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Joseph V. Panesko
Assistant Attorney General
Natural Resources Division
P.O. Box 40100
Olympia, WA 98504-0100

Re: Taylor Shellfish – Totten Inlet issue

Dear Mr. Panesko:

I have reviewed Doug Southerland's October 27, 2008 correspondence detailing findings regarding Taylor Shellfish's ("Taylors") use of property located in Totten Inlet. I have also reviewed your related October 27, 2008 correspondence. I understand that DNR has determined that Taylor's past use of the state-owned aquatic lands adjacent to Taylor's parcel is actionable under the public lands trespass statute, RCW 79.02.300. I also understand that DNR is contemplating imposition of treble damages pursuant to RCW 79.02.300, but is willing to consider any additional information that may establish that Taylor did not know, or have reason to know, that it was operating upon state-owned aquatic lands.

I request that you consider the extensive history and related facts set forth in this correspondence, in light of equitable principles that support the proposed resolution of this matter. The issues involve potential claims for deed reformation based on mutual mistake, tideland substitution, or defenses based on other equitable grounds. I also request that you consider the facts set forth in light of analogous case law regarding imposition of treble damages. I strongly believe that the imposition of treble damages is not appropriate given the facts set forth herein.

Should the Department pursue treble damages, Taylor will be forced to take responsive action, including counterclaims to seek to obtain title to the disputed property through deed reformation, tideland substitution or other equitable principles. It appears to be in the best interest of both parties to work cooperatively to resolve this situation in an equitable manner.

This correspondence also responds to DNR's calculation of damages. Specifically, this letter addresses the outstanding issue of oyster seed survival rates and also what we believe is an erroneous calculation of base rent for geoduck culture areas.

FACTUAL OVERVIEW

Historical conveyances, historical use of the subject property and facts regarding Taylor's original acquisition of the property, as well as Taylor's general shellfish operations and practices in the vicinity of the property, should be taken into consideration in evaluating the present situation. The facts set forth below are supported by the attached declarations of Justin Taylor, a Taylor United founder, and Paul Taylor, current President of Taylor Resources and manager of all Taylor tidelands. The following facts are also supported by legal records and documentation associated with the subject property. *See* documents attached.

From the beginning, the subject property was transferred by the State of Washington based on the premise that the property was suitable for the cultivation of oysters. In 1905 the State conveyed certain tidelands, including the subject property, to H. R. Weatherall. This conveyance was made pursuant to the Bush Act (Chapter 24, Laws of 1895). A "moving cause" for passage of the Bush Act was to encourage and facilitate the oyster industry. *In re Anderson*, 95 Wash. 330, 335, 163 Pac. 767 (1917). The Bush Act provided for the sale of not more than 100 acres of tidelands, considered suitable for the cultivation of oysters, at $1.25 per acre. Any lands so conveyed were to be used solely for oyster planting. The Act required that this oyster-related restriction be written into the face of the deed. H. R. Weatherall paid the State of Washington $90.72 ($1.25 per acre) to purchase 72.58 acres of tidelands pursuant to the Bush Act, for the sole purpose of cultivating oysters.

From this point forward, deeds conveying the subject property referenced land "suitable for the cultivation of oysters." Without question, the subject property's suitability for the cultivation of oysters was represented to buyers from the time that the State conveyed the subject property in 1905, to the time that Taylors acquired it over 60 years later. At the time that the State conveyed the subject property in 1905, Olympia Oysters were the only oyster being cultivated in the South Sound region. Because of their environmental sensitivity, Olympia Oysters generally grow only on the low stretches of beach. It must have been the case that in 1905 the State intended to grant, and H. R. Weatherall intended to receive, property suitable for the cultivation of Olympia Oysters.

A recent survey of the subject property has revealed that the land legally described in the 1905 deed is not land suitable for the cultivation of Olympia Oysters. Until the advent of bag culture in the 1980's, the property, as surveyed, was not even suitable for cultivation of the Pacific Oyster. Most of the land encompassed by the survey is unsuitable for any form of aquaculture. The property, as surveyed, is located very near the upland on a rocky, high energy beach.

In 1913, the Washington State Supreme Court recognized that; "it is well known that oyster lands are generally to be found below the line of mean low tide." *State v. Sturtevant*, 76 Wash. 158, 173, 135 P. 1035 (1913). This observation supports Taylor's contentions regarding the suitability of the beach, as surveyed, for oyster cultivation.

The historical use and maintenance of the subject property supports the contention that owners from 1905 forward believed that the subject property included the lower reaches of beach. Prior to Taylor's purchase of the property, the property was actively farmed down to the line of low tide. At the time of Taylor's purchase, the seller represented to Taylors that the property extended to the line of low tide. Upon purchasing the property, Taylors continued to farm in the historical footprint, and have farmed the subject property to the line of low tide.

REFORMATION OF DEED BASED ON MUTUAL MISTAKE

Taylors have a viable cause of action for reformation of the original deed to include the area of encroachment. The deed issued by the State of Washington clearly mis-described the tidelands that were intended to be conveyed. The facts dictate that the deed should be reformed based on the parties' mutual mistake. "Where there has been an agreement actually entered into, which the parties have attempted to put in writing, but have failed because of a mistake either of themselves or of the scrivener, the courts having jurisdiction in matters of equitable cognizance have power to reform the instrument in such a manner as to make it express the true agreement." *Geoghegan v. Dever*, 30 Wn.2d 877, 889, 194 P.2d 397 (1948) (quoting *Silbon v. Pacific Brewing & Malting Co.*, 72 Wash. 13, 129 P. 581 (1913)).

The general rule in Washington is that a deed containing an inadequate legal description of the property to be conveyed is not subject to reformation. *Martinson v. Cruikshank*, 3 Wn.2d 565, 568-69, 101 P.2d 604 (1940); *Howell v. Inland Empire Paper Co.*, 28 Wn.App. 494, 495-96, 624 P.2d 739, review den'd, 95 Wn.2d 1021 (1981). However, Washington courts have held that the general rule should not be construed so as to preclude reformation in the face of an appropriate factual setting. *Williams v. Fulton*, 30 Wn.App. 173, 176 n. 1, 632 P.2d 920, review den'd, 96 Wn.2d 1017 (1981). An appropriate factual setting includes instances where the deficiency is due to a mutual mistake. *Tenco, Inc. v. Manning*, 59 Wn.2d 479, 485, 368 P.2d 372 (1962). Where a deed contains an inadequate legal description due to a mutual mistake, courts will allow the deed to be corrected.

Where there has been a mutual mistake, reformation is a proper remedy to effectuate the true intent of the parties by correcting errors in a legal description. *Lofberg v. Viles*, (the indicated corrections may be made in this case and the contract reformed on the ground of mutual mistake) 39 Wn.2d 493, 498, 236 P.2d 768 (1951) (citing *Rosenbaum v. Evans*, 63 Wash. 506, 115 P. 1054 (1911); *Moeller v. Schultz*, 11 Wn.2d 416, 119 P.2d 660 (1941); *Kaufmann v. Woodard*, 24 Wn.2d 264, 163 P.2d

606 (1945); *Geoghegan v. Dever*, 30 Wn.2d 877, 194 P.2d 397 (1948), *Bacon v. Gardner*, 39 Wn.2d. 299, 229 P.2d 523 (1951)).

The deed issued by the State of Washington, and the context in which Weatherall made the initial purchase, provides clear, cogent and convincing evidence that (1) the State of Washington intended to convey *tidelands suitable for the cultivation of oysters*; (2) that the deed's legal description, as recently determined by survey, fails to describe lands suitable for the cultivation of oysters of a variety capable of being cultivated at the time the deed was executed (Olympia oysters); (3) the intention of the parties was identical at the time the deed was executed, and the deed failed to carry into effect the intention of the parties; and (4) that a mutual mistake occurred. The State, Weatherall and Weatherall's successors in interest have either expressly or impliedly assented to the conveyance as it was intended since 1905.

Evidence of the State's belief as to the location and ownership of the tidelands is contained in the Department of Natural Resources own internal documentation. This documentation shows the Weatherall tidelands extending to extreme low tide. In a letter dated August 7, 1997, of which Taylor recently became aware, DNR provided internal documentation of ownership to Buzz and Julie Walker. In this letter, Pamela Dittman highlighted private ownership and leasing activities along this stretch of beach. The "aquatic land plate", which has been maintained by DNR for decades, shows that the portion of the Weatherall tract in question was contiguous to the bed lands leased to Carl Adams for a wave break. The official "aquatic land plate" demonstrates that there are no state lands between the Weatherall "Bush" deed of 1905 and the State's bed lands lease to Carl Adams in 1957. The current dispute only arises because the modern survey has determined that there are several hundred feet of State owned tidelands between the Weatherall Tract and the Adams bed lands lease.

Given the evidence of the State's intent in selling these lands as reflected in the Bush Act, Weatherall's intent to acquire an oyster tract, the statement in the deed that it conveyed "oyster lands" and the parties' statements, actions and belief for over a period of 103 years, we feel that a court would reform the deed in the vicinity of the encroachment to reflect the original intent. A court should determine that the Weatherall tract includes lands suitable for the cultivation of Olympia oysters, the variety capable of being cultivated at the time the deed was executed.

SUBSTITUTION OF TIDELANDS:

Even if a court were to reject Taylor's request to reform the deed based on mutual mistake, the deed itself explicitly provides Taylor with the ability to substitute productive tidelands for the tidelands that were actually conveyed, in the event the tidelands actually conveyed are not suitable for oyster production. A clause in the Bush Act provided that if lands purchased pursuant to the act proved to be unsuitable for oyster planting, a certificate of abandonment filed with the Commissioner of Public

Lands would entitle the purchaser to acquire another tideland tract for the purpose of oyster cultivation. In the present case, that right of substitution is explicitly set forth in the deed itself:

> "It is expressly agreed that if from any cause any tract or tracts, parcel or parcels of said land shall become unfit or valueless for the purpose of oyster planting, the party having so purchased and being in possession of the same ... shall be entitled to again make purchase of oyster lands pursuant to the provisions of an act of the Legislature of the State of Washington ...."

In 1935, the Bush Act was repealed by Chapter 47, Laws of 1935. However, the repealing act provided that it was not to be construed as affecting any rights acquired under the Act. In 1971, a prohibition on the State's sale of tide and shorelands was enacted. Chapter 217, Laws of 1971, Extraordinary Session, and as amended by Chapter 186, Laws of 1974, Extraordinary Session, codified as RCW 79.01.470 (Gissberg Amendment). From that time forward, DNR has taken the position that the sale of tidelands also includes the sale of the State's reversionary interest in the Bush Act oyster lands. This position reflects guidance set forth by the Attorney General in AGLO 1981, No. 14. The Attorney General conceded that the substitution provision was a "right" as opposed to a mere privilege, but interpreted the Gissberg Amendment of 1971 as rendering no tidelands available for sale.

The issue of the Gissberg Amendment's impact on the legal right to exchange unproductive tidelands for productive tidelands under the Bush Act has not been resolved by Washington Courts. While the Attorney General's opinion will be given some weight, an exchange of tidelands does not diminish the holdings of state tidelands sought to be maintained by the Gissberg Amendment. A compelling case can be made that a substitution, through which the state exchanges unproductive tidelands for productive tidelands, fulfills dual legislative purposes by facilitating the shellfish industry while maintaining state tideland holdings. An exchange simply shifts the location of the tidelands and does not diminish the State's ownership. In this case, the State would gain tidelands easily access by the public in exchange for tidelands below private ownership that can only be accessed by boat.

A compelling argument could also be made that if the Gissberg amendment attempts to invalidate a Bush Act owner's contract rights, it would violate the contract clause of the Washington Constitution, Article I, Section 23: "No ... law impairing the obligations of contracts shall ever be passed." WASH. CONST. art. 1, § 23. Similarly, article I, section 10 of the United States Constitution declares that "No state shall ... pass any ... law impairing the obligation of contracts." U.S. CONST. art. 1, §10.

It is well-settled that these state and federal constitutional provisions are coextensive and are given the same effect. See, e.g., *Tyrpak v. Daniels*, 124 Wash.2d 146, 151, 874 P.2d 1374 (1994); *Caritas Servs., Inc. v. Dep't of Social & Health Servs.*, 123

Wn.2d 391, 402, 869 P.2d 28 (1994). "The prohibition against any impairment of contracts is 'not an absolute one and is not to be read with literal exactness.' " *Tyrpak*, 124 Wn.2d at 151 (quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428, 54 S.Ct. 231, 78 L.Ed. 413 (1934)). But when a state interferes with its own contracts, those impairments "face more stringent examination under the Contract Clause than would laws regulating contractual relationships between private parties." *Id.* at 151-52, (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 n. 15, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978)); *Caritas*, 123 Wn.2d at 402-03)).

The court uses a three-part test to determine if there has been an impairment of a public contract: (1) does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is substantial impairment, is it reasonable and necessary to serve a legitimate public purpose. *Tyrpak*, 124 Wn.2d at 152, 874 P.2d 1374; *Caritas Servs.*, 123 Wn.2d at 403, 869 P.2d 28; *Carlstrom v. State*, 103 Wn.2d 391, 694 P.2d 1 (1985). However, even minimal impairment of contractual expectations in public contracts violates the contract clause where there is no real exercise of police power to justify the impairment. *Tyrpak*, 124 Wn.2d at 156. Where, through an exchange of tidelands the State suffers no net loss in State-owned tideland area, it is difficult to justify such a substantial contractual impairment.

EQUITABLE DEFENSES

While equitable doctrines of laches, waiver and estoppel are not favored as against the state, under appropriate circumstances, these equitable defenses will be applied. In the only case reported case under RCW 79.02.300, which I realize you were involved in, the court applied equitable estoppel principals to bar DNR from seeking treble damages. *Northlake Marine Works, Inc. v. State, Dept. of Natural Resources*, 134 Wn.App. 272, 138 P.3d 626 (2006). Much like the fact pattern presented in *Northlake Marine*, DNR officials have been physically present on the beach in question for years. Both DNR and Taylors were under the belief that Taylors owned this stretch of beach. The fact pattern here seems to warrant equitable relief.

