



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

APPLICATION FOR PERMIT Morro Bay Oyster Company Farm

Public Notice/Application No.: SPL-2019-00102-EBR

Project: Morro Bay Oyster Company Farm

Comment Period: June 17, 2019 through July 16, 2019

Project Manager: Emma Ross; (805) 350-4157; emma.b.ross@usace.army.mil

Applicant

Neal Maloney
Morro Bay Oyster Company
1287 Embarcadero
Morro Bay, California 93442

Location

The project is located in Morro Bay, specifically in California Fish and Game Commission State Water Bottom Lease #M-614-01 Parcel 2 near the city of Morro Bay, San Luis Obispo County, California (lat.: 35.3359, long.: -120.8451).

Activity

The applicant is seeking after-the-fact authorization for the existing shellfish growing facilities (Pacific oyster, *Crassostrea gigas*, which occupy approximately 5 acres of Morro Bay, and authorization of a proposed 129.5 acre expansion. The project will be split in two phases: Phase 1, expanding by 5 acres in the next year and Phase 2, expanding up to the remaining 124.5 acres within five years. The applicant plans on additionally growing the indigenous Pismo clam (*Tivela stultorum*) and Manila clam (*Venerupis philippinarum*) within this expansion. The existing facilities include a series of barges tied together totaling approximately 3500 square feet. This includes the floating work barge, and equipment barge. The two oyster nursery rafts known as floating upwelling systems (FLUPSYs), are 320 square feet and are off lease at a boat slip in the city marina at the Beach Street slips. The untethered bottom bags, floating long lines and modified racks are called a self-tip system. The self-tip system is currently composed of 15 lines, 100 bags per line, roughly 210 feet long and covers approximately 15,000 square feet. The Floating long lines are just a little bit longer per line at roughly 250 ft. and there are approximately 40 lines with 100 bags per line. The expansion would result in up to an additional 129.5 acres (within five years) for shellfish growing in an area not presently used for aquaculture operations (in two phases). Phase 1 (would occur immediately after permitting) of the project would add approximately 2,000 untethered bags of clams, 70 additional self-tip lines and 20 new floating long lines. Phase 2 (would occur within five years) would consist of adding approximately 10,000 bags of clams. With the exception of the FLUPSYs which are secured to existing docks all of the growing systems and barges will be within the state water bottom lease. Construction of new, in-kind, replacement barge, will take place on land and final assembly will take place on the lease site. Once complete, the new barge will total approximately 3500 square feet like the current barge. All facilities and operations described herein would be constructed on or take place within the state water bottom lease. For more information see Additional Project Information section and attached drawings below.

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Comments should be mailed to:

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
ATTN: Emma Ross, Project Manager
60 S California Street, Suite 201
Ventura, CA 93001-2598

Alternatively, comments can be sent electronically to: emma.b.ross@usace.army.mil.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including

the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance

Coastal Zone Management- The applicant has certified the proposed activity would comply with and would be conducted in a manner consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission the project is consistent with the State's Coastal Zone Management Plan. The applicant has applied for a Coastal Development Permit (CDP) and the permit is under review.

Essential Fish Habitat- The Corps preliminary determination is the proposed activity may adversely affect EFH and federally managed fishery species. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District hereby requests initiation of EFH consultation for the proposed project. This notice initiates the EFH consultation requirements of the MSA. In order to comply with the MSA, pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: see project description above and additional information and drawings below.
2. On-site inspection information: Surveys (*Morro Bay National Estuary Program: Morro Bay Eelgrass Report 2018*, dated April 2019) of the lease site indicate there is eelgrass (*Zostera marina*), in the west side of the lease (figure enclosed). However, eelgrass was not in this location when equipment was placed. The lease site is also habitat for federally managed species in the Pacific Groundfish and

Coastal Pelagic Fishery Management Plans. The lease site may also provide habitat for marine mammals including southern sea otter (*Enhydra lutris nereis*), harbor seals, and sea lions.

3. Analysis of the potential adverse effects on EFH: The project may suppress benthic aquatic species or prevent their colonization and utilization of the substrate and water column, and locally affect dissolved oxygen concentrations on benthic habitats. The project may provide surfaces for colonization by exotic species including encrusting organisms and algae. The project may result in entanglement of marine mammals; however this has not been reported in the project area. The growing facilities may experience localized or catastrophic failure as a result of storm surge and wave action and could result in substantial debris accumulation on local beaches and in the ocean.

