STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGION LAND OFFICE

PRELIMINARY BEST INTEREST FINDING
AQUATIC FARMSITE LEASE RENEWAL

APPLICANT: JIM AGUIAR
EAGLE SHELLFISH FARM
ADL #226846

LOCATION: SIMPSON BAY / PRINCE WILLIAM SOUND

The Department of Natural Resources is accepting public comment on the following preliminary decision document for the renewal of an existing aquatic farm site. **Written comments must be received on or before 5:00 p.m., Friday, November 14, 2008.**

PROPOSED ACTION: The applicant is requesting **renewal of his existing aquatic farm site lease** which consists of an area measuring 390 ft. x 1270 ft. for shellfish grow-out and an area 20ft. x 40 ft. for shellfish hardening containing approximately 11.39 acres, more or less. In addition the applicant has a 24 ft. x 40 ft. caretaker facility anchored 660 feet from the aquatic farm site boundary. The structure is also used as a nursery and work barge facility. An 11 ft. x 14 ft. up-weller is tied to the barge facility. The total area encompassed by this farm site is approximately 12.39 acres, more or less.

The applicant has been successfully culturing Pacific oysters and has met or exceeded the required commercial use threshold for a 12.39 acre shellfish farm.

The farm site location is only accessible by boat or floatplane. A location map is attached to this decision.

AUTHORITY: AS 38.05.035; AS 38.05.070; AS 38.05.075; AS 38.05.083; AS 38.05.127; AS 38.05.128; 11 AAC 63.020

This decision addresses and is based on those issues under the authority of the Department of Natural Resources (DNR) under Title 38. While other issues may be addressed that are not within the scope of DNR's responsibilities, this decision's purpose is to determine whether or not to issue a DNR lease and does not make any determinations whatsoever on the issuance of other agency authorizations that are necessary for aquatic farming activities. Information included in the original preliminary decision document may not be included in this document if conditions have not been altered. Original preliminary decisions for this lease can be obtained by contacting the aquatic farm program manager for the DNR in Anchorage.

ADMINISTRATIVE RECORD: The administrative record for the application submitted is file number ADL 226846.

LOCATION:

USGS MAP COVERAGE: Cordova C-6

NAUTICAL CHART: 16709 Prince William Sound

LEGAL DESCRIPTION: Township 14 South, Range 4 West, Copper River Meridian, and more specifically described as:

Section 23: SW ¼, within Simpson Bay, encompassing an area measuring 390 ft. x 1270 ft. for grow-out and an area 20 ft. x 40 ft. for hardening. Plus a 24 ft. x 40 ft. caretaker facility anchored 660 feet from the aquatic farm site boundary. The structure is also used as a nursery and work barge facility. An 11 ft. x 14 ft. up-weller is tied to the barge facility. The total area encompassed by this farm site is approximately 12.39 acres, more or less..

GEOGRAPHIC: The proposed farm site is located on state-owned tide and submerged lands off the southeast side of lower Simpson Bay in Prince William Sound approximately 11 miles northwest of the City of Cordova.

POLITICAL INFORMATION:

BOROUGH/MUNICIPALITY: This application is outside of an organized borough.

COASTAL DISTRICT: The application lies outside of an approved coastal district. The nearest coastal district is the City of Cordova.

REGIONAL CORPORATION: Chugach Alaska Corporation

FISH AND GAME ADVISORY COMMITTEES: Southcentral Region Fish and Game Advisory Committees.

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Prince William Sound Area Plan, Management Unit 23, Fidalgo, Adopted in 1988.

SURFACE CLASSIFICATION: The Prince William Sound Area Plan designates state owned tidelands at the proposed location as forestry, Habitat & harvest, and public recreation..

SURFACE MINERAL ORDERS: The proposed site is open to mineral entry.

ALASKA COASTAL MANAGEMENT PROGRAM: The proposed aquatic farm was found consistent with the Alaska Coastal Management Program (ACMP) on November 27, 1996, under State I.D. No. AK 9605-29AA. The applicant's request to renew and amend his lease does not require another consistency review.

SURVEY AND APPRAISAL:

SURVEY: A survey is not required by law before issuing a 10-year negotiated lease. However, the department has the right to require one in the future, at the applicant's expense, if boundary conflicts or disputes over acreage arise.

APPRAISAL: The Division of Mining, Land and Water has approved an administrative lease fee schedule for aquatic farm sites that meet the conditions listed within the schedule. The most current lease fee schedule will be used to establish the fair market rental each lessee must pay. The applicant

has the option to have a site-specific appraisal done, at the applicant's expense, before the lease is issued, if he or she does not wish to use the fee schedule. If an applicant opts for a site-specific appraisal, the division-approved appraisal will establish the rental for the lease and the fee schedule will no longer be an option.

PUBLIC/AGENCY NOTICE AND COMMENTS: Public notice of the proposal has been sent to various newspapers, post offices, agencies, boroughs/cities, and native corporations. Public and agency comments are welcome during the comment period and will be considered in the final best interest finding. Only those who provide written comments during the comment period or who testify at a public hearing will be sent a copy of the final best interest finding and will be eligible to appeal. The final best interest finding will include an explanation of the appeal process. The public comment period begins on October 13, 2008 and will end on November 14, 2008.

The preliminary best interest finding is subject to public comments received during the comment period. The final best interest finding will consider and address any comments related to the subject proposal and will be available on or about December 8, 2008. If significant changes occur to this decision as a result of public comments received, additional notice will be sent to those who provided comments, either in writing or by testifying at a public hearing.

ENVIRONMENTAL RISK ASSESSMENT: The applicant has submitted a signed environmental risk questionnaire. The questionnaire asks for information on potentially hazardous materials, such as plans for onsite storage of fuel or chemicals. The applicant has indicated that no on-site use, storage, transport, disposal, or otherwise, of any petroleum products will be used during the course of the proposed activities.

BONDING AND INSURANCE:

BONDING: Bonding, or another form of security, is required under AS 38.05.083 and 11 AAC 63.080. The bond must cover the costs of site cleanup and restoration, any associated cleanup costs after termination of the lease, including any unpaid rentals or other obligations accruing until site restoration is complete. The regulations require the minimum security amount of $2,500 (or $1,250 with an association bond) for an aquatic farm lease. Factors such as location and amount of improvements at the site are taken into consideration when the bond amount is determined. Please refer to the Recommendation section at the end of this decision for the bond amount that was determined appropriate for this proposal.

INSURANCE: At this time the DNR does not require this type of activity to have general liability insurance. General liability insurance may be required in the future depending on the aquatic farming operations and the procedures of the department at the time changes are made to the lease or a renewal lease is issued. The lessee is responsible for acquiring other types of insurance, such as Workman's Compensation Insurance that may be required under other local/state/federal laws.

POTENTIAL CONFLICTS/PENDING INTERESTS: There are no known potential conflicts or pending interests at the location of the proposal.

