

Agenda

Planning Commission - Regular Meeting City and Borough of Juneau

August 24, 2021
Virtual Meeting Only
7:00 PM

This virtual meeting will be held by video and telephonic participation only. To join the webinar, paste this URL into your browser: <https://juneau.zoom.us/j/99517564301>. To participate telephonically, call: 1-346-248-7799 or 1-669-900-6833 or 1-253-215-8782 or 1-312-626-6799 or 1-929-436-2866 or 1-301-715-8592 and enter Webinar ID: 995 1756 4301.

I. ROLL CALL

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. June 8, 2021 Draft Minutes Regular Planning Commission - APPROVED

B. July 27, 2021 Draft Minutes Regular Planning Commission - APPROVED

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

VI. ITEMS FOR RECONSIDERATION

VII. CONSENT AGENDA

VIII. UNFINISHED BUSINESS

IX. REGULAR AGENDA

A. USE2021 0007: A Conditional Use Permit for an aquatic plant farm -
APPROVED AS AMENDED

X. OTHER BUSINESS

XI. STAFF REPORTS

XII. COMMITTEE REPORTS

XIII. LIAISON REPORT

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS

XVIEXECUTIVE SESSION

XVISUPPLEMENTAL MATERIALS

A. Additional Materials for August 24, 2021 Planning Commission

XVIADJOURNMENT

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

June 8, 2021 Draft Minutes Regular Planning Commission - APPROVED

ATTACHMENTS:

	Description	Upload Date	Type
▣	June 8, 2021 Draft Minutes Regular Planning Commission	8/16/2021	Minutes

Minutes
Planning Commission
Regular Meeting
 CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
 June 8, 2021

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held virtually via Zoom Webinar and telephonically, to order at 7:03 P.M.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Deputy Clerk; Ken Alper; Dan Hickok; Mandy Cole; Josh Winchell; Erik Pedersen

Commissioners absent:

Staff present: Jill Maclean, CDD Director; Alexandra Pierce, CDD Planning Manager; Laurel Christian, CDD Planner; Irene Gallion CDD Planner; Sherry Layne, Law; Teresa Bowen, Law

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – None

III. APPROVAL OF MINUTES – None

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION – Chairman LeVine explained the procedures for participating via Zoom format.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

VI. ITEMS FOR RECONSIDERATION – None

VII. CONSENT AGENDA – None

VIII. UNFINISHED BUSINESS – None

IX. REGULAR AGENDA

- X. BOARD OF ADJUSTMENT** – Items **USE2021 0004; PWP2021 0001; ADP2021 0001; ADP2021 0002; ADP2021 0003** were presented to a joint body of the Regular Commission and Board of Adjustment and all were presented together.

Prior to hearing items **USE2021 0004; PWP2021 0001; ADP2021 0001; ADP2021 0002; ADP2021 0003**, Mr. Voelckers disclosed a potential conflict as the architect who worked for the applicant on this project works in Mr. Voelckers' office. They have not discussed the item and Mr. Voelckers has no financial interest. He was allowed to remain.

USE2021 0004: A Conditional Use Permit for an accessory apartment on an undersized lot in a moderate landslide/avalanche area
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Conditional Use Permit. The permit would allow the development a single-family dwelling with an accessory apartment on an undersized lot in a moderate landslide/avalanche zone.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.
2. Prior to issuance of a building permit, the applicant must submit documentation to demonstrate that all applicable parking code requirements have been met, in conformity with CBJ 49.40.200.
3. **Per Title 49.70.300(a)**, the proposed single-family dwelling with accessory apartment shall be designed and constructed using mitigating measures certified as effective by a professional engineer registered to practice in the State of Alaska. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site.

PWP2021 0001: Parking Waiver to waive the three required parking spaces for a proposed single-family dwelling and accessory apartment
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and

APPROVE the requested parking waiver. The permit would waive three parking spaces for a proposed single-family dwelling and accessory apartment.

ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 7 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback

from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

STAFF PRESENTATION – Ms. Christian presented all items together to the joint Planning Commission/Board of Adjustment members

QUESTIONS FOR STAFF (OF ALL 5 ITEMS PRESENTED)

Mr. Alper asked for clarification of what made the lot nonconforming. Ms. Christian said the lot is certified nonconforming for lot size, lot depth, and lot width. Mr. Alper asked if 'certified nonconforming' meant that the property had come before the PC to receive the certification. Ms. Christian explained that the nonconforming certificate review is a department review and does not come before the PC but the certificate is included in their packet.

Mr. Alper asked how CDD had come to the 9-foot 7-inch measurement for the front setback. Ms. Christian explained that the CBJ cartographer does the measurement calculations.

Mr. Alper asked how much smaller would the footprint of the building be if they had used the standard reduction rather than the ADOD. Ms. Christian did not have that calculation but said the front and side yard setbacks would each be about two feet smaller with the rear yard setback gaining about two feet.

Mr. Alper asked if we know how many of the units in the Irwin area currently already have accessory apartments. Ms. Christian did not have that information. She said they have seen several in recent years but there may also be a number of them that were established prior to zoning as well. Ms. Pierce added that a number of recent and upcoming code revisions are encouraging and supporting infill development in the area.

Mr. Dye asked if the rear setback needs an ADOD. Ms. Christian said the applicant had originally submitted an ADOD request but it turned out they did not need one and it was withdrawn.

Mr. Arndt asked if there should be a note added regarding fire codes considering the small distance between the buildings. Ms. Christian said she had checked with building code officials and there may be additional fire separation required. She did not make it a condition of approval because it would be addressed with the building permit review.

Mr. Voelckers asked if there had been other cases in which a parking waiver was approved allowing zero on-site parking based on availability of street parking. Specifically, he asked if there was any concern that this would set a precedent. Ms. Christian said they recommended approval saying there was ample on-street parking, there was not a detriment to public health and safety, Title 49 requirements are met. Mr. Voelckers said his recollection of other PWPs was that the rules were the rules and some parking must be provided on-site. Ms. Pierce said she knew of no instances where the CDD had denied a parking waiver request for an accessory apartment. The downtown lots are generally small, nonconforming lots. She felt this situation warrants investigation and approval of a parking area. If this were a lot with adequate space to provide a parking spot, then it would not have been recommended for approval.

Mr. Winchell noted that in the Staff presentation photos of the lot, there was a vehicle parked on the vacant lot. He asked how it would impact the area if that lot currently be used for parking were to be developed with no parking spaces. This would put the vehicles currently using the lot for parking and the vehicles associated with the new construction and tenants onto street parking. Ms. Christian said her review looked at whether the waiver would cause a significant impact to available on street parking. Title 49 requires three parking spaces. While there might be an impact, she did not feel three vehicles would be 'significant'. Mr. Winchell said if it is currently being used for one or two vehicles and the new owner has three vehicles then the effect would be five vehicles and not just the three in Title 49. Ms. Pierce said based on Ms. Christian's parking study, she felt very comfortable granting this parking waiver. Mr. Winchell asked how

snow removal would impact the findings of her study. Ms. Christian explained there was snow on the ground when she conducted the study and there was still plenty of on-street parking.

APPLICANT PRESENTATION – Larry Johansen, 227 Irwin Street – Mr. Johansen said his proposal would not have an effect on parking as he does not own a vehicle and several of his neighbors do not as well. The neighborhood is located within walking distance of everything.

Besides the parking, another concern he had heard was the safety issue with the home blocking drivers' views. He understands about site plans and said the home will not block any line of sight for drivers.

COMMISSIONER QUESTIONS FOR THE APPLICANT

Mr. Alper said they have received generally negative written public testimony from some of the neighbors regarding the parking. He asked if Mr. Johansen had done any outreach with the neighbors to discuss their concerns and if he had any sense that there were other neighbors who may not have submitted comments but who may be favorable to the parking waiver. Mr. Johansen had not received any comments on the Facebook page he had for this and he felt if anybody had strong feelings for or against his proposal then they had a chance to comment at this meeting and nobody has. He reiterated he does not own a vehicle and does not expect that he will have tenants with vehicles.

Ms. Cole asked Mr. Johansen if he had seen the conditions for approval and asked if they were acceptable to him. He said he had and they are.

ADDITIONAL QUESTIONS FOR STAFF

Mr. Hickok asked if the applicant has a nonconforming certificate for resale. Ms. Christian said there are several types of nonconforming certificates. This one was issued because it needed a nonconforming certificate for development. Director Maclean clarified CBJ does not require nonconforming certificates for selling a property but it may be required by financing institutions.

Referencing Condition #3 for **USE2021 0004**, Mr. Dye asked if Staff had ideas on how to change the wording so it is clear why this level of engineering is being required. Ms. Christian did not have any recommendation for that language. Mr. Dye suggested referencing the code. Ms. Pierce said this is language is consistent with the wording used when they've made this condition several times before. It is how it's been done in the past but could be improved. Mr. Dye suggested adding, "Per 49.70.300(a), " to the beginning. Staff did not object.

Mr. Winchell said, while he will not oppose this, he does foresee these actions having an impact on parking going forward.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve **USE2021 0004** amending Condition 3 to add "Per Title 49.70.300(a),".*

The motion passed with no objection.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and approve PWP2021 0001.*

Mr. Voelckers spoke to his motion saying this was challenging for him trying to balance the needs of downtown with being fair to other areas around the borough. He said the information from staff was compelling and convinced him there was ample parking in the area and takes into consideration the directives of the Comp plan to provide housing.

Mr. Arndt also supported the motion saying Ms. Christian's parking study convinced him. Mr. Alper spoke to support the motion saying he is looking forward to see how it develops. Mr. Dye agreed and said due to the size of the lot itself, the parking waiver makes sense.

The motion passed with no objection.

MOTION: *by Mr. Arndt to accept staff's findings, analysis and recommendations and approve ADP2021 0001, ADP2021 0002, and ADP2021 0003.*

The motion passed with no objection.

At 7:55 P.M., gavelled out as Board of Adjustment, remaining in session as Planning Commission.

At ease 7:55 P.M. – 8: 06 P.M.

Items **AME2020 0001, AME2020 0002, AME2015 0010, and AME2021 0005** are POSTPONED TO JUNE 22, 2021

AME2020 0001: ~~_____ A text amendment proposing new zoning districts: Neighborhood Commercial, Mixed Use 3~~

Applicant: ~~_____ CBJ Community Development~~

Location: ~~_____ Juneau Borough wide~~

Staff Recommendation

~~Staff recommends the Planning Commission adopt the Director's analysis and findings, and make a recommendation to the Assembly to APPROVE the proposed text amendment to adopt the Neighborhood Commercial (NC) and Mixed Use 3 (MU3) zoning districts.~~

AME2020 0002: ~~_____ Text amendment to add landscaping and vegetative cover purpose statements to CBJ Land Use Code~~

Applicant: ~~_____ CBJ Community Development~~

Location: ~~_____ Juneau Borough wide~~

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings, and make a recommendation to the Assembly to APPROVE the proposed text amendment to add purpose statements for landscaping and vegetative cover to the CBJ Land Use Code.

AME2015 0010: — A proposal to rezone a portion of the Auke Bay Center to Neighborhood Commercial, Mixed Use 3, and revision to landscape and vegetative standards.

Applicant: — CBJ Community Development

Location: — Auke Bay

Staff Recommendation

Staff recommends the Planning Commission ADOPT the Director's analysis and findings and forward a recommendation of APPROVAL to the Assembly for a rezone proposal for the Auke Bay Center with the boundary adjustment to the NC zoning district to exclude the Tanner Terrace Subdivision and include UAS property along Glacier Highway.

AME2021 0005: — A text amendment to revise Title 49 to create the Auke Bay Overlay District.

Applicant: — CBJ Community Development

Location: — Auke Bay

Staff Recommendation

Staff recommends the Planning Commission ADOPT the Director's analysis and findings and forward a recommendation of APPROVAL to the Assembly for a text amend the CBJ Land Use Code to create the Auke Bay Overlay District with an amended boundary map that includes properties east of Auke Bay along the uphill side of Glacier Highway and removes the Tanner Terrace Subdivision.

Note that CBJ will not use a density bonus until water and waste water utilities can be upgraded.

XI. OTHER BUSINESS

Prior to hearing other business, Mr. Arndt disclosed a friend of his used to live in one of the subject buildings. He no longer lives there and Mr. Arndt did not believe it was an issue but felt he should at least bring it up. Mr. Arndt further disclosed the attorney representing the party has represented Mr. Arndt on other matters in the past. He did not have any financial interest and felt he could be fair and impartial and he was allowed to stay.

Mr. Voelckers disclosed he owns the building in which the attorney for the appellant is a tenant. He has no financial interest in this case and feels he can be fair and impartial. He was allowed to stay.

Mr. Hickok disclosed JoAnn Birt is a coworker and she is a potential witness. He has no financial interest and can be fair and impartial. He was allowed to remain.

Mr. LeVine explained there is an hour set aside for this hearing. Each side will have 30 minutes to use however they see fit. The half hour time limit includes argument, witness testimony, answering questions from the PC, cross examining witnesses and rebuttal. The appellant will have the right to go first and CBJ Attorney Bowen will keep time for both sides.

Mr. Voelckers asked if there was any advice Law could provide regarding what types of questions can be asked. Mr. LeVine asked Ms. Bowen to briefly explain the rules and what duties the PC is charged with in this process.

Ms. Bowen explained the PC is reviewing a decision and will decide if there is substantial evidence to support it, if there was abuse of discretion or if it was a bad policy call. Their job is to either AFFIRM, RESCIND, or MODIFY the original decision. She said they need to be comfortable with the decision they make. To that end, if there is information the PC needs so they can make their decision, they need to ask for that.

A. APL2021 0001 – Compliance Hearing on ENF2021 0015

The appellant, Todd Araujo, chose to present second allowing Ms. Layne to present for CBJ first.

CDD Presentation

Ms. Layne opened stating this is an appeal of the compliance orders and not of the nonconforming certifications. The appellant owns three apartment buildings which have too many apartments. Two of the buildings have two too many and one building has one apartment too many for a total of five noncompliant apartment units. There are no permits on file showing the previous owner or the builder got authorization from CDD or the City to go above what was allowed in the permits and there are no certificates of occupancy for any of the three buildings. The previous owner was aware of the noncompliance issues when he sold the buildings to the appellant in February 2021. The appellant is asking CDD to not enforce the noncompliant units.

Ms. Layne added CDD cares about housing, but it has to be properly permitted housing with certificates of occupancy that has been deemed safe. However, CDD cannot look the other way now that they know about the illegal units. The appellant wants to blame CDD because he purchased noncompliant properties. However, the appellant worked with an experienced realtor and went through the loan process to obtain financing for the properties. Additionally, the appellant admits he was made aware of the appeal by the previous owner for the non-certifying situation reviews.

The appellant is aware and there is no dispute that there are no COs or that there are too many units. What is in dispute is what do we do about it now? CDD is asking the PC to affirm the

compliance orders. Even if PC rescinds them, Certificates of Occupancy cannot be for the properties unless the PC changes the zoning and the Comprehensive plan.

Mr. LeVine asked Ms. Layne to give a brief description of what it means to 'enforce' and what result would enforcement action have on the properties. Ms. Layne explained CDD is asking the property owner to come into compliance with zoning and building permits. They would have to decommission the noncompliant units. They would then have to apply for and get a certificate of occupancy for the whole buildings to be in compliance.

Mr. Winchell asked when CDD became aware of the noncompliance of the five apartments. Ms. Layne said that she believed the noncompliance letters went to the previous owner in November 2020. Mr. Winchell asked when the buildings were built. Ms. Layne said they were built about 1972 or 1973 and said it is on the permits on exhibit 1.

Ms. Layne called Director Maclean as a witness. In questioning, Ms. Layne established Ms. Maclean's position and years of experience with CDD. (Six years with the department, three of them as Director of Community Development). In her capacity as Director, Ms. Maclean reviewed the noncompliance order letters (Exhibit 3) based on the nonconforming situations reviews that Code Enforcement Officer Nate Watts sent to the appellant on March 10, 2021.

Ms. Layne asked how CDD decides whether or not to start an investigation or review of a property. Ms. Maclean explained they can come about in a variety of ways including neighbor complaints, routine inspections, or during nonconforming situation reviews. In this case, it was because the previous owner initiated a review based on advice from their realtor that a nonconforming situation review was necessary.

