

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

TAYLOR RESOURCES, INC., a Washington corporation, also known as TAYLOR SHELLFISH FARMS

Petitioners,

v.

PIERCE COUNTY, a political subdivision of the State of Washington,

Respondent.

and

NORTH BAY PARTNERS, a family partnership;
FOSS M. LESLIE ETAL, Taxpayers of record for the property at issue,

Additional Parties
Defendant/Respondent.

TAYLOR RESOURCES, INC., a Washington corporation, also known as TAYLOR SHELLFISH FARMS

Petitioners/Plaintiff,

and

NORTH BAY PARTNERS LLC, a limited liability corporation,

Additional Party/Co-Plaintiff,

v.

PIERCE COUNTY, a political subdivision of the State of Washington,

Respondent/Defendant.

and

FOSS M. LESLIE ETAL, Taxpayers of record for the property at issue,

Additional Party.

NO. 08-2-00904-9

**CIVIL NOTICE OF ISSUE
(NTIS)
Clerk's Action Required**

Cause No. 08-2-01571-5

**CIVIL NOTICE OF ISSUE
(NTIS)
Clerk's Action Required**

1 **TO: THURSTON COUNTY CLERK** and to all other parties listed herein:

2 **PLEASE TAKE NOTICE** that an issue of law in this case will be heard on the date below and
3 the Clerk is directed to note this issue on the calendar checked below.

4 **Calendar Date: July 18, 2008**

Day of Week: Friday

5 **IMPORTANT WARNING:** If this Notice of Issue is not timely filed, contains a wrong day or
6 date, or is scheduled for a wrong calendar date, your hearing will not be scheduled. You will not
7 be notified.

8 Bench/Judge Deliver to Superior Court, Building 2, Rm. 150
9 Copies: By 12:00 noon, 5 court days preceding the scheduled hearing date [LCR
10 Filing Deadlines: 5(b)(2)]
11 Confirmation: Confirm at www.co.thurston.wa.us/clerk by clicking on Hearing
12 Confirmation, by faxing to (360) 753-4033, or by calling (360) 786-5423 by
13 12:00 noon three court days prior to the hearing date [LCR 16(f)(2)].
14 2000 Lakeridge Drive SW, Building 2, Olympia WA 98502.

15 Court Address:

16 **CIVIL MOTIONS** (Friday – 9:00 am)

CONFIRMATION REQUIRED

ASSIGNED JUDGE:

Judge Richard D. Hicks

Judge Christine Pomeroy

Judge Gary R. Tabor

Judge Chris Wickham

17 **UNLAWFUL DETAINERS** (Friday – 10:00 am)

CONFIRMATION REQUIRED

18 **DOL REVOCATIONS** (Friday – 9:00 am)

CONFIRMATION REQUIRED

19 **RALJ APPEALS** (Tuesday – 9:00 am)

No Confirmation Necessary

Type of Motion:

Default

Discovery

Summary Judgment/Dismissal

Change Venue

Continue Trial

Show Cause

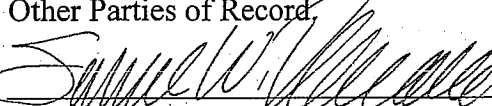
Present Order

TRO/Preliminary Injunction

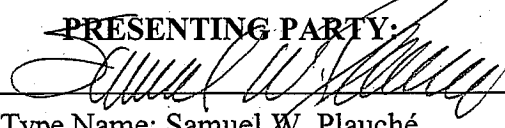
Other: Consolidation and Entry of
Settlement Agreement

1
2 **Certificate of Service**

3 I certify that on July 11, 2008, I deposited in
4 the United States mail, delivered through a
5 legal messenger service, personally delivered,
6 a copy of this document to the attorney(s) of
7 record for Plaintiff/
8 Petitioner Defendant/Respondent All
9 Other Parties of Record.

10
11 
12 Attorney for Plaintiff/Petitioner
13 Defendant/Respondent
14 Other: _____

PRESENTING PARTY:

15 Sign: 
16 Print/Type Name: Samuel W. Plauché
17 WSBA # 25476 (if attorney)
18 Address: GordonDerr LLP, 2025 1st Avenue,
19 Suite 500
20 City/State/Zip: Seattle, WA 98121-3140
21 Attorney for: Petitioner
22 Telephone: 206-382-9540
23 Date: July 11, 2008

24
25 **LIST NAMES, ADDRESSES & TELEPHONE NUMBERS**
26 **OF ALL PARTIES REQUIRING NOTICE**

27 **SEE ATTACHED LIST OF PARTIES**

28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____
101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____
201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____	Name: _____ Attorney for: _____ WSBA #: _____ Address: _____ _____ Telephone: _____

1 LIST NAMES, ADDRESSES & TELEPHONE NUMBERS
2 OF ALL PARTIES REQUIRING NOTICE

3 Pierce County
4 Pierce County Auditor
5 Annex-Public Services Building
6 2401 S. 35th Street, Room 200
7 Tacoma, WA 98409-7874
8 Phone:

9 Michael DeMille
10 P. O. Box 804
11 Lake Bay WA 98349-0804
12 Phone:

13 North Bay Partners, LLC
14 M. Leslie Foss, Registered Agent
15 211 S. 6th Street
16 Mount Vernon, WA 98274-3906
17 Phone:

18 FOSS M LESLIE ETAL
19 211 S 6th Street
20 Mount Vernon, WA 98274-3906
21 Phone:

22 Jerry R. Kimball
23 Law Office of Jerry R. Kimball
24 1200 Fifth Avenue, Suite 2020
25 Seattle, WA 98101-3132
26 Phone: (206) 587-5701

27 Mr. David A. Bricklin
28 Brickline Newman Dold, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
Phone: 206) 264-8600

Ms. Jill Guernsey
Pierce County Prosecuting Attorney
955 Tacome Avenue S #301
Tacoma, WA 98402
Phone: (253) 798-6732

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<input type="checkbox"/> EXPEDITE <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: <u>July 18, 2008</u> Time: <u>9:00 a.m.</u> Judge/Calendar: <u>Judge Chris Wickham</u>
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SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a Washington corporation, also known as TAYLOR SHELLFISH FARMS

Petitioners,

v.

