

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

PRELIMINARY DECISION

ADL 232899 Seawan Gehlbach dba Simpson Bay Oyster Company
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 **5:00 PM on July 17, 2018**. 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.

Requested Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO) has received a request from Seawan Gehlbach dba Simpson Bay Oyster Company (SBOC) to lease approximately 14.38 acres, more or less, of tidelands located in Simpson Bay, Prince William Sound, approximately 12 nautical miles northwest from Cordova, Alaska.

Scope of Review:

The scope of this decision is to determine if it is in the State's best interest to issue a 10-year aquatic farm lease to SBOC for 14.38 acres, more or less. The authorization of an aquatic farm lease will provide SBOC the use of state tidelands for the commercial growth and harvest of Pacific oysters (*Magallana gigas*).

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 38.05.035(e) Written Findings; AS 38.05.070(b) Generally; AS 38.05.083 Aquatic Farming and Hatchery Site Leases; and AS 38.05.945 Public Notice. The authority to execute the Final Finding and Decision, and the lease, has been delegated to the Regional Manager of SCRO.

Administrative Record:

Case file ADL 232899 constitutes the administrative record for the SBOC lease application.

Legal Description, Location, and Geographical Features:

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

- **Site reference name:** Simpson Bay
- **Legal description:** NW 1/4 of Section 14, SE 1/4 of Section 15, Township 14 South, Range 4 West, Copper River Meridian
- **Geographical locations:** Simpson Bay, Prince William Sound, approximately 12 nautical miles northwest from Cordova, Alaska.
- **Approximate Lat/Longs:**
 Grow-out area for Pacific oysters: 2,500 feet by 250 feet = 14.35 acres
 Parcel 1:
 NE Corner Latitude: 60°39.547' N Longitude: 145°53.014' W
 SE Corner Latitude: 60°39.229' N Longitude: 145°53.891' W
 SW Corner Latitude: 60°39.254' N Longitude: 145°53.863' W
 NW Corner Latitude: 60°39.576' N Longitude: 145°53.071' W

 Hardening area for Pacific oysters: 50 feet by 30 feet = 0.3 acres
 Parcel 2:
 NE Corner Latitude: 60°39.488' N Longitude: 145°52.987' W
 SE Corner Latitude: 60°39.485' N Longitude: 145°53.003' W
 SW Corner Latitude: 60°39.489' N Longitude: 145°53.010' W
 NW Corner Latitude: 60°39.492' N Longitude: 145°52.994' W
- **Existing surveys:** None
- **Municipality/Borough:** No organized borough
- **Native Corporations/Federally Recognized Tribes:** Chugach Alaska Corporation, The Eyak Corporation, Tatitlek Corporation
- **Size:** 14.38 acres, more or less

Title:

The DNR Title Report No. 10298 issued from DNR’s Realty Services on December 21, 2017, states 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. Uplands closest to the subject tidelands are not owned by the State of Alaska.

Third Party Interests:

No third party interests are known at this time.

Classification and Planning:

The project area is subject to the Prince William Sound Area Plan (Area Plan). The Area Plan map for the proposed lease site is Management Unit 23, found in Chapter 3. The tideland designation for the site is 23i: forestry, habitat and harvest, public recreation¹. The forestry designation for tidelands refers to log transfer facilities and related development as the intended use. The tideland classification

¹ Prince William Sound Area Plan Ch. 3 p. 3-200

for the site is Settlement Land, Wildlife Habitat Land, and Public Recreation Land². Most tidelands in the Sound have recreation and habitat values. They also have settlement value in the form of access for the upland owner -- shoreline development, resource-transfer sites, and other developed or undeveloped access needs. Therefore, all three classifications -- recreation, habitat, and settlement -- are used³. The closest uplands to the proposed leasehold is Chugach National Forest land.

The proposed operation must be in the best interest of the State before an authorization may be issued. Factors that are to be considered in this decision are identified in 11 AAC 63.050(b). In Chapter 2 of the Area Plan, Areawide Land Management Policies, goals include providing opportunities to increase income and diversify the State's economy through the use of state tidelands and submerged lands for mariculture⁴. As specified in the Area Plan in Chapter 2 under Management Intent and Guidelines, this unit is to be managed for multiple uses and mariculture may be allowed on state tidelands if it can be made consistent with the primary intent for a particular area. These areas will be available for mariculture if it is possible to site, design, and operate mariculture in a manner compatible with the designated use, or if there is no feasible and prudent alternative for mariculture while one exists for the competing use⁵. The state tidelands within this management unit will be managed for a variety of purposes including resource transfer facilities, public access, anchorages, mariculture, fish and wildlife habitat and harvest, and maintaining the scenic and recreation resources. When authorizing tideland uses, particular attention will be given to avoiding or minimizing impacts on important commercial and recreational fishing areas, anchorages, public access, and scenic resources along the ferry route⁶.