It is clear that if Carl Adams or Taylors had known that the tidelands they were farming were state lands, they could have exercised the right of substitution prior to the Gissberg Amendment. Clearly, if the Gissberg Amendment somehow revoked their right of substitution, Taylors have been harmed by the delay in discovering the issue. The circumstances surrounding the deed to oyster land, and the fact that the state's aquatic land plate shows private ownership and the use of and private investment in the tidelands in question by Carl Adams and Taylors for over 50 years, should have substantial impact on a judge sitting in equity. If this were a dispute between private parties, it is clear that the state would not be entitled to any recovery. Taylors have invested years of their time, talent and resources in making this unproductive beach into an extremely valuable resource. Equity should not allow the State to step in now and seize the benefits that that Taylor has worked long and hard to create.

TRESPASS DAMAGE ISSUES

In the alternative to waiving any recovery, we believe the State would not be entitled to treble damages.

TREBLE DAMAGE CASE LAW

In the treble damages context, DNR has expressed a willingness to consider additional information establishing that Taylor did not know, or have reason to know that it was operating upon state-owned aquatic lands. In addition to the facts set forth in the preceding section, facts set forth in this section bring Taylor within a category of fact patterns where the imposition of treble damages has not been upheld by Washington courts.

The treble damage provision set forth in RCW 79.02.300 is significantly qualified by a paragraph providing that if, at the time of the use or occupancy of public lands, the user or occupant did not know or have reason to know that he or she lacked authorization, liability shall be for single damages. RCW 79.02.300. No significant case law interprets this provision or provides clear guidance on its application. In the absence of such case law, it is appropriate to turn to analogous case law interpreting a very similar provision set forth at RCW 64.12.040. RCW 64.12.040 provides, in part, that in the timber trespass context, where a trespass was casual or involuntary, or where the defendant *had probable cause to believe that the land on which the trespass was committed was his own*, judgment shall only be given for single damages. RCW 64.12.040 (emphasis added).

In drawing the analogy between RCW 64.12.030/.040 and RCW 79.02.300, Taylors acknowledge that the "damages" at issue in the present case are markedly different than the "damages" at issue in a timber trespass. In the timber trespass context, the trespasser did nothing to enhance the value of the property, and in fact removed all valuable timber for the trespasser's benefit. In contrast, Taylor significantly enhanced the value of the property by planting shellfish, and took from the property only shellfish so planted. Although the present issue can therefore be distinguished from timber trespass situations, analogies that can be drawn from case law interpreting the provision set forth at RCW 64.12.040 are useful in the absence of similar case law in the RCW 79.02.300 context.

Several distinct categories of cases have emerged in the RCW 64.12.030 and .040 context, and the judicial decisions with respect to each distinct category are essentially uniform. Generally, the imposition of treble damages has been *upheld* where **1)** parties acted with knowledge or notice of ongoing or unresolved boundary disputes or in reckless disregard of probable consequences or problems (*See* for example, *Happy Bunch, LLC v. Grandview North, LLC*, 142 Wn.App. 81, 173 P.3d 959 (2007); *Sparks v. Douglas County*, 39 Wn.App. 714, 695 P.2d 588 (1985); *Ashworth v. Snyder*, 94

Wn.App. 1036 (1999), unpublished); **2)** parties disregarded easily ascertainable boundary-related data or indicators (*See* for example, *Sherrell v. Selfors*, 73 Wn.App. 596, 871 P.2d 168 (1994); *Longview Fiber Co. v. Roberts*, 2 Wn.App. 480, 470 P.2d 222 (1970)); **3)** parties failed to take any affirmative action, as warranted by the particular circumstances, to reconcile apparent boundary inconsistencies (*See* for example, *Smith v. Shiflett*, 66 Wn.2d 462, 403 P.2d 364 (1965); *Ashworth*, 94 Wn.App. 1036); or **4)** parties recognized that action to determine a boundary was necessary, but took inexcusably erroneous action to determine the boundary, such as a survey undertaken by an untrained individual who failed to begin the survey correctly from easily ascertainable starting point (*See* for example, *Henriksen v. Lyons*, 33 Wn.App. 123, 652 P.2d 18 (1982); *Blake v. Grant*, 65 Wn.2d 410, 397 P.2d 843 (1964); *Guay v. Washington Natural Gas Co.*, 62 Wn.2d 473, 383 P.2d 296 (1963). Significantly, failure to obtain a formal survey does not, in and of itself, conclusively support imposition of treble damages. *Grays Harbor County v. Bay City Lbr. Co.*, 47 Wn.2d 879, 289 P.2d 979 (1955). The failure to obtain a formal survey is but one factor, the reasonableness of which must be weighed in light of all other applicable evidence.

In contrast, the application of treble damages has *not been upheld* where **1)** parties acted in reasonable reliance upon informal oral agreements based on rough estimates and other parties' related understanding of the location of boundaries, or parties acted based on apparently reliable misinformation or an honestly mistaken belief regarding property boundaries or ownership (*See* for example, *Blake v. Grant*, 65 Wn.2d 410, 397 P.2d 843 (1964); *Birchler v. Castello Land Co.*, 133 Wn.2d 106, 110, 942 P.2d 968 (1997); *Skamania Boom Co. v. Youmans*, 64 Wash. 94, 116 P. 645 (1911); **2)** parties acted with the absence of knowledge or notice that the property belonged to another, and in the absence of facts sufficient to put them on notice of another's ownership (*See* for example, *Hawley v. Sharley*, 40 Wn.2d 47, 240 P.2d 557 (1952)); or **3)** parties acted in good faith and without any intention to deprive another of his property, based on a preponderance of the evidence (*See* for example, *Gardner v. Lovegren*, 27 Wn. 356, 67 P. 615 (1902)). The factual history at issue brings Taylor within the second category of cases, where treble damages have not been upheld.

The treble damage provision set forth at RCW 64.12.030 has been consistently categorized by Washington courts as a punitive damages provision. In *Blake v. Grant*, the Supreme Court observed that "[o]ur statutory action for treble damages is in the nature of a penalty." *Blake,* 65 Wn.2d at 413 (citing *Gardner,* 27 Wash. 356). Washington courts generally disfavor punitive damages provisions. As such, Washington courts interpret punitive damages provisions narrowly. *Birchler*, 133 Wn.2d at 110-11 (citing *Grays Harbor County,* 47 Wn.2d 879; *Bailey v. Hayden*, 65 Wn. 57, 61, 117 P. 720 (1911)).

In *Blake v. Grant*, the Court stated that "the rule is well established in Washington that there must be an 'element of willfulness' on the part of the trespasser to support treble

damages. *Blake,* 65 Wn.2d at 412 (citing *Bailey*, 65 Wash. 57; Harold v. Toomey, 92 Wash. 297, 158 P. 986 (1916); *Fredericksen v. Snohomish County*, 190 Wash. 323, 67 P.2d 886 (1937); *Lawson v. Helmich*, 20 Wash. 167, 146 P.2d 537 (1944); *Mullally v. Parks*, 29 Wn.2d 899, 190 P.2d 107 (1948).

The punitive damages exception set forth in RCW 64.12.040 "reflects a legislative intention to withhold punitive damages if the trespass was the result of an honest mistake ...." *Rayonier, Inc v. Polson*, 400 F.2d 909, 920-21 (9th Cir., 1968). This intent is further reflected in Washington Supreme Court decisions. *Id.* For example, in *Hawley*, 40 Wn.2d 47, punitive damages were held to be improperly imposed upon the defendant, who "inadvertently strayed or trespassed" upon the plaintiff's tract, which adjoined one of the parcels which he was clearing. *Id.* In *Grays Harbor County*, the court observed that because the rule allowing a higher measure of damages in cases of willful conversion is in conflict with Washington's frequently expressed policy with respect to punitive damages, it should be strictly limited in application to those situations where the bad faith of the defendant's act is proven by a preponderance of the evidence. It should be shown that the defendant either intended to deprive the plaintiff of his property, or, having knowledge of facts sufficient to put him on notice of the plaintiff's ownership, acted in reckless disregard of the probable consequences. *Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 866, 289 P.2d 975 (1955).

Like the timber trespass statutes, RCW 79.02.300 provides for single damages if, at the time of the unauthorized act or acts, the party "did not know or have reason to know that he or she lacked authorization." In the present case, Taylors had no knowledge or notice of any ongoing or unresolved boundary dispute with respect to the line at issue. Taylors did not disregard any easily ascertainable boundary-related data or indicators. Taylors were not made aware of any boundary inconsistency that would have caused a reasonable person to take affirmative action to formally reconcile the boundary. Nothing indicated to Taylors that their historical understanding of the boundary and historical use up to the line at issue was erroneous. Taylor's reliance upon their historical understanding of the boundary location was reasonable, and certainly falls within the category of fact patterns where the imposition of treble damages has not been upheld by Washington courts in analogous situations. The reasonableness of Taylor's belief in ownership is highlighted by DNR's understanding. It is clear from DNR's 1997 letter and their aquatic land plate that even DNR believed that Taylors owned this property.

Some have claimed that Taylors should have known they were farming state land because they farmed more acres than were in the Carl Adams parcel. What these individuals fail to realize is that Taylors did not manage the beach in question in isolation. The encroachment area is less than 5% of the total land managed by Taylors in Totten inlet. The encroachment area is only a small segment in a much larger farm.

Taylor owns or leases 9,775 acres of tidelands in Washington. Within Totten Inlet alone, Taylor owns or leases 472 acres of tideland. Overall, Taylor owns 476 separate

legal parcels, with 35 separate parcels located in Totten Inlet. The area of alleged encroachment is only a small segment of 7.65 miles of tidelands in Totten Inlet that Taylor manages. The segment in question is managed as part of an overall 1.6 mile farm.

The years of active farming on the property supports Taylor's belief of ownership. Taylors knew of Carl Adam's historical use of the property. In 1957, Carl Adams secured a DNR lease for the purpose of constructing wavebreak structures in the vicinity of the subject parcel (application number 05339, lease number 2053). The wavebreak structures were located in the subtidal area. Significantly, the wavebreak structures did not function to protect the upward reach of beach. Rather, the structures were located specifically to protect the lower beach area currently at issue. Adams would only have constructed the wavebreak structures if he believed that he owned the lower beach area and if he were conducting activity on the lower beach to warrant its protection. Adam's lease applications provide evidence of his belief of ownership over the land at issue. DNR correspondence indicates that the wavebreak lease was filed for the lease of the bed lands of Totten Inlet, under the provisions of Chapter 164 of the Session Laws of 1953. The correspondence indicates that Mr. Adams submitted a permit from the United States Army Corps of Engineers, authorizing him to place wave breaker boomsticks anchored in front of oyster beds at the location covered by the application; that Mr. Adams submitted a drawing depicting the location of the area and planned improvements; and that the location of the improvements were examined in the field by department staff.

Mr. Adam's application described the lease area as "sufficient tide lands in front of the second class tide lands described in statutory warranty deed no. 517291, recorded in Thurston County Auditor's Office in Volume 272 at Page 332." The boomsticks were to be anchored in approximately 5.2 feet of water at mean low or low tide. The application notes that the location of the boomsticks was within a ten foot wide strip parallel to and below the water line of extreme low tide.

In a separate document associated with the lease, Chief Engineer M.E. Bowler's report to the Commissioner of Public Lands states that "... [t]he abutting tidelands in front of said sections 4 and 5 are included in a tract conveyed for the cultivation of oysters in accordance with the provisions of Chapter 24, Laws of 1895 through deed issued to H.R. Weatherall September 11, 1905." The Thurston County Auditor, by letter of September 26, 1956, submitted a certified copy of Adam's deed, dated March 9, 1953, showing him to be the record owner of the abutting tidelands. Adams, by affidavit dated September 28, 1956, declares that he is the actual owner of the abutting tidelands. Adams states that the lands are wanted for placing wave breaker boomsticks anchored in front of oyster beds for a term of 5 years and that there are no oysters or improvements on the desired lands.

It is also significant that the tract at issue is an anomaly when compared to Taylor's other Totten Inlet tracts. The modern survey locates the subject parcel in the upward reach of the beach. As previously noted, this is highly unusual for Bush Act parcels. For all the reasons previously noted, the encroachment area would normally be included in Bush Act parcels. In the vicinity of the Totten Farm, beaches are generally well-sloped, and the metes and bounds description of such lands is generally understood to encompass the lower lying lands suitable for Olympia Oyster cultivation. The adjacent lands that Taylor owned when it purchased the Adam's tract are owned to extreme low tide. The present issue seems isolated to a portion of the Weatherall tract.

Bush and Callow Act lands are also very difficult to locate. Unlike second class tideland deeds, which by implication deed to low or extreme low tide, Bush and Callow Act deeds describe the property through metes and bounds descriptions that are not readily susceptible to application on the ground. Without a known starting point, usually a non-existent meander corner, there is no easily ascertainable method of locating the described land.

Taylor's failure to obtain a formal survey is not in itself evidence of bad faith, and is reasonable when viewed in the specific historical context. *Grays Harbor County v. Bay City Lbr. Co.*, 47 Wn.2d 879, 289 P.2d 979 (1955). Taylors acted in reliance upon oral representations made by the seller, Carl Adams, and acted in reliance upon the existing boundaries to which Carl Adams farmed. Taylors had no knowledge or reason to believe that the property belonged to any other party, nor is there any showing of any intent by Taylors to deprive any other party of their property. Due to expense and the difficulty of tidelands surveys, shellfish growers have generally relied upon historical locations of farming activity and representations by sellers and adjacent owners with respect to boundary locations. Formal surveys are only conducted as necessary to resolve issues or questions that arise with respect to such boundaries. Even surveyed boundaries are notoriously difficult to maintain; the hostile saltwater environment makes it difficult to maintain physical boundary markers in tideland areas. Metal markers tended to rust and deteriorate, and wooden markers tended to break off or wash away.

