July 31, 2023

TAYLOR SHELLFISH LLC
CASE INDEX

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MASON COUNTY DEPARTMENT OF PLANNING
Building VIII - 615 W. Alder Street; Shelton, WA 98584 – 360.427.9670

TO: Mason County Hearing Examiner

FROM: Planning staff, Luke Viscusi; LViscusi@MasonCountyWA.gov; 360.427.9670 ext. 282

RE: Shoreline Substantial Development Permit request by Taylor Shellfish to grow Pacific oysters and install a floating oyster bag system in Oakland Bay, Shelton, WA, Permit #SHR2023-00003.

STAFF REPORT

I. **APPLICANT.** The applicant is Taylor Shellfish. The authorized representative is Erin Ewald of Taylor Shellfish.

II. **PROPERTY LOCATION.** Subtidal area of Oakland Bay, between E Beil Rd and Chapman Cove; located on Mason County parcels 32010-13-70590, 32015-22-22222, and 32016-22-22222; WA DNR lease # 20-104436; Latitude / Longitude of project boundaries are: 47.226000 / -123.059108, 47.230349 / -123.052932, 47.224121 / -123.056164, and 47.228415 / -123.050025.

III. **LEGAL DESCRIPTION.** The subject parcels have no legal descriptions.

IV. **EVALUATION.**

PROPOSAL: The applicant is proposing to install and operate a floating oyster bag system on three subtidal parcels owned by the Washington Department of Natural Resources (DNR) in Oakland Bay. The full lease boundary is identified under WA DNR lease # 20-104436. At full installation, an estimated 9.1 acres of surface water within a 50-acre project boundary would be used for floating aquaculture gear. Approximately 30 double-lines of oyster bags (seen in Exhibit 10) and 60 anchors would be installed with approximately 30-foot spacings between the rows of oyster bags. There could be up to 30 screw anchors installed in the center of each line. The gear is anticipated to remain continuously but can be removed for a

few weeks for fishing access when coordinated with the Squaxin Island Tribe (see Exhibit 15). The farm will be used for oyster seed and oyster grow-out cultivation intended for human consumption. The oyster bags are made from UV-resistant, high-density polyethylene (HDPE) mesh and measure a maximum of 48 inches by 48 inches. The Oyster bags will be arranged in a set of double-rows oriented in a northeast-southwest direction. Each row of bags will be secured by a headline that runs for approximately 1,800 feet.

A. CHARACTERISTICS OF THE SITE AND AREA. The project is located in state waters leased through the DNR (see Exhibit 13) within Oakland Bay of the South Puget Sound. The site is designated as a shoreline of statewide significance by RCW 90.58.030(2)(f)(iii) as a saltwater body below the line of extreme low tide. The current use of the site is low intensity recreation (recreational boating, fishing, etc.) and occasional tribal fishing. Upland properties along Oakland Bay are single family residential with Rural Residential 5 Acre (RR5) zoning. The predominant uses of Oakland Bay are industrial, residential, recreational, and shellfish aquaculture. Oakland Bay County Park, Walker Park, Sunset Bluff County Park, Oakland Bay Recreational Area, and Bayshore Preserve provides public access to the shoreline. Oakland Bay Marina, Port of Shelton, Shorecrest County Park, and Arcadia Point provide public boat launches. The bay is largely characterized by calm waters and soft sedimented bottoms. In Mason County's 2012 Shoreline Inventory and Categorization Report, Oakland Bay was identified as the only major industrial area in Mason County, which includes the City of Shelton. Oakland Bay is an active shellfish aquaculture bay with a wide variety of shellfish species that support tribal harvest, recreational harvest, commercial harvest, and restoration activities.

B. ZONING: The three parcels are zoned as Water.

C. SHORELINE DESIGNATION. The three parcels are within the Aquatic Shoreline Environmental Designation.

D. COMPREHENSIVE PLAN DESIGNATION. The Comprehensive Plan designation is "Water".

E. SEPA COMPLIANCE AND OTHER PUBLIC NOTICE REQUIREMENTS.

(1) A Determination of Non-Significance (DNS) was issued on 04/19/2023 (Exhibit 6). The SEPA comment period ended on 05/04/2023.

(2) Public notice procedures were followed in accordance with Sections 15.07.010 and 15.07.030 of Mason County Title 15.

(3) Notice of Application and Public Hearing for Shoreline Substantial Development and Conditional Use Permit SHR2023-00003 occurred on three separate occasions due to extensions requested by the applicant. The original hearing was scheduled for 05/24/2023. The applicant requested an extension until 06/14/2023, to provide information in response to public comments. The

applicant requested a second extension until 08/09/2023 to respond to additional requests for information regarding public access. Posting in the Mason-Shelton Journal was done on three occasions (04/20/2023, 06/01/2023, and 06/08/2023). Physical postings at four locations were done on three occasions (04/21/2023, 05/12/2023, and 07/06/2023). The public was notified by mail on two occasions (04/18/2023 and 07/05/2023). The first mailing did not go out to all adjacent property owners within 300 feet of the project property boundaries. This was corrected on the second mailing on 07/05/2023. All materials documenting the public notices can be found in the Notice of Application and Public Hearing (Exhibit 12)

(4) Seven comments were received regarding SEPA (Exhibit 18) and 39 comments were received regarding the shoreline permit as of the date of this report (Exhibit 19). The applicant and their consultant addressed public comments for SEPA and the shoreline permit in the Taylor Shellfish Responses to Public Comments from May 1, 2023 to May 8, 2023 (Exhibit 20), the Confluence Environmental Responses to Public Comments from May 4, 2023 (Exhibit 21), and the Taylor Shellfish Responses to Public Comments from May 9, 2023 to July 26, 2023 (Exhibit 22).

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

V. ANALYSIS.

The Project Classifications section of the Mason County Shoreline Master Program (MCC 17.50.090) requires a Shoreline Substantial Development Permit or Shoreline Exemption, subject to siting and design requirements, for new floating aquaculture projects in Aquatic shoreline designations. This project is not exempt from the Substantial Development requirements, per MCC 17.50.400(b)(1), and therefore requires a Shoreline Substantial Development Permit.

The County incorrectly required a Shoreline Conditional Use Permit for the project for much of the review period. This was rectified through communication with the WA Department of Ecology (see Exhibit 17). Though the specific method of floating aquaculture has not yet been permitted in Mason County and is not specifically called out in Mason County Code, the project does not require a Conditional Use Permit because MCC 17.50.090 permits “floating aquaculture” in Aquatic shoreline designations with a Shoreline Substantial Development Permit. “Conditional Use Permit” appears on many of the exhibits for this project, but it is no longer applicable. Because a Conditional Use Permit is not required, the WA Department of Ecology does not make a final decision on this Shoreline Substantial Development Permit. The “date of filing” for this permit will be the date the WA Department Ecology receives receipt of Mason County’s decision, as specified in WAC 461-08-305(6)(a).

The Aquaculture chapter of the Mason County Shoreline Master Program (MCC 17.50.210) guides in the review of this application. The project must address the policies and regulations of MCC 17.50.140 (Public Access) due to the definition of "Public Access" as defined in MCC 17.05.020. The Views and Aesthetic policies of the Master Program (MCC 17.50.145) are also addressed in this project. Though it is not a requirement of Mason County Code, cumulative impacts are addressed due decisions of the WA Shoreline Hearings Board that the local government should consider addressing cumulative impacts for Shoreline Substantial Development Permits in certain circumstances.

The applicable policies and regulations follow with staff response. The applicant has also responded to the Aquaculture Policies and Regulations of the SMP in the Permit Application Addendum (Exhibit 11).

17.50.140(a) PUBLIC ACCESS POLICIES:

(1) This program is intended to preserve and enhance the public's opportunity to enjoy the physical and aesthetic qualities of county shorelines.

The project is consistent with this policy. The term "shorelines" in Mason County's Shoreline Master Program (MCC 17.50.020) refers to "all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except: (1) Shorelines of statewide significance." The proposed project is located within a shoreline of statewide significance, and thus, the public's opportunity to enjoy physical access to the "shoreline" is preserved even though 9.1 acres of state waters would be made inaccessible due to the location of aquaculture gear.

The Public Access Memorandum (Exhibit 23) proposes to formally grant the public the right of access to 16.6 acres of tidelands owned by the applicant. All of the tidelands proposed as public access are defined as "shorelines" in Mason County's Shoreline Master Program. Thus, the proposal further enhances the public's opportunity to enjoy the physical qualities of county shorelines.

The project preserves the public's opportunity to enjoy the aesthetic qualities of the shoreline as addressed in the County's responses to MCC 17.50.145(1), MCC 17.50.145(2), MCC 17.50.210(a)(10), MCC 17.50.210(b)(1)(J), and MCC 17.50.210(b)(1)(L).

(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.

Not Applicable. This policy is applicable to Mason County's Parks and Recreation Comprehensive Plan.

(3) Public entities are encouraged to provide public access as part of each development project, unless access would be incompatible with this program because of safety, security, or adverse impacts to shoreline functions.

Not Applicable. No public entity is proposing development.

(4) Private entities should provide public access when the development would either generate a demand for public access, or would impair existing legal access opportunities or rights.

The project would either generate a demand for public access or impair existing legal access opportunities for the general public to 9.1 acres of public waters.

Similar to agritourism, there is a possibility that the project could increase or create demand for public access in the form of tourism. One such example is Penn Cove Shellfish, which gives mussel farm tours in Coupeville, Washington, centered around their floating mussel rafts. The applicant's Public Access Memorandum (Exhibit 23) further demonstrates the possible demand for public access by stating: "Taylor Shellfish employees who operate the nearby farm in Chapman Cove similarly report increased public interest and use in areas containing oyster bag cultivation systems. In this regard, the Proposal itself provides a recreational amenity…" In regard to another of the applicant's existing farms, the applicant states "many boaters are attracted to Taylor Shellfish's British Columbia oyster bag farm and enjoy viewing the farm and discussing it with company employees."

Due to the inherent nature of floating aquaculture gear, the overwater acreage occupied by the gear impairs existing legal access opportunities and rights.

The applicant is proposing to provide public access as specified in the Public Access Memorandum (Exhibit 23), including formally granting the public the right of access to 16.6 acres of tidelands and working with Oakland Bay Marina to provide assistance for improvements to their boat launch and/or related facilities. Therefore, the proposal is consistent with this policy.

(5) Public access requirements on privately owned lands should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including the landowner and the public.

The Public Access Memorandum (Exhibit 23) proposes to formally grant the public the right of access to 16.6 acres of tidelands privately owned by the applicant. Since there is no commercial navigation in the area of the project, the approximately 9.1 acres of public access that the project is removing affects recreation (ie. boating, kayaking, swimming, fishing, etc.).

While it would be impossible for the applicant to replace the acres rendered inaccessible with new acreage that provides for the exact same types of recreation, the applicant is proposing public access mitigation that corresponds to the size, extent, and character of the aquaculture development. The public access sites proposed as mitigation in the Public Access Memorandum (Exhibit 23) provide comparable recreational opportunities, such as landing or launching personal watercraft, sunbathing, fishing, and walking the beach.

In the Public Access Memorandum (Exhibit 23), the applicant makes the case that recreation at the site of the project is "extremely low" and that "most recreation is from those using kayaks or fishing along the shoreline." This claim comes from the applicant's farm managers who have worked in Oakland Bay and Chapman's Cove for over 10 years. No other data was presented to support the current levels of recreational activity in the project area. While project area is used for recreational boating, it is unclear how much. Whether there are high or low levels of recreational activity in the project area, the applicant is ultimately mitigating for the loss of approximately 9.1 acres of water used for recreation by formally granting the public the right of

access to 16.6 acres of tidelands that can be used for comparable forms of recreation, as well as committing to working with Oakland Bay Marina to further enhance opportunities for public access.

Currently, the area of the beach at Sunset Bluff Park that is publicly accessible only extends to the ordinary high water mark (OHWM). That means the public's formal right to access Oakland Bay at Sunset Bluff Park ends at the OHWM line, when not covered by water. The private lots along E Sunset Rd similarly do not have the formal right to access Oakland Bay through the tidelands, when not covered by water, because those tidelands are privately owned by the applicant. This can be seen in the Public Access Memorandum (Exhibit 23, Figure A, see the yellow-outlined Areas 1, 2, and 3), which shows the areas proposed as public access mitigation sites.

