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BRICKLIN NEWMAN DOLD. LLP

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

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

Appellant.

v.

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

Respondent.

NO. S08-010

APPELLANT'S PROPOSED
LEGAL ISSUES AND
PRELIMINARY WITNESS AND
EXHIBIT LISTS

Appellant, Taylor Resources, Inc. ("Taylor") hereby submits the following proposed legal issues and preliminary lists of witnesses and exhibits in the above-captioned case.

I. PROPOSED LEGAL ISSUES

1. Whether the Hearing Examiner's conclusion that SD 22-00 expired is erroneous and inconsistent with applicable laws and regulations including the Shoreline Management Act ("SMA"), state implementing regulations, the Pierce County Shoreline Master Program ("SMP"), case law, and the plain language of the permit, itself.

2. Whether a preponderance of the evidence presented to the Board supports that SD 22-00 did not expire, contrary to the Examiner's Decision.

3. Whether the County is equitably stopped from finding that SD 22-00 has expired.

APPELLANT'S PROPOSED LEGAL ISSUES AND
PRELIMINARY WITNESS AND EXHIBIT LISTS - 1

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- 3. Mr. Bill Dewey
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- 5. Mr. Bill Taylor
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- 6. Ms. Leslie Foss, Managing Partner
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Upland property owner/Intervenor
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- 7. Mr. Ty Booth, Planner
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- 8. Ms. Vicki Diamond, Supervisor
Pierce County Planning and Land Use Services
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APPELLANT'S PROPOSED LEGAL ISSUES AND
PRELIMINARY WITNESS AND EXHIBIT LISTS - 3

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13. Dr. Jeffrey P. Fisher, Ph.D., Principal
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14. Dr. Jonathon (Joth) Davis, Ph.D.
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APPELLANT'S PROPOSED LEGAL ISSUES AND
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15. Mr. David Troutt, Director
Natural Resources Department
Nisqually Tribal Community
4820 She-Nah-Num Drive S.E.
Olympia, WA 98513
Tel: (360) 438-8687

16. Mr. David P. Findley
Associate-Engineering Geologist, L.G., L.E.G.
Golder Associates, Inc.
18300 NE Union Hill Road, Suite 200
Redmond, WA 98052
Tel: (425) 883-0777
Fax: (425) 882-5498

17. Mr. Lynn Goodwin
750 Mountain View Road
Quilcene, Washington 98376-9526
Tel: (360) 765-3530

III. PRELIMINARY EXHIBIT LIST

The following is a preliminary list of exhibits Appellant Taylor Shellfish intends to submit at hearing.

Exhibit Number	Document Description	Date
1.	Vicinity Maps of geoduck farm locations	
2.	List of parcel numbers and property owners SD22-00	undated
3.	Site Plans (9 pages, plus one enlargement to 11 x 17)	undated
4.	Environmental Code of Practice (22 pages)	undated
5.	Photographs of Foss farm and operations	various

Exhibit Number	Document Description	Date
6.	Illustrative photographs of Taylor's harvesting operations	various
7.	Aerial photo of Foss Farm	
8.	Aerial photo of Washington Shellfish Farm	
9.	JARPA Application	04/11/00
10.	Staff Report on Application (SD22-00)	12/01/00
11.	Hearing Examiner's Decision on Application (SD22-00)	12/28/00
12.	Shoreline Management Substantial Development Permit (SD22-00)	01/09/01
13.	Declaration of Robert C. Paradise (Pierce County v. Douglas McRae, et al., Cause No. 02-2-08561-5) (not stamped with exhibit number - H.E. exhibit in Case No. AA11-03)	06/29/03
14.	Declaration of William A. Garrison (Pierce County v. Douglas McRae, et al., Cause No. 02-2-08561-5) (H.E. Exhibit No. 22 in Case No. AA11-03)	06/30/03
15.	Verbatim Transcript of Proceedings, Pierce County Hearing Examiner, AA11-03, AA13-03, AA14-03 and AA15-03, Washington Shell Fish	09/15/03
16.	Verbatim Transcript of Proceedings, Pierce County Hearing Examiner, AA11-03, AA13-03, AA14-03 and AA15-03, Washington Shell Fish	11/03/03
17.	Report and Decision, Pierce County Hearing Examiner, Administrative Appeals: AA11-03, AA13-03, AA14-03 and AA15-03 (Washington Shellfish)	12/04/03
18.	Washington Shell Fish Case 132 Wn. App. 239, 131 P.3d 326 (2006)	03/28/06
19.	E-mail thread from V. Diamond to LLHENDRICKS. Subject: Geoduck Questions	05/22/06 3:59:11 PM

