

STAFF SUMMARY FOR FEBRUARY 10-11, 2016

14. CHARLES FRIEND OYSTER CO. LEASE**Today's Item**Information Action

Consider request from Charles Friend Oyster Company to renew State Water Bottom Lease No. M-430-04 for aquaculture for a period of 15 years.

Summary of Previous/Future Actions

- Received request to renew lease Aug 4-5, 2015; Fortuna
- **Today approve request Feb 10-11, 2016; Sacramento**

Background

FGC has the authority to lease state water bottoms to any person for aquaculture pursuant to Sections 15400 and 15405, Fish and Game Code. A lessee shall have a prior right to renew the lease on terms agreed upon between FGC and the lessee (Section 15406, Fish and Game Code).

Charles Friend Oyster Company, Inc. has held FGC-issued state water bottom lease No. M-430-04 since 1999 for purposes of culturing shellfish in Tomales Bay (Exhibit 1). The lease is set to expire on Feb 29, 2016 and the lessee, Mr. Charles (Tod) Friend, has submitted a request to renew the lease (Exhibit 2).

Following FGC receipt of this request, DFW conducted an initial review of the lease operations for possible management or biological considerations, and determined that the lessee may not be in full compliance with the requirements of other permitting agencies as required under Item E of the lease list of terms, conditions, and covenants (Exhibit 3). DFW has notified Mr. Friend of these concerns and advised that these must be rectified to its satisfaction before DFW will recommend renewal of lease M-430-04, or recommend action on other pending lease requests before FGC (Exhibit 3). In order for FGC to make its decision regarding renewal of the lease, DFW will need to complete a final review of the lease and lease renewal request and evaluate the proposed project for California Environmental Quality Act compliance.

Significant Public Comments

1. Mr. Charles (Tod) Friend has submitted documentation of efforts over the past two years to come into compliance with other permitting agencies; these efforts are ongoing (Exhibit 4).

Recommendation

FGC staff: Approve a one year extension of the existing lease, per DFW recommendation; request that lessee provide DFW with documentation of full compliance with all permitting agencies before DFW final review and FGC consideration of lease renewal.

DFW: Extend existing lease for period of one year to allow for continued operation of the lease area, and consider renewal once lessor has been determined to be in good standing with other permitting agencies.

Exhibits

STAFF SUMMARY FOR FEBRUARY 10-11, 2016

1. [State Water Bottom Lease No. M-430-04 and amendments](#)
2. [Charles Friend Oyster Co. request for lease renewal, dated Jan 26, 2015](#)
3. [DFW memo and attachment, dated Jan 13, 2016](#)
4. [Documentation from Mr. Friend on compliance efforts, received Jan 27, 2016](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves a one year extension of lease No. M-430-04 under existing terms and conditions, and will consider renewal once compliance with all other permitting agencies has been substantiated by DFW.

**TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE
LEASE NO. M-430-04**

This amendment of aquaculture lease made and entered into as of the 1st day of January 1993, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "lessor", and Bay Bottom Beds Inc., hereinafter referred to as "Lessee".

W I T N E S S E T H:

WHEREAS, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Inc.) for the purpose of cultivating oysters, mussels and clams, and

WHEREAS, Lessee has heretofore informed Lessor that the partnership has been dissolved and the partners have requested that the water bottom acreage contained in said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels, and

WHEREAS, Lessor has requested at a duly called and noticed hearing of the Fish and Game Commission of the State of California, that the partition and redescription of said lease would be in the best interest of the State of California.

NOW, THEREFORE, THIS AMENDMENT WITNESSETH:

That, in accordance with a request for partition of said lease made by Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain tidelands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North Latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographic map; thence North 83°31' West for a distance of 2,749.3 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2,128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence N 46°50'24" E 1,028.82 feet; thence N 35°53'07" W 539.10 feet; thence N 29°23'42" E 655.05 feet; thence N 59°41'17" W 670.79 feet; thence S 58°38'08"

W 2,190.75 feet; thence S 51°18'13" E 1078.38 feet; thence N 39°32'12" E 357.16 feet; to the true point of beginning.

This parcel of water bottoms, formerly a portion of Aquaculture Lease No. M-430-17, containing an area of 61.9± acres, more or less, comprises Aquaculture Lease No. M-430-04. (Appendices 1 & 2).

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (Crassostrea gigas), Sumino oyster (C. rivularis), Eastern oyster (C. virginica), flat oyster (Ostrea edulis), Native oyster (O. lurida), Manila clam (Tapes japonica), California sea mussel (Mytilus californianus), and bay mussel (M. edulis), in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be long lines, rafts, stakes, racks and bags, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

The required ten (10) day notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game, Marine Resources Division, 1136 Duer Road, Sebastopol, CA 95473. In addition to the ten (10) day notice, the Marine Unit Manager, Mr. Thomas Moore, telephone (707) 823-9236, shall be given notice at least 24 hours prior to the date of planting, giving details on where the shellfish seed can be inspected.

This amended lease falls within the authorized term of the initial lease of twenty-five (25) years which commenced on the 1st day of March, 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051 and 15406.7. Said annual rental will be payable to Lessor on a fiscal year basis, July 1 - June 30, and within thirty (30) days of the commencement of the lease, or after receipt of the consummated lease agreement. If said annual rental is not paid within sixty

(60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of his obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said rent to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

Lessee expressly recognizes and acknowledges that any payments by Lessee as provided for herein, are subject to the provisions of Fish and Game Code Section 15410, which provides that all leases shall be subject to the power of the Legislature to increase or decrease the rents, fees, taxes, and other charges relating to the lease, but no increase in rent shall be applicable to an existing lease until it is renewed.

This lease is made upon the following terms, conditions and covenants, to wit:

A. This lease may, at the option of the Lessee, be renewed for additional periods not to exceed 25 years each. If Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission.

B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414, on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10th day of each month, for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment, and all books at any time and records of Lessee pertaining to Lessee's cultivation on the leased premises.

C. In order to provide assurance to Lessor that this aquaculture lease is utilized for the purpose stated in the lease application, the lease shall be improved at no less than the minimum rate established by Commission regulations (Appendix 3). This annual rate of planting for shellfish shall be:

Off-bottom culture: 309,500 single seed less than 1 year old
(@ 5,000/acre) or 61.9 cases (@ 80 lbs.
shellstock/case) of seed-bearing shell.

The term of improvement for this lease shall be two years, with the minimum rate of planting for the entire acreage being reached by July 1, 1994. The minimum annual rate of planting for the entire acreage will be maintained thereafter until the end of the lease.

The minimum annual harvest requirement for the lease will be an average of 123,800 (@ 2,000/acre) oysters, clams or other shellfish, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option period. Lessor may declare this lease terminated if Lessee fails to meet these cultivation and harvesting requirements and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.

D. If, at any time subsequent to the beginning date of this lease, the use of cultural devices authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7¹², 1989 (Appendix 3⁴). Such money shall be deposited over a two-year period, payable one-half upon entering upon the lease, and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal for each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures, or otherwise clean, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up, leaving the secured amount whole.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California (Addendum 1), hereby attached to and made part of this agreement, a total of four hundred forty-nine dollars and fifty cents (\$449.50), a sum proportional to Lessee's total lease acreage of sixty-one and nine-tenths (61.9) acres. This amount equals one-half of the amount, eight hundred ninety-nine dollars (\$899.00), deposited in the "Tomales Bay Escrow Account" by the former partnership (Shellfish Unlimited).

E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to, State Water Resources Control Board, U.S. Coast Guard, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.

F. Lessee recognizes and understands in accepting this lease, that its interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due to the Lessor hereunder, and any such tax shall be the liability of, and be paid by, Lessee.

G. Any modification of natural or existing features of the real property described in this lease, which is not consistent with the authorized uses under this lease, is expressly prohibited without prior written consent of the Lessor.

H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Resources Division Office, 1136 Duer Road, Sebastopol, CA 95473, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated

species comprising each planting, including a diagram showing area, amounts, and dates planted. Such declaration shall be submitted on or before July 15 of each year for the previous year, July 1 - June 30, inclusive.

I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Fish and Game Code Section 15101. Lessee agrees not to commit, suffer or permit any waste on said premises, or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term thereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.

J. This lease of State water bottom only grants Lessee the exclusive right to cultivate and harvest the specified species of oysters, mussels, and clams authorized in the original lease agreement.

K. The lease shall be clearly marked with buoys or stakes to prevent interference with boating or fishing activities that may take place in the area. Minimum marking of the lease shall include: One (1) buoy or stake on each of the four corners of the lease. All buoys or stakes used to define the boundaries of the lease shall be marked in conformance with the International Association of Lighthouse Authorities Maritime Buoyage System regulations (33 CFR sections 62.33 and 66.01-10). Lessee shall make application at the U.S. Coast Guard, Aids to Navigation Branch, 400 Ocean Gate, Long Beach, CA 90822, for approval of the buoys and stakes to be established on this lease. Each buoy or stake shall be set and maintained to extend at least three (3) feet above the surface of the water at mean-higher high water. All buoys or stakes shall bear the Aquaculture Lease No. M-430-04.

If buoys or stakes used to mark this lease are lost, displaced or otherwise removed from the lease area, they must be replaced within a two-week period, weather conditions permitting, or the lease may be subject to abandonment proceedings.

L. In compliance with sections 1,2, and 3 of the Policy, Awarding of Tomales Bay Aquaculture Leases, adopted by the Fish and Game Commission at its meeting on January 12, 1989 (Appendix 3), Lessee agrees to cooperate with the Lessor in the monitoring of the health of eel grass beds located on the lease and in conducting a study to gather baseline sedimentation data on eel grass beds lying within the lease boundary. Lessee further agrees to participate with the Lessor in the design, implementation, and operation of a study to collect baseline information on sedimentation occurring within the leasehold during the period

July 1, 1990 and June 30, 1994, and the monitoring of wintering shorebirds during the period November 1 to February 28 each year, adequate to measure any population or use changes due to lease operations.

If any of the environmental monitoring programs discussed above indicate, or any other reliable information leads the Lessor to conclude that Lessee's aquaculture operation is directly associated with a significant adverse change in the Tomales Bay ecosystem, Lessor shall notify the Executive Director of the Fish and Game Commission and the Lessee of such findings. Upon receipt of notice, Lessee shall take all necessary steps to modify, relocate or discontinue the operation in accordance with the Lessor's advice, unless Lessee demonstrates that its aquaculture operations are not a substantial factor, directly or cumulatively, causing the adverse environmental change. Failure to promptly respond shall be grounds for termination of the lease.

M. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulations of the Fish and Game Commission, in particular Fish and Game Code sections 15400-15415, inclusive, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation enacted in the future, the latter will control.

N. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated, or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.

O. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within 60 days after notice in writing, shall cause this lease to thereupon cease and terminate.

P. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

Q. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Lessee

LISA JANG
Bay Bottom Beds Inc
966 Borden Villa Dr. #103
Santa Rosa, CA 95401

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

R. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: Robert R Treman

By: Dawn Christel
Lessor

BAY BOTTOM BEDS CO. INC.

By: Lisa Jang
Lessee

By: _____

ALL-PURPOSE ACKNOWLEDGMENT

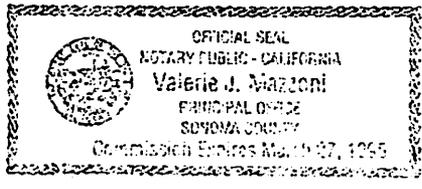
No. 5179

State of California
County of Sonoma

On 02/18/93 before me, Valerie J. Mazzoni Notary Public
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared Lisa Jang
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.
Valerie J. Mazzoni
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S) Sec. Treasurer TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Te Lease of State Water Bottom
Number of Pages 15 Date of Document 01/01/93
Signer(s) Other than Named Above None

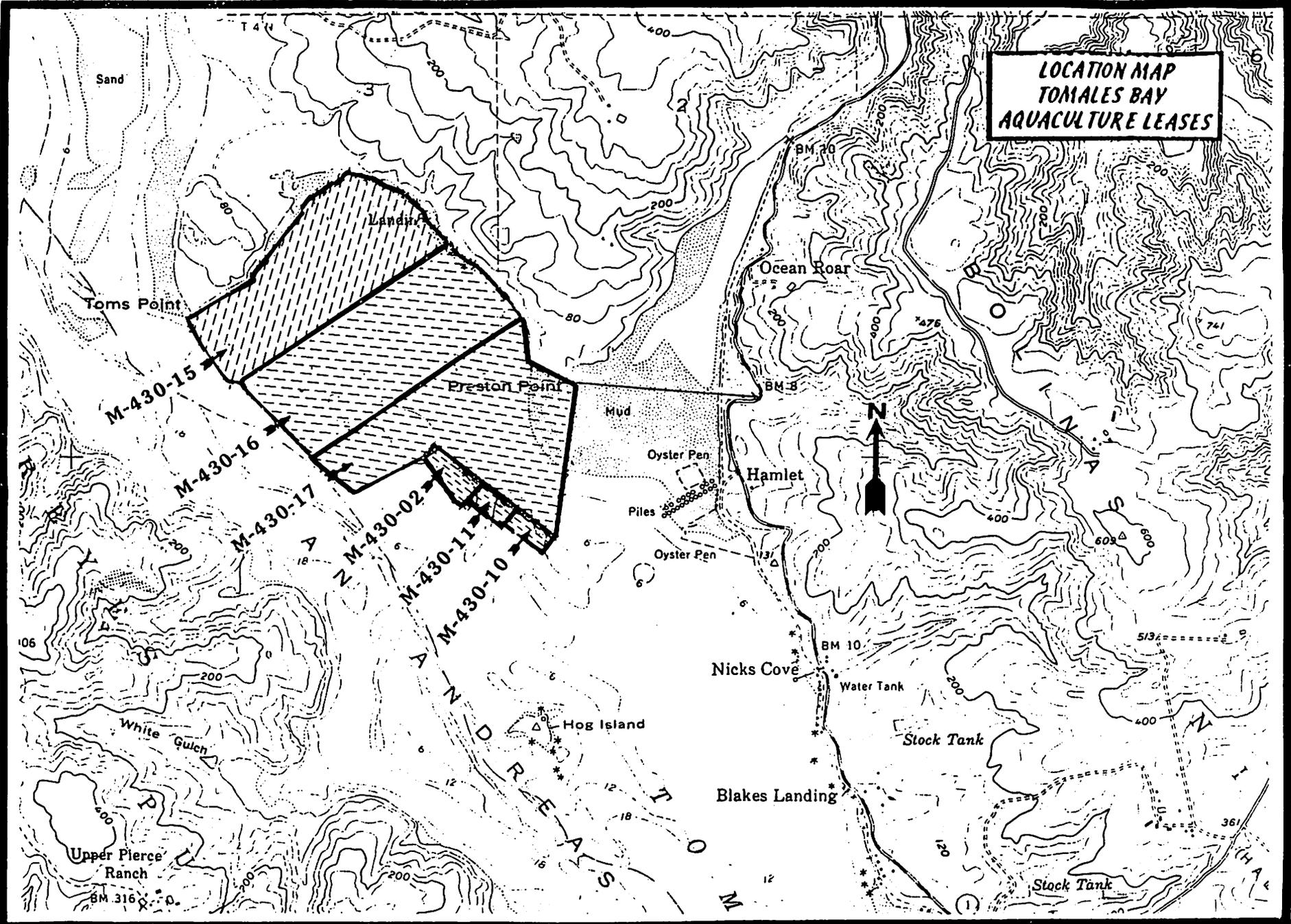
ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND

