

**IN THE COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON**

HOOD CANAL SHELLFISH COMPANY, et al.,

Petitioners,

v.

STATE OF WASHINGTON,
DEPARTMENT OF NATURAL RESOURCES,

Respondent.

OPENING BRIEF OF IDDINGS PETITIONERS

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I. INTRODUCTION

Petitioners Marlene Iddings, Lloyd Earl Iddings, Renee Hanover, Linda Slates, and Hood Canal Shellfish Company (“HCSC”) jointly own tidelands in Dewatto Bay, Mason County. These tidelands have been continuously owned and used by members of the Iddings family since Marlene Iddings and her late husband purchased the property in 1959 from the estate of Therese Reidell. In 1947, Ms. Reidell purchased the tidelands and vacated oyster reserves from the State of Washington through an extensive 13-year application process. Contemporaneous communications during this process make clear the parties’ intent to convey all tidelands and vacated oyster reserves in front of Ms. Reidell’s upland property except those that the State had earlier sold to James Murray.

The trial court held that, regardless of what the parties agreed, the State was legally required to establish lateral (or side) tideland boundaries at the time of sale based upon the “equitable apportionment” methodology described in *Spath v. Larsen*, 20 Wn.2d 500, 148 P.2d 834 (1944). *Spath* described this methodology as follows:

Tidelands should be apportioned between the respective upland owners so that as the whole length of the water boundary of the land within the concave cove or bay, is to the whole length of the low water line, so is each landowner's proportion of the shore line to each owner's share of tidelands along the line of low water.

Id. at 524-25. The trial court erred in treating *Spath's* general guidelines for resolving boundary disputes between adjacent tideland owners as a mandate that deprived the State of its authority and discretion to establish lateral boundaries at the time of sale. The trial court's holding is inconsistent with *Spath* as well as the precedent upon which *Spath* relies and later cases that have stressed the limited scope of *Spath's* guidelines.

Although state statutes restricted the landward and waterward boundaries of tidelands that the State could sell, no such restriction limited the lateral boundaries the State could establish. *Spath* did not create a new restriction on how the State could sell tidelands; rather, it established an *equitable* remedy for courts to use when determining a lateral tideland boundary *between two established tideland owners* when there was no prior agreement.

Under the trial court's ruling, tideland lateral boundaries must be delineated in accordance with *Spath's* "equitable apportionment" theory regardless of the parties' contrary intent. This would fundamentally change how tidelands are delineated, surveyed, and owned throughout the State. And by unilaterally rewriting the boundaries of hundreds if not thousands of tidelands, it would deprive tideland owners of property they purchased relying upon representations and communications with the State.

The trial court ignored the fundamental question that this case raises: Based upon the historical record, did the State sell the tidelands that Ms. Reidell requested, or did the State retain some (undefined) tideland ownership? The trial court should have determined whether the State retained *any* tideland ownership before considering whether *Spath* applies here, but it failed to do so. The trial court also failed to apply a basic principle of real estate law—namely, that deeds are construed to give meaning to the parties’ intent.

The deed and other communications between Ms. Reidell and the State clearly establish what tidelands the State sold to Ms. Reidell: the tidelands in front of her upland property extending out to extreme low tide. This included a sand spit that is noted in both Ms. Reidell’s application and communications from the State. The record also establishes that the only tidelands in front of her upland property that Ms. Reidell did *not* buy were those conveyed to James Murray, now owned by Petitioner Virgil Timmerman. Because the State retained no ownership of these tidelands, *Spath* is inapplicable.

The record contains no indication that the State sought to retain tidelands for itself or to utilize “equitable apportionment” at the time of sale to establish lateral tideland boundaries. Because all the evidence establishes that Ms. Reidell purchased, and the State sold, tidelands which included the

spit and all areas between Ms. Reidell's upland property and Mr. Murray's tidelands, extending to extreme low tide, there is no genuine issue of material fact. Petitioners were and are entitled to summary judgment on their quiet title claim.

The trial court also erred when it held that a survey proffered by the Department of Natural Resources ("DNR") accurately established not just the tideland boundaries but also the boundary between the Iddings' and DNR's upland parcels. The trial court ignored the opinions of three independent expert surveyors that directly contradicted the factual conclusions drawn by DNR's surveyor. In deciding this issue in favor of the State on summary judgment, the trial court mistakenly viewed the evidence in a light most favorable to the *moving* party. The trial court also overlooked fatal errors in DNR's survey. The impact of the trial court's ruling, if not reversed, is catastrophic: It would deprive the Iddings family of the water source that they have relied on and used for decades and nearly an acre of their uplands.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in holding that *Spath v. Larsen* determines the lateral boundaries of the tidelands that the State sold to Ms. Reidell.

2. The trial court erred when it ignored extensive evidence that established the agreement between Ms. Reidell and the State concerning the tidelands she purchased and when it concluded that the State owned *any* tidelands within the disputed area.

3. To the extent that the trial court considered questions of property ownership independently of *Spath*, it erred in granting summary judgment to the State. Genuinely disputed issues of material fact preclude a summary determination that the State owned the disputed tidelands.

4. The trial court erred in denying Petitioners' motion for summary judgment on their quiet title claim.

5. The trial court erred in granting summary judgment to the State when it found that DNR's survey properly established the uplands boundaries for property owned by Laure and Lloyd Earl Iddings as well as tideland boundaries.

6. The trial court erred when it ignored the fatal flaws in DNR's survey identified by the surveys submitted by Petitioners and by Petitioner Timmerman.

Issues Pertaining to Assignments of Error

1. Does *Spath v. Larsen* require that all State sales of tidelands within a cove comply with "equitable apportionment"? (A/E 1)

2. Was the trial court entitled to apply *Spath v. Larsen* to establish the lateral boundaries of tidelands without first determining that the State actually retained ownership of any tidelands? (A/E 1, 2, 3)

3. Was the trial court right to ignore the terms of the deed and contemporaneous communications between Ms. Reidell and the State in determining the lateral boundaries of the tidelands sold to Ms. Reidell? (A/E 1, 2, 3)

4. Was the trial court right to deny Petitioners' motion for summary judgment concerning its quiet title claim when all the evidence in the record established that Ms. Reidell purchased all tidelands in front of her uplands property, excluding those sold to James Murray? (A/E 4)

5. May summary judgment be granted in a boundary-line dispute when the non-moving party presents expert survey evidence that contradicts the factual conclusions in the moving party's survey? (A/E 5, 6)

6. Was the trial court right to determine as a matter of law that DNR's survey accurately depicted the upland property owned by Laure and Lloyd Earl Iddings as well as tidelands boundaries, when that survey relied upon inaccurate information and reflected significant surveying errors as identified by three different experts? (A/E 5, 6)

III. STATEMENT OF THE CASE

This case arises from a dispute over the ownership of tidelands in Dewatto Bay, which is part of Hood Canal in Mason County, Washington. CP 147–54. Members of the Iddings family own three upland parcels that abut Dewatto Bay. *Id.* Marlene Iddings owns and resides upon the parcel immediately adjacent to the tidelands (Mason County Tax Parcel 32328-42-00010). CP 220–21, 307. Laure and Lloyd Earl Iddings own the upland property immediately to the east (Mason County Tax Parcel 32328-42-00040). CP 2572–74, 308.

DNR, as successor in interest to North Mason County School District No. 403 (the “School District”), owns the parcel to the east of Laure and Lloyd Earl Iddings’ upland property. CP 2575. This parcel (Mason County Tax Parcel 32328-42-60000) forms a headland at a ninety-degree angle. CP 690. HCSC, Lloyd Earl Iddings, Marlene Iddings, Linda Slates, and Renee Hanover own the aquatic tidelands parcel (Mason County Tax Parcel 32328-42-70280) that is adjacent to both the Iddings’ upland parcels and DNR’s headland property. CP 147–54, 226–30. A picture of the tidelands and surrounding area is included in the Appendix at A-1.

A. The Reidell application and communications with the State

The Iddings family acquired the tidelands from Therese Reidell. CP 220–21. Ms. Reidell purchased an upland parcel located on the southwest

shore of Dewatto Bay from James Harden Nance in 1933. CP 1081–82. At the time of her purchase, the upland parcel adjacent to her property to the east was owned by the School District. CP 1064–66. The School District transferred the property to DNR in 1982. CP 2575.

On September 2, 1934, Ms. Reidell wrote to Commissioner of Public Lands A.C. Martin, stating that she owns the “portion of Government Lot five which lies west of the school-grounds . . . and wish[es] to make application for the purchase of the abutting tidelands.” CP 156. On September 14, 1934, Commissioner Martin notified Donald McFadon that Therese Reidell “has requested information as to procedure to purchase in front of her property and objects to the lease, and a part of the abutting land belongs to the school district.” CP 158–59. Mr. McFadon held a log booming lease from the Washington State Department of Public Lands (“DPL”)¹ on part of the Dewatto Bay vacated oyster reserves.² *Id.*

¹ The work of DPL, the Division of Forestry, and the Department of Conservation and Development was consolidated in 1957, when the then-newly created DNR took over their functions. See David Wilma, *Washington Legislature Creates Department of Natural Resources in 1957, Essay 5293*, HISTORYLINK.ORG, <https://historylink.org/File/5293> (last accessed Apr. 27, 2020).

² “Oyster beds” were defined as “the tide and shore lands belonging to the State of Washington, not within two miles of any incorporated city or town, covered by natural oyster beds, or so much shore and tide land as is necessary for the preservation and growth of any natural oyster bed” as delineated on a plat designated by the State. Laws of 1891, ch. 150, §§ 1, 2, Appx. B-1–2. Dewatto Bay oyster reserves were vacated and designated for sale in 1930. CP 163.

On February 23, 1937, Ms. Reidell filed an application with DPL to purchase the tidelands—specifically, both second class tidelands³ and vacated oyster reserves in front of the western half of Government Lot 5. CP 161. In her application, she sought to purchase tidelands adjacent to both her uplands and the uplands owned by the School District. *Id.* Accordingly, she requested that notification be given to the School District.⁴ *Id.*

Ms. Reidell’s request overlapped with another request for a log booming lease filed by Chas R. McCormick Lumber Company, which sought to lease the vacated oyster reserves in front of the western half of Government Lot 5. CP 165. DPL approved the McCormick lease on March 18, 1937. *Id.* DPL described the lease as extending across the entirety of Dewatto Bay, such that it could block access to that portion of the bay lying east of the leased area. CP 167–68. This lease was assigned to another logging company, Pope & Talbot Lumber Company (“Pope & Talbot”), in July 1938. CP 170. In March 1942, Pope & Talbot renewed this lease for an additional five years, with no notification to Ms. Reidell. CP 172–73. In a

³ “Second class tidelands” were defined at the time as “public lands belonging to the state over which the tide ebbs and flows outside of and more than two miles from the corporate limits of any city, from the line of ordinary high tide to the line of extreme low tide.” Laws of 1927, ch. 255, § 6, Appx. C-1–2.

⁴ At the time of Ms. Reidell’s application, the adjacent uplands owner had a preference right to purchase adjacent second class tidelands and vacated oyster reserves. *See* Laws of 1927, ch. 255, § 121, Appx. C-5–6. Such tidelands could be sold to a person other than the adjacent property owner if the adjacent uplands owner did not object to the sale. *See id.* at §§ 121, 138, Appx. C-5–8.

photograph taken during the time of Pope & Talbot's log booming lease, the booming operation can be seen immediately north of the headlands and the spit. CP 853.

On March 1, 1945, Ms. Reidell's daughter, Beatrice Reidell, sent a letter to Commissioner of Public Lands Otto Case, stating that "[s]he [Therese Reidell] was informed by your office that these tidelands were under lease to a logging company and that at the expiration of the lease she would be notified so that she might bid for the purchase. To the present date she has received no such notification from your office." CP 179. On April 9, 1945, Commissioner Case responded, acknowledging that the State had failed to notify Ms. Reidell upon expiration of the previous log booming lease and that the area had been re-leased to Pope & Talbot. CP 181-82. Commissioner Case suggested that Ms. Reidell refile her application shortly before the expiration of Pope & Talbot's log booming lease. *Id.* DPL Chief Engineer Raymond Reed also placed a note in Pope & Talbot's lease file to notify Beatrice Reidell upon expiration of Pope & Talbot's lease. CP 172, 862 (a better copy of this exhibit has been included as Appendix F-2).

Therese Reidell complied with the request of Commissioner Case and refiled her application on September 18, 1946. CP 864-66. She again asked to purchase the tidelands and vacated oyster reserves in front of her uplands; she noted that Pope & Talbot did not object to the purchase. *Id.* A

note from Chief Engineer Raymond Reed on Ms. Reidell's application represented the sole limitation on the scope of Ms. Reidell's request for tidelands in front of her property: "Deed V.4P.271 under App. 2561, covering portion of these lands above mean low tide in fr. pt. Lot 5, to be excepted from tide lands and vacated oyster reserve lands to be sold under this App. 11330." CP 866. Deed V.4P.271 refers to the State's conveyance of the Murray Tidelands to James Murray in 1903. CP 868.

On October 30, 1946, Ms. Reidell submitted an updated application form with an affidavit of upland ownership and described the requested tidelands to include the "small rise at some distance from silt-wash" where clams and oysters were present. CP 870–71. This referred to the spit (shown in the Appendix at A-1). *Id.* On November 4, 1946, Commissioner Case responded, requesting additional detail concerning the requested tidelands, including a map showing a survey of her property. CP 196. On November 18, 1946, Ms. Reidell submitted a hand-drawn map of the requested tidelands. CP 198–200. Ms. Reidell also submitted an affidavit from the Mason County Auditor, confirming the legal description of her upland property. CP 872. On November 23, 1946, Commissioner Case responded, stating "[i]t is likely that this map will be of considerable assistance to us in processing your application." CP 202.