Traditional Use Findings:

The proposed lease is not located within an organized borough. An additional consideration is required under AS 38.05.830. The proposed leasehold falls within the Alaska Department of Fish & Game (ADF&G) Game Management Unit (GMU) 6D and the Prince William Sound Management Area for commercial fisheries. ADF&G hunting regulations lists brown and black bear, deer, goat, moose, wolf, and wolverine as species that can be hunted. Trapping regulations for this GMU list beaver, coyote, red fox, lynx, and several other furbearers. In the Prince William Sound Area Plan, the tidelands in the area are to be managed for multiple use, including resource transfer facilities, public access, anchorages, mariculture, fish and wildlife habitat and harvest, and maintaining the scenic and recreation resources. ADF&G regulations for subsistence fisheries specify salmon, halibut, lingcod, sharks, rockfish, herring, and shellfish can be harvested. The shellfish subsistence fishery includes golden king crab, tanner crab, and shrimp. Subsistence use is defined in the Alaska Statute AS 16.05.940(33) which states, "noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for

² Prince William Sound Area Plan Ch. 4 p. 4-6

³ Prince William Sound Area Plan Ch. 4 p. 4-5

⁴ Prince William Sound Area Plan Ch. 2 p. 2-19

⁵ Prince William Sound Area Plan Ch. 3 p. 2-21

⁶ Prince William Sound Area Plan Ch. 3 p. 3-194

direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption." Personal use in Alaska is defined as the "taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries." Personal use fishing is open to Alaskan residents only, and a valid resident Sport Fishing License must be held to participate in personal use fisheries. It is unlawful to buy, sell, trade or barter personal use finfish, shellfish, aquatic plants, or their parts.

The Prince William Sound Management Area for commercial fishing is home to five salmon hatcheries, including the largest pink salmon and second largest chum and sockeye salmon enhancement programs in the state. Salmon fisheries are a major economic driver in Prince William Sound, harvesting annually upwards of 74 million fish. Beginning in the early 1900s with razor clams, diverse shellfish fisheries including those for shrimp and scallops as well as king, Dungeness and Tanner crabs, sustained area residents through the 1980s. As shellfish resources declined, fisheries developed for groundfish including Pacific cod, sablefish, and pollock.

Sport fisheries in Prince William Sound target five species of Pacific Salmon, several species of groundfish (halibut, rockfish and lingcod), shrimp and clams, as well as cutthroat trout and Dolly Varden. These fisheries depend primarily on wild stocks. However, six private non-profit hatcheries contribute significantly to several salmon fisheries, and state hatcheries support fisheries in three stocked lakes and king salmon fisheries in Valdez, Cordova, and Whittier.

Due to the nature of aquatic farming, the proposed site is not expected to impact traditional uses of these areas. Other traditional uses may be identified during the public notice period. If further traditional uses that may be impacted by the site become evident, they will be discussed in the Final Finding and Decision.

Access:

Access to the proposed aquatic farm leasehold is by boat. The proposed leasehold can also be accessed by floatplane.

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. DNR 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.

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.

Management Analysis:

The scope of this review is to evaluate and determine if a lease for the above-mentioned parcel is in the best interest of the State and supports the overall intent of the Aquatic Farm Act.

In 1988, the legislature adopted statutes referred to collectively as the Aquatic Farm Act. The legislature, through the adoption of the Aquatic Farm Act, established in statute the State could proceed and indeed encourage development of shellfish farming. The two central tenets of the State's aquatic farming policy are:

1. The State should encourage the establishment and responsible growth of an aquatic farming industry; and,
2. Development and siting of aquatic farming operations should be made with full consideration of established and ongoing activities.

With these considerations, aquatic farm leases were designed to achieve commercial production and develop a foundation for an aquatic farming industry in the State of Alaska.

Management Goals for Aquatic Farms:

The overall intent of the Aquatic Farm Program is to provide citizens access to public lands and resources with the goal of creating an industry which will foster the State's economic growth through the creation of employment opportunities and development of Alaska-grown shellfish and seaweed products.