PIERCE COUNTY, a political subdivision of the State of Washington,

Respondent.

and

NORTH BAY PARTNERS, a family partnership; FOSS M. LESLIE ETAL, Taxpayers of record for the property at issue,

Additional Parties.

TAYLOR RESOURCES, INC., a Washington corporation, also known as TAYLOR SHELLFISH FARMS

Petitioners/Plaintiff,

and

No. 08-2-00904-9

JOINT MOTION FOR
CONSOLIDATION AND ENTRY
OF SETTLEMENT AGREEMENT

No. 08-2-01571-5

JOINT MOTION FOR CONSOLIDATION AND ENTRY
OF SETTLEMENT AGREEMENT - 1

GordonDerr.

2025 First Avenue, Suite 500
Seattle, WA 98121-3140
(206) 382-9540

1 NORTH BAY PARTNERS LLC, a limited liability corporation,)

2 Additional Party/Co-Plaintiff,)

3 v.)

4 PIERCE COUNTY, a political subdivision of)
5 the State of Washington,)

6 Respondent/Defendant.)

7 and)

8 FOSS M. LESLIE ETAL, Taxpayers of record)
9 for the property at issue,)

10 Additional Party.)
11)

12 COME NOW Petitioner/Plaintiff Taylor Resources. Inc. ("Taylor"),
13 Respondent/Plaintiff North Bay Partners, LLC ("North Bay"), and Respondent/Defendant
14 Pierce County, Washington ("the County") (collectively referred to herein as "the
15 Movants"), and jointly move the Court as follows:

16 **I. RELIEF REQUESTED**

17 For the reasons more fully described in this motion, the Movants request that the Court
18 enter an Order that accomplishes the following:

- 19 1. Consolidates this matter with the pending Cause Number 08-2-01571-5 which
- 20 challenges substantially the same actions that are at issue in this petition.
- 21 2. Authorizes Petitioner/Plaintiff Taylor Resources, Inc., to harvest the geoduck
- 22 clams currently planted in the tidelands owned by North Bay Partners LLC.
- 23 3. Dismisses from these consolidated cases Petitioner/Plaintiff Taylor Resources,
- 24 Inc.'s, claims based on the doctrine of equitable estoppel.
- 25 4. Dismisses from these consolidated cases Petitioner/Plaintiff Taylor Resources, Inc.
- and North Bay Partners LLC's claims for damages pursuant to Ch. 64.40 RCW.

JOINT MOTION FOR CONSOLIDATION AND ENTRY
OF SETTLEMENT AGREEMENT - 2

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(206) 382-9540

1 5. Continues in these consolidated cases the stay order that is currently in effect in
2 this matter.

3 The Movants note that entry of an order as to item 2, above, is an express
4 condition precedent to their agreement to issue an order as to items 3 and 4 in, above.

5 II. GROUNDS FOR RELIEF

6 A. Consolidation.

7 The Movants request that, in the interest of judicial economy, this action be
8 consolidated with pending Cause No. 08-2-01571-5. Both this action and Cause No. 08-
9 2-01571-5 challenge decisions arising out of the same Pierce County Hearing Examiner
10 proceedings. Both actions involve the same parties, the same facts and essentially the
11 same record. This Motion has been served on all parties in Cause No. 08-2-01571-5 as
12 well as on all parties appearing in this matter.

13 This action challenges a March 26, 2008, decision of the Pierce County Hearing
14 Examiner in Pierce County Hearing Examiner Case Number AA 16-07. After issuance of
15 that decision, Pierce County moved for reconsideration of that decision on a few, discrete
16 issues. That motion for reconsideration resulted in the Examiner issuing an Amended
17 Final Decision and Order on June 12, 2008; that Amended Final Decision and Order is the
18 subject of the proceedings in Cause No. 08-2-01571-5.

19 In the interest of judicial economy, this action should be consolidated with Pending
20 Cause No. 08-2-01571-5.

21 B. Settlement Stipulation.

22 The remaining aspects of the proposed order address issues that arise out of a
23 settlement agreement signed by the Movants on June 27, 2008. A copy of that settlement
24 agreement and attachments is attached hereto as Attachment 1.
25

JOINT MOTION FOR CONSOLIDATION AND ENTRY
OF SETTLEMENT AGREEMENT - 3

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GordonDerr.

2025 First Avenue, Suite 500
Seattle, WA 98121-3140
(206) 382-9540

1 This action concerns an appeal of a Pierce County Administrative Decision finding
2 that a Shoreline Substantial Development Permit issued to Taylor has expired. In its
3 Petition in this action (as well as pending Cause Number 08-2-01571-5), Taylor alleges,
4 among other things, that the County is prohibited by the doctrine of equitable estoppel
5 from finding that the Permit in question has expired. In addition, Taylor and North Bay
6 have included in their petition (as well as in Pending Cause Number 08-2-01571-5) a
7 claim for damages under Ch. 64.40 RCW, alleging that the County's determination that
8 the Permit in question has expired was arbitrary and capricious. The bases for these
9 allegations are more fully discussed in Paragraphs 5.1 through 5.5 of the Petition in this
10 action, and Paragraphs 5.1 through 5.5 of the Petition in Cause Number 08-2-01571-5.

