

**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: JON VAN HYNING  
AQUABIONICS, INCORPORATED  
ADL #225239**

**LOCATION: SOUTH BAY / PERRY ISLAND**

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 along with reducing the size of his farm to just under 1 acre of tide and submerged lands. The applicant currently holds a lease consisting of two sites. Site #1 will be reduced to an area measuring 20 ft. x 1500 ft. for shellfish culture, plus an area 12 ft. x 800 ft. for an up-welling platform and seed culturing area. Site #2 is a 3.5 acre area located on the uplands for facilities directly related to the operation of the aquatic farm site.

The total acreage for the tideland portion of the lease is 0.90 acres. The total area of the upland part of the lease is 3.5 acres.

The applicant has been successfully culturing Pacific oysters and has met the required commercial use threshold for a 1.0 acres farm, which is a requirement to renew an existing aquatic farm tideland lease.

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 225239.

**LOCATION:**

**USGS MAP COVERAGE:** Seward C-3

**NAUTICAL CHART:** 16705 Prince William Sound

**LEGAL DESCRIPTION:** Township 7 North, Range 9 East, Seward Meridian,  
And more specifically described as:

Section 20: NE ¼, those tide and submerged lands located within South Bay on Perry Island, encompassing an area measuring 20 ft x 1500 ft for grow-out of farmed stock containing approximately 0.68 acres more or less; and an area 12 ft x 800 ft consisting of a cable connected to rock outcropping at each end with individual units consisting of two 5-gallon plastic buckets placed end to end and spaced approximately 12-ft apart, up to a maximum of 25 units, to hold farm seed plus an 8 ft x 12 ft, up-welling platform in the northern-most area of the site, with eight, 4 ft x 4 ft white totes to contain farm seed. The additional requested area comprises 0.22 acres; and

Section 20: NE ¼, those uplands located on the south end of Perry Island, encompassing an area of approximately 3.5 acres, according to the drawing attached hereto and made a part of this lease amendment and labeled Attachment A. The following improvements are authorized on the uplands: dam, skiff shed, dwelling, warehouse, and a generator building. No other improvements are authorized.

**GEOGRAPHIC:** The proposed farm site is located on state-owned tide and submerged lands off the south side of Perry Island in Prince William Sound approximately 9 miles west of the City of Whittier.

**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 Whittier.

**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 9, Perry Island, Adopted in 1988.

**SURFACE CLASSIFICATION:** The Prince William Sound Area Plan designates state owned tidelands at the proposed location as general use.

**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 December 10, 1996, under State I.D. No. AK 9010-06AA. 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 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 9, Perry Island. State land will be retained in public ownership and managed for multiple use with emphasis on public recreation. State land may be used for limited public recreation facilities such as public use cabins or mooring buoys. Management of the tidelands will ensure their unspoiled visual appearance.

**Upland Owner/Management Intent:** Perry Island is managed by the USFS. No federal timber harvest is expected during the life the management plan. The federal land is open to mining, though it is only weakly mineralized. The state has selected the majority of uplands on the island and owns the tidelands that surround the island. Over the course of the 10-year lease there have been no known conflicts between upland owner (USFS) 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 at Perry Island.
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

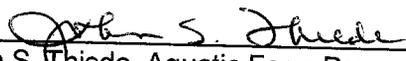
**Social, Economic, and Environmental Concerns:** There are no known significant social, economic, and environmental effects from the existing lease.