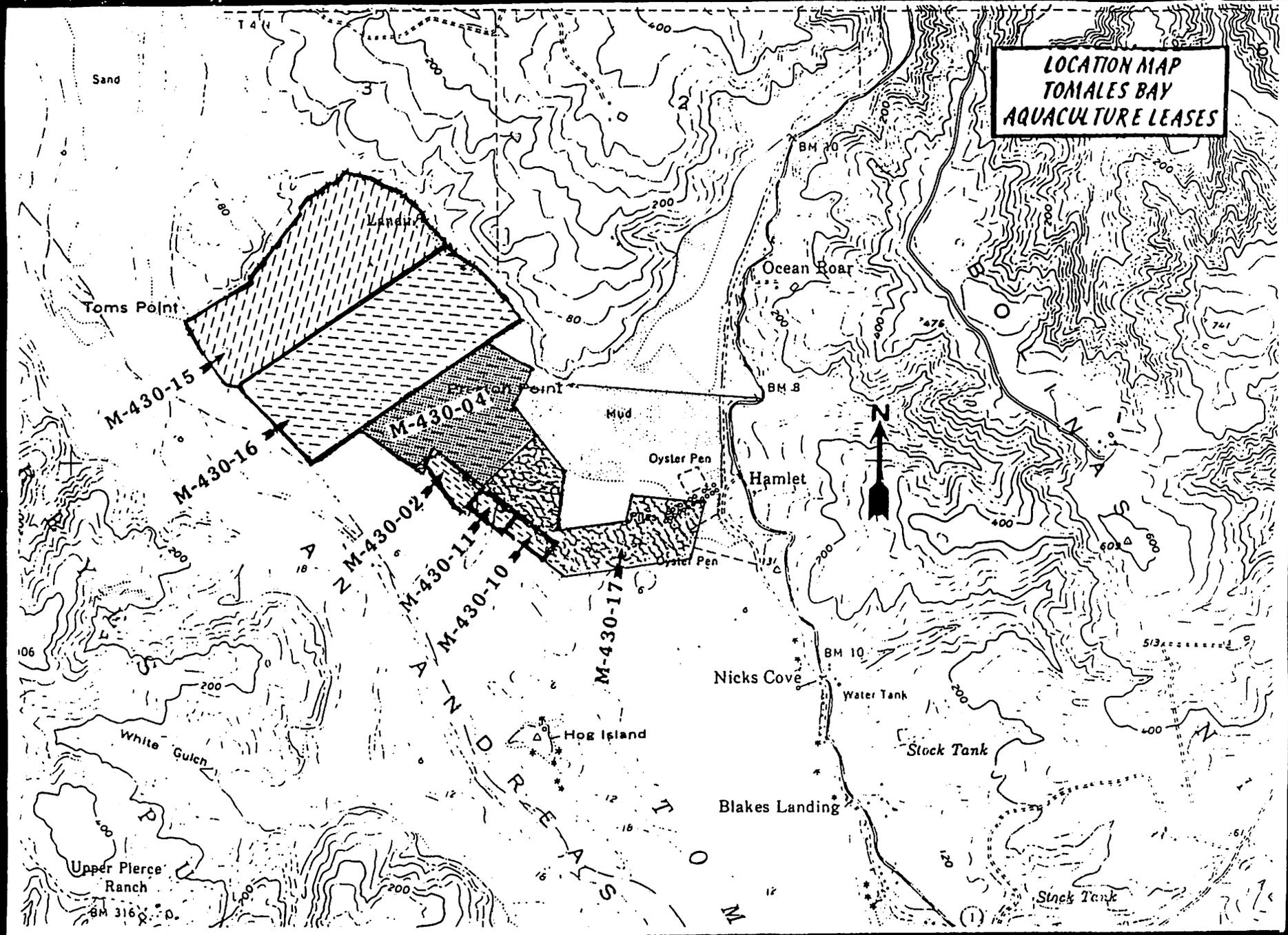
BAY BOTTOM BEDS COMPANY

NONDISCRIMINATION CLAUSE

(OCP - 1)

1. During the performance of this contract, contractor* and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
- * All references to "contractor" shall be deemed to be Lessee.





ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND
SHELLFISH UNLIMITED
ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASES
TOMALES BAY, CALIFORNIA

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of March, 1991, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Shellfish Unlimited, hereinafter referred to as "Lessee", and Tomales Bay shellfish Growers Association, a California Nonprofit Corporation now forming, hereinafter referred to as the "Association."

Lessee has entered into an aquaculture lease this 1st day of March, 1991, for the lease of State water bottoms situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-17.

This Escrow Agreement is subject to Lease No. M-430-17 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$899.00, which funds will consist of the following:

- (a) \$449.50 deposited upon entering upon the lease;
- (b) \$449.50 deposited upon the first anniversary of such inception date.

In the event that Lessor fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. Mr. F. Robert Studdert shall act as Escrow Agent and shall place the escrow deposits in an interest-bearing account in the West America Bank, North Gate Branch, at San Rafael, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Association shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Association and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Association and may be withdrawn by the Association at any time for distribution to its members without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Association. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements, Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days, of the abandoned lease and Lessor shall not resort to the escrow security;
- (b) Lessor shall appropriate and apply any portion of the escrow security as may be reasonably necessary to fund the cleanup;

(c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Association shall hold Escrow Agent harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Association:

TOMALES BAY SHELLFISH GROWERS
ASSOCIATION
P. O. Box 829
Marshall, CA 94940

To the Escrow Agent:

F. ROBERT STUDDERT
36 Professional Center Parkway
San Rafael, CA 94903

To the Lessee:

Lisa Jang
SHELLFISH UNLIMITED
966 Borden Villa Drive, #103
Santa Rosa, CA 95401

16. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR: Karyn A. Meyer
Acting Asst. Director, Admin.

ASSOCIATION: _____

LESSEE: Lisa Jang
Martin J. Jang

INDIVIDUAL ACKNOWLEDGMENT

NO. 201

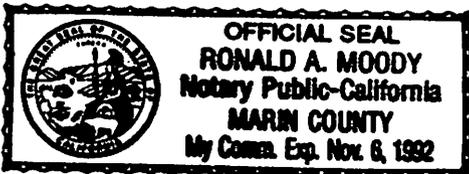
State of Calif.
County of Marina } SS.

On this the 4 day of February 1991, before me,

Ronald A. Moody
the undersigned Notary Public, personally appeared

Martin J. Jang

personally known to me
 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) he subscribed to the within instrument, and acknowledged that he executed it. WITNESS my hand and official seal.



Ronald A. Moody
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document lease of state water M-430-17
Number of Pages 13 Date of Document signed 2-4-91
Signer(s) Other Than Named Above _____

**AMENDMENT NO. 1
TO
INDENTURE OF LEASE**

This amendment of Aquaculture Lease made and entered into as of the 1st day of April 1996, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Incorporated, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Incorporated) for the purpose of cultivating oysters, mussels and clams, and

WHEREAS, on December 4, 1992 The Fish and Game Commission approved dissolution of the partnership and decreed that said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels and

WHEREAS, on February 5, 1993 the Fish and Game Commission of the State of California approved the reconfiguration and redescription of said 61.9 acre parcels to eliminate non-productive areas, and

WHEREAS, The Fish and Game Commission at its meeting on October 7, 1994 adopted new administrative procedures to standardize annual proof-of-use reporting and the rental period for aquaculture leaseholds, and approved revision of the Escrow Agreement for Cleanup of Aquaculture Leases in Tomales Bay (Addendum 1), and determined that the amendment of this aquaculture agreement would be in the best interest of the State.

NOW THEREFORE, THIS AMENDMENT WITNESSETH:

That, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes and subject to covenants, terms, conditions, reservations, restrictions and limitations as are set forth herein.

This amended lease falls within the authorized term of the initial lease, twenty-five (25) years, which commenced on the 1st day of March 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051, 18406.5, and 15406.7. Beginning January 1, 1997, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 – December 31. The next annual rental fee will be due July 1, 1996, and will cover the period July 1, 1996 to December 31,

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: _____

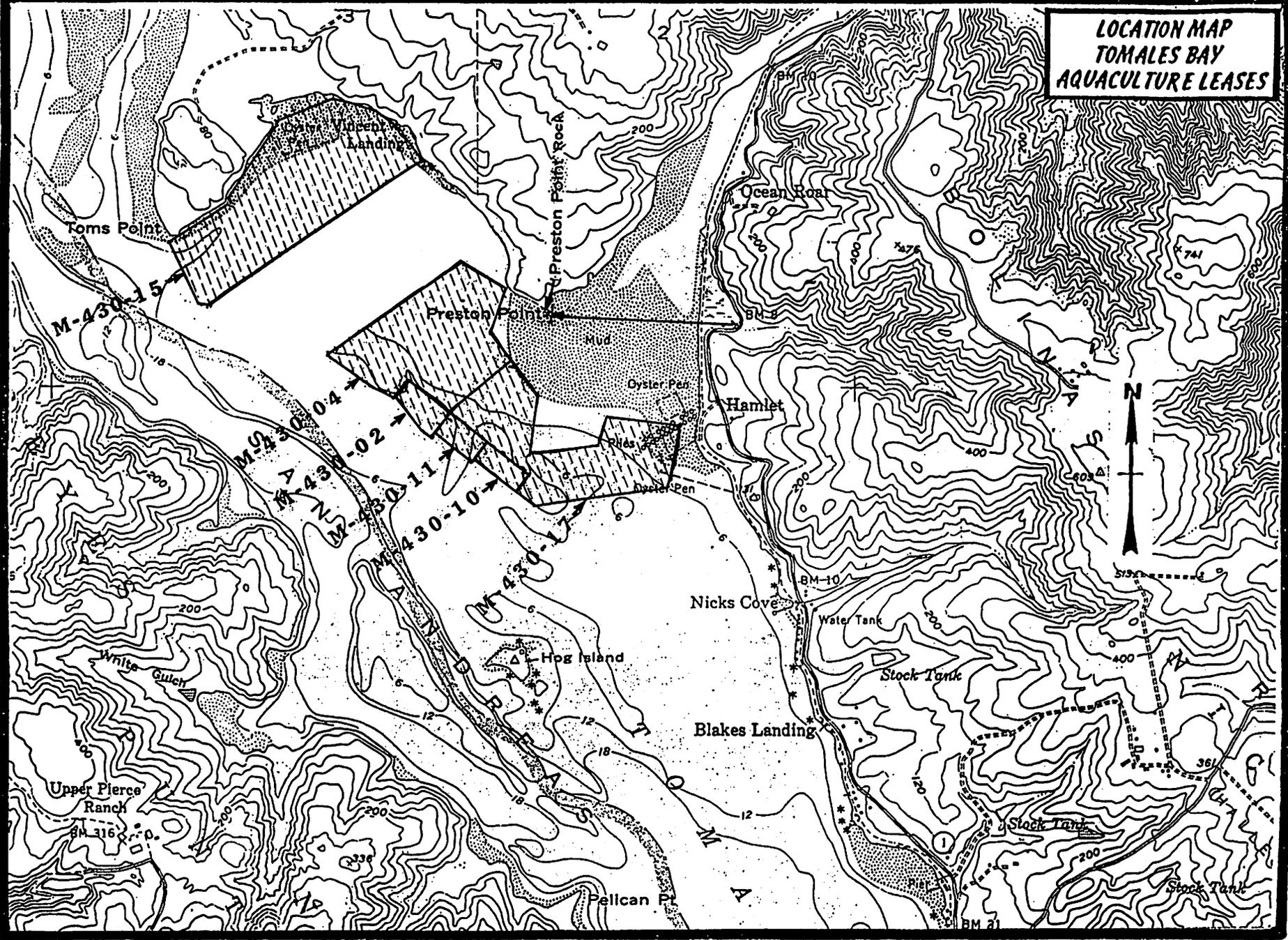
By: _____

BAY BOTTOM BEDS INCORPORATED

By: _____

By: _____

LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES



**ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND
BAY BOTTOM BEDS COMPANY
ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASES
TOMALES BAY, CALIFORNIA**

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of April 1996, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Company hereinafter referred to as "Lessee", and California Aquaculture Association a California Nonprofit Corporation, hereinafter referred to as the "Association."

Lessee has entered into an agreement for the lease of State water bottoms for aquaculture situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-04.

This Escrow Agreement is subject to Lease No. M-430-04 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$450.00, which funds will consist of the following:

- (a) \$225.00 deposited upon entering upon the lease;
- (b) \$225.00 deposited upon the first anniversary of such inception date.

In the event that Lessee fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. The Treasurer of the California Aquaculture Association shall act as Escrow Agent for Lessees who are association members in good standing and shall place the escrow deposits in an interest-bearing account in the Union Bank Branch, at Brawley, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate

account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Tomales Bay Lessees contributing to the "Tomales Bay Cleanup Fund" shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Tomales Bay Lessees and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Tomales Bay Lessees and may be withdrawn by the Escrow Agent at any time for distribution to Association members, who are Tomales Bay Lessees, without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Tomales Bay Lessees. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by

Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements; Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days of written notification from Lessor that said lease is abandoned, and Lessor shall not resort to the escrow security account.
- (b) Lessor, after sixty days have elapsed, as defined in paragraph 11(a), may appropriate and apply any portion of the escrow security account as may be reasonably necessary to fund the cleanup;
- (c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Tomales Bay Lessees shall hold Escrow Agent and Association harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. In the event that any legal action is pursued in relation to this Escrow Agreement, the parties hereby agree to pay their own attorney's fees and legal costs regardless of who prevails.

16. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:	DEPARTMENT OF FISH AND GAME 1416 Ninth Street Sacramento, California 95814
To the Association:	CALIFORNIA AQUACULTURE ASSOCIATION P. O. Box 1004 Niland, California 92257
To the Escrow Agent:	THE TREASURER CALIFORNIA AQUACULTURE ASSOCIATION P. O. Box 1004 Niland, California 92257
To the Lessee:	BAY BOTTOM BEDS, INC. 966 Borden Villa Drive, #103 Santa Rosa, California 95401-4401

17. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR: _____

ASSOCIATION: _____

LESSEE: _____

COMMISSIONERS
Richard T. Thieriot, President
San Francisco
Michael Chrisman, Vice President
Visalia
Douglas B. McGeoghegan
Maxwell

GRAY DAVIS
Governor



ROBERT R. TREANOR
EXECUTIVE DIRECTOR
1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
(916) 653-5040 Fax

STATE OF CALIFORNIA

Fish and Game Commission

October 14, 1999

Mr. Charles Friend
180 Montecito Avenue, #104
Oakland, California 94610

Dear Mr. Friend:

The Commission, at its October 8, 1999, meeting in Redding, approved the request of Bay Bottom Beds for authorization to transfer title of its State Water Bottom Lease (M-430-04), Tomales Bay, to you. The Department of Fish and Game will be completing the new lease agreement and sending it to you for your signature in the near future.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert R. Treanor".

Robert R. Treanor
Executive Director

cc: LB Boydston, Intergovernmental Affairs Office
Marine Region - Monterey
Bob Hulbrock, Aquaculture Coordinator
Fred Wendell, Marine Region - Morro Bay
Lisa Jang, Bay Bottom Beds

AMENDMENT NO. 2
TO
INDENTURE OF LEASE

This amendment of Aquaculture Lease is made and entered into as of the 8th day of October 1999, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Charles Friend, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, on February 5, 1993, Bay Bottom Beds, Incorporated did gain the exclusive privilege of cultivating specified shellfish on Lease M-430-04 created through the partition, reconfiguration and redescription of one-half of lease M-430-17, and

WHEREAS, Bay Bottom Beds, Incorporated applied to the Fish and Game Commission for authority to transfer title of Bay Bottom Bed's State Water Bottom Lease (M-430-04), Tomales Bay, to Charles Friend, and

WHEREAS, the Fish and Game Commission at its meeting on October 8, 1999, authorized the transfer of title from Bay Bottom Bed, Incorporated to Charles Friend;

NOW, THEREFORE, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes, and subject to the additional covenants, terms, conditions, reservations, restrictions, and limitations as are set forth herein, and does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain lands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographical map; thence North 83°31' West for a distance of 2749.30 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence North 46°50'24" East 1028.82 feet; thence North 35°53'07" West 539.10

feet; thence North 29°23'42" East 655.05 feet; thence North 59°41'17" West 670.79; thence South 58°38'08" West 2190.75 feet; thence South 51°18'13" East 1078.38 feet; thence North 39°32'12" East 357.16 feet; to the true point of beginning

This parcel of water bottoms, containing an area of 61.9 acres more or less, comprises Aquaculture Lease No. M-430-04

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (*Crassostrea gigas*), Sumino oyster (*C. rivularis*), Eastern oyster (*C. virginica*), flat oyster (*Ostrea edulis*), Native oyster (*O. lurida*), Manila clam (*Tapes japonica*), California sea mussel (*Mytilus californianus*), and bay mussel, (*Mytilus edulis*) in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be longlines, rafts, stakes, rack and bag, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

This lease is made upon the following additional terms, conditions, and covenants, to wit:

D. If, at any time subsequent to the beginning date of this lease, the use of culture devices authorized herein shall fall into a state of disrepair, or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Cleanup of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage

bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7, 1989. Such money shall be deposited over a two-year period payable one-half upon entering upon the lease and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines, that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal of each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay. Since Bay Bottom Beds, Incorporated transferred their interest under the lease with the approval of the California Fish and Game Commission, the Escrow Agent shall transfer such escrow deposit to the successor in interest, Charles Friend, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove the growing structures, or otherwise clean up the lease, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up leaving the secured amount whole.

P. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

To the Lessee

CHARLES FRIEND
180 MONTECITO AVE. #104
OAKLAND, CALIFORNIA 94610

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Q. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

R. The lease does not imply that any guarantee is given that shellfish may be grown and harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.

Lessee must recognize that compliance by certified shellfish harvesters with the conditions and procedures set forth in the Department of Health Service's current "Management Plan for Commercial Shellfishing in Tomales Bay, California and in the current "Contingency Plan for Marine Biotoxins in California Shellfish" is mandatory. These conditions and procedures establish classifications for certification to harvest shellfish (oyster, mussels and clams) and establish rainfall closure rules which may delay or prevent harvesting of cultured organisms from this lease and are a condition of the Shellfish Growing Area Certificate .

S. The Nondiscrimination Clause (OCP-1) identified as item P in the original terms, conditions, and covenants is hereby relocated as item S for clarity between amendments.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written

APPROVED:

FISH AND GAME COMMISSION

By: _____

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: _____
Lessor

CHARLES FRIEND

By: _____
Lessee

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2015 JAN 26 PM 1:44

MLS

Mr. Sonke Mastrup
Executive Director
California Fish and Game Commission
P.O.Box 944209
Sacramento, CA 94244-2090

From: Charles (Tod) Friend
Charles Friend Oyster Company
180 Montecito Ave. #104
Oakland, CA 94610, (510) 406-0006

January 20, 2015

Subject: Request for renewal of F&G Commission lease M-430-04

Dear Mr. Mastrup:

I write today to formally request that the California Fish & Game Commission consider the renewal of their lease M-430-04 located on Tomales Bay, West Marin, California to Charles Friend and the Charles Friend Oyster Company. Charles Friend is presently the 'Lessee' as per "Amendment No.2 to Indenture of Lease", entered into as of the 8th day of October 1999, and before The Commission.

Please advise me at your earliest convenience as to any further Notice required of me to the Commission itself, other Departments or parties prior to the Commission's consideration of this Renewal request.

Sincerely,

Charles Friend



1/20/15

State of California
Department of Fish and Wildlife

Memorandum

Date: January 13, 2016

To: Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: Agenda Item for the February 10-11, 2016, Fish and Game Commission Meeting Regarding Proposed Renewal of State Water Bottom Lease, M-430-04, and Proposed Amendment and Sublease of State Water Bottom Lease, M-430-05, Tomales Bay Oyster Company, Tomales Bay, Marin

The Department of Fish and Wildlife (Department) is providing the following comments in regard to three requests by Mr. Charles Friend, Tomales Bay Oyster Company, for Fish and Game Commission (Commission) approval to: (1) renew state water bottom lease M-430-04; (2) amend state water bottom lease M-430-05; (3) and sublease state water bottom lease M-430-05.

During the Department's review of the above requests, it came to our attention that Mr. Friend is not currently in good standing with the Department and other regulatory agencies regarding his aquaculture operations. The specific areas of concern include the construction of several non-permitted fence and berm structures within intertidal mudflats and a subtidal channel on lease M-430-04 and the unauthorized placement of shell material onto the intertidal mudflat area near the Tomales Bay Oyster Company retail facility, adjacent to lease M-430-05.

The Department does not support any of the proposed lease requests until Mr. Friend has addressed the permitting and permit compliance issues associated with his two leases. The Department will consider the requests to renew lease M-430-04, and amend and sublease lease M-430-05 when Mr. Friend is able to demonstrate that he is in full permit compliance with all regulatory agencies. However, lease M-430-04 is scheduled to expire on February 29, 2016. Thus, to prevent lease expiration, the Department recommends a one-year extension for lease M-430-04 while Mr. Friend works through the permitting process with the appropriate regulatory agencies and is able to demonstrate full compliance.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager of the Department's Marine Region, at (805) 568-1246.

Attachment

ec: Craig Shuman, D.Env., Regional Manager
Marine Region (7)
Craig.Shuman@wildlife.ca.gov

Fish and Game Commission
January 13, 2016
Page 2

Kirsten Ramey, Senior Environmental
Scientist Supervisor
Marine Region (7)
Kirsten.Ramey@wildlife.ca.gov

Randy Lovell, State Aquaculture
Coordinator
Randy.Lovell@wildlife.ca.gov



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 7, 2016

Mr. Charles Friend
Tomales Bay Oyster Company
180 Montecito Avenue, #104
Oakland, CA 94610

Dear Mr. Friend:

The Department of Fish and Wildlife (Department) has reviewed your requests to: 1) sublease State Water Bottom Lease M-430-05, received at the Fish and Game Commission (Commission) on June 24, 2015; 2) renew State Water Bottom Lease M-430-04, received at the Commission on August 4, 2015; and 3) to amend State Water Bottom Lease M-430-05, received at the Commission on October 7, 2015.

The current lease agreements for M-430-04 and M-430-05 state: “Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any government agency having authority by law, including but not limited to State Water Resources Control Board, State Coastal Commission, State Lands Commission, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.”

A number of incidents have come to the Department’s attention that indicates you are not currently in good standing with other regulatory agencies. Most recently these incidents include the construction of several non-permitted fence and berm structures within intertidal mudflats and a subtidal channel near the mouth of Walker Creek on lease M-430-04 and the unauthorized placement of shell material onto the intertidal mudflat area near the pier at the Tomales Bay Oyster Company retail facility, adjacent to lease M-430-05.

The Department is unable to support any of your lease requests until you have addressed the permitting and permit compliance issues associated with your two leases. Therefore, the Department strongly encourages you to attend the February 10-11, 2016, Fish and Game Commission (Commission) meeting in Sacramento and be prepared to show proof of a good faith effort to remove and resolve the aforementioned unauthorized fence and berm structures as well as proof of your efforts to come into compliance with all government agencies having oversight of your operation. These agencies include, but are not limited to, the California Coastal Commission, U.S. Army Corps of Engineers, and the Regional Water Quality Control Board.

Conserving California’s Wildlife Since 1870

Mr. Charles Friend
January 6, 2016
Page 2

To prevent lease expiration, the Department will be recommending a one-year extension at the February Commission meeting for lease M-430-04. However, the Department will only consider your requests to renew lease M-430-04, and amend and sublease lease M-430-05 once you are in full permit compliance with all other regulatory agencies. If you have any questions, please contact Kirsten Ramey, Marine Region Aquaculture Coordinator, California Department of Fish and Wildlife, 619 2nd Street, Eureka, California, 95501, phone (707) 445-5365, or email Kirsten.Ramey@wildlife.ca.gov.

Sincerely,



Craig Shuman, D. Env.
Regional Manager

ec: Tom Barnes, Program Manager
Department of Fish and Wildlife
Tom.Barnes@wildlife.ca.gov

Randy Lovell, State Aquaculture Coordinator
Department of Fish and Wildlife
Randy.Lovell@wildlife.ca.gov

Kirsten Ramey, Senior Environmental Scientist Supervisor
Department of Fish and Wildlife
Kirsten.Ramey@wildlife.ca.gov

Acting Executive Director
Fish and Game Commission
FGC@fgc.ca.gov

From: Charles Friend
To: [Ashcraft, Susan@EGC](mailto:Ashcraft,Susan@EGC)
Subject: TBOC and CCC
Date: Wednesday, January 27, 2016 3:11:27 PM
Attachments: [TBO_1.pdf](#)

Susan:

I am scanning the record of correspondence (with maps) between TBOC and Coastal Commission (Separate scans due to size of document).

It represents the state of play between 'Coastal' and TBOC.
This is for the record.

My Team argues that we are "vested" and do not need a development permit from Coastal for M-430-05. There are side issues, but this is the crux.

We are renewing our initiative with Coastal to reengage in the discussion and proceed with the permitting we can do together and try to answer the larger question of the Coastal Development Permit at the same time.

This 'overlarge' scan is for the record and perhaps the Commissioners or some of staff would care to examine it.

On M-430-04 I do have a Coastal Development Permit, under the name of Charles Friend Oyster Company Inc.

Under separate cover I am mailing copies of a study conducted for us by an independent party tracing the history of TBOC and relationship with Fish and Game Commission.

I have applied for Army Corp Permit and have asked for Army Corp letter confirming. The prior permits are lapsed.

Sorry for the big load here...

Sincerely

Tod Friend TBOC

From: Charles Friend
Sent: Thursday, January 28, 2016 3:41 PMT
To: Ashcraft, Susan@FGC
Subject: Re: TBOC and CCC

Susan:

What I had in mind was that the Commissioners have the materials in hand even if they are not likely to study them. The materials, even unexamined, still represent TBOC's effort to engage, and at minimum, exchange communications with Coastal over the last two and half years regarding a Coastal Development Permit i.e. "Proof of our efforts to come into compliance" (Dr. Shuman). Want the Commissioners to conclude that TBOC has not been sitting on its hands these past two years.

Letters from Cassidy at Coastal thanking us for our efforts completing the removal of the berm (and NOAA) and fence...would be emails I would hope the Commissioners would look at prior to hearing, as well as the CDP for M-430-04 going back to 2002. also, a CCC Administrative Permit authorizing the removal of the fence and berm on M-430-04, as well as a permit from NOAA for the same.

I also have a Use Permit from Marin Co. from 1987 authorizing 'returning the shucked oyster shell to the oyster cultivating area', on Lease M-430-05. Our having placed some shell next to our pier was something Dr. Shuman pointed to in his letter.

Finally, the "Summary Report" on the history of TBOC clears up the confusion CCC was under about TBOC responsibilities for Golden Gate Oyster Co. M-430-07 activities on that FGC lease. The history of FGC and TBOC is outlined in the Summary Report and I would like the study to be made part of the record. Six copies of this report will arrive in your office on Monday. It is long and detailed, but well done.

Didn't intend to be so wordy. I do apologize. Would be tasteful if the Ansel Adams Photo was on the cover of the Summary but I only acquired the photo today. Would appreciate any suggestions you might have with regard to all of this.

thanks for your note

Best

Tod at TBOC

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7. 1/29/2015 Answer TBOC ii
8. 5/01/2015 CCC response
9. 5/2015 TBOC
10. 6/17/2015 Warren response
11. 6/26/15 Prows answer
12. 8/06/2015 Warren CCC
13. 10/02/2015 Ginsberg/Shell

Tab 1

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8555

November 23, 1987

Tomales Bay Shellfish Farms, Inc.
P.O. Box 296
Pt. Reyes Station, CA 94956

RECEIVED
 1987 NOV 30 P 4:56
 DISTRICT OFFICE
 SAN FRANCISCO

WAIVER OF PERMIT REQUIREMENTS

RE: 1-87-177W

Dear Tomales Bay Shellfish Farms, Inc.

Regarding your proposal for the construction of a 400 sq.ft. oyster packing shed,
replacement of an existing 182 sq.ft. refrigeration unit with a new 1.0 sq.ft. unit;
replacement and renovation of existing oyster holding tanks, and legalization of an
existing dock that was renovated and expanded in size by 540 sq.ft. without the benefit
of approved permits located at 15479 State Route 1, Marshall, Marin County,
APN: 119-060-01.

the Executive Director of this Commission waives the requirement for a coastal
permit for this development pursuant to Section 13250(c) of the Commission
regulations, and per plans submitted on file at the District Office.

This waiver is effective as of November 20, 1987.

Please call this office if you have any questions.

Very truly yours,

Gary L. Holloway

Gary L. Holloway

Coastal Program Analyst

TAB 2

CALIFORNIA COASTAL COMMISSION

48 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE (415) 904-5 200
FAX (415) 904-5 400
TDD (415) 597-5885



SENT BY REGULAR AND CERTIFIED MAIL
Certification No. 7006 2760 0005 5883 2933

April 24, 2014

Scott Hochstrasser
IPA, Inc.
141 Bolinas Road
Fairfax, CA 94930

Coastal Act Violation File No: **V-7-14-001 (Tomales Bay Oyster Company)**

Location: 15479 State Route One, Marshall, Marin County,
APN 119-060-33; Oyster Allotment Area M-430-05

Alleged violation description: Non-compliance with CDP 2-82-38 and CDP Waiver 1-87-177-W; unpermitted expansion of the existing shellfish operation; unpermitted vegetation clearing, grading, paving, installation of rock, and placement of a revetment.

Dear Mr. Hochstrasser:

As we discussed during our telephone conversations of February 10, February 24, and April 21 of 2014, I am writing concerning alleged Coastal Act violations at the Tomales Bay Oyster Company (TBOC) shellfish operation in Marshall, Marin County. These alleged violations are located both onshore and offshore at or adjacent to 15479 State Route 1 in Marshall on property owned or leased by TBOC, the owners of which you represent in the matter of pending permit applications before Marin County (Use Permit Amendment 14-1, Design Review Amendment 14-12, and Tidelands Permit Amendment 14-2). In addition, there are alleged Coastal Act violations on an adjacent parcel owned by the National Park Service (NPS). You have indicated that you will also be representing the property owners concerning the alleged Coastal Act violations at or adjacent to their Tomales Bay Oyster Company facility and that the owners are interested in seeking resolution to these alleged violations. We are very pleased to be working cooperatively

with you and the County to resolve any outstanding Coastal Act violations associated with the Tomales Bay Oyster Company's operation. This letter is intended to set the groundwork for a resolution and to provide background on the Coastal Act issues that might be helpful to that end.

There are various areas of concern, which I will discuss separately. First, I will provide some background regulatory information.

1. Permit History. In 1981 Golden Gate Oyster Company (GGOC) obtained from the California Department of Fish and Wildlife (then Fish and Game) an allotment of State water bottoms in Tomales Bay of approximately 100 acres consisting of three submerged parcels together comprising Oyster Allotment Number M-430-07. (According to California Department of Fish and Wildlife records, this allotment, M-430-07, was declared abandoned in 1994 and therefore no longer exists.) The allotment was for the purpose of culturing giant Pacific oysters and European flat oysters, authorizing cultivation of oysters using rafts, racks, and trays. The allotment was for a term of 25 years, ending March 4, 2007. This operation also received approval by the U.S. Army Corps of Engineers (Army Corps), the California Department of Health Services, the California Regional Water Quality Control Board (RWQCB), and the Marin County Department of Public Works, who issued a Tidelands Permit in 1982 (Tidelands Permit 82-04).

On November 16, 1982, Golden Gate Oyster Company (GGOC) was granted by the Coastal Commission (Commission) Coastal Development Permit (CDP) No. 2-82-38 (the Permit), which authorized a commercial oyster bed operation on a small portion (about three acres) of the three submerged parcels in Tomales Bay for which GGOC had received a Fish and Game allotment.

We do not know if TBOC is operating in the exact same location on the submerged parcels as was GGOC, and if so, whether TBOC considers its operation to be covered by the Permit. We have no record of the Permit being transferred to TBOC, which was the typical mechanism by which cultivation permit transmittals were tracked by the Commission. Additionally, we have no record of TBOC having obtained a separate CDP for oyster cultivation operations offshore. We do know that Tomales Bay Shellfish Farms, Inc. was granted a Use Permit and Design Review by Marin County (the County) in 1987 (UP 88-011/DR 88-038), authorizing the construction of a 400-sq.-ft. oyster packing shed, replacement of an existing 182-sq.-ft. refrigeration unit with a new 160-sq.-ft. unit, replacement and renovation of existing oyster holding tanks, and legalization of an existing dock that was renovated and expanded in size by 650 square feet without benefit of approved permits at the subject site. This Use Permit was conditioned such that hours for retail sales were limited to 12 noon to 5 pm on Fridays and 9 am to 5 pm on Saturdays and Sundays. In addition, CDP Waiver 1-87-177-W was issued by the Commission on November 20, 1987 to Tomales Bay Shellfish Farms, Inc. for the same proposed project.

Sometime since those approvals, the owners of the property began to operate retail sales on the site on a daily basis, rather than just on the weekend, and also undertook what appears to be

additional, unpermitted development, including installation of picnic tables and barbeques, expansion of parking areas, and creation of an informal kayak launch, which were neither contemplated nor authorized by the 1982 CDP or the 1987 Permit waiver. The current property owners are now seeking an amendment to the County's 1987 Use Permit and Design Review, and to its 1982 Tidelands Permit, to authorize these changes after-the-fact, and are also intending to seek a CDP from the Commission. This unpermitted development constitutes one or more Coastal Act violations, as described below.