In December 1946, Pope & Talbot applied to continue its booming

lease on the tidelands in front of Ms. Reidell's property. CP 204. A January 2, 1947, memorandum from W.F. Moyer to Raymond Reed acknowledges an overlap between Ms. Reidell's requested tideland purchase and Pope & Talbot's log booming lease. CP 206. On May 20, 1947, Commissioner Case confirmed that Ms. Reidell's application covered "the major portion of the vacated oyster reserve in front of the W1/2 of said lot 5" and that Pope & Talbot chose not to lease any remaining portion. CP 886. The adjacent property owner at the time, the School District, filed no objection to her application.

DPL summarized Ms. Reidell's purchase request in a staff report prepared by Mr. Reed. CP 210–11. This April 11, 1947, report confirmed that the requested tidelands included the "small rise" referenced in her application. *Id.* On August 12, 1947, DPL approved Ms. Reidell's application. CP 891–92. The Order confirmed that DPL intended to convey "such tide lands as lie in front of a tract of uplands owned by Therese D. Reidell on November 18, 1946." CP 892. On August 28, 1947, the Governor signed the deed conveying the tidelands, with the same legal description and declaration of intent, to Ms. Reidell (the "Reidell Deed"). CP 216.

B. The Iddings' purchase of the tidelands and the State's acknowledgement of tideland boundaries

Following Ms. Reidell's death, in a letter dated February 2, 1956, Commissioner Case described the scope of Ms. Reidell's tideland purchase to her estate's probate attorneys as follows:

On September 24, 1946, Mrs. Theresa [sic] A. Reidell applied for purchase, under preference right as the abutting upland owner, the majority of the second class tidelands and vacated oyster reserve lands in front of the W1/2 of lot 5, section 28, township 23 north, range 3 west, W.M. with application No. 11330. On August 28, the following year, Deed No. 19670 granted her those second class tidelands and vacated oyster reserve in front of the W1/2 of said lot 5. Excluded from Mrs. Reidell's purchase were the tidelands conveyed to Mr. James Murray in 1903 with application No. 2561. Cheif [sic] Engineer, Raymond Reed, had identified the tidelands conveyed to James Murray as extending to mean low tide and northeast of the second class tidelands and vacated oyster reserve conveyed to Theresa [sic] D. Reidell.

CP 218. On February 16, 1959, Lloyd and Marlene Iddings purchased Ms. Reidell's property, including the tidelands as described in the Reidell Deed. CP 898-99. In 1963 the Mason County Assessor gave the State a map of property ownership. CP 223-24. This map showed that the State did not retain any tidelands. *Id.*

Since buying the tidelands, the Iddings family has used them as their own, including harvesting oysters and enjoying the spit for recreation. CP 1043. Over the years, the property has been transferred among members of the Iddings family, but it has always remained under continuous ownership by the family. CP 74-84.

Members of the Iddings family have also owned Mason County Tax Parcel 32328-42-00040 since Lloyd and Marlene Iddings purchased the uplands in 1959 from Ms. Reidell's estate. CP 898–99. In 2011 Lloyd Earl Iddings and Laure Iddings acquired sole ownership of Tax Parcel 32328-42-00040. CP 2572–74. Part of their property is a water system that provides water to their property and other Iddings family properties, as established through a 1974 Water Rights Claim filed with the Washington State Department of Ecology. CP 1835.

C. DNR's assertion of ownership

The Iddings family enjoyed uninterrupted enjoyment of the tidelands from the date of their purchase in 1959 until July 2, 2013, when DNR first notified the Iddings of its ownership claim to the tidelands. CP 922–26, 1044. On that day, more than 54 years after the Iddings' purchase and nearly 66 years after the Reidell deed, DNR asserted for the first time that “[t]he tidelands immediately north of [Ms. Reidell's] tract were never sold and remain in state ownership.” CP 922.

D. Surveys of upland and tideland boundaries

DNR initially claimed that ownership of the tidelands was properly depicted in a 1992 survey conducted by R. H. Winters Co. Inc., which did not use “equitable apportionment” (the “Winters Survey”). CP 922–24. The Winters Survey showed the size of the Iddings' tideland property to be

substantially reduced as compared to that described in the Reidell Deed and correspondence between Ms. Reidell and the State. CP 923–24.

DNR has abandoned the Winters Survey; it now claims that the correct property boundaries are set forth in a survey prepared for the State in 2016 by Sitts & Hill Engineers, Inc. (the “Sitts & Hill Survey”). CP 2554–55. The boundaries depicted in the Sitts & Hill Survey substantially modify the Iddings’ uplands and tidelands ownership, as well as the ownership of a number of other Dewatto Bay property owners named in this lawsuit. *Id.* The changes to surveyed tideland boundaries are based upon Sitts & Hill’s use of “equitable apportionment.” CP 2542–43. According to the Sitts & Hill Survey, HCSC and Iddings family members do not own the portion of tidelands that include the spit. *Id.* The Sitts & Hill Survey also depicted HCSC’s and the Iddings family members’ tidelands as abutting State-owned tidelands between their tidelands and those owned by Mr. Timmerman. *Id.* Additionally, the Sitts & Hill Survey concludes that the eastern boundary of the uplands property owned by Laure and Lloyd Earl Iddings is located near a “base of the hill” west of a creek that feeds into Dewatto Bay. CP 2542.

The Iddings family commissioned a survey by Terrell Ferguson. CP 1050. Based on his research and review of historical deeds and contemporaneous communications between Ms. Reidell and DPL, Mr.

Ferguson concludes that these documents conclusively establish the tideland boundaries. *Id.* Mr. Ferguson also concludes that, based upon several senior deeds, the eastern boundary of the uplands property now owned by Laure and Lloyd Earl Iddings is located immediately southwest of the creek that divides their property from the School District property, now owned by DNR. CP 1053–55. According to Mr. Ferguson’s survey, HCSC and Iddings family members own approximately 7.5 acres of tidelands, including the spit, and their tidelands directly abut the tidelands owned by Mr. Timmerman to the northeast. CP 148–50 (a better copy of this exhibit has been included as Appendix F-3–6).

Petitioner Virgil Timmerman engaged two other surveyors, Robert Wilson and James Thalacker, to review the Sitts & Hill Survey and conduct a survey of the property owned by Mr. Timmerman. CP 670–708, 709–42. Like Mr. Ferguson, they concluded that “equitable apportionment” was inappropriate in this case. CP 680–83, 711–18. They also identified a number of other surveying errors in the Sitts & Hill Survey, including establishing a wrong meander corner, using the wrong defining features to establish the “headlands” and “cove” subject to “equitable apportionment,” using the wrong methodology to establish high tide, and improperly bifurcating Mr. Timmerman’s property for the purpose of “equitable apportionment.” CP 674–83, 711–18.

E. Procedural History

HCSC filed suit against DNR in 2015, seeking to quiet title in the tidelands and to recover damages for inverse condemnation. CP 38–95. In its amended complaint, HCSC included the other tideland owners (Marlene Iddings, Linda Slates, Lloyd Earl Iddings, and Renee Hanover) and a tort claim for conversion. *Id.* In July 2015, DNR filed an answer and counterclaims against the plaintiff tideland owners. CP 1–22. DNR sought to quiet title in the tidelands (but *not* any upland property). *Id.* DNR also asserted an adverse possession claim and claimed damages for trespass, illegal taking of shellfish, and obstructing the taking of shellfish. *Id.*

DNR also filed a third-party complaint against 13 other individuals or families that own tidelands in Dewatto Bay, including Petitioner Virgil Timmerman, seeking to force their acceptance of DNR’s proposed “equitable apportionment” of the tidelands. CP 23–37. In addition, DNR’s third-party complaint against Earl James Iddings, Laure Iddings, D.D. DeNotta Shellfish Company, and Caron DeNotta alleged claims of trespass, illegal taking of shellfish, and obstructing the taking of shellfish. *Id.*

In February 2019, after extensive discovery, the Petitioner tideland property owners, as well as Earl James Iddings and Laure Iddings, filed a motion for partial summary judgment. CP 96–137. They sought summary judgment on their quiet title claim and sought to dismiss DNR’s claim of

adverse possession. CP 100. DNR also filed a motion seeking summary judgment “on its counterclaims to quiet title to certain tidelands in Dewatto Bay” CP 3439. The parties engaged in extensive briefing, including submitting hundreds of pages of exhibits related to the disputed ownership issues.⁵

The trial court entered its Decision on Motions for Summary Judgment on May 8, 2019. CP 1663–69. The court’s analysis is contained in one sentence: “*Spath v. Larsen*, 20 Wn.2d 500, 148 P.2d 834 (1944) established the legal standards to determine the lateral boundaries of tidelands owned by adjacent owners in a cove and is the controlling case law for the adjudication of this case” CP 1668. The court’s decision contains no analysis of how the State established ownership of tidelands in the disputed area. *Id.*

Based solely upon *Spath*, the trial court concluded that (1) DNR holds superior title to the tidelands⁶ and (2) that “[i]n the light most favorable to the non-moving party, there is no question of material fact” that the Sitts & Hill Survey correctly delineated the tideland boundaries and

⁵ D.D. DeNotta Seafood Company, Caron DeNotta, and Petitioner Virgil Timmerman also submitted motions for summary judgment.

⁶ The court initially stated that it viewed this question in “the light most favorable to the moving party.” This error was later “corrected” in a Notice of Scrivener Error and Order Nunc Pro Tunc. CP 1792–93.

upland boundary of the property owned by Laure and Lloyd Earl Iddings. *Id.* The Petitioners represented here, as well as Virgil Timmerman, timely appealed the court’s summary judgment. CP 1794–1813.

IV. ARGUMENT

A. Standard of review

The court reviews summary judgment decisions “de novo, engaging in the same inquiry as the trial court.” *Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019) (quoting *Afoa v. Port of Seattle*, 176 Wn.2d 460, 466, 296 P.3d 800 (2013)). The court considers “all disputed facts in the light most favorable to the nonmoving party.” *Id.*; *see also Atherton Condo. Apartment-Owners Ass’n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990) (“The moving party is held to a strict standard. Any doubts as to the existence of a genuine issue of material fact is resolved against the moving party”).

“Summary judgment is appropriate if there are no genuine issues of material fact and reasonable minds could reach but one conclusion.” *Vargas*, 194 Wn.2d at 728. A genuine issue of material fact exists “if, after weighing the evidence, reasonable minds could reach different factual conclusions about an issue that is material to the disputed claim.” *Jones v. Wash. Dep’t of Health*, 170 Wn.2d 338, 352, 242 P.3d 825 (2010). Even in cases where the basic facts are undisputed, “if the facts are subject to

reasonable conflicting inferences, summary judgment is improper.” *Southside Tabernacle v. Pentecostal Church of God, Pac. Nw. Dist., Inc.*, 32 Wn. App. 814, 821, 650 P.2d 231 (1982).

Interpretation of deeds is a mixed question of fact and law. *Newport Yacht Basin Ass’n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012). Deed interpretation “is a question of fact when a court relies on inferences drawn from extrinsic evidence, but is a question of law when ‘(1) the interpretation does not depend on the use of extrinsic evidence or (2) only one reasonable inference can be drawn from the extrinsic evidence.’” *Kelly v. Tonda*, 198 Wn. App. 303, 312, 393 P.3d 824 (2017) (quoting *Spectrum Glass Co. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 129 Wn. App. 303, 311, 119 P.3d 854 (2005)) “Similarly, if two or more meanings are reasonable, a question of fact is presented.” *Id.* While determining property boundaries is a question of law, the location of those boundaries is a question of fact. *DD & L, Inc. v. Burgess*, 51 Wn. App. 329, 335, 753 P.2d 561 (1988).

B. *Spath v. Larsen* did not establish a legal restriction on the lateral boundaries of tidelands sold by the State.

The trial court erroneously determined that *Spath v. Larsen* requires, as a matter of law, that lateral boundaries of tidelands within a cove *must* be delineated using the “equitable apportionment” method. This extremely

expansive reading of *Spath v. Larsen* conflicts with fundamental tenets of real estate law and deed interpretation, which demand that the underlying intent of the parties to the deed control. Further, it ignores the plain language of *Spath* and subsequent case law, which demonstrate that *Spath* was *not* intended to establish a restriction on tideland boundaries or to overrule agreements between the purchaser and seller as to how boundaries are delineated.

The question addressed in *Spath* is different from the one presented in this case. *Spath* considered how to delineate the shared lateral boundary of a tideland between two established owners of adjacent uplands, both having tideland deeds. *Spath* did not address the situation presented in this case—namely, whether the State retained any ownership in the disputed tidelands that would give it standing to seek delineation of the tideland boundaries. This question must be answered first, particularly in cases involving State tideland ownership, because State tideland ownership is defined by the “subtraction method”: subtracting all tidelands sold to private parties. The trial court simply assumed the answer to this fundamental question. It erred in applying *Spath* without first considering whether *Spath* was even applicable to the dispute presented by this case.

1. Tideland ownership in Washington.

Washington established a unique approach to tideland ownership. Upon statehood, the State was granted ownership of all tidelands and submerged lands below the line of ordinary high water. Const. art. XVII, § 1. Between 1889 and 1971, the State engaged in an active program to sell hundreds if not thousands of tidelands into private ownership. *See Harris v. Hylebos Indus., Inc.*, 81 Wn.2d 770, 777–78, 505 P.2d 457 (1973) (generally describing the statutes authorizing State tideland sales); RCW 79.125.200 (prohibiting new tideland sales after 1971).

Although many states, such as Massachusetts, grant the upland property owner ownership to low tide by statute, tideland ownership in Washington may be obtained only pursuant to a grant from the State. Absent such a grant, owners of uplands in Washington do not have *any* right to tidelands or to navigable water. *Compare Spath*, 20 Wn.2d at 509 (citing Massachusetts ordinance granting tideland ownership to low tide), *with Harris*, 81 Wn.2d at 779 (“[T]he law of Washington does not recognize, as appurtenant to upland, tideland or shore land in its natural condition, rights of any sort beyond the boundaries of the property. A right of access to the navigable channel over intervening land, above or below low water, must arise from a grant by the owner of the intervening property”) (quoting *Port of Seattle v. Oregon & Wn. R.R.*, 255 U.S. 56, 67, 41 S. Ct. 237, 65 L. Ed. 500 (1920)).

