

Staff Summary for December 11-12, 2024

7. Aquaculture Lease Assignment**Today's Item****Information** **Action**

Receive and discuss a recommendation regarding the request from Cove Mussel Company to assign State Water Bottom Lease M-430-06 in Tomales Bay to Starbird Mariculture, Inc.

Summary of Previous/Future Actions

- | | |
|---|-----------------------------|
| • Commission executive director approved Cove Mussel Company request to sublease one acre of lease M-430-06 to Starbird Mariculture | February 2015 |
| • Commission received a request from Cove Mussel Company to assign lease M-430-06 to Starbird Mariculture | October 2020 |
| • Commission referred request to Department for review and recommendation | December 2020 |
| • Today receive Department recommendation | December 11-12, 2024 |
| • Consider and act on assignment request | February 12-13, 2024 |

Background

The Commission has the authority to lease state water bottoms to any person for the purpose of conducting aquaculture in marine waters of the State, under terms agreed upon between the Commission and the lessee (California Fish and Game Code sections 15400 and 15405). An aquaculture lessee who wishes to assign their state water bottom lease to another person or entity (i.e., to transfer the lease rights and responsibilities) must seek and receive approval from the Commission (California Fish and Game Code Section 15412).

Existing Lease and Assignment Request

State Water Bottom Lease M-430-06 in Tomales Bay, encompassing approximately 10 acres near Marconi Cove in Marin County, has been in operation for nearly 50 years under leases issued by the Commission. Since 1985, Cove Mussel Company, LLC has held and operated the lease, which is set to expire on March 7, 2027 (Exhibit 1). In 2015, the Commission approved a sublease of 1 acre to Starbird Mariculture, Inc. for shellfish aquaculture at the request of the lessee (Exhibit 2). In October 2020, Cove Mussel Company requested to assign the entire lease to Starbird Mariculture (Exhibit 3).

Department Review Process

In December 2020, the Commission referred the assignment request to the Department for review and recommendation. The Department conducted subtidal surveys of the entire lease area in 2021 and 2022, documenting debris and gear from past and current aquaculture operations, as well as non-aquaculture related debris. While Cove Mussel Company is responsible for cleanup under its lease terms, Starbird Mariculture has undertaken clean-ups to address debris concerns for both its sublease operations and the unused gear and debris from Cove Mussel Company's former operations. The Department has been unable to conduct additional underwater surveys since 2022; however, Starbird Mariculture submitted a draft

Staff Summary for December 11-12, 2024

standard operating procedure to the Department for review and has committed to working with the Department and Commission staffs on a more detailed standard operating procedure and reporting plan to minimize lost gear and debris and to ensure removal when it does occur.

After review and coordination with Starbird Mariculture, the Department has concluded that Starbird Mariculture has the necessary knowledge, experience, and financial resources to assume the entire lease (Exhibit 4). Starbird Mariculture is current with production and harvest document submissions, continues to remove unused gear and debris, has maintained annual aquaculture registrations, and is current with a coastal development permit (CDP) from the California Coastal Commission for Starbird Mariculture's operation within the one-acre sublease (identified as "M-430-06A"). The CDP establishes special conditions associated with maintenance, marine debris reduction and management, and annual reporting, among others (Exhibit 5). Note that the larger lease area does not have a CDP; Chris Starbird, CEO of Starbird Mariculture, has already committed to pursuing the required CDP for the entire lease area upon assignment.

Recommendation and Lease Terms

The Department supports approving Cove Mussel Company's request to assign State Water Bottom Lease M-430-06 to Starbird Mariculture for the remainder of the lease term. Working with staff, the Department is preparing a draft lease assignment agreement; while the terms of an existing lease are typically carried forward in their entirety in a lease assignment, select amendments are expected to be necessary to align with lease administration changes since the original 2002 lease was approved. Additionally, the Department proposes to add a new section to the lease terms to establish guidelines for gear and debris management, including documentation and reporting requirements that will align with existing reporting obligations to other agencies, such as the California Coastal Commission.

Today, the Department will present an overview of the lease assignment request and Department recommendation for discussion. Following today's meeting, Commission staff will continue working with Starbird Mariculture, with Department input, on refinements to the draft assignment agreement and terms in preparation for consideration and potential action at the February 12-13, 2025 Commission meeting.

Significant Public Comments (N/A)

Recommendation (N/A)

Exhibits

1. [Current lease agreement for ease M-430-06, expiring March 7, 2027](#)
2. [Map of Starbird Mariculture's sublease for one-acre parcel within lease M-430-06](#)
3. [Letter from Scott Zahl, Cove Mussel Company requesting assignment, dated October 10, 2020](#)
4. [Department memo, received December 2, 2024](#)
5. [Coastal development permit conditions for Starbird Mariculture's sublease](#)

Motion (N/A)

3-7-02 M/A
#20
Cove Mussel
Number M-430-06

RENEWAL OF LEASE

Made this eighth day of March, 2002 at San Diego, California by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor" and Cove Mussel Company, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessee indicated an interest in renewing a prior lease agreement and exercised that option by requesting Fish and Game Commission consideration of the request in correspondence dated January 14, 2002, and

WHEREAS, Lessee is presently a registered aquaculturist authorized to grow marine life for profit in the waters of the State of California as provided in Section 15101 of the Fish and Game Code, and

WHEREAS, Lessee expressed support for the Lessor's recommended approval of the requested lease renewal for a 25-year period at an initial lease rate of twenty-three dollars (\$23) per acre, subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every ten years, at the Fish and Game Commission's discretion, and

WHEREAS, the Fish and Game Commission determined that a lease renewal was in the best interest of the State of California at the March 8, 2002 meeting in San Diego, California and approved the renewal based on the renegotiated lease terms recommended by the Department of Fish and Game.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of payment of the monies hereinafter stated in accordance with the renegotiated terms recommended by the Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to law and in consideration of the covenants contained herein on the part of the Lessee, Lessor does hereby grant to Lessee the exclusive privilege to cultivate approved shellfish hereon and in those certain waters of the State of California described as follows, to wit:

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

Beginning at a point which is located South 85°29' East 6,540.00 feet from a 1" Iron Pipe Monument marked NPS 2-F-3 at the southerly terminus of that certain course shown as South 33°18'25" East 616.12 feet on Sheet 2 of 9 sheets of that certain map entitled, "Point Reyes National Seashore", which map was filed in Book 3 of Official Surveys at Page 56 in the Office of the County Recorder of Marin County, California, and said 1" Iron Pipe having California Zone 3 Coordinates North 606,084.87, and East 1,310,543.53; thence from said point of beginning North 86°04' East 660.00 feet; thence South 3°56' East 660.00 feet; thence South 86°04' West 660.00 feet; thence 3°56' West 660.00 feet to the true point of beginning.

This parcel of water bottoms, containing ten (10) ± acres more or less, comprises aquaculture lease M-430-06.

