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

TAYLOR UNITED, INC., a Washington corporation, and TAYLOR RESOURCES, INC., a Washington corporation; and HELEN G. SENFF, a widow, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES, Defendant, and LAURA HENDRICKS, a married woman; COALITION TO PROTECT PUGET SOUND HABITAT, a Washington non-profit corporation; and ASSOCIATION FOR THE PROTECTION OF HAMMERSLY, ELD & TOTTEN INLETS, a Washington non-profit corporation, Potentially Interested Parties.	No. COMPLAINT TO QUIET TITLE AND FOR UNJUST ENRICHMENT, UNLAWFUL LEASE DENIAL, BREACH OF CONTRACT AND RELATED CLAIMS

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Plaintiffs, Taylor United, Inc., and Taylor Resources, Inc., by and through their attorneys, Samuel W. Plauché, Amanda M. Carr, and Duncan M. Greene, and Plaintiff, Helen G. Senff, by and through her attorney, Robert W. Johnson, allege as follows:

I. PARTIES

1.1 Plaintiff Taylor United, Inc. (hereinafter "Taylor United"), is a Washington corporation, incorporated under the laws of the State of Washington and domiciled at 130 SE Lynch Road, Shelton, Washington, 98584. Taylor United is a family-owned corporation, wholly owned by the three children of Justin and Carol Taylor, as well as their spouses and children (the "Taylor Family"). Taylor United owns and leases tidelands in Thurston County, Washington.

1.2 Plaintiff Taylor Resources, Inc. (hereinafter "Taylor Resources"), is a Washington corporation, incorporated under the laws of the State of Washington and domiciled at 130 SE Lynch Road, Shelton, Washington, 98584. Taylor Resources is a family-owned corporation, wholly owned by the Taylor Family. Taylor Resources leases tidelands located in Thurston County, Washington, from Plaintiff Helen G. Senff.

1.3 The Taylor Family and their ancestors have been farming shellfish in Washington State for five generations, since the 1890s. Taylor United and Taylor Resources (collectively hereinafter "Taylors"), own and manage the Taylor Family's shellfish farming operations. Taylors have approximately 400 employees in Washington State and another 100 employees outside of Washington State. Taylors cultivate clams, oysters, mussels and geoduck.

1.4 Plaintiff Helen G. Senff, a widow, owns real property, including tidelands and uplands, located on Totten Inlet in Thurston County, Washington. Ms. Senff leases tidelands to Taylor Resources.

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1.5 Defendant State of Washington, Department of Natural Resources (hereinafter "DNR") has asserted an ownership interest in certain tidelands in Thurston County, Washington, as further described in the legal descriptions attached hereto as Exhibit A and incorporated herein by this reference (hereinafter "Disputed Areas"). The Disputed Areas consist of two abutting narrow parcels of tidelands on Totten Inlet. The first parcel (hereinafter "Taylor Disputed Area") is located between tidelands owned by Taylor United on one side and the Extreme Low Tide Line[1] on the other side. The Taylor Disputed Area totals 26 acres of tidelands, more or less. The second parcel (hereinafter "Senff Disputed Area"), abutting and just north of the Taylor Disputed Area, is located between tidelands owned by Helen G. Senff and leased to Taylor Resources on one side, and the Extreme Low Tide Line on the other side. The Senff Disputed Area totals 6 acres, more or less.

1.6 Potentially interested party Laura Hendricks, a married person, has submitted Aquatic Lands Lease Application No. 20-083990 to DNR for tidelands in Totten Inlet. While Ms. Hendricks' apparent intent was to apply to lease the Taylor Disputed Area, the tidelands Ms. Hendricks describes in her lease application, by map and parcel number, are actually the Taylor United tidelands adjacent to the Disputed Area. Ms. Hendricks listed herself as the lease Applicant. Ms. Hendricks also listed herself as the Applicant's Representative in her capacity as Director of Co-Applicant Coalition to Protect Puget Sound Habitat, a Washington non-profit corporation (hereinafter "CPPSH"). Ms. Hendricks also listed herself as the Applicant's Representative in her capacity as Director of Co-Applicant Association for the Protection of Hammersly, Eld, and Totten Inlets, a Washington non-profit corporation (hereinafter "APHETI"). Ms. Hendricks's

[1] The Extreme Low Tide Line is the lowest line on the land reached by a receding tide. *See* RCW 90.58.030(2)(a).

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address is listed in Application No. 20-083990 as 3919 51st Avenue Court NW, Gig Harbor, Washington, 98335.

1.7 Potentially interested party CPPSH, a Washington non-profit corporation, is listed as an Applicant for DNR Aquatic Lands Lease Application No. 20-083990 to lease tidelands owned by Plaintiff Taylor United. CPPSH's Registered Agent is Laura Hendricks. CPPSH's Registered Agent's address is 6723 Sunset View Drive, Gig Harbor, Washington, 98332.

1.8 Potentially interested party APHETI, a Washington non-profit corporation, is listed as an Applicant for DNR Aquatic Lands Lease Application No. 20-083990 to lease tidelands owned by Plaintiff Taylor United. APHETI's Registered Agent is Lee Ruddy. APHETI's Registered Agent's address is 7637 78th Place NW, Olympia, Washington, 98502.

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction, and venue is properly laid with this Court, because this action involves quieting title to certain real property located in Thurston County, Washington.

2.2 This Court further has jurisdiction over this matter under Chapter 7.24 RCW (Uniform Declaratory Judgments Act), Chapter 7.28 RCW (Ejectment, Quieting Title), Chapter 79.02 RCW (Public Lands Management), and RCW 2.08.010.

2.3 Venue is proper in Thurston County pursuant to Chapter 4.12 RCW because the Disputed Areas are situated in Thurston County, the personal property that is the subject of this claim is situated in Thurston County, and the acts, occurrences, transactions and/or omissions giving rise to this action occurred in Thurston County, and

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pursuant to RCW 79.02.030 (Public Lands Management), because the lands and materials at issue are situated in Thurston County.

III. FACTS

A. FACTS RELATED TO USE OF THE DISPUTED AREAS

3.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

3.2 Shellfish farming has a rich history in Washington State. Farmers began cultivating shellfish on tidelands in the South Puget Sound prior to statehood. Recognizing the importance of the oyster industry, shortly after statehood the Washington State Legislature passed the Bush and Callow Acts in 1895, providing for the private purchase of tidelands for the sole purpose of shellfish farming. The purpose of these transfers of tidelands was to encourage and facilitate shellfish farming. Under the Bush and Callow Acts, if tidelands conveyed thereunder are ever used for a purpose other than shellfish cultivation, ownership of those tidelands reverts back to the State.

3.3 The Disputed Areas and the adjacent tidelands owned by Plaintiffs have a long history of use for shellfish farming, beginning in 1905. In that year, pursuant to the Bush Act, the State conveyed to H. R. Weatherall 72.58 acres of tidelands in Totten Inlet "suitable for the cultivation of oysters" (hereinafter "Weatherall Conveyance"). The tidelands (hereinafter "Weatherall Tract") were to be used solely for oyster cultivation. A modern survey has not confirmed the actual acreage transferred under the Weatherall Conveyance.