The Legislature passed several acts governing tideland sales, including limitations on the waterward extent of tidelands that could be sold. *See, e.g.*, Laws of 1897, ch. 89, § 4, Appx. D (restricting waterward boundary to mean low tide); Laws of 1927, ch. 255, § 6, Appx. C-1-2 (restricting waterward boundary to extreme low tide).

In order to support a fledgling oyster industry, the State also sold lands called “vacated oyster reserves.” This phrase refers to second-class tidelands located in the State’s oyster reserves that were subsequently vacated by the State. Upon vacation by the State, the oyster reserves were sold in the same manner as second-class shorelands. Laws of 1929, ch. 224, § 1, Appx. E-1. An applicant that owned the abutting upland property enjoyed a preferential right to purchase adjacent tidelands within a vacated oyster reserve.⁷ Laws of 1927, ch. 255, § 121, Appx. C-5-6. Third parties could also purchase these tidelands if the upland owner(s) were provided notice and did not exercise their preferential right within 30 days. *Id.* at §§ 121, 138. Failure to act within such 30-day period extinguished any preferential right. *Id.* at § 124. Any aggrieved party had 30 days to appeal any grant of tidelands by the State. *Id.*

⁷ While not specifically discussed in relation to second-class tidelands, the Legislature anticipated circumstances where multiple upland owners could claim a preferential right. *See* Laws of 1927, ch. 255, § 111, Appx. C-3-4 (discussing this issue in respect to first-class tidelands).

Tidelands not sold by the State are retained under State ownership. CP 3441. Unlike a private tideland owner, the State does not have a grant deed for its retained tidelands. *Id.* Rather, its remaining tideland ownership is determined by defining what was sold by the State and subtracting those sold tidelands. *Id.* The State owns the remainder. *Id.*

2. The only boundary restrictions on tidelands sold by the State are those established by the Legislature.

At the time that Ms. Reidell purchased her tidelands from DPL, DPL's ability to sell tidelands to private parties was restricted by statutory provisions related to the shoreline and waterward boundaries of tidelands. Under those statutes, DPL could sell only those second-class tidelands located between the ordinary high water line and extreme low tide. Laws of 1927, ch. 255, § 6, Appx. C-1-2. There was no limitation, statutory or otherwise, on DPL's authority to establish lateral tideland boundaries as it saw fit at the time of sale. The State had "full power" to sell tidelands "subject to no restrictions, save those imposed upon the legislature by the constitution of the state and the constitution of the United States" *Harris*, 81 Wn.2d at 774 (quoting *Eisenbach v. Hatfield*, 2 Wn. 236, 244-45, 26 P. 539 (1891)). "[T]he right to grant navigable waters, except as constrained by constitutional checks, is as absolute as its rights to grant the dry land which it owns." *Id.* at 775 (quoting *Eisenbach*, 2 Wn. at 252).

3. *Spath* established an equitable tool for the courts to delineate the lateral tideland boundary between two tideland owners, *not* a legal restriction on how the State may sell tidelands.

Spath considered a dispute between two tideland owners that owned the adjacent uplands. *Spath*, 20 Wn.2d at 507–08. The tidelands were located in a cove in Sequim Bay. *Id.* Both tidelands were deeded by the State; neither deed contained a description of the lateral boundaries. *Id.* at 502. The court was then tasked with establishing an appropriate lateral boundary between the two tideland owners.

Spath explicitly rejects the expansive interpretation adopted by the trial court. Rather than announcing a strict rule that would bind the State whenever it sold tidelands, the *Spath* court cautioned that its guidelines were not applicable in all cases:

As in this state, with its miles of tidewater shore line, the question is of considerable importance, we have endeavored to establish certain rules which may serve as guides in similar cases, always bearing in mind, however, that we have before us for determination a specific problem, and that rules applicable to the situation here presented may not apply in all cases.

Spath, 20 Wn.2d at 508. *Spath* further cautioned: “It must always be remembered . . . that the endless variations of shore lines within this state will present many questions concerning the ownership of tidelands, which cannot be determined by any one fixed rule, however elastic.” *Id.* at 524. This is consistent with *Spath*’s description of its apportionment remedy as

an *equitable* rule that, if even applicable, must be applied in light of the facts of the particular situation.

Spath specifically acknowledged that its ruling was not intended to override different lateral boundaries established through an agreement between purchaser and seller: “It follows that the dividing line between the water fronts here, *in case the parties have not established one for themselves*, is a line drawn from the shore end of the dividing line of the upland to the harbor line so as to intersect it [the harbor line] at right angles.” *Id.* at 517–18 (quoting *Columbia Land Co. v. Van Dusen Inv. Co.*, 50 Or. 59, 63, 91 P. 469 (1907)) (emphasis added). This exception to the *Spath* guidelines was reaffirmed in *Lloyd v. Montecucco*, 83 Wn. App. 846, 924 P.2d 927 (1996): “*Knight* holds that [the *Spath*] boundary rule applies when the lateral or side lines are not otherwise established by the terms of the grant under which the upland owner holds.” *Id.* at 857 (citing *Knight v. Wilder*, 56 Mass. 199, 48 Am. Dec. 660, 663 (1848)).

This exception is also recognized in the historical precedent upon which *Spath* relies. In *Attorney General v. Boston Wharf Co.*, 78 Mass. 553 (1859), rather than applying equitable apportionment, the court focused on the intent of the parties and determined that there was a “common understanding among them, in relation to their respective rights” Even the seminal case cited in *Spath*, *Commonwealth v. City of Roxbury*, 75 Mass.

451 (1857), held that equitable apportionment is inappropriate if there is agreement by the parties as to a different sideline boundary:

In the construction of a grant, the court will take into consideration the circumstances attending the transaction, the situation of the parties, the state of the country, and of the thing granted, at the time, in order to ascertain the intent of the parties.

Id. at 493; *see also Brown v. Goddard*, 13 R.I. 76, 77 (1880) (“The rule . . . is applicable in the case at bar unless the parties or their predecessors in title have themselves established a different rule.”). The State’s own expert admits this. *See* CP 382 (“The ‘Cove Rule’ . . . sets forth a means by which courts may determine shorelands’ lateral boundary lines where the shoreline is not straight ***and in the absence of other evidence establishing different shoreline boundaries.***”) (emphasis added). DNR acknowledged in previous briefing that *Spath* does not bar the State from establishing different lateral tideland boundaries in tideland sales. CP 3448.

Spath was concerned with providing an equitable solution to the problem of giving water access to two tideland owners with adjacent upland properties. But *Spath* does not create a right to access navigable water independent of tideland ownership. *See Harris*, 81 Wn.2d at 781 (“Neither party in [*Spath*] was given any right to enter upon the property of the other in order to reach the water.”). As discussed above, the statutes governing DPL at the time of the sale to Ms. Reidell permitted tideland sales to third-

party purchasers that did not own the adjacent uplands property. There is no statutory restriction that prohibited DPL from selling all the tidelands in Dewatto Bay between ordinary high tide and extreme low tide to a single purchaser. Nor was DPL prohibited from selling the tidelands in front of both Ms. Reidell's property and the School District property to Ms. Reidell, as she requested. *Spath* did not purport to restrict such a sale, either.

In fact, DPL sold several tidelands in Dewatto Bay to private parties who did not own the adjacent uplands. For example, DPL sold tidelands to Frank Robinson, who did not have a preferential right (i.e., he did not own adjoining uplands). CP 2439–40. As shown by these other Dewatto Bay examples, DPL was under no legal obligation to reserve tidelands for itself or the School District as an adjacent upland property owner. Because the trial court erroneously concluded that *Spath* restricts how lateral boundaries must be delineated when tidelands are sold, its judgment must be reversed.

C. Petitioners are entitled to summary judgment on their quiet title claim.

As explained above, *Spath*'s "equitable apportionment" method is used to resolve a boundary line dispute *between two established tideland property owners where there is not a prior agreement establishing the lateral boundary*. This method does not apply where there is an agreement between the original parties to the purchase and sale that establishes the

lateral boundary. In ruling that *Spath* dictated the lateral boundaries of the tidelands in this case, the trial court ignored the fundamental question of whether DNR established any ownership in the tidelands in question. The trial court, therefore, did not consider the voluminous evidence in the historical record concerning ownership. Had the court investigated the record, it would have reached the only reasonable conclusion supported by the historical documents: that all tidelands within the disputed area, other than those previously sold to James Murray, were sold to Ms. Reidell.

The record is devoid of any indication that DPL sought to retain tidelands for itself or utilize “equitable apportionment” at the time of sale to establish the lateral tideland boundaries. Because all available evidence establishes that Ms. Reidell purchased, and DPL sold, tidelands which included the spit and all areas between Ms. Reidell’s upland property and Mr. Murray’s tidelands, extending to extreme low tide, there is no genuine issue of material fact. The trial court should have awarded summary judgment to Petitioners.

1. Traditional rules of deed interpretation govern the location of the lateral boundaries in this case.

In evaluating what tidelands were sold by DPL to Ms. Reidell, the traditional principles of deed interpretation apply. In determining property boundaries, “the fundamental question is what was the grantor’s intent.”

Thompson v. Schlittenhart, 47 Wn. App. 209, 212, 734 P.2d 48 (1987) (citing *Erickson v. Wick*, 22 Wn. App. 433, 436, 591 P.2d 804 (1979)); *Zunino v. Rajewski*, 140 Wn. App. 215, 222, 165 P.3d 57 (2007) (“[D]eeds are construed to give effect to the intentions of the parties, and particular attention is given to the intent of the grantor when discerning the meaning of the entire document”), *rev’d on other grounds, Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300 (2016)).

In evaluating a deed to ascertain the intent of the parties, extrinsic evidence may be used to show the parties’ intent. Such evidence includes both communications between the parties and the parties’ conduct and admissions. *Kelly*, 198 Wn. App. at 316; *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003); *Thomas v. Nelson*, 35 Wn. App. 868, 871, 670 P.2d 682 (1983); *King Cty. v. Hanson Inv. Co.*, 34 Wn.2d 112, 126, 208 P.2d 113 (1949); *Barlow Point Land Co. v. Keystone Prop. I, LLC*, 2015 WL 5314196 (Wn. Ct. App. Sept. 9, 2015) (unpublished). Where boundaries are uncertain, they may be established by the best evidence available in the circumstances. *Thompson*, 47 Wn. App. at 212 (citing *Ghione v. State*, 26 Wn.2d 635, 652, 175 P.2d 955 (1946)); *Thomas*, 35 Wn. App. at 871. Courts will consider the circumstances of the transaction and the subsequent conduct of the parties in determining their

intent at the time the deed was executed. *Newport Yacht*, 168 Wn. App. at 65 (citing *Hanson Inv. Co.*, 34 Wn.2d at 126).

In cases involving the delineation of tideland lateral boundaries, consideration of extrinsic evidence to ascertain the parties' intent is appropriate even if one of the parties is the State of Washington. As noted in *Strand v. State*, 16 Wn.2d 107 119–120, 132 P.2d 1011 (1943):

If the commissioner or his subordinates erred in determining the lands attached, the state should not have the right many years later to come into a court of equity and set aside the acts of its officials to the irreparable injury of the citizens who acted in good faith and upon the assumption that the commissioner knew what he was doing It was their duty and responsibility to investigate and determine the nature of the tidelands.

The effect of the trial court's ruling in this case is that, contrary to black-letter real estate law, extrinsic evidence is *always* irrelevant, *as a matter of law*, when considering tideland boundaries. This is inconsistent with the above authority and even the conclusions of DNR's own expert witness. CP 932–34.

The trial court's exclusion of extrinsic evidence was not just legal error; it also resulted in extremely unfair results. In this case, the State was an original party to the sale of the tidelands to Ms. Reidell. If the State agreed with Ms. Reidell to sell certain tidelands, and Ms. Reidell purchased the tidelands pursuant to that agreement, the State should not be able to

renegotiate the terms of the parties' agreement over 70 years later with her successor in interest based upon general surveying principles that were not used by the State at the time of the sale. The State must abide by the terms of its agreement with Ms. Reidell concerning the tidelands that it sold her.

2. The communications between Ms. Reidell and DPL establish that she intended to purchase the disputed tidelands area.

Ms. Reidell engaged in an extensive thirteen-year campaign to purchase the tidelands in front of her uplands property, including the area currently in dispute. Her intent is demonstrated clearly in the historical record. At the time of Ms. Reidell's application, owners of upland property were entitled to notice of any application to purchase the tidelands abutting their property. *See* Laws of 1927, ch. 255 § 121, Appx. C-5-6. In her 1937 application, Ms. Reidell requested notification to the School District, thereby demonstrating her intent to purchase the tidelands that abutted a portion of the School District's uplands property. CP 161. Pope & Talbot's log booming lease application, which delayed the approval of Ms. Reidell's application because it covered the same area, also asked that the School District be notified. CP 172.

When Ms. Reidell complied with DPL's request that she refile her application near the expiration of Pope & Talbot's lease, she described the requested tidelands as including the "small rise at some distance from silt-

wash” where clams and oysters were present. CP 871. The spit that is located in front of Ms. Reidell’s upland property, west of the property owned by the School District (at the time), is the only geographical feature in the area that meets that description. The School District filed no objection to her application.

Ms. Reidell’s intent to purchase the tidelands, including the disputed area, is perhaps most clearly evidenced by the hand-drawn map she submitted to assist the DPL in processing her application. CP 198–200. The map could not indicate more clearly Ms. Reidell’s intention to purchase all tidelands abutting the western shore of the headland, extending to the Murray Tidelands. CP 200.

3. DPL understood Ms. Reidell’s application to be a request to purchase all tidelands in front of her property other than those already purchased by James Murray.

Ms. Reidell’s unambiguous request for tidelands and vacated oyster reserves was received and understood by DPL. In both correspondence with Pope & Talbot and Beatrice Reidell, DPL acknowledged that the area that Ms. Reidell sought to purchase extended onto the land leased by Pope & Talbot at the time. CP 181–82; CP 886. Photographs taken when Pope & Talbot leased the area show its log booming operation was located north of the spit, immediately north of the headlands owned (at the time) by the School District. CP 853. The Commissioner of Public Lands confirmed,

shortly before selling the tidelands to Ms. Reidell, that Ms. Reidell's proposed purchase overlapped with the area leased by Pope & Talbot and that Ms. Reidell's application covered "the major portion of the vacated oyster reserve in front of the W1/2 of said lot 5." CP 886.