This lease, in accordance with provisions of Section 15400 of the Fish and Game Code, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (*Crassostrea gigas*), European flat oyster (*Ostrea edulis*), and bay mussels (*Mytilus edulis*) in the previously designated area. The cultivation of additional species of aquatic plants or animals must have approval of the Fish and Game Commission. Seed stock must be certified before planting in compliance with Section 15201 of the Fish and Game Code, and must be planted by Lessee in a manner and at a size approved by the Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

All oyster cultivation on the lease shall be confined to racks, trays, buoyed longlines, and rafts within the area approved by the Commission. No other mode of operation or culture method is authorized unless Lessee shall first obtain approval thereof from the Fish and Game Commission.

The notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game's, Marine Region Aquaculture Coordinator, P.O. Box 1560, Bodega Bay, California 94923, telephone (707) 375-4261, or at such other place as Lessor may from time to time designate. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the aquaculture coordinator or their designee, giving the details on where the shellfish seed can be inspected.

In accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby renew said lease for such consideration, specific purposes and subject to covenants,

terms, conditions, reservation, restrictions and limitation as are set forth herein.

This lease renewal is authorized for a term of twenty-five (25) years commencing on the 8th day of March, 2002, and ending on the 7th day of March, 2027, for the total rental of two hundred seventy-six dollars (\$276) per year, and a privilege tax on all products harvested as provided by Fish and Game Code Sections 8051, 18406.5, and 15406.7. Beginning January 1, 2002, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 – December 31. If said annual rental fee is not paid within sixty (60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of its obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said fee(s) to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

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

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

- A. This lease may, at the option of Lessee, be renewed for additional periods not to exceed 25 years each. If the Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission. Lessor retains the right to renegotiate terms of the lease, including annual rental rates, subject to adjustment considering changes in the Consumer Price Index and current lease rates, at the Fish and Game Commission's discretion, no more often than every ten (10) years during the current renewal period.
- B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414 on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10th day of each month for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment and all books

at any time, and Lessee's records pertaining to its cultivation on the leased premises.

- C. The lease shall be improved at no less than the minimum rate established by Commission regulations (Section 237(i)(A) - (C), Title 14, CCR). A minimum rate of planting shall be negotiated for option periods. Lessor may declare this lease terminated if Lessee fails to meet these requirements, and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.
- D. If, at any time subsequent to the beginning date of this lease the use of trays, racks, buoyed longlines, or rafts authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determine by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with the written notice shall be ground for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease. All such improvements to be removed shall be salvaged and removed by Lessee at Lessee's sole expense and risk within ninety (90) days after the expiration, or sooner termination of this lease. If Lessee fails to remove such improvements or portion thereof designated by Lessor, and restore the lease land as hereinafter provided, within ninety (90) days after the expiration date or sooner termination of the lease or notice by Lessor, Lessor may remove or have removed all of the improvements and charge the expense of such removal to Lessee. In making such removals, Lessee shall restore said leased land as nearly as possible to the condition existing prior to erection or placement of the improvements thereupon.
- E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to State Water Resources Control Board, State Coastal Commission, State Lands Commission, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.
- F. Lessee recognizes and understands in accepting this lease that his interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by Lessee.
- G. Any modification of natural or existing features of the real property described in this lease, which are not consistent with the authorized uses under this lease are expressly prohibited without prior written consent of the Lessor.

- H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Region office, P.O. Box 1560, Bodega Bay, California 94923, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated species comprising each planting, including a diagram (map) showing area, amounts, and dates planted. Such annual proof-of-use shall be submitted on or before February 1 of each year for the previous year, January 1 -- December 31, inclusive.
- I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Section 15101 of the Fish and Game Code. Lessee agrees not to commit, suffer, or permit any waste on said premises or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term hereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.
- J. This lease of State water bottoms only grants Lessee the exclusive right to cultivate marine life as described in the lease. The lease does not imply that any guarantee is given that shellfish may be grown or harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.
- K. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder, shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulation of the Fish and Game Commission, in particular Sections 15400 - 15415, inclusive, of the Fish and Game Code, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation, the latter will control. This lease shall be deemed amended automatically upon the effective date of such conflicting law or regulation.
- L. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.

- M. The waiver by the Lessor of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach, whether of the same or any other term, covenant or condition, regardless of the Lessor's knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by the Lessor shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of the Lessee to pay the particular monies so accepted, regardless of the Lessor's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of the agreement or revocation of any notice or other act by the Lessor. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within sixty (60) days after notice in writing, shall cause this lease to thereupon cease and terminate.
- N. Lessee shall not assign or transfer this agreement without prior written approval. Such written approval of the assignment or transfer of lease shall be subject to any and all conditions required by the Fish and Game Commission including, without limitation by reason of the specifications herein, the altering, changing or amending of this agreement as deemed by the Commission to be in the best interest of the State.
- O. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

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

To the Lessee

MR. SCOTT ZAHL
COVE MUSSEL COMPNAY
P.O. Box 745
Marshall, CA 94940

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

- P. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents and employees against any and all claims and demands of every kind and nature whatsoever arising out of or in any way connected with the use by the Lessee of said lease or the exercise of the privilege granted herein.
- Q. The terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties and the successors, and assigns of the parties hereto.
- R. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

IN WITNESS THEREOF, the parties hereto have caused this lease to be duly executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

