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STAFF REPORT: PERMIT AMENDMENT

Application No.: 9-19-0386-A1

Applicant: Morro Bay Oyster Company, LLC

Location: Morro Bay, San Luis Obispo County (APN 940-002-255)

Project Description: Modify permit to authorize operations on an additional 8.29 acres of lease site M-614-01 Parcel 2 and authorize use of a new floating work barge platform.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Morro Bay Oyster Company, LLC (MBOC) has requested an amendment to Coastal Development Permit (CDP) 9-19-0386, approved by the California Coastal Commission (Commission) on December 13, 2019, which provided after-the-fact authorization for MBOC's previously unpermitted 2.2-acre existing oyster aquaculture farm and authorized a six-acre expansion of the farm within intertidal mudflats (the latter of which never occurred). CDP 9-19-0386 also included after-the-fact (ATF) authorization of two nursery rafts and prescribed the removal of an existing work barge. Since the original ATF approval of MBOC's operations, eelgrass within Morro Bay recovered from a near total absence and now occurs throughout the six-acre expansion area the Commission previously approved. The conditions of that approval prohibit placement of oyster cultivation gear within eelgrass and thus prevent the prior-approved gear configuration from being installed as described in CDP 9-19-0386. As such, MBOC now proposes to instead use a new location on the lease site outside of eelgrass habitat. In this proposed

amendment, MBOC also requests approval for an onsite work barge, which was recently authorized by the California Fish and Game Commission for use on State Water Bottom Lease No. M-614-01 Parcel 2, for a limited scope of aquaculture-related activities. Approval of this CDP amendment would allow MBOC to cultivate oysters over a total of 10.52 acres (2.2 acres of existing + 8.29 acres of expansion + 0.03-acre work platform) in Morro Bay.

The key Coastal Act issues raised by the proposed project expansion are the potential for adverse impacts to marine resources from the placement of gear in the intertidal areas of Morro Bay, and to visual resources associated with the installation and use of the work barge.

Several special conditions currently in place on MBOC's existing CDP, and as modified herein, would minimize potential effects on coastal resources. Conditions in place include requirements to: (i) demarcate boundaries of specific cultivation areas to prevent displacement or movement of gear into sensitive habitat areas, (ii) avoid placement of cultivation equipment, anchors, or other structures, gear or equipment in eelgrass habitat and (iii) implement a site access plan to keep personnel outside of eelgrass habitat. Additionally, requirements for marine debris reduction and response remain in effect as well as those pertaining to disturbance of marine wildlife and intake screening systems that protect salmonid fish species. Also remaining are conditions requiring the implementation of a hazardous materials spill prevention and response plan. Discharge requirements for cleaning and sorting also remain and **Special Condition 10** would still apply to removal of the current work barge, which has not yet occurred. **Special Condition 13** has been added to address and prevent negative impacts on marine resources and water quality that could result from the construction, installation, and use of the new work barge on the aquaculture lease site.

With the existing and modified special conditions, Commission staff recommends the Commission find that the project would be carried out consistent with the Coastal Act. Staff therefore recommends the Commission **APPROVE** CDP amendment application 9-19-0386-A1, as conditioned. The motion is on Page 4. The standard of review is the Coastal Act's Chapter 3.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Amendment No. 9-19-0386-A1 pursuant to the staff recommendation.*

Staff Recommendation:

Staff recommends a **YES** vote on the forgoing motion. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves the coastal development permit amendment on the grounds that the development, as amended and subject to the conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. NEW AND MODIFIED CONDITIONS

Except as modified by this amendment, all standard and special conditions in the original Coastal Development Permit 9-19-0386 (see [Appendix B](#)) remain in effect and are incorporated herein. This permit amendment is granted subject to the following amended and new conditions as shown below in ~~striketrough~~ and underlined text.

Modified Existing Conditions

Special Condition 7 is modified as follows:

7. Protection of Eelgrass Habitat. No shellfish cultivation equipment, anchors, or other structures, gear or equipment shall be installed or placed on, in, or over eelgrass habitat, as determined by the Executive Director using the definition of eelgrass habitat in the National Marine Fisheries Service's October 2014 California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP)¹ or within any area identified by the National Marine Fisheries Service as important to eelgrass recovery in Morro Bay. Prior to placing or installing structures or equipment on any shellfish cultivation area not shown on [Exhibit 2](#) as an existing cultivation areas or in any area shown on [Exhibit 7](#) as a new cultivation area, MBOC shall submit, for Executive Director review and

¹Eelgrass habitat is defined in Sections II(A) and II(B) of the CEMP. Available at: https://media.fisheries.noaa.gov/dam-migration/cemp_oct_2014_final.pdf.

approval, information collected within the most recent eelgrass growing season (April through October) demonstrating that no eelgrass is present within the area in which installation or placement is proposed. If eelgrass is present or the Executive Director does not approve the information (for example, because it is inconclusive, out of date, of inadequate resolution, or improperly collected), MBOC shall retain the services of a qualified, independent third party to carry out an eelgrass survey of that area. The survey shall be carried out consistent with the methodology and protocols established in the CEMP and shall be carried out during the eelgrass growing season in which installation activities will occur (or the previous growing season if installation will occur after the completion of one growing season and prior to the start of the next). Within 30 days of survey completion, the results of the eelgrass survey shall be provided to the Executive Director for review and approval along with a map or diagram showing the footprint and location of proposed cultivation structures and equipment relative to nearby eelgrass habitat and demonstrating that installation within eelgrass habitat, as defined in the CEMP, or within areas identified by NMFS as important for eelgrass protection in Morro Bay, will not occur. While installation of new shellfish cultivation structures and equipment shall be prohibited within eelgrass habitat, as defined in the CEMP, if such eelgrass habitat moves or expands into areas with existing fixed cultivation structures and/or equipment (elevated or floating longlines), MBOC may continue to maintain and use these areas for shellfish cultivation.

MBOC shall install all cultivation equipment (elevated longlines or floating longlines) within ~~new~~ existing cultivation beds using the configuration and spacing described in this report ~~(and shown in [Exhibit 3](#) of CDP 9-19-0386: five feet between lines, ten feet between groups of three or four lines, and 15 feet and 30 feet between cultivation beds).~~ In the new proposed expansion area, MBOC shall install all cultivation equipment (elevated longlines or bottom bags) within new cultivation beds using the configuration and spacing shown on [Exhibit 7](#): (i) elevated tipping lines in growing Areas 1 through 5, shall be spaced roughly three feet between lines, ten feet between groups of three or four lines, and 10 feet between cultivation beds; and (ii) in Areas 6 and 7, if bottom bags are used in place of elevated longlines, lines of bottom bags shall be spaced roughly three feet apart. If the National Marine Fisheries Service identifies a wider spacing or reduced density of equipment that would promote eelgrass recovery, new cultivation beds shall be installed with that spacing and/or density.

Special Condition 10 is modified as follows:

10. Work Platform Removal. WITHIN ~~442~~ MONTHS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall fully remove from Morro Bay its existing floating work platform and all associated barges, rafts and moorings not used for shellfish cultivation. Demolition or deconstruction activities on the floating work platform (including removal of machinery and associated equipment) shall be limited to only those necessary to prepare the platform and its associated barges to be towed to the nearest appropriate marina or boat ramp and removed from the bay. All subsequent deconstruction, cleaning or demolition activities shall be carried out onshore at MBOC's facility, and all resulting debris and waste shall be properly recycled or transported to a certified waste disposal facility. No subsurface cleaning or scraping of the work platform rafts shall be carried out within Morro Bay. Within 30 days of the completion of floating

work platform removal, MBOC shall provide, for Executive Director review and approval, the results of a benthic survey carried out within the former footprint of the work platform. All aquaculture debris observed during this survey shall be removed by MBOC.

