

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

PRELIMINARY BEST INTEREST FINDING AND DECISION
AQUATIC FARMSITE LEASE F FOR AN EXISTING FARM

APPLICANT: Steven M. Rykaczewski
ADL NUMBER: 227591

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., Thursday, September 15, 2011.**

PROPOSED ACTION: The applicant is applying for a 10-year aquatic farm lease on an exiting farm to farm located approximately 16 miles northwest of Homer, on the southwest side of the entrance into Bear Cove. The applicant is currently utilizing an area measuring 160' x 400 ft. utilizing five long-lines with lantern nets for oyster grow-out. In addition there is a 10-foot by 20-foot work raft within the farm boundaries.

The total acreage for is 1.47 acres

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

ADMINISTRATIVE RECORD: The individual case file constitutes the administrative record for each application submitted.

LOCATION:

GEOGRAPHIC: The existing farmsite is located on state-owned tidelands in Bear Cove, Kachemak Bay near the communities of Homer, Halibut Cove, and Seldovia, within the Kachemak Bay State Critical Habitat Area but outside Kachemak Bay State Park.

BOROUGH/MUNICIPALITY: Kenai Peninsula Borough.

REGIONAL/VILLAGE CORPORATION/COUNCILS: Cook Inlet Region, Incorporated, and Seldovia Native Association.

FISH AND GAME ADVISORY COMMITTEES AND COUNCILS: Homer Fish and Game Advisory Council.

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.

TITLE REPORT: Report was requested on September 20, 1999.

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Kenai Area Plan, adopted 2000.

LAND CLASSIFICATION: The existing aquatic farm is within the Kenai Area Plan, Region 8, Map 8A – Fritz Creek and Upper Kachemak Bay. The tideland designation for Bear Cove is Public Recreation and Tourism (rp). Areas used by concentrations of recreationists or tourists compared to the rest of the planning area; or areas with high potential to attract concentrations of recreationists and tourists. These areas offer localized attractions, or ease of access, or developed facilities. Examples include marinas, cabins, lodges, anchorages, scenic overlooks, road-accessible shore locations that are used for picnicking, sports and fishing. The recreation and tourism uses for which these units are designated may be either public or commercial. This land will remain in state ownership unless otherwise noted. The primary management intent for these sites is to protect the opportunity of the public to use these sites, and their public vales for recreation.

OTHER PLANS: The Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan was adopted by the Department of Fish and Game in December 1993. The Department of Fish and Game has reviewed the proposal to determine if it complies with this plan.

MINERAL CLOSING ORDER: The proposed sites are open to mineral entry. No mineral closing order is proposed.

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: The law does not require a survey before issuing a 10-year negotiated lease. However, the department has the right to require one, at the applicant's expense, if boundary conflicts or disputes over acreage or other land uses arise.

APPRAISAL: A site-specific appraisal is not necessary because the Division of Mining, Land and Water has approved an administrative lease fee schedule for aquatic farmsites. 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 want to use the fee schedule. If an applicant opts for a site-specific appraisal, the approved appraisal will establish the rental for the affected lease, and the applicant cannot later decide to switch back to the fee-schedule rate.

PUBLIC AND AGENCY COMMENTS: Public and agency comments are welcome during the comment period and will be used in making the final finding. Individuals who comment on the preliminary best interest finding or proposed land use plan will be sent a copy of the final document.

ENVIRONMENTAL RISK ASSESSMENT: The applicants have submitted signed environmental risk questionnaires. The questionnaire asks for information on potentially hazardous materials, such as plans for onsite storage of fuel or chemicals. The individual decisions address the use of potentially hazardous materials that may be used at the farm site.

BONDING AND INSURANCE: 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 bond regulations requires: The minimum security amount for a lease is \$2,500. However, if three or more lessees post an association bond to over 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 60 days' 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.

USGS MAP COVERAGE: Seldovia C-3

NAUTICAL CHART: 16645

LEGAL DESCRIPTION: Township 5 South, Range 10 West, Seward Meridian, Section 19

LATITUDE/LONGITUDE: 59°43.34"N, 151°02.700"W

LAND CLASSIFICATION: This area has been classified Wildlife Habitat and Public Recreation. This classification does not preclude aquatic farming.