TRADITIONAL USE FINDING: The existing aquatic farm has caused no known disruption of traditional and/or existing uses of the area, such as commercial and sport fishing, subsistence activities, boat travel, and recreation. Through agency and public input, more traditional and existing use information may surface. If such information becomes available, any potential and/or existing conflicts will be addressed in the final best interest finding.

PRINCE WILLIAM SOUND AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This farm site lies within Management Unit 23 I, Fidalgo. Simpson Bay receives frequent day and overnight use by residents of Cordova for sport fishing, hunting, hiking and exploring. There are nearby anchorage sites that receive concentrated use by commercial purse seine fishers.

Upland Owner/Management Intent: The uplands surrounding the state tidelands are owned by Eyak Corporation. Over the course of the 10-year lease there have been no known conflicts between upland owner (Eyak Corporation) and the lessee.

CONSIDERATIONS: The following criteria, set out in 11 AAC 63.050(b), has been considered and represents what is known at this time:

Land Management: There are no known land management policies or designations, other than those in the Alaska Coastal Management Program, the Prince William Sound Area Plan, and potentially the Chugach National Forest Land and Resource Management Plan that may impact this proposal. Measures taken to mitigate impacts on the resources identified in the above-mentioned plans are listed below.

Pending/Existing Uses:

1. There are no known pending use conflicts or potential impacts to nearby communities or residential land due to the on-going operation of this farm in Simpson Bay.

2. Information available suggests the aquatic farm has not disrupted traditional and existing uses of the site for use as an anchorage, commercial and sport fishing, recreation, and tourism.

3. There are no historic and cultural resources known to exist in the area.

4. There are no commercial or industrial facilities known to exist in the area.

Public Access: Public access has been and will be protected in accordance with 11 AAC 63.050(b)(6) and 11 AAC 53 and will be addressed in any resultant lease agreement.

Public Trust Doctrine: Any resultant lease agreement is subject to the principles of the Public Trust Doctrine in order to protect the public's right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.

Mitigation Measures: In addition to the mitigation measures identified above under Pending/Existing Uses, paragraph 2, any resultant lease renewal may include additional stipulations necessary to mitigate conflicts identified during the public/agency comment period

Social, Economic, and Environmental Concerns: There are no known significant social, economic, and environmental effects from the existing lease.

Surface Area: The proposal does not encumber more than a third of the surface area of a bay, bight, or cove in accordance with 11 AAC 63.050(c).

This aquatic farm has provided opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of renewing this lease on state owned tide and

submerged lands is the continued employment opportunities as well as any secondary jobs created or increased from businesses involved in marketing, transport or sale of the farmed products.

After 10-years of successful operation of this site there seems to be no obvious disadvantages of renewing this activity on state owned tide and submerged lands. The public should be aware that access through the site, as well as access to any of the common property resources not being cultured at the site are public uses that remain intact. Therefore, and as mentioned above, any resultant lease would stipulate the requirement that signs be posted informing the public of their rights at the aquatic farm site.

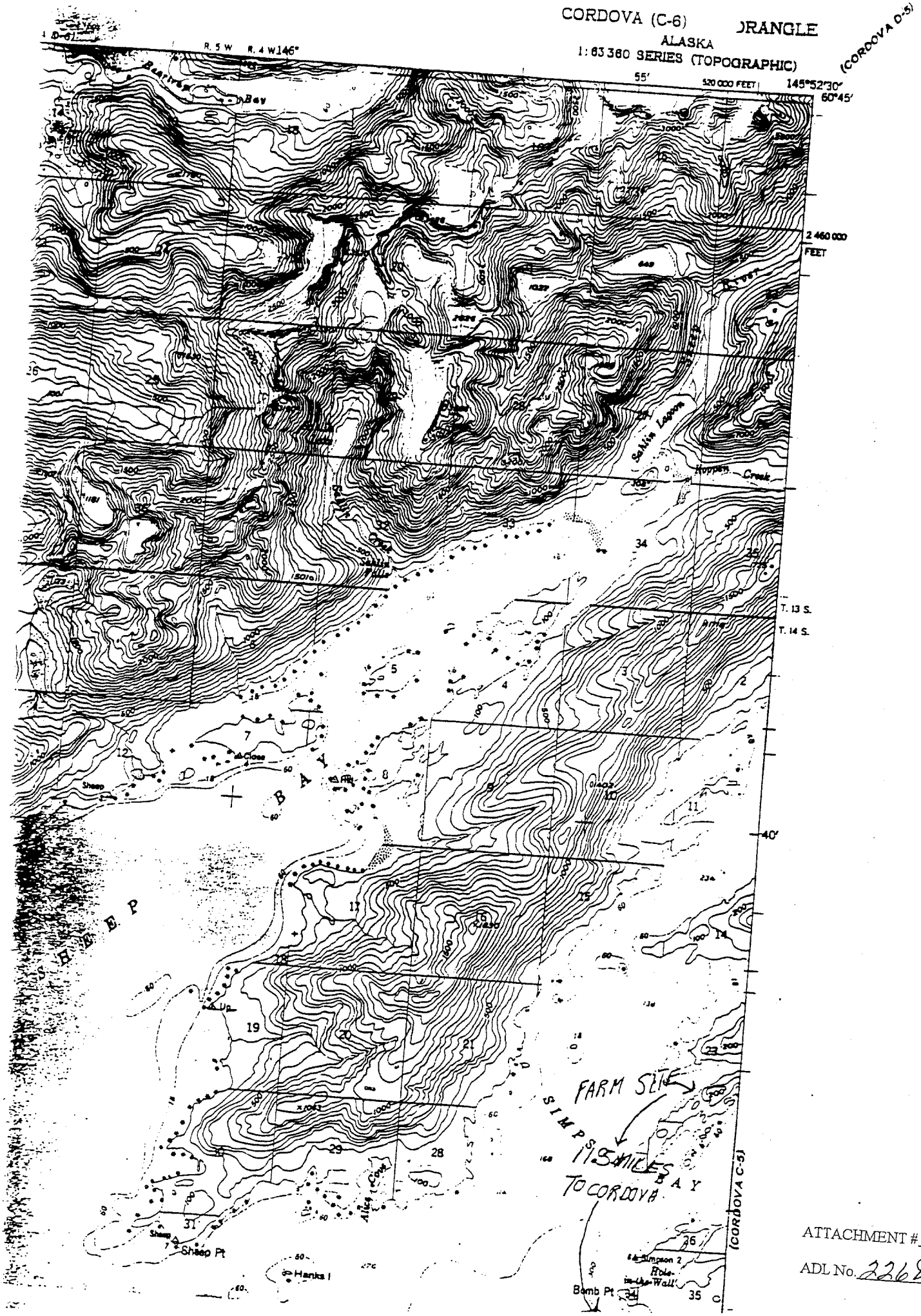
RECOMMENDATION: Considering the information known at this time and described within this decision, it appears to be in the state's best interest to renew the lease for approximately 12.39 acres, more or less to the applicant for intertidal culture and support facilities. Any resultant lease will include stipulations that may be identified as a result of public comments. Approval of the application is recommended with a security bond set at $2,500 or $1250 with an association bond.

