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DEPARTMENT OF ECOLOGY
SHORELANDS AND ENVIRONMENTAL ASSISTANCE PROGRAM
SHORELINE MANAGEMENT ACT RULE MAKING 2010
DEPARTMENT OF ECOLOGY AUDITORIUM
BEV POSTON, HEARING OFFICER
SEPTEMBER 14, 2010

Anna Hirsch, Transcriptionist
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003

1 MS. POSTON: Okay, let the record show that it is
2 7:06pm on Tuesday, September 14th, 2010 and this public
3 hearing is being held at the Ecology Headquarters Auditorium
4 located at 300 Desmond Drive, Lacey, Washington.

5 This hearing is about the proposed updates to the
6 Shoreline Management Act Rules, Washington Administrative
7 Code 173-18, 173-20, 173-22, 173-26 and 173-27. Legal ads
8 of the public comment period and hearings were published on
9 or around the following dates, August 18th, August 25th,
10 September 1st and September 8th. And they were in the
11 following papers, The Idaho Lewiston Morning Tribune, The
12 Aberdeen Daily World, The Bellingham Herald, the
13 Bremerton/Kitsap Sun, The Centralia Chronicle, The
14 Ellensburg Daily Record, The Everett Daily Herald, The
15 Kennewick/Tri City Herald, The Longview Daily News, The
16 Moses Lake/Columbia Basin Herald, The Olympian, The Port
17 Angeles/Peninsula Daily News, The Seattle Times, Skagit
18 Valley Herald, The Spokane Spokesman Review, Tacoma News
19 Tribune, Vancouver Columbian, The Walla Walla Union
20 Bulletin, The Wenatchee World, The Yakima Herald Republic,
21 The Goldendale Sentinel, The Stevenson/Skamania County
22 Pioneer and The White Salmon Enterprise.

23 Ecology also placed information about the comment
24 period on the rules -- and the rules updates on the hearings
25 on the ecology website and on the agency public involvement

1 calendar. A rule proposal notice was emailed on August
2 17th, 2010 to a list serve made up of local government
3 planners in shellfish and environmental interests. Ecology
4 also sent emails or letters in August 2010 to legislators
5 and tribes interested in geoducks.

6 Okay, wow that was a mouthful. At this time we have
7 Miss Diane Cooper who has indicated she would like to
8 present her testimony. And you may begin.

9
10 **Testimony of Diane Cooper**

11 Thank you. And thank you to Ecology for the
12 opportunity to comment and all the work that has been done.
13 It is appreciated. My comments are going to be general in
14 nature and we're going to provide pretty detailed written
15 comments before the -- the October 18th deadline. I'm going
16 to focus on two major concerns and others are going to focus
17 on some other concerns.

18 Number 1, the changes that Ecology proposes we believe
19 go well beyond the recommendations of SARC and the intent of
20 the legislature. As you know I represented the Puget Sound
21 growers on SARC and during that process. And that really is
22 -- that was a significant investment of time and energy, not
23 just by me, but by others and Ecology. We believe that the
24 SARC recommendation should be fully considered and be
25 reflected in the new rules. Most SARC members recommended

1 that Ecology develop a guidance document, which we talked
2 about earlier, or BMP's that could be updated as the sea
3 grant science unfolds and practices evolve.

4 Because the rules are -- are more prescriptive and more
5 detailed they very well will likely be implemented and the
6 practices will be outdated or the rules will be outdated
7 before the practices are implemented. And they're certainly
8 uninformed by the science at this point.

9 We are concerned with several specific geoduck
10 provisions specifically the buffer requirements, survey
11 requirements, the limiting areas for planting, harvesting
12 and predator exclusion devices, the use of motorized
13 equipment. We have no idea and it's not really indicated
14 how local governments and local planners are going to assess
15 these limitations or what they're going to use to assess
16 them.

17 Number 2, Ecology should not proceed given that the
18 small business economic impact statement on your own
19 analysis concluded that there's going to be a
20 disproportionate impact to small businesses. The mitigation
21 that's offered is -- is inadequate. Small business economic
22 impact statement is inadequate because it examined only one
23 of the 15 limits and conditions in any detail. And it made
24 assumptions regarding cost of permitting that are
25 significantly less than the actual cost of opinion and

1 complying with the conditional use permit.

