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

Renewal Decision

ADL 107362 – Cornelis Bakker
dba Cornelis Bakker, Inc.

AS 38.05.070(e), AS 38.05.083

Project Overview:

Per AS 38.05.070(e) and AS 38.05.083, the Department of Natural Resources (DNR), Division of Mining, Land, & Water (DMLW), Southcentral Regional Office (SCRO) has made the decision to renew the existing aquatic farm lease (ADL 107362) issued to Cornelis Bakker dba Cornelis Bakker, Inc. for a one time 10-year term. The purpose of this lease is to allow Cornelis Bakker the continued use of state tidelands for subtidal aquatic farming activities. This lease is situated within the NW ¼ of Section 34, Township 77 South, Range 95 East, Copper River Meridian and is approximately 24 miles southeast of Ketchikan, in Southeast Alaska. The aquatic farm site is made up of one trapezium-shaped parcel measuring 314.1 feet by 406.8 feet by 312.6 feet by 387.1 feet, with an area of approximately 2.8 acres.

Cornelis Bakker will be subject to the similar terms and conditions as found within the original lease dated June 30, 2007.

History:

ADL 107362 was issued to the lessee on June 30, 2007 for a period of 10-years. There have been no amendments or compliance issues since the lease was authorized. The lessee has made all of the annual fee payments consistently ahead of the payment date. The aquatic farmsite is for the purpose of on-bottom culturing of hatchery produced geoducks on the ocean floor.

Existing Infrastructure:

Divers will manually plant geoduck clam seed, subtidally within the leased parcels and conduct authorized farming operations to prepare the beds for cultivation, and to rear and harvest geoduck. The parcel will be marked on at least the four major corner coordinate boundaries with concrete block anchors, weighing a minimum of 100 pounds and otherwise sized to secure the marker buoys. The anchors will be connected to white #A-2 polyform or similar buoys by sinking poly line with a maximum 25-foot scope at local, extreme high water. Other than the anchor and buoy system, there is no infrastructure.

Lease Renewal Authority:
In 2007 the original lease had been adjudicated pursuant to AS 38.05.035(b)(1) Delegation of the Powers and Duties of the Director; AS 38.05.035(e) Written Findings; AS 38.05.070(a) Generally; AS 38.05.083 Aquatic Farming and Hatchery Site Leases; and AS 38.05.945 Public Notice. Upon lease expiration, subsection AS 38.05.070(e) allows the Director to renew a lease previously issued under section AS 38.05.070 if the lease is in good standing and the lease renewal is determined to be in the best interest of the State.

Lease Renewal Qualifications:
In order to qualify for a renewal, a lessee must be in "good standing". Good standing refers to the fact that the lessee's accounts are current, that there are no outstanding compliance issues, and that the lessee maintains a healthy business relationship with the lessor. A review of the case file has shown that the lessee is in good standing.

Renewing the lease under AS 38.05.070(e) will allow the lessee and the lessor to reenter into a lease contract with minimal delays or disruptions. This lease renewal is in the best interest of the State as the land under lease will continue to enhance the aquatic farm industry and the renewal is consistent with the State's Constitution as the lease provides for the utilization, development, and conservation of the natural resources belonging to the State for the maximum benefit of its people.

Lease Renewal Discussion:
Annual reports have been submitted for the duration of the authorized lease. All annual fees have been paid and the lease is considered to be in good standing with the department. Cornelius Bakker has not met the Commercial Use Requirement (CUR) per 11 AAC 63.030(b) since his lease was authorized in 2007, with challenges such as paralytic shellfish poisoning, slow growth rate, predation, and seed shortage being problems for him and many geoduck aquatic farmers. Since this aquatic farm has been in existence for 10 years, DNR expects the CUR will be applied to this second lease term as previous term planting efforts should reach a marketable size at some point within the next five years. The lessee will be expected to reach the CUR by the end of the fifth year. If the requirements set out in the lease terms are not met the lease is subject to termination.

Administrative Record:
Case file ADL 107362 constitutes the administrative record for this case.

Legal Description:
The legal description for ADL 107362 is Section 34, Township 77 South, Range 95 East, Copper River Meridian.

Title and Third Party Interest:
DNR Title Reports issued from DNR's Realty Services state that the State of Alaska holds title to the subject tidelands under the Equal Footing Doctrine and the Tide and Submerged Lands Act of

1953. Updated Title Reports have been requested, but were not available at the time of issuance of this Renewal Decision. SCRO reserves the right to modify the lease based upon information contained within the updated Title Report.

