



October 27, 2008

Mr. William Taylor
Taylor Shellfish
130 SE Lynch Rd
Shelton, WA 98584

Dear Bill,

I am writing to discuss the findings between staff and counsel for the state Department of Natural Resources (DNR) and Taylor Shellfish concerning the trespass on Totten Inlet. While our staff and attorneys have been deliberating on the details, I feel it is important for you to understand the basic framework and theory behind DNR's approach to calculating the damages attributable to Taylor Shellfish's past use of the state-owned aquatic lands adjacent to Taylor Shellfish's privately owned parcel. It has been a lengthy process to review and calculate the survey results and the harvest records in order to determine damages for Taylor Shellfish's aquaculture use of the state-owned aquatic lands.

The public lands trespass statute, found at RCW 79.02.300, says charging the fair market value of the use had that been authorized is an appropriate manner of calculating damages for the unauthorized use of public lands. That statute also directs DNR to treble the damages unless DNR "determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization." At this point, DNR intends to request treble damages, but any additional information we receive that establishes that the company did not know or have reason to know that its activities were over state-owned aquatic lands will be taken into consideration.

DNR has aquaculture leases throughout the Puget Sound and ocean bay areas covering a wide variety of shellfish and finfish operations, and those leases utilize a variety of rental methodologies depending on the unique circumstances at each site. DNR does not have any intertidal geoduck aquaculture leases at this time—although some proposed leases have been put out for public bids, and bids have been received on several such leases. DNR has relied on all of these materials and documents to come up with a comparable and fair rental valuation for purposes of establishing past damages for the Totten Inlet situation.

DNR staff has reviewed the survey results and scrutinized Taylor Shellfish's harvest records from the site to calculate damages for the past unauthorized aquaculture activity on the state-

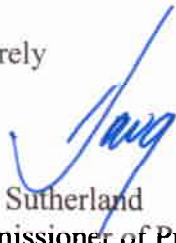
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owned aquatic lands. Preliminary calculations for the single value of land rent and production rents for geoduck harvested over the last three years amount to \$443,849.77, and the details are being shared with your staff. This calculation does not include the trebling. DNR staff still needs to resolve the outstanding issue of oyster seed survival rates before calculating the past use values for the oyster aquaculture. If Taylor Shellfish believes any of DNR's calculations or factors are incorrect, please provide any factual data to support requested corrections.

DNR has received and is reviewing Taylor Shellfish's lease application to continue your shellfish aquaculture operations at the site. DNR also has received a competing lease application proposing to use the site for other activity, and that proposal is also under consideration. Until DNR makes a determination on the future use of the site, we will be unable to resolve the open question about disposition of current shellfish aquaculture product remaining on the state-owned aquatic lands. Pending such resolution, I still hope that we can resolve the damages issue for the prior aquaculture and harvest activity.

DNR appreciates Taylor Shellfish's patience and cooperation throughout this process. It is difficult and lengthy, but imperative that we move through these phases, and in accordance with statute, to ensure a fair resolution of this matter.

Sincerely



Doug Sutherland
Commissioner of Public Lands

C: Fran McNair, Aquatic Lands Steward
Rich Doenges, Aquatic Resources Division Manager
Patricia O'Brien, Attorney General, Division Chief
Joe Panesko, Assistant Attorney General