id.* at 4. Confluence’s proposed
20 monitoring plan directly addresses potential effects of the project, and hence “monitoring
21 of the bay beyond these effects would be irrelevant.” *Id.*

22 Responses have not shown that Confluence’s extensive monitoring plan is
23 deficient, nor have they demonstrated that a more reasonable, yet robust, monitoring plan
24 would likely be developed by an additional consultant to be retained in the future.
25 Therefore, Taylor respectfully requests that the Hearing Examiner revise condition 24 as

1 set forth in the Motion.

2 **E. Condition 25 Should Be Stricken.**

3 Several responses oppose Taylor’s request to strike condition 25, which requires
4 the use of green and/or blue gear and specifically prohibits black oyster bags. However,
5 the responses fail to rebut the information provided by Taylor that blue or green gear is
6 not commercially viable or preferable from an aesthetic or environmental perspective.

7 Multiple responses inaccurately claim that Taylor’s request to strike condition 25
8 is based on the added cost associated with producing blue or green gear. W. Lanning
9 Response at 1; D. and G. Douglas Response at 3; T. and M. Nevares Response at 2.
10 Taylor’s request is primarily based on the lack of commercial viability of blue or green
11 gear, the failure of blue or green gear to appreciably reduce aesthetic impacts, and the risk
12 of degradation with blue or green gear. Motion at 8-12. These are all sufficient reasons to
13 strike the condition, but the added cost associated with producing such inferior gear
14 contributes to the lack of reasonableness of the condition and is an appropriate factor for
15 the Hearing Examiner to consider. Nor did Taylor pre-produce black oyster bags
16 specifically for this project, as one response mistakenly contends. W. Lanning Response at
17 1. Rather, the black bags that Taylor would use for the project are existing bags already in
18 Taylor’s inventory. Motion, App. B at 1. The added costs for using blue and green bags
19 would largely result from Taylor being precluded from reusing these bags for the project,
20 while additional costs would be associated with adding blue and green colors and other
21 additives. *Id.*

22 One response agrees with Taylor Shellfish that the use of blue or green gear will
23 not reduce the project’s aesthetic footprint. N. Wilner Response at 1.⁵ The public

24 ⁵ This same response expresses a personal preference for “clear” gear as a first option with
25 “blue/green camo a second choice.” N. Wilner Response at 1. Clear and “camo” gear is
neither available nor recommended by any source of authority.

1 responses do not indicate a community preference for green or blue gear compared to
2 black based on the renderings that have been provided and hence reinforce Taylor’s
3 position that colored gear would not appreciably reduce aesthetic impacts.

4 One response incorrectly asserts that the renderings are mere “opinions,” B. and F.
5 Fierst Response at 2, when in fact they were professionally produced based on site-
6 specific photographs of the project area under sunny conditions. Ex. 25 at 6 (renderings by
7 APEX Visualization); Motion, App. B at 4-5. No response provides competing renderings
8 or photographs demonstrating that colored gear would reduce aesthetic impacts. Instead,
9 one response quotes an anonymous source for the position that the best color of gear
10 depends on the color of the water and the surrounding environment. K. Kent-Lanning
11 Response at 1. Another response asserts that the blue or green color recommendation in
12 condition 25 is based on the 1986 Department of Ecology Aquaculture Siting Study, E.
13 and P. Pattillo Response at 1. But this response ignores that Ecology has clarified in the
14 record here that the 1986 Siting Study “recommends that color of aquaculture equipment
15 be considered in project design as one of several aesthetic factors. It does not prescribe a
16 specific color as the preferred choice for all aquaculture projects.” Motion, App. C at 2.

17 Ecology further cautioned as follows:

18 It is also important to recognize the age of the Study, and that aquaculture
19 practices and technology have advanced considerably since its writing.
20 Those advancements, and the realities of modern aquaculture operations,
21 should be taken into consideration in the permit decision. For example, if
22 current manufacturing practices render certain colors infeasible and/or at
23 greater risk of causing environmental harm, those potential impacts must
24 be weighed against potential visual impacts through the lens of the
25 Shoreline Management Act.