11 As explained more fully in the attached settlement agreement, rather than litigate the
12 issues of equitable estoppel and damages, the Movants have agreed to a settlement that
13 would allow Taylor to harvest, over time, the shellfish crop currently planted in the North
14 Bay tidelands in exchange for dismissal of Taylor's equitable estoppel claim and dismissal
15 of Taylor and Foss' claims for damages under Ch. 64.40 RCW. That settlement is
16 dependent upon the Court entering an order in the form attached hereto in Attachment 1.

17 The Movants fully support entry of such an order and believe that entry of such an
18 order advances the interests of justice and is fully within the Court's authority.

19 III. CONCLUSION

20 For the foregoing reasons, the Movants request that the Court enter an Order that:

- 21 1. Consolidates this matter with the pending Cause Number 08-2-01571-5 which
22 challenges substantially the same actions at issue in this petition.
- 23 2. Authorizes Petitioner/Plaintiff Taylor Resources, Inc., to harvest the geoduck
24 clams currently planted in the tidelands owned by North Bay Partners LLC.
- 25 3. Dismisses from these consolidated cases Petitioner/Plaintiff Taylor Resources,
Inc.'s, claims based on the doctrine of equitable estoppel.

JOINT MOTION FOR CONSOLIDATION AND ENTRY
OF SETTLEMENT AGREEMENT - 4

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- 4. Dismisses from these consolidated cases Petitioner/Plaintiff Taylor Resources, Inc. and North Bay Partners LLC's claims for damages pursuant to Ch. 64.40 RCW.
- 5. Continues in these consolidated cases the stay order that is currently in effect in this matter.

DATED this 10th day of July, 2008.

GORDONDERR LLP

By: Samuel W. Plauché
 Samuel W. Plauché, WSBA #25476
 Amanda M. Carr, WSBA #38025
 Attorneys for Petitioner, Taylor Shellfish Farms

LAW OFFICE OF JERRY R. KIMBALL

By: Samuel W. Plauché for per tel e-mail
 Jerry R. Kimball, WSBA #8641 authorization
 Attorneys for Plaintiff North Bay Partners on 7/9/08

OFFICE OF THE PIERCE COUNTY PROSECUTING ATTORNEY

By: Samuel W. Plauché for per tel e-mail
 Jill Guernsey, WSBA #9443 authorization
 Attorney for Pierce County on 7/10/08

Attachment 1

SETTLEMENT AGREEMENT

This AGREEMENT is entered into on this 27th day June, 2008 by and between Taylor Resources, Inc., a Washington corporation (also known as Taylor Shellfish Farms) ("Taylor"); North Bay Partners LLC, a Washington limited liability corporation, ("North Bay"); Case Cove LLC, a Washington Limited Liability Corporation ("Case Cove"); and Pierce County, Washington, a political subdivision of the State of Washington. Taylor, North Bay, Case Cove and Pierce County are referred to as "the Parties."

RECITALS

1. In 2000, Taylor entered into a lease with North Bay to lease certain tidelands owned by North Bay on Key Peninsula, Pierce County, Washington (hereinafter "the North Bay Tidelands.") The purpose of the lease is to allow Taylor to operate a geoduck farm on the North Bay Tidelands. That lease provides, among other things, that Taylor will compensate North Bay based on a specified percentage of the proceeds from the geoduck harvested from the North Bay Tidelands.

2. Also in 2000, Taylor entered into a contractual agreement with Case Cove whereby Case Cove was conveyed an ownership interest in several of the geoduck crops to be planted on the North Bay Tidelands. Specifically, Case Cove owns a 50% interest in a portion of the 2004 geoduck plantings, as well as a 50% interest in the entire 2005 and 2006 geoduck plantings, all of which are currently planted in the North Bay Tidelands.

3. On April 11, 2000, Taylor submitted to Pierce County an application for a Shoreline Substantial Development Permit to cultivate the intertidal zone of private tidelands for the commercial production of geoduck clams on the North Bay Tidelands. Pierce County processed that application, and, on December 28, 2000, the Pierce County Hearing Examiner issued Shoreline Substantial Development Permit SD 22-00. That permit allowed, subject to certain specified conditions, Taylor to cultivate the intertidal zone of private tidelands for the commercial production of geoduck clams on the North Bay Tidelands.

4. Pursuant to permit SD 22-00, Taylor established a geoduck farm on the North Bay Tidelands. Taylor then planted geoduck seed on that farm in each of the following years: 2001, 2002, 2003, 2004, 2005, 2006.

5. Once geoduck seed is planted on tidelands, the geoduck remain in the ground until they grow to approximately 2 pounds in size and are ready for harvest. It takes approximately four to seven years, depending on site conditions, from the time of planting for the geoducks to reach that size.

6. In 2007, a dispute arose regarding whether SD 22-00 had expired. On August 8, 2007, Pierce County's Department of Planning and Land Services ("PALS")

expired. In its Administrative Determination, PALS found that Taylor was required to obtain a new Shoreline Substantial Development Permit in order to continue farming activities on the North Bay Tidelands. In its August 8, 2007 Administrative Determination, PALS did not address whether Taylor was authorized to continue harvesting geoduck that had already been planted on the North Bay Tidelands. Taylor continued harvesting previously planted geoduck after the County issued its August 8, 2007 Administrative Determination.

7. Taylor timely appealed the County's August 8, 2007 Administrative Determination to the Pierce County Hearing Examiner. Hearings were held before the Examiner on November 1 and 2, and December 13 and 14, 2007.