Ms. Layne asked how much 'digging' does CDD do when performing reviews. Ms. Maclean said it depends on the case but they do as much as they can to try to reach a nonconforming approval. The Department does what they can but the burden of proof is on the owner to provide documentation that they were legally built if CDD cannot.

Ms. Layne asked what issue CDD discovered with these three buildings. Ms. Maclean explained that while conducting the review, it was discovered that all three of the properties were originally permitted as fourplexes but were built as sixplexes. In one instance, the original owner requested a building permit for a fifth unit in one of the buildings. Ms. Maclean said this proves that the permits were needed to construct the extra units. There were no permits or applications for the sixth unit in that building or for the extra units in the other two buildings. Therefore, it was discovered that each building had noncompliant units that were illegally established.

Mr. Arndt asked why the previous owner asked for the nonconforming certificates. Ms. Layne said the previous owner asked for the certificates because his real estate agent said he needed

them. Mr. Arndt clarified he was asking what nonconforming situation was being addressed, substandard parking, lot size, or number of units. Ms. Layne and Ms. Maclean did not know.

Mr. Winchell acknowledged at some point the previous owner requested and received a waiver for units. He asked if they had, at any time, exceeded the amount approved. Ms. Layne explained at the time they were built they were allowed by zoning to build four units per building. They asked for and received a waiver for one more unit in one building. At no point has six units been allowed for any of the buildings. Four units was the maximum allowed then and three units is the maximum now.

Mr. Alper asked how a fifth unit was permitted if four units were the maximum allowed. Ms. Layne said she nor CDD knows by whom or how that permit was issued.

Mr. Voelckers said the appellant asserts that the CBJ and CDD are aware of other noncompliant situations that they do not address or have been treated inconsistently from this case. He asked for some background. Ms. Layne said CDD has addressed cases similar to this. CDD is aware of certain properties and Ms. Maclean can talk more about those cases they have addressed.

Mr. Dye asked if CDD is required to not enforce on the fifth unit or are they able to revoke the permit that was mistakenly or illegally issued. Mr. LeVine had the same question and added if the permit was illegal when it was issued, does that satisfy the criteria to be nonconforming or is it actually something else that CDD has simply decided not to enforce on? Ms. Layne's understanding is that it is certified nonconforming. CDD will not enforce on that unit because it was permitted. Mr. LeVine asked if that meant that any existing permit, legally granted or not, would satisfy the criteria to make something nonconforming. Ms. Layne confirmed that is the case.

At this point, Mr. Hickok recused himself as his level of involvement appeared to be more than he had originally thought and he was removed.

Ms. Layne asked Director Maclean to give a brief overview of the differences between nonconforming, compliant, and noncompliant. Director Maclean explained conforming means a property conforms to the current zoning. If a property owner needs a little help in the form of a permit or variance, they are considered 'compliant'. This is still legal but it is not conforming. Properties that met zoning at the time they were established but no longer meet that due to zoning changes are considered 'nonconforming'. Noncompliant means the development or situation is illegal.

Ms. Layne asked how many nonconforming situation reviews CDD has conducted over the past year and if they had found other noncompliant situations. Ms. Maclean answered that since the code was adopted in April 2020, CDD has performed approximately 140 nonconforming situation

reviews and have issued almost that many to date. There have been a handful that have also had noncompliant situations.

Mr. Winchell read from the appellant's opening brief saying they made claims that CDD will turn a blind eye if the property owner can produce a building permit and said the brief describes "don't ask don't tell" at CDD. Mr. Winchell asked if there is any evidence that CDD has ever engaged in a policy of "don't ask don't tell" or turning a blind eye on any permitting. Ms. Layne knew of no such policy and reiterated Ms. Maclean's description of the investigation process.

Mr. LeVine asked if a situation is considered legal if it is built pursuant to a permit even if that permit is determined to have been illegal after the fact. Ms. Layne said CDD honors existing permits even if they may not have been properly issued. Mr. Dye followed up asking if it matters that there were no COs issued in this situation. He asked if the project is, therefore, considered not closed. Ms. Maclean reiterated that the department has discretion over enforcement and they strive to work with property owners as much as possible within the code. If a property owner has gone through the steps to obtain a permit and staff mistakenly issues it, the department will 'own' that mistake and will allow it.

Mr. Voelckers asked about the level of communication between the City Assessor's office and CDD and asked if the fact that the property owner had paid taxes on this property as it stands for a number of years means that CDD should have known or been notified that it was noncompliant. Ms. Layne answered that the Assessor's and CDD departments have different functions and are not connected. Assessors do not enter buildings when making assessments and they assume properties are properly permitted. She added that even though the owners paid taxes based on sixplexes, they also collected income on those extra units so they have not suffered harm by those taxes.

Mr. Dye asked if the permit had been issued but had not been acted on, would it be allowed to be built now? Ms. Maclean explained if it had been issued but not built, it would have expired and would not be allowed.

Appellant Presentation

Mr. Araujo, representation for the appellant, Mr. Brown, owner A&S Rentals, opened stating that while it is true CDD has enforcement discretion, that discretion is not without limits and cannot be arbitrary or capricious. He feels the facts in this case show the decision was arbitrary and haphazard and poised to unfairly punish A&S Rentals.

Mr. Araujo called Mr. Brown to testify. Mr. Brown is the owner of the properties in question. Mr. Brown testified that Nate Watts, CDD Code Enforcement Officer, pointed out nearby properties that were similarly situated to his. In response, Mr. Brown made a public records request for those properties in December of 2020 but did not receive the documents until mid-March 2021.

He was told the request was originally denied due to an ongoing appeal by the previous owner. Mr. Brown was not sure under what Title the appeal was filed.

Mr. Araujo argued CDD does not actively conduct nonconforming situation or noncompliance investigations. He explained his use of “don’t ask don’t tell” alludes to the fact that there is no requirement by CBJ to perform the investigations. If the prior owner had not mistakenly requested the nonconforming certificate in this instance, then they would not be here now. Mr. Araujo said this demonstrates the arbitrary nature of this process. He said that the fact that CDD performs investigations as they become aware of them makes it arbitrary. Mr. Araujo said that Code Enforcement Officer Watts had informed him of several other properties that were also noncompliant. Mr. Araujo said the fact that those properties were not being enforced upon is evidence of the arbitrariness of CDD’s enforcements.

Mr. LeVine asked Mr. Araujo what he would propose as a better solution to the situation. Mr. Araujo said when CDD is aware that there are other noncompliant properties, they are duty bound to take action. By not doing so, he said, they penalize owners who properly try to get an NCC and award those who do not come forward.

Mr. Araujo said CDD gives informal, off the book exemptions in noncompliant situations if either party is able to produce a CO or a building permit. Even if that permit is illegal, Mr. Araujo said, CDD will give them a free pass. Mr. Araujo felt that supports the assertion that the process is arbitrary. He asked how to reconcile the fact that they have three sixplexes where only a fourplex is allowed but, somehow, they were able to obtain a permit for five units. He said that may be a mistake but it has the smell of impropriety.

Mr. Voelckers noted that in the appellant’s opening brief it was asserted that Mr. Brown was confused about the defects on the property and asked how this was a surprise after watching the prior owner go through the process. Mr. Araujo said Mr. Brown nor Ms. Brit were party to that action and A&S believed that the dismissal of the appeal meant the resolved any and all issues. He added A&S would not have purchased the properties had they known that the COs were not in place. He said A&S was not able to learn about the problem because he was prevented from accessing the necessary documents.

Mr. LeVine referenced Mr. Araujo’s premise that there is an illegal or arbitrary enforcement saying the lynch pin of Mr. Araujo’s assertion is that the city knows about noncompliance issues it is not enforcing. Mr. LeVine asked isn’t it the nonenforcement that is arbitrary and not the enforcement since CDD is duty bound to take action when it becomes aware of noncompliant situations. Mr. Araujo said there are at least three types of arbitrary aspects to this. The first is that only property owners who come forward with an issue are enforced upon. Those who know they are noncompliant just won’t come forward and will not come to the attention of CDD and, therefore, will not be enforced upon. The second is when CDD is aware of noncompliant

properties, they have the discretion to investigate or not. Then, if they do investigate and the property owner is able to produce a CO or permit, they are in the clear.

Mr. Arndt asked if the properties that Mr. Araujo points out in the appellant statement are noncompliant for the same reasons. Mr. Araujo said those properties are also noncompliant for too many units in a building.

Mr. Dye asked when the noncompliance orders were issued, did Mr. Brown make any attempt to see if the PC or Assembly were interested in fixing the problem. Mr. Brown said he did reach out to several assembly members and asked how this had been missed in zoning. Mr. Brown said there are up to a dozen or more properties that have too many units.

Mr. Dye asked Mr. Araujo for an estimate of how many potential dwelling units could be removed based on their knowledge of other similar properties with excess units. Mr. Araujo said they knew for sure that A&S Properties could lose five units. As for the others, he did not feel comfortable with the question. Mr. Araujo said Mr. Brown had been reluctant to even bring it up except as a means of demonstrating the arbitrary nature of the process.

Mr. Voelckers asked why several of the units in question are currently vacant. Mr. Araujo said they are under repair and will be filled as soon as they are ready.

Mr. Winchell asked if the units have been upkept in good repair since being built. Mr. Araujo confirmed they have been.

Mr. Alper recalled Ms. Layne had said that even if the appeal is successful, they department cannot issue a certificate of occupancy without fundamental legal changes because they are not compliant. He asked how they would address that. Mr. Araujo said for that was something to be dealt with at another time. Their hope with this appeal would be for the CDD to rescind the enforcement action and allow A&S to continue on with the three sixplexes.

Mr. Dye asked if the appeal was not successful today, but the compliance was altered to allow more time pursuant to a legislative fix prior to enforcement commencing, would that satisfy the appellant? Mr. Araujo said if that was the only alternative to decommissioning the five units, then they would accept it.

Mr. Araujo closed saying his client was an bona fide purchaser and should be subject to certain considerations. He was not aware of the issue when purchasing. The situation has been in existence for more than forty years. To enforce now, would be punishing Mr. Brown for something he did not create. The hope is that based the PC would rescind the enforcement actions.

Mr. Winchell asked Mr. Araujo his thoughts on CBJ having taken taxes for forty years based on the buildings being sixplexes and they now are saying they have to be fourplexes. Mr. Araujo said despite representations by CDD that there is no way to know how long the excess units have been in use, the assessor's office shows these as sixplexes for forty plus years. He sees this as a failing in record keeping and that failing was compounded when those documents were not given to this client when requested.

Mr. LeVine declared the argument portion of the appeal hearing is now closed and Mr. Hickok rejoined the meeting.

XII. STAFF REPORTS

Ms. Maclean reported

- Title 49 meets Thursday at noon. Lot depth and parking will be discussed.
- She presented to the Lands/Housing and Economic Development Committee. Lot depth and the Land Use Code were of interest. The Committee asked CDD to look at other dimensions beyond Lot Depth.

Mr. Voelckers asked if the conversation with the Lands Committee would give rise to a new Comp Plan. Ms. Maclean said if the Comp Plan came back to CDD it would be a priority but there is currently no funding in place for a major rewrite of the Land Use Code.

Mr. LeVine asked Mr. Voelckers and Ms. Maclean to schedule a Governance Committee meeting.

XIII. COMMITTEE REPORTS

Mr. Dye reported Blueprint has not met recently due to lack of quorum

XIV. LIAISON REPORTS

Mr. Jones reported

- all Assembly and Committee meetings are back to in-person or hybrid format
- HRC meetings will be held on the 23rd and 24th for board appointments and they will be held via Zoom
- Upcoming legislation includes
 - Res 2949 related to liaisons between Assembly and Committee members
 - ORD 2021-20 related to pay for boards, commissions, assembly members, and the mayor

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS – None

MOTION: *by Mr. Dye to enter Executive Session for the purpose of deliberating APL2021 0001 and discussion of VAR2021 0001*

The motion passed with no objection.

XVII. EXECUTIVE SESSION The PC entered into Executive Session at 9:43 P.M. saying they would adjourn the Regular meeting at the end of Executive Session. At this point, Staff and secretary were excused.

- A. APL2021 0001 – Deliberation (if necessary)
- B. Appeal of VAR2021 0001: Potential discussion (if necessary)

XVIII. ADJOURNMENT – 11:02 P.M.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

July 27, 2021 Draft Minutes Regular Planning Commission - APPROVED

ATTACHMENTS:

	Description	Upload Date	Type
▣	July 27, 2021 Draft Minutes Regular Planning Commission	8/11/2021	Minutes

Minutes
Planning Commission
Regular Meeting
 CITY AND BOROUGH OF JUNEAU
Nathaniel Dye, Acting Chairman
 July 27, 2021

I. ROLL CALL

Nathaniel Dye, Acting Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held virtually via Zoom Webinar and telephonically, to order at 7:05 P.M.

Commissioners present: All Commissioners present via video conferencing –; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Deputy Clerk; Dan Hickok; Mandy Cole; Erik Pedersen

Commissioners absent: Michael LeVine, Chairman; Josh Winchell; Ken Alper

Staff present: Jill Maclean, CDD Director; Alix Pierce, CDD Planning Manager; Irene Gallion, CDD Planner; Sherri Layne, Law

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – At CDD’s request, PWP2021 0003 postponed to August 24, 2021.

III. APPROVAL OF MINUTES

A. Draft Minutes May 11, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Arndt to approve the Planning Commission Regular Meeting May 11, 2021 minutes with a correction to item **XVI: Planning Commission Comments and Questions** to note the comments by Mr. Arndt and Mr. Voelckers were referring to the issue of Variances.*

B. Draft Minutes June 22, 2021 Planning Commission Special Meeting

MOTION: *by Mr. Arndt to approve the Planning Commission Special Meeting June 22, 2021 minutes.*

C. Draft Minutes June 22, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Arndt to approve the Planning Commission Regular Meeting June 22, 2021 minutes.*

- IV. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** – Acting Chairman Dye briefly explained the rules for participating via Zoom format
- V. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None
- VI. **ITEMS FOR RECONSIDERATION**- None
- VII. **CONSENT AGENDA** – None
- VIII. **UNFINISHED BUSINESS** – None
- IX. **REGULAR AGENDA**

PWP2021 0003: ~~A reduction from 14 required off street parking spaces to 9 to serve a daycare expansion~~

Applicant: ~~Kayla Svinicki~~

Location: ~~4341 Windfall Avenue~~

Staff Recommendation

~~Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Parking Waiver. The permit would provide a parking reduction from 14 required off street parking spaces to nine to serve a child care expansion at 4341 Windfall Avenue in a D3 Zone.~~

~~**MOTION:** *by Mr./Ms. ... to accept staff's findings, analysis and recommendations and approve PWP2021 0003.*~~

~~***The motion passed with no objection.***~~

AME2018 0001: A text amendment to revise and update Title 49 Section 49.25.510(k) Accessory Apartments and other related sections of the Land Use Code

Applicant: Larry Johansen

Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission ADOPT the Director's analysis and findings and make

a recommendation to the Assembly to APPROVE the proposed text amendment to amend CBJ 49.25.300, Table of Permissible Uses (TPU); CBJ 49.25.400, Table of Dimensional Standards; CBJ 49.25.510(k) Special Density considerations – Accessory Apartments; and CBJ 49.80.120, Definitions in regard to accessory apartments.

STAFF PRESENTATION – Ms. Pierce presented **AME2018 0001** Text amendment to revise and update Title 49 Section 49.25.510(k)

COMMISSIONER QUESTIONS -

Mr. Voelckers asked if Planning Commission would be involved on any accessory apartment permits or if it would be at the department level. Ms. Pierce said it would be at the department level.

Mr. Arndt noted Ms. Pierce's presentation showed an accessory apartment with a parking waiver would still have to come before the PC. He asked if it would be the parking waiver alone or both the accessory apartment and parking waiver permits that would be before them at that point. Ms. Pierce explained it would be just the parking waiver but if the parking waiver was not approved then the accessory apartment would not meet its parking requirement and the Director would not approve the accessory apartment either.

Mr. Arndt expressed concern that an accessory apartment creating an additional dwelling unit would then make the building a common wall dwelling on what could be a very small lot. Ms. Pierce clarified the accessory apartment would make it a multi-unit development rather than a common wall dwelling. Ms. Pierce explained that currently accessory apartments on undersized lots often come before the PC as Conditional Use Permits (CUP). CDD is looking to add language to the Ordinance to allow Director approval in these situations.

