

**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: RONALD J. BADER AND MARIE W. BADER
MOSS ISLAND OYSTER FARM
ADL # 225563**

LOCATION: PETERSON BAY / KACHEMAK BAY

The Department of Natural Resources is accepting public comment on the following preliminary decision document for the renewal of a 10-year lease for 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 their existing aquatic farm site lease plus amending the site to include a second 50 ft. x 50 ft. hardening area. The additional hardening area was in the original lease and then dropped in 2002 by the lessee. The lease renewal would encompass an area measuring 116 ft. x 375 ft. for shellfish growout and two areas measuring 50 ft. x 50 ft. for shellfish hardening. The total acreage of the lease would be 1.11 acres, more or less. The farm site is located off the eastern shore of Peterson Bay and the western most point of Moss Island within Peterson Bay.

Access to the site 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 renew an existing tideland 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 225563.

LOCATION:

USGS MAP COVERAGE: Seldovia C -4

NAUTICAL CHART: 16645

LEGAL DESCRIPTION: Township 7 South, Range 12 West, Seward Meridian,
And more specifically described as:

Section 14: NE ¼ within Peterson Bay, encompassing an area measuring 116 ft. x 375 ft. for shellfish grow-out and two areas measuring 50 ft. x 50 ft. for shellfish hardening.

According to the drawings attached to this document and labeled as Attachment B, containing approximately 1.11 acres, more or less.

GEOGRAPHIC: The farm site is located on state-owned tide and submerged lands 5.0 miles east of Homer in Peterson Bay, Kachemak Bay.

POLITICAL INFORMATION:

BOROUGH/MUNICIPALITY: This application is inside the Kenai Peninsula Borough.

COASTAL DISTRICT: The application inside the Kenai Peninsula Borough Coastal District and is subject to their coastal district management plan and enforceable policies

REGIONAL CORPORATION: Cook Inlet Region, Incorporated and the Seldovia Village Tribe.

FISH AND GAME ADVISORY COMMITTEES: Homer and Seldovia Fish and Game Advisory Committees.

TITLE:

ACQUISITION AUTHORITY: Submerged Lands Act of 1953. (P.L. 31, 83rd Congress, First Session; 67 Stat. 29); Equal Footing Doctrine; Section 1 of the Alaska Statehood Act.

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Kenai Area Plan (KAP), Region 9, South Side Kachemak Bay and Chugach Islands, Unit 535, Peterson Bay tidelands, adopted January 7, 2000.

SURFACE CLASSIFICATION: The KAP classifies state owned tidelands in this area as Habitat and Public Recreation and Tourism-Dispersed Use. These classifications allow aquatic farming activities.

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 May 20, 1995, State I.D. No. AK 9504-18AA. The applicant's request to renew and amend his lease does not require another consistency review.

PUBLIC/AGENCY NOTICE AND COMMENTS: Public notice of the proposal has been sent to various newspapers, post offices, agencies, boroughs/cities, native corporations, , Fish and Game Advisory committees, etc. 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 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.

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.

TRADITIONAL USE FINDING: The aquatic farm has not had an effect on 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.

KENAI AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This proposal lies within Region 9, South Side Kachemak Bay and Chugach Islands, Unit 535, Peterson Bay, adopted January 7, 2000. The designations are habitat and recreation and tourism-dispersed use. The existence of the farm site over the last 10 years has not caused impacts to the habitat or recreation and tourism values in Peterson Bay. It is likely the aquatic farm sites have enhanced tourism through the curiosity of the farms.

UPLAND OWNER/MANAGEMENT INTENT: The uplands adjacent to the proposed amendment are privately owned. To date, there have been no conflicts between upland owners and the existing aquatic farm.

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 Kenai Area Plan, and the Management Plan for Kachemak Bay State Critical Habitat Area (ADFG, 1993) 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 negative impacts to nearby communities or residential land due to the placement of this farm at the proposed

location. Farm sites in the area have positively impacted the city of Homer by providing additional employment and at times have provided local restaurants with fresh oysters.