OTHER PENDING INTERESTS: The uplands are privately owned. During the initial 10-year lease comment period the upland owner expressed concern about the location of the existing farmsite. The upland owner stated that the location would pose a navigational hazard for accessing the uplands by boat or seaplane; that the proposed farm site would create an undesirable visual impact from buoys and the work-raft; and that the commercial activity offshore of her property would be undesirable. The upland owner is being sent a copy of this preliminary decision for comments on the new 10-year lease proposal.

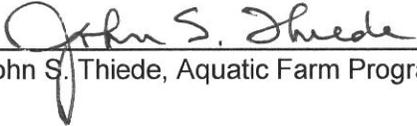
ENVIRONMENTAL RISK QUESTIONNAIRE: The applicant has indicated that no toxic and/or hazardous materials, and/or hydrocarbons will be generated, used, stored, transported, disposed of or otherwise come in contact with the proposed farm site.

RECOMMENDATION: The preliminary decision is subject to public comments. The Final Decision and Finding will be made on or about October 10, 2011. If significant changes occur to the decision, additional notice will be sent to those who made written comments during the preliminary decision comment period.

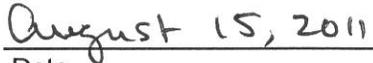
The criteria set out in 11 AAC 63.050(b) have been considered:

1. There are no known policies, other than those in the Kenai Peninsula Borough Coastal District Plan and the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan that would impact this proposal.
2. There has not been any known conflict with the commercial and recreational fishery that takes place within Bear Cove. However, the area has not been routinely opened to commercial salmon fishing in the last decade. Personal or recreational use fishers may use the area to some extent.
3. The placement of this farm in this location does not appear to have a negative impact on the upland owner. The site is placed so that access to the uplands is possible by boat during a low tide.
4. There are no known historic or cultural resources in the area.
5. There are no known commercial or industrial facilities that are incompatible with aquatic farming known to exist in the area.
6. Public access would be reserved along the mean high water line, protecting the public's right of access.
7. Upland owner concerns.

RECOMMENDATION: Based on the information considered above, it appears to be in the state's best interest to lease 1.47 acres for oyster in Bear Cove. Any resultant lease will include stipulations that may be identified as a result of public comments. Approval of the proposal is recommended. The security bond set at \$2,500 or \$1250 with an association bond will remain in effect.



