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

PRELIMINARY DECISION

ADL 225561
Gary and Debbie Seims dba Seims Sea Farm
Application for Lease
AS 38.05.083

This Preliminary Decision is the initial determination on a proposed disposal of interest in state land and is subject to comments received during the Public Notice period. The public is invited to comment on this Preliminary Decision. The deadline for commenting is **November 18, 2019**. Please see the Comments Section of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision.

Proposed Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) has received a request from Gary and Debbie Seims dba Seims Sea Farm (SSF) to lease 0.89 acres, more or less, of tide and submerged lands located within Peterson Bay near Homer, Alaska, for 10 years for the continuing operation of an existing commercial aquatic farmiste for the purpose of culturing Sugar Kelp (*Saccharina latissimi*), Ribbon Kelp (*Alaria marginata*), Sea lettuce (*Ulva fenestrate)*, Red ribbon (*Palmaria mollis),* Pacific oysters (*Magallana gigas)*, and Blue mussel (*Mytilus trossolus)*. The location of the project area is further described as being within the N1/2 of Section 14 in Township 7 South, Range 12 West, Seward Meridian.

SCRO is considering the issuance of a 10-year aquatic farmsite lease to SSF for the purpose of an aquatic farm consisting of one parcel to be used for suspended culture.

Scope of Review:

The scope of this decision is to determine if it is the State's best interest to issue this aquatic farmsite lease renewal.

Authority:

This lease application is being adjudicated pursuant to AS 38.05.035(b)(1) Delegation of the Powers and Duties of the Director; AS 38.05.070(b) Generally; AS 38.05.083 Aquatic Farming and Hatchery Site Leases, the regulations in 11 AACC 63, and AS 38.05.945 Notice. The authority to execute the Preliminary Decision, Final Finding and Decision, and the lease has been delegated to the Regional Manager of SCRO.

Administrative Record:

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2000 Kenai Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 225561.

Legal Description, Location, and Geographical Features:

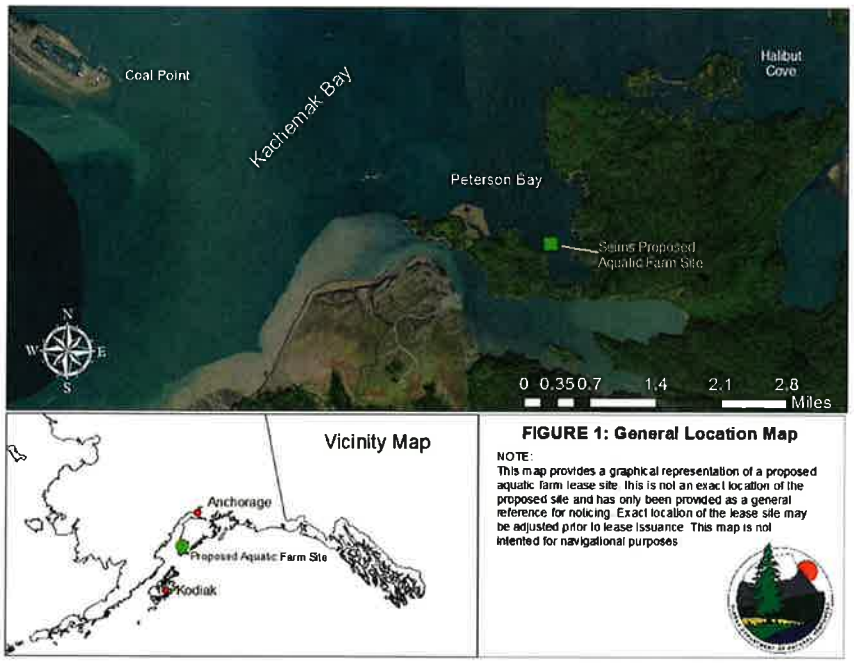
The state land where this proposed lease site is located is described as follows:

- **Site reference name**: Peterson Bay
- **Legal description**: N1/2 Section 14, Township 7 South, Range 12 West, Seward Meridian
- **Geographical locations**: Peterson Bay, approximately 5 miles from the Homer Spit, Alaska. See Figure 1 for the project location.
- **Approximate Lat/Longs**:

  Parcel #1: 0.89 acres

  NE Corner: 59°34.400'N, 151°16.478'W
  SE Corner: 59°34.376'N, 151°16.446'W
  SW Corner: 59°34.369'N, 151°16.476'W
  NW Corner: 59°34.395'N, 151°16.502'W

- **Existing surveys**: None
- **Municipality/Borough**: Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes**: Cook Inlet Region, Inc., Seldovia Village Tribe



Title:
A DNR Title Report (RPT-11327) issued on January 18, 2019 from DMLW's Realty Services Section attests that the State of Alaska holds title to the subject tide and submerged lands under the Equal Footing Doctrine and the Submerged Lands Act of 1953.

Third Party Interests:
No third-party interests are known at this time.

Classification and Planning:
The project area under ADL 225561 is subject to DNR's 2000 Kenai Area Plan (KAP), Region 9, Southside Kachemak Bay and Chugach Islands, Unit 535, Peterson Bay Tidelands, Map 9A. The tideland designation for the site is Habitat (ha) and Public Recreation & Tourism (rd) which converts to the tideland classifications of Wildlife Habitat Land and Public Recreation Land. According to Chapter 2 of the KAP, Wildlife Habitat Lands are to be managed to maintain and protect wildlife and wildlife habitat and Public Recreation Lands are to be managed to provide accessible outdoor recreational opportunities with undeveloped land being provided for recreation pursuits.

In Chapter 2 of the KAP, the goals for aquatic farming are to "provide opportunities to increase income and diversify the state's economy through the use of state tidelands and submerged lands for aquatic farming." The KAP also discusses AS 38.05.083 which provides for "the leasing of state tide and submerged lands for aquatic farming or related hatchery operations." Management intent for this site, located in Unit 535, will be guided by the 1993 Kachemak Bay and Fox River Flats Critical Habitat Area Management Plan.