**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).

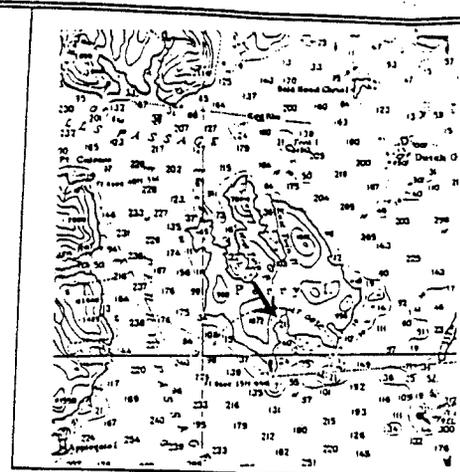
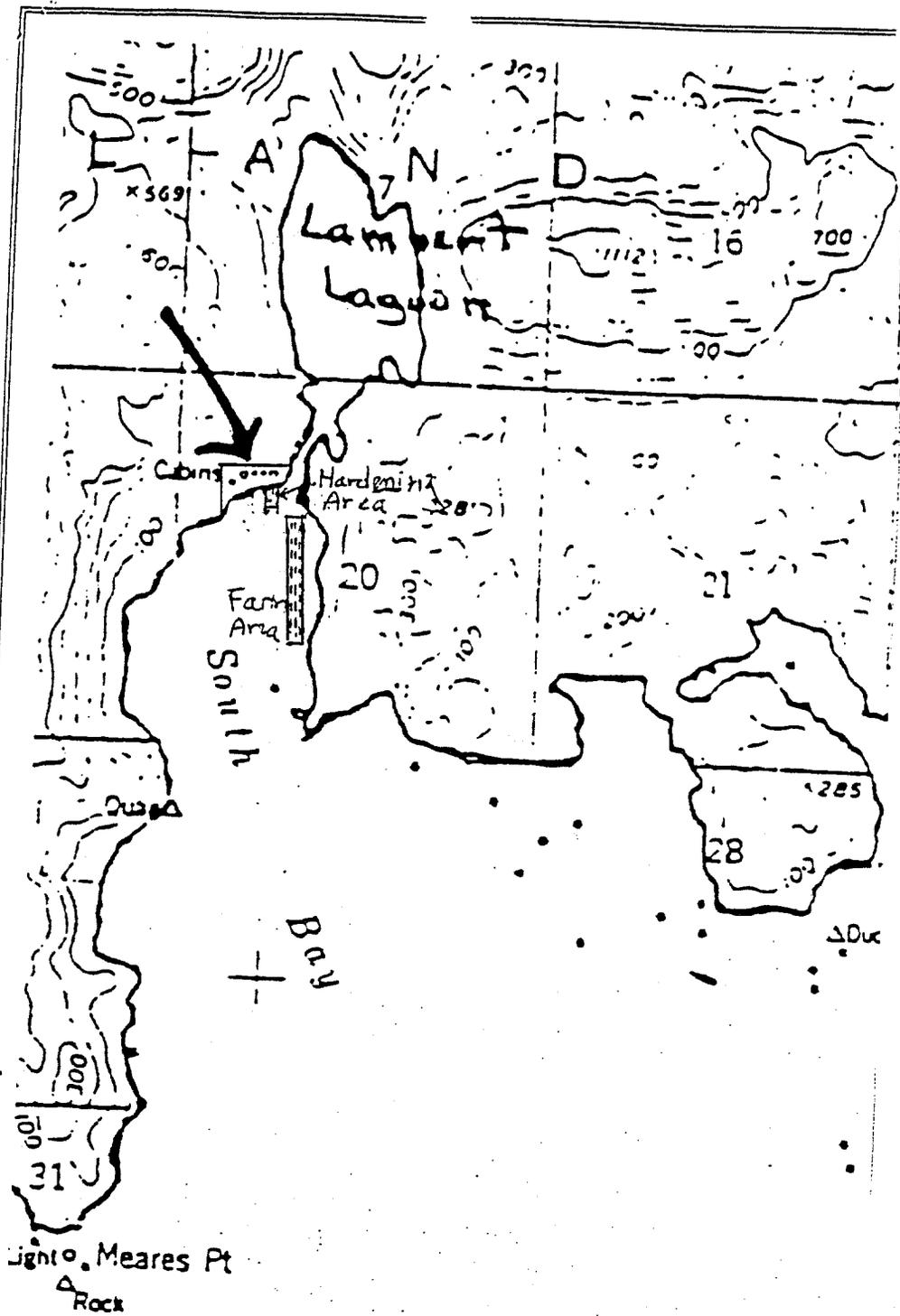
This aquatic farm has provided opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of renewing this lease on state owned tide and submerged lands is the continued employment opportunities as well as any secondary 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 3.5 acres, more or less to the applicant for upland facilities and 0.90 acres, more or less for intertidal culture. The total acreage for this lease will be 4.4 acres, more or less. 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



