

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECEIVED
DEC 17 2012
GENDLER & MANN, LLP

BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

TAYLOR SHELLFISH COMPANY, INC., a Washington corporation,)	No.
Petitioner,)	
v.)	PETITION FOR REVIEW
THURSTON COUNTY, a political subdivision of the State of Washington,)	
Respondent.)	

1. Identity of Appealing Party and Representative

Appellant Taylor Shellfish Company, Inc. ("Taylor Shellfish") is incorporated in Washington State. Taylor Shellfish's mailing address, telephone number and telefacsimile number are:

Taylor Shellfish Company, Inc.
130 SE Lynch Road
Shelton, WA 98584
Phone: (360) 426-6178
Fax: (360) 427-0327

Appellant's representative is Plauché & Carr LLP. The contact information for Plauché & Carr LLP is:

1 Plauché & Carr LLP
2 Samuel W. Plauché and Laura C. Kisielius
3 811 First Avenue, Suite 630
4 Seattle, WA 98104
5 Phone: (206) 588-4188
6 Fax: (206) 588-4255
7 Email: billy@plauchecarr.com; laura@plauchecarr.com

8 2. Identity of Other Parties

9 The respondent in this appeal is Thurston County. A citizen's group, Association
10 to Protect Hammersly, Eld and Totten Inlets ("APHETI"), participated in the proceeding
11 before the Thurston County Board of County Commissioners ("BOCC") on the final
12 decision that is being challenged in this Petition for Review. Through its attorneys,
13 APHETI submitted written briefing to the Thurston County BOCC and provided oral
14 argument at a public meeting held by the Thurston County BOCC on the decision that is
15 being challenged in this Petition for Review. APHETI also participated in the proceeding
16 before the Thurston County Hearing Examiner. Taylor Shellfish does not believe
17 APHETI qualifies as a "party" under WAC 461-08-350(2) or under the definition of
18 "party" set forth in WAC 461-08-305(8). However, in an abundance of caution, APHETI
19 is identified in this petition as a potential party to this proceeding to ensure compliance
20 with WAC 461-08-350(2). Taylor Shellfish will request the Shorelines Hearings Board
21 ("Board") determine whether APHETI is a party under WAC 461-08-350(2) at the first
22 scheduled prehearing conference.

23 3. Application for Shoreline Permit

24 A copy of the application for a shoreline permit which was filed with Thurston
25 County pursuant to RCW 90.58.140 is attached to this Petition for Review as Exhibit A.

1 4. The Decision Appealed

2 This is the appeal of Thurston County’s denial of an application for a Shoreline
3 Substantial Development Permit (“SDP”) for the proposed Taylor Shellfish North Totten
4 Inlet Mussel Farm. The application initially was denied by the Thurston County Hearing
5 Examiner. The denial subsequently was affirmed by the Thurston County BOCC.
6 Thurston County’s final decision on the permit application, made by the Thurston County
7 BOCC, is attached to this Petition for Review as Exhibit B. The Thurston County
8 Hearing Examiner’s initial and final decisions are attached to this Petition for Review as
9 Exhibit C.

10 5. Short and Plain Statement of Grounds for Appeal

11 The Thurston County BOCC erred in affirming the decision of the Thurston
12 County Hearing Examiner to deny an SDP for the proposed Taylor Shellfish North Totten
13 Inlet mussel farm. The initial application for the mussel farm was submitted in 1996. A
14 limited-scope Environmental Impact Statement (“EIS”) under the State Environmental
15 Policy Act (“SEPA”) was prepared for the mussel farm, beginning in 1998.
16 Environmental review of the project spanned over 12 years. The County retained an
17 Independent Technical Review Committee (“ITRC”) made up of five leading experts in
18 various shellfish and ocean science fields to review the environmental analysis. The Final
19 EIS concluded the mussel farm would result in *no significant adverse environmental*
20 *impacts*. The County staff recommended that the SDP for the proposed project be
21 granted, subject to certain specified conditions.

