

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

**PRELIMINARY BEST INTEREST FINDING  
10-YEAR AQUATIC FARMSITE LEASE RENEWAL**

**APPLICANT: William Blake LaRue  
*K-Bay Oyster Company*  
ADL # 227614**

**LOCATION: KACHEMAK BAY / HALIBUT COVE**

The Department of Natural Resources is accepting public comment on the following preliminary decision document for the renewal of a 10-year aquatic farm site lease. **Written comments must be received on or before 5:00 p.m., Tuesday, June 2, 2010.**

**PROPOSED ACTION:** The applicant is requesting the renewal of an existing aquatic farm lease along with a reduction in the size of the site located in Halibut Cove, Kachemak Bay, Alaska. The farm site lease renewal is for the continued use of, and a reduction in size from an area measuring 164 ft. x 800 ft. (3.0 acres) to an area measuring 54 ft. x 800 ft. (0.99) acres for shellfish culture. Within the culture area the lessee may place up to four 400 ft. longlines for oyster culture and secured with standard anchors. The maximum area that may be used is approximately 0.99 acres. The site is situated among existing aquatic farms in the Halibut Cove area.

The applicant has been successfully culturing Pacific oysters within Kachemak Bay for 10-years and with the reduction in farm site size, he has met and/or exceeded the minimum commercial use requirement. The farm site is located off the south shore of Halibut Cove, approximately 9 miles southeast of the City of Homer, Alaska.

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.

**ADMINISTRATIVE RECORD:** The administrative record for this application is file number ADL 227614.

**GEOGRAPHIC LOCATION:** The proposed farm site is located on state-owned tide and submerged lands 9.0 miles east of Homer in Halibut Cove, Kachemak Bay.

**USGS MAP COVERAGE:** Seldovia D -4

**NAUTICAL CHART:** 16645

**LEGAL DESCRIPTION:**

Township 7 South, Range 11 West, Seward Meridian, and more specifically described as:

**Grow-out Area:**

Section 6: SE ¼ within Halibut Cove encompassing a total area measuring 54 ft. x 800 ft. for shellfish grow-out.

The total area encompassed by this aquatic farm proposal is approximately 0.99 acres, more or less.

**POLITICAL INFORMATION:**

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

**COASTAL DISTRICT:** The project is inside the Kenai Peninsula Borough Coastal District and was found to be consistent with the Alaska Coastal Management Program (ACMP) on February 22, 2000, under State I.D. NO. AK 9905-11AA.

**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, 83<sup>rd</sup> Congress, First Session; 67 Stat. 29); Equal Footing Doctrine; Section 1 of the Alaska Statehood Act.

**TITLE REPORT:** A title report was received on June 1, 2000.

**PLANNING AND CLASSIFICATION:**

**LAND MANAGEMENT PLAN:** Kenai Area Plan (KAP), Region 9, South Side Kachemak Bay and Chugach Islands, Unit 562A, Kachemak Bay Critical Habitat Area General Tidelands, adopted January 7, 2000.

**LAND CLASSIFICATION:** The KAP classifies state owned tidelands in this area as wildlife habitat and harvest. 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 is currently undergoing Alaska Coastal Management consistency review. If the project is found to be inconsistent the project can not obtain a lease.

**ACCESS:** Access to the proposed sites is by boat or floatplane. A fifty-foot-wide easement will be

reserved to protect public access in accordance with 11 AAC 63.050(b)(6) and 11 AAC 53. If additional specific easements are required, they will be addressed under the final recommendation section of this document.

#### **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, native corporations and Fish and Game Advisory committees. 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 will be sent a copy of the final best interest finding and will be eligible to appeal. The final best interest finding will consider and address any comments related to the subject proposal. The final best interest finding will include explanation of the appeal process. The public comment period begins on April 26, 2010 and will end at 5:00 p.m. on June 2, 2010.

**BONDING AND INSURANCE:** The applicant currently has a performance bond in place. The minimum security amount for a lease is \$2,500. However, if three or more lessees post an association bond to cover all of their leases, the minimum security amount is 50 percent of the amount individually calculated for each lease. The association must designate an agent for notification purposes. The association has the right to be notified of the termination of a lease covered by its association bond. If neither the former lessee nor the association completes the site restoration as required by AS 38.05.090, the department will use the association bond for this purpose, up to 100 percent of the amount individually calculated for that lease. The association may remove a lease in good standing from the coverage of its association bond after a 60-day notice to the department, during which time the affected lessee must make other arrangements to comply with 11 AAC 64.080(b). A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of an association bond.

At this time, the Department does not require these operations to have insurance. Insurance may be required in the future depending on the operation and the policies of the department at the time changes are made to the lease or another lease is issued. Insurance, such as Workman's Compensation Insurance, may be required under other state laws.