2. Alleged Coastal Act Violations. The current owners may be out of compliance with the terms and conditions of the County and Commission approvals, and may have undertaken unpermitted development on the site, constituting Coastal Act violations consisting of but not limited to the unpermitted expansion of retail sales from weekends only to full-time; unpermitted placement and use of more than 80 picnic tables and barbeque facilities; unpermitted increase in the number of parking spaces; unpermitted provision of an informal kayak launch area; unpermitted use of the site for a special event; and, most recently, unpermitted vegetation removal, grading, and paving of a large swath of land near Highway One, including removal of trees and a berm adjacent to Highway One, as well as unpermitted placement of a retaining wall and rock at this site, some of which is on federal park land.

Section 13172 of Title 14 of the California Code of Regulations states that:

Violation of a permit or any term, condition, or provision of a permit is grounds for enforcement under this section and under Chapter 9 of the California Coastal Act of 1976.

The current offshore operation may exceed what was approved by the County and the Commission in 1982 and 1987, constituting a violation of the Commission's CDP and CDP Waiver, and, thus a violation of the Coastal Act¹.

Furthermore, the recent extensive unpermitted vegetation removal, grading, paving, and placement of a retaining wall and rock on a swath of land near Highway One, which appears to be partially within the Commission's Coastal Permit jurisdiction and partially within the County's Coastal Permit jurisdiction, constitutes another Coastal Act violation. These unpermitted activities are not considered routine maintenance but, in fact, constitute development requiring a CDP. Further complicating this, at least some of this unpermitted development has occurred on federal lands rather than on property owned or leased by your clients, and without the consent of the landowner. We have been notified by the National Park Service (NPS) that NPS informed the property owners by letter that the NPS property could no longer be used for parking. Thus, you will need to work with NPS to restore this swath of land to its pre-violation condition, which may require authorization. We would be happy to

¹ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). Except as otherwise indicated, all further section references are to the PRC, and thus, to provisions of the Coastal Act.

coordinate with you and with NPS concerning any actions taken there to be as efficient as possible.

Please note that pursuant to Section 30106 of the Coastal Act and Section 22.130.030 of the Marin County Zoning Code:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 ... (Emphasis added)

As such, the placement of picnic tables, barbeque facilities, a retaining wall, and rock; grading, paving, and removal of vegetation; and the creation of a kayak launching area constitute development under the Coastal Act and the LCP.

As you may be aware, Section 30600(a) of the Coastal Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit (CDP), in addition to any other permit required by law, before carrying out any development. Marin County Zoning Code Section 22.68.030 also states that a Coastal Permit is required for development in the Coastal Zone proposed by a private entity or a state or local agency unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver. Any other development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act and the LCP. Thus, the unpermitted activities described above that were undertaken on or adjacent to the subject property are considered to be unpermitted development, constituting one or more Coastal Act violations.

Finally, as noted above, it is not clear what authorizations the existing facility has, whether it is operating in the exact same location where CDP 2-82-38 authorized oyster operations, or whether the operation exceeds that which was authorized by the 1982 Permit and the subsequent 1987 Waiver. It appears that it is possible that the existing operation has expanded its scope and/or footprint without authorization. We would like to work with you to determine if this is the case, and to ensure that we can resolve all Coastal Act violations associated with your client's facility. To this end, please provide us with the following information:

- a. Describe, in terms of square footage/acreage and location, the footprint of the current aquaculture operation.
- b. Describe all species cultivated, and the method(s) of cultivation.
- c. Describe the extent of physical development on the site, including all structures such as residences, restrooms, picnic tables, parking spaces, septic system, etc. and provide written documentation demonstrating any current authorization for all such development, including both onshore and offshore shellfish operations, from the California Coastal Commission, Marin County, Army Corps, RWQCB, Department of Health, and California Department of Fish and Wildlife, including evidence of a current Fish and Wildlife Oyster Allotment. To the extent TBOC is relying on an authorization given to another entity, please indicate that and explain how the authorization applies to TBOC. Please also specify the number of parking spaces, picnic tables, etc.
- d. Describe the extent and nature of the retail business at the site (hours of operation, etc.).
- e. We understand that you are pursuing a boundary survey; please submit the results of this survey, including detailed maps, when it is complete.
- f. We note that Charles (Tod) Friend is presently the manager and part-owner of Tomales Bay Shellfish Farms, Inc. Please describe whether and in what manner the aquaculture operation authorized by CDP 1-93-73/E-02-007-T1 (issued to Bay Bottom Beds, Inc. and later transferred to Charles Friend) for State Water Bottoms Leases M-430-04 and M-430-19 is related to the operation authorized by the Permit for State Water Bottom Leases M-430-05 and M-430-07. Do they together comprise the operation now known as Tomales Bay Oyster Company or are they entirely separate operations?
- g. The name on the deed for APN 119-060-33 is "Tomales Bay Shellfish Farms, Inc." In various documents, I have seen this name used, as well as the name "Tomales Bay Oyster Company," which is the name on the website, and is the name of the entity to which the current California Fish and Wildlife aquaculture lease for State Water Bottom No. M-430-05 was granted. Please clarify whether they refer to the same company and operation.
- h. Indicate whether (and, if so, when) the property changed ownership from Golden Gate Oyster Company to Tomales Bay Shellfish Farms and from Tomales Bay Shellfish Farms to Tomales Bay Oyster Company.
- i. Describe in writing how you intend to resolve the violation consisting of the unpermitted vegetation removal, grading, paving, and placement of a revetment and rock on property owned by the NPS. It is possible that Commission authorization may be required for the restoration work that will be necessary to return the site to its pre-violation condition.
- j. We are aware that many visitors to the oyster farm park on the Highway One shoulder near the subject site, particularly on weekends. We have a concern that this shoulder area where visitors park may be within the Caltrans right-of-way (ROW). In our telephone conversation of February 24, 2014, you informed me that this area is within the public road right-of-way (highway shoulder) and thus does not require authorization from Caltrans. However, I met at the site with a representative from Caltrans, Huy Nguyen, to discuss the ROW encroachment issue, and he thinks the shoulder is most likely within the Caltrans ROW, and that a Caltrans encroachment permit may be necessary if visitors to

the oyster farm are going to be parking on the shoulder. Therefore, please provide documentation that demonstrates that you have an encroachment permit for this use, or verifies that an encroachment permit is not required for visitor parking on the Highway One shoulder.

3. **Resolution.** We recognize that the Tomales Bay Shellfish Farm provides the public with a valuable visitor-serving use. However, some of the development on the site is unpermitted, and I believe we are in agreement that this situation needs to be rectified. The Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively. We are confident that we can resolve this matter without resorting to formal action. To begin the resolution process, *please have your client cease at once* all unpermitted activities, including any vegetation removal, grading, paving, and/or placement of retaining walls and rock on the subject property. Further, please have your client cease using the NPS land for parking for your operation. Please submit all requested information noted above by **June 2, 2014**. Additionally, once your client has obtained all necessary approvals from the County for the expansions to the onshore shellfish operation, submit within 30 days of County approval a complete CDP application to our office, seeking after-the-fact authorization for the existing unpermitted development, which will be considered "proposed development" for purposes of the Commission's CDP process. It appears that at least some of the unpermitted onshore development is within the Coastal Development Permit jurisdiction of Marin County, while some may be in the Coastal Commission's CDP jurisdiction. Any changes to the offshore operation are within the Commission's CDP jurisdiction. Alison Dettmer, Deputy Director, will be available to answer questions that might arise concerning our CDP process.

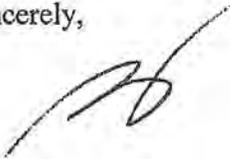
Please note that we cannot guarantee that staff will recommend approval of proposed development, or that the Commission will authorize proposed development. Any existing unpermitted development that is not authorized by the Commission will need to be removed and any affected areas restored. You have indicated in your email of February 10, 2014 that your client is interested in pursuing a consolidated coastal permit from the Commission, rather than seeking CDPs from both the County and the Commission. County staff has expressed agreement that this is the best way to proceed; however, you will need to obtain written approval to this effect from the County.

For any enforcement questions, you may contact me at 415-904-5269. It is our policy in the Commission's enforcement unit that staff shall not communicate via email except to convey purely factual information. If you wish to discuss CDP application requirements, call Alison Dettmer at 415-904-5205.

Scott Hochstrasser
Tomales Bay Oyster Company
Page No. 7

Thank you for your continued cooperation; we look forward to working with you to resolve this matter amicably.

Sincerely,



Jo Ginsberg,
Enforcement Analyst

cc: Debbi Poiani, Marin County Code Enforcement
Charles (Tod) Friend, TBOC
Kirsten Ramey, California Department of Fish and Wildlife
Cicely Muldoon, Superintendent, NPS, Point Reyes National Seashore
Huy Nguyen, Caltrans
Lisa Haage, CCC, Chief of Enforcement
Heather Johnston, CCC, Enforcement Supervisor
Alison Dettmer, CCC, Deputy Director
Nancy Cave, CCC, North Central Coast District Manager
Cassidy Teufel, CCC, Environmental Scientist
Joe Street, CCC, Environmental Scientist
Alex Helperin, CCC, Senior Staff Counsel
Mark Delaplaine, CCC, Manager, Energy, Ocean Resources, and Federal Consistency
Division

TAB 3

**LOCATION MAP
OYSTER ALLOTMENT
NO. M-430-05**

M-430-07
PARCEL 3

M-430-06

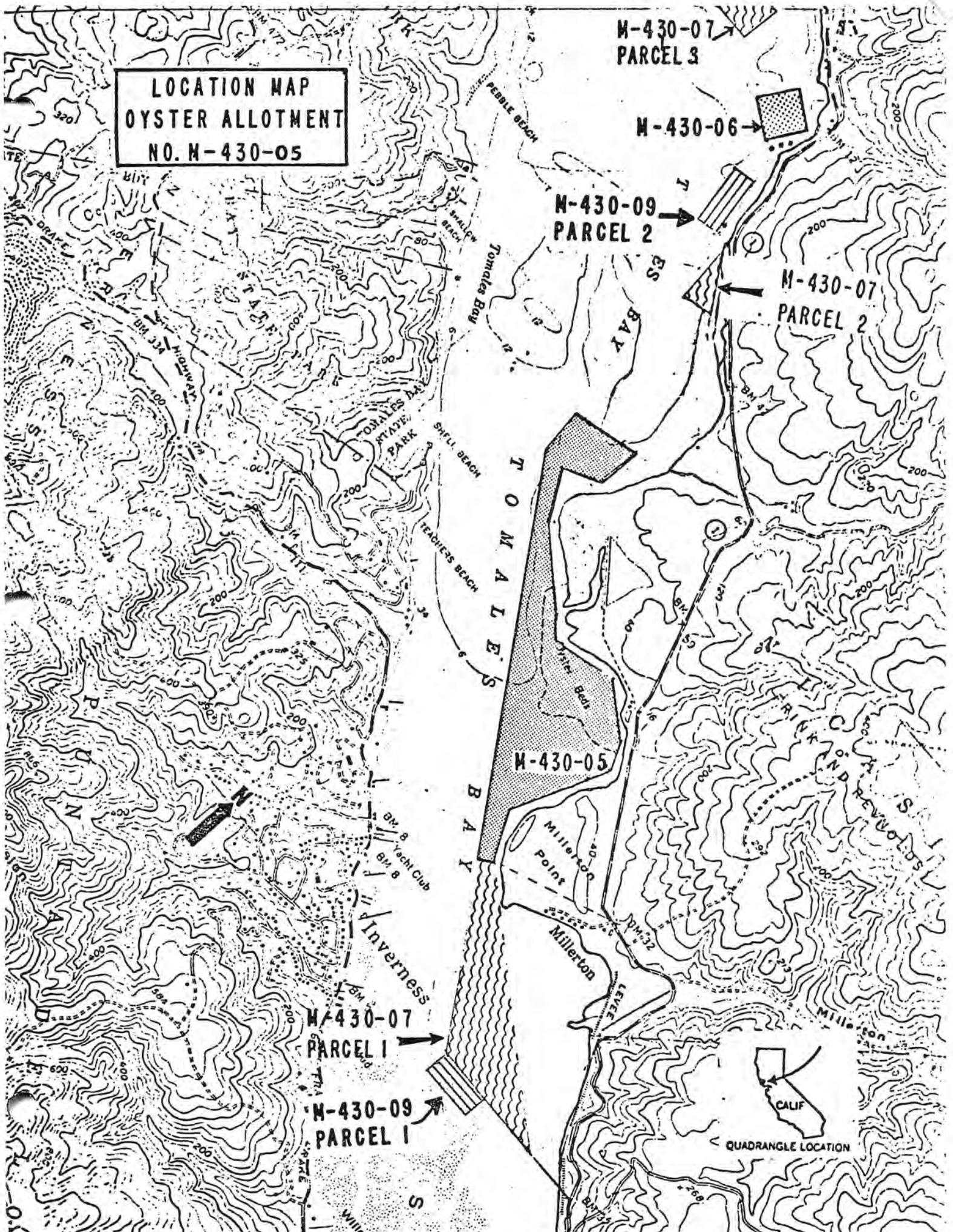
M-430-09
PARCEL 2

M-430-07
PARCEL 2

M-430-05

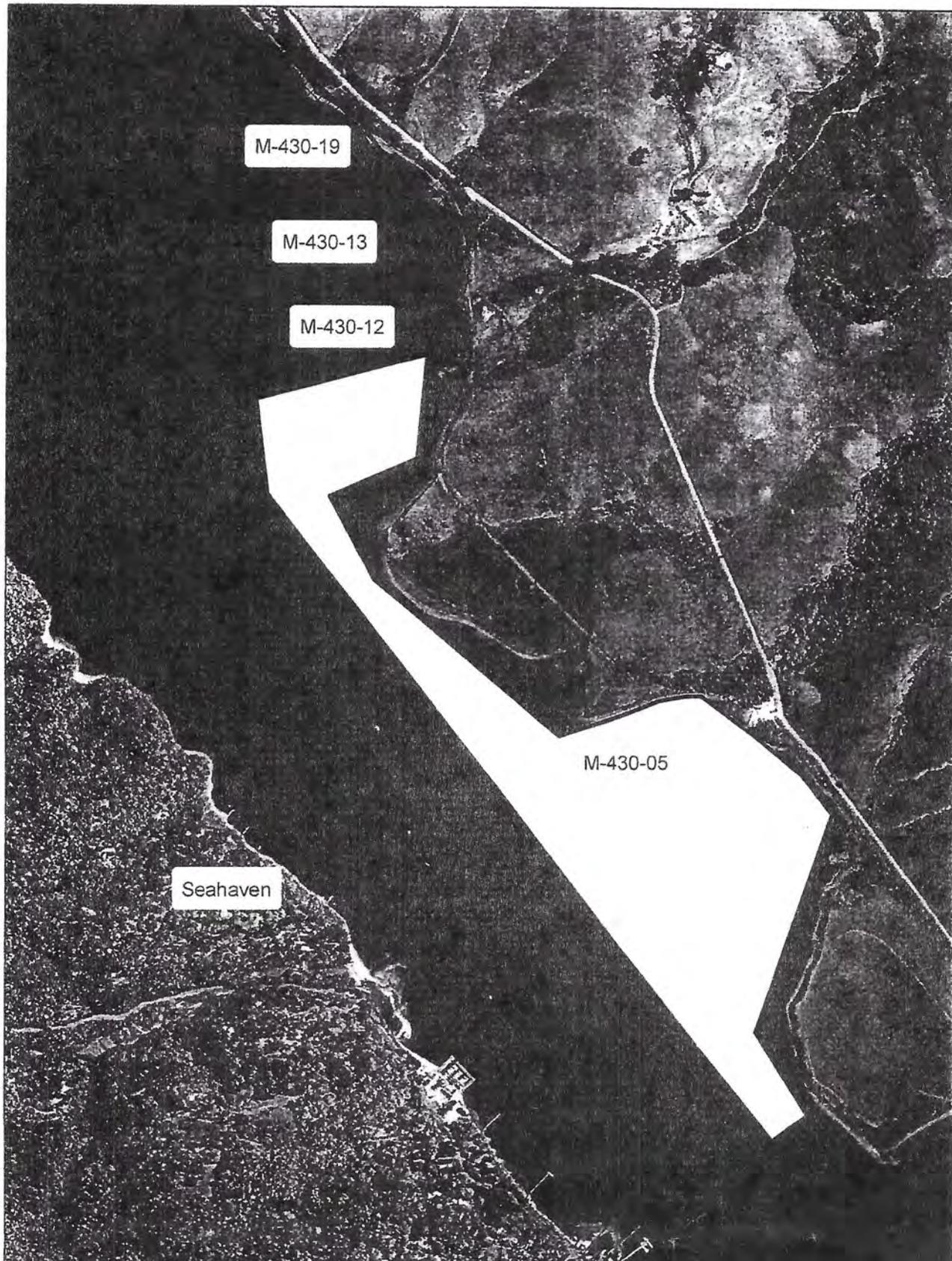
M-430-07
PARCEL 1

M-430-09
PARCEL 1



QUADRANGLE LOCATION

State Water Bottom Lease M-430-05
Tomales Bay, Marin County, CA





© 2023 California State Parks (Rev. 2013)
Map by Elmber Cartography, Berkeley, CA

TAB 4

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**SENT BY REGULAR MAIL**

August 20, 2014

Scott Hochstrasser
IPA, Inc.
141 Bolinas Road
Fairfax, CA 94930

Coastal Act Violation File No: **V-7-14-001 (Tomales Bay Oyster Company)**

Location: 15479 State Route One, Marshall, Marin County,
APN 119-060-33; Oyster Allotment Area M-430-05

Alleged violation description: Non-compliance with CDP 2-82-38 and CDP Waiver 1-87-177-W; unpermitted expansion of the existing shellfish operation; unpermitted vegetation clearing, grading, paving, installation of rock, and placement of a revetment.