The period of time being investigated by DNR has been limited to the last three years based upon the Statute of Limitations. Applying the RCW 79.02.300 test, the question becomes what Taylor knew, or should have known, during the last three years. Taylor's management and use of the land at issue during that time was directed and overseen by Paul Taylor. Paul is the President of Taylor Resources, and acts as the manager for Taylor's hatchery, nursery and tideland operations. Paul has actively worked Taylor's tidelands in Totten Inlet since 1973. Paul knew that his father purchased the particular portion of property at issue when Paul was a freshman in high school. At that time Paul began working the beach and became very familiar with the operations in the vicinity. The locations of planting and harvesting operations were very obvious to him based upon visual observation of the beach. The boundaries were so

obvious to Paul that he never had any occasion to revisit the language contained in the deed, nor any associated acreage reference. The tract became one of many managed by Taylor in the immediate vicinity, and Taylor was at no time put on notice that the tract's historical boundaries were incorrect.

As further evidence of the belief that they owned the beach; Taylors used this particular beach as a showcase for their operations. The diversity of shellfish grown on this particular farm made it ideal to showcase such operations. Many representatives from state agencies, including DNR and DOE have visited the site to observe the operations. State agencies have conducted studies and evaluations on the beach at issue, and the beach is frequently utilized for tours. The tours include the press, public, senators and representatives. If the Taylors had any reason to believe that they were trespassing on state land, it seems they would not have showcased their operations on the site in this manner.

In sum, the facts do not appear to support imposition of treble damages.

DAMAGES/BACK RENT CALCULATIONS

Separately, we have reviewed DNR's back rent calculations contained in your October 27, 2008 letter to Billy Plauché. While we accept several of your and Mr. Schreck's revisions to our original calculations, there are two areas (in addition to the general discussion of treble damages, addressed above) with which we disagree.

Oyster Rental Calculations

As an initial matter, we note that the complicated production based rental system DNR is using to calculate back rent in this instance is not a system that, in Taylor's experience, DNR has used with regard to typical oyster rent calculations. Rather, Taylor's experience has been that DNR has used a flat per acre rental fee for oyster lands. In Willapa/Grays Harbor, the rental rate for Class II oyster lands (very productive ground) is currently $158.03 per acre per year. Using this rate, if the area of oyster ground on the Totten site totaled 20 acres (the area of oyster production is far less), the total back rent for the past three years would be less than $10,000. We believe this sort of flat rental rate calculation is far more representative of DNR's leasing practices on oyster lands.

With regard to DNR's efforts to estimate a production based rent for oysters that spent a portion of their lives on the Totten Tidelands, you have indicated that DNR is not willing to accept Taylor's survival rate of 18% for Kumamoto oysters and 21% for Pacific and Virginica oysters. Mr. Schreck has indicated that he believes that an appropriate seed survival rate would be in the 50 to 80% range.

As explained in Mr. Plauché's September 8, 2008 letter, the seed survival rates Taylor used are based on the actual figures for the entire Totten farm. To arrive at these figures, we compared the total seed placed on the Totten site to the total oysters

harvested from the site two years later. While we recognize that the survival at the Totten farm is low, that is related to specific factors on that site, such as a significant

crab population (and a resultant high predation rate). In addition, Taylor's use of grow bags for Kumamoto oysters is a fairly new phenomenon, and, as with all new techniques, mortality rates are higher as we learn how best to manage this growing method. We believe that the mortality percentages used in Mr. Plauché's letter are accurate.

We also note that, from Taylor's experience, Mr. Schreck's suggested 50 to 80% survival percentage significantly overstates survival. As evidence of this fact, we have attached a spreadsheet calculating survival percentages for our Eld Inlet and Oyster Bay farms, two farms that we consider very good growing areas. You will see that, when looking at seed survival over a 5 year period, the average survival at the Oyster Bay farm was approximately 30% and the average survival at the Eld Inlet farm was 42%.

Geoduck rental calculations

We also disagree with the total acreage figure DNR used to calculate the geoduck land per acre rental rate. DNR apparently used a 17.1 acre figure for the total geoduck acreage used. Applying a $1,158.33 per acre rental rate over a three year period, DNR calculated a total land rental rate of $59,422.33.

However, the square footage figures shown on the aerial photograph attached to Mr. Panesko's letter show a total of approximately 7.5 acres of geoduck culture on these tidelands (including unseeded geoduck tubes). While we recognize a potential need to even boundaries and/or provide some "buffer area" around the geoduck planting areas, adding almost 10 acres (more than doubling the acreage of the existing plantings) is excessive. Indeed, as DNR's aerial photograph shows, much of this excess area is being used for oyster cultivation, for which DNR is separately charging a rental fee based on oyster production.

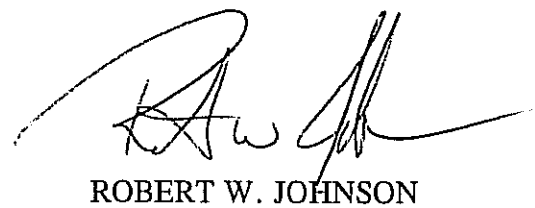
We believe that the maximum additional acreage that can justifiably be included in the geoduck acreage totals is approximately 2.5 acres, or an acreage that brings the geoduck acreage area up to a total of 10 acres. That equates to a total three year land rental for geoduck areas of $34,749.90.

CONCLUSION

In the interest of resolving this situation, Taylor would consider a settlement modeled after the decision in the *Northlake Marine Works, Inc.* case. Taylor would pay back-rent payments for the three year use-period at issue (un-trebled), on the condition that the implied lease can be formalized with respect to shellfish currently planted on the subject property, and with the expectation that the State will negotiate with Taylor in good faith to formalize reasonable lease terms with respect to future operations. Should DNR

choose to accept this proposal, Taylor will agree to forego claims with respect to deed reformation and the right of exchange issue. We would ask that you please consider the information regarding back-rent calculations presented in this correspondence in reaching a final figure. Thank you for your time and attention.

Sincerely,



ROBERT W. JOHNSON

ATTACHMENT A

Declaration of Paul Taylor:

Paul Taylor declares as follows:

1. I am the President of Taylor Resources which owns and operates all of Taylor United's tidelands including what we refer to as the Carl Adams tract which is involved with the encroachment issue with the Department of Natural Resources. I am the manager of the hatchery, nursery and tidelands.

2. I am personally involved in the daily operations of the tidelands from brood stock to harvest. I am responsible for management of the planting of shellfish crops and utilization of the various tidelands. I have been working on the tidelands since 1973 and directly responsible for the tideland management for the last 15 years. During the time period being reviewed by the Department of Natural Resources, I made the decisions on what shellfish to plant in what locations. This included the decisions relating to the tidelands where the encroachment was discovered.

3. Taylors owns or leases 9,775 acres of tidelands in the State of Washington consisting of 476 separate legal parcels. In Totton Inlet, we currently own or lease 473 acres of tidelands. That acreage is made up of 35 different parcels. That translates to 7.65 miles of beach in Totten Inlet.

4. I distinguish between two different types of tidelands. The first I call tide flats. Tide flats are usually at the end of a bay and are large areas of flat tidelands exposed at low tide. Beaches, on the other hand, are located along the edge of bays and inlets and are steeper than tide flats. The area in question consists of a beach along Totten Inlet.

5. Most of our holdings in Totten Inlet are Bush Act Tidelands. The Bush Act was a law around the turn of the century that allowed people to buy tidelands for the purpose of growing oysters. The legislature wanted to promote the shellfish industry. At that time, the only oyster in the South Sound was the Olympia Oyster. The Bush Act tidelands therefore consisted of the tidelands suitable for growing Olympia Oysters. The Olympia Oysters grew only in tidal pools or on low intertidal areas. The Bush Act tidelands are usually low on the beach.

6. The Totten Inlet 473 acres are managed as two farms; one we call Oyster Bay, and the other the Totten Farm. The Oyster Bay tract has beaches and tidal flats, most of these grounds are parcels that are bounded by State tidelands. The Totten

Farm is beach land which we believed, prior to this issue coming up, that we owned, with four exceptions, from high on the beach to an extreme low tide.

7. The Totten Farm is managed as a whole and not by the individual parts. The Totten farm is about 1.6 miles of beach. We plant the beach with patches of shellfish where they are suitable to the particular species. We measure the segments in square feet, but I have never added up the square feet of beach that we are using and compared it to the description of the property.

8. The Carl Adams beach which is at issue was originally part of the Weatherall tract purchased from the State in 1905. Taylor ownership or control over the Weatherall tidelands has come in stages. My father originally owned the portion of the Weatherall tidelands south of the encroachment area. This portion of the beach is owned in most cases to extreme low tide and in some places beyond.

9. The Carl Adams beach is a separate segment of the Weatherall tract. This is generally where the encroachment was discovered. My father and his partner purchased the Carl Adams beach in 1969 and incorporated it into the other Weatherall tideland tract. Since the purchase, the Carl Adams beach has become an indistinguishable segment of a much longer beach. I never looked at the deed to the Carl Adams property until this problem was discovered.

10. Bush Act deeds were written with courses and distances which are very difficult to follow. The beginning point for the description is a meander corner. Until this controversy, I believed we owned the Carl Adams tract the same as the rest of the Weatherall tract: between high tide and extreme low tide.

11. The shellfish industry has not generally had their tidelands surveyed. The surveys were expensive and usually not needed. When we buy tidelands, the party who sold the land would point out what they were selling and we would farm that area. If a neighbor complained, we would try to work out an agreement or, in rare cases, have the property surveyed. Tideland surveys are very difficult. The tide has to be right and survey stakes don't stay in place like upland stakes. It is virtually impossible because metal stakes rust, and debris in the water breaks wood stakes off.

12. In all the years I have been involved in the business, I have never seen a situation like we discovered with the Carl Adam's land where the Bush Act tidelands were high on the beach. It is clear to me that a mistake was made regarding these tidelands. The deeded Bush Act tidelands in the area of the encroachment consist of a rocky, high energy beach. The beach is not only not suitable for Olympia Oysters, but until very recently with new techniques, was not suitable for any shellfish production. Even with modern bag culture, much of the Carl Adam's beach is simply unsuitable for shellfish production. It is too high on the beach.

13. If Carl Adams had known about this problem he could have exchanged the unproductive ground for the ground he was farming under the Bush Act deed. If my father had known about the problem he could have purchased or exchanged the tidelands with the ones we were farming. It is my understanding that this option is no longer available.

14. In reviewing the record regarding the Carl Adams tract: The Carl Adams tract is described as being adjacent to the wave breaks he constructed on land leased from the state. When we purchased the wave breaks they were being maintained. The wave breaks were located right at the sub-tidal boundary.

15. The wave break that Carl Adams constructed and maintained protected what we now know is the area of encroachment. The wave break would have only protected oysters placed on the state tidelands. The wave break would not have protected the area surveyed as the Carl Adams tract. The lease described the wave break land as being adjacent to the Carl Adams tidelands. The modern survey shows that the wave break is hundreds of feet from the deeded tidelands.

16. Until recently, there was never any concern expressed to Taylor that we were not farming our own land. This was our show off beach. The Totten Farm was used for a broad range of shellfish cultures and was the one used as our main tour stop. We have taken hundreds of visitors to this beach including representatives from DNR and DOE. We have taken senators and representatives on tours of that beach.

17. Carl Adams farmed down to extreme low tide. We have farmed the Carl Adams beach to low tide since 1969. We believed we owned to low tide and nobody ever questioned our use of the beach until recently.

18. Some have said we should have recognized the problem because of the acreage discrepancy or because we use GPS. As I previously stated, I have never added up the acreage that we are farming, crops have different rotations and a different foot print each time they are planted. The area of encroachment was just a part in a much larger beach. It represents only about 5% of the total tidelands that make up our Totten Inlet Farms.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated this 12th day of November, 2008 in ~~Shelton, Washington~~ Suva Suva Fiji

Paul Taylor

ATTACHMENT B

Declaration of Justin Taylor:

Justin Taylor Declares as follows:

1. I am one of the founders of Taylor United and was involved with the purchase of the tidelands which are involved with the encroachment issue with the Department of Natural Resources.

2. My family has been involved in the shellfish industry in Totten Inlet for many years. My grandfather was in the oyster business. I used to work Totten Inlet tidelands with my father. Prior to World War II, the Olympia Oyster was the only oyster in the South Sound. Before the war, pollution from the ITT Rainier pulp mill had pretty much wiped out the Olympia Oyster. During the war the pulp mill was closed down and the Olympia Oyster began to come back.

3. Right after the war I purchased a tract of Bush Act tidelands to go into the oyster business. Once the war was over the pulp mill started back up it killed the Olympia Oyster and I was out of the oyster business.

4. I started working with a partner Masao Okada to bring Pacific Oysters to Totten Inlet. The Pacific Oysters were just starting in the Willapa area but there was a great deal of resistance to bringing them to the South Sound. I started buying up other Bush Act lands in Totten Inlet since the Olympia Oysters were pretty much wiped out by the pulp mill and I believed the tideland was a fairly good value.

5. Most of the tidelands I purchased in Totten Inlet were Bush Act tidelands. The Bush Act lands were specifically for the purpose of growing the Olympia Oysters. Olympia Oysters grew naturally on the lowest portion of the tidelands. The Olympia Oysters were very heat sensitive and tended to grow very low on the beach. Because of the nature of the Olympia's habitat, they needed deep water.