Mr. Hickok asked if a duplex with an accessory apartment would then be a triplex. Ms. Pierce said it would be a duplex with an accessory apartment.

Mr. Pedersen asked if staff had considered how adding an accessory apartment would affect financing options for banks and property owners. Ms. Pierce said the purpose and intent of the ordinance is to make it easier to add accessory apartments but she is not sure how lenders treat a unit that is clearly subordinate to a larger unit but she thought it would be treated as an accessory apartment for lending purposes.

Mr. Voelckers noted that he had understood the PC could give CDD and LAW direction but the proposed motion is to send it directly to the assembly. He asked if the PC suggestions would be added before reaching the Assembly or if CDD would need more time to finalize it. Ms. Pierce said with the intent that clarification would be provided in ordinance language, they could vote to forward it to the Assembly and the language could be drafted in the meantime. She added it is common for LAW to make small changes to ordinance language between the Commission and

the Assembly.

Mr. Dye understands the current process allows for an accessory apartment in a single-family dwelling in a multi-family zone district through a CUP. He asked if the proposal before them maintains that CUP process for accessory apartments or if that is what they are trying to codify. Ms. Pierce said the intent is to make accessory apartment approval at the department level and remove the need for a CUP.

Mr. Arndt suggested adding verbiage to the proposal to clarify the process for adding an accessory apartment to a single-family dwelling unit on a lot not large enough to accommodate a second dwelling unit. Mr. Dye agreed with Mr. Arndt's suggestion and asked if accessory apartments are included in the TPU. Ms. Pierce confirmed it is part of the TPU.

Mr. Voelckers agreed with Mr. Arndt and Mr. Dye and suggested changing the working to something like, "An accessory apartment is allowed in D10, D15, D18, etc., on those lots too small to otherwise provide a second dwelling unit," and establishing a minimum lot size to keep it practical and not deleterious to the neighborhood.

Mr. Dye asked if this is needed since it is covered in the TPU already. Ms. Layne said that would be up to the PC and CDD. Ms. Pierce explained that Staff intent was to clarify in the ordinance that an accessory apartment is allowed in a single-family home in a multi-family district because if it is not clear to the planner working on the ordinance then it may not be clear to others reading the Code.

MOTION: *by Mr. Voelckers to ADOPT the Director's analysis and findings and make a recommendation to the Assembly to APPROVE AME2018 0001 proposed text amendment to amend CBJ 49.25.300, Table of Permissible Uses (TPU); CBJ 49.25.400, Table of Dimensional Standards; CBJ 49.25.510(k) Special Density considerations – Accessory Apartments; and CBJ 49.80.120, Definitions in regard to accessory apartments with an amendment to Staff findings and analysis to include a sentence that clarifies an accessory apartment is permissible in D10, D15, D18 MU, MU2, LC, GC, and WC when the lot is not large enough to accommodate a second dwelling unit per standard density requirements above a lot size of 3000 square feet.*

Mr. Arndt noted according to the Staff report, an accessory apartment would be counted as regular density if the lot was large enough and on an undersized lot. It would only apply if the use were a single-family home and not a multi-family dwelling. He asked if Mr. Voelckers' amendment meant to combine the two so it would not matter whether there is a multi-family or single-family use on an undersized lot.

To clarify, Mr. Dye asked if Mr. Arndt's intent was to ask is it okay when there are two units currently on a smaller lot and an accessory apartment is squeezed in to make three versus if there is already one dwelling unit and an accessory is added to the one.

Mr. Voelckers responded saying it was not his intent to increase nonconformance. He intended to increase density. He thought LAW might have to work on that wording.

The motion passed with no objection.

AME2018 0004: Proposed revisions to the Alternative Development Overlay District, which affects setbacks, minimum lot area, and other issues related to development. The Overlay covers both downtown Juneau and downtown Douglas, but revisions only concern Juneau at this time.

Applicant: City & Borough of Juneau

Location: Downtown Juneau

STAFF PRESENTATION – Ms. Gallion presented **AME2018 0004** Proposed revisions to the Alternative Development Overlay District (ADOD)

COMMISSIONER QUESTIONS -

Mr. Arndt asked what happens when the current ADOD expires in a few days noting it will likely take months to get this finalized and enacted. Will this be a problem in the interim? Ms. Gallion said it will take some time to get this finished but staff is very close and it is worth it to finish the process rather than just extending the ADOD again.

Mr. Voelckers asked about how this would affect existing structures that may not meet the proposed minimum required setbacks. The owners are concerned that with the proposed new ADOD they might not be able to rebuild if there was an earthquake or some other event that destroyed their building. Ms. Gallion explained that is covered in the nonconforming code. If they have a nonconforming certification, they can rebuild. If they do not have a nonconforming certification and the cost to replace the structure (not including foundation) is less than 75% of the assessed value of the building, then it can be rebuilt. If it is more than 75%, they lose the nonconforming rights.

COMMISSIONER COMMENTS-

Mr. Voelckers suggested going through the ordinance line by line saying they could agree on changes along the way and make a combined motion at the end.

Ms. Gallion displayed a copy of the ordinance with Mr. Voelckers' suggested edits.

Page 1

- Lines 18-20

Mr. Voelckers proposed:

49.70.1400 Purpose: Edit to read: *The purpose of this chapter is to establish **optional alternative** dimensional standards that suit the built environment in ~~historic~~ **established** neighborhoods and reduce the number of non-conforming properties. ~~Improving conformance reduces the need for variances or conditional use permits, lessening the burden to property owners.~~*

Page 2

- Lines 3-4

Mr. Voelckers proposed:

(b) Edit to read: *Participation in the Downtown Juneau ADOD is optional, unless required ~~to make non-conforming development more conforming~~ **to establish conforming development**.*

Mr. Arndt asked if participation in ADOD were optional, when would the ‘unless required’ apply. Ms. Gallion said if it was the will of the PC to make it truly an opt-in option, they could modify it to remove that ‘unless required’.

Ms. Cole asked if the CDD would ever deny a nonconforming situation because of ADOD. Ms. Gallion answered property owners should be allowed to choose to participate or not in the ADOD. Ms. Gallion would prefer not to deny anybody the ability to opt out of ADOD.

Mr. Dye asked if it would make sense to strike item (b). Mr. Arndt suggested keeping the first portion and deleting ‘unless required.’ Mr. Voelckers explained his intent with the phrasing he had suggested was to facilitate or allow permission for a property owner to make a modification that might otherwise not be conforming.

- Line 13

Mr. Voelckers proposed:

(h) Existing non-conforming lots ~~can participate in other~~ **can be developed following** ADOD standards.

- Line 21

Mr. Voelckers proposed:

(1) Minimum lot size is 3,000 square feet **for new construction**.

Mr. Dye cited Title 49 discussions and said it would be for existing as well as new construction and said he thought it was meant to read:

(1) Minimum lot size **for single-family use** is 3,000 square feet.

Mr. Arndt added his recollection of the Title 49 discussions were clear about the minimum lot size and anything less than the minimum would be non-conforming.

Mr. Voelckers asked how item (4) ties with the rest of the section as he had thought it was to allow renovations on lots smaller than 3,000 square feet.

Ms. Gallion explained her recollection was the minimum lot sizes were for new lots. Lots that are smaller than 3,000 square feet can still participate in other dimensional standards of ADOD.

- Line 24

Mr. Arndt suggested:

(4) Existing lots that do not ~~have~~ meet minimum lot size ...

Mr. Voelckers suggested:

(4) ... may ~~participate in~~ be modified or renovated using the other dimensional modifications of this ~~part~~ article.

Mr. Arndt suggested

(4) ... may ~~participate in the other dimensional modifications of this part~~ be allowed to opt in.

Ms. Gallion agreed and pointed out this is saying the same thing as (h) and could be combined and left either in item (h) or in item (4) depending on what makes most sense for developers. Mr. Voelckers thought it made sense to leave it in both places.

Ms. Gallion recapped to confirm (h) will now read: *Existing non-conforming lots can be developed following ADOD standards* and (4) will read: *Existing lots that do not meet minimum lot size can be developed following the other dimensional standards of this article*.

Page 3

- Line 2

Mr. Voelckers proposed:

~~(2) Minimum lot depth is 25 feet.~~

Mr. Arndt asked if there is no minimum lot depth, would it then default to the underlying zoning district. He suggested if the Assembly does not pass lot depth when it comes up next week, then he would propose:

(2) There is no ~~Minimum lot depth is 25 feet.~~

- Line 13

Mr. Voelckers proposed:

12 feet and in no case shall any ~~side~~ setback be less than three feet.

- Line 12

Mr. Voelckers proposed:

(B) If lot size is less than required in this section, the required setback sum for additions or alterations may be

Mr. Dye suggested that change would be better if added earlier on the page at line 7 or 8.

- Line 25

Mr. Voelckers proposed:

(b) ~~Methodology~~ **Exception Categories**

Page 4

- Line 9

Mr. Dye proposed:

(4) Energy efficiency improvements that do not increase interior square footage, such as exterior insulation, may **reduce** ~~project up to eight inches into a required yard~~ **setbacks by (number of) inches.**

Mr. Arndt agreed pointing out this dimension verbiage is consistent with Title 49.25.430.

Mr. Pedersen proposed:

(4) ... such as exterior insulation **and associated siding materials,** ...

Mr. Arndt proposed:

(4) Energy efficiency improvements that do not increase interior square footage, ~~such as exterior insulation,~~ may project up to eight inches into a required ~~yard~~ **setback.**

MOTION: by Mr. Voelckers to move **AME2018 0004** ADOD language to the Assembly for consideration and adoption subject to the working amendments to the text that were developed tonight

The motion passed with no objection.

MOTION: by Mr. Arndt to recommend to the Assembly to extend and continue existing ADOD regulations as currently written as quickly as possible to extend it to August 1, 2022.

Ms. Gallion reminded the PC that last time this came before the Assembly, the Assembly said they did not want to see another extension. She suggested adding some language to help the Assembly understand why this extension is being requested. Mr. Dye said the assembly has full access to the record and assembly liaison Jones is aware of this discussion and can inform the assembly.

The motion passed with no objection.

At ease 8:45 p.m.-8:50 p.m.

X. BOARD OF ADJUSTMENT – None

XI. OTHER BUSINESS – None

XII. STAFF REPORTS

Ms. Pierce reported Lot Depth, Board of Adjustment repeal and the proposed North Douglas rezone are on the Assembly Agenda Monday

XIII. COMMITTEE REPORTS

Mr. Dye reported Blue Print met but could not maintain quorum and had to schedule another meeting.

Mr. Voelckers reported Public Works & Facilities met last Monday. Topics discussed centered around waste reduction, landfill, organic and compost waste, and junk vehicles.

Mr. Hickok reported Lands Committee met last Monday and approved to send the assembly a request by Norwegian Cruise Line to lease tidelands.

Mr. Pedersen reported Douglas/West Juneau steering committee is on hiatus until Mid-August.

Mr. Dye reported Title 49 work continues on many topics.

XIV. LIAISON REPORTS

Mr. Jones reported on recent Assembly activities

- Joint PC/Assembly meeting is scheduled for August 30.
- Assembly has meetings August 2, August 23 and one meeting in September and then no meetings until October 25
- Committee of the Whole also only has 3 meetings between now and November
- Systemic racism committee will begin reviewing legislation on September 13

Ms. Cole asked if there is any role for the PC during the Assembly meeting regarding PC proposals for Douglas. Mr. Jones answered that the PC would not have direct involvement but members are welcome to testify under public testimony.

Mr. Voelckers asked if the joint meeting on Aug 30 would be an in person/virtual hybrid and does he see a problem logistically with that. Mr. Jones said it would likely be a hybrid.

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Dye said members are allowed to consult Ms. Layne regarding specific questions about how to engage with the Assembly and reminded them they are always allowed to attend as a member of the public.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 9:06 P.M.

DRAFT

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

USE2021 0007: A Conditional Use Permit for an aquatic plant farm - APPROVED AS AMENDED

AGENDA ITEM:

Case No.: USE2021 0007

Applicant: Brian P. Delay

Location: Lena Cove, Favorite Channel (approximate location)

Proposal: A Conditional Use Permit for an aquatic plant farm

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Conditional Use Permit. The permit would allow the development of an aquatic plant farm at Lena Cove.

The approval is subject to the following conditions:

1. The Conditional Use Permit shall expire on March 11, 2031.
2. Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.
3. A Floodplain Development Permit shall be required before development occurs.
4. Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

ATTACHMENTS:

Description	Upload Date	Type
☐ Staff Report for USE2021 0007 - Part 1	8/12/2021	Staff Report
☐ Staff Report for USE2021 0007 - Part 2	8/12/2021	Staff Report
☐ Presentation for USE2021 0007	8/20/2021	Presentation
☐ Notice of Decision for USE2021 0007	8/25/2021	Notice of Decision



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD

155 S. Seward Street • Juneau, AK 99801

DATE: August 12, 2021
TO: Michael LeVine, Chair, Planning Commission
BY: Teri Camery, Senior Planner, CFM 
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: A Conditional Use Permit for an Aquatic Plant Farm at Lena Cove

STAFF RECOMMENDATION: Approval with conditions

KEY CONSIDERATIONS FOR REVIEW:

- The farm will operate from October 1 through April 15 each season; most or all of the structure will be removed in the interim
- Weekly access to the area will be by commercial fishing vessel or skiff
- The farm has an approved Alaska Department of Natural Resources tidelands lease and Alaska Department of Fish and Game Aquatic Farm Permit

GENERAL INFORMATION	
Property Owner	State of Alaska – Department of Natural Resources
Applicant	Brian P. Delay
Property Address	Lena Cove
Legal Description	Lena Cove
Parcel Number	O parcel
Zoning	D1/D3 (zoning corresponds to upland parcels)
Land Use Designation	Cove is not designated; surrounding area is state park and rural low density residential
Lot Area	3.15 acres
Access	Lena Cove
Existing Land Use	Lena Cove Recreational Area
Associated Applications	N/A

ALTERNATIVE ACTIONS:

1. **Amend:** require additional conditions, or delete or modify the recommended conditions.
2. **Deny:** deny the permit and adopt new findings for items 1-6 below that support the denial.
3. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

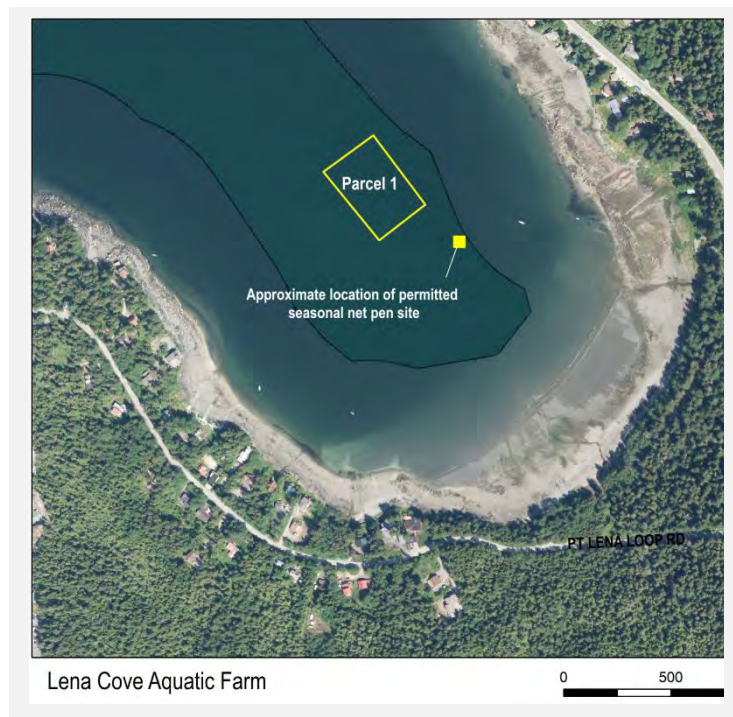
Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - o 49.15.330

The Commission shall hear and decide the case per 49.15.330(a) Conditional Use Permit. A conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses. The conditional use permit procedure is intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites. The commission may attach to the permit those conditions listed in subsection (g) of this section as well as any further conditions necessary to mitigate external adverse impacts. If the commission determines that these impacts cannot be satisfactorily overcome, the permit shall be denied.