John S. Thede

John S. Thede, Aquatic Farm Program Manager

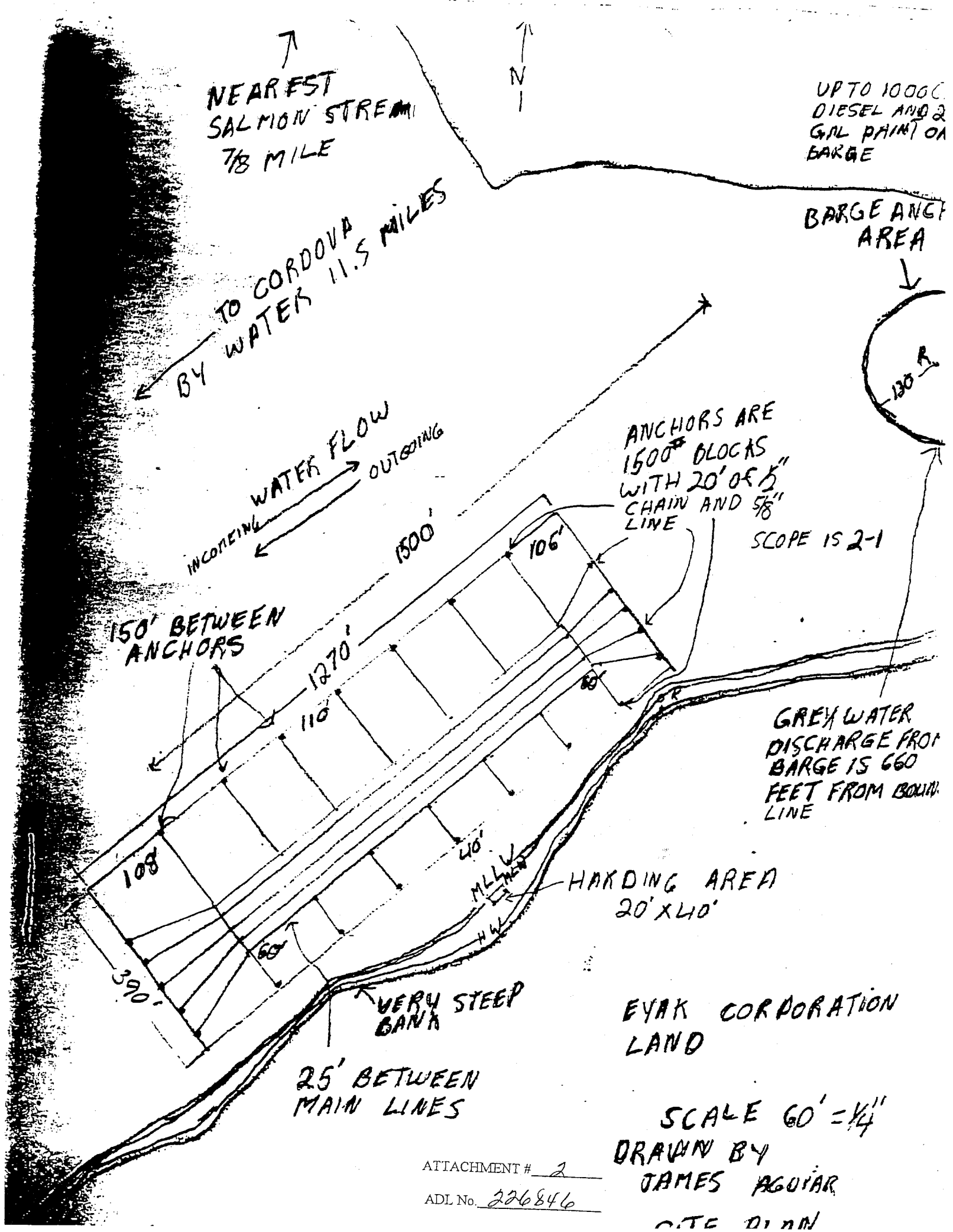
10/1/08

Date



ATTACHMENT # 1

ADL No. 226846



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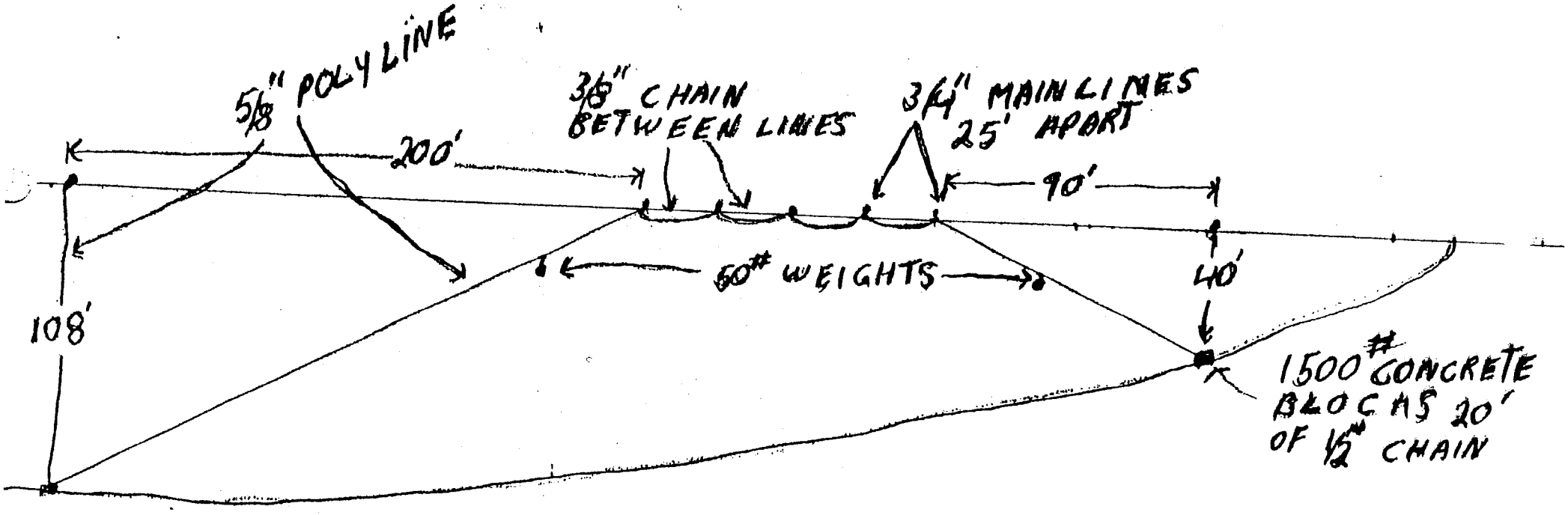
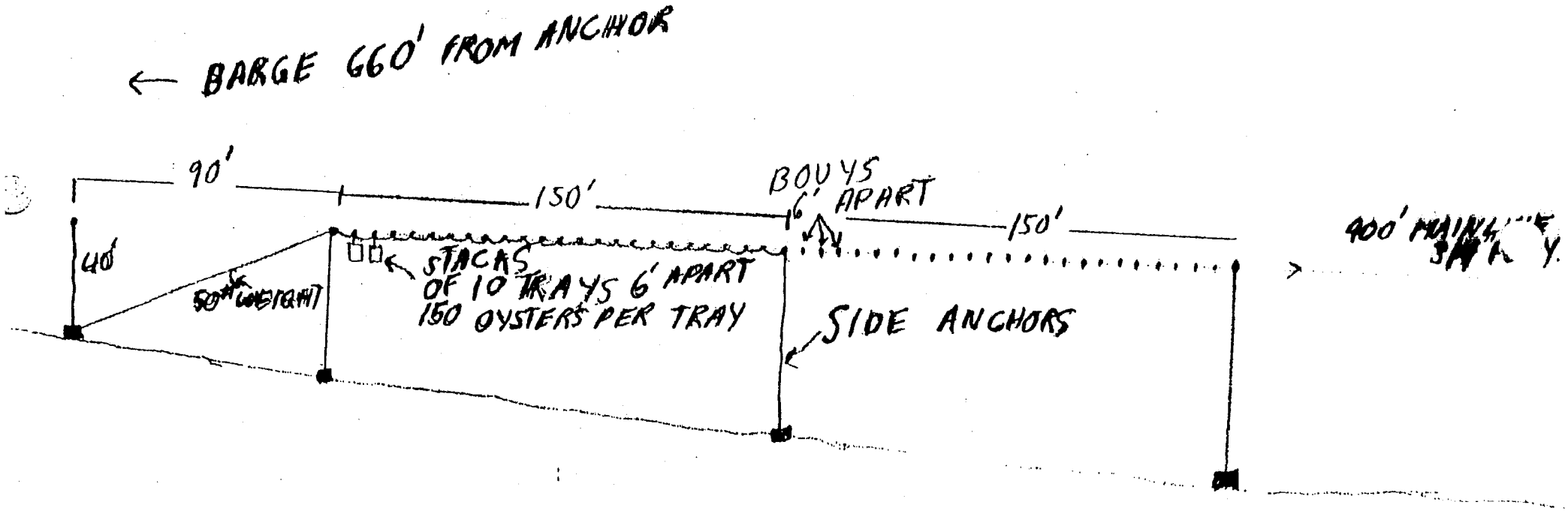


