



US Army Corps
of Engineers
Seattle District



Joint Public Notice

Application for a Department of the Army Permit and a Washington Department of Ecology Water Quality Certification and/or Coastal Zone Management Consistency Concurrence

US Army Corps of Engineers
Regulatory Branch
Post Office Box 3755
Seattle, WA 98124-3755
Telephone: (206) 764-3450
ATTN: Jason Sweeney,
Project Manager

WA Department of Ecology
SEA Program
Post Office Box 47600
Olympia, WA 98504-7600
Telephone: (360) 407-6076
ATTN: SEA Program,
Federal Permit Coordinator

Public Notice Date: April 2, 2020
Expiration Date: May 2, 2020

Reference No.: NWS-2017-511
Name: Penn Cove Shellfish, LLC
(Samish Bay)

Interested parties are hereby notified that all or a portion of the work as described below and shown on the enclosed drawings dated September 11, 2019 was performed without specific authorization under Section 10 of the Rivers and Harbors Act and Section 404 and 401 of the Clean Water Act. U.S. Army Corps of Engineers permit regulations (33 CFR 320-332) allow District Engineers to make a determination of whether the activity is contrary to the public interest or if the work should be authorized by an after-the-fact permit.

The Corps will review the work in accordance with Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Ecology will review the work pursuant to Section 401 of the CWA, with applicable provisions of State water pollution control laws and the Coastal Zone Management Act.

APPLICANT: Penn Cove Shellfish, LLC
Attention: Ian Jeffords
P.O. Box 148
Coupeville, Washington 98239
Telephone: (360) 678-4803

AGENT: K&L Gates LLP
Attention: Robert Smith
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Telephone: (206) 370-5743

LOCATION: In Samish Bay on Skagit County Parcels P48476, P48477, and P48478

WORK: The proposed project is to authorize a currently unauthorized commercial shellfish aquaculture operation cultivating up to 32 acres of Manila clam, and expand the operation to include the cultivation of Pacific and Kumamoto oysters. A total of up to 38.70 acres is proposed to be cultivated. Up to 37.85 acres would be in

NWS-2017-511, Penn Cove Shellfish, LLC (Samish Bay)

cultivation with either Manila clam or oysters, and up to 0.85 acre would be in cultivation with oysters. The remaining 1.25 acres would not be subject to shellfish aquaculture.

Site access is by boat at high tide, and worked during low tides. All shellfish activities would occur on privately-owned tideland within an area defined by +1' mean lower low water (MLLW) tidal elevation and the outer boundary at approximately -1.0 ft. MLLW tidal elevation, and within the surveyed property boundaries.

PURPOSE: To install a commercial shellfish aquaculture operation cultivating Manila clams and oysters in proximity to existing Penn Cove facilities.

ADDITIONAL INFORMATION:

The currently unauthorized aquaculture at the site consists of Manila clams grown in the substrate under 4-foot wide by 100-foot long clam nets with 3/8-inch mesh, spaced 3-feet apart. All edges are buried, and nets secured with rebar staples every 20-feet for the length of the nets.

A mulch layer dragged behind a tractor would be used to simultaneously lay the netting and bury the edges of the nets. On an incoming tide, the length of the netting would be walked and Manila clams are spread over the nets by hand.

Clams would be harvested 18-24 months after planting in the substrate. The nets would be removed by a mechanical harvester that rolls up the netting, excavates four to six inches of substrate, and harvests the clams.

In areas that have had recent active shellfish cultivation or do not contain eelgrass, both Manila clam and oysters would be cultivated. Manila clams would be cultivated as described above, however, the nets would be spaced 4-feet across, in sets of two, followed by two sets of oyster long lines with SEAPA brand baskets. The baskets would be suspended off the bottom from 100-foot long lines spaced 4-feet apart. The long lines would be held in place by galvanized steel posts that would not protrude more than four and a half feet above the substrate. Harvest would occur by hand after 18-24 months.

In areas that have not been in active cultivation and contain eelgrass beds, oyster cultivation would occur in long lines spaced 10-feet apart.

In areas that have not previously been in cultivation, a 16-foot buffer would be kept from eelgrass beds.

Also proposed is the use of a "coil compactor" to control bamboo worms (*Clymenella torquata*) and prepare the substrate for planting. The coil compactor is comprised of a 2-inch square steel bar wound as a 2-foot by 6-foot long coil, weighing approximately 600 pounds. It has a center axle which allows it to be pulled across the substrate. The weight of the rolling steel coil causes a collapse of the burrows created by the bamboo worms. The "coil compactor" is used prior to planting a shellfish bed that has bamboo worms. Use would be limited to a couple days and would not need to be used again for a planted site unless that site is not in shellfish cultivation for several years prior to replanting.