2 And moreover the one issue that Ecology did assess, the
3 buffer requirement, concluded that there would be a
4 disproportionate impact on small business and then offered
5 little or no mitigation to that impact.

6 While I represent a larger grower, our industry I think
7 is unique in that its vitality and -- and viability and its
8 overall success is really dependent on having both small and
9 large growers. Having the small businesses impacted is
10 really unacceptable and it threatens the whole industry.

11 Finally, it's important to recognize that we are -- our
12 industry is currently being challenged by a number of
13 conflicts. Many of the challenges are result of land use
14 conflicts that result from shorefront property owners and
15 working farms. This is not unlike many of the challenges
16 that other natural resource industries have faced in this
17 state. It's critical that the state provide appropriate
18 guidance to local jurisdiction that allows the continued
19 existence and growth of our industry.

20 We've heard from the state from their -- at various
21 levels. We've heard from the governor all the way down to
22 agency staff that the shellfish industry is critical to the
23 state and that it's important to the state.

24 Ecology, you have the opportunity now to prove it and
25 acknowledge a long history, our economic and cultural

1 significance and our beneficial contributions to the marine
2 environment. Thank you.

3 MS. POSTON: Thank you. Okay, Ms. Stock. Hello?
4

5 **Testimony of Amanda Stock**

6 Hi, my name is Amanda Stock with Plauche and Stock and
7 I'm here on behalf of Taylor Shellfish this evening. Thank
8 you for the opportunity to comment. As Ms. Cooper just
9 mentioned, we're both providing comments that are general in
10 nature and we will be following up with detailed written
11 comments in addition to testimony at this hearing.

12 And Ms. Cooper spoke about two issues that are of -- of
13 primary concern to Taylor and I'm going to speak about a --
14 a separate issue that's also of great concern to us and --
15 and other growers in the community. And that pertains to
16 the changes that are being proposed that are applicable to
17 all aquaculture not just to geoduck. And the changes that
18 Ecology is proposing represent a significant departure from
19 Ecology's current policy with regards to aquaculture in
20 general.

21 The changes that are proposed remove important water
22 quality protections and place aquaculture at the end of the
23 line when balancing conflicting preferred shoreline uses
24 including navigation. And although this is I think what
25 we've all acknowledged as sort of a -- a shortened rule

1 making process that's at a timeline, it's really come out of
2 the -- the end of a very long exhaustive process that not
3 only the aquaculture stakeholders but Ecology and I know
4 many other people in this room spent an incredible amount of
5 time working on these recommendations coming out of SHB22-
6 20, the SARC process and all the conversations that went
7 around coming up with a set, you know, agreed on
8 recommendations to Ecology. And then the subsequent
9 comments that the growers including Taylor submitted as
10 Ecology was draft -- was drafting these rules.

11 And with regards to the changes that are applicable to
12 all of aquaculture that remove the significant protections
13 represent a change at the end of a very long process that
14 doesn't feel like a -- frankly a logical end to all of the
15 work that went into coming up with these recommendations.
16 And as a result growers are frustrated and discouraged and
17 they're angry and they're at a loss.

18 And with regard to these changes that are applicable to
19 all of aquaculture, which include retaining subsistence
20 commercial and recreational shellfish beds as critical
21 saltwater habitats retain the language stating that
22 aquaculture is an activity of statewide interest and that
23 properly managed it can result in long term over short term
24 benefit and can protect the resources and ecology of the
25 shoreline. And that includes also the language that's

1 proposed to be removed that states that aquaculture is water
2 dependent and a preferred use of the shoreline.

3 As well as some of the things that -- that Ms. Cooper
4 referenced the -- that the fact that Ecology proposed
5 changes go well beyond the recommendations of SARC and that
6 the small business economic impact statement doesn't really
7 adequately take into account the impacts to the growers.

