



August 31, 2020

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California Coastal Commission
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Via Electronic Delivery: Cassidy.Teufel@coastal.ca.gov

Re: Draft Coastal Development Permit Application Guidance for Aquaculture and Marine Restoration Projects

Dear Mr. Teufel,

Thank you for the opportunity to comment on the Draft Coastal Development Permit (“CDP”) Application Guidance for Aquaculture and Marine Restoration Projects (“Draft Guidance”)¹. The undersigned organizations have extensive knowledge of marine resources off the California coast and experience navigating the various laws and policies associated with coastal and marine development. Together, we offer our general support for the Draft Guidance, the California Coastal Commission’s (“Commission”) authority to regulate aquaculture development, and the importance of the environmental review and compliance process. In this letter, we provide a suggestion regarding improved coordination, and present our concerns with unsustainable aquaculture development. Noting the limited focus of the Draft Guidance, constrained by SB 262, and the amended Public Resources Code Section 30612.5, we have attempted to narrow our comments. We thank you for your hard work on this comprehensive document which will aid new aquaculture applicants and existing operators in following the existing regulations and robust and transparent public process.

¹ California Coastal Commission, Draft CDP Application Guidance for Aquaculture and Marine Restoration Projects, July 2020 (“Draft Guidance”)

Support of the Coastal Commission’s Authority to Regulate Aquaculture Development

As is explained in the Draft Guidance, aquaculture is clearly defined as “development” under Coastal Act Section 30106 and falls within the Commission’s regulatory framework.² We commend the Commission for its comprehensive approach to aquaculture regulation and oversight.

We understand the Commission’s role to regulate aquaculture has evolved over time since the 1970s. The Commission has the ongoing challenge of keeping pace with market trends, the evolving scale and complexity of the aquaculture industry, and addressing new and emerging issues such as impacts from a changing climate and invasive species.³ The importance of carefully reviewing impacts is critical, since aquaculture development is often placed within sensitive and complex ecosystems. Historical examples highlight some of the challenges and environmental impacts of the aquaculture industry, such as extensive clean up after operational closure⁴ and the impacts of unpermitted activities⁵, both of which can leave behind lasting impacts to habitat, and in extreme cases, there have been threats to public health and safety⁶.

Importance of the Environmental Review and Compliance Process

The California Environmental Quality Act (“CEQA”) section of the Draft Guidance is useful⁷, and we reiterate the importance of the environmental review and compliance process. Specifically, the process under CEQA and the National Environmental Policy Act (“NEPA”), for federal projects, is critical to ensuring appropriate siting and a comprehensive review of environmental considerations for the review of new projects. The completion of a CEQA or NEPA document, related to new aquaculture applications, allows the relevant regulatory agencies to begin with a strong baseline for future review and compliance.

We also support the case-by-case approach review of CDPs,⁸ because it is not possible to use a one size fits all approach as each site has unique considerations.

Suggestion for Improved Agency Coordination and CEQA Compliance

² Draft Guidance, p. 7 referencing CA Pub. Res. Code § 30106

³ Draft Guidance, p. 10

⁴ Guy Kovner, The Press Democrat, “More work ahead to restore estero after Drakes Bay Oyster Co. departure”, January 9, 2016, <https://www.pressdemocrat.com/article/news/more-work-ahead-to-restore-estero-after-drakes-bay-oyster-co-departure/?ref=related>; See also California Coastal Commission, Staff Report and Findings for Consent Cease and Desist Order No. CCC-07-CD-11 showing unpermitted operations, December 12, 2007.

⁵ For example, after-the fact authorizations have been issued to Morro Bay (December 13, 2019), Santa Barbara Mariculture (July 13, 2018), Hog Island Oyster Company (February 8, 2019), and other operations.

⁶ [Rob McMillan](https://abc7.com/hidden-danger-off-socal-coast-leads-to-tragic-death-of-oc-man/5745369/), ABC7, “Hidden danger off SoCal coast leads to tragic death of Orange County man who was fishing”, December 10, 2019, <https://abc7.com/hidden-danger-off-socal-coast-leads-to-tragic-death-of-oc-man/5745369/>

⁷ Draft Guidance, pp. 11-13

⁸ Draft Guidance, p. 24

Section 30612.5 of the Public Resources Code lists one of the purposes of the Draft Guidance: “[t]o increase state and federal agency coordination.”⁹ Related to that purpose, we are supportive of the Draft Guidance’s useful discussion on coordination and consultation¹⁰, as well as Appendix C that discusses other relevant agencies.

Related to coordination with other agencies, we would like to use this opportunity to raise a suggestion that the Commission could consider an expanded joint or collaborative review process with other state agencies including the California State Lands Commission (“CSLC”). Appendix C of the Draft Guidance indicates the many agencies involved, including the CSLC. While CSLC was historically involved in the leasing of state tidal lands for aquaculture, this responsibility was transferred to the Fish and Game Commission (CSLC still retains jurisdiction for the leasing of state tidal lands for non-commercial or research and restoration purposes). The lack of current involvement by CSLC in the review of commercial leases appears inconsistent. It is unclear why the agency continues to regulate non-commercial leases, but has no jurisdiction over commercial leases.

The CSLC has an extensive history of leasing state lands, as well as a wealth of experience in the CEQA review process. We suggest the development of a collaborative review panel to increase efficiency in the review process of new applicants. We recommend that the review panel include the CSLC, the Commission, the Department of Fish and Wildlife, the Fish and Game Commission, the Army Corps of Engineers, and the Public Health Department, etc. Similar processes like this already take place related to other types of environmental regulation such as related to the oil industry.

While we understand extensive coordination already takes place in this process, having the CSLC take a more active role is logical based on the agency’s extensive experience in management authority over tidelands, submerged lands, and beds of navigable lakes and waterways, including its role of issuing leases for non-commercial aquaculture and restoration activities. This experience, as well as the agency’s experience with Public Trust Doctrine oversight and the CEQA process, may help expedite the process and review of new leases, aid in CEQA compliance, and reduce duplicative or overlapping information requirements.

Concerns with Unsustainable Aquaculture Development

While noting the inherently constrained focus of this Draft Guidance, we take this opportunity to voice our opposition to more environmentally damaging or unsustainable forms of aquaculture (such as bivalve facilities that use pesticides, operations that damage eelgrass¹¹, and any finfish facilities in open water).

These types of aquaculture can cause damage to essential habitat, water quality, and public health when poorly sited and scaled. For example, while wild bivalves are known to clean water, the water quality impacts of intensive shellfish aquaculture may not always be beneficial; many aquaculture activities can negatively impact water quality through the removal of eelgrass, the increase of wastes from concentrated production, and the disruption of sediments.

⁹ CA Pub. Res. Code § 30612.5(b)(2)

¹⁰ Draft Guidance, pp. 14-16

¹¹ We appreciate the specific discussion of the importance of eelgrass, a foundational species, which begins on p. 24 of the Draft Guidance.

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Other significant potential environmental impacts from dense shellfish aquaculture is a reduction in shoreline biodiversity, installation of plastic gear (e.g., PVC tubes, polyethylene anti-predator netting, and polyolefin ropes), and use of pesticides. Massive shellfish operations also pose risks to marine wildlife and public health and safety. Aquaculture can also have significant negative impacts on shorebirds as mentioned under the wildlife section of the Draft Guidance.¹²

Thank you for the consideration of our comments and for your diligent and thorough efforts to update CDP permitting in the state of California. We look forward to the final guidance document.

Sincerely,

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cc: Sarah Christie, California Coastal Commission Legislative Director

¹² Draft Guidance, p. 30