The location of mean high water and special aquatic sites (e.g., eelgrass, mudflats) shown on the project drawings have not yet been verified by the U.S. Army Corps of Engineers (Corps). If the Corps determines the boundaries of the waters are substantially inaccurate a new public notice may be published.

MITIGATION: No compensatory mitigation is being proposed.

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ENDANGERED SPECIES: The Endangered Species Act (ESA) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the ESA on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or any designated critical habitat. After receipt of comments from this public notice, the U.S. Army Corps of Engineers will evaluate the potential impacts to proposed and/or listed species and their designated critical habitat.

If the U.S. Army Corps of Engineers (Corps) determines that the proposed action may adversely affect EFH for federally managed fisheries in Washington waters, the Corps will initiate EFH consultation with the NMFS. The Corps' final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

The U.S. Army Corps of Engineers (Corps) has determined that the proposed action will adversely affect designated EFH for federally managed fisheries in Washington waters.

CULTURAL RESOURCES: The Corps has reviewed the latest published version of the National Register of Historic Places, Washington Information System for Architectural and Archaeological Records Data and other sources of information. There are no recorded historic properties within the permit area. Given the nature and scope of the undertaking, little likelihood exists for the proposed project to impinge upon an undisturbed historic property. The Corps invites responses to this public notice from Native American Tribes or tribal governments; Federal, State, and local agencies; historical and archeological societies; and other parties likely to have knowledge of or concerns regarding historic properties and sites of religious and cultural significance at or near the project area. After receipt of comments from this public notice, the Corps will evaluate potential impacts and consult with the State Historic Preservation Officer and Native American Tribes in accordance with Section 106 of the National Historic Preservation Act, as appropriate.

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

EVALUATION – CORPS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

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

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The described discharge will be evaluated for compliance with guidelines promulgated by the Environmental Protection Agency under authority of Section 404(b)(1) of the CWA. These guidelines require an alternatives analysis for any proposed discharge of dredged or fill material into waters of the United States.

EVALUATION – ECOLOGY: Ecology is soliciting comments from the public; Federal, Native American Nations or tribal governments, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this activity. Ecology will be considering all comments to determine whether to certify or deny certification for the proposed project.

ADDITIONAL EVALUATION:

Skagit County has issued an exemption from the requirement of obtaining a Shorelines Substantial Development permit for this project.

COMMENT AND REVIEW PERIOD: Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether authorizing the work would not be contrary to the public interest. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. Either conventional mail or e-mail comments must include the permit applicant's name and reference number, as shown below, and the commenter's name, address, and phone number. All comments whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration.

CORPS COMMENTS: All e-mail comments should be sent to jason.t.sweeney@usace.army.mil. Conventional mail comments should be sent to: U.S. Army Corps of Engineers, Regulatory Branch, Attention: Jason Sweeney, P.O. Box 3755, Seattle, Washington 98124-3755. All comments received will become part of the administrative record and are subject to public release under the Freedom of Information Act including any personally identifiable information such as names, phone numbers, and addresses.

ECOLOGY COMMENTS: Any person desiring to present views on the project pertaining to a request for water quality certification under Section 401 of the CWA and/or Coastal Zone Management consistency concurrence, may do so by submitting written comments to the following address: Washington State Department of Ecology, Attention: Federal Permit Coordinator, Post Office Box 47600, Olympia, Washington 98504-7600, or e-mail to ecyrefedpermits@ecy.wa.gov.

To ensure proper consideration of all comments, responders must include the following name and reference number in the text of their comments: Penn Cove Shellfish, LLC; NWS-2017-511

Encl: Figures (9)

VICINITY MAP



NWS-2017-511

SAMISH BAY SHELLFISH PROJECT MAP
APPLICANT: PENN COVE SHELLFISH, LLC
OWNER: PAUL BLAU
USACE REF# NWS-2017-511
SKAGIT COUNTY 39.95 ACRES
LAT: 48.576501°N LONG: -122.477404°W
PARCELS #P48476, #P48477, #P48478
SAMISH BAY, SKAGIT COUNTY, WA DATE:
09/11/19—SHEET 1 OF 9