VICINITY MAP

Date Prepared: 30 Sept. 97	Applicant's Name: AQUADYNAMICS INC. Jack M. Van Hyming
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND	
AQUATIC FARM DIAGRAM	
Sec. (SRO:NE) Township 7N, Range 9E, Meridian Seward	
Scale: 2" = 1 mile	ATTACHMENT # 2
SHEET 2 OF 3	File # ADL No. 225239



Hardening Area

100' x 100'

X Tidal BM

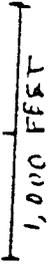
S. Bay site

1500'

150'

Reef

SOUTH BAY PERRY ISLAND



ATTACHMENT # 3

ADL No. 225239

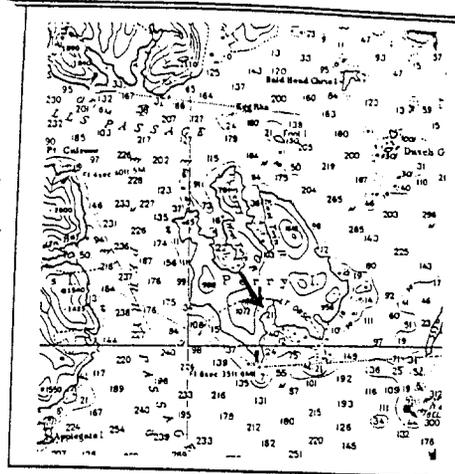


1850 000 FEET (ZONE 4)