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES	
North	D1 Residential
South (Zone)	Lena Cove Recreation Area
East (Zone)	D1 Residential
West (Zone)	D3 Residential

SITE FEATURES	
Flood Zone	VE Velocity Flood Zone

BACKGROUND INFORMATION

Project Description – The applicant requests approval for an aquatic plant (kelp) farm at Lena Cove, adjacent to Lena Beach Recreation Area. A system of lines, anchors, and floats will be used to grow aquatic plants submerged below the ocean surface. The farm will operate seasonally from October 1 to April 15 each year. Kelp will be planted on submerged lines in October and harvested in April. Maintenance, regular inspection of gear, and data logging of growth rates will be performed weekly or as needed to ensure that equipment is secure. All anchors, lines, and floats will be removed after harvest and prior to April 15 of each year. Helical anchors may or may not be removed annually if they don't interfere with other authorized uses in the area and don't protrude from the seabed more than 12 inches.

Vessel access to the site will be from private or commercial facilities in Auke Bay or Tee Harbor. A larger vessel may be needed for 1-2 days at the beginning and end of operations to place and retrieve gear and equipment. Most of the inspection, monitoring, and data collection activities will be performed with a small skiff or non-motorized watercraft.

The project is expected to benefit the local ecosystem, because kelp provides shelter for forage fish; naturally absorbs nitrogen run-off from adjacent properties; and removes carbon dioxide from surrounding waters. Up to four employees may be required at any given time to manage the farm.

The development has had extensive agency review dating back to 2019 with the Alaska Department of Natural Resources (ADNR), Alaska Department of Fish and Game (ADF&G), U.S. Coast Guard (USCG), and the U.S. Army Corps of Engineers (USACE). Other state and federal resource agencies as well as the public have commented and/or had the opportunity to comment during these review processes.

August 12, 2021
USE2021 0007
Page 3 of 9

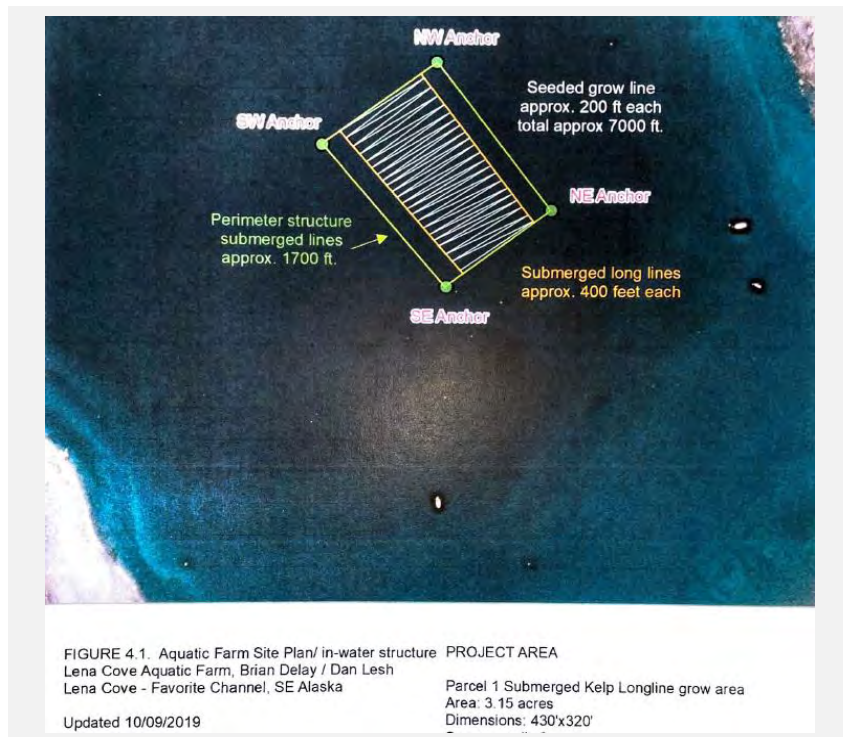
ADNR issued a final finding and decision on the aquatic farm tideland lease on February 8, 2021, included in the applicant's Conditional Use Permit application. The final lease agreement is also included. The lease agreement is valid from March 12, 2021 through March 11, 2031.

ADF&G issued an Aquatic Farm Operation Permit on May 13, 2021. The permit expires on May 31, 2031. The permit includes conditions regarding spill response, marine mammal best management practices, minimizing the introduction of invasive species, and stock transfer, among other issues. The permit also requires an annual report. The permit is included in the Conditional Use Permit application materials.

ZONING REQUIREMENTS

The development is located entirely on submerged waters within Lena Cove, therefore code requirements regarding lot size, width, depth, lot coverage, minimum vegetation requirements, and setbacks are not applicable. An aquatic farm is allowed in the D1 zoning district with a Conditional Use Permit, as defined in CBJ Code 49.25.300 Section 14.100.

SITE PLAN



ANALYSIS

Project Site and Design – The development is located in Lena Cove, adjacent to D1 and D3 residential areas and the Lena Cove Recreational Area, as shown below.



FIGURE 4. Detailed aquatic site plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'

The project area is 430 feet x 320 feet, and marked with signage required and approved by the USCG. The plant farm uses seeded string wrapped around submerged long lines seven feet or more below the water surface. Four submerged lines forming the structure perimeter will be anchored at the parcel corners, measuring a total of 1,500 linear feet. These submerged lines will be removed after harvest. Up to 35 grow lines totaling approximately 7,000 linear feet will span back and forth approximately 200 feet between two submerged long lines, attached to the perimeter structure. All gear will be maintained at a minimum seven feet below the water surface; only the corners of the development will be visible. All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains, and removable or temporary anchor systems will be removed from the site before April 15 and reinstalled again after October 1 each year. Helical anchors may or may not be removed after

each harvest. Kelp will be harvested in early April using a commercial fishing vessel and/or support skiff. Weekly maintenance and monitoring activities will be conducted with smaller vessels.

ADNR issued a tideland lease valid from March 12, 2021 through March 11, 2031. The lease agreement includes conditions regarding insurance, spill response and notification, and navigation markers. Since ADNR is the landowner, it is necessary for the Conditional Use Permit to expire when the lease does. Further, any significant modification to the project may require a modified Conditional Use Permit. Staff therefore recommends the following conditions:

Condition: The Conditional Use Permit shall expire on March 11, 2031.

Condition: Any signification expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.

Access and Parking – Parking and vessel access to and from the site will use private or commercial facilities at Auke Bay or Tee Harbor. Access to the site by the applicant's private property adjacent to Lena Cove may be authorized with the approval of ADNR, as noted in the additional stipulations of the lease agreement. The applicant anticipates seeking authorization from ADNR for this option.

Noise – Noise impacts related to the project are expected to be minimal. A larger vessel may be required for one to two days at the beginning and end of operations to place and remove equipment. Weekly monitoring and maintenance activities will typically be conducted with a skiff.

Lighting – No lighting is proposed or necessary for the development. However, the applicant notes that low emission marking lights may be considered during the one-week window of the commercial Tanner crab openings in February.

Habitat – There are two anadromous waterbodies that flow into Lena Cove, Lena Creek and Unnamed Creek, with ADF&G Catalog Numbers 111-50-10300 and 111-50-10310. The site selection for the aquatic farm meets the ADF&G minimum distances from these waterbodies. The project is expected to benefit the local ecosystem by 1) offering increased shelter for forage fish; 2) naturally absorbing nitrogen run-off from adjacent properties; and 3) removing carbon dioxide from surrounding waters. No debris is generated at the site. ADF&G has issued an Aquatic Farm Operations Permit for the development effective May 13, 2021.

Hazard Zones – Lena Cove is within a Velocity (VE) Special Flood Hazard Area. A Floodplain Development Permit is required by CBJ 49.70.400(h). Through this review the CBJ Floodplain Administrator will review final building plans for compliance with CBJ Floodplain Development standards. For the proposed development, floodplain development standards require anchoring, which the applicant has noted in the project plans.

Condition: A Floodplain Development Permit shall be required before development occurs.



Public Health, Safety, and Welfare – The applicant states that potential safety hazards to navigation have been mitigated by signage, gear design, and limited operation times. The development has a fixed system of lines submerged a minimum of seven feet below the water surface, with minimal vertical lines (up to six) and surface floats (up to six). The safety hazard is also mitigated by limiting farm operations to seasonally set dates when vessel traffic is infrequent and anchoring of vessels seldom occurs. Security at the site consists of electronic monitoring from the shore, as well as State and USCG approved markings at farm boundaries.

Property Value or Neighborhood Harmony – Impacts on recreational users are expected to be minimal due to the limited operation schedule. Visual impacts are limited to the minimum necessary to avoid conflict with recreational and commercial boaters. Lena Cove is one of a few surfing locations accessible by road in winter and early spring months when northerly winds send waves to Lena Beach. The proposed farm site is well beyond the surf break and will not interfere with these activities. Impacts to personal use fisheries are expected to be minimal due to the season of operation from October through April. The applicant has talked with representatives from DIPAC and will work with this organization to ensure that fixed gear is clear at the remote lease site at Lena Cove. Gear and equipment will be removed seasonally to avoid conflict or overlap with DIPAC's seasonal operations. To ensure that any debris from the operation does not impact surrounding beaches, staff recommends the following condition:

Condition: Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

AGENCY REVIEW

CDD conducted an agency review comment period between July 13, 2021 and July 23, 2021. Agency review comments can be found in Attachment C.

Agency	Summary
Alaska Department of Transportation	Reviewed Alaska Department of Natural Resources' tideland lease application in February 2020 and found no cause for objection; has reviewed the Conditional Use Permit application and maintains its non-objection
Alaska Department of Environmental Conservation Division of Water, Nonpoint Source Section	Has no issues with the application; Alaska Department of Environmental Conservation water quality evaluations have determined that marine water in Lena Cove is not impaired

In addition, ADNDR conducted an agency review period for the tideland lease from February 11, 2020 to March 2, 2020. The Final Finding and Decision was issued on February 8, 2021 and is included in the applicant's Conditional Use Permit application. The final lease agreement is also included. The lease agreement is valid from March 12, 2021 through March 11, 2031. The lease agreement includes conditions regarding insurance, spill response and notification, and navigation markers. ADF&G issued an Aquatic Farm Permit effective May 12, 2021.

PUBLIC COMMENTS

CDD conducted a public comment period between July 27, 2021 and August 23, 2021. Public notice was mailed to property owners within 500 feet of the proposed development on July 27. A public notice sign was also posted on-site two weeks prior to the scheduled hearing. No public comments have been received to date.

CONFORMITY WITH ADOPTED PLANS

The proposed development is in general conformity with the 2013 Comprehensive Plan, and the 2015 Juneau Economic Development Plan.

PLAN	Chapter	Page No.	Item	Summary
2013 Comprehensive Plan	5	58	Policy 5.11	Policy encourages the location and growth of locally based basic sector industries that provide year-round, full-time employment and provide tax revenues that support public services.
	5	60	Policy 5.14	Policy supports the development and expansion of the seafood industry and to attract and retain harvesters, processors, and sustainable aquaculture activities in Juneau.
	10	138	Policy 10.11	Policy supports facilitating the careful development of economically-valuable natural resources while avoiding, minimizing, and/or mitigating adverse

PLAN	Chapter	Page No.	Item	Summary
				environmental and/or economic impacts to other local or regional business sectors.
2015 Juneau Economic Development Plan			Initiative	The plan calls for building on strengths to expand business opportunities, with a specific objective to create more value from seafood and other maritime resources and services.

FINDINGS

Conditional Use Permit Criteria – Per CBJ 49.15.330 (e) & (f), Review of Director's & Commission's Determinations, the Director makes the following findings on the proposed development:

1. *Is the application for the requested conditional use permit complete?*

Analysis: No further analysis needed.

Finding: Yes. The application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. *Is the proposed use appropriate according to the Table of Permissible Uses?*

Analysis: The application is for an aquatic plant farm at Lena Cove. The use is listed at CBJ 49.25.300, Section 14.100 for the D1 zoning district.

Finding: Yes. The requested permit is appropriate according to the Table of Permissible Uses.

3. *Will the proposed development comply with the other requirements of this chapter?*

Analysis: The proposed site design complies with other requirements of this chapter.

Finding: Yes. The proposed development will comply with all Title 49 requirements.

4. *Will the proposed development materially endanger the public health, safety, or welfare?*

Analysis: The applicant has mitigated potential hazards from the development with the gear design, signage, and security.

Finding: No. There is no evidence to suggest that with appropriate conditions, the requested aquatic plant farm in a D1 zoning district will materially endanger the public health or safety.

5. *Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?*

Analysis: The development has minimized impacts to recreational and commercial fishing users in the area, with minimal visual impacts to the surrounding residential area.

Finding: No. There is no evidence to suggest that the proposed development for an aquatic plant farm, in a D1 zoning district will substantially decrease the value or be out of harmony with the property in the neighboring area.

6. *Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?*

Analysis: The proposed development supports the policies of the 2013 Juneau Comprehensive Plan and 2015 Juneau Economic Development Plan.

Finding: Yes. The proposed development will be in general conformity with the 2013 Juneau Comprehensive Plan and the 2015 Juneau Economic Development Plan.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Conditional Use Permit. The permit would allow the development of an aquatic plant farm at Lena Cove.

The approval is subject to the following conditions:

1. The Conditional Use Permit shall expire on March 11, 2031.
2. Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.
3. A Floodplain Development Permit shall be required before development occurs.
4. Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	Abutters Notice and Public Notice Sign Photo
Attachment C	Agency Comments



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

PROPERTY LOCATION

Physical Address
Lena Cove- Juneau, Alaska

Legal Description(s) (Subdivision, Survey, Block, Tract, Lot)
3.15 acres located within the SW1/4 of Section 18, Township 40 South, Range 65 East, Copper River Meridian

Parcel Number(s)
Reference Lease # ADL 233370

☐ This property located in the downtown historic district
☐ This property located in a mapped hazard area, if so, which _____

LANDOWNER/ LESSEE

Property Owner State of Alaska - Department of Natural Resources	Contact Person Brent Reynolds
Mailing Address 550W. 7th Ave., Suite 900c Anchorage, AK 99601-3577	Phone Number(s) (907) 269-8567
E-mail Address brent.reynolds@alaska.gov	

LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits

I am the owner of the property and I consent to this application and I (we) consent as follows:
development on my (our) property is made with my complete understanding and permission.
of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

X  5/24/2021
Date

X _____
Landowner/ Lessee Signature Date

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.

APPLICANT If the same as OWNER, write "SAME"

Applicant Brian P. Delay	Contact Person Same
Mailing Address 16955 Glacier Highway, Juneau, AK 99801	Phone Number(s) (907) 321-1952
E-mail Address brian.delay@gmail.com	

X  05/25/2021
Applicant's Signature Date of Application

DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Intake Initials 
Case Number USE21-7.
Date Received 5/26/2021



ALLOWABLE/CONDITIONAL USE PERMIT APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

To be completed by Applicant

PROJECT SUMMARY

Proposal for Aquatic Plant Farm at Lena Cove

TYPE OF ALLOWABLE OR CONDITIONAL USE PERMIT REQUESTED

- ☐ Accessory Apartment – Accessory Apartment Application (AAP)
☒ Use Listed in 49.25.300 – Table of Permissible Uses (USE)
 Table of Permissible Uses Category: (USE 14 100) Aquaculture

IS THIS A MODIFICATION or EXTENSION OF AN EXISTING APPROVAL?

☐ YES – Case # _____ ☒ NO

UTILITIES PROPOSED

WATER: ☐ Public ☐ On Site

SEWER: ☐ Public ☐ On Site

SITE AND BUILDING SPECIFICS

Total Area of Lot 3.15 Acres square feet Total Area of Existing Structure(s) _____ square feet

Total Area of Proposed Structure(s) 134,720 square feet

EXTERNAL LIGHTING

Existing to remain
Proposed

- ☒ No ☐ Yes – Provide fixture information, cutoff sheets, and location of lighting fixtures
☒ No ☐ Yes – Provide fixture information, cutoff sheets, and location of lighting fixtures

ALL REQUIRED DOCUMENTS ATTACHED

☒ Narrative including:

- ☒ Current use of land or building(s)
☒ Description of project, project site, circulation, traffic etc.
☒ Proposed use of land or building(s)
☒ How the proposed use complies with the Comprehensive Plan

If this is a modification or extension include:

- ☐ Notice of Decision and case number
☐ Justification for the modification or extension
☐ Application submitted at least 30 days before expiration date

☒ Plans including:

- ☒ Site plan
☐ Floor plan(s)
☒ Elevation view of existing and proposed buildings
☐ Proposed vegetative cover
☐ Existing and proposed parking areas and proposed traffic circulation
☒ Existing physical features of the site (e.g.: drainage, habitat, and hazard areas)

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

ALLOWABLE/CONDITIONAL USE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>500.00</u>			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	\$ <u>50.00</u>			
Pub. Not. Sign Deposit	\$ <u>100.00</u>			
Total Fee	\$ <u>650.00</u>			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Attachment A - Application Packet

Case Number

USE 21-7

Date Received

5/26/2021

Allowable/Conditional Use Permit Application Instructions

Allowable Use permits are outlined in CBJ 49.15.320, Conditional Use permits are outline in CBJ 49.15.330

Pre-Application Conference: A pre-application conference is required prior to submitting an application. There is no fee for a pre-application conference. The applicant will meet with City & Borough of Juneau and Agency staff to discuss the proposed development, the permit procedure, and to determine the application fees. To schedule a pre-application conference, please contact the Permit Center at 586-0770 or via e-mail at permits@juneau.org.