3.4 Several facts demonstrate that both the State of Washington and H.R. Weatherall intended that the waterward line of the Weatherall Tract run along the Extreme Low Tide Line. First, at the time the State conveyed the Weatherall Tract in 1905,

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Olympia oysters were the predominant oyster cultivated in the South Puget Sound region. Because of their environmental sensitivity, Olympia oysters generally grow only on the more waterward, lower stretches of tidelands that are exposed less often than those tidelands higher up on the beach. In fact, in some places in Puget Sound, Olympia Oysters grew beyond the Extreme Low Tide Line onto subtidal areas. Because the intent of the Bush Act was to convey tidelands suitable for the production of oysters, tidelands conveyed under the Act were generally located very low on the beach.

3.5 After the Weatherall Conveyance, on information and belief, Mr. Weatherall farmed oysters on his tidelands, including the Disputed Areas, as the Bush Act required. The Disputed Areas, which are bordered on the waterward side by the Extreme Low Tide Line, include those low stretches of beach that, at the time of the Weatherall Conveyance, were considered suitable for the cultivation of oysters.

3.6 Over the course of the past century, the Weatherall Tract was broken up into multiple smaller parcels and sold off to various individuals and entities. Those parcels, including those that Plaintiffs currently own and cultivate, were understood by DNR, Plaintiffs, and prior tideland owners to include the Disputed Areas.

3.7 From 1953 until 2008, the year the first and only modern survey of the Disputed Areas and adjacent tidelands was conducted, both DNR and the owners of tidelands included in the Weatherall Conveyance, including Plaintiffs, took numerous actions demonstrating a shared belief that the Disputed Areas were included in the Weatherall Conveyance. These actions include, without limitation, applying for and granting leases to adjacent subtidal areas, making representations to each other and to third parties indicating that the State did not have an ownership interest in the Disputed Areas, and conducting numerous inspections and site visits of the Disputed Areas that confirmed the areas were being actively used for shellfish culture.

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3.8 On or around March 9, 1953, Carl and Beda Adams, a married couple, purchased a portion of the Weatherall Tract. The Adamses believed that the land they were purchasing included the Disputed Areas. As required under the Bush Act, the Adamses farmed oysters on their tidelands, including the Disputed Areas.

3.9 There is extensive evidence that both DNR and the Adamses recognized the Adamses' ownership of the Disputed Areas since at least the 1950s. For example, in 1956, the Adamses applied for, and DNR issued, an aquatic lease for a wave break adjacent to the waterward boundary of the Disputed Areas (hereinafter "Wave Break"). The Wave Break consisted of floating logs anchored to pilings. The purpose of the Wave Break was to protect oysters being grown on the lower reaches of the Disputed Areas from damage caused by wave action. The Wave Break was to be installed on a ten-foot-wide strip running along the waterward side of the Extreme Low Tide Line that forms the waterward boundary of the Disputed Areas. The Adamses' application included a sworn affidavit stating that they were the actual owners of the tidelands abutting the area proposed to be leased (the Disputed Areas).

3.10 After receiving the Adamses' Wave Break lease application, DNR inspected the site where the Adamses were proposing to install the Wave Break. This site inspection would have definitively revealed that the Disputed Areas were being cultured for oysters. South Puget Sound has not historically and currently does not have annual oyster sets, although they do occur on an irregular and infrequent basis. At the time of DNR's 1957 inspection, and in the years leading up to that inspection, there were no natural sets of oysters in South Puget Sound. During years when no natural set occurred, oyster cultivation in South Puget Sound entailed collecting oyster "seed" (small oysters attached to a shell) from other areas and distributing that seed across South Puget Sound oyster lands. The seed was collected from Hood Canal/Dabob Bay (where oysters set

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naturally) or it was imported from Japan. DNR inspectors visiting the Disputed Areas in 1957 would have seen oysters on the tidelands throughout the portions of the Disputed Areas adjacent to the proposed Wave Break location, which would have been an obvious indication of active oyster farming. Without active culturing, the Disputed Areas would not have contained significant quantities of oysters.

3.11 DNR acknowledged the Adamses' ownership of the Disputed Areas during its review of the Wave Break lease application. On or around December 5, 1956, DNR prepared an Engineer's Report that acknowledged Mr. Adams's affidavit of ownership of the Disputed Areas. The Engineer's Report also referenced the Thurston County Auditor's certification of the Adamses' deed "showing [the Adamses] to be the record owner of the abutting tidelands." The Report stated that "the abutting tidelands...are included in a tract conveyed for the cultivation of oysters." The "abutting tidelands" referenced in the Report is a reference to the tidelands adjacent to the subtidal areas that were the subject of the Wave Break lease application. These "abutting tidelands" include the Disputed Areas.

3.12 On or around October 10, 1957, DNR issued its Order granting Carl Adams a five-year lease (hereinafter "1957 Wave Break Lease") for the installation of the Wave Break to protect the Adamses' oysters being cultivated in the Disputed Areas. The area leased to the Adamses, as legally described, was a ten-foot-wide strip just waterward of the Extreme Low Tide Line (which line forms the waterward boundary of the Disputed Areas.) Mr. Adams then constructed the Wave Break to protect his oysters. Portions of the Wave Break still exist today in the subtidal area directly adjacent to the Disputed Areas.

3.13 DNR's official Aquatic Land Plates confirm that the Disputed Areas are included within the tidelands owned by Carl Adams in the 1950s. DNR's Aquatic Land

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Plates are a series of maps on which DNR has maintained its official records of sales and leases of all state aquatic lands since statehood in 1889. These official Aquatic Land Plates show the Adamses' 1957 Wave Break Lease in the subtidal area directly adjacent to the waterward boundary of the portion of the Weatherall Tract then owned by Adamses. Thus, DNR's official Aquatic Land Plates depict the waterward boundary of the Weatherall Tract in this area as the Extreme Low Tide Line, thereby indicating that the Disputed Areas are included within the Adamses' ownership.

3.14 DNR had occasion to review the ownership of the Disputed Areas again five years later, on or around October 4, 1962, when the Adamses submitted an application to renew the 1957 Wave Break Lease to protect their oyster lands. In his lease application, Mr. Adams again certified that he was the owner of the tidelands abutting the Wave Break at the Extreme Low Tide Line.

3.15 During the course of DNR's review of the Adamses' renewal application, DNR prepared and submitted an Engineer's Report again affirming that the Adamses were the owners of the tidelands abutting the Wave Break, and that the application was for wave breaks in front of oyster lands they owned and actively cultivated. DNR again conducted a site visit and concluded "[t]his property seems to be useful only for the purpose presently used by the Lessee"—the protection of oysters in the Disputed Areas—and recommended issuance of the lease. DNR then issued the Adamses a ten-year lease for their Wave Break (hereinafter "1962 Wave Break Lease") effective on or around December 6, 1962.

3.16 DNR's official Aquatic Land Plates also depict the 1962 Wave Break Lease, again confirming that the Adamses' ownership included the Disputed Areas. The legal description for the 1962 Wave Break Lease locates it just waterward of the Extreme

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Low Tide Line, which again is shown as the waterward boundary of the portion of the Weatherall Tract in this area that was owned by Carl Adams.

3.17 On or around February 20, 1963, Lighthouse Oyster purchased tidelands from the Adamses, with the understanding that those tidelands included the Taylor Disputed Area. Lighthouse Oyster, like the Adamses before them, farmed oysters in the lower portion of the Taylor Disputed Area protected by the Wave Break.