**TRADITIONAL USE FINDING:** The presence of aquatic farm sites has not disrupted traditional and/or existing uses of the area, such as commercial and sport fishing, subsistence activities, boat travel, anchorage 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 562A, Kachemak Bay Critical Habitat Area General Tidelands, adopted January 7, 2000. The designations are habitat and harvest. These areas are to be managed so that their principle resources are protected. The existence of the farm site over the last 10-years has not appeared to have caused impacts to the habitat and harvest values in this area.

**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 sites.

**ENVIRONMENTAL RISK QUESTIONNAIRE:** The applicant has indicated that this proposed activity will not generate, use, store, transport, disposal of, or otherwise come in contact with toxic and/or hazardous materials, and/or hydrocarbons.

**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 impacts to nearby communities or residential land due to the placement of this farm at the proposed location.
2. Information available suggests the aquatic farm should not disrupted traditional and existing uses of the site for use as an anchorage, commercial and sport fishing, recreation, and tourism.

Issuing a lease for an aquatic farm would not compete with commercial and sport fisheries as access to those resources being sought after would be protected and stipulated in any resultant lease agreement.

In order to inform the public of their continued access rights, any resultant lease would stipulate the requirement that signs be posted with information that informs the public of their rights of access through the farm site as well as access to those fish and wildlife resources not being cultured at the aquatic farm site.

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.

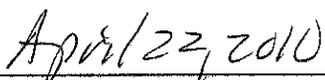
**Surface Area:** The proposal does not encumber more than a third of the surface area of a bay, bight, or cove in accordance with 11 AAC 63.050(c).

**ADVANTAGES AND DISADVANTAGES OF THE PROPOSAL:** This aquatic farm provides opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of 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.

There are several other aquatic farm sites in the same area as this farm site that have been there for 10-years or longer. There seems to be no obvious disadvantages of this aquatic farm site 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.

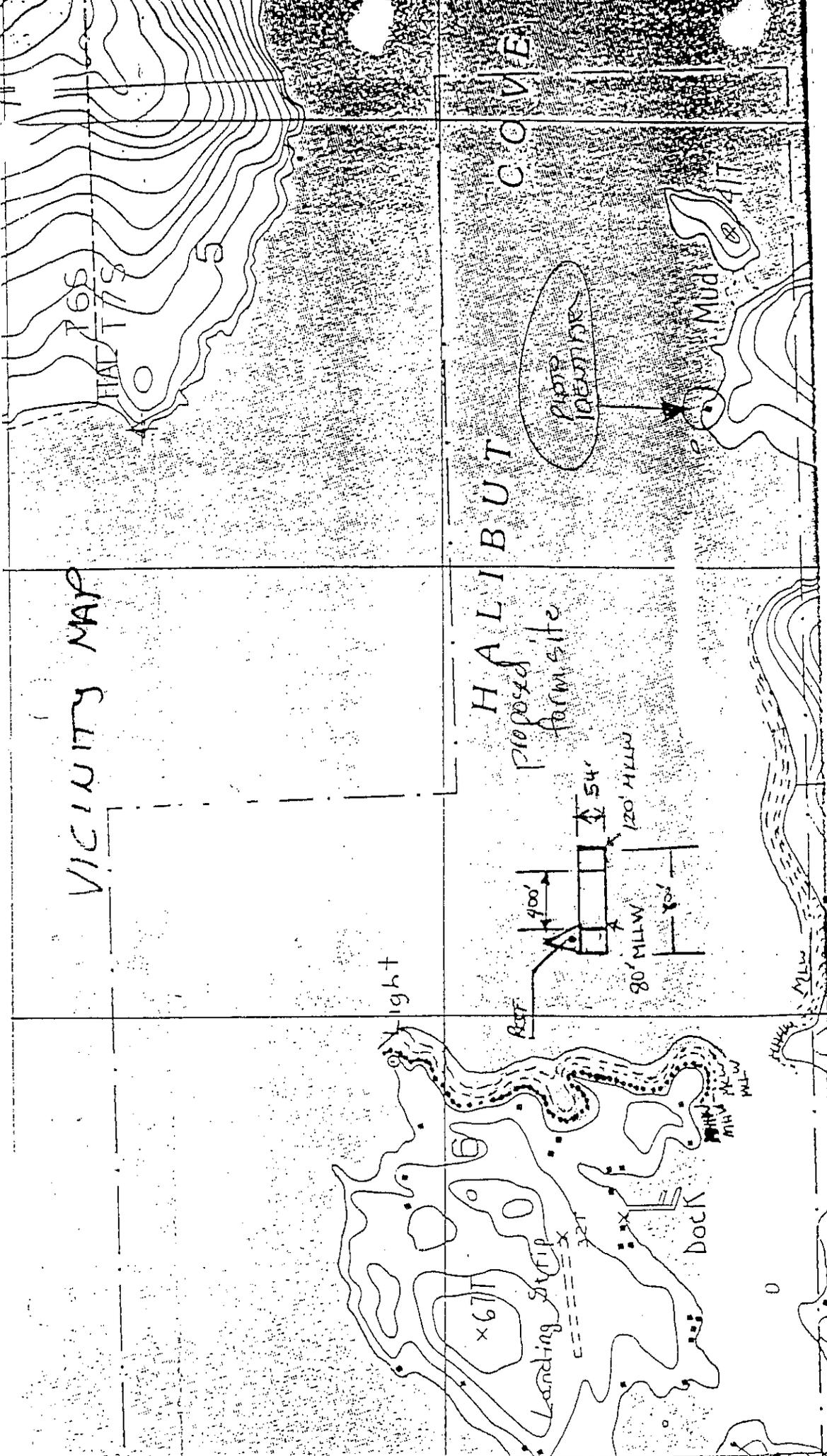
**RECOMMENDATION:** Considering the information known at this time and described within this decision, it appears to be in the state's best interest to renew this aquatic farm site lease of approximately 0.99 acres more or less to the applicant for suspended culture. Any resultant lease will include stipulations that may be identified as a result of public comments.

