

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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49th Day:	November 27, 1996
180th Day:	April 7, 1997
Staff:	Robert Merrill
Staff Report:	February 28, 1997
Hearing Date:	March 13, 1997
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-96-69**

APPLICANTS: **COAST SEAFOODS COMPANY**

PROJECT LOCATION: Within Humboldt Bay, approximately 3/4 of a mile north of the Samoa Bridge along the west side of the channel, in Humboldt County.

PROJECT DESCRIPTION: Develop a permanent clam seed nursery by permanently anchoring (1) a series of 10 approximately 12-foot-wide by 20-foot-long wooden rafts with styrofoam floats for use in holding clam seed nursery trays; and (2) a 20-foot-wide by 27-foot-long floating work platform for washing, sorting, counting seed, and related activities.

LOCAL APPROVALS RECEIVED: Humboldt Bay Harbor Recreation & Conservation District: (1) Lease, most recently amended on June 22, 1995; (2) Permit No. 1995-7 effective December 21, 1995.

OTHER APPROVALS RECEIVED: (1) U.S. Army Corps of Engineers Nationwide Permit No. 4 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403)

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County Local Coastal Program

STAFF NOTES1. Standard of Review

The project is within the Commission's retained coastal development permit jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

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SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with conditions requiring submittal of evidence of approval of the project by the U.S. Army Corps of Engineers and removal of the clam seed nursery should it ever be abandoned. Aquaculture is a coastal dependent use encouraged by the Coastal Act and the proposed permanent mooring of the 12 rafts associated with the project will not have any significant adverse impacts on habitat values. The clam seed nursery is located above an area of the Bay with a sandy bottom that does not support eelgrass or other vegetation with high habitat values. The project will be visually compatible with the character of the area as the proposed rafts have a low profile and are similar to other aquaculture apparatus in the Bay. Finally, the proposed project will have no adverse affect on public access. Therefore, staff believes the proposed project, as conditioned, is consistent with the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached

III. Special Conditions:

1. U.S. Army Corps of Engineers Review.

WITHIN SIX MONTHS OF COMMISSION APPROVAL, the applicants shall submit to the Executive Director evidence that the U.S. Army Corps of Engineers has granted permission for the project authorized herein.

2. Removal of Rafts Upon Abandonment of Clam Seed Nursery.

Within 90 days of abandonment of the clam seed nursery, the applicant or assignees shall submit a complete application and subsequently secure a coastal development permit to remove the rafts and their anchoring system from the project site.

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IV. Findings and Declarations.

The Commission hereby finds and declares:

1. Project and Site Description:

The applicant proposes to develop a permanent clam seed nursery in Humboldt Bay by permanently anchoring a series of 11 rafts in the open waters of the Bay. In 1996, the applicant applied for and received Coastal Development Permit Waiver No. 1-96-002W to establish the clam seed nursery for a one year trial period, after which the rafts were to be removed unless the applicant sought additional authorization to retain the nursery in place for a longer time period. Thus, the rafts are already in place and no new rafts are proposed at this time.

The rafts serve as an intermediate nursery, for growing clam seed between the time the seed is produced in the applicant's Quilocene, Washington hatchery to a point where the clam seed is ready for planting in clam beds the company operates elsewhere in the Bay. Clam seed is grown at the new nursery from approximately 1-2 millimeters in shell length to 6-8 millimeters.

The project site is approximately three-quarters of a mile north of the Samoa Bridge, west of the west navigable channel (see Exhibits 1 and 2). The nursery rafts are anchored about one-half mile offshore.

The rafts include 10 nursery rafts and one work float (see Exhibits 3 and 4). Each of the nursery rafts is 12 feet wide by 20 feet long, and has 24 tray wells. Clam seed nursery trays (in stacks of 10-12) are suspended in each tray well. The work float is 20 feet wide by 27 feet long, and is used for washing, sorting and counting seed. The rafts are constructed from wood and styrofoam floats. The nursery rafts are positioned in five parallel rows, each row containing two rafts coupled end to end. The work float is moored between two of the rows. The rafts are oriented at a right angle or crosswise to the tidal currents. The rafts are secured in place with 2,000-pound anchors consisting of concrete poured into rounded steel frames. The anchors and rafts are linked by 7/8-inch-in-diameter cable.