~~Placement or installation of a new or replacement floating work platform shall require an amendment to this coastal development permit and submittal of evidence that the Fish and Game Commission has approved operation of such a facility on State Water Bottom Lease No. M-614-01, Parcel 2.~~

Special Condition 12 is modified as follows:

12. Other Agency Review and Approval. PRIOR TO COMMENCEMENT OF PROPOSED CONSTRUCTION AND/OR INSTALLATION ACTIVITIES for new oyster cultivation beds and the new work platform, MBOC shall submit to the Executive Director written evidence that any necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted, including those from the Regional Water Quality Control Board, California Fish and Game Commission, ~~and~~ U.S. Army Corps of Engineers, and California Department of Public Health. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without an amendment to this permit unless the Executive Director determines that no amendment is legally necessary. Proposed construction and/or installation activities shall not proceed if one or more authorizations from other agencies are not issued.

NEW Conditions

New Special Condition 13:

13. New Work Platform Installation and Maintenance. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall submit, for Executive Director review and approval, a plan for implementing the following measures pertaining to construction, installation, and use of the new work platform:

- a. Construction shall be with materials consistent with the proposed work barge configuration and plans as shown on [Exhibit 8](#).
- b. Any paint, coating, wrapping, sealant, adhesive, caulk, or other product used in construction of overwater and in-water structures shall be inert when fully dried and cured, and therefore not leach chemicals that could contribute to aquatic toxicity. For the new work platform, the applicant shall submit, for the Executive Director's review and approval, information specifying the products to be used and the location of their use and shall provide any available information on the product's aquatic toxicity.
- c. Floating booms shall be used to contain any floating debris accidentally discharged into coastal waters during construction activities. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible. The collected debris shall be removed as soon as possible, but no later than the end of each day.
- d. A silt curtain shall be used to control turbidity if sediment or silt is stirred up during construction activities taking place in or over coastal waters, where coastal resources (such as benthic communities or eelgrass) may be at risk.

- e. The new work platform shall be periodically monitored during the life of the structure and shall be repaired or replaced if the materials begin to deteriorate, to ensure that any fragments of barge materials or any other equipment stored on the barge do not enter coastal waters and contribute to marine debris.
- f. A five-meter buffer around the new work platform shall be surveyed on an annual basis to ensure shell debris and biofouling materials are not substantially hardening or altering the mudflat environment surrounding the work platform. Results of this monitoring shall be included in the annual report required by Special Condition 4 of this permit.

III. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Project Location

Morro Bay Oyster Company is located on CA State Bottom Lease No. M-614-01 Parcel 2, in the “back-bay” portion of the Morro Bay estuary near the outlet of Chorro Creek. The proposed growing area on M-614-01 Parcel 2, is located approximately adjacent to and north of the growing area approved in CDP 9-19-0386 (See [Exhibits 6, 7 and 9](#) for maps of the proposed project).

Proposed Amendment

The proposed amendment would expand oyster cultivation operations onto an additional 8.29 acres of lease site M-614-01 Parcel 2. MBOC proposes to create seven new cultivation areas (Areas 1 through 7) in the new 8.29-acre zone. In addition, MBOC proposes to install and operate a new floating work platform/barge in the same location as its current work platform, within a different section of its state aquaculture lease.

New Cultivation Beds

MBOC proposes to use “SEAPA” or self-tipping bags strung on lines held up by posts in the new proposed 8.29-acre intertidal cultivation bed. If tide heights in certain portions of Areas 6 and 7 preclude the use of SEAPA tipping bags, MBOC proposes to use bottom bags. Within each of growing Areas 1 through 5, MBOC proposes to install eight, four-line clusters of 320-foot cultivation lines. Within each four-line cluster, MBOC proposes to space the lines 2.5-feet apart and each grow area would have a 10-foot buffer from the adjacent grow area (See [Exhibit 7](#) – Proposed Gear and Layout). Each 4-row cluster would have 120 bags per each 320-foot line with thirty-two approximately 2-inch PVC riser posts that are 8-feet-tall installed every 10 feet of the line. Altogether, MBOC proposes to install approximately 1.49 acres of oyster culture gear within the 8.29-acre proposed culture footprint. While off-bottom culture is the preferred growing method for the whole proposed site, MBOC requests authorization to use bottom bags in portions of Areas 6 and 7 if these methods are needed to effectively culture at higher elevations in the intertidal zone where elevated tipping lines may not work. MBOC proposes to set approximately 2,000 bottom bags in rows of 100 bags, with bags touching edge to edge, and a three-foot gap between the rows of 100 bags.

Work Platform/Barge Replacement

Additionally, MBOC seeks authorization to install and use a new floating work barge, which had previously been identified for removal under **Special Condition 10** of CDP 9-

19-0386 due a lack of authorization from the California Fish and Game Commission. This authorization was obtained subsequent to the issuance of the CDP (see [Exhibit 8](#)). The new proposed work barge would be 1,200 square feet, or approximately half the size of the current 2,568-square-foot work barge, which the new barge would replace. The current barge would be towed north through the main channel at high tide to the public launch ramp in Morro Bay. An excavator or similar powered vehicle approved by the City of Morro Bay Harbor Department would be used to pull the barge up the ramp. The barge would be disposed of upland in appropriate dumpsters and the removal and disposal process is expected to take less than one week.

The new work barge would be constructed on land prior to the destruction of the existing barge and is anticipated to take two months to complete. The entire 1,200-square-foot platform will be made from aluminum, stainless steel, composite decking, structural fiberglass, closed cell foam floats encased in plastic, and pressure-treated wood. All painting and cutting of any construction materials would happen at the shoreside facility and not on the water. The only activity that would occur on the water is towing the barge in pieces to the former barge site and assembly of the six 10- by 20-foot sections. All towing of barge sections from the public boat launch to the approved work barge site would take place at the highest possible tide using MBOC's two vessels. The barge pieces would be launched on boat trailers and during towing MBOC would adhere to the vessel transit map previously approved under CDP 9-19-0386 (See [Exhibit 10](#) – Updated Cultivation Site Access Plan). The barge sections would have a draft of six to eight inches, and MBOC states they would require a 3-foot tide height to avoid any disturbance of the bottom anywhere on the route. The new barge sections would be towed into place and pinned together with galvanized brackets as shown on [Exhibit 8](#). The barge will be secured to the existing moorings made of concrete and galvanized steel with 25 feet of one-inch chain and 25 feet of ¾-inch chain with shackles and turnbuckles. All mooring hardware is galvanized steel and each mooring is tied to the work barge at two contact points. The current work barge would be towed through the main channel in Morro Bay to the public launch ramp where it would be removed and disposed of upland over the course of one week. Work barge removal and construction and installation of the new work barge is expected to take approximately three months.

B. STANDARD OF REVIEW

The project at issue in the CDP amendment application is located in the Commission's retained jurisdiction. The standard of review is Chapter 3 of the Coastal Act.

