

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

**PRELIMINARY DECISION**

**ADL 234203**

**Stephen Payton and Harmony Payton**  
**dba Seldovia Seaweed**  
Application for Lease  
AS 38.05.083

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state-owned tide and submerged lands. The public is invited to comment on this PD. The deadline for commenting is **11:59PM March 17, 2026**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

**Requested Action:**

Stephen Payton and Harmony Payton dba Seldovia Seaweed submitted an application to the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW) to lease 4.59 acres more or less, of state-owned tide and submerged lands for 10 years for the purpose of installing a submerged longline culture system for the commercial growth and harvest of sea lettuce (*Ulvaria obscura*), sugar kelp (*Saccharina latissima*), and bull kelp (*Nereocystis luetkeana*). The proposed lease is located on the southwest end of Kachemak Bay, within Seldovia Bay in Seldovia, Alaska. The location of the project area is further described as being within SW1/4 of Section 6 and NW1/4 of Section 7, Township 9 South, Range 14 West, Seward Meridian, Alaska.

**Requested Improvements:**

- Parcel 1: 200 feet by 1000 feet (4.59 acres, more or less)
- (4) 400-foot longlines
- (6) 200-lb anchors

**Proposed Action:**

DMLW proposes to issue a 10-year aquatic farmsite lease to Seldovia Seaweed to facilitate the commercial growth and harvest of sea lettuce, sugar kelp, and bull kelp. The proposed aquatic farm will consist of one parcel totaling 4.59 acres, more or less, to install and maintain a submerged longline system made up of four 400-foot longlines located on the southwest end of Kachemak Bay, within Seldovia Bay in Seldovia, Alaska.

### **Scope of Decision:**

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

### **Authority:**

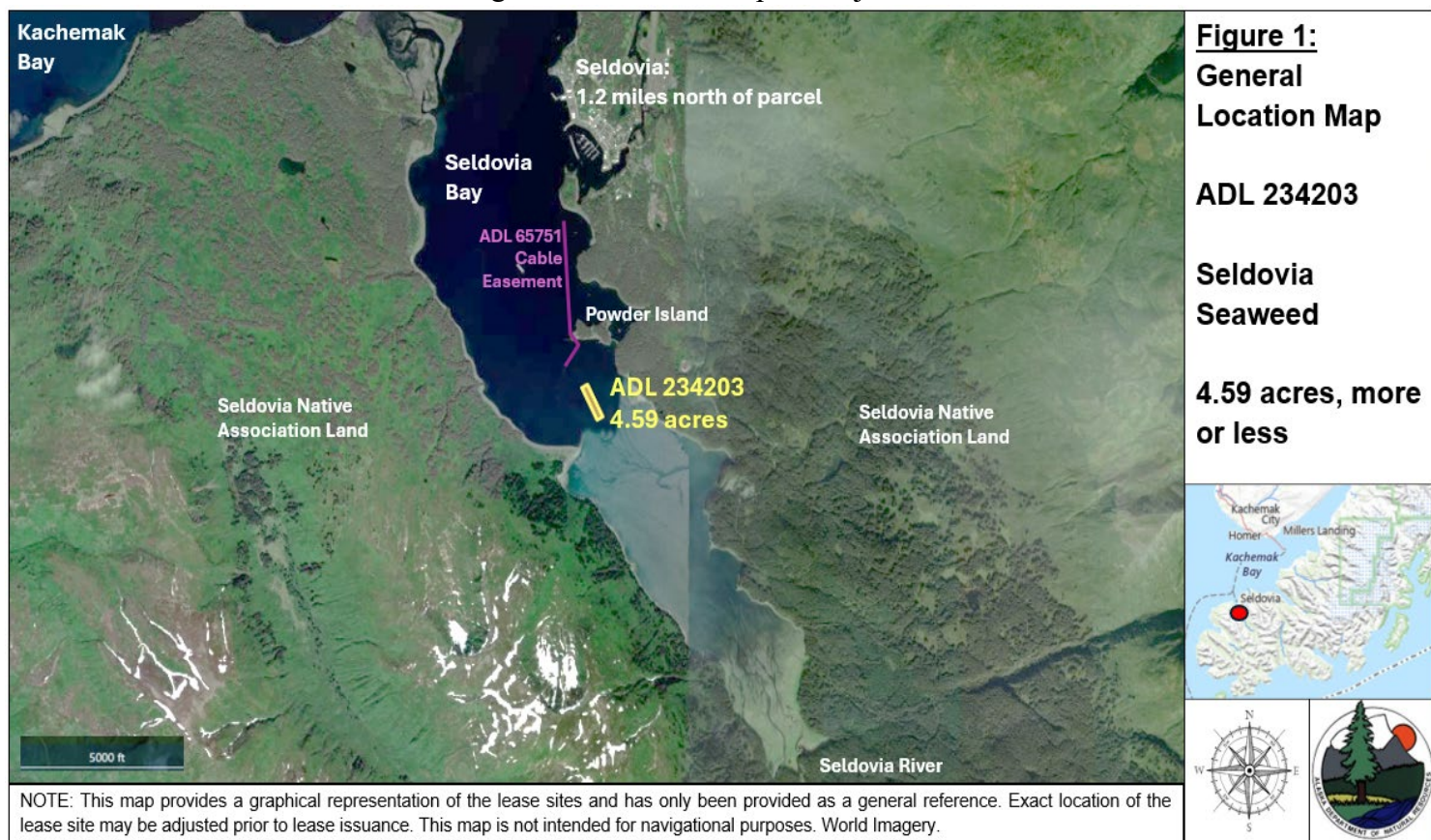
This lease application is being adjudicated pursuant to Alaska Statute (AS) 38.05.035(e) Delegation of the Powers and Duties of the Director, AS 38.05.070(b) Generally, and AS 38.05.083 Aquatic Farming and Hatchery Site Leases.

The authority to execute the Preliminary Decision, Final Finding and Decision, and the lease has been delegated to the Regional Manager of the Southcentral Regional Land Office under AS 38.05.035(b)(1).

### **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 234203.

Figure 1: Overview Map of Project Area



### **Legal Description, Location, and Geographical Features:**

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

- **Site reference name:** Seldovia Bay
- **Geographical locations:** Located within Seldovia Bay on the southwest end of Kachemak Bay, approximately 0.25 miles south of Powder Island, and approximately 1.2 miles south of Seldovia, Alaska.
- **Approximate Lat/Longs (NAD 83):**

Parcel 1:        Suspended grow out area

NE Corner:    59° 25.13900'N, 151° 42.92800'W

SE Corner:    59° 24.99221'N, 151° 42.78453'W

SW Corner:    59° 24.97733'N, 151° 42.83800'W

NW Corner:    59° 25.12321'N, 151° 42.98453'W

- **Legal description:** SW1/4 of Section 6 and NW1/4 of Section 7, Township 9 South, Range 14 West, Seward Meridian, Alaska
- **Recording district:** Seldovia
- **Existing parcel survey, if applicable:** N/A
- **Municipality/Borough:** Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes:** Cook Inlet Region Inc., Chugach Alaska Corporation, Koniag Inc., Seldovia Village Tribe, Seldovia Native Association, Native Village of Port Graham, Native Village of Nanwalek
- **Size:** 4.59 acres, more or less

### **Title:**

A DNR Title Report (RPT-24198) issued on January 14, 2026, 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 is subject to the 2000 Kenai Area Plan (KEAP) within Region 9: South Side Kachemak Bay and Chugach Mountains, Unit 541: Seldovia Bay Tidelands, Map 9A. This unit is designated Habitat and Public Recreation and Tourism – Dispersed Use, and converts to a classification of Wildlife Habitat Land and Public Recreation Land. The area is also subject to ADF&G's 1993 Kachemak Bay Critical Habitat Area Management Plan (Kachemak Bay CHA MP). The tide and submerged lands of Seldovia Bay are located within the LDA of the Kachemak Bay CHA MP.

The land management policies for each management unit outlined in Chapter 3 state that Region 9, Unit 541, Seldovia Bay Tidelands, is managed for its resources of sea otter populations, kelp beds, mussels, mollusk beds, seaweed and rock oysters in the unit. The area is currently used for recreation by Seldovia residents (3-265).

In Chapter 2 of the KEAP, Aquatic Farming in Kachemak Bay must be made consistent with the criteria described in AS 16.40.105 and all proposals are to be reviewed by ADF&G (2-5). Further, KEAP manages Aquatic Farming projects located in this proposal's location of Kachemak Bay by the guidelines set forth in the legislatively designated area, 1993 Kachemak Bay CHA MP. Per the KEAP,

DNR will manage for aquaculture consistent with this plan and any future adopted changes to the Critical Habitat Area plan:

...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... To avoid conflict with existing setnet fisheries, aquatic farms will not be sited within 1000' radius offshore (from mean low water) of commercial set gillnet sites in Seldovia Bay (KEAP 2-5).

In this area, "on-bottom aquatic farming" means an operation that grows, farms, or cultivates aquatic farm products in captivity or under positive control on or in the substrate. As of April 12, 2001, regulation 5 AAC 95.300 went into effect which prohibits on bottom aquatic farming in the Kachemak Bay CHA MP. This proposed aquatic farm lease, ADL 234203, does not include any on-bottom farming.

This aquatic farm proposal is consistent with the criteria set by the Kachemak Bay CHA MP and upheld by KEAP. 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).

### **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. However, 11 AAC 63.050(b)(5)(B) require consideration of whether the lease site impacts traditional and existing uses of the site. Known traditional and existing uses of the area include, but are not limited to, residential use, sightseeing, recreation, tourism, sport fishing, salmon hatcheries, and upland access. The proposed aquatic farm should not interfere

with traditional and/or existing uses of the area, including commercial or sport fishing, subsistence activities, navigation, and recreation. Public and Agency Notice may reveal more unknown uses. If such information becomes available, any potential or existing conflicts will be addressed in a final best interest finding.

**Access:**

Access to the aquatic farm is by boat from the city of Seldovia which is 1.2 miles from the proposed farm site. The applicant plans to access the site using a 20-foot skiff.

**Access To and Along Navigable and Public Waters:**

The site is located on Seldovia Bay within Kachemak Bay.

AS 38.05.127 and 11 AAC 51.045 require that before leasing land, DMLW determines if a body of water is navigable and if it is, that DMLW provides for easements or reservations as necessary to ensure free access to and along the waterbody. The waters of Seldovia Bay are tidally influenced and thus navigable. However, the lease is entirely within these waters and located further than 50 feet from Mean High Water, thus a .127 easement is not necessary.

**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, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

**Hazardous Materials and Potential Contaminants:**

Hazardous materials will not be stored within the proposed leasehold. Requests to store hazardous materials in the future may require additional stipulations.

**Agency Review:**

An Agency Review was conducted on November 12, 2025, through December 2, 2025. Information and comments received from sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD.

The following agencies were included in the review:

- DNR Division of Parks and Outdoor Recreation
- DNR DPOR Office of History and Archaeology, State Historic Preservation Office
- DNR Natural Resource Conservation and Development Board
- DNR Division of Oil and Gas

- Alaska Department of Fish and Game
- Alaska Department of Environmental Conservation
- Alaska Department of Transportation and Public Facilities
- Alaska Department of Commerce, Community, and Economic Development
- Alaska Mental Health Trust Land Office
- Alaska Association of Conservation Districts
- U.S. Forest Service
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- U.S. National Park Service
- National Oceanic and Atmospheric Administration
- U.S. Environmental Protection Agency
- U.S. Coast Guard

**Agency Review Comment(s):**

During the Agency Review, DMLW received the comments below:

**U.S Army Corps of Engineers (USACE):**

The USACE provided an email dated November 14, 2025, stating,

Department of the Army (DA) authorization is required to perform work in navigable waters of the United States.