The rafts float in several feet of water above the bay bottom. A survey of site conditions conducted prior to the initial mooring of the rafts in 1996 indicated that the bottom habitat underneath the rafts consists of hard packed sand with occasional areas of a sand-mud mix. This habitat supports a variety of benthic organisms, but the survey indicated the site contains no eelgrass beds.

The Humboldt Bay Harbor Recreation and Conservation District administers the tide and submerged lands in this area pursuant to a legislative grant. The District has granted a long term lease as well as a Harbor District permit to the applicant for the clam seed nursery.

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The rafts are anchored outside of the navigable channels of Humboldt Bay. The U.S. Coast Guard reviewed the initial anchoring of the rafts and determined that the rafts need not be lighted and the anchoring required no special Coast Guard approval at that location.

2. Fill in Coastal Waters and Protection of Marine Resources.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project includes the authorization of permanent fill in coastal waters in the form of the floating rafts, and the anchoring system. The rafts cover a total of approximately 3,000 square feet of Bay surface area and the anchors cover a relatively small amount of bottom area.

Sections 30230, 30231, and 30233 of the Coastal Act address the protection of the marine environment from the placement of fill, including fill for aquaculture operations. Section 30230 of the Coastal Act provides as follows, in applicable part:

Marine resources shall be maintained, enhanced, and where feasible, restored...Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act provides as follows, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30233(a) provides as follows, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

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(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- a. that the purpose of the fill is for one of eight uses allowed under Section 30233;
- b. that the project has no feasible less environmentally damaging alternative;
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided; and
- d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

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A. Permissible Use for Fill

The first test set forth above is that any proposed fill must be for an allowable purpose. The use of the fill, aquaculture, is a resource dependent use that depends on the resources of the bay's waters to function at all. Fill is permissible for such uses under Section 30233(a)(8).

B. Alternatives

The second test set forth by the Commission's fill policies is that the proposed fill project must have no feasible less environmentally damaging alternative.

The no project alternative would involve removing the nursery which has only been authorized to date as a temporary facility. However, the no project alternative would not accomplish the project objectives of growing clam seed for Humboldt Bay aquaculture activities and thus is not a feasible alternative.

A clam seed nursery must provide an environment where the clam's are immersed in sea water that is similar in terms of salinity, temperature, nutrient content, etc. to the sea water found where clam's grow naturally. As shown in Exhibit 4, the applicant's nursery suspends trays of clam seed into the water in stacks from underneath the nursery rafts. The nursery provides for a greater rate of production of clams than the rate of production of natural clam beds by maximizing the availability of suitable surfaces for the clams to adhere to, concentrating the clams in a denser environment, shielding the clams from natural predators, among other reasons. Because the clam seed nursery must utilize sea water with certain characteristics matching the sea water where clams normally grow, the nursery is dependent on a Humboldt Bay location and some amount of floating or structural fill in the Bay is necessary to provide the necessary estuarine environment for the nursery.

The design of the nursery minimizes the amount of fill required. The overall amount of surface area coverage of the rafts is relatively small and the approximately 20-foot-long by 11-foot-wide seed rafts have been designed to be as small as possible. Space has been saved by suspending the clam seed trays in stacks rather than arraying them one layer deep. The access walkways on the rafts for use by nursery workers are no greater than two feet wide, which is the minimum size needed for safety purposes.

The specific location chosen for the clam seed nursery is the least environmentally damaging. The principal impact that the array of rafts could have on the environment is the shading of bottom habitat and the direct displacement of habitat by the anchors utilized to secure the rafts to the bottom. The project location is in an area that contains an unvegetated sandy bottom. Thus, the shading caused by the rafts will have minimal impact, as it will not interfere with plant growth as it could elsewhere around the Bay where eelgrass and other sensitive tidal and inter-tidal plant species which provide high habitat value are located. In addition, the location of

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the nursery is outside of navigable channels and will have no appreciable impact on use of the Bay environment for recreational activities.