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Exhibit Number	Document Description	Date
20.	E-mail from P. Prendergast to T. Byers, V. Diamond. Subject: Geoduck Conditions	06/05/06 10:32:20 AM
21.	AGO 2007 No. 1	01/04/07
22.	SD53-05 and SD55-05 Hearing Examiner's Decision on Reconsideration (with cover letter)	01/19/07
23.	SD53-05 and SD55-05 Hearing Examiner's Amended Report and Decision (with cover letter)	01/19/07
24.	SD53-05 and SD55-05 Corrected Shoreline Substantial Development Permits (transmitted 3/19/07 – final decision date 01/19/07)	01/19/07
25.	Memorandum from D. Risvold to K. Larrabee Subject: Geoduck Harvest	03/21/07
26.	E-mail thread from T. Booth to V. Diamond. Subject: SD22-00 (Taylor)	05/21/07 2:22:34 PM
27.	Letter from S. Plauché to T. Booth, Pierce County	06/26/07
28.	Photographs taken by Ty Booth, Pierce County, re SD22-00	07/06/07
29.	Photographs taken by Ty Booth, Pierce County, re: SD22-00	07/13/07
30.	E-mail from V. Diamond to J. Regan, S. Larson, D. Wilson, T. Byers. Subject: Taylor Shellfish	07/13/07 4:09 PM
31.	E-mail thread from D. Rosenkranz to D. Ranes, K. Larrabee, M. Brells, V. Diamond; J. Landenburg; C. Kleeburg Subject: Taylor Shellfish – Foss Site	08/09/07 3:11:47 PM
32.	E-mail from S. Dzinbal to T. Clingman, R. Shultz, L. Crerar, D. Fagergren, J. Koenings, L. Veneroso, M. Barker, R. Doenges, R. Mraz, G. White, B. Lynn Subject: AGO 2007 No. 1 Patricia Lantz request re HPA SMA and geoduck aquaculture.pdf	02/11/07
33.	Letter from J. Pharris to K. Townsend re: AGO 2007 No. 1, Bricklan/Newman Letter	08/28/07

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Exhibit Number	Document Description	Date
34.	Letter from Michelle Walker, Army Corps of Engineers, to Kathyrn Townsend, Protect Our Shoreline	06/27/07
35.	72 FR 11092-01	
36.	33 C.F.R. § 322.2	
37.	Letter from Bill Dewey to Penny Dalton, Washington Sea Grant, Re: Comments on Effects of Geoduck Aquaculture on the Environment	09/28/07
38.	Letter from Jeff Fisher (October 3, 2007) to Dr. Rachel Waters, Washington Sea Grant, Re: Comments on Effects of Geoduck Aquaculture on the Environment	10/03/07
39.	Letter from Representative Lantz to the Attorney General re: Request for formal Attorney General Opinion	09/28/06
40.	Letter from David Bricklin to the Thurston County Board of Commissioners	07/10/07

Exhibit Number	Document Description	Date
41.	Commercial Geoduck Fishery Management Plan and EIS, Departments of Fisheries and Natural Resources, 1985	1985
42.	SEPA Determination of Nonsignificance, Log. No. 98031, dns, Department of Fish and Wildlife Lead Agency	05/14/98
43.	Preliminary Assessment and Corrective Action Plan, Version 1 (authored by D. Fagergren, A. Criss and D. Christensen)	05/06/04
44.	Programmatic Biological Evaluation of Potential Impacts of Intertidal Geoduck Culture Facilities to Endangered Species and Essential Fish Habitat	06/10/04
45.	Letter from R. Doenges, Department of Natural Resources, to M. Taylor, Washington Council of Trout Unlimited	01/03/07
46.	Memorandum from R. Knust, Washington Department of Natural Resources, re: SEPA Lead Agency and MDNS	06/29/07