Three main state agencies, the ADF&G, DNR, and the Department of Environmental Conservation (DEC) oversee the regulatory responsibilities for the commercial operation of Alaska aquatic farms. These agencies work cooperatively to ensure the State's public lands and resources are being used in such a manner as to positively contribute and benefit the residents of the State of Alaska through means such as economic growth and the availability of locally grown products.

As part of the lease conditions the applicant/lessee is required to submit two documents which the agencies will use to measure the aquatic farm's viability and determine if it is the State's best use of the land and resources. Evaluative measures are derived from a variety of sources including, but

not limited to, current industry standards, comparable farms in the area, and research and technology based trends on both the local and regional scale.

The first document an applicant/lessee is required to submit an Operation and Development Plan describing a basic business strategy for the aquatic farm site. This includes general information such as location information and infrastructure (i.e. work rafts, covered processing facilities, Floating Upweller Systems (flupsys), etc.) to be used on the farm site. It also contains measurable goals established by the applicant/lessee, to include information on startup and projected stocking, species to be cultured, anticipated seeding schedules and production and harvest levels for each 12-month cycle. In addition, it specifies business practices such as methods used to improve the productivity of the species being raised (i.e. predator exclusion controls, seeding schedules, etc.), cultivation and harvesting techniques, equipment used for cultivation and harvesting, number of people on site, projected number of days the site is actively being farmed, and methods of accessing the farm site. As the business market is a fluid entity DNR is under the expectation this Operation and Development Plan will be modified (with prior department approval) over the life of a lease.

Annual reports are the second required document a lessee must submit for an aquatic farm site to remain in compliance with lease terms. These reports are used as an evaluative tool by DNR, ADF&G, and the lessee to measure the productivity of an aquatic farm site, the current feasibility of the Operation and Development Plan, and to identify any problems (i.e. seed shortage, environmental factors, etc.) that have been encountered over the course of a 12-month period. In addition to identifying any difficulties an individual farm may be encountering, these annual reports will provide the regulatory agencies a method of identifying larger scale or industry wide problems and trends.

Lease Discussion

SBOC submitted an aquatic farm application for a DNR aquatic farm lease to cultivate Pacific oysters (*Magallana gigas*) on April 30, 2017. The proposed aquatic farm site is located on state-owned tide and submerged lands within Simpson Bay, Prince William Sound, approximately 12 nautical miles northwest from Cordova, Alaska. The proposed farm site is composed of one parcel for oyster grow-out, gear storage and raft moorage measuring 2,500 feet long by 250 feet wide and totaling 14.35 acres, and parcel 2 is for oyster beach hardening and cage defouling measuring 50 feet long by 30 feet wide and totaling 0.03 acres. The total area is 14.38 acres, more or less.

Parcel 1, the grow-out parcel, will hold two 1900-foot polydac longlines 30 feet apart from each other for subtidal suspended culture of Pacific oysters (*Magallana gigas*). Each longline will have submerged stacks of flow through metal cages for oyster grow-out supported and marked by buoys at the surface. Stacks will be spaced at least 6 feet apart. At maximum grow-out capacity stacks would number 50 per 300 feet, for a maximum of 600 stacks on two longlines. Cages are coated steel wire mesh 24-inches by 24-inches by 5-inches trays which and will be stacked up to 10 cages deep. Longlines will be anchored with 600-pound Danforth-type anchors on the corners and 100-

pound Danforth-type anchors along the sides, all rigged with chain at the anchor end. Parcel 2, the hardening area, will have up to 12 large nylon, 1.5-inch mesh bags (4-foot diameter by 4-foot height) and will hold mature oysters anchored with rocks in the intertidal. Oyster cages may be stacked here to defoul.

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.

Operation and Development Plan

The proposed lease Operation and Development Plan dated July 31, 2017, is accepted by SCRO as complete. Should the proposed lease be granted, it is anticipated that the Operation and Development Plan 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.

Compliance with Existing Regulations and Lease Stipulations

SCRO recognizes there are many challenges faced by aquatic farmers in Alaska with growing kelp. Such challenges include survival of seedstock to harvestable size, localized water quality issues, fouling organisms such as bryozoans that diminish quality of product, and weather issues that damage product or culture gear. Harvesting, processing, and marketing logistics must all be considered.

In consideration of these challenges, SCRO still has the responsibility to appropriately manage lands held in trust for the residents of the State of Alaska and to ensure the authorized aquatic farms are operating in accordance with the intent of the Aquatic Farm Act. The primary method used to accomplish this is the adoption of regulations governing how laws are to be implemented.