No other feasible alternatives involving less environmental damage have been identified. Therefore, the Commission finds that there are no feasible less environmentally damaging alternatives to the proposed project.

C. Feasible Mitigation Measures.

The third test set forth under Section 30233 is whether feasible mitigation measures can be employed to minimize the proposed fill project's adverse environmental effects.

The proposed project could potentially have two adverse environmental effects on the Humboldt Bay environment, including (i) disturbance of mud flat habitat, and (ii) the creation of a hazard to boater safety or habitat by break-up of the nursery should it be abandoned in place. Feasible mitigation measures can be employed to minimize these potential adverse environmental effects.

(i) Mud flat Habitat. The anchors for the clam seed nursery rafts are lodged on the Bay bottom in an unvegetated sandy and sandy-muddy area. Such soft bottom habitat supports a variety of worms, mollusks, and other benthic organisms. The minor loss of soft bottom habitat area displaced by the anchors is not proposed to be offset by the removal of other material. In previous permit actions, the Commission has often determined that piles, anchors, and similar small structures often provide new habitat of their own that offsets the detriment to habitat values caused by the loss of soft bottom habitat from the installation of these structures. The hard surfaces of the structures provide new habitat for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae. In such cases, where the amount of new hard habitat created is commensurate with the amount of soft bottom habitat area lost, the Commission has often not required mitigation for loss of soft bottom habitat. The Commission similarly finds in this case that the creation of new hard habitat, which is relatively limited within Humboldt Bay, will offset the relative minor loss of soft bottom habitat area, and no additional mitigation for loss of soft-bottom habitat is necessary.

ii. Apparatus Hazards. The rafts of the clam seed nursery could create a hazard to boaters and habitat areas should the nursery ever be abandoned and the rafts left in place in an unmaintained state. Deterioration, storms, and currents could eventually dislodge or break apart the rafts, and the debris could float to other parts of the Bay where it could adversely affect boaters and habitat areas. To prevent such an impact from occurring, the Commission attaches Special Condition No. 2 which requires the applicant or its assignees to apply for a coastal development permit for removal of the rafts and the anchoring system should the clam seed nursery ever be abandoned. In its review of such an application, the Commission could impose conditions to

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ensure that the apparatus is removed in a manner that will not adversely affect boater safety and habitat values.

The Commission finds, that as conditioned, the proposed project is consistent with the fourth test set forth by Sections 30230, 30231, and 30233 of the Coastal Act for approvable fill projects in that adequate mitigation for the adverse environmental effects of the proposed project will be provided.

D. Maintenance and Enhancement of Estuarine Habitat Values.

The fourth general limitation set by Sections 30230, 30231, and 30233 for fill projects is that any proposed fill project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As noted above, the anchors for the clam seed nursery will provide a small amount of hard habitat which is in relatively limited supply in Humboldt Bay. By increasing the diversity of habitat the proposed project will enhance the biological productivity and functional capacity of the habitat, consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

3. Visual Resources.

Section 30251 protects the scenic and visual qualities of coastal areas, requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas must be subordinate to the character of its setting.

Because of the low profile of the rafts in the water, and their location half a mile offshore, the clam seed nursery is not visible from most public vantage points around the shores of Humboldt Bay. However, the clam seed nursery is visible from Highway 255 along a portion of the Samoa Bridge, the bridge that spans Humboldt Bay between Eureka and the Samoa Peninsula.

Because of the relatively small size of the nursery and its low profile, the nursery does not stand out as a major landmark. In addition, the clam seed nursery is not incompatible with the visual character of the area. The nursery is located just north of another clam seed nursery that was installed many years ago by a different aquaculture company. The older nursery also utilizes rafts and is similar in appearance to the rafts installed by the applicants. In addition, the presence of a clam seed nursery is not incompatible with the visual character of Humboldt Bay in general as Humboldt Bay is the State's major producer of oysters, clams and other shellfish and the Bay contains many other aquaculture operations around its perimeter.

Therefore, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act as the clam seed nursery is visually

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compatible with the character of its setting and will avoid significant adverse impacts on visual resources.