C. OTHER AGENCY APPROVALS FOR THIS AMENDMENT

California Department of Public Health

The California Department of Public Health (CDPH) regulates the growing, harvesting, processing, and marketing of bivalve shellfish (including oysters, mussels, clams, and scallops) intended for sale for human consumption. CDPH participates in the National Sanitation Shellfish Program (NSSP) – the federal and state cooperative program recognized by the US Food & Drug Administration and the Interstate Shellfish Sanitation Conference for the sanitary control of shellfish. Currently, shellfish cultivation is

prohibited on over 200 of the 280 acres of remaining aquaculture lease areas in Morro Bay, and the remaining areas (approximately 73 acres) are carefully regulated by CDPH as “conditionally approved,” as shown on [Exhibit 4](#) of CDP 9-19-0386. Of the lease area held by MBOC, approximately 12.6 acres are conditionally approved for cultivation and harvest. This designation has been used by CDPH in Morro Bay since 1979 and means that harvesting oysters in such areas is regulated seasonally or following rainfall and storm events (CDPH 2018). Expansion of the oyster farm outside of the area shown on [Exhibit 4](#) would require reclassification of MBOC’s entire “approvable” lease area to a classification known as “conditionally restricted.” Under this designation shellfish must be purified by relaying or depuration before marketing when the area is open for harvest (CDPH 2024). CDPH Staff indicated that it could likely reclassify the lease area within a few months depending on when MBOC submits its application.

California Fish and Game Commission

MBOC’s operation is carried out within State Water Bottom Lease No. M-614-01 Parcel 2. This lease was issued for a period of 25 years by the California Fish and Game Commission and, unless renewed, will terminate on May 3, 2029. This lease includes the shellfish species and cultivation methods currently used by MBOC and requires MBOC to obtain and adhere to permits and authorizations from all other relevant agencies. In the course of its review of MBOC’s original permit application, Commission staff solicited input from California Fish and Game Commission staff, who confirmed that MBOC’s 2,568-square-foot floating work platform was not currently authorized by the Fish and Game Commission and may potentially not be able to be authorized on a state aquaculture lease due to the intention for such leases to be used exclusively for shellfish cultivation. **Special Condition 10** was therefore applied to require MBOC to carry out the proposed removal of its existing floating work platform within 12 months, and to seek an amendment to the coastal development permit prior to installing a new or replacement floating work platform if it first received authorization for such a facility from the California Fish and Game Commission. On July 21, 2021, the California Fish and Game Commission modified its lease with MBOC for State Water Bottom Lease No. M-614-01 Parcel 2 to allow for the presence and use of barges for the purpose of propagating, cultivating, maintaining, and harvesting aquatic animals in marine waters of the state (See [Exhibit 8](#)).

California Department of Fish and Wildlife

MBOC’s aquaculture operations are required to be registered annually with the California Department of Fish and Wildlife (CDFW) and to adhere to a variety of protocols related to introduced species and the importation of oyster seed. MBOC has a consistent compliance record with these regulations and has a valid registration for 2023.

U.S. Army Corps of Engineers

The United States Army Corps of Engineers (USACE) Regulatory Program administers and enforces Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act of 1972, as amended. Under Section 10, a Corps permit is required for work or structures in, over, or under navigable waters of the United States. Expansion of

MBOC's aquaculture grow area requires authorization from the USACE and USACE's review will include consultation with the National Marine Fisheries Service (NMFS). Commission staff reached out to USACE to ensure it was aware of MBOC's proposed project and offered to notify MBOC that an amendment to its Corps permit would be required. Commission staff provided the USACE contact information to MBOC on April 8, 2024, and explained that an amendment to its USACE permit would be required. MBOC intends to provide the USACE with an application for a permit amendment and **Special Condition 12** requires MBOC to obtain the USACE authorization prior to construction and any changes to the approved project required by the USACE must be reviewed by the Executive Director to determine if such changes would require an amendment to this permit. Proposed construction and/or installation activities shall not proceed if authorization from the USACE is not issued.

National Marine Fisheries Service

Under ESA Section 7(a)(2), federal agencies must consult with the National Marine Fisheries Service (NMFS) when any project or action they take may affect an ESA-listed marine or anadromous species or designated critical habitat. USACE consults with NMFS because NMFS is responsible for protecting marine resources, including fish, marine mammals, and their habitats. Commission staff engaged with NMFS staff during the CDP application review process, particularly concerning the evaluation of eelgrass habitat within the 8.29-acre expansion area. This coordination informed the development of modified **Special Condition 7**.

Central Coast Regional Water Quality Control Board

Projects involving discharges of dredged or fill material to waters of the United States that require permits from the U.S. Army Corps of Engineers under Clean Water Act Section 404 are also required to obtain authorization from the Regional Water Quality Control Board (RWQCB) under Clean Water Act Section 401. Coastal Commission staff coordinated with the RWQCB regarding MBOC's proposed modification to its aquaculture operation and alerted MBOC that approval from the RWQCB would be required. **Special Condition 12** requires MBOC to obtain authorization from the RWQCB prior to construction, and any changes to the approved project required by the RWQCB must be reviewed by the Executive Director to determine if such changes would require an amendment to this permit. Proposed construction and/or installation activities shall not proceed if authorization from the RWQCB is not obtained and provided to the Executive Director.

Tribal Consultation

In the original CDP application review, Commission staff engaged in outreach to Native American Tribes understood to have current and/or historic connections to the project area. These Tribes included the Northern Chumash Tribal Council (NCTC), the yak tit'yu tit'yu yak tit'hini Northern Chumash Tribe, and the Salinan Tribe of Monterey and San Luis Obispo Counties. At that time, Commission staff received feedback from representatives of the NCTC who were concerned with "structural above water view impediments," "introducing a nonnative species into our Sacred Estuary," and consideration of "emergency plan for gas or oil spills, cleaning solvents, noise or exhaust pollutions, effect on endangered species, plans for cooperating with the recreational uses, motor rotors effect on Eel Grass, self-regulation plans, [and] long-

term effects on the back bay.” In response to this input, Commission staff provided additional information and background to NCTC about these issues and their consideration as part of the Commission staff’s process of reviewing the CDP application and developing a recommendation.

As part of this amendment review, Commission staff reached out to the representatives of the NCTC to inform them of the proposed project changes and to offer ongoing consultation. At the time of publication of this staff report and recommendation, no additional questions or concerns had been brought to the attention of Commission staff by representatives of NCTC. Any concerns raised subsequent to the publication of this report will be brought to the attention of the Commission through the development of an addendum to this staff report and recommendation.

D. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. 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 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Consistent with the project area analyzed in CDP 9-19-0386, the additional cultivation area proposed in this amendment is primarily located in the intertidal and submerged mudflats of the “back bay” portion of the Morro Bay estuary near the outlet of Chorro Creek. The 2,300-acre Morro Bay estuary is a semi-enclosed water body where freshwater from the land mingles with the sea. Here there are diverse wetlands, salt and freshwater marshes, intertidal mudflats, eelgrass beds, and various subtidal habitats. Renowned for its significance and relatively minimal disruption, Morro Bay harbors one of the most notable wetland ecosystems along the central and southern California coastline and supports a wide variety of wildlife species such as resident and migratory seabirds, shorebirds, harbor seals, sea otters, and sea lions, as well as two rare, federally-listed fish species, the tidewater goby, and south central California steelhead. Morro Bay is recognized as an Important Bird Area where hundreds of migratory bird

species stop during their journey along the Pacific Flyway. Shorebirds and waterbirds can number in the tens of thousands as they rest and forage in the estuary's open waters and tidally-exposed mudflats. For example, Short-billed dowitchers (*Limnodromus griseus*) can be found probing the mud swiftly, searching for marine worms, snails, small crustaceans, and aquatic larvae.