6. In the 1940s and 1950s there were not a lot of residences on Totten Inlet. In 1958 there was a terrific set of Pacific Oyster in South Sound. The oyster originally set high on the beach near the barnacle line. The oysters had to be moved down on the beach to be able to survive. I first met Carl Adams in the early 1960's when he was still working the set from 1958 along with Japanese seed he had imported. He continually moved the oysters from higher beach to the lower beach where they would survive. The wave action would move them back up the beach. He was working the beach as his property from the barnacle line all the way down to the low tide line. He had wave breaks installed just off the low tide line. The wave breaks protected only the lowest part of the tidelands from the prevailing winds.

7. Some years later, we purchased some of the original Carl Adams tidelands from Lighthouse. Lighthouse had purchased those lands from Carl Adams. The Lighthouse land adjoined Carl Adams other remaining tideland property and I developed a good friendship with him. During all the years that I knew him, he worked the beach from the high tide line all the way down to the wave breaks. We also worked our beach from the high tide line down to low water.

8. In 1969, Carl Adams was getting older and wanted to get out of the Oyster business. Masao Okada and I went together to buy Carl Adam's tidelands and started farming it together. We farmed the same area of land as Carl. The oysters grew best low down on the beach. The deep ground is very good. When we purchased the rest of the Carl Adams piece it was contiguous to us and just added to the area we were already farming.

9. Shellfish farming is not like traditional crop farming. Some areas like Mud Bay or Oakland Bay you might have square flat plots of shellfish. In beach areas, such as the area of Totten Inlet where Carl Adams land was, the land is fairly steep. On the steep land you plant more in patches that are productive. You have to avoid streams and points that are too wind swept. You end up with patches of beach were you plant. We never really paid any attention to acreage.

10. When we bought the Carl Adams land we also took over his leases with the state for the adjoining bed lands for the wave breaks. At that time those wave breaks were in good shape. That area is really wind swept. It became more and more difficult to get boom sticks and keep the wave break maintained. After several years we just let the lease go. We always believed that the wave breaks were adjacent to our tidelands.

11. I was very surprised to see the map where the deeded Carl Adams land was. Someone obviously made a mistake when they drew the deed to that beach. According to the new survey, there is no way you could grow Olympia Oysters on that beach. On most of it you could not even grow Pacific Oyster even with modern bag culture techniques.

12. I have bought many acres of tidelands in my life. One thing, surveying tidelands is much more difficult and very often the starting points can be in deeper water. In the time I was involved in shellfish farming, we never had surveys done before buying or even after buying. The lands were often less valuable than the cost of the survey. Most boundary disputes where settled between the owners by agreement. I can remember only one time we had a dispute with another oyster farmer and got a survey to resolve the issue.

13. For the most part we worked to the line where the person before you worked. Only one incident with Bishop where you agreed to disagree and both not work the area. Years later a survey was performed and a lawsuit resolved the dispute.

14. The common practice over all the years involved people farming the footprint of their predecessor and that was it.

15. On Carl Adams tract, someone made just made a mistake; nobody would want the land that comes out of the recent survey for shellfish.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated this 13 day of November 2008 in Shelton Washington.

Justin Taylor

Justin Taylor

ATTACHMENT C

Make Checks Payable to Commissioner of Public Lands

STATE OF WASHINGTON

DEPARTMENT OF NATURAL RESOURCES

P.O. BOX 110
OLYMPIA, WASHINGTON

SECOND NOTICE

PLEASE

We again remind you of your past due lease rental. Please give this your prompt attention. Leases not paid when due are subject to cancellation without further notice.

Please return both copies of our original statement with your remittance.

Carl Adams
[illegible] Carlyon Ave.
Olympia, Wash.

RECEIPT NUMBER _____

LEGAL DESCRIPTION OF LEASE

LEASE	GRANT	COUNTY	PORT
	Bed, Shor. Waters	Thurston	Olympia

LEASE NO.	APPL. NO.	DATE DUE MO.	DAY	YR.	FOR YEAR ENDING MO.	DAY	YR.	AMOUNT DUE
2053	5310	10	10	61	10	10	62	$30.00

AMOUNT RECEIVED $

OFFICE NUMBER 10-15-61

CASHIER'S STAMP OCT 1961 PAID

BY _____ CASHIER

BERT L. COLE
COMMISSIONER OF PUBLIC LANDS

BY _____ CASHIER

G.F. 9753

Make Checks Payable to and Address all communications to

COMMISSIONER of PUBLIC LANDS

P.O. BOX 138
OLYMPIA, WASHINGTON

SECOND NOTICE

PLEASE

We again remind you of your past due lease rental. Please give this your prompt attention. Leases not paid when due are subject to cancellation without further notice.

Please return both copies of our original statement with your remittance.

Carl Adams
[illegible] Carlyon Ave.
Olympia, Washington

RECEIPT NUMBER _____

LEGAL DESCRIPTION OF LEASE

Districts Olympia

LEASE	GRANT	COUNTY	PORT
	Bed of Sea, Waters	Thurston	Port of Olympia

LEASE NO.	APPL. NO.	DATE DUE MO.	DAY	YR.	FOR YEAR ENDING MO.	DAY	YR.	AMOUNT DUE
2053	5310	10	10	60	10	10	61	$30.00

AMOUNT RECEIVED $

OFFICE NUMBER

CASHIER'S STAMP SEP 1960 PAID

BY _____ CASHIER

CHECK

BERT L. COLE
COMMISSIONER OF PUBLIC LANDS

BY _____ CASHIER

G.F. 9753

Make Checks Payable to and Address all communications to

COMMISSIONER of PUBLIC LANDS

SECOND NOTICE

P.O. BOX 110
OLYMPIA, WASHINGTON

PLEASE

We again remind you of your past due lease rental. Please give this your prompt attention. Leases not paid when due are subject to cancellation without further notice.

Please return both copies of our original statement with your remittance.

CARL ADAMS
620 CARLYON
OLYMPIA WASH

V

RECEIPT NUMBER _____

LEGAL DESCRIPTION OF LEASE

PORTION OF DED OF TOTTEN INLET ETC

LEASE	GRANT	COUNTY	PORT
T	L	TH	OLYMPIA

LEASE NO.	APPL. NO.	DATE DUE MO.	DAY	YR.	FOR YEAR ENDING MO.	DAY	YR.	AMOUNT DUE
2053	05339	10	10	58	10	10	59	30.00

AMOUNT RECEIVED	CASHIER'S STAMP
$	
OFFICE NUMBER	M.O. — CHECK

BERT L. COLE
COMMISSIONER OF PUBLIC LANDS

By _____
CASHIER

Dep

ASSIGNMENT

(The Commissioner of Public Lands will not approve and enter any assignment unless lease be in good standing.)

For and in consideration of _____ ($_____) *Dollars in hand paid to the within lessee and assignor, he hereby assigns, sets over and transfers* _____ *of his right, title and interest in and to the within and foregoing lease, unto* _____ *of* _____, *Wash., and said assignee hereby binds and obligates himself to perform all the conditions and covenants of said lease.*

IN WITNESS WHEREOF, We have hereunto set our hands and seals this _____ *day of* _____, *A. D. 19*____

Witnesses:

_____ _____ [SEAL]
Assignor.

_____ _____ [SEAL]
Assignee.

ASSIGNOR'S ACKNOWLEDGMENT

STATE OF WASHINGTON, County of _____ ss.

I, _____, *do hereby certify that on this* _____ *day of* _____, 19____, *personally appeared before me* _____ *to me known to be the individual* _____ *described in, and who executed the within instrument, and acknowledged that* _____ *signed and sealed the same as* _____ *free and voluntary act and deed for the uses and purposes therein mentioned.*

Given under my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for the State of Washington,

Residing at _____

DUPLICATE

Lease No. _____

WHEN WRITING THIS OFFICE PLEASE GIVE NUMBER OF LEASE

Lease of Tideland

BED OF NAVIGABLE WATERS

STATE OF WASHINGTON

To

CARL ADAMS

Address 620 Carlyon Avenue

Olympia, Washington

Application No. 5339

2242-37

STATE PRINTING PLANT, OLYMPIA, WASH.

LEASE—Tide Land

DUPLICATE

THIS LEASE, Made and entered into this 10th *day of* October, *A. D.* 1952

by and between the State of Washington, party of the first part, and

CARL ADAMS, *party of the second part,*

WITNESSETH, That for and in consideration of the sum of Thirty and no/100

($ 30.00) *Dollars per year, to be paid to the Commissioner of Public Lands of the State of Washington yearly in advance, and in consideration of the covenants hereinafter contained, the State of Washington doth lease, demise and let unto the party of the second part* the bed of navigable waters *situate in* Thurston *County, State of Washington, and described as follows, towit:*

That portion of the bed of Totten Inlet, owned by the State of Washington, in front of government lot 2 and the south ½ of government lot 1, section 4, government lots 2, 3 and 4, section 5; government lots 2 and 3 and the east ½ of government lot 4, section 8, all in township 19 north, range 2 west, W.M., lying westerly of the line of extreme low tide and easterly of a line which is 10 feet westerly from and parallel to said line of extreme low tide, with a frontage of 119 lineal chains, more or less.

This lease is issued pursuant to the provisions of Chapter 164 of the Session Laws of 1953 and is subject to all of the provisions of said Act.

for the period of Five (5) *years from date of this instrument.*

As a further consideration the following covenants are mutually agreed to:

The payment of the above mentioned annual rent to the Commissioner of Public Lands of the State of Washington yearly in advance is of the essence of this contract, and the same shall be, and is, a condition precedent to the execution and continuance of this lease or any rights thereunder, and if said annual rent shall not be paid on or before the date when due, this lease shall be null and void.

The State of Washington reserves the right to approve any assignment of the whole or any interest in and to the within leasehold.

The lands herein shall not be offered for sale except upon application of lessee, who shall have preference right to re-lease at highest rate bid: Provided, however, and these rights are conditioned that lessee shall keep his lease in good standing.

All improvements placed upon said land by the lessee, capable of removal without damage to the land, where the lease is yielded to the state prior to any application to purchase said land, may be removed by the lessee, or at his option may remain on the land subject to purchase or hire, and this lease is granted according to the provision of an act relating to lease, etc., of state lands, approved March 18, 1897 (as amended by section 2 of an act approved March 18, 1899, and acts amendatory thereof and supplemental thereto).

All piling or other improvements placed upon the above described lands shall attach to and become a part of the realty unless moved or sold under the provision of the said act relating to lease, etc., of state lands, approved March 18, 1897, and acts amendatory thereof and supplemental thereto within three years after termination by surrender or limitation of lease or re-lease.

No statutory right vested in lessee is waived hereby, and lessee expressly agrees to all covenants herein and binds himself or themselves for the payment of rent as hereinbefore set out.

Witnesses as to Lessee:

Wm. Ellis

Ellen Lundeen

THE STATE OF WASHINGTON,

By Bert L. Cole

Commissioner of Public Lands.

Carl Adams

Lessee.

P. O. Address 620 Carlyon Avenue

Olympia, Washington

DEPARTMENT OF NATURAL RESOURCES
Office of Commissioner

In re Application No. 5339 by Carl Adams for the Lease of the Bed of Navigable Waters in Thurston County	ORDER
	October 10, 1957

It appearing to the Commissioner at this time that Application No. 5339 was filed in this office by Carl Adams for the lease of the bed of navigable waters of Totten Inlet in front of government lots 1 and 2, section 4, government lots 2, 3 and a portion of government lot 4, section 5, and government lot 2 and a portion of government lots 1 and 4, section 8, all in township 19 north, range 2 west, W.M., in Thurston County; that said application was filed under the provisions of Chapter 164 of the Session Laws of 1953; and

It further appearing that the applicant has submitted a permit from the United States Army, Corps of Engineers, authorizing him to place wave breaker boomsticks anchored in front of oyster beds at the location covered by this application; and in addition to the Army permit, the applicant has submitted a drawing showing the location of the area and the improvements which are planned for construction thereon; that the property has been examined in the field and it has been determined that a fair annual rental for a 5-year lease would be $30.00; and the Commissioner being fully advised, it is therefore

ORDERED and DETERMINED that Application No. 5339, filed by Carl Adams as hereinabove set forth be and the same is hereby approved and that a lease be issued for a term of 5 years, the annual rental to be $30.00; the area to be included therein being more particularly described as follows:

> That portion of the bed of Totten Inlet, owned by the State of Washington, in front of government lot 2 and the south ½ of government lot 1, section 4; government lots 2, 3 and 4, section 5; government lots 2 and 3 and the east ½ of government lot 4, section 8, all in township 19 north, range 2 west, W.M., lying westerly of the line of extreme low tide and easterly of a line which is 10 feet westerly from and parallel to said line of extreme low tide, with a frontage of 119 lineal chains, more or less.
>
> The above described lands have an area of 1.8 acres, more or less.

Dated this 10th day of October, A. D., 1957.

Bert L. Cole

BERT L. COLE, Commissioner

bm

S. F. No. 3609—7-56—3M. 35609.

10-1-56

Application to Lease ~~Tide, Shore or Oyster~~ Lands

~~LAND BED OF NAVIGABLE WATERS~~

To the Commissioner of Public Lands, Olympia, Washington:

I, Carl Adams, of Olympia, Wash., do hereby apply to lease that certain tract of Tide land of the 2nd class situated in Thurston (6) County, Washington, particularly described as follows, to wit:

Sufficient tide lands in front of the second class tide lands described in Statutory Warranty Deed No. 517291, recorded in Thurston County Auditor's Office in Volume 272 at Page 332, a photostatic copy of which is attached hereto, for the purpose of placing wave breaker boomsticks which would be anchored in approximately 5.2' of water at mean low or low tide, as per sketch attached.

East Gov. Lots 1 & 2, Sec. 4, Gov. Lots 2, 3 & portion Gov. Lot 4, Sec. 5; Gov. Lot 2 & portions Gov. Lots 1 & 4, Sec. 8, All in T. 18 N., R. 2 W.