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Exhibit Number	Document Description	Date
47.	Habitat Conservation Plan for Washington Department of Natural Resources' Geoduck Fishery	July 2007
48.	Summary Observations from Engineering Geologic Reconnaissance – Geoduck Farm Key Peninsula, Pierce County, Washington by Golder Associates, Inc.	08/30/07
49.	How Does Shellfish Farming Impact Puget Sound? A presentation prepared by Taylor Shellfish Farms, with contributions from other Puget Sound shellfish farmers	09/24/2007
50.	Entrex – Comments on Proposed Nationwide Permit D	11/2007

Exhibit Number	Description of Study, Paper or Publication
51.	Beadman, H.A., M.J. Kaiser, M. Galanidi, R. Shucksmith, and R.I. Willows. 2004. Changes in species richness with stocking density of marine bivalves. Journal of Applied Ecology 41: 464-475.
52.	Beal, B.F., and M.G. Kraus. 2002. Interactive effects of initial size, stocking density, and type of predator deterrent netting on survival and growth of cultured juveniles of the soft-shell clam, <i>Mya arenaria</i> L., in eastern Maine. Aquaculture 208: 81-111.
53.	Coen, L.D., M.W. Luckenbach, and D.L. Breitburg. 1999. The role of oyster reefs as essential fish habitat: a review of current knowledge and some new perspectives. In: Benaka, L.R. (editor), Fish Habitat: Essential Fish Habitat and Rehabilitation. American Fisheries Society Symposium 22: 438-454.
54.	Coen, L.D. and R. E. Grizzle. 2007. The importance of habitat created by molluscan shellfish to managed species along the Atlantic Coast of the United States. ASMFC Habitat Management Series #8.
55.	Crawford, C.M., C.K. Macleod, and I.M. Mitchell. 2003. Effects of shellfish farming on the benthic environment. Aquaculture. Vol. 224, no. 1-4, pp. 117-140. 30 Jun. IS: ISSN 0044-8486.
56.	Crawford, C. 2003. Environmental management of marine aquaculture in Tasmania, Australia. Aquaculture 226: 129-138.
57.	Crosby, M.P. 1988. Using bioenergetics of intertidal oyster populations as a measurement of anthropogenic perturbations to shellfish growing waters. Journal of Shellfish Research 7(1): 199-200.
58.	Dankers, N., and D.R. Zuidema. 1995. The role of the mussel (<i>Mytilus edulis</i> L.) and mussel culture in the Dutch Wadden Sea. Estuaries 18: 71-80.