Dear Mr. Hochstrasser:

I am writing as a follow-up to our meeting of May 14, 2014 and our recent telephone conversation of August 5, 2014 and your subsequent email that same day. We appreciate your cooperation in this matter, and we look forward to working with you to work out a resolution of the issues at the site.

On May 14, 2014, you and Charles (Tod) Friend met with Heather Johnston and me to discuss the above-referenced alleged Coastal Act violation. At our meeting, we discussed a number of issues, including the fact that Tomales Bay Oyster Company ("TBOC") has a current, valid California Department of Fish and Wildlife ("CDFW") Allotment of State Water Bottoms for offshore Parcel M-430-05. We also discussed that in April of 2009 Mr. Friend purchased Tomales Bay Shellfish Company from Drew Alden and changed the name to TBOC.

During our meeting, Mr. Friend informed us that although the County Use Permit restricts days and hours of use to Fridays from noon to 5:00 p.m. and Saturdays and Sundays from 9:00 a.m. to 5:00 p.m., the retail operation has always been open every day.

Concerning the adjacent property owned by the National Park Service ("NPS"), Mr. Friend indicated that he had been under the impression that this property belonged to TBOC, and it wasn't until he hired a surveyor that he learned that the southern border of his property is at the location of the gate, and does not extend 180 feet farther south as he had believed. Mr. Friend indicated that he wrote a letter to Cicely Muldoon of NPS requesting that NPS allow him to continue using the parks property for parking, and while waiting for a response from NPS, he had the berm on the Parks parcel removed to help with the flow of traffic into and out of the TBOC facility and alleviate the bottleneck situation. Just after the berm had been removed, he was notified by Ms. Muldoon that NPS did not want TBOC to use the parks property for parking and that the property needed to be restored to its previous condition.

In an attempt to help coordinate with the County on this matter, I have spoken several times with Lorene Jackson, the Marin County Planner who is working with you on the pending Use Permit, Tidelands Permit, and Design Review amendments for the TBOC site. The proposal is to amend the current permits to legalize, after the fact, various elements of your onshore operation such as retail sales seven days a week from 9 am to 5 pm; picnicking and barbecuing seven days a week from 9 a.m. to 5 p.m.; placement of 83 existing picnic tables with related retaining wall, etc. My understanding is that these permit amendment applications are still incomplete, and that there are several issues that still need to be addressed before they can be acted upon by the County. Most recently, I learned that Mr. Friend is in negotiations to purchase a 26-acre parcel on the inland side of Highway One in the hopes of using that parcel to provide additional parking for TBOC, as well as providing adequate septic and water for the TBOC site. If this parcel can be developed in a manner consistent with its zoning that meets the needs of TBOC, this might facilitate the County's processing of the pending permit applications, and may also address some of the issues that will arise once the Coastal Commission begins processing a Coastal Development Permit ("CDP") application for existing unpermitted development, as well as any new proposed development, on the TBOC property. We are optimistic that all outstanding Coastal Act violations can be resolved through the permit process. We would like to continue to work cooperatively with you and with the County to achieve this goal. As we have noted in previous correspondence, aquaculture is an important coastal-dependent use supported by the Coastal Act, and TBOC provides a valuable visitor-serving amenity to coastal visitors.

As we discussed in our telephone conversation of August 5, 2014, we have been unable to locate the full permit file for CDP 2-82-38, which authorized a commercial oyster bed operation on Oyster Allotments M-430-05 and M-430-07 for Golden Gate Oyster Company in November of 1982, but do have a copy of the staff report for this matter, including the analysis and approval by the Commission. I have provided you with a copy of the staff report for this project. Pursuant to CDP 2-82-38, the Commission approved Golden Gate Oyster Company's oyster cultivation operation on portions of three submerged parcels in Tomales Bay, the first parcel (the

southern end of Oyster Allotment M-430-05) located immediately south and west of Millerton Point and containing 84 acres, and the second and third parcels (Oyster Allotments M-430-07) located south of the Marshall Boatworks and containing 5 and 11 acres respectively.

Of the total acreage of the three parcels (100 acres), Golden Gate Oyster Company only proposed and received authorization from the Commission in CDP 2-82-38 to use three acres for oyster culture. This CDP specified that any increase in the amount of the parcels used would require a permit amendment or new CDP. Approximately $1\frac{3}{4}$ acres of Parcel One (at the southern end of Oyster Allotment M-430-05) was approved to be used for the cultivation of 10,000 oysters with sixteen rows of flexible plastic pipe stakes. Approximately one acre of Parcel Two (Oyster Allotment M-430-07) was approved to be used for the placement and maintenance of 21 oyster racks on the bay bottom. Six bags containing 200 oysters each were authorized to be mounted to each rack. Approximately $\frac{1}{4}$ acre of Parcel Three (also in Oyster Allotment M-430-07) was approved to be used, with 50 racks marked by buoys placed on the bay bottom. Eight bags containing 600 oysters each were authorized to be mounted to each of these racks. A small raft used as a nursery at all three sites was also approved to be moored near the shore in Parcel Two.

CDP 2-82-38 appears to be the only coastal development permit authorizing an oyster cultivation operation in the general vicinity of the TBOC site. My understanding is that approximately 80 offshore acres are currently being actively used by TBOC for the cultivation of shellfish. Since the current operation at TBOC is substantially larger in size and scope than the Golden Gate Oyster Company operation approved by CDP 2-82-38 (which was for only three acres), it appears that at least some elements of the current operation are unpermitted at this time. In addition, portions of the onshore development, such as restroom facilities, parking, and retail sales, also appear to be unpermitted. CDP 1-87-177(W) authorizes some additions to existing facilities, but we have been unable to find any permits that authorize the onshore operation itself. Thus, it appears that TBOC does not have coastal development permits that authorize its current operation onshore or offshore, and it would be appropriate for TBOC to submit a CDP application to the Commission, seeking after-the-fact authorization for all unpermitted development and activities, plus authorization for any proposed new development TBOC wishes to pursue.

There are two feasible options for you to consider concerning obtaining authorization for proposed development on the site. One option would be to first obtain all necessary local permits from Marin County (the pending Use Permit, Tidelands Permit, and Design Review amendments) before submitting a CDP application to the Commission. Another option would be to apply to the Commission for after-the-fact authorization for the offshore development first and then follow-up with another permit application or permit amendment application for the onshore operation, once the County has approved it.

Since most of the current oyster operation is located within the Commission's area of retained CDP jurisdiction, we recommend that you seek to obtain from the Commission a consolidated

coastal permit that addresses all proposed development on the parcel(s), including the offshore operation and any proposed development on the parcel Mr. Friend is seeking to purchase. This option would reduce the number of hearings, applications, cost, and time required to complete the CDP process. As I indicated in a voice mail message that I left for you on August 5, 2014, pursuant to Section 30601.3 of the Coastal Act, the Commission may process and act upon a consolidated CDP so long as (a) the proposed project requires a CDP from both a local government with a certified local coastal program (LCP) and the Commission; and (b) the applicant, appropriate local government, and the Commission (which may agree through the executive director) consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation. We believe that so long as all parties agree, the Commission could process a consolidated permit for the entire proposed project, including proposed development on the parcel Mr. Friend is contemplating buying across the highway. Mr. Friend would need to either own that parcel outright, or have the owner's written permission to develop that parcel, for this parcel to be included in the CDP application. I recommend that you discuss this with Cassidy Teufel of our Energy and Ocean Resources Unit, who is the person who will process such a CDP application. Mr. Teufel can be reached at 415-904-5502.

In my previous letter of April 24, 2014, I requested some information, and gave you a deadline to submit this information. I spoke with you by telephone and you requested an extension of time. I told you that we would be extending this deadline, and this letter confirms that extension. Some of the information I requested in that letter has already been provided by you or Mr. Friend while the remainder remains outstanding. Please provide by October 1, 2014, the following outstanding information:

- a. Describe, in terms of square footage/acreage and location, the footprint of the current aquaculture operation.
- b. Describe all species cultivated, and the method(s) of cultivation.
- c. Describe the extent of physical development on the site, including all structures such as residences, restrooms, picnic tables, parking spaces, septic system, etc. and provide written documentation demonstrating any current authorization for all such development, including both onshore and offshore shellfish operations, from the California Coastal Commission, Marin County, Army Corps, RWQCB, Department of Health, and California Department of Fish and Wildlife, including evidence of a current Fish and Wildlife Oyster Allotment. To the extent TBOC is relying on an authorization given to another entity, please indicate that and explain how the authorization applies to TBOC. Please also specify the number of parking spaces, picnic tables, etc.
- d. Describe the extent and nature of the retail business at the site (hours of operation, etc.).
- e. We understand that you are pursuing a boundary survey; please submit the results of this survey, including detailed maps, when it is complete.
- f. Please describe in writing the status of the violation consisting of the unpermitted vegetation removal, grading, paving, and placement of a revetment and rock on property

Scott Hochstrasser
Tomaes Bay Oyster Company
Page No. 5

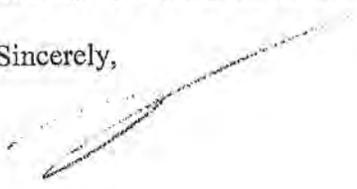
owned by the NPS. It is possible that Commission authorization may be required for the restoration work that will be necessary to return the site to its pre-violation condition.

Please note that Commission staff does have an open violation case for TBOC, but is choosing at this time not to take any formal action because you are pursuing obtaining the appropriate permits from Marin County, and have indicated your willingness to cooperate and to pursue a CDP from the Commission to authorize after-the-fact all unpermitted development. As I have indicated previously, the first step in resolving the alleged outstanding Coastal Act violations on the TBOC property is for Mr. Friend to pursue getting all appropriate permits to authorize the unpermitted development. However, the Coastal Act violations cannot be considered to be resolved until a CDP has been approved, all special conditions met, and the permit issued. Merely submitting a CDP application does not resolve any outstanding Coastal Act violations.

Please let me know if you have any additional questions concerning enforcement. I can be reached at 415-904-5269. It is our policy in the Commission's enforcement unit that staff shall not communicate via email except to convey purely factual information. Any detailed discussions about the alleged Coastal Act violation and our investigation should take place by telephone or by letter.

Thank you for your cooperation. We anticipate continuing to work with you amicably to resolve this matter. Please let me know if you have any questions regarding this letter or the next steps.

Sincerely,



Jo Ginsberg,
Enforcement Analyst

cc: Cristy Stanley, Marin County Code Enforcement
Charles (Tod) Friend, TBOC
Kirsten Ramey, California Department of Fish and Wildlife
Cicely Muldoon, Superintendent, NPS, Point Reyes National Seashore
Huy Nguyen, Caltrans
Lisa Haage, CCC, Chief of Enforcement
Heather Johnston, CCC, Enforcement Supervisor
Alison Dettmer, CCC, Deputy Director
Nancy Cave, CCC, North Central Coast District Manager
Cassidy Teufel, CCC, Environmental Scientist
Alex Helperin, CCC, Senior Staff Counsel
Mark Delaplaine, CCC, Manager, Energy, Ocean Resources, and Federal Consistency
Division

TAB 5

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**SENT BY REGULAR MAIL**

October 24, 2014

Scott Hochstrasser
IPA, Inc.
141 Bolinas Road
Fairfax, CA 94930

Coastal Act Violation File No: **V-7-14-001 (Tomales Bay Oyster Company)**

Location: 15479 State Route One, Marshall, Marin County,
APN 119-060-33; Oyster Allotment Area M-430-05

Alleged violation description: Non-compliance with CDP 2-82-38 and CDP Waiver 1-87-177-W; unpermitted expansion of the existing shellfish operation; unpermitted vegetation clearing, grading, paving, installation of rock, and placement of a revetment.

Dear Mr. Hochstrasser:

I am writing as a follow-up to your letter dated October 17, 2014, which I received by email on October 22, 2014, and our telephone conversation of October 22, 2014. As always, we appreciate your cooperation in trying to resolve the outstanding alleged Coastal Act violations on the subject property.

In our previous letter dated August 20, 2014, you asked for a time extension to submit the information we had requested in our letter of April 24, 2014. We set an extended deadline of October 1, 2014 for you to submit this information. In your letter dated October 17, 2014, you respond to a number of our informational requests, and request an additional time extension for submittal of the remaining information. This letter will confirm that we are extending the deadline for submittal of all outstanding information until January 5, 2015.

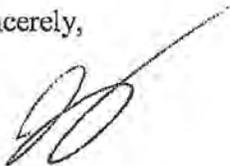
You have indicated that you will be submitting the following outstanding information:

- a. A description, in terms of square footage/acreage and location, of the footprint of the current aquaculture operation. You indicate in your October 17, 2014 letter that ILS Engineering is working on preparing a map of the current lease areas, and that once you have that map, your client will prepare a written description keyed to each of the lease areas describing the square footage, location, and footprint of the current operations;
- b. A comprehensive revised plan including new information on septic, water supply, parking, picnic tables, and oyster operations in the water;
- c. A boundary survey prepared by the National Parks Survey;
- d. Additional information concerning resolution of the violations on the NPS property.

We look forward to receiving these materials from you. We understand that you will be working with Curtis Havel at the County, and we ask that you keep us apprised as to the status of the pending County Use Permit, Tidelands Permit, and Design Review amendments.

If you have any questions or concerns, please feel free to call me anytime at 415-904-5269. Thank you for your continuing cooperation.

Sincerely,



Jo Ginsberg,
Enforcement Analyst

cc: Cristy Stanley, Marin County Code Enforcement
Curtis Havel, Marin County Planner
Charles (Tod) Friend, TBOC
Kirsten Ramey, California Department of Fish and Wildlife
Cicely Muldoon, Superintendent, NPS, Point Reyes National Seashore
Huy Nguyen, Caltrans
Lisa Haage, CCC, Chief of Enforcement
Alison Dettmer, CCC, Deputy Director
Nancy Cave, CCC, North Central Coast District Manager
Cassidy Teufel, CCC, Environmental Scientist
Mark Delaplaine, CCC, Manager, Energy, Ocean Resources, and Federal Consistency
Division

TAB 6



Scott L. Hochstrasser
IPA, Inc.

E-Mail slh1ipa@aol.com *141 Bolinas Road * Fairfax, CA 94930 USA * Tele (415)459-6224 *

October 17, 2014

Letter Emailed and Sent Via U.S. Post Office

Jo Ginsberg, Enforcement Analyst
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RE: Coastal Act Violation File # V-7-14-001) the Tomales Bay Oyster Company (TBOC)

Dear Ms. Ginsberg,

As I understand your letter of August 20, 2014 the above referenced violation file notes several "alleged violations as follows; non- compliance with CDP2-82-38 and CDP Waiver 1-87-177-W; unpermitted expansion of the existing shellfish operation; unpermitted vegetation clearing, grading, paving, installation of rock, and placement of a revetment.