When an Aquatic Farm Lease is required from the Alaska Department of Natural Resources (ADNR) for a new or modified aquatic farm, the applicant must obtain and submit a copy of the ADNR preliminary decision with a Preconstruction Notification to us.

Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for structures or work in or affecting navigable waters of the U.S. (33 U.S.C. 403). Section 10 waters are those waters subject to the ebb and flow of the tide shoreward to the mean high-water mark, and/or other waters as identified by the Alaska District. Aquaculture structures and work would require Section 10 Authorization.

**DMLW Response:**

DMLW acknowledges USACE's comment. DMLW has provided a copy of the USACE agency's comment via email to Seldovia Seaweed on November 26, 2025, and notified them to contact the USACE for their specific permit information.

Alaska Department of Fish and Game (ADF&G):

ADF&G's Permit Coordinator submitted a letter on behalf of ADF&G Division of Commercial Fisheries (Management, Gene Conservation Lab and Fish Pathology), Division of Sport Fish, Division of Wildlife Conservation, Subsistence Section and Habitat Section, dated December 1, 2025. Within the December 1, 2025, letter from ADF&G is a Department Advisory, advising the applicant of general conditions pertaining to ADF&G's statutory and regulatory provisions for issuance of an Aquatic Farm Operation Permit (AFOP) if the applicant's project is approved. ADF&G also requests that the December 1, 2025, letter be included in the preliminary decision as an advisory to the applicant and for public reference.

The following concerns and recommendations are noted in the ADF&G letter and may be addressed in the AFOP:

- Division of Commercial Fisheries: has reviewed this request and has no concerns. The proposed site falls within waters that periodically open to commercial salmon purse seining. Because anchors and buoys would remain in place year-round, approval of this permit could result in some decrease in fishable area within Seldovia Bay for that gear type. However, the specific location proposed is not known to be in a high-use area for the commercial salmon purse seine fishery.
- Division of Wildlife Conservation, Marine Mammal Research Program: This application complies with the guidelines set forth with the ADF&G marine mammal mariculture policy updated in April 2024. Any advisories or mitigation steps recommunicated by NOAA Fisheries National Marine Fisheries Service (NMFS) or the US Fish and Wildlife Service (FWS) to reduce marine mammal disturbances should be followed. Large whales, especially humpbacks, are highly susceptible to entanglement in lines in the water; Removing all gear from the water during the non-growing season may minimize gear loss, user conflicts, and marine mammal entanglement and habitat exclusion potential. Any marine mammal entanglements should be immediately reported to the NMFS.
- Subsistence Section: has reviewed this request and has no concerns. The proposal is close to the subsistence fishery and documented salmon fishing areas (Technical Paper No. 420 page 141) but should not interfere with the area open to subsistence fishing.

DMLW Response:

DMLW acknowledges ADF&G's comment. As one of the resource managers in the area, ADF&G's input is an important source of information. DMLW relies on input from ADF&G and other stakeholders to advise of any expected impacts and solutions that may fall outside of DMLW's authority. DMLW has provided a copy of ADF&G's December 1, 2025, letter to the applicant. As requested in ADF&G's letter, the PD herein contains ADF&G's letter, which will be advertised for a 30-day public comment period. Per the development plan submitted by the

applicant on November 10, 2025, anchors and mooring buoys associated with the site will be left onsite year-round. DNR's statute and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to fish and game but authorize DNR to issue a lease for state-owned tideland, shoreland or submerged land to develop an aquatic farm. Management of fish and game is within the authority of ADF&G, and as such, DMLW must defer to them and encourages the applicant to work directly with them. ADF&G may add to its operation permit authorization the conditions it deems appropriate.

Office of History and Archaeology, State Historic Preservation Office (DNR DPOR):

On November 24, 2025, DPOR submitted an agency comment stating that, following review of the application for ADL 234203, DPOR "believe a finding of No Historic Properties Affected continues to be appropriate for the project." If the scope of this project changes, DPOR may need to re-evaluate this determination. DPOR states that "Should inadvertent discoveries of cultural resources occur during project activities, work must halt, and our office must be notified so we can evaluate whether the resource(s) should be preserved in the public interest (AS 41.35.070[d])."

DMLW Response:

DMLW acknowledges the comment provided by DNR DPOR.

**Lease Discussion:**

Stephen Payton and Harmony Payton dba Seldovia Seaweed submitted an application for a DNR aquatic farm lease to cultivate three species of kelp on April 30, 2023. This application was deemed complete by DMLW and Alaska Department of Fish & Game on March 25, 2024, and went into Agency Review from April 30, 2024, to May 20, 2024. During review, agencies identified that the proposed parcel required relocation because the site was in the vicinity of an electric cable easement issued to Homer Electric Association, serialized as ADL 65751. The applicant incorporated this guidance to submit new coordinates for an alternative site. A complete application for the revised site was submitted on November 10, 2025, and the updated application was sent to Agency Review on November 12, 2025.

The proposed lease will be composed of one parcel, consisting of 4.59 acres, more or less. The parcel will measure 200 feet by 1000 feet and will contain four 400-foot submerged longlines for cultivating three species of kelp: natural-set sea lettuce, and hatchery-produced sugar kelp and bull kelp.

Each of the four 400-foot longlines will be constructed of 7/16-inch polyline and suspended seven feet below the water surface. Depth control will be maintained using a system of ten-pound dropper weights and 6-by-14-inch foam "lobster" surface buoys, twelve in total. The parcel will contain six 200-pound anchors. Four anchors will be placed at the four corners of the parcel, and the outer longlines located on the east and west parcel borders will share one anchor each. Each anchor line

consists of 150-feet of 3/4-inch poly rope attached to seven-feet of 1/2-inch chain. The anchor scope is connected to 18-inch, 100-pound displacement mooring buoys, eight in total.

Outplanting occurs in the fall, and kelp harvests take place in May and June using a 20-foot skiff. During harvest, the lines will be stripped of kelp, the kelp sorted into totes, and the lines removed for the season. No support facilities are proposed, and gear will be stored on the applicant's private property when not in use. The year-round gear in the water will be the anchors and mooring buoys. The farm will be accessed as needed and weather dependent.

At this time the Commercial Use Requirement (CUR) states a farm must make annual sales of aquatic farm products of at least \$3,000.00 per acre or \$15,000.00 per farm by the commencement of the fifth year of operation and continue for the rest of the lease term. Failure to meet CUR constitutes a default and may be cause for termination. Annual reports of sales are due January 31 of each year.

Should the proposed lease be approved, the lease will be issued for a 10-year term beginning no later than one year following the effective date of the Final Finding and Decision. The proposed aquatic farm lease will be subject to the terms of DMLW's standard lease document effective at the time the lease is signed. The lease will also be subject to additional stipulations based, in part, upon the following considerations.

**Development Plan:**

The Development Plan (DP) attached to this decision (Attachment A) and dated November 10, 2025, is under consideration by DMLW. 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 DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

**Performance Guaranty:**

In accordance with AS 38.05.083(e) and 11 AAC 63.080, the applicant will be required to submit a performance guaranty for the lease to incentivize performance of the conditions of the lease and to provide a mechanism for the state to ensure that the lessee shares in financial burden in the event of noncompliance for site cleanup, restoration, and any associated costs after termination or expiration of the leases, the following bonds will be required.

**\$2,500.00 Performance Guaranty:** Performance guaranties provide a means to pay for corrective action if the lessee fails to comply with the lease requirements. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. Performance guaranties are subject to periodic adjustments being made during the term of the

authorization to address increases or decreases in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.

The Lessee must post a performance guaranty in the amount of \$2,500.00 to secure faithful performance with all terms and condition of the lease and to ensure site restoration of the leasehold. The performance guarantee must remain in effect for the duration of the lease term or until released in writing by the Authorized Officer (AO).

Failure by the Lessee to provide replacement security, upon notice of non-renewal of an existing form of security, shall be grounds for the AO to make a claim upon the existing security to protect the Lessor's interests.

The guaranty amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments to the lease, assignments, re-appraisals, changes in the development plan, approval of a reclamation plan, any change in the activities conducted or performance of operations conducted on the leased premises and as a result of any violations to the lease agreement.

The guaranty may be utilized by the AO to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Lessee does not comply with the site utilization, restoration requirements and/or other stipulations contained in the lease agreement. If the Lessee fails to perform the obligations under the lease agreement within a reasonable timeframe, the AO may perform the Lessee's obligations at the Lessee's expense. The Lessee agrees to pay within 20 days following demand, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the Lessee to comply with the terms and conditions of the lease agreement. The provisions of these authorizations shall not prejudice the State's right to obtain a remedy under any law or regulation.

The performance guaranty will be released upon expiration of the lease provided that all terms and conditions of the lease have been met, including complete removal and restoration of the leased area leaving the site in a safe and clean condition.

**Bond Association:** If three or more lessees post an association bond to cover 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 this section. A lease that is in default or that has

been terminated with site restoration still pending may not be removed from the coverage of the association bond.

**Reclamation Bond:** The State will reserve the right to require a reclamation bond due to noncompliance issues during the term of the lease or near the end of the life of the project.

**Insurance:**

To protect the State from liability associated with the use of the site, the applicant shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the stipulations of the authorization. The applicant shall secure or purchase at its own expense and maintain in force at all times during the term of this lease, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of ALL the insured's operations on state land. The insurance requirement may be adjusted periodically.

**Survey:**

In accordance with AS 38.04.045, this 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. The applicant submitted GPS coordinate points for the proposed leased area.

**Compensation and Appraisal:**

DMLW has approved an administrative lease fee schedule for aquatic farmsites that meet the conditions outlined within the Aquatic Farmsite Fee Schedule, Report No. 2522-16. The most current lease fee schedule will be used to determine the fair market rental each lessee is required to pay. All fees are subject to adjustment per AS 38.05.083(c). This schedule serves as the basis for establishing annual rent for the use of tide, submerged, and shore lands suitable for aquatic farm sites.

For an aquatic farm lease of 4.59 acres, the annual rent consists of a base fee of \$450 for the first acre, plus \$125 per additional acre or portion thereof, resulting in a total annual amount of \$950.00.

A breakdown of the aquatic farm annual lease fee will be as follows:

4.59 acres:  $(1 \text{ acre} \times \$450) + (4 \text{ acres} \times \$125) = \textbf{\$950.00 annual rent}$

If the applicant does not agree with the fee schedule amount of \$950.00, 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 \$950.00 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 Tideland Survey to accomplish the appraisal. If a survey is required, the cost will be incurred by the applicant.

**Subleases:**

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. A sublease is defined to include any lease, rental, storage, or accommodation agreement between the Lessee and another individual, business or corporation utilizing or benefiting from the lease parcel. Sublessee shall be defined to mean any individual or business entity executing an agreement, as above, with the Lessee. A sublease pertaining to the proposed lease includes but is not limited to, user agreements, license agreements, communication site agreements, or any contracts between the lessee and other commercial entities. All potential subleases must first be approved in writing by DMLW. DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will be 25% of the annual fee paid to the lessee by the sublessee. All sublessees and activities must meet the statutory qualifications under which this original lease was issued.