Protective Designations

In recognition of the number, diversity and rarity of species and habitats that are found in Morro Bay and its overall ecological importance, the Morro Bay estuary has received several protective designations. As discussed in the findings of CDP 9-19-0386, Morro Bay is part of the Environmental Protection Agency's (EPA) National Estuary Program (NEP), established by Congress in 1987 under Section 320 of the Clean Water Act to protect and restore estuaries of national significance. Currently, 28 estuaries located along the Atlantic, Gulf, and Pacific coasts and in Puerto Rico are designated as estuaries of national significance, with three in California – San Francisco Bay, Morro Bay, and Santa Monica Bay². The entirety of MBOC's operations is also included within the Morro Bay State Marine Managed Area, a designation that conveys protection for marine species and habitats but includes exemptions for several specified activities, including shellfish aquaculture carried out pursuant to a valid state water bottom lease and permit.

Benthic Habitat

Potential adverse impacts to benthic habitat and eelgrass from the installation of shellfish cultivation equipment at this site is discussed in detail in the staff report for CDP 9-19-0386 and could also result from the expanded operations included in this amendment application. The proposed additional 8.29-acre cultivation area on Lease No. M-614-01 Parcel 2 is comprised of subtidal and intertidal mudflats made up of fine sands and silts and is directly adjacent to the growing area approved under CDP 9-19-0386 ([Exhibit 6](#)). One difference is that portions (namely Areas 6 and 7) of the new proposed cultivation area are at higher elevations such that mudflat is exposed at low tide. Although often dominated by bare mud, the site's higher elevation mudflats also periodically support a variety of fast-growing algae species, primarily the green sea lettuce (*Ulva* spp.) and red algae (*Gracilaria* spp.). South of the new area and adjacent to the original growing area is an east-to-west running deeper tidal channel in which MBOC's floating work platform is moored. The work platform will be discussed further in Section F.

Under the proposed amendment, MBOC would install a maximum of approximately 7,400 two-inch diameter PVC support and anchoring posts in the mudflat that are needed to elevate the lines of cultivation bags. This would result in disturbance and long-term loss of approximately 205 square feet of benthic habitat known to be rich in marine invertebrate communities that provide important forage for shorebirds and other marine wildlife. Short-term disturbance to the mudflat is also likely to result from foot traffic between cultivation rows during aquaculture operations and during installation of

²For a list and map of the NEP sites see: https://www.epa.gov/system/files/documents/2023-01/nep_national_map.pdf

gear. However, the lost and disturbed habitat would be spread out across the 7,400 post sites, each with a cross-sectional area of approximately 3 square inches and would be insignificant relative to the large area of mudflats in the project vicinity. Consistent with CDP 9-19-0386 (which considered the loss of approximately 350 square feet of mudflat due to the placement of 4,000 four-inch PVC pipes), in the context of the 8.29-acre proposed project area in Lease No. M-614-01 Parcel 2, and the 2,300-acre Morro Bay estuary as a whole, the loss of roughly 205 square feet of mudflat habitat and short-term disturbance of adjacent areas due to foot traffic and trampling is not anticipated to adversely affect the biological productivity of the bay, or measurably reduce marine organism populations that rely on this habitat.

MBOC's proposed use of 2,000 bottom bags would result in smothering and disturbance to approximately 12,000 square feet (0.28 acres) of benthic habitat. However, as stated in CDP 9-19-0386, the magnitude and extent of these effects is strongly influenced by several factors, including oyster stocking density, current speed, the amount of contiguous area occupied by cultivation gear, the length of time cultivation gear is in place before being moved, and following frequency. Of the approximately 27,776 mesh bags that are proposed to be installed in the new proposed grow area, only up to 2,000 of these would be placed directly on the mudflat. MBOC proposes to leave three-foot gaps between two single-bag rows of 100 bags so they would not impact a contiguous area (See [Exhibit 7](#) – Proposed Gear and Layout). This spacing, combined with a modest stocking density of roughly 150 oysters per bag, frequent bag flipping and the anticipated following periods that are inherent to the oyster production process (i.e. due to oyster mortality) would also reduce the level of disturbance to the mudflat and its associated benthic fauna. Although some adverse effects may occur, these are expected to be limited and sparsely distributed over space and time.

Eelgrass

Eelgrass is a highly productive, habitat forming species that warrants strong protection because of the important physical, biological, and economic value it provides, as well as its importance for managed fisheries (NOAA Fisheries 2014). Eelgrass beds provide nursery habitat for rare and commercially important fish and invertebrate species, forage for migratory birds such as black brant, and protection for water quality by stabilizing sediments and filtering and removing excess nutrients. Eelgrass is also considered to be a resource of cultural importance to the Native American Tribes of the Morro Bay area. Morro Bay has long been recognized as a stronghold for eelgrass in southern California; however, its extent varies year-to-year, sometimes widely. When MBOC began operations in 2008, this was around the time eelgrass began to decline sharply, as discussed in the staff report for CDP 9-19-0386. By 2017, eelgrass extent in Morro Bay had diminished from 344 acres to 13 acres -- an over 95% reduction in eelgrass cover. By 2021, however, eelgrass acreage had recovered to approximately 500 acres, far surpassing its 2007 extent (See Figure below, MBNEP 2021).



The significant recovery and expansion of eelgrass in Morro Bay since the original CDP was granted has greatly restricted the areas compatible with aquaculture, and expansion within MBOC's original proposed growing area is no longer permissible because it would involve the placement of cultivation gear within eelgrass habitat, inconsistent with the avoidance requirements of **Special Condition 7** and permit issued by the U.S. Army Corps of Engineers. This special condition was designed to require the use of best available science and the recommendations of the National Marine Fisheries Service's California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP) to ensure that new aquaculture gear would not be placed in an area suitable for eelgrass persistence or recovery in Morro Bay.

As part of the current application, MBOC reinvestigated the feasibility of other oyster cultivation sites within Lease No. M-614-01 Parcel 2. MBOC states that it worked with agency experts to identify areas on Lease No. M-614-01 Parcel 2 with less eelgrass and thus a higher potential for compliance with **Special Condition 7**. The figures in [Exhibit 9](#) depict the 8.29-acre proposed growing area and locations of eelgrass mapped by the Morro Bay National Estuary Program (MBNEP) in 2019, 2020, and 2021. In its CDP application for this amendment, MBOC requested to use 2.5-foot spacing between lines within each of the 4-line cultivation clusters. MBOC's original **Special Condition 7** of CDP 9-19-0386 included a five-foot spacing requirement for all new proposed cultivation equipment due to the uncertain nature of eelgrass habitat within the proposed expansion area at the time. The rationale was that five-foot spacing would increase the opportunity for eelgrass to recover in the originally proposed expansion area of CDP 9-19-0386 by creating more space between lines where eelgrass could fill in. In contrast, the new growing area proposed in this amendment application is expected to contain far less eelgrass habitat due to its location higher in the intertidal zone where eelgrass is less likely to survive. MBOC's initial assessment of past eelgrass surveys of this area also indicate that it is less suitable for eelgrass habitat (See [Exhibit 9](#)). Therefore, five-foot spacing between lines is not a necessary requirement for Areas 1 through 5 and the use of three-foot spacing would be adequate.

As of 2021 there appears to be some eelgrass growth on the western portion of the proposed growing area; however, data more recent than 2021 has not been used to formally assess the locations of potential eelgrass habitat within the new growing area. To assure the new proposed cultivation area and placement of aquaculture gear within it avoids eelgrass habitat, **Special Condition 7** has been modified to prohibit new cultivation equipment from being installed in the proposed cultivation area as shown on [Exhibit 6](#) until MBOC submits relevant eelgrass survey data. The eelgrass survey must be completed in full accordance with the CEMP during the eelgrass growing season in which gear installation is proposed and would be provided to the Executive Director for review and approval within 30 days of survey completion. The prior-to-construction eelgrass survey required under **Special Condition 7** must include a map or diagram showing the footprint of proposed cultivation structures and equipment relative to the mapped eelgrass habitat, to demonstrate that installation within CEMP-defined eelgrass habitat will not occur. Further, the standards in **Special Condition 7** require MBOC to avoid areas that the National Marine Fisheries Service determines to be essential to eelgrass protection in Morro Bay. MBOC proposes to avoid eelgrass when conducting cultivation activities in the new proposed growing area, and MBOC updated its site access plan approved by the Executive Director under CDP 9-19-0386 to include access routes to the new proposed cultivation area that would avoid eelgrass (See [Exhibit 10](#) – Updated Cultivation Site Access Plan).