The Kachemak Bay and Fox River Flats Critical Habitat Area Management Plan (Plan) is jointly managed by DNR and the Alaska Department of Fish & Game (ADF&G), Habitat Division. The stated goals within the Plan are to "maintain and enhance fish and wildlife populations and their habitat" found within the boundary. The plan specifically addresses aquatic farming and states that "aquatic farming activities, including float structures essential to the farm operation, may be permitted in Kachemak Bay on a case by case basis under terms and conditions consistent with the protection of fish and wildlife populations and their habitats, continued use of fish and wildlife, and public use and enjoyment of the critical habitat areas if compatible with other existing uses." Additional aquatic farms of any configuration in Peterson Bay or additional floating aquatic farms in Kasitsna Bay will not be authorized due to an absence of suitable sites free from conflict with existing fisheries and public use.

The KAP mentions there are three mariculture operations within Peterson Bay. SSF first applied for this aquatic farm in Peterson Bay in April of 1991.

In accordance with the KAP and the Kachemak Bay and Fox River Flats Critical Area Management Plan, aquatic farming is an allowable use and therefore it is determined that this aquatic farm is consistent with both plans.

Traditional Use Findings:

Traditional use findings will not be discussed in this Preliminary Decision because the proposed lease site is located within the Kenai Peninsula Borough, an organized borough. Pursuant to AS 38.05.830, a traditional use finding is not required.

Access:

Access to and from the aquatic farm is by skiff, as needed, from private uplands.

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. At the proposed lease site, the Along easement is 50 feet seaward from the line of mean high water.

Public Trust Doctrine:

Pursuant to AS 38.05.126 all authorizations for this site will be subject to the principles 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.

Lease Discussion:

SSF has operated their aquatic farm in Peterson Bay for over 20 years. SSF originally applied for an Aquatic Farm Permit (ADL 225561) in April of 1991. Prior to 1997, DNR authorized aquatic farms under a permit program and not a lease program. SSF was issued an Aquatic Farm Permit on March 1, 1993 with an expiration date of February 29, 1996. ADL 225561 was renewed for the first time on March 1, 1996 with an expiration date of February 28, 1999. In September of 1997, SSF applied for a conversion from the 1988 Aquatic Farm Program to the 1999 Aquatic Farm Leasing Program. On January 1, 1999, a 10-year lease was issued for ADL 225561 with an expiration date of December 31, 2008. ADL 225561 was renewed once more on July 28, 2009 with an expiration date of December 31, 2018.

This renewal consists of one parcel, Parcel 1, instead encompassing approximately 0.89 acres. Parcel 1 measures 130-feet by 300-feet and is the site for suspended culture with lantern nets for

Pacific oysters, Blue mussels by natural set at site on oyster lantern nets, and kelp and sea lettuce by natural set at site on oyster lantern nets.

The Commercial Use Requirement (CUR) states a farm needs to be making annual sales "of at least $3,000.00 per acre or fraction of an acre, or $15,000.00 per farm, whichever is less." Under 11 AAC 63.110(7), the lease will include provisions that failure to meet the CUR constitutes a default and may be cause for revocation, and annual reports of the previous year's sales are due by January 31st of every year. Given this is a 2018 renewal application, SSF is required to meet the previous year's CUR. SSF met the commercial use requirement in 2017. The proposed lease will be subject to the terms of DMLW's standard lease document and any Additional Stipulations based, in part, upon the following considerations.

Development Plan:

The Development Plan (DP) revised and submitted on October 21, 2018 is accepted by SCRO as complete but may be subject to change based on agency and public review. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity will be permitted. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

Hazardous Materials and Potential Contaminants:

No hazardous materials or fuel will be stored on the proposed leasehold.

The use and storage of all hazardous substances must be done in accordance with existing federal, state and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the sites and managed and disposed of in accordance with state and federal law.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.083(e) and 11 AAC 63.080, SSF will be required to submit a performance bond or other required security "sufficient to cover the cost of site cleanup and restoration and any associated cleanup cost after termination of lease, including any unpaid rentals or other obligations until site restoration is complete, [or] is the lessee abandons site" after lease termination or if the lessee abandons the site.

- **$2,500.00 Performance Bond:** A bond in the amount of $1,250.00 for the farmsite was previously submitted by SSF on December 8, 1998. The full $2,500.00 bond amount will not be required at this time based on SSF's membership in a bond association, Kachemak Shellfish Growers Cooperative (KSGC). KSGC is required

to cover the remaining bond amount of $1,250.00 in the event that the performance bond is garnished by SCRO. SSF will be required to submit the full $2,500.00 performance bond in the event SSF's membership in the bond association ends. The bond amount is based on the level of development, amounts of hazardous material/substances on site, and the perceived liability to the state. This bond will remain in place for the life of the proposed lease. This bond will be used to insure the applicant's compliance with the terms and conditions of the lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, re-appraisals, changes in the development plan, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.

- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond due to non-compliance issues during the term of the lease or near the end of the life of the project.

Insurance:

SSF will be required to submit proof of liability insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. SSF will be responsible for maintaining such insurance throughout the term of the lease.

Survey:

In accordance with AS 38.04.045, this short-term lease does not require a survey. However, the State of Alaska reserves the right to require one in the future should the need arise due to changes in statutes or increased use of the area. SSF has submitted GPS coordinate point(s) for the four corners of the proposed leasehold.

Compensation/Appraisal:

DMLW has approved an administrative lease fee schedule for aquatic farmsites 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. Fees are subject to adjustment per AS 38.05.083(c). The current annual rate for an aquatic farm lease that is 0.01 to 30 acres in size is $450.00 for the first acre and $125.00 for each additional acre. In accordance with the Aquatic Farmsite Fee Schedule, Report No. 2522-13, the lease fee for SSF shall be $450.00 per year.