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Exhibit Number	Description of Study, Paper or Publication
59.	DeAlteris, J.T., B.D. Kilpatrick, and R.B. Rheault. 2004. A comparative evaluation of the habitat value of shellfish aquaculture gear, submerged aquatic vegetation and a nonvegetated seabed. Journal of Shellfish Research. (23:3) 867-874.
60.	Ferraro, S. P. and F. A. Cole. 2006. Benthic macrofauna - habitat associations in Willapa Bay, Washington, USA. Estuarine Coastal and Shelf Science – in press
61.	Gerritsen, J., A.F. Holland, and D.E. Irvine. 1994. Suspension-feeding bivalves and the fate of primary production: an estuarine model applied to Chesapeake Bay. Estuaries 17 (2), 403-416.
62.	Gilbert, F., P. Souchu, M. Bianchi, and P. Bonin. 1997. Influence of shellfish farming activities on nitrification, nitrate reduction to ammonium and denitrification at the water-sediment interface of the Thau lagoon, France. Marine Ecology Progress Series 151: 143-153.
63.	Glasoe, S.D., and D. Fagergren. 2000. Shellfish water quality trends and threats in Puget Sound. Journal of Shellfish Research, Vol. 19, no. 1, p. 656. Jun 2000. Conference 92. Annual Meeting of the National Shellfisheries Association, Seattle, Washington (USA), March 19-23,2000. (Abstract)
64.	Grant, J., A. Hatcher, D. B. Scott, P. Pocklington, C. T. Schafer, and G. V. Winters. 1995. A multidisciplinary approach to evaluating impacts of shellfish aquaculture on benthic communities. Estuaries 18 (1A): 124-144.
65.	Hall, S. J., and M.J.C. Harding. 1997. Physical disturbance and marine benthic communities: the effects of mechanical harvesting of cockles on non-target benthic infauna. Journal of Applied Ecology. 34: 497-517.
66.	Hilgerloh, G., J. O'Halloran, T. Kelly, and G.S.O. Burnell. 2001. A preliminary study on the effects of oyster culturing structures on birds in a sheltered Irish estuary. Hydrobiologia. Vol. 465, no. 1-3, pp. 175-180. Dec.
67.	Hood Canal Salmon Enhancement Group. 2006. Molluscan Study Final Report.
68.	Hosack, G. R., B. Dumbauld, J. L. Ruesink and D. A. Armstrong 2006. Habitat Associations of Estuarine Species: Comparisons of Intertidal Mudflat, Seagrass (<i>Zostera marina</i>), and Oyster <i>Crassostrea gigas</i>) Habitats. Estuarine Research Foundation, Estuaries and Coasts, Vol. 29, No. 68, pp. 1150-1160.
69.	Inglis, G.J., and N. Gust. 2003. Potential indirect effects of shellfish culture on the reproductive success of benthic predators. Journal of

Exhibit Number	Description of Study, Paper or Publication
	Applied Ecology. Vol. 40, no. 6, pp. 1077-1089. Dec. IS: ISSN 0021-8901.
70.	Laffargue, P., M.L. Be'gout, and F. Lagarde're. 2006. Testing the potential effects of shellfish farming on swimming activity and spatial distribution of sole (<i>Solea solea</i>) in a mesocosm. ICES Journal of Marine Science 63: 1014-1028.
71.	Lindahl, O., R. Hart, and B. Hernroth, et al. 2005. Improving Marine Water Quality by Mussel Farming: A Profitable Solution for Swedish Society. Ambio. 34(2):131-138.
72.	Luckenbach, M.W., J. Harding, R. Mann, J. Nestlerode, F.X.O. Beirn, and J.A. Wesson. 1999. Oyster reef restoration in Virginia, USA: Rehabilitating habitats and restoring ecological functions. Journal of Shellfish Research 18: 720. (Abstract)
73.	Luckenbach, M.W., L.D. Coen, P.G. Ross Jr., and J.A. Stephen. 2005. Oyster Reef Habitat Restoration: Relationships between Oyster; Abundance and Community Development Based on Two Studies in Virginia; and South Carolina. Journal of Coastal Research 40: 64-78.
74.	MacFarlane, S.L. 1996. Shellfish as the impetus for embayment management. Marine and Estuarine Shallow Water Science and Management. Spagnolo,-R.J.;Ambrogio,-E.;Rielly,-F.J.,-Jr.-eds. 19(2A):311-319. (Abstract)
75.	Mazouni, N., J.C. Gaertner, and J.M. Deslous-Paoli. 1998. Influence of oyster culture on water column characteristics in a coastal lagoon (Thau, France). Hydrobiologia. Vol. 373-374, no. 1-3, pp. 149-156.
76.	Meyer, D. L., and E. C. Townsend. 2000. Faunal utilization of created intertidal eastern oyster (<i>Crassostrea virginica</i>) reefs in the southeastern United States. Estuaries 23: 34-45.
77.	Moore, L.M.C. 2001. Thesis: Comparative use of longline oyster beds and adjacent tidal flats by shorebirds and waders on Humboldt Bay, California.
78.	Mugg, J., M.A. Rice, and M. Perron. 2001. Effects of filter-feeding oysters on sedimentation rates and phytoplankton species composition: preliminary results of mesocosm experiments. Journal-of-Shellfish-Research. vol. 20(no. 1):525. (Abstract)
79.	Newell, R.I.E., T.R. Fisher, R.R., Holyoke, and J.C. Cornwell. 2004. Influence of eastern oysters on nitrogen and phosphorus regeneration in Chesapeake Bay, USA. P. In: Dame, R., Olenin, S. (Eds.), The Comparative Roles of Suspension Feeders in Ecosystems. NATO Science Series IV — Earth and Environmental Sciences. Springer, Netherlands.
80.	Newell, R. I. E. 2006. A framework for developing "ecological carrying capacity" mathematical models for bivalve mollusc aquaculture.