3.18 In 1967, DNR again confirmed that the Disputed Areas were held in private ownership. That year, the owner of uplands in the vicinity of the Disputed Areas inquired about purchasing the tidelands in front of his uplands, which included the Disputed Areas. DNR reviewed its official records and concluded that the Disputed Areas were privately owned Bush Act tidelands, and therefore not available for sale. DNR then sent a letter to the upland owner informing him that, according to DNR's official records, the tidelands adjacent to his upland property (which included the Disputed Areas) had been sold in the Weatherall Conveyance and that there were likely no tidelands available for purchase.

3.19 On or around January 31, 1969, Justin Taylor and Masao Okada purchased tidelands from Lighthouse Oyster pursuant to a Statutory Warranty Deed (hereinafter "Taylor Deed"), with the understanding that those tidelands included the Taylor Disputed Area. Mr. Taylor and Mr. Okada, like the Adamses and Lighthouse Oyster before them, farmed oysters in the lower portion of the Taylor Disputed Area protected by the Wave Break. Mr. Taylor and Mr. Okada took over the 1962 Wave Break Lease, the boundary of which formed the waterward boundary of the Taylor Disputed Area.

3.20 DNR again reviewed and confirmed that the Taylor Disputed Area was in private ownership in 1972, when the 1962 Wave Break Lease expired and Mr. Taylor and Mr. Okada filed an application to renew the lease for another ten-year period. In the lease

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application Mr. Taylor certified that he was the owner of the tidelands abutting the Wave Break (the Taylor Disputed Area). DNR reviewed the lease application and, after a site visit and recommendation of approval, approved the lease (hereinafter "1972 Wave Break Lease").

3.21 Masao Okada passed away at the age of 49 on or around September 26, 1975. Mr. Okada was survived by his wife, Mabel Okada. Shortly after his death, Mr. Okada's interest in the 1972 Wave Break Lease abutting the Taylor Disputed Area was assigned to Ms. Okada. On or around October 20, 1980, Ms. Okada and Mr. Justin Taylor assigned the 1972 Wave Break Lease abutting the Taylor Disputed Area to Taylor United.

3.22 On or around September 24, 1982, Taylor United applied for a renewal of the 1972 Wave Break Lease abutting the Taylor Disputed Area for the purpose of "oystering." DNR issued a ten-year lease (hereinafter "1982 Wave Break Lease") on June 1, 1983, effective May 2, 1983. DNR's AIMS Master File Data sheet for the lease describes the lease as being for a "wave break for oysters." The 1982 Wave Break Lease expired on October 10, 1992.

3.23 DNR again confirmed that the Disputed Areas were held in private ownership in 1997, in response to a third-party inquiry about Taylors' tideland ownership in Totten Inlet. At that time, DNR reviewed its records, including the Aquatic Land Plates for the Disputed Areas, and issued a written response to that third party stating that Taylors owned the Taylor Disputed Area and that there were no state lands between the Weatherall Tract and the Wave Break at the Extreme Low Tide Line.

B. FACTS RELATED SPECIFICALLY TO THE SENFF DISPUTED AREA.

3.24 On or around January 22, 1960, Carl Adams sold Ernest Senff and Helen G. Senff, a married couple, a portion of his tidelands to farm oysters, under a Statutory

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Warranty Deed (hereinafter "Senff Deed"). The Senffs understood that the lands they were purchasing included the Senff Disputed Area. Mr. Adams assigned a portion of his 1957 Wave Break Lease to Ernest Senff. The Wave Break was located just westerly of the Extreme Low Tide Line that forms the waterward boundary of the Senff Disputed Area. The Senffs, as the Adamses had before them, farmed oysters throughout the Senff Disputed Area continuously from 1960 to 2002.

3.25 On or around December 2, 2002, Plaintiff Helen Senff and Plaintiff Taylor Resources entered into a Product Purchase Agreement under which Taylor Resources harvested and purchased from Ms. Senff the existing Senff oysters on the tidelands. Ms. Senff and Taylor Resources understood that the lands covered by this agreement included the Senff Disputed Area. The agreement required harvest be completed by June 1, 2003.

3.26 On or around December 16, 2002, Plaintiff Helen Senff and Plaintiff Taylor Resources entered into a seven-year lease agreement allowing Taylor Resources to cultivate shellfish on Ms. Senff's tidelands. Both Ms. Senff and Taylor Resources understood at the time they entered into the lease agreement that the lease included the Senff Disputed Area and that Ms. Senff was the owner of the Senff Disputed Area.

3.27 After execution of the Senff lease, Taylor Resources commenced the cultivation of geoduck clams on the Senff Disputed Area. The Senff Disputed Area presently contains significant quantities of shellfish (oysters and geoducks) that were planted on that property by Taylor Resources.

C. FACTS RELATED TO THE TAYLOR FAMILY'S SUBSTANTIAL IMPROVEMENTS TO THE DISPUTED AREAS.

3.28 For 40 years, since Justin Taylor's 1969 purchase of the tidelands he believed contained the Taylor Disputed Area, the Taylor Family has relied upon DNR and the Taylor Family's mutual understanding that Justin Taylor and subsequently Taylor

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United owned the Taylor Disputed Area. Over the course of those 40 years, the Taylor Family has spent countless hours improving the Taylor Disputed Area for shellfish cultivation. The Taylor Family's efforts have resulted in a significant enhancement in the value of the Taylor Disputed Area.

3.29 For over 45 years, the Senffs, and subsequently Taylor Resources, have relied upon DNR and the Senffs' and Taylor Resources' mutual understanding that the Senffs owned the Senff Disputed Area. Over the course of those 45 plus years, the Senffs, and subsequently Taylor Resources, have spent countless hours improving the Senff Disputed Area for shellfish cultivation, resulting in a significant enhancement in the value of the Senff Disputed Area.

3.30 As an example of the Taylor Family's enhancement, Taylors have cultivated oysters using on-bottom and bag growing methods in the Disputed Areas. Taylors have also used the Disputed Areas for oyster seed storage and as a transfer point for oyster seed. Taylors also cultivate geoduck clams in the ground. Taylors largely developed the techniques currently used in geoduck cultivation, a relatively new type of shellfish farming, in the Disputed Areas. The Disputed Areas currently contain over $3 million worth of valuable shellfish that were planted by Taylors (hereinafter "Taylor Product").

3.31 Due to the highly productive nature of this farm and its ability to sustain numerous species of shellfish utilizing a range of growing methods, Taylors have used the farm, including the Disputed Areas, as their showcase property for decades, hosting tours for regulatory agencies including DNR, Thurston County, the Army Corps of Engineers, the State Shellfish Aquaculture Regulatory Committee, and individuals including potentially interested party Laura Hendricks.

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3.32 Then-Commissioner of Public Lands Doug Southerland and DNR aquatics staff attended one such tour of the Disputed Areas in 2002. During that tour, Commissioner Sutherland and DNR staff were shown Taylor United's shellfish farming activities, including oyster and geoduck farming, which were being conducted throughout the Taylor Disputed Area.

3.33 Until 2007, over the course of numerous inspections of the site, reviews in response to third-party inquiries, and issuance of multiple adjacent leases to protect the oysters cultivated in the Disputed Areas, DNR never questioned, and indeed repeatedly confirmed, that Taylors owned the Taylor Disputed Area.