8. On February 19, 2008, Taylor submitted a new application for a Shoreline Substantial Development Permit to continue its geoduck farming operations on the North Bay Tidelands. That permit application is currently pending before PALS.

9. On March 26, 2008, the Examiner issued a decision upholding the County's August 8, 2007 Administrative Determination. At the time of the Examiner's March 26, 2008 decision, significant stocks of geoduck had been planted, but not yet harvested, from the North Bay Tidelands. Those unharvested geoducks, the locations of which are shown on the aerial photograph attached hereto as Attachment 1, were planted in 2002, 2003, 2004, 2005 and 2006. The Examiner's March 26, 2008 decision created significant uncertainty regarding Taylor's ability to harvest those geoducks.

10. Taylor timely appealed the Examiner's March 26, 2008 decision to both the Shoreline Hearings Board and the Thurston County Superior Court. In those appeals, Taylor claims, among other things, that Pierce County is equitably estopped from prohibiting Taylor's continued harvest of geoduck on the North Bay Tidelands based on Taylor's allegation that County staff made representations to Taylor that the permit did not expire.

11. On April 25, 2008, Taylor amended its Thurston County Superior Court petition (discussed in the preceding recital) to add a claim for damages. That claim was joined by North Bay. Also on April 25, 2008, both North Bay and Taylor submitted damages claims to the County. Each of the claims for damages referenced herein was based in part on the significant uncertainty created by the Examiner's March 26, 2008 decision with regard to Taylor's ability to harvest geoducks planted in the North Bay Tidelands prior to 2007.

12. On June 12, 2008, in response to Pierce County's Motion for Reconsideration, the Examiner issued an Amended Report and Decision modifying the Examiner's March 26, 2008 decision. The Examiner's June 12 Amended Report and Decision does not change the uncertainty created by the Examiner's March 26, 2008 decision regarding Taylor's ability to harvest the geoduck previously planted in the North Bay Tidelands.

13. Rather than litigate the issues of damages and equitable estoppel as they relate to the uncertainty created by the Examiner's March 26, 2008 and June 12, 2008 decisions with regard to Taylor's ability to harvest geoducks planted to date in the North Bay Tidelands prior to 2007, Taylor, North Bay, Case Cove and Pierce County wish to resolve their disagreement on these issues by agreement. This AGREEMENT is entered into without any admission of liability on the part of any of the Parties.

AGREEMENT

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, THE PARTIES AGREE AS FOLLOWS:

I. Pierce County Commitments

a. Pierce County agrees that the County, Taylor and North Bay will execute and file a joint stipulation or joint motion in Thurston County Superior Court Cause No. 08-2-00904-9 in which Pierce County, Taylor and North Bay will stipulate or jointly move that the Court should enter an order authorizing Taylor to harvest the geoduck planted in the North Bay Tidelands prior to the date of this Agreement and remaining in the North Bay Tidelands as of the date of this Agreement. Said harvest activities shall be undertaken as each age class of geoduck reaches harvestable size and shall be completed no later than December 31, 2013. The stipulation or joint motion referenced in this Paragraph shall be substantially in the form attached hereto as Attachment 2.

b. Pierce County agrees that it will process Taylor's pending application for a new Shoreline Substantial Development Permit to allow the cultivation of the intertidal North Bay property for commercial geoduck production. That application will be processed in accordance with the rules and regulations that were in place on the date that application was submitted. Nothing in this Agreement is intended to constrain the County's decision making discretion in processing Taylor's pending application. The County does not warrant that such application will be approved and acknowledges that Taylor, North Bay and Case Cove do not warrant that any adverse decision of the County will not be appealed and damages claimed.

II. Taylor/North Bay/Case Cove commitments:

a. In the stipulation or joint motion discussed in Paragraph I.a, above, Pierce County, Taylor, and North Bay will also stipulate or jointly move that the Court should dismiss Taylor's equitable estoppel claim and Taylor and North Bay's respective damages claims (filed pursuant to Chapter 64.40 RCW) in Thurston County Superior Court Cause No. 08-2-00904-9. The Stipulation or joint motion referenced in this Paragraph shall be substantially in the form attached hereto as Attachment 2.

b. Upon entry of the order discussed in Paragraphs I.a and II.a, above, and the favorable resolution of any appeals of that order (or the lapse of applicable appeal periods without the filing of any appeals), Taylor and North Bay shall withdraw their

April 25, 2008, Pierce County administrative claims for damages. If the order discussed in Paragraphs I.a. and II.a. above is appealed and said appeal results in an unfavorable appellate court ruling (i.e. an appellate court ruling that reverses the Thurston County Superior Court's entry of said final order), Taylor and North Bay shall have no obligation to withdraw their administrative claims for damages.

c. Upon entry of the order discussed in Paragraphs I.a and II.a, above, and the resolution of any appeals of that order (or the lapse of applicable appeal periods without the filing of any appeals), the Parties shall execute a mutual release permanently releasing each other from any liability for damages resulting from the County's actions as described in Taylor and North Bay's claim for damages in their April 25, 2008 Amended Complaint in Thurston County Superior Court Cause No. 08-2-00904-9 as well as Taylor and North Bay's respective Pierce County administrative claims for damages filed on April 25, 2008 by Pierce County. The release discussed in this Paragraph will not address potential liability relating to any future actions on permit applications. The release shall be substantially in the form attached hereto as Attachment 3. If the order discussed in Paragraphs I.a. and II.a. above is appealed and said appeal results in an unfavorable appellate court ruling (i.e. an appellate court ruling that reverses the Thurston County Superior Court's entry of said final order), the parties shall have no obligation to execute the release discussed in this Paragraph.