In addition, Oakland Bay Marina currently has applications into the City of Shelton for improvements to their facility, including a boat launch that is open for public use. The applicant has discussed these improvements with Oakland Bay Marina, including financial assistance or in-kind services to best meet the marina's needs. As stated in the Public Access Memorandum (Exhibit 23), the applicant "will commit to continuing to work with the Marina to provide appropriate assistance to the Marina for improvements to the boat launch and/or related facilities."

Under the proposal, the applicant will formally allow the public, which would include the private landowners along E Sunset Rd, to use Areas 1, 2, and 3 for recreation, as well as continue to improve public access for recreation in Oakland Bay. As proposed, the public access mitigation is reasonable to the applicant, effectively improves recreational opportunities on the shorelines adjacent to the project, and fairly provides for public access on tidelands owned by the applicant. Therefore, the proposal is consistent with this policy.

17.50.140(b) PUBLIC ACCESS REGULATIONS:

(1) Public access shall be required to the extent allowed by law in the review of shoreline substantial development or conditional use permits in the following circumstances:

(A) The use or development is a public project; or

Not Applicable. The proposal is a private project.

(B) The project is a non-residential, water-enjoyment or non-water-oriented use or development; or

Not Applicable. The proposal is a water-oriented development.

(C) The project is a private water-dependent or water-related use or development and one of the following conditions exists:

(i) The project increases or creates demand for public access;

Similar to agritourism, there is a possibility that the project could increase or create demand for public access in the form of tourism. One such example is Penn Cove Shellfish, which gives mussel farm tours in Coupeville, Washington, centered around their floating mussel rafts. The applicant's Public Access Memorandum (Exhibit 23)

further demonstrates the possible demand for public access by stating: "Taylor Shellfish employees who operate the nearby farm in Chapman Cove similarly report increased public interest and use in areas containing oyster bag cultivation systems. In this regard, the Proposal itself provides a recreational amenity…" In regard to another of the applicant's existing farms, the applicant states "many boaters are attracted to Taylor Shellfish's British Columbia oyster bag farm and enjoy viewing the farm and discussing it with company employees." Therefore, the project could potentially increase or create demand for public access.

(ii) The project impacts or interferes with existing access by blocking access or discouraging use of existing access;

The SEPA Checklist (Exhibit 6), page 12, 12.b., states "Approximately 50 acres would become inaccessible to boaters due to presence of floating culture gear." This was corrected by the applicant in the Public Access Memorandum (Exhibit 23), which states that the project's "impact to public access will consist of limiting boaters from traveling on areas of water occupied by the approximately 9.1 acres of gear, along with minor additional area around the gear accounting for a safety factor." While the project site is 50 acres, boaters can "navigate and recreate in the areas of water provided between rows of floating oyster bags." Between each row of oyster bags are "approximately 30 feet" of water that is publicly accessible.

Public access is defined in MCC 17.50.020 as the ability of the general public or, in some cases, a specific community, to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Therefore, the project impacts or interferes with existing access by blocking the access of the general public to travel on 9.1 acres of waters of the state.

(iii) The project impacts or interferes with public use of waters subject to the public trust doctrine.

The project either impacts or interferes with public use of waters subject to the public trust doctrine. This does not mean the project violates the public trust doctrine, as that could only be decided by a court. There is precedent in Caminiti, 107 Wash. 2d at 670, 732 P.2d at 995., which is referenced in The Washington State Department of Ecology's Public Trust Doctrine and Coastal Zone Management in Washington State. In Caminiti, the court noted that the requirements of the public trust are met by the legislatively drawn controls of the Shoreline Act. The Shoreline Act lists among its preferred uses single family residences and piers. Therefore, the court concluded that the statute at issue in Caminiti was consistent with the Shoreline Act, and, by implication, with the public trust doctrine.

The court found that the state did not give up its right of control over the jus publicum by allowing private landowners to build docks on public shorelands and tidelands. Thus, the government retained adequate control over the docks to satisfy the requirements of the public trust doctrine. Finally, the court concluded that such docks do not impair the public interest.

While the project is not a dock, it is similar in that it is a private proposal on public waters in which an obstruction interferes with the existing public use of the waters. The

proposed site is designated as a shoreline of statewide significance by RCW 90.58.030(2)(f)(iii) as a saltwater body below the line of extreme low tide. RCW 90.58.020(1) states that the highest use preference for shorelines of statewide significance is to recognize and protect the statewide interest over local interest. Mason County Code 17.50.210(a)(1) then states that aquaculture is of statewide interest and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Similar to how single-family residences and piers were stated as preferred uses in Caminiti, the applicant establishes that aquaculture is a preferred use of the waters in their Permit Application Addendum (Exhibit 11).

While the public trust doctrine may not be violated, the project still impacts public use of waters subject to the doctrine.

(D) The county bears the burden of demonstrating that a proposed use or development meets any of the preceding conditions.

County staff has confirmed that the project must address the policies and regulations of MCC 17.50.140 due to the definition of "Public Access" as defined in MCC 17.05.020. Public access means "the ability of the general public or, in some cases, a specific community, … to travel on the waters of the state…" This project would make approximately 9.1 acres of state waters inaccessible to the general public. The Public Access Memorandum (Exhibit 23) states that the project's "impact to public access will consist of limiting boaters from traveling on areas of water occupied by the approximately 9.1 acres of gear, along with minor additional area around the gear accounting for a safety factor."

Based on experiences of the applicant in British Columbia and within Oakland Bay, the project could potentially increase or create demand for public access. Due to the inherent nature of floating aquaculture gear, the overwater acreage occupied by the gear impacts or interferes with existing access. The Public Trust Doctrine provides protection of public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality. While tidelands may be sold into private ownership through conveyance of the jus privatum, the public trust doctrine reserves a public property interest, the jus publicum, in these lands and the waters flowing over them. The project involves floating aquaculture on public waters, leased through the Washington State Department of Natural Resources, which is subject to the Public Trust Doctrine.

The project meets the conditions of MCC 17.50.140(C)(ii) and MCC 17.50.140(C)(iii), as well as potentially MCC 17.50.140(C)(i). Thus, public access shall be required to the extent allowed by law in review of this project.

(2) Public access to the shoreline shall not be required of the following:

(A) Activities qualifying for a shoreline permit exemption; or

Not Applicable. The project does not qualify for a shoreline permit exemption.

(B) New single family residential development.

Not Applicable. The project is not a single-family residential development. Therefore, public access to the shoreline shall be required.

(3) The county may approve alternatives to on-site, physical access to the shoreline if the applicant can demonstrate with substantial and credible evidence that one or more of the following conditions exist:

(A) Unavoidable health or safety hazards to the public exist which cannot be prevented by any reasonable means;

The applicant has not demonstrated with substantial and credible evidence that this condition exists.

(B) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

The applicant has not demonstrated with substantial and credible evidence that this condition exists.

(C) The cost of providing the access, easement, or an alternative amenity, is unreasonably disproportionate to the total long term cost of the proposed development;

The applicant has not demonstrated with substantial and credible evidence that this condition exists.

(D) Environmental impacts that cannot be mitigated, such as damage to spawning areas or nesting areas, would result from the public access; or

The applicant has not demonstrated with substantial and credible evidence that this condition exists.

(E) Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

The applicant has not demonstrated with substantial and credible evidence that this condition exists.

To clarify, the proposed project is located within a "shoreline of statewide significance," not within a "shoreline" as defined by MCC 17.50.020. This means that there are 9.1 acres of "shoreline of statewide significance" (state waters leased through the DNR, see Exhibit 13) rendered inaccessible due to the location of aquaculture gear. No physical access to the "shoreline" is being impacted by the project.

As mitigation for the approximately 9.1 overwater acres made inaccessible by aquaculture gear, the applicant is proposing to formally grant the public the right of access to 16.6 acres of tidelands owned by the applicant and work with Oakland Bay Marina to provide assistance for improvements to their boat launch and/or related facilities, as specified in the Public Access Memorandum (Exhibit 23). All of the tidelands proposed as public access sites are defined as "shorelines" in Mason County's Shoreline Master Program (MCC 17.50.020). Thus, the County may approve of the on-site, physical access to the shoreline proposed as mitigation in the Public Access Memorandum (Exhibit 23).

(4) To be exempt from the public access requirements above, the project proponent must demonstrate that all feasible alternatives have been considered, including, but not necessarily limited to:

(A) Regulating access through means such as maintaining a gate and/or limiting hours of use; and

The feasible alternative would not apply because the project site is over 1,000 feet from the adjacent shorelines. Therefore, public access shall be required to the extent allowed by law in review of this project.

(B) Separating uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.).

The feasible alternative would not apply because the project site is over 1,000 feet from the adjacent shorelines. Therefore, public access shall be required to the extent allowed by law in review of this project.

(5) When physical public access is deemed to be infeasible, the proponent shall provide visual access to the shore where site conditions make visual access possible.

MCC 17.50.020 defines "feasible" as an "action, such as a development project, mitigation, or preservation requirement, meets the following conditions: (1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (2) The action provides a reasonable likelihood of achieving its intended purpose; and (3) The action does not physically preclude achieving the project's primary intended legal use."

Physical public access was not deemed infeasible, as evidenced by the applicant's Public Access Memorandum (Exhibit 23). The proposal formally grants the public the right of access to 16.6 acres of tidelands owned by the applicant (Exhibit 23, Figure A, see the yellow-outlined Areas 1, 2, and 3). The applicant also states the "project lies level on the horizon at less than 12" above the water surface" in their Aquaculture Visual Assessment (Exhibit 25). Therefore, the project is providing physical public access, as specified in the Public Access Memorandum (EXHBIT XX), and also providing visual access to the shore.

(6) Where commercial, industrial, multifamily and/or multi-lot developments are proposed in locations that would interrupt existing shoreline views, primary structures shall provide for reasonable view corridors.

Not Applicable. No commercial, industrial, multifamily and/or multi-lot developments are being proposed.

(7) Visual access shall not be provided by removing vegetation from required vegetative buffers.

No vegetation will be removed from buffers for the proposed project. The project is subtidal and located over 1,000 feet from the shore.

(8) Public access shall be located and designed to be compatible with the natural shoreline character, to avoid adverse impacts to shoreline ecological functions, and to ensure public safety.

The applicant has prepared a Public Access Memorandum (Exhibit 23), which proposes mitigation for the overwater acreage rendered inaccessible due to the location of the

aquaculture gear. The proposal formally grants the public the right of access to 16.6 acres of tidelands owned by the applicant (Exhibit 23, Figure A, see the yellow-outlined Areas 1, 2, and 3).

Since there is no development proposed as mitigation and the applicant is granting formal access, the shoreline would not be physically altered. There would also be no change in the existing shoreline ecological functions if no improvements to the existing shoreline are proposed for the public access sites. As describe in the County's response to MCC 17.50.140(b)(11), the public access sites proposed are not currently ADA accessible. If accessing the sites from the nearest public street, members of the public would have to follow a hiking trail, then descend a rope ladder on the edge of a bluff to access Areas 1 and 2. Members of the public would need to walk through Bayshore Preserve and muddy tidelands to access Area 3. However, the public access mitigation proposed by the applicant does not degrade the level of public safety at the proposed public access sites. With no physical improvements, the level of public safety would remain the same at all proposed public access sites. As described in the County's response to MCC 17.50.140(b)(15), the applicant will also install signage to indicate information regarding the public's right of access, further ensuring public safety for Areas 1, 2, and 3.

Therefore, the existing natural shoreline character, ecological functions, and public safety would be maintained in Areas 1, 2, and 3 with the public access mitigation proposed by the applicant in the Public Access Memorandum (Exhibit 23).

(9) When otherwise consistent with this program, public access structures shall be allowed to encroach into the shoreline buffer when necessary to provide physical and or visual access to the water's edge.

Not Applicable. There are no public access structures being proposed for the project. As mitigation for the overwater acreage rendered inaccessible due to the location of aquaculture gear, the applicant has proposed to formally grant the public the right of access to 16.6 acres of tidelands, which is detailed in the Public Access Memorandum (Exhibit 23). The mitigation proposed provides both physical and visual access to the water's edge.

(10) Public shoreline access provided by public road ends, public road rights-of-way, public utilities and rights-of-way shall not be diminished by the county, neighboring property owners, or other citizens in accordance with RCW Chapter 36.87.130.