Barge/Work Platform

Similar to the other aquaculture operator in Morro Bay (Grassy Bar Oyster Company), MBOC's operation is not supported by a nearby onshore facility or base of operations. Nearly all activities that would typically take place at an onshore facility – such as shellfish sorting, culling, cleaning, packing for sales, and equipment storage – are instead carried out within Morro Bay itself on MBOC's work platform/barge. The barge is located within MBOC's aquaculture lease in close proximity to its cultivation beds, and it is anchored in place in a channel between the intertidal mudflats with three 2,000-pound concrete anchors attached to heavy chains and two-inch rope line. MBOC states that the barge pieces that make up the whole platform were collected over the years and are at the end of their useable life. The barge contains a variety of equipment and structures such as tables, shade tents, and a portable restroom, many of which have signs of heavy wear and tear. Therefore, MBOC has proposed to replace the work platform with a new one according to the specifications in [Exhibit 8](#). **Special Condition 10** has been revised to ensure that the degrading work platform would be removed from Morro Bay within four months of Commission approval of the CDP amendment. **Special Condition 10** limits deconstruction and demolition activities to only those that are required to prepare the barge pieces to be towed to the nearest appropriate marina or boat ramp for removal from the bay. MBOC may not clean or scrape the work platform rafts within Morro Bay and all subsequent deconstruction, cleaning or demolition activities must be carried out onshore at MBOC's facility, with all debris and waste properly disposed of at a certified waste disposal facility.

The new work platform would be no more than 1,200 square feet in size and would be anchored in the same spot using the three existing anchors that the 2,568-square-foot work barge uses. A size reduction of 1,200 square feet would shrink the amount of

submerged mudflat the work platform covers by more than half, and approximately 1,368 square feet of mudflat would no longer be covered by the work platform. Potential impacts to the marine environment associated with a new work platform in Morro Bay include the introduction of manmade construction products and materials that could become marine debris if not monitored for signs of damage. Furthermore, barge components or coatings could leach chemicals such as polycyclic aromatic hydrocarbons (PAHs), or metals such as copper, lead, and zinc that can have high aquatic toxicity. These marine debris and aquatic contamination concerns would be addressed through the addition of **Special Condition 13**, which requires MBOC to prioritize the use of nontoxic products and specify other products used to construct overwater and in-water structures.

The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. **Special Condition 13** would require MBOC to submit a construction and installation plan for review and approval by the Executive Director that includes use of floating booms to contain any debris generated during construction and use of a silt curtain if needed to control turbidity. **Special Condition 13** would require periodic inspections of the work platform and any necessary repairs must be made to ensure the barge materials do not enter coastal waters and become marine debris. Finally, **Special Condition 13** requires MBOC to survey a five-meter buffer of substrate around the new work platform annually to ensure it is not being altered due to shell or biofouling debris. Per existing **Special Condition 8**, any new intake systems installed on the new work platform would be required to have a design that meets the California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for protection of juvenile salmonids. Specifically, the intake system must have mesh openings of no more than 3/32 inches and a maximum intake water velocity of 0.33 feet per second.

Pacific Oyster

MBOC continues to propose to cultivate Pacific oyster (*Crassostrea gigas*). This species is considered to be native to Japan but is one of the most popular shellfish species for aquaculture in California and many other coastal areas worldwide and has been cultivated nearly continuously in Morro Bay since the 1930s. Although in a growing number of locations in southern California this species is known to be able to escape cultivation and establish wild populations, there is no record or evidence that this has occurred in Morro Bay or surrounding areas. Extensive baywide surveys conducted in 2022 in partnership by CA Sea Grant and MBNEP verified that the species continues to remain unestablished outside of cultivation areas. If such records or evidence becomes available, MBOC could change its cultivation practices to exclusively use triploid Pacific oysters. Originally developed by aquaculture researchers to augment meat quality and growth rates, triploid oysters have an extra chromosome that also renders them nearly completely sterile and thus virtually incapable of establishing self-sustaining populations in the wild. Addition of species such as Kumamoto Oysters (*Crassostrea sikamea*) or Olympia Oysters (*Ostrea lurida*) to the cultivation site would also require approval from the California Fish and Game Commission through an amendment to MBOC's state aquaculture lease.

Ongoing Marine Resource Protections

The special conditions of CDP 9-19-0386 established protection of marine resources with explicit standards that would remain in effect under this CDP amendment. To limit the amount of marine debris generated by the proposed project, **Special Condition 2** requires bottom bag fields to be clearly marked and bags must contain at least two gallons of large oysters so they are adequately weighted and remain in place. **Special Condition 5** also targets marine debris reduction through requirements to mark gear and conduct cleanup events, and **Special Condition 4** requires annual report submissions to the Executive Director with information about marine debris reduction efforts. In recognition of the extensive eelgrass habitat within Morro Bay and its critical importance for food production along the Pacific Flyway, **Special Condition 3** requires MBOC to adhere to its cultivation site access plan which was established to avoid eelgrass, and modified **Special Condition 7** prohibits gear placement in eelgrass habitat. **Special Conditions 6 and 8** provide protection for sensitive wildlife species through requirements to avoid chasing or directly disturbing waterfowl, shorebirds, or marine mammals, and **Special Condition 8** requires intake systems used in MBOC's operations to be consistent with CDFW and NMFS guidelines for the protection of salmonid fish such as steelhead. **Special Condition 9** prevents MBOC from discharging shell debris and non-native fouling organisms into the marine environment. Therefore, with the remaining, modified, and new special conditions, the Commission finds that the proposed project is consistent with Coastal Act Section 30230 and 30231.

E. FILL OF OPEN COASTAL WATERS

Section 30233(a) of the Coastal Act states, in part:

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:

...

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

The original CDP approval covered the placement, installation and maintenance of cultivation bags, floating longline anchoring posts, elevated longline support posts, and the existing work platform. In turn, review of this proposed CDP amendment must include an evaluation of the modified quantities associated with the type of gear and location of the gear within MBOC's lease area. Previously, the approval considered the placement of up to 20,000 two by three-foot plastic mesh cultivation bags or baskets, over 3,000 small diameter PVC posts, several hundred helical screw anchors, and three weighted mooring blocks within Morro Bay tidelands. The proposed project in this CDP amendment application involves the placement of: (i) approximately 7,392 two-inch PVC posts (approximately 48 cubic yards [cy] of fill), (ii) approximately 25,776 Seapa baskets with a volume of 25 liters (840 cy of fill), and (iii) up to approximately 2,000 square feet (222.22 cy) of bottom bags on the mudflat. The new work platform would cover an area of 1,200 square feet. These materials constitute "fill" as defined by the Coastal Act.

Section 30108.2 of the Coastal Act states:

“Fill” means earth or any other substance or material, including pilings placed for the purpose of erecting structures thereon, placed in a submerged area.

Coastal Act Section 30233(a) permits fill in coastal waters if three elements are met: (1) the fill constitutes an allowable use under 30233(a); (2) there is no feasible less environmentally damaging alternative; and (3) feasible mitigation measures have been provided to minimize any adverse effects.