By: Robert A. Treanor

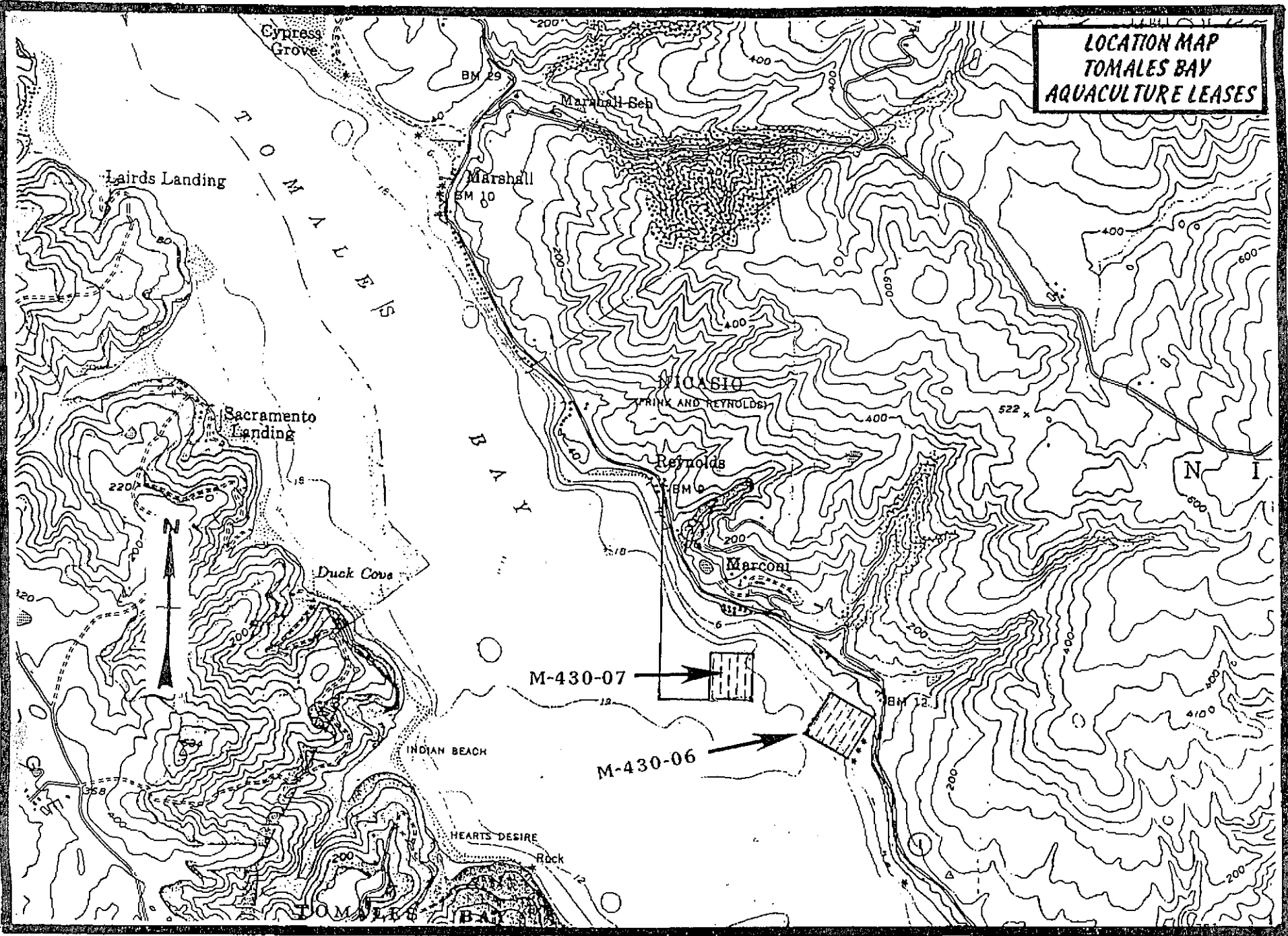
**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME**

By: Brenda K. DeMaan
Lessor for

COVE MUSSEL COMPANY

By: Scott Zahl
Lessee

**LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES**



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

NONDISCRIMINATION CLAUSE

(OCP - 1)

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

* All references to "contractor" shall be deemed to be Lessee.

STATE OF CALIFORNIA
FISH AND GAME COMMISSION

DATE: March 12, 2002

TO: Robert C. Hight, Director

FROM: Executive Director

SUBJECT: Request of Scott Zahl, Cove Mussel Company, to Renew Aquaculture Lease M-430-06, Tomales Bay

The Commission, at its March 8, 2002, meeting in San Diego, approved the request of Scott Zahl, Cove Mussel Company, for renewal of aquaculture lease M-430-06, Tomales Bay, for the maximum 25-year period. As recommended by the Department, the lease rate will increase from \$10.00 to \$23.00 per acre. Language will be included in the lease that specifies that the Consumer Price Index and current lease rates would be considered by the Commission when evaluating the basis for a lease rate change. Any evaluation would be at the Commission's discretion and would occur no more frequently than every 10 years. Please have your staff take appropriate action to issue the new lease in a timely manner.

Thank you for your assistance in this matter.

COPY Original signed by
Robert R. Treanor

Robert R. Treanor

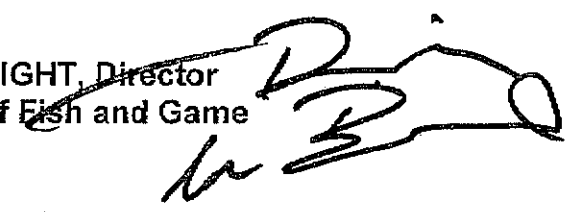
cc: Deputy Director Brazil
Deputy Director Mastrup
LB Boydston, Intergovernmental Affairs Office
Patty Wolf, Regional Manager-Marine Region
Fred Wendell, Marine Region-Morro Bay
Tom Moore, Marine Region-Bodega Bay
Eric Dockter, Fiscal and Administrative Services Branch
Bob Hulbrock, Aquaculture Coordinator
Scott Zahl, Lessee

Memorandum

To: Robert R. Treanor
Executive Director
Fish and Game Commission

Date: February 19, 2002

From: **ROBERT C. HIGHT, Director**
Department of Fish and Game



Subject: *Agenda Item for the March 7-8, 2002 Fish and Game Commission Meeting*
Request to Renew State Water Bottom Lease Number M-430-06 Located in Tomales Bay, Marin County

The subject 10-acre state water bottom lease was established in 1978 and transferred to Mr. Zahl, Cove Mussel Company, in September 1985. Mr. Zahl was granted a 15-year extension of the initial ten (10) year lease period on February 1, 1988. Since then, the lessee has conducted his operation in a professional and environmentally sensitive manner. Mr. Zahl submitted written notification to indicate his interest in renewing the lease within the one-year time period stipulated in his lease. He has also indicated an interest in renewing the lease for the maximum 25-year period and increasing the annual lease rental rate from \$10 to \$23 dollars per acre. This new annual rental rate is based on the average annual rent paid for all current Tomales Bay leases established between 1976 and 2001. In addition, the lease would be subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every 10 years, at the Commission's discretion.

These changes have been discussed with and found to be acceptable by the lessee. The Department recommends establishing new terms and conditions for this lease as specified above.

If you have any questions, please contact Mr. Fred Wendell, Acting Bays/Estuaries Ecosystem Coordinator in the Department's Marine Region, at (805) 772-1714.

cc: F. Wendell
Department of Fish and Game
Morro Bay, California

January 22, 2002

Mr. Scott Zahl
Cove Mussel Company
P.O. Box 745
Marshall, CA 94940

Dear Mr. Zahl:

Your request to renew California State Aquaculture Lease No. M-430-06, Tomales Bay, Marin County, has been scheduled for the Commission's March 8, 2002, meeting in San Diego. That meeting will commence at 8:30 a.m. in the Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street. Unless otherwise notified, it is not necessary for you to attend this meeting. You will be notified of any Commission action shortly after this meeting.

Sincerely,

COPY Original Signed by
Robert R. Treanor

Robert R. Treanor
Executive Director

cc: Deputy Director Brazil
LB Boydston, Intergovernmental Affairs Office
Patty Wolf, Regional Manager-Marine Region
Fred Wendell, Marine Region, Morro Bay
Tom Moore, Marine Region, Bodega Bay
Bob Hulbrock, Aquaculture Coordinator
Eric Dockter, FASB/Business Services

Cove Mussel Company

P. O. Box 745
Marshall, CA 94940
(415) 683-9307

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January 14, 2002

Robert Treanor, Executive Director
California Fish & Game Commission
1416 Ninth Street
P. O. Box 944209
Sacramento, CA 94244-2090

Dear Sir:

I am writing to formally request renewal of aquaculture lease no. M-430-06 (ten acres) located in Tomales Bay, Marin County as instructed in the terms of my lease. The current lease expires January 31, 2003. Thank-you for your attention to this matter.