CROSS SECTION
SITE PLAN

SCALE 25' = 1/2"
DRAWN BY
JAMES AGUIAR

ATTACHMENT # 3
ADL No. 226846



CROSS SECTION
SITE PLAN

SCALE 25' = 1/2"
DRAWN BY
JAMES AGUIRRE

ATTACHMENT # 4
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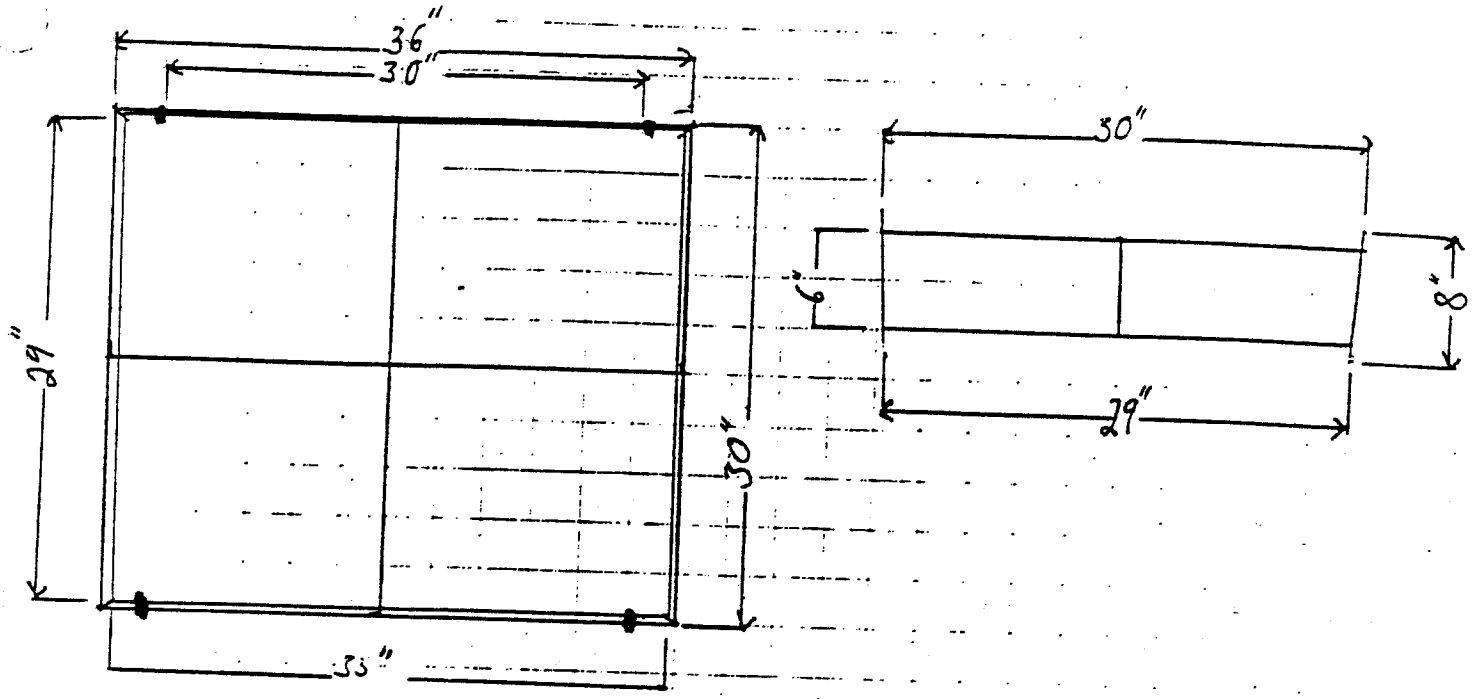
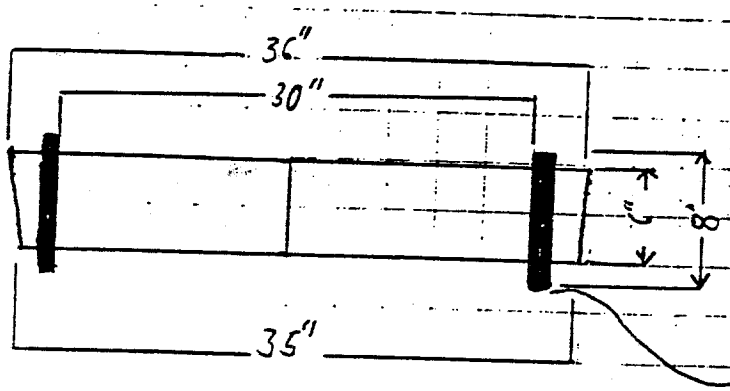