Key regulations for the management of aquatic farms are identified below:

11 AAC 58.510, Lease Utilization

This regulation states the land being leased must fall within the scope of what is being proposed by the applicant and approved by DNR. Leases must be developed and utilized consistent with the approved Operation and Development Plan within five years or the lease may be terminated.

11 AAC 63.030(b), Commercial Use Requirement (CUR)

The CUR is one method DNR has available to determine whether or not the aquatic farm is being farmed to a commercial benchmark. The CUR was codified in the 1998 regulations as a quick and quantifiable measurement of productivity by the fifth year of operations (and beyond) and it provides DNR and ADF&G a means of identifying farms that may need closer monitoring. At the time the CUR was adopted, the primary species being farmed was the Pacific Oyster which had an

established record of growth data in Alaskan waters available to regulators and industry members. At this time, the CUR states a farm needs to be making annual sales in excess of \$3,000.00 per acre or \$15,000.00 per farm by the fifth year of operation of aquatic farm product, as defined in AS 16.40.199. Failure to meet CUR constitutes a default and may be cause for termination, per 11 AAC 63.110(7).

11 AAC 63.110(7), General Lease Provisions, Operation and Development Plan, and Annual Reports

The applicant has provided a site description and a project description to DNR and ADF&G with their application. They also provided a projection on how much planting and harvesting they plan to do during the 10-year term. DNR is aware of some of the issues faced by farmers when trying to establish any realistic long term projections. This is why the Operation and Development Plan is considered a fluid document and subject to change (with DNR approval) over the life of the lease in reaction to unanticipated changes in the basic business plan. Leaseholders are encouraged to communicate changes to plans with DNR frequently to communicate how farming activities are progressing. Failure to develop the lease site in accordance with the approved Operation and Development Plan within five years of lease issuance will result in non-compliance and subject the lease to cancellation.

Annual Reports (due by January 31st of each year) are valuable documents for both DNR and ADF&G. They are the main tool both agencies use to identify and understand issues the aquatic farmer may be encountering which could inhibit the productivity of an aquatic farm site. Reports also communicate if the site is being utilized in accordance with the Operation and Development Plan and if the CUR is being met annually, per 11 AAC 63.030(b). By failing to submit complete and timely Annual Reports, the lessee not only falls out of compliance with aquatic farm regulations, but also inhibits DNR's constitutional responsibility to ensure the land is being utilized in accordance with the best interest of the residents of the State.

11 AAC 63.110(11)(b), Lease Compliance

This regulation requires the lessee to provide the department with any records it has determined are necessary to verify the lessee's compliance with the lease provisions.

Hazardous Materials and Potential Contaminants:

No hazardous materials or fuel are planned to be stored on the 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 11 AAC 63.080 SBOC will be required to submit a performance guaranty for the leasehold.

- **\$2,500.00 Performance Bond:** This bond will remain in place for the life of the lease. The bond amount is based upon the level of development, amounts of hazardous material/substances on site, and the perceived liability to the state. 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 Operation and 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:

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

Survey:

In accordance with AS 38.04.045, this short-term land 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. SBOC has submitted GPS coordinate points for each of the four corners of the proposed leasehold.

Compensation and Appraisal:

DMLW has approved a 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. Fees are subject to adjustment per AS 38.05.105. At this time, the rates for aquatic farms up to 30 acres in size are \$450.00 for the first acre or partial acre and \$125.00 for each additional acre or partial acre. In accordance with the Aquatic Farmsite Fee Schedule, Report No. 2522-13, a breakdown of the lease fee will be as follows:

14.38 acres: (1 x \$450.00) + (14 x \$125.00) = **\$ 2,200.00 per year**

If the applicant does not agree with the fee schedule amount of \$2,200.00, 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. 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 \$2,200.00 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 State Land Survey or 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 State of Alaska. 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.

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 the termination of their lease. What level of reclamation constitutes as being “good and marketable” is at the discretion of SCRO. DNR reserves the right to require a reclamation bond at any time.

Agency Notice:

An Agency Review was conducted for a 20-day period starting on December 29, 2017. The deadline for agency comments was January 17, 2018. Due to agency request, the agency review was extended until January 29, 2018.