4. Public Access.

Coastal Act Section 30210 requires that maximum public access opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Coastal Act Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through use. Coastal Act Section 30212 requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, as when adequate access exists nearby. In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

The proposed project does not have any significant adverse impact on public access. As the rafts are anchored approximately half a mile offshore and the applicant uses existing boat docking facilities to access the nursery by boat, the clam seed nursery has no effect on shoreline public access. In addition, the nursery will not adversely affect boat access on Humboldt Bay. The nursery is anchored outside of any channel within Humboldt Bay that is navigable by large vessels. Given the small size of the nursery relative to the expanse of Humboldt Bay, the nursery also does not appreciably diminish the water surface area of the Bay available for sea kayakers and other shallow draft small craft. Furthermore, the proposed project will not increase the burden on existing public access facilities as it will not increase the density of development around Humboldt Bay and thereby increase the number of people seeking use of public access facilities.

Therefore, as no significant adverse impacts of the proposed development on public access have been identified, the Commission finds that it is not appropriate to require public access through a special condition of this permit and finds that the project as proposed is consistent with Sections 30210, 30211, and 30212 of the Coastal Act.

5. U.S. Army Corps of Engineers Approval.

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 1 which

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requires the applicants to submit evidence that the U.S. Army Corps of Engineers has granted permission for the project authorized herein.

6. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed above, the project has been mitigated to avoid significant impacts on the estuarine environment of Humboldt Bay. As conditioned, the proposed development with the proposed amendment will not have a significant adverse effect on the environment, within the meaning of CEQA.

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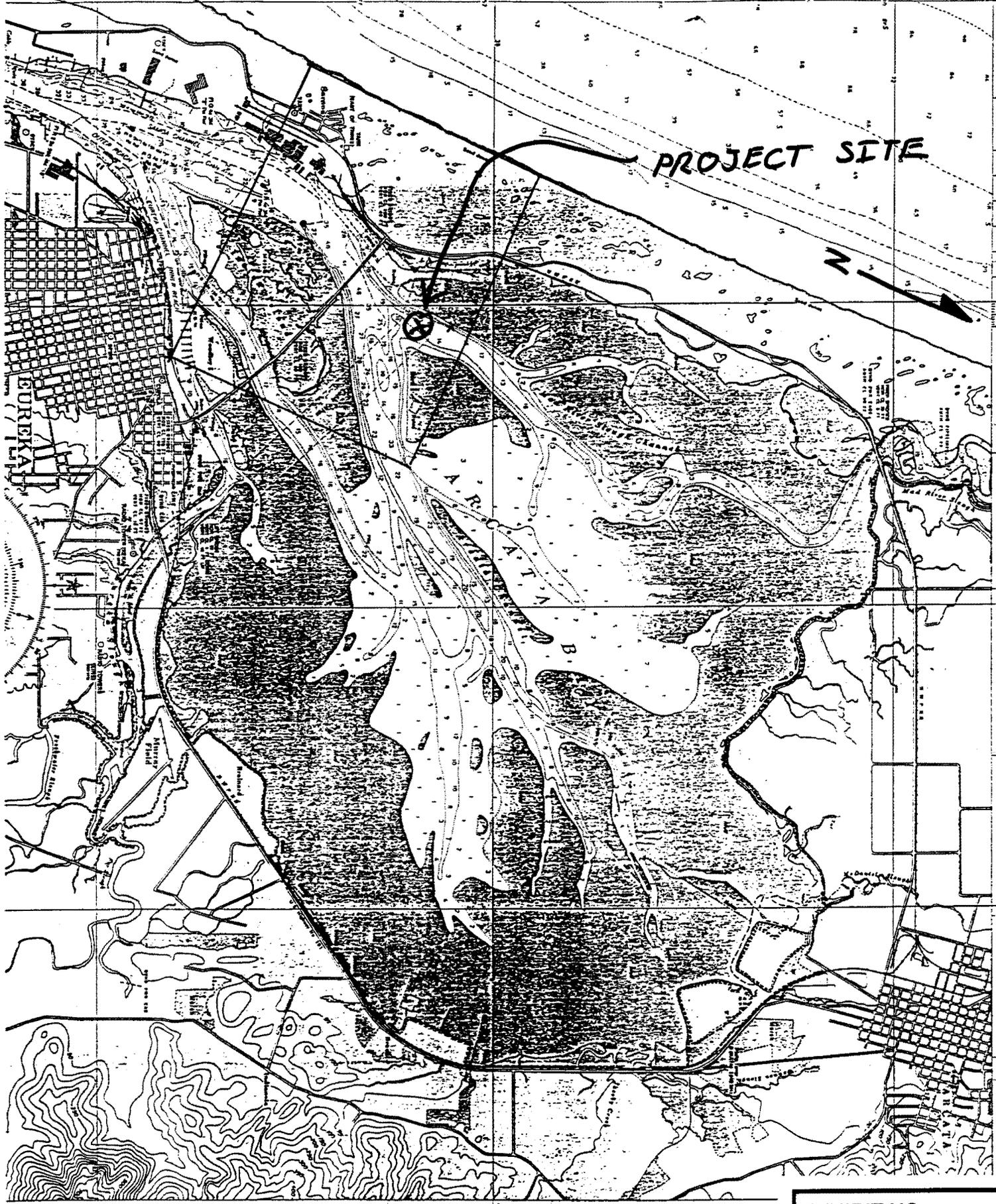
COAST SEAFOODS COMPANY