If the applicant does not agree with the fee schedule amount of $450.00, a fair market value determination can be obtained by the applicant. Fair market value is determined by obtaining a DNR approved appraisal of the lease site. If an appraisal is conducted to determine fair market value of the lease site, the applicant will be required to pay the appraised amount and the $450.00 annual fee will no longer be an option. The appraisal cost will be borne by the applicant. The parcel

may need to have an approved Alaska Tidelands Survey to accomplish the appraisal. If a survey is required the cost will be incurred by the applicant.

Assignment of Lease:

The proposed lease, if issued, may be transferred or assigned to another individual or corporation **only** with prior written approval from the DMLW. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease or the lease is not in good standing. DMLW reserves the right to amend the terms of the lease prior to assignment.

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their lease sites to a "good and marketable condition" within 120 days after termination of the lease. What level of reclamation constitutes as being "good and marketable" is at the discretion of SCRO. SCRO reserves the right to require a reclamation bond at any time due to non-compliance issues during the term of the lease or near the end of the life of the project.

Agency and Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, this PD will be advertised for 30-day public comment period. An agency review will be conducted and run concurrently with the Public Notice. Notice will be posted on the Alaska Online Public Notice System, and the post offices in Homer, Seldovia, and Anchor Point. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on October 17, 2019 for a 30-day public comment period. The deadline for public and agency comments is November 18, 2019.

The following agencies will be included in the review:

- DNR DMLW – Mining
- DNR DMLW – Water
- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR DPOR/Office of History and Archaeology, State Historic Preservation Office
- DNR Natural Resource Conservation and Development Board
- DNR Division of Oil and Gas
- DNR DMLW – Realty Services
- ADF&G – Habitat
- ADF&G – Aquatic Farm Coordinator.
- ADF&G – Advisory Committee
- Alaska Department of Environmental Conservation Shellfish
- Alaska Department of Transportation and Public Facilities
- U.S. Army Corp of Engineers

- U.S. Fish and Wildlife Service
- National Oceanic and Atmospheric Administration
- U.S. Environmental Protection Agency
- U.S. Coast Guard
- Kenai Peninsula Borough

Comment(s):

This decision is subject to both public and agency comments and all comments received by the comment deadline will be considered in the Final Finding and Decision. Only those who comment and the applicant have the right to appeal the Final Finding and Decision.

Written comments about this project must be received in this office no later than 5:00 PM on November 18, 2019 to be considered.

To submit comments, please choose one of the following methods:

Postal:	Department of Natural Resources Southcentral Regional Land Office ATTN: Brent Reynolds 550 West 7TH Avenue Suite 900C Anchorage, AK 99501-3577
Phone:	907-269-8567
E-mail:	brent.reynolds@alaska.gov
Fax:	907-269-8913

If public comments result in significant changes to the Preliminary Decision, additional public notice may be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

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. DMLW considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State's resources. This authorization provides a direct economic benefit to the State with the collection of one-time filing fees and any annual lease fees. The authorization of this lease is in the State's best interest as it furthers economic development of the State's aquatic farm industry. It is recommended that DMLW issue a 10-year lease to SSF.

Brent Reynolds, Natural Resource Specialist II — Date: 9/16/19

Preliminary Decision:

It is the determination of the Division of Mining, Land, and Water that it may be in the State's best interest to issue an aquatic farmsite lease to SSF, as described above. Upon authorization of lease ADL 225561, the applicant will be required to pay the annual lease fee of $450.00, provide proof of liability insurance, and the $1,250.00 performance bond will remain in place during the term of the lease. This Preliminary Decision shall now proceed to agency and public notice.

Clark Cox, Regional Manager — Date: 10-16-19

Southcentral Regional Land Office, Division of Mining, Land & Water

Attachments

Attachment A – Development Plan: Project Description, General Location Map, Detailed Location Map, Site Plan Maps, and Cross-Sectional Diagram.

Attachment A
Development Plan

Seims

ATTACHMENT 1

Project Description

Gary and Debbie Seims

Seims Sea Farm

Peterson Bay

Kachemak East

June 6, 2018

This is an existing twenty-five year old Mariculture farmsite we started in 1993. The farm is accessed by boat and located in Peterson Bay approximately five (5) miles East of the Homer harbor in Kachemak Bay. It is on State owned tidal and submerged lands and is composed of three separate parcels totaling .89 acres The last amendment to this farm lease was in November of 2012 to add ramp in order to provide better access to private uplands from work area.

Parcel #1 (.89 acres) Farmsite; Section 14; NE 1/2, within Peterson Bay encompassing an area measuring 130 ft. X 300 ft. This site is for shellfish and aquatic plant grow out using suspended culture on longlines and sorting, cleaning and harvesting product *and location of 8 ft. x 20 ft. work float.*

Species Product to be farmed includes Shelfish and Aquatic plants: Pacific Oysters (Magallana gigas), Blue Mussels (Mytilus Trossulus), Sea Lettuce (Ulva lactuca), *Red Ribbon, (Palmaria Mollis)*, Ribbon Kelp (Alaria Marginata), Sugar Kelp (Laminaria Sacharina),

Gear and Equipment: will consist of suspended culture using longlines and lantern nets Farm site parcel #1 will have up to 12 longlines at 200 feet long each and spaced 10 fee apart with up to 70 nets per line (There are 4 lines w/120 nets at this time) supported by Blue/Grey poly form buoys. Lantern nets are 18 inches wide by up to ten feet deep. They range from 5mm to 21mm mesh and 5 and 10 tier. Anchor system used include; 16-2000lb Cement/Rock anchors.

Attachment A
Development Plan

Culture Method; suspended culture with lantern nets for; Pacific oysters(spat from approved facility), Blue Mussels by natural set at site on oyster lantern nets, and aquatic plants (Kelp/Seaweed/sea lettuce) by natural set at site on oyster lantern nets.