2. The aquatic farm has had no disruption on 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

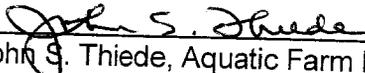
Social, Economic, and Environmental Concerns: There are no known significant social, economic or environmental effects from the existing lease.

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 farmsite.

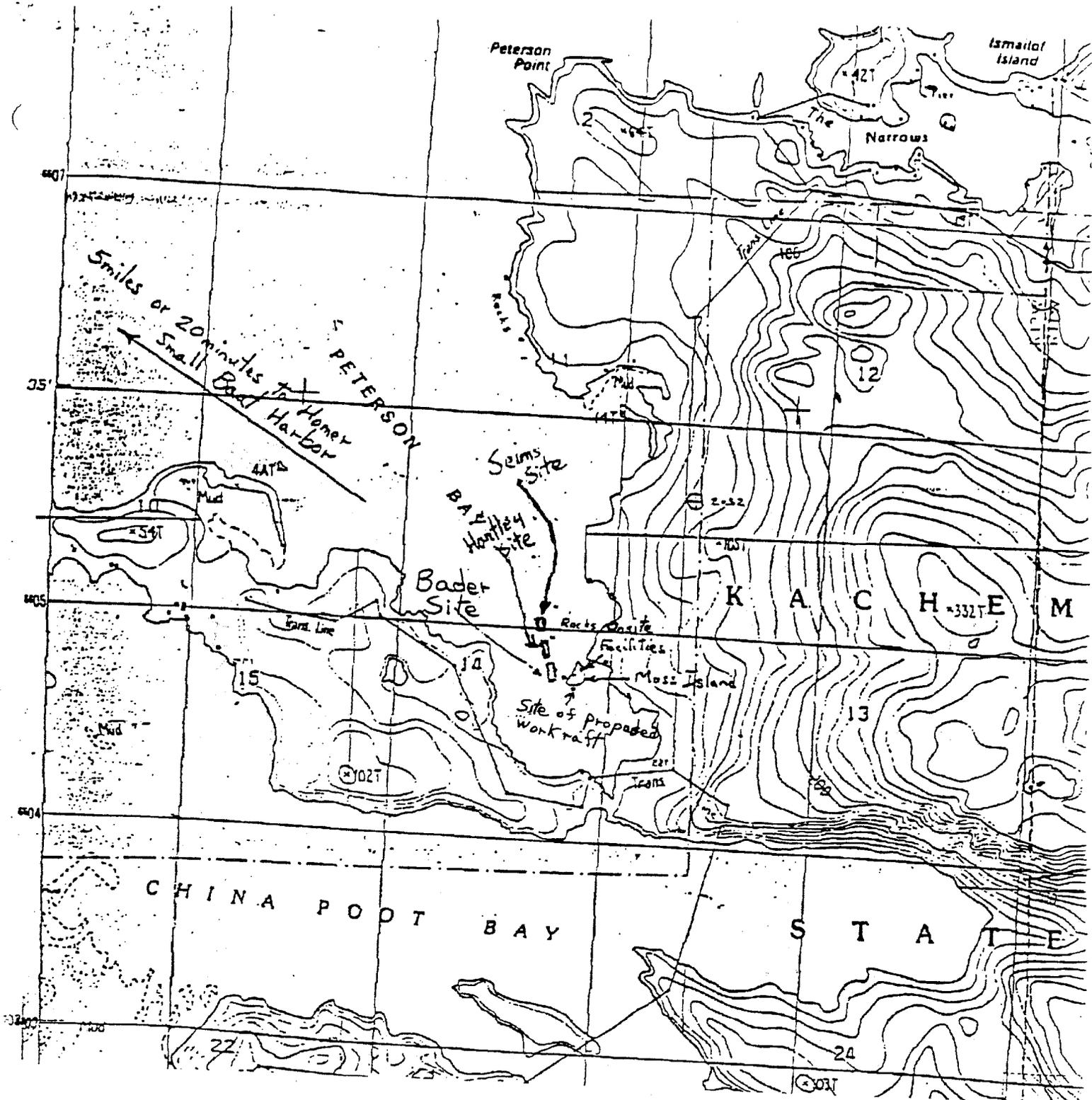
RECOMMENDATION: Considering the information known at this time and described within this decision, it appears to be in the state's best interest to renew the lease for approximately 1.11 acres more or less to the applicant for intertidal culture. Any resultant lease will include stipulations that may 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. Thiede, Aquatic Farm Program Manager