The following agencies were included in the review:

- DNR DMLW – Mining
- DNR DMLW – Water
- DNR DMLW – Title
- DNR DMLW – Land Sales
- DNR Office of History and Archaeology/SHPO
- DNR Division of Oil and Gas
- DNR Division of Parks and Outdoor Recreation (DPOR)
- ADF&G - Habitat
- ADF&G – Aquatic Farm Coordinator
- DEC - Shellfish
- Department of Transportation and Public Facilities
- U.S. Fish and Wildlife Service
- U.S. Army Corp of Engineers
- USDA Forest Service, Cordova Ranger District

- National Oceanic and Atmospheric Administration
- U.S. Environmental Protection Agency
- U.S. Coast Guard
- City of Cordova

During the Agency Review, SCRO received three comments.

ADF&G Comment:

It is recommended that the stipulations listed below be added to the aquatic farm lease and aquatic farm operation permit authorizations, where appropriate, and an advisory of the recommendations be provided in the Department of Natural Resources Preliminary Decision that are provided to the applicant and the public.

If the lease is approved, a site-specific condition will be added to the aquatic farm operation permit as follows:

- The permit holder will implement best management practices to reduce impacts to marine mammals including: a) regular maintenance of farm structures (i.e. keep lines secured and anchor wraps under tension); b) ensure waste material and debris are collected and disposed of correctly; c) use caution when operating vessels; d) directing aquatic farm workers to avoid interacting with or feeding marine mammals; e) for any anchors, remove all entangling materials and avoid the use of rubber; and f) monitor marine mammal species in the vicinity of the farm. Any marine mammal entanglements should be immediately reported to the department's aquatic farming coordinator – (907) 465-6150 and National Marine Fisheries Service Alaska 24 hr. Stranding Hotline, phone – (877) 925-7773.

SCRO Response:

DNR statutes and regulations do not specify management of aquatic farms relating to marine mammals and management of marine mammals are outside the scope of DNR's authority. However, DNR will add an advisory in the lease as a reminder to SBOC. In addition, pursuant to lease stipulation No. 4, the stipulation requires the lessee to comply with all applicable laws, regulations, ordinances, and order that a public authority has or may put into effect.

Furthermore, lease stipulation No. 26 states: The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.

USDA Forest Service, Cordova Ranger District, Comment:

The Chugach National Forest manages land and natural resources in the surrounding area. The development plan, maps, and diagrams were reviewed. It was determined this project is unlikely to negatively impact Forest Service lands and resources. There were no objections or concerns about the proposed lease.

SCRO Response:

The USDA Forest Service comment is accepted.

U.S. Army Corps of Engineers Comment:

U.S. Army Corps of Engineers Section Chief provided an email to the applicant and SCRO advising that the proposed oyster farm would require an authorization under Section 10 of the Rivers and Harbors Act. The application form was attached with direction for SBOC to forward it once complete to Mr. Randall Virgil in the Juneau field office.

SCRO Response:

The U.S. Army Corps of Engineers' comment is noted and SBOC is aware of the permit requirements and indicated that she is complying with the U.S. Army Corps of Engineers on this requirement.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, the notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Notices/Search.aspx> for at least 30 consecutive days per AS 38.05.945(b)(3). The post offices located in Cordova, Valdez, Whittier, Chenega, and Tatitlek will be requested to post the notice of the Preliminary Decision per AS 38.05.945(b)(3)(C). Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on June 13, 2018 for a 30-day public comment period.

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 July 17, 2018 to be considered.

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

Postal: Department of Natural Resources
Southcentral Region Office
ATTN: Karen Cougan
550 West 7th Avenue Suite 900C

Anchorage, AK 99501-3577

Phone: 907-269-8543

E-mail: karen.cougan@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. This decision considers the existing uses in the area, and the overall benefit to the State’s aquatic farm industry. SCRO 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 yearly rent/fees. The proposed lease also supports job opportunities for the public while maximizing the use of the State’s natural resources. 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 the recommendation that the State issue SBOC a 10-year lease, with the understanding that if the lessee fails to comply with the submission of the Annual Reports, Commercial Use Requirements, or with any other information DMLW requests, this will constitute a violation of the lease terms and steps may be taken to terminate the lease authorization.

Karen Cougan

Karen Cougan, Aquatic Farm Program Coordinator

5/29/18

Date

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 farm lease, per AS 38.05.083 to SBOC, as described above. Upon authorization of ADL 232899, the applicant will pay the annual lease fee of \$2,200.00 per year. The applicant will also be required to submit a \$2,500.00 performance bond and meet the State of Alaska liability insurance requirements. This application shall now proceed to public notice.

