

EXPEDITE  
 No hearing set  
 Hearing is set:  
 Date: 7/18/08  
 Time: 9:00 am  
 Judge/Calendar:  
 Wickham/Motion

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
 IN AND FOR THE COUNTY OF THURSTON

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

Petitioners,

NO. 08-2-00904-9

v.

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

REPLY OF RESPONDENT PIERCE  
 COUNTY IN SUPPORT OF MOTIONS  
 TO CONSOLIDATE AND FOR ENTRY  
 OF SETTLEMENT AGREEMENT

Respondent,

and

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

Additional Parties  
 Defendant/Respondent.

COMES NOW Pierce County, and files this brief reply in support of the joint motion  
 to approve the settlement agreement in this case.

As the Declaration of Chuck Kleeberg, Director of the Pierce County Planning and  
 Land Services Department, states, after the Hearing Examiner issued his decision in late  
 March, 2008, the issue of whether to allow Taylor to continue farming during the pendency of

1 the appeal of the Examiner's decision arose. Mr. Kleeberg stated that, in general,  
2 enforcement is aimed at garnering compliance, not punishment. He further advised that the  
3 fact that Taylor's application for a new permit to continue its farming activities at the Foss  
4 site was a sign of compliance. At no time did Mr. Kleeberg agree that the County would stop  
5 Taylor from harvesting geoduck it had planted during the time period the permit was in force.  
6

7 Furthermore, had Taylor requested a stay of the Hearing Examiner's decision during  
8 the pendency of Taylor's appeal to remove mature geoduck from this site, the County would  
9 have agreed.

10 This Settlement Agreement resolves the equitable estoppel and damages claims filed  
11 by Taylor and North Bay, but allows all parties, including intervenor, to go forward on the  
12 issues involved in the Examiner's decisions. Neither of those claims are claims involving the  
13 intervenor.

14 Finally, unlike the 9<sup>th</sup> Circuit case intervenor refers to in its brief, this settlement  
15 agreement does not issue a permit. It resolves equitable estoppel and damages claims, and  
16 allows Taylor to retrieve the geoducks it planted pursuant to the shoreline substantial  
17 development permit issued in 2000.  
18

19 Conclusion:

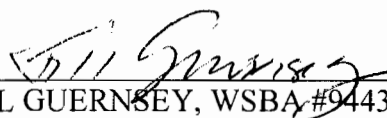
20 The gravamen of intervenor's response to the motion is that this settlement agreement  
21 is either too early in that a new shoreline permit has not been issued, or too late in that the old  
22 permit has expired. Perhaps because they have no involvement in the equitable estoppel and  
23 damages claims, their perspective on this issue is limited to the merits of the Examiner's  
24 decision that the permit has expired.  
25

1 The County on the other hand, is involved not only in issues involving the correctness  
2 of the Examiner's decision, but also issues involving damage claims. The Settlement  
3 Agreement has been fully negotiated and resolved between the County, Taylor and North  
4 Bay, and fairly resolves issues before this Court.

5  
6 Pierce County respectfully requests that this Court approve the Settlement as it  
7 resolves important and significant claims in this case. The intervenor will continue to have its  
8 day in court on the issues in which it has been involved, that is, issues regarding the length of  
9 the shoreline permit, and whether this activity constitutes "development" under the Shoreline  
10 Management Act.

11 DATED this 17<sup>th</sup> day of July, 2008.

12 GERALD A. HORNE  
13 Prosecuting Attorney

14 By:   
15 JILL GUERNSEY, WSBA #9443  
16 Deputy Prosecuting Attorney  
17 PH: (253)798-7742  
18 Attorneys for Pierce County  
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DECLARATION OF SERVICE

I, Jill A. Anderson, declare that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. As a legal assistant in the Office of the Pierce County Prosecuting Attorney, I sent a true and correct copy of the foregoing Reply of Pierce County today by fax & U. S Mail, postage prepaid, to:

(& electronic mail [bplauche@GordonDerr.com](mailto:bplauche@GordonDerr.com))  
(206) 626-0675 FAX  
Samuel "Billy Plauché & Amanda Carr  
GordonDerr LLP  
2025 First Avenue, Suite 500  
Seattle, WA 98121-3140

NORTH BAY PARTNERS  
M. Leslie Foss, Managing Partner  
211 S. 6<sup>th</sup> Street  
Mount Vernon, WA 98274-3906

FOSS M. LESLIE ETAL  
211 S. 6<sup>th</sup> Street  
Mount Vernon, WA 98274-3906

(& electronic mail [jkimballaw@seanet.com](mailto:jkimballaw@seanet.com))  
(206)624-1361 FAX  
Jerry R. Kimball  
2020 IBM Bldg.  
1200 Fifth Avenue  
Seattle, WA 98101

(& electronic mail [bricklin@bnd-law.com](mailto:bricklin@bnd-law.com))  
FAX (206) 264-9300  
David A. Bricklin  
BRICKLIN NEWMAN DOLD, LLP  
1001 Fourth Avenue, Suite 3303  
Seattle, WA 98154

I certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct. Dated at Tacoma, Pierce County, Washington, this 17<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
JILL A. ANDERSON

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
 IN AND FOR THE COUNTY OF THURSTON

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

Petitioners,

NO. 08-2-00904-9

v.