Allowable Use

Morro Bay Oyster Company, LLC (MBOC) proposes to place fill in coastal waters for the purpose of cultivating oysters. As discussed above, MBOC’s proposed project is an aquaculture project, and as such qualifies as an “allowable use” under 30233(a)(7). The project is therefore consistent with the first test of Section 30233(a).

Alternatives

For the second test of Section 30233(a), the Commission must further find that there is no feasible less environmentally damaging alternative to the proposed placement of fill in estuarine waters. Coastal Act Section 30108 defines “feasible” as “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.”

MBOC proposes to use the aquaculture methods previously approved in CDP 9-19-0386, including on-bottom (floating longlines and bottom bags) and off-bottom (elevated lines with self-tipping bags) cultivation methods. The off-bottom method would entail approximately 888 cy of fill over roughly 205 square feet of substrate, and the on-bottom method would entail approximately 222 cy of fill over roughly 2,000 square feet of substrate. The new work platform would cover an area of no more than 1,200 square feet. Due to the force of tides and currents, the presence of shellfish predators, as well as the design of the structures and gear associated with MBOC’s oyster cultivation methods, a system of small (approximately two-inch diameter) anchoring and support posts, bottom bags, elevated lines, and other cultivation gear is an essential element of growing oysters. MBOC proposes to minimize the amount of fill of estuarine waters at the project site by primarily using floating and elevated intertidal shellfish cultivation equipment that would be maintained above the mudflats. Anchoring and support posts would be two-inch diameter PVC pipes, strung with lines that suspend oyster bags above the substrate. Bottom bags that lay on the mudflat may be used in a small portion of Areas 6 and 7 at higher elevations. The Commission has previously agreed that alternative designs, such as piles or larger mooring posts, are generally more environmentally damaging, as the installation of such structures would create adverse impacts to marine life (for example, through elevated levels of pile-driving underwater noise or increased sedimentation).

Commission staff has also considered other shellfish cultivation methods and project configurations to determine if any of them would require less fill or be less environmentally damaging than the proposed project. Other techniques considered include placement of loose shell on tidal flats (bottom culture) and use of floating

cultivation rafts or barges in subtidal areas. However, most of these methods would involve more fill in coastal waters when compared to the proposed project or would result in the conversion or loss of additional natural habitat. In addition, these methods can necessitate the use of mechanical or hydraulic dredging equipment during harvest, occupation and use of subtidal habitat areas that support sensitive wildlife species, and displacement of shorebird foraging from mudflat areas due to the presence of aquaculture gear.

There are different benefits and drawbacks associated with different types of oyster culture equipment. For example, on-bottom cultivation with mesh bags can reduce the visual profile of a cultivation area and allows for further development of oysters that are not yet ready for sale. Off-bottom cultivation is easier to see from the shoreline but is expected to disturb less of the mudflat since the 2-foot-wide by 3-foot-long by 0.5-foot-deep (3 feet²) footprint of each bag is lifted off the substrate. Bottom bags may not require staking and anchoring, thereby avoiding the placement of stakes in the mudflat, but are expected to occupy more of the mudflat when laid flat than bags hung vertically on a line that move with the tide. The portion of the lease site that is higher in the intertidal zone may call for the use of approximately 2,000 bottom bags that are (3-square-foot or 0.11 cy each) for a total of up to 222.22 cubic yards of fill. Bags would be set in rows of 100-bag lines touching edge to edge with a three-foot gap between rows.

Overall, however, it appears that the use of bottom bags versus elevated gear at similar densities simply results in trading some effects for others with no clear overall advantages in impact potential or magnitude. The critical considerations appear to be site specific resource management considerations (such as the species and habitats present) and the density of cultivated oysters and installed equipment (lower densities have lower potential for adverse effects), as well as maintenance and operational practices. Assuming similar densities and practices, it does not appear to be less environmentally damaging to replace bottom culture gear with elevated culture gear or vice versa.

For the reasons described above, the Commission therefore finds that the proposed project is the least environmentally damaging feasible alternative and therefore the second test of Coastal Act Section 30233(a) is satisfied.

Mitigation

The final test of Coastal Act Section 30233(a) requires that feasible mitigation measures have been provided to minimize any adverse effects of the proposed fill. Mitigation measures have been established through the original permit special conditions and include such measures as marine debris management, preventative measures to avoid eelgrass habitat, implementation of a cultivation site access plan, measures to prohibit wildlife disturbance, and measures to limit the potential loss and dispersal of cultivation gear. These conditions remain in effect and unchanged with the proposed permit amendment, and thus feasible mitigation measures have been provided to minimize the adverse effects of fill. Therefore, the third and final test of Coastal Act Section 30233(a) has been met.

Conclusion

Because its three tests have been met, the Commission finds the proposed project, as amended and conditioned, is consistent with Section 30233(a) of the Coastal Act.

F. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall 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.

The proposed project amendment includes two visual considerations: first, the expansion of cultivation gear in the intertidal areas of Morro Bay, and second, the placement of a work barge in a channel on lease M-641-01, Parcel 2.

Self-tipping Longline Culture Method

MBOC proposes to use the oyster cultivation methods previously approved under CDP 9-19-0386 with modifications to the layout of the gear. MBOC has proposed the placement of approximately 224 longlines within the 8.29-acre expansion area (See [Exhibit 6 and 7](#)), which would be elevated four feet above the substrate. Each longline includes PVC posts spaced every 10 linear feet as well as hanging SEAPA style cultivation baskets. Viewed at a distance during low tides, this gear resembles a series of short fences or walls configured in parallel rows ([Exhibit 7](#)). This gear is submerged during high tide. If bottom bags are used in a small portion of the 8.29-acre high intertidal zone (Areas 6 and 7), these bags would largely blend in with the mudflat appearance. Tidal submersion, combined with the proposed location of the gear approximately 0.3 to 0.5 miles from the nearest shoreline would make the gear difficult to see during most conditions. Therefore, the gear placement does not conflict with Section 30251.

Barge/Work Platform

The most noticeable visual element of MBOC's current aquaculture operation is the approximately 2,600-square-foot work barge that is permanently moored within the cultivation area to facilitate its operations. As shown in the photo on the next page, the existing work barge contains a variety of machinery, materials, and equipment that have been stored and used for operations, with many of the components showing signs of wear and tear. The barge supports several raised tables and overhead shade structures as well as a portable restroom and handwash station. Each of the floating barge pieces that make up the whole platform were collected over the years and are all made of different materials, heights, and ages.



Photo of MBOC's current work barge to be removed and replaced. Photo by: MBOC

MBOC has acknowledged that the existing configuration of the work barge as well as its size may impede the viewshed of the bay back area, which is highly regarded by naturalists as well as tribal members who consider this area part of the Sacred Viewshed. As such, MBOC proposes to reduce the size of the work barge from 2,568 square feet to no more than 1,200 square feet, which would reduce the amount of view space occupied by the work barge. MBOC has also proposed design features to help reduce visual glare and to ensure the work barge better matches the color of the Bay. Because most public vantage points are ½ mile or more away from the site, the reconfigured and reduced work barge will more closely resemble an anchored vessel from a distance, and better match the visual character of the back bay.

Additionally, with the proposed modifications to reduce gear storage on the barge, MBOC will further reduce the visual clutter that is associated with the work barge. New recommended **Special Condition 13** memorializes MBOC's project changes and ensures that the expected visual improvements will be realized.