Strip 10' wide parallel to and below the line of extreme low tide

Sketch - MEB

Located on Totten Inlet about 8 miles northwest of Olympia in Northwestern Thurston County.

For what purpose are the lands wanted? For placing wave breaker boomsticks anchored in Totten Inlet in front of Oyster Lands

For how many years is the lease desired? 5 years

Are you the owner of the abutting ~~uplands~~? 2nd class tide lands

If not, give name and last known P. O. address of such owner ------

Are there any oysters or clams on these lands? no

Are there any improvements on the lands covered by the application? no

If so, state character and value of same ------

By whom are the improvements claimed? ------

Are the lands located in front of, or within two miles of the corporate limits of any city or town? no

Are the lands located in front of any lands reserved by the United States for military, lighthouse or other public purposes? no

Are the lands located within a Port District? no

Are you a citizen of the United States or have you declared your intention to become such? yes

Dated at Olympia, Washington, this 28 day of 9, 1956

(Sign here) Carl Adams

Ten dollars Must Accompany this application.

P. O. Address 620 Carlyon Avenue

Olympia, Washington
(City) (State)

NOTE—All remittances should be payable to Commissioner of Public Lands.

5329

0538

September 23, 1957

Mr. Carl Adams
620 Carlyon Avenue
Olympia, Washington

Dear Mr. Adams:

This is in connection with your Application No. 5330 to lease a portion of the bed of Totten Inlet in front of Section 4, and portions of Sections 5 and 8, Township 19 North, Range 2 West, W.M.

We have reappraised this area and we will issue you a lease for a period of five years and the charge therefor will be $30.00 per year plus a $2.00 fee, or a total of $32.00.

You have $10.00 on deposit under this application and if you will arrange to forward a remittance of $22.00, the lease will be prepared.

Yours very truly,

BERT L. COLE, Commissioner

By _____
H. E. BOWLER, Supervisor
Civil Engineering Division

HEB:ps
AL-5339

Watrous

This approval is completely out of line

January 3, 1957

Mr. Carl Adams
620 Carlyon Avenue
Olympia, Washington

Dear Mr. Adams:

Reference is made to your Application No. 5339 for the lease of the bed of navigable waters in front of certain uplands on Totten Inlet.

We will issue a lease for a period of five years, as requested, and the charge will be $120.00 per year. The first year's rental together with the fee for issuing the lease will be $122.00. You have $10.00 on deposit under this application and if you will arrange to forward an additional remittance of $112.00, the lease will be prepared.

Very truly yours,

OTTO A. CASE, COMMISSIONER

By: ______________________
Frank O. Sether
Assistant Commissioner

FOS/jr
App. 5339

30.00 per year

MEP 68264

F. No. 1856—11-55—10M. 43604.

STATE OF WASHINGTON
OFFICE OF
COMMISSIONER OF PUBLIC LANDS

REPORT OF ENGINEER

Olympia, December 5, 1956

To the Honorable Commissioner of Public Lands, Olympia, Wash.:

SIR: I herewith submit the following report on Application No. 5339 by Carl Adams, 620 Carlyon Avenue, Olympia, Washington to lease the bed of navigable waters of Totten Inlet in front of government lots 1 and 2, section 4, government lots 2, 3 and a portion of government lot 4, section 5 and government lot 2 and a portion of government lots 1 and 4, section 8, all in township 19 north, range 2 west, W.M., located on Totten Inlet about 8 miles northwest of Olympia in northwestern Thurston County.

The abutting tidelands in front of said section 8 are included in a tract conveyed for the cultivation of oysters in accordance with the provisions of Chapter 24, Laws of 1895 through deed issued to J. C. Crumble September 19, 1931. The abutting tidelands in front of said sections 4 and 5 are included in a tract conveyed for the cultivation of oysters in accordance with the provisions of Chapter 24, Laws of 1895 through deed issued to H. E. Weatherall September 11, 1905. The bed of Totten Inlet in front of the above sections have not been affected by any transaction and are open.

The County Auditor of Thurston County, by letter of September 26, 1956, submitted a certified copy of the applicant's deed, dated March 9, 1953, showing him to be the record owner of the abutting tidelands.

The applicant, by affidavit dated September 28, 1956, declares that he is the actual owner of the abutting tidelands.

The applicant has submitted a copy of a letter from the U. S. Army Corps of Engineers dated September 24, 1956 giving their approval of the proposed work.

The applicant states that the lands are wanted for placing wave breaker boomsticks anchored in front of oyster beds for a term of 5 years and

that there are no oysters or improvements on the desired lands.

The description follows:

That portion of the bed of Totten Inlet, owned by the State of Washington, in front of government lot 2 and the south ½ of government lot 1, section 4; government lots 2, 3 and 4, section 5; government lots 2 and 3 and the east ½ of government lot 4, section 8, all in township 19 north, range 2 west, W.M., lying westerly of the line of extreme low tide and easterly of a line which is 10 feet westerly from and parallel to said line of extreme low tide, with a frontage of 119 lineal chains, more or less.

NOTE: The above described lands have an area of 1.8 acres, more or less.

Respectfully submitted,

M. E. BOWLER
Chief Engineer

AJA:bm WFMV
App. 5339ANH

AFFIDAVIT

We the undersigned, Carl Adams and Beda Adams, do hereby declare that we are the owners of certain tide lands of the second class situated in Thurston County, State of Washington, and described in Statutory Warranty Deed No. 517291, Recorded in Volume 272 at Page 332, in the Thurston County Auditor's Office at Olympia, Washington, a photostatic copy of which deed is attached hereto.

Carl Adams

Mrs. Beda Adams

Dated at Olympia, Washington, this 9-28 day of 1956, 1956.

Ellen Lindsay
Witness

Statutory Warranty D

517281

Real Estate Sales Tax Paid 45.__

Receipt No. 5568 ... 1953

Martin J. Durkan, ... County Treasurer

By [illegible]

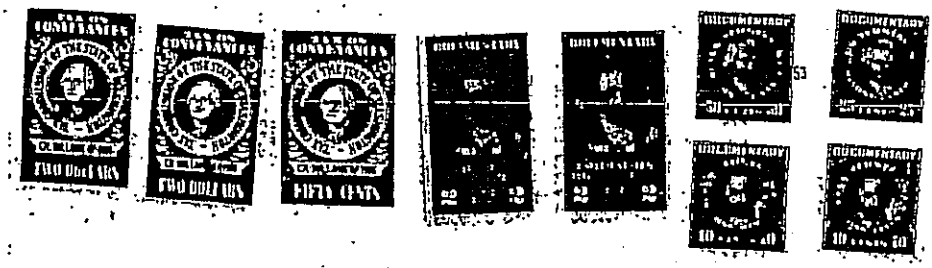
THE GRANTOR LEW BELLIDOX ...

... as of the time of ...

... in Township ..., Range ...

[illegible]

VOL 274 PAGE 133



Dated this 9th day of March, 1953

Lew Selvidge (SEAL)

Ella M. Selvidge (SEAL)

STATE OF WASHINGTON,
County of Thurston } ss.

On this day personally appeared before me Lew Selvidge and Lla M. Selvidge, husband and wife, to me known to be the individual s described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 9th day of March, 1953.

Notary Public in and for the State of Washington, residing at Olympia

STATE OF WASHINGTON }
County of } ss.

I, County Auditor of the State of Washington, do hereby certify that the within instrument of writing was filed for record in my office at ... o'clock ... M., and recorded in Volume ... of ... on page ...

WITNESS my hand and official seal this ... day of ... 19...

County Auditor

By ... Deputy

No. _____ $ _____

County of _____

Application to Lease {TIDE / SHORE / OYSTER} Lands

_____

Applicant.

APPLIED
NOV 5 1957

Filed _____

STATE PRINTING PLANT, OLYMPIA, WASH.

ATTACHMENT D

State of Washington Sept. 11, 1905

In consideration of Ninety and 72/100 ($90.72) Dollars, the receipt of which is hereby acknowledged, the State of Washington does hereby grant, bargain, sell and convey unto H. R. Weatherall, his heirs and assigns, the following described tide land of the Second Class, suitable for the Cultivation of Oysters, and being situate in Thurston County, Washington, to-wit:

Beginning at the meander corner to fractional sections seven and eighteen (18), on east side of inlet in township nineteen (19) north, range two (2) west of the Willamette Meridian; thence north 7° 30' east 9.09 chains; north 30° east, 15.00 chains; north 60° east, 23.10 chains; north 45° east 20.00 chains; north 21.60 chains; north 46° east, 44.00 chains; north 35° east, 30 chains; north 43° east, 48.00 chains; north 11° 55' east 27.01 chains; east, 3.00 chains; ~~South 20.22 chains; South 44° west 8.38 chains~~ to meander corner on township line between sections four (4) and thirty-three (33); thence along the meander line: South 50½° west 7.14 chains; South 38° west, 20.22 chains; South 45° west, 8.50 chains to meander corner to sections four (4) and five (5); thence South 47° west 13.54 chains; South 27° west 22.71 chains; South 55° west 11.00 chains; South 31° west 12.17 chains; South 52° west, 12.06 chains to meander corner to sections five (5) and eight (8); thence South 42½° west 8.83 chains; South 48½° west, 9.47 chains; South 5° west 7.89 chains; South 31¼° east 6.15 chains; South 19° west 5.56 chains; South 4° west 6.81 chains; South 41° west 2.76 chains; west 3.45 chains; South 32½° west 9.09 chains; South 48½° west 4.69 chains; north 76¾° ...

*ORIGINAL SURVEY BY [illegible] APPLICATION NO. 5050; LAND WAS SOLD TO H.R. WEATHERALL USING SAME LEGAL DESC.

land of the Second Class, suitable for the cultivation of Oysters, and being situate in Thurston County, Washington to wit:

Beginning at the meander corner to fractional sections seven and eighteen (18), on east side of inlet in township nineteen (19) north, range two (2) west of the Willamette Meridian: thence north 9° 30' east 9.09 chains; north 30° east, 15.00 chains; north 60° east, 23.00 chains; north 45° east 20.00 chains; north 2?.00 chains; north 46° east, 44.00 chains; north 58° east, 30.00 chains; north 43° east, 48.00 chains; north 11° 30' east 27.01 chains; east, 3.00 chains; south 20.00 chains; south 44° west 8.38 chains to meander corner on township line between sections four (4) and thirty-three (33); thence along the meander line south 50° west 7.14 chains; south 35° west 20.2? chains; south 45° west 8.50 chains to meander corner to sections four (4) and five (5); thence south 47° west 15.54 chains; south 27° west [illegible] chains; south 58° west 11.10 chains; south 31° west 12.16 chains; south 52° west 12.00 chains to meander corner to sections five (5) and eight (8); thence south 4° west 8.93 chains; south 28½° west, 9.74 chains; south 5° west 7.52 chains; south 81½° east 6.?0 chains; south 11° east [illegible] chains; south 4° west 6.80 chains; south 41° west 2.76 chains; west 3.45 chains; south 73° west 9.09 chains; south 48½° west 4.69 chains; south 94½° west 3.20 chains; south 63° east 6.50 chains to meander corner to sections seven (7) and eight (8); thence south 61½° east 3.71 chains; south 67½° west 5.36 chains; south 58° west 12.60 chains; south 14½° west 10.12 chains to the place of beginning, containing 72.30 acres more or less, according to the survey thereof as shown on the official plat of said tidelands filed in the office of the Commissioner of Public Lands of the State of Washington

at Olympia, Washington, on the 17th day of April, 1900.

To Have and to hold the said premises with their appurtenances unto the said H. R. Weatherwax, his heirs and assigns forever:

It is Expressly Agreed that if from any cause any tract or tracts, parcel or parcels of said land shall become unfit or valueless for the purpose of oyster planting, the party having so purchased, and being in possession of the same, upon certifying such fact under oath to the Commissioner of Public Lands and to the auditor of the County wherein such lands are situated, and also upon filing under oath a certificate of abandonment of such tract or tracts, parcel or parcels of land, in the office of each of such officials, shall then be entitled to again make purchase of oyster lands pursuant to the provisions of an Act of the Legislature of the State of Washington entitled, "An act providing for the sale and purchase of tide lands of the third class and manner of conveying the same, for the purposes of oyster planting, to encourage and facilitate said industry, and declaring an emergency," approved March 2nd, 1895; and such certificate shall be and be deemed to be a reconveyance to the State of Washington of the lands therein described as having become unfit and valueless for the purposes of oyster planting.

Witness the Seal of the State affixed this 11th day of September, 1905;

(Seal)

Albert E. Mead
Governor.