Harvest Method; From float or Boat Manual labor, davits w/crank winches, sorting table plastic crates and water pump used for maintenance and harvesting.

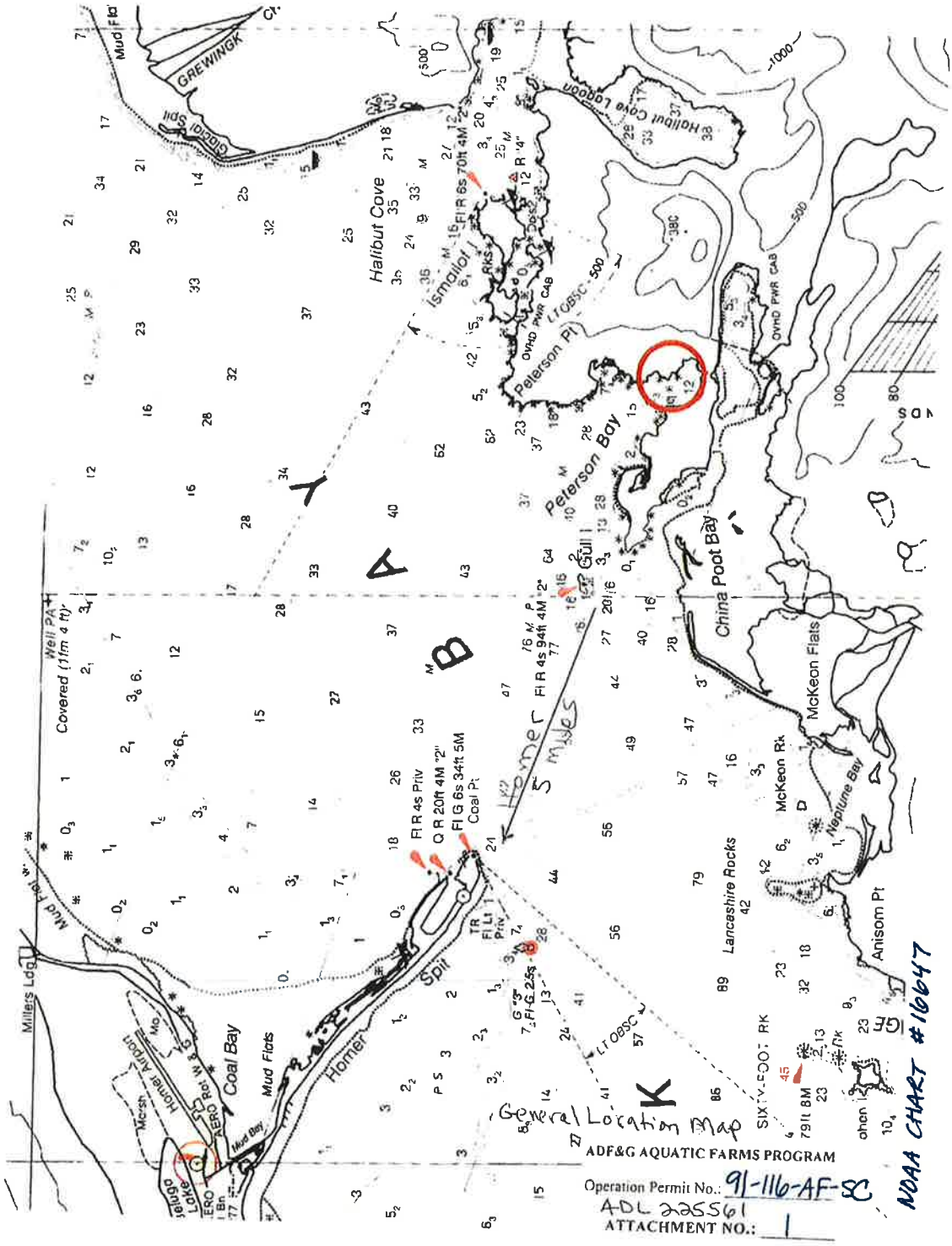
Work Equipment Transportation; A 20ft boat is used to work farm and move harvestec product to work float or to the market in Homer (Kachemak Shellfish growers Coop)

Support Facility; 8 ft. x 20 ft. work float. This is a work float used for sorting, cleaning, and harvesting all farm product.