The County will not vacate any roads abutting bodies of water, as specified in RCW 36.87.130. Therefore, public shoreline access provided by public road ends, public road rights-of-way, public utilities and rights-of-way will not be diminished by the County, neighboring property owners, or other citizens.

(11) Public access sites shall be connected to the nearest public street and shall include improvements that conform to the requirements of the Americans with Disabilities Act (ADA) when feasible or required by law.

The applicant is proposing 3 public access sites as specified in the Public Access Memorandum (Exhibit 23, Figure A, see the yellow-outlined Areas 1, 2, and 3). The public access sites proposed, totaling 16.6 acres, are private tidelands owned by the applicant. The public has access to those tidelands when covered by water by virtue of the Public Trust Doctrine. While not covered by water, the applicant can currently exclude members of the public from accessing the tidelands. The applicant is proposing to formally grant the public the right of access to those tidelands when not covered by water and during daylight hours.

Area 1 is connected to E Sunset Rd through County-owned Sunset Bluff Park (Exhibit 23, Figure A, see the blue-outlined areas). Sunset Bluff Park has off-street parking and restroom facilities. Coming from E Sunset Rd, members of the public must follow the hiking trail through the park, then descend a rope ladder on the edge of a bluff to access Area 1. Alternatively, Area 1 can also be accessed by members of the public traveling by watercraft.

Area 2 is connected to E Sunset Rd through Sunset Bluff Park, though most easily accessed by the private properties along E Sunset Rd. Members of the public can either access Area 2 by hiking through Sunset Bluff Park or by watercraft.

Area 3 is connected to E State Route 3 (WA-3) through Capitol Land Trust's Bayshore Preserve and land owned by the WA Department of Fish and Wildlife (Exhibit 23, Figure A, see the purple and red-outlined areas). Members of the public would need to either use a watercraft or walk through Bayshore Preserve and muddy tidelands to access Area 3.

The public access proposal does not include improvements that conform to the requirements of the Americans with Disabilities Act (ADA). Areas 1, 2, and 3 are not currently ADA accessible, however, it is also not feasible or required by law to improve access to Areas 1, 2, and 3 in ways that would be ADA accessible.

MCC 17.50.020 defines "feasible" as an "action, such as a development project, mitigation, or preservation requirement, meets the following conditions: (1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (2) The action provides a reasonable likelihood of achieving its intended purpose; and (3) The action does not physically preclude achieving the project's primary intended legal use."

Due to the slope and location of Sunset Bluff Park, a geotechnical report, habitat management plan, mitigation, substantial development permit, and permits from various state and federal entities would all be needed for any improvements to beach access (beach access structure) regarding Areas 1 and 2. To make the beach of the park ADA accessible, a ramp would be needed that would come into contact with the water because the OHWM currently abuts the bluff. While a potential project could meet Mason County regulations, it would likely not meet all the regulations of the WA Department of Ecology, WA Department of Fish and Wildlife, the Army Corps of Engineers, or the Squaxin Island Tribe because such a project would require substantially altering the shoreline buffer. In addition, the Mason County Parks and Trails Department expressed no interest in making any access improvements within Sunset Bluff Park, which provides access to Areas 1 and 2. Area 3 is approximately 600 feet away from Bayshore Preserve, and similarly, any improvements that would make the area ADA accessible would require permitting pathways that would come into contact with the water of the South Puget Sound. For access to the aforementioned sites, condition (2) under the definition of "feasible" cannot be met.

Because connections to public streets are already provided and ADA accessibility for the sites would be infeasible, the public access proposal as specified in the Public Access Memorandum (Exhibit 23) complies with this regulation.

(12) Opportunities for boat-in public access and access to remote shorelines not accessible by automobile shall be provided where feasible and appropriate.

No boat-in public access or access to remote shorelines not accessible by automobile is being proposed for this project, nor has either been determined to be feasible and appropriate. As part of the applicants Public Access Memorandum (Exhibit 23), they are committing to continuing to work with Oakland Bay Marina to provide appropriate assistance for improvements to their boat launch and/or related facilities, further enhancing opportunities for boat-in public access within Oakland Bay.

(13) When required for public land, commercial, port or industrial use/development, public access sites shall be available for public use prior to final occupancy of such use or development. Maintenance of the public access facility over the life of the use or development shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the county auditor's office.

Public access mitigation is required in this instance for public waters (leased through the DNR, see Exhibit 13). Therefore, the public access sites specified in the Public Access Memorandum (Exhibit 23) shall be available for public use prior to the completion of construction. Ongoing maintenance of the public access sites 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.

(14) Public access easements and permit conditions shall be recorded on the deed of title and/or the face of a short or long plat. Recordation shall occur at the time of final plat approval or prior to final occupancy.

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. The applicant states that they recognize the "public access easements and permit conditions shall be recorded prior to installation of the Proposal."

(15) The location of new public access sites shall be clearly identified. Signs shall be installed and maintained by the project proponent in conspicuous locations. The signs shall indicate the public's right of access, hours of access, and other information as needed to control or limit access according to conditions of approval.

The Public Access Memorandum (Exhibit 23) prepared by the applicant states, "the company will install and maintain signs in conspicuous locations … These signs will notify the public of the right to access the identified areas during daylight hours and advise the public that the access areas are part of Taylor's farming operations, and that cultivated shellfish shall not be removed." Therefore, the proposal complies with this regulation.

(16) Existing, formal public access shall not be eliminated unless the applicant shows there is no feasible alternative and replaces the public access with access of comparable functions and value at another location.

Existing, formal public access is being eliminated by the project. The SEPA Checklist (Exhibit 6), page 12, 12.b., states "Approximately 50 acres would become inaccessible to boaters due to presence of floating culture gear." This was corrected by the applicant in the Public Access Memorandum (Exhibit 23), which states that the project's "impact to public access will consist of limiting boaters from traveling on areas of water occupied by the approximately 9.1 acres of

gear, along with minor additional area around the gear accounting for a safety factor." While the project site is 50 acres, boaters can "navigate and recreate in the areas of water provided between rows of floating oyster bags." Between each row of oyster bags are "approximately 30 feet" of water that is publicly accessible.

Public access is defined in MCC 17.50.020 as the ability of the general public or, in some cases, a specific community, to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

Due to the inherent nature of floating aquaculture gear, the overwater acreage occupied by the gear eliminates approximately 9.1 acres of formal public access. There is no feasible alternative in this case because the public cannot occupy the same physical space as floating aquaculture gear. As mitigation for the acreage rendered inaccessible due to the location of aquaculture gear, the applicant has proposed to formally grant the public the right of access to 16.6 acres of tidelands and work with Oakland Bay Marina to provide assistance for improvements to their boat launch and/or related facilities, which is detailed in the Public Access Memorandum (Exhibit 23).

Since there is no commercial navigation in the area of the project, the approximately 9.1 acres of public access that the project is removing affects recreation (ie. boating, kayaking, swimming, fishing, etc.). It would be impossible for the applicant to replace the acres rendered inaccessible with new acreage that provides for the exact same types of recreation; the applicant would essentially need to find a way to create new public water. Instead, the public access sites proposed as mitigation in the Public Access Memorandum (Exhibit 23) provide other recreational opportunities, such as landing or launching personal watercraft, sunbathing, fishing, and walking the beach.

In addition, the applicant has discussed potential improvements with Oakland Bay Marina, including financial assistance or in-kind services to best meet the marina's needs. Oakland Bay Marina currently has applications into the City of Shelton for improvements to their facility, including a boat launch that is open for public use. By committing to working with Oakland Bay Marina to provide assistance for improvements to their boat launch and/or related facilities, the applicant is further enhancing recreational opportunities within Oakland Bay and the South Puget Sound.

In the Public Access Memorandum (Exhibit 23), the applicant makes the case that recreation at the site of the project is "extremely low" and that "most recreation is from those using kayaks or fishing along the shoreline." This claim comes from the applicant's farm managers who have worked in Oakland Bay and Chapman's Cove for over 10 years. No other data was presented to support the current levels of recreational activity in the project area. While project area is used for recreational boating, it is unclear how much. Whether there are high or low levels of recreational activity in the project area, the applicant is ultimately mitigating for the loss of approximately 9.1 acres of water used for recreation by formally granting the public the right of access to 16.6 acres of tidelands that can be used for comparable forms of recreation, as well as working with Oakland Bay Marina to improve public access to recreation.

Therefore, the applicant is replacing existing, formal public access with access of comparable functions and value at other locations specified in the Public Access Memorandum (Exhibit 23).

(17) Requirements or conditions for public access shall be consistent with all relevant constitutional and other legal limitations on regulation of private property.

County staff recommends Conditions #1-4 for the proposed public access. The recommended conditions are consistent with Mason County regulations and all relevant constitutional and other legal limitations on regulation of private property.

17.50.145 VIEWS AND AESTHETICS POLICIES:

(1) This program seeks to minimize obstructions of the public's visual access to the water and shoreline from new shoreline developments while recognizing private property rights.

This policy refers to upland development on private property. The project would be located in the middle of a waterbody (Oakland Bay of South Puget Sound), over 1,000 feet from all shoreline ordinary high water marks. The project would not obstruct the public's visual access to the water and shoreline. According to the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology, the proposed aquaculture will be visually evident, but not visually obtrusive.

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

The applicant has completed an Aquaculture Visual Assessment (Exhibit 25), which uses the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology. The Aquaculture Siting Study is intended to be an environmental assessment tool for use in evaluating and regulating aquaculture facilities. Despite the study being from 1986, Ecology still considers the study to be best management practices for determining visual and aesthetic impacts. Ecology recommends that local governments utilize the study in their 2017 Shoreline Master Program Handbook (Chapter 16, Page 22), which was further confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). The result of the visual assessment done by the applicant is that the proposed aquaculture will be visually evident, but not visually obtrusive.

The applicant scored the project as a "Class III – Moderate Visual Impact," as seen on page 82 of the Aquaculture Siting Study (Exhibit 24), which states: "To mitigate impact, project should remain visually subordinate to the project setting. Project design should borrow from the colors of the natural setting. Scale should be enough so not to cover more than 10% of the cone of vision seen from key observation points."

In the Aquaculture Visual Assessment (Exhibit 25), the applicant addresses color with the following statement: "except for navigation aids, the project will use colors and materials that blend into the surrounding environment where practicable." The applicant also states, "this floating system is constructed of black HDPE." The applicant addresses scale with the following statement: "this project lies level on the horizon at less than 12" above the water surface. Based on Ecology's assessment tool, this project will cover less than 10% of the cone of vision as viewed from 75% of key observation points." The applicant ends their Aquaculture Visual Assessment by stating, "as a result, the project will not substantially detract from the aesthetic qualities of the surrounding area, nor will it have a more than moderate aesthetic impact."

(3) Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological, aesthetic values or slope stability.

Not Applicable. No upland development is proposed, therefore, there will be no clearing, thinning, or limbing of vegetation.

(4) Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.

Not Applicable. No upland development is proposed, therefore, there will be no creation or maintenance for views from properties on the shoreline.

(5) The county should achieve aesthetic objectives by implementing regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting and maintenance of natural vegetative buffers.

This policy refers to upland development that would impact shoreline buffers. The County has criteria for the aforementioned elements of shoreline development. The aesthetic objectives for aquaculture are achieved through the regulations of the Shoreline Master Program, and specifically through MCC 17.50.210(b). Aesthetic regulations strictly pertaining to aquaculture are included in MCC 17.50.210(b)(1)(J) and 17.50.210(b)(1)(L).

(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.

The applicant has completed an Aquaculture Visual Assessment (Exhibit 25), which uses the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology. Despite the study being from 1986, Ecology still considers the study to be best management practices for determining visual and aesthetic impacts. Ecology recommends that local governments utilize the study in their 2017 Shoreline Master Program Handbook (Chapter 16, Page 22), which was further confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). The result of the visual assessment done by the applicant is that the proposed aquaculture will be visually evident, but not visually obtrusive. In the Aquaculture Visual Assessment, the applicant states, "this project lies level on the horizon at less than 12" above the water surface. Based on Ecology's assessment tool, this project will cover less than 10% of the cone of vision as viewed from 75% of key observation points." By this assessment, there is not irreconcilable conflict between the project and maintenance of views from adjacent properties. If there was irreconcilable conflict, the project would have priority over maintenance of views from adjacent properties, unless there is a compelling reason to the contrary.