Attest. Sam A. Nichols

24	S 31¼° E	6.15		5.26	3.19		92.05		484.183
25	S 19° W	5.56		5.26		1.81	93.43		491.442
26	S 4° W	6.81		6.79		.47	91.15		618.908
27	S 41° W	2.76		2.08		1.81	88.87		184.849
28	West	3.45				3.45	83.61		
29	S 32½° W	9.09		7.67		4.88	75.28		577.388
30	S 48½° W	4.69		3.11		3.51	66.89		208.028
31	N 76¾° W	3.26	.75			3.17	60.21	45.157	
32	S 65½° W	6.30		2.64		5.72	51.32		135.485
33	S 61½° W	8.81		4.20		7.74	37.86		159.012
34	S 57¾° W	5.36		2.86		4.53	25.59		73.187
35	S 38½° W	12.60		9.86		7.85	13.21		130.251
36	S 14½° W	10.72		10.38		2.68	2.68		27.818
			187.05	187.05	136.11	136.11		25459.547	26919.654
									25459.547
									[illegible]
									[illegible]

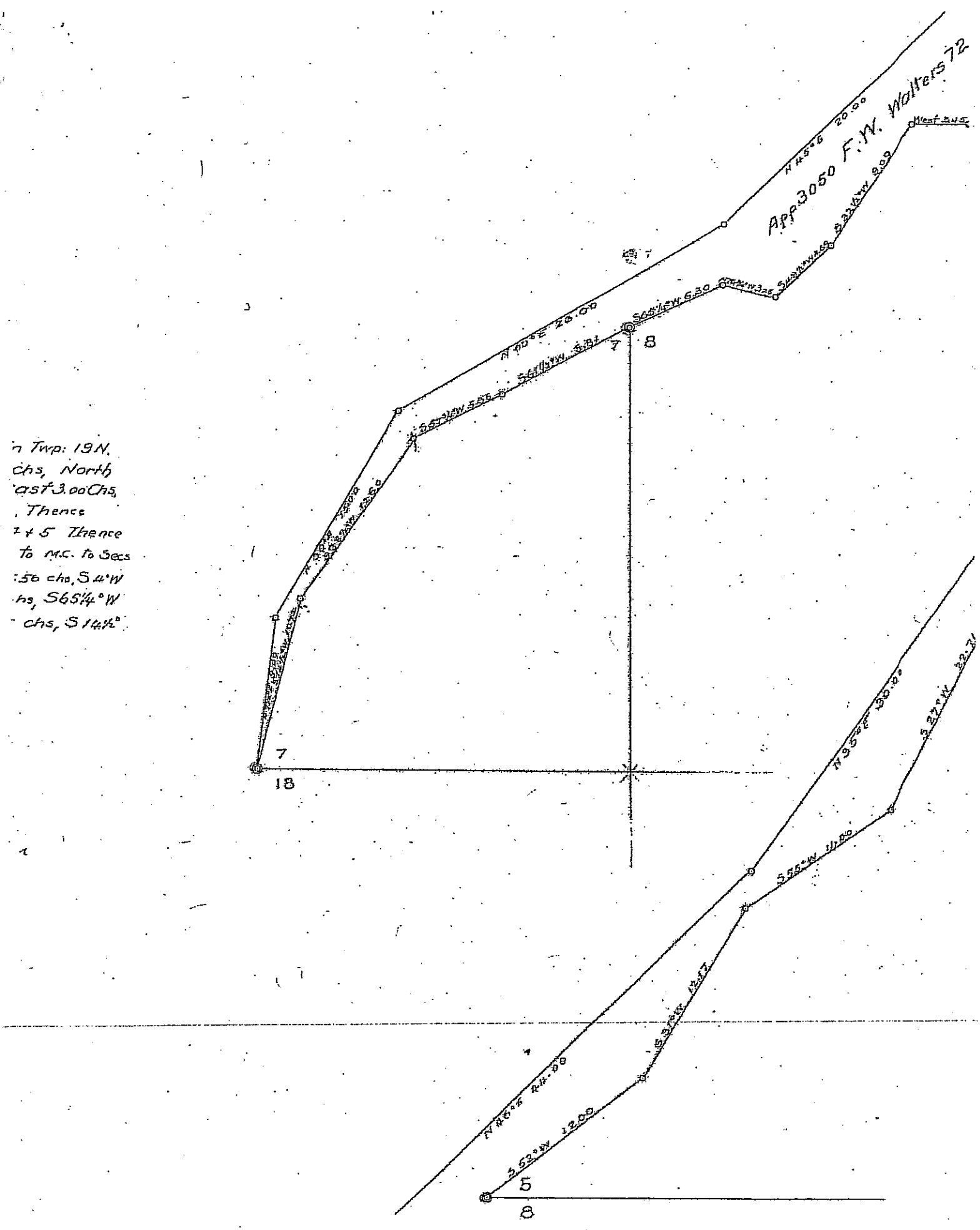
Beginning at the meander Corner to Fractional Sections 7 & 18 on East Side of Inlet in Twp: R.2 W. W.M. Thence N.7°30'E 9.09 Chs: N.30°E 15.00 Chs, N.60°E 23.00 Chs, N.45°E 20.00 Chs, 22.00 Chs, N 46°E 44.00 Chs, N.35°E 30.00 Chs, N.43°E 48.00 Chs, N.11°55'E 27.01 Chs, East 3. South 20.22 Chs, S 44° W. 8.38 Chs, To meander Corner on Township line between Secs 4 & 33, Then along the meander line. S 50½°W 3.14 Chs, S 38°W 20.22 Chs, S 45°W 8.50 Chs to M.C. to Secs 4 & 5 S 47°W 13.54 Chs, S 27°W 22.71 Chs, S 55°W 11.00 Chs, S 31°W 12.27 Chs, S 52°W 12.00 Chs, to M.C. 5 & 8. Thence S 42½° W 8.83 Chs, S 48½°W 9.47 chs, S 6°W 7.89 chs, S 31¼°E 6.15 chs, S 19°W 5.56 chs 6.81 chs, S 41° W 2.76 chs, West 3.45 chs, S 32½°W 9.09 chs, S 48½°W 4.69 chs, N 76¾° W 3.26 chs, S 6 6.30 chs, to M.C. to Secs 7 & 8. Thence S 61½°W 8.81 Chs, S 57¾°W 5.36 Chs, S 38½°W 12.60 chs, W. 10.72 Chs, to point of beginning. Containing [illegible] acres.

I hereby Certify that the above Plat is a true and Correct representation of the Survey according to the field notes thereof.

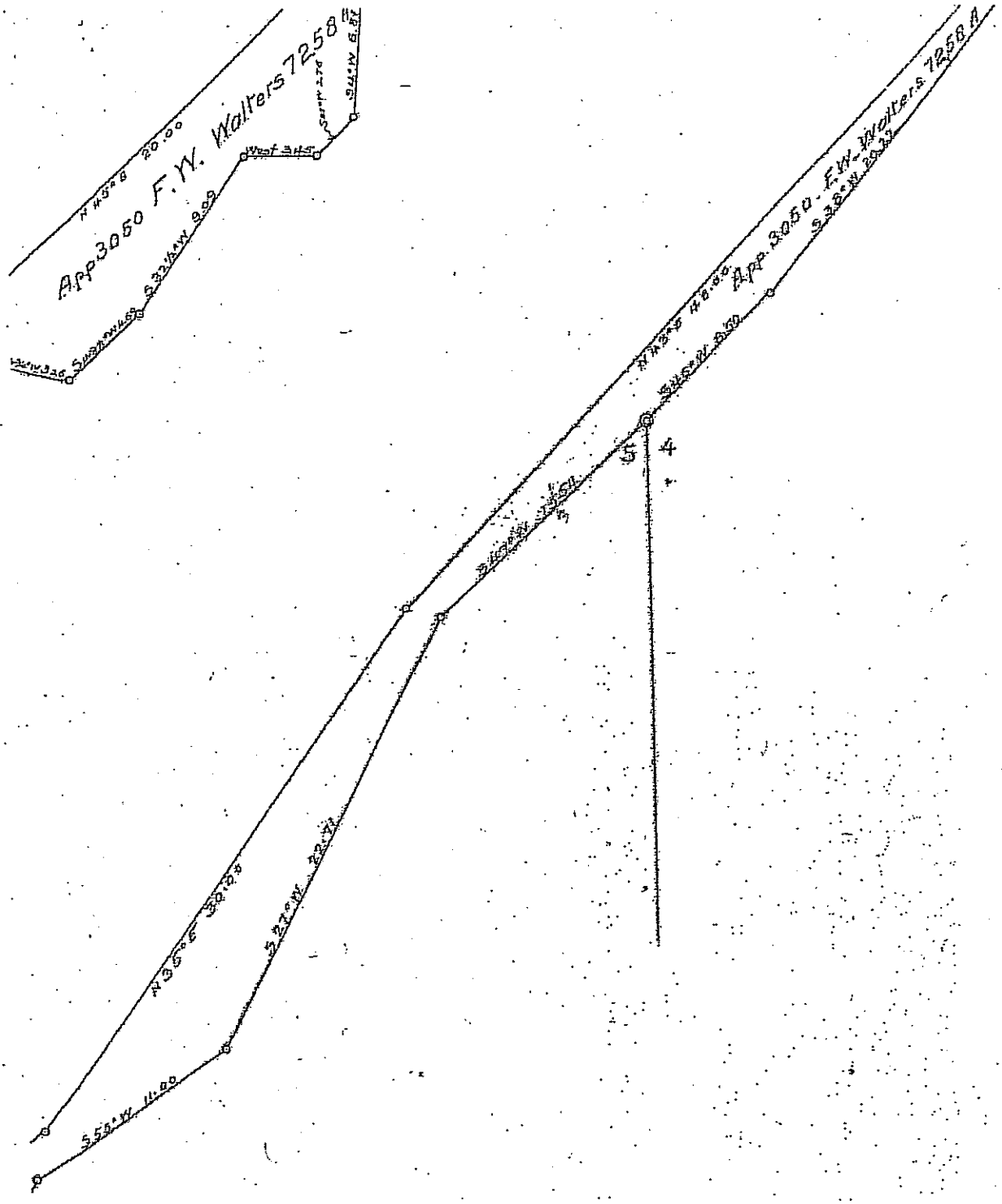
Olympia April 2 1900

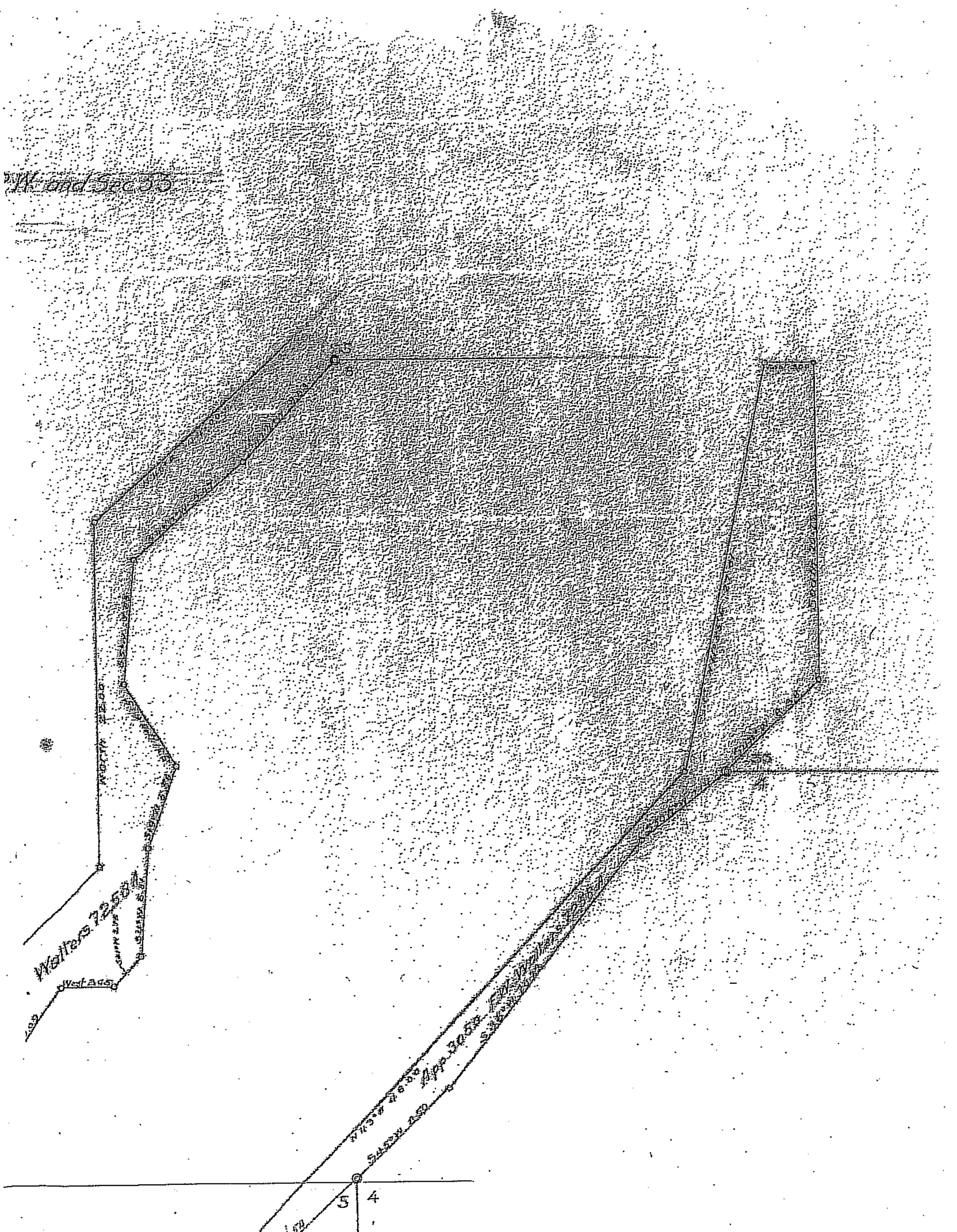
Jas C McFadden
Surveyor.