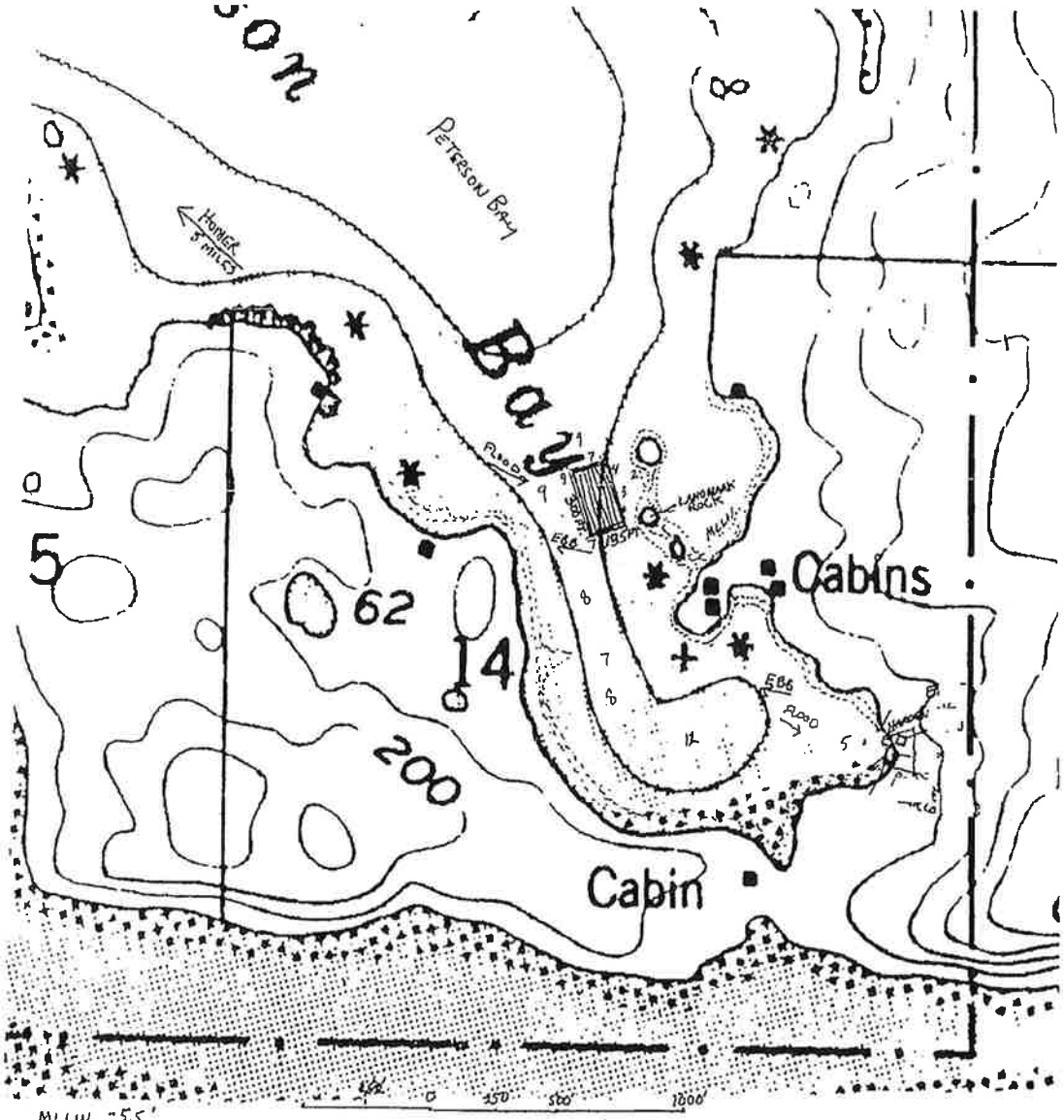
Storage Location; *Farm gear and equipment not being used and not on farm site or Bo are stored off site on private land.*

seims

Attachment A
Development Plan



Attachment A
Development Plan



MLLW -5.5'
MLW 1.6'
MHW 17.3'
MHHW 18.1'

SCALE 1" = 500'

DEPTH AT SITE AT MLLW: AVERAGE 30' (20' TO 50')