17.50.210(a) AQUACULTURE POLICIES:

(1) Aquaculture is of statewide interest. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Properly managed, it can result in

long-term over short-term benefit and can protect the resources and ecology of the shoreline.

The proposal for a floating oyster bag farm aligns well with this policy. The current use of the water area is for recreation, specifically boating and fishing. The Habitat Management Plan (Exhibit 8) details how the proposal is consistent with control of pollution and how the applicant will prevent damage to the environment. Thus, this proposal would be a preferred use of the water area.

(2) Potential locations for aquaculture practices are relatively restricted due to specific biophysical requirements such as water quality, temperature, substrate, dissolved oxygen, and salinity. Priority should be given to aquaculture uses in areas having a high potential for such uses.

The applicant has extensive experience reviewing sites for appropriate conditions for successfully cultivating oysters. It was confirmed through email correspondence with Kathy Petersen and Justin Donahue of the WA Department of Ecology that there is sediment within the site that may not be meeting standards, but "there is not enough evidence to show it is impaired" (Exhibit 17). The sediment within the site is listed as Category 2, but any project sites that have known contaminated sediments would either be listed as Category 4 or 5. The Habitat Management Plan (Exhibit 8) states that no changes to temperature, dissolved oxygen, or salinity will occur from this proposal. While the floating culture gear may cause short-term impacts to the substrate, it is a limited effect over a short period of time. Only short-term adverse changes in water quality would occur during installation of anchors. The Habitat Management Plan states the proposal would have an overall positive effect on water quality.

(3) The county should strengthen and diversify the local economy by encouraging aquaculture uses. Aquaculture operations should be protected against encroachment from incompatible, competing uses.

This policy encourages and supports the development of aquaculture businesses. This proposal for a floating oyster bag farm aligns well with this policy. The applicant is headquartered in Mason County and employs hundreds of residents within the County and neighboring areas. The proposed floating aquaculture project strengthens the local economy by supporting Taylor Shellfish to provide consistent employment for aquaculture uses within Mason County.

There are existing mussel rafts that received a lease through the DNR (Exhibit 26) and are located 400 to 500 feet to the northeast of the proposed project area (as seen in Exhibit 29). The mussel rafts can be seen as early as 2005 in the aerial views of Exhibit 28. Mason County staff contacted the current owner, Ian Child of Sound Shellfish (Exhibit 27), to confirm the use of the existing aquaculture.

Recreational boating could be a competing use to floating aquaculture in Oakland Bay. The proposed site is designated as a shoreline of statewide significance by RCW 90.58.030(2)(f)(iii) as a saltwater body below the line of extreme low tide. RCW 90.58.020(1) states that the highest use preference for shorelines of statewide significance is to recognize and protect the statewide interest over local interest. In comparison, recreational boating is lower in the use preference hierarchy as evidenced by this policy, by RCW 90.58.020(6), which states, "increase recreational opportunities for the public in the shoreline," and by email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17).

(4) Flexibility to experiment with new aquaculture techniques should be allowed.

The applicant acknowledges this policy. The applicant states that the farm will use proven techniques that effectively raise oysters and avoid adverse impacts. This method of floating aquaculture has not been permitted within Mason County previously.

(5) The county should minimize redundancy of aquaculture permit application requirements required by this program and other county, state and federal standards.

The applicant appreciates this policy. The Shoreline Permit Application, JARPA, and SEPA Checklist often request similar information, albeit with nuanced differences and parsed in different ways. The applicant will use methods and materials described in the Habitat Management Plan (Exhibit 8). In the spirit of limiting redundancy, the Habitat Management Plan is consistently referred to in their application materials and in this Staff Report.

The applicant will also adhere to the Conservation Measures listed in the Programmatic Consultation (Exhibit 14). A programmatic Endangered Species Act/Essential Fish Habitat consultation for shellfish activities in Washington State inland marine waters ("Programmatic Consultation") was completed in 2016 between the U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. The Programmatic Consultation contains a thorough description and analysis of oyster aquaculture activities and their potential impacts on listed species, critical habitat, and essential fish habitat.

The Programmatic Consultation includes the following documents:

- *Programmatic Biological Assessment, Shellfish Activities in Washington State Inland Marine Waters, U.S. Army Corps of Engineers Regulatory Program, October 2015*
- *Programmatic Biological Opinion, National Marine Fisheries Service, September 2016*
- *Programmatic Biological Opinion for Shellfish Activities in Washington State Marine Waters, U.S. Fish and Wildlife Service, August 2016*
- *Revised ITS and Biological Opinion Errata, National Marine Fisheries Services, September 2016*

(6) The county should support community restoration projects associated with aquaculture when they are consistent with this program.

Not Applicable. No community restoration project is proposed.

(7) Shoreline and upland development in productive aquaculture areas or those areas with a high potential for aquaculture uses should be reviewed for detrimental impacts on aquaculture.

The applicant appreciates this policy. No upland development is proposed. The Habitat Management Plan (Exhibit 8), §§ 6.4.3, states that there "would be no impact to public beaches that support the recreational, tribal, and commercial harvest locations because the proposed Project is located more than 1,000 feet away and no activities would extend into these locations. In addition, shellfish are grown in highly productive systems that do not appear to be 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 gear or additional of biodeposits can provide habitat and food for many species."

(8) Maximum effort to protect water quality should be made in areas with high potential for aquaculture and current aquaculture areas that have been identified as sensitive areas.

The applicant appreciates this policy. As filter feeders, shellfish are widely recognized as playing an important role in maintaining water quality (essentially helping to clean up after the impact of the growing population on marine waters).

The Habitat Management Plan (Exhibit 8) states the following: "Bivalves remove more nutrients from the water column than they input as feces or pseudofeces (also known as biodeposits), which can have a net benefit to water quality. Bivalves filter large quantities of organic matter from the water column and assimilate nitrogen and phosphorus into their shells and tissue (Newell et al. 2005). When shellfish are harvested, the sequestered nutrients are permanently removed from the system, also known as bioextraction.

The Confluence Environmental Responses to Public Comments from May 4, 2023 (Exhibit 21) states the following: "Although historic sulfite liquor discharges into Oakland Bay caused high mortality rates and lack of shell growth in shellfish (Hopkins et al. 1931), it is now recognized as one of the most productive shellfish growing areas in the country (Steinberg and Hampden 2009)."

The productivity of Oakland Bay is not explicitly stated in the referenced study; the statement extrapolates on data from a Memorandum from Herrera Environmental Consultants (Steinberg P, Hampden J, (2009) Nitrogen removal with shellfish harvest in Oakland Bay and Puget Sound. Technical Memorandum prepared for The Pacific Shellfish Institute.). The data in the Memorandum shows that Oakland Bay accounted for 17% of the Puget Sound's total shellfish harvested (in kg/year) in 2007, as recorded by the Washington State Department of Fish and Wildlife.

The Habitat Management Plan also states that the "proposed Project and similar actions would have an overall positive effect on water quality and would result in a no net loss of habitat."

The state regulation recognizes "subsistence, commercial and recreational shellfish beds" as critical saltwater habitat (WAC 173-26-221(2)(c)(iii)). Mason County recognizes "commercial and recreational shellfish areas" as fish and wildlife habitat conservation areas (MCC 8.52.170 (b)(1)). The proposal for a commercial shellfish farm is consistent with the protection of water quality and saltwater habitat conservation.

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

The Macroalgae and Eelgrass Study (Exhibit 7) states that no significant macroalgae, no native eelgrass, limited instances of drift algae, and minimal instances of attached macroalgae were

found within the survey area. The JARPA (Exhibit 3) states that the substrate beneath the farm is generally muddy/silt with no observable sign of submerged aquatic vegetation (SAV). The Washington Department of Natural Resources' Puget Sound Seagrass Monitoring tool and the Washington State Department of Ecology's Coastal Atlas Map tool confirm these findings.

The applicant will comply with the Conservation Measures listed in the Programmatic Consultation (Exhibit 14). The Habitat Management Plan (Exhibit 8), §§ 4.1.4, states that the applicant's avoidance, conservation, and minimization measures are focused on: gear installation and siting of the floating bags, maintenance, repair, and work, species-specific activities, and a farm plan record-keeping log. The proposal is sited outside of surf smelt and sand lance spawning areas. The applicant will conduct surveys to ensure no herring spawn is present when conducting work activities that could disturb spawn.

The applicant will comply with all regulatory requirements governing the cultivation and transport of species so as not to spread disease to native aquatic life. The proposal will cultivate established species of oysters, including Pacific and Kumamoto oysters, which have been cultivated within Mason County for decades.

Shellfish aquaculture has been shown to provide beneficial ecosystem services such as nitrogen absorption, carbon sequestration, and habitat formation. Additional details for achieving no-net-loss are provided in the Habitat Management Plan (Exhibit 8).

(10) Recognition should be given to the possible impacts that aquacultural activities might have on the aesthetic quality of the shoreline area.

The spirit of this policy seems to be that views of and to the shoreline areas should be preserved, within reason. This is reinforced by RCW 90.58.020, which says: "In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

The applicant shows that they are taking the aesthetic quality of the shoreline into account in the design of the proposal through submerging equipment, maintaining a low profile for the equipment, using neutral colors, and maintaining the equipment to prevent fouling organisms. This can be seen in Exhibits 6, 8, 11, and 15.

The applicant has completed an Aquaculture Visual Assessment (Exhibit 25), which uses the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology. The Aquaculture Siting Study is intended to be an environmental assessment tool for use in evaluating and regulating aquaculture facilities. Despite the study being from 1986, Ecology still considers the study to be best management practices for determining visual and aesthetic impacts. Ecology recommends that local governments utilize the study in their 2017 Shoreline Master Program Handbook (Chapter 16, Page 22), which was further confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). The result of the visual assessment done by the applicant is that the proposed aquaculture will be visually evident, but not visually obtrusive. By completing the assessment, the applicant has given recognition to the possible impacts that aquacultural activities might have on the aesthetic quality of the shoreline area.

The possible impacts to aesthetic quality of the shoreline area are further discussed in the County's response to 17.50.210(b)(1)(J).

(11) Structures or activities associated with aquaculture should be located landward of shoreline buffers unless clearly shoreline dependent.

The activities associated with the project are shoreline-dependent and the aquaculture gear is water-dependent. The Permit Application Addendum (Exhibit 11) states that the applicant "will access the farm site by boat and no farm activities will occur in the upper portion of tidelands or on uplands."

(12) Aquacultural activities should be operated in a manner that allows navigational access to shoreline owners and commercial traffic.

In the following sections, the applicant describes navigational access in relation to their proposal:

- *Exhibit 3, Additional Information for Conditional Use Permit, page 1, 3.: "… the project site is … located at least 1,000 feet from the shoreline. The project will not interfere with the normal public use of the shoreline…"*
- *Exhibit 6, SEPA Checklist, Page 12, b.: "Approximately 50 acres would become inaccessible to boaters due to presence of floating culture gear. The gear is anticipated to remain continuously but can be removed for a few weeks for fishing access when coordinated with the Squaxin Island Tribe. Given the location in Oakland Bay, the project will not pose an impediment to marine navigation."*
- *Exhibit 6, SEPA Checklist, Page 12, c.: "Floating lines will be held fast by anchors to prevent them from drifting outside of the designated Project site. Maker buoys will be installed to identify the project location and reduce potential recreational impacts.*
- *Exhibit 11, Permit Application Addendum, page 5, (12): "This Proposal will be located 1,000 feet away from the shoreline and outside of commercial navigation channels. There is no commercial traffic over the Site with which Proposal could potentially interfere. The Proposal will not impede navigational access to shoreline owners or commercial traffic."*
- *Exhibit 11, Permit Application Addendum, page 8, (K): "The Proposal will minimize interference with navigation. The Site is located outside of navigation channels, the Proposal occupies a minor portion of Oakland Bay, and unimpeded navigation is provided in all areas adjacent to the Site. The Proposal will be marked with navigation markers to ensure other users are aware of and can easily avoid the oyster cultivation system."*
- *Exhibit 23, Public Access Memorandum, page 1: "The full lease boundary is identified under WADNR lease # 20-104436 and covers 50 acres (the "Site"). However, the Proposal's gear will only occupy a minor portion—approximately 9.1 acres—of the Site."*
- *Exhibit 23, Public Access Memorandum, page 1: "There will be approximately 30 feet of space in between each double-row of bags to allow for access to the floating bags.*
- *Exhibit 23, Public Access Memorandum, page 2: "Based on the company's experience operating a similar farm in British Columbia, boaters easily and safely navigate and recreate in the areas of water provided between rows of floating oyster bags."*

- *Exhibit 23, Public Access Memorandum, page 2: "Because boaters can easily and safely navigate in between the Proposal's oyster bags, the Proposal is not expected to adversely impact boaters traveling north or south in Oakland Bay. However, even if boaters did not choose to travel in between the Proposal's rows of oyster bags, they could still easily travel north and south through the Bay as the Proposal is sited over 1,000 feet from each shoreline. Similarly, individuals traveling west or east Oakland Bay at the location of the Proposal would still be able to do so, although they would need to spend some additional time navigating to the north or south depending on their destination."*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: "The location of the system within the bay was selected so that it would have the least amount of frontage impact to waterfront landowners or recreational boaters traveling north – south direction, while still providing efficiencies in design and maintenance."*

Ultimately, the proposal removes access to 9.1 acres of surface water within the 50-acre site. The proposal does still allow for navigational access to the surrounding shorelines in that it is sited 1,000 feet from all adjacent shorelines. No shoreline owners are impeded from accessing their properties.