23 *Id.*

24 Finally, no response provides information demonstrating that blue or green gear is
25

1 commercially viable or environmentally acceptable. Instead, one response summarily
2 asserts that manufacturers “should be able to provide a stable colorant and improve the
3 UV resistance for the chosen color” without further explanation or authority. F. Ritson
4 Response at 1. And others complain that Taylor, nor manufacturers, submitted
5 information regarding the lack of commercially viable colored gear. D. and G. Douglas
6 Response at 3; B. and F. Fierst Response at 2. These responses ignore that Taylor is itself
7 a gear manufacturer and hence can speak with authority on this issue. Motion, App. B.
8 Further, Taylor coordinated with other gear manufacturers in advance of filing its
9 reconsideration motion, and there is no basis for concluding that Taylor was not honest in
10 its representations regarding the difficulties in producing consistent and uniform blue or
11 green colored gear. *Id.* To the extent that the Hearing Examiner desires such information,
12 Taylor has provided a statement from its Generation 2 gear manufacturer, Norplex Inc.,
13 affirming it “cannot guarantee the longevity or color in the environment for oyster grow
14 bags with colors other than black” for the very reasons stated by Taylor in its Motion.
15 App. B.

16 Taylor’s position that blue and green oyster bags are commercially unviable,
17 environmentally unacceptable, and ineffective at reducing the project’s aesthetics is
18 supported by the record and not contravened in responses. Accordingly, condition 25
19 should be stricken.

20 III. CONCLUSION

21 Again, Taylor greatly appreciates the Hearing Examiner’s careful consideration of
22 this project. For the reasons set forth above and in the Motion, Taylor’s request to revise
23 conditions 5, 13, 16, and 24, and to strike condition 25, should be granted.

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DATED this 7th day of November, 2023.

PLAUCHÉ & CARR LLP

By: *s/Jesse DeNike*

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List of Appendices

- A. Response to Motion for Reconsideration Comments on SHR2023-0003. Confluence Environmental Company. November 7, 2023.
- B. Norplex, Inc. letter regarding oyster grow bags. Norplex, Inc.

Appendix A



To: Jesse DeNike, Plauche & Carr
cc: Erin Ewald, Taylor Shellfish

From: Chris Cziesla and Kelly McDonald

Chris Cziesla Kelly McDonald

Date: November 7, 2023

Re: Response to Motion for Reconsideration Comments on SHR2023-0003

The following information provides responses by topic to comments received in response to Taylor Shellfish's motion for reconsideration, specifically related to monitoring of the proposed floating aquaculture farm in Oakland Bay (Mason County SHR2023-0003). The relevant comment letters for each of the topics are listed within each section.

RESPONSES TO COMMENTS

Comment: Several commenters discussed the need for monitoring to be conducted by a qualified, independent, third party.

Comment Letters: 10.23.2023_Response from Nancy Willner, 10.27.2023_Response from Kathy Kent-Lanning, 10.27.2023_Response from William Lanning, 10.30.2023_Response from David and Ginny Douglas on behalf of Friends of Oakland Bay, 10.30.2023_Response from Francesca Ritson, 10.30.2023_Response from Judith Brumley-Bidwell, 10.31.2023_Response from Betsy Norton, 10.31.2023_Response from Bill and Florence Fierst, 10.31.2023_Response from Melissa Kennedy, 10.31.2023_Response from Tom and Melanie Nevares, 11.01.2023_Response from Mark Herinckx, 11.01.2023_Response from Patrick and Erin Pattillo

Response: Monitoring by a qualified, independent, third party was not suggested in the hearing examiner's decision. Instead, the hearing examiner suggested a qualified third party be used as peer review to determine what monitoring is necessary, if any, and then to develop a monitoring plan to assess uncertain project impacts without duplicating monitoring requirements of other permitting agencies. The hearing examiner also specifically invited the applicant to propose monitoring measures which may negate the need to involve peer review.