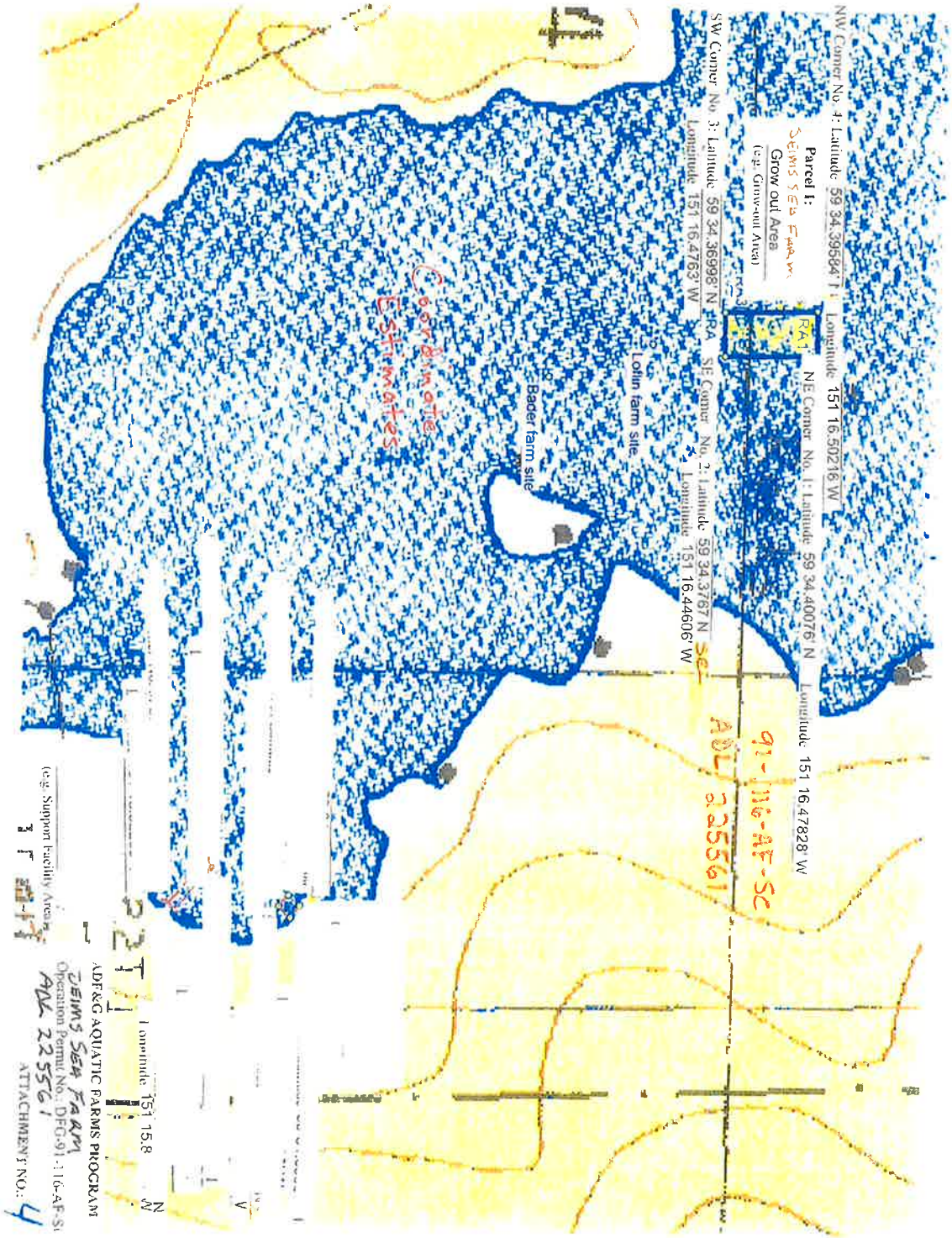
SITE PLAN
OVER VIEW

PETERSON BAY
SECTION 14 T 7S R12W
SEWARD MERIDIAN
KENAI PENINSULA BOROUGH

SEIMS SEA FARMS
P.O. BOX 486
HOMER AK 9960
(907) 235-7156

ADL 225561
Aquatic Farm Operation Permit
DFG 91-116-AF-SC
Attachment Number: 3

Attachment A
Development Plan