The possible impacts to navigational access are further discussed in the County's response to 17.50.210(b)(1)(K).

(13) Floating aquaculture should be reviewed for conflicts with other water dependent uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installation shall incorporate features to reduce use conflicts.

In the following sections, the applicant describes the surrounding uses near the proposed project area:

- *Exhibit 3, Additional Information for Shoreline Conditional Use Permit, page 1, 2.: "This project is proposed for a subtidal state lease area formerly utilized for log storage and that experiences low levels of recreational activity."*
- *Exhibit 4 JARPA, page 4, 5m.: "The area is currently used for incidental marine navigation and occasional tribal fishing."*
- *Exhibit 6, SEPA Checklist, page 9, 8.a.: "The site is currently used for navigation. Adjacent tidelands are used for log storage, a wastewater outfall, a marina, floating mussel culture, gravel barge loading, and shellfish FLUPSY. There are no land use impacts associated with the continued use for these activities.*
- *Exhibit 6, SEPA Checklist, page 12, 12.a: In response to the designated and informal recreational opportunities are in the immediate vicinity, the applicant stated, "typical use of south Puget Sound, including motorized and non-motorized boating and fishing."*
- *Exhibit 11, Permit Application Addendum, page 5, (12): "This Proposal will be located 1,000 feet away from the shoreline and outside of commercial navigation channels. There is no commercial traffic over the Site with which Proposal could potentially interfere. The Proposal will not impede navigational access to shoreline owners or commercial traffic."*

- *Exhibit 11, Permit Application Addendum, page 5, (13): "The Site of the Proposal is located in an area that has formerly been utilized for log storage without any history of conflicts with other water-dependent uses. The Site is located outside of navigation channels, and it is not significantly used for navigation, recreation, or sport or commercial fishing."*
- *Exhibit 23, Public Access Memorandum, page 3: "To the extent that boaters use Oakland Bay, such use is primarily concentrated in the southern portion of Oakland Bay, which contains deeper water. Taylor farm managers who have worked in Oakland Bay and Chapman's Cove for over 10 years report that the use of the Site of the Proposal for recreation is extremely low. Most recreation is from those using kayaks or fishing along the shoreline."*

In regard to tribal fishing, the applicant is proposing to move the aquaculture gear temporarily Mason County parcel 32015-10-80160, within Chapman Cove, if the Squaxin Island Tribe requests unimpeded fishing access. This is outlined in Exhibit 15 and addressed in the responses to MCC 17.50.210(b)(1)(D)(i) and MCC 17.50.210(b)(1)(D)(i).

In regard to the mussel rafts, County staff contacted Ian Child of Sound Shellfish (Exhibit 27) to confirm the use of the existing aquaculture. The existing mussel rafts received a lease through the DNR (Exhibit 26) and are located 400 to 500 feet to the northeast of the proposed project area (as seen in Exhibit 29). The mussel rafts can be seen as early as 2005 in the aerial views of Exhibit 28.

In regard to navigation, complying with the requirements of the US Coast Guard and US Army Corps of Engineers will result in a proposal that minimizes interference with navigation and is ultimately consistent with this policy. Rory Lee of the US Army Corps of Engineers communicated to the County (Exhibit 17) that the project will be subject to the US Army Corps of Engineers' Section 10 process, which includes a public notice and comment period (NWS-2023-305-AQ). The possible impacts to navigational access are further discussed in the County's response to 17.50.210(b)(1)(K).

In regard to recreational boating, the applicant makes the case that while the area is used for recreation, it is an insignificant amount of recreation. To verify this, the County staff called the Oakland Bay Marina and was told there is no data on the amount of boats that use or go through Oakland Bay in any given period of time. No other data was presented to support the current levels of recreational activity in the project area. This project area is used for recreational boating, though it is unclear how much.

Mason County does have speed requirements for motorboats, found in MCC 9.04.130(a), that apply within 150 feet of permanent structures and shorelines. Exhibit 30 shows the approximate speed regulation areas for vessels that currently exist in Oakland Bay, as well as what areas would be affected by the proposed project. At the lowest tide captured by Google Earth, (taken May of 2009), there would be approximately 500 to 600 feet of waters unimpeded by the 6 miles per hour speed limit, regulated by MCC 9.04.130(a)(1) and 9.04.130(a)(2), located to the east and north of the proposed project. Approximate distances from the project extents to the shores at the lowest tide captured by Google Earth, (taken May of 2009) can be found in Exhibit 29.

The proposed site is designated as a shoreline of statewide significance by RCW 90.58.030(2)(f)(iii) as a saltwater body below the line of extreme low tide. RCW 90.58.020(1) states that the highest use preference for shorelines of statewide significance is to "recognize

and protect the statewide interest over local interest." Mason County Code 17.50.210(a)(1) then states that "aquaculture is of statewide interest" and, "when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area." By comparison, "increase recreational opportunities for the public in the shoreline" is the 6th priority of RCW 90.58.020. This is further supported by email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). In a case of irreconcilable use conflict between aquaculture and recreational boating, the combination of RCW 90.58.020 and MCC 17.50.210(a)(1) gives preference to aquaculture.

17.50.210(b) AQUACULTURE REGULATIONS:

(1) General Aquaculture Regulations.

(A) Shoreline developments adjacent to areas suitable for aquaculture shall practice strict pollution control procedures. As required by MCC 8.52.170(g), design and siting of all new construction and major new development shall not adversely impact water quality.

Not Applicable. This proposal involves development in a subtidal area, not development of adjacent shoreline areas.

(B) Proposed residential subdivisions and other land uses and developments which may impact aquaculture operations shall provide facilities to prevent any adverse water quality impacts to such operations. As required by MCC 8.52.170(g), all projects shall meet or exceed any storm water design requirements to avoid any risk of decertification of shellfish beds.

Not Applicable. No residential subdivisions are proposed in this project.

(C) Site preparation and construction in the vicinity of aquaculture operations shall not result in off-site erosion, siltation, or other reductions in water quality. Land uses on erosion hazard areas shall meet the requirements of MCC 8.52.160.

Not Applicable. This proposal involves development in a subtidal area, not development of adjacent shoreline areas.

(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 rotation; and areas dormant due to market conditions, seed or juvenile availability, past and current pest infestations or control issues, water quality issues, and other cultivation factors beyond the control of the operator. A presumptively dormant area may, on a case-by-case basis as determined by the administrator, be deemed abandoned provided clear and affirmative information evidencing intent to abandon the area for 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:

(i) The operation changes the scope and intent of the original permit as defined in 17.50.400; or

This regulation does not apply to the proposed 50-acre area of the project.

However, the JARPA (Exhibit 4), SEPA Checklist (Exhibit 6), and Habitat Management Plan (Exhibit 8) all state that the aquaculture gear is "anticipated to remain continuously but can be removed for a few weeks for fishing access when coordinated with the Squaxin Island Tribe." The Permit Application Addendum (Exhibit 11) expands on this by stating, "Taylor Shellfish has coordinated with the Squaxin Island Tribe to ensure it will not adversely impact the Tribe's fishing rights; 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."

In the Memo from Taylor Shellfish Regarding Relocating Gear to Parcel 32015-10-80160 (Exhibit 15), the applicant outlines that in the case of the Squaxin Island Tribe requesting unimpeded fishing access, the aquaculture gear would be temporarily moved to Mason County parcel 32015-10-80160, within Chapman Cove. The parcel is owned by the applicant and is the site of an existing shellfish farm. Chapman Cove is intertidal, as seen on the low-tide aerial views in Exhibit 28 (to the east of Chapman Peninsula), so the gear would be laying on the substrate for a portion of the time. However, the use of parcel 32015-10-80160 and the ecological impact of the aquaculture gear on that parcel does not require review by the County. As seen on the Washington Department of Natural Resources' Bush and Callow Act Aquatic Lands in Mason County (Exhibit 16), almost the entirety of Chapman Cove was included in the Bush Act of 1895.

Per this regulation, parcel 32015-10-80160 is considered dormant, and hence, an existing aquaculture area because it is an area acquired under the Bush Act of 1895. There is no original permit for parcel 32015-10-80160. Shellfish harvesting has been conducted on the parcel for decades prior to the adoption of permitting through the Shoreline Master Program. Existing operations on parcel 32015-10-80160 may continue as noted in this regulation.

(ii) The facility proposes to cultivate non-native species not previously cultivated in the State of Washington.

This regulation does not apply to the proposed 50-acre area of the project.

Reference the response above (MCC 17.50.210(b)(1)(D)(i)). Per this regulation, parcel 32015-10-80160 is considered dormant, and hence, an existing aquaculture area because it is an area acquired under the Bush Act of 1895. The facility is proposing to cultivate non-native species that have previously been cultivated in Washington State.

Therefore, ongoing maintenance, harvest, replanting, restocking or changing the culture technique or species cultivated for any aquaculture activity on parcel 32015-10-80160 does not require shoreline review or a new permit. The applicant may move the gear from the proposed 50-acre project area and temporarily store the gear in Chapman Cove, on parcel 32015-10-80160, without any review from the County. Activities occurring on parcel 32015-10-80160 shall still comply with the policies and regulations of Mason County's Shoreline Master Program.

(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.

The proposal impacts normal public use of surface waters by rendering 9.1 acres of state waters inaccessible to the public. However, as stated in the County's response to MCC 17.50.210(b)(1)(K), complying with the requirements of the US Coast Guard and US Army Corps of Engineers will result in proposals that minimize interference with navigation and ultimately comply with the County's regulations. Any potential impacts regarding navigation would be identified, reviewed, and addressed by the US Army Corps of Engineers' internal navigation team through the Section 10 permitting process. The US Army Corps of Engineers has not notified the County of any significant adverse impacts to normal public use of the surface water due to this project.

While the impacts to public use of the surface water are not significant or adverse, the applicant proposing to provide public access as specified in the Public Access Memorandum (Exhibit 23), including formally granting the public the right of access to 16.6 acres of tidelands and working with Oakland Bay Marina to provide assistance for improvements to their boat launch and/or related facilities. The applicant's public access mitigation compensates for any impact to normal public use of surface waters by replacing, enhancing, and providing substitute resources. See all responses to MCC 17.50.140 for further information on the applicant's impacts and mitigation for public access.

(F) Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.

While not explicitly stated, it is implied in the Habitat Management Plan (Exhibit 8), §§ 6.2.3, that the aquaculture gear will not cause extensive erosion or accretion along the adjacent shorelines. Oakland Bay has ongoing erosion, transport, and deposition of sediments. The floating culture gear may cause short-term impacts to the substrate, specifically when being installed. The Habitat Management Plan, §§ 4.1.2, states the "anchors will be installed by cranes and hydraulic machinery from a vessel with minimum substrate disturbance."

(G) Aquaculture structures and activities that are not shoreline dependent or do not have a functional relationship to the water shall be located landward of shoreline buffers required by this program to minimize the detrimental impact to the shoreline.

Not applicable. All aquaculture structures and activities are water-dependent.

(H) Proposed aquaculture processing plants shall provide adequate buffers to screen potential impacts of operations (e.g., visual, odor, and noise impacts) from adjacent residential uses.

Not Applicable. No aquaculture processing plants are proposed.