10/1/08

Date



Moss Island Oyster Farm

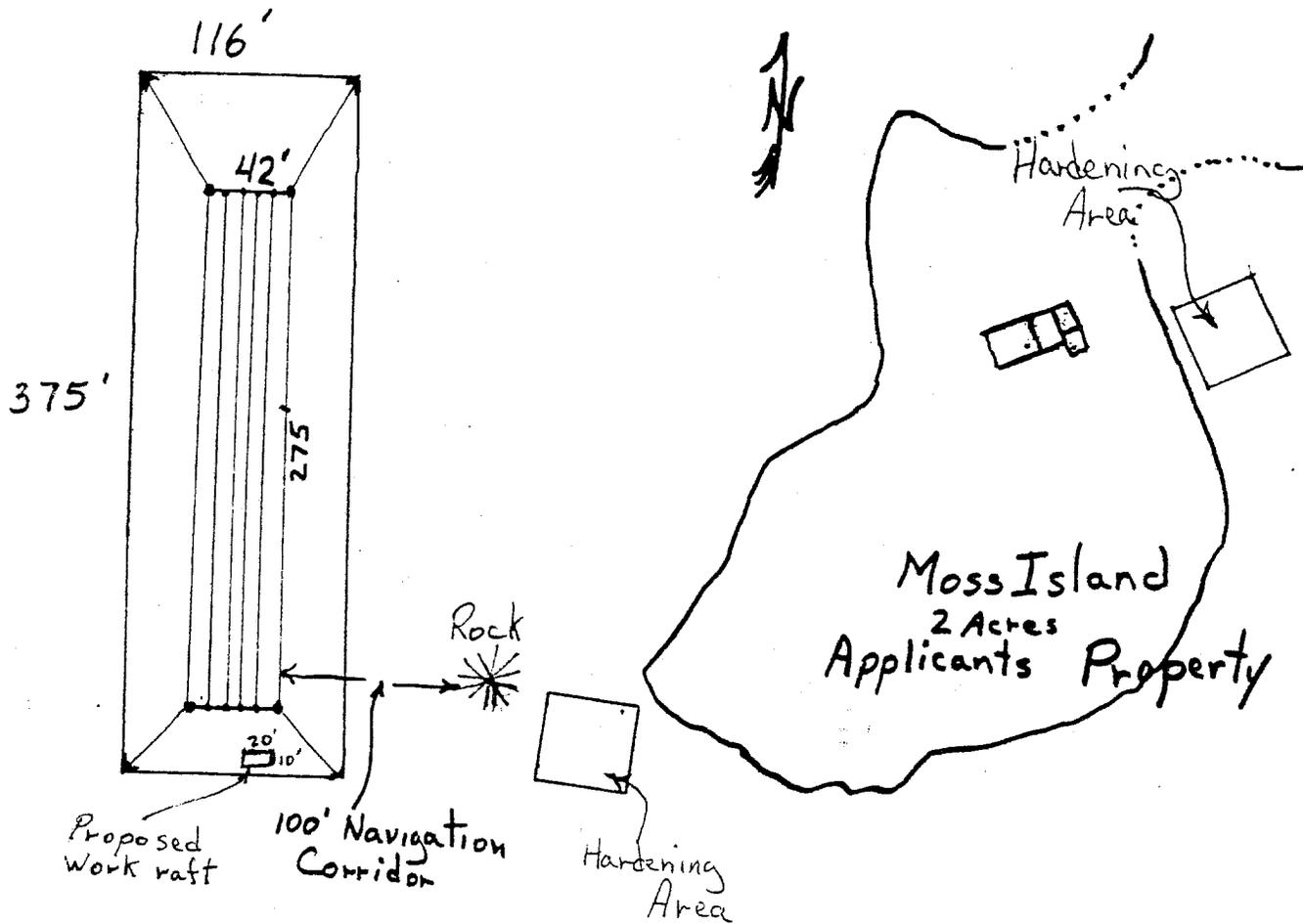
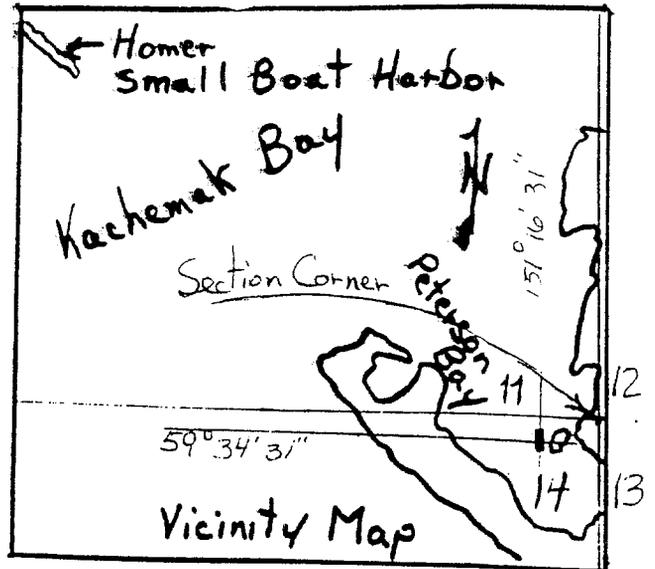
Area Specific Map of Aquatic Farm Sites in Peterson Bay