**Assignment:**

The proposed aquatic farm lease, if issued, may be assigned to another individual or corporation only with written approval from the State of Alaska. A lease will not be assigned to an entity if that entity does not meet the statutory qualifications or requirements of the lease, or if the lessee is considered not to be in “good standing” with this or any other agency authorization.

**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.

**Public Notice of the Preliminary Decision:**

Pursuant to AS 38.05.945, this PD will be noticed for a 30-day public comment period, starting on February 13, 2026. The Seldovia and Homer post offices located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>. Additionally, Public Notice will be sent to relevant Regional Corporations, Village Corporations, Municipality/Boroughs, neighboring property owners, nearby DMLW authorization holders, and other interested parties.

The public is invited to comment on this PD. All comments received during the public comment period will be considered in the Final Finding and Decision (FFD). A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the PD. If public comments result in significant changes to the PD, additional public notice may be given.

To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period.

**Written comments about this project must be received in this office no later than 11:59 PM on March 17, 2026, to be considered.**

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

Mail: Department of Natural Resources  
Division of Mining, Land and Water  
Southcentral Regional Land Office  
ATTN: Emily Gettis  
550 West 7<sup>th</sup> Avenue Suite 900C  
Anchorage, AK 99501-3577  
E-mail: [emily.gettis@alaska.gov](mailto:emily.gettis@alaska.gov)  
Fax: (907) 269-8913

DNR-DMLW complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to comment should contact Alaska Relay at 711 or 1-800-770-8973 for assistance at no cost.

***Signature Page Follows***

**Recommendation:**

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, agency comments, and land ownership, and has found that this project is consistent with all applicable statutes and regulations. DMLW considered both direct and indirect benefits to the State. DMLW finds granting of the proposed lease provides the greatest benefit to the State.

I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.



2/11/2026

Emily Gettis

Date

Natural Resource Specialist 3

**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 for 10 years to Seldovia Seaweed, as described above. This Preliminary Decision shall now proceed to public notice.



2/11/2026

Cinnamon Micelotta, Acting Natural Resource Manager 2

Date

Southcentral Regional Land Office

Division of Mining, Land & Water

**Attachments**

- Attachment A – Development Plan
- Attachment B – ADF&G Letter
- Attachment C – SAMPLE Lease
- Attachment D – SAMPLE Additional Stipulations

# Attachment A Development Plan

## PROJECT DESCRIPTION

DATE SUBMITTED: 4/30/23, 3/14/24 , 11/10/2025

### Company Name

Seldovia Seaweed

Site Location (Include water body, distance from nearest community, any landmarks, general region of Alaska, and whether on state tidal and/or submerged lands or private. Provide enough information to understand where it is located.)

The farm site is located in Seldovia Bay which is in Kachemak Bay. 1.2 miles from the city of Seldovia. The site is in state waters.

### Site Dimensions, Acres for Each Parcel

The site is ~~100~~<sup>200</sup> feet wide and 1,000 feet long  
this is ~~100,000~~<sup>200,000</sup> square feet or ~~3.44~~<sup>4.59</sup> acres.

### Total Acres of All Parcels

~~3.44~~ acres  
4.59

### Species You Intend to Farm (Include scientific and common species name)

saccharina latissima (sugar kelp)  
nereocystis luetkeana (bull kelp)  
ulvaria obscura (sea lettuce)

## Attachment A Development Plan

**Culture Method** [Describe operation activities to be done onsite such as outplanting of seedstock, husbandry techniques to be used (culling, sorting, washing, etc.), maintenance and monitoring activities, management of fouling organisms and incidental species, predator control measures, and schedule of activities such as timing of outplanting seeded lines or adding seedstock into trays, etc. Describe what methods you plan to use based on the definition in 5 AAC 41.400(6). "Culture" means to use or the use of methods to manipulate the biology and the physical habitat of a desired species to optimize survival, density, growth rates, uniformity of size, and use of the available habitat, and to efficiently produce a product suitable for a commercial market.]

Gear will be deployed in October and seedstock will be outplanted shortly after. Sea lettuce will be grown via natural set method. The farm site will be inspected twice weekly minimum (as weather allows). Kelp will be monitored for growth at this time. Any fouling or incidental species will be removed and relocated. In May or June kelp and sea lettuce will be harvested by removing from the line with a knife. The exact date will vary based on weather and other conditions.

**Culture Gear and Equipment (Type, Size, Number, Configuration, Material, and Anchoring System)** [If more than one parcel, indicate what parcel specific gear will be located on. If more than one species, indicate gear to be used for each. Gear includes any structure that holds or protects the organism like trays, tiers of lantern nets, Vexar bags, OysterGro system, grow-out submerged longlines, predator netting, longlines, buoys, depth control systems, etc. Include approximate installation schedule, or if and what gear will remain installed year-round etc.]

All species produced will be grown on a submerged longline system.

~~Two 2 longline systems each 800 feet long in total.~~

4 - 400 foot long lines of 7/16 inch poly line will be suspended 7 feet below the surface with depth control systems with dropper weights and buoys.

These systems will be ~~in~~ anchored with 200 lb anchors on either end. 7 feet of 1/2 inch ~~anchor~~ chain will connect the anchor to a 3/4 inch poly rope. This rope will attach to an 18 inch diameter 100 lb displacement mooring ball at the surface.

Depth control systems will consist of 5/16 inch poly line 7 feet long with a 6x14 inch surface buoy and weight.

Culture gear will be removed, while anchors and mooring buoys will remain onsite year-round.

\* The 400 foot longlines, on the east and west sides of the parcel, will share one anchor between each of the 400 foot longlines. There will also be an anchor in each of the 4 corners, for a total of 4 anchors.

## Attachment A Development Plan

**Seed Acquisition Plan (Commercially produced and/or wildstock)** [Commercially produced juveniles or seed stock must be obtained from an approved seed source. Do you intend to collect wildstock juveniles or natural set organisms for direct culture on your proposed site? Yes/No. If yes, describe collection methods (applicable for indigenous species: i.e. mussels, scallops, abalone, natural set aquatic plants, etc. This does not refer to broodstock collection on behalf of hatcheries for propagation. If increasing number of acquisitions per year, indicate projected amounts per year. Aquatic plant species can be combined into total feet of line per year.)

*Nereocystis luetkeana*, and *Saccharina latissima* will be acquired from the Alutiq Pride Marine Institute. We will acquire 1600 feet of line per year. *Ulvaria obscura* will be collected opportunistically/bycatch.

**Harvest Equipment and Method** [Describe harvest equipment and methods to be used, activities to be done onsite, and schedule of harvest of aquatic farm product. If more than one species, include harvest information for each species or group of species like macroalgae if the harvest information is the same.]

Kelp will be harvested in <sup>May/June</sup> of each year. Line with kelp will be hauled onto a twenty foot skiff and kelp will be stripped off the line into insulated totes.

**Support Facilities (Type, Size, Number, Configuration, Material, and Anchoring)** [Support facilities include caretaker facility, storage rafts, work rafts, processing rafts, etc.]

There will be no support facilities. Gear will be stored on private property when not in use.

## Attachment A Development Plan

c. What techniques will be used to optimize growth or condition of product?

To optimize growth of product it will mostly be left alone.  
We will monitor the site regularly to ensure gear is intact

### 3. Acquisition of hatchery or wild seed

- a. Will you use a certified or approved shellfish seed source(s)? Yes ☐ No ☒
- b. Will you use an Alaska kelp hatchery? Yes ☒ No ☐
- c. How do you intend to collect wild seed? (Applicable for indigenous species: i.e. clams, natural set kelp, invertebrates, etc.)

sea lettuce will grow via natural set method and will be encouraged to grow on culture gear such as 5/16 poly line not seeded by hatchery

### 4. Describe how operation of the aquatic farm will improve the productivity of species intended for culture not covered by the previous questions (examples: predator exclusion, reduction of competing species, density manipulation by culling/redistribution, importing natural or hatchery seed, program harvest to optimize growth/condition and habitat improvement)?

Farm operation will improve productivity of cultured species by using hatchery seeded lines, excluding predators and controlling the depth at which they grow.

## D. PROJECT LOCATION

### 1. Coordinates

Please provide latitude and longitude coordinates for each corner of each parcel at the proposed farm site. Identify each parcel to be used. For example, Parcel 1 - growing area, Parcel 2 - hardening area, etc. Latitude and longitude coordinates must be in NAD83 datum using degrees and decimal minutes format to the nearest .001 minute (Example: Longitude -133° 17.345), obtained using a Global Positioning System (GPS). If you are applying for more than three parcels or your proposed parcels have other than four corners, please provide those coordinates in your project description or on a separate sheet.

<b>Parcel 1:</b>	NE Corner No. 1: Latitude	59° 25.13900	Longitude	-151° 42.92800
<u>Grow-out Area</u> (e.g. Grow-out Area)	SE Corner No. 2: Latitude	59° 24.99221	Longitude	-151° 42.78453
	SW Corner No. 3: Latitude	59° 24.97733	Longitude	-151° 42.83800
	NW Corner No. 4: Latitude	59° 25.12321	Longitude	-151° 42.98453
<b>Parcel 2:</b>	NE Corner No. 1: Latitude	_____	Longitude	_____
<u>_____</u> (e.g. Hardening Area)	SE Corner No. 2: Latitude	_____	Longitude	_____
	SW Corner No. 3: Latitude	_____	Longitude	_____
	NW Corner No. 4: Latitude	_____	Longitude	_____
<b>Parcel 3:</b>	NE Corner No. 1: Latitude	_____	Longitude	_____
<u>_____</u> (e.g. Support Facility Area)	SE Corner No. 2: Latitude	_____	Longitude	_____
	SW Corner No. 3: Latitude	_____	Longitude	_____
	NW Corner No. 4: Latitude	_____	Longitude	_____

## Attachment A Development Plan

**Access to and from Site** [Include nearest community, transportation type used and how many times traversing back and forth]

The farm site is located 1.2 miles from the city of Seldovia.  
The site is easily accessible by boat. We will use an 18 foot skiff to access the site.

**Storage Location of Equipment and Gear When Not in Use** [Include whether on private lands and nearest community]

Gear will be stored at our property in Seldovia when not in use.  
219 Lindstead Lane, Seldovia AK 99663

### C. PROJECT OPERATION PLAN

#### 1. How will support facilities, culture gear and anchoring systems be maintained?

- a. How often, in days per month, do you intend to monitor your site for things such as adequate anchoring, disease, exotic species settlement, fouling, gear drift, snow load, wind damage, vandalism, etc.?

Growing season 7 (days/month) Off months 2 (days/month)

- b. How will you keep the gear and shellfish free of fouling organisms (hot-dip, air dry, pressure washing, etc.)?

Kelp growth will be encouraged, unintended species will be removed manually (by hand with a knife)

- c. How will you manage reduction of competing species over the course of operations (relocate sea stars, grow-out cages, or other possible protection from competing species)?

If any competing species are found they will be removed by hand and relocated to the nearby beach.

- d. If you intend to use predator netting, how long will you keep netting over your product?

N/A (months)

- e. If using predator netting, how will you minimize impacts on non-target species, including seabirds, seals, sealions, walrus and whales?

