

# GENDLER & MANN, LLP

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December 1, 2006

Michael Welter, Director  
Thurston County Development Services  
Building 1, Second Floor  
2000 Lakeridge Dr., SW  
Olympia, WA 98502

Re: Shoreline Substantial Development Permit SH-TCO-92-009  
Taylor United, Ltd.

Dear Mr. Welter:

I write on behalf the Association for the Protection of Hammersley, Eld and Totten Inlets ("APHETI") to bring your attention to what appears to be ongoing violations of the terms of Thurston County's Shoreline Substantial Development Permit SH-TCO-92-009 issued to Taylor United, Ltd., for the operation of mussel rafts in Gallagher Cove, Totten Inlet. A copy of that permit is attached.

On November 3, 2006, a team of two professional divers with lights and cameras dove in the vicinity of the mussel rafts operated under this lease. What they discovered is startling and, we believe, requires prompt action. The dive was conducted without touching or otherwise interfering with the mussel rafts or protective netting. The dive was, however, conducted close enough to observe and photograph the seabed underlying the mussel rafts.

The bottom conditions are significantly disturbed and show evidence of substantial abuse. The divers observed the following conditions:

- At least three or more inches of "sludge" covered the entire area underneath and adjacent to the existing mussel rafts.
- Instead of a protective net enclosing the mussel ropes and floating above the seabed, the divers observed funneled nets flared from the center floats to the bottom and anchored with brick-like weights.

- The entire area was covered with mussel shell debris.
- The entire area was spread with debris including sheet metal and PVC.
- A large growth of white matting, very likely *Beggiatoa* was spread throughout the area.
- At least three large clumps of an aggressive colonial tunicate were present.
- No evidence of algae or other plant life was present.
- The entire benthic layer under the rafts and surrounding area appeared significantly compromised and indeed like a "dead-zone."

The divers did collect at least one hand sample of the material beneath the nets. This sample was sealed and provided to Dr. Joel Elliot, at the University of Puget Sound's Department of Biology. Upon examination Dr, Elliot has concluded:

It is clear that one of your samples had a lot of *Beggiatoa* in it. As for the sediment from the sample with all of the *Beggiatoa*, there was a high concentration of hydrogen sulfide in the porewater as you know from the rotten smell. This is consistent with the conditions where you find the growth of surface mats of *Beggiatoa*.

Obviously, the presence of high levels of hydrogen sulfide and *Beggiatoa* is not consistent with a healthy ecosystem. It is far more indicative of an oxygen depleted deadzone - again consistent with the diver's observations.

We write to you (and similarly to DNR) because you retain regulatory control over this situation. First, as the agency responsible for permitting and enforcement of the Shoreline Management Act, Thurston County is charged with ensuring that the goals, policies and requirements of the SMA are met. This includes, of course, the SMA's policy of "protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life." RCW 90.58.020. Obviously what is going on at this site is not in keeping with the policy of the SMA or Thurston County's permit. On this basis alone, Thurston County should act to rescind the current permit and, in conjunction with the Department of Natural Resources, require prompt restoration of this site.

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Second, the information discovered by this dive certainly provides "new information indicating a proposal's probable significant adverse environmental impacts." While Thurston County originally issued a Determination of Non-Significance for this project, this new information confirms that the DNS was incorrect. As such, Thurston County is required by SEPA to prepare a new threshold determination for this project.<sup>1</sup> Until further and complete environmental review has been completed, Thurston County should take immediate action to rescind this permit and prohibit further operations of these mussel rafts.

We ask for your prompt attention this matter. We ask further that you respond to this complaint in writing.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP

David S. Mann

cc: Governor Christine Gregoire  
Gordon White, Department of Ecology  
Lindie Schmidt, Department of Natural Resources  
Jeffrey P. Koenings, Department of Fish and Wildlife  
Representative William Eickmeyer  
Representative Patricia Lantz  
Ron Schultz, Puget Sound Action Team

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<sup>1</sup> As you are probably aware, subsequent to approval of the shoreline permit for this particular set of mussel rafts, Thurston County determined that additional mussel rafts in Totten Inlet required preparation of an Environmental Impact Statement. After several years, that EIS remains pending.