Permit #s: DFG-91-101-AF-SC R01; ADL 225563; COE 17-91032B; SID AK 910605-24A

Scale: 1" = 25,000' Date 11-10-97 Permittee: Ronald J. Bader

ATTACHMENT # 1

ADL No. 225563



Moss Island Oyster Farm

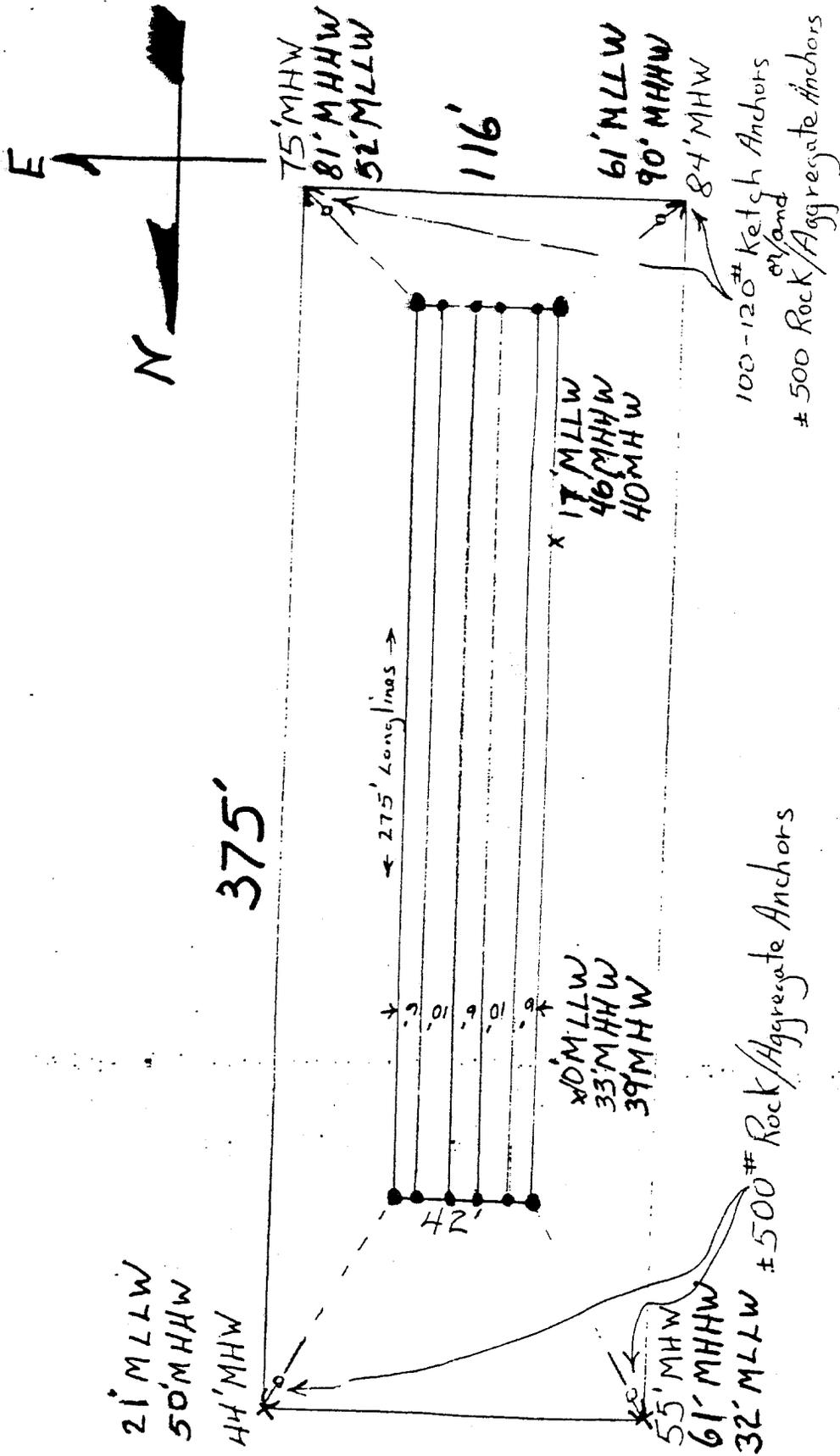
Existing Site Plan and Vicinity Map

Permit #'s: DFG-91-101-AF-SC R01; ADL225563; COE 15-910328; SID AK 910605-24A

