1 2 3 4 5 6 7 8 9 10	JOHN BRISCOE (053223) LAWRENCE S. BAZEL (114641) PETER PROWS (257819) BRISCOE IVESTER & BAZEL LLP 155 Sansome Street, Seventh Floor San Francisco, CA 94104 Tel (415) 402-2700 Fax (415) 398-5630 Ibazel@briscoelaw.net pprows@briscoelaw.net IDELL & SEITEL LLP RICHARD J. IDELL (069033) 465 California Street, Suite 300 San Francisco, CA 94104 Telephone: (415) 986-2400 Facsimile: (415) 392-9259 Attorneys for Drakes Bay Oyster Company	JAN 2 9 2014 JAN 2 9 2014 KIM TURNER, Court Executive Officer MARIN COUNTY SUPERIOR COURT By: J. Chen, Deputy
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12		OF MARIN
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14	PHYLLIS FABER, an individual, and ALLIANCE FOR LOCAL SUSTAINABLE	Case No. CIV 1301469 and 1301472 CONSOLIDATED
15	AGRICULTURE, an unincorporated organization, DRAKES BAY OYSTER	
16	COMPANY, a California corporation,	DRAKES BAY OYSTER COMPANY'S CROSS-COMPLAINT FOR
17	Petitioners and Plaintiffs,	INJUNCTIVE RELIEF, DECLARATORY RELIEF,
18		AND CIVIL PENALTIES FOR
19	CALIFORNIA COASTAL COMMISSION, CHARLES LESTER, DOES 1 through 10, inclusive,	VIOLATIONS OF THE CALIFORNIA COASTAL ACT
20	Respondents and Defendants,	
21	DRAKES BAY OYSTER COMPANY,	
22	Petitioner, Plaintiff, Cross-Defendant,	
23	and Cross-Plaintiff	
24	V.	
25	CALIFORNIA COASTAL COMMISSION, CHARLES LESTER, DOES 1 through 10,	
26	inclusive,	
27	Respondents, Defendants, Cross- Plaintiffs, and Cross-Defendants	
28		
	CROSS-COMPLAINT	CIV 1301469 AND CIV 1301472

1 1. Drakes Bay Oyster Company ("Drakes Bay") operates an 80-year old shellfish farm 2 in an area called Drakes Estero in Point Reyes, California. Drakes Bay is celebrated by 3 environmentalists and the public for producing some of the world's finest oysters in an 4 environmentally sensitive and sustainable way. The Coastal Act requires the Coastal Commission to 5 permit, protect, and promote aquaculture of the type practiced by Drakes Bay. The Coastal 6 Commission has violated these statutory requirements. The Coastal Commission should be ordered 7 to pay statutory penalties for these violations. Drakes Bay is also entitled to injunctive and 8 declaratory relief. 9 THE COASTAL ACT REQUIRES THE PROTECTION OF AQUACULTURE 10 2. The Coastal Act, which is codified at Public Resources Code ("PRC") §§ 30000 et 11 seq., provides that the Act shall be liberally construed to accomplish its purposes and objectives. 12 (PRC § 30009.) Permitting, protecting, and promoting existing aquaculture facilities, including 13 Drakes Bay, are important purposes and objectives of the Coastal Act. 3. 14 PRC § 30001(d) recognizes that "existing developed uses" are "essential to the 15 economic and social well-being of the people of this state and especially to working persons 16 employed within the coastal zone." Drakes Bay is an existing developed use. 17

4. PRC § 30001.5(a) states that one of the "basic goals" for the coastal zone is to protect both its "natural and artificial resources". Drakes Bay has natural and artificial resources in the coastal zone.

5. Other provisions of the Act, including but not limited to PRC §§ 30222.5, 30242, and 30411(c) and (d), impose mandatory requirements on the Commission relating to aquaculture.

## THE COASTAL ACT AUTHORIZES SUIT AGAINST THE COMMISSION

PRC § 30334(b) specifies that the Commission may be sued.

7. Drakes Bay is a "person", as defined in PRC § 30111.

8. PRC § 30804 authorizes any person to maintain an action to enforce the duties
specifically imposed upon the Commission.

9. PRC § 30805 authorizes any person to maintain an action for the recovery of civil
penalties provided for in PRC § 30820.