8 And as I mentioned we're going to be following up with
9 written comments and we urge you to carefully consider the
10 written comments that we'll be submitting in -- in response
11 to Ecology's proposed changes. Thank you.

12 MS. POSTON: Okay. Thank you. Okay, Mr.
13 Bloomfield. Hi.

14
15 **Testimony of Tom Bloomfied**

16 I'm just -- I'll keep this even more brief. I'd like
17 to -- to start by saying thank you for the opportunity to
18 testify. I would like to speak to the economic impact of
19 the proposed changes.

20 On a very personal level for the last eight years I
21 have been salting away money with the idea and the business
22 plan to start my own small farm. And if these rules are
23 adopted as proposed that idea will be shelved because I
24 believe that that will create a business environment that is
25 not attainable for a small business.

1 I would also like to formally request specific examples
2 of aquaculture that is not water dependent. I don't believe
3 that can exist so if you can provide that that would be
4 great. Thank you.

5 MS. POSTON: Okay. Thank you so much. Mr. Allen.

6 MR. ALLEN: Okay. Want me to start?

7 MS. POSTON: Go ahead.

8
9 **Testimony of Brian Allen**

10 All right. I'm sorry, I'm a little punchy I've been up
11 on the low tide last night (inaudible) this morning so. My
12 name is Brian Allen I am a small business owner in Thurston
13 County and a aquaculture farmer. I haven't had a -- a lot
14 of time to review the proposed rule changes so I'm -- I just
15 wanted to be here and -- and say something and then we're --
16 I'm going to submit written comments so look for those.

17 But things have changed quite a bit in the last five
18 years for us shellfish farmers. And I think if I were to
19 think of start -- starting a -- a shellfish farming business
20 today I probably wouldn't simply because the -- there has
21 been such a sea change of regulatory oversight. We haven't
22 had any new project development in three years because of
23 it.

24 And so when I see things like requiring conditional use
25 permits and the guidance to local jurisdictions it seems to

1 me to be overreaching. I think that Ecology has plenty of
2 opportunity for regulatory oversight already with the 401
3 and of course it's own management process. And that the
4 local counties should be able to determine on their own how
5 to regulate shoreline activities.

6 The other thing I want to say is -- is that I'm growing
7 world class seafood right here and I'm doing it without
8 chemicals and without hormones (inaudible) feeding them and
9 I will -- that's where I'll leave it.

10 MS. POSTON: Okay. Thank you. Mr. Wishart. Hi.

11
12 **Testimony of Bruce Wishart**

13 Hi. Thank you for the opportunity to comment. I'm
14 Bruce Wishart also a member of the SARC and -- and glad as
15 many of you are to be nearing the end of this long process.
16 Representing People For Puget Sound and the environmental
17 community tonight. I -- I'll try and make my comments
18 brief. We will be also submitting written comments and we
19 hope to continue the dialogue with everyone in the room and
20 all the other stakeholders as we work to finalize the rule.
21 I think we've had a good constructive discussion and
22 probably will continue to do so up until the final draft of
23 the rule comes out.

24 But to start with thank you to Ecology for all your
25 hard work pulling this proposal together. We do see some

1 improvements in this version of the rule as opposed to the
2 pre-draft rule. I think there's been some clarification
3 it's certainly easier to read and interpret.

4 I'd like to start by indicating our support for the
5 conditional use permit requirement, the language beginning
6 on Page 73. We very much support the idea of clear
7 direction to local governments in terms of buffers and best
8 management practices. We think that's appropriate. And
9 while the conditions and the rule and the requirements to
10 the rule are not as prescriptive as we would have preferred,
11 we actually prefer numeric buffers and -- and other more
12 prescriptive standards to ensure protection of habitat, we
13 do understand, you know, that were compromises made and this
14 is -- this the middle ground.

15 We appreciate the inclusion of the baseline survey
16 requirement in this version of the rule. We do have a few
17 concerns with this -- the conditional use permit section
18 though. And one of them is that it now appears and -- and
19 we were disturbed to find that monitoring and reporting
20 requirements now seem to be optional, left to the discretion
21 of local governments. We think that some level of
22 monitoring and reporting should be required and spelled out
23 in the guidelines.