N/A

#### 2. Projected Harvest Rotation Consistent with Life History

- a. How often do you intend to harvest your product by species?

once per year in May. Exact date dependent on weather and growth.

- b. Do you plan on utilizing density manipulation by culling or redistribution?

no

## Attachment A Development Plan

### 2. Site Size

Please use the following formula to compute area. For more complex parcel shapes, you may wish to use the Measure Area tool in Alaska Mapper found at <https://mapper.dnr.alaska.gov/>. If you are applying for more than three parcels or your parcels are not rectangular, you may provide this information in the project description or on a separate sheet.

1. To compute the total area (sq. ft), multiply the width (ft) by the length (ft) of Parcel 1. The outside length and width of the Parcel must include your anchors and anchoring system plus any scope.
2. Divide the area (sq. ft) of Parcel 1 by 43,560, to convert the area from sq. ft to acres.
3. Repeat for each separate Parcel of your proposed farm site.
4. Add the acreage of each Parcel to get the total tideland acreage for your proposed farm site.
5. Write the Total Acreage on the line where indicated.
6. Note that the number of acres must correspond to your farm site maps and drawings.

Parcel 1: 200 feet (x) 1000 feet = 200,000 square feet (÷) 43,560 = 4.59  
(Width of Parcel 1) (Length of Parcel 1) (Area) (Acres)

Parcel 2: \_\_\_\_\_ feet (x) \_\_\_\_\_ feet = \_\_\_\_\_ square feet (÷) 43,560 = \_\_\_\_\_  
(Width of Parcel 2) (Length of Parcel 2) (Area) (Acres)

Parcel 3: \_\_\_\_\_ feet (x) \_\_\_\_\_ feet = \_\_\_\_\_ square feet (÷) 43,560 = \_\_\_\_\_  
(Width of Parcel 3) (Length of Parcel 3) (Area) (Acres)

How many total acres of state-owned tidelands are you applying for (add all parcel acres): 4.59  
(Total Acreage)

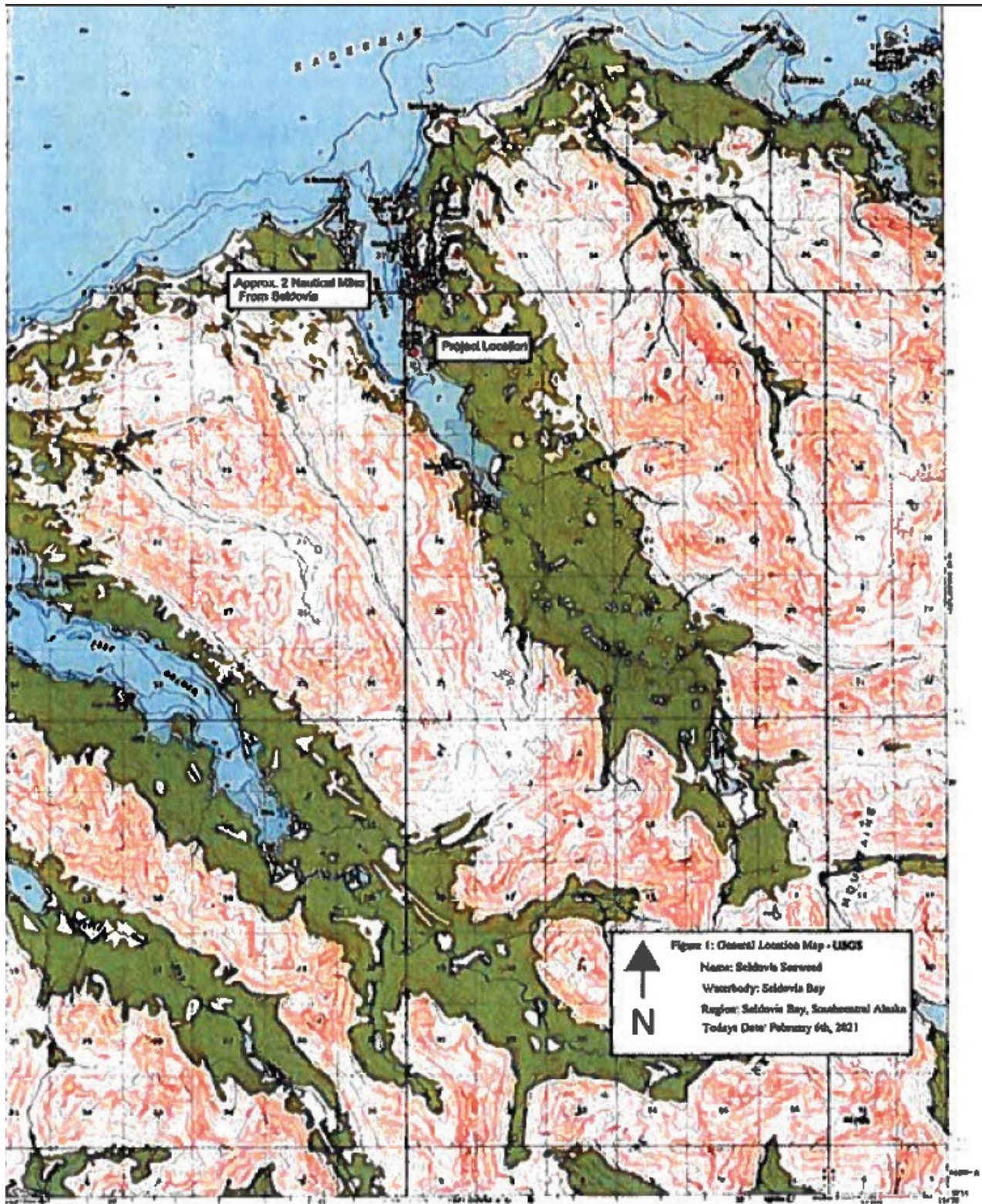
If you are also applying for state owned uplands for support facilities, how many total upland acres? 0  
(Total Upland Acreage)

## Attachment A Development Plan

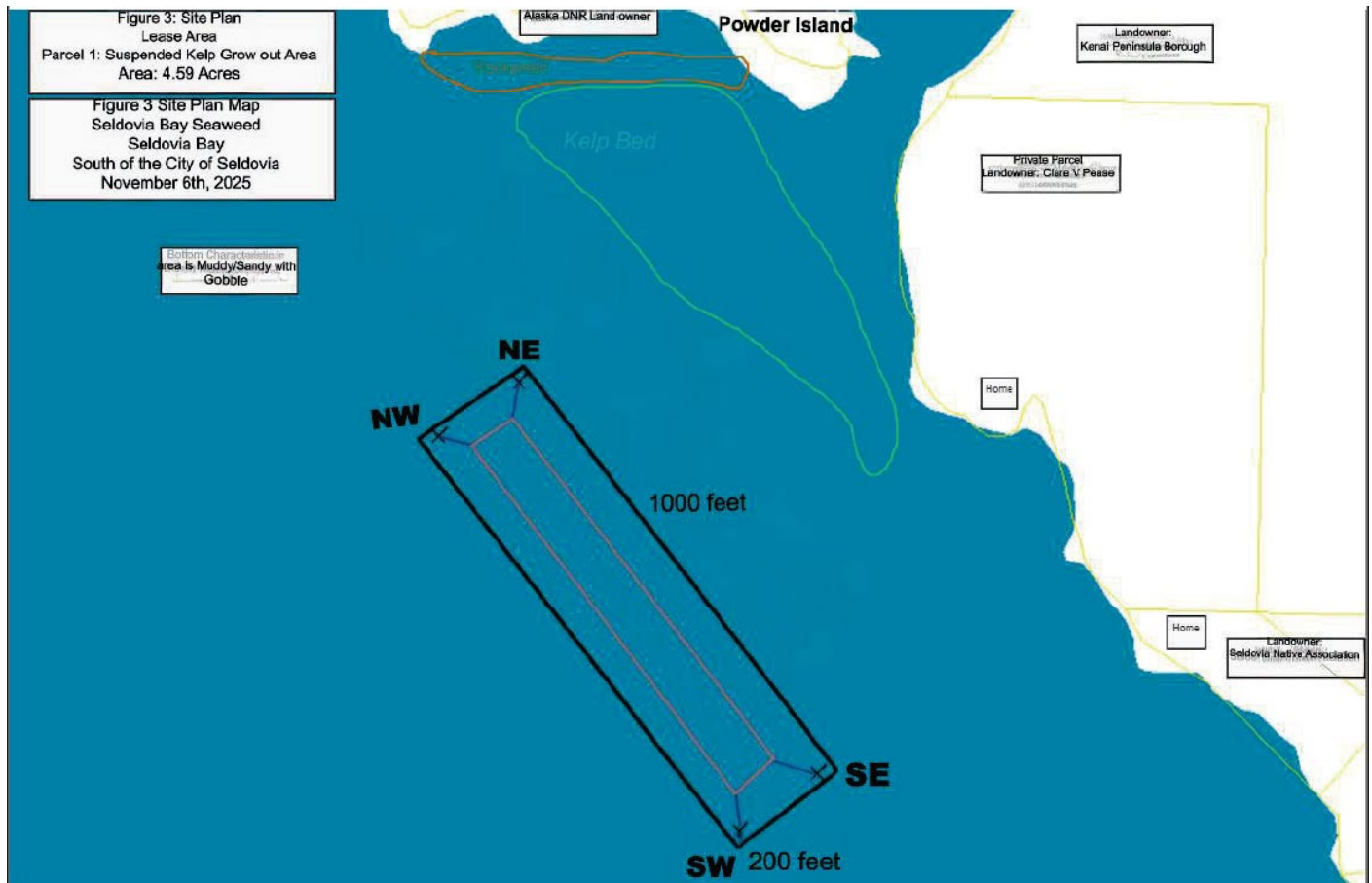
### E. SITE SUITABILITY – PHYSICAL AND BIOLOGICAL CHARACTERISTICS

1. Is the proposed location protected from severe storms, strong currents, winter ice, etc. and if not, is the farm designed for extremes?  
Yes ☒ No ☐ Additional Information \_\_\_\_\_
2. Does your site have suitable water exchange for species of culture? Yes ☒ No ☐
3. Are water temperatures suitable for proposed species of culture? Yes ☒ No ☐  
(Note: temperatures > 60° and < 31° F may pose problems such as Vibrio bacteria contamination or icing.)
4. Is there any significant freshwater influence near the farm? Yes ☐ No ☒  
(Note: freshwater may impact shellfish growth and/or survival or carry fecal coliform or other pollutants)
5. Is the salinity concentration at your proposed farm site appropriate for species of culture? Yes ☐ No ☐
6. Have you monitored the phytoplankton (microalgae) abundance and types during the main grow-out season?  
Yes ☐ No ☒ If yes, findings: \_\_\_\_\_  
(Note: shellfish depend on phytoplankton for food, but harmful phytoplankton can prevent harvest/sales.)
7. Have you monitored suspended sediments or turbidity (e.g. water clarity/transparency using a secchi disc) at your proposed farm site? Yes ☐ No ☒ If yes, findings: \_\_\_\_\_  
(Note: This is used as rough check for microalgae densities, run-off, and glacial silt (milky-grey color).)
8. For on-bottom culture, are the bottom characteristics suitable for the proposed species? Yes ☐ No ☐  
Substrate and vegetation? \_\_\_\_\_
9. For on-bottom culture, how will bottom characteristics be made suitable if not already?  
\_\_\_\_\_
10. For suspended culture, is the water depth sufficient to prevent gear from grounding and impacting the benthos under floating structures? Depth of Gear (in ft): 7 Water depth at low tide (in ft): 52
11. Is your proposed site more than 300 ft from an anadromous fish stream? Yes ☒ No ☐
12. Are you aware of any eelgrass or kelp beds on or near your proposed farm site? Yes ☒ No ☐ If yes, describe:  
The entirety of Seldovia Bay has kelp beds. The species to be produced grows abundantly in the area.
13. For farming using on-bottom culture methods, is there insignificant wild stock of the species to be cultured on the proposed farm site? (Reference 5 AAC 41.235) Yes ☐ No ☐ Additional information  
\_\_\_\_\_
14. Are there existing uses near your proposed farm site such as boat traffic, existing fisheries or a sensitive area as listed in section C of Part 1, etc. that may be impacted by the farm operation? Yes ☒ No ☐ If yes, describe how your farm can be sited to mitigate conflicting uses?  
Seldovia Bay has frequent boat traffic. The site is located in an area out of the way of this traffic. The site is located in Kachemak bay critical habitat area. The site is located near a subsistence fishery, but is in an area not frequently used and outside the area available to us