There is no suggestion that the monitoring should be carried out or conducted by an independent third party. Indeed, it would be highly unusual to require that monitoring be conducted by an independent third party. Monitoring requirements at the local, state, and federal levels almost uniformly allow the applicant to conduct any required monitoring either

directly or with the assistance of a qualified resource. This holds true for wetland mitigation monitoring under Clean Water Act section 404, water quality monitoring under Clean Water Act section 401, impact monitoring associated with take authorizations under the Endangered Species Act, as well as numerous other local, state, and federal regulations. Having the monitoring conducted by an independent third party is typically reserved for the rare instances where willing and known violations have occurred or when there is direct evidence of fraudulent behavior on the part of the applicant. None of this is the case for Taylor Shellfish. In fact, Taylor Shellfish routinely monitors and reports monitoring results related to requirements by various agencies including herring spawn presence (Washington Department of Fish and Wildlife), turbidity from cultivation activities (Washington Department of Ecology), shellstock, gear, and equipment movement (Washington Department of Fish and Wildlife), and water sampling results for processing plant operations (Washington Department of Health).

Commenters note that if an independent third party were not to conduct the monitoring, it would be the “fox guarding the henhouse” or otherwise inadequate. While there can be value in a fully independent monitoring approach, in practice it often results in decreased responsiveness and ultimately poorer outcomes. Alternatively, with the applicant’s involvement in the monitoring effort, monitoring becomes part of the project, and feedback and corrective action can be nearly instantaneous. For example, marine mammal and fish monitoring may be conducted by Taylor Shellfish staff who are present at the site every day and who are trained in the necessary monitoring techniques and information (e.g., identification of marine mammals and fish, marine mammal and fish behavior, and the appropriate responsive actions and documentation, should marine mammals or fish be present). A third-party monitor would only be present a fraction of the time and any corrective actions would likely need to go through a reporting process before being implemented. This delay in response would limit the effectiveness of the proposed monitoring and potentially result in greater impacts, should an issue arise.

For monitoring elements such as circulation and flushing, contaminants, or dissolved oxygen and algal blooms, Taylor Shellfish staff are uniquely qualified to help create and implement any required monitoring due to their knowledge about the local system, the project components, and the relationship between the two. For example, if monitoring revealed that an anchor had moved, Taylor Shellfish staff would be able to document and report the movement as required, determine the likely cause (e.g., planned movement, accidental movement, vessel interaction), and most importantly, determine the appropriate corrective action to prevent reoccurrence. A third-party monitor would be able to similarly document the anchor movement, but any corrective action could likely only be taken following associated communication with Taylor Shellfish staff and via scheduled reporting timelines.

Furthermore, having the monitoring conducted by Taylor Shellfish staff aligns well with project goals and objectives. For Taylor Shellfish to have a productive farm over the term of the project, ensuring the quality of the local and surrounding water and the ecological functioning of Oakland Bay is paramount. Contaminant disturbance, water quality degradation (i.e., dissolved oxygen decreases, algal blooms), and alterations in bay circulation all would be detrimental to project operations and shellfish production. Taylor Shellfish is highly incentivized and motivated to ensure Oakland Bay continues to function properly and that all ecological processes are maintained or improved.

Within a regulatory context, the process used for the vast majority of required monitoring is as follows: 1) the applicant, who knows the project best, develops the monitoring plan; 2) the appropriate independent regulatory agency, who is familiar with the resource and relevant regulations, reviews and approves the monitoring plan; 3) the applicant conducts the approved monitoring plan and reporting according to agreements; 4) the agency reviews monitoring results and determines if any next steps are appropriate, based on the results. This process has the advantage of involving the applicant to ensure applicability and accuracy, as well as providing independent approval and review of results by a regulatory agency to confirm the monitoring goals and objectives are satisfied. The Washington Department of Natural Resources (DNR) has indicated their willingness to oversee the monitoring report review as part of the Stewardship Plan that will be a condition of the lease approval. DNR review and approval of a monitoring plan to be conducted by Taylor Shellfish would provide the benefits of knowledgeable oversight by the applicant, with appropriate third-party involvement.

Comment: Proposed monitoring does not directly measure identified concerns, focus on the entire bay, or use comparisons between pre-project and post-project conditions.