Exhibit Number	Description of Study, Paper or Publication
	Prepared for the 33 rd UJNR aquaculture Panel Symposium "Ecosystem and carrying capacity of aquaculture ground." Bull. Fish. Res. Agen. No. 19.00-00.
81.	Olin, P. Environmental Interactions of Bivalve Shellfish Aquaculture.
82.	Pearce, C.M., Y.X. An, J.M. Blackburn, L.J. Keddy, D.L. Paltzat, and S.W. Williams. 2007. Intertidal culture of juvenile geoduck clams (<i>Panopea abrupta</i>): an examination of predator protection technology and potential environmental interactions. Pacific Biological Station, Department of Fisheries and Oceans, Canada. (Presentation)
83.	Pietros, J.M., and M.A. Rice. 2003. The impacts of aquacultured oysters, <i>Crassostrea virginica</i> (Gmelin, 1791) on water column nitrogen and sedimentation: results of a mesocosm study. Aquaculture. 220(1-4):407-422.
84.	Powers, M. J., et al. 2007. Macroalgal growth on bivalve aquaculture netting enhances nursery habitat for mobile invertebrates and juvenile fishes. Marine Ecology Progress Series 339: 109-122.
85.	Rheault, R.B. 2001. Eelgrass is Great, but Shellfish Aquaculture is Better. Marine Aquaculture and the Environment: A Meeting for Stakeholders in the northeast Tlusty. Cape Cod Press Falmouth, Massachusetts pp. 203-210.
86.	Rice, M.A. In: Tlusty, M.F., D.A. Bengston, H.O. Halvorson, S.D. Oktay, J.B. Pearce, and R.B. Rheault, JR. (Eds) 2001. Environmental impacts of shellfish aquaculture: filter feeding to control eutrophication. pp. 76-86 In: Marine Aquaculture and the Marine Environment. January 2001, Cape Cod Press, Falmouth, Massachusetts.
87.	Short, K.S., and R. Walton. 1992. The transport and fate of suspended sediment plumes associated with commercial geoduck harvesting. Final Report. Prepared by Ebasco Environmental (Bellevue, Washington) for the Washington Department of Natural Resources.
88.	Spencer, B.E., M.J. Kaiser, and D.B. Edwards. 1996. The effect of Manila clam cultivation on an intertidal benthic community: the early cultivation phase. Aquaculture and Research 27: 261-276. (Abstract)
89.	Spencer, B.E., M.J. Kaiser and D.B. Edwards. 1997. Ecological effects of intertidal Manila clam cultivation: Observations at the end of the cultivation phase. Journal of Applied Ecology 34: 444-452. (Abstract)
90.	Spencer, B.E., M.J. Kaiser, and D.B. Edwards. 1998. Intertidal clam harvesting: benthic community change and recovery. Aquaculture and Research 29: 429-437.
91.	Thacker, P.D. 2006. Oysters and clams clean up dirty water. Environmental Science and Technology, May 15, 2006.