[Signature]

Clark Cox, Regional Manager
Southcentral Regional Office, Division of Mining, Land & Water

6-6-18

Date

Attachments

Attachment A – Development Plan: Project Description, General Location Map, Site Plan Maps and Diagrams (The complete Development Plan is available upon request.)



Attachment A Development Plan

ADL 232899 Development Plan

Aquatic Farm Program Application

Part B. Project Description

Simpson Bay Oyster Company (Seawan Gehlbach)

Simpson Bay, Prince William Sound, Southcentral AK

This proposed mariculture farm site is located in Simpson Bay, 12 nautical miles from Cordova, AK. This farm site was chosen for its proximity to proven oyster culture and protection from weather; on sunny days the western wind creates "chop" in outer Simpson Bay which does not wrap around to this site, and it is in the lee of east wind storms. This site does present the challenge of deeper water but the protection is worth it.

The proposed farm site is composed of 1 larger parcel (Parcel 1) for oyster grow out, gear storage and raft moorage and 1 small parcel (Parcel 2) for oyster beach hardening and cage defouling. The total area is 14.38 acres.

Parcel 1 (Grow-out Area): 250ft x 2500ft, 14.35 acres. To best fit this site we are arranging the farm with (2) 1900ft. polydac - longlines 30ft apart from each other for subtidal suspended culture of Pacific oysters (*Crassostrea gigas*). Each longline will have submerged stacks of flow through metal cages for oyster grow out supported and marked by buoys at the surface. Stacks will be spaced at least 6' apart. At maximum grow-out capacity stacks would number 50/ 300ft, for a maximum of 600 stacks on two longlines. Cages are coated steel wire mesh 24"x 24"x 5" trays which and will be stacked up to 10 cages deep.

This area includes the anchor footprint which is wide due to the MLLW (mean lower low water) water depth of 200ft all along the parcel's western edge. Longlines anchored with 600# Danforth-type anchors on the corners and 100# Danforth-type anchors along the sides, all rigged with chain at the anchor end.

Within Parcel 1 the work/processing raft, storage raft and FLUPSY, will be secured with mooring lines to mooring points (ie. bouys, mooring rings) on the above described anchors and moorings system of the grow-out area. These rafts are all moveable within this area and may remain on site year round; they will be brought to Cordova for haulout / maintenance as necessary.

The work raft is a 36' x 12' with 3' draft steel hull with no copper bottom paint, equipped with a mast and boom, topping lift and hoisting winches and covered storage; used to move along the longlines and haul stacks of trays out of the water for cleaning and sorting oysters. Diesel fuel will be stored in fuel tanks integral to the hull. Storage of gasoline will be in plastic fuel containers stored in totes for secondary containment.

Attachment A Development Plan

The storage raft is a 16' x 20' with 1' draft wooden raft constructed with non-treated lumber with floatation provided by polystyrene enclosed in polyethylene. The storage raft will be used to store oyster cages and equipment.

The FLUPSY (Floating UPweller SYstem), our oyster nursery, will be a 28' x 16' x 4' (3' draft) steel framework with encapsulated polystyrene floatation. Young oysters will start growing in (12) 24" screen bottom poly baskets with screened pvc piping at the top feeding a central trough circulated by an aluminum paddlewheel. Paddlewheel will be driven by an electric motor, power supplied by a battery bank charged by a solar panel array and backed up with a generator.