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

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

The Habitat Management Plan (Exhibit 8) was prepared by Confluence Environmental Company, which meets the requirements of a qualified fish and wildlife professional as defined in MCC 8.52.030. The Habitat Management Plan addresses no net loss of ecological functions in §§ 8.0 - 8.6. Confluence Environmental Company concludes that the proposed project would result in no net loss of ecological functions.

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

The Macroalgae and Eelgrass Study (Exhibit 7) states that no significant macroalgae, no native eelgrass, limited instances of drift algae, and minimal instances of attached macroalgae were found within the survey area. The JARPA (Exhibit 3) states that the substrate beneath the farm is generally muddy/silt with no observable sign of submerged aquatic vegetation (SAV). The Washington Department of Natural Resources' Puget Sound Seagrass Monitoring tool and the Washington State Department of Ecology's Coastal Atlas Map tool confirm these findings.

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

In the following sections, the applicant describes the anchors and potential impacts from the proposed development:

- *Exhibit 4, JARPA, page 5, 6a.: "The project will include the installation of subtidal anchors, which will be attached to buoys. Approximately 30 double lines and 60 anchors will be installed, including a 20- to 30-foot spacing between headlines. There could be up to 30 screw anchors installed in the center of each line."*
- *Exhibit 4, JARPA, page 8, 8a.: "Concrete wedge anchors will be installed to secure the floating structure."*
- *Exhibit 4, JARPA, page 8, 8c.: "Any minor effects are mitigated by the beneficial effects of growing and harvesting shellfish in areas that may be vulnerable to nitrogen loading and other negative effects from shoreline development. The proposed area in Oakland Bay is within the Port District and surrounded by activities such as a wastewater outfall and marina, both of which contribute or have a higher likelihood of contributing excessive nutrient loading into the environment."*

- *Exhibit 8, Habitat Management Plan, page 6, 4.1.2: "The anchors will be installed by cranes and hydraulic machinery from a vessel with minimum substrate disturbance… Each end of the double line will be attached to one 2,000-pound wedge anchor."*
- *Exhibit 8, Habitat Management Plan, page 31, 6.2.1: "The main disturbance to the substrate would only be during initial installation of anchors."*
- *Exhibit 8, Habitat Management Plan, page 37, 6.4: "Based on full build-out, the floating culture will use 60 wedge anchors, which would result in approximately 0.02 acre of loss to the benthic areas. The additional screw anchors would not result in loss of benthic habitat because the metal plate will be buried in the substrate. This amount of loss, especially considering the increased area in potential attachment points that would increase benthic diversity (refer to Section 6.4.1), is a minor amount of benthic habitat loss."*
- *Exhibit 8, Habitat Management Plan, page 37, 6.4.3: "The small scale of the proposed Project (0.02 acre of benthic habitat for anchors), combined with its location in subtidal areas, means that impacts to benthic fauna are expected to be minor."*
- *Exhibit 8, Habitat Management Plan, page 42, 7.2, Table 4: "Only short-term adverse changes in water quality would occur during installation of anchors" is listed under the "Basis of Determination" for Bull Trout, Chinook salmon, Bocaccio, and Southern Resident Killer Whale.*

No other mitigation is proposed, and Confluence Environmental Company concludes that no further mitigation is needed due to the best management practices and conservations measures of the Programmatic Consultation (Exhibit 14).

(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.

The proposed aquaculture gear, as seen in the Floating Culture System Cross Section (Exhibit 10), includes oyster bags that inherently protect against predators. No other practices to control birds and mammals are proposed. Therefore, the least harmful best management practices are being applied to this project. The oyster bags will be in compliance with the Conservation Measures of the Programmatic Consultation (Exhibit 14).

(J) To the maximum extent practicable, floating aquaculture structures shall not substantially detract from the aesthetic qualities of the surrounding area, provided methods are allowed by federal and state regulations and follow best management practices.

In the following sections, the applicant describes the aesthetics of their proposal:

- *Exhibit 6, SEPA Checklist, page 11, 10.b.: "Low-profile equipment would be visible on the surface of the water. No lines of sight would be obstructed."*

- *Exhibit 6, SEPA Checklist, page 12, 10.c.: says "Regular maintenance will be done to remove fouling organisms from bags and lines."*
- *Exhibit 8, Habitat Management Plan, page 8, Figure 3: includes photos of the aquaculture system in British Columbia, Canada.*
- *Exhibit 11, Permit Application Addendum, page 4, (10): "The Proposal's anchors will be located underwater and will not be visible. The Proposal's floats and bags will be partially submerged and protrude a minimum amount above the water surface. The gear will use neutral colors to blend into the environment, and Taylor Shellfish will regularly monitor the gear to ensure it is properly secured and maintained. Limited navigation markers will be utilized in compliance with USCG requirements to ensure the farm is visible to other uses within Oakland Bay."*
- *Exhibit 11, Permit Application Addendum, page 8, (L): "Taylor Shellfish uses best management practices to minimize potential visual impacts. Oyster cultivation equipment will … have neutral colors to minimize visual impacts. Taylor Shellfish will … monitor the farm regularly to ensure gear is maintained in a neat and orderly fashion."*
- *Exhibit 25, Aquaculture Visual Assessment, page 3: "Lying in front of residential homes along the shoreline, there is currently visual disruption to the scenery. Additionally, because it lies consistently low and flat along the water surface, its visual impact to adjacent scenery is very limited."*
- *Exhibit 25, Aquaculture Visual Assessment, page 4: "The development lies low on the water surface and greater than 1,000 feet away from any point along the shoreline and is therefore not visible to many viewers. Views along the roadway are not extensive and are regularly broken by mature vegetation and houses."*
- *Exhibit 25, Aquaculture Visual Assessment, page 4: "The project will sit less than 12" above water surface. The majority of homes and viewpoints 1,000' – 1,500' are lower than 55' above sea level. Those with high bank views are over 1,500' from the project extent."*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: "This floating system is constructed of black HDPE which was selected for UV resistance and uniformity of color."*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: This project lies level on the horizon at less than 12" above the water surface. Based on Ecology's assessment tool, this project will cover less than 10% of the cone of vision as viewed from 75% of key observation points.*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: "This project has been designed to meet the mitigation recommendations identified within Ecology's tool… this project is expected to be visibly unobtrusive."*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: "The project will be located more than 1,800' from high bank observation points. Most (more than 50%) of the Project is located over 1,500' away from the ordinary high water mark (OHWM), and observation points on the land within 1,500 of the project are low bank."*

- *Exhibit 25, Aquaculture Visual Assessment, page 5: "The location of the system within the bay was selected so that it would have the least amount of frontage impact to waterfront landowners or recreational boaters traveling north – south direction, while still providing efficiencies in design and maintenance."*
- *Exhibit 25, Aquaculture Visual Assessment, page 6: "In particular, the project will utilize black colors in the floating oyster bags… Black-colored gear is consistent in quality and viewer experience. It strikes an optimum balance between blending into the environment while also being sufficiently visible to ensure it can be safely avoided by recreational and other users."*
- *Exhibit 25, Aquaculture Visual Assessment, page 7, Figure 1: Rendering at 1,000' horizontal, 10 - 15' vertical.*
- *Exhibit 25, Aquaculture Visual Assessment, page 8, Figure 2: Existing system in Vancouver, Visual from approx. 1,300' horizontal distance and 6' vertical.*
- *Exhibit 25, Aquaculture Visual Assessment, page 9, Figure 3: Existing system in Vancouver. Visual from approx. 50' horizontal distance and 6' vertical.*
- *Exhibit 25, Aquaculture Visual Assessment, page 10, Figure 4: Existing system in Vancouver. Visual from approx. 400' horizontal distance and 10' vertical*

The applicant has completed an Aquaculture Visual Assessment (Exhibit 25), which uses the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology. The Aquaculture Siting Study is intended to be an environmental assessment tool for use in evaluating and regulating aquaculture facilities. Despite the study being from 1986, Ecology still considers the study to be best management practices for determining visual and aesthetic impacts. Ecology recommends that local governments utilize the study in their 2017 Shoreline Master Program Handbook (Chapter 16, Page 22), which was further confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). The result of the visual assessment done by the applicant is that the proposed aquaculture will be visually evident, but not visually obtrusive.

The applicant scored the project as a "Class III – Moderate Visual Impact," as seen on page 82 of the Aquaculture Siting Study (Exhibit 24), which states: "To mitigate impact, project should remain visually subordinate to the project setting. Project design should borrow from the colors of the natural setting. Scale should be enough so not to cover more than 10% of the cone of vision seen from key observation points."

The applicant shows that they are taking aesthetics of the gear into account in the design of the proposal through submerging equipment, maintaining a low profile for the equipment, using neutral colors, and maintaining the equipment to prevent fouling organisms. The Aquaculture Visual Assessment (Exhibit 25) gives justification for the color of the gear and the location of the project within Oakland Bay. The applicant provides sufficient evidence that the aquaculture gear will not substantially detract from the aesthetic qualities of the surrounding area to the "maximum extent practicable."

(K) Aquacultural structures shall be placed in such a manner, and be suitably sized and marked, so as to minimize interference with navigation.

In the following sections, the applicant describes navigational access in relation to their proposal:

- *Exhibit 3, Additional Information for Conditional Use Permit, page 1, 3.: "… the project site is … located at least 1,000 feet from the shoreline. The project will not interfere with the normal public use of the shoreline…"*
- *Exhibit 6, SEPA Checklist, page 12, 11.a.: "Lights for navigation will be installed per U.S. Coast Guard requirements."*
- *Exhibit 6, SEPA Checklist, page 12, 12.b.: "Approximately 50 acres would become inaccessible to boaters due to presence of floating culture gear. The gear is anticipated to remain continuously but can be removed for a few weeks for fishing access when coordinated with the Squaxin Island Tribe. Given the location in Oakland Bay, the project will not pose an impediment to marine navigation."*
- *Exhibit 6, SEPA Checklist, page 12, 12.c.: "Floating lines will be held fast by anchors to prevent them from drifting outside of the designated Project site. Maker buoys will be installed to identify the project location and reduce potential recreational impacts.*
- *Exhibit 11, Permit Application Addendum, page 5, (12): "This Proposal will be located 1,000 feet away from the shoreline and outside of commercial navigation channels. There is no commercial traffic over the Site with which Proposal could potentially interfere. The Proposal will not impede navigational access to shoreline owners or commercial traffic."*
- *Exhibit 11, Permit Application Addendum, page 5, (13): "The Site of the Proposal is located in an area that has formerly been utilized for log storage without any history of conflicts with other water-dependent uses. The Site is located outside of navigation channels, and it is not significantly used for navigation, recreation, or sport or commercial fishing."*
- *Exhibit 11, Permit Application Addendum, page 8, (K): "The Proposal will minimize interference with navigation. The Site is located outside of navigation channels, the Proposal occupies a minor portion of Oakland Bay, and unimpeded navigation is provided in all areas adjacent to the Site. The Proposal will be marked with navigation markers to ensure other users are aware of and can easily avoid the oyster cultivation system."*
- *Exhibit 23, Public Access Memorandum, page 1: "The full lease boundary is identified under WADNR lease # 20-104436 and covers 50 acres (the "Site"). However, the Proposal's gear will only occupy a minor portion—approximately 9.1 acres—of the Site."*
- *Exhibit 23, Public Access Memorandum, page 1: "There will be approximately 30 feet of space in between each double-row of bags to allow for access to the floating bags.*
- *Exhibit 23, Public Access Memorandum, page 2: "Based on the company's experience operating a similar farm in British Columbia, boaters easily and safely*

navigate and recreate in the areas of water provided between rows of floating oyster bags."

- *Exhibit 23, Public Access Memorandum, page 2: "Because boaters can easily and safely navigate in between the Proposal's oyster bags, the Proposal is not expected to adversely impact boaters traveling north or south in Oakland Bay. However, even if boaters did not choose to travel in between the Proposal's rows of oyster bags, they could still easily travel north and south through the Bay as the Proposal is sited over 1,000 feet from each shoreline. Similarly, individuals traveling west or east Oakland Bay at the location of the Proposal would still be able to do so, although they would need to spend some additional time navigating to the north or south depending on their destination."*
- *Exhibit 25, Aquaculture Visual Assessment, page 5: "The location of the system within the bay was selected so that it would have the least amount of frontage impact to waterfront landowners or recreational boaters traveling north – south direction, while still providing efficiencies in design and maintenance."*

The applicant will mark their aquaculture structures appropriately to minimize interference with navigation, per standards of the US Coast Guard and US Army Corps of Engineers. Marker buoys will be installed to identify the project location and reduce potential recreational impacts. Though no work will be done at night, there will be night lighting per US Coast Guard requirements.