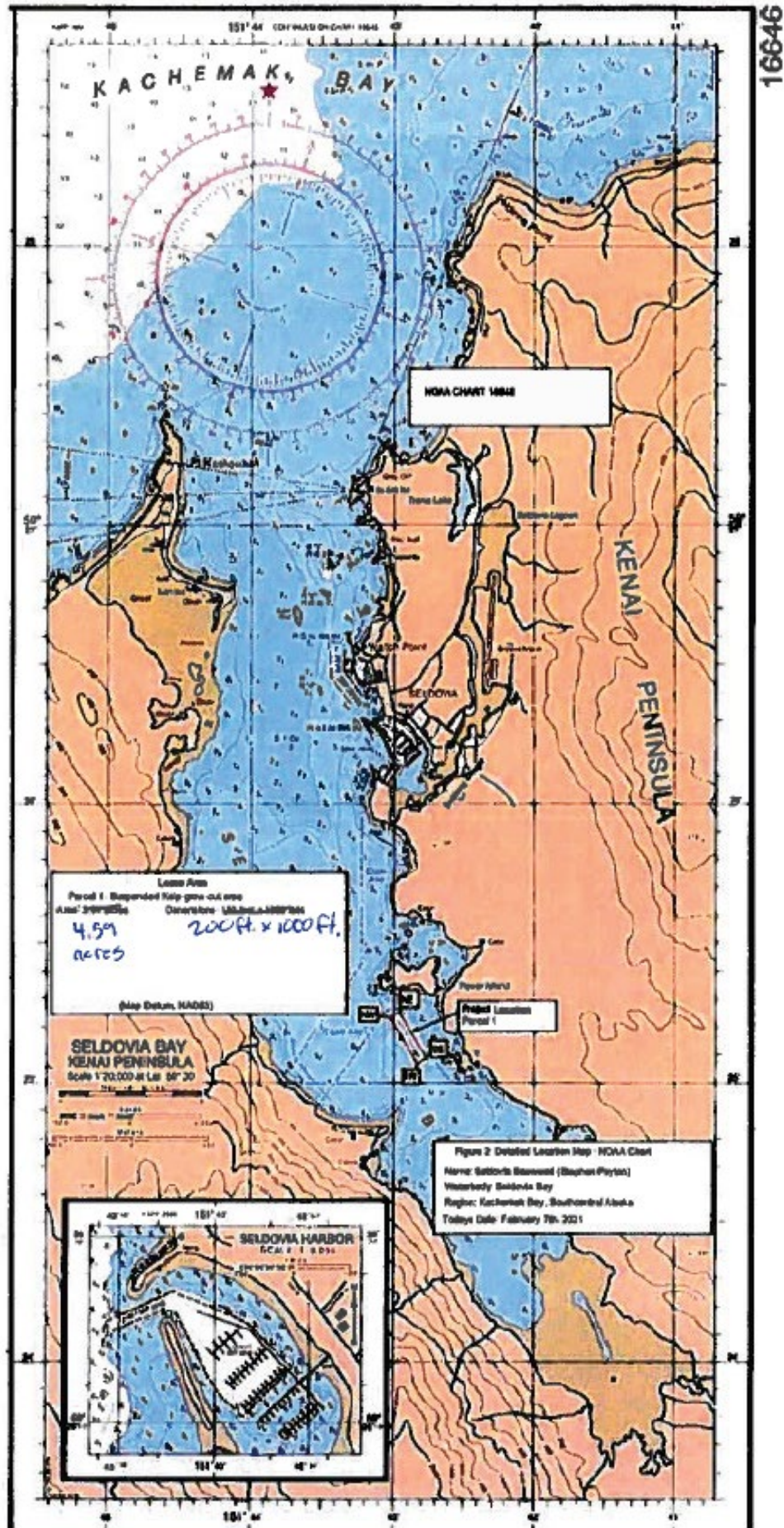
## Attachment A Development Plan



## Attachment A Development Plan



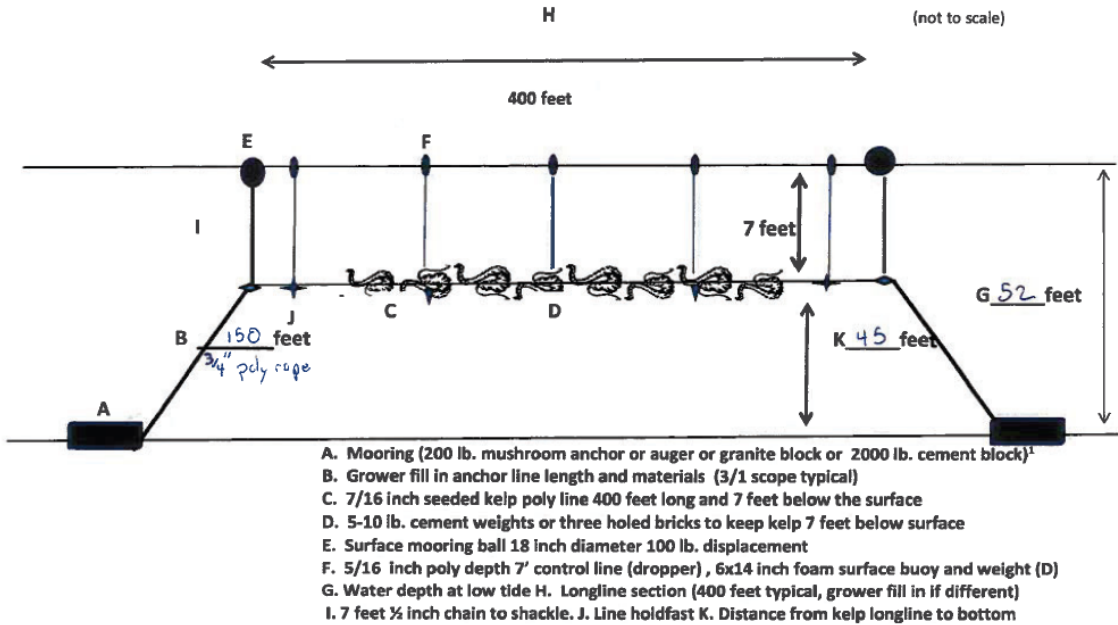
# Attachment A Development Plan



## Attachment A Development Plan

Name: Seldovia Seaweed  
Water Body: Seldovia Bay  
Region: Kachemak Bay, Southcentral Alaska  
Date: 10/26/2023

**Figure 4a. Cross-sectional view Alaskan Sugar Kelp Longline (grower fill in depth G and L)**



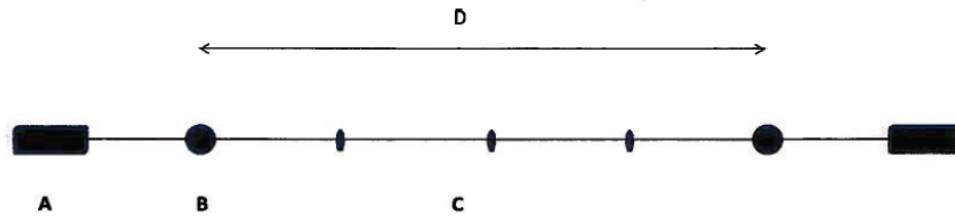
<sup>1</sup> Mooring detail to be filled out by grower in Figure 5.

## Attachment A Development Plan

Name: Seldovia Seaweed  
Water Body: Seldovia Bay  
Region: Kachemak Bay Southcentral Alaska  
Date: 10/26/2023

Figure <sup>4b</sup> 3b. Detailed Drawing - Plan view Alaskan Sugar Kelp Longline

(not to scale)

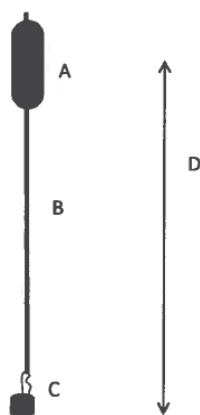


- A Mooring
- B Mooring buoy
- C Kelp longline with surface buoys
- D 400 foot kelp longline section (grower fill in if different)

## Attachment A Development Plan

Name: Seldovia Seaweed  
Water Body: Seldovia Bay  
Region: Kachemak Bay Southcentral Alaska  
Date: 10/26/2023

Figure 4c. Detailed Drawing - Details on kelp depth control line dropper

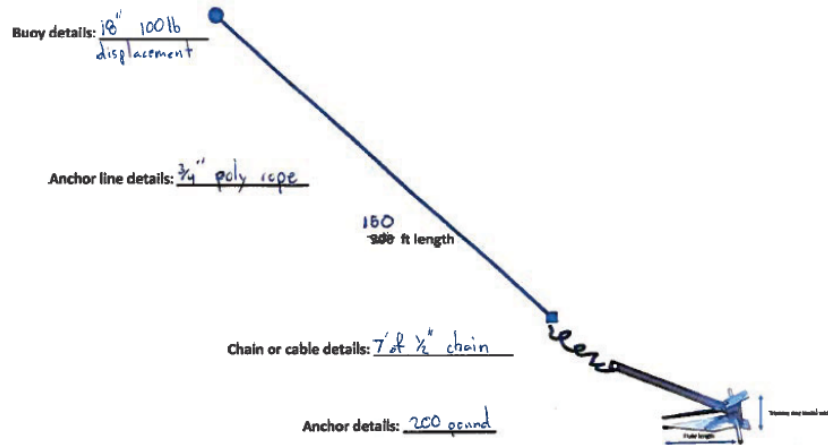


- A. 6 x 14 inch lobster buoy
- B. 1 inch pvc pipe with a lobster spindle washer and figure 8 knot of 5/16 poly rope on each end
- C. 10 lb. cement weight from ½ gallon paint bucket with knotted 5/16 poly loop or 3-holed brick
- D. 7 foot length

## Attachment A Development Plan

Name: Seldovia Seaweed  
Water Body: Seldovia Bay  
Region: Kachemak Bay Southcentral Alaska  
Date: 10/26/2023

Figure 5 Detailed Drawing - Anchoring system with configuration and poundage (fill in and /or add anchor drawing).