22 In denying the permit application, the Thurston County Hearing Examiner and the
23 Thurston County BOCC wrongly substituted their judgment for that of scientific experts.
24 They inappropriately ignored the goals and policies of the Shoreline Management Act
25 (“SMA”), Department of Ecology’s Shoreline Guidelines, and the Shoreline Master

1 Program for the Thurston Region (“SMPTR”) compelling approval of the permit
2 application. They erroneously interpreted Regional Criterion B of the SMPTR. And they
3 erroneously determined that the mussel farm required a cumulative impacts analysis.

4 Specifically, the County erred in concluding:

- 5 • Lack of information regarding the potential cumulative impacts of the
6 mussel farm with regards to its potential effects on dissolved oxygen,
7 benthic life, and significant spreading of or genetic pollution by Gallo
8 mussels justified denial of the permit application.
- 9 • Lack of sufficient information regarding the mussel farm’s potential effects
10 on benthic life justified denial of the permit application.
- 11 • Lack of sufficient information regarding mussel farm’s potential effects on
the native mussel and the wildlife species that feed on it justified denial of
the permit application.

12 6. Statement of Facts

13 Taylor submitted an application for an SDP for the North Totten Inlet mussel farm,
14 together with a SEPA checklist, to the County on November 13, 1996. Taylor’s original
15 proposal was twice reduced in scope to eliminate or minimize concerns raised by the
16 County or the public during the review process.

17 The Thurston County Hearing Examiner required a limited-scope EIS to examine
18 the impacts of the mussel farm on bottom-dwelling organisms, the surrounding water
19 column, phytoplankton resources and marine navigation, and impacts that could be caused
20 by the escapement and propagation of mussels. Taylor retained a team of technical
21 consultants in 1999 to conduct the investigations and analyses required to prepare the EIS.

22 The County selected a team of scientists to serve on an Independent Technical
23 Review Committee (“ITRC”) to review and comment on all documents prepared by
24 Taylor consultants, including the original scope of work, study protocols and
25

1 methodology, and findings and conclusions described in technical reports. These
2 scientists, recognized experts in their fields, include:

- 3 • *Jack Rensel, Ph.D.* (Rensel Associates Aquatic Science Consultants) –
4 phytoplankton, algal blooms, and effects on benthic organisms and finfish;
- 5 • *Mitsuhiro Kawase, Ph.D.* (University of Washington School of
6 Oceanography) – flushing characteristics (circulation) and water quality
7 (eutrophication);
- 8 • *Jan Newton, Ph.D.* (University of Washington, Applied Physics Lab) –
9 water quality (nutrients and dissolved oxygen) and phytoplankton
10 productivity;
- 11 • *Ralph Elston, Ph.D.* (AquaTechnics, Inc.) – mussel genetics, including
12 potential escapement and competition issues; and
- 13 • *Roger Newell, Ph.D.* (University of Maryland, Horn Point Laboratory) –
14 water column and benthic community effects.

15 The County released a Draft EIS (“DEIS”) in 2010. The DEIS was accompanied
16 by a series of technical reports, all of which were reviewed by the ITRC. The DEIS
17 concluded, based on these technical reports and analyses prepared during the extensive
18 environmental review, that the project would not result in any significant unavoidable
19 adverse impacts to the following specific resources and uses: water circulation; dissolved
20 oxygen; silicate, phosphorous or dissolved inorganic nitrogen; phytoplankton;
21 macroalgae; zooplankton; benthic organisms; genetic make-up of native mussel
22 populations; fish or fish habitat; marine mammals; bald eagles, marbled murrelets,
23 bulltrout, Puget Sound Chinook salmon, steelhead trout or Southern Resident killer whale;
24 and vessel traffic.