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ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Vicinity Map
 Coast Seafoods Company
 Clam Floats (nursery)

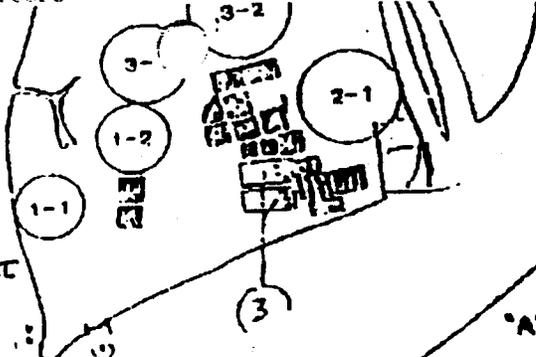
EXHIBIT NO.	2
APPLICATION NO.	1-96-69
COAST SEAFOOD	
Vicinity Maps (1 of 2)	

Samoa

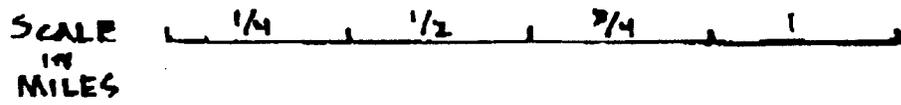
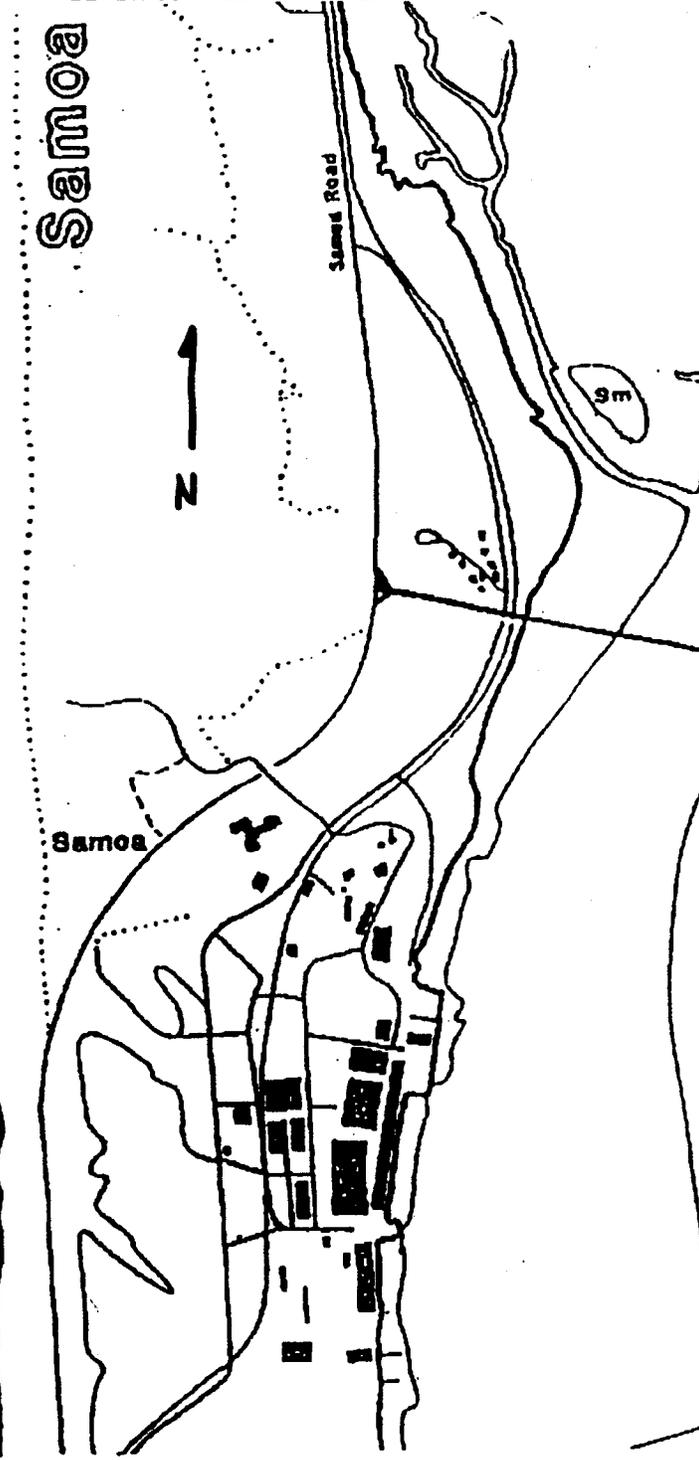


Samoa Road

X ←
PROJECT
SITE



Samoa



COAST SEAFOODS COMPANY CLAM FLATS

EXHIBIT NO.	2
APPLICATION NO.	1-96-69
COAST SEAFOOD	
Vicinity Maps (2 of 2)	