D. FACTS RELATED TO DNR'S ASSERTION OF OWNERSHIP AND SETTLEMENT OF COMPETING OWNERSHIP CLAIMS.

3.34 In 2007, potentially interested party Laura Hendricks filed a request that the State Auditor review the Taylors' ownership of tidelands in Washington. Some time after that request, DNR contacted the Taylor Family and informed them that it had received information indicating that Taylors' shellfish farming operations on and around the Disputed Areas could be occurring in an area that a modern survey would indicate included state-owned tidelands.

3.35 Historically, shellfish growers have not utilized surveys when conducting transfers of intertidal areas used for shellfish farming. Instead, shellfish farmers have generally relied upon historical locations of farming activity, natural features in the landscape (such as the Extreme Low Tide Line), and representations by sellers and adjacent owners with respect to boundary locations. Tideland surveys are generally not conducted because of the difficulty of conducting accurate surveys in the intertidal area, challenges to retaining survey/boundary markers in the harsh marine environment, and the limited access to the intertidal area due to the tidal cycle, all of which result in an

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extremely high cost of conducting tideland surveys relative to the values of the tidelands themselves.

3.36 The Disputed Areas cover less than 5% of the total acreage managed by Taylors in Totten Inlet. Within Totten Inlet, Taylors own or lease 472 acres of shorelines divided among 35 separate parcels. Taylors have managed the Disputed Areas as a small portion of a contiguous 1.6 mile farm.

3.37 After DNR notified Taylors of the potential boundary discrepancy on its Totten farm, Taylors commissioned a survey of the Disputed Areas during the first half of 2008, on those dates where sufficiently extreme low daytime tides allowed an intertidal survey to occur (hereinafter "2008 Survey"). The 2008 Survey revealed numerous discrepancies between the legal descriptions in the Weatherall Conveyance and the shared understanding between DNR, Plaintiffs, and adjacent property owners as to the location of boundaries in the vicinity of the Disputed Areas. The 2008 Survey concluded that the legal descriptions in the deeds to Plaintiffs Taylor United and Helen Senff did not include the Disputed Areas. Rather, those legal descriptions included an area higher on the intertidal plane, an area that was by and large not suitable for cultivating oysters.

3.38 With regard to the upland boundary of the Weatherall Conveyance, the 2008 Survey revealed that numerous bulkheads constructed by adjacent upland owners were actually located on and were encroaching Plaintiffs' tidelands. This fact further demonstrates that the commonly-held and shared understanding regarding the location of Plaintiffs' tideland boundaries differed from the boundaries determined by the 2008 Survey. On information and belief, none of the upland owners whose bulkheads are encroaching on Plaintiffs' properties conducted surveys of their uplands prior to constructing the encroaching bulkheads, providing further evidence that tideland area surveys are generally not conducted.

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3.39 Based on the results of the 2008 Survey, the Disputed Areas form an approximately 32-acre strip of tidelands between the areas described in the deeds and the Extreme Low Tide Line that, until that point, was thought by DNR and Plaintiffs to form the waterward boundary of Plaintiffs' properties. DNR confirmed the accuracy of the survey, and asserted an ownership interest in the Disputed Areas based on the results of that survey.

3.40 Rather than litigate the issues of title to the tidelands, disposition of the shellfish on the Disputed Areas, and related damages claims, Taylors and DNR determined to work cooperatively to resolve the ownership dispute over the Disputed Areas in an equitable manner. On or around May 20, 2008, as part of this cooperative effort, Taylor Resources applied for a lease from DNR to continue cultivating shellfish on the Disputed Areas. On or around September 4, 2008, potentially interested parties Laura Hendricks, CPPSH, and APHETI applied for a lease to grow shellfish on Taylor United's tidelands adjacent to the Taylor Disputed Area.

3.41 On or around September 26, 2008, DNR and Taylor Resources entered into Aquatic Lands Right of Entry Agreement No. 23-083357. DNR granted Taylor Resources a right of access to the Disputed Areas to the extent DNR has an ownership interest in the property. Under the Agreement, DNR has allowed Taylor Resources to enter the Disputed Areas to remove certain aquaculture gear and conduct ongoing maintenance until resolution of the ownership dispute over the Disputed Areas. The Right of Entry does not allow Taylors to harvest the Taylor Product in the Disputed Areas or to plant additional shellfish in those areas.

3.42 In furtherance of the commitment to work cooperatively to resolve the ownership dispute over the Disputed Areas, rather than litigating the issues of title to the tidelands, disposition of the shellfish on the Disputed Areas, and related damages claims,

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Taylors and DNR entered into a settlement agreement on or around January 12, 2009, regarding the Disputed Areas. Under the settlement agreement, DNR agreed "to consider a use authorization/lease to Taylor[s] that allows Taylor[s] to harvest existing oysters and continue to use the [Disputed Areas]" for a term of five years. DNR's decision on the lease was to be based on "applicable statutory authorities."

3.43 On or around December 12, 2008, DNR sent a letter to the Squaxin Island Tribe regarding the Disputed Areas. In the letter, DNR acknowledged that the ownership dispute over the Disputed Areas was only discovered "[t]his past year" but that the aquaculture activities on the Disputed Areas "have been ongoing for many decades, first as oyster culture by the preceding Bush Act landowners and more recently by Taylor Shellfish as both oyster aquaculture and geoduck aquaculture."

3.44 DNR also admitted, in its December 12, 2008, letter to the Squaxin Tribe, that the State has always believed the Disputed Areas to be owned by Plaintiffs:

> Prior to the discovery of the encroachment, both DNR and Taylor Shellfish believed that Taylor Shellfish's aquaculture operations at this site were entirely on Taylor's private land, parcel #93010401000.

DNR's admission that it believed that Taylor owned the Taylor Disputed Area is consistent with DNR's Aquatic Lands Plates and records; statements for the past 50 years in DNR reports, inspections, and leases for the Wave Break; and DNR's representations made over the past century to Taylors, to prior farmers of the Disputed Areas, and to third parties inquiring as to the ownership of the Disputed Areas. It is further consistent with Taylors' historic belief that their aquaculture operations in the Disputed Areas were on private land, which was the basis for Taylors' extensive improvements to the Disputed Areas.

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E. FACTS RELATED TO DNR'S LEASE PROCESSING AND BREACH OF THE SETTLEMENT AGREEMENT.

3.45 In November of 2008, DNR began processing the application by Taylor Resources to lease portions of the Disputed Areas for aquaculture. As DNR processed Taylor Resources' Lease application, DNR requested, and Taylor Resources agreed, to modify the application to include a term of five years and to limit the scope of activities so the lease would only allow harvesting existing planted geoducks and cultivation of oysters using traditional on bottom methods (hereinafter "Lease").

3.46 DNR, as lead agency, began the environmental review process for the Lease pursuant to the State Environmental Policy Act (SEPA File No. 08-122201). On or around December 19, 2008, DNR issued a Mitigated Determination of Nonsignificance ("MDNS") for the Lease. The DNR Responsible Official concluded that the proposal as conditioned will not have a probable significant adverse impact on the environment. The public comment period for the MDNS was set from December 19, 2008, to January 5, 2009. The comment period was subsequently extended to January 8, 2009, and then again to January 23, 2009.

3.47 On or around January 14, 2009, a new Commissioner of Public Lands took office. Prior to taking office, the incoming Lands Commissioner criticized his predecessor for entering into a settlement agreement with Taylor Resources.