Responding to its receipt of Ms. Reidell's map, DPL acknowledged the map's utility. Commissioner Case noted his approval: "It is likely that this map will be of considerable assistance to us in processing your application." CP 202. As DPL staff processed her request, Chief Engineer Raymond Reed noted that Ms. Reidell's request must exempt tidelands previously sold to James Murray. CP 866. There is no indication that DPL intended to exempt any other tidelands. Furthermore, when Mr. Reed prepared his staff report for the Commissioner to consider Ms. Reidell's purchase, he confirmed that Ms. Reidell sought to purchase tidelands including the "small rise" referenced in Ms. Reidell's application—the spit that DNR now claims to own. CP 210.

During Ms. Reidell's thirteen-year application process, there is no evidence indicating anything but Ms. Reidell's articulated intent to purchase all of the tidelands except the Murray Tidelands. Likewise, there is no evidence contradicting DPL's intent to sell her the same.

4. The deed and subsequent communications and actions of the State establish that the State sold the disputed area to Ms. Reidell.

Nowhere in the extensive thirteen-year history of communications between DPL and Ms. Reidell is there any indication that the State limited or modified her request other than by excluding the tidelands previously sold to Mr. Murray. One would presume that, had the State intended to drastically reduce the amount of tidelands subject to sale, there would have been some notification to Ms. Reidell. Similarly, there is no indication that the State intended to use “equitable apportionment” to delineate the tideland boundaries, even though it presumably knew such an option was available given that the *Spath* decision was issued three years prior to Ms. Reidell’s tideland purchase. Instead, the deed establishes that the State sold her what she requested:

Those portions of the tide lands of the second class and vacated State Oyster Reserve No. 2, Plat No. 137, situate in front of, adjacent to or abutting upon that portion of Government Lot 5, Section 28, township 23 north, range 3 west, W.M., described as follows:

That portion of said Government Lot 5, lying east of a line which is 20 feet east of and parallel to the west line of said Lot 5, and southerly and westerly of the main creek running through said Lot 5 and having a frontage of 5.76 lineal chains; more or less.

The above description is intended to convey such tide lands as lie in front of a tract of uplands owned by Therese D. Reidell on November 18, 1946.

CP 216 (emphasis added).

The inclusion of the last paragraph is significant. This language is unique to the Reidell Deed; it was not included in other Dewatto Bay tidelands deeds issued by DPL or DNR to James Murray, Frank Robinson, W.M. Nance, Earnest Brown, W.E. Kilian, and Harry Wood. CP 868, 969, 971, 973, 975, 977. It confirms DNR's intent to sell the tidelands "in front of" her upland property. If DPL meant to apply "equitable apportionment" to the purchase and sale of the tidelands, as assumed by DNR's surveyors, a significant portion of her purchased tidelands would actually be "in front of" Government Lot 6, in direct contradiction to the plain language of the Reidell Deed.

The Commissioner of Public Lands definitively confirmed the scope of the State's conveyance in a 1956 letter to the attorneys for the estate of Ms. Reidell:

On September 24, 1946, Mrs. Theresa [sic] A. Reidell applied for purchase, under preference right as the abutting upland owner, the majority of the second class tidelands and vacated oyster reserve lands in front of the W1/2 of lot 5, section 28, township 23 north, range 3 west, W.M. with application No. 11330. On August 28, the following year, Deed No. 19670 granted her those second class tidelands and vacated oyster reserve in front of the W1/2 of said lot 5. Excluded from Mrs. Reidell's purchase were tidelands conveyed to Mr. James Murray in 1903 with application No. 2561. Chief [sic] Engineer, Raymond Reed, had identified the tidelands conveyed to James Murray as extending to mean low tide and northeast of the second class tidelands and vacated oyster reserve conveyed to Theresa [sic] D. Reidell.

CP 218. Further, a map of property ownership as it existed in 1963 was provided to the State by the Mason County Assessor, which showed no retained State tidelands. CP 223–24. There is no evidence that the State disputed this map. To the contrary, it was not until 2013 that DNR claimed an ownership interest in the tidelands.⁸

In sum, the circumstances surrounding the State’s conveyance to Ms. Reidell, the Reidell Deed, and subsequent conduct and statements by the State provide clear and unambiguous evidence that in 1947 the State intended to sell, and did in fact sell, tidelands and vacated oyster reserves to Ms. Reidell that included the disputed tidelands. The historical record, which is the best evidence available, shows that the parties intended the Reidell Tidelands to abut the Murray Tidelands and extend beyond the Murray Tidelands between mean low tide and extreme low tide. These tidelands are now rightfully owned by HCSC and members of the Iddings family, and DNR retains no tidelands ownership on the western side of the School District headlands. Title should therefore be quieted in Petitioners.

⁸ Petitioners join in Petitioner Timmerman’s claims regarding *res judicata*, equitable estoppel, and laches and incorporate such claims and argument by reference herein. As further described in Petitioner Timmerman’s opening brief, DNR’s opportunity to present any claim for “equitable apportionment” was during the *Margett Litigation*. Marlene Iddings, as the owner of the adjacent tidelands at the time of the *Margett Litigation*, was a necessary party to any such apportionment. *Seattle Factory Sites v. Saulsberry*, 131 Wn. 95, 229 P. 10 (1924). DNR cannot seek to relitigate the same boundary issues over 50 years later.

5. To the extent the trial court considered questions of ownership at all, it erred in granting summary judgment to the State.

There is no indication in the trial court's order that it considered whether DNR owned any tidelands within the disputed area, which is an essential requirement prior to any consideration of *Spath*. If, however, the trial court did consider whether DNR owned the tidelands, its grant of summary judgment to DNR was clear error.

In interpreting deeds, "What the parties intended is a question of fact and the legal consequence of that intent is a question of law." *Newport Yacht Basin* 168 Wn. App. at 64. On summary judgment, questions concerning the parties' intent must be viewed in the light most favorable to the nonmoving party. *Vargas*, 194 Wn.2d at 728. If there are material questions of fact as to the intent of the parties, a court must deny a motion for summary judgment. *Pelly v. Panasyuk*, 2 Wn. App. 2d 848, 864, 413 P.3d 619 (2018). "Summary judgment procedures are not designed to resolve inferential disputes." *Kelly*, 198 Wn. App. at 311 (quoting *Sanders v. Day*, 2 Wn. App. 393, 398, 468 P.2d 452 (1970)). "It seems obvious that in situations where, though evidentiary facts are not in dispute, different inferences may be drawn therefrom as to ultimate facts such as intent . . . a summary judgment would not be warranted." *Id.* (quoting *Preston v. Duncan*, 55 Wn.2d 678, 681–82, 349 P.2d 605 (1960)).

As detailed above, there is extensive evidence in the historical record that the State sold Ms. Reidell all the tidelands she requested, including the spit, other than those previously sold to James Murray. This record and the lack of any historical evidence establishing a different boundary mandates summary judgment for Petitioners. Even if the Court disagrees, the record at a minimum requires reversal of the trial court's approval of DNR's motion for summary judgment. The historical record establishes a reasonable inference, when viewed in a light most favorable to Petitioners, that DPL sold the disputed tidelands to Ms. Reidell. This is sufficient to overcome DNR's motion for summary judgment.

D. The trial court's determination of the upland boundary was improper, unnecessary and based upon a fatally flawed survey.

The trial court also erred in resolving DNR's claim regarding the location of the upland boundary between its property and the property owned by Laure and Lloyd Earl Iddings, the result of which is to deprive the Iddings family of critical access to their water source that they have used for over 40 years. The issue of the location of the upland boundary was not a proper subject for summary judgment because Petitioners presented expert evidence contradicting and calling into question the factual conclusions of DNR's surveyor. Because all evidence and reasonable

inferences must be drawn in Petitioners' favor, summary judgment should not have been granted to DNR.

1. Determination of the upland boundary goes beyond the relief sought by DNR.

Despite the fact that DNR did not seek to quiet title regarding the boundary between its upland parcel (previously owned by the School District) and the property now owned by Laure and Lloyd Earl Iddings, the trial court determined that the Sitts & Hill Survey properly depicted the boundary between the two upland parcels. *See* CP 1668. The only reason DNR requested such a delineation was so that the tideland boundaries could be established through the "equitable apportionment" method discussed in *Spath*. Because *Spath* is not applicable in this case, the determination of the upland frontage is completely unnecessary and superfluous. To the extent that DNR seeks a boundary determination or to quiet title in the upland parcel, it must bring an appropriate cause of action seeking such relief.

2. The Sitts & Hill Survey contains fatal errors that resulted in an inaccurate delineation of the boundary line between the Iddings' upland property and DNR's upland property.

In delineating the upland boundary between the Iddings' and DNR's parcels, the Sitts & Hill Survey relied primarily upon an unrecorded survey conducted by Robert Sadler in 1961 and the grant deed from Therese Reidell's estate to Marlene and Lloyd Iddings in 1959. CP 2541–42. Both

the Sadler survey and the deed contained critical errors that affected the accuracy of the Sitts & Hill Survey.

As noted by Sitts & Hill, the main purpose of the Sadler survey was to “settle an uncertain boundary and ambiguous legal description between North Mason School District parcel . . . and R.W. and Anne King’s parcel” CP 2541. The survey was performed to reach a boundary line agreement with the Kings, the predecessors in interest to Virgil Timmerman. *Id.* It was not intended to resolve any ambiguities as to the boundary between the parcels owned by the Iddings family and the School District.

The 1961 Sadler survey described the upland boundary line as follows:

That portion of Lot 5, Section 28, T 23 North, Range 3 West, W.M., which lies south and west of the main gulch and creek. The line along the aforesaid gulch to run on south and west side of aforesaid ***gulch***. Commencing at the meander line on the shore line between the aforesaid Lot 5 and the tide land at or near the base of the hill, where the bottom land meets the base or foot of the hill, then meander around the aforesaid base of hill straight from a point to point, not to touch or cross the aforesaid creek, to the south line of the aforesaid Lot 5 at the base of the hill

CP 2522 (emphasis added). This description is inconsistent with the legal descriptions in the senior deeds for the property, including the warranty deed from Clara Nance to James Harden Nance recorded April 25, 1913,

CP 1058–59; the deed from James Harden Nance to Therese Reidell, recorded September 21, 1933, CP 1061–62; and the deed from William Nance to the School District, filed August 21, 1929, which also describes the portion *not* being conveyed to the School District, CP 1064–65. All three deeds include the same language:

That part of Lot 5 of Section 28, Township 23 North of Range 3 West, W.M., which lies South and West of the main gulch and creek. The line along the aforesaid gulch to run on south and west side of aforesaid *creek*. Commencing at the meander line on the shore line between the aforesaid Lot 5 and the tide land at or near the base of the hill, where the bottom land meets the base or foot of the hill, then meander around the aforesaid base of hill straight from a point to point, not to touch or cross the aforesaid *creek*, to the south line of the aforesaid Lot 5 at the base of the hill

CP 1061–62 (emphasis added). Mason County confirmed this as the accurate legal description at the time that Ms. Reidell purchased the tidelands from DPL. CP 872. Sitts & Hill did not identify any other surveys upon which they relied to establish the boundary line between the Iddings and DNR upland parcels.

The Sitts & Hill Survey also relied upon the deed from Seattle First National Bank, as trustees for Therese Reidell’s estate, to Lloyd and Marlene Iddings, which was recorded March 5, 1959. CP 2542, 2561. This deed is also inconsistent with the senior deeds and follows the Sadler survey

in its description “not to touch or cross the aforesaid gulch,” which is described in the previous documents as “not to touch the aforesaid creek”:

That part of Lot 5 of Section 28, Township 23 North of Range 3 West, W.M., which lies South and West of the main gulch and creek. The line along the aforesaid gulch to run on south and west side of aforesaid creek. Commencing at the meander line on the shore line between the aforesaid Lot 5 and the tide land at or near the base of the hill, where the bottom land meets the base or foot of the hill, then meander around the aforesaid base of hill straight from a point to point, not to touch or cross the aforesaid **gulch**, to the south line of the aforesaid Lot 5 at the base of the hill

CP 898 (emphasis added).

The property acquired by the School District excluded the property eventually owned by Ms. Reidell, which included the language “not to touch or cross the aforesaid **creek**.” DNR cannot acquire, through survey or otherwise, private property that was not granted to it by the School District, at least without paying just compensation. *Firth v. Lu*, 146 Wn.2d 608, 615, 49 P.3d 117 (2002). To do so would be a taking in violation of the state and federal constitutions. U.S. CONST. amend. V; Const. art. 1, § 16.

The relevant deeds to consider are therefore the original deeds conveying the upland properties from the Nance family to Ms. Reidell and the School District, respectively. Because these are the senior deeds, the legal descriptions contained therein prevail over conflicting language in later deeds. *See Groeneveld v. Camano Blue Point Oyster Co.*, 196 Wn. 54,

61, 81 P.2d 826 (1938); *Lundell v. Allen & Nelson Mill Co.*, 57 Wn. 150, 152 106 P. 626 (1910).

Moreover, legal descriptions developed after the State sold the tidelands to Ms. Reidell are irrelevant in determining the tidelands sold by the State to Ms. Reidell. Even if the State was legally required to sell tidelands based upon the “equitable apportionment” method set forth in *Spath*, the extent of the tidelands sold would be determined based upon the lineal frontage owned by Ms. Reidell at the time of sale. That lineal frontage must be determined by the extent of her upland property as described in her grant deed from Mr. Nance and confirmed by the Mason County Auditor prior to the sale.

The Sitts & Hill Survey was based upon later surveys and deeds which contain flaws that fatally undermine its accuracy. These flaws not only impact the upland property delineation; they also doom Sitts & Hill’s delineation of the tideland boundary. By significantly reducing the Iddings’ upland frontage that must be considered if “equitable apportionment” were appropriate in this case (which it is not), the flaws destroy the basis for such apportionment.