148°

R 8 E

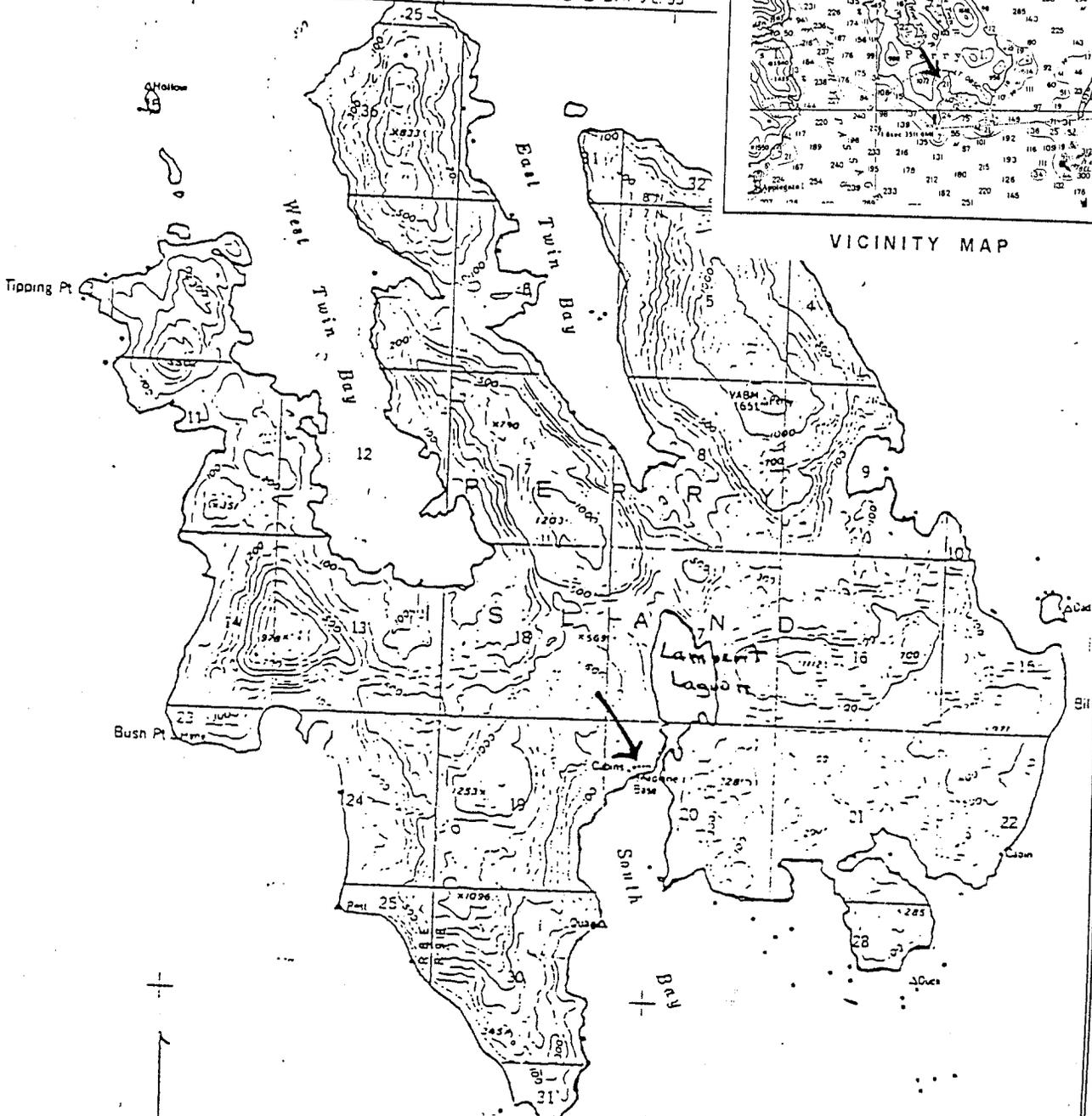
15 EWARD D-31R 9 E. 55'



VICINITY MAP

P R R R Y

P A S S A G E



Scale: 1 inch = 1 mile

Date Prepared: 30 Sept. 97	Applicant's Name: AQUABIONICS INC. Jack M. Van Hynning
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND	
AQUATIC FARM DIAGRAM	
Sec.(s) 20: NE 1/4 township 7N, Range 9E, Meridian 5 west	
Scale: 1" = 1 mile	ATTACHMENT # 1
SHEET 1 OF 3	File # ADL No. 225239

Field Work 5-22-50

By H.E.A. & J.H.C.

Revised 10-13-60

By P.B.L.

Revised 10-27-64

By C.S.W.

Revised 1-27-82

By D.T.W.

Revised 12-6-88

By J.R.K.