3.48 On or around February 2, 2009, DNR issued a notification that DNR was delaying its final threshold determination until February 20, 2009, due to the almost 400 comment letters and e-mails DNR received on the MDNS for the Lease, which required "significant review of the significant ecological questions and/or concerns [that] requires additional scientific staff time and research."

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3.49 On or around February 5, 2009, three days after DNR extended the SEPA review process for 18 days to ensure all public comments were considered before taking action on Taylor Resources' lease application, the new Lands Commissioner suddenly and unexpectedly issued a press release announcing his decision to reject Taylor Resources' proposed Lease. The new Lands Commissioner also indicated in the press release that he intended to "renegotiate the settlement for the trespass on public land as an issue separate from the lease." The first notification Taylors received of the Commissioner's decision to deny Taylor Resources' lease application and repudiate the settlement agreement was from local newspaper reporters who forwarded the new Lands Commissioner's press release to a Taylor employee.

3.50 On or around February 9, 2009, Bill Taylor, President of Taylor United, met with the new Lands Commissioner. According to the February 5 press release, the purpose of this meeting was to discuss the Commissioner's decision to not sign the Lease and repudiate the settlement agreement executed by the previous Lands Commissioner. Later that day, the new Lands Commissioner issued an internal DNR memorandum again affirming his decision to deny the Lease.

IV. FIRST CAUSE OF ACTION: QUIET TITLE TO REAL PROPERTY

4.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

4.2 The two principal forms of action regarding disputed title to land in Washington are quiet title and ejectment.

4.3 Under RCW 7.28.010, a plaintiff is entitled to a judgment quieting title to disputed land and/or ejectment of the defendant from disputed land if a court finds that the plaintiff has a valid subsisting interest in the disputed land and a right to the possession

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thereof. If the plaintiff is in possession of the disputed land, he or she can sue only to quiet title. If the plaintiff is not in possession, he or she can sue both to eject the defendant and to quiet title.

4.4 Plaintiffs believe that they are legally in possession of the Disputed Areas.

4.5 As discussed in the following sections, Plaintiffs have a valid subsisting interest in the Disputed Areas and a right to the possession thereof, based upon judicial doctrines that include without limitation (1) reformation of a deed based on mutual mistake; and (2) equitable boundary adjustment doctrines that allow courts to adjust the boundary between adjoining properties.

4.6 Reformation of Deed Based on Mutual Mistake. Washington law allows courts to reform the legal description in a deed based on a mutual mistake if the intention of the parties was identical at the time of the transaction and the written agreement did not express that intention. The Taylor Deed and the Senff Deed should be reformed to recognize that, by virtue of mutual mistake, Plaintiffs have a valid subsisting interest in the Disputed Areas and a right to the possession thereof, for reasons that include without limitation the following:

4.6.1 At the time of the Weatherall Conveyance, the identical intention of the parties was to convey tidelands suitable for the cultivation of oysters. The parties' intent to convey such tidelands is evidenced by facts including without limitation the statement in the Weatherall Deed that the lands conveyed were "suitable for the cultivation of oysters" and the legislative history and intent of the Bush Act.

4.6.2 Because the legal description in the Weatherall Deed described tidelands that were not suitable for the cultivation of oysters, the deed did not express the parties' intention.

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4.6.3 The mistaken waterward boundary legally described in the portion of the Weatherall Deed adjacent to the Disputed Areas was used in legal descriptions in deeds conveying portions of the Weatherall Tract to subsequent purchasers. Thus, the land legally described in the Taylor Deed and the Senff Deed is a portion of the land legally described in the Weatherall Deed.

4.6.4 The parties' intent to convey tidelands suitable for the cultivation of oysters in the Weatherall Conveyance has been further demonstrated and confirmed by the pattern of actions taken from 1953 until 2008 by the owners of tidelands originally sold in the Weatherall Conveyance and by DNR, which consistently treated the Extreme Low Tide Line as the true boundary between the State's ownership and the Plaintiffs' ownership. Such actions by Plaintiffs and their predecessors include, without limitation: cultivating shellfish throughout the Disputed Areas in all locations susceptible to that use; submitting lease applications for the Wave Break to protect the oysters cultivated in the Disputed Areas; and constructing and maintaining the Wave Break adjacent to the Extreme Low Tide Line. Such actions by DNR include, without limitation: granting leases for the Wave Break; inspecting the Disputed Areas and confirming they were owned by Plaintiffs and their predecessors; making representations to Plaintiffs and their predecessors, and to third parties, that the Disputed Areas were owned by Plaintiffs; and maintaining its Aquatic Land Plates showing the waterward boundary of the Weatherall Tract as the Extreme Low Tide Line. On information and belief, DNR and the owners of tidelands originally sold in the Weatherall Conveyance also took similar actions from 1905 to 1953 that demonstrate and confirm the parties' intent to convey tidelands suitable for the cultivation of oysters.

4.6.5 Plaintiffs are entitled to reformation of the legal descriptions in the Taylor Deed and the Senff Deed because the erroneous legal description used in the

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Weatherall Deed and in subsequent deeds conveying portions of the Weatherall Tract was the result of a mutual mistake and did not effectuate the parties' intent to transfer lands suitable for oyster cultivation. The lands described in the Weatherall Deed were not suitable for oyster cultivation.

4.7 Equitable Boundary Adjustment Doctrines. Washington courts also recognize several different equitable doctrines that allow courts to adjust the boundary between adjoining properties by virtue of statements and/or acts by the landowners that reflect an agreement to, recognition of, and/or acquiescence in a boundary line that is at odds with boundaries described in title documents as revealed by a survey. These doctrines include, without limitation, the "common grantor" doctrine, the "mutual recognition and acquiescence" doctrine, and the "estoppel i*n pais*" doctrine.

4.7.1 Common Grantor. A court may adjust the boundary between adjoining properties under the common grantor doctrine if it finds that (1) a common grantor and original grantee agreed on a boundary during the sale; and (2) subsequent purchasers had actual notice of the agreed boundary and/or a visual examination of the property would reveal that a different boundary was serving as the true boundary. By virtue of the common grantor doctrine Plaintiffs have a valid subsisting interest in the Disputed Areas and a right to the possession thereof, for reasons that include without limitation the following:

4.7.1.1 During the sale of the Weatherall Tract, DNR as common grantor and Mr. Weatherall as original grantee agreed that the waterward boundary of the property would be the Extreme Low Tide Line. This agreement is demonstrated by facts that include without limitation the pattern of actions taken by the owners of tidelands originally sold in the Weatherall Conveyance and by DNR, as alleged in paragraph 4.6.4, which consistently treated the Extreme Low Tide Line as the true boundary; by the

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statement in the Weatherall Deed that the lands conveyed were "suitable for the cultivation of oysters;" and by the legislative history and intent of the Bush Act.

4.7.1.2 Subsequent purchasers had actual notice of the changed boundary line. On information and belief, each of Plaintiffs' predecessors cultivated oysters through the Disputed Areas in those areas suitable for that use. The Extreme Low Tide Line is a physical feature particularly recognizable in this case due to the presence of the Wave Break, and each seller of all or a portion of the Disputed Areas represented to the purchaser that the Extreme Low Tide Line marked the boundary.

4.7.1.3 Alternatively, a visual examination of the property would reveal that the Extreme Low Tide Line was the true boundary due to the presence of features such as the Wave Break at the Extreme Low Tide Line and shellfish cultivation within the Disputed Areas.

