

1 SHORELINES HEARINGS BOARD
2 STATE OF WASHINGTON

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JAN 16 2013

GENDLER & MANN, LLP

3 TAYLOR SHELLFISH COMPANY, INC.,

4 Petitioner,

SHB No. 12-012

5 v.

PRE-HEARING ORDER AND ORDER
ON INTERVENTION

6 THURSTON COUNTY,

7 Respondent.

8 and

9 ASSOCIATION FOR THE PROTECTION
OF HAMMERSLY, ELD AND TOTTEN
10 INLETS,

11 Respondent Intervenor.

12 On December 17, 2012, Petitioner Taylor Shellfish Company, Inc. filed a petition with
13 the Shorelines Hearings Board ("Board") for review of a King County decision, dated June 18,
14 2012.

15 A pre-hearing conference was held on January 3, 2013. Administrative Appeals Judge
16 Joan M. Marchioro presided for the Board. Attorney Laura C. Kisielius appeared on behalf of
17 the Petitioner. Attorney Elizabeth Petrich appeared on behalf of Respondent Thurston County.
18 Attorney David S. Mann appeared on behalf of Association to Protect Hammersly, Eld and
19 Totten Inlets (APHETI). Based on the conference, the Board enters the following Pre-Hearing
20 Order:
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I. INTERVENTION

On December 31, 2012, the Board received a letter from Mr. Mann stating that his client, APEHTI, wanted to intervene in the proceeding and requesting that he be permitted to participate in the pre-hearing conference. Receiving no objection to the request, the Board permitted Mr. Mann to participate.

During the pre-hearing conference, Mr. Mann stated that APHETI wanted to intervene in the case in support of the decision under appeal. The Board asked counsel for the Petitioner and Thurston County whether they objected to APHETI's request to intervene and was informed that there was no objection. Therefore, the Board grants APHETI's request to intervene. APHETI is added to the caption as an Intervenor-Respondent and is subject to the terms and conditions of this Pre-Hearing Order.

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II. HEARING

The hearing in this matter is set for **April 22-23, 2013**, commencing at **9:00 a.m.** at the Board's office in Tumwater, Washington. Parties shall be prepared to proceed to hearing on that date.

III. MEDIATION AND SETTLEMENT

The parties are requested to notify the Board jointly by **March 22, 2013** if there are significant settlement possibilities in the case. The parties have been informed that mediation is a no-cost service provided by the Environmental and Land Use Hearings Office. If mediation is desired the parties should notify the Environmental and Land Use Hearings Office by telephone or in writing.

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IV. LEGAL ISSUES

The parties submitted and agreed to the following legal issues, which will govern the case:

1. Did Thurston County err in denying a shoreline substantial development permit for the proposed Taylor Shellfish North Totten Inlet Mussel Farm on the basis that a formal cumulative impacts analysis should have been performed pursuant to the Shoreline Management Act, specifically regarding dissolved oxygen, the effects on benthic life of Beggiaotoa and sulfide levels, and the spreading of or genetic pollution by Gallo mussels, particularly considering an Environmental Impact Statement prepared for the mussel farm concluded the mussel farm would not result in any significant adverse environmental impacts?
2. Did Thurston County err in denying a shoreline substantial development permit for the proposed Taylor Shellfish North Totten Inlet Mussel Farm on the basis that additional information regarding the mussel farm's potential effects on benthic life through sulfide levels, deposition of organic material and generation of Beggiaotoa was required, particularly considering an Environmental Impact Statement prepared for the mussel farm concluded the mussel farm would not result in any significant adverse environmental impacts?
3. Did Thurston County err in denying a shoreline substantial development permit for the proposed Taylor Shellfish North Totten Inlet Mussel Farm on the basis that additional information regarding the mussel farm's potential spread or hybridization of Gallo mussels was required, particularly considering an Environmental Impact Statement prepared for the mussel farm concluded the mussel farm would not result in any significant adverse environmental impacts?