**Attachment B  
ADF&G Letter**



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

**Department of Fish and Game**

Division of Commercial Fisheries  
Headquarters Office

1255 West 8<sup>th</sup> Street  
P.O. Box 115526  
Juneau, Alaska 99811-5526  
Main: 907.465.4210  
Fax: 907.465.4168  
Permit Coordinator: 907.465.4724

December 1, 2025

Emily Gettis  
Department of Natural Resources  
Southcentral Regional Land Office  
Aquatic Farm Leasing Program  
550 West 7th Avenue, Suite 900C  
Anchorage AK 99501

Re: Alaska Department of Fish and Game Agency Review Comments  
Payton / Seldovia Seaweed Aquatic Farm Site Proposal – Seldovia Bay  
DNR File No. ADL 234203

Dear Ms. Gettis:

The Alaska Department of Fish and Game (ADF&G) has completed a preliminary review of the project proposal, ADL 234203 relevant to criteria specified in authorizations for Aquatic Farming AS16.40.105 and 5 AAC 41 200-400. ADF&G Division of Commercial Fisheries (Management, Gene Conservation Lab and Fish Pathology Section), Division of Sport Fish, Division of Wildlife Conservation, Subsistence Section and Habitat Section, were part of the initial review. *There are no concerns pertaining to an aquatic farm operation permit at the proposed location.* Any comments from other government agencies or from the public that may impact applicable department provisions will be considered as part of the final department review for an aquatic farm operation permit which will be issued within 30 days of the lease being issued. Recommendations from this preliminary review are summarized below.

**Department Advisory**

Please advise the applicant that if the project is approved, general conditions pertaining to Alaska Department of Fish and Game statutory and regulatory provisions for issuance of an Aquatic Farm Operation Permit (AFOP) will be included in the operation permit. In addition, site-specific conditions that have been recommended by staff may be included in the AFOP.

Division of Commercial Fisheries has reviewed this request and has no concerns. The proposed site falls within waters that periodically open to commercial salmon purse seining. Because anchors and buoys would remain in place year-round, approval of this permit could result in some decrease in fishable area within Seldovia Bay for that gear type. However, the specific location proposed is not known to be in a high-use area for the commercial salmon purse seine fishery.

## Attachment B ADF&G Letter

Emily Gettis  
Department of Natural Resources  
Aquatic Farm Proposal ADL 234203 ADF&G Review Comments

- 2 -

December 1, 2025

*Gene Conservation Lab* has reviewed this request and have no concerns.  
*Fish Pathology Section* has reviewed this request and have no concerns.

Division of Sport Fish has no comment at this time.

*Invasive Species Program Coordinator* has no comment at this time.

### Division of Wildlife Conservation

*Marine Mammal Research Program*: This application complies with the guidelines set forth with the ADF&G marine mammal mariculture policy updated in April 2024. Any advisories or mitigation steps recommunicated by NOAA Fisheries National Marine Fisheries Service (NMFS) or the US Fish and Wildlife Service (FWS) to reduce marine mammal disturbances should be followed. Large whales, especially humpbacks, are highly susceptible to entanglement in lines in the water; Removing all gear from the water during the non-growing season may minimize gear loss, user conflicts, and marine mammal entanglement and habitat exclusion potential. Any marine mammal entanglements should be immediately reported to the NMFS 24 hr. Stranding Hotline, phone – (877) 925-7773 and the ADF&G Permit Coordinator (907-465-4724).

*Access Defense Program*: Has reviewed this request and have no concerns.

*Seabird Program*: Did not comment at this time.

Habitat Section did not comment at this time.

Subsistence Section has reviewed this request and has no concerns. The proposal is close to the subsistence fishery and documented salmon fishing areas ([Technical Paper No. 420](#) page 141), but should not interfere with the area open to subsistence fishing.

Our department requests that the Department of Natural Resources consider providing this in their Preliminary Decision as an advisory to the applicant and for public reference.

Thank you for the opportunity to provide comments on this aquatic farm proposal. If you have any questions, please contact me at (907) 465-4724.

Sincerely,



Michelle Morris  
Permit Coordinator

ecc: Garold V. Pryor, Aquaculture Section Chief, ADF&G  
Stephen Payton, Seldovia Seaweed

**Attachment C**  
**Sample Lease**

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

550 W. 7<sup>th</sup> Avenue, Suite 900c  
Anchorage, Alaska 99501-3577

**LEASE AGREEMENT**  
**AS 38.05.083**

Effective this    day of    , this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and, hereafter referred to as "lessee," whether one or more, whose sole addresses for purposes of notification under this lease agreement are listed in section 28.

The lessor and the lessee agree that this lease, including all attachments and documents that are incorporated in this lease by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this lease including any attachments will be binding upon the parties and upon their respective successors and assigns. The lessor and the lessee further agree that this lease is conditioned upon satisfactory performance by the lessor and the lessee of all covenants and conditions contained in this lease. The lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the lessee under this lease, and the rights and remedies of the lessor.

This lease is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this lease. A reference to a statute, regulation, or ordinance in this lease includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska, its political subdivisions, or the United States of America to enact and enforce legislation or to adopt and enforce regulations or ordinances affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this lease. This lease shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

1. Grant. This lease is issued under the authority of AS 38.05.083 for a term of **ten (10)** years beginning on the, and ending at 11:59 PM on the    day of    , unless sooner terminated, subject to: compensation as specified in section 2; the attached development plan approved by the State on; and attached stipulations, if any, that are incorporated in and made a part of this lease, for the following, hereafter referred to as the "leasehold":

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:

**Subject to: Attachment A, Special Stipulations, attached hereto and made a part of this lease agreement; and Attachment B, Site Drawings and Development Plans, attached hereto and made a part of this lease agreement, containing approximately acres more or less.**

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor:

**Equal annual payments, in advance, on or before the Day of Month of every year during said term at the rate of per annum.**

The lessor may, upon 10 days' notice, review and copy any records of the lessee that are necessary to verify the lessee's compliance with this paragraph.

(b) In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the lessor at the

## Attachment C Sample Lease

commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

3. Denial of Warranty. The lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the leasehold, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the profitability or fitness of the leasehold for any use. The lessee represents that the lessee has inspected the leasehold and determined that the leasehold is suitable for the use intended, or has voluntarily declined to do so, and accepts the leasehold "as is" and "where is."

4. Use of Leasehold. Prior to execution of this lease and to commencing use or development of the leasehold, the lessee shall submit a development plan for the leasehold to the lessor and obtain the lessor's approval of the plan. Any use or development of the leasehold must be consistent with the development plan approved by the lessor. Any proposed revisions to the development plan must be submitted to the lessor for approval before any change in use or development occurs. The lessee shall use and occupy the leasehold in compliance with the approved development plan and all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control. The lessee may not permit any unlawful occupation, business, or trade to be conducted on the leasehold. The lessee shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The lessee shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements. The lessee agrees not to place any aboveground or underground fuel or chemical tanks on the leasehold without the prior written approval of the lessor.

5. Encumbrance of Leasehold. The lessee may not encumber or cloud the lessor's title to the leasehold, or any portion of the leasehold, nor enter into any lease, easement, or other obligation of the lessor's title without the prior written approval of the lessor.

6. Assignment of Interest. The lessee may not assign or sublet any interest held under this lease, including a security interest, without the prior written approval of the lessor. The lessor may approve such assignment or subletting if the lessor finds it to be in the best interest of the state. No such assignment or subletting will be effective until approved by the lessor in writing, and the assignee agrees to be subject to and governed by the provisions of this lease, any subsequent amendments to this lease, any additional stipulations, or reappraisal as deemed appropriate by the lessor, and all applicable laws, regulations, and ordinances in the same manner as the original lessee. No assignment or subletting of the leasehold, or any portion thereof, by the lessee will annul the lessee's obligation to pay the compensation required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest may occur without the prior written approval of the lessor.

7. Conditional Lease. If all or part of the leasehold has been tentatively approved, or approved, but not yet patented, by the United States to the lessor, then this lease will be conditioned upon receipt by the lessor of such patent. If for any reason the lessor does not receive patent, any compensation paid to the lessor under this lease will not be refunded. Any prepaid compensation for land to which patent is denied the lessor will be refunded to the lessee of record in the amount of the pro-rata portion of the unexpired term. The lessor will have no further liability to the lessee for the termination of the lease.

8. Payment of Taxes and Assessments. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leasehold.

9. Section Line Rights-of-Way. If the leasehold borders on or includes one or more section lines, the lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way or rights-of-way pursuant to AS 19.10.010.

## Attachment C Sample Lease

10. Navigable and Public Waters. (a) Pursuant to AS 38.05.127 and 11 AAC 51.045, the lessor reserves a public access easement to and along all public or navigable water bodies that border on or are included in this leasehold. No public access easement may be obstructed or otherwise rendered incapable of reasonable use for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without the prior written approval of the lessor.

(b) The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The lessor reserves the right to grant other interests to the leasehold consistent with the Public Trust Doctrine.

11. Condemnation of Leasehold or Improvements. If the whole or any part of the leasehold is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(1) Taking of the entire leasehold. If all of the leasehold is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leasehold. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned leasehold by the lessee in accordance with the approved development plan.

(2) Taking of substantial part of the leasehold. If the taking is of a substantial part of the leasehold, the following rules apply:

(A) If the taking by condemnation reduces the ground area of the leasehold by at least 30 percent or materially affects the use being made by the lessee of the leasehold, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than 180 days after the date of taking.

(B) If the lessee elects to terminate, the provisions in subsection (1) of this section govern the condemned portion of the leasehold and the covenants and conditions of the lease govern disposal of the remainder of any buildings or improvements made by the lessee in accordance with the approved development plan.

(C) If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned portion of the leasehold by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender possession of the condemned portion of the leasehold. Except as it may be adjusted from time to time under the covenants and conditions of the lease and applicable statutes, compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

(3) Taking of insubstantial part of the leasehold. If the taking by condemnation reduces the ground area of the leasehold by less than 30 percent and the lessor determines that the taking is of such an insubstantial portion that the lessee's use of the leasehold is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection 2(C) of this section will govern.

12. Valid Existing Rights. This lease is subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this lease.

13. Inspection. The lessor will have reasonable access to the leasehold for purposes of inspection.

14. Mineral Reservations. This lease is subject to the reservations required by AS 38.05.125 and the rights and obligations imposed by AS 38.05.130.

## Attachment C Sample Lease

15. Concurrent Use. This lease is subject to reasonable concurrent uses as provided under Article VIII, Section 8 of the Constitution of the State of Alaska. The concurrent user who is found to be at fault for damage or injury arising from noncompliance with the terms governing the user's concurrent use is liable for damages and the user's interest is subject to forfeiture or termination by the lessor. In this context, the term "concurrent user" includes the lessee and any other person or entity who lawfully uses the land subject to this lease, but does not include the State of Alaska.

16. Surface Resources. Unless otherwise provided by this lease or other written authorization, the lessee may not sell or remove from the leasehold any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes. Material required for the development of the leasehold may be used only in compliance with the approved development plan.

17. Appropriation or Disturbance of Waters. During the term of this lease, the lessee will have the right to apply for an appropriation of ground or surface water on the leasehold in accordance with AS 46.15 and 11 AAC 93.060.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this lease and accruing to the benefit of the leasehold will remain appurtenant to the leasehold, and may not be severed or transferred from the leasehold without the prior written approval of the lessor. In the event of termination or forfeiture of this lease, any such right or interest will vest in the lessor.

19. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease constitutes the entire leasehold. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leasehold, the Lessee has no right to occupy or use the accreted land unless a separate lease is entered with the Lessor with respect to such lands. The rules of law usually applicable to accretion or reliction of land do not apply to this lease, nor to the interest described in this lease.

20. Waiver or Forbearance. The receipt of compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any provision of this lease. No failure on the part of the lessor to enforce a covenant or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such covenant or condition. No forbearance or written waiver affects the right of the lessor to enforce any covenant or condition in the event of any subsequent default. The receipt of compensation by the lessor after termination or any notice of termination will not reinstate, continue, or extend this lease, or destroy, or in any manner impair the validity of any notice of termination that may have been given prior to receipt of the compensation, unless specifically stated by the lessor in writing.

21. Default and Remedies. (a) Time is of the essence in this lease. If the lessee defaults on the performance of any of the covenants or conditions of this lease, and the default is not remedied within 60 days after the lessor issues written notice of such default to the lessee and to the holder of a security interest in the leasehold approved by the lessor, or within any additional period the lessor allows for good cause, the lessee will be subject to legal or any other administrative action deemed appropriate by the lessor, including termination of this lease. The lessor may, in the notice of the default or in a separate written notice, state that if the default is not remedied, this lease shall terminate on a date certain, which shall be at least 60 days after issuance of the notice of default. Upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and this lease and all rights of the lessee under the lease shall terminate. Upon termination of the lease the lessor shall have an immediate right to possession of the leasehold and any possession by the lessee shall be unlawful. It is specifically agreed that no judicial action shall be necessary to terminate this lease or to allow the lessor to retake possession in the event of default by the lessee. No improvements may be removed from the leasehold while the lease is in default except with the lessor's prior written approval. If this lease is terminated for default, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. Any costs or fees, including attorney's fees, reasonably incurred by the lessor for the enforcement of this lease, shall be added to the obligations due and payable by the lessee.

## Attachment C Sample Lease

(b) The rights, if any, of third-party security interest holders or lienholders are controlled solely by AS 38.05.103 and 11 AAC 58.590. If the lessee fails to remedy the default within the time allowed in subsection (a) of this section, the holder of an approved security interest who has received notice under subsection (a) of this section may remedy the default. The holder shall act within 60 days from the date of receipt of notice under subsection (a) of this section, or within any additional period the lessor allows for good cause.

(c) The lessor may, at the lessor's option, following the lessee's default and failure to remedy, or after termination of this lease due to such default and failure to remedy, accelerate the unpaid compensation for the remainder of the term of this lease. The lessee's obligation to pay such accelerated rent to the lessor survives termination of this lease.

(d) If this lease is terminated, or all or any portion of the leasehold is abandoned by the lessee, the lessor may immediately enter, or re-enter and take possession of the leasehold, and without liability for any damage, remove all persons and property from the leasehold and may, if necessary, use summary proceedings or an action at law. The words "enter" and "re-enter" as used are not restricted to their technical legal meaning. Any entry, re-entry, possession, repossession, or dispossession by the lessor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the lessee, either in whole or part, of any liability under the lease.

(e) The lessor, upon or at any time after giving written notice of any default, may enter or re-enter the leasehold to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purpose to be for the benefit of the lessee.

(f) At any time after termination of this lease, the lessor may re-let the leasehold, or any part thereof, in the name of the lessor for such term and on such conditions as the lessor may determine, and may collect and receive the compensation therefor. The lessor shall not be responsible or liable for failure to re-let the leasehold or for any failure to collect any compensation due upon such re-letting, nor shall the lessor be required to account for or pay to the lessee any excess compensation received as a result of such re-letting. The lessee shall be liable for any deficiency, and for all costs, expenses, and fees incurred by the lessor arising out of the default, including the lessor's efforts to re-let the leasehold.

(g) No right or remedy conferred upon or reserved to the lessor in this lease or by statute, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative.

22. Disposition of Improvements and Chattels After Termination. AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leasehold after termination. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leasehold and the site restored to its original condition at the lessee's sole expense, or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor, and may be required to pay rent on any improvements or chattels left on the parcel in accordance with 11 AAC 58.680.

23. Indemnity to Lessor. The lessee shall indemnify, defend, and hold the lessor harmless from and against all claims, demands, judgments, damages, liabilities, penalties, and costs, including attorney's fees, for loss or damage, including but not limited to property damage, personal injury, wrongful death, and wage, employment, or worker's compensation claims, arising out of or in connection with the use or occupancy of the leasehold by the lessee or by any other person holding under the lessee, or at the lessee's sufferance or invitation; and from any accident or fire on the leasehold; and from any nuisance made or suffered on the leasehold; and from any failure by the lessee to keep the leasehold in a KF and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the lessee of all or any portion of the leasehold or interest therein contrary to the covenants and conditions of this lease. The lessee holds all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the parcel at the sole risk of the lessee, and shall defend, indemnify and hold the lessor harmless from any claim of loss or damage by any cause whatsoever, including claims by third parties.

## Attachment C Sample Lease

24. Insurance. If required by the lessor, the lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

25. Bonding. If required by the lessor, the lessee shall furnish a bond, cash deposit, certificate of deposit, or other form of security acceptable to the lessor in an amount determined by the lessor to be sufficient to ensure faithful performance of the covenants and conditions of this lease, and to cover the cost of site cleanup and restoration and any associated costs after termination of the lease. The amount and conditions of the bond shall be specified in the attached stipulations made a part of this lease agreement. The lessee shall maintain the bond as long as the lessor deems necessary, and in the amount required by the lessor, which amount may be adjusted periodically.

26. Environmental Compliance. (a) 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.

(b) Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The lessee's obligations under this section shall arise if there is any event or occurrence at the leasehold during the term of this lease, or arising out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, that requires compliance with the Environmental Laws.

(c) At no expense to the lessor, the lessee shall promptly provide all information requested by the lessor for preparation of affidavits or other documents required by the lessor to determine the applicability of the Environmental Laws to the leasehold, and shall sign the affidavits promptly when requested to do so by the lessor.

(d) The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of the lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease; and from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease.

(e) The lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

(f) In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leasehold (i) has been released on the leasehold; (ii) has resulted from acts or omissions of the lessee or its agents; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

## Attachment C Sample Lease

(g) This section of this lease does not in any way alter the State of Alaska's powers and rights or the lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that the lessee is strictly liable, jointly and severally, for damages and costs incurred by the state for cleanup of contamination on the leasehold. The obligations and provisions of this section 26 shall survive the termination of this lease.

(h) As used in this lease, the term "hazardous materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

27. Surrender of Leasehold. Upon the expiration, termination, or cancellation of this lease, the lessee shall peacefully leave and deliver up all of the leasehold in good, sanitary, and marketable condition, order, and repair.

28. Notices. (a) Any notice or demand by the lessee will be made by hand delivery to the Director, Division of Mining, Land and Water, or by certified mail, postage prepaid, addressed as follows (or to a new address that the lessor designates in writing), with delivery occurring upon receipt by the lessor:

To the Lessor:

Division of Mining, Land and Water  
550 W. 7<sup>th</sup> Avenue, Suite 900C  
Anchorage, Alaska 99501-3577

(b) Any notice or demand by the lessor will be issued as provided in 11 AAC 02.040(c). If issuance is by mail, the notice or demand will be addressed as follows (or to a new address that the lessee or its successor in interest designates in writing):

To the Lessee:

The lessor will issue a copy of any such notice or demand to each holder of a security interest in the leasehold whose assignment has been approved by the lessor under section 6 of this lease. Any security interest not approved as provided in section 6 is insufficient to require notice by the lessor under AS 38.05.103.

(c) Any notice or demand regarding the lease must be in writing and will be complete if given as set out above.

29. Penalty Charges. The lessee shall pay a fee for any late payment or returned check issued by the lessee as follows:

(1) Late Payment Penalty: The greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the lessor. Acceptance of a late payment or of a service charge for a late payment is subject to the lessor's rights under sections 20 and 21 of this lease.

(2) Returned Check Penalty: A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under subsection (1) of this section shall continue to accumulate.

30. Modification. This lease may be modified or amended only by a document signed by both parties. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

## **Attachment C**

### **Sample Lease**

31. Choice of Law. This lease shall be construed under the laws of the State of Alaska. The lessee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this lease.

32. Severability of Clauses of Lease Agreement. If any clause or provision of this lease is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this lease will not be affected, and in lieu of each clause or provision of this lease that is illegal, invalid, or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

SAMPLE

**Attachment C  
Sample Lease**

By signing this lease, the lessor and the lessee agree to be bound by its provisions.

LESSEE:

\_\_\_\_\_

LESSOR:

\_\_\_\_\_

**Joni Sweetman  
Regional Manager, Southcentral Regional Land Office**

STATE OF ALASKA                    )  
  ) ss.  
\_\_\_\_\_**Judicial District**            )

THIS IS TO CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
\_\_\_\_\_**Judicial District**            )

THIS IS TO CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, of the Division of Mining, Land and Water of the Department of Natural Resources of the State of Alaska, who executed the foregoing lease on behalf of the State of Alaska, and who is fully authorized by the State to do so.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

## Attachment D Sample Additional Stipulations

-Acre Aquatic Farm Lease  
Annual Lease Fee  
Annual Lease Fee Due by: **Month Day**  
Commercial Use Requirement (CUR): **Annually**  
(CUR begins no later than the 5<sup>th</sup> year of operation)

1. **Authorized Officer (AO):** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), is the Regional Manager or designee.
2. **Preference Right:** No preference right to a sale of this leasehold is granted or implied by the issuance of this Lease. Any renewal of this Lease will be subject to current statutes and regulations at the time of Lease expiration.
3. **Lease Utilization:** [Section 4 of the Lease document is hereby amended to include the following:](#) In accordance with 11 AAC 58.510, the lessee is bound to the approved Development Plan submitted as part of the application for Lease. Use of the land or any portion of it, for purposes other than those specified in the Development Plan constitutes a breach of the Lease and may result in revocation. Failure to develop and/or utilize the leased site for a period of five years or more may, at the discretion of the AO, constitute grounds for termination of the Lease.
4. **Modifications to the Development Plan:** [Sections 4 & 30 of the Lease document are hereby amended to include the following:](#) To adequately address any modifications to the approved Development Plan, the lessee will be required to provide advance written notice to the AO for approval of those changes prior to construction or implementation and must be accompanied by the amendment fee required by 11 AAC 05.010. The AO reserves the right to reevaluate the Lease compensation and other terms and conditions of the Lease prior to approval. No modifications are approved unless specifically authorized in writing by the AO.

However, under this paragraph:

- (A) the following changes do not require an amendment of the Development Plan:
  - (i) any change in the species or number of shellfish or aquatic plants being raised if the change is permitted by the Department of Fish and Game;
  - (ii) a change in the number or type of rearing structures authorized within the lease boundaries, if the change does not increase obstructions to navigation or to other public use;
- (B) the department will not authorize a proposed amendment to the lease development plan for a “change of use”; for the purpose of this subparagraph and AS 38.05.083(d), “change of use” means a change from the raising of shellfish and aquatic plants to any other use; and
- (C) the approval of an amendment of an aquatic farm site lease does not relieve the lessee of the obligation to obtain other necessary authorizations.