4. Proposed minimization, conservation, or mitigation measures: The applicant will use best management practices and exclusionary zones to not place new equipment in areas where eelgrass is growing. The Corps will consider measures in the CDP (if approved) and determine whether additional minimization, conservation, or mitigation measures following review of public comments.

5. Conclusions regarding effects of the proposed project on EFH: It is the Corps' preliminary determination the proposed activity may adversely affect and would have an adverse impact on EFH or federally managed fisheries and EFH. My final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries. If I do not receive written comments (regular mail or e-mail) within the 30-day notification period, I will assume concurrence by NOAA Fisheries that no mitigation measures are necessary.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and there are no listed historic properties in or adjacent to the Area of Potential Effect (APE). The APE is defined as the 134.5 acre areas (the entire acreage of Lease #M-614-01 Parcel 2) of navigable waters in which regulated activities would occur. As a result, the Corps has determined the existing project and proposed expansion have no potential and little likelihood to cause effect to historic properties as described in 33 CFR 325 Appendix C(3)(b). This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species- Preliminary determinations indicate the proposed activity may affect but is not likely to adversely affect federally-listed endangered or threatened species, specifically the southern sea otter (*Enhydra lutris nereis*). Therefore, informal consultation under Section 7 of the Endangered Species Act is required and will occur under separate cover.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). No discharge of dredged or fill material is proposed within special aquatic sites, however Corps' practice is to consider tethered bag shellfish growing systems a fill because when the tide is out, the bags lay on the substrate and change the

bottom contours. The basic project purpose is commercial shellfish production which is considered a water dependent activity.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The No Action Alternative and alternative[s] to the proposed tethered bag growing system will be considered.

Additional Project Information

Baseline information- The applicant has been operating on approximately a 5-acre shellfish aquaculture cultivation facility within the 134.5 acre lease site (Lease No. M-614-01 Parcel 2) for approximately 11 years. The Corps is evaluating impacts of unauthorized structures and work and the proposed 129.5 acre expansion of the facility to build out the lease site M-614-01 Parcel 2. The applicant is discussing planting eelgrass either within the parcel or finding a plot where it could grow to offset potential impacts.

Project description- See "Activity" description above.

Proposed Mitigation- Mitigation may be required as a result of comments received on this public notice, the applicant's response to those comments, and/or the public interest evaluation. The Corps' proposed mitigation sequence (avoidance/minimization/compensation), is summarized below:

Avoidance: Not proposed; the project involves marine aquaculture and is water dependent.

Minimization: The Corps will consider the minimization measure described in the CDP (if approved). Additional measures may be developed following review of public comments.

Compensation: The Corps will review the California Eelgrass Mitigation Policy (CEMP 2014) and determine whether compensatory mitigation measures are required following review of public comments.

Proposed Special Conditions: Special conditions will be developed in response to comments received on this public notice.

For additional information please call Emma Ross of my staff at (805) 350-4157 or via e-mail at Emma.B.Ross@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

