

Three Bays Preservation, Inc.
864 Main Street
PO Box 215
Osterville, MA 02655

November 26, 2007

Mr. John Klimm, Town Manager
Town Manager's Office
Barnstable Town Hall
307 Main Street
Hyannis, MA 02601

Re: Application for Renewal of Aquaculture Licenses
Cape Cod Oyster Co., Inc.

Dear Mr. Klimm:

Three Bays Preservation, Inc. (Three Bays) opposes the renewal of the aquaculture licenses in West Bay and North Bay for Cape Cod Oyster Co. Three Bays opposes the renewal of these licenses for the following reasons: (a) We understand the current licenses of the applicant may have expired on November 6, 2007. If that is the case, under the provisions of MGL Chapter 130 Section 58, the applicant has failed to renew the licenses in a timely fashion and therefore the licenses may not be renewed; (b) Three Bays supports comprehensive water sheet zoning and does not believe the granting of individual aquaculture licenses without a comprehensive management plan for the Three Bays is an effective way to deal with the ever increasing competing uses of the Three Bays area; (c) In the ten years since these licenses were last renewed we have experienced dramatically increased recreational and commercial uses throughout the Three Bays and in particular in West Bay. The location of the three grants under consideration in West Bay (grants 201, 202 and 203) are no longer appropriate for the exclusive use of a single license holder; (d) The applicant has repeatedly failed to comply with town regulations regarding the operation of these grants and should not be rewarded for its' conduct with a renewal of these licenses.

Three Bays Preservation was formed over ten years ago by local property owners concerned about the ongoing degradation of the water quality throughout the Three Bays and about protecting Dead Neck and Sampson's Island, two unspoiled barrier beach islands that are a unique nesting area for a number of protected shore birds. Several years ago Mrs. Paul Mellon gifted Dead Neck to Three Bays and we now partner with the Massachusetts Audubon Society to protect the fragile environment of Dead Neck and Sampson's Island and the birds that nest there. We have also, in conjunction with the Town of Barnstable, engaged in numerous dredging projects to improve the tidal flow of water, and we are actively engaged in the Massachusetts Estuaries Project for the long term improvement of water quality in the Three Bays.

Over the ten years of our existence we have witnessed a dramatic increase in the various competing interests for the use of the Three Bays and requests by various stake holders for implementation of regulations concerning their specific interests. For example, we have seen the Town adopt an overlay district regarding the construction of docks in Cotuit Bay, the proposed adoption for a recreational shellfish relay overlay district and a request to restrict certain types of gear in the aquaculture grant areas. A comprehensive management plan for the Three Bays would provide the Town with proper planning and put an end to the “spot zoning” created in reaction to the wishes of certain groups. Until such a comprehensive plan is put in place, we believe it is not in the public’s interests to grant a ten year license to the exclusion of the public at large.

Until such a management plan is implemented, the Town has no choice but to consider the renewal of aquaculture licenses on a case by case basis. West Bay may have been an appropriate area twenty years ago, or ten years ago when the grants were renewed, for an exclusive use for the benefit of a single operator in grant areas 201, 202 and 203, but that is not the case today. In your recent decision regarding the application of the President of Cape Cod Oyster in Popponessett Bay, you correctly decided the public’s interest should outweigh that of a single commercial user. West Bay has many of the very same attributes of Popponessett Bay and your reasoning in that case, cited below, applies here:

- “The public demand for non-exclusive use of limited town marine resources has increased dramatically and continues to do so while the availability of marine resources and natural marine habitat to the public continues to decline”
- “The issuance of this license would place the private business interests of the few above the compelling interests of the public to preserve the nonexclusive, multi use of the public’s pristine marine environment....”
- “The issuance of this aquaculture license would be contrary to the Town’s obligation to protect and preserve the existing fisheries and to minimize the impact on other uses of the marine environment as set forth in the Town’s Shellfish Regulations, Section 407-46.”

In addition to the foregoing, you decided in the application for a grant in Popponessett Bay that such a lease “...would have an adverse impact on the Town’s effort to promote the orderly and fair regulation of aquaculture consistent with the Town’s aquaculture regulations.” The reasons you cited in your decision apply here as well. Cape Cod Oyster’s failure to comply with Town regulations in the past is a factor to be considered in determining whether they should be entrusted with the privilege of renewing their existing licenses and the conduct of the President of Cape Cod Oyster during 2006 and 2007 mitigates against the renewal of a license in the pristine marine environment of West Bay.

Three Bays supports well managed aquaculture grants in appropriate locations. Three Bays has offered in the past and renews the offer today to enter into a program with the Town for the propagation of shellfish for the benefit of the public in a designated area in West Bay. We offer to the Town the assistance of our staff, our equipment and some monetary support for such a program. We propose to clean up the area of discarded gear, prepare the area for the introduction of shellfish and assist in the implementation of a long term plan for the benefit of the public. In the event this plan is successful, we would propose to expand it to other areas in the Three Bay area. We sincerely hope the town will consider our proposal.

Thank you for your consideration in this matter.

Sincerely,
Three Bays Preservation, Inc.

By: _____
William Gahagan, President