Application: An application for an Allowable/Conditional Use Permit will not be accepted by the Community Development Department until it is determined to be complete. The items needed for a complete application are:

1. **Forms:** Completed Allowable/Conditional Use Permit Application and Development Permit Application forms.
2. **Fees:** Fees generally range from \$350 to \$1,600. Any development, work, or use done without a permit issued will be subject to double fees. All fees are subject to change.
3. **Project Narrative:** A detailed narrative describing the project.
4. **Plans:** All plans are to be drawn to scale and clearly show the items listed below:
 - A. Site plan, floor plan and elevation views of existing and proposed structures
 - B. Existing and proposed parking areas, including dimensions of the spaces, aisle width and driveway entrances
 - C. Proposed traffic circulation within the site including access/egress points and traffic control devices
 - D. Existing and proposed lighting (including cut sheets for each type of lighting)
 - E. Existing and proposed vegetation with location, area, height and type of plantings
 - F. Existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.)

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: As part of the review process the Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the permit request the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department also sends all applications out for a 15-day agency review period. Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed project.

Hearing: All Allowable/Conditional Use Permit Applications must be reviewed by the Planning Commission for vote. Once an application has been deemed complete and has been reviewed by all applicable parties the Community Development Department will schedule the requested permit for the next appropriate meeting.

Public Notice Responsibilities: Allowable/Conditional Use requests must be given proper public notice as outlined in CBJ 49.15.230:

The Community Development Department will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, CDD will mail notices to all property owners within 500-feet of the project site.

The Applicant will post a sign on the site at least 14 days prior to the meeting. The sign shall be visible from a public right-of-way or where determined appropriate by CDD. Signs may be produced by the Community Development Department for a preparation fee of \$50, and a \$100 deposit that will be refunded in full if the sign is returned within seven days of the scheduled hearing date. If the sign is returned between eight and 14 days of the scheduled hearing \$50 may be refunded. The Applicant may make and erect their own sign. Please contact the Community Development Department for more information.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



(907) 586-0715
 CDD_Admin@juneau.org
 www.juneau.org/CDD
 155 S. Seward Street • Juneau, AK 99801

Rainy Dawn Fisheries – Aquatic Plant Farm

Case Number: PAC2020 0002

Applicant: Brian Delay

Property Owner: State of Alaska

Property Address: Lena Cove

Parcel Code Number: 8B3401010031 (Uplands property owned by Applicant)

Site Size: 137,600 square feet (3.15 Acres)

Upland Zoning Around the Cove: D1 and D3

Existing Land Use: Waterbody

Conference Date: 01/15/2020

List of attendees

Note: Copies of the Pre-Application Conference Report will be emailed, instead of mailed, to participants who have provided their email address below.

Brian Delay	Applicant	Brian.Delay@gmail.com
Laurel Christian	Planning	Laurel.Christian@juneau.org
Adrienne Scott	Permit Tech	Adrienne.Scott@juneau.org

Conference Summary**Questions/issues/agreements identified at the conference that weren't identified in the attached reports.**

The following is a list of issues, comments and proposed actions, and requested technical submittal items that were discussed at the pre-application conference.

The application should include the following:

- 1) Copies of any state or federal permits/applications
- 2) Detailed site plans that show proposed lease area and any structures
- 3) A detailed project narrative that includes:
 - a. The overall goal/purpose of the operation
 - b. A non-technical description of the operation: planting, maintenance, and harvesting methods and activity level at different times of year
 - c. Access
 - d. Noise impacts, if any (if there are none, explain why)
 - e. Lighting, if any
 - f. Habitat impacts and/or benefits
 - g. Impacts on recreational users, if any (if there are none, explain why)
 - h. Impacts of navigation if any (if there are none, explain why)
 - i. An explanation of how the site will be maintained to minimize waste and debris
 - j. Security at the site

Some specific items that should be addressed in the application are also provided below.

Planning Division:

1. **Zoning** – The cove where the site will be located is not assigned a zoning district. According to CBJ 49.25.120 *areas under water or tidelands which are not shown as included within any district shall be subject to the regulation of the adjacent district*. The uplands zoning surround the cove includes the D1 and D3 zoning districts. The Aquaculture use is allowed in either the D1 or D3 zoning districts with an approved Conditional Use Permit (USE 14.100).

Please describe the location of all activities that you wish to be reviewed under this permit. Exclude activities that are too uncertain to commit to doing or are a significant time period in the future. Be sure to mention if these areas are in approved State tideland leases.

2. **Setbacks** – Development will be in tideland waters. Lot setbacks are not applicable.

3. **Height** – Structures are limited to 35 feet for primary structures and 25 feet for accessory structures in the D1 and D3 zoning districts. The datum in this case will be above water. The height of any floating structures should not be an issue except possibly in terms of visual impacts.
4. **Access and Parking** – Applicant should describe how access and parking will be provided.

Commercial use permits may be required from CBJ Docks and Harbors; you should check with the CBJ Harbor master.

5. **Lot Coverage** – Not applicable
6. **Vegetative Coverage** – Not applicable
7. **Lighting** – Describe any lighting that will be present
8. **Noise** – Describe how the activities and equipment will contribute to noise and any plans to mitigate noise impacts to recreational users.
9. **Flood** – Please describe how all structures are sufficiently anchored to avoid debris in the event of a storm. There may be additional FEMA requirements for structures.
10. **Habitat** – Please describe benefits and detriments in the project narrative as noted. There are two anadromous waterbodies that feed into Lena Cove, Lena Creek and an Unnamed Creek ADF&G Catalog Numbers 111-50-10300 and 111-50-10310.
 - a. DIPAC remote release site
11. **Plat or Covenant Restrictions** – Not applicable
12. **Employees** – Applicant should describe how many employees will be required.
13. **CBJ 49.70.905** – This chapter of code contains some Coastal Management Plan enforceable policies; things to consider in the project narrative:
 - a. How will the aquatic farm be managed to prevent adverse impacts on beaches and other physical shore features?
 - b. How will you ensure that navigable waters are free from hazards or obstructive development?
 - c. How will you ensure that the development will not detract from the scenic quality of the shoreline and be compatible with surrounding areas?
 - d. Will the development block scenic vistas?
 - e. How will waste be disposed of?

Building Division:

14. **Building** – There may be Coastguard construction requirements for floating structures. This will be checked during agency review of the application.

15. **Outstanding Permits** – NA

General Engineering/Public Works:

16. **Engineering** – NA

17. **Drainage** – NA

18. **Utilities** – (water, power, sewer, etc.) NA

Fire Marshal:

19. **Fire Items/Access** – No comments at this time.

Other Applicable Agency Review:

4) DOT&PF / Alcohol Beverage Control Board / Army Corps / DEC (wastewater) / DNR / USF&W / F&G / FAA / Corrections... -

Submit copies of any state or federal permits. Comment on how water navigation hazards be addressed.

List of required applications

Based upon the information submitted for pre-application review, the following list of applications must be submitted in order for the project to receive a thorough and speedy review.

1. Development Permit Application form (see CDD website under Land Use forms)
2. Conditional Use Permit application form including a narrative, site plan and any supporting materials (see CDD website under Land Use forms).

Additional submittal requirements:

Submittal of additional information, given the specifics of the development proposal and site, are listed below. These items will be required in order for the application to be determined Counter Complete.

1. A copy of this pre-application conference report.
2. Federal and State permits associated with the operation. Any agreements for commercial use of CBJ parking lots (if applicable).

Fee estimates

The preliminary plan review fees listed below can be found in the CBJ code section 49.85.

Based upon the project plan submitted for pre-application review, staff has attempted to provide an accurate estimate for the permits and permit fees which will be triggered by your proposal.

1. Conditional Use Permit Fee – Class II Uses \$500.00
2. Sign Permit Fee - \$50.00 fee plus \$100.00 refundable deposit

For informational handouts with submittal requirements for development applications, please visit our website at www.juneau.org/cdd.

Submit your completed application

You must submit your application(s) in person with payment to:

City/Borough of Juneau
Permit Center
230 S. Franklin Street,
Fourth Floor Marine View Center
Juneau, AK 99801

Phone: (907) 586-0715
Fax: (907) 586-4529
Web: www.juneau.org/cdd

Proposal for Aquatic Plant Farm at Lena Cove

Submitted by Brian P. Delay DBA Rainy Dawn Fisheries

16955 Glacier Highway Juneau, AK 99801

May 25, 2021

Project Narrative

Current Use of Land:

Lena Cove, located approximately 6 nautical miles from Auke Bay on the Juneau road system, is a highly developed area of the CBJ Zoned D1/D3. Private, State, Federal and Municipal Lands adjoin Lena Cove. State submerged lands within Lena Cove are managed by the Alaska Department of Natural Resources. The USFS uplands provide an important point of access to the waterfront for visitors and locals throughout the year. Recent improvements by the USFS have increased handicap access as well as improvements to fish habitat at the head of the cove. Other small streams dot the cove and see anadromous fish return often annually. Lena Beach Recreation Area situated immediately upland of the cove sees a multitude of recreational users throughout the year but to a lesser extent during winter months. Surfers and Kayakers are the primary, sporadic users of the waters of Lena Cove during the late autumn and winter months, November to April, when conditions are amiable for surfing. Due to its northern exposure and nearby anchoring alternatives, Lena Cove is seldom used for anchoring of vessels past late September. Lena Cove is within the Southeast Tanner Crab fishery Core Areas. This fishery is prosecuted annually, usually in the month of February and lasts approx. one week. Lena Cove is a remote release site for hatchery reared Chinook Salmon operated by Douglas Island Pink and Chum (DIPAC). Dozens of commercial charter fishing vessels and sport anglers will ply the waters of Lena Cove during spring, summer and autumn sport fisheries. Many more anglers cast and snag from shore during these months as well. Lena Cove is a heavily used, vital recreation area for the residents of Juneau. This project proposes an allowable activity under CBJ zoning that is seasonal (October 1- April 15) and is specifically geared towards avoiding conflict with other users during periods of peak use.

Project Description/Proposed use of land:

The purpose of this project is for commercial cultivation and harvest of Aquatic Plants (kelp). A system of lines, anchors and floats is used to grow aquatic plants (kelp) submerged below the ocean surface. The proposed farm would be operated seasonally from October 1st to April 15th. Kelp would be planted on submerged lines in October and Harvested in April. Weekly Maintenance will be performed with a skiff or commercial fishing vessel or as needed to ensure gear and equipment is secure and not moving. Regular inspection of gear and data logging of growth rates will be performed weekly and as needed. All removable Danforth type anchors, lines and floats will be removed after harvest and prior to April 15th each year. Helical anchors may or may not be removed annually so long as they don't interfere with other authorized uses

F.) Habitat impacts from the proposed project are expected to benefit the local ecosystem by 1.) offering increased shelter for forage fishes 2.) fixing nitrogen runoff from adjacent properties and 3) removing carbon dioxide from the surrounding waters

G.) Impacts on recreational users is expected to be negligible. Lena Cove is one of a few surfing locations accessible by road in winter and early spring months when northerly outflow events pile waves onto Lena Beach. The proposed farm site is well beyond the surf break and should not interfere with those activities.

Impacts to personal use fishers is intended to be mitigated by limiting farm operations to seasonally set dates.

H.) Potential Impacts or Hazards to navigation are mitigated by 1.) gear design; a fixed submerged (minimum seven feet) matrix with minimal vertical lines and buoys and 2.) limiting farm operations to seasonally set dates when vessel traffic is less frequent and anchoring of vessels seldom occurs

I.) No waste or debris is generated at the site

J.) Security at the site will consist of electronic monitoring from shore as well as State and USCG approved markings at farm boundaries.

Planning Division:

1. **Zoning** – The cove where the site will be located is not assigned a zoning district. According to CBJ 49.25.120 areas under water or tidelands which are not shown as included within any district shall be subject to the regulation of the adjacent district. The uplands zoning surround the cove includes the D1 and D3 zoning districts. The Aquaculture use is allowed in either the D1 or D3 zoning districts with an approved Conditional Use Permit (USE 14.100).

Location of activities to be reviewed under this permit are limited to the location and legal description(see below) authorized under the approved State tideland lease (ADL 233370).

The aquatic farm is 3.15 acres located within the SW1/4 of Section 18, Township 40 South, Range 65 East, Copper River Meridian, within Lena Cove, approximately 13 miles northwest of the city of Juneau, Alaska.

2. **Setbacks** – Development will be in tideland waters. Lot setbacks are not applicable.

3. **Height** – Structures are limited to 35 feet for primary structures and 25 feet for accessory structures in the D1 and D3 zoning districts. The datum in this case will be above water. The height of any floating structures should not be an issue except possibly in terms of visual impacts.

4. Access and Parking

Parking and Vessel access to and from the site will utilize private or commercial facilities at Auke Bay or Tee Harbor. Access to the site by private property adjacent to the site

may be authorized with the approval of DNR as noted in the additional stipulations of the lease agreement. See: (" Attachment B Additional Stipulations" Pg. 27, Section 16 SiteRequirements: part C)

- (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*

Applicant will likely seek authorization from DNR to access site from private property adjacent to the farm site.

9. Flood – Gear and equipment will be anchored with steel Danforth anchors up to 500 lbs. each or helical anchors. Because the system of lines is in a fixed, submerged position, debris and flotsam should generally not interact with the gear. In the event that large woody debris approaches the farm site, mitigation measures will be taken to reposition debris to safeguard farm operations.

10. Habitat – Please describe benefits and detriments in the project narrative as noted.
a.) There are two anadromous waterbodies that feed into Lena Cove, Lena Creek and an Unnamed Creek ADF&G Catalog Numbers 111-50-10300 and 111-50- 10310. The site selection of this farm meets ADFG minimum distances from these waterbodies. Gear and equipment will be removed from the site annually when operations cease.

b.) Habitat impacts from the proposed project are expected to **benefit** the local ecosystem by 1.) offering increased shelter for forage fishes 2.) fixing nitrogen runoff from adjacent properties and 3) removing carbon dioxide from the surrounding waters. **Detrimental** impacts to the nearby habitat are not expected. Kelp is harvested prior to the plants becoming fertile thereby addressing spreading of the species and seed is sourced locally as regulated by ADFG to ensure bio-diversity.

c.) DIPAC remote release site-Applicant has had dialogue with representatives of DIPAC and is committed to working with that organization to keep fixed gear clear of previously authorized activities at the remote lease site at Lena Cove. Gear and equipment will be removed seasonally to avoid conflict or overlap with DIPAC's seasonal operations.

11. Plat or Covenant Restrictions – Not applicable

12. Employees –

Up to four employees may be required at any give time to manage this farm.

13. CBJ 49.70.905 – This chapter of code contains some Coastal Management Plan enforceable policies; things to consider in the project narrative:

- a. How will the aquatic farm be managed to prevent adverse impacts on beaches and other physical shore features? Gear and equipment will be maintained in a fixed position, electronically monitored and maintenance performed weekly or more frequently as needed.
- b. How will you ensure that navigable waters are free from hazards or obstructive development? Gear design is intended to mitigate risks by maintaining depth at or greater than minimum standards set by the State of Alaska.
- c. How will you ensure that the development will not detract from the scenic quality of the shoreline and be compatible with surrounding areas? Gear design is intended to create as little visual impact as possible with only 6-8 surface floats visible from shore.
- d. Will the development block scenic vistas? No.
- e. How will waste be disposed of? No waste will be created or disposed of at the site

Building Division: 14. Building – There may be Coastguard construction requirements for floating structures. This will be checked during agency review of the application.