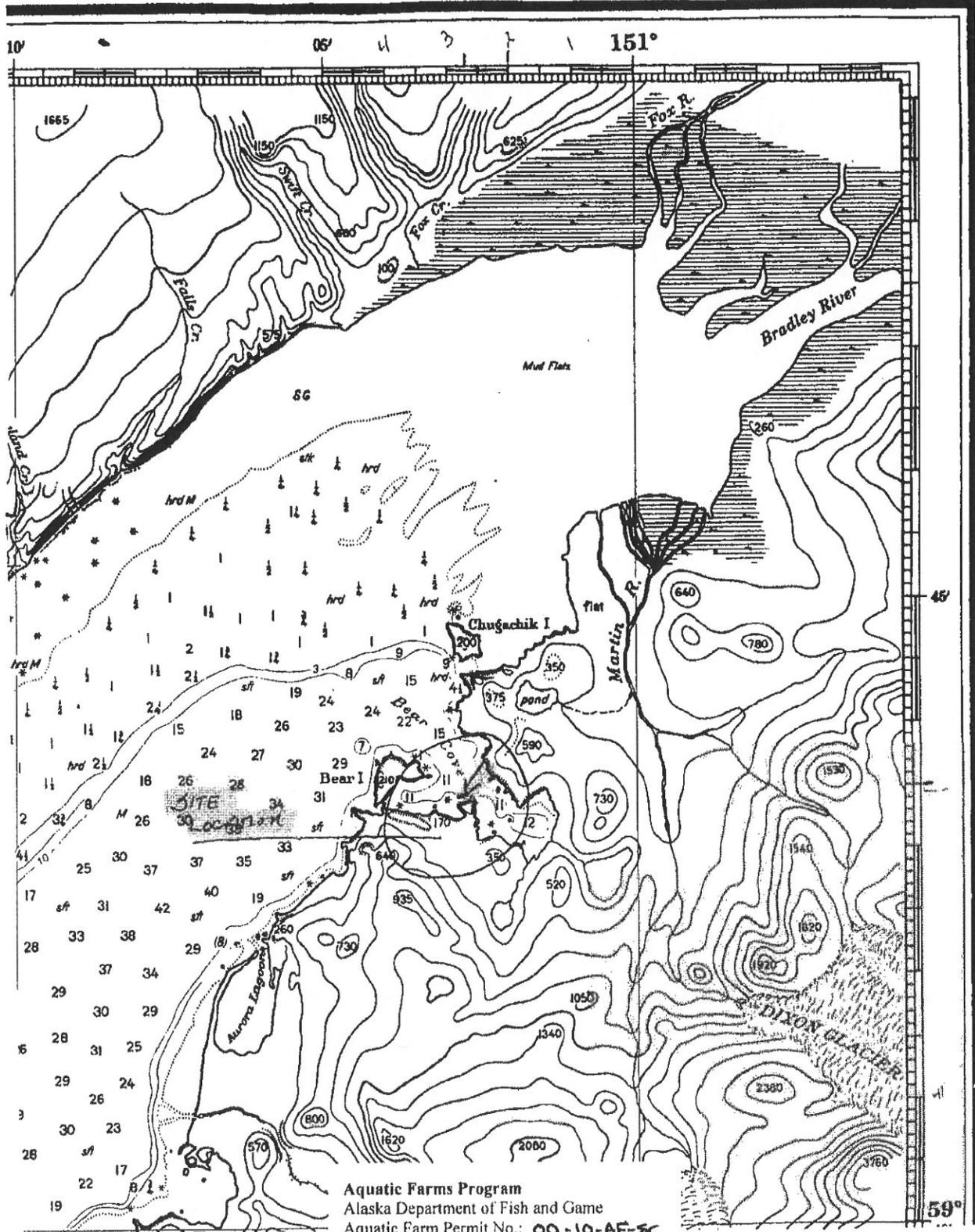
John S. Thiede, Aquatic Farm Program Manager