Planning and Classification:

The project area is subject to the Central/Southeast-Southeast Area Plan, Region 5, Management Unit KT-35, tidelands adjacent to mainland (map number 3-26). The designation for this site is habitat and the classification for this site is wildlife habitat land. In accordance with the area plan and classification, aquatic farming is an allowable use on state owned tidelands.

Access:

Access to the aquatic farm will be by boat. All support facilities will be located in Ketchikan.

Public Access:

Access To and Along Navigable and Public Waters:

Nearly all shore and tide lands in the State of Alaska are subject to a To and Along Easement under AS 38.05.127 and 11 AAC 51.045. The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the state's waterways. The department has determined that the issuance of this aquatic farm lease will not block reasonable access to state navigable water. The along easement extends 50 feet seaward from the line of mean high water.

Authorization and Term Length:

Pursuant to AS 38.05.070(e) leases may only be renewed once and for a duration no longer than the original lease term. As such, this renewal lease will be issued for an additional 10-year term.

Annual Fee:

DMLW 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. At this time the rates for aquatic farms are $450/acre or partial acre and $125 for each additional acre or partial acre. In accordance with the Aquatic Farmsite Fee Schedule, Report No. 2522-12, a breakdown of the lease fee for the 2.8-acre aquatic farm will be as follows:

1 acre (1 x $450) = $450.00/per year
2 acres (2 x $125) = $250.00/per year

Total annual fee = $700.00/per year

Periodic Rate Adjustment:

In accordance with AS 38.05.105, the proposed lease will be subject to re-appraisal at five-year intervals after the issuance of the proposed authorization.

Bonding:
In accordance with the terms of the original lease, the existing performance bond of $2,500 will be sufficient to satisfy 11 AAC 63.080.

Insurance:
In accordance with the terms of the original lease and 11 AAC 96.065, Cornelis Bakker will be required to submit proof of liability insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. Cornelis Bakker will be responsible for maintaining such insurance throughout the term of the renewed lease.

Public Trust Doctrine:
Pursuant to AS 38.05.126 all authorizations for this site will be subject to the principals of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, SCRO is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Signature page follows:

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. This decision considers the applicant's history and experience with aquatic farming, their proposed Development Plan, the existing uses in the area, and the overall benefit to the state's aquatic farm industry. I recommend the issuance of another 10-year aquatic farm lease to Cornelis Bakker dba Cornelis Bakker, Inc. with the understanding that if the lessee fails to comply with all stipulated terms of the lease including the CUR, will constitute a violation of the lease terms and steps may be taken to terminate the lease authorization.

Karen Cougan May 15, 2017

Karen Cougan, Natural Resource Specialist III Date

Decision:

The findings presented above have been reviewed and considered. The case file has been found to be complete and the requirements of all applicable statutes and regulations have been satisfied. I find that it is in the best interests of the State to renew this 2.8-acre lease as described under the authority of AS 38.05.070(e). Cornelis Bakker dba Cornelis Bakker, Inc. will be required to provide insurance, bonding, annual fees, the submission of the Annual Reports, and compliance with the CUR within the next five years.