Development Legend

1. Skiff Shed

2. Dwelling

3. Warehouse

4. ~~Experimental Wind Powered~~

~~Water Pump~~ Removed

5. Windmill

6. ~~Acquaculture Building~~  
Generator

Meanders

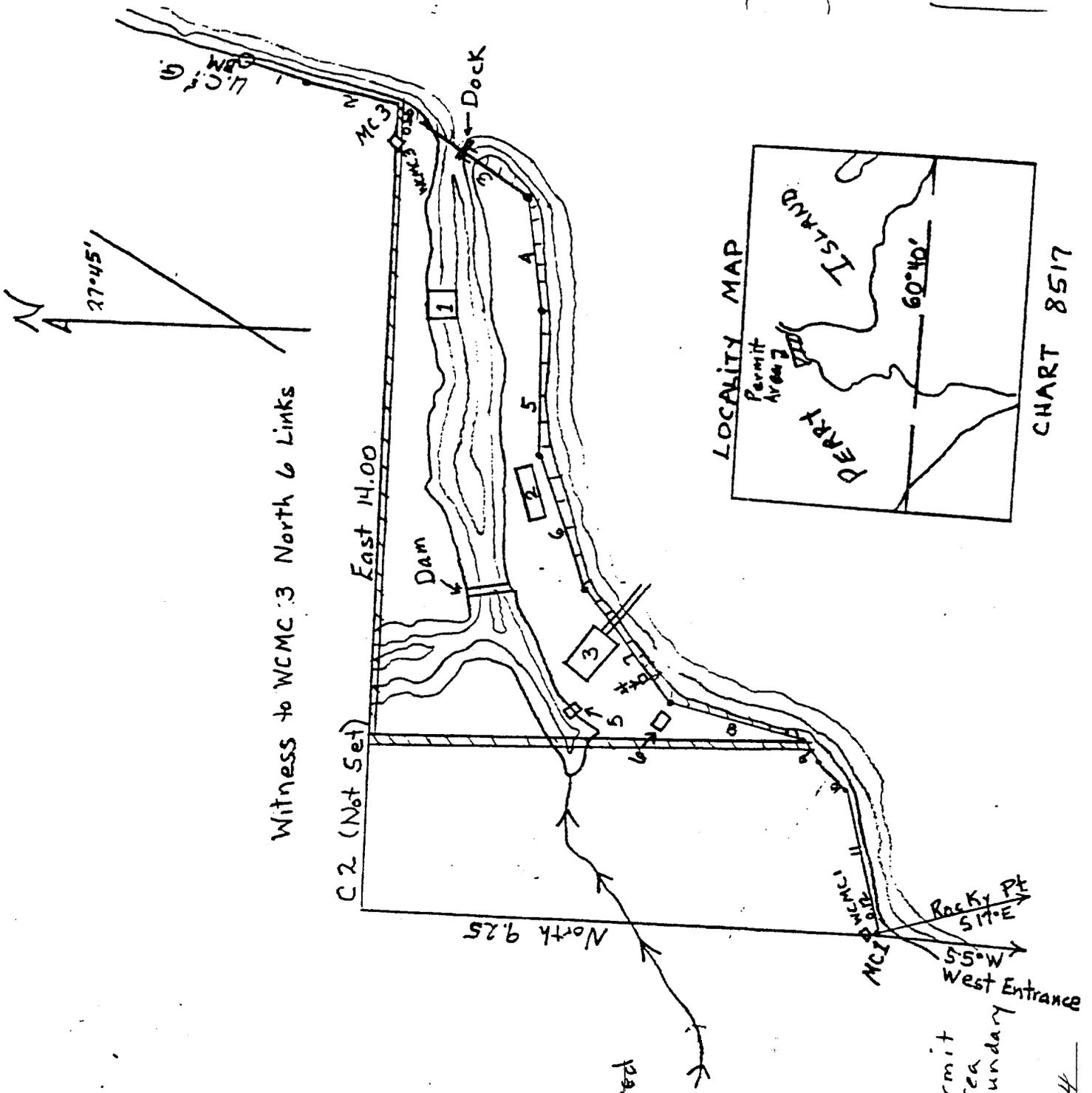
1.	S 17° W	1.14	CHS.
2.	S 10° W	1.64	"
3.	S 34° W	2.86	"
4.	S 81° W	2.00	"
5.	N 88° W	2.50	"
6.	S 69° W	2.50	"
7.	S 50° W	2.50	"
8.	S 12° W	2.50	"
9.	S 53° W	0.53	"
10.	S 43° W	0.64	"
11.	S 74° W	2.50	"