The trial court had before it two surveys that disagreed with the boundary delineations in the Sitts & Hill survey. HCSC and the Iddings family members submitted a survey prepared by Terrell Ferguson, which

established that they owned all tidelands excluding those previously conveyed to James Murray (now owned by Virgil Timmerman). CP 147–54; Appendix F-3–6. Mr. Ferguson also delineated an eastern boundary of the upland parcel owned by Laure and Lloyd Earl Iddings that generally runs south and west of the creek within a gulch. *Id.*

Based upon the historical deeds associated with the conveyances from the Nance family to Ms. Reidell and the School District, Mr. Ferguson opined that the most important call within those deeds was the “line along aforesaid gulch to run on the South and West side of aforesaid creek.” CP 1054. He found this to be the controlling factor because it is at the very beginning of the legal description and uses a very definable physical feature to be used as a boundary, in comparison to the “toe of a hill” relied upon in the Sitts & Hill Survey. *Id.* In his professional surveying opinion, he concluded:

the later call in the legal description to “meander around the aforesaid base of hill” is meant to emphasize that the deed line is wholly and completely on the south and west side of the creek, “not to touch or cross aforesaid creek.” Thus, the south and/or west bank of the creek is the intended deed line between the two parcels.

Id. Mr. Ferguson also noted that this boundary was consistent with Ms. Reidell’s understanding of her boundary based upon communications between Ms. Reidell and DPL. CP 1055. Mr. Ferguson also raised serious

concerns regarding Sitts & Hill's utilization of the Sadler survey, noting that the Sadler survey contained a different (and incorrect) call:

The main description appears to be identical to the 1929 deed from William Nance to the School District, except on Mr. Sadler's document, it reads in part "The line along aforesaid gulch to run on the South and West side of aforesaid *gulch*." This is in conflict with both the County's description of Ms. Reidell's uplands parcel at the time she acquired the tidelands, as well as the 1929 deed between Mr. Nance and the School District and 1912 deed between Clara Nance and James Harden Nance. Most likely, the change in this one word was a scrivener's error. This change should be ignored and not used in place of the original because there is no explanation and/or documentation to support the change.

Id. This mistake concerning the critical call within the deed, which is unexplained in the Sitts & Hill Survey, generated the improper uplands boundary line depicted in the Sitts & Hill Survey. Even DNR's own surveyor agreed that, based upon his review of the historical record, the appropriate boundary line was the creek between the two properties. CP 1040-42.

Petitioner Virgil Timmerman also submitted declarations from two surveying experts, Robert J. Wilson and John Thalacker, who were highly critical of the Sitts & Hill Survey. Mr. Wilson submitted a survey depicting Mr. Timmerman's tideland boundary, which was shown as sharing a boundary with the tidelands parcel owned by HCSC and the Iddings family. CP 723-25 (a better copy of this exhibit has been included as Appendix F-

1). Both Mr. Wilson and Mr. Thalacker agreed with Mr. Ferguson that “equitable apportionment” was not an appropriate method in this case to delineate the tidelands and generally agreed with the tideland delineation in Mr. Ferguson’s survey. CP 680–83, 711–18. They also raised substantial concerns regarding the overall survey methodology employed by Sitts & Hill. The methodological flaws in the Sitts & Hill Survey include:

- To the extent that “equitable apportionment” is applicable, the Sitts & Hill Survey did not appropriately scale the apportionment, in that it must identify both headlands in Dewatto Bay and equitably apportion the entirety of Dewatto Bay.⁹ CP 682–83; CP 715–16.
- The Sitts & Hill survey establishes the wrong delineation of ordinary high tide. CP 678, 683; CP 717.
- The Sitts & Hill survey establishes the wrong meander corner for the south meander corner of the east boundary. CP 674–76.
- *Spath v. Larsen* does not establish a surveying rule or methodology to be followed by surveyors to resolve boundary disputes; rather, it is an equitable principle to be used for judicial resolution of certain disputes. CP 717–18.
- The Sitts & Hill Survey erroneously considers only a portion of the property owned by Virgil Timmerman in apportioning tidelands based upon uplands lineal frontage. CP 715–16.

⁹ The method described in *Spath v. Larsen* is intended to delineate tideland boundaries in a cove. Therefore, one must first identify the headlands and extent of the cove in question. Mr. Wilson concluded that Sitts & Hill, without explanation, limited the scope of its apportionment to a single headland within the cove as opposed to the entire cove, which would include all of Dewatto Bay. CP 715–17.

The non-moving parties gave the trial court expert opinions from three surveyors that called into question the accuracy and reliability of the factual conclusions of the Sitts & Hill Survey. The trial court, however, failed to consider that evidence when it granted DNR summary judgment on the boundary issues.

3. The significant flaws in the Sitts & Hill Survey mandated that the trial court reject the survey or conduct a trial where testimony from each surveyor could be heard.

Conflicting opinion testimony offered by opposing experts cannot be resolved at summary judgment. *Lake Chelan Shores Homeowners Ass'n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 174–75, 313 P.3d 408 (2013), *review denied*, 179 Wn.2d 1019 (2014); *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 119–20, 11 P.3d 726 (2000); *Meyers v. Ferndale Sch. Dist.*, 457 P.3d 483, 490 (Wn. Ct. App. 2020) (“In general, when experts offer competing, apparently competent evidence, summary judgment is inappropriate”) (citing *C.L. v. Dep’t of Soc. & Health Servs.*, 200 Wn. App. 189, 200, 402 P.3d 346 (2017)). Although courts may disregard conflicting expert opinions where the issue involved is a question of law, *see Arden v. Forsberg & Umlauf, P.S.*, 193 Wn. App. 731, 746, 373 P.3d 320 (2016), the location of a property boundary is a question of fact. *DD & L, Inc.*, 51 Wn. App. at 335.

This case is similar to *Larson v. Nelson*, 118 Wn. App. 797, 77 P.3d 671 (2003), where the Court of Appeals reversed summary judgment and remanded for trial an issue of whether a slough was part of a river. Each party presented evidence supporting their assertions, including expert testimony concerning the location of the shorelines of the slough. The Court of Appeals held that “[t]his competing, apparently competent evidence demonstrates the need for a trial to resolve these factual issues.” *Id.* at 810. “Because weighing of evidence, balancing of competing experts’ credibility, and resolution of conflicting material facts are not appropriate on summary judgment, a trial is necessary to resolve these matters.” *Id.* at 810 n.17.

Similarly, a case recently decided by this court held that summary judgment was improper when the opposing party presented evidence that raised material questions of fact as to whether a boundary survey properly identified the location of the boundary. *See Rinehold v. Renne*, 2020 WL 1158088 (Wn. Ct. App. Mar. 10, 2020) (unpublished) (reversing trial court’s ruling that, as a matter of law, a survey conducted for the plaintiffs correctly determined the boundary of the property where non-moving party raised factual issues regarding the intent of the deed).

As discussed above, the surveys and declarations submitted by three qualified surveyors all established significant questions of material fact that,

when viewed in the light most favorable to Petitioners as the non-moving parties, establish that there were critical and fatal errors in the Sitts & Hill Survey with respect to the location of the upland and tideland boundaries. These errors required the trial court to deny summary judgment and reserve for trial the issue of whether the Sitts & Hill Survey is accurate in its delineation of the boundaries for both uplands and tidelands.

V. CONCLUSION

The trial court's judgment should be reversed and the case remanded with instructions to enter summary judgment for Petitioners on their quiet title claim. Alternatively, the court's summary judgment should be reversed and the case remanded to determine whether the State owns any tidelands within the disputed area that would be subject to delineation. In either case, the trial court's determination that the Sitts & Hill Survey correctly delineated the upland and tideland boundaries must be reversed.

DATED this 7th day of May, 2020.

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APPENDIX A



Google Earth



This graphic is found at CP 101. It has been reproduced here in color. The upland parcel numbers and court-ordered boundaries have been added for ease of reference.

APPENDIX B

or kill, any feathered game for the market or sale in any month in the year except the month of December.

SEC. 2. Such game shall be of the several kinds as follows: Swan, geese, brants, sand-hill cranes, grouse, pheasants, partridges, prairie chicken, snipe and all the various and different kinds of ducks.

Limit of close season.

SEC. 3. It shall be unlawful for any person or persons to sell or dispose of, except in the month of December, or have in their possession for the purpose of sale, any of the game mentioned in section two, for money, or for any pay whatever.

SEC. 4. That it shall be unlawful to ship any kind or kinds of game out of this state for the market any month in the year.

SEC. 5. That it shall be unlawful for any person or persons to kill, trap, or in any manner cause to be killed, quail and golden, silver, China or Mongolian pheasants for the period of five years after this act becomes a law.

Disposition of fines.

SEC. 6. That all fines or moneys collected under this act be paid to the county treasurer and held in and made a sinking fund for a game commissioner.

SEC. 7. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof shall be fined for each offense in a sum not less than ten dollars nor more than one hundred dollars.

Approved March 9, 1891.

CHAPTER CL.

[H. B. No. 255.]

RELATING TO TIDE AND SHORE LANDS.

AN ACT relating to tide and shore lands.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That the tide and shore lands belonging to the State of Washington, not within two miles of any cor-

porated city or town, covered by natural oyster beds, or so much shore and tide land as is necessary for the preservation and growth of any natural oyster bed, is hereby withdrawn and reserved from sale or lease for the purpose of establishing a natural oyster bed reserve.

To protect natural oyster beds.

SEC. 2. The board of appraisers of tide and shore lands appointed and acting under and by virtue of an act entitled "An act for the appraising and disposing of the tide and shore lands belonging to the State of Washington," approved March 26, 1890, shall, when this act takes effect, investigate and determine the shore and tide lands within their county covered by a natural oyster bed, as well as such parts of tide and shore lands within the said county not covered by a natural oyster bed but which is necessary for the preservation and growth of any natural oyster bed. And such board of appraisers shall cause to be made a plat of such natural oyster beds, and of such tide and shore lands which they deem necessary and reserve for the preservation and growth of such natural oyster beds; and such plat shall be marked and noted upon the tide and shore land plats of such county, and thereafter shall be known as "natural oyster beds reserved," and the same shall not be offered for sale or lease, nor sold nor leased.

Duty of local board.

SEC. 3. The decision of the board of appraisers hereinbefore mentioned shall be open to appeal and review in making the reservations provided for in the foregoing sections. This act shall be open to all appeals and supervisions provided now by law under the act entitled "An act for the appraising and disposing of the tide and shore lands belonging to the State of Washington," approved March 26, 1890, and as may hereafter be provided by law either amendatory to said last named act or in addition thereto.

Open to appeal.

Approved March 9, 1891.

APPENDIX C

Institutional lands, that is, lands held in trust for state charitable, educational, penal and reformatory institutions; and

Institutional lands.

All public lands of the state, except tide lands, shore lands, harbor areas and the beds of navigable waters.

Public lands.

SEC. 2. Whenever used in this act the term "outer harbor line" shall mean a line located and established in navigable waters as provided in section 1 of article XV of the state constitution, beyond which the state shall never sell or lease any rights whatever.

Outer harbor line.

May not sell or lease rights beyond.

SEC. 3. Whenever used in this act the term "harbor area" shall mean the area of navigable tidal waters determined as provided in section 1 of article XV of the state constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

Harbor area.

Reserved for navigation and commerce.

SEC. 4. Whenever used in this act the term "inner harbor line" shall mean a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area.

Inner harbor line.

SEC. 5. Whenever used in this act the term "first class tide lands" shall mean the beds and shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

First class tide lands.

SEC. 6. Whenever used in this act the term "second class tide lands" shall mean public lands belonging to the state over which the tide ebbs and

Second class tide lands.

flows outside of and more than two miles from the corporate limits of any city, from the line of ordinary high tide to the line of extreme low tide.

First class
shore lands.

SEC. 7. Whenever used in this act the term "first class shore lands" shall mean public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and within or in front of the corporate limits of any city or within two miles thereof upon either side.

Second
class shore
lands.

SEC. 8. Whenever used in this act the term "second class shore lands" shall mean public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and more than two miles from the corporate limits of any city.

Improve-
ments.

SEC. 9. Whenever used in this act the term "improvements" when referring to public lands belonging to the state shall mean anything considered a fixture in law placed upon or attached to such lands, or any change made in their previous condition that has added value to the lands.

Board of
state land
commission-
ers con-
stituted.

SEC. 10. The commissioner of public lands, the secretary of state, and the state treasurer shall constitute the board of state land commissioners, of which the commissioner of public lands shall be chairman, and a clerk in the office of the commissioner of public lands, to be appointed by the chairman, shall be secretary.

Ex-officio
harbor line
commission.

SEC. 11. The board of state land commissioners shall constitute the commission provided for in section 1 of article XV of the state constitution, to locate and establish harbor lines beyond which the state shall never sell or lease any rights whatever, and to determine the width of the harbor area be-

enter in a well bound book to be kept in his office a description of each lot, tract or piece of tide or shore land, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on, or prior to, the date of the plat or re-plat, the commissioner shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract or piece of land covered, and the appraised value of the land covered, with, and exclusive of, the improvements.

Record
book.

What shall
contain.

SEC. 111. The commissioner of public lands shall, before filing in his office the plat and record of appraisement of any tide or shore lands platted and appraised by him, cause a notice to be published once each week for four consecutive weeks in a newspaper published and of general circulation in the county wherein the land covered by such plat and record are situated, stating that such plat and record, describing it, is complete and subject to inspection at the office of the commissioner of public lands and will be filed on a certain day to be named in the notice.

Notice by
publication
before filing
plat and
record.

Record may
be
inspected.

Any person claiming a preference right of purchase of any of the tide and shore lands platted and appraised by the commissioner of public lands, and who feels aggrieved at the appraisement fixed by the commissioner upon said lands, or any part thereof, may within sixty days after the filing of such plat and record in the office of the commissioner (which shall be done on the day fixed in said notice), appeal from such appraisement to the superior court of the county in which the tide or shore lands are situated, in the manner provided by this act for appeals from orders or decisions.

Claimant of
preference
right of
purchase
may appeal
from ap-
praisement.