6-13-17

Clark Cox, Southcentral Regional Manager Date

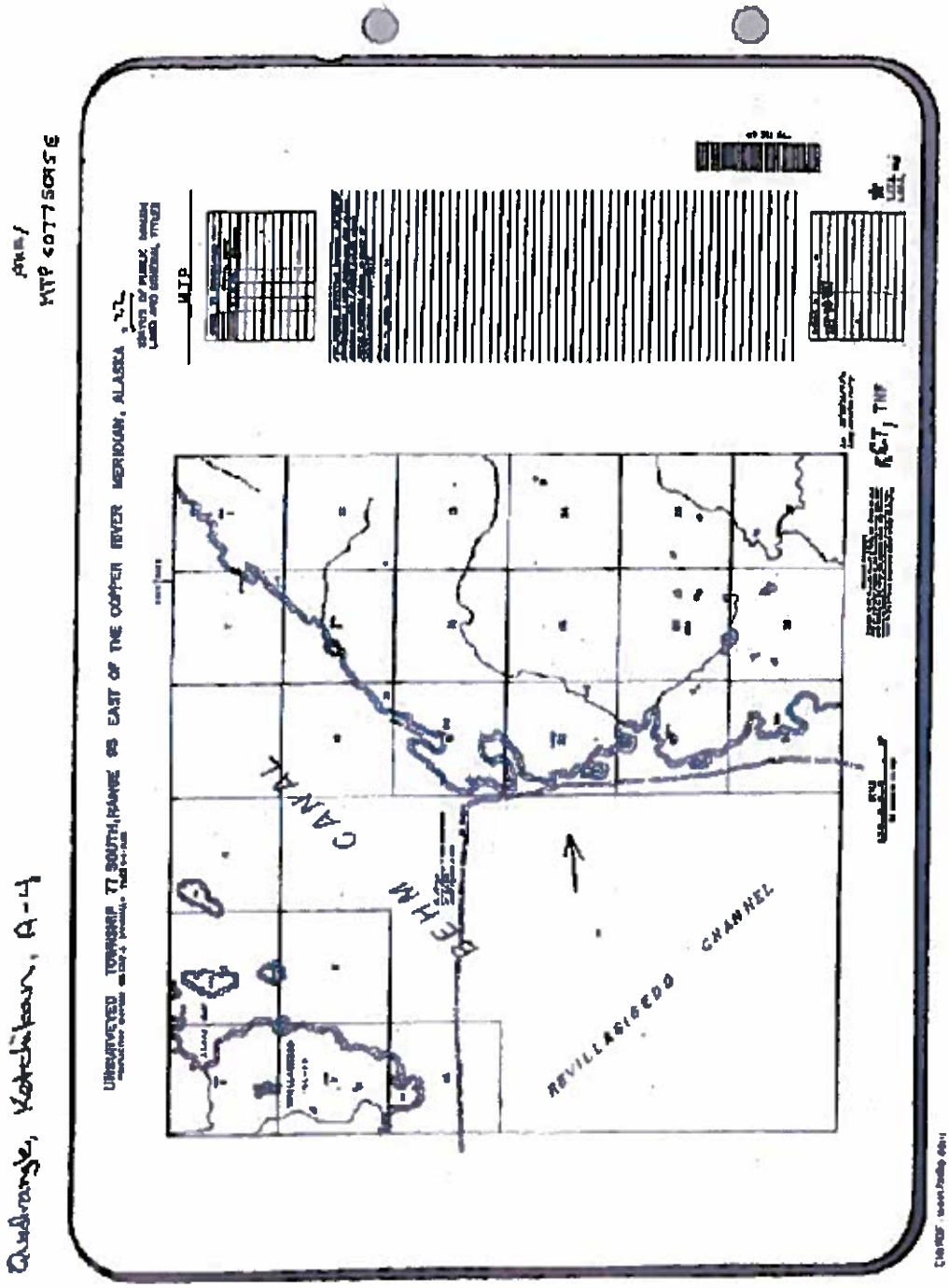
Southcentral Region Land Office, Division of Mining, Land and Water

Appeal:

A person affected by this may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to (907) 269-8918; or sent by email to dnr.appeals@alaska.gov.

If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the Department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court (11 AAC 02.020(a) and (b)). A copy of 11 AAC 02 may be obtained from any regional office of the Department of Natural Resources.