Scale: 1" = 100' Date 8-10-98 Permittee: Ronald J. Bader

ATTACHMENT # 2

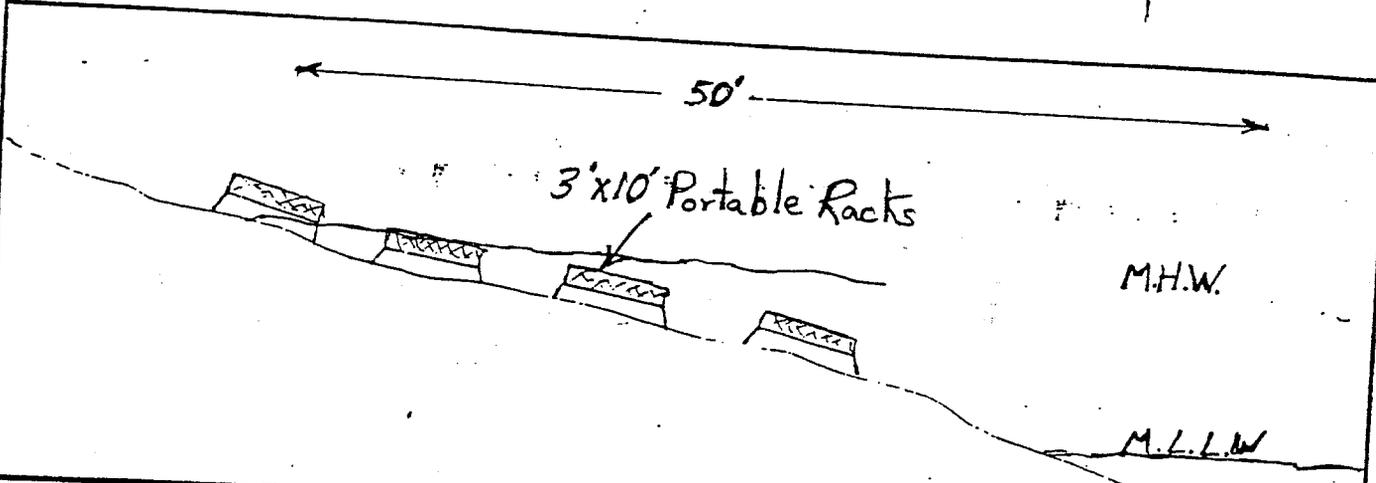
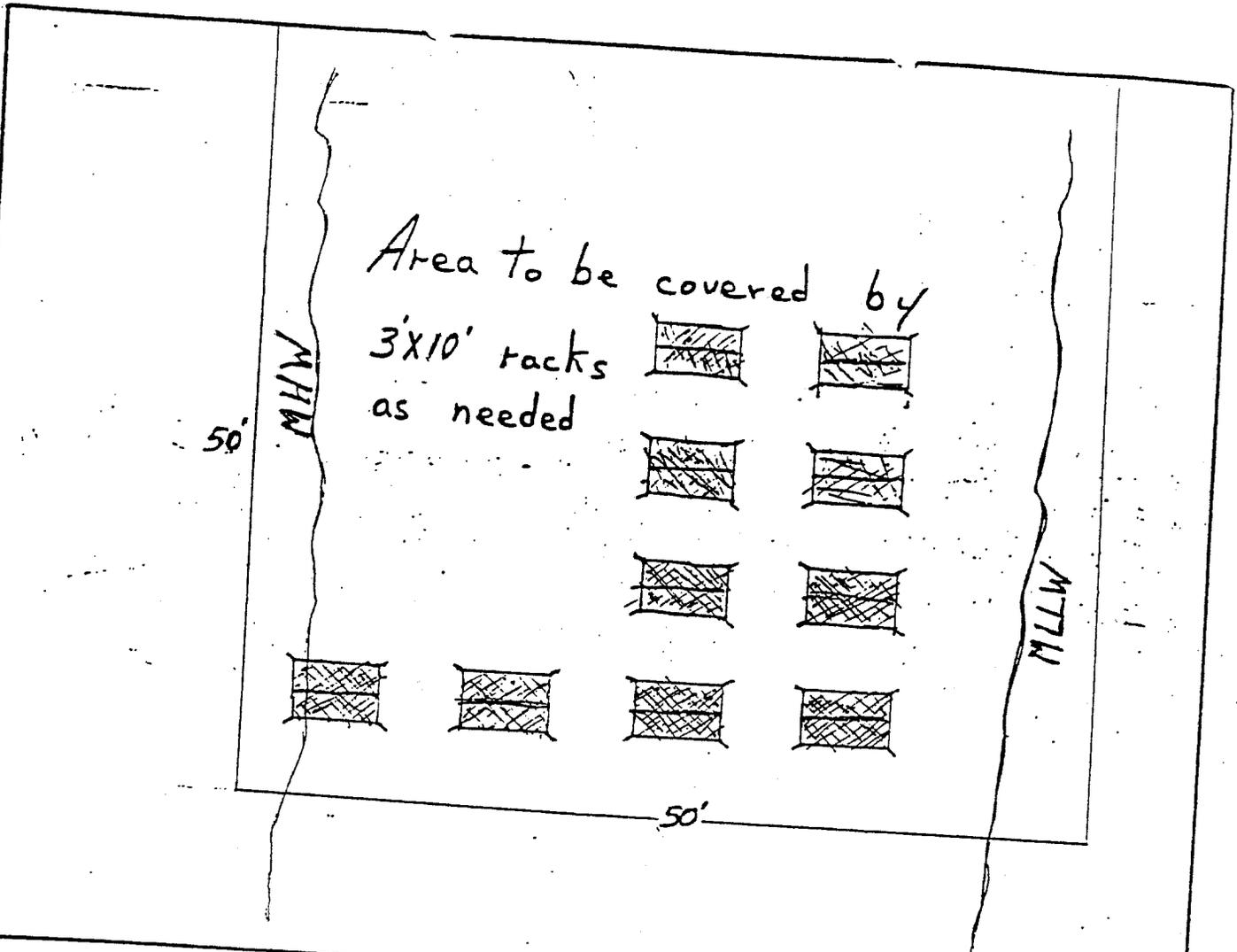
ADL No. 225563