VICINITY MAP WITH
ADJACENT PROPERTY OWNERS

PLAN VIEW

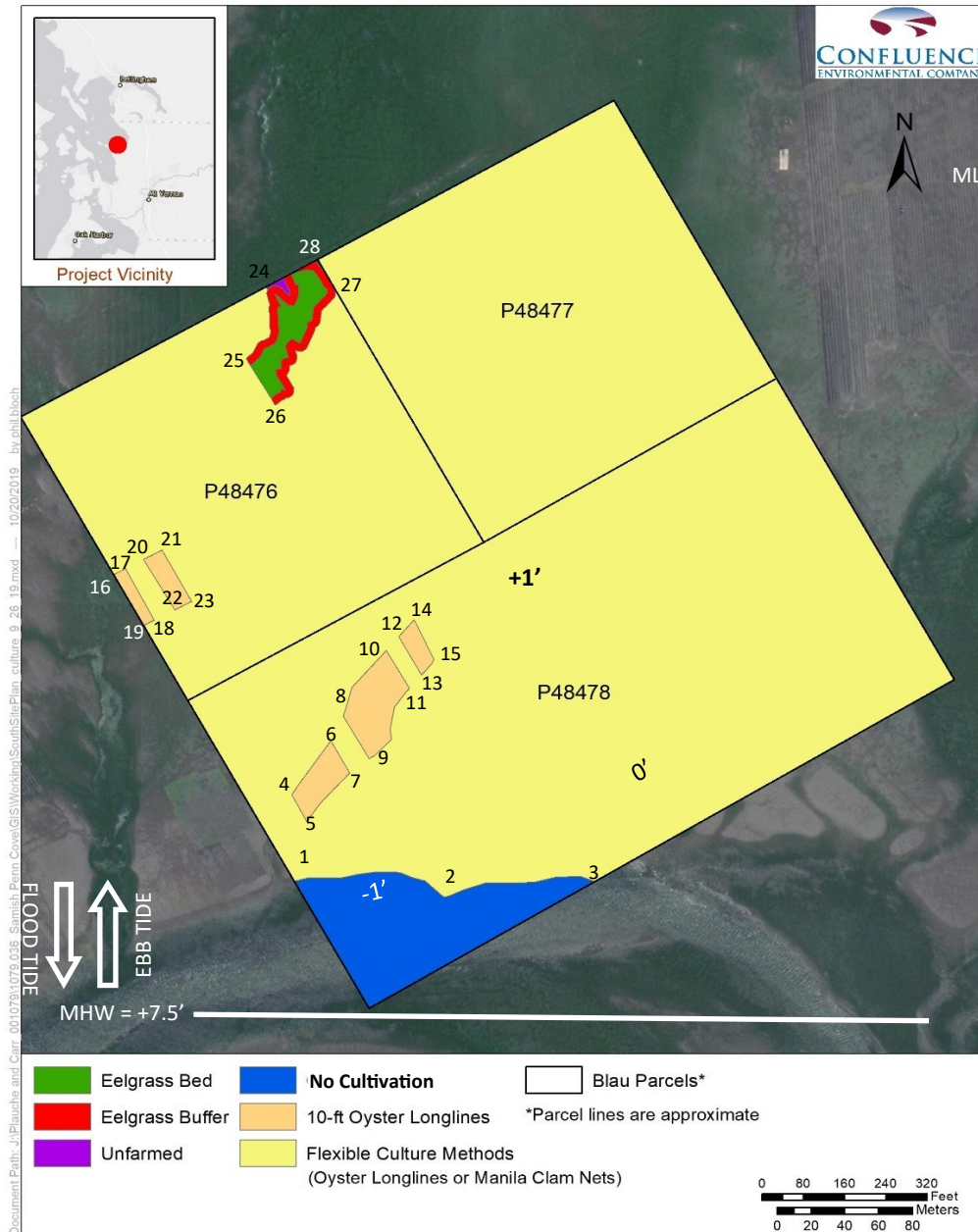


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PARCELS #P48476, #P48477, #P48478
SAMISH BAY, SKAGIT COUNTY, WA DATE:
09/11/19—SHEET 2 OF 9

Cultivation Type	Acres	Not Farmed
10' Oyster Longlines	0.85	
Flexible (Oyster Longlines or Clam Nets)	37.85	
Total	38.7	1.25