4.7.2 Mutual Recognition and Acquiescence. A court may adjust the boundary between adjoining properties under the doctrine of mutual recognition and acquiescence if it finds that (1) the line is certain, well defined, and in some fashion physically designated upon the ground; (2) the adjoining landowners, or their predecessors in interest, in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line continued for at least ten years. By virtue of mutual recognition and acquiescence Plaintiffs have a valid subsisting interest in the Disputed Areas and a right to the possession thereof, for reasons that include without limitation the following:

4.7.2.1 The boundary line between the Disputed Areas and DNR's holdings is and has been well defined and physically designated upon the ground by

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features such as the Wave Break at the Extreme Low Tide Line and shellfish cultivation within the Disputed Areas.

4.7.2.2 DNR, Plaintiffs, and their predecessors have manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the Extreme Low Tide Line as the true boundary line. Such acts, occupancy, and improvements include without limitation those acts alleged in paragraph 4.6.4.

4.7.2.3 The parties' mutual recognition and acquiescence in the Extreme Low Tide Line as the true boundary line has continued for a period of time far exceeding ten years. The parties' mutual recognition and acquiescence began no later than 1957, when DNR issued the 1957 Wave Break Lease for the installation of the Wave Break at the Extreme Low Tide Line, and continued for fifty years until 2007. On information and belief, the parties' mutual recognition and acquiescence began in 1905, when H. R. Weatherall began farming portions of the Disputed Areas in all locations susceptible to that use, and continued for nearly 100 years until 2007.

4.7.3 Estoppel *in Pais* (Estoppel by conduct). A court may adjust the boundary between adjoining properties under the doctrine of estoppel *in pais* if it finds that (1) the owner made an admission, statement, or act inconsistent with a claim afterwards asserted, (2) the other party acted on the faith of such admission, and (3) allowing the owner to contradict or repudiate his admission, statement, or act would result in injury to the other party. By virtue of estoppel *in pais* Plaintiffs have a valid subsisting interest in the Disputed Areas and a right to the possession thereof, for reasons that include without limitation the following:

4.7.3.1 DNR made numerous admissions, statements and/or acts that are inconsistent with its current claim of ownership to the Disputed Areas, including

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without limitation the statement in the Weatherall Deed that the lands conveyed were "suitable for the cultivation of oysters" and those acts by DNR alleged in paragraph 4.6.4.

4.7.3.2 Plaintiffs and their predecessors acted on the faith of DNR's pattern of admissions, statements and/or acts, as alleged in paragraph 4.6.4, which consistently treated the Extreme Low Tide Line as the true boundary, by improving the Disputed Areas and cultivating shellfish within the Disputed Areas.

4.7.3.3 Allowing DNR to contradict or repudiate its admissions, statements and/or acts would result in injury to Plaintiffs, including without limitation Plaintiffs' loss of the value of the Disputed Areas and millions of dollars Plaintiffs invested in improving the Disputed Areas, over $3 million in Plaintiffs' geoduck and oysters currently planted in the Disputed Areas, and the loss of the ability to farm the Disputed Areas in future years.

4.8 For reasons including without limitation those set forth in paragraphs 4.2 through 4.7 above, Plaintiffs are entitled to a judgment quieting title in them to the Disputed Areas.

V. SECOND CAUSE OF ACTION: EJECTMENT

5.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

5.2 Alternatively, if Plaintiffs are deemed not to be in legal possession of the Disputed Areas, for reasons including but not limited to those set forth in paragraphs 4.2 through 4.7 above, Plaintiffs are entitled to an order pursuant to RCW 7.28.010 requiring DNR to vacate the Disputed Areas.

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VI. THIRD CAUSE OF ACTION: DECLARATORY JUDGMENT REGARDING OWNERSHIP OF REAL PROPERTY (IN THE ALTERNATIVE)

6.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

6.2 Alternatively, if title to the Disputed Areas is not quieted in Plaintiffs and/or DNR is not ordered to vacate the Disputed Areas pursuant to RCW 7.28.010, Plaintiffs seek a declaration pursuant to the Uniform Declaratory Judgment Act, Chapter 7.24 RCW, that title to the Disputed Areas is vested in Plaintiffs.

6.3 A court may grant a declaratory judgment if it finds that it has been presented with a justiciable controversy. A justiciable controversy is (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement; (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

6.4 This Court has been presented with a justiciable controversy for reasons that include without limitation the following:

6.4.1 There is an actual and presently existing controversy between Plaintiffs and DNR regarding the ownership of the Disputed Areas.

6.4.2 The parties have genuine and opposing interests, which are direct and substantial. Plaintiffs have strong financial interests in this dispute, including without limitation its interests in the value of the Disputed Areas and millions of dollars invested by Plaintiffs in improving the Disputed Areas, over $3 million in Plaintiffs' geoduck and oysters currently planted in the Disputed Areas, and the loss of the ability to farm the

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Disputed Areas in future years. On information and belief, DNR has financial interests in this dispute, as demonstrated by actions that include without limitation DNR's assertions of claims for the value of the Taylor Product as part of a royalty for the harvest, DNR's assertions of claims for back rent, and DNR's assertions of claims for future rent.

6.4.3 A judicial determination of the respective rights of Plaintiffs and DNR with respect to the Disputed Areas will provide a final and conclusive determination of the controversy between the parties.

6.5 For reasons including without limitation those set forth in paragraphs 4.2 through 4.7 above, Plaintiffs are entitled to a declaration that title to the Disputed Areas is vested in Plaintiffs.

VII. FIFTH CAUSE OF ACTION: INVERSE CONDEMNATION OF REAL PROPERTY

7.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

7.2 For reasons including without limitation those set forth in paragraphs 4.2 through 4.7 above, Plaintiffs have a private property right in the Disputed Areas.

7.3 Washington's constitution provides that "[n]o private property shall be taken or damaged for public or private use without just compensation having been first made." WASH. CONST. art. I, § 16.

7.4 The term "inverse condemnation" is used to describe an action alleging a governmental "taking" or "damaging" that is brought to recover the value of property which has been appropriated in fact, but with no formal exercise of the power of eminent domain.

7.5 A governmental entity may be held liable for inverse condemnation if a court finds the following elements: (1) a taking or damaging (2) of private property (3) for

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public use (4) without just compensation being paid (5) by a governmental entity that has not instituted formal proceedings.

7.6 DNR is liable for inverse condemnation for reasons that include the following:

7.6.1 DNR's actions in asserting ownership of and entering onto the Disputed Areas since 2008 have resulted in a taking and/or damaging of private property for public use without just compensation.

7.6.2 On information and belief, DNR appropriated the Disputed Areas for possible leasing or other purposes authorized pursuant to applicable statutes, which are public purposes and/or public uses.

7.6.3 DNR has failed to provide just compensation to Plaintiffs.

7.6.4 No condemnation proceedings were instituted or maintained by DNR prior to the taking of Plaintiffs' private property interests.

7.7 Plaintiffs are entitled to compensation for the lost value resulting from DNR's claims of ownership of the Disputed Areas since 2008.

VIII. SIXTH CAUSE OF ACTION: QUIET TITLE TO PERSONAL PROPERTY (IN THE ALTERNATIVE)

8.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

8.2 Alternatively, if the Court finds that title to the Disputed Areas is not vested in Plaintiffs, Taylors seek an order quieting title in them to the Taylor Product.