As your letter notes we have corresponded several times over the past year in an effort to first understand the alleged violations and secondly and more importantly to work out a program for resolving the issues. Your letter seeks additional information from my clients (by Oct 1, 2014) and notes that the violation case is not in a "formal action" because we are pursuing obtaining necessary local government permits. The purpose of this letter is three fold. First, to seek additional time for providing you the additional information requested on page 4 of your letter (items a-f). Although the following will explain what has been and is being done to secure the information you requested that effort has been delayed. Secondly, the purpose is to provide you with an update on the development of the application for local government permits. Finally, to outline a critical path and time line for completing the local government permit process, resolving issues with the National Park Service and moving forward with the request for a combined CDP application for the land and water activities.

As your letter points out the only CDP permitting authorization of oyster cultivation operation in the "general vicinity" of the TBOC which can be located in Coastal Commission files is CDP2-82-38. This permit was granted to Golden Gate Oyster Company for three (3 acres) site. Accordingly you assume that because the TBOC is using a larger area that some elements of the current operation are unpermitted. Rather

than accept there is an alleged violation based on assumptions we have been pursuing a “public records request” with California Fish and Wildlife offices to secure all of the relevant history of leases, lease areas and parties of interest in an effort to try and determine if the TBOC and/or its predecessors have grandfathered rights to continuation of the maricultural operations. As you know these activities have been present in Tomales by in the “general vicinity” since the early 1900’s. We have just received (Oct 9, 2014) notification from Fish and Wildlife that the records request is completed, request for fee payment and expect to receive the package this week. This will take some time to review and reconstruct the history.

Secondly, and very important to the future success of the County of Marin permitting, my client has completed the purchase of a +-26 acre upland property directly across the street from the dry land TBOC parking, processing and retail operations. The purchase of this additional land provides for the potential to resolve some of the county water supply, septic and parking requirements for the dry land operation. We have had a General Consultation with the County planners to determine what uses can be made of the additional property to support the current dry land operations. The details of the use require water well testing, septic perk testing, and development of access and parking lot design. This work is all underway and will likely take an additional 3-4 weeks to complete.

Finally, we are working on providing the additional information you requested in your letter as follows and I have provided an updated “response” for each information item to keep you updated on our progress and timing for a complete response.

Please provide by October 1, 2014, the following outstanding information:

- a. Describe, in terms of square footage/acreage and location, the footprint of the current aquaculture operation.

Response: The client is having ILS Engineering complete a map of the current lease areas which should be done this week. Once we have that map the client will prepare a written description keyed to each of the lease areas describing the square footages, location and footprint of the current operations. We expect to have this completed by November 15, 2014

- b. Describe all species cultivated, and the method(s) of cultivation.

Response: Included in the written description noted above will be a detailed summary of the species cultivated and methods of cultivation.

- c. Describe the extent of physical development on the site, including all structures such as residences, restrooms, picnic tables, parking spaces, septic system, etc. and provide written documentation demonstrating any current authorization for all such development, including both onshore and offshore shellfish operations, from the California Coastal Commission, Marin County, Army Corps, RWQCB, Department of Health, and California Department of Fish and Wildlife, including evidence of a current Fish and Wildlife Oyster Allotment. To the extent TBOC is relying on an authorization given to another entity, please indicate that and explain how the authorization applies to TBOC. Please also specify the number of parking spaces, picnic tables, etc.

Response: Based on previous submittals and County of Marin transmittals of information submitted it is clear

that your office currently has a description of the development on site. (See January 30, 2014 "Response to Notice of Project Status Dated August 29, 2013" prepared by IPA, Inc and including plans prepared by SDS, Biological Assessment Prepared by Wood Consulting, Parking Agreement with Shoreline School, Domestic Water Supply analysis and W-Trans Parking and Traffic study.) County records indicate that this package was submitted to CCC with all of the details February 5, 2014. To-date the County application remains "incomplete". With the purchase of additional land and planning for future use of the additional land the application materials are in the process of changing significantly. Accordingly, you should have the details of the existing operation and the changes that were made without authorizations with the exception of the Oyster allotments. Now with the newly purchased property we are in the process of significantly modifying the application including providing new information on septic, water supply, parking, picnic tables and oyster operations in the water. Because the planning is generally starting over with additional land and because the oyster operation is now being questioned significant additional planning and documentation work is necessary. We do not expect to have completed a comprehensive revised plan before December 31, 2014. This provides us with the time needed to review and analyze the Public Records and do the necessary planning for the new property.

- d. Describe the extent and nature of the retail business at the site (hours of operation, etc.).

Response: The extent and nature of the retail business at the site, operation hours, etc. was provided in the January 30, 2014 packet sent to the County of Marin, also CCed to the CCC on February 5, 2014.

- e. We understand that you are pursuing a boundary survey; please submit the results of this survey, including detailed maps, when it is complete.

Response: The National Parks Service has advised that their boundary survey work has been completed. Ranger Nick Night has been in touch with me about a site meeting to review the survey work and to map out a "critical path" for resolving the unauthorized work done a small portion of the NPS property by the TBOC. We are tentatively planning on meeting on-site Oct 26 or 27. I will provide an email update on this matter following the meeting. We have not yet been provided with the results of the NPS boundary survey work.

- f. Please describe in writing the status of the violation consisting of the unpermitted vegetation removal, grading, paving, and placement of a revetment and rock on property owned by the NPS. It is possible that Commission authorization may be required for the restoration work that will be necessary to return the site to its pre-violation condition.

Response: As noted above the NPS has completed a common boundary survey, we are working on mapping the TBOC water bottom operations, and previous plans show the TBOC land boundaries as prepared by ILS Engineering. We are meeting with NPS Ranger Nick Night to map out a critical path for resolving the violations for unpermitted vegetation removal and grading on NPS property. To -date we have been advised that the NPS will be doing the remediation and restoring the area previously disturbed by the TBOC. It is therefore assumed that the NPS would also pursue, if needed any permits required by the Commission. As noted above following the meeting with the NPS (Oct 26-27) I will prepare a follow up email with the plan for resolving the violations noted in item f above.

Summary and Conclusion

As you can see from the report above there are several moving parts to the project local government application at the County of Marin. Additionally, the violations on NPS are in the process of being resolved. Finally, with the oyster activity in the State water bottom being questions as to the history and/or need for a CDP the client is moving with a great deal of caution so as not to preclude any/all potential "grandfathered rights". This process has resulted in the need for a "public records request" and the time needed to study the use rights and prepare a clear understanding

of the need for Coastal permits for operations on the dry land and the State water bottom.

My client and our team continue to work in good faith and with timely due diligence to resolve the alleged violations and secure local, state and if needed national agency permits for the continuation of the TBOC operations. We believe that the TBOC land and water uses are consistent with the coastal recreational visitor serving purpose and intent of the Coastal Act and the local coastal plans. Accordingly, we intend to continue to work with the agencies to secure any/all permits necessary to continue the TBOC operations. Thank you for your continued assistance and cooperation.

Sincerely,
Original Signed and Sent US Post
Scott L, Hochstrasser, Consultant

CC: Via Email Only
Charles Friend
Curtis Havel, Marin County Planning
Supervisor Kinsey

TAB 7

BRISCOE IVESTER & BAZEL LLP

155 SANSOME STREET
SEVENTH FLOOR
SAN FRANCISCO CALIFORNIA 94104
(415) 402-2700
FAX (415) 398-5630

Peter S. Prows
(415) 402-2708
pprows@briscoelaw.net

29 January 2015

By Email and U.S. Mail

Jo Ginsberg
Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Tomales Bay Oyster Company

Dear Ms. Ginsberg:

Tomales Bay Oyster Company ("TBOC") has retained this firm, together with International Planning Associates ("IPA"), to address the concerns that Coastal Commission staff have raised about TBOC's operations. TBOC appreciates this opportunity to cooperate with the Commission to resolve those concerns.

Let me begin by thanking you. Your flexibility on deadlines for requests for information is greatly appreciated, as is your recognition that aquaculture of the sort practiced by TBOC is an important coastal-dependent use supported by the Coastal Act. The Marin County LCP also recognizes, supports, and encourages aquaculture in Tomales Bay.

This letter addresses three issues: (i) alleged non-compliance with Coastal Development Permit ("CDP") 2-82-38; (ii) respective permit jurisdictions for onshore operations; and (iii) the need for a CDP for offshore operations. Also attached to this letter is a report, prepared by IPA, intended to provide the information you have requested.

1. *CDP 2-82-38*

Your letters allege that TBOC is not in compliance with CDP 2-82-38. But CDP 2-82-38 was issued to a different company operating in a different area. CDP 2-82-38 simply does not apply to TBOC, and so this allegation should be dropped.

BRISCOE IVESTER & BAZEL LLP

Jo Ginsberg

29 January 2015

Page 2

As IPA's attached report describes, in October 1976 the California Department of Fish and Game ("Department") issued to TBOC's predecessor-in-interest, the American Shellfish Corporation ("ASC"), State Water Bottom Lease M-430-05. (IPA report, sections 5.1a & 6.0.) That lease was for 320 acres of water bottoms on the eastern shore of Tomales Bay. In 1981, the Department declared that ASC had abandoned the northernmost 5 acres, and the southernmost 84 acres, of M-430-05. The Department then reallocated that abandoned acreage to a different company by issuing Golden Gate Oyster Inc. ("Golden Gate") State Water Bottom Lease M-430-07 for that acreage; "Parcel 1" of M-430-07 was previously the southernmost 84 acres of M-430-05, and "Parcel 2" of M-430-07 was previously the 5 northernmost acres of M-430-05. (M-430-07 also included a separate "Parcel 3" north of Parcel 2, but Parcel 3 had no relation to the abandoned acreage of M-430-05.)

Golden Gate then obtained CDP 2-82-38. Your 20 August 2014 letter asserts that this CDP authorized aquaculture in "[a]pproximately 1 3/4 acres of Parcel One (at the southern end of Oyster Allotment M-430-05)". But Parcel 1 was part of M-430-07, not M-430-05. "Exhibit A" to the staff report for this CDP is titled "Location Map Oyster Allotment No. M430-07", suggesting that the CDP was for M-430-07 rather than some other Department-leased area. And although the area depicted as "Parcel 1" on Exhibit A does not have an "M-430-07" label, the shading of Parcel 1 is the same as the shading of Parcels 2 and 3 (which are labeled as "M-430-07"), and different from the shading of the area labeled "M-430-05", making clear that Parcel 1 is part of M-430-07 rather than M-430-05. CDP 2-82-38 thus applies only to M-430-07, not to any part of M-430-05.

TBOC is not the current holder of M-430-07. Because CDP 2-82-38 only applies to M-430-07, and TBOC does not hold that lease, TBOC cannot be in violation of this CDP. This allegation should be dropped.

2. *Onshore Permit Jurisdiction*

Your letter of 24 April 2014 stated that "some of the unpermitted onshore development ... may be in the Coastal Commission's CDP jurisdiction." Marin County's LCP appears to cover the entire onshore area of TBOC's operations, which suggests that permitting authority for the entire onshore area has been delegated to

Marin County. (*See* Pub. Res. Code § 30519(a).) TBOC would appreciate clarification of whether permitting authority for any part of TBOC's onshore operations has not been delegated to Marin County, and, if so, which specific parts of those onshore operations remain within the Commission's original permit jurisdiction.

3. *CDP For Offshore Operations*

Your letter of 20 August 2014 contains the surprising suggestion that TBOC needs an after-the-fact CDP for its entire offshore operations. (*See* page 3 ("it appears that TBOC does not have coastal development permits that authorize its current operation ... offshore, and it would be appropriate for TBOC to submit a CDP application, seeking after-the-fact authorization for all unpermitted development and activities".)) TBOC is cultivating shellfish in areas where shellfish have been cultivated, with authorization from the State of California, since 1875. The Commission has long known that TBOC was cultivating shellfish in these areas, because in 1981 the Commission certified the Marin LCP, which recognizes and supports ongoing aquaculture in M-430-05. TBOC intends to continue cultivating shellfish in areas authorized by the State of California since before the Coastal Act became law. It does not appear that a CDP, much less an after-the-fact CDP, is required for present or planned operations.

Aquaculture is a form of agriculture. (Pub. Res. Code § 30100.2.) Agriculture in what is now the Marin County Coastal Zone dates back to the earliest days of California's statehood. Although agriculture in Marin County has a long history, that history is dynamic. Market forces have contributed to shifts from beef and dairy production in the earliest days, to diversification into row crops and vineyards, to today leading the nation in the local, sustainable food movement. Farmers in Marin County must also respond to environmental factors, such as drought, for example by fallowing certain acres, or holding others in reserve. In other words, agriculture must adapt to survive in the Marin County Coastal Zone.

The same holds true for aquaculture. The 1851 Oyster Act authorized any person to plant oysters in the waters of the State, and granted any person who planted oysters the "exclusive right" to those oysters. (1851 Stats., ch. 117 § 2.) By the 1850s, oysters

were widely cultivated in San Francisco Bay, but oyster farmers shortly began looking elsewhere for cultivation locations as pollution came to render the Bay unsuitable for oystering. In 1875, the first oysters were planted in Tomales Bay—17 carloads of Eastern oysters—near Millerton. (Elinore M. Barrett, California Department of Fish and Game, Fish Bulletin 123, *The California Oyster Industry*, at 36 (1963).) In 1876, the State patented TBOC's predecessor-in-interest, Samuel Taylor, several *miles* of tidelands along the eastern shore of Tomales Bay, from nearly its southern end to well north of Millerton, for the purpose of cultivating oysters. (IPA report, sections 4.1, 8.0, & 9.0.) By 1911, some 450 *acres* were being cultivated in and around Millerton, and a large processing plant had been built in the area. (*The California Oyster Industry* at 36.) Pacific oysters were introduced in 1928. (*Id.* at 37.) By 1940, siltation caused the closure of some of the southern oyster beds. (*Id.* at 60.)

In October 1976, California, through the Department, issued M-430-05 to ASC, authorizing cultivation of Pacific, Eastern, and European Flat oysters on stakes, wires, trays, racks, and rafts within a 320-acre area in and around Millerton. (IPA report, sections 5.1a & 5.4.) That lease covered essentially all of the tideland areas patented to Taylor in 1876, as well as the submerged lands that had been used for cultivating oysters in and around Millerton in the years since. (*Id.*, section 9.0.) TBOC is the current holder of M-430-05, and has cultivated, and intends to continue to cultivate, oysters within that lease area—thus continuing 140 years of oyster cultivation in the Millerton area.

All of TBOC's oyster-cultivation activities were either ongoing or planned before the Coastal Act became law in 1977. Activities that were either ongoing or contemplated since before the Coastal Act do not require a CDP, as recognized by various authorities:

- The Coastal Act does not require a CDP for developments for which a "vested right" was obtained prior to 1 January 1977, unless a "substantial change" occurs. (Pub. Res. Code § 30608.) TBOC and its predecessors-in-interest acquired a vested right to cultivate oysters in and around Millerton through their (at the time) 100 years of oyster cultivation in that area, as well as through M-430-05, which in 1976 authorized oyster cultivation in the entire lease area. TBOC

currently cultivates oysters in that area, and expects to continue to cultivate oysters in that area. Continuing to cultivate oysters in an area historically used for oyster cultivation, and authorized by the State in 1976 for oyster cultivation, does not constitute a substantial change. Because no substantial change has or is expected to occur for this vested right, the Coastal Act does not require a permit for TBOC's existing or planned oyster-cultivation activities.

- The caselaw on vested rights under the Coastal Act is in accord. "[A]n activity which was already underway when [the Coastal Act] became effective was exempt" from the Act's permitting requirements, provided that the activity is "within the scope of the preexisting authorization for use of the coastal resource in question." (*Monterey Sand Co. v. Cal. Coastal Com.* (1987) 191 Cal.App.3d 169, 176.) In *Monterey Sand*, the issue was whether pre-Coastal-Act mining leases issued by the State Lands Commission gave the lessee a vested right to mine in the leased areas without a CDP. The Court of Appeal answered in the affirmative. (*Id.*) *Monterey Sand* is directly on point here: oyster cultivation in the Millerton area was already underway when the Coastal Act became effective, and current oyster-cultivation activities are within the scope of the preexisting authorization for oyster cultivation within the M-430-05 lease area. TBOC thus has a vested right to continue cultivating oysters in that lease area, without any need for a CDP.
- The caselaw on nonconforming uses in other land-use contexts is also instructive. "[A]n owner of a nonconforming use may sometimes be found to have a vested right to use an entire tract even though only a portion of the tract was used when the restrictive ordinance was enacted." (*Hanson Bros. Enters. v. Nevada County* (1996) 12 Cal.4th 533, 557 (internal citation and quotation marks omitted).) "The determining factor", held the Supreme Court, "is whether the nature of the initial nonconforming use, in the light of the character and adaptability to such use of the entire parcel, manifestly implies that the entire property was appropriated to such use prior to adoption of the restrictive zoning ordinance." (*Id.*, internal citation and quotation marks omitted.) Here there is no question that the entire area of TBOC's current and planned operations was manifestly intended to be

BRISCOE IVESTER & BAZEL LLP

Jo Ginsberg

29 January 2015

Page 6

used for oyster cultivation since before the Coastal Act, because the State authorized use of that entire area for oyster cultivation through M-430-05, issued in October 1976. Because the entire area of M-430-05 was authorized for oyster cultivation since before the Coastal Act, TBOC has a vested right to cultivate oysters in that entire area. No CDP is required.