Sincerely,

Scott Zahl

Scott Zahl
Owner, Cove Mussel Company



Memorandum

To: Robert R. Treanor
Executive Director
Fish and Game Commission

4 MAR 02 2:26 PM
12:26pm

Date: February 19, 2002

From: **ROBERT C. HIGHT, Director**
Department of Fish and Game

Subject: *Agenda Item for the March 7-8, 2002 Fish and Game Commission Meeting*
Request to Renew State Water Bottom Lease Number M-430-06 Located in Tomales Bay, Marin County

The subject 10-acre state water bottom lease was established in 1978 and transferred to Mr. Zahl, Cove Mussel Company, in September 1985. Mr. Zahl was granted a 15-year extension of the initial ten (10) year lease period on February 1, 1988. Since then, the lessee has conducted his operation in a professional and environmentally sensitive manner. Mr. Zahl submitted written notification to indicate his interest in renewing the lease within the one-year time period stipulated in his lease. He has also indicated an interest in renewing the lease for the maximum 25-year period and increasing the annual lease rental rate from \$10 to \$23 dollars per acre. This new annual rental rate is based on the average annual rent paid for all current Tomales Bay leases established between 1976 and 2001. In addition, the lease would be subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every 10 years, at the Commission's discretion.

These changes have been discussed with and found to be acceptable by the lessee. The Department recommends establishing new terms and conditions for this lease as specified above.

If you have any questions, please contact Mr. Fred Wendell, Acting Bays/Estuaries Ecosystem Coordinator in the Department's Marine Region, at (805) 772-1714.

cc: F. Wendell
Department of Fish and Game
Morro Bay, California

From: Scott Zahl <[REDACTED]>

Sent: Saturday, October 10, 2020 11:29 AM

To: Miller-Henson, Melissa [REDACTED]

Subject: Cove Mussel Co lease reassignment request

Please find attached the Letter requesting reassignment of Cove Mussel Company Lease M-430-06 to Starbird Mariculture Inc.

Thank-You,

Scott Zahl

Cove Mussel Company

[REDACTED]

October 8, 2020

Melissa Miller-Henson
Executive Director
Fish and Game Commission
PO Box 944209
Sacramento, CA 94244-2090

Dear Ms. Miller-Henson,

I am writing this letter to request that the aquaculture lease currently held by me (M-430-06 in Tomales Bay, Marin County) be assigned to Chris Starbird, Starbird Mariculture, Inc. Chris currently operates on a sublease of Cove Mussel Co. and we have agreed to transfer all culture equipment and shellfish inventory to Starbird Mariculture. Chris will assume responsibility for providing financial assurity for clean-up funds as required by the Department of Fish & Wildlife as well as applying for any necessary permits required by agencies including California Coastal Commission and Army Corps of Engineers.

Thank You for your attention to this matter,

Sincerely,

Scott Zahl
Cove Mussel Company
PO Box 745
Marshall, CA 94940

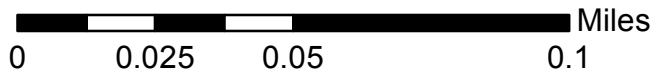
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Sublease on State Water Bottom Lease M-430-06 Tomales Bay, CA



Legend

- proposed sublease corners
- ▭ proposed sublease area
- ▨ 2013 Eelgrass Habitat



Memorandum

Date: November 27, 2024

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda Item for the December 11-12, 2024 Fish and Game Commission Meeting Regarding Proposed Lease Assignment of Cove Mussel Company's State Water Bottom Lease M-430-06 (Tomales Bay, CA) to Starbird Mariculture.**

The California Department of Fish and Wildlife (Department) is providing the following comments in regard to a request by Mr. Scott Zahl, Cove Mussel Company, LLC. (Cove Mussel Company) for California Fish and Game Commission (Commission) approval to assign its existing state water bottom lease number M-430-06 to Chris Starbird, Starbird Mariculture, Inc. (Starbird Mariculture). The request was received by the Commission in October 2020 and, in December 2020, the Commission referred the request to the Department for evaluation and recommendation.

Existing Lease

The existing lease encompasses approximately 10 acres of state water bottoms in the County of Marin at Tomales Bay, near Marconi Cove. The lease has been in operation for almost 50 years, and leased and operated by Cove Mussel Company since 1985. The current lease is set to expire on March 7, 2027. In addition, Starbird Mariculture has operated on a one-acre Commission-approved sublease occupying a corner of M-430-06 (known as "M-430-06A") since early 2015.

Department Review Process

The Department has sought to ensure that those requesting to obtain leases through transfer of title (i.e: assignment) meet minimum qualifications to operate responsibly and minimize the likelihood of subsequent lease abandonment. In 2021 and again in 2022, the Department conducted underwater surveys of the lease area, documenting debris and gear from past and existing aquaculture operations, as well as non-aquaculture related debris. While Cove Mussel Company is responsible for all clean-up, Starbird Mariculture has undertaken clean-ups in response to debris concerns relayed by the Department. Mr. Starbird has provided the Department and Commission staff with documentation of his clean-up efforts and debris removals, including debris from past operations and non-aquaculture debris. The Department has not been able to conduct any surveys since 2022. However, Mr. Starbird has submitted a proposed standard operating procedure draft to the Department, and has committed to working with the Department and Commission staff on a more detailed set of standard operating procedures and reporting plan.

After extensive review and coordination with the candidate assignee, the Department concludes that Starbird Mariculture has the necessary knowledge, experience, and financial support to successfully operate the full lease for aquaculture purposes for at least the duration of the remaining lease term. Starbird Mariculture is current with regard to production and harvest document submissions, has and continues to remove unused gear and debris from the lease area including the outgoing Cove Mussel Company operation, has maintained annual aquaculture registrations with the Department, and has obtained a Coastal Development Permit (CDP) from the Coastal Commission for the one-acre sublease of M-430-06 that it currently operates (M-430-06A). Note that the larger lease does not have a CDP; Starbird Mariculture would be required, and has expressed commitment, to obtaining a CDP to cover the full lease upon assignment

California Environmental Quality Act (CEQA) Review

Starbird Mariculture proposes no change in the culture methods or species currently approved by the Commission for this lease site. Upon staff review, it was determined that the proposed project is subject to the “Class 1” or “Existing Facilities” categorical exemption pursuant to CEQA Guidelines section 15301 (Cal. Code Regs., Title 14, §15301). In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. All provisions of the lease are identical to the original lease, with the exception of additional monitoring and reporting requirements to ensure the site is properly maintained. This lease does not increase, decrease, or change existing operations or allow for any new activities by the lessee.