PLAN VIEW—MAPPED USE AREA APPROXIMATE COORDINATES



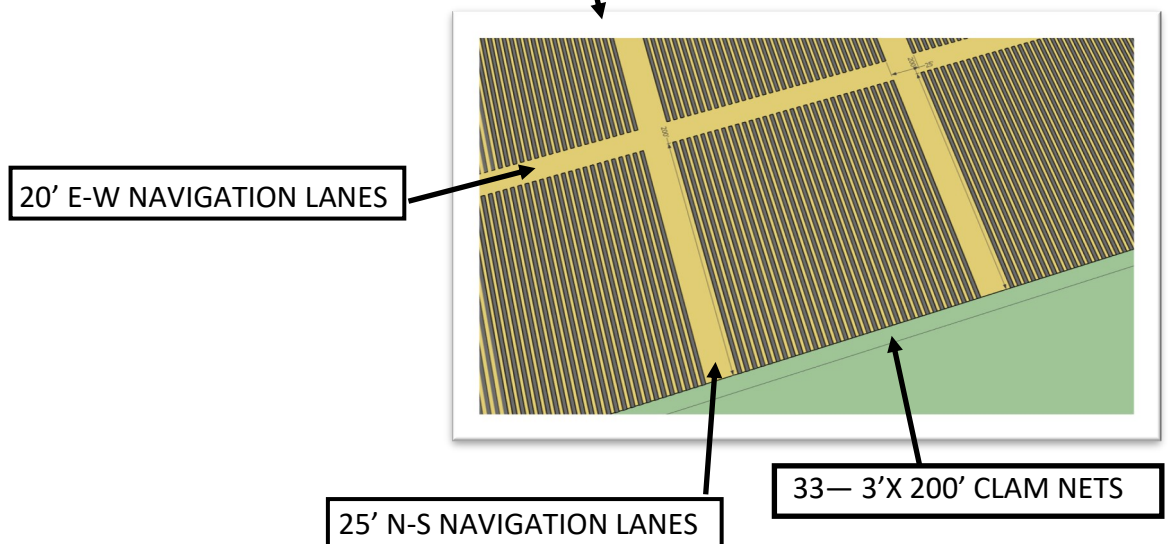
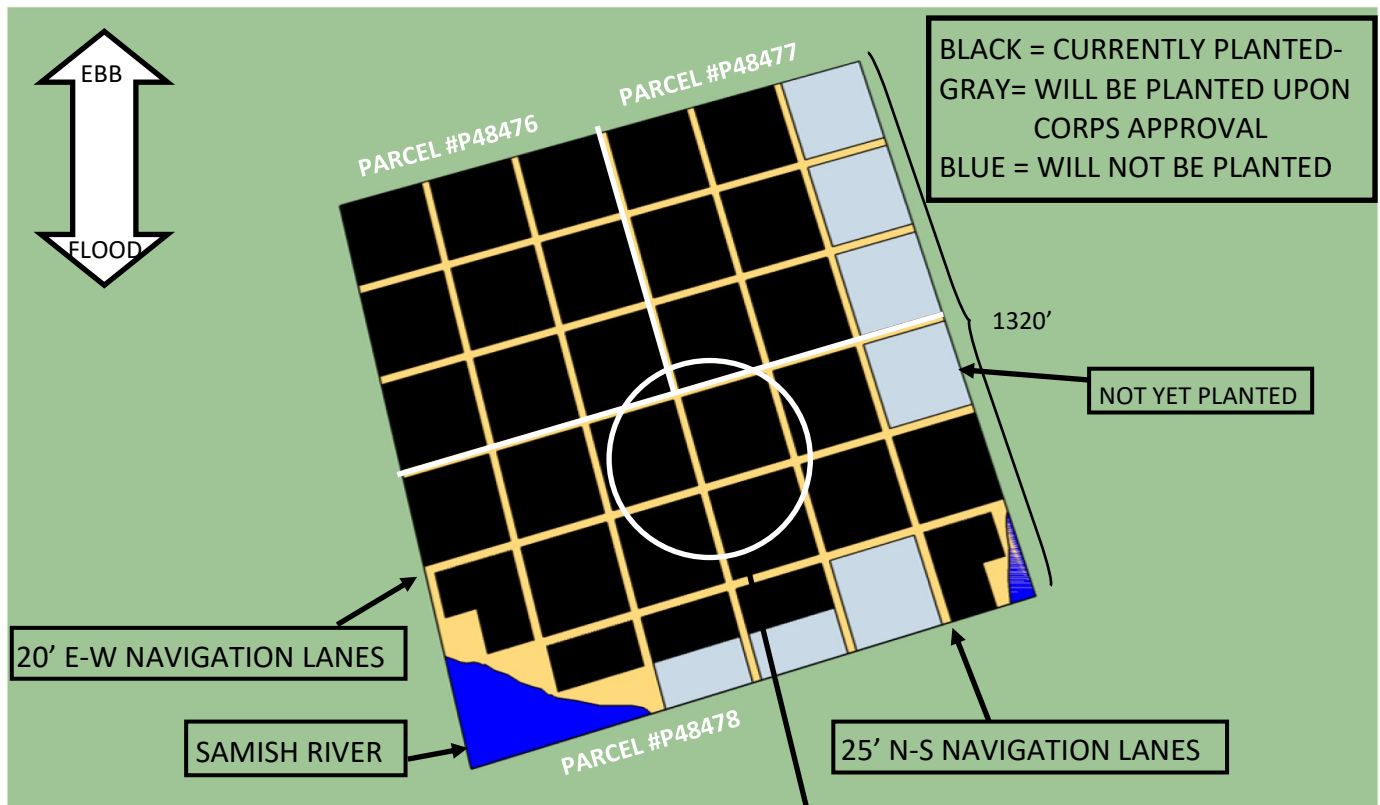
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09/11/19—SHEET 3 OF 9