TBOC of course intends to cooperate in obtaining all permits required by law. But a CDP for TBOC's current and planned offshore operations does not appear to be required by law. Please confirm that you do not expect TBOC to obtain a permit, after-the-fact or otherwise, for its current or planned offshore oyster-cultivation operations.

Sincerely yours,

BRISCOE IVESTER & BAZEL LLP



Peter S. Prows

Counsel for Tomales Bay Oyster Co.

Enclosure

cc: Alison Dettmer, Deputy Director, California Coastal Commission
Steve Kinsey, Chair, California Coastal Commission
Curtis Havel, Senior Planner, Marin County
Kirsten Ramey, Senior Environmental Scientist Supervisor, California
Department of Fish and Wildlife

TAB 8

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
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May 1, 2015

Peter S. Prows
Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104

RE: Tomales Bay Oyster Company (TBOC)

Dear Mr. Prows:

Thank you for your letter dated January 29, 2015 responding to Jo Ginsberg's enforcement letters of April 24, 2014, August 20, 2014, and October 24, 2014 regarding operations and alleged Coastal Act violations at the Tomales Bay Oyster Company ("TBOC") property. In your letter you address three issues, and I will respond to each of these three issues separately, as well as discussing a fourth issue concerning the installation and removal of two fence/berm structures near the mouth of Walker Creek in Tomales Bay.

1. **CDP No. 2-82-38.** We concur with your assessment that CDP No. 2-82-38 does not apply to TBOC, and, thus TBOC is not in violation of the terms and conditions of CDP No. 2-82-38.
2. **Onshore Permit Jurisdiction.** You postulate that because the Marin County LCP "covers the entire onshore area of TBOC's operations," permitting authority for the entire onshore area has therefore been delegated to Marin County. This is, in fact, not correct. A boundary determination for the Tomales Bay Oyster Company parcel (APN 119-060-33) has been prepared by our Mapping Department, and this determination (copy attached) indicates that the property is bisected by the Coastal Commission's ("Commission") permit jurisdiction boundary in the manner indicated in the attached exhibit. As indicated in the cover memo, the Commission's permit jurisdiction is based on the existence of tidelands, submerged lands, and public trust lands, and the information available indicates that the parcel appears to be located, in part, on tidelands, submerged land and/or land that may be subject to the public trust. As you can see in the exhibit, nearly the entire parcel is within the retained coastal permit jurisdiction of the Commission. Therefore, all currently unpermitted onshore development within the Commission's retained jurisdiction will require Commission authorization through an

after-the-fact (“ATF”) coastal development permit (“CDP”). Any unpermitted development located within Marin County’s LCP jurisdiction requires a CDP from the County. Should all parties agree, your client may seek to pursue a consolidated coastal permit from the Commission, rather than seeking CDPs from both the County and the Commission. Seeking a consolidated permit from the Commission will be both less expensive and quicker to obtain than seeking to obtain CDPs from both agencies. If this is your client’s wish, you will need to obtain written approval from the County.

As you know, the County will also need to complete processing its Use Permit Amendment, Tidelands Permit Amendment, and Design Review Amendment applications for TBOC, and approval of these amendments will be necessary before the Commission could complete its CDP process.

3. **CDP for Offshore Operations.** Very recently, it came to our attention that TBOC may be carrying out shellfish cultivation activities on two aquaculture leases approved by the California Fish and Game Commission – lease numbers M-430-04 and M-430-05. This fact was not initially apparent because our records indicate that lease number M-430-04 is not held by TBOC but rather by an entity called “Brothers Bernal.” Nevertheless, in an effort to find any evidence of existing CDP authorization for TBOC’s aquaculture operation, we found that in February of 2002, that portion of CDP number 1-93-73 (*originally issued to Golden Gate Oyster Company in 1994*) that included operations on lease number M-430-04 was reassigned by the Coastal Commission to Mr. Charles Friend. As part of this reassignment, the permit was re-numbered E-02-007-T1. For your reference, both this reassignment action and CDP number 1-93-73 have been included with this letter. Based on these newly reviewed records, it appears that those aspects of TBOC’s operations currently being carried out on aquaculture lease number M-430-04 in conformance with CDP number E-02-007-T1 have been authorized by the Commission. We look forward to addressing with you, through a CDP amendment, any aspects of TBOC’s operation within lease M-430-04 that are not consistent with CDP number E-02-007-T1.

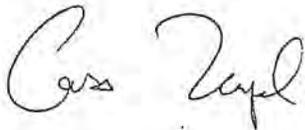
Regarding TBOC’s operations in aquaculture lease area M-430-05, you opine in your letter that TBOC has a vested right to these operations since it is cultivating shellfish in areas where shellfish have been cultivated since 1875. While you may be correct that TBOC has a vested right for some or all of its offshore operations in this area, we do not have a record of a vested rights determination that was done for the TBOC property. In order to conclude that TBOC indeed has a vested right for its offshore aquaculture operations in lease number M-430-05, you will need to either provide us with a copy of a vested right determination that was approved by the Coastal Commission, or submit to us an application for a vested rights determination. Our legal staff can provide guidance as to what materials would need to be submitted for us to begin the vested rights determination process. Should a vested rights determination for TBOC’s aquaculture operation in lease area M-430-05 be approved, we would be in agreement that no CDP is

required for that operation. Should that not be the case, TBOC will need to submit an application for after-the-fact approval of any portion of its offshore aquaculture operation in lease area M-430-05 not covered by an approved vested rights determination, and we will happy to provide guidance as to what materials would be necessary to begin the application process.

4. **Removal of Unpermitted fence/berm structures in Tomales Bay.** As you know, within the last year or so TBOC installed two fence/berm structures in Tomales Bay near the mouth of Walker Creek. The Gulf of the Farallones National Marine Sanctuary ("Sanctuary") is now requiring TBOC to remove these materials and all associated debris. On February 18, 2015, the Sanctuary issued a salvage/recovery operations permit to Mr. Friend for the removal of these materials. In addition, a CDP from the Commission is required for their removal. I spoke with Mr. Friend on March 16, 2015, and again on April 10, 2015, about this requirement and he agreed to promptly submit a CDP application for this work. While the Sanctuary permit initially required removal operations to be completed by March 30, 2015, we have coordinated with the Sanctuary on an extension of this deadline so that Mr. Friend may obtain the required CDP. We are happy to provide assistance to Mr. Friend in the preparation of this CDP application and its expeditious processing. To help resolve this situation, TBOC should, by May 8, 2015, submit a complete CDP application for the removal of all fence/berm structures it installed near the mouth of Walker Creek.

If you have any questions about permit applications or vested rights, please call me at 415-904-5502. If you have any questions about enforcement, please contact Jo Ginsberg at 415-904-5269. We look forward to working with you and your client to ensure that your client's operation is up-to-date on all permits required under the Coastal Act. Thank you for your cooperation.

Sincerely,



Cassidy Teufel
Senior Environmental Scientist

Attachment: Boundary Determination No. 03-2015, APN 119-060-33

cc: Charles (Tod) Friend, TBOC
Scott Hochstrasser, IPA, Inc.
Max Delaney, Gulf of the Farallones National Marine Sanctuary
Brian Crawford, Director, Marin County Community Development Agency

Peter Prows
Tomales Bay Oyster Company
Page No. 4

Jo Ginsberg, CCC, Enforcement Analyst
Pat Veasart, CCC, Northern California Enforcement Supervisor
Alison Dettmer, CCC, Deputy Director
Lisa Haage, CCC, Chief of Enforcement
Matt Christen, Staff Attorney
Louise Warren, CCC, Senior Staff Counsel
Mark Delaplaine, CCC, Manager, Energy, Ocean Resources, and Federal Consistency
Division

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**MEMORANDUM**

March 2, 2015

To: Jo Gingsberg, Enforcement Program

From: Darryl Rance, GIS/Mapping Program

Cc: Pat Veasart, North Coast Enforcement Program Manger
Nancy Cave, North Central Coastal District Office Manager

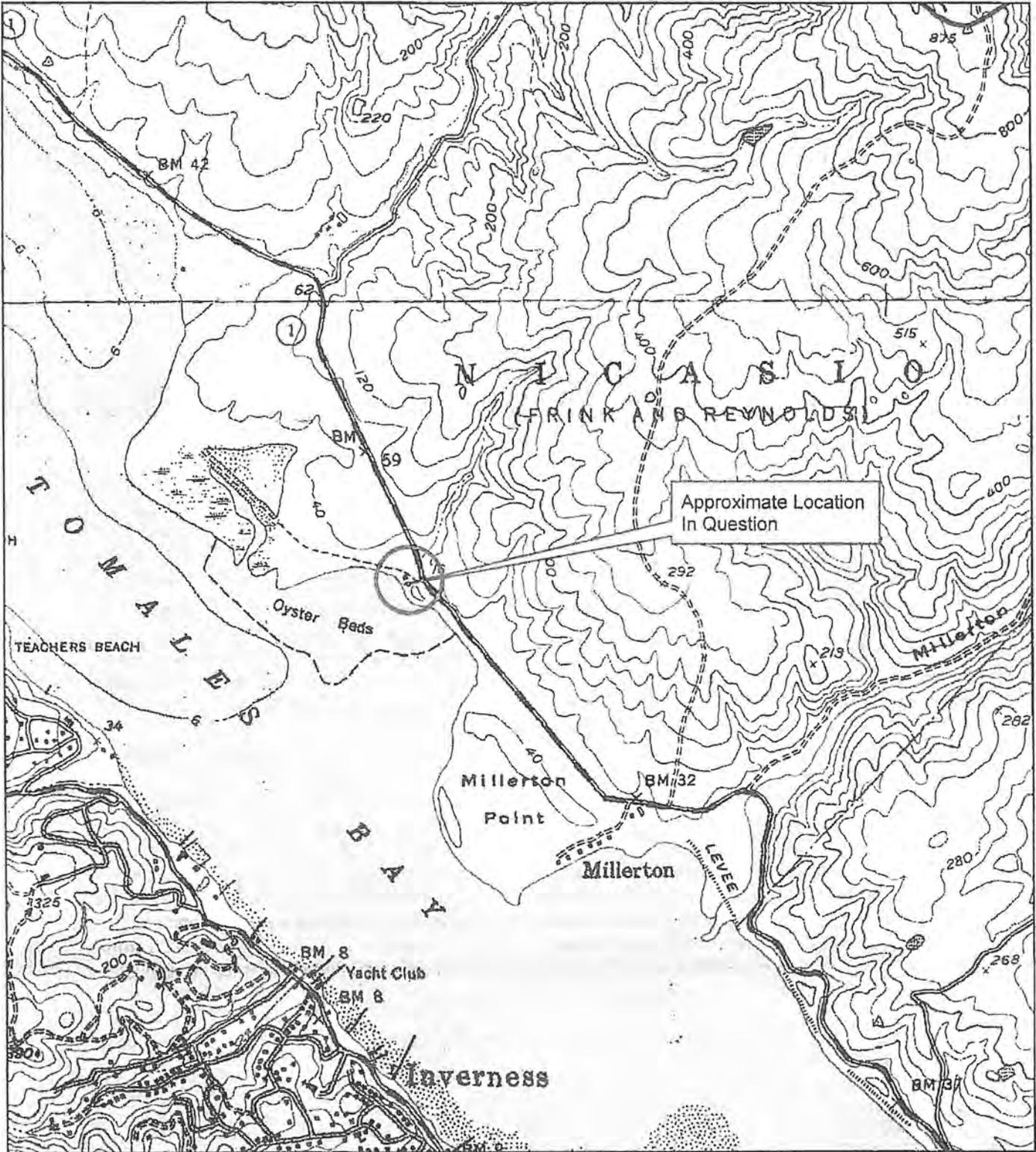
Subject: Boundary Determination No. 03-2015, Assessor Parcel Number 119-060-33, Marin County.

A boundary determination has been requested for Tomales Bay Oyster Company located on Marin County Assessor Parcel Number 119-060-33. Enclosed is a copy of a portion of the Coastal Zone Boundary Map Nos. 52 & 54 (Point Reyes and Inverness Quadrangles) with the approximate location of the subject property indicated. See Exhibit 1. Also included is an Aerial Photo-based exhibit that depicts the subject property with the Coastal Commission permit jurisdiction added. See Exhibit 2.

Based on the information provided and available in our office, the subject property is located entirely within the Coastal Zone and appears to be bisected by the Coastal Commission permit jurisdiction boundary in the manner indicated on Exhibit 2. Development that is proposed within the Coastal Commission permit jurisdiction would require coastal development permit authorization from the Coastal Commission. The Coastal Commission's permit jurisdiction is based on the existence of tidelands, submerged lands and public trust lands. The information available indicates that the area in question appears to be located, in part, on tidelands, submerged land and, or land that may be subject to the public trust. Based on this information the Coastal Commission is asserting jurisdiction over development activities associated with the Tomales Bay Oyster Company as shown on Exhibit 2. Questions regarding the exact extent of public trust lands should be referred to the State Lands Commission for determination. Their status determination may or may not result in a different permit and appeal boundary.

Please contact Darryl Rance of the GIS/Mapping Program at (415) 904-5335 if you have any questions regarding this determination.

Enclosures



BD 03-2015
 APN 119-060-33
 Tomales Bay Oyster Co.
 Marin County

Portion of Coastal
 Zone Boundary Map Nos. 52 & 54
 (Point Reyes and Inverness Quadrangles)

CALIFORNIA
COASTAL
 COMMISSION

Technical Services Division



Exhibit 1

DAR 2/2015

TAB 9

BRISCOE IVESTER & BAZEL
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155 SANSOME STREET
SEVENTH FLOOR
SAN FRANCISCO CALIFORNIA 94104
(415) 402-2700
FAX (415) 398-5630

Peter S. Prows
(415) 402-2708
pprows@briscoelaw.net

— May 2015

By Email and U.S. Mail

Cassidy Teufel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Tomales Bay Oyster Company

Dear Mr. Teufel:

I write in response to your letter of 22 May, in which you wrote that the information TBOC submitted in January “was not sufficient to initiate the Commission’s vested rights determination process”, and asked me to complete a form to begin that process. The information submitted in January established that TBOC continues to cultivate shellfish in areas authorized for shellfish cultivation by California since 1875. That is all the information the Commission should have needed to agree months ago that the vested-rights claim is substantiated. (*See Monterey Sand Co. v. Cal. Coastal Com.* (1987) 191 Cal.App.3d 169, 176 (“an activity which was already underway when [the Coastal Act] became effective was exempt” from the Act’s permitting requirements, provided that the activity is “within the scope of the preexisting authorization for us of the coastal resource in question”).) Continued delays in processing the claim violate the Commission’s regulations and support the position that the Commission has waived any right to object.

Can you or Commission legal staff please specifically explain why the information submitted in January was not sufficient, and why this process needs to be restarted now with the completion of this form?

Thank you, and please do not hesitate to call me with any questions.

Sincerely yours,

BRISCOE IVESTER & BAZEL LLP

Peter S. Prows
Counsel for Tomales Bay Oyster Co.

BRISCOE IVESTER & BAZEL LLP

Cassidy Teufel

14 May 2015

Page 2

cc: Alison Dettmer, Deputy Director, California Coastal Commission
Steve Kinsey, Chair, California Coastal Commission
Curtis Havel, Senior Planner, Marin County
Kirsten Ramey, Senior Environmental Scientist Supervisor, California
Department of Fish and Wildlife
Scott Hochstrasser, IPA, Inc.