8.3 Pursuant to RCW 7.28.310, a person claiming to be the owner of or interested in any personal property may bring suit for the purpose of adjudicating the title of the plaintiff to such property, or any interest therein, against any and all adverse claims,

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removing all such adverse claims as clouds upon the title of the plaintiff and quieting the title of the plaintiff against any and all such adverse claims.

8.4 One who plants or artificially cultivates shellfish obtains a personal property right in such shellfish.

8.5 Taylors have obtained a personal property right in the Taylor Product because Taylors planted and artificially cultivated the Taylor Product.

8.6 Pursuant to RCW 7.28.310, Taylors are entitled to an order quieting title in them to the Taylor Product, requiring DNR to allow Taylors to enter onto the Disputed Areas and harvest the Taylor Product over a period of time as it matures, and prohibiting DNR from allowing any activities within the Disputed Areas that would decrease the value of the Taylor Product.

IX. SEVENTH CAUSE OF ACTION: CONSTRUCTIVE TRUST BASED ON UNJUST ENRICHMENT / RESTITUTION (IN THE ALTERNATIVE)

9.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

9.2 Alternatively, if the Court finds that title to the Disputed Areas is not vested in Plaintiffs and that title to the Taylor Product is not vested in Taylors, Taylors seek an order based on unjust enrichment and/or restitution imposing a constructive trust on the Disputed Areas and the Taylor Product.

9.3 Unjust enrichment, or quasi contract, allows recovery for the value of a benefit provided without a contract based on notions of fairness and justice. The doctrine of unjust enrichment is applied when money or property has been placed in one party's possession such that in equity and good conscience it should not be retained.

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9.4 A defendant is liable under quasi contract if a court finds the following elements: (1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment. Similarly, a defendant is liable in restitution if it receives an economic benefit under circumstances such that its retention without payment would result in the unjust enrichment of the defendant at the expense of the plaintiff.

9.5 A constructive trust is an equitable remedy imposed when a court finds that a person holding title to property would be unjustly enriched if he or she did not convey it to the plaintiff.

9.6 DNR is liable for the value of the Taylor Product by virtue of quasi contract and/or restitution for reasons that include the following:

9.6.1 By retaining the Taylor Product, DNR will receive a benefit whose value exceeds $3 million.

9.6.2 The benefit received by DNR will be at the expense of Taylors, who have invested substantial time, labor, and capital to improve the Disputed Areas and cultivate the Taylor Product.

9.6.3 The circumstances make it unjust for DNR to retain the benefit of the Taylor Product without payment. DNR should not be allowed, after treating the Disputed Areas as Plaintiffs' property for at least fifty years, to now assert ownership of the Taylor Product and retain the benefit of Taylors' investments in time, labor and capital.

9.7 By virtue of quasi contract and/or restitution, Taylors are entitled to an order imposing a constructive trust on the Taylor Product by which DNR holds possession to the Taylor Product on Taylors' behalf, requiring DNR to allow Taylors to enter onto the Disputed Areas and harvest the Taylor Product over a period of time as it matures, and

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prohibiting DNR from allowing any activities within the Disputed Areas that would decrease the value of the Taylor Product.

X. EIGHTH CAUSE OF ACTION: UNLAWFUL DENIAL OF LEASE (IN THE ALTERNATIVE)

10.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

10.2 Alternatively, if this Court finds that title to the Disputed Areas is not vested in Plaintiffs and/or that title to the Taylor Product is not vested in Taylors, Plaintiff Taylor Resources seeks an order overturning the Commissioner's decision to deny the Lease on procedural and substantive grounds and remanding the Commissioner's decision for processing of the application for the Lease and issuance of the Lease in accordance with applicable statutes.

10.3 Under RCW 79.105.160 and RCW 79.02.030, any applicant to lease state-owned aquatic lands feeling aggrieved by any order or decision of the Commissioner of Public Lands concerning the same may appeal the order or decision to the superior court of the county in which such lands or materials are situated.

10.4 Plaintiff Taylor Resources is aggrieved by the Commissioner's decision to deny the Lease because Taylor Resources is the applicant for the Lease Application that was denied by the Commissioner.

10.5 The Commissioner's decision to deny the Lease was arbitrary and capricious because it was taken without regard to or consideration of the facts and circumstances surrounding the action, including without limitation the facts and circumstances surrounding the merits of the Lease and the public and agency comments regarding the Lease that were submitted pursuant to the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW.

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10.6 The Commissioner's decision to deny the Lease was contrary to RCW 79.105.210, which provides that DNR has the authority make leases only in conformance with the state Constitution and chapters 79.105 through 79.140 RCW, for reasons that include without limitation the following:

10.6.1 The Commissioner's decision to deny the Lease Application was contrary to the management philosophy set forth in RCW 79.105.020 and the management guidelines set forth in RCW 79.105.030 because, among other reasons, the Commissioner's decision thwarted the goals of "[f]ostering water-dependent uses," "[e]nsuring environmental protection," and "[u]tilizing renewable resources."

10.6.2 The Commissioner's decision to deny the Lease Application was contrary to legislatively-declared policies favoring aquaculture development, such as the policies set forth in RCW 79.105.050, RCW 79.135.160, RCW 79.135.170, and the policy set forth in RCW 15.85.010 "to encourage the development and expansion of aquaculture within the state."

10.6.3 The Commissioner's decision to deny the Lease Application was contrary to policies favoring water-dependent uses set forth in RCW 79.105.210.

10.6.4 The Commissioner's decision to deny the Lease Application was contrary to the administrative rules adopted by DNR pursuant to RCW 79.105.360, including without limitation WAC 332-30-127, which provides that if an unauthorized use is permissible under law and DNR policy, "the occupant is to be encouraged to lease the premises."

10.7 The Commissioner's decision to deny the Lease was contrary to SEPA because, among other reasons, DNR failed to consider public and agency comments before the decision was made and failed to issue a final threshold determination before rendering its decision.

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10.8 Pursuant to RCW 79.02.030, Plaintiff Taylor Resources is entitled to an order overturning the Commissioner's decision to deny the Lease and remanding the Commissioner's decision for processing of the Lease and issuance of the lease in accordance with applicable statutes.

XI. EIGHTH CAUSE OF ACTION: BREACH OF SETTLEMENT AGREEMENT

11.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

11.2 A plaintiff may recover damages for breach of contract if a court finds that: (1) the plaintiff and defendant made a valid contract; (2) the contract was breached by defendant; (3) plaintiff performed; and (4) plaintiff suffered damages as a consequence.

11.3 The Settlement Agreement is a valid contract between Plaintiff Taylor Resources and DNR that requires DNR to process the Lease Application "based on applicable statutory authorities."

11.4 For reasons that include without limitation those set forth in paragraphs 10.5 through 10.7, the Settlement Agreement was breached by DNR because DNR did not process Taylor Resources' Lease Application "based on applicable statutory authorities." To the contrary, DNR's actions disregarded those statutory authorities.

11.5 Plaintiff Taylor Resources performed each of its obligations under the Settlement Agreement.

11.6 As a consequence of DNR's breach of the Settlement Agreement, Plaintiff Taylor Resources has suffered and continues to suffer damages in an amount to be determined at trial.