III. Miscellaneous Provisions.

a. Attorneys' Fees. The Parties shall bear their own attorneys fees and costs, including all attorneys' fees and costs incurred in connection with the preparation and execution of this Agreement.

b. Amendment. This Agreement may only be amended or modified by mutual agreement of the Parties expressed in writing.

c. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

d. Additional Documents. The Parties agree to cooperate fully and to timely execute any and all supplementary documents and to timely take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement; provided, however, that nothing herein shall obligate the County to render any particular decision regarding Taylor's pending application referenced in Paragraph I.b., above.

e. No Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is for the benefit of the Parties only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

f. Effectiveness. The effectiveness of this Agreement is contingent upon execution by all Parties to this Agreement and entry by the superior court of an order approving the stipulation (or granting the joint motion) in substantially the form attached hereto as Attachment 2, and such approval being affirmed on appeal or discretionary review, or the period for appeal or requesting discretionary review lapsing without an appeal being filed. In the event the superior court declines to enter an order approving the stipulation (or granting the joint motion), or in the event the superior court enters an order approving the stipulation (or granting the joint motion) but issues a stay of that order pending an appeal or request for discretionary review, or in the event that the superior court enters an order approving the stipulation (or granting the joint motion) but that order is reversed by an appellate court, this Agreement shall be a nullity and unenforceable, and the execution of this Agreement shall not be admissible in any proceeding involving claims now existing or hereafter arising between the Parties.

g. Authority. The Parties each represent and warrant that they have the respective power and authority, and are duly authorized to execute, deliver and perform the obligations under this Agreement.

h. Execution of Agreement. A Party may deliver executed signature pages to this Agreement by PDF or facsimile transmission to any other Party, which PDF or facsimile copy shall be deemed to be an original executed signature page. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.\

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i. Joint Drafting. The parties agree that they have all participated in the drafting of this Agreement, that it results from the efforts of each party and that it shall not be construed against any party based on the party having assisted in drafting this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into among the Parties as of this ____ day of _____, 2008.

PIERCE COUNTY

DATED: 6/23/08

By: 
Its: County Executive

TAYLOR RESOURCES, INC.

DATED: _____

By: _____

Its: _____

NORTH BAY PARTNERS LLC

DATED: _____

By: _____

Its: _____

CASE COVE LLC

DATED: _____

By: _____

Its: _____

i. Joint Drafting. The parties agree that they have all participated in the drafting of this Agreement, that it results from the efforts of each party and that it shall not be construed against any party based on the party having assisted in drafting this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into among the Parties as of this ____ day of _____, 2008.

PIERCE COUNTY

DATED: _____

By: _____

Its: _____

TAYLOR RESOURCES, INC.

DATED: 6-27-2008

By: Wendy Taylor

Its: Vice President

NORTH BAY PARTNERS LLC

DATED: _____

By: _____

Its: _____

CASE COVE LLC

DATED: _____

By: _____

Its: _____

i. Joint Drafting. The parties agree that they have all participated in the drafting of this Agreement, that it results from the efforts of each party and that it shall not be construed against any party based on the party having assisted in drafting this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into among the Parties as of this _____ day of _____, 2008.

PIERCE COUNTY

DATED: _____

By: _____

Its: _____

~~TAYLOR RESOURCES, INC.~~

North Bay Partners LLC

DATED: 6/25/08

By: *M. J. Fox*

Its: *managing member*

NORTH BAY PARTNERS

DATED: _____

By: _____

Its: _____

CASE COVE LLC

DATED: _____

By: _____

Its: _____

i. Joint Drafting. The parties agree that they have all participated in the drafting of this Agreement, that it results from the efforts of each party and that it shall not be construed against any party based on the party having assisted in drafting this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into among the Parties as of this ____ day of _____, 2008.

PIERCE COUNTY

DATED: _____

By: _____

Its: _____

TAYLOR RESOURCES, INC.

DATED: _____

By: _____

Its: _____

NORTH BAY PARTNERS LLC

DATED: _____

By: _____

Its: _____

CASE COVE LLC

DATED: 6/26/08

By: Kent Kingman

Its: Owner

Attachment 1



- 2002/2004
Planting,
2007 Harvest
- 2003
Planting,
Nothing
Harvested
- 2002
Planting,
Nothing
Harvested
- Mix of 2002 & 2004
Plantings (2002 had
high mortality).
Nothing Harvested
- Planted 2006,
Nothing Harvested
- 3 Tidal Elevation

Attachment 2

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<input type="checkbox"/> EXPEDITE <input type="checkbox"/> No hearing set <input type="checkbox"/> Hearing is set Date: _____ Time: _____ Judge/Calendar: <u>Gary R. Tabor</u>

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a Washington
corporation, also known as TAYLOR
SHELLFISH FARMS)

Petitioners,)

v.)

PIERCE COUNTY, a political subdivision of
the State of Washington,)

Respondent.)

and)

NORTH BAY PARTNERS, a family
partnership; FOSS M. LESLIE ETAL,
Taxpayers of record for the property at issue,)

Additional Parties.)

No. 08-2-00904-9

STIPULATION AND ORDER
(Proposed)

STIPULATION

COMES NOW Petitioner/Plaintiff Taylor Resources ("Taylor"), Respondent/Co-
Plaintiff North Bay Partners LLC ("North Bay"), and Respondent/Defendant Pierce
County, Washington ("Pierce County"), and stipulate as follows:

STIPULATION AND ORDER - 1

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2025 First Avenue, Suite 500
Seattle, WA 98121-3140
(206) 382-9540

1 1. The claims in this action concern a geoduck farm Taylor operates on
2 tidelands in Pierce County owned by North Bay ("the Foss Farm.") On March 26, 2008,
3 and again on June 12, 2008, the Pierce County Hearing Examiner issued decisions that
4 created uncertainty with regard to Taylor's ability to harvest geoducks planted at the Foss
5 Farm prior to the date of those decisions.