Marine Debris Reduction and Management

Starbird Mariculture operates under existing CDP special conditions for its one-acre sublease, which includes components delineated by the Coastal Commission addressing marine debris reduction and management. To ensure responsible operation, accountability, and consistency on the assigned lease as it relates to preventing and removing marine debris, the Department recommends specifying special conditions in the lease terms, that enable Commission and Department staff to confirm compliance with requirements to reduce and manage marine debris through concurrent, consolidated submission of the CDP-required annual report with Commission-required annual Proof-of-Use reporting ([T14 §237j, CCR](#)).

Decommissioning and Financial Surety

Per [FGC §15409](#), upon termination of a lease, for any reason, all structures shall be removed at the lessee’s expense from the leasehold, and the area shall be restored to its original condition. If the requested assignment is approved, the assignee will provide financial surety (choosing from a suite of financial instrument options), based on a third-party clean-up estimate in the amount of ten thousand one hundred fifty dollars (\$10,150) to ensure structures are removed and the lease is restored to its original condition. An updated estimate shall be submitted in the event additional approved

Melissa Miller-Henson, Executive Director
CA Fish and Game Commission
November 27, 2024
Page 3 of 3

culture methods expand within the lease boundaries, or installed gear is removed in the future.

Recommendation

The Department recommends approval of the request to assign state water bottom lease M-430-06 from Cove Mussel Company to Starbird Mariculture for the remainder of the existing lease term, incorporating special conditions as described above into the Lease Assignment Agreement.

For questions or concerns, please contact the State Aquaculture Coordinator, Randy Lovell at (916) 376-1650 or AquacultureCoord@wildlife.ca.gov.

cc: **California Department of Fish and Wildlife**

Chad Dibble, Deputy Director
Wildlife and Fisheries Division

Craig Shuman, D. Env., Regional Manager
Marine Region

Kirsten Ramey, Env. Program Manager
Marine Region

California Fish and Game Commission

Susan Ashcraft
Marine Adviser

CALIFORNIA COASTAL COMMISSION

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



Th5a

Staff: C. Teufel-SF

Date: October 24, 2019

ADMINISTRATIVE PERMIT

Application No.: 9-19-1135

Applicant: Chris Starbird (Starbird Mariculture, Inc.)

Project Description: Request for after-the-fact approval for mooring and use of twelve 224 square foot floating shellfish aquaculture rafts for the cultivation of Pacific oysters and proposed mooring and use of 360 sq.ft. equipment storage barge on one acre of leased state tidelands.

Project Location: Submerged tidelands of Marconi Cove, Tomales Bay; within one acre sublease of California Department of Fish and Game Aquaculture Lease No. M-430-06, Marin County.

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination and any special conditions appear on subsequent pages.

Note: Public Resources Code Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Coastal Commission at the following time and place:

Thursday, November 14, 2019 – 9:00 a.m.
Oceano Hotel & Spa
280 Capistrano Rd.
Half Moon Bay, CA 94019

IMPORTANT: Before you may proceed with development, the following must occur:

Pursuant to Title 14, California Administrative Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

JOHN AINSWORTH
Executive Director

By: Cassidy Teufel
Senior Environmental Scientist

STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgement.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions is returned to the Commission Office.
- 2. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 3. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 4. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: SEE PAGES 12 THROUGH 15.

EXECUTIVE DIRECTOR'S DETERMINATION (CONTINUED):

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the policies of Chapter 3 of the California Coastal Act, including those policies regarding public access and coastal

recreation opportunities, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION & BACKGROUND

The project area is located offshore within the Marconi Cove area on the east side of Tomales Bay, near the community of Marshall in western Marin County (**Exhibit 1**). The project area is a one acre sublease established by the California Fish and Game Commission within the larger State Water Bottom Lease No. M-430-06, a roughly 10 acre area of submerged tidelands leased to the Cove Mussel Company for the cultivation of shellfish.

Shortly after the one acre sublease was established in February of 2015 and prior to obtaining a coastal development permit, Starbird Mariculture, Inc. (Starbird) installed and began a commercial oyster cultivation operation using a series of six concrete block-and-chain moorings and 12 floating aluminum barges.¹ Each barge is 24 feet long and eight feet wide, open in the center with a series of lateral bars used to affix ropes that extend into the water below the barge and support stacks of six plastic mesh oyster cultivation trays (**Exhibit 2**). Each tray measures approximately two feet by two feet and is nine inches high, making a stack of six trays approximately five feet tall. Each barge can support up to 21 stacks of trays (a total of 126 individual trays). Within these trays, Starbird cultivates various sizes of Pacific oysters (*Crassostrea gigas*), from mature oysters that are sold to consumers and restaurants to small "seed oysters" that are sold to other shellfish growers to be planted elsewhere for further grow-out.

As carried out by Starbird, cultivation of mature and seed oysters involves the use of a roughly 20 foot long skiff equipped with an outboard motor and hoist, as well as a larger 42 foot long pontoon boat equipped with oyster sorting and processing equipment. The skiff is used for the initial placement and eventual harvest and removal of the stacks of oyster filled trays onto the cultivation barges. Neither vessel would be anchored, moored or stored within the sublease or lease area when not in active use. Although the pontoon boat has been moored within the Cove Mussel Company lease area in past years, such use is not authorized in that area and Starbird is therefore seeking a mooring lease from the California State Lands Commission in a different area of Marconi Cove (outside of the areas leased for shellfish aquaculture). In coordination with the Greater Farallones National Marine Sanctuary, the California State Lands Commission manages a vessel mooring program for Tomales Bay. Because Starbird has yet to obtain a mooring lease for its pontoon boat or identify where this lease would be located and what type of mooring would be installed on it, these activities are not included in the current coastal development permit application and would be considered separately.

¹ Until recently, Starbird also carried out oyster aquaculture operations without benefit of a coastal development permit on another sublease near the Walker Creek area of Tomales Bay. Those operations have since been discontinued and the associated equipment removed under authorization from the Commission under CDP amendment no. 1-93-73-A1, approved in August 2019.

Once planted, mature oysters are harvested after 18-24 months and seed oysters are harvested after one to three months. Between planting and harvest, both types of oysters are periodically removed from their cultivation trays and processed through the sorting system located on Starbird's 42 foot pontoon boat. As shown in **Exhibit 2**, this system relies on the use of an approximately eight foot long cylindrical plastic drum into which holes of various sizes have been drilled. After the pontoon boat is brought to the sublease area from its offsite mooring and temporarily affixed to one of the cultivation rafts, the oysters are transferred from cultivation trays and placed within this drum to be sorted by size. The sorted oysters are then placed back into cultivation trays and returned to Tomales Bay for further grow-out. On average, each stack of cultivation trays is processed and sorted in this way once per month. Seawater used for sorting and processing is withdrawn directly from Tomales Bay through the use of an intake system placed off of the side of the pontoon boat. Harvest of oysters is carried out through use of the skiff and its hoist. Stacks of cultivation trays are removed from the water and properly sized oysters are packaged into mesh bags for transport to shore and sale or temporary in-water storage at the equipment barge.