Cultivation Type	Acres	Not Farmed
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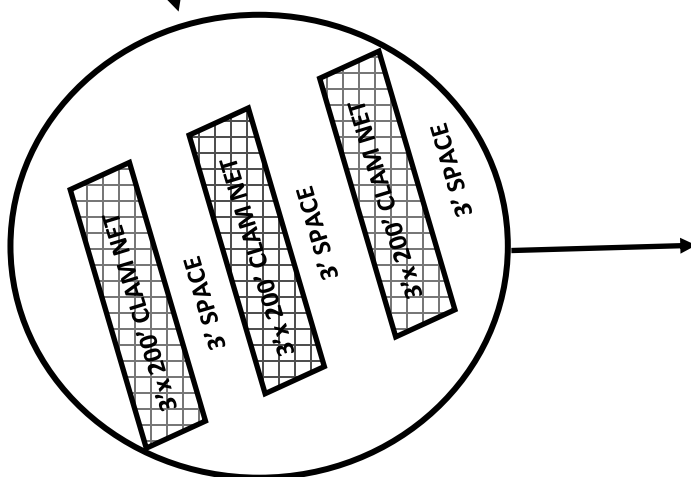
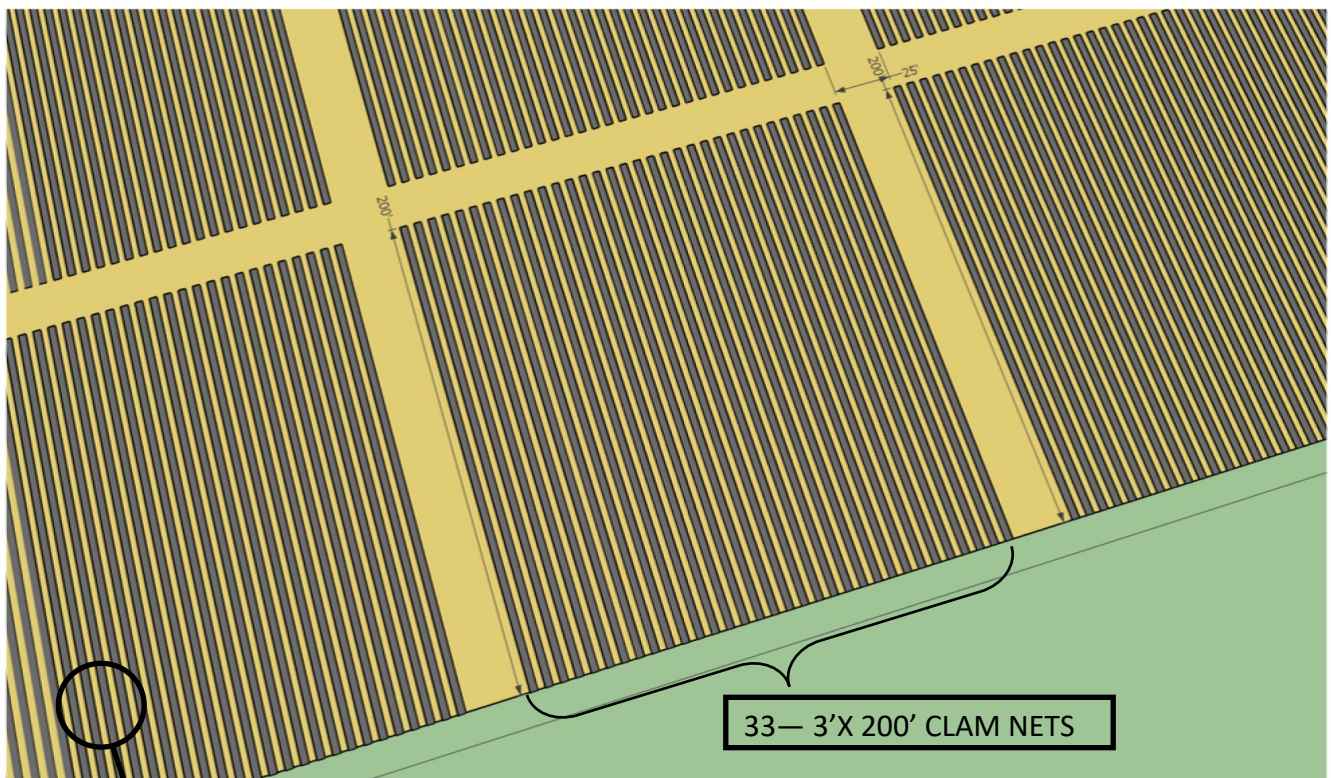
NWS-2017-511
PROJECT PLAN VIEW



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SAMISH BAY, SKAGIT COUNTY, WA DATE:
09/11/19—SHEET 5 OF 9