Date

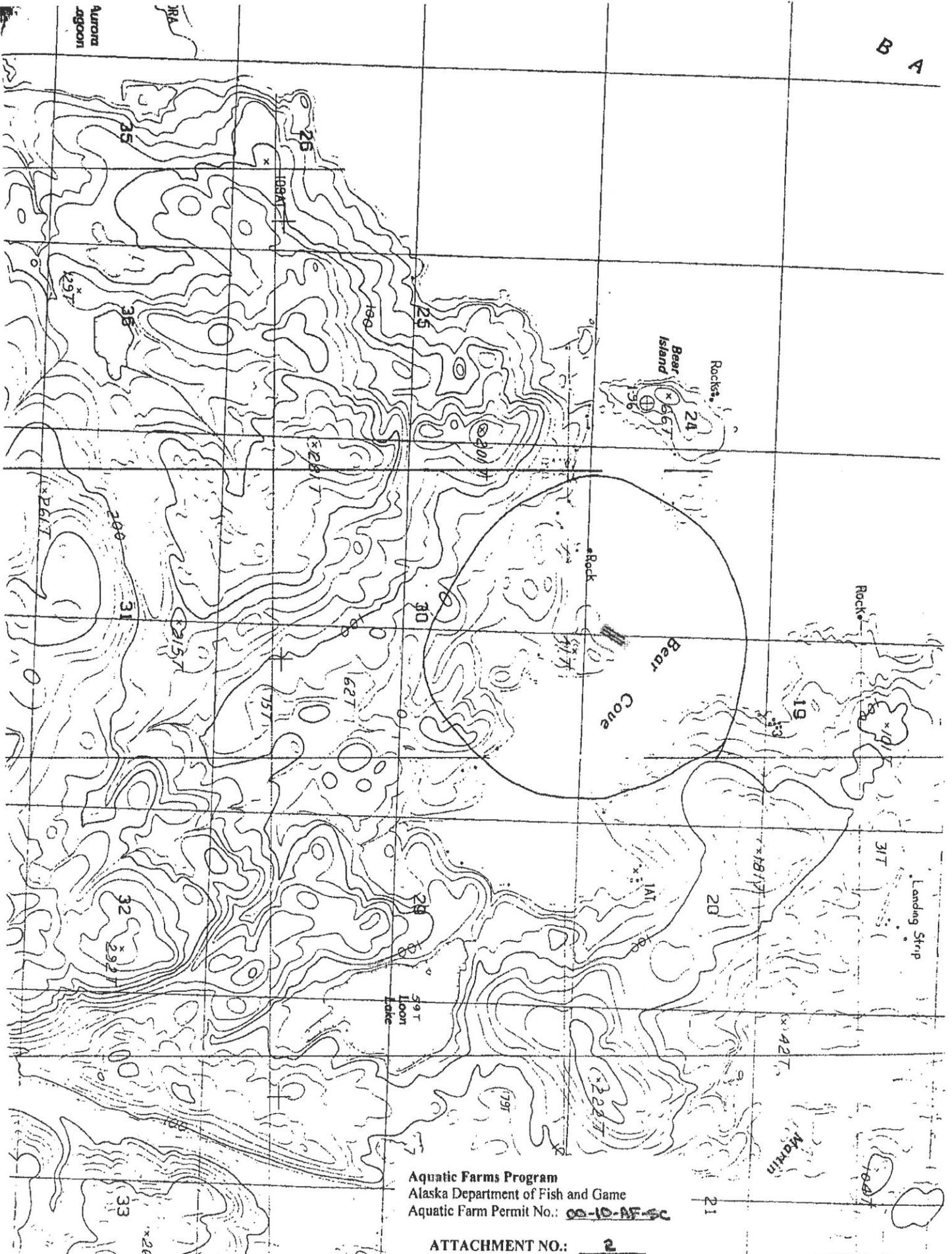
SOUNDINGS IN FATHOMS

Nautical Chart Catalog No. 3, Panel K



Aquatic Farms Program
 Alaska Department of Fish and Game
 Aquatic Farm Permit No.: 00-10-AF-5C

ATTACHMENT NO.: 1



Aquatic Farms Program
 Alaska Department of Fish and Game
 Aquatic Farm Permit No.: 00-10-AF-4C