TAB 10

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
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FAX (415) 904-5400
TDD (415) 597-5885



June 17, 2015

Peter S. Prows
Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104

RE: Tomales Bay Oyster Company (TBOC)

Dear Mr. Prows:

Thank you for your letter dated May 29, 2015 responding to Cassidy Teufel's letter of May 22, 2015. Among other topics, Mr. Teufel's letter is regarding Tomales Bay Oyster Company's ("TBOC") option to submit a vested rights application to the Coastal Commission to establish a vested right to the development that TBOC's predecessor-in-interest was engaging in at the time its operations became subject to the requirements of the Coastal Act. In your letter you claim that TBOC's January 29, 2015 submittal of information responding to Jo Ginsberg's enforcement letters should have been construed by Commission staff as an application to seek a vested right.

Although your cover letter discusses vested rights and asserts that TBOC need not obtain a permit for some of the development identified in Ms. Ginsberg's letters, there is no indication in either your cover letter or the supporting material that these materials constituted an application for a vested right. Neither of these submittals requested that the Coastal Commission determine that such a vested right exists, nor did they include the Coastal Commission's application form for a vested right.

The standard for establishing a vested right is whether a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791. The scope of the vested right is limited to the extent of the development authorized by the permit on which the property owner relied. *Id.* at 793. The applicant for the vested right bears the burden of establishing the existence of the vested right. 14 CCR Section 13200.

The development for which TBOC may establish a vested right, therefore, is that that its predecessor-in-interest was undertaking, consistent with all required authorizations, at the time

Peter Prows
Tomales Bay Oyster Company
Page No. 2

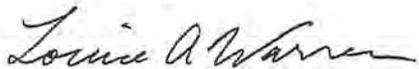
its operations became subject to the provisions of the Coastal Act - in this case, February 1, 1973. TBOC's application for a vested right should therefore focus on establishing what development was occurring in February of 1973 and the scope of the approvals in effect at that time that authorized such development, including any conditions of approval or other limitations on such approvals. The Coastal Commission's vested rights application includes questions that would help establish this information and how the development meets the test laid out by the California Supreme Court in *Avco*.

Nevertheless, if TBOC believes that the information it submitted in its January 29, 2015 submittal of information is sufficient to meet its burden of establishing a vested right and the scope of that vested right as it existed in February 1, 1973, then Commission staff will accept that letter and supporting documentation as a vested rights application. We urge TBOC, however, to carefully review its January 29, 2015 submittal and compare it to the information requested in the Coastal Commission's vested rights application to ensure that the application is complete. For example, the TBOC submittal does not include a copy of a State water bottom lease authorizing the oyster cultivation operation in 1973.

Please confirm that TBOC does not intend to submit any other documentation supplementing your January 29, 2015 letter and accompanying materials, in which case we will proceed to review that submittal as a vested rights application. Alternatively, if TBOC intends to provide additional support for its application, we will review that when it is provided to us.

If you have any questions about TBOC's vested rights application, please contact me at 415-904-5227. Thank you for your cooperation.

Sincerely,



Louise Warren
Senior Staff Counsel

cc: Charles (Tod) Friend, TBOC
Scott Hochstrasser, IPA, Inc.

TAB 11

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Peter S. Prows
(415) 402-2708
pprows@briscoelaw.net

__ June 2015

By Email and U.S. Mail

Louise Warren
Senior Staff Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Tomales Bay Oyster Company

Dear Ms. Warren:

Thank you for your letter dated 17 June, which continues an exchange I have had with various Commission staff about Tomales Bay Oyster Company's offshore oyster-cultivation operations. Before addressing the substance of your letter, let's take a few steps back.

This exchange of letters began with Ms. Ginsberg's surprising suggestion that TBOC should apply for an after-the-fact permit for its entire offshore oyster-cultivation operations within the approximately 160-acre area of lease M-430-05. Oysters have been cultivated in that area since 1875. To our knowledge, Ms. Ginsberg's letter was the first time that anybody at the Commission had ever suggested that TBOC needed a CDP for this cultivation—despite the fact that the Commission has been aware of this cultivation since at least 1981, when it approved the Marin County LCP. Under the Commission's new after-the-fact permit application fee schedule, the fee alone for such an application could potentially be astronomical (not to mention the significant time, expense, and uncertainty that might be associated with the permit process for what is essentially a 160-acre offshore farm).

As you know, the Coastal Act generally requires CDPs for "development", as defined by the Act. (PRC § 30600(a).) By implication, if there is no development, no CDP is required. The Commission bears the burden of showing that an activity constitutes development for which a CDP is required. Only once it is established that an activity constitutes development does the question arise as to whether that activity is nevertheless exempt from the CDP requirement because of vested rights.

Commission staff have taken the firm position that “ongoing agricultural production activities ... do not require a CDP” because they are not development.¹ This position is consistent with direction given by the California Attorney General, who has formally opined that the Coastal Act reflects “a legislative intent to leave hands off coastal agricultural activity, especially in ongoing agricultural use of land,” unless there are “major changes” such as “the conversion of undeveloped land into agricultural use.”² TBOC’s offshore aquacultural operations are a form of agriculture. (PRC § 30100.2.) Because TBOC’s offshore aquacultural operations constitute ongoing agricultural production activities, they are not development and do not require a CDP.

If the Commission were to change position and assert that ongoing agricultural production activities are development requiring a CDP, then that could have profound statewide consequences. Potentially every farmer in the Coastal Zone might need a new CDP each time they planted a crop, even if that crop had been grown on that land (as oysters have been cultivated in TBOC’s lease area) for more than a century. Agriculture in the Coastal Zone could come to a halt. The many agriculture-supportive policies in the Coastal Act would be undermined.

Please let me know whether it is the Commission’s position that TBOC’s ongoing offshore oyster cultivation activities in lease area M-430-05 are development, or confirm, as I asked Ms. Ginsberg in my 29 January 2015 letter to do, that “you do not expect TBOC to obtain a permit, after-the-fact or otherwise, for its current or planned offshore oyster-cultivation operations.” If you do contend that any parts of TBOC’s offshore operations are development, please specify exactly which parts are development and, further, what the after-the-fact permit application fee would be (assuming there were no vested rights). Only if it is now the Commission’s position that any part of TBOC’s ongoing offshore oyster cultivation activities are development do we need to get into the issue of vested rights, which I would be glad to address further at the appropriate time.

Thank you, and please do not hesitate to call me with any questions.

¹ E.g., LCP-2-MAR-13-0224-1 Part B (Marin County IP Update) at 4, *available at* <http://documents.coastal.ca.gov/reports/2015/4/th7a-4-2015.pdf>. See also Charles Lester et al., *Background Report For Workshop On Agriculture In The Coastal Zone: Implementation Of Coastal Act Provisions Related To Agriculture*, at 19 (26 April 2013) (certain “crop changes are not defined as new development requiring coastal permits”), *available at* <http://documents.coastal.ca.gov/reports/2013/5/W3-5-2013.pdf>.

² Office of the Attorney General, Opinion No. SO 77/39 I.L., at 7 (6 April 1978).

BRISCOE IVESTER & BAZEL LLP

Louise Warren

__ June 2015

Page 3

Sincerely yours,

BRISCOE IVESTER & BAZEL LLP

Peter S. Prows

Counsel for Tomales Bay Oyster Co.

cc: Alison Dettmer, Deputy Director, California Coastal Commission
Steve Kinsey, Chair, California Coastal Commission
Curtis Havel, Senior Planner, Marin County
Kirsten Ramey, Senior Environmental Scientist Supervisor, California
Department of Fish and Wildlife
Scott Hochstrasser, IPA, Inc.

TAB 12

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



August 6, 2015

Peter S. Prows
Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104

RE: Tomales Bay Oyster Company (TBOC)

Dear Mr. Prows:

Thank you for your letter dated June 26, 2015 responding to my letter to you of June 17, 2015. In this letter you assert that ongoing aquaculture operations are not development for which a coastal development permit (CDP) is required. We do not agree with your legal argument and believe that a CDP is necessary to authorize certain development activities undertaken by your client - discussed in our previous letters. .

It does not appear necessary or productive, however, to debate these legal issues with you; our goal is to find a path forward so that your client's aquaculture facility operates with appropriate permits in place. As you know, the Commission not only implements the California Coastal Act but also the federal Coastal Zone Management Act (CZMA). Under the CZMA, any applicant for a federal license or permit to conduct an activity affecting any land or water use or natural resource of the coastal zone shall certify that the proposed activity complies with the enforceable policies of a state's approved coastal zone management plan. (16 U.S.C. 1456(c)(3)). For activities affecting California's coastal zone, this certification is reviewed by the Coastal Commission to determine whether the proposed activity is consistent with the Chapter 3 policies of the Coastal Act; the same policies with which a CDP must be consistent.

Regardless of whether the subject development activities undertaken by your client are "development" under the Coastal Act, as we believe they are, or if they are vested under the Coastal Act, those activities are subject to federal permit requirements and therefore the Coastal Commission's federal consistency authority under the CZMA. A CDP from the Commission satisfies the federal consistency requirement for activities subject to the CZMA. Thus, we urge your client to simply apply for a CDP that would also satisfy its federal consistency obligations.

In your letter you also requested that Commission staff provide your client with an estimate of the cost of an after-the-fact permit application fee for this operation. The fee schedule for CDP

Peter Prows
Tomales Bay Oyster Company
Page No. 2

applications is found in Title 14 of the California Code of Regulations at section 13056. The fee for aquaculture operations is based on the cost of the development. (14 CCR 13056(a)(5)(B)). Without knowing the development costs for the subject activities, we are unable to estimate the cost of the application fee, but your client is likely to be able to obtain some sense of the fee by reviewing this schedule. As you note, however, because this CDP would be authorizing development after-the-fact, any fee calculated under 13056(a)(5)(B) would be multiplied by 5.

I will be out of the office on leave starting August 14, 2015, so please direct any follow-up correspondence or questions to Alex Helperin at Alex.Helperin@coastal.ca.gov.

Sincerely,



Louise Warren
Deputy Chief Counsel

cc: Charles (Tod) Friend, TBOC
Scott Hochstrasser, IPA, Inc.
Bryan Matsumoto, U.S. Army Corps of Engineers
Max Delaney, Greater Farallones National Marine Sanctuary
Korie Schaeffer, National Marine Fisheries Service

TAB 13

CALIFORNIA COASTAL COMMISSION

49 FROBONT SUITE 2000
SAN FRANCISCO, CA 94105-2319
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 997-5885



SENT BY REGULAR AND CERTIFIED MAIL
Certification No. 7012 3460 0001 7811 0627

October 2, 2015

Scott Hochstrasser
IPA, Inc.
141 Bolinas Road
Fairfax, CA 94930

Coastal Act Violation File No: **V-9-15-0093 (Tomales Bay Oyster Company)**

Location: Directly offshore of 15479 State Route One, Marshall,
Marin County, APN 119-060-33

Violation¹ description: Unpermitted development including, but not limited to, the
disposal of shell in the intertidal mudflats near the pier at
the Tomales Bay Oyster Company ("TBOC") site

Dear Mr. Hochstrasser:

I am writing regarding a new Coastal Act violation² at the TBOC site. It has come to our attention that a large quantity of shell material comprising approximately 2,000 square feet in area, up to 8 inches deep, has been discarded onto the intertidal mudflat area near the pier at the TBOC site sometime around late July of 2015 without benefit of a coastal development permit ("CDP"). We have also been informed that additional shell has been dumped at that location even more recently, perhaps several times, in the past several months. This disposal area is outside of TBOC's state aquaculture lease and the dumping of this debris constitutes unpermitted fill in sensitive habitat/coastal waters and raises a variety of issues with regard to the maintenance and protection of marine resources and habitats. The burial and hardening of

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Please further note that the term "violation," as used throughout this letter, refers to alleged violations of the Coastal Act (Public Resources Code § 30000 *et seq.*).

² As the reference to a "new" violation implies, we continue to believe that other activities that we identified in previous letters constitute violations as well.

intertidal soft-substrate mudflat areas with shell debris has the potential to result in significant long-term modifications to the ecology of these areas by altering wildlife foraging patterns and the abundance and composition of species they support, as well as their hydrology and physical and chemical make-up.

Violation

As we noted in previous correspondence concerning TBOC, pursuant to Section 30106 of the Coastal Act:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973.....(Emphasis added)

As such, the discard of large quantities of shell in the intertidal mudflats at the TBOC site constitutes development under the Coastal Act. Section 30600(a) of the Coastal Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a CDP, in addition to any other permit required by law, before carrying out any development. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act. Thus, the unpermitted activities described above that were undertaken on or adjacent to the subject property are considered to be unpermitted development, constituting a Coastal Act violation.

Enforcement Remedies

Chapter 9 of the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following: Sections 30809(a) and 30810(a) of the Coastal Act provide that the Executive Director of the Coastal Commission and the Commission itself, respectively, may issue an order to enforce the requirements of the Coastal Act or a certified LCP. Section 30811 authorizes the Commission to require restoration of a site if unpermitted development inconsistent with the Coastal Act has occurred and is causing ongoing damage to coastal resources. Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act, respectively. Section 30820(a)(1) provides that any entity who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not

exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that, in addition to any other penalties, any entity that "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists. Finally, Section 30812 provides for the Executive Director to record a Notice of Violation on the property where an unresolved violation exists.

Resolution of Coastal Act Violations

As we have noted previously, we recognize that TBOC provides the public with a valuable visitor-serving amenity and is an asset to the local economy. However, operation of TBOC must occur within the confines of the law and in a manner that is protective of coastal resources. We are somewhat mystified that additional unpermitted development activities continue to take place, especially those associated with the discard of waste materials into Tomales Bay. We have been striving to work cooperatively with you for more than a year to resolve other outstanding Coastal Act violations, including the unpermitted status of TBOC's onshore facility and operations within one of its aquaculture leases (M-430-05) and unpermitted vegetation clearing, grading, paving, installation of rock, and placement of a revetment.

Furthermore, Cassidy Teufel of our Energy, Ocean Resources, and Federal Consistency Unit has been working cooperatively with you to address the unpermitted installation of fences and berms in Tomales Bay and as part of a coordinated group of resource agency representatives and shellfish growers working to jointly seek solutions to ongoing issues associated with the release of aquaculture related debris into Tomales Bay. These latest violations are at odds with the resource protection and stewardship goals of these ongoing efforts and raise questions about TBOC's dedication to the cooperative approach between the shellfish industry and resource agencies that is being pursued.

Whenever possible, Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively. We are hopeful that we can resolve this latest matter without resorting to formal action. To begin the resolution process, **please have your client cease at once** all unpermitted activities, including any further dumping of shell in the intertidal mudflats at the site or placement of any additional unpermitted structures on or adjacent to the subject property, and take the following steps to begin resolution of this new Coastal Act violation:

1. Cease all unpermitted activities at once.
2. Contact me by October 14, 2015 to describe how you will begin resolution of the latest Coastal Act violation. I can be reached at **415-904-5269**. Submit by October 23, 2015 a complete CDP application for removal of the unpermitted shell and restoration of the disturbed area. We recommend that you seek the assistance of a qualified expert to prepare a removal and restoration plan. You should also contact the staff of the Marine Region of the California Department of Fish and Wildlife, California State Lands

Scott Hochstrasser
Tomales Bay Oyster Company
V-9-15-0093
Page No. 4

Commission, Greater Farallones National Marine Sanctuary, and U.S. Army Corps of Engineers to coordinate removal and restoration activities. Please note that staff cannot recommend approval of retention of the unpermitted shell because, under the Coastal Act, it is not an allowable use in sensitive habitat. Please contact Cassidy Teufel at **415-904-5502** to discuss requirements for your CDP application for removal of unpermitted shell.

Failure to meet the deadlines noted above may result in formal action by the Commission to resolve this Coastal Act violation, including initiation of the enforcement remedies discussed above.

Thank you for your cooperation and prompt attention to this matter. We look forward to talking to you soon.

Sincerely,



Jo Ginsberg,
Enforcement Analyst

cc: Cristy Stanley, Marin County Code Enforcement
Charles (Tod) Friend, TBOC
Kirsten Ramey, California Department of Fish and Wildlife
Susan Ashcraft, California Fish and Game Commission
Max Delaney, Greater Farallones National Marine Sanctuary
Bryan Matsumoto, San Francisco District, U.S. Army Corps of Engineers
Becky Ota, California Department of Fish and Wildlife
Nicholas Lavoie, California State Lands Commission
Lisa Haage, CCC, Chief of Enforcement
N. Patrick Veasart, CCC, Enforcement Supervisor
Alison Dettmer, CCC, Deputy Director
Nancy Cave, CCC, North Central Coast District Manager
Cassidy Teufel, CCC, Environmental Scientist
Mark Delaplaine, CCC, Manager, Energy, Ocean Resources, and Federal Consistency
Division