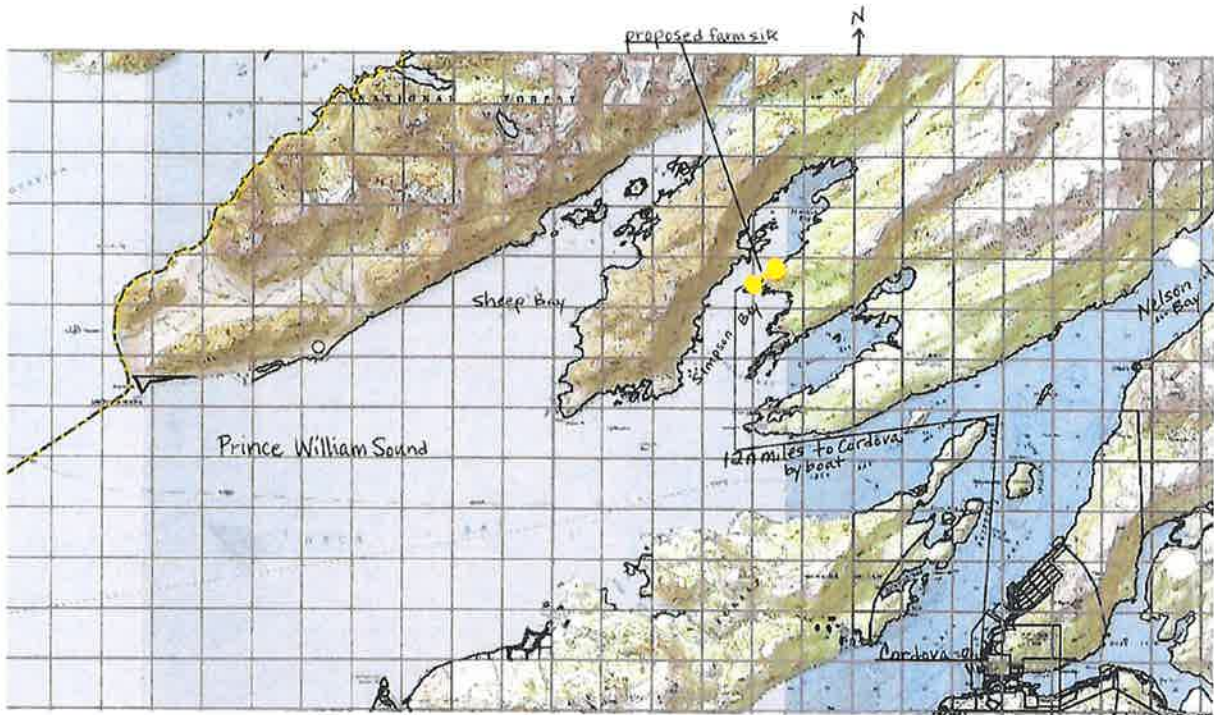
Parcel 2 (Hardening Area): 30ft x 50ft, .03 acres. This area is for beach hardening of oysters in mesh bags. Up to 12 large nylon, 1.5in mesh bags (4' diameter by 4' height) will hold mature oysters anchored with rocks in the intertidal. Oyster cages may be stacked here to defoul.

Access to and from the site and Cordova will be by boat. Personnel will not stay long-term at the site. Housing for personnel will be provided on support vessels with holding tanks for waste. We anticipate working the farm in "surges" of 10-14 days twice a month, during the active months.

Oysters will be grown, sorted, defouled, cleaned, hardened and harvested at the farm site. Stacks of oysters will be lifted using the hydraulics and winch from our work raft. Packing for shipment and storage of oysters will occur in Cordova. Our facilities in Cordova will be used to store equipment when not in use.

Our oysters will be marketed to Alaska, Cordova, and the Pacific Northwest. Daily jet service into Cordova gives us good access to fresh markets in Anchorage and Seattle.