15. Outstanding Permits – NA General Engineering/Public Works: 16. Engineering – NA

17. Drainage – NA

18. Utilities – (water, power, sewer, etc.) NA

Fire Marshal:

19. Fire Items/Access – No comments at this time.

Other Applicable Agency Review:

4) DOT&PF / Alcohol Beverage Control Board / Army Corps / DEC (wastewater) / DNR / USF&W / F&G / FAA / Corrections... -

Comment on how water navigation hazards be addressed.

Hazards to navigation will be addressed by maintaining all gear and equipment within the permitted boundaries of the lease area and by maintaining all gear at a fixed submerged depth while minimizing the number of loose vertical lines and surface floats.

How the proposed use complies with CBJ Comprehensive Plan:

The proposed project complies with Comprehensive Plan on several fronts.

Pg 17 Principles for Creating Livable Mixed Use Communities
Protect Environmental Resources

“ Provide a balance of preservation of natural systems and new development;...”

POLICY 2.3. TO DEVELOP AND USE SUSTAINABILITY INDICATORS TO MEASURE JUNEAU'S PROGRESS TOWARD BECOMING A MORE SUSTAINABLE COMMUNITY.

2.2 - IA2 Identify opportunities throughout the CBJ government to conserve energy, use alternative fuels and renewable energy sources, and reduce the community's carbon footprint.

POLICY 5.11. TO ENCOURAGE THE LOCATION AND GROWTH OF LOCALLY-BASED BASIC SECTOR INDUSTRIES THAT PROVIDE YEAR-ROUND, FULL-TIME EMPLOYMENT AND PROVIDE TAX REVENUES THAT SUPPORT PUBLIC SERVICES.

5.11 - DG2 When allocating public lands, infrastructure, tax benefits or other public benefits for new commercial or industrial activities, the CBJ government should consider giving higher priority to locally based basic sector industries over non-local candidate businesses.

POLICY 5.14. TO SUPPORT THE DEVELOPMENT AND EXPANSION OF THE SEAFOOD INDUSTRY AND OF SERVICES AND FACILITIES THAT BENEFIT COMMERCIAL FISHING ACTIVITY AND TO ATTRACT AND RETAIN HARVESTERS, PROCESSORS, AND SUSTAINABLE AQUACULTURE ACTIVITIES IN JUNEAU

5.14 - IA4 Support mariculture that does not have unacceptable impacts on important fish and wildlife habitat and other maritime-related activities and ensure adherence with state law and protocols on mariculture practices. Use of invasive species or harmful food or waste products in these operations should be prohibited.

POLICY 5.19 TO ENCOURAGE AND SUPPORT CONTINUATION AND EXPANSION OF LOCAL AND REGIONAL RESEARCH ACTIVITIES, BOTH ACTIVITIES THAT SUPPORT REGIONAL INDUSTRY, AND THOSE THAT ATTRACT NEW JOBS AND RESEARCH DOLLARS TO JUNEAU AND THE REGION.

5.19 - IA3 Actively promote Juneau and the region as world class research and education arenas.

5.19 - IA4 Encourage location of research facilities and activities in Juneau and the region. Actively encourage NOAA and other research vessels to homeport in the region.

POLICY 10.11. TO FACILITATE THE CAREFUL DEVELOPMENT OF ECONOMICALLY-VALUABLE NATURAL RESOURCES WHILE AVOIDING, MINIMIZING, AND/OR MITIGATING ADVERSE ENVIRONMENTAL AND/OR ECONOMIC IMPACTS TO OTHER LOCAL OR REGIONAL BUSINESS SECTORS.

10.11 - SOP1 Work with state and federal agencies to promote natural resource development that is compatible with the policies contained in this Plan.

10.11 - SOP2 Maintain close coordination in the review process for state permit activities that affect land and habitat within the borough boundaries.

Copies of any state or federal permits.

See attached:

- 1) Final Finding and Decision for ADL 233370
- 2) Lease Agreement
- 3) Aquatic Farm Operation Permit
- 4) Aquatic Farm Program Application
- 5) Army Corp of Engineers-General Permit Application
- 6) Comments from Agency Review -ADFG, DIPAC letter, NOAA, USFS
- 7) Aquatic Farm Siting Restrictions
- 8) General, Detailed Location Maps
- 9) Site Plans- Figures 3,4,5
- 10) Catenary Matrix Drawings
- 11) Table - Comparison of Breakout Force for Mooring Anchors

Project Description
Rainy Dawn
Fisheries Updated
3-18-2020

Seasonal Aquatic plant farm using submerged kelp grow lines and submerged long line structure.

Location: Lena Cove---Favorite Channel. Approximately 6 nautical miles from Auke Bay, .7 nautical miles east of Point Lena, Southeast Alaska.

The proposed aquatic farm site is composed of a single parcel located on state--- owned submerged lands totaling 3.15 acres.

- Parcel 1 --- 430 feet x 320 feet (3.15 acres)

Species: *Nereocystis luetkeana* (bull kelp), *Eularia fistulosa* (dragon kelp), *Saccharina latissima* (sugar kelp).

Culture Method: Seeded string wrapped around submerged long lines (submerged minimum 7 feet below water surface). Seed stock will be acquired from a state permitted hatchery and out---planted within 50km by water from brood---stock acquisition location. All gear and equipment including anchors will be deployed between the months of October and December and removed after harvest the following spring, except for helical anchors, which may or may not remain fixed.

Gear and Equipment Type: Gear deployed will include one of two Anchor Systems Either *Removable* or *Fixed*. The *Removable* system is composed of four 250 to 500 pound steel Danforth anchors and galvanized chain with surface mooring buoys, Alternatively the *Fixed* Anchor System utilizes helical anchors, which may not be removed seasonally, with mooring rode and 5/8" or 3/4" chain with surface mooring buoys. A total of four surface floats or mooring buoys, one per anchor at each end of two submerged longlines/parcel corners, will be deployed with two *temporary* surface floats mid span of the submerged long lines. The two temporary surface floats will be used during initial deployment of the gear and as needed during the growout phase. A total of six surface floats including mooring buoys will be visible on the water surface during the growing season. All surface floats will then be removed after harvest.

Four submerged lines forming the *Structure Perimeter* will be anchored at the parcel corners measuring a total of 1,500 Lineal feet. These submerged lines forming the structure perimeter will be removed after harvest.

Up to thirty---five Grow lines totaling approximately 7,000 lineal feet of 1/2" up to 5/8" blue steel line or equivalent; with seeded string, will span back and forth approximately two hundred feet between two submerged long lines, attached to

the *perimeter structure*. All gear will be maintained at minimum seven feet below the water surface including at extreme low water. Because these lines are under tension at a fixed depth and attached to the structure perimeter all submerged lines will generally be significantly deeper than seven feet below the water surface.

All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or *temporary* anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the *Fixed* anchor system may remain onsite or be removed before April 14.

Harvest Equipment and Method: Kelp will be harvested in early spring during the month of April using a commercial fishing vessel and/or support skiff. Grow lines will be pulled onboard manually or using hydraulic drum and cut with a knife into brailer bags and/or totes and transported in fish holds, totes or bags. After harvest all grow lines will be removed, cleaned, and stored in the City and Borough of Juneau. Gear including grow lines, submerged long lines, chains, anchor ropes, *Temporary* Anchor systems, and surface buoys will be removed after each harvest. Helical anchors may or may not be removed after harvest.

Operation Schedule: Gear and Equipment including one of two anchor systems will be deployed after October 1 up to December after salmon fisheries have mostly concluded. Outplanting of seeded lines from a skiff will occur in October, November or December. The farm will be monitored from shore daily for interaction with the public and wildlife. After outplanting and during the growout phase (December to – April) growth data will be collected from the site weekly. Regular inspection for fouling or movement of gear and equipment, after storms or weather events will be performed as needed. Kelp will be harvested before April 15. All gear and equipment including removable anchor systems will be removed from the site before the opening of salmon fisheries typically in late April.

Support Facilities: No upland facilities or support structures will be used on this proposed aquatic farm at this time.

Access: Growing areas will be accessed by skiff from Tee Harbor or Auke Bay launch ramp and/or main dock at Statter Harbor. The site will be monitored daily during winter growing season.

Storage: All gear while not in use will be stored on private property in the City and Borough of Juneau.

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

FINAL FINDING AND DECISION

ADL 233370
Brian Delay dba Rainy Dawn Fisheries
Application for Lease
AS 38.05.083

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated August 12, 2020. To be eligible to appeal this decision, a person must have provided a written comment during the comment period of the PD.

Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) has made a determination to issue a 10-year aquatic farm lease (ADL 233370) to Rainy Dawn Fisheries for approximately 3.15 acres of tide and submerged lands, more or less, for the operation of a commercial aquatic farm. The aquatic farm is located within the SW1/4 of Section 18, Township 40 South, Range 65 East, Copper River Meridian, within Lena Cove, approximately 13 miles northwest of the city of Juneau, Alaska.

Changes to the Decision:

There are no changes to the PD. This FFD responds to comments on the PD that were received during the public notice comment period.

Agency Review:

Agency review was conducted from February 11, 2020 to March 2, 2020. A second Agency Review was conducted on March 25, 2020 after mitigation between applicant and the Alaska Department of Fish and Game (ADF&G).

Agency Review Comment(s):

SCRO received five letters or emails with comments during the agency review: Comments were received from NOAA, ADF&G, U.S Forest Service, Alaska Department of Transportation and Public Facilities, and the City and Borough of Juneau. All agency comments were addressed in the PD.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, the PD was advertised for a 30-day public comment period beginning on August 26, 2020. Notice was posted at the post offices located in Juneau, Alaska and on the State's Online Public Notice website. Notices were also mailed or e-mailed to neighboring property owners, permit/lease holders, and other interested parties on August 26, 2020.

Public Notice Comment(s):

SCRO received 17 emails or letters with comments, two from the public were in support, three from the public remained neutral, eleven from the public were in objection, and one from an agency had "no comment" during the public notice. Within these comments, 25 topics were raised that are addressed by SCRO below.

Public Comments of Support or Non-objection:

SCRO received two comments from the public of support and three comments that remained neutral for the proposed lease. Within the comments, there are 8 topics raised that are addressed by SCRO below.

Topic 1:

Commenter expresses support for proposed farm within Lena Cove stating "Lena Cove has long hosted a variety of commercial and recreational activities including salmon hatchery net pens, charter fishing vessels, picnicking, and recreational seafood harvest". Commenter points out that because of the industry's newness to the region, applications for aquatic farms raise many concerns among adjacent landowners "particularly related to visual impact and conflicting use". Commenter explains that they believe the applicant's plan to remove all gear, except anchors, from April 15th through September 30th each year addresses concerns surrounding conflicting use. Commenter points out that kelp farms have been identified "by the State of Alaska, City and Borough of Juneau, Alaska Fisheries Development Foundation, Southeast Sustainable Partnership, Southeast Conference, Juneau Economic Development Council and others as an important, sustainable economic development opportunity in Southeast Alaska".

SCRO Response:

SCRO acknowledges the comment.

Topic 2:

Commenter states that the proposed farm is off shore enough that they do not see much, if any, adverse effect to the beach zone but support the Forest Service's restrictions on using Lena Beach for any equipment storage. Commenter states that although they believe some waves will be "damped out" for surfing, they like the idea of seaweed farming for Juneau and support the plan.

SCRO Response:

SCRO acknowledges the comment.

Topic 3:

Commenter states application indicates applicant plans to monitor operation from shore. Commenter asks whose property the applicant will be crossing to get close enough to monitor an underwater operation during winter months.

SCRO Response:

SCRO acknowledges the comment. Applicant has clarified in an October 8, 2020 letter to DNR that the proposed farmsite is currently actively monitored electronically from shore with no need to access the shoreline via privately owned property. Furthermore, applicant states that they do not intend to use U.S. Forest Service facilities for access or storage of equipment related to farming activities.

Topic 4:

Commenters state that any future transfer, sale, or expansion should require a public review or approval process.

SCRO Response:

SCRO acknowledges the comment. Pursuant to AS 38.05.945, any preliminary finding under AS 38.05.035(e) concerning the sites for aquatic farms and related hatcheries must go through the public notice process. This would include future sales and expansions but does not include future transfers, or amendments that do not increase the authorized area, for aquatic farms.

Topic 5:

Commenter asks for a more exact location and legal description stating “the current description encompasses 160 acres”.

SCRO Response:

As per the Public and Agency Notice, “Subject to AS 38.05.083, the Southcentral Regional Land Office (SCRO) has made a Preliminary Decision to offer a 10-year lease to Brian Delay dba Rainy Dawn Fisheries for a 3.15-acre, more or less, site for the operation of an aquatic farmsite for the purpose of cultivating bull kelp, dragon kelp, and sugar kelp. The location of the project area is further described as being within the SW1/4 of Section 18, Township 40 South, Range 65 East, Copper River Meridian, within Lena Cove, approximately 13 miles northwest of the city of Juneau, Alaska.” Furthermore, the PD includes coordinates for the four corners as well as maps of the proposed lease site.

Topic 6:

Commenters express that finalization of a lease, if approved, should only be given after obtaining any additional required permits.

SCRO Response:

SCRO acknowledges the comment. Pursuant to 11 AAC 63.110(3), a lessee shall obtain and remain in compliance with all other federal, state, and local authorizations necessary for lawful operations.

Topic 7:

Commenters ask if the proposed site will be located in the same place year after year and if the site will be anchored.

SCRO Response:

The proposed site would continue to be located within the same coordinates found within the application and PD for the term of the lease. Four anchors would be used on the farmsite.

Topic 8:

Commenters ask whether or not a public notice has been given to the community.

SCRO Response:

Pursuant to AS 38.05.945, the PD was advertised for a 30-day public comment period beginning on August 26, 2020. Notice was posted on the Alaska Online Public Notice System, the post offices located in Juneau, Alaska, and courtesy notices were mailed or emailed to neighboring property owners and other interested parties.

Public Comments of Opposition or Concern:

SCRO received 11 comments of opposition or concern to the proposed lease. Within these comments there are 17 topics raised that are addressed by SCRO below.

Topic 1:

Commenters have concerns the proposed farmsite conflicts with existing uses within Lena Cove. Current uses pointed out by commenters are surfing, swimming, sport fishing, trolling, kayaking, paddle boarding, and placing personal use Dungeness crab pots during the season. Commenters state the proposed farm is in direct conflict with the Juneau populations public use and incompatible with existing and designated development. Commenters express the area is historically a residential area for retirees and a location sought after for its views and access.

SCRO Response:

If authorized, the Aquatic Farm Lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. 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.

Topic 2:

Commenters express concern that Lena Cove is not a healthy body of water for farming commercial plants. Commenters state Lena cove is not completely sanitary as septic systems for over 50 homes drain into the waters of Lena Cove. Commenters express concern over whether or not sewage outfalls could be damaged by the setup or harvesting of the proposed site and whether the seafloor will be undermined in any way.

SCRO Response:

The Alaska Department of Environmental Conservation (ADEC) was included on the Agency Review and SCRO did not receive any comments or concerns from ADEC. DNR's statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to water quality but authorize DNR to issue a lease of state-owned tideland, shoreland, or submerged land to develop an aquatic farm. Management of water quality is within the authority of ADEC. According to an email from ADEC, kelp is considered a raw agricultural product until it is processed and there are currently no required minimum conditions of the growing waters for kelp that must be met, unlike shellfish growing waters that are required to go through a classification process.

Topic 3:

Commenters express concern that the three species of kelp proposed to be farmed within Lena Cove are not known to the commenters to have been native to Lena Cove. Commenters state that one non-commercial grade species of kelp is found within Lena Cove and used by residents to add nutrients to home gardens. Commenter asks why the State of Alaska would permit plants to be introduced and farmed in waters which these species of kelp have not naturally grown.

SCRO Response:

DNR's statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to fish, game, and species of kelp but authorize DNR to issue a lease of state-owned tideland, shoreland, or submerged land to develop an aquatic farm. Management of fish and game as well as species being farmed in aquatic farms is within the authority of ADF&G, not DNR. ADF&G may add to its operation permit authorization the conditions it deems appropriate.