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

Respondent,

DECLARATION OF CHUCK  
 KLEEGERG IN SUPPORT OF MOTIONS  
 TO CONSOLIDATE AND FOR ENTRY  
 OF SETTLEMENT AGREEMENT

and

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

Additional Parties  
 Defendant/Respondent.

I, Chuck Kleeberg, declare as follows:

1. I am over the age of 18 years, not a party to this action, and competent to be a witness herein.

2. I am the Director of the Pierce County Planning and Land Services Department ("PALS") and an attorney licensed to practice law in the state of Washington, WSBA # 12933.

1           3.     I am familiar with the issues involved in this case.

2           4.     In 2000 the Pierce County Hearing Examiner issued a shoreline substantial  
3 development permit to Taylor Shellfish ("Taylor") allowing them to establish a geoduck farm  
4 on the Foss family property on the Key Peninsula in unincorporated Pierce County.

5           5.     To the best of my knowledge this was the first shoreline permit issued in  
6 Pierce County for such an activity.

7           6.     This permit, and the issue of the expiration of this permit, is the basis for this  
8 proceeding in superior court.

9           7.     In August of 2007 PALS issued an administrative determination stating that  
10 this permit expired. Taylor appealed that decision to the Pierce County Hearing Examiner.

11           8.     The Hearing Examiner upheld PALS administrative determination and Taylor  
12 and North Bay (the Foss family partnership/corporation) have appealed the Examiner's  
13 decision to superior court in this action.

14           9.     Taylor and North Bay have also filed damages actions against the County.

15           10.    After the Hearing Examiner issued his decision in late March, 2008, I was  
16 asked if PALS would shut the operation down.

17           11.    I advised people that in general, enforcement is aimed at garnering compliance  
18 with the law, not punishment.

19           12.    I further advised people that the fact that Taylor has applied for a new  
20 shoreline permit to continue its farming activities at the Foss property is a sign of compliance.

21           13.    I do not know why the Intervenor states that the County agreed to shut Taylor  
22 down if the Examiner upheld PALS administrative decision. That was certainly not my  
23 position then or now.  
24  
25

1           14.     After Taylor appealed the Hearing Examiner's decision to superior court it is  
2 my understanding that Taylor could have moved for a stay of the Examiner's decision.

3           15.     Had Taylor requested a stay in order to remove the mature geoduck from this  
4 site I would have agreed.

5           16.     The Settlement Agreement between the County, Taylor and North Bay  
6 involved extensive discussions and allows Taylor to remove geoduck as it matures which was  
7 planted when the shoreline permit was in effect.

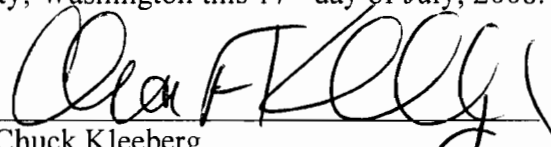

8           17.     The Agreement does not allow Taylor to plant new geoduck seed unless and  
9 until a new permit is issued.

10          18.     In return, the claims filed by both Taylor and North Bay are dismissed, but the  
11 claims involving the correctness of the Examiner's decision will continue to be addressed by  
12 the Court.  
13

14          19.     This Settlement Agreement is in the best interests of Pierce County and  
15 appropriately resolves the claims for damages in this case.

16             I certify under penalty of perjury under the laws of the State of Washington, that the  
17 foregoing is true and correct.

18             EXECUTED at Tacoma, Pierce County, Washington this 17<sup>th</sup> day of July, 2008.  
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21                             \_\_\_\_\_  
22                             Chuck Kleeberg  
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DECLARATION OF SERVICE

I, Jill A. Anderson, declare that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. As a legal assistant in the Office of the Pierce County Prosecuting Attorney, I sent a true and correct copy of the foregoing Declaration today by fax & U. S Mail, postage prepaid, to:

(& electronic mail [bplauche@GordonDerr.com](mailto:bplauche@GordonDerr.com))  
(206) 626-0675 FAX  
Samuel "Billy" Plauché & Amanda Carr  
GordonDerr LLP  
2025 First Avenue, Suite 500  
Seattle, WA 98121-3140

NORTH BAY PARTNERS  
M. Leslie Foss, Managing Partner  
211 S. 6<sup>th</sup> Street  
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Mount Vernon, WA 98274-3906

(& electronic mail [jkimballaw@seanet.com](mailto:jkimballaw@seanet.com))  
(206)624-1361 FAX  
Jerry R. Kimball  
2020 IBM Bldg.  
1200 Fifth Avenue  
Seattle, WA 98101

(& electronic mail [bricklin@bnd-law.com](mailto:bricklin@bnd-law.com))  
FAX (206) 264-9300  
David A. Bricklin  
BRICKLIN NEWMAN DOLD, LLP  
1001 Fourth Avenue, Suite 3303  
Seattle, WA 98154

I certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct. Dated at Tacoma, Pierce County, Washington, this 17<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
JILL A. ANDERSON