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Development Plan

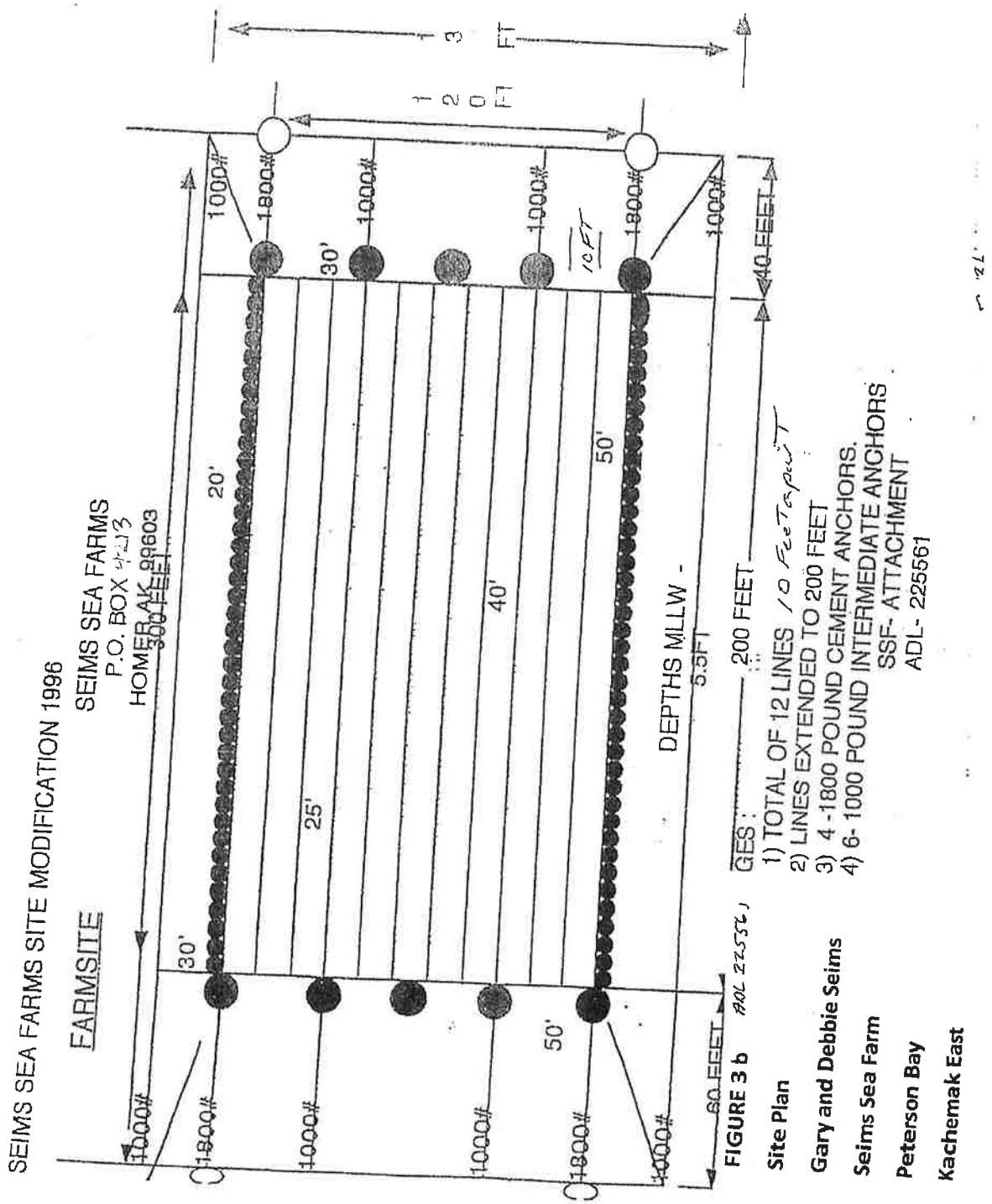


FIGURE 3 b

Site Plan

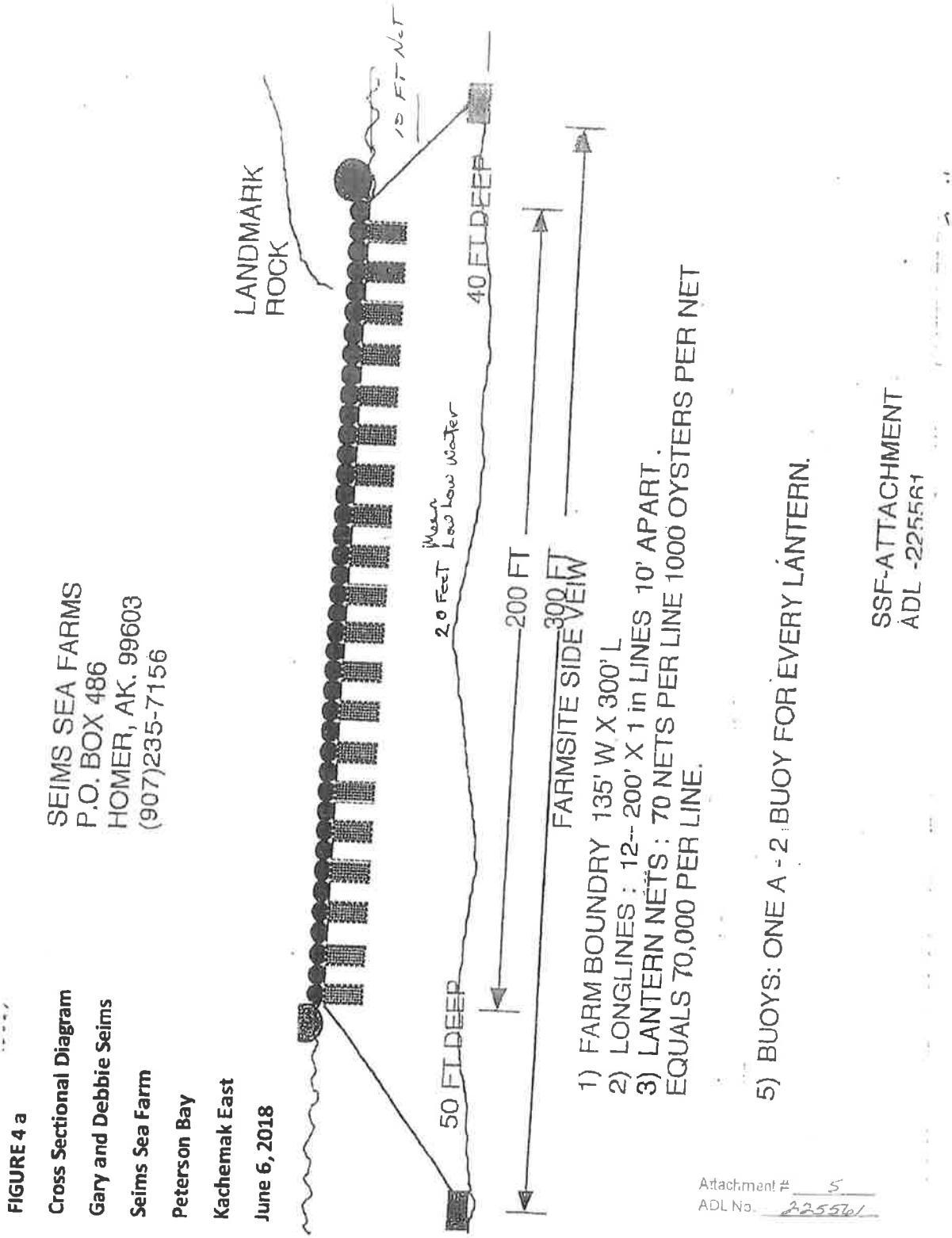
Gary and Debbie Seims

Seims Sea Farm

Peterson Bay

Kachemak East

Attachment A
Development Plan



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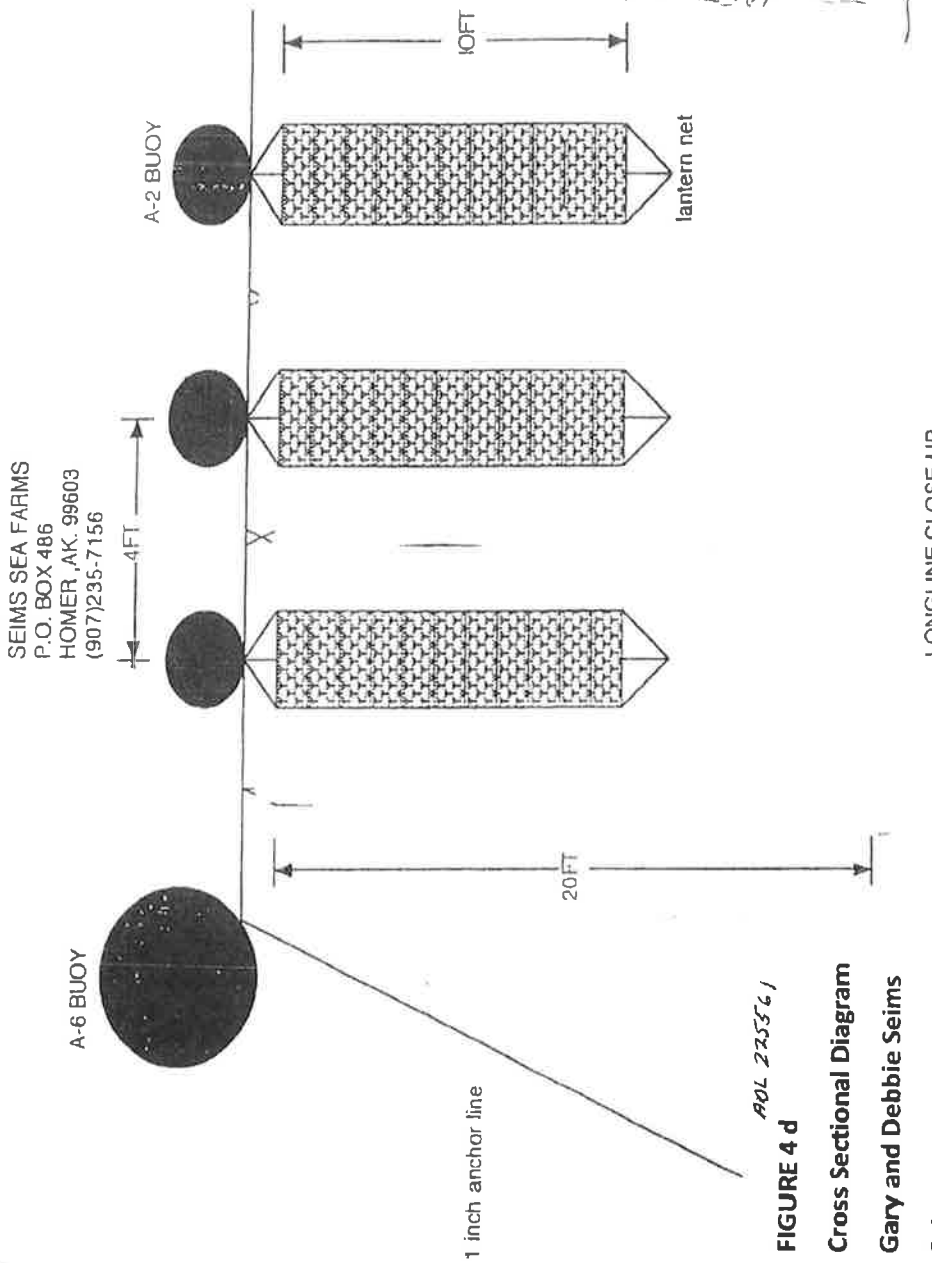