Topic 4:

Commenters express concern over access to the waters within the cove via boat in winter months. Commenters state the "northerlies are fierce" and it is rare to see a boat approaching Lena Cove during winter from Tee Harbor or from Lena Point. Commenters state by September 10, pleasure boats are pulled from Lena Cove because the water is not safe during winter months. Due to the weather, commenters are concerned the structure of the proposed farm will end up on Lena Beach or strung along the beach front. Commenters are also concerned the proposed footprint displaces navigable anchorage, crabbing, use by beach residents for vessel moorage historically managed by

CBJ. Commenters ask if the USCG commented on the use of Lena Cove as an identified sheltered anchorage.

SCRO Response:

The U.S. Coast Guard was included on both Agency Reviews with no comments received by DNR. In the applicant's letter to DNR responding to public comments dated October 8, 2020, the applicant is aware of the lack of vessel traffic during winter months. Applicant's answer to the cove not being safe during winter months is that "these conditions are not persistent and are typically associated with northerly outflow events that pile waves onto Lena Beach several times each winter. These conditions are sporadic and not the norm. The proposed site is located well beyond breaking surf and the planned design is intended to tolerate such forces."

Topic 5:

Commenters state Lena Cove is used by Douglas Island Pink and Chum Incorporated for king salmon hatchery during spring. Commenter states salmon is a public good to replenish king salmon and the proposed farm is for private gain.

SCRO Response:

DNR's statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to fish, game, and species of kelp but authorize DNR to issue a lease of state-owned tideland, shoreland, or submerged land to develop an aquatic farm. Management of fish and game as well as species being farmed in aquatic farms is within the authority of ADF&G, not DNR. ADF&G may add to its operation permit authorization the conditions it deems appropriate. ADF&G was notified during the Agency Review period and worked with applicant concerning site specific mitigation concerning gear. Applicant worked with ADF&G to address potential concerns and agreed to cease activities from April 14 to October 1 each year to remove all in water aquatic farm structures, except that fixed anchors may remain onsite throughout the year if they extend above the substrate not more than 12 inches.

Topic 6:

Commenters are concerned the agency responses received during the Agency Review Period were "boiler plate mediocre statements of non-involvement" in which none of the agency comments offered information that the proposed farm would make a difference in availability of commercial kelp. Commenters state that none of the agency responses demonstrated knowledge of Lena Cove or the impact of the proposed seeding of non-native kelp species into Lena Cove.

SCRO Response:

Agency review was conducted from February 11, 2020 to March 2, 2020. A second Agency Review was conducted on March 25, 2020 through April 15, 2020 after mitigation between the applicant and ADF&G. All comments received during these times were evaluated and incorporated

into the PD. Any potential or relevant information outside of DNR authority are the responsibility of the agency with authority. DNR's statutes and regulations do not specify management of aquatic farms relating to fish, game, and species of kelp but authorize DNR to issue a lease of state-owned tideland, shoreland, or submerged land to develop an aquatic farm.

Topic 7:

Commenters state the proposed farm within Lena Cove would change the cove in unknown ways and mitigation of unintended consequences were not addressed within the application.

SCRO Response:

As per Section 26 within the Aquatic Farm Lease, 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. Furthermore, as per Section 26 (e) found within the Aquatic Farm Lease, "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". Furthermore, pursuant to 11 AAC 63.080(a), "a bond, cash deposit, certificate of deposit, or other form of security acceptable to the commissioner must be posted and maintained in an amount determined by the commissioner to be sufficient to cover the cost of site cleanup and restoration and any associated cleanup costs after termination of the lease, including unpaid rentals or other obligations accruing until site restoration is complete".

Topic 8:

Commenter has concerns with long-term zoning and planning.

SCRO Response:

According to the City and Borough of Juneau Planning Commission, applicant would need to apply for a Conditional Use Permit from the City and Borough of Juneau Planning Commission in order to move forward with the proposed site.

Topic 9:

Commenters are concerned about the financial cost of monitoring by ADNR, ADF&G, ADEC, USFS, Alaska State Lab and states "the forecast revenues seem to be insufficient for much, if any, profit".

SCRO Response:

Authorizations for aquatic farming promote the long-term development of the State's resources and encourages economic growth. Governor Walker established the Alaska Mariculture Task Force in 2016 by Administrative Order (AO) No. 280. AO No. 280 details the benefits to Alaskans

which could be provided by a fully developed mariculture industry including economic benefits by providing jobs and commerce in coastal communities.

Topic 10:

Commenter states a feasible/prudent alternate site should be identified and evaluated. Commenters express concern on why a residential area has been chosen and whether or not there are examples where sites close to residential areas have been tested without conflict of use. Commenters state the property area around Lena Cove is for residential use and has protected residents from encroachment of commercial activities. Commenters state on the East Coast of the United States, there is a 1,000-foot buffer from sites to shore. Commenters state location of proposed farm may be a nuisance to residents due to noise, lighting, harvesting, proposed farm affecting the view, or other unforeseen operations. Commenter asks specifically what level of artificial light, noise, or other pollution is normally to be expected from operation and harvest. Commenters state activities involved with operating an aquatic farm within Lena Cove would be disruptive to residents and have a negative impact on property values. Commenters express that if proposed farm is approved, additional conditions should be included within the lease contract to mitigate the impact of noise and bright lights by limiting all activities to daylight hours and prohibiting the use of lights.

SCRO Response:

Pursuant to AS 38.05.083, DNR will review and adjudicate a properly filled out application for an aquatic farmsite located on state owned tide and submerged lands.

Pursuant to the Additional Stipulations found within the Lease Authorization, the U.S. Coast Guard shall be contacted by the applicant prior to placing any aquatic farm structures under the lease authorization to determine lighting or marking requirements necessary for the protection of maritime navigation. Specific site requirements found within the Additional Stipulations include visibly marking each corner of the site in accordance with both the USCG and ADF&G marking requirements. Specifics on the proposed infrastructure and harvesting methods are detailed in the PD and the associated project description.

Topic 11:

Commenter states an EIS review should be done to protect the existing biodiversity.

SCRO Response:

Pursuant to Alaska Statutes and Regulations, a lessee is subject to all applicable federal, state, and local laws. DNR's statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to Environmental Impact Statements (EIS). The Environmental Protection Agency is responsible for administering the EIS filing process and that process only begins when a federal agency develops a proposal to take a major federal action defined under 40 CFR 1508.1.

Topic 12:

Commenters are concerned about the presence of herring spawn and ask if harvesting would be postponed if herring spawn are present.

SCRO Response:

The March 20, 2020 letter received from ADF&G lists permit conditions pertaining to herring, specifically, if herring spawn is onsite, the eggs must not be disturbed or removed. According to the ADF&G letter, “all eggs must be allowed to hatch”. DNR’s statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to fish, game, and species of kelp but authorize DNR to issue a lease of state-owned tideland, shoreland, or submerged land to develop an aquatic farm. Management of fish and game as well as species being farmed in aquatic farms is within the authority of ADF&G, not DNR.

Topic 13:

Commenters are concerned with legal challenges stating, “expanded insurance coverage to guarantee adjacent landowners are protected from any adverse effects and held harmless”. Commenters state bonding for reclamation issues should be in place prior to lease authorization. Commenters express concern that if applicant does not comply with conditions set forth within the lease that the State, as owner of the tidelands, remove any in-place structures before the dates specified within the lease.

SCRO Response:

Pursuant to 11 AAC 63.080(a), “a bond, cash deposit, certificate of deposit, or other form of security acceptable to the commissioner must be posted and maintained in an amount determined by the commissioner to be sufficient to cover the cost of site cleanup and restoration and any associated cleanup costs after termination of the lease, including unpaid rentals or other obligations accruing until site restoration is complete”. Furthermore, applicant is required to show proof of liability insurance prior to lease authorization.

Topic 14:

Commenters state an independent study should be conducted to determine sites viable to establishing an aquatic farmsite without impact to adjacent property owners and a policy requiring an independent study prior to the consideration of any lease application would streamline the lease process to insure a successful project for agencies, applicants, DNR, and the public by identifying the most appropriate sites.

SCRO Response:

DNR’s adoption of regional land use plans and their land classifications considers the kinds of uses or authorizations that would be suitable for a particular area of state land. The PD discussed the area plan guidelines for where the proposed lease site is located. The section called

Classification and Planning contains a summary of the DNR area plan and confirmation that an aquatic farmsite would be consistent with the land management intent.

Topic 15:

Commenters express concern that the applicant is putting their individual convenience and personal gain ahead of the negative lifestyle impact and potential loss of property values to residents of Lena Cove.

SCRO Response:

DNR aquatic farm statutes and regulations do not allow for limiting applicant entities or applications that fulfill all statutory and regulatory requirements.

Topic 16:

Commenters express concern that several marine mammal species, protected under law, use the waters of Lena Cove. These species include killer whales, humpback whales, Steller sea lions, harbor porpoise, and harbor seals. Commenters express concern over whether or not operations of the proposed farm is compatible with waterfowl and sea life within the area. Commenter asks specifically if entanglements are possible and whether or not diseases could be introduced to the native plant species found within the area from the farm.

SCRO Response:

DNR's statutes and regulations for aquatic farmsite leases do not specify management of aquatic farms relating to marine mammals but authorize DNR to issue a lease of state-owned tideland, shoreland, and submerged land to develop an aquatic farm. Management of marine mammals is within the authority of the National Marine Fisheries Service (NMFS). Within the February 28, 2020 letter from the NMFS received during the Agency Notice Period, specific marine mammal considerations were listed concerning entanglement, vessel interactions, and habitat exclusion. A site-specific consideration was listed concerning the stellar sea lion critical habitat. This site-specific consideration stated a 20 nautical mile buffer around major haul outs and rookeries. The February 28, 2020 letter also had recommendations for best management practices for aquatic farms to minimize interactions between marine mammals. A copy of the February 28, 2020 NMFS letter has been given to the applicant.

The applicant has clarified in an October 8, 2020 letter to DNR that the proposed farmsite equipment/gear is designed to mitigate risks by keeping submerged lines under constant tension thus avoiding loose lines near the surface.

Topic 17:

Commenters express concern that while there may be substantial infrastructure at Statter Harbor to support commercial activities, there is no infrastructure that exists within Tea Harbor. Commenters state that applicant should take advantage of services offered at Statter Harbor and

use it exclusively in order to access the proposed farm. Commenters express the public beach access located in Tee Harbor is not an appropriate place.

SCRO Response:

Applicant has clarified in an October 8, 2020 letter to DNR that access to proposed site would be limited to commercial launch facilities located at Tee Harbor or Statter Harbor/Auke Bay.

Signature page follows:

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations, and submitted agency and public comments. DMLW considered three criteria to determine if this project provided the greatest economic benefit to the State. These include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State's natural resources. Collection of the one-time filing fee and annual rent represents the direct economic benefit realized by the State. Issuance of the lease provides an indirect economic benefit to the State and the development of its natural resources by facilitating commercial use of state tide and submerged lands. Additionally, the issuance of the lease serves the best interest of the State as it will continue to enhance and grow the commercial aquatic farm industry in Alaska.

- Attachment A – Sample Lease
- Attachment B – Additional Stipulations
- Attachment C – Project Description, Maps and Figures

Brent Reynolds

1/19/21

Brent Reynolds

Date

Natural Resource Specialist II

Final Finding and Decision:

The findings of the PD have been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945. The casefile has been found to be complete and the requirements of all applicable statutes and regulations have been satisfied. I find that it is in the best interest of the State to issue the lease as described above, under the authority of AS 38.05.083. Brian Delay dba Rainy Dawn Fisheries will be required to provide proof of liability and workers' compensation insurance, a \$2,500.00 performance guaranty bond, an annual fee of \$825.00, submit Annual Reports, and adhere to the Commercial Use Requirement. If the applicant does not submit the required deliverables within 90 days from the date of this decision, DMLW may choose to rescind this decision. Unless an appeal is received, the lease term will begin upon the effective date of this decision.

Samantha Carroll

2/8/2021

Samantha Carroll, Regional Manager
Southcentral Regional Land Office
Division of Mining, Land & Water

Date

Appeal:

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160(a) and (b).

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

**Attachment A
Sample Lease**

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
550 W. 7th 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 12 o'clock midnight 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 a adjustment by the lessor at the 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

**Attachment A
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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.

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

**Attachment A
Sample Lease**

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.

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

**Attachment A
Sample Lease**

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, an 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.

(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.

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(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 a 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.

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

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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, judgments, 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, judgments, 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.

(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.

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Sample 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. 7th 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.

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

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enforceable.

SAMPLE

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

LESSEE:

LESSOR:

**Samantha Carroll
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 B
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 5th 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 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.

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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 (5th) 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 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

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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.
- **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.

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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

- 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

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lessee has knowledge of the discharge.

The lessee is responsible for following all timelines, and submitting all required information as outlined in 18AAC 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, 17th 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.

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

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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.*

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Project Description and Maps ADL 233370

Project Description Rainy Dawn Fisheries Updated 3-18-2020

Seasonal Aquatic plant farm using submerged kelp grow lines and submerged long line structure.

Location: Lena Cove---Favorite Channel. Approximately 6 nautical miles from Auke Bay, .7 nautical miles east of Point Lena, Southeast Alaska.

The proposed aquatic farm site is composed of a single parcel located on state--- owned submerged lands totaling 3.15 acres.

- Parcel 1 --- 430 feet x 320 feet (3.15 acres)

Species: *Nereocystis luetkeana* (bull kelp), *Eularia fistulosa* (dragon kelp), *Saccharina latissima* (sugar kelp).

Culture Method: Seeded string wrapped around submerged long lines (submerged minimum 7 feet below water surface). Seed stock will be acquired from a state permitted hatchery and out---planted within 50km by water from brood---stock acquisition location. All gear and equipment including anchors will be deployed between the months of October and December and removed after harvest the following spring, except for helical anchors, which may or may not remain fixed.

Gear and Equipment Type: Gear deployed will include one of two Anchor Systems Either *Removable* or *Fixed*. The *Removable* system is composed of four 250 to 500 pound steel Danforth anchors and galvanized chain with surface mooring buoys, Alternatively the *Fixed* Anchor System utilizes helical anchors, which may not be removed seasonally, with mooring rode and 5/8" or 3/4" chain with surface mooring buoys. A total of four surface floats or mooring buoys, one per anchor at each end of two submerged longlines/parcel corners, will be deployed with two *temporary* surface floats mid span of the submerged long lines. The two temporary surface floats will be used during initial deployment of the gear and as needed during the growout phase. A total of six surface floats including mooring buoys will be visible on the water surface during the growing season. All surface floats will then be removed after harvest.

Four submerged lines forming the *Structure Perimeter* will be anchored at the parcel corners measuring a total of 1,500 Lineal feet. These submerged lines forming the structure perimeter will be removed after harvest.

Up to thirty---five Grow lines totaling approximately 7,000 lineal feet of 1/2" up to 5/8" blue steel line or equivalent; with seeded string, will span back and forth approximately two hundred feet between two submerged long lines, attached to

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the *perimeter structure*. All gear will be maintained at minimum seven feet below the water surface including at extreme low water. Because these lines are under tension at a fixed depth and attached to the structure perimeter all submerged lines will generally be significantly deeper than seven feet below the water surface.

All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or *temporary* anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the *Fixed* anchor system may remain onsite or be removed before April 14.

Harvest Equipment and Method: Kelp will be harvested in early spring during the month of April using a commercial fishing vessel and/or support skiff. Grow lines will be pulled onboard manually or using hydraulic drum and cut with a knife into brailer bags and/or totes and transported in fish holds, totes or bags. After harvest all grow lines will be removed, cleaned, and stored in the City and Borough of Juneau. Gear including grow lines, submerged long lines, chains, anchor ropes, *Temporary* Anchor systems, and surface buoys will be removed after each harvest. Helical anchors may or may not be removed after harvest.

Operation Schedule: Gear and Equipment including one of two anchor systems will be deployed after October 1 up to December after salmon fisheries have mostly concluded. Outplanting of seeded lines from a skiff will occur in October, November or December. The farm will be monitored from shore daily for interaction with the public and wildlife. After outplanting and during the growout phase (December to – April) growth data will be collected from the site weekly. Regular inspection for fouling or movement of gear and equipment, after storms or weather events will be performed as needed. Kelp will be harvested before April 15. All gear and equipment including removable anchor systems will be removed from the site before the opening of salmon fisheries typically in late April.