6 2. Taylor and North Bay's Petition/Complaint in this action essentially raises
7 three bases for relief:

8 a. A Land Use Petition Act appeal of the Pierce County Hearing Examiner's
9 decisions described in Paragraph 1, above.

10 b. A claim that Pierce County is equitably estopped from prohibiting Taylor's
11 ongoing harvest of geoduck planted as part of its geoduck farming operation at
the Foss Farm.

12 c. A claim for damages under Ch. 64.40 RCW for damages Taylor alleges were
13 incurred as a result of County actions leading up to, and including, the issuance
of the decisions referenced in Paragraph 1, above.

14 3. Taylor, North Bay and Pierce County entered into a Settlement Agreement
15 on _____, 2008, in an effort to resolve a portion of this action. A true and correct
16 copy of that Agreement is attached hereto as Attachment 1.

17 4. Pursuant to the Settlement Agreement referenced in Paragraph, 3, above,
18 Taylor, North Bay and Pierce County agree that an order should be entered in this case
19 authorizing Taylor to harvest the geoduck that were planted at the Foss Farm prior to the
20 date of the Settlement Agreement discussed in Paragraph 3, above. Those harvest
21 activities shall be completed no later than December 31, 2013.

22 5. Pursuant to the Settlement Agreement referenced in Paragraph 3, above,
23 Taylor, North Bay and Pierce County agree that, if an order is entered authorizing
24 geoduck harvest as discussed in Paragraph 4, above, then an order should also be entered
25 dismissing Taylor's Equitable Estoppel Claim, which is presented in Paragraph 4.3 of the

STIPULATION AND ORDER - 2

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Seattle, WA 98121-3140
(206) 382-9540

1 Amended Petition for Review (Land Use Petition Act) And Complaint for Damages
2 Pursuant to RCW 64.40 in this action.

3 6. Pursuant to the Settlement Agreement referenced in Paragraph 3, above,
4 Taylor, North Bay and Pierce County agree that, if an order is entered authorizing
5 geoduck harvest as discussed in Paragraph 4, above, then an order should also be entered
6 dismissing Taylor and North Bay's damages claim under RCW 64.40, which is presented
7 in Section V of the Amended Petition for Review (Land Use Petition Act) And Complaint
8 for Damages Pursuant to RCW 64.40 in this action.

9 Dated this ____ day of June, 2008.

10 GORDONDERR LLP

LAW OFFICE OF JERRY R.
KIMBALL

12 By: _____
13 Samuel W. Plauché, WSBA #25476
14 Amanda M. Carr, WSBA #38025
Attorneys for Taylor Resources

By: _____
Jerry R. Kimball, WSBA #8641
Attorneys for North Bay Partners LLC

15 OFFICE OF THE PIERCE COUNTY
16 PROSECUTING ATTORNEY

17 By: _____
18 Jill Guernsey, WSBA #9443
19 Attorney for Pierce County

20 **ORDER**

21 THIS MATTER having come before the Court upon the stipulation of the parties
22 as set forth above, and the Court finding the requested relief to be proper, NOW,
23 THEREFORE, IT IS HEREBY ORDERED that:

24
25 STIPULATION AND ORDER - 3

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Seattle, WA 98121-3140
(206) 382-9540

1 1. Petitioner/Plaintiff Taylor Resources is hereby authorized to harvest all
2 geoduck that were planted at the Foss Farm prior to _____, 2008. Those
3 harvest activities shall be completed no later than December 31, 2013.

4 2. The equitable estoppel claim included in Petitioner/Plaintiff Taylor
5 Resources' Amended Petition for Review (Land Use Petition Act) And Complaint for
6 Damages Pursuant to RCW 64.40 is hereby DISMISSED.

7 3. The claim for damages under Ch. 64.40 RCW included in
8 Petitioner/Plaintiff Taylor Resources and Respondent/Plaintiff North Bay Partners LLC
9 Petition/Complaint is hereby DISMISSED.

10 4. All other aspects of this Land Use Petition Act action are maintained, and
11 the Stay Order entered on May 28, 2008 remains in effect.

12 DATED this ___ day of _____, 2008.

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GARY R. TABOR, Judge

Presented by:

GORDONDERR LLP

LAW OFFICE OF JERRY R.
KIMBALL

By: _____
Samuel W. Plauché, WSBA #25476
Amanda M. Carr, WSBA #38025
Attorneys for Taylor Resources

By: _____
Jerry R. Kimball, WSBA #8641
Attorneys for North Bay Partners LLC

OFFICE OF THE PIERCE COUNTY
PROSECUTING ATTORNEY

By: _____
Jill Guernsey, WSBA #9443
Attorney for Pierce County

STIPULATION AND ORDER - 4

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Seattle, WA 98121-3140
(206) 382-9540

Attachment 3

RELEASE

For the consideration set out herein, Pierce County, Washington, a political subdivision of the State of Washington, Taylor Resources, Inc., a Washington corporation, (also known as Taylor Shellfish Farms) ("Taylor"), North Bay Partners LLC, a Washington Limited Liability Corporation ("North Bay") and Case Cove LLC, a Washington Limited Liability Corporation ("Case Cove") hereby release and forever discharge each other of and from any and all claims, demands, obligations, actions, causes of action, damages, costs or attorneys fees, injuries, losses of services, expenses, and compensation of any nature whatsoever, either known or unknown, whether based in tort, contract, or any other theory of recovery that are based upon, arise out of, or result from the actions described in Taylor and North Bay's claims for damages in their April 25, 2008 Amended Complaint in Thurston County Superior Court Cause No. 08-2-00904-9, as well as Taylor and North Bay's respective Pierce County administrative claims for damages filed on April 25, 2008. This release is a full settlement and discharge of any and all claims that could have been made by Pierce County, Taylor, North Bay and Kent Kingman against each other with regard to the incidents set forth in Taylor and North Bay's claim for damages in their April 25, 2008 Amended Complaint in Thurston County Superior Court Cause No. 08-2-00904-9, as well as Taylor and North Bay's respective Pierce County administrative claims for damages filed on April 25, 2008.