In the current coastal development permit application, Starbird is requesting after-the-fact authorization for its 2015 installation and use of moorings and oyster cultivation barges within its one acre sublease and for the ongoing use of this equipment and associated vessels for the commercial cultivation of Pacific oysters. Additionally, Starbird is also proposing to moor onto its sublease an approximately 24 foot long by 15 foot wide equipment barge that would be used to store recently harvested oysters and cultivation trays that are not in use. This barge would only be used for equipment and temporary storage of harvested oysters and would not be used as a work platform for shellfish processing, packing, sorting or other activities.

Installation of the equipment barge would be accomplished by towing it onto the sublease area by boat and affixing it to one of the existing moorings adjacent to the existing aquaculture barges. As shown in **Exhibit 2**, the equipment barge would have solid wooden panels on the landward side to help support the stacks of cultivation trays on it and provide visual screening.

B. STANDARD OF REVIEW

The proposed project is located in the Commission's retained jurisdiction. The County of Marin has a certified local coastal program (LCP), but the site is seaward of the Tomales Bay shoreline within an area over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

C. OTHER AGENCY APPROVALS

California Fish and Game Commission

Starbird Mariculture's operation is carried out within a one acre sublease established by the California Fish and Game Commission in State Water Bottom Lease No. M-430-06. This sublease was established in February 2015. The current term of State Water Bottom Lease No. M-430-06 extends until March 7, 2027. **Special Condition 1** would establish a permit term that is tied to the term of this lease unless the sublease is revoked earlier. If the lease

term is extended, the CDP term could be modified through a permit amendment to reflect the new expiration date.

California Department of Fish and Wildlife

Starbird Mariculture'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. Starbird has a valid registration for 2019. Commission staff reached out to and solicited input from CDFW staff during the course of this permit review, consistent with the state and federal agency coordination process established for shellfish aquaculture projects in Tomales Bay through a Memorandum of Agreement signed in 2016.

Gulf of the Farallones National Marine Sanctuary

Tomales Bay is within the Greater Farallones National Marine Sanctuary and under management by the Office of National Marine Sanctuaries (ONMS). Commission staff coordinated its review of the proposed project with ONMS staff and solicited early input from them, consistent with the state and federal agency coordination process established for shellfish aquaculture projects in Tomales Bay through a Memorandum of Agreement signed in 2016. In addition, ONMS staff provided information with Commission staff about the presence and location of sensitive marine resources in the project area.

D. MARINE BIOLOGICAL RESOURCES

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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The previously completed and proposed installation and operation of oyster aquaculture barges and an equipment storage barge on Starbird Mariculture's one acre sublease has the potential to result in adverse impacts to marine resources through the release of debris, hazardous materials, and non-native species into the marine environment and the impingement or entrainment of protected fish species through a seawater intake system.

Marine Debris

Man-made material released into the marine environment, especially plastics, pose a significant threat to both marine wildlife and habitats. This debris may cause injury and death to marine life by entanglement or ingestion and can negatively affect habitats through smothering, spatial displacement and mechanical disturbance. Because the materials proposed to be used by Starbird Mariculture as part of its aquaculture operations are primarily comprised of plastics (including the approximately 1,500 individual four square foot plastic mesh trays that would be planted with oysters and submerged in the bay and the several hundred additional trays that would be stored on the water on Starbird's proposed equipment barge), these operations increase the risk that large volumes of plastic may work loose, disperse into the environment and become marine debris. Such occurrences have been well documented around similar shellfish aquaculture operations in Tomales Bay, Humboldt Bay, Morro Bay and in Oregon, Washington and British Columbia.

To address the potential ongoing and future release and distribution of marine debris resulting from Starbird Mariculture's oyster cultivation operations, the Commission is requiring in **Special Condition 6** that Starbird Mariculture implement or continue a variety of best practices, including those focused on inspections following storm events; debris reduction trainings for field employees; quarterly cleanup events; gear marking; field storage of tools and construction materials; and comprehensive debris cleaning and removal activities carried out on each bed at the time of its harvest. Although Starbird Mariculture currently carries out a number of these practices voluntarily, memorializing these practices through operational requirements would help further ensure that they continue in the future. These requirements would reduce the long-term accumulation of debris within cultivation beds, prevent debris generation and loss, and promote recovery of materials lost due to storm action or other unavoidable causes.

Non-native Species

Based on assessments by the Greater Farallones National Marine Sanctuary (which includes Tomales Bay) and a December 2011, report of the Tomales Bay Watershed Council titled, *Tomales Bay Watershed Species of Local Interest: Native and Non-native Species of Conservation or Management Concern*, over a dozen invasive marine species are present in Tomales Bay that have been identified as a priority or high-priority concern for management due to the likelihood that they present a major ecological or socio-economic threat. Many of these species are known to be "fouling organisms," species of invertebrates and algae that are known to seek out and colonize artificial hard substrate in the marine environment.

Maintenance activities for in-water structures and vessels that involve periodic removal of fouling organisms without proper collection and disposal protocols may result in increased dispersal and propagation opportunities for these species. Such opportunities for dispersion and spread pose a particular risk with some algal species and colonial tunicate species such as didemnum that may break apart into many pieces when disturbed, each of which may be capable of surviving, growing, and reproducing on its own. Four invasive colonial marine tunicate species have been identified within Tomales Bay.

Each of the 12 oyster aquaculture rafts would include multiple stacks of cultivation trays that would extend five to eight feet below the rafts into the water column. These trays and the undersides of the rafts themselves are likely to attract fouling organisms over time and would

need to be periodically removed and cleaned. Some of these cleaning activities may involve the use of a pressure washer, hose, or scraping devices and would be carried out annually or every several years on the hulls and floats of the rafts themselves, with wash water and removed fouling organisms discharged into the bay. Other types of cleaning would likely be carried out on the cultivation trays periodically as well as they are removed from the bay for shellfish sorting and/or harvest. Without such cleaning, the natural accumulation of marine fouling organisms on the outside of the trays may begin to impede the flow rate of water through the trays and thereby restrict the growth of the oysters they contain. This cleaning of both the rafts and cultivation trays may result in the discharge and spread of invasive organisms. To address this potential risk to native marine habitats and species that this cleaning activity would have with regard to the spread and dispersion of invasive marine species, the Commission is requiring in **Special Condition 2** that the cleaning of the aquaculture rafts and cultivation trays be carried out in a manner that prevents discharge of biofouling materials and organisms to Tomales Bay, including requirements to carry out some cleaning activities onshore and the requirement to collect and dispose of all removed biological material and organisms at an upland facility. While some fouling organisms are native species that do not present an invasion risk, the diverse growing forms, colors and range of algal and invertebrate species in the fouling community make it extremely difficult for those without specialized training to successfully identify species and differentiate between natives and non-natives. Accordingly, in similar situations with marine areas like Tomales Bay in which invasive species are present, the precautionary approach that the Commission has adopted is to consider all fouling organisms as a potential risk.