ADL 225561

FIGURE 4 d

Cross Sectional Diagram

Gary and Debbie Seims

Seims Sea Farm

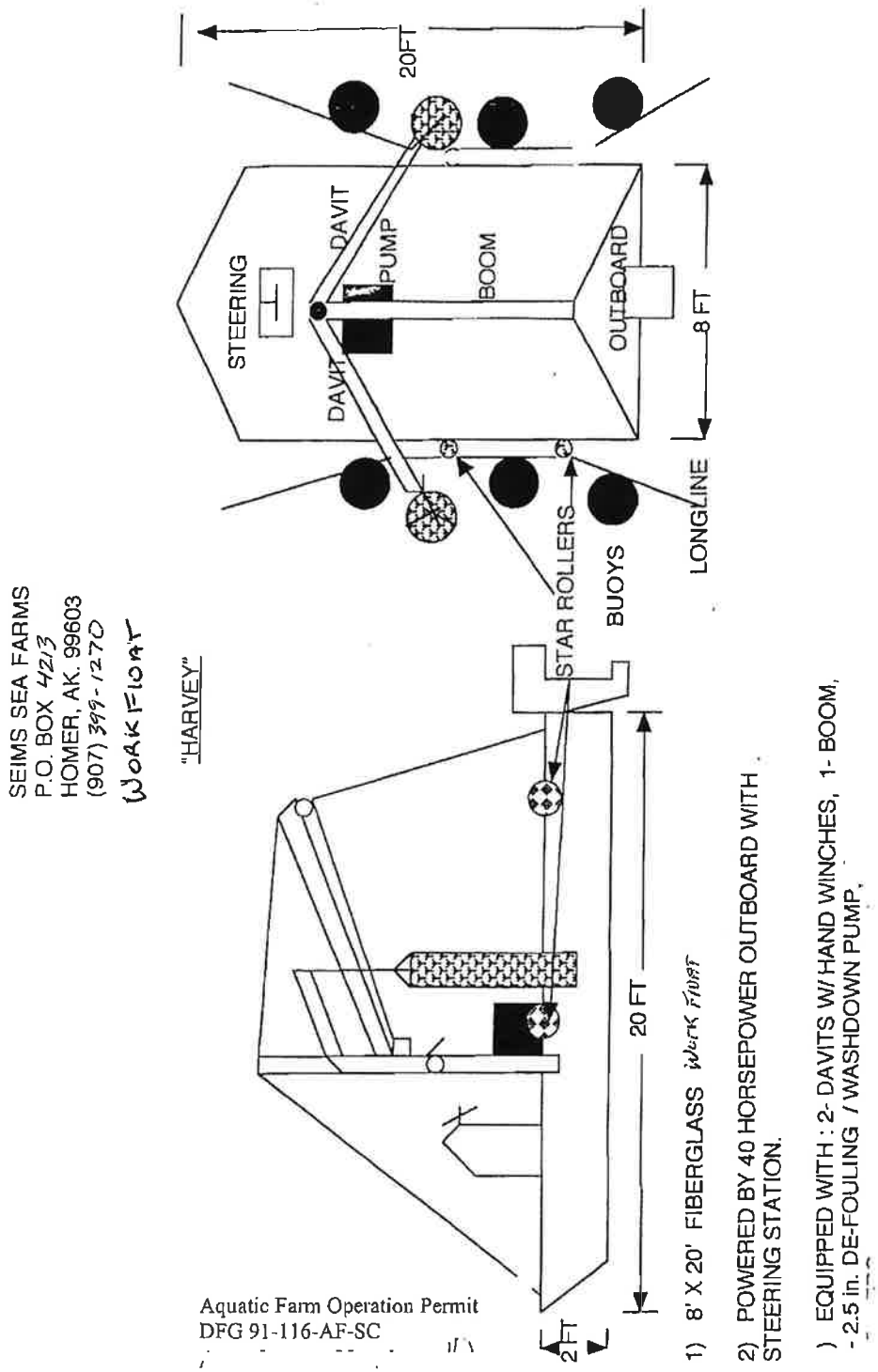
Peterson Bay

Kachemak East

June 6, 2018

LONGLINE CLOSE-UP

1) ALL LINES ARE 1 INCH POLY
2)
3) LANTERN NETS FOR OYSTERS ARE 20inX10FT of 5 mm, 9mm, 15mm and 21mm nets
4) LANTERN NETS ARE SPACED EVERY 4 FEET
5) THERE IS AN A-2 BUOY ABOVE EACH LANTERN NET. AND AN A-6 BUOY AT THE ENDS OF EVERY THIRD OR FORTH LINE.

Minimum water depth is 20FT at MLLW. Nets do not ground:

Attachment A
Development Plan