This release is expressly limited to the claims set forth above and no other claims are hereby released. For example, and without limiting the breadth of this exclusion, this release does not apply to any actions taken by Pierce County with regard to the permit applications filed by Taylor on February 19, 2008.

PIERCE COUNTY

DATED: _____

By: _____
Its: _____

TAYLOR RESOURCES, INC.

DATED: _____

By: _____
Its: _____

NORTH BAY PARTNERS LLC

DATED: _____

By: _____
Its: _____

CASE COVE LLC

DATED: _____

By: _____
Its: _____

Approved as to form:

Jill Guernsey, Deputy Prosecuting Attorney
Attorney for Pierce County

EXPEDITE
 No hearing set
 Hearing is set
 Date: July 18, 2008
 Time: 9:00 a.m.
 Judge/Calendar: Judge Chris Wickham

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a Washington
 corporation, also known as TAYLOR
 SHELLFISH FARMS

Petitioners,

v.

PIERCE COUNTY, a political subdivision of
 the State of Washington,

Respondent.

and

NORTH BAY PARTNERS, a family
 partnership; FOSS M. LESLIE ETAL,
 Taxpayers of record for the property at issue,

Additional Parties.

TAYLOR RESOURCES, INC., a Washington
 corporation, also known as TAYLOR
 SHELLFISH FARMS

Petitioners/Plaintiff,

and

No. 08-2-00904-9

ORDER ON CONSOLIDATION
 AND ENTRY OF STIPULATED
 ORDER
 (proposed)

CLERK'S ACTION REQUIRED

No. 08-2-01571-5

ORDER ON CONSOLIDATION AND ENTRY OF
STIPULATED ORDER - 1

Y:\WP\TAYLOR\FOSS\SETTLEMENT\TP ORDER ON CONSOL-SETTLEMENT AGREEMENT.FINAL.DOC

GordonDerr.

2025 First Avenue, Suite 500
 Seattle, WA 98121-3140
 (206) 382-9540

1 NORTH BAY PARTNERS LLC, a limited
2 liability corporation,

3 Additional Party/Co-Plaintiff,

4 v.

5 PIERCE COUNTY, a political subdivision of
6 the State of Washington,

7 Respondent/Defendant.)

8 and

9 FOSS M. LESLIE ETAL, Taxpayers of record
10 for the property at issue,

11 Additional Party.
12

13 THIS MATTER having come before this Court upon the Joint Motion of the
14 parties for consolidation and entry of a stipulated order pursuant to a Settlement
15 Agreement, and the Court finding the requested relief to be proper,

16 **NOW, THEREFORE, IT IS HEREBY ORDERED** that:

17 1. Petitioner/Plaintiff Taylor Resources is hereby authorized to harvest all
18 geoduck that were planted at the Foss Farm prior to June 27, 2008. Those harvest
19 activities shall be completed no later than December 31, 2013.

20 2. The equitable estoppel claim included in both Petitioner/Plaintiff Taylor
21 Resources' Amended Petition for Review (Land Use Petition Act) And Complaint for
22 Damages Pursuant to RCW 64.40 filed under Cause No.08-2-00904-9 and the Petition for
23 Review (Land Use Petition Act) and Complaint for Damages Pursuant to RCW 64.40
24
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ORDER ON CONSOLIDATION AND ENTRY OF
STIPULATED ORDER - 2

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(206) 382-9540

1 filed under Cause No. 08-2-01571-5, are hereby **DISMISSED** from these consolidated
2 cases.

3 3. Petitioner/Plaintiff Taylor Resources, Inc. and North Bay Partners LLP's
4 claims for damages under Ch. 64.40 RCW included in both Petitioner/Plaintiff Taylor
5 Resources' Amended Petition for Review (Land Use Petition Act) And Complaint for
6 Damages Pursuant to RCW 64.40 filed under Cause No.08-2-00904-9 and the Petition for
7 Review (Land Use Petition Act) and Complaint for Damages Pursuant to RCW 64.40
8 filed under Cause No. 08-2-01571-5, are hereby **DISMISSED** from these consolidated
9 cases.
10

11 4. This Court retains jurisdiction to vacate the order of dismissal under
12 Paragraphs 2 and 3, above, in the event the authorization to harvest provided under
13 Paragraph 1, above, is modified or reversed on appeal.

14 5. This matter is hereby consolidated with Cause No. 08-2-01571-5 and this
15 matter shall continue under Cause No. 08-3-00904-9.

16 6. All other aspects of this Land Use Petition Act action are maintained under
17 these consolidated cases, and the Stay Order entered on May 28, 2008, remains in effect in
18 these consolidated cases.
19

20 DATED this ___ day of July, 2008.

21
22 CHRIS WICKHAM, JUDGE

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25
ORDER ON CONSOLIDATION AND ENTRY OF
STIPULATED ORDER - 3

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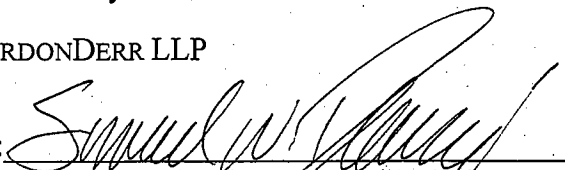
GordonDerr.