Permit Area Boundary



ATTACHMENT # 4

ADL No. 225239



Witness to WCMC 3 North 6 Links

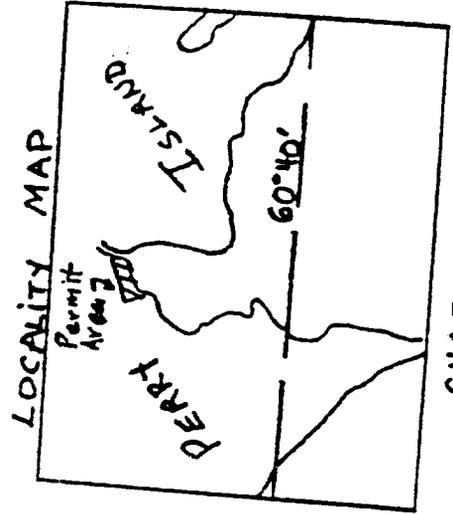


CHART 8517



# TEN-YEAR AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Fill out an operation and development plan for each species using an optimistic expectation of what is possible within the limits of your farm site and the anticipated seed supply. \*Fill in your projected income by the end of Year 5 at the bottom of this page.

Name Jon KATHVING DNR ADL No. 225239 ADF&G Permit No. 91-26AAAF-C  
 Species/Common Name to Be Cultured Practical Oyster

(Individual plan required for each species)

Calendar Year	Installation Schedule			# of Seed Collected Offsite	# of Seed Collected Onsite	# of Hatchery Grown Seed	Projected Harvest and Income	
	Support Facilities	Gear Types	Anchor Systems				# of Animals	# of Pounds
(Year 1) 20 <u>08</u>	Install expeller in lagoons Cahnel Nets	Lantern add 10		NA	NA	80,000	12,000	6,000.00
(Year 2) 20 <u>09</u>	instale Deese power unit on workbench	Lantern nets add 10		NA	NA	80,000	18,000	9,000
(Year 3) 20 <u>10</u>		Lantern nets add 15		NA	NA	80,000	23,000	11,000
(Year 4) 20 <u>11</u>		Lantern nets add 15		NA	NA	100,000	30,000	15,000.
(Year 5) 20 <u>12</u>		Lantern nets add 15		NA	NA	100,000	30,000	15,000

You must reach the commercial use requirement of your lease by the end of your 5<sup>th</sup> year and then continue to maintain or increase that level of productions throughout the remaining years of your lease. The commercial use requirement as set out in AS 16.40.199 is defined as a production level of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less. The commercial use requirement applies to the combined total of all species, is not a "per species" requirement and, must be maintained in Years 6 - 10.

\*Projected income for this species at the end of Year 5: \$ 15,000.00. Projected income is based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.

AFOP exp. 2/28/18  
 Lease exp. 12/31/08

ADF&G AQUATIC FARMS PROGRAM  
 Operation Permit No.: 91-26AAAF-SC  
 ATTACHMENT NO.: 14

**AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B**

Continued - Page 2.

Name Don Van Hyning DNR ADL Number 8252339 ADF&G Permit Number 91-26A-AF-C  
 Species (Common Name) to be Cultured Paik

Calendar Year	Installation Schedule			Data to be reported for each species			Projected Harvest and Income		
	Support Facilities	Gear Types	Anchor Systems	# of Seed Collected Offsite	# of Seed Collected Onsite	# of Hatchery Grown Seed	# of Animals	# of Pounds	Income
(Year 6) 2013	add another oyster line in bay	2400	—	—	—	100,000	35,000	—	19,000
(Year 7) 2014	add another upweller	—	—	—	—	100,000	35,000	—	19,000
(Year 8) 2015	—	—	—	—	—	100,000	40,000	—	21,600
(Year 9) 2016	—	—	—	—	—	100,000	40,000	—	21,600
(Year 10) 2017	—	—	—	—	—	100,000	40,000	—	21,600

The information contained herein is true and complete to the best of my knowledge.

Printed name: Don Van Hyning

Signature: [Handwritten Signature]

Date: Jan 24-07

ADF&G AQUATIC FARMS PROGRAM

Operation Permit No.: 91-26A-AF-50

ATTACHMENT NO.: 15