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1	10.	PRC § 30820 specifies that any person who violates any provision of the Coastal Act	
2	may be civill	y liable.	
3	11.	The Commission is a person, as defined in PRC § 30111.	
4		FACTS	
5	12.	California, through its Fish and Game Commission and Department of Fish and	
6	Wildlife, beg	an leasing Drakes Estero for aquaculture in 1934. Drakes Estero has continuously been	
7	used for shel	lfish farming ever since.	
8	13.	Although Drakes Bay's shellfish farm long pre-dates the Coastal Act, the	
9	Commission	now insists that Drakes Bay's operations require a permit from the Commission.	
10	14.	In January 2006, Drakes Bay submitted a permit application to the Commission.	
11	15.	A dispute then arose between Drakes Bay and the Commission over the	
12	Commission's processing of that permit application. To resolve that dispute, the Commission and		
13	Drakes Bay entered into an agreement in 2007 in the form of a consent cease and desist order ("2007		
14	Consent Order"). The 2007 Consent Order confirmed the Commission's "intent to process [Drakes		
15	Bay's permit application]" after the National Park Service took action on a separate permit for		
16	Drakes Bay.		
17	16.	Drakes Bay and the Commission later agreed that the Commission would process	
18	Drakes Bay's	s permit application once the Park Service released an environmental analysis.	
19	17.	Drakes Bay has submitted a complete permit application. Drakes Bay has paid all	
20	application for	ees. Drakes Bay has submitted all information required by the Coastal Act.	
21	18.	The operations that Drakes Bay has proposed for permitting are consistent with all	
22	applicable Coastal Act policies.		
23	19.	The Park Service released its environmental analysis in November 2012.	
24	Nevertheless	, the Commission has refused to process Drakes Bay's permit application.	
25		FIRST COUNT	
26		(Violation of 2007 Consent Order)	
27	20.	Drakes Bay incorporates the allegations in paragraphs 1 through 19.	
28	21.	The 2007 Consent Order required the Commission to process Drakes Bay's permit	
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application.

22. 2 Drakes Bay and the Commission agreed that processing would begin after the 3 National Park Service made public its final environmental impact statement. 4 23. The National Park Service made public its final environmental impact statement in 5 November 2012. 6 24. Since November 2012, the Commission has not processed Drakes Bay's permit 7 application in good faith. 8 25. The Commission's failure to process Drakes Bay's permit application is a violation of 9 the 2007 Consent Order. 10 26. The 2007 Consent Order includes an implied covenant of good faith and fair dealing. 11 27. The Commission's decision not to process Drakes Bay's permit application was not 12 made in good faith. 13 28. The Commission's decision not to process Drakes Bay's permit application violates 14 the implied covenant of good faith and fair dealing. 15 29. The Commission's violations of the 2007 Consent Order entitle Drakes Bay to 16 declaratory relief and equitable relief under the Coastal Act. 17 30. The Commission's violations of the 2007 Consent Order also make it liable for civil 18 penalties under the Coastal Act. 19 **SECOND COUNT** 20 (Violation of Coastal Act Section 30222.5) 21 31. Drakes Bay incorporates the allegations in paragraphs 1 through 19. 22 32. PRC § 30222.5 provides as follows: "Oceanfront land that is suitable for coastal 23 dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located 24 on those sites shall be given priority, except over other coastal dependent developments or uses." 25 33. Drakes Bay operates on oceanfront land suitable for coastal dependent aquaculture. 26 34. Drakes Bay is informed and believes that the Commission has recently taken actions 27 that have not protected the oceanfront land that is suitable for Drakes Bay's coastal-dependent 28 aquaculture. 3