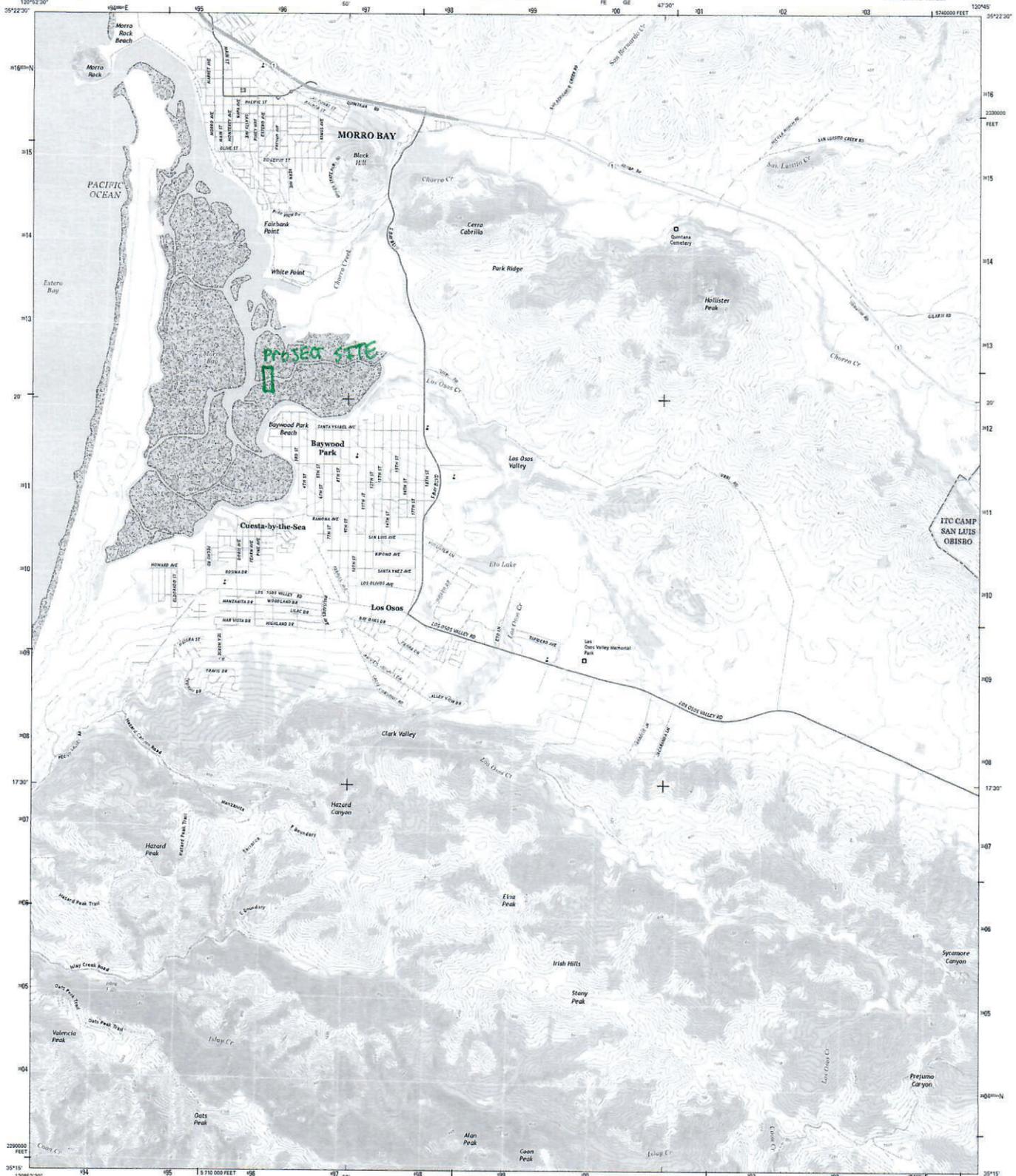
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LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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U.S. DEPARTMENT OF THE INTERIOR
U.S. GEOLOGICAL SURVEY

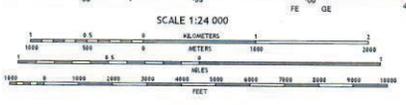


MORRO BAY SOUTH QUADRANGLE
CALIFORNIA-SAN LUIS OBISPO CO.
7.5-MINUTE SERIES



Produced by the United States Geological Survey
North American Datum of 1983 (NAD83)
World Geodetic System of 1984 (WGS84). Projection and
1:600-meter grid. Universal Transverse Mercator, Zone 19S
18 000-foot scale. California Coordinate System of 1983 (CCS83)
This map is not a legal document. Boundaries may be
generalized for this map scale. Private lands with government
reservations may not be shown. Obtain permission before
entering private lands.

Imagery: NIP, May 2012
Name: HERE, © 2013 - 2014
Name: HERE, © 2013 - 2014
Hydrography: National Hydrography Dataset, 2012
Contour: National Elevation Database, 2009
Boundary: Multiple sources; see metadata file 1972 - 2015
Public Land Survey System: BLM, 2011



ROAD CLASSIFICATION

Expressway	Local Connector
Secondary Hwy	Local Road
Ramp	US Route
Interstate Route	State Route

1	2	3
4	5	6
7	8	9

This map was produced to conform with the
National Geospatial Program US Topo Product Standard, 2011
A metadata file associated with this product is available at: www.usgs.gov

MORRO BAY SOUTH, CA
2015



Figure 1. Location of aquaculture leases, showing *Prohibited* and *Conditionally Approved* Areas; primary water quality stations and secondary stations in Morro Bay, California. The Proposed site is the solid colored box to the East of the northern mark of #78 and a southern mark of #74 on lease M-614-01 parcel 2.