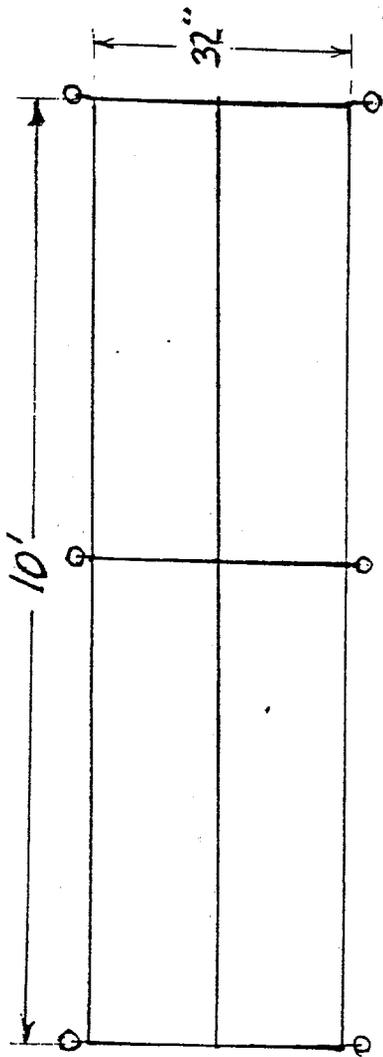
Moss Island Oyster Farm

Top View of Existing Farm Plan

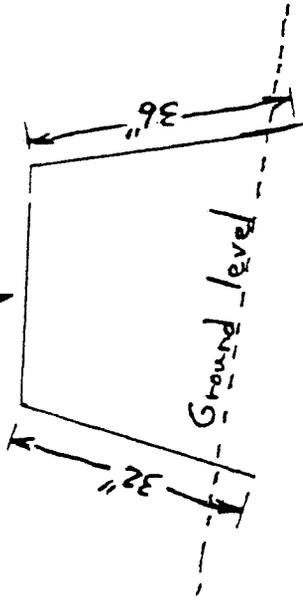
Permit #s: DFG-91-101-AF-SC R01; ADL 225563; SOE 15 910328
 Scale: 1" = 50' Date 8-10-98 Permittee: Ronald J. Bader



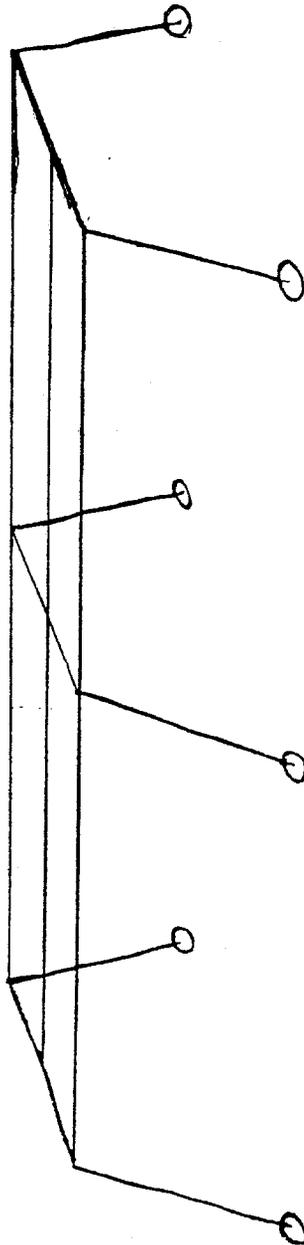
Purpose: Pacific Oyster and Blue Mussel Farming	Site Plan Hardening and Defouling Area	Revised Site Plan for Aquatic Farm Permit SID AK 910605-24A ADL 225563 COE 1-910328
Adjacent Property Owners: None to Farm Site	Scale: 1" = 10'	Applicant: Ronald Bader



Racks to be covered with
 36" X 18" X 3 1/2" cages.
 100 - 150 oyster per bag.



The rack is made of
 5/8" rebar. Six cages
 per rack.



Purpose: Pacific Oyster and Blue Mussel Farming	Plan for above ground rack	Site Plan for Aquatic Farm Permit SID AK 910605-24A ADL 225563 COE 1-91032B
Adjacent Property Owners: None to Farm Site	Scale: 1" = 2'	Applicant: Ronald Bader