Prosecuting
Attorney
to appeal on
behalf of
state, city
or county.

The prosecuting attorney of any county, or city attorney of any city, in which such lands are situated, shall at the request of the governor, or of ten freeholders of the county or city, in which such lands are situated, appeal on behalf of the state, or the county, or city, from any such appraisement in the manner hereinabove provided.

Service of
notice of
appeal.

Notice of such appeal shall be served upon the commissioner of public lands, and it shall be his duty to immediately notify all persons claiming a preference right to purchase the lands the appraisement of which has been appealed from.

Appeal
bond.

Any party, other than the state, county or city, appealing, shall execute a bond to the state with sufficient surety, to be approved by the commissioner of public lands, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

Hearing and
order by
superior
court.

The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisement appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner of public lands. The appraisement fixed by the court shall be final.

Copy
certified to
commis-
sioner.

Court's ap-
praisement
final.

Abutting
owners have
preference
right to
purchase.

SEC. 112. The owner or owners of land abutting or fronting upon tide or shore lands of the first class platted and appraised by the commissioner of public lands, as in this act provided, shall have the right, for sixty days following the filing of the final appraisal of the tide or shore lands with the commissioner of public lands, to apply for the purchase of all or any part of the tide or shore lands in front of the lands so owned: *Provided*, That if the abutting up-land owner has attempted to convey by deed to a *bona fide* purchaser any portion of the tide or shore lands in front of such uplands, or littoral

waterway or portion of waterway shall be embraced within the limits of a port district created under the laws of the state, the title to such portions thereof as shall then remain undisposed of by the state shall vest in such port district. Such title so vesting shall be subject to any railroad or street railway crossings existing at the time of such vacation.

Title subject to existing railroad crossings.

The provisions of this section shall not apply to any waterway or portion of waterway which forms, or by improving the same may be made to form, a connection between a river, or another waterway, and tidal waters.

Waterways excepted by act.

SEC. 119. Any replat of tide or shore lands heretofore, or hereafter, platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways and other public places theretofore dedicated and the dedication of new streets, alleys, waterways and other public places appearing upon such replat, when the same is recorded and filed as in the case of original plats.

Streets, alleys, etc., vacated or dedicated when plat or replat of tide or shore lands recorded.

SEC. 120. All tide lands, other than first class, shall be offered for sale and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tide lands, and each applicant shall furnish a copy of the United States field notes certified to by the officer in charge thereof, of said meander line with his application, and shall pay one-tenth of the purchase price on the date of sale.

Tide lands sold as other state lands.

Minimum price.

Field notes filed with application.

SEC. 121. Whenever application is made to purchase any shore lands of the second class or whenever the commissioner of public lands shall deem it for the best interest of the state to offer any shore lands of the second class for sale, he shall cause a notice to be personally served upon the abutting upland owner if he be a resident of this state, or if

Application for shore lands of the second class.

Notice to abutting upland owner.

the upland owner be a non-resident of this state, shall mail to his last known post office address, a copy of a notice notifying him that application has been made for the purchase of such shore lands or that the commissioner deems it for the best interest of the state to sell the same, as the case may be, giving a description and the appraised value of such shore lands in no case less than five dollars per lineal chain frontage and notifying such upland owner that he has a preference right to purchase said shore lands at the appraised value thereof for a period of thirty days from the date of the service or mailing of said notice, and no such shore lands shall be offered for sale, or sold, to any other person than the abutting upland owner until after the expiration of said thirty days from the date of the service or mailing of such notice. If the upland owner is a non-resident of this state and his address is unknown to the commissioner of public lands, notice to him shall not be necessary or required. If at the expiration of the thirty days from the service or mailing of the notice, as above provided, the abutting upland owner has failed to avail himself of his preference right to purchase and paid to the commissioner of public lands the appraised value of the shore lands described in said notice, then in that event said shore lands may be offered for sale and sold in the manner provided for the sale of state lands, other than capitol building lands. The commissioner of public lands may cause any of such shore lands, to be platted as is provided for the platting of shore lands of the first class, and when so platted such lands shall be sold or leased in the manner in this act provided for the sale or lease of shore lands of the first class.

Upland owner has preference right.

Upland owner non-resident and address unknown—notice not required.

May sell to others if right not exercised within time.

Platting and sale as in case of shore lands of first class.

Second class tide or shore lands.

SEC. 122. Tide or shore lands of the second class which are separated from the upland by navi-

No lease or sale within three years—improvements pass with the land.

until payment is made by such subsequent lessee or purchaser of the appraised value of the improvements as determined by the commissioner of public lands, or as may be determined on appeal, to such former lessee, or his successor in interest. In case such tide or shore lands are not leased, or sold, within three years after the expiration of such former lease, then and in that event, such improvements existing on the lands at the time of any subsequent lease or sale thereof, shall be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land, and sold, or leased, with the land.

Isolated oyster lands. Application to purchase.

SEC. 138. The commissioner of public lands upon the filing in his office by any person, firm or corporation owning any oyster lands within, or abutting upon, any state oyster reserve, of an application to purchase any tract or parcel of tide land lying between said oyster land and the adjoining shore, or any small or isolated tract of tide land, not exceeding three acres in extent, lying between his said oyster lands and any adjoining oyster lands heretofore sold by the state, accompanied by an abstractor's certificate of title or other evidence of title to the applicant's oyster lands demanded by the commissioner of public lands, and by the field notes of a survey and plat of the lands applied for, the commissioner of public lands shall examine such evidence of title and such field notes and plat and cause the land applied for to be inspected, and if he shall find that the title to the adjoining land is in the applicant and that the land applied for is of little value to the state for the future development of the state's oyster reserves, due to its size and isolation, he shall thereupon appraise the value of the land applied for, and upon the payment of the appraised value to the commissioner of public lands cause a

Investigation and appraisal.

deed to be issued for the land applied for in the same manner as deeds of state lands are issued, which deed shall contain a covenant or condition of defeasance to the effect that if said lands be used for any other purpose than the cultivation of oysters or edible shell fish, then such deed shall be cancelled and the lands described therein revert to the state: *Provided*, That if the tract of land applied for is located between the lands of two or more owners, then upon the application of either of the adjoining owners, the others shall be notified of such application and given sixty days within which to apply for the purchase of said land, and if others of said adjoining owners make application to purchase said land, the commissioner of public lands shall determine an equitable division of said land between said applicants, and each shall be given the privilege of purchasing the part allotted to him, but if any of said adjoining owners fail for a period of sixty days to purchase said land at the appraised value, then the other adjoining owner, or owners, shall have the privilege of purchasing the land.

Deed.

Notice to adjoining owners.

Division of the land.

SEC. 139. In lieu of a deed as provided for in the preceding section, a contract may be issued to the applicant by the terms of which one-fifth of the purchase price may be paid to the commissioner, and the remainder in four equal annual installments, with interest on deferred payments at the rate of six per cent per annum, and if said applicant shall comply with the terms of said contract and make the payments therein provided for, a deed shall issue as provided in the preceding section: *Provided*, That said contract shall contain a covenant of defeasance as is provided in the case of a deed issued under the provisions of the preceding section: *And Provided Further*, That such contract shall be subject to cancellation by the commissioner of public lands for

Installment payments.

Interest on deferred payments.

Deed.

Provisions.

APPENDIX D

Records of
board, etc.

SEC. 2. Said board and commission shall keep a full and complete record of their proceedings in separate records, one relating to appraisement, sale, lease and selection of lands; one relating to harbor lines, harbor areas, tide and shore lands. A clerk in the office of the commissioner of public lands shall act as the secretary of said board and commissions, and their office shall be in the office of the commissioner of public lands, and all records relating to said board and commissions of public lands of the state shall be kept in the office of the commissioner of public lands, and shall be subject to public inspection.

Rules and
regulations.

SEC. 3. Said board of state land commissioners shall make all rules and regulations for carrying out the provisions of this act, not inconsistent with law, and the commissioner of public lands shall act as chairman of said board and commissions.

Classification
of public lands.

SEC. 4. That for the purpose of this act all lands belonging to and under the control of the state shall be divided into the following classes:

(1) *Granted Lands*: (a) Common school lands and lieu and indemnity lands therefor. (b) University lands and lieu and indemnity lands therefor. (c) Other educational land grants. (d) Lands granted to the State of Washington for other than educational purposes, and lieu and indemnity lands therefor. (e) All other lands, including lands acquired or to be hereafter acquired by grant, deed of sale, or gift, or operation of law, including arid lands.

(2) *Tide Lands*: All lands over which the tide ebbs and flows from the line of ordinary high tide to the line of mean low tide, except in front of cities where harbor lines have been established or may hereafter be established, where such tide lands shall be those lying between the line of ordinary high tide and the inner harbor line, and excepting oyster lands.

(3) *Shore Lands*: Lands bordering on the shores of navigable lakes and rivers below the line of ordinary high water and not subject to tidal flow.

(4) *Harbor Lines and Areas*: Such lines and areas as are described in article 15 of the constitution of the State of Washington and which have been established according

to law. All of which outer harbor lines so established as aforesaid are hereby ratified and confirmed, also all such harbor lines and areas as may and shall be hereafter established.

SEC. 5. All lands described in section four are “public lands” and the terms “public lands” and “state lands” shall be defined and deemed to be synonymous whenever either is used in this act. Defining terms.

That the selection, inspection and appraisal of land as hereinafter provided for in this act may be made by one of the members of the said board or commission; but when it is deemed advisable and for the best interests of the state, the commissioner of public lands may employ two or more citizens of the state, familiar with such work, to personally inspect, appraise or select lands, harbor areas, etc. Inspection, etc., of lands.

The word “improvements” used in this act, when referring to school or granted lands, shall be interpreted to mean fencing, diking, draining, ditching, houses, barns, shelters, wells, slashing, clearing or orchards, and also breaking that has been done prior to application for purchase or lease, and all things that would be considered fixtures in law. When referring to tide or shore lands and harbor areas, the word “improvements” shall be interpreted to mean all fills or made ground of a permanent character, and all structures erected or commenced on said lands or actually in use for purposes of trade, business, commerce or residence prior to March 26, 1890, and completed before January 1, 1891: *Provided*, That ordinary capped piles or similar structures or fixtures shall not be considered an improvement. Improvements, how defined.

SEC. 6. The compensation of such inspectors so appointed by the commissioner of public lands shall not exceed four dollars per diem for time actually employed, and necessary expenses, which shall be submitted to the commissioner of public lands in an itemized and verified account, to be approved by the commissioner of public lands. Compensation of inspectors.

SEC. 7. Said state land inspectors shall, immediately upon their appointment, under the direction of the commissioner of public lands, inspect such unsurveyed lands Duties of inspectors.

APPENDIX E

pany, electrical company, water company, telephone company, telegraph company, wharfinger and ware-houseman as such terms are defined in this section.

Passed the House March 8, 1929.

Passed the Senate March 12, 1929.

Approved by the Governor March 26, 1929.

CHAPTER 224.

[H. B. 108.]

STATE OYSTER RESERVES.

AN ACT authorizing the vacation of State Oyster Reserves or portions thereof, and providing for the manner of sale or lease thereof and the disposition of the proceeds.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The commissioner of public lands is hereby authorized to sell or lease tide lands which have heretofore or which may hereafter be set aside as state oyster reserves in the same manner as provided for the disposition of second class shore lands in so far as the statutes relating to the sale of such second class shore lands may be applicable to the sale of tide lands in state oyster reserves.

Sale or
lease of tide
lands.

SEC. 2. The commissioner of public lands, upon the receipt of an application for the purchase or lease of any tide lands which have heretofore or which may hereafter be set aside as state oyster reserves, shall notify the director of fisheries and game of the filing of the application, describing the lands applied for. And it shall be the duty of the director of fisheries and game to cause an inspection of the reserve to be made for the purpose of determining whether said reserve or any part thereof should be retained as a state oyster reserve or vacated.

Application.

Director of
fisheries and
game.

APPENDIX F

APPLICATION No. **2515**

County **Mason**
To Re- **Lease Vacated Oyster Res. Lands**
Applicant **Pope & Talbot**
Filed **March 10,** 19**42**
Description **In front $W\frac{1}{2}$ in width Lot 5,**
Sec. **28** Twp. **23** N., R. **3W**
Referred to **42** 19
Report Inspection Filed 19
Appraised 19
Protest Filed 19
Notice of Leasing Mailed 19
Date of Lease Fixed 19
Notice of Leasing with App. No. 19
Report of Leasing Filed 19
Report of Leasing with App. No. 19
Lease No. **1372**

OTHER SPECIAL PROCEEDINGS
1373-7

Part of Dewatto
No portion of money to Port
Money to Fisheries Fund.
Chop. 229 Laws 1929 as amended Chap. 56 Laws '35