APPELLANT'S PROPOSED LEGAL ISSUES AND
PRELIMINARY WITNESS AND EXHIBIT LISTS - 12

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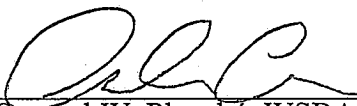
Exhibit Number	Description of Study, Paper or Publication
92.	Wechsler, J. 2004. Master's thesis entitled: Assessing the Relationship Between the Ichthyofauna and Oyster Mariculture in a Shallow Coastal Embayment, Drakes Estero, Point Reyes National Seashore
93.	U.S. Environmental Protection Agency, Proposed Effluent Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Facility Point Source Category , 57 Fed. Reg. 57,872 (September 12, 2002)
94.	WDFW and DNR. 2001. Commercial Geoduck Fishery, State of Washington, Final Supplemental Environmental Impact Statement . Washington Departments of Fish and Wildlife and Natural Resources, Olympia.
95.	Whiteley, J., and L. Bendell-Young. 2007. Ecological implications of intertidal mariculture: observed differences in bivalve community structure between farm and reference sites . Journal of Applied Ecology. 44: 495-505.
96.	Keystone Species of the Estuary . Shellfish Ecology, Puget Sound Action Team. July 2003.
97.	Curriculum Vitae - Jeffrey P. Fisher, Ph.D.
98.	Curriculum Vitae - Jonathon (Joth) Davis, Ph.D.
99.	Curriculum Vitae - David Troutt, Director
100.	Curriculum Vitae - David P. Findley
101.	Curriculum Vitae - Lynn Goodwin
102.	Aerial Photographs
103.	Fisher, J., K. Mueller, S. Luchessa, and J. Davis. 2008. Technical Memorandum: An Analysis of the Environmental Concerns Associated with Intertidal Geoduck Clam Aquaculture . April 14, 2008.
104.	Pierce County permit application file(s) for Shoreline Nonconforming Use Permit SDNP3-07 (Chisa Investments); Reference Numbers 584510/584512; tax parcel no. 0020081005.
105.	Pierce County permit application file(s) for Application Numbers 585770 (LESA) and 589537 (LSXV) (Villa D'Cugini); tax parcel no. 0020081027.
106.	Pierce County permit application file(s) for Shoreline Substantial Development Permit/Shoreline Non-Conforming Use Permit/Zoning Code Variance SD/NP24-07/V10-07; Reference Numbers 600355/600358/600362; tax parcel nos. 0020081015/0020081036.
107.	Any and all records disclosed by Pierce County in response to formal requests for public records pursuant to RCW Chapter 42.56, dated March 28, 2008, submitted by Amanda Carr, GordonDerr LLP, to Pierce County Council,

Exhibit Number	Description of Study, Paper or Publication
	Pierce County Risk Management, Pierce County Executive, and Pierce County Planning and Land Services. ¹

Appellant Taylor Shellfish reserves the right to add or delete any witnesses or exhibits from this proposed list, and to call as a witness or offer as an exhibit any of the witnesses or exhibits listed by the Appellant, Respondents, any Intervenors or other parties.

Dated this 29th day of April, 2008.

GORDONDERR LLP

By: 
 Samuel W. Plauché, WSBA #25476
 Amanda Carr, WSBA # 38025
 Attorneys for Appellant, Taylor Shellfish Farms

¹ Appellant, through its undersigned attorney, submitted these formal requests for public records on March 28, 2008. The County has not yet fully responded to that request.

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BEFORE THE SHORELINES HEARINGS BOARD OF THE STATE OF WASHINGTON

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

v.

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

SHB No. 08-010
DECLARATION OF SERVICE

I, Amanda Kleiss-Acres, declare as follows:

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

That I, as a legal assistant in the office of GordonDerr LLP, caused true and correct copies of the following documents to be delivered as set forth below:

1. Appellant's Proposed Legal Issues & Preliminary Witness and Exhibit List; and
2. Declaration of Service

and that on April 29, 2008, I addressed said documents and deposited them for delivery as follows:

DECLARATION OF SERVICE - 1

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

EXECUTED at Seattle, Washington on April 29, 2008.


Amanda Kleiss-Acres, Declarant

DECLARATION OF SERVICE - 2

GordonDerr.
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