1" X 3/16" X 8" CORNER STRAP

WIRE FRAME WILL BE 5/16 OR 1/4" BAR WELDED

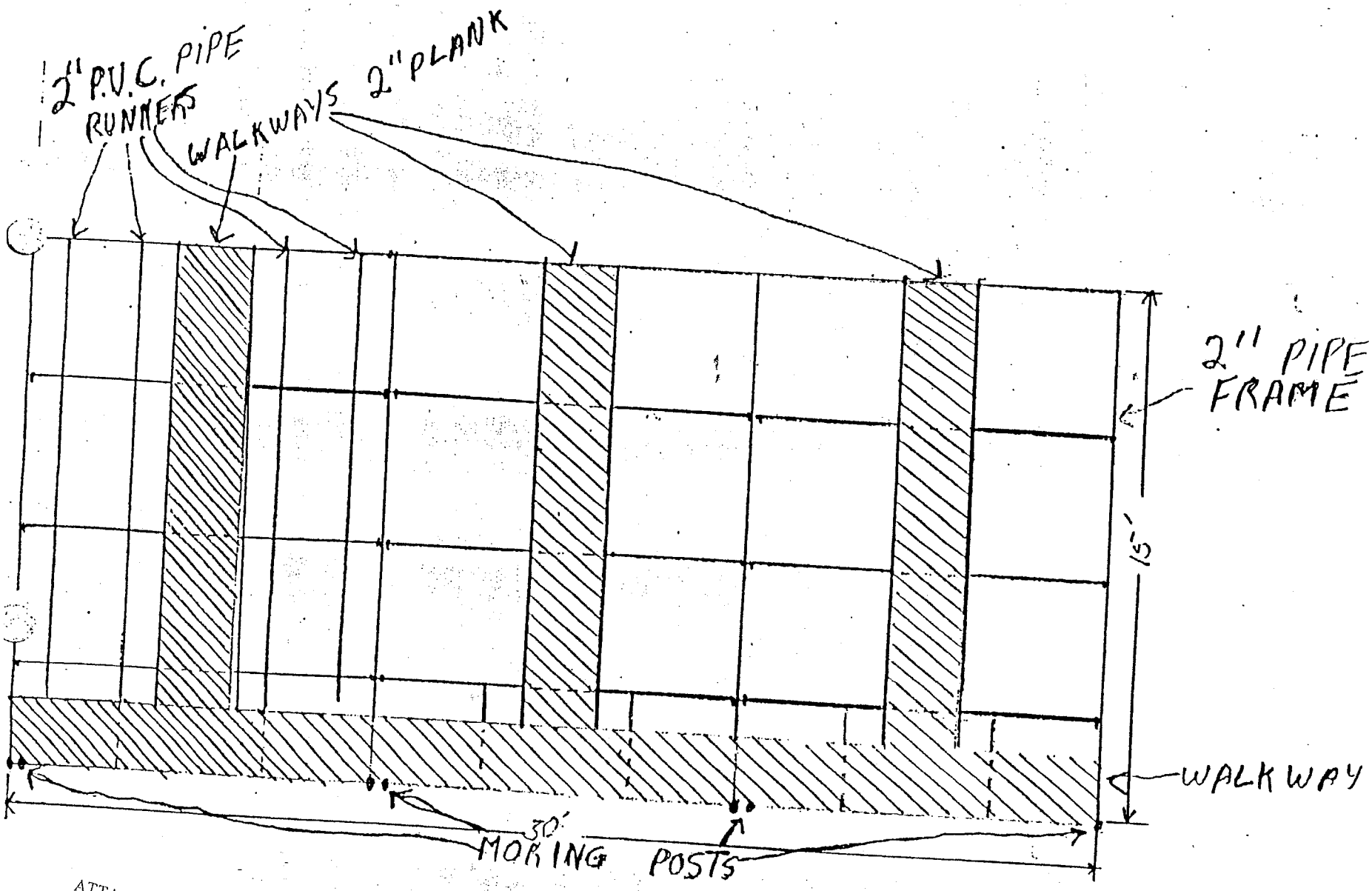
METAL FRAMES WILL BE LINED WITH POLYETHYLENE MESH IN VARIOUS SIZES 1/2", 3/4", 1"