MISCELLANEOUS MEMORANDA

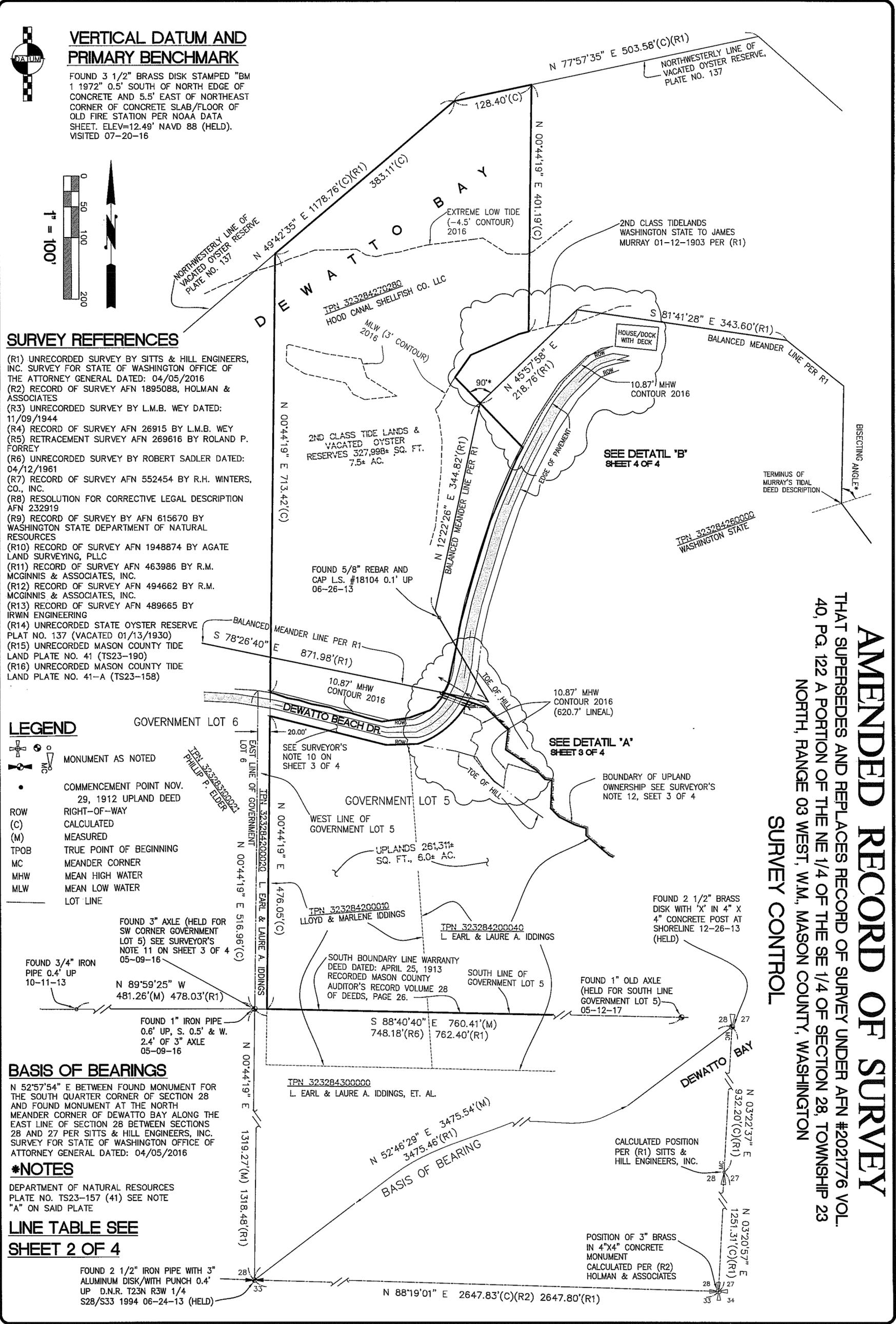
Notice: Beatrice Reiddell Star Route 1, Box # 80
of expiration of Lease 1372 **Bremerton, Wa**
Week 4-7-45

Booming L: 1372 noted 7-30-42 EBT.

AMENDED RECORD OF SURVEY

THAT SUPERSEDES AND REPLACES RECORD OF SURVEY UNDER AFN #2021776 VOL. 40, PG. 122 A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SECTION 28, TOWNSHIP 23 NORTH, RANGE 03 WEST, W.M., MASON COUNTY, WASHINGTON

SURVEY CONTROL



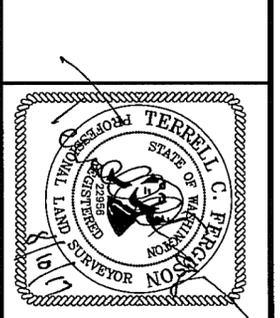
RECORDERS CERTIFICATE
 Recording No. _____
 Filed for record this _____ day of _____, 2013, at _____ m. in Book _____ of Surveys at Page _____ at the request of _____

 TERRYLL C. FERGUSON
 Supt. of Records

SURVEYOR'S CERTIFICATE
 This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of HOOD CANAL SHELLFISH CO. LLC.

 JUNE 2013
 Certification No. 22936

EQUIPMENT USED
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 OMNI PRISM W/ -30mm OFFSET
 TDS-48 DATA COLLECTOR



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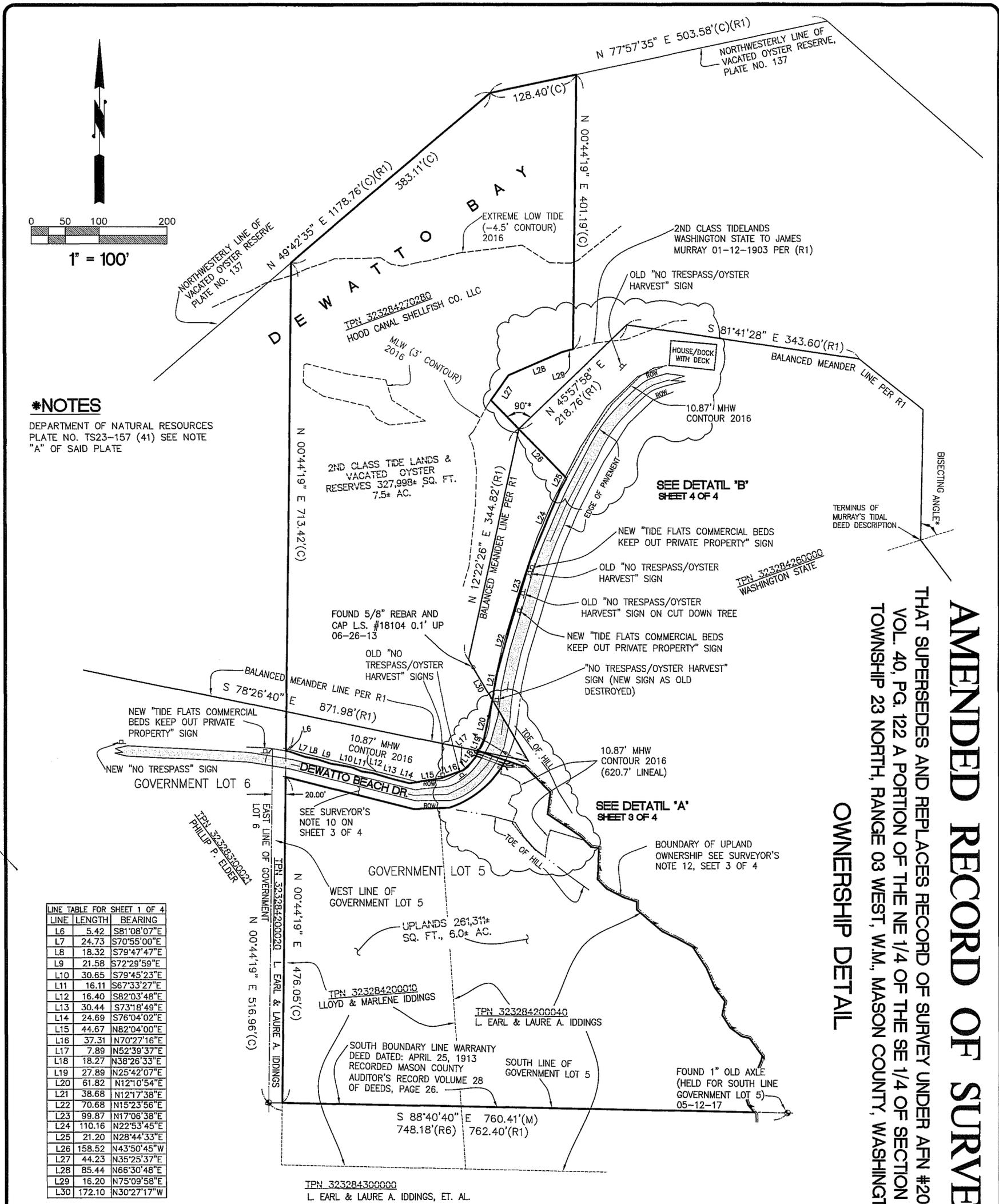
FOR: HOOD CANAL SHELLFISH CO. LLC.
 P.O. BOX 2
 MAPLE VALLEY, WA. 98038

RECORD OF SURVEY
 MASON COUNTY, WASHINGTON

Checked by TOF _____
 Scale 1" = 100'
 Sheet 1 of 4

AMENDED RECORD OF SURVEY

THAT SUPERSEDES AND REPLACES RECORD OF SURVEY UNDER AFN #2021776 VOL. 40, PG. 122 A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SECTION 28, TOWNSHIP 23 NORTH, RANGE 03 WEST, W.M., MASON COUNTY, WASHINGTON OWNERSHIP DETAIL



***NOTES**
 DEPARTMENT OF NATURAL RESOURCES
 PLATE NO. TS23-157 (41) SEE NOTE
 "A" OF SAID PLATE

LINE TABLE FOR SHEET 1 OF 4

LINE	LENGTH	BEARING
L6	5.42	S81°08'07"E
L7	24.73	S70°55'00"E
L8	18.32	S79°47'47"E
L9	21.58	S72°29'59"E
L10	30.65	S79°45'23"E
L11	16.11	S67°33'27"E
L12	16.40	S82°03'48"E
L13	30.44	S73°18'49"E
L14	24.69	S76°04'02"E
L15	44.67	N82°04'00"E
L16	37.31	N70°27'16"E
L17	7.89	N52°39'37"E
L18	18.27	N38°26'33"E
L19	27.89	N25°42'07"E
L20	61.82	N12°10'54"E
L21	38.68	N12°17'38"E
L22	70.68	N15°23'56"E
L23	99.87	N17°06'38"E
L24	110.16	N22°53'45"E
L25	21.20	N28°44'33"E
L26	158.52	N43°50'45"W
L27	44.23	N35°25'37"E
L28	85.44	N66°30'48"E
L29	16.20	N75°09'58"E
L30	172.10	N30°27'17"W

TIDELAND LEGAL DESCRIPTION

(STATE OF WASHINGTON TO JAMES MURRAY, JUNE 12, 1903, PER AFN #13470, VOLUME 4, PAGE 271)

ALL TIDE LANDS OF THE SECOND CLASS OWNED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON THAT PORTION OF THE UNITED STATES GOVERNMENT MEANDER LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE CORNERS TO FRACTIONAL SECTIONS 28 AND 33, TOWNSHIP 23 NORTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN;

THENCE ALONG THE MEANDER LINE OF THE UNITED STATES SURVEY 69 CHAINS TO THE PLACE OF BEGINNING, IT BEING A CERTAIN POINT DESCRIBED IN THE UNITED STATES SURVEY FIELD NOTES AS NORTH 44.75', EAST 3.30 CHAINS; THENCE SOUTH 82.75' EAST 5.20 CHAINS;

THENCE SOUTH 82.75' EAST 5.20 CHAINS; THENCE SOUTH 52.50' EAST 1.80 CHAINS; THENCE SOUTH 2.90 CHAINS, MAKING IN ALL 13.20 CHAINS MEASURES ALONG SAID GOVERNMENT MEANDER LINE.

(STATE OF WASHINGTON TO THERESE D. REIDELL, AUGUST 28, 1947, PER STATE RECORD TIDE LAND DEED VOLUME 20, PAGE 340 ALSO VOLUME 191, PAGE 148, MASON COUNTY AUDITOR)

THOSE PORTIONS OF THE TIDE LANDS OF THE SECOND CLASS AND VACATED STATE OYSTER RESERVE NO. 2 PLAT NO. 137, SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON THAT PORTION OF GOVERNMENT LOT 5, SECTION 28, TOWNSHIP 23 NORTH, RANGE 3 WEST, W.M., DESCRIBED AS FOLLOWS:

THAT PORTION OF GOVERNMENT LOT 5, LYING EAST OF A LINE WHICH IS 20 FEET EAST AND PARALLEL TO THE WEST LINE OF SAID LOT 5, AND SOUTHERLY AND WESTERLY OF THE MAIN CREEK RUNNING THROUGH LOT 5 AND HAVING A FRONTAGE OF 5.76 LINEAL CHAINS, MORE OR LESS.

THE ABOVE DESCRIPTION IS INTENDED TO CONVEY SUCH TIDE LANDS AS LYING IN FRONT OF A TRACT OF UPLANDS OWNED BY THERESE D. REIDELL ON NOVEMBER 18, 1946.

UPLAND LEGAL DESCRIPTION

(PER WARRANTY DEED, MRS. CLARA NANCE TO JAMES HARDEN NANCE, DATED NOVEMBER 29, 1912, UNDER A.F.N. 28126, VOLUME 28 DEEDS, PAGE 26)

ALL THAT PORTION OF GOVERNMENT LOT FIVE (5), SECTION TWENTY EIGHT (28), TOWNSHIP TWENTY THREE (23) NORTH OF RANGE THREE (3) WEST OF W.M. WHICH LIES SOUTH AND WEST OF THE MAIN GULCH AND CREEK. THE LINE ALONG THE AFORESAID GULCH TO RUN ON THE SOUTH AND WEST SIDE OF AFORESAID CREEK, COMMENCING AT THE MEANDER LINE ON THE SHORE LINE BETWEEN THE AFORESAID LOT FIVE (5) AND THE TIDE LAND AT OR NEAR THE BASE OF THE HILL WHERE THE BOTTOM LAND MEETS THE BASE OR FOOT OF THE HILL, THEN MEANDER AROUND THE AFORESAID BASE OF HILL STRAIGHT FROM POINT TO POINT, NOT TO TOUCH OR CROSS THE AFORESAID CREEK TO THE SOUTH LINE OF THE AFORESAID LOT FIVE (5) AT THE BASE OF THE HILL EXCEPT A STRIP TWENTY (20) FEET ALONG THE WEST LINE OF THE AFORESAID LOT FIVE (5).