Support Facilities: No upland facilities or support structures will be used on this proposed aquatic farm at this time.

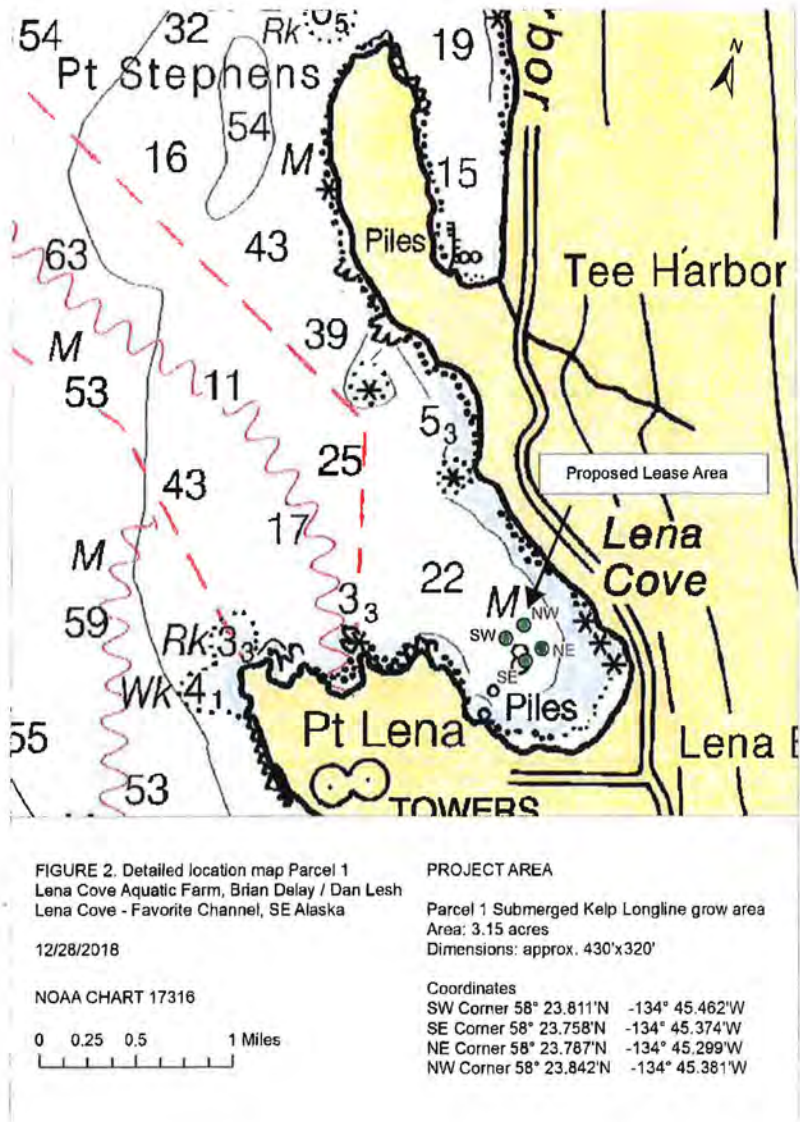
Access: Growing areas will be accessed by skiff from Tee Harbor or Auke Bay launch ramp and/or main dock at Statter Harbor. The site will be monitored daily during winter growing season.

Storage: All gear while not in use will be stored on private property in the City and Borough of Juneau.

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FIGURE 4. Detailed aquatic site plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 320 640 960 1280 feet



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

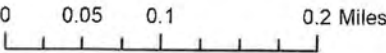
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FIGURE 4.1. Aquatic Farm Site Plan/ in-water structure PROJECT AREA
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

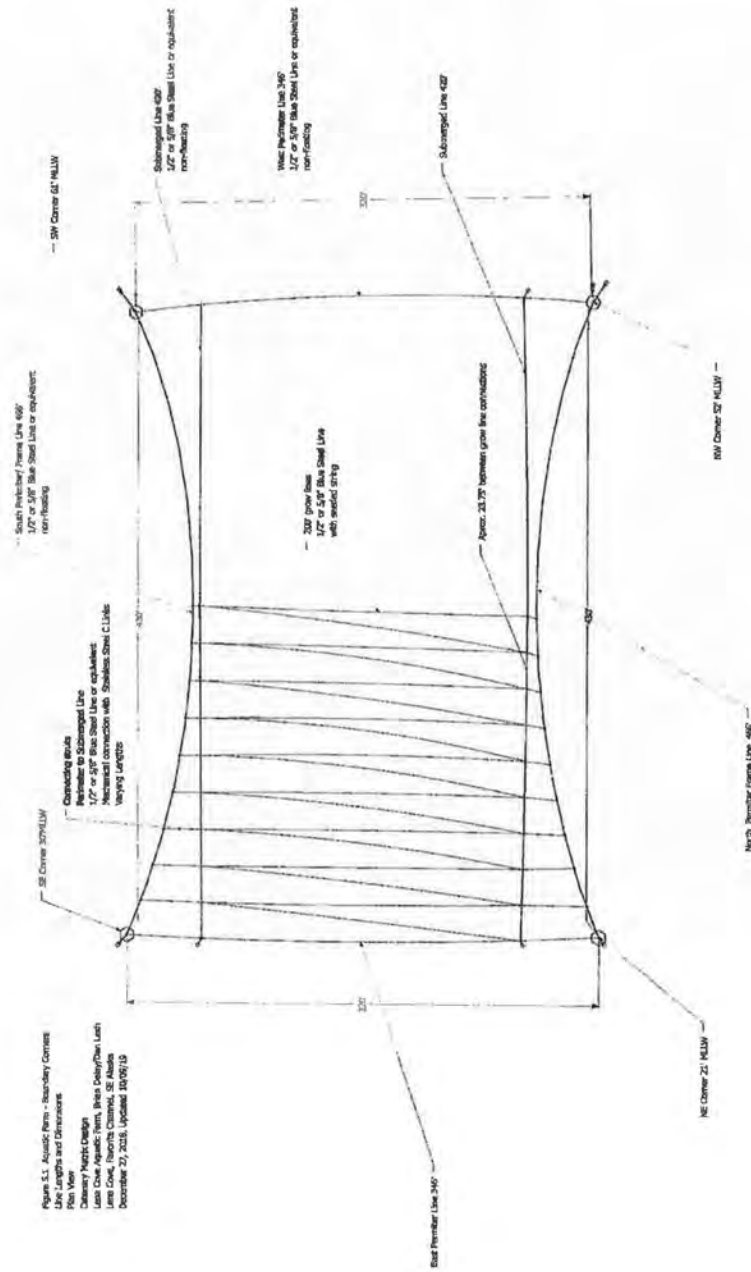
GOOGLE EARTH IMAGERY



Parcel 1 Submerged Kelp Longline grow area
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See appendix for upland property owners

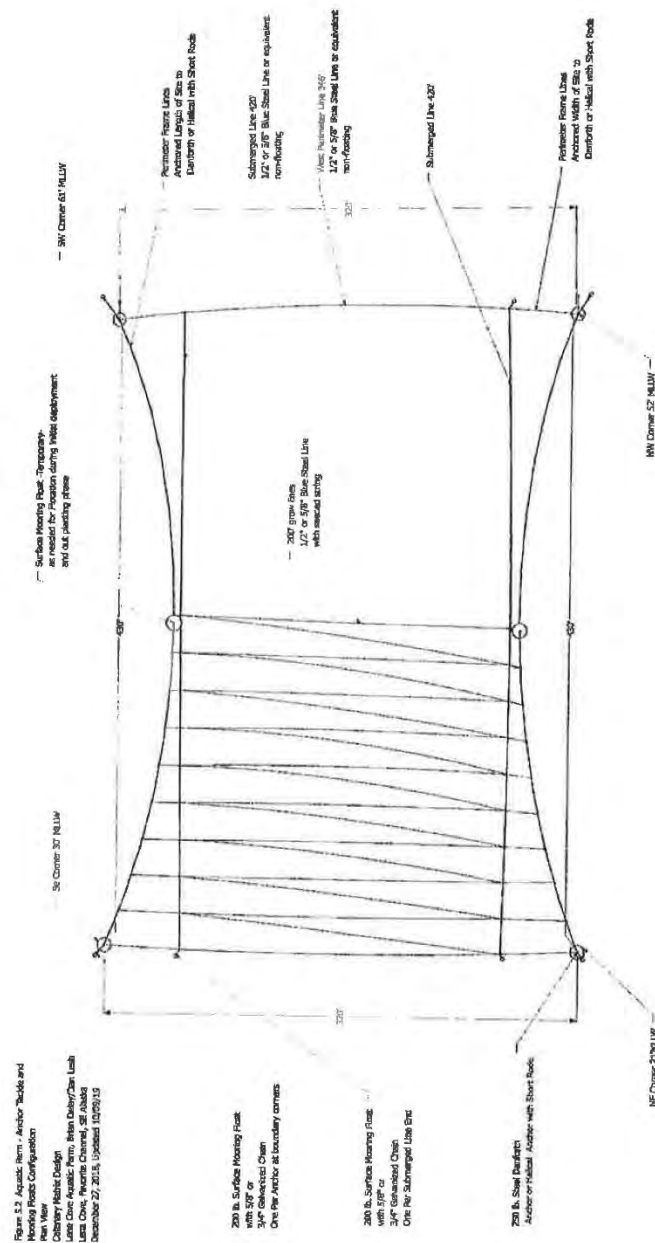
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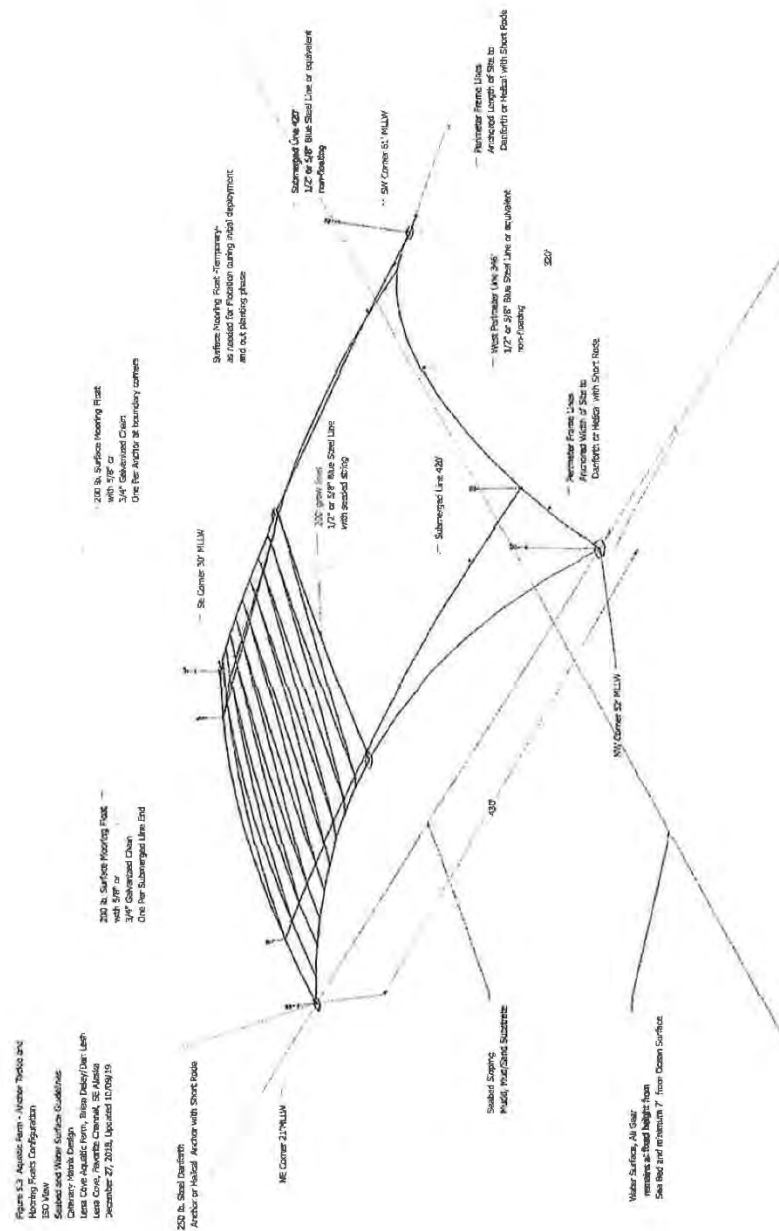
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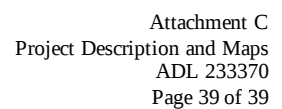
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STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
550 W. 7th Avenue, Suite 900c
Anchorage, Alaska 99501-3577
Rainy Dawn Fisheries
ADL No. 233370
LEASE AGREEMENT
AS 38.05.083

Effective this **12th day of March, 2021**, this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and **Rainy Dawn Fisheries**, 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 **12th day of March 2021**, and ending at 12 o'clock midnight on the **11th day of March 2031**, unless sooner terminated, subject to: compensation as specified in section 2; the attached development plan approved by the State on **March 19, 2020**; 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":

SW1/4 of Section 18, Township 40 South, Range 65 East, Copper River Meridian.

Those tide and submerged lands located in the Lena Cove, 13 miles northwest of Juneau, Alaska and further described as:

Parcel 1: 430-feet by 320-feet (3.15 acres) Grow-out area for submerged longline system for the culture of bull kelp, dragon kelp, and sugar kelp.

NE Corner Latitude:	58°23.787'N	Longitude:	134°45.299'W
SE Corner Latitude:	58°23.758'N	Longitude:	134°45.374'W
SW Corner Latitude:	58°23.811'N	Longitude:	134°45.462'W
NW Corner Latitude:	58°23.842'N	Longitude:	134°45.381'W

1 _____, Lessee

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:

**The conditions and stipulations in Attachment A, Additional Stipulations.
Attachment B, Approved Development Plan, attached and made part of this lease agreement.**

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor: **\$825.00 due on or before March 12th of each year.** 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 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.

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.

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.

(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 a 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 safe 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.

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, judgments, 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, judgments, 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.

(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 clean up 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. 7th 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:

Rainy Dawn Fisheries
16955 Glacier Highway
Juneau, AK 99801

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.

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.

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

LESSEE:

Rainy Dawn Fisheries

LESSOR:

Samantha Carroll
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.
3rd 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: _____

Approved as to form February 9, 1994, and September 25, 2001.

/s/ Elizabeth J. Barry, Assistant Attorney General

9 Lessee

**Attachment A
Additional Stipulations**

ADL 233370 – Rainy Dawn Fisheries

3.15-Acre Aquatic Farm Lease
Annual Lease Fee = **\$825.00**
Annual Lease Fee Due by: **March 12th**
Commercial Use Requirement (CUR): **\$12,000 Annually**
(CUR begins no later than the 5th 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.

10 _____, Lessee

Attachment A Additional Stipulations

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 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 3.15-acre lease is \$12,000 in annual sales and must be met by the commencement of the fifth (5th) 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 **\$2,500.00** to secure faithful performance with all terms and conditions of the Lease and to insure

Attachment A Additional Stipulations

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 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 safe 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 233370** 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.

12 _____, Lessee

Attachment A Additional Stipulations

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.
- **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

Attachment A
Additional Stipulations

- *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 Impervious Secondary Containment Area

- 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, 17th 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;

Attachment A
Additional Stipulations

- (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 fanned product.

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 15, 2020 through March 14, 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 a **3.15-acre farm site is \$825.00.** (The annual fee is calculated at \$450 for the first acre, or portion thereof, plus \$125 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 time line showing when each step of the restoration process will be completed.*

Attachment B Development Plan

Project Description Rainy Dawn Fisheries Updated 3-18-2020

Seasonal Aquatic plant farm using submerged kelp grow lines and submerged long line structure.

Location: Lena Cove---Favorite Channel. Approximately 6 nautical miles from Auke Bay, .7 nautical miles east of Point Lena, Southeast Alaska.

The proposed aquatic farm site is composed of a single parcel located on state--- owned submerged lands totaling 3.15acres.

- Parcel 1 --- 430 feet x 320 feet (3.15 acres)

Species: *Nereocystis luetkeana* (bull kelp), *Eularia fistulosa* (dragon kelp), *Saccharina latissima* (sugar kelp).

Culture Method: Seeded string wrapped around submerged long lines (submerged minimum 7 feet below water surface). Seed stock will be acquired from a state permitted hatchery and out---planted within 50km by water from brood---stock acquisition location. All gear