TRAYS WILL BE STACKED 10 HIGH AND TIED WITH 4 LINES 1/16" ONE IN EACH CORNER FROM TOP TO BOTTOM

ATTACHMENT # 5

ADL No. 226846

HARDING FRAME SCALE ¼" = FOOT TOP VIEW



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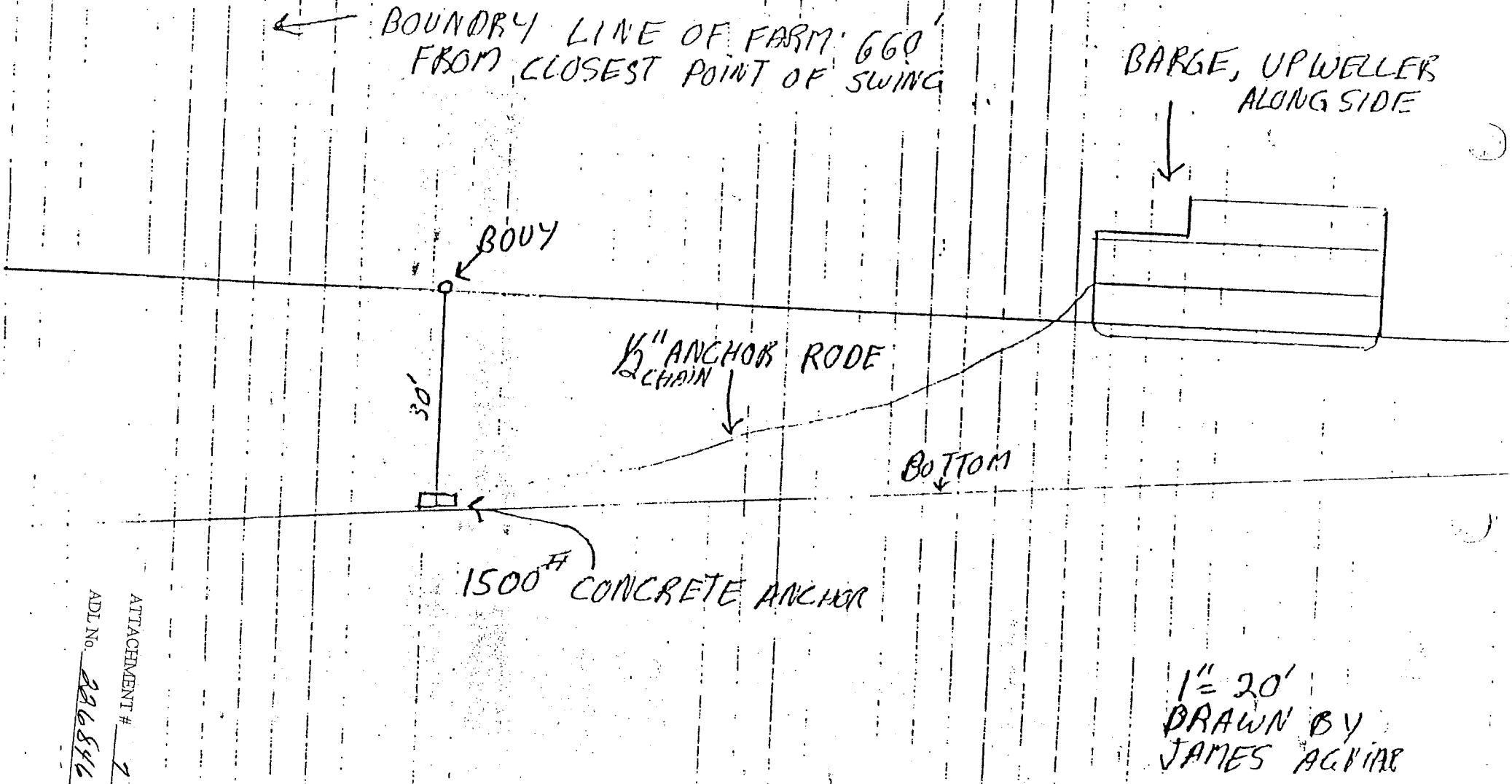
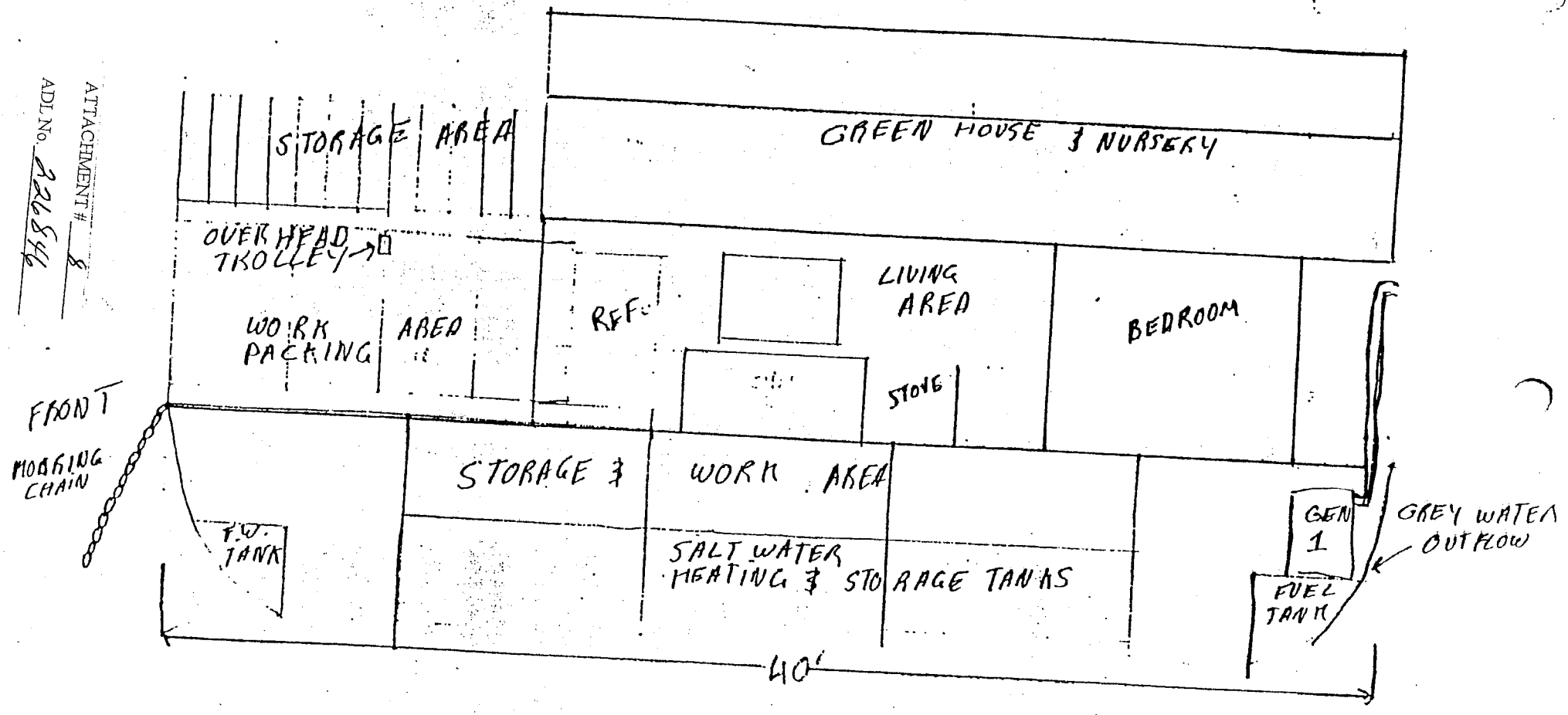