RECORDER'S CERTIFICATE
 Recording No. _____
 Filed for record this _____ day of _____
 201____, at _____ m. in Book _____ of Surveys
 of Page _____ of the request of _____
 TERRELL, C. FERROUSON
 Supt. of Records

SURVEYOR'S CERTIFICATE
 This map correctly represents a survey made by
 me or under my direction in conformance with the
 requirements of the Survey Recording Act of the
 request of HOOD CANAL SHELLFISH CO. LLC.
 JUNE 2013
 Certification No. 22956

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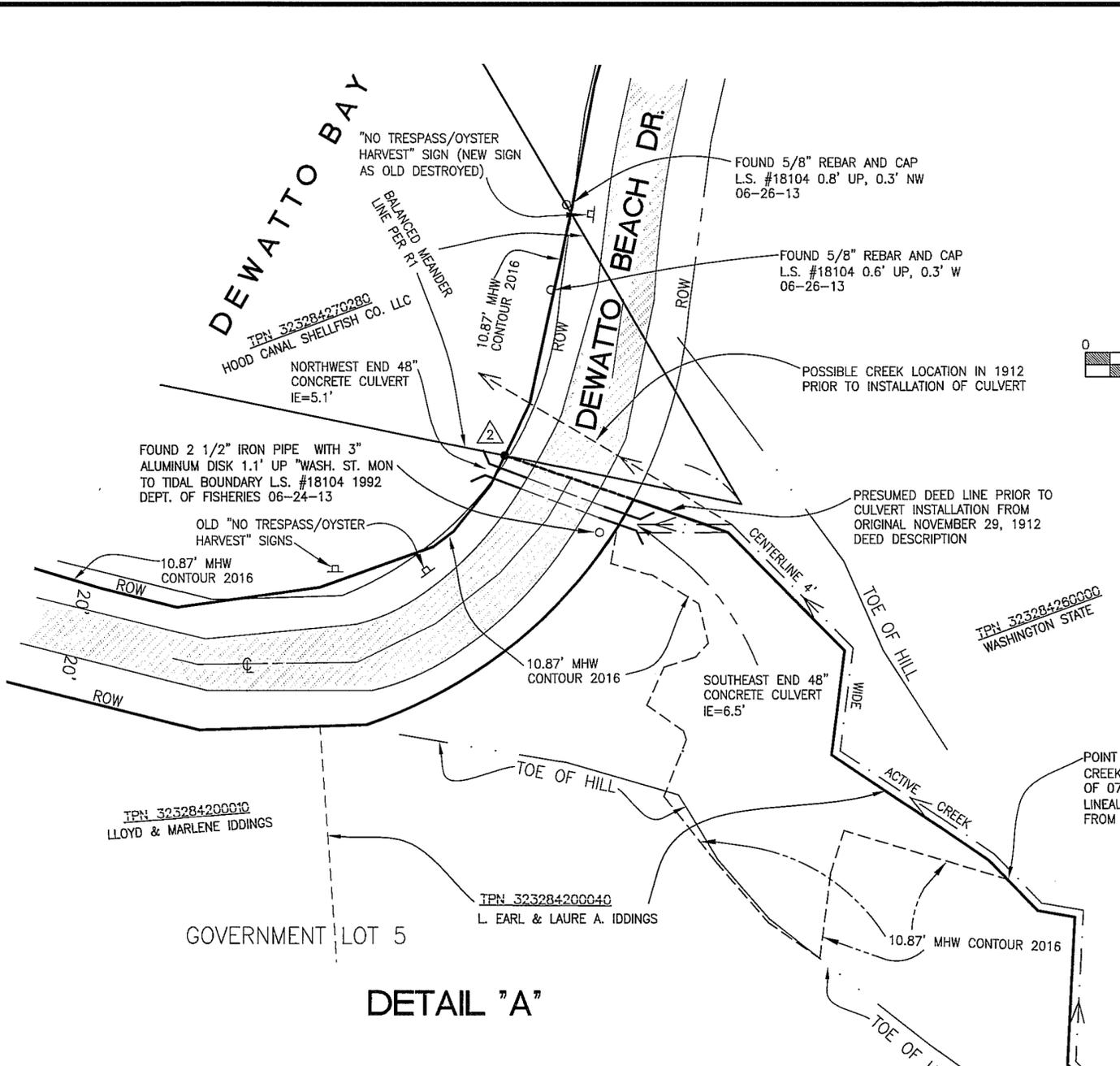
FOR: HOOD CANAL SHELLFISH CO. LLC.
 P.O. BOX 2
 MAPLE VALLEY, WA 98038

MASON COUNTY, WASHINGTON

AMENDED RECORD OF SURVEY

THAT SUPERSEDES AND REPLACES RECORD OF SURVEY UNDER AFN #2021776
VOL. 40, PG. 122 A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SECTION 28,
TOWNSHIP 23 NORTH, RANGE 03 WEST, WM., MASON COUNTY, WASHINGTON

DETAIL "A" AND NOTES



DETAIL "A"

- ### SURVEYOR'S NOTES
- THIS AMENDED SURVEY SUPERSEDES AND REPLACES THE RECORD OF SURVEY AS FILED UNDER AFN 2021776, VOLUME 40, PAGE 122, DATED 03/06/2014, IN MASON COUNTY, WASHINGTON.
 - THE DRAWING SHOWN HEREON DOES NOT NECESSARILY CONTAIN ALL THE INFORMATION OBTAINED BY THE SURVEYOR IN HIS FIELD WORK, OFFICE WORK, OR RESEARCH.
 - BASELINE'S FIELD TRAVERSE PROCEDURES MEET OR EXCEED ACCURACY STANDARDS AS PER W.A.C. 332-130-090, PARAGRAPHS 1(a) AND 1(b).
 - POSSIBLE ENCROACHMENTS AS SHOWN HEREON ARE ONLY THOSE ABOVE GROUND, VISIBLE OBJECTS OBSERVED BY THE SURVEYOR, BASELINE ENGINEERING, INC. MAKES NO WARRANTIES AS TO MATTERS OF UNWRITTEN TITLE SUCH AS: ACQUIESCENCE, ESTOPPEL, ADVERSE POSSESSION, ETC.
 - AN ON THE GROUND SURVEY WAS PERFORMED ON 12-05-12; AND 6-24, 6-26, 8-14, 10-11 AND 12-26-13; AND 1-24-14; AND 5-09, 6-06, 7-20, 7-27, AND 11-07-16.
 - FOR THE PURPOSES OF THIS SURVEY, MONUMENTS SHOWN HAVE BEEN HELD AS BEING THOSE MONUMENTS DEPICTED ON THE PLAT(S) OR SURVEYS AS MARKING THE SECTION LINES AND/OR SECTION CORNERS AS NOTED.
 - MONUMENTS VISITED AS NOTED.
 - EASEMENTS OF RECORD, IF ANY, NOT SHOWN AS THEY ARE NOT THE FOCUS OF THIS SURVEY.
 - THE NORTHERLY LIMITS OF TIDELANDS, AS REPRESENTED HEREIN, IS THE NORTHERLY LINE OF THE VACATED OYSTER RESERVE, PLATE NO. 137 PER WARRANTY DEED DATED NOVEMBER 29, 1912, UNDER AFN 28126, VOLUME 28 DEEDS, PAGE 26.
 - THE APPARENT RIGHT-OF-WAY FOR DEWATTO BEACH DRIVE ESTABLISHED AT 40 FEET, 20' EACH SIDE OF THE CENTERLINE OF EXISTING ASPHALT PER SURVEY.
 - THE 3" AXLE WAS HELD AS THE SW CORNER OF GOVERNMENT LOT 5 PER TESTIMONY FROM PROPERTY OWNER IDTINGS THAT IT WAS ALWAYS THEIR UNDERSTANDING FROM PAST AND ADJOINING OWNERS THAT THIS AXLE REPRESENTED THE GOVERNMENT LOT CORNER.
 - EAST LINE OF PARCEL TPN 323284200040 INTERPRETED PER AFFIDAVIT BY THERESE REIDELL DATED NOVEMBER 11, 1946.
 - THE 10.87' CONTOUR LINE WAS USED FOR THE MHW LINE RELATIVE TO THE MLLW PER CONFLUENCE ENVIRONMENTAL COMPANY, 146 N. CANAL ST., #111, SEATTLE, WASHINGTON.

- ### *NOTES
- ▲ COMMENCEMENT POINT OF NOVEMBER 29, 1912 UPLAND DEED DESCRIPTION; "COMMENCING AT THE MEANDER LINE ON THE SHORE LINE BETWEEN THE AFORESAID LOT FIVE (5) AND THE TIDE LAND AT OR NEAR THE BASE OF THE HILL . . ."
- ### SURVEYOR'S NARRATIVE
- THE INTENT OF THIS SURVEY IS TO REPRESENT 2ND CLASS TIDELANDS AND OYSTER RESERVES ADJACENT TO AND/OR ABUTTING TO PARCEL #323284200010 AND #323284200040 PER 1947 THERESE D. REIDELL OWNERSHIP WITH EXISTING FEATURES ASSOCIATED THERETO.
- THIS SURVEY CONTENDS THAT TIDE LAND PRORATION IS NOT APPLICABLE AS PRORATION OF 2ND CLASS TIDELANDS WAS NOT CONSIDERED AND/OR APPLIED TO THIS SURVEY, AS IT IS THE SURVEYOR'S OPINION THAT THE INTENT OF THERESE REIDELL'S REQUEST THROUGH HER APPLICATION AND EXHIBIT TO PURCHASE SUBJECT TIDELANDS FROM THE STATE INDICATED A "RECTANGULAR" PURCHASE OF 2ND CLASS TIDELANDS AND VACATED OYSTER RESERVE AND THERE WAS NOTHING FOUND FROM THE STATE TO INDICATE THAT ANYTHING OTHER THAN A RECTANGULAR SALE HAD BEEN MADE.
- RECORDED DOCUMENTS SUPPORTS A "RECTANGULAR" CONFIGURATION WAS CONVEYED FROM THE STATE OF WASHINGTON TO THERESE D. REIDELL AND OTHER COMMUNICATION AND STAYED WITH THE UPLANDS AS FUTURE CONVEYANCES WERE MADE.
- #### REGARDING UPLANDS LEGAL DESCRIPTION
- THE EASTERLY BOUNDARY LINE OF THE UPLAND OWNERSHIP OF THERESE REIDELL PARCEL IN NOVEMBER 18, 1946 AS ESTABLISHED PER WARRANTY DEED, AUDITOR'S FILE NUMBER 28126 AND IDENTIFIED BY ". . . LIES SOUTH AND WEST OF THE MAIN GULCH AND CREEK. . . NOT TO TOUCH OR CROSS AFORESAID CREEK TO THE SOUTH LINE OF AFORESAID LOT FIVE . . ." WAS DEFINED WITH THIS SURVEY BY THE LEFT BANK OF THE ACTIVE CREEK AS SURVEYED IN JULY 2016. THE CREEK WAS NOT LOCATED SOUTHERLY AND BEYOND THE INTERSECTION WITH THE 10.87' MHW CONTOUR.
- REVIEWING DEEDS AND OTHER DOCUMENTS AS PART OF THIS SURVEY THEY MAKE REFERENCE TO WORDS SUCH AS 'GULCH', 'BASE OF HILL', 'CREEK', 'BOTTOM LAND', AND IN SOME INSTANCES WILL GROUP THEM TOGETHER TRYING TO DESCRIBE BOUNDARY LOCATION BASED ON PHYSICAL FEATURES AS OPPOSED TO SPECIFIC TYPES OF MONUMENTS LIKE FENCE CORNERS OR STONES OR PIPES AND AXELS.
- WHEN GENERAL DESCRIPTIONS ARE USED TO TRY AND DESCRIBE LOCATION OF BOUNDARY LINES, IT TENDS TO THEN LEAVE THE DOOR OPEN TO VARIOUS INTERPRETATIONS, NOT TO MENTION THAT PHYSICAL FEATURES SUCH AS 'BASE OF HILL' AND 'FLAT LAND' CAN CHANGE DRAMATICALLY OVER THE PASSAGE OF TIME.
- THE USE OF THE WORD 'GULCH' OFFERS A VERY OPEN AREA FOR DESCRIPTION. BASIC DEFINITION OF A 'GULCH' IS AN AREA OF SLOPE GENERALLY CREATED BY A CREEK OR DRAINAGE OF WATER. WHEN THE LEGAL DESCRIPTION THEN MAKES THE CALL TO "NOT CROSS THE AFORESAID GULCH", IT IS THIS SURVEYOR'S OPINION THAT THE INTENT OF THIS CALL REFERS TO THE LOWEST POINT OF THE GULCH WHICH IS WHERE THE CREEK WOULD EXIST.
- THUS THIS SURVEY CONSIDERS THE WEST BANK OF THE EXISTING CREEK AS THE EAST LINE OF THE SUBJECT PARCEL.
- FURTHERMORE, IT IS THIS SURVEYOR'S OPINION THAT THE 2ND CLASS TIDE LANDS THAT MS. REIDELL SOUGHT IN 1946-47 WAS NOT DEPENDENT UPON "UPLANDS" DESCRIPTION AS HER APPLICATION AND ASSOCIATED AND EVENTUAL SKETCH CLEARLY DEMONSTRATES HER INTENT. HOWEVER IT IS MY OPINION THAT MS. REIDELL WAS LAY TO THE ACTUAL LOCATION OF THE OYSTER RESERVE LIMITS AND WAS THEREFORE NOT SURE WHERE TO END THE NORTHERN LIMITS OF HER REQUEST.

RECORD OF SURVEY

FOR:
HOOD CANAL SHELLFISH CO. LLC.
P.O. BOX 2
MAPLE VALLEY, WA. 98038
MASON COUNTY, WASHINGTON

EQUIPMENT USED

TOPCON GTS-3C
OMNI PRISM W/ -30mm OFFSET
TDS-48 DATA COLLECTOR

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act of the request of HOOD CANAL SHELLFISH CO. LLC.

JUNE 2013
Terrell C. Ferguson
Certification No. 22956

RECORDER'S CERTIFICATE

Recording No. _____
Filed for record this _____ day of _____
201____, at _____m. in Book _____ of Surveys
at Page _____ of the request of _____
TERRELL C. FERGUSON
Supt. of Records

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DRAWN BY: RLL DATE: AUG. 2017 JOB NO.: 12-003
CHECKED BY: TCF SCALE: 1" = 30' SHEET: 3 OF 4

K&L GATES LLP

May 07, 2020 - 3:08 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53486-0
Appellate Court Case Title: Hood Canal Shellfish, et al., Petitioners v. Dept. of Natural Resources, Respondent
Superior Court Case Number: 15-2-00267-1

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