No guidelines for suitable sizing a floating aquaculture system in Oakland Bay, specifically regarding navigation, have been provided or found by the County. Mason County does have speed requirements for motorboats, found in MCC 9.04.130(a), but they only apply within 150 feet of permanent structures and shorelines. Rory Lee of the US Army Corps of Engineers communicated to the County (Exhibit 17) that they do not have specific guidelines that make a determination whether a project creates a navigation concern or not. However, the US Army Corps of Engineers does uphold Section 10 of the Rivers and Harbors Act, which focuses on ensuring navigation of waterways.

Thus, the phrasing "suitable sized" does not seem to be upheld by any guidelines in this case, and instead the phrasing gives the applicant the ability to justify how they are suitably sizing their proposal. The applicant determined the boundaries of the proposal by matching the previous commercial footprint of the Simpson log boom, which was in operation up until the late 1980's (Exhibit 28). The "1,000 feet" to the shorelines that is consistently referenced in the application materials was measured once the applicant identified where the previous DNR lease for the log boom was located. This reasoning can be further seen in the Permit Application Addendum (Exhibit 11), where the applicant states the site "is located in an area that has formerly been utilized for log storage without any history of conflicts with other water-dependent uses."

Since this project will be subject to the US Army Corps of Engineers' Section 10 process, which includes a public notice and comment period (NWS-2023-305-AQ), the project must meet the navigational requirements of the US Coast Guard and US Army Corps of Engineers to be permitted. Rory Lee stated that the project poses a potential risk to navigation (Exhibit 17), and that the US Army Corps of Engineers' internal navigation team can assess the

navigation risk associated with the project following the public comment period for the Section 10 permit.

Complying with the requirements of the US Coast Guard and US Army Corps of Engineers will result in a proposal that minimizes interference with navigation and ultimately fulfills this regulation.

(L) Aquaculture development shall be designed and constructed with best management practices to minimize visual impacts and shall be maintained in a neat and orderly manner. Aquaculture facilities, except navigation aids, shall use colors and materials that blend into the surrounding environment where practicable.

The gear will be anchored to the substrate, so there is low potential for escapement, and the applicant will monitor the farm regularly to ensure gear is maintained in a neat and orderly fashion.

The applicant has completed an Aquaculture Visual Assessment (Exhibit 25), which uses the Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology. The Aquaculture Siting Study is intended to be an environmental assessment tool for use in evaluating and regulating aquaculture facilities. Despite the study being from 1986, Ecology still considers the study to be best management practices for determining visual and aesthetic impacts. Ecology recommends that local governments utilize the study in their 2017 Shoreline Master Program Handbook (Chapter 16, Page 22), which was further confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). The result of the visual assessment done by the applicant is that the proposed aquaculture will be visually evident, but not visually obtrusive.

By utilizing the assessment methods within the Aquaculture Siting Study to justify that the project is minimizing visual impacts, the applicant is referencing the Aquaculture Siting Study as "best management practices."

The applicant scored the project as a "Class III – Moderate Visual Impact," as seen on page 82 of the Aquaculture Siting Study (Exhibit 24), which states: "To mitigate impact, project should remain visually subordinate to the project setting. Project design should borrow from the colors of the natural setting. Scale should be enough so not to cover more than 10% of the cone of vision seen from key observation points."

In the Aquaculture Siting Study (Exhibit 24), on page 64 it is stated that "eight major siting and design variables affect potential visual impact from aquaculture facilities: distance offshore, solar orientation, vertical profile, size, surface coverage, color, form and materials." The project fits well within most of the variables, but the project does not strictly follow the mitigation measures recommended for distance offshore, size, and color. The study states on page 6 that the mitigation measures should be done "when feasible," and the applicant has provided reasoning as to why incorporating those mitigation measures would be infeasible.

For distance offshore, the application materials consistently reference that there is 1,000 feet to the shorelines from the project area. Approximate distances from the project boundary to the shoreline at the lowest tide captured by Google Earth can be seen in Exhibit 29. However, the Aquaculture Siting Study, page 6, suggests that when feasible, aquaculture facilities should be sited or designed to be "at least 1,500 to 2,000 feet offshore" as a

mitigation measure because when an aquaculture facility is "moved 1,500 feet offshore, it becomes a line on the horizon." Similarly, for size, the Aquaculture Siting Study, page 65, states: "at distances greater than 1,500 feet to 2,000 feet, size doesn't seem to affect visual impact."

Ecology's 2017 SMP Handbook (Chapter 16, Page 22) also recommends local governments "rely on flexible standards that incorporate the 1500-2000 foot distance" recommended in the study. Ecology's 2017 SMP Handbook even suggests that local governments adopt regulations to site aquaculture structures "at least 1,500 feet off shore." Mason County has not adopted that regulation or any other regulations which would require a specific offshore distance for floating aquaculture.

In the applicant's Aquaculture Visual Assessment (Exhibit 25), it is stated that: "The location of the system within the bay was selected so that it would have the least amount of frontage impact to waterfront landowners or recreational boaters traveling north – south direction, while still providing efficiencies in design and maintenance. Locating the farm 1,500 from the OHWM on all sides would not appreciably reduce aesthetics, negatively impact farm efficiencies, and increase potential recreational impacts." It is implied that if the applicant were to site the farm 1,500 feet from the OHWM to the south of the site, their options are to either increase the length of the farm towards the southwest to match their intended production or to decrease the size of the farm, and subsequently decrease their intended production. Following the aforementioned distance offshore and size mitigation recommendations in the Aquaculture Siting Study (Exhibit 24) would physically preclude achieving the project's primary intended legal use and is therefore not feasible.

For color, the Aquaculture Siting Study, page 65, states: "In general, blues and greens complement the natural setting; grays and earth tones are neutral; white and black are highly variable in their response to lighting conditions … Blues and greens complement the dominant colors of the Puget Sound waters and the surrounding forested hillsides … White and black are very deliberate colors. Depending on light conditions, they can be nearly invisible or stand out in sharp contrast against the water."

The applicant is proposing black HDPE gear and floats, which is highly variable. In the applicant's Aquaculture Visual Assessment (Exhibit 25), it is stated that: "In particular, the project will utilize black colors in the floating oyster bags. Advances in gear development since publication of the aquaculture siting study have improved the consistency and experience of aquaculture gear. Black-colored gear is consistent in quality and viewer experience. It strikes an optimum balance between blending into the environment while also being sufficiently visible to ensure it can be safely avoided by recreational and other users. In addition, black gear is more stable and UV-resistant compared to blue and green colored gear." Following the aforementioned color mitigation recommendation in the Aquaculture Siting Study (Exhibit 24) would not achieve the intended result of minimizing navigational impacts and is therefore not feasible.

Therefore, the findings of the Aquaculture Visual Assessment (Exhibit 25) and the design of the project are consistent with the Aquaculture Siting Study (Exhibit 24) that is used as the basis for determining the visual impacts of the project. The applicant has shown that the project will be designed and constructed with best management practices to minimize visual impacts.

(M) Proposed aquacultural developments shall make adequate provisions to control nuisance factors such as excessive noise and odor and 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.

The Permit Application Addendum (Exhibit 11) states that the project will comply with Mason County Code Titles 6 (Sanitary Code) and 9 (Peace, Morals, and Safety). The project will specifically comply with MCC 9.04, which regulates motorboats, and MCC 9.36, which regulates noise control. The SEPA Checklist (Exhibit 6), §§ 7.b.2, states that noise will be limited to short-term engine noise "from slow-moving work boats during construction and operations. Vessel noise will be similar to recreational boating activities."

The Habitat Management Plan (Exhibit 8), §§ 4.1.3, states that "boat-based workers will perform operations and maintenance. Regular maintenance activities will include removal of fouling organisms (e.g., barnacles, mussels, other invertebrates, and algae) from bags and lines, and minor repair work… Floats and bags are periodically flipped to expose bags and oysters to air for drying and to control fouling organisms." Therefore, odor from the fouling organisms would be controlled by the regular maintenance for the project.

The SEPA Checklist (Exhibit 6), §§ B.11.a, states that "lights for navigation will be installed per U.S. Coast Guard requirements." No further lighting is proposed for the project. The SEPA Checklist, §§ 7.b.3, states that vessel activity is "restricted to daylight hours." Therefore, excessive lighting or noise due to work at night is a non-issue for the project.

(N) 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. 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).

As stated in the Permit Application Addendum (Exhibit 11), the applicant "reuses, repurposes, recycles, and discards (in order of priority) shellfish culture gear." Regular maintenance activities for the project will control any odor from fouling organisms. The applicant will comply with the Federal Clean Water Act, Section 401, the Washington State Water Pollution Control Act (RCW 90.48), and Mason County Code regulations.

As explained in the responses to MCC 17.50.210(b)(1)(D)(i) and MCC 17.50.210(b)(1)(D)(ii), the aquaculture gear can be moved to parcel 32015-10-80160 temporarily because the area was included in the Bush Act of 1895. Ongoing maintenance, harvest, replanting, restocking or changing the culture technique or species cultivated for any aquaculture activity on parcel 32015-10-80160 does not require shoreline review or a new permit. Temporarily storing the aquaculture gear in the shoreline (on parcel 32015-10-80160) would be considered ongoing maintenance. Any activities on parcel 32015-10-80160 shall be in compliance with this regulation.

(O) Equipment, structures and materials shall not be abandoned in the shoreline or wetland area.

The applicant will patrol the farm regularly to ensure gear is maintained in a neat and orderly fashion. All equipment and materials that are not secured to the substrate leave the farm site at the end of each workday, along with crews and vessels. The applicant shall comply with all following Programmatic Consultation Conservation Measures (Exhibit 14) that address this concern: #11 and #22.

As explained in the responses to MCC 17.50.210(b)(1)(D)(i) and MCC 17.50.210(b)(1)(D)(ii), the aquaculture gear can be moved to parcel 32015-10-80160 temporarily because the area was included in the Bush Act of 1895. Ongoing maintenance, harvest, replanting, restocking or changing the culture technique or species cultivated for any aquaculture activity on parcel 32015-10-80160 does not require shoreline review or a new permit. Temporarily storing the aquaculture gear in the shoreline (on parcel 32015-10-80160) would be considered ongoing maintenance.

(P) Precautionary measures shall be taken to minimize the risk of oil or other toxic materials from entering the water or shoreline area.

No vessel fueling will occur at the site. Vessels will be monitored and maintained daily to minimize the risk of oil or other toxic materials from entering the water or shoreline area. Food grade, biodegradable oil is used in the hydraulic systems. A spill kit and notification procedures are kept on-board vessels. 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.

(Q) Gravel enhancement projects necessary to maintain existing shellfish beds are allowed. New projects that are not maintenance of existing beds and involve greater than one thousand cubic yards of material may be considered as a conditional use.

Not Applicable. No gravel enhancement is proposed.

(R) To minimize redundancy between federal, state and local aquaculture requirements, the county should use permit applications that mirror federal or state permit applications, and accept documentation that has been submitted to other permitting agencies wherever possible.

The JARPA (Exhibits 4) and SEPA Checklist (Exhibits 6) are also used by other agencies for permitting. This regulation implements Policy 5. The County accepted JARPA Attachment E (Exhibit 5) and the Application to the DNR for Use of State-Owned Aquatic Lands (Exhibit 13), which were submitted to the WA Department of Natural Resources, as proof that the applicant has the authority to propose this project in its location within Oakland Bay.

(S) A written statement of exemption is required for new aquaculture activities that do not constitute substantial development or otherwise require a shoreline permit . . .

Not applicable. The proposal includes activities that constitute substantial development.

(2) Finfish Net Pen Regulations . . .

Not Applicable.

(3) Commercial Geoduck Aquaculture . . .

Not Applicable.

17.50.400(c)(3)(A) REVIEW CRITERIA FOR SUBSTANTIAL DEVELOPMENT PERMITS:

(i) Any person wishing to undertake substantial development on shorelines shall apply to the county for a substantial development permit.