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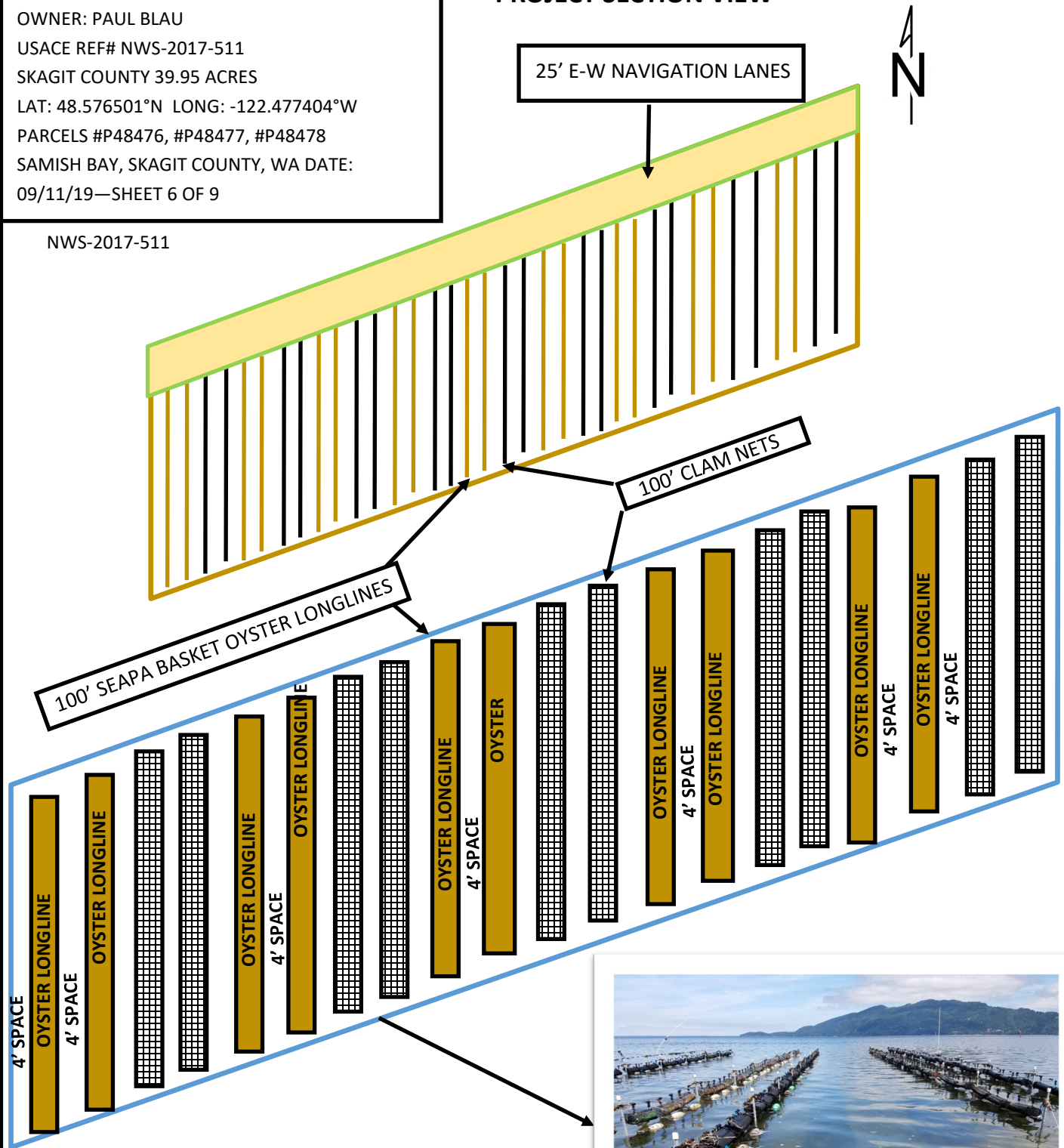
PROJECT SECTION VIEW



SAMISH BAY SHELLFISH PROJECT MAP
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SAMISH BAY, SKAGIT COUNTY, WA DATE:
09/11/19—SHEET 6 OF 9

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PROJECT SECTION VIEW



VARIABLE CULTURE METHODS



SAMISH BAY SHELLFISH PROJECT LAYOUT MAP
APPLICANT: PENN COVE SHELLFISH, LLC
OWNER: PAUL BLAU, BLAU OYSTER COMPANY
USACE REF# NWS-2017-511
PARCELS #P61578, #P61597, #P61600, #61602, #P61596
SAMISH BAY, SKAGIT COUNTY, WA
LAT:48.587273° N LONG: -122.470990° W
DATE: 09/11/19—SHEET 7 OF 9