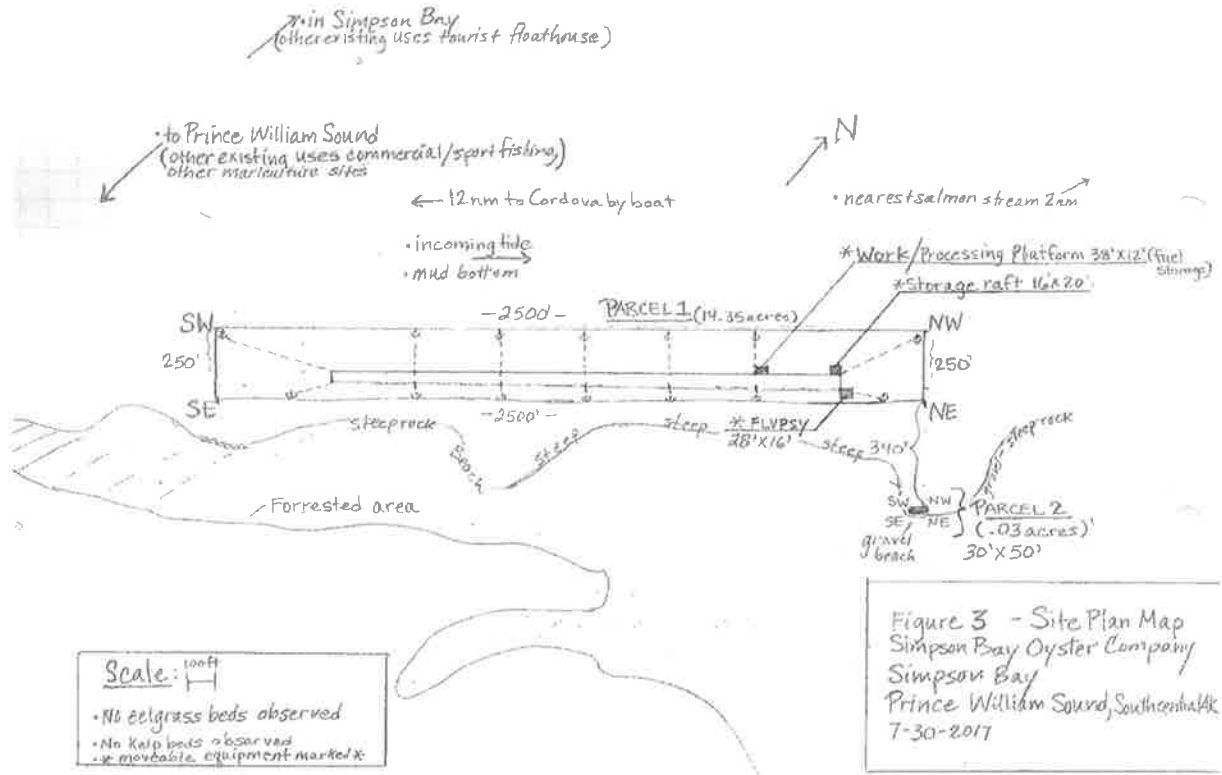
Attachment A Development Plan



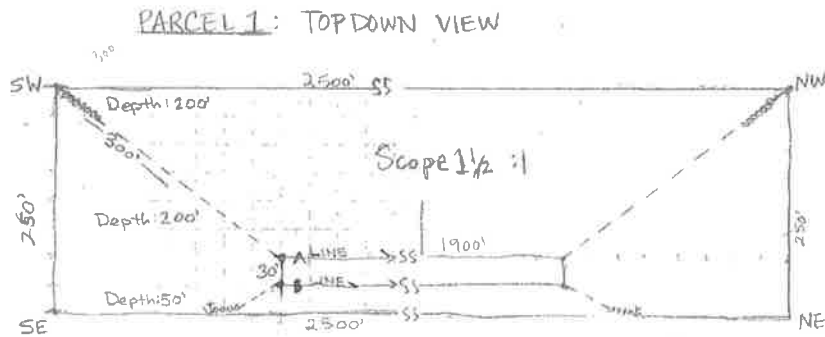
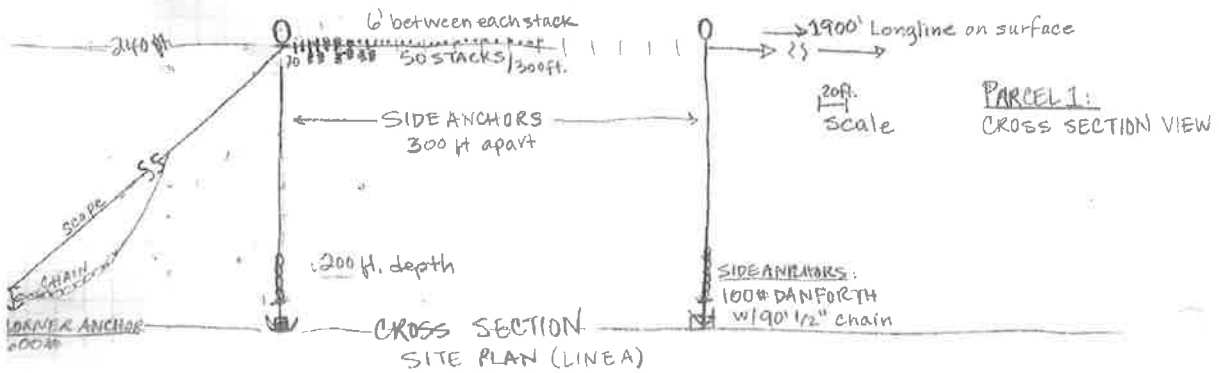
2 miles
Map created @ DNR-AKMapper-ArcGIS Topo

Figure 1 General Location Map
USGS Topographical
Simpson Bay Oyster Company
Simpson Bay
Prince William Sound, Southcentral AK

Attachment A Development Plan



Attachment A Development Plan



- Corner anchors 600# with chain (\$20000)
- side anchors not represented here due to scale.

Figure 5 Sectional Diagrams
Simpson Bay Oyster Company (S. Gelibach)
Simpson Bay
Prince William Sound, SE AK ()
4/30/17 (revised 7/30/17)