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XII. NINTH CAUSE OF ACTION: INJUNCTION

12.1 Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs above as if fully set forth herein.

12.2 Preliminary Injunction. For reasons including but not limited to those set forth in paragraphs 4.2 through 4.7, 6.1 through 6.5, 8.1 through 8.6 and 9.1 through 9.8 above, as owners of the Disputed Areas, Plaintiffs are entitled to a preliminary injunction (1) enjoining DNR from leasing the Disputed Areas, removing or otherwise disturbing the Taylor Product, or undertaking any other activities that would reduce the value of the Disputed Areas or the Taylor Product or that would otherwise be inconsistent with Plaintiffs' ownership of the Disputed Areas and the Taylor Product; and (2) authorizing Plaintiffs to harvest the Taylor Product as needed to avoid spoilage of oysters and/or geoducks.

12.3 Permanent Injunction. For reasons including without limitation those set forth in paragraphs 4.2 through 4.7, 6.1 through 6.5, 8.1 through 8.6 and 9.1 through 9.8 above, as owners of the Disputed Areas, Plaintiffs are entitled to an injunction forever enjoining DNR from having or asserting any right, title, estate, lien, or interest in or to the Disputed Areas, adverse to Plaintiffs.

XIII. REQUEST FOR RELIEF

Plaintiffs Taylor United, Taylor Resources, and Helen G. Senff request that the Court grant the following relief:

1. An order that title to the Taylor Disputed Area be quieted and established in Plaintiff Taylor United in fee simple as against DNR, and that DNR be barred forever from asserting any claim, right, or title adverse to Taylor United, Inc.

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2. An order that title to the Senff Disputed Area be quieted and established in Plaintiff Helen G. Senff in fee simple as against DNR, and that DNR be barred forever from asserting any claim, right, or title adverse to Helen G. Senff.

3. To the extent Plaintiffs are not deemed to be in possession of the Disputed Areas, an order requiring DNR to vacate the Disputed Areas.

4. An order requiring DNR to pay Plaintiffs compensation in an amount to be proven at trial to compensate Plaintiffs for DNR's inverse condemnation of the Disputed Areas.

4. In the alternative, if the Court does not quiet title to the Disputed Areas in Plaintiffs and does not order DNR to vacate the Disputed Areas, a declaration pursuant to the Uniform Declaratory Judgment Act that title to the Disputed Areas is vested in Plaintiffs.

6. In the alternative, if the Court finds that title to the Disputed Areas is not vested in Plaintiffs, an order quieting title in Plaintiffs to the personal property located in the Disputed Area, to wit: the Taylor Product.

7. In the alternative, if the Court finds that title to the Disputed Areas is not vested in Plaintiffs and that title to the Taylor Product is not vested in Taylors, an order finding that, based on quasi contract, Taylors are entitled to harvest the Taylor Product in the Disputed Areas as it matures and that, until the Taylor Product matures, DNR holds that Product in a constructive trust on behalf of Taylors.

8. In the alternative, if the Court finds that title to the Disputed Areas is not vested in Plaintiffs and that title to the Taylor Product is not vested in Taylors, and the Court finds that Taylor is not entitled to harvest the Taylor Product based on quasi contract, an order overturning DNR's denial of the Lease and remanding the

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Commissioner's decision to deny the Lease to the agency with an order that the Lease be granted. To this end, Plaintiffs request:

(i) an order pursuant to RCW 79.02.030 requiring DNR to certify a copy of the agency record to this Court within 30 days;

(ii) an order pursuant to RCW 43.21C.075 granting the parties leave to supplement the agency record; and

(iii) *de novo* review of the Lease pursuant to RCW 79.02.030.

9. An order declaring DNR in breach of the settlement agreement and awarding damages to Plaintiffs for that breach in an amount to be proven at trial.

10. Preliminary and permanent injunctive relief allowing Taylors to harvest.

11. Preliminary and permanent injunctive relief prohibiting DNR from having or asserting any right, title, estate, lien or interest in or to the Disputed Areas, adverse to Plaintiffs or leasing the Disputed Areas, removing or otherwise disturbing the Taylor Product, or undertaking any other activities that would reduce the value of the Disputed Areas or the Taylor Product or that would otherwise be inconsistent with Plaintiffs' ownership of the Disputed Areas and the Taylor Product.

12. Attorneys' fees and costs to the extent allowed by law;

13. Leave to amend this Complaint to add claims for damages arising out of tortious conduct after presentment of such claims to the risk management division and expiration of the 60-day period as required under RCW 4.92.110; and,

14. Further relief as may be just and equitable.

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DATED this 23rd day of February, 2009.

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By: _____
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EXHIBIT A

LEGAL DESCRIPTION
TAYLOR DISPUTED AREA

That portion of Second Class Tidelands in front of Government Lots 2, 3 and 4 of Section 5, Township 19 North, Range 2 West, W.M. in Thurston County, Washington, more particularly described as follows:

BEGINNING at the North one quarter corner of said Section 4; Thence N 89° 13' 33" W, 1,033.13 feet to the meander corner on the North line of said Section 4; Thence continuing N 89° 13' 33" W, 187.86 feet to the West line of a tract of second class tidelands suitable for the cultivation of oysters conveyed by the State of Washington to H.R. Weatherall as described in Volume 7, Page 120 of Tideland and Shoreland Deeds on file at the office of the Commissioner of Public Lands in Olympia, Washington; Thence S 13° 48' 57" W along said West line, 3.56 feet and S 44° 54' 37" W, 2,649.63 feet to the TRUE POINT OF BEGINNING; Thence continuing S 44° 54' 37" W along said West line, 519.07 feet and S 36° 54' 40" W, 1,979.84 feet and S 47° 54' 35" W, 1,461.33 feet; Thence N 42° 17' 04" W, 91.98 feet more or less to the line of extreme low tide in Totten Inlet; Thence Northeasterly along the line of extreme low tide to a point which bears N 40° 57' 39" W from the TRUE POINT OF BEGINNING; Thence S 40° 57' 39" E, 254.74 feet more or less to the TRUE POINT OF BEGINNING.

LEGAL DESCRIPTION
SENFF DISPUTED AREA

That portion of Second Class Tidelands in front of Government Lots 1 and 2 of Section 4 and Government Lot 2 of Section 5, all in Township 19 North, Range 2 West, W.M., in Thurston County, Washington, more particularly described as follows:

BEGINNING at the North one quarter corner of said Section 4; Thence N 89° 13' 33" W, 1,033.13 feet to the meander corner on the North line of said Section 4; Thence continuing N 89° 13' 33" W, 187.86 feet to the West line of a tract of Second Class Tidelands suitable for the cultivation of oysters conveyed by the State of Washington to H.R. Weatherall as described in Volume 7, Page 120 of Tideland and Shoreland Deeds on file at the office of the Commissioner of Public Lands in Olympia, Washington and the TRUE POINT OF BEGINNING; Thence S 13° 48' 57" W along said West line, 3.56 feet and S 44° 54' 37" W, 2,649.63 feet; Thence N 40° 57' 39" W, 254.74 feet more or less to the line of extreme low tide in Totten Inlet; Thence Northeasterly along the line of extreme low tide to a point which bears N 89° 13' 33" W from the TRUE POINT OF BEGINNING; Thence S 89° 13' 33" E, 280.87 feet more or less to the TRUE POINT OF BEGINNING.