Seawater Intakes

The removal of seawater through intake structures is known to result in the impingement and entrainment of marine life. The type and quantity of marine life that may be adversely affected in this way is related to the size and velocity of the intake structures. Larger, high-velocity structures can cause the impingement and entrainment of larger organisms that can include adult fish, while smaller low-velocity structures can typically only impinge and entrain smaller larval and juvenile organisms. While impingement (capture of fish and marine organisms against an intake screen due to suction) can often result in the injury or mortality of the affected organism, adverse effects of entrainment (capture of fish and marine organisms in the intake stream) vary based on the type of intake system (configuration of pipes, pressure changes, temperatures) and ultimate use of the entrained water.

As part of its proposed operations, Starbird Mariculture (Starbird) would carry out a variety of activities that would require the use of seawater extracted from Tomales Bay. These activities include (1) shellfish cleaning and sorting operations on its pontoon boat; and (2) maintenance cleaning of the cultivation equipment.

Starbird proposes to pump out seawater from Tomales Bay for these activities using gasoline powered intake equipment with an approximate capacity of 50 gallons per minute. The intake of seawater in this way would result in substantial mechanical stress for organisms within the water and would be likely to cause mortality to juvenile fish and a portion of the larval and planktonic organisms in the water extracted from the bay for these uses. Among the juvenile fish known to be present within Tomales Bay's waters are several species recognized with federal protection, including the federally endangered tidewater goby (*Eucyclogobius*

9-19-1135 (Starbird Mariculture, Inc.)

newberryi), federally threatened central California coast steelhead (*Oncorhynchus mykiss*), state and federally endangered Coho salmon (*Oncorhynchus kisutch*), and state threatened longfin smelt (*Spirinchus thaleichthys*).

Both the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS) have developed guidance and technical specifications for the use of intake structures located within water bodies in which longfin smelt and juvenile salmonids such as steelhead are found. These guidelines are intended to protect these fish species by ensuring that intake screens are small enough to prevent their entrainment and intake velocities are low enough to not overwhelm their swimming abilities. Specifically, intake velocities are not to exceed 0.2 feet per second with a screen size of at least 5 square feet per cubic foot per second if an active system is used and 0.05 feet per second with a screen size of at least 20 square feet per cubic foot per second if a passive system is used.

The Commission has previously found these standards to reduce the potential impingement and entrainment of protected species of juvenile and adult fish and has required their use on a variety of shellfish aquaculture operations that include seawater intake structures (for example, CDP Nos. E-11-029, 9-16-0204, and 9-18-0278). **Special Condition 4** would establish these intake standards for the seawater intake systems that Starbird Mariculture proposes to use for maintenance or shellfish cleaning, washing, or sorting operations.

Eelgrass

The results of both historic eelgrass mapping efforts carried out in Tomales Bay by the California Department of Fish and Wildlife and more recent efforts funded by the Greater Farallones National Marine Sanctuary (completed in 2017) show that eelgrass habitat is not present with the sublease area occupied by Starbird Mariculture's aquaculture equipment and moorings. Eelgrass is not typically present in Tomales Bay at the water depths found within the sublease area. As such, the placement of 12 aquaculture barges and an additional equipment storage barge within the sublease area – along with the six associated concrete block moorings – would not adversely affect eelgrass habitat.

Conclusion

The Executive Director finds that the project, as conditioned, will be carried out in a manner in which marine resources are maintained, species of special biological significance are given special protection, the biological productivity of coastal waters is sustained, and healthy populations of all species of marine organisms will be maintained. In addition, the Executive Director finds the project, as conditioned, will maintain the biological productivity of coastal waters and estuarine habitats appropriate to maintain optimum populations of marine organisms. The Executive Director therefore concludes that the proposed project, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act.

E. FILL OF OPEN COASTAL WATERS

Section 30233(a) of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of

this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act Section 30108.2 defines “fill” as “earth or any other substance or material ... placed in a submerged area.” As part of its project, Starbird Mariculture (Starbird) is seeking after-the-fact authorization for the installation of six concrete block-and-chain moorings on the seafloor in the Marconi Cove area of Tomales Bay. Each mooring block has an approximate seafloor footprint of 13 square feet and the combined total of all six moorings would be roughly 80 square feet. These moorings would maintain Starbird’s 12 oyster cultivation barges in place. Installation of these mooring devices into the submerged waters of Tomales Bay constitutes “fill” of estuarine waters, as that term is defined in the Coastal Act.

The Commission may authorize a project that includes filling of estuarine waters if the project meets the three tests of Coastal Act Section 30233. The first test requires that the proposed activity fit within one of seven use categories described in Coastal Act Section 30233(a)(1)-(7). The second test requires that no feasible less environmentally damaging alternative exists. The third and final test mandates that feasible mitigation measures are provided to minimize any of the project’s adverse environmental effects.

Allowable use

The purpose of the anchors is to support barges that would be used to cultivate oysters, an aquaculture activity. Aquaculture is described as an allowed use in Coastal Act Section 30233(a)(7). Therefore, the Commission finds that the project meets the allowable use test for fill of estuarine waters under Coastal Act Section 30233(a).

Alternatives

The Commission must further find that there is no feasible less environmentally damaging alternative to placing 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.”

In addition to the proposed placement of six concrete mooring blocks and associated tackle on approximately 80 square feet of submerged tidelands, Commission staff also considered alternatives that included installation of helical screw anchor type moorings and different types of weighted mooring blocks. However, the installation of helical anchors was rejected because it is prohibited by the Tomales Bay Mooring Program developed by the California State Lands Commission and Greater Farallones National Marine Sanctuary. Although these types of moorings can have a significantly smaller overall seafloor footprint compared to traditional weighted blocks, their use in Tomales Bay has yet to be sufficiently evaluated in order to determine effectiveness and capacity limitations. Accordingly, use of such moorings may increase the likelihood of failure and loss, thus presenting a potential threat to coastal resources.

While the Tomales Bay Mooring Program does not apply to moorings for aquaculture equipment on state aquaculture leases, it nevertheless provides relevant criteria for mooring materials and inspection/maintenance activities that were developed after careful review and consideration of the resources and conditions in Tomales Bay. These criteria, specifically described in the Tomales Bay Mooring Program’s sections on “Mooring Tackle Requirements” and “Inspection and Maintenance Requirements” (included in **Exhibit 3**) establish appropriate best practices and guidelines for moorings such as those proposed for use by Starbird Mariculture. The concrete filled 55-gallon drums proposed to be authorized for use as mooring blocks by Starbird are specifically identified as acceptable mooring anchors in the Tomales Bay Mooring Program. These types of moorings have a proven history of successful use in Tomales Bay when properly installed, maintained, and coupled with appropriate tackle. Such moorings are the dominant type used throughout the bay for anchoring a wide range of vessels, including many that are much larger than the aquaculture barges proposed to be used by Starbird. Therefore, the Commission agrees with the applicant that less environmentally damaging feasible alternatives to the proposed concrete mooring blocks are not currently available.