5. **Commercial Use Requirement:** The lessee shall report annually to the department, no later than January 31, on sales during the previous year of shellfish and aquatic plants raised on the lease site, not including sales of commercially harvested wild stock that had been stored at the lease site. If the lessee provides this sales information

## Attachment D

### Sample Additional Stipulations

to the Department of Fish and Game by an annual report, by copies of fish tickets, or by other means, the lessee may fulfill this paragraph's requirement for a sales report by asking the Department of Fish and Game to give a copy of the information to the department.

Failure to comply with the commercial-use requirement set out in 11 AAC 63.030(b) is a default and cause for termination, unless the lessee shows to the AO's satisfaction that the failure is due to circumstances beyond the lessee's reasonable ability to foresee or control.

**The commercial-use requirement for this -acre lease is \$ in annual sales, and must be met by the commencement of the fifth (5<sup>th</sup>) year of the term and continued annually for the remaining lease term.**

**6. Inspections:** Section 13 of the Lease document is hereby amended to include the following: The AO may designate representatives to inspect the leased area at any time. Sites which are determined to be in noncompliance will be subject to re-inspection for which the lessee may be assessed, at the AO's discretion, either a fee of \$100 or a fee equal to the actual expenses incurred by the Division of Mining, Land and Water (11 AAC 05.010) for the inspection.

The AO reserves the right:

- (A) of reasonable access to the leasehold for purposes of inspection, including the lessee's improvements and rearing structures; when the department inspects the lessee's rearing structures, the department will not lift or handle underwater rearing structures without prior notice to the lessee; the notice to the lessee may include notice by the Department of Fish and Game in accordance with AS 16.40.150(b); and
- (B) upon 10 days' prior notice, to inspect records of the lessee necessary to verify the lessee's compliance with the lease provisions.

**7. Request for Data/Additional Information:** For purposes of information and review, the AO may require the lessee to furnish data related to the use, maintenance, and operational activities undertaken in connection with this leasehold. The lessee shall furnish the required data as soon as possible or as otherwise required under the terms of this Lease.

**8. Assignment:** Section 6 of the Lease document is hereby amended to include the following: In the event the lessee desires to transfer their interest of this Lease to another party, the lessee must submit a letter to the AO requesting the assignment and include a copy of the draft Assignment Agreement with that letter for review. The AO reserves the right to renegotiate new terms or conditions for the Lease prior to approving any assignment. The AO reserves the right to require an assignment between the lessee and another party in the event of a change in corporate ownership, or LLC/LLP membership/name change.

**9. Performance Guaranty:** Per section 25 of the Lease agreement: The lessee must post a performance guaranty in the amount of to secure faithful performance with all terms and conditions of the Lease and to insure site restoration of the leasehold. This performance guaranty must remain in effect for the duration of the Lease term or until released in writing by the AO. **Failure by the lessee to provide replacement security shall be grounds for the AO to make a claim upon the existing security to protect the lessor's interests.**

If three or more lessees post an association bond to cover 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

## Attachment D

### Sample Additional Stipulations

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 this section. A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of the association bond.

The guaranty amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments to the Lease, assignments, reappraisals, changes in the Development Plan, approval of a reclamation plan, any change in the activities conducted, or performance of operations conducted on the leasehold and as a result of any violations to the Lease agreement.

The guaranty may be utilized by the AO to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the lessee does not comply with the site utilization, restoration requirements and/or other stipulations contained in the Lease agreement. If the lessee fails to perform the obligations under the Lease agreement within a reasonable timeframe, the AO may perform the lessee's obligations at the lessee's expense. The lessee agrees to pay within 60 days following notice, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the lessee to comply with the terms and conditions of the Lease agreement. The provisions of this authorization shall not prejudice the State's right to obtain a remedy under any applicable law or regulation. The performance guaranty will be released upon expiration of the Lease provided that all terms and conditions of the Lease have been met, including restoration of the leasehold to a KF and clean condition found acceptable by the AO.

10. **Insurance:** Per section 24 of the Lease agreement: The lessee is required to carry commercial liability insurance with the State of Alaska listed as an **"additional insured party"**. The case number **ADL** is to be referenced on the policy.

Insurance is required and is subject to annual review and adjustment by the AO. The AO may require a reasonable increase based on a change in the lessee's Development Plan or with increased risk. The insurance policy(s) must be written by a company(s) on the Division of Insurance's "admitted list" and the broker/agent must be licensed to do business in the State. If surplus lines insurance is provided, the broker must have a surplus broker license and be listed on the "surplus lines insurance list". Additional information regarding the admitted and surplus lines lists may be obtained from the Division of Insurance at (907) 269-7900.

a) Consult, as appropriate, with an insurance professional licensed to transact the business of insurance under Alaska Statute, Title 21, to determine what types and levels of insurance are adequate to protect the lessee and lessor (the State, its officers, agents and employees) relative to the liability exposures of the lessee's commercial operations.

b) Secure or purchase at lessee's own expense, and maintain in full force at all times during the term of the Lease, adequate insurance policies and coverage levels recommended by an insurance professional, licensed to transact the business of insurance under Alaska Statute, Title 21, and acceptable to the State of Alaska. The State will expect to see at a minimum, the following types of coverage:

- **Commercial General Liability Insurance:** The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Alaska Department of Administration.

## Attachment D

### Sample Additional Stipulations

- **Workers' Compensation Insurance:** The lessee shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e. U.S.L. & H or Jones Act) or other State laws in which employees are engaged in work on the premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

c) Provide proof of insurance to the AO on a yearly basis. The certificate must provide for a 30-day prior notice to the State of Alaska in the event of cancellation, nonrenewal, or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of the Lease and shall be grounds, at the discretion of the AO, for termination of the Lease. Generally, the AO will rely upon the best professional judgment of the licensed insurance agent and, at renewal, the agent's annual reassessment of the insured's liability exposure for determination of adequate levels of coverage. The AO reserves the right to require additional coverage if, in its discretion, it determines that it may be warranted.

In the event the lessee becomes aware of a claim against any of its liability coverage, the lessee shall notify, and provide documentation and full disclosure of the claim to the AO within 20 days.

**11. Spill Response:** Section 26 of the Lease document is hereby amended to include the following: The lessee is responsible for preventing fuel, hydraulic fluid, and oil spills that could result in contamination of contiguous land and water. Petroleum product spills shall be cleaned up immediately and any contaminated earth or vegetative materials shall be disposed of as required by the Alaska Department of Environmental Conservation regulations. To facilitate rapid spill response, adequate sorbent materials (i.e., material that collects or absorbs petroleum products while at the same time repels water) will be kept on site to be used in the event of a spill. Should any unlawful discharge, leakage, spillage, emission, or pollution of any type occur due to lessee activities, the lessee shall, at its expense, be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

**12. Spill Notification:** Section 26 of the Lease document is hereby amended to include the following: The lessee is responsible for notifying the State of Alaska of any pollutants they have caused to be discharged, released, or spilled in or around the project area by contacting the Division of Mining, Land and Water Hazardous Materials Coordinator at (907) 269-8552 and the Department of Environmental Conservation Southcentral Area Response Team Office at (907) 269-3063 during business hours (after hours call the Department of Environmental Conservation Spill Hotline at (800) 478-9300) for the following situations:

Oil/Petroleum Releases:

#### To Water

- *Any* release of oil to water *must be reported* as soon as the lessee has knowledge of the discharge.

#### To Land

- Release(s) of oil **in excess of 55 gallons** must be reported as soon as the lessee has knowledge of the discharge.
- Release(s) of oil **between 10 and 55 gallons** must be reported within 48 hours after the lessee has knowledge of the discharge.
- The lessee is responsible for providing, on a monthly basis, a written record of any discharge of oil **between 1 to 10 gallons**.

#### Within Impermeable Secondary Containment Area

## Attachment D

### Sample Additional Stipulations

- Any release of oil **in excess of 55 gallons** must be reported within 48 hours after the lessee has knowledge
- of the discharge.

#### Hazardous Substance Releases:

- Release(s) of all hazardous substances (other than oil) **in any amount** must be reported as soon as the lessee has knowledge of the discharge.

The lessee is responsible for following all timelines, and submitting all required information as outlined in 18 AAC 75.300 and other applicable spill regulations under Article 3.

**13. Historic Preservation:** The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any State-owned historic/prehistoric archaeological or paleontological site without a lease from the commissioner. Should any sites be discovered during the course of field operations, activities that may cause damage will cease and the Office of History and Archaeology in the Division of Parks and Recreation (907) 269-8721/8720/8722 and the appropriate coastal district shall be notified immediately.

**14. Incurred Expenses:** All expenses incurred by the lessee connected with the exercise of the privileges covered by this authorization shall be borne solely by the lessee and the State of Alaska shall in no way be held liable for said expenses.

**15. Navigation:** The United States Coast Guard (USCG) shall be contacted prior to placing any aquatic farm structures under this lease to determine lighting or marking requirements, such as buoys, necessary for the protection of maritime navigation, in accordance with Title 33, Code of Federal Regulations, Part 64. Required markings of this nature are Private Aids to Navigation, and must be subject to an approved permit. The USCG may be reached at the following address and phone number: Commander, 17<sup>th</sup> Coast Guard District, P. O. Box 25517, Juneau, AK 99802-5517, telephone (907) 463-2254.

**16. Site Requirements:** The lessee is required to adhere to the following:

- (A) Visibly mark the corners of the site and in accordance with USCG and ADF&G (5 AAC 41.277) marking requirements;
- (B) All improvements shall be secured utilizing anchoring methods with sufficient weight and holding capability to keep them in their authorized location(s) and must be retrievable upon expiration, termination, or cancellation of the lease. Anchoring systems for floating facilities moored for periods of more than 14 days must be approved by the Regional Manager and the USCG;
- (C) The use of adjacent uplands for activities related to the aquatic farm site, including shore ties, is not authorized under this lease. Written permission from the upland owner and authorization from this department must be obtained prior to any use of the adjacent uplands; and
- (D) Any commercially harvested wild stock acquired under AS 16, a fishery administered by DFG, may be held within the lease boundary before transporting to market. If DFG allows this activity within the lease boundary, the lessee is required to comply with DFG's operation permit requirements including clearly identifying and keeping the commercially harvested wild stock separate from any farmed product.

## Attachment D

### Sample Additional Stipulations

17. **Lease Compensation:** An administrative lease fee schedule for aquatic farm sites has been approved by the Division of Mining, Land and Water effective March 17, 2020 through March 16, 2022 under Appraisal Report 2522-14. The lease fee schedule is subject to review every two years. The annual rent for the proposal based on an -acre farm site is \$ (The annual fee is calculated at \$ for each additional acre, or portion thereof.) The lease is subject to review of the annual rent every 5 years. In other words, should the fee be increased during the term of a lease, the lease will be amended at five-year intervals for fee adjustment. The lease fee is due on or before the date determined with authorization of the lease. **It is the responsibility of the lessee to submit the annual lease payment.** A courtesy notice of the lease fee may not be sent by the State.

18. **Lease Expiration and Site Reclamation:** No later than one (1) year prior to lease expiration, the lessee shall file with the AO:

- a) A complete renewal/reissuance lease application; or
- b) An approved reclamation plan for the leasehold. *Reclamation plans must include a description of the methods and techniques that will be used to rehabilitate affected areas of the leasehold. The plan must also include a specific timeline showing when each step of the restoration process will be completed.*