EUREKA SEED RAFT LAYOUT

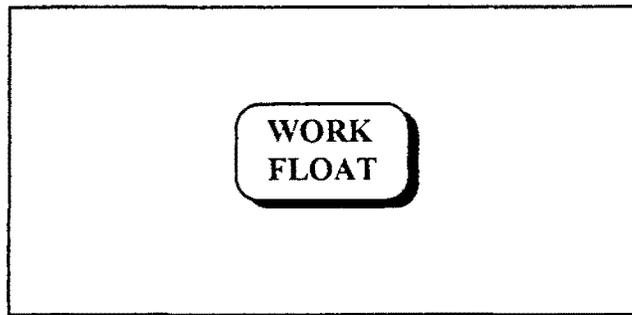
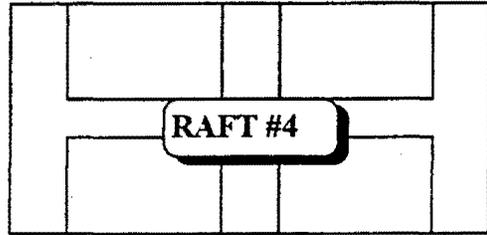
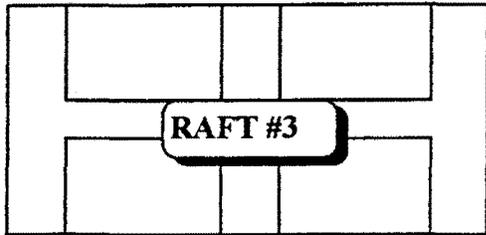
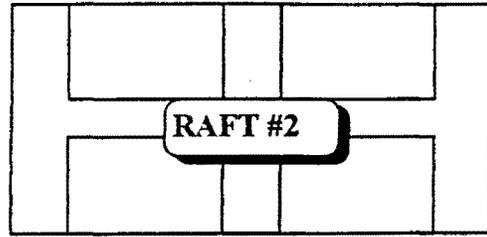
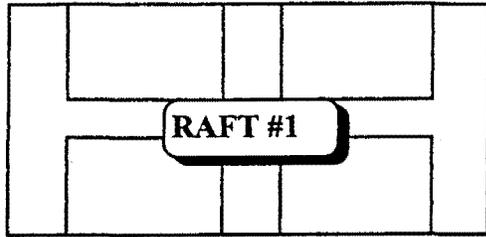
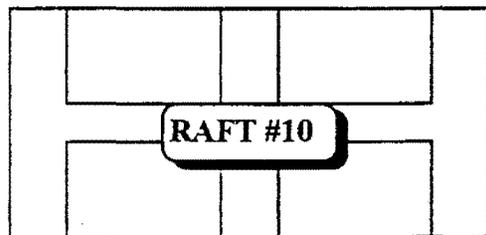
