



Totten Inlet Property Dispute Q&A

Q: Who's involved in this dispute?

A: The property dispute in Totten Inlet is between Taylor Shellfish, Helen Senff, and the Washington Department of Natural Resources.

Q: What is this dispute about?

A: This dispute involves competing claims of ownership to property in Totten Inlet. The area of dispute has been farmed with shellfish by others since the early 1900s, and by Taylors Shellfish since 1969. Only recently, as a result of complaints from geoduck farming opponents, did DNR dispute the property boundaries and assert ownership claims to the property. Taylor suspended farming activities in the disputed area as soon as a survey was completed, began cooperating with the state to resolve the issue, and agreed to settle the dispute out of court.

Q: What is the settlement agreement?

A: After 9 months of investigation by DNR, with oversight from the State Auditor, lawyers and others considering the facts around the issue, a settlement was agreed to that would have avoided litigation.

Under the settlement signed by Commissioner Sutherland on January 12th Taylor agreed to forfeit its ownership claims to the property if DNR decided, in compliance with all applicable statutes, to lease 21 acres to Taylor for five years to allow them to harvest the crops Taylor had planted on the land. In addition, Taylor agreed to:

- Pay \$480,838 back rent plus leasehold excise tax, interest and \$53,241 of staff time reimbursement totaling \$629,762;
- Pay \$200,000 to the Geoduck Aquaculture Research Account for Washington Sea Grant to conduct research of geoduck aquaculture practices at the site bringing the total to \$829,762.
- Pay an estimated \$500,000 in additional rent over the course of the next five years.

This settlement fully compensated DNR for all back rent allowable under the law, plus interest, plus staff time, plus \$200,000 toward continued geoduck research by Sea Grant.

Q: Why is the settlement agreement not being honored?

A: Commissioner Goldmark issued a press release saying that he would not honor the signed settlement agreement. The Commissioner's decision constitutes breach of contract and is a violation of our State's SEPA law that requires public input be considered in the decision to lease this property to Taylor Shellfish.

Q: What are the next steps?

A: Commissioner Goldmark's decision to not honor the signed settlement agreement forces Taylor Shellfish to assert its claims of ownership to the disputed property. On Monday, February 23, 2009 Taylor Shellfish filed suit in Thurston County Superior Court to assert its quiet title claims of ownership of the disputed property. The legal process of determining ownership of the property will occur over, at least, the next year.

Taylor Shellfish will also be filing a separate legal action in Federal Court. The State's intent in the sale of this land to Taylor Shellfish in 1969 was to transfer lands suitable for oyster farming. The lands mistakenly described in Taylor's deed are generally too high on the beach to be used to cultivate oysters. Under Taylor's deed, if the lands being transferred were not actually suitable for growing oysters, Taylor has the right to obtain substitute tidelands from the state that are suitable for that purpose. The Federal action will seek to confirm that the substitution right in its deed remains valid.

Taylor will also be moving forward shortly with an administrative claim for damages that it has suffered as a result of DNR's assertion of ownership to these tidelands. These damages are the result of DNR's restriction of Taylor's use of these tidelands, which has been ongoing since spring of 2008 and continues today

Q: What is quiet title?

A: An action to quiet title is a lawsuit brought in court to establish a party's title to real property against anyone and everyone, and thus "quiet" any challenges or claims to the title.

For over 50 years, DNR has recognized and acquiesced to the property boundaries maintained by Taylor Shellfish and its predecessors. The law does not allow DNR, after 50 years of recognizing and accepting these boundaries, to assert claims of ownership of the property. That is particularly true considering the significantly increased value of the property that is exclusively attributable to Taylor Shellfish's efforts over the past 40 years.

Q: Why is Taylor Shellfish filing separate state and federal legal claims?

A: Different courts have jurisdiction over different legal matters. Taylor Shellfish filed suit in Thurston County Superior Court for breach of contract and to quiet title to the property that has been the subject of the dispute between Taylor Shellfish and the DNR (*To establish Taylor Shellfish's title to the property in dispute*).

Taylor Shellfish will be filing a separate legal action in Federal Court within the next week or two to confirm the substitution right in the deed remains valid (*Under Taylor's deed, if the lands being transferred were not actually suitable for growing oysters, which the lands mistakenly described in Taylor's deed are not, Taylor has the right to obtain substitute tidelands from the state that are suitable for that purpose*).

Q: How has Taylor Shellfish been damaged?

A: Since the spring of 2008, Taylor Shellfish has been restricted from planting or harvesting crops on land that the company asserts that it owns. This restriction has resulted in loss of current and future income to the company.

Q: What does the public think about this?

A: On December 19, 2008, public comment began on the DNR's mitigated determination of non-significance (MDNS) under SEPA for the proposed lease, concluding that the activities of Taylor Shellfish would not have any environmentally significant impact. Public comment related to the lease was solicited from December 22, 2008 until January 23, 2009. The public submitted a total of over 400 comments and favored granting the lease by a 2 to 1 margin.

Taylor Shellfish is a fifth-generation, family owned business. The company is headquartered in Shelton, Washington. Taylor Shellfish is the largest producer of farmed shellfish on the West Coast and provides 500 family-wage jobs. Shellfish farming contributes to a clean and healthy Puget Sound. *Taylor Shellfish — good for the economy AND good for the environment.* www.taylorshellfish.com