Attachment A
Development Plan

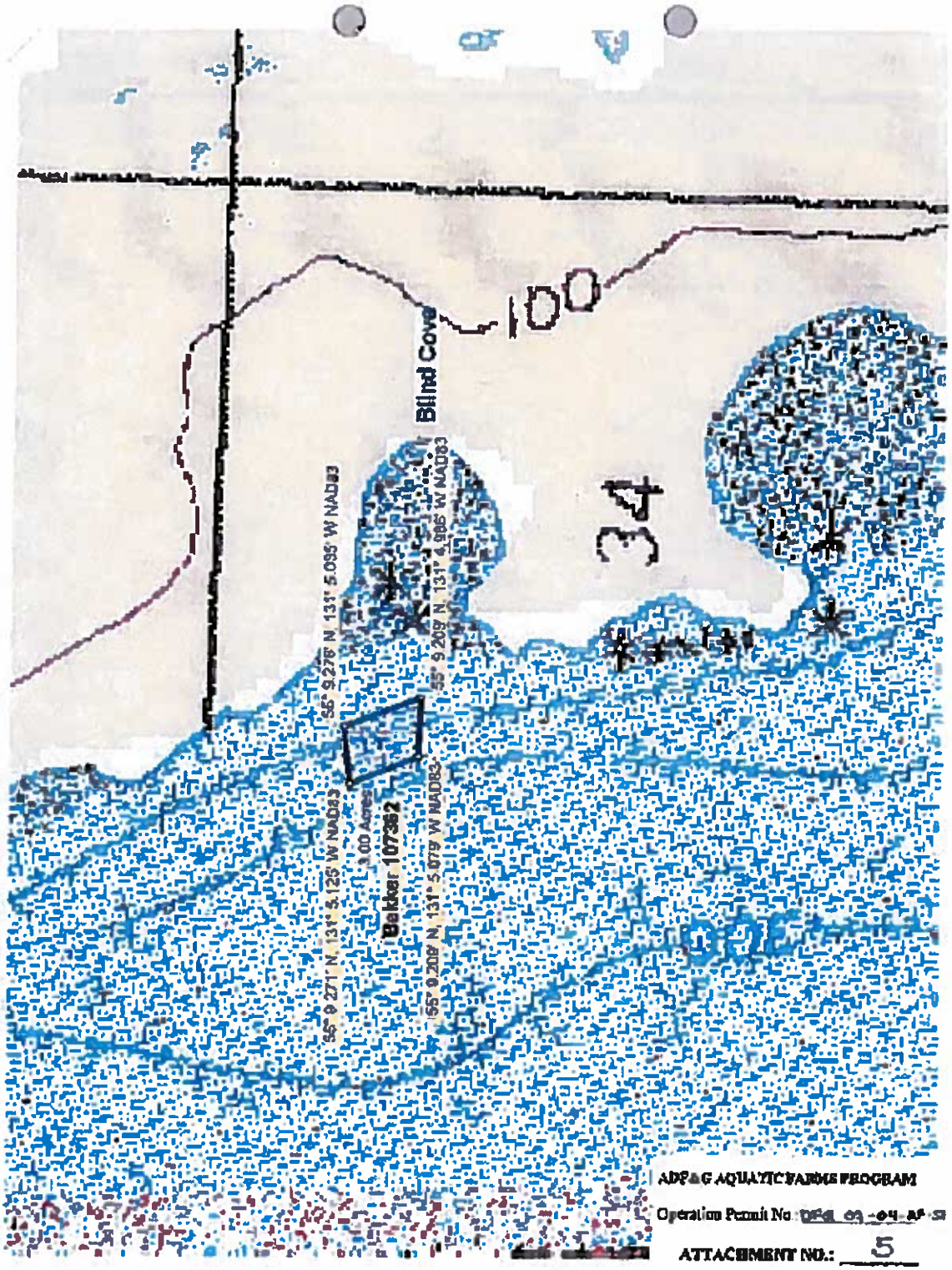


ADF&G AQUATIC FARMS PROGRAM

Operation Permit No.: [illegible]

ATTACHMENT NO.: 1

Attachment A
Development Plan



Attachment A
Development Plan

Project Description:

The aquatic farmsite is for the purpose of on-bottom culturing of hatchery produced geoducks on the ocean floor at the site located directly outside of Blind Cove, 2.5 miles south of Skyes Cove and 3.5 miles northwest of Slate Island, adjacent to Misty Fiords National Monument Wilderness in southeastern Alaska. This aquatic farm site is made up of one trapezium-shaped parcel measuring approximately, 314.1 ft. by 406.8 ft. by 312.6 ft. by 387.1 ft. with an area encompassing approximately 2.8 acres of state-owned submerged lands. The farm site footprint is situated between existing permitted farm sites; ADL 107076 and ADL 107077. The farm site is approximately 24 nautical miles southeast of Ketchikan.

The parcel will be marked on at least the four major comer coordinate boundaries provided in this permit for this site with concrete block anchors, weighing a minimum of 100 pounds and otherwise sized to secure the marker buoys under the worst foreseeable local weather conditions, connected to white #A-2 Polyform or similar buoys by sinking poly line with a maximum 25-foot scope at local, extreme high water (EHW). Corner marking buoys must be maintained and easily discernible for the duration of this aquatic farming permit.

Geoduck clam seed may be acquired from the Alutiiq Pride Shellfish Hatchery in Seward. As of the issue date of this permit, the Alutiiq Pride Shellfish Hatchery is the only certified source for geoduck spat for Alaska aquatic farms.

Divers will manually plant geoduck clam seed, subtidally, within the leased parcel(s) and conduct authorized farming operations to prepare the beds for cultivation, and to rear and harvest geoduck. Authorized predator exclusive devices or measures may be employed as necessary to deter predators. Access to the site will be by boat and all support facilities will be located in Ketchikan.

Legal Description:

The site is located, in major part or in whole, within Township 77 South, Range 95 East, Copper River Meridian, and Section 34.