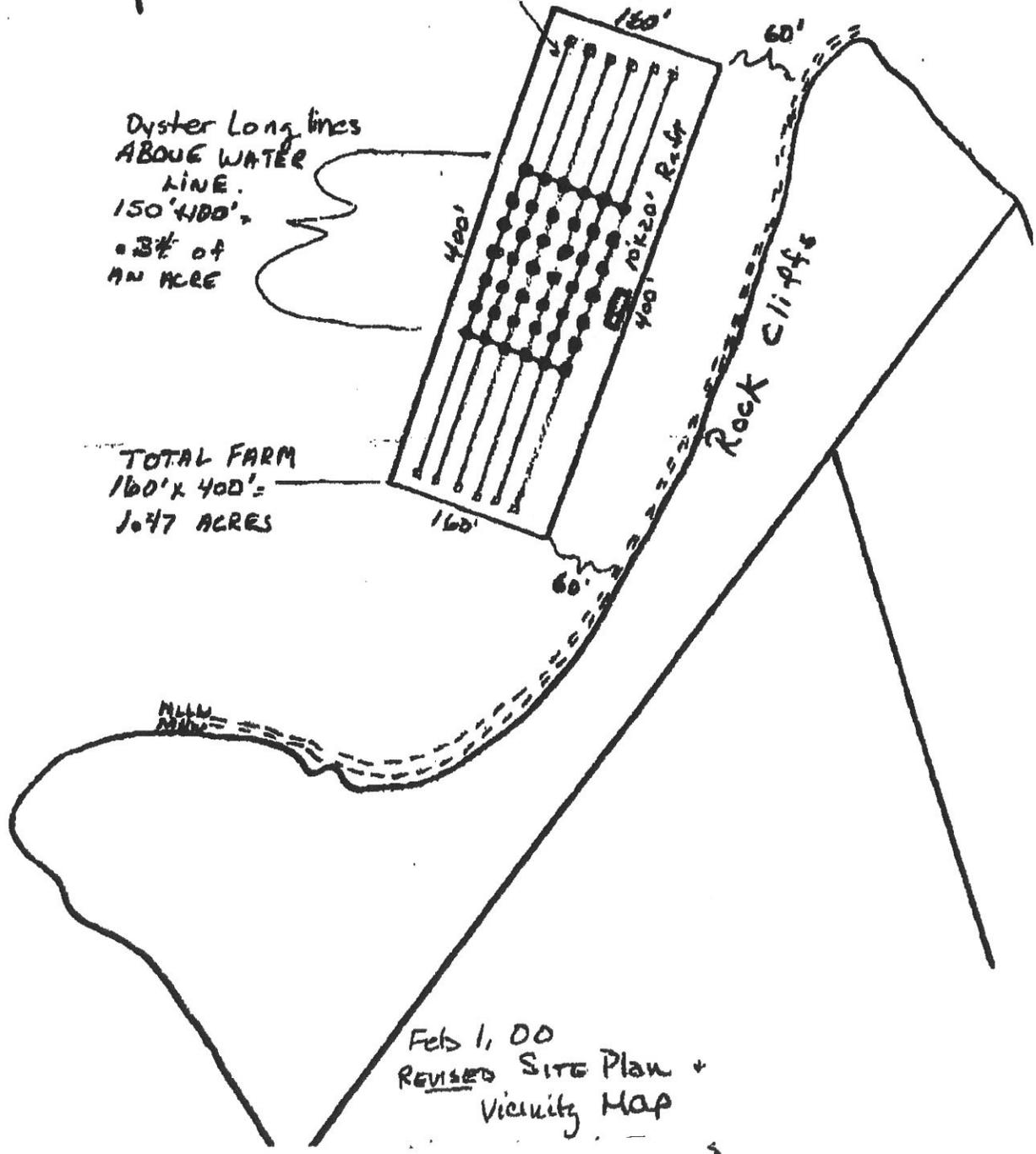
ATTACHMENT NO.: 2



3/4" ANCHOR LINE w/ 150' DAN-OR-AN ANCHORS
w/ 3/8" CHAIN 25' LONG

Oyster Long lines
ABOVE WATER
LINE.
150' x 100'
= 3% of
AN ACRE

TOTAL FARM
160' x 400' =
1.47 ACRES

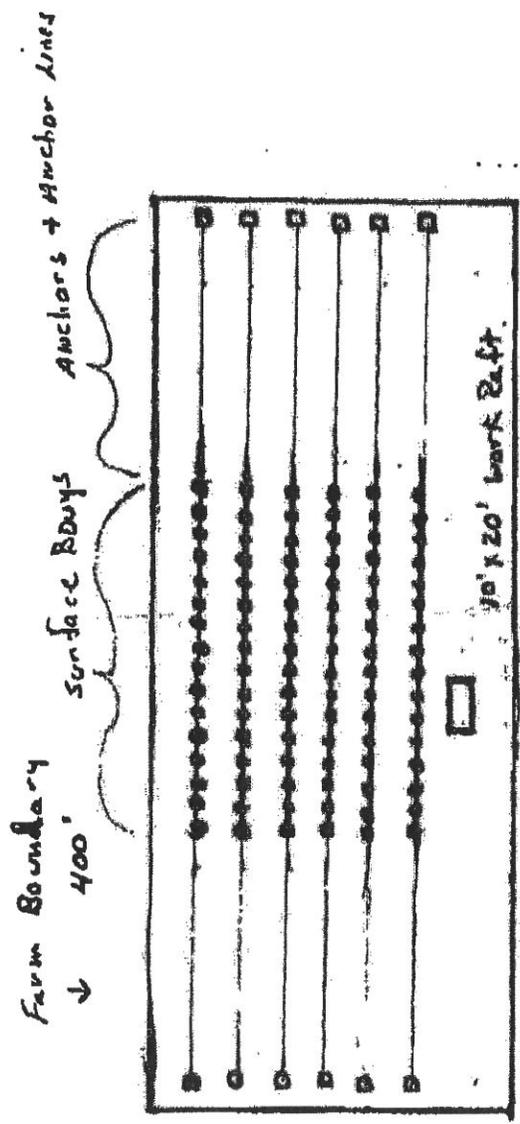


Feb 1, 00
REVISED SITE Plan +
Vicinity Map

Aquatic Farms Program
Alaska Department of Fish and Game
Aquatic Farm Permit No.: 00-10-AF-30

ATTACHMENT NO.: 3

Scale 1" = 80'



Farm Boundary 160' →

Boundary $160' \times 400' = 1.47$ acres
 Surface Boundary $150' \times 100' = 0.34$ of an acre.