App. # 3050



n Twp: 19N.
Chs, North
ast 3.00 Chs,
, Thence
7 + 5 Thence
to M.C. to Secs
:56 chs, S 4° W
hs, S 65¼° W
- chs, S 14½°

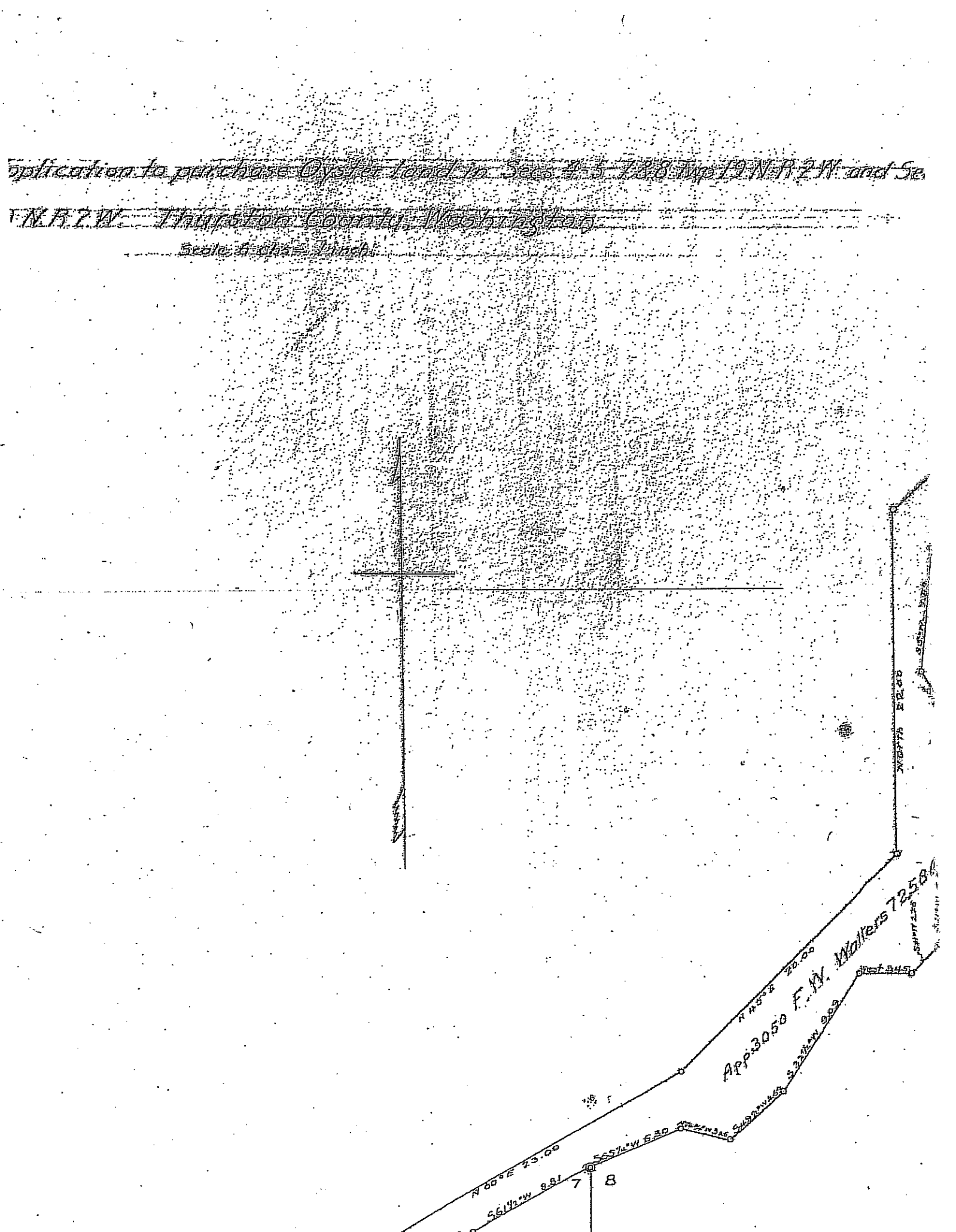

App3050 F.W. Walters 7258
N 43°E 20.00
S 33°W 9.00
S 55°W 11.00
N 35°E 30.00
S 27°W 22.71
S 35°W 33.61
N 43°E 42.00
S 35°W 5.30
App. 3050 - F.W. Walters 7258 A
S 38°W 20.32
5
4



W and Sec 33
Walters 72.50 A
West
App. 30.50 F.W. Walters
5
4

Application to purchase Oyster land in Sec's 4-5 T28 Twp 19N R 2W and Se
1/4 R 2 W Thurston County Washington

Scale 6 chs = 1 inch



Plat of F.W. Walters Application to

Twp 20 N R 2 W

No	Course	Dist	Latitudes North	Latitudes South	Departures East	Departures West	D.M.D.	North Areas	South Areas
1	N 71½° E	8.09	9.01		7.70		[illegible]	10.631	
2	N 30° E	15.00	12.99		7.50		15.96	[illegible]	
3	N 60° E	20.00	11.50		19.92		37.28	[illegible]	
4	N 45° E	20.00	14.14		14.14		71.34	1,008.777	
5	North	22.00	22.00				85.45	1,880.560	
6	N 46° E	44.00	30.56		31.65		117.13	3,579.102	
7	N 35° E	30.00	24.57		17.21		165.99	4,078.371	
8	N 43° E	48.00	35.10		32.77		215.94	7,579.494	
9	N 11° 53' E	27.01	26.43		5.58		254.29	6,720.091	
10	East	3.00			3.00		262.87		
11	South	20.22		20.22			265.87		5,375.291
12	S 44° W	8.38		6.02		5.82	260.05		1,565.520
13	S 50½° W	7.14		4.54		5.51	248.69		1,129.054
14	S 38° W	20.22		15.93		12.45	230.73		3,675.528
15	S 45° W	8.50		6.01		6.01	212.27		1,275.744
16	S 47° W	13.52		9.22		9.90	196.36		1,810.439
17	S 27° W	22.71		20.23		10.31	176.15		3,560.174
18	S 55° W	11.00		6.31		9.01	156.83		989.597
19	S 31° W	12.17		10.43		6.27	141.55		1,476.366
20	S 52° W	12.00		7.39		9.45	125.83		929.904
21	S 42½° W	8.83		6.51		5.97	110.39		718.638
22	S 48½° W	9.47		6.27		7.09	97.33		610.259
23	S 5° W	7.89		7.86		.69	89.55		703.863
24	S 31¼° E	6.15		5.26	3.19		92.05		484.183
25	S 19° W	5.56		5.26		1.81	93.43		496.442
26	S 4° W	6.81		6.79		1.47	91.15		618.908
27	S 41° W	2.76		2.08		1.81	88.87		184.849
28	West	3.45				3.45	83.61		
29	S 32½° W	9.09		7.67		4.88	75.28		577.398
30	S 48½° W	4.69		3.11		3.51	66.89		208.028
31	N 78¾° W	3.26	.75			3.17	60.21	45.157	
32	S 65¼° W	6.30		2.64		5.72	51.32		135.485
33	S 61½° W	8.81		4.20		7.74	37.86		159.012
34	S 57¾° W	5.36		2.86		4.53	25.59		73.187
35	S 38½° W	12.60		9.86		7.55	13.21		130.251
36	S 14½° W	10.72		10.38		2.68	2.68		27.818
			187.05	187.05	136.11	136.11		25459.547	26978.964
									25459.547
									1464.457
									725.208+

ATTACHMENT E

WOODALL'S COPY

WASHINGTON STATE DEPARTMENT OF
Natural Resources

JENNIFER M. BELCHER
Commissioner of Public Lands

August 7, 1997

Buzz and Julie Walker
2723 Hillside Drive
Olympia, WA 98501

Subject: Ownership Township 19 North, Range 2 West, Sections 4 & 5

Dear Buzz & Julie:

I'm enclosing a copy of the official plates for Township 19 North, Range 2 West. (Attachment 1) This aquatic land plate shows the ownership of the tidelands and the leasing activities that have taken place in each area.

Attachment 2 and 3 are enlargements of certain areas contained on Attachment 1. I've highlighted the leasing activities in yellow and the private ownership of tidelands in green. I'm also including a copy of the original deed related to this purchase. (Deed Volume 7, Page 121, Attachment 4) Most likely the second class tidelands have been deeded to another person since the original purchase. You will need to contact the county or a title company to obtain the current ownership information as we do not keep records of changes in title.

Last but not least, you requested information on the leasing activity for Taylor United. Included is a print out obtained from the department's contract management system. If you have questions regarding the terms of any of the leases held by Taylor, you will need to contact Terry Roswall. If you have questions regarding the printout provided, please contact me.

Sincerely,

Pamela J. Dittman
Aquatic Resources
Public Disclosure Officer
PO Box 47027
Olympia, WA 98504-7027

Reference Code: Public Disclosure
F:\HOME\PKKK490\PBLCDISC\1997\WALKER.LTR

State of Washington

In consideration of Ninety and 72/100 ($90.72) Dollars. To receipt of which is hereby acknowledged the State of Washington does hereby grant, bargain, sell and convey unto H. R. Whittlesell, his heirs and assigns, the following described tide land of the Second Class, suitable for the Cultivation of Oysters, and being situate in Thurston County, Washington, to wit:

Beginning at the meander corner to fractional sections seven and eighteen (18), on east side of inlet in township nineteen (19) north, range two (2) west of the Willamette Meridian; thence north 7° 30' east 9.09 Chains; north 30° east, 15.00 Chains; north 60° east, 23.00 Chains, north 45° east 20.00 Chains; north 22.00 Chains, north 46° east, 44.00 Chains; north 35° east, 30 Chains; north 43° east, 48.00 chains; north 11° 55' east 27.01 Chains, east, 3.00 Chains; South 20.22 Chains; south 44° west 8.35 Chains to meander corner on township line between sections four (4) and thirty-three (33); thence along the meander line: south 50½° west 7.14 Chains; South 35° west, 20.22 Chains; South 40° west, 8.50 Chains to meander corner to sections four (4) and five (5); thence South 47° west 13.54 Chains; South 27° west 22.31 Chains; South 55° west 11.00 Chains; South 31° west 12.17 Chains; South 52° west, 12.0 Chains; to meander corner to sections five (5) and eight (8); thence south 42½° west 8.83 Chains; South 48½° west, 9.47 Chains; South 5° west 7.89 Chains; South 21½° west 6.15 Chains; South 19° west 5.56 Chains; South 4° west 6.81 Chains; South 41° west 2.76 Chains; west 3.46 Chains; South 32½° west 9.09 Chains; South 48½° west 4.69 Chains; north 74¾° west 3.26 Chains; South 68¼° west, 6.30 Chains to meander corner to sections seven (7) and eight (8); thence South 61½° west 8.81 Chains; South 57¾° west 5.36 Chains; South 38½° west 2.60 Chains; South 14½° west 10.72 Chains to point of beginning. Containing 72.88 acres more or less, according to the survey thereof as shown on the official plat of said tide land filed in the office of the Commissioner of Public Lands of the State of Washington.

Attachment A

of Olympia [illegible] day of Sept [illegible]
[illegible] To have and to hold the said premises
with their appurtenances unto the said
H. R. Weatherall, his heirs and assigns forever.

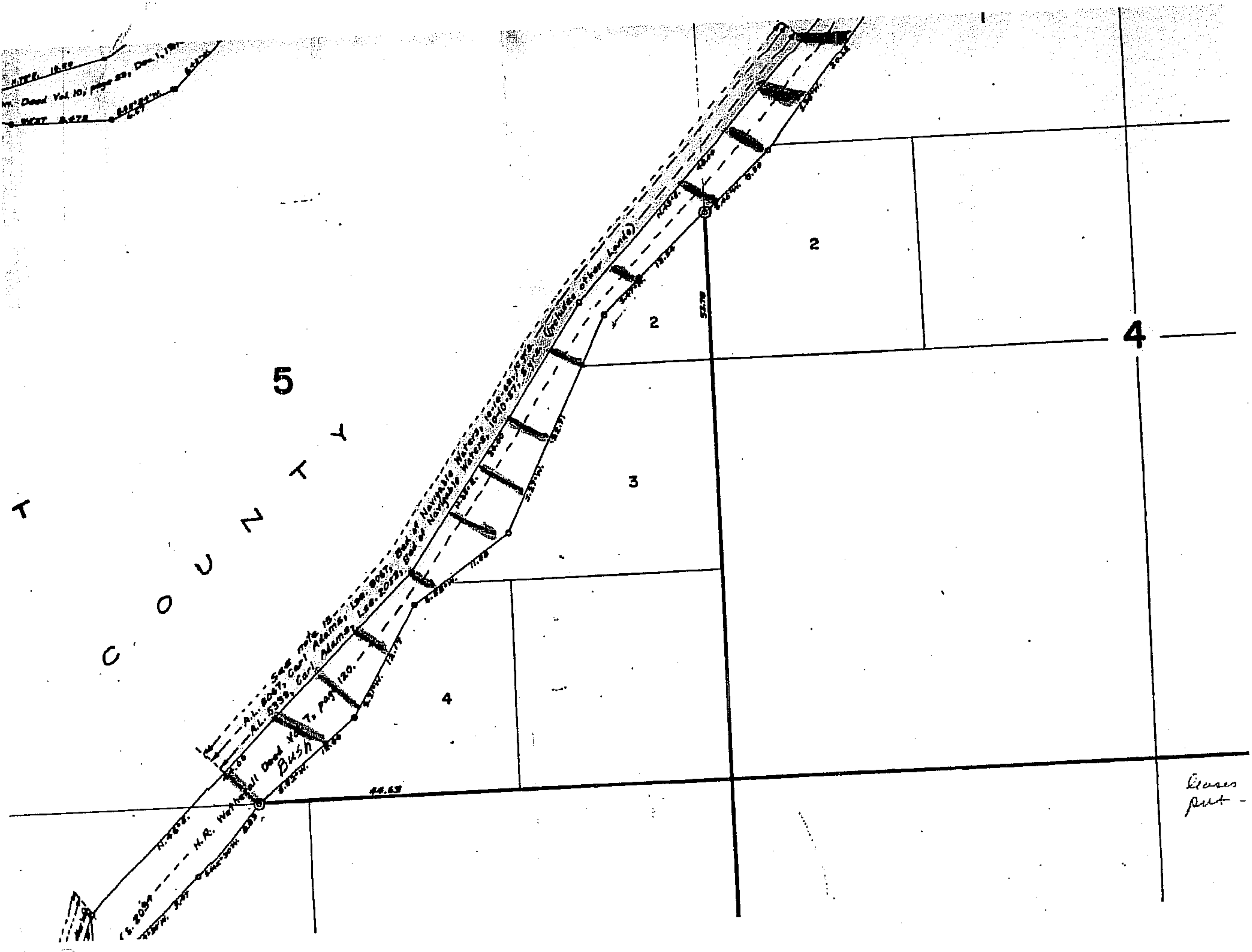
It is Expressly Agreed that if from any cause any tract or tracts, parcel or parcels of said land shall become unfit or valueless for the purpose of oyster planting, the party having so purchased and being in possession of the same, upon certifying such fact under oath to the Commissioner of Public Lands and to the auditor of the County wherein such lands are situated, and also upon filing under oath a certificate of abandonment of such tract or tracts, parcel or parcels of land, in the office of each of such officials, shall then be entitled to again make purchase of oyster lands pursuant to the provisions of an act of the Legislature of the State of Washington entitled "An act providing for the sale and purchase of tide Lands of the third class, and manner of conveying the same for the purpose of oyster planting, to encourage and facilitate said industry, and declaring an emergency" approved March 2nd, 1895; and such certificate shall be and be deemed to be a reconveyance to the State of Washington of the lands therein described as having become unfit and valueless for the purpose of oyster planting.