Comment Letters: 10.23.2023_Response from Nancy Willner, 10.27.2023_Response from Kathy Kent-Lanning, 10.31.2023_Response from Betsy Norton, 10.31.2023_Response from Tom and Melanie Nevares, 11.01.2023_Response from Patrick and Erin Patillo

Response: Proposed monitoring focuses on the potential mechanisms of impact most directly associated with the project and uses comparisons to control areas, when appropriate. These features of the monitoring plan are intentional and allow for the direct association between the project and the potential impact being monitored. For example, you cannot have introduction of sediment contaminants into the water column due to the project unless the sediment is mobilized by a feature of the project. The project's only interaction with sediments in the project area is via the anchors. If the anchors do not move, then potentially contaminated sediments would not be moved. Therefore, monitoring of the anchors is an appropriate method to

determine the potential for contaminant introduction from the sediment. Whereas, if monitoring were to focus on measuring contaminant levels in the sediment using a comparison between pre-project conditions and post-project conditions, a variety of non-project related factors could have been the cause of any changes observed.

Similarly, erosion and scour associated with the project would not occur unless the project altered current conditions. By measuring current velocities up-current, within the project array, and down-current of the project array during the same tidal exchange, the results directly point to the potential effect of the array on currents. In contrast, attempting to measure actual erosion along the shoreline would be indirect and would likely result in the confusion of any project-related impacts with other non-project causes of shoreline erosion (e.g., upland or riparian actions, storms). Additionally, measuring currents prior to project installation and comparing with post-installation conditions would confuse results and make the determination of changes due to the project array virtually impossible. Current velocities in a large embayment such as Oakland Bay are very complex. Measurements taken months apart cannot be meaningfully compared because the forces controlling current velocity (e.g., tidal, wind, atmospheric pressure, salinity, and temperature conditions) can change dramatically over time. By measuring currents as proposed, at the same time but in different locations, any potential project-related effects can be more easily determined. In the proposed monitoring, the up-current location acts as a control where it is reasonable to assume that the project would have no effect on currents. Direct comparison of the measurements at this location with the measurements within the project array and down-current of the project allows for likely causal conclusions to be made regarding impacts of the project on currents, without the influence of potentially confounding variables.

For other elements, such as submerged aquatic vegetation (SAV) or debris accumulation, a before-installation and after-installation approach is proposed. This approach is more appropriate for determining effects to SAV or debris because these impacts would not be instantaneous but rather likely to occur over time. Additionally, it is reasonable to assume that other environmental or anthropogenic factors would not confound results indicating a potential effect on SAV or debris within Oakland Bay. Should an after-installation survey indicate changes to the SAV or debris condition observed prior to installation, it is likely to be related to the installation of the project array.

The proposed monitoring directly addresses potential effects of the project; monitoring of the bay beyond these effects would be irrelevant. As noted above, Taylor Shellfish is highly incentivized to maintain or improve the ecological functioning of Oakland Bay. Monitoring of potential impacts and appropriate responsive actions limits impacts from the project and ensures the preservation of the Oakland Bay ecosystem.

Appendix B



NORPLEX, INC.

NORTHWEST PLASTIC EXTRUSION

111 3rd St. N.W. • Auburn, WA 98002 (253) 735-3431 FAX (253) 735-5056
P.O. Box 814 Auburn, WA 98071-0814

Norplex Inc. produces grow bags for oyster cultivation. The standard material that Norplex uses for manufacturing oyster grow bags is black in color and has the highest level of UV resistance. Black bags made from this material have the greatest uniformity in color, and they are also the most durable. Norplex guarantees the color and longevity of black oyster grow bags.

To manufacture grow bags with different colors, we would have to use a virgin material and then add coloration. To provide UV protection, we would also need to add UV inhibitors. We have attempted to do this in the past, but the results were not acceptable. Even with UV inhibitors, colored grow bags are not as durable, and they are only expected to last as half as long compared to black grow bags. For these reasons, Norplex cannot guarantee the longevity or color in the environment for oyster grow bags with colors other than black.

Scott McCauley
Norplex, Inc.
Netting Plant Manager

A handwritten signature in black ink, appearing to read 'S. H. McCauley', written in a cursive style.