(ii) A permit shall be granted only when the proposed development is consistent with:

a. Policies and regulations of the Mason County Shoreline Master Program and applicable policies enumerated in Chapter 90.58 RCW in regard to shorelines of the state and of statewide significance; and

The project is consistent with the policies and regulations of the Mason County Shoreline Master Program and the applicable policies enumerated in RCW 90.58 as a shoreline of statewide significance.

b. Regulations adopted by the department of ecology pursuant to the Act, including Chapter 173-27 WAC.

The project is consistent with RCW 90.58 as a shoreline of statewide significance and is therefore also consistent with WAC 173-27 and the regulations adopted by the Department of Ecology pursuant to the Shoreline Management Act.

CUMULATIVE IMPACTS

The WA Department of Ecology's 2019 Shoreline Permitting Manual (Page 3-2) states that the Shoreline Hearings Board has concluded in several appeal decisions that a local government should have considered addressing cumulative impacts for Shoreline Substantial Development Permits. One example is in the case of Coalition to Protect Puget Sound Habitat v. Pierce County, SHB No. 13-016c (January 22, 2014), the Shoreline Hearings Board ruled that cumulative impacts should be considered for Shoreline Substantial Development Permits in certain circumstances, including if a shoreline of statewide significance is involved and if the project would be the "first of its kind" in the area. This was confirmed through email correspondence with Lizzie Carp of the WA Department of Ecology (Exhibit 17). Therefore, cumulative impacts should be addressed in review of this project even though Mason County Code does not specifically require cumulative impact consideration for Shoreline Substantial Development Permits.

Cumulative impacts for this project are addressed within:

- *The Habitat Management Plan (Exhibit 8)*
- *The Permit Application Addendum (Exhibit 11, Pages 17-19)*
- *The Aquaculture Siting Study (Exhibit 24, Pages 85-66)*

In the Habitat Management Plan (Exhibit 8), Confluence Environmental Company addresses other like actions in the area of the project and other potential shellfish activities. Here are their conclusions:

- *Regarding water quality, potential permits granted to other developments in the area where similar circumstances exist "would result in a minor amount of suspended sediments that are well within the changes of the natural system."*
- *Regarding sediment quality, potential permits granted to other developments in the area where similar circumstances exist "are sustainable within Oakland Bay."*
- *Regarding fish and wildlife habitat, potential permits granted to other developments in the area where similar circumstances exist would "not result in significant impacts to fish and wildlife habitat and may provide a benefit for additional foraging opportunities."*
- *Regarding invertebrates, potential permits granted to other developments in the area where similar circumstances exist would "not result in significant impacts to invertebrates and may provide an increased abundance due to presence of shellfish culture gear, shellfish products, or increased organic material."*
- *Regarding submerged aquatic vegetation, potential permits granted to other developments in the area where similar circumstances exist would "not result in significant impacts to SAV."*

Confluence Environmental Company states that minor impacts "can occur during shellfish aquaculture operations," however, the "impacts are well within the natural variability of the system and still maintain the natural functioning of that system." Confluence Environmental Company ultimately concludes that "the proposed Project in Oakland Bay would result in no net loss of ecological functions."

The Permit Application Addendum (Exhibit 11) prepared by the applicant rightly points out that "each project must undergo individual project review to demonstrate it is appropriately sited, designed, and conditioned to not result in a net loss of ecological functions. Thus, future applicants cannot simply rely on approvals for prior projects but must demonstrate their proposals satisfy all review standards." Mason County's aquaculture regulations (MCC 17.50.210(b)) assure that potential projects do not cause extensive erosion of the shorelines, balance habitats and local ecology, do not substantially detract from the aesthetic qualities of the surrounding area, are suitably sized and marked to minimize interference with navigation, minimize visual impacts, are maintained in a neat and orderly manner, and control nuisance factors such as excessive noise, odor, and excessive lighting. All additional requests for like actions in the area would need to comply with these (and other) regulations.

Per MCC 17.50.210(b)(1)(D), if the project scope/intent was changed in the future, or eventually transferred to a different owner that wished to change the type of aquaculture technique, species, or gear, the project would require a new shoreline review and permit because the scope and intent of the original permit would not be maintained. Ongoing maintenance, harvest, replanting, restocking or changing the culture technique or species cultivated for any existing or permitted aquaculture activities do not require shoreline review or a new permit.

Mason County Code does not have restrictions on the amount of aquaculture gear, farm size, or a required distance offshore for floating aquaculture, so potential projects just need to be consistent and comply with the policies and regulations of Mason County Code to be granted a Shoreline Substantial Development Permit. As shown in Exhibit 30, Mason County does have speed requirements for motorboats, found in MCC 9.04.130(a), that apply within 150 feet of permanent structures and shorelines. If permits for similar developments were granted in the

area, more of Oakland Bay would be impeded by the 6 miles per hour speed limit regulated by MCC 9.04.130(a)(1) and 9.04.130(a)(2).

In the applicant's Aquaculture Visual Assessment (Exhibit 25), they state the "location of the system within the bay was selected so that it would have the least amount of frontage impact to waterfront landowners or recreational boaters traveling north – south direction … Locating the farm 1,500 from the OHWM on all sides would … increase potential recreational impacts." The applicant is implying that increasing the length of the farm towards the southwest could potentially impact navigation. Rory Lee of the US Army Corps of Engineers also stated that the project poses a potential risk to navigation (Exhibit 17), and that the US Army Corps of Engineers' internal navigation team can assess the navigation risk associated with the project following the public comment period for the Section 10 permit. Thus, if permits for similar developments were granted in the area, there are potential impacts to navigation. However, as stated in the County's response to MCC 17.50.210(b)(1)(K), complying with the requirements of the US Coast Guard and US Army Corps of Engineers will result in proposals that minimize interference with navigation. Any potential cumulative impacts regarding navigation would be identified, reviewed, and addressed by the US Army Corps of Engineers' internal navigation team through the Section 10 permitting process.

As pointed out by public comments, during the recent McEwan Fire near Shelton, WA, which began on July 4, 2023), the WA Department of Natural Resource's helicopters and planes scooped water out of Oakland Bay to suppress the fire. David Way of the WA Department of Natural Resources stated through email correspondence (Exhibit 17) that "dipping/scooping out of the salt water is generally an exception rather than a common practice for firefighting," and that it "would be highly unlikely" for the DNR "to do that again in that specific area." In the case that dipping/scooping out of Oakland Bay did need to happen in the future helicopters would not be inhibited from scooping water because they can dip out of very small waterways and there is over 1,000 feet from the project site to adjacent shorelines. David Way points out that "fixed wings obviously require more runway" and usually "need about an open mile of water with clear approach and departure." If similar projects in the area were to be granted permits, a consistent distance from the shoreline would need to continue to be maintained to allow for approach and departure of fixed wing aircrafts. At over 1,000 feet from the project to the adjacent shorelines, this project and potential similar projects in the area would not cause cumulative impacts to dipping/scooping water because the DNR will "often work with local Sheriff's office or other entities to keep recreationists clear" of specific areas if they are needed for approach and departure of fixed wing aircrafts or helicopters.

The Aquaculture Siting Study (Exhibit 24) prepared for the Washington State Department of Ecology includes four general areas of potential cumulative impacts: biological, navigational, visual, and access. Biological concerns are addressed by the Habitat Management Plan (Exhibit 8). Navigational concerns are addressed through the US Army Corps of Engineers' Section 10 of the Rivers and Harbors Act process, which focuses on ensuring navigation of waterways. In addition to the information included in this response to Cumulative Impacts, see the County's response to MCC 17.50.210(b)(1)(K) regarding impacts to navigation. Visual concerns are addressed through the applications of MCC 17.50.145, 17.50.210(a)(10), 17.50.210(b)(1)(J) and 17.50.210(b)(1)(L). Potential similar projects in the area would need to meet those criteria and also follow the WA Department of Ecology's guidance on visual impacts by completing a visual impact assessment. Access concerns are addressed through the application of MCC 17.50.140. There are currently two public boat launches in the project area. If similar potential projects in

the area are proposed, additional public access within the area will need to be commensurate with the proposed development.

Finally, the project and any requests for like actions in the area must be in compliance with the Conservation Measures listed in the Programmatic Consultation (Exhibit 14). A programmatic Endangered Species Act/Essential Fish Habitat consultation for shellfish activities in Washington State inland marine waters ("Programmatic Consultation") was completed in 2016 between the U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. The Programmatic Consultation contains a thorough description and analysis of aquaculture activities and their potential impacts on listed species, critical habitat, and essential fish habitat. The Programmatic Consultation includes the following documents:

- *Programmatic Biological Assessment, Shellfish Activities in Washington State Inland Marine Waters, U.S. Army Corps of Engineers Regulatory Program, October 2015*
- *Programmatic Biological Opinion, National Marine Fisheries Service, September 2016*
- *Programmatic Biological Opinion for Shellfish Activities in Washington State Marine Waters, U.S. Fish and Wildlife Service, August 2016*
- *Revised ITS and Biological Opinion Errata, National Marine Fisheries Services, September 2016*

Altogether, the Programmatic consultation covers continuing and new shellfish farming activities over an anticipated 20-year timeline (until 2035) and contains a robust state-wide cumulative impacts assessment. As confirmed through email correspondence with Rory Lee of the US Army Corps of Engineers (Exhibit 17), it was determined that the proposed project meets the Programmatic Consultation "based on the system being defined as a floating/suspended bag system." The Programmatic Consultation sets limits on the amount of new aquaculture acreage that can be permitted within the South Puget Sound to avoid cumulative impacts. Any similar potential projects in the area would also need to meet the terms and conditions of the Programmatic Consultation, thus avoiding cumulative impacts.

Therefore, the project will not produce substantial adverse effects to the shoreline environment. If permits were granted for other developments in the area where similar circumstances exist, the total of those permitted uses would remain consistent with the policies of RCW 90.58.020 and the Mason County Shoreline Master Program.

VI. CONCLUSION.

The Hearing Examiner shall review proposed development according to the following criteria:

(1) The development does not conflict with the Comprehensive Plan and meets the requirements and intent of the Mason County Code, especially Title 6, 8 and 16.

(2) Development does not impact the public health, safety and welfare and is in the public interest.

(3) Development does not lower the level of service of transportation and /or neighborhood park facilities below the minimum standards established within the Comprehensive Plan.

Staff has verified that the proposed development does in fact comply with the Mason County Code, including Title 6 (Sanitary Code), 8 (Environmental Policy) and 16 (Subdivisions.). The project is not subject to Title 16. The project met the requirements of the Mason County Environmental Policy and the SEPA review was completed on May 4, 2023. The project will not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. The project will have no adverse impact upon health, safety, and welfare. The project is in the broad public interest as defined by the applicant in the Permit Application Addendum (Exhibit 11, Page 14).

Because the proposal is consistent with all applicable policies and use regulations, **staff recommends approval of the permit with the following conditions:**

CONDITIONS:

1. New public access, including alternatives to on-site, physical access, shall be required as specified in the Public Access Memorandum (Exhibit 23) and shall be available for public use prior to the completion of construction.
2. 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.
3. 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.
4. 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).
5. Construction of the project shall not commence until all required state and federal permits are obtained by the applicant.
6. All of the Conservation Measures listed in the Programmatic Consultation (Exhibit 14), must be implemented throughout the life of the project.
7. Regular maintenance and operation activities, as described in the Permit Application Addendum (Exhibit 11), shall utilize best management practices.
8. All vessels shall be in compliance with Mason County Code Title 9, and specifically Sections 9.04 and 9.36.
9. All vessel activity shall be restricted to daylight hours, including weekends. No work at night shall occur.
10. Navigational lighting shall be installed and limited to the minimum necessary per U.S. Coast Guard requirements.

11. Navigational aids, such as marker buoys, shall be installed in compliance with U.S. Army Corps of Engineers and U.S. Coast Guard requirements.
12. 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).
13. 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).
14. 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.
15. 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).
16. Water quality is not to be degraded to the detriment of the aquatic environment as a result of this project.
17. 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.
18. Construction of the project and ongoing project activities shall not cause extensive erosion or accretion along the adjacent shorelines.
19. 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.

VII. CHOICE OF ACTION:

1. Approval of SHR2023-0003.
2. Approval of SHR2023-0003 with conditions.
3. Deny (reapplication or resubmittal is permitted).
4. Deny with prejudice (reapplication or resubmittal is not allowed for one year).
5. Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.