V. MOTIONS

For dispositive motions, responses, and replies, **an original and six (6) copies** of the pleading and supporting documents shall be filed with the Presiding Officer. For non-dispositive motions an original and 1 (one) copy is needed. **All copies and attachments shall be three-hole punched.**

1 Board and served on the other parties by **April 8, 2013**. An **original and six (6) copies** shall be
2 filed. All exhibits must be introduced in connection with a witness' testimony or referred to in
3 argument. Parties are asked to submit into evidence only those portions of voluminous
4 documents actually being referred to or relied upon by a witness.

5 When meeting with the Presiding Officer prior to the commencement of the hearing, each
6 party shall have available an **original and six (6) copies** of its exhibits and exhibit lists which
7 shall identify those stipulated to by the parties, and spaces for indicating whether each exhibit
8 was offered, admitted or excluded. Each exhibit shall be pre-marked by a tab for identification
9 (P-1, P-2, etc., for petitioner; R-1, R-2, etc., for respondent), and so identified on the exhibit lists.
10 All oversized exhibits shall be marked with the case number. The number given to an exhibit
11 does not limit the order of its introduction at hearing. Any exhibit listed by one party may be
12 introduced by another party. Voluminous exhibits (over 100 pages) shall be three-hole punched
13 for the Board's convenience.

14 **VII. DISCOVERY**

15 The parties have agreed to complete discovery by **March 8, 2013**, except for witnesses
16 identified for the first time in the final witness list. These witnesses may be deposed after the
17 discovery cut-off. If formal discovery is pursued, parties should pay particular attention to the
18 time requirements imposed by the superior court civil rules with regard to interrogatories,
19 depositions, etc. Discovery requests shall be served sufficiently ahead of the discovery deadline
20 so that the opposing party has the response time allowed by these rules. (For example, responses
21 to interrogatories are typically due thirty (30) days after service. See CR 33.)

1 The parties shall endeavor to resolve any discovery disputes among themselves. If a
2 dispute cannot be resolved, any party may file a motion, provided the motion is accompanied by
3 an affidavit reciting efforts to resolve the discovery dispute. Any motions to compel discovery
4 must be filed and served by the discovery cutoff date. An **original and one (1) copy** of
5 discovery motions and supporting documents, including a proposed order, must be filed with the
6 Presiding Officer.

7 Depositions, interrogatories, requests for production or inspection, requests for admission
8 and the responses shall not be filed. It is the initiating party's responsibility to maintain the
9 original together with answers to interrogatories and to make them available for the proceedings.

10 **VIII. BRIEFS**

11 Pre-Hearing Briefs are required. If submitted, they shall be filed and served no later than
12 **April 15, 2013**, with an **original and six (6) copies** for the Board. Briefs are limited to fifteen
13 (15) pages absent an order granting a motion to lengthen. If a citation is made to a case other
14 than a Board Decision, Wn.App. or Wn.2d case, a complete copy of the referenced citation must
15 be filed.

16 **IX. COMMUNICATION**

17 **COMMUNICATION/CONTACT:** All correspondence and filings with the Board shall
18 be sent to the attention of the Presiding Officer with copies sent at the same time to all other
19 parties.

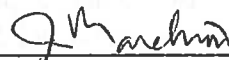
20 The Board does not accept e-mail correspondence directed to the presiding officer.
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Due date	Description
February 18, 2013	Dispositive Motions must be filed
March 8, 2013	Discovery cutoff
March 22, 2013	Joint Status Report due
April 1, 2013	Final Exhibit Exchange
April 8, 2013	Final Witness Lists due
April 8, 2013	Final Exhibit Lists due
April 15, 2013	Prehearing Briefs due
April 22-23, 2013	Hearing dates

SO ORDERED this 9th day of January, 2013.

SHORELINES HEARINGS BOARD



JOAN M. MARCHIORO, Presiding
Administrative Appeals Judge