  
Rick Thompson, Southcentral Regional Manager

  
Date



VICINITY MAP



SCALE 1:25 000



Site 1' boundaries and layout

Anchors will be 1100 pound railroad wheels on a 2:1 slope.

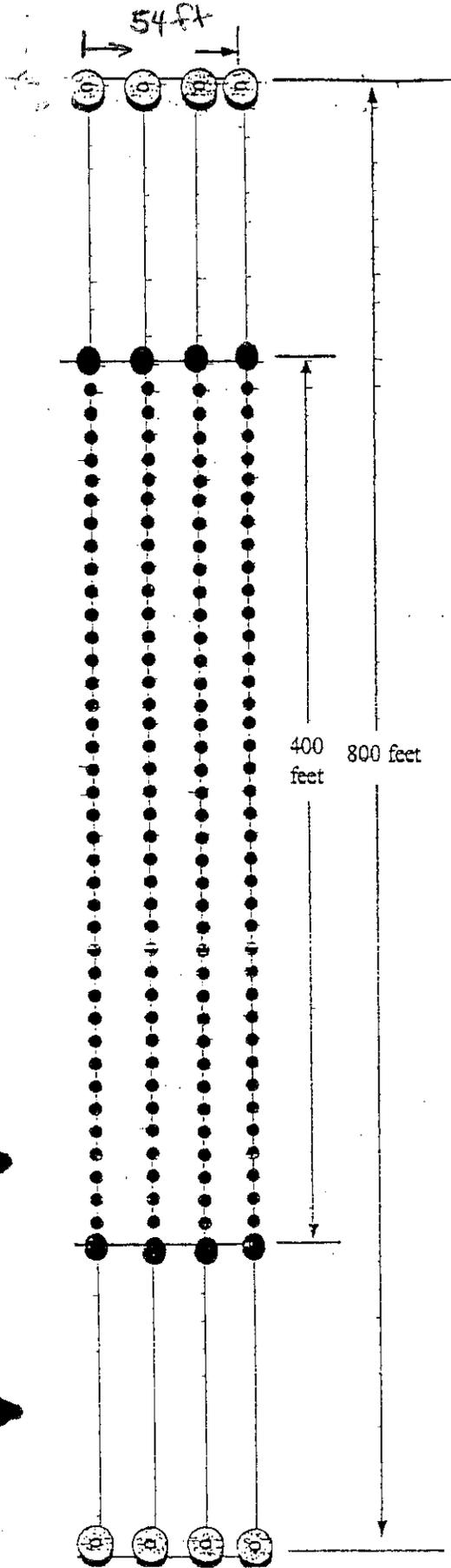
Corner bouys will be size A4 and orange in colour for visibility and to mark outside parameters of farm.

Ten tier lantern nets with 10000 animals each will be suspended every 3 feet on 5 longlines. The remaining 5 longlines will have 10' mussel socks suspended every 3'.

380 A3 bouys spaced 10 feet apart and slate gray in colour to minimize visual impact.

Longlines are 3/4 inch poly. Each one is 400 feet in length.

Anchor lines are 3/4 poly and 225 feet long. Chafing gear is attached at anchors to eliminate wear.



~ 17.5 feet

3 Acres Farm

CROSS - SECTIONAL