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP 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)(A) of CEQA prohibits approval of a proposed development if there are

feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

The Coastal Commission's review and analysis of CDP applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. As a responsible agency, the Commission conducted its analysis of the potential impacts of the proposed development that the Commission is authorized by the Coastal Act to review. The Commission has reviewed the relevant coastal resource issues associated with the proposed project and has identified appropriate and necessary conditions to assure protection of coastal resources consistent with the requirements of the Coastal Act. The staff report discusses the relevant coastal resource issues with the proposed development. All public comments received to date have been addressed in the staff report. The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As conditioned, there are no additional feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse environmental effect that approval of the proposed project, as modified, would have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the Coastal Act and CEQA Section 21080.5(d)(2)(A).

IV. APPENDICES

APPENDIX A: Substantive File Documents

Coastal Development Permit Application No. 9-19-0386-A1 and associated file.
Adopted Findings for Coastal Development Permit Nos. 9-19-0386 and 9-18-0278

References

- California Department of Public Health. 2024. 2022-2023 Annual Sanitary Survey Update Report: Shellfish Growing Area Classification for Morro Bay, California. Technical Report No. 24-11.
- California Department of Public Health. 2024. Management Plan for Commercial Shellfishing in Morro Bay, California. Environmental Management Branch Preharvest Shellfish Unit. Technical Report No. 24-03.
- Merkel & Associates, Inc. 2020. San Diego Bay Eelgrass Inventory. Prepared for U.S. Navy Region Southwest. San Diego, CA.
- Morro Bay National Estuary Program. 2021. Morro Bay Eelgrass Report. Morro Bay, CA. Available at: https://library.mbnep.org/wp-content/uploads/2022/11/2021-Eelgrass-Report_FINAL.pdf

NOAA National Marine Fisheries Service. 2014. California Eelgrass Mitigation Policy and Implementing Guidelines. West Coast Region. Available at: https://media.fisheries.noaa.gov/dam-migration/cemp_oct_2014_final.pdf.

APPENDIX B – Original Permit Special Conditions from CDP 9-19-0386

- 1. Permit Term Limit.** This permit shall expire on May 3, 2029. If the term of MBOC's lease (State Water Bottom Lease Nos. M-614-01, Parcel 2) – also currently set to expire on May 3, 2029 - is amended or a new lease is issued by the California Fish and Game Commission, MBOC may submit an application for a permit amendment requesting an extension of the permit term. MBOC shall, no less than 60 days prior to permit expiration or the cessation of its operations on Lease No. M-614-01 Parcel 2, submit a complete application to amend this permit to remove all cultivation equipment and accumulations of oyster shell and return the lease area to a natural condition.
- 2. Bottom Bag Cultivation Areas.** The outer perimeter of MBOC's untethered bottom bag cultivation bed shown approximately on [Exhibit 2](#) shall be clearly marked. To prevent loss of bottom bags and displacement outside of this cultivation bed, placement of untethered bottom bags shall be limited to the area within these marked perimeters and all untethered bottom bags shall be stocked with no less than two gallons of large oysters. If bottom bags with lower volumes of oysters or smaller sizes are used, they shall be affixed to lines secured to the mudflats within the bottom bag cultivation bed.
- 3. Cultivation Site Access Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, MBOC shall submit, for Executive Director review and written approval, a Cultivation Site Access Plan that includes: (1) a map showing the travel routes and landing or cultivation bed access sites that MBOC's vessels and personnel shall use to access its various operation areas; (2) procedures (such as employee training, use of lookouts and/or speed restrictions) to limit herding or flushing of black brant, shorebirds, or marine mammals within Morro Bay; (3) procedures to avoid injury or disturbance to sensitive habitat areas such as eelgrass beds and marine mammal haul outs, including avoiding passage through and landing in such areas during lower tides and updates of vessel and personnel access routes if sensitive habitat areas expand or shift. Upon approval by the Executive Director, MBOC shall implement the Cultivation Site Access Plan.
- 4. Annual Report.** By March 1 of each year, MBOC shall submit to the Executive Director an annual report with information regarding the results of the prior year's quarterly cleanup events carried out as described in **Special Condition 5** and the date of training, training materials, meeting minutes, and list of attendees from the Marine Debris Reduction Training described in **Special Condition 5(C)**. In addition, the annual report shall include information on the estimated number of cultivation bags and/or baskets lost, replaced, and recovered throughout the course of the year, as well as any design, management, or operational changes

implemented to address issues that have arisen with the expanded use of elevated cultivation bags and/or baskets. The annual report shall also include a description of any significant changes to the type, quantity and configuration of cultivation equipment that are being considered and any resource or operational challenges that are emerging (such as bird roosting or changes to eelgrass habitat).

- 5. Marine Debris Reduction and Management.** MBOC shall carry out operations consistent with the following marine debris reduction and management practices:
 - A. Storm Damage and Debris.** As soon as safely and reasonably possible following storm or severe wind or weather events, MBOC shall patrol all of its active cultivation areas for escaped or damaged aquaculture equipment. All equipment that cannot be repaired and placed back into service shall be properly recycled or disposed of at an appropriate onshore facility. In addition, MBOC shall retrieve or repair any escaped or damaged aquaculture equipment that it encounters while conducting routine daily and/or monthly maintenance activities associated with shellfish culture (e.g. bed inspections, shellfish harvest and planting). If the escaped gear cannot be repaired and replaced on the shellfish bed, it shall be properly recycled or disposed of on land.
 - B. Gear Marking and Replacement.** MBOC shall mark shellfish culture bags (bottom bags, floating bags and hanging bags), baskets, and floats in an easily identifiable manner with identification information including its company name. Markings shall be securely attached and robust enough to remain attached and legible after an extended period in the marine environment (e.g. heat transfer, hot stamp, etching, etc.). Existing cultivation bags and floats currently in use shall be marked or replaced with marked versions when replanted and all unmarked gear shall be replaced in this way WITHIN 18 MONTHS OF THE COMMISSION'S APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT. MBOC shall also complete the replacement of all plastic wrapped Styrofoam block floats with crab floats (or similarly robust and durable buoys/floats) within 12 months of the Commission's approval of this permit. In the event that its shellfish culture gear or equipment becomes displaced or dislodged from culture beds, it shall be MBOC's responsibility to retrieve the material from the shoreline, open water, eelgrass beds, mudflat, or submerged bottom with minimal damage to the resources affected. Once located, such material shall be removed as soon as feasible and properly disposed of, recycled, or returned to use.
 - C. Marine Debris Reduction Training.** WITHIN 30 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall implement an employee training regarding marine debris issues, including covering how to identify culture gear or associated materials (marking stakes, support posts, longlines, label tags, clasps, etc.) that are loose or at risk of becoming loose, proper gear repair methods, and how to completely remove gear from out-of-production areas. Particular focus shall be placed

on management and maintenance practices to reduce the loss of any gear type that is frequently lost or consistently found during bay cleanup and inspection activities. This training shall be repeated on an annual basis throughout the term of the permit. During trainings, MBOC's employees shall be encouraged to consider and implement field and management practices that reduce the amount of small plastic gear (such as zip-ties, tags and fasteners) and non-biodegradable material (such as PVC stakes and nylon or polypropylene rope) used in its operations.