1	35.	Drakes Bay is informed and believes that the Commission has recently taken actions
2	that have not	given priority to the proposals made by Drakes Bay.
3	36.	These Commission actions are in violation of Coastal Act Section 30222.5.
4	37.	The Commission's violations of Coastal Act Section 30222.5 entitle Drakes Bay to
5	declaratory re	elief and equitable relief under the Coastal Act.
6	38.	The Commission's violations of Coastal Act Section 30222.5 also make it liable for
7	civil penaltie	s under the Coastal Act.
8		THIRD COUNT
9		(Violation of Coastal Act Section 30242)
10	39.	Drakes Bay incorporates the allegations in paragraphs 1 through 19.
11	40.	PRC § 30242 provides as follows: "All other lands suitable for agricultural use shall
12	not be converted to nonagricultural uses unless (l) continued or renewed agricultural use is not	
13	feasible, or (2) such conversion would preserve prime agricultural land or concentrate development	
14	consistent wi	th Section 30250. Any such permitted conversion shall be compatible with continued
15	agricultural use on surrounding lands."	
16	41.	The phrase "lands suitable for agricultural use" in PRC § 30242 includes lands
17	suitable for a	quacultural use, because "aquaculture facilities and land uses shall be treated as
18	agriculture facilities and land uses". (PRC § 30100.2.)	
19	42.	The land used by Drakes Bay is land suitable for agricultural use.
20	43.	Drakes Bay is informed and believes that the Commission has recently taken actions
21	that will convert, have converted, or have taken steps to convert the land Drakes Bay uses to	
22	nonagricultu	cal uses.
23	44.	The continuation of aquacultural use of Drakes Estero by Drakes Bay is feasible.
24	45.	The conversion of the land used by Drakes Bay to nonagricultural uses would not
25	preserve prin	ne agricultural land or concentrate development within the meaning of Section 30250.
26	46.	The Commission's actions that will convert, have converted, or are steps to
27	converting th	e land Drakes Bay uses to nonagricultural uses are in violation of PRC § 30242.
28	47.	The Commission's violations of Coastal Act Section 30242 entitle Drakes Bay to
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1	declaratory relief and equitable relief under the Coastal Act.	
2	48. The Commission's violations of Coastal Act Section 30242 also make it liable for	
3	civil penalties under the Coastal Act.	
4	FOURTH COUNT	
5	(Violation of Coastal Act Section 30411(c))	
6	49. Drakes Bay incorporates the allegations in paragraphs 1 through 19.	
7	50. PRC § 30411(c) provides as follows: "The Legislature finds and declares that salt	
8	water or brackish water aquaculture is a coastal-dependent use which should be encouraged to	
9	augment food supplies and to further the policies set forth in Chapter 4 (commencing with Section	
10	825) of Division 1. The Department of Fish and Game may identify coastal sites it determines to be	
11	appropriate for aquaculture facilities. If the department identifies these sites, it shall transmit	
12	information identifying the sites to the commission and the relevant local government agency. The	
13	commission, and where appropriate, local governments shall, consistent with the coastal planning	
14	requirements of this division, provide for as many coastal sites identified by the Department of Fish	
15	and Game for any uses that are consistent with the policies of Chapter 3 (commencing with Section	
16	30200) of this division."	
17	51. Drakes Bay is informed and believes that the Commission has recently taken actions	
18	that discourage, rather than encourage, aquaculture in Drakes Estero.	
19	52. Drakes Estero is a site identified by the Department of Fish and Wildlife for	
20	aquaculture. This information has been transmitted to the Commission.	
21	53. Drakes Bay is informed and believes that the Commission has recently taken actions	
22	that do not provide for aquaculture in Drakes Estero, even though it is consistent with the policies of	
23	Chapter 3.	
24	54. These actions are in violation of PRC § 30411(c).	
25	55. The Commission's violations of Coastal Act Section 30411(c) entitle Drakes Bay to	
26	declaratory relief and equitable relief under the Coastal Act.	
27	56. The Commission's violations of Coastal Act Section 30411(c) also make it liable for	
28	civil penalties under the Coastal Act.	
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2		FIFTH COUNT
3		(Violation of Coastal Act Section 30411(d))
4	57.	Drakes Bay incorporates the allegations in paragraphs 1 through 19.
5	58.	PRC § 30411(d) provides as follows: "Any agency of the state owning or managing land
6	in the coastal zone for public purposes shall be an active participant in the selection of suitable sites for	
7	aquaculture facilities and shall make the land available for use in aquaculture when feasible and consistent	
8	with other pol	icies of this division and other provision of law."
9	59.	The Commission is an agency of the state owning or managing land in the coastal
10	zone for pub	lic purposes.
11	60.	Drakes Estero is a suitable site for aquaculture facilities.