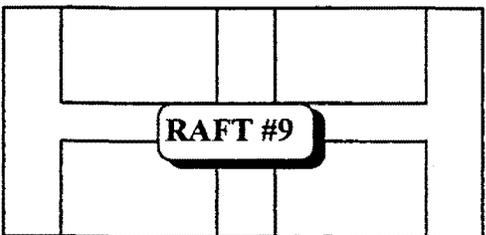
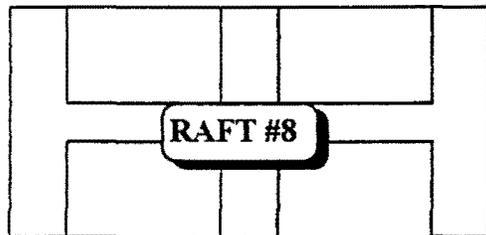
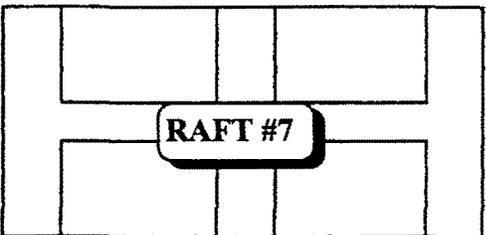
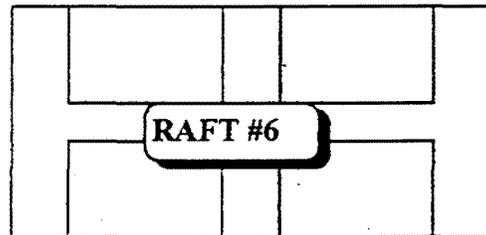
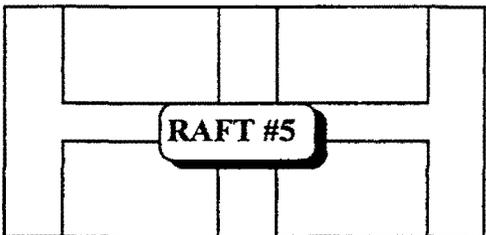
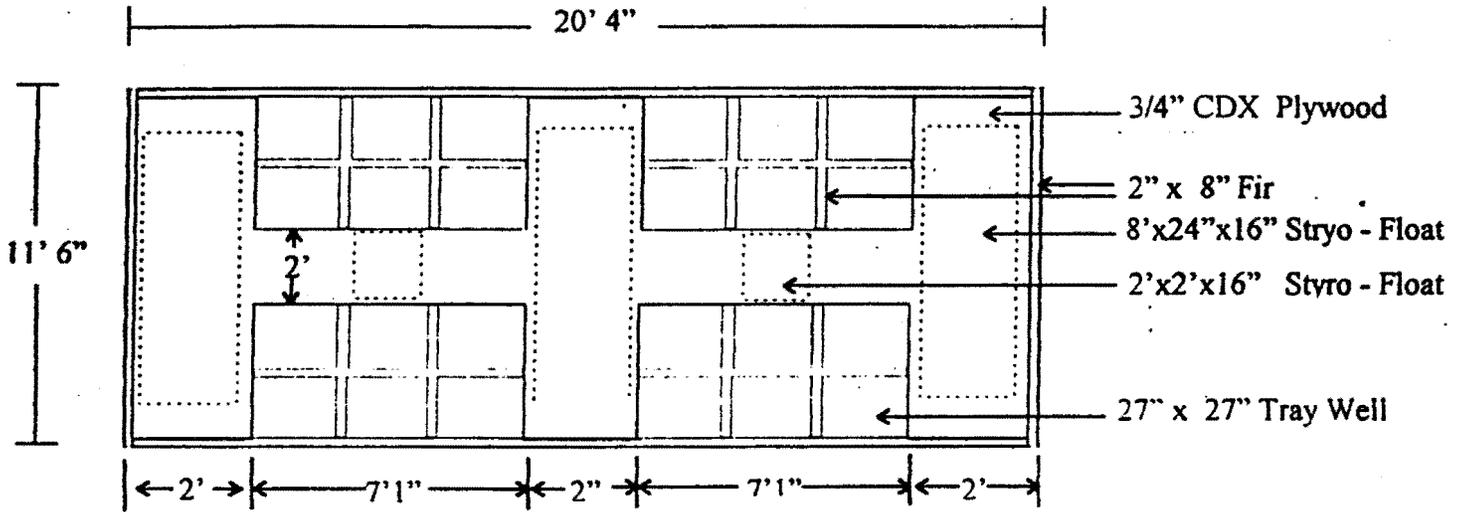