ATTACHMENT # 7

ADL No. 226846

SCALE 1" = 5'
DRAWN BY
JAMES AGUIAR



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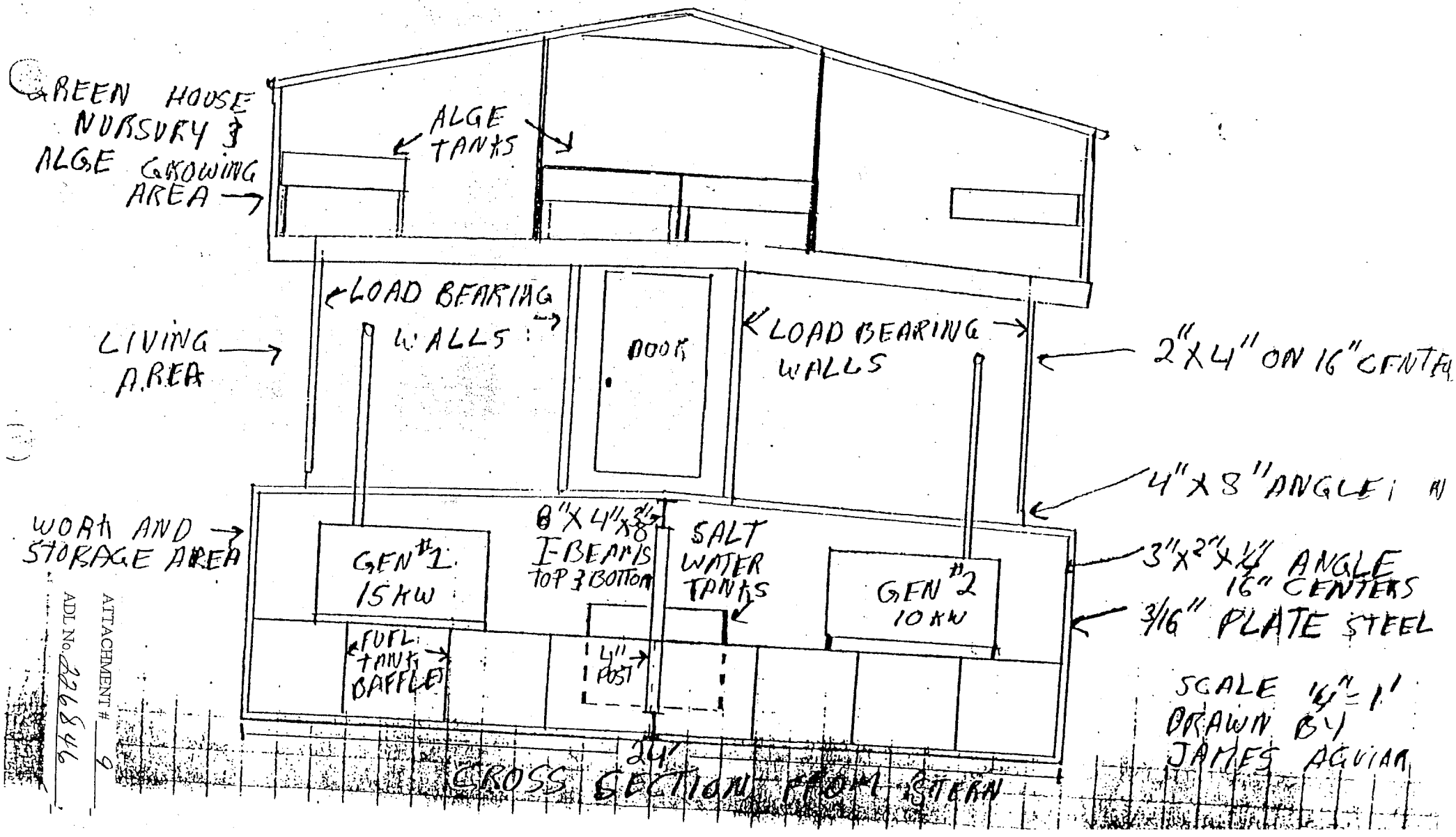

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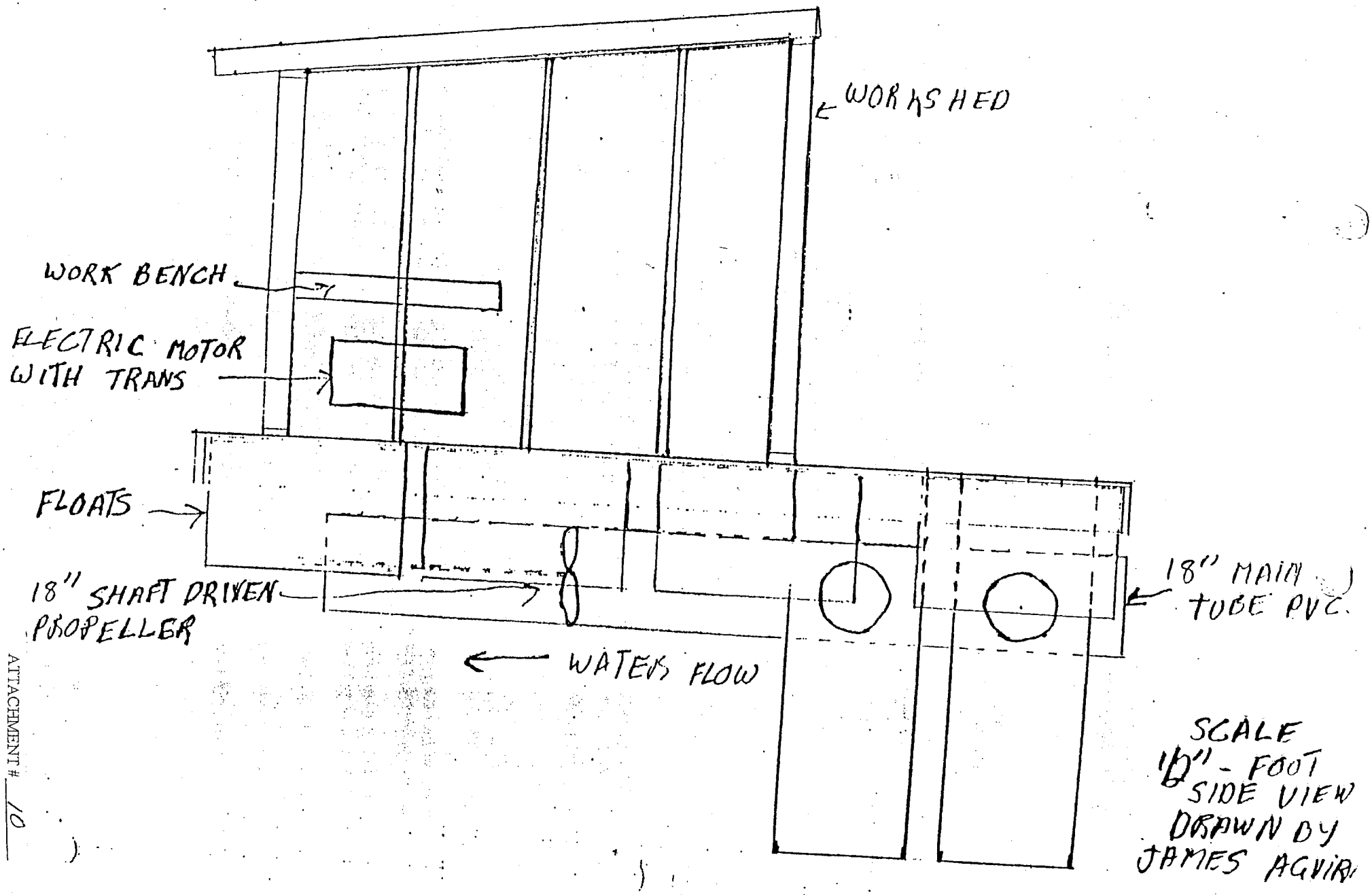
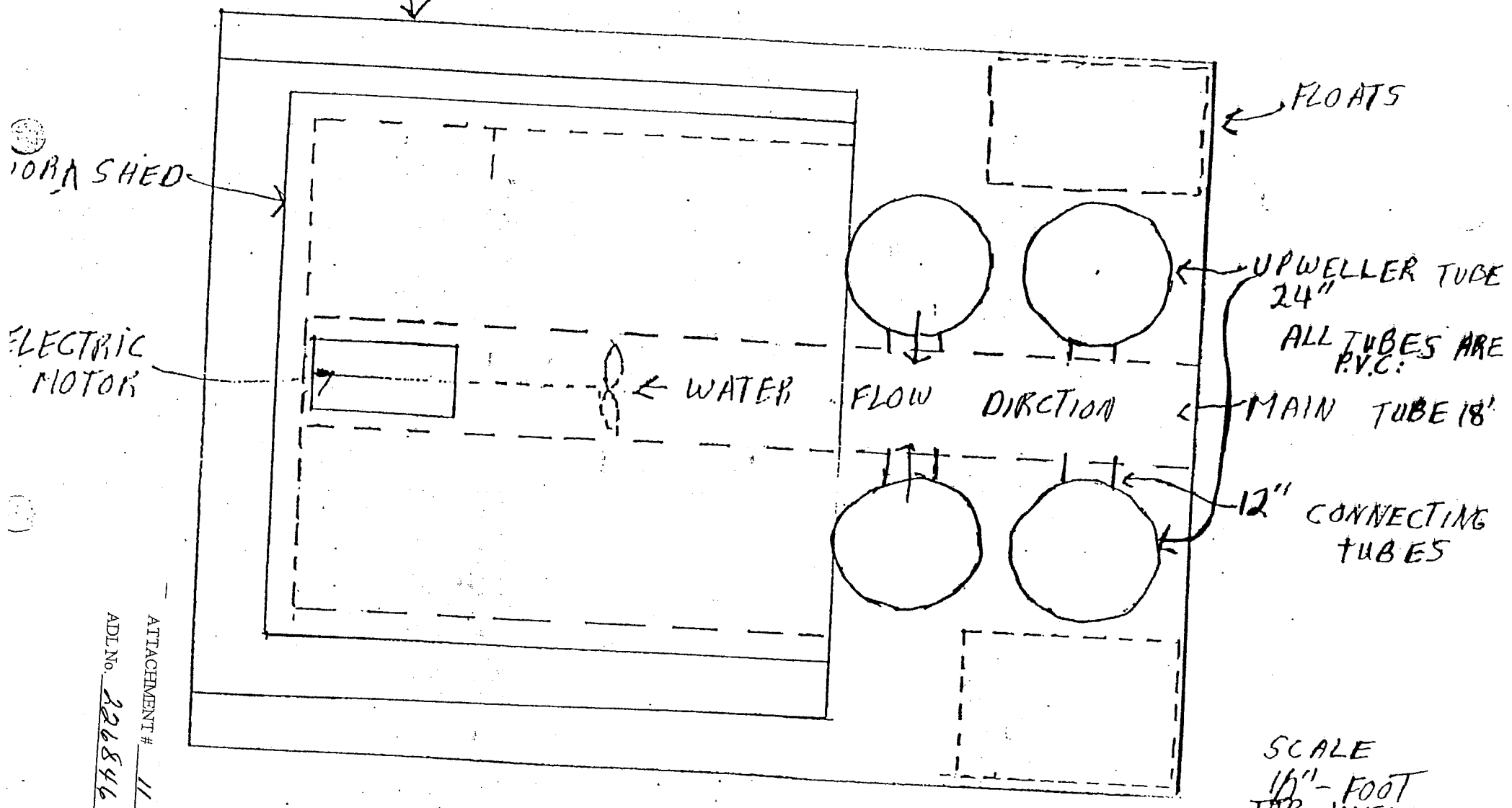