- D. Cleanup Events.** MBOC shall carry out quarterly cleanup events in Morro Bay in coordination with other interested parties or organizations. Cleanup events shall include walking different portions of the bay and shorelines to pick up escaped shellfish gear and other trash (regardless of whether it is generated by the project). Particular focus shall be placed on the collection and removal of shellfish cultivation equipment (wires, stakes, etc.) abandoned within MBOC's lease area by prior operators. The volume and type of shellfish gear collected and the cleanup location (marked on a map) and duration of cleanup activity shall be recorded and documented in the annual report submitted to the Executive Director. If persistent discoveries of certain gear types are made, MBOC shall evaluate (and if feasible, implement use of) alternative gear types or practices that would reduce these consistent sources of debris.
- E. Ongoing Operations.** MBOC shall not leave or temporarily store tools, loose gear, or construction materials on its leased tidelands or surrounding areas. All aquaculture gear installed on and in use in active cultivation sites shall be kept neat and secure and maintained in functional condition. MBOC shall carry out regular bed inspections and maintenance activities to help ensure that broken, collapsed, fallen, or buried gear is fixed or removed in a timely manner.
- F. Bed Cleaning at Harvest.** At the time of harvest of each cultivation area, MBOC shall carry out a thorough inspection to locate and remove loose, abandoned or out of use equipment, tools, and accumulations of oysters from the surrounding substrate. Oyster shell shall not be intentionally placed or deposited within the lease outside of cultivation gear, and oysters or oyster shell accidentally spilled during cultivation or harvest shall be immediately collected and removed.
- G. Excessive Gear Loss or Maintenance Failures.** If the Executive Director determines that MBOC is responsible for consistently extensive loss of aquaculture equipment (including bottom bags, cultivation baskets or floats) into the marine environment or is consistently failing to maintain its equipment in an intact and serviceable condition, MBOC shall, within 60 days of the Executive Director's written notification, submit a permit amendment to modify its cultivation equipment and/or operational practices to minimize equipment loss and mitigate impacts to affected habitat.

- 6. Wildlife Disturbance.** During vessel transit, harvest, maintenance, inspection, and planting operations, MBOC shall avoid approaching, chasing, flushing, or directly disturbing shorebirds, waterfowl, seabirds, or marine mammals.
- 7. Protection of Eelgrass Habitat.** No shellfish cultivation equipment, anchors, or other structures, gear or equipment shall be installed or placed on, in, or over eelgrass habitat, as determined by the Executive Director using the definition of eelgrass habitat in the National Marine Fisheries Service's October 2014 California Eelgrass Mitigation Policy (CEMP) or within any area identified by the National Marine Fisheries Service as important to eelgrass recovery in Morro Bay. Prior to placing or installing structures or equipment on any shellfish cultivation area not shown on [Exhibit 2](#) as an existing cultivation areas, MBOC shall submit, for Executive Director review and approval, information collected within the most recent eelgrass growing season (April through October) demonstrating that no eelgrass is present within the area in which installation or placement is proposed. If eelgrass is present or the Executive Director does not approve the information (for example, because it is inconclusive, out of date, of inadequate resolution, or improperly collected), MBOC shall retain the services of a qualified, independent third party to carry out an eelgrass survey of that area. The survey shall be carried out consistent with the methodology and protocols established in the CEMP and shall be carried out during the eelgrass growing season in which installation activities will occur (or the previous growing season if installation will occur after the completion of one growing season and prior to the start of the next). Within 30 days of survey completion, the results of the eelgrass survey shall be provided to the Executive Director for review and approval along with a map or diagram showing the footprint and location of proposed cultivation structures and equipment relative to nearby eelgrass habitat and demonstrating that installation within eelgrass habitat, as defined in the CEMP, will not occur. While installation of shellfish cultivation structures and equipment shall be prohibited within eelgrass habitat, as defined in the CEMP, if such eelgrass habitat moves or expands into areas with existing fixed cultivation structures and/or equipment (elevated or floating longlines), MBOC may continue to maintain and use these areas for shellfish cultivation.

MBOC shall install all cultivation equipment (elevated longlines or floating longlines) within new cultivation beds using the configuration and spacing described in this report (and shown in [Exhibit 3](#); five feet between lines, ten feet between groups of three or four lines, 15 feet and 30 feet between cultivation beds). If the National Marine Fisheries Service identifies a wider spacing or reduced density of equipment that would promote eelgrass recovery, new cultivation beds shall be installed with that spacing and/or density.

- 8. Intake System Design.** All intake systems used by MBOC to supply water from Morro Bay for maintenance or shellfish cleaning, sorting or washing shall be designed with intake screens designed consistent with California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for protection of juvenile salmonids by having: (a) mesh openings of no more than 3/32 inches; and (b) a maximum intake water velocity of 0.33 feet per second. WITHIN 30

DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall provide, for Executive Director review and approval, evidence that intake screens meeting these standards have been installed on all intake systems used by MBOC to supply water from Morro Bay for its operations.

9. **Discharge of Materials.** MBOC shall not intentionally dispose of or release any equipment or waste, including lines, buoys, cultivation bags, baskets, fasteners and other equipment, or living or dead shellfish, shells, or non-native fouling organisms into the marine environment. All biofouling organisms removed during oyster cleaning, sorting, and packing operations shall be collected and disposed of at an appropriate upland facility. Other than water associated with deck rinsing, no direct discharge of wash water or non-native biofouling materials into Morro Bay shall occur during maintenance, cleaning, sorting or packing operations.
10. **Work Platform.** WITHIN 12 MONTHS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall fully remove from Morro Bay its existing floating work platform and all associated barges, rafts and moorings not used for shellfish cultivation. Demolition or deconstruction activities on the floating work platform (including removal of machinery and associated equipment) shall be limited to only those necessary to prepare the platform and its associated barges to be towed to the nearest appropriate marina or boat ramp and removed from the bay. All subsequent deconstruction, cleaning or demolition activities shall be carried out onshore at MBOC's facility, and all resulting debris and waste shall be properly recycled or transported to a certified waste disposal facility. No subsurface cleaning or scraping of the work platform rafts shall be carried out within Morro Bay. Within 30 days of the completion of floating work platform removal, MBOC shall provide, for Executive Director review and approval, the results of a benthic survey carried out within the former footprint of the work platform. All aquaculture debris observed during this survey shall be removed by MBOC.

Placement or installation of a new or replacement floating work platform shall require an amendment to this coastal development permit and submittal of evidence that the Fish and Game Commission has approved operation of such a facility on State Water Bottom Lease No. M-614-01, Parcel 2.

11. **Hazardous Material Spill Prevention and Response Plan.** WITHIN 60 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, MBOC shall submit for Executive Director review and written approval, a project specific Spill Prevention and Response Plan (SPRP) for work vessels, barges, and gasoline powered machinery that will be used during project construction and operational activities. MBOC and its personnel shall be trained in, and adhere to, the emergency procedures and spill prevention and response measures specified in the SPRP during all project installation and operations. The SPRP shall provide

for emergency response and spill control procedures to be taken to stop or control the source of the spill and to contain and clean-up the spill. The SPRP shall include, at a minimum: (a) identification of potential spill sources and quantity estimates of a project specific reasonable worst case spill; (b) identification of prevention and response equipment and measures/procedures that will be taken to prevent potential spills and to protect marine and shoreline resources in the event of a spill. Spill prevention and response equipment shall be kept onboard project vessels and barges at all times; (c) a prohibition on vessel fueling/refueling activities outside of designated fueling stations and limitation on equipment refueling to no more than five gallons, carried out with spill prevention and response protocols in place; and (d) emergency response and notification procedures, including a list of contacts to call in the event of a spill.

12. **Other Agency Review and Approval.** PRIOR TO COMMENCEMENT OF PROPOSED CONSTRUCTION AND/OR INSTALLATION ACTIVITIES for new oyster cultivation beds, MBOC shall submit to the Executive Director written evidence that any necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted, including those from the Regional Water Quality Control Board, California Fish and Game Commission and U.S. Army Corps of Engineers. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without an amendment to this permit unless the Executive Director determines that no amendment is legally necessary. Proposed construction and/or installation activities shall not proceed if one or more authorizations from other agencies are not issued.