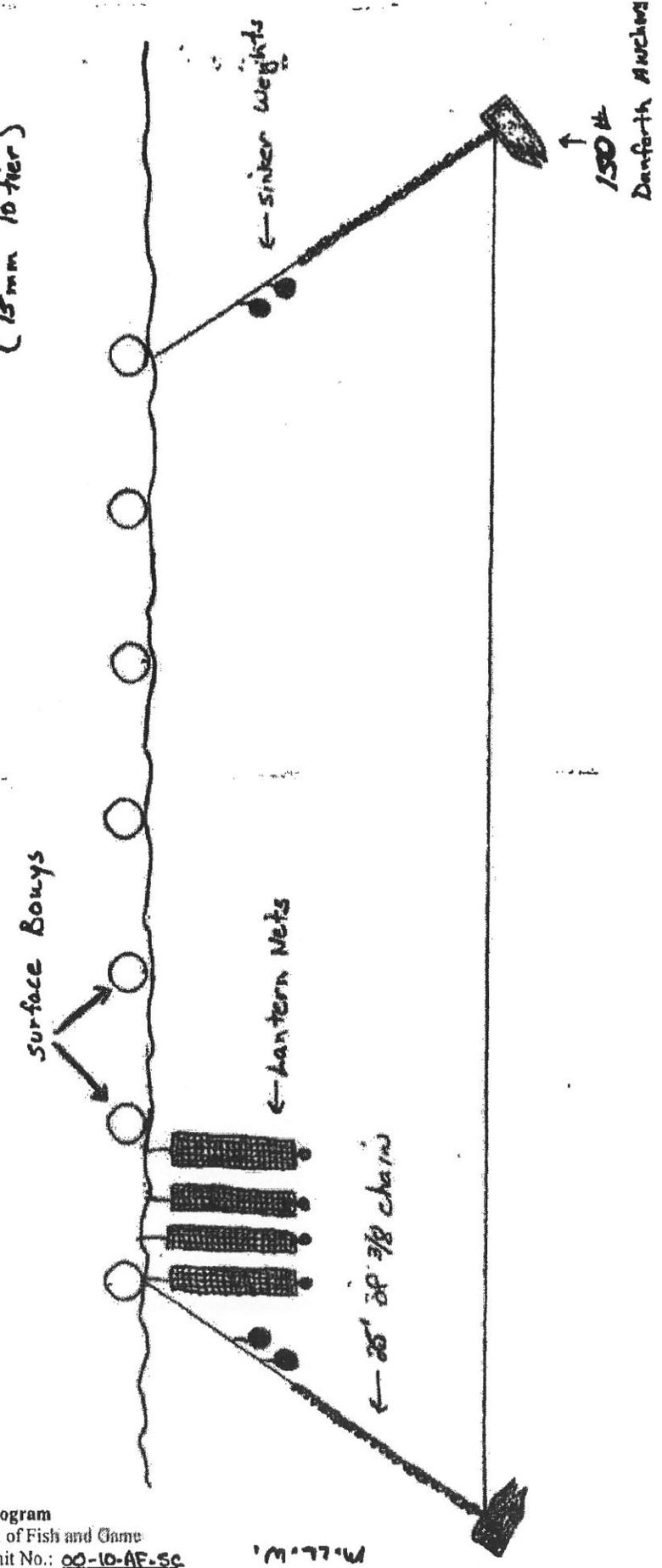
Revised Detailed Drawing
 Feb. 2, 00

Aquatic Farms Program
 Alaska Department of Fish and Game
 Aquatic Farm Permit No.: 00-10-AF-00

ATTACHMENT NO.: 4

150' Longlines 3/4" mesh
 16 A-2 bouys - 1 every 10'
 50 lantern nets - 1 every 3'
 (15mm 10 tier)

REVISED Feb 1, 00
 CROSS-SECTIONAL DRAWING



Aquatic Farms Program
 Alaska Department of Fish and Game
 Aquatic Farm Permit No.: 00-10-AF-SC

ATTACHMENT NO.: 5
 Steven M. Rykaczewski - ADL 227591
 Preliminary Decision - 2011

Water Depth
 4ft