ATTACHMENT # 10

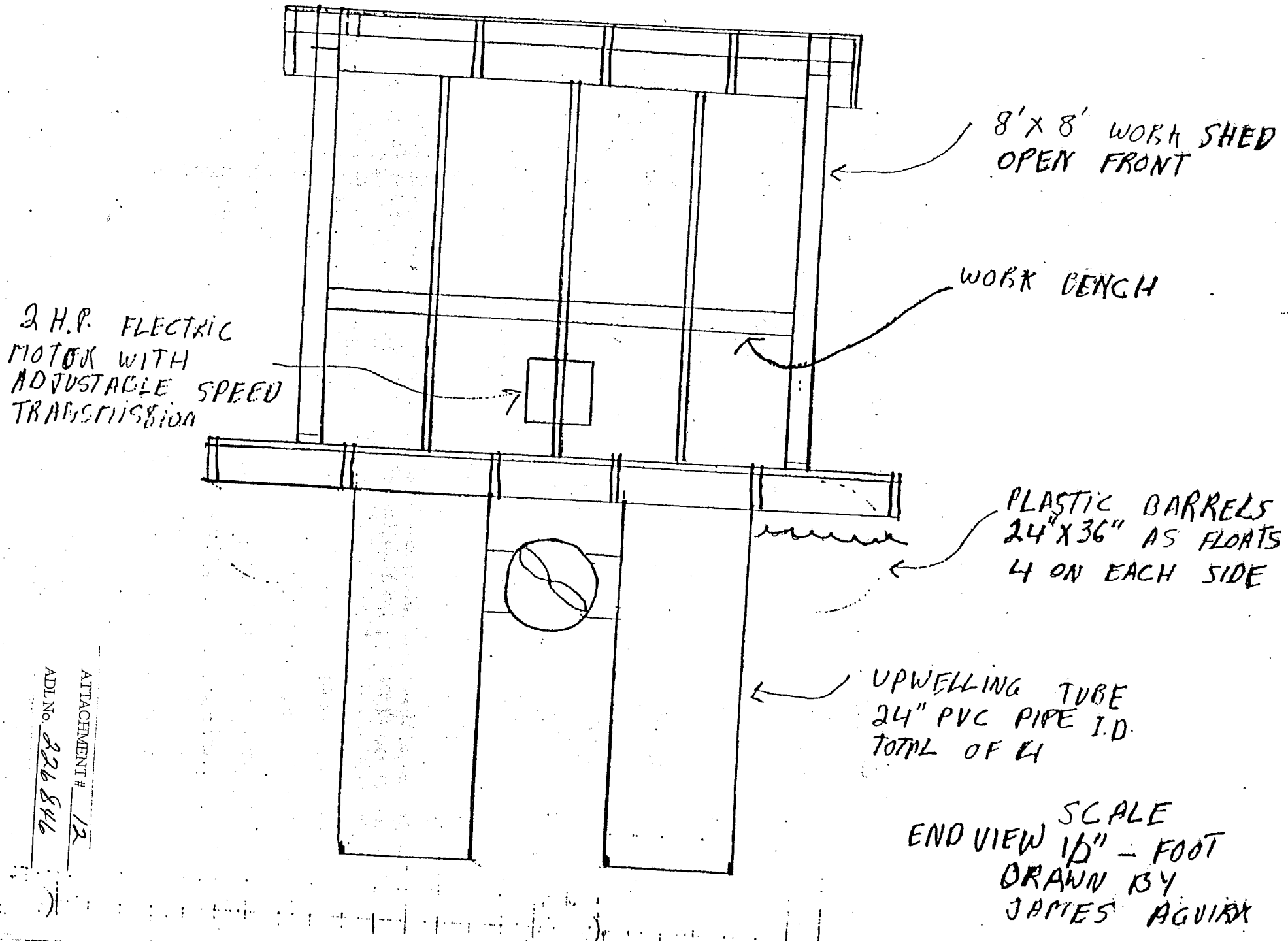
ADL No. 226846

10' X 10' UPWELLER RAIT



SCALE 1/4" - FOOT
TOP VIEW
DRAWN BY
JAMES AGUIAR

ATTACHMENT # 11
ADL No. 226846



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ADL No. 226846