

Drakes Bay Oyster Company

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March 15, 2011

Natalie Gates
DBOC SUP EIS

Re: Lease M-438-01 Lease Line

Dear Natalie,

The California Department of Fish and Game (CDFG) informed Drakes Bay Oyster Company (DBOC) that the original Drakes Estero lease boundary lines were drawn on the kitchen table of Charlie Johnson's home. The intent, at the time, was to create a lease area that included all of the existing shellfish beds. The crude mapping method used, without benefit of current, modern-day technology, not surprisingly turned out to be inaccurate and resulted in an error. Many years later, CDFG realized that the rudimentarily-drawn lease lines errantly crossed Bed 6. The CDFG first noticed the lease line error in an aerial survey and notified Johnson Oyster Company (JOC) in 1992. This drawing error has never been corrected.

DBOC has systematically sought to resolve many JOC administrative problems since January of 2005. One by one, DBOC has corrected concerns of the Point Reyes National Seashore (PRNS), the California Coastal Commission (CCC), the California Department of Public Health (CDPH), the US Public Health Service (PHS), the Food and Drug Administration (FDA), the County of Marin and the CDFG. This lease line error represents only one more administrative problem needing correction. Over the past two years, DBOC has worked with CDFG to address this particular issue. CDFG required DBOC to hire, and pay for, a licensed land surveyor to determine exactly where the lease boundary line was drawn and to propose a solution so that the 5 racks on Bed 6 would be properly located within the lease, as originally intended. DBOC hired Robert Reese, of Reese Water and Land Surveying Services, who had significant experience with similar marine survey work, to do the survey work. Attached are Mr. Reese's report and exhibits (attachments a, b, c, d). His solution is to move the lease line to the location that it was originally intended to be so that the 5 racks in Bed 6 are also within the lease. To keep the CDFG lease area acreage the same, an equivalent area will be removed from the DBOC lease. The area to be removed is the area nearest the main channel where harbor seals haul out. The edge of the lease, therefore, will be more than 500' away from the main channel haul outs. This distance exceeds the minimum setbacks of both the Marine

Mammal Act and the more restrictive 1992 multi-agency Drakes Estero Harbor Seal Protection Protocols. Lastly, these new setbacks will alleviate the need for the temporary seal protection areas which were added as a precautionary measure by the California Coastal Commission.

The proposed solution to this administrative error will not change operations in Drakes Estero whatsoever. The 5 racks in question were built in the 1950's and have been used ever since. DBOC is not using the area near the main channel that will be removed from the lease. This correction changes nothing in Drakes Estero. This correction will simply correct a line on a map to reflect the original intent and the historic use. Once these details were finally worked out, DBOC made its request to the Fish and Game Commission (FGC) on May 5, 2010 (attachment e).

CDFG recommended to the FGC that they approve this correction. The process they use is called a lease "amendment". In the spring of 2010, prior to initiating the current EIS, PRNS blocked the FGC action on this amendment. After the opposition from PRNS was received, CDFG and PRNS communicated by telephone and at meetings to be sure that PRNS understood the amendment. Once the misunderstandings were clarified, CDFG contacted us (DBOC) and told us that we could put the request back on the FGC agenda. We did so, and the item was put on the February 3, 2011 FGC meeting agenda. However, once again, PRNS opposed the FGC action and the item was not approved. This time, the PRNS asserted that the amendment would affect the EIS baseline. DBOC fully agrees with the NPS opinion that the current level of shellfish production is the baseline for the EIS; however, DBOC disagrees that this amendment will affect the baseline.

DBOC has spent significant time and money to hire professionals, provide solutions and organize the F&G process. DBOC has correctly addressed this many decade-old mistake with CDFG and properly brought it before the FGC. Once approved, as set forth in the DBOC NPS SUP, DBOC is to bring the amendment to NPS for approval. PRNS either does not understand the SUP or disagrees with DBOC's interpretation of it. DBOC has asked PRNS about the SUP language in our July 22, 2010 letter to PRNS (attachment f) and PRNS has not responded. Because of the PRNS opposition, described more fully in the DBOC scoping letter dated March 4, 2011 (attachment g), DBOC has again temporarily removed the request from the FGC agenda. The latest, unexpected opposition presented by PRNS and NPS has prompted John McCamman, CDFG Director, to arrange a meeting with PRNS to resolve this issue. John McCamman, Sonke Mastrup, CDFG Deputy Director DBOC and PRNS are to be at that meeting. When PRNS agrees to allow the State process to continue as it should, DBOC will again make the amendment request to the FGC.

Sincerely,

Kevin & Nancy Lunny