25 The County received written and oral comments on the DEIS during a 45-day
public comment period. The County and its consultants meticulously and
comprehensively responded to these comments in the Final EIS (“FEIS”). In response to
some comments, additional research was conducted and analysis performed. The FEIS

1 was issued November 7, 2011, again concluding the proposed mussel farm would not
2 result in any significant adverse environmental impacts. All told, the environmental
3 review of this project spanned a period well in excess of 12 years and resulted in costs to
4 Taylor (consulting fees, legal fees, payment for the County's consultants and the ITRC
5 members) well in excess of \$1,000,000.

6 Thurston County staff recommended approval of the proposed mussel farm to the
7 Thurston County Hearing Examiner, with specified conditions. A copy of the February
8 13, 2012, Thurston County Resource Stewardship Land Use & Environmental Review
9 Section Report is attached to this Petition for Review as Exhibit D. The Hearing
10 Examiner acknowledged the mussel farm was "one of the most thoroughly reviewed
11 proposals that has been presented to Thurston County." The facts established below, and
12 that again will be established before the Board, demonstrate the proposed mussel farm is
13 consistent with the SMA, Department of Ecology's Shoreline Guidelines and the SMPTR.
14 Specifically:

- 15 • The mussel farm is water dependent and a preferred use of the shoreline
16 environment.
- 17 • The mussel farm is "an activity of statewide interest."
- 18 • The mussel farm will "result in long-term over short-term benefit and can protect
19 the resources and ecology of the shoreline" by providing beneficial three-
20 dimensional habitat and reduction of nutrient pollution through filtration.
- 21 • The mussel farm advances Thurston County's policies to encourage aquaculture
22 uses and utilize shorelines with high aquacultural potential.
- 23 • The environmental impacts of the mussel farm were thoroughly analyzed,
24 revealing no significant adverse environmental impacts.
- 25 • The mussel farm's impacts on nitrogen loading will be significantly beneficial to
South Puget Sound.

- 1 • The mussel farm furthers the intent of the SMPTR’s Conservancy Environment to
2 achieve sustained resource utilization.
- 3 • The mussel farm will provide increased opportunities for public access to the
4 shorelines of the state.

5 The North Totten Inlet mussel farm epitomizes an appropriate use of the shorelines
6 contemplated by the SMA. It is water dependent, an activity of statewide interest, results
7 in long-term over short-term benefit, provides a net ecological benefit to the shoreline
8 ecosystem, and promotes the utilization of shorelines for economically productive uses.
9 The mussel farm is not only consistent with the SMPTR, but furthers many of its goals
10 and policies.

11 The Thurston County Hearing Examiner, although presented with “one of the most
12 thoroughly reviewed” proposals presented to the County, stated he did not have sufficient
13 evidence regarding certain specified potential environmental impacts to approve the
14 mussel farm. He stated, although the independent experts selected by the County all
15 agreed the mussel farm would not result in significant adverse environmental impacts, that
16 a cumulative impacts analysis on certain environmental issues was required before he
17 could approve the farm. On these bases, the Hearing Examiner erroneously denied the
18 SDP application for the proposed mussel raft, and the Thurston County BOCC
19 erroneously affirmed such denial.

20 7. Relief Sought

21 Taylor Shellfish requests the following specific relief:

- 22 a. An order and judgment reversing Thurston County’s denial of the SDP
23 application and issuing the permit with the conditions recommended by Thurston County
24 Resource Stewardship Land Use & Environmental Review Section staff on page 11 of its
25 report dated February 13, 2012 (attached to this Petition for Review as Exhibit D).

1 b. In the alternative, an order and judgment reversing Thurston County's
2 denial of the SDP application and remanding the permit to Thurston County with
3 instructions to issue the permit with only those conditions recommended by Thurston
4 County Resource Stewardship Land Use & Environmental Review Section staff on
5 page 11 of its report dated February 13, 2012 (attached to this Petition for Review as
6 Exhibit D).

7 Dated this 13th day of December, 2012.

8 PLAUCHÉ & CARR, LLP

9
10 By: 

Samuel W. Plauché, WSBA #25476

Laura C. Kisielius, WSBA #28255

Attorneys for Petitioner Taylor Shellfish