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PROJECT SECTION VIEW

25' E-W NAVIGATION LANES

N

100' SEAPA BASKET OYSTER LONGLINES

100' OYSTER LONGLINE

10' SPACE

100' OYSTER LONGLINE

10' SPACE

100' OYSTER LONGLINE

10' SPACE

100' OYSTER LONGLINE

10' SPACE

100' OYSTER LONGLINE

10' SPACE

100' OYSTER LONGLINE

10 FOOT SPACED OYSTER CULTURE LONGLINES

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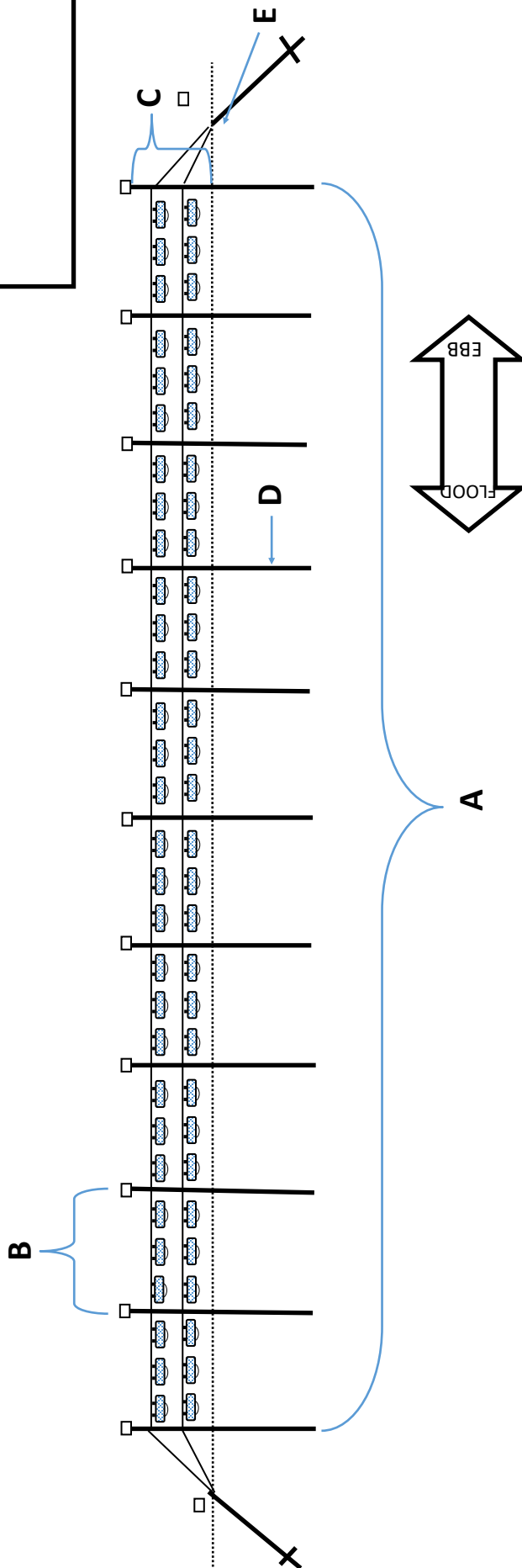
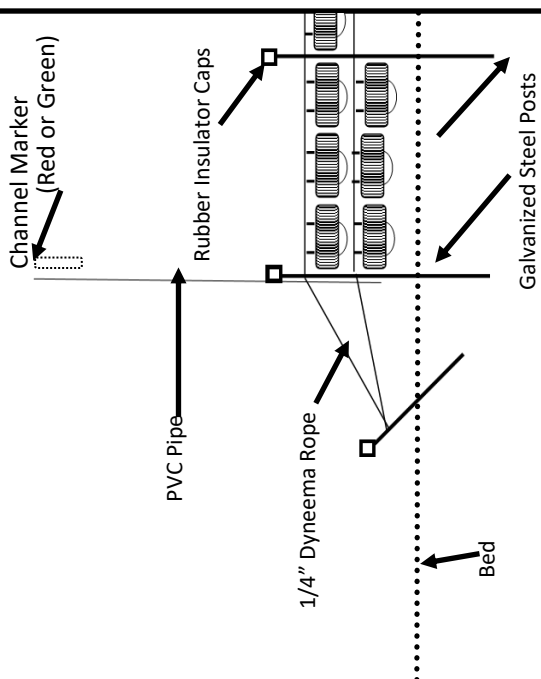
NWS-2017-511

OYSTER NURSERY & GROWOUT

SEAPA BASKET LINE LAYOUT

- [A] **100 feet** = oyster lines
- [B] **10 feet** = space between posts
- [C] Galvanized steel T-posts shall not protrude more than **4.5 feet** above bed.
- [D] **10 feet** = galvanized steel fence post
- [E] **5 feet** = galvanized helical eath anchor