Witness the Seal of the State affixed this 11th day of September, 1903.

(Seal)

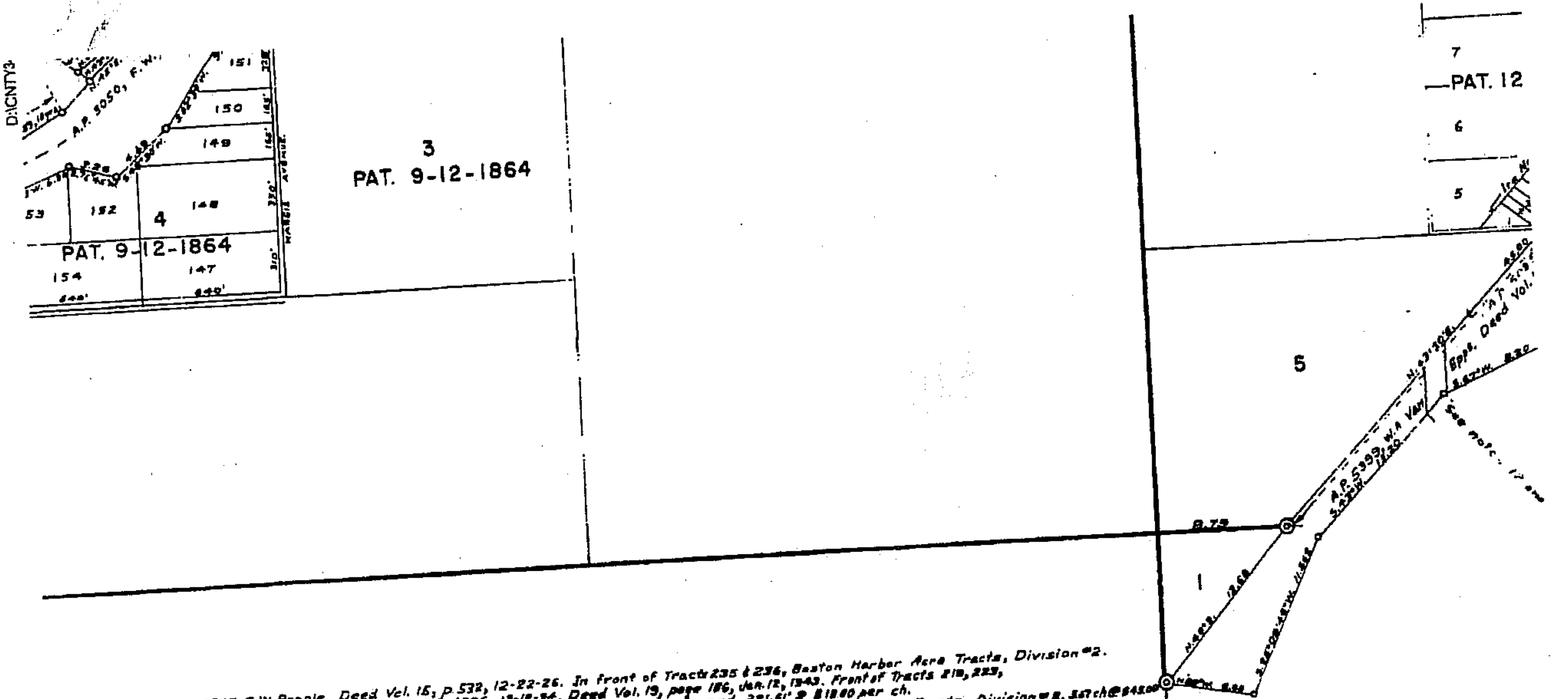
Albert E. Mead
Governor.

Attest. Sam H. Nichols
Secretary of State.



COUNTY
5
4
A.L. 8067, Carl Adams; Lse. 8067; Bed of Navigable Waters; 10-18-55; 10 A's.
A.L. 5338, Carl Adams; Lse. 2053; Bed of Navigable Waters; 10-10-57; 5 A's. (Includes other Lands)
See note 15
H.R. Wetherall Deed Vol. 7, page 120.
Bush
Deed Vol. 10, page 83, Dec. 1, 191
2
2
3
4
44.63
53.78

Leases put -



Note 1: A.P. 8347, C.W. Popple. Deed Vol. 15, p. 532, 12-22-26. In front of Tracts 235 & 236, Boston Harbor Acre Tracts, Division #2.
Note 2: A.P. 9784, Gustav S. Furberg. C of S. 6396, 12-18-34, Deed Vol. 19, page 186, Jan. 12, 1943. Front of Tracts 219, 223, 233.6' @ $18.00 per ch. and 321.61' @ $18.00 per ch.
Boston Harbor Acre Tracts, Division #2. In front of Tracts 212 and 213, Boston Harbor Acre Tracts, Division #2. 3.57 ch @ $45.00
Note 3: A.P. 11967, M. Camus. Deed Vol. 21, p. 363, 7-3-50. [illegible] 4-16-51.
Note 4: A.P. 2031, Sep. [illegible] Evelyn Mowr [illegible] 3-13-51.
Note 5: A.L. 2413, P[illegible] & Walter [illegible] Boston Harbor Acre Tracts, Division #2.
Note 6: A.P. 12347, Thomas E. Nelson. Deed Vol. 21, page 766, 6-16-53. Front of Tract 234, Boston Harbor Acre Tracts, Division #2.
Note 7: A.P. 12319, Thomas E. Nelson. [illegible] S. 7234, 6-16-53, to Frank C. Tamblyn. Deed Vol. 21, p. 779, 8-18-53, In front of Tr. 239, Boston Harbor Acre Tract, Division #2.
[illegible] portion – no bids.
Note 8: A.P. 12[illegible] Thomas E. Nelson. Cl[illegible] Norton, 3-3-60. Deed Vol 23, page 411, 8-23-63.
Note 9: A.P. 13349, Clyde Norton. C. of S 13949, Clyde & Lillian Mae Norton, 3-3-60. Deed Vol 23, page 411, 8-23-63. In front of Tracts 237 & 238, Boston Harbor Acre Tracts, Div. #2. 6.26 ch. @ $60.00. Boston Harbor Acre Tracts, Div. 2.
Note 10: A.P. 13543, Robert F. & Bess G. Haymaker. Deed Vol. 23, p 181, 6-8-61. In front of Tract 218, Boston Harbor Acre Tracts, Div. #2
Note 11: A.P. 13639, Martha Elizabeth Myers. Deed Vol. 23, page 240, 2-18-62. In front of Tract 242, Boston Harbor Acre Tracts, Div. #2
Note 12: A.P. 7348, John [illegible] Rejected August 13, 1322. In front of a portion of L. 5, Sec. 3.
Note 1[illegible]: A.P. 13333, M[illegible] Camas. Rejected 6-17-53. In front of a portion of Lot 5, Sec. 3.
Note 14: A.P. 14037, R[illegible] Laura Hulbert, Ann Mc[illegible] [illegible] Gov. Lots 1 & 2, Sec. 4, Gov. Lots 2, 3, & 4, Sec 5, & Gov Lots 1, 2, & 4, Sec 8. Re-lease 10006,
Note 15: A.B.L. 10006, Justin E. Taylor & Masao Okada. Bed of Nav. Waters in front of a. Gov. Lots 1 & 2, [illegible] 3-27-81 1 yr.
Note 16: A.L. 11760, Ronald Wappler, 6 ac. Pr. S10-T19N, R2W, Bed of Nav. Water, Geoduck Tract 6-5-81, 1 yr.
Note 17: A.L. 11782, Skinner Point Fisheries, Lmtd.; 53 ac. of bed. Tr. por. Gov Lots 1, 2, 3, Sec. 3; Geoduck Tract 6-5-81, 1 yr. (See Mason Co. Plate 7 also)
Note 18: A.L. 11784, Geoduck Harvest Co.; 94 acres of Geoduck Tract in bed in fr. par. Gov. Lot 1, Sec. 3; 6-5-81, 1 yr.
Note 19: A.L. 11867, PEARCE DIVE CO., GEODUCK TRACT LOT 3 & 4 SEC. 3, 4-30-1982 LSE. 1 YR.

3:01

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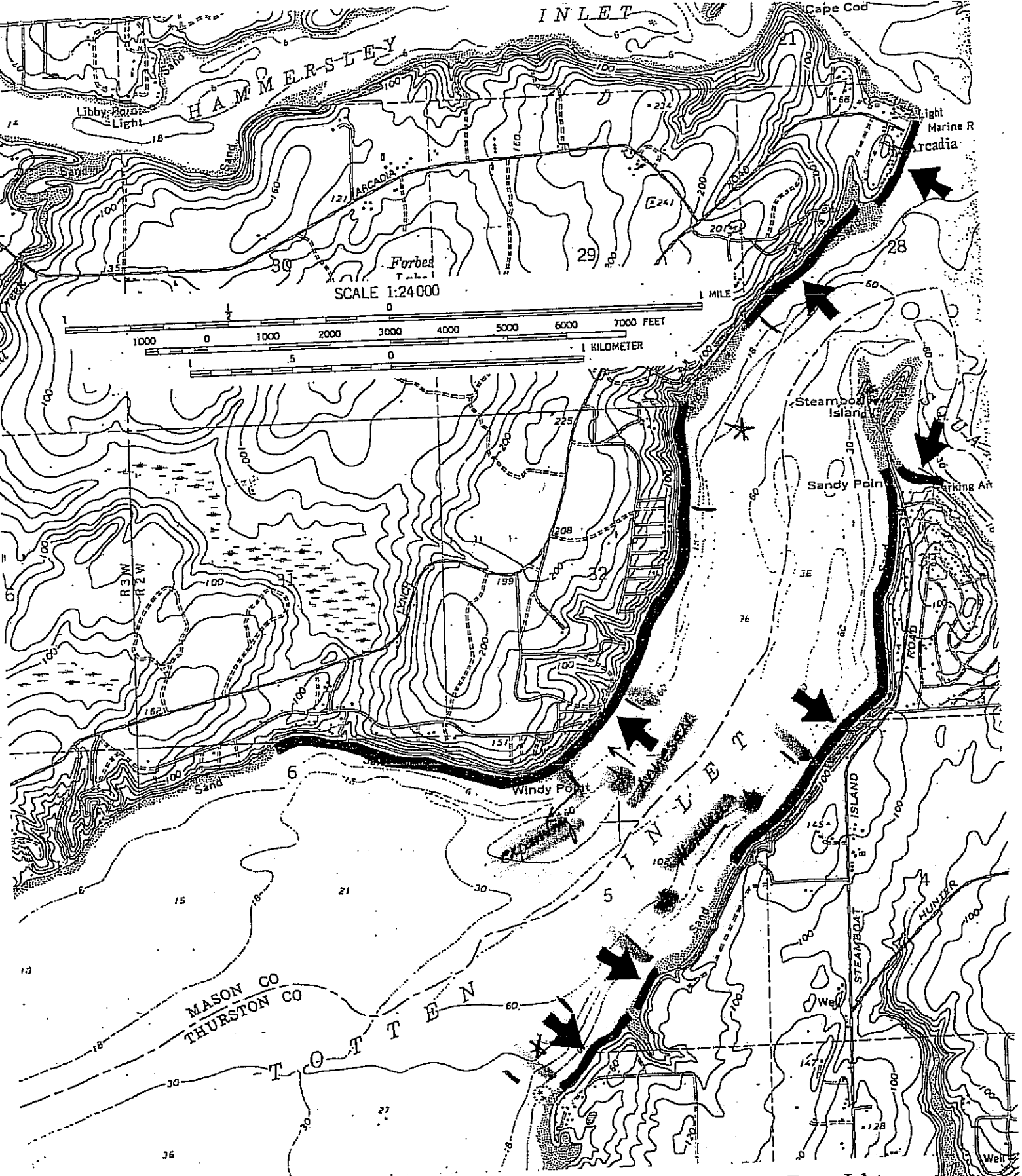

Figure 30B. Documented sand lance spawning beaches in the northern Totten Inlet area, Mason-Thurston Cos., WA.

Black arrows

WDFW

2/5/99

ATTACHMENT F

Oyster Bay

Year	2002	2003	2004	2005	2006	SUM
Seed Unit	10,166,606	12,282,034	17,847,551	16,307,190	9,194,337	65,797,718
Year	2004	2005	2006	2007	2008	
Harvest Dz.	415,172	5,188,248	4,520,388	5,116,164	4,620,768	19,860,740

30.18%

Eld Inlet

Year	2002	2003	2004	2005	2006	SUM
Seed Unit	16,795,556	19,174,316	14,453,271			50,423,143
Year	2004	2005	2006	2007	2008	SUM
Harvest Dz.	4,695,156	9,466,764	7,057,188	7,337,580	3,604,188	21,219,108

42.08%