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BEFORE THE  
PIERCE COUNTY HEARING EXAMINER

APPELLANT: TAYLOR SHELLFISH  
FARMS

ADMINISTRATIVE APPEAL  
AA11-07

APPEAL APPLICATION NO. 612676

POST HEARING MEMORANDUM  
OF INTERVENORS COALITION  
FOR PROTECTION OF PUGET  
SOUND HABITAT, ET AL.

I. INTRODUCTION

At the conclusion of the hearing, the Examiner established a schedule for the filing of post hearing briefs by the parties. Subsequently, the Examiner apprised the parties that they should file proposed findings of fact, too.

The Intervenors Coalition for Protection of Puget Sound Habitat (CPPSH) et al. have prepared proposed findings and conclusions. We believe our position is well stated in that document and the brief we filed prior to the hearing.<sup>1</sup> Rather than repeat material from those other documents, we limit this post hearing brief to just two items not covered elsewhere.

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<sup>1</sup> Intervenors Coalition to Protect Puget Sound Habitat, et al.'s Opening Brief (Oct. 19, 2007).

1 II. ADMISSION OF EXHIBIT 13

2 Exhibit 13 is a compact disc of a television show entitled *Dirty Jobs*. In that show,  
3 Taylor's geoduck operations are depicted quite clearly. Mr. Phipps, one of Taylor's witnesses in  
4 this proceeding, is interviewed in the video as harvesting takes place. We believe the video is  
5 illustrative of the testimony provided during the hearing by several witnesses and will be of  
6 significant value to the Examiner.  
7

8 During the hearing, we moved admission of this exhibit. Tr. 3:91:23. We believe that the  
9 Examiner admitted the exhibit with words to the effect of "for what it is worth." However, the  
10 transcript of that portion of the hearing appears to omit that portion of the conversation between  
11 counsel and the Examiner. The transcript includes counsel's request for admission of the exhibit,  
12 but it does not include the Examiner's ruling on the request.  
13

14 We request that the Examiner make clear that the exhibit was entered as an exhibit.

15 III. OTHER PERMITS DO NOT ADDRESS SMA COMPLIANCE ISSUES

16 Taylor has inferred at various points that a Shoreline Management Act substantial  
17 development permit should not be required because Taylor's operations will be carefully  
18 scrutinized by other agencies. On its face, such argument and evidence is irrelevant. The SMA  
19 does not condition the requirement for a substantial development permit based on whether other  
20 agencies are scrutinizing the project, too. The requirement for a substantial development permit  
21 is based exclusively on whether the project constitutes "substantial development" as that term is  
22 defined in the SMA. The definition does not include reference to whether or what extent other  
23 agencies may be reviewing the activity, too.  
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1 Furthermore, Taylor's characterization of the Army Corps permit process as "robust"<sup>2</sup> and  
2 as an adequate substitute for SMA review was revealed during the hearing to be contrary to the  
3 facts. The supposedly "robust" review by the Army Corps involves Taylor filing a simple  
4 notification checklist. There is no evidence that the Army Corps reviews the checklist for  
5 accuracy. There was no evidence that the Army Corps issues a permit. Most importantly, there  
6 is no evidence that the Army Corps reviews the activities for compliance with the requirements of  
7 Washington's Shoreline Management Act. Tr. 1:163:20 -1:164:24 (Cooper). Similarly, there is  
8 no review of SMA issues pursuant to State's "aquatic farm registration" requirements. Tr.  
9 1:165:10 (Cooper).

11 Moreover, Ms. Cooper acknowledged that the other permits, leases and certifications  
12 which govern Taylor's operations at this site are perpetual once issued. Tr. 1:132:24. Thus, if the  
13 Shoreline permit also were to be perpetual, there would be no ongoing review of the  
14 environmental and land use issues associated with this project. Id. As Ms. Cooper  
15 acknowledged, the only ongoing review would be Taylor's own "internal review." Id.

#### 17 IV. CONCLUSION

18 For the reasons set forth in our opening brief, this brief, and in our proposed findings of  
19 fact and conclusions of law, the Examiner should rule that Taylor's operations constitute  
20 "development" as that term is used in the Shoreline Management Act and rule that the permit  
21 issued to Taylor in 2001 has expired.  
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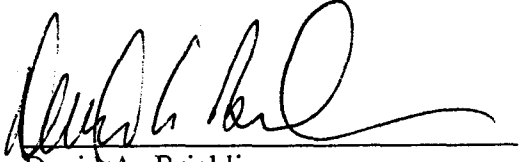
26 <sup>2</sup> Tr. 1:162:1 (Cooper).

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Dated this 27 day of January, 2008.

Respectfully submitted,

BRICKLIN NEWMAN DOLD, LLP

By: 

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CPSH post hearing memo