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Seattle, WA 98121-3140
(206) 382-9540

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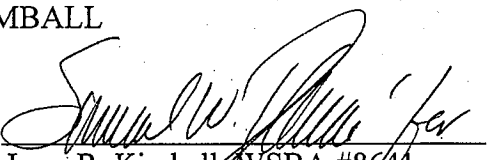
GORDONDERR LLP

By: 

Samuel W. Plauché, WSBA #25476
Amanda M. Carr, WSBA #38025
Attorneys for Petitioner, Taylor Shellfish Farms

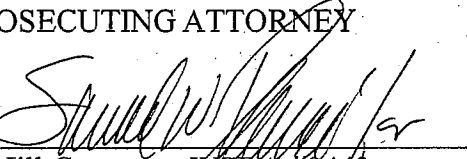
Approved as to form:

LAW OFFICE OF JERRY R.
KIMBALL

By:  per e-mail auth.
Jerry R. Kimball, WSBA #8641 7/9/08

Attorneys for North Bay Partners LLC

OFFICE OF THE PIERCE COUNTY
PROSECUTING ATTORNEY

By:  per e-mail auth.
Jill Guernsey, WSBA #9443 7/9/08

Attorney for Pierce County

ORDER ON CONSOLIDATION AND ENTRY OF
STIPULATED ORDER - 4

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(206) 382-9540

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EXPEDITE
 No hearing set
 Hearing is set
Date: July 18, 2008
Time: 9:00 a.m.
Judge/Calendar: Judge Chris Wickham

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

TAYLOR RESOURCES, INC., a Washington
corporation, also known as TAYLOR
SHELLFISH FARMS)

Petitioners,

v.

PIERCE COUNTY, a political subdivision of
the State of Washington,)

Respondent.

and

NORTH BAY PARTNERS, a family
partnership; FOSS M. LESLIE ETAL,
Taxpayers of record for the property at issue,)

Additional Parties.

TAYLOR RESOURCES, INC., a Washington
corporation, also known as TAYLOR
SHELLFISH FARMS)

Petitioners/Plaintiff,

and

No. 08-2-00904-9

DECLARATION OF DELIVERY

No. 08-2-01571-5

DECLARATION OF DELIVERY - 1

GordonDerr.
2025 First Avenue, Suite 500
Seattle, WA 98121-3140
(206) 382-9540

1 NORTH BAY PARTNERS LLC, a limited liability corporation,)

2 Additional Party/Co-Plaintiff,)

3 v.)

4 PIERCE COUNTY, a political subdivision of)
5 the State of Washington,)

6 Respondent/Defendant.)

7 and)

8 FOSS M. LESLIE ETAL, Taxpayers of record)
9 for the property at issue,)

10 Additional Party.)
11)

12 I, Terri A. Tyni, declare as follows:

13 That I am over the age of 18 years, not a party to this action, and competent to be a
14 witness herein;

15 That I, as a legal assistant in the office of GordonDerr LLP, caused true and correct
16 copies of the following documents to be delivered as set forth below:

- 17 1. Civil Notice of Issue (for July 18, 2008);
- 18 2. Joint Motion for Consolidation and Entry of Settlement Agreement;
- 19 3. Order on Consolidation and Entry of Stipulated Order (proposed); and
- 20 4. Declaration of Delivery

21 and that on July 11, 2008, I addressed said documents and deposited them for delivery as
22 follows:
23
24
25

1 Pierce County Auditor
2 Annex- Public Services Building
2401 S 35th Street, Room 200
3 Tacoma, WA 98409-7874

4 By United States Mail
5 By Legal Messenger
 By Facsimile
 By E-mail

6 Ms. Jill Guernsey
7 Pierce County Prosecuting Attorney
955 Tacoma Avenue S. #301
8 Tacoma, WA 98402

9 By United States Mail
10 By Legal Messenger
 By Facsimile
 By E-mail

11 Michael DeMille
12 P. O. Box 804
Lake Bay, WA 98349-0804

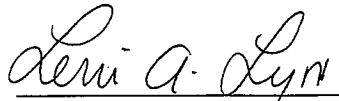
13 By United States Mail
14 By Legal Messenger
 By Facsimile
 By E-mail

15 Mr. David A. Bricklin
16 Bricklin Newman Dold, Llp
1001 Fourth Avenue, Suite 3303
17 Seattle, Wa 98154

18 By United States Mail
19 By Legal Messenger
 By Facsimile
20 By E-mail

21 I certify under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23 EXECUTED at Seattle, Washington on July 11, 2008.

24 
25 Terri A. Tyni, Declarant

North Bay Partners, LLC
M. Leslie Foss, Registered Agent
211 S 6th Street
Mount Vernon, WA 98274-3906

By United States Mail
 By Legal Messenger
 By Facsimile
 By E-mail

Jerry R. Kimball
Law Office of Jerry R. Kimball
1200 Fifth Avenue, Suite 2020
Seattle, WA 98101-3132

By United States Mail
 By Legal Messenger
 By Facsimile
 By E-mail

FOSS M LESLIE ET AL
211 S 6th Street
Mount Vernon, WA 98274-3906

By United States Mail
 By Legal Messenger
 By Facsimile
 By E-mail

DECLARATION OF DELIVERY - 3

GordonDerr.

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