OYSTER LONGLINE DETAIL DIAGRAM



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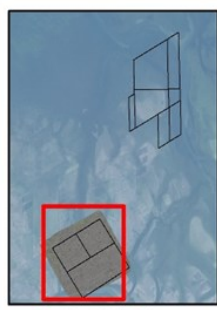
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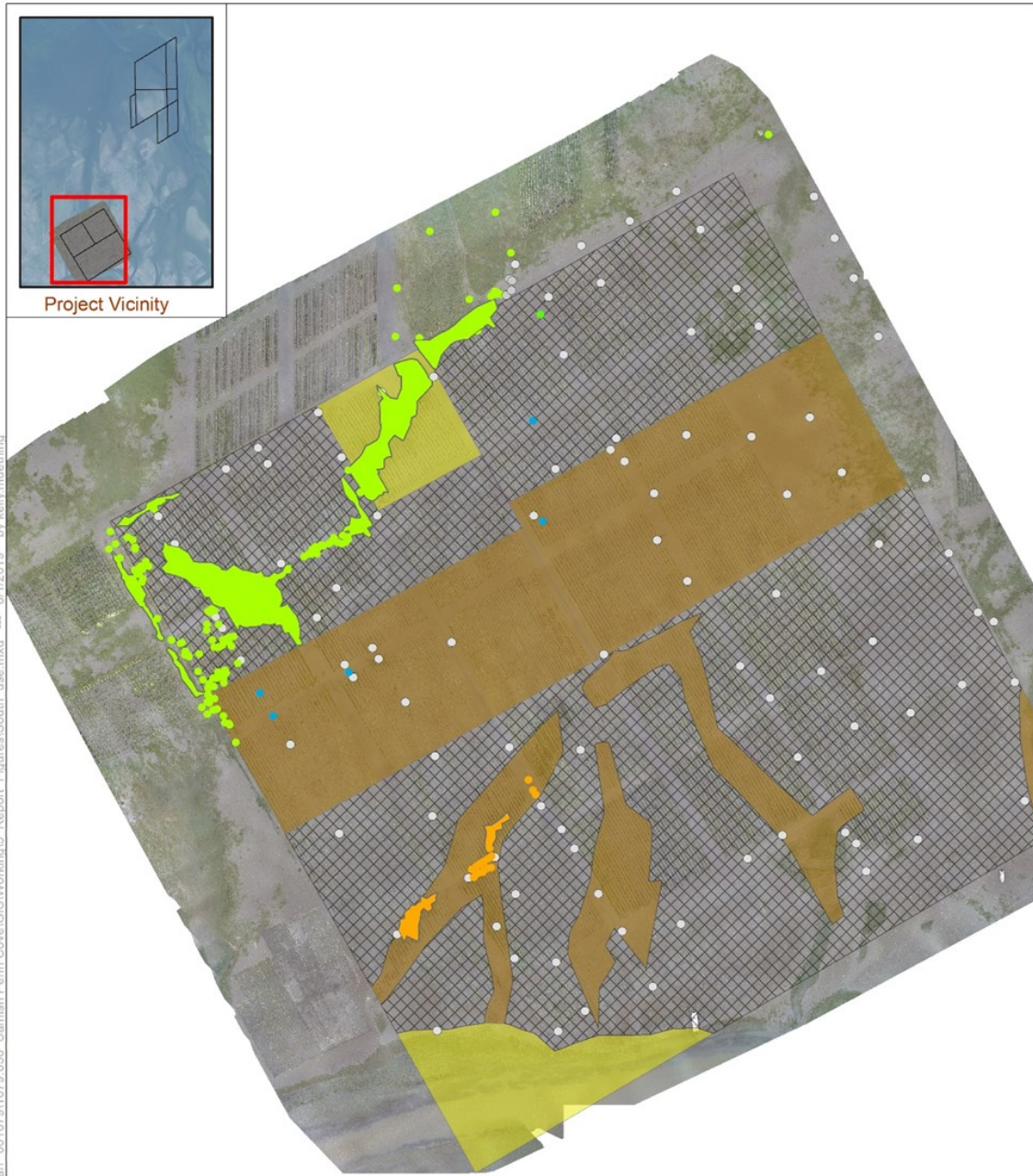
09/11/19—SHEET 9 OF 9

NWS-2017-511



Project Vicinity

Document Path: J:\Plauche and Carr_001079\1079_036_Samish Penn Cove\GIS\Working\5_Report_Figures\South_use.mxd --- 8/1/2019 by kelly.muehlthng



- Mixed Beds Dominated by *Z. japonica* **Inventory (per 10/22/2018 letter to Corps)**
- Mixed Beds Dominated by *Z. marina* Farmed
- Z. marina* Patches Not Farmed
- No Eelgrass (ground observation) Fallow