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

Mitigation Measures

The final requirement of Coastal Act Section 30233(a) is that filling of coastal waters may be permitted if feasible mitigation measures have been provided to minimize any adverse environmental impacts. As described in greater detail in the marine resources section of this report, the mitigation measures associated with this project consist of: marine debris prevention and response measures; non-native species management measures; intake standards; and hazardous materials spill prevention and response measures. In addition, **Special Condition 7** would establish design and inspection/maintenance requirements for the

barge mooring systems proposed to be used by Starbird. These requirements are detailed in **Exhibit 3** and come directly from the Tomales Bay Mooring Program developed by the California State Lands Commission and Greater Farallones National Marine Sanctuary. Specifically, the Tomales Bay Mooring Program's sections on "Mooring Tackle Requirements" and "Inspection and Maintenance Requirements" establish standards for the type of mooring blocks and tackle most appropriate for use in Tomales Bay as well as the type and frequency of maintenance inspections that should be carried out. Because the Tomales Bay Mooring Program does not apply to aquaculture activities and areas, **Special Condition 7** would carry forward these basic standards and apply them to Starbird Mariculture's proposed operations. In combination with **Special Conditions 2-6**, these feasible mitigation measures will minimize the project's adverse environmental impacts. Thus, with the imposition of the conditions of this permit, the Commission finds that the third and final test of Coastal Act Section 30233(a) has been met.

Conclusion

Because the three tests have been met, the Commission finds the proposed project consistent with Section 30233 of the Coastal Act.

F. VIOLATION

As noted above in the Project Description and Background section, although the Starbird Mariculture oyster aquaculture operation has been in place and active since 2015, no coastal development permit had been sought or received to authorize it under the California Coastal Act. As such, violations of the Coastal Act exist on the subject property, including, but not limited to, installation and use of unauthorized shellfish aquaculture equipment such as cultivation rafts, trays, and moorings. In response to notification by Commission permitting and enforcement staff about these Coastal Act violations, Starbird Mariculture submitted this CDP application. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit results in resolution of the future impacts from the violation related to the unpermitted installation and use of oyster cultivation equipment going forward.

Although development has taken place prior to the submission of this Coastal Development Permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violation related to the installation of unauthorized cultivation equipment - or any other violations at the site, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied.

Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The Executive Director incorporates his findings on conformity with the Chapter 3 policies of the Coastal Act at this point as if set forth in full. As discussed above, the development has been conditioned to be found consistent with the policies of the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts, so that no significant adverse environmental effects are anticipated to be caused by this project, have been required as permit special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Executive Director finds that the development, as conditioned to mitigate the identified impacts, is consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Permit Term Limit.** This coastal development permit shall expire on March 7, 2027 or upon the earlier revocation of Starbird Mariculture's sublease of State Water Bottom Lease No. M-430-06, whichever occurs first. If the term of State Water Bottom Lease No. M-430-06 – also set to expire on March 7, 2027 - is amended or a new lease is issued by the California Fish and Game Commission, Starbird Mariculture may submit an application for a permit amendment requesting an extension of the permit term. Starbird Mariculture shall, no less than 60 days prior to permit expiration or the cessation of its operations on its sublease, 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. Maintenance Cleaning.** All maintenance cleaning operations of the raft hulls, raft floats and cultivation equipment used on Starbird Mariculture's sublease shall be carried out onshore. All biofouling organisms and biological materials removed during these cleaning operations shall be collected and disposed of at an appropriate upland facility. No discharge of untreated wash water or biofouling materials into Tomales Bay shall occur during maintenance cleaning or shellfish sorting operations.
- 3. Annual Report.** By December 31 of each year, Starbird Mariculture shall submit to the Executive Director an annual report with information regarding the results of quarterly cleanup events carried out as described in **Special Condition 6**, including the date of training, training materials, meeting minutes, and list of attendees from the Marine Debris Reduction Training described in **Special Condition 6(C)**. In addition, the annual report

shall include information on the number of cultivation trays 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. The annual report shall also include: (i) mooring inspection reports required in **Special Condition 7**; (ii) a description of any significant changes to the type, quantity and configuration of cultivation equipment that are being considered; and (iii) a description of any resource or operational challenges that are emerging.

4. **Intake System Design.** All intake systems used by Starbird Mariculture to supply water from Tomales 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.

5. **Hazardous Material Spill Prevention and Response Plan.** WITHIN 60 DAYS OF PERMIT ISSUANCE, Starbird Mariculture 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. Starbird Mariculture 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; (c) provisions to assure that spill prevention and response equipment will be kept onboard project vessels and barges at all times; (d) 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 (e) emergency response and notification procedures, including a list of contacts to call in the event of a spill.

6. **Marine Debris Reduction and Management.** Starbird Mariculture 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, Starbird Mariculture shall patrol all active aquaculture 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, Starbird Mariculture 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. Starbird Mariculture shall mark shellfish cultivation equipment (trays and bags) 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 12 months of approval of this permit amendment. In the event that its shellfish culture gear or equipment becomes displaced or dislodged from culture beds, Starbird Mariculture shall retrieve the material from the shoreline, open water, eelgrass beds, mudflat, or submerged bottom in a manner that will avoid or minimize any damage to marine resources such as eelgrass. 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 PERMIT, Starbird Mariculture shall implement an employee training regarding marine debris issues, how to identify culture gear or associated materials (marking stakes, support posts, longlines, etc.) that is 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 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, Starbird Mariculture'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 nylon or polypropylene rope) used in its operations.

D. Cleanup Events. Starbird Mariculture shall carry-out quarterly Tomales Bay cleanup events in coordination with other interested parties or organizations, which 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). 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 of the Commission.

E. Ongoing Operations. Starbird Mariculture shall not leave or temporarily store tools, loose gear, or construction materials on its subleased tidelands or cultivation barges. All aquaculture gear installed in active culture areas shall be kept neat and secure and maintained in functional condition. Starbird Mariculture 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. Excessive Gear Loss or Maintenance Failures. If the Executive Director determines that Starbird Mariculture is responsible for consistently extensive loss of aquaculture equipment (including cultivation trays) into the marine environment or is consistently failing to maintain its equipment in an intact and serviceable condition, Starbird Mariculture 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 address the issue.

7. **Barge Moorings.** Moorings and associated equipment for the aquaculture barges and equipment storage barge shall be installed and maintained consistent with the “Mooring Tackle Requirements” and “Inspection and Maintenance Requirements” of the Tomales Bay Mooring Program developed by the California State Lands Commission and Greater Farallones National Marine Sanctuary (**Exhibit 3**). These sections of the Tomales Bay Mooring Program establish the appropriate mooring material, design, capacity and tackle to be used in Tomales Bay as well as inspection and maintenance methods, frequency, and reporting. Annual mooring inspection reports shall be provided to the Executive Director for review and approval as part of the annual report described in **Special Condition 3**.

8. **Other Agency Review and Approval.** PRIOR TO COMMENCEMENT OF PROPOSED EQUIPMENT STORAGE BARGE INSTALLATION ACTIVITIES, Starbird Mariculture shall submit to the Executive Director written evidence that all 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.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Permittee's Signature

Date of Signing