24 We were also concerned with new language that seems to
25 make conversion of areas of non-geoduck aquaculture to

1 geoduck aquaculture not necessarily subject to a conditional
2 use permit. And we're not clear what the intent was there
3 but we'd like to continue talking about that with you.

4 On Page 30 changes have been made to a section
5 regarding designation of preferred uses. Our goal is to
6 ensure that when local governments are conducting planning
7 that they designate environmentally significant areas first
8 and then subsequently other preferred uses. I think that's
9 the intent of Ecology, that's been their longstanding
10 position in this area and that's what the guidelines had
11 originally said.

12 I know there's been an attempt to clarify this language
13 but we still think area needs some work and so we -- we want
14 to continue working on that section of the rule.

15 We do have several other comments and -- and a lot of
16 specifics. I'll probably leave that for the written
17 comments and -- and appreciate the opportunity tonight to
18 speak. Thank you.

19 MS. POSTON: Okay. Thank you. Okay, at this time
20 no one else has indicated on the sheets that they would like
21 to provide testimony so I'm opening it up. Is there anyone
22 out here? Please come forward, Sir. Yes. You were the
23 first one with your hand up in the air. And if you could
24 state your name for the record and go ahead and begin
25 talking then.

1 and high school and grade school students who want to do
2 something on the shoreline. And it's -- it's probably very
3 difficult. So I'd like to see something in the regulations
4 that projects are designed primary for shoreline improvement
5 that ecology tried to modify our JARPA permit process, the
6 Joint Aquatic Resources Permit Application, to allow -- we
7 have a couple cases in there we used the JARPA for speeding
8 the process and making the fees minimal. If we had another
9 little line in there that said, "For shoreline restoration
10 work that's designed primary to help the shoreline these
11 will also be able to go through the speedier process, JARPA
12 process." This would allow a lot of us as our funding gets
13 minimal and we got people who want to volunteer and do stuff
14 they certainly don't want to sit around and wait for permits
15 and pay a high fee to help the -- help our shorelines. So I
16 think that is something we should consider and get into all
17 these. I'm going to try to get in the individual ones but
18 we should be an overall umbrella in this area too.

19 Enforcement. I haven't read the regulation I've got to
20 admit but -- fully, but we need to ensure that our
21 enforcement processes are clear and meaningful. Enforcement
22 rules should act as a deterrent and not as a penalty but,
23 you know, we need these deterrents. We don't really want to
24 -- we don't want to penalize people but they need to have
25 some reason for not complying. And those not complying

1 reasons for people that -- that -- that deliberately want to
2 damage the shorelines there should be a hurt in the
3 regulation someplace that's easy to enforce. Not too Mickey
4 Mouse and weasel worded. If they hurt the environment
5 because they obviously want to and they say sorry I'm going
6 to disregard these regulations fine, here's your penalties
7 start paying, let's go to court and talk about it. But
8 we've got to be able to win these enforcement issues. We've
9 got to be able to -- to have some active enforcement
10 processes. And we have enforcement in our county on some
11 rules but they're so vague and difficult to process they
12 never get enforced. So lets get some clear meaningful
13 enforcement rules.

14 Third thing, under the natural environment area I
15 conclude that the shellfish use in our shorelines or our
16 natural -- our natural shoreline environments it's hard to
17 justify that it does not damage our natural environments.
18 So we have to ensure our regulations, the conditional use
19 permits are great I encourage those. I want to make sure
20 that we're going to go into a natural shoreline that all
21 public uses and enjoys for the next 100 years that we don't
22 put in aquaculture that screws up that shoreline. And I can
23 think of very few aquacultural processes -- the -- the
24 commercial type, that are not going to damage our natural
25 conditions -- our natural environments. So I'd like strong

1 rules in that right -- in that area that aquaculture is
2 probably going to be off limits unless you have very good
3 farm (inaudible). Thank you.