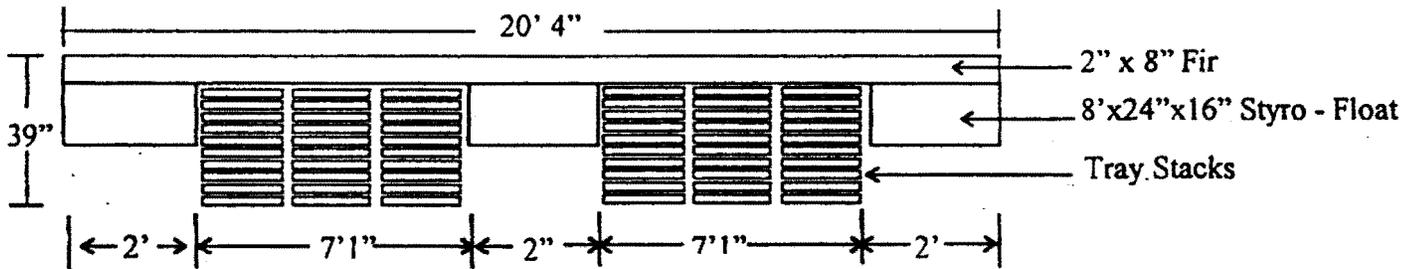
EXHIBIT NO.	3
APPLICATION NO.	1-96-69
COAST SEAFOOD	
Raft Layout	



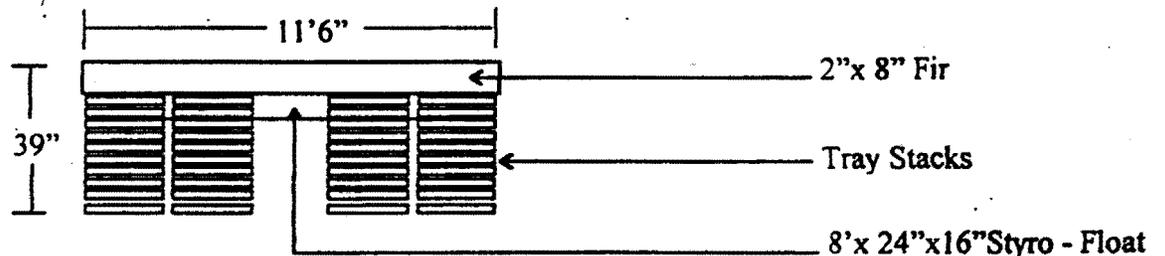
Coast Seafoods Company
Clam Seed Nursery Raft Design



Clam Seed Raft - Top View



Clam Seed Raft - Side View



Clam Seed Raft - End View

EXHIBIT NO.	4
APPLICATION NO.	1-96-69
COAST SEAFOOD	
Raft Design	