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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF MARIN**

13 PHYLLIS FABER, an individual, and
14 ALLIANCE FOR LOCAL SUSTAINABLE
AGRICULTURE, an unincorporated
15 organization, DRAKES BAY OYSTER
COMPANY, a California corporation,

16 Petitioners and Plaintiffs,

17 v.

18 CALIFORNIA COASTAL COMMISSION,
19 CHARLES LESTER, DOES 1 through 10,
inclusive,

20 Respondents and Defendants,

21 **DRAKES BAY OYSTER COMPANY,**

22 Petitioner, Plaintiff, Cross-Defendant,
23 and Cross-Plaintiff

24 v.

25 CALIFORNIA COASTAL COMMISSION,
26 CHARLES LESTER, DOES 1 through 10,
inclusive,

27 Respondents, Defendants, Cross-
28 Plaintiffs, and Cross-Defendants

FILED

JAN 29 2014

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

BY FAX

Case No. CIV 1301469 and 1301472
CONSOLIDATED

**DRAKES BAY OYSTER COMPANY'S
CROSS-COMPLAINT FOR
INJUNCTIVE RELIEF,
DECLARATORY RELIEF,
AND
CIVIL PENALTIES FOR
VIOLATIONS OF THE
CALIFORNIA COASTAL ACT**

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.

14 3. 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
18 both its “natural and artificial resources”. Drakes Bay has natural and artificial resources in the
19 coastal zone.

20 5. Other provisions of the Act, including but not limited to PRC §§ 30222.5, 30242, and
21 30411(c) and (d), impose mandatory requirements on the Commission relating to aquaculture.

22 **THE COASTAL ACT AUTHORIZES SUIT AGAINST THE COMMISSION**

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

24 7. Drakes Bay is a “person”, as defined in PRC § 30111.

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

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

1 application.

2 22. 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.

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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FIFTH COUNT

(Violation of Coastal Act Section 30411(d))

57. Drakes Bay incorporates the allegations in paragraphs 1 through 19.

58. PRC § 30411(d) provides as follows: “Any agency of the state owning or managing land in the coastal zone for public purposes shall be an active participant in the selection of suitable sites for aquaculture facilities and shall make the land available for use in aquaculture when feasible and consistent with other policies of this division and other provision of law.”

59. The Commission is an agency of the state owning or managing land in the coastal zone for public purposes.

60. Drakes Estero is a suitable site for aquaculture facilities.

61. Aquaculture in Drakes Estero is consistent with other policies of the division and other provisions of law.

62. Drakes Bay is informed and believes that the Commission has recently taken actions that do not make Drakes Estero available for aquaculture.

63. These actions violate PRC § 30411(d).

64. The Commission’s violations of Coastal Act Section 30411(d) entitle Drakes Bay to declaratory relief and equitable relief under the Coastal Act.

65. The Commission’s violations of Coastal Act Section 30411(d) also make it liable for civil penalties under the Coastal Act.

SIXTH COUNT

(Declaratory Relief)

66. Drakes Bay incorporates the allegations in paragraphs 1 through 65.

67. Code of Civil Procedure § 1060 authorizes a person interested under a written instrument, or who desires a declaration of his or her rights or duties with respect to another, in cases of actual controversy relating to the legal rights and duties of the parties, to bring a cross-complaint for a declaration of rights.

68. An actual controversy has arisen between Drakes Bay and the Commission over the

1 legal rights and duties of the parties.

2 69. Drakes Bay desires a declaration of the rights and duties of the parties.

3 **PRAYER**


4 Drakes Bay 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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DATED: January 29, 2014

BRISCOE IVESTER & BAZEL LLP

By: 

Peter Prows
Attorneys for
DRAKES BAY OYSTER COMPANY

1 **PROOF OF SERVICE**

2 I declare that I am over the age of eighteen years and not a party to this action. I am
3 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 VIOLATIONS OF**
7 **THE CALIFORNIA COASTAL ACT**

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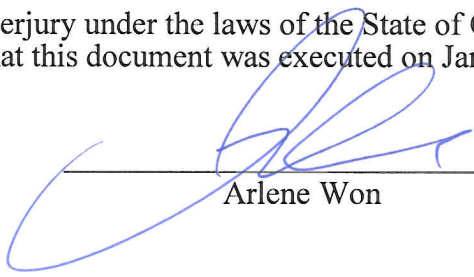
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8 *Attorneys for Real Party in*
9 *Interest Drakes Bay Oyster*
10 *Company*

11 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 in a sealed 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.

12 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 that transmission was unsuccessful.

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
15 Francisco, California.

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17 _____
18 Arlene Won

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