4 MS. POSTON: Okay. Thank you. Okay, is there
5 anyone else who would like to say anything? Yes, Sir.
6 Okay, have a seat. Please state your name for the record.

7
8 **Testimony of Clayton Johnson**

9 Yes, my name is Clayton Johnson. I'm a private citizen
10 I do not represent any organization. But I want to speak
11 particularly to the aquaculture that -- about geoducks. One
12 thing I have on just about everyone in this room is age.
13 And I have grown up on Puget Sound my ancestors were
14 pioneers in the area. And what concerns me more than
15 anything else about this is that the word growth is used
16 here several times this evening.

17 Now I own a small summer place in (inaudible) and I've
18 been watching what's been going on. And I've also watched
19 what has happened in Puget Sound as well as the rest of the
20 country and there are people who would cut every tree, there
21 are people who would take every resource if they could
22 without regulation. And I submit -- I haven't read the
23 regulation changes and so on but I submit they're probably
24 not too strong. If anything, the geoduck people -- and I'm
25 not your enemy I just want you to be controlled. I think

1 you have been very lightly regulated, very lightly regulated
2 and you've done things -- just gone right ahead. And so I
3 don't think that we want to just let things happen without
4 very tight controls and without letting our Puget Sound
5 become industrialized.

6 If you want to see what I'm really talking about
7 consider the Nisqually Delta now and then most of you all
8 know where that is and you also know where the Port of
9 Tacoma is. The Port of Tacoma once looked like the
10 Nisqually Delta it doesn't anymore. There were people who
11 wanted to make the Nisqually Delta a deep water port and if
12 they had succeeded it would look just like the Port of
13 Tacoma does now. I do not want Puget Sound to be developed
14 so much that my kids, grandkids cannot use it. Thank you.

15 MS. POSTON: Okay. Thank you. Okay, is there
16 anyone else? No? Okay. All of the testimony just received
17 at the four public hearings and this is the -- third one,
18 along with any written comments received at the end of the
19 public comment period, which is October 18th, will be part
20 of the official record for the proposed rule revision. And
21 whether a comment is presented orally or in writing they
22 receive equal mate -- equal weight -- tough night -- in the
23 decision making process.

24 If you would like to email or send written comments
25 they must be postmarked no later than five o'clock p.m. on

1 October 18th, 2010. And please mail your comments to Cedar
2 Butay with --

3 UNKNOWN FEMALE SPEAKER: (Inaudible).

4 MS. POSTON: Did it do it wrong again? I'm sorry.

5 UNKNOWN FEMALE SPEAKER: (Inaudible).

6 MS. POSTON: I am so bad with names. You can beat
7 me afterwards. Anyways, send your comments to Cedar with
8 the Washington Department of Ecology, Post Office Box 47600
9 Olympia, Washington 98504-7600. You may also email comments
10 and the email address is the word shorelinerule, as one, at
11 ecy.wa.gov. The different venues in which you can comment
12 are listed up here.

13 After the comment period Ecology staff is going to
14 review all of the comments that have been submitted and
15 prepare a document called a Response To Comment Summary.
16 People who gave testimony or submitted comments will be
17 notified when the responsiveness summary is available.

18 Adoption of the rule updates is currently scheduled for
19 December 14th, 2010. If the proposed rule amendments are
20 adopted that day and filed with the state code advisor, the
21 rule will go into effect 31 days later making it around mid
22 January.

23 On behalf of the Department of Ecology thank you so
24 much for attending the open house and our public hearing.
25 And I appreciate your cooperation, your courtesy with each

1 other. Let the record show this hearing is adjourned at
2 7:32. Thank you.

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7 (End of Hearing)
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IN RE: Department Of Ecology

1 Shorelands And Environmental Assistance Program
2 Shoreline Management Act Rule Making 2010

3 HELD: September 14, 2010 - Department Of Ecology
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6 AFFIDAVIT

7 I, Anna Hirsch do certify that the recordings provided to us
8 of the Department Of Ecology Public Hearing, held in Lacey,
9 Washington was transcribed by me to the best of my ability.
10

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12 _____
13 Anna Hirsch,
14 Transcriptionist
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