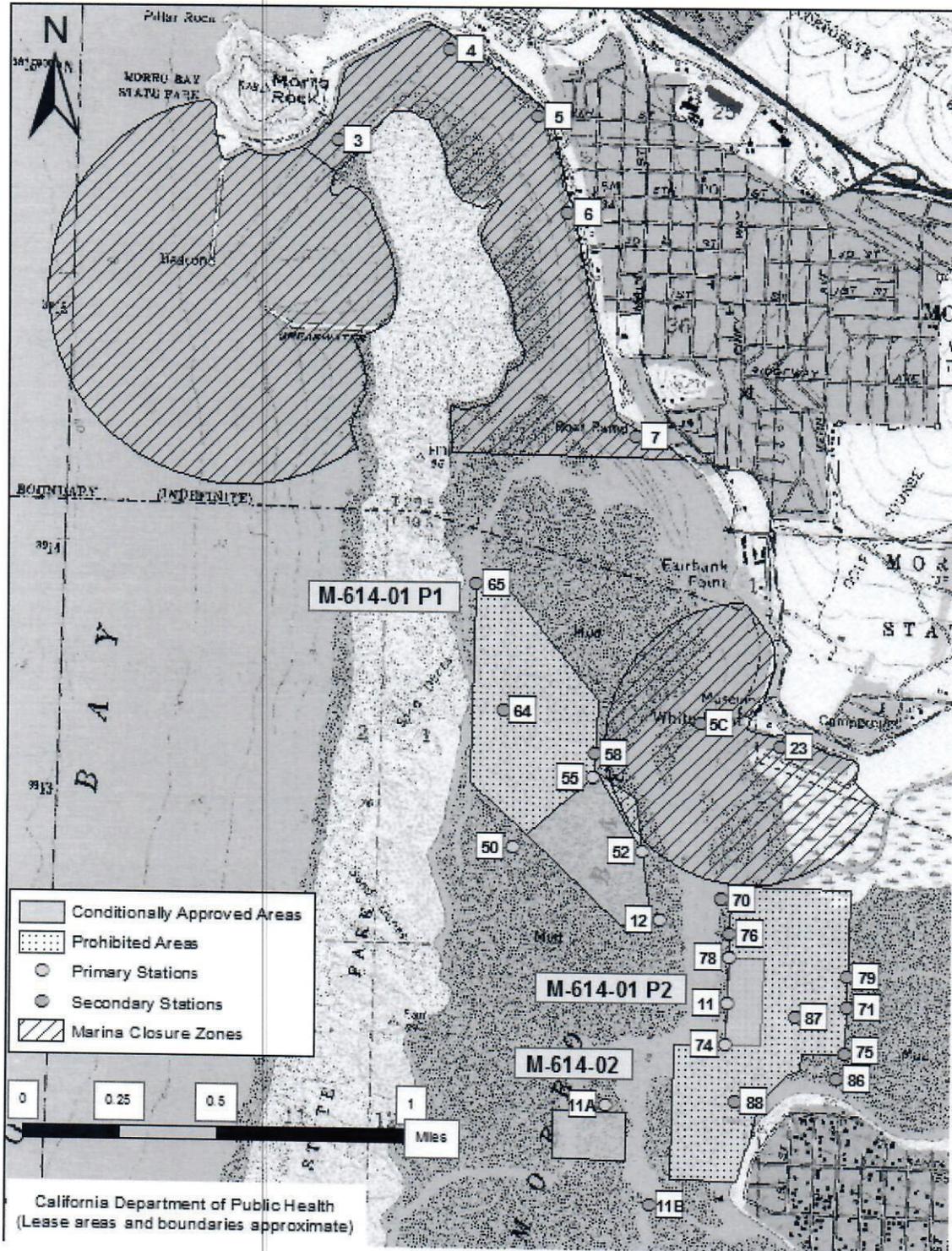
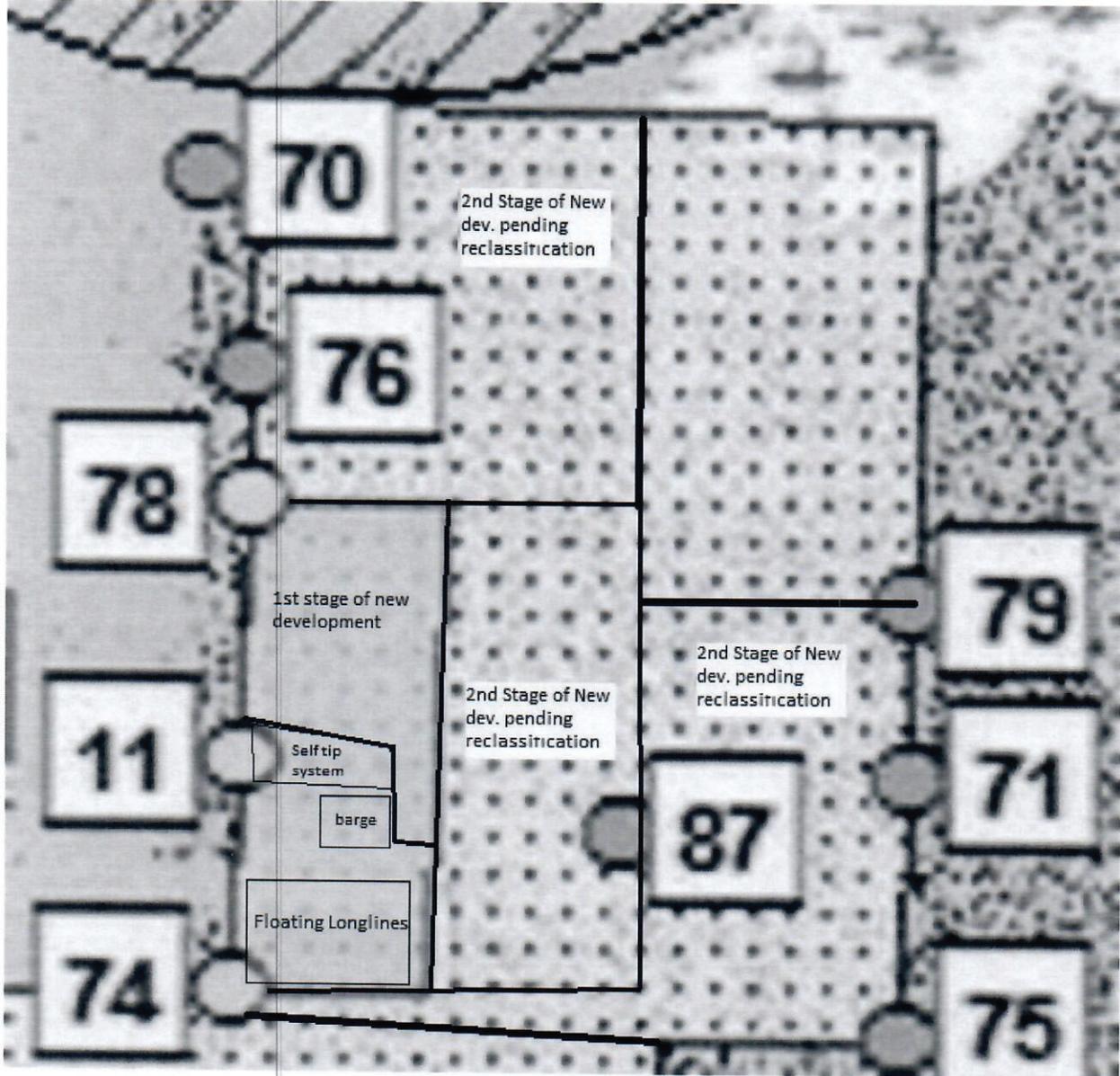
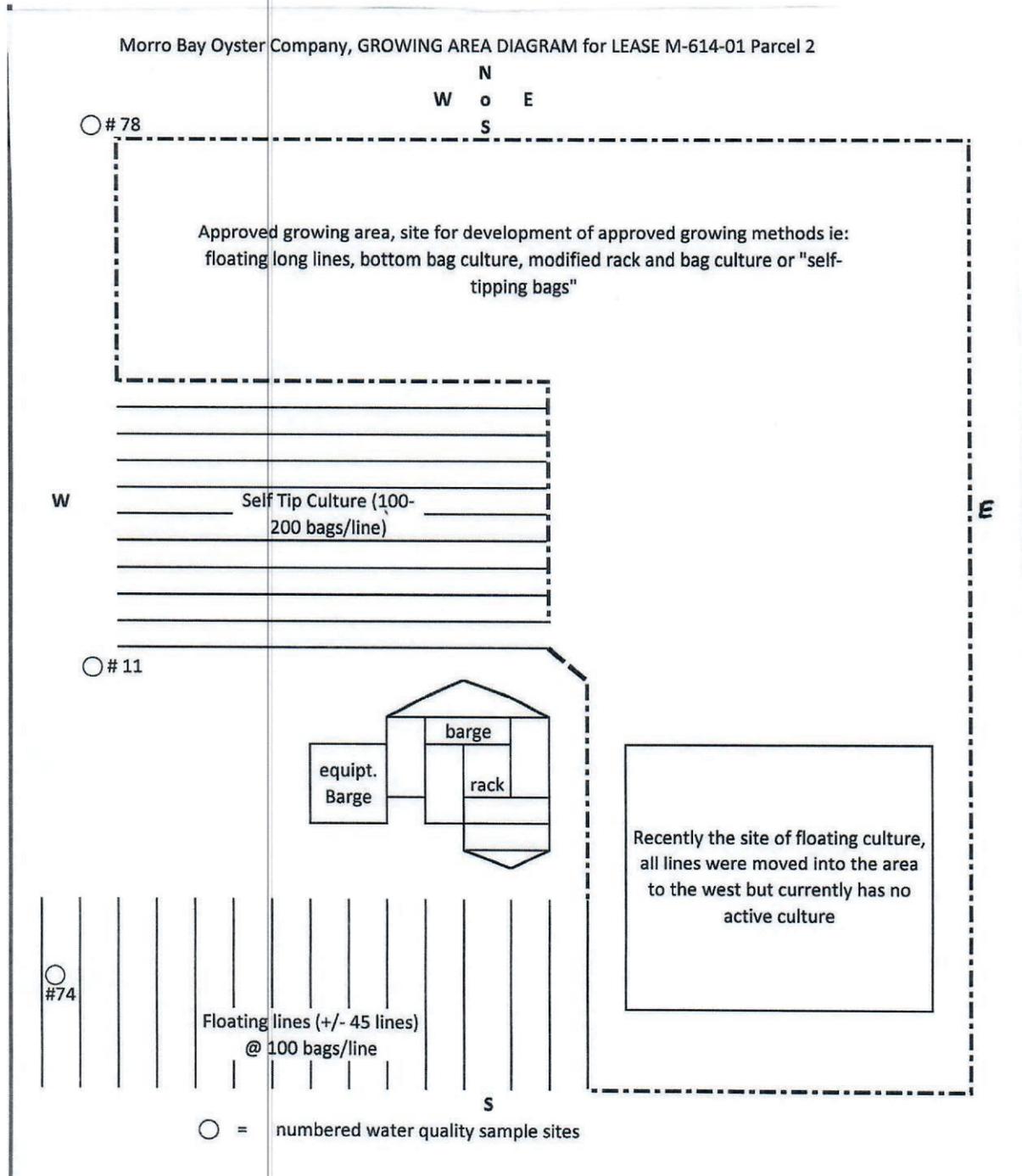


Image below: Zoomed in image of Lease M-614-01 parcel 2 of Morro Bay Oyster Co. The corners of the currently approved growing area are (Tan colored): GPS locations- NW corner: 35.33765 by -120.84509, NE Corner: 35.33765 by -120.845357, SW Corner: 35.33433 by -120.84509, SE Corner: 35.33433 by -120.84357. Other GPS markers that will help determine the rough boundaries of proposed farming are:
Site 70) N 35.3401 W-120.8451
Site 87) N 35.3355 W-120.8420
Site 79) N 35.3371 W-120.8397
Site 75) N 35.3341 W-120.8396



Below is an image of the current layout of the farm. The corners of the currently approved growing area are: GPS locations- NW corner: 35.33765 by -120.84509, NE Corner: 35.33765 by -120.845357, SW Corner: 35.33433 by -120.84509, SE Corner: 35.33433 by -120.84357.



Eelgrass near/within Lease #M-614-01 Parcel 2



450

Feet