12	61.	Aquaculture in Drakes Estero is consistent with other policies of the division and
13	other provisions of law.	
14	62.	Drakes Bay is informed and believes that the Commission has recently taken actions
15	that do not make Drakes Estero available for aquaculture.	
16	63.	These actions violate PRC § 30411(d).
17	64.	The Commission's violations of Coastal Act Section 30411(d) entitle Drakes Bay to
18	declaratory relief and equitable relief under the Coastal Act.	
19	65.	The Commission's violations of Coastal Act Section 30411(d) also make it liable for
20	civil penaltie	s under the Coastal Act.
21		SIXTH COUNT
22		(Declaratory Relief)
23	66.	Drakes Bay incorporates the allegations in paragraphs 1 through 65.
24	67.	Code of Civil Procedure § 1060 authorizes a person interested under a written
25	instrument, o	or who desires a declaration of his or her rights or duties with respect to another, in cases
26	of actual controversy relating to the legal rights and duties of the parties, to bring a cross-complaint	
27	for a declaration of rights.	
28	68.	An actual controversy has arisen between Drakes Bay and the Commission over the
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1	legal righ	ts and duties of the parties.
2	69	Drakes Bay desires a declaration of the rights and duties of the parties.
3		PRAYER
4	Drakes B	ay requests the following relief:
5	1.	An injunction prohibiting the Commission from violating the Coastal Act;
6	2.	An injunction compelling compliance with the Coastal Act;
7	3.	An injunction compelling the Commission to process Drakes Bay's permit application,
8		and to issue a permit;
9	4.	Civil penalties, in an amount to be determined at trial;
10	5.	A declaration that the Commission is in violation of the 2007 Consent Order and of PRC
11		§§ 30222.5, 30242, 30411(c), and 30411(d);
12	6.	Attorney fees under CCP § 1028.5, plus costs and expert fees, and
13	7.	Such additional relief as the Court deems proper.
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15	DATED:	January 2,2014 BRISCOE IVESTER & BAZEL LLP
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17		By:
18		Peter Prows Attorneys for
19		DRAKES BAY OYSTER COMPANY
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1	PROOF OF SERVICE
2 3	I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 155 Sansome St., Suite 700, San Francisco, California 94104.
4	On January 29, 2014, at San Francisco, California, I served the attached document(s):
5	DRAKES BAY OYSTER COMPANY'S CROSS-COMPLAINT FOR INJUNCTIVE
6 RELIEF, DECLARATORY RELIEF, AND CIVIL PENALTIES FOR VIOL THE CALIFORNIA COASTAL ACT	
7	on the following parties:
8 9 10 11 12 13 14	Zachary R. WaltonKamala D. HarrisChris WadeAttorney General of the State of CaliforniaElizabeth L. BridgesChristina TiedemannCorinne L. CalfeeSupervising Deputy Attorney GeneralSSL Law FirmSusan A. Austin575 Market Street, Suite 2700Deputy Attorney GeneralSan Francisco, CA 94105Joel S. JacobsTelephone: (415) 814-64001515 Clay Street, 20 <sup>th</sup> FloorFacsimile: (415) 814-6401P.O. Box 70550zack@ssllawfirm.comOakland, California 94612-0550chris@ssllawfirm.comTelephone: (510) 622-2124liz@ssllawfirm.comJoel.Jacobs@doj.ca.gov
15 16	Attorneys for Petitioner and Plaintiff Phyllis FaberAttorneys for Defendant/Respondent/Cross- Complainant California Coastal Commission
17 18 19	Alexander D. CalhounJudith L. Teichman3638 Washington Street2558 Clay Street, #1San Francisco, CA 94118San Francisco, CA 94115Telephone: (415) 921-3336Telephone: (415) 921-2483sandybengoshi@yahoo.comjudyteichman@gmail.com
20 21 22 23 24	Attorneys for Nonparties AmiciAttorneys for Nonparties AmiciCuriae William T. Bagley, PattyCuriae William T. Bagley, PattyUnterman, The Marin CountyUnterman, The Marin CountyFarm Bureau, Sonoma CountyFarm Bureau, Sonoma CountyFarm Bureau, The CaliforniaFarm Bureau, The CaliforniaFarm Bureau Federation andFarm Bureau Federation andThe Mendocino County FarmThe Mendocino County FarmBureauBureau
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26 27	
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2	465 California Street, Suite 300 San Francisco, CA 94104		
3	Telephone: (415) 986-2400 Facsimile: (415) 392-9259		
4	<u>Richard.idell@idellseitel.com</u>		
5	Attorneys for Real Party in		
6	Interest Drakes Bay Oyster Company		
7			
8	X BY FIRST CLASS MAIL: On the date written above, I deposited with the United States Postal Service a true copy of the attached document		
9	in a scaled envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.		
10	X BY E-MAIL OR ELECTRONIC TRANSMISSION: On the date written above, I e-mailed the documents to the persons on the service list at the e-mail addresses listed above. I did not receive, within a reasonable time after transmission, any electronic message or other indication		
11	that transmission was unsuccessful.		
12			
13	I declare under penalty of perjury under the laws of the State of California that the		
14	foregoing is true and correct and that this document was executed on January 29, 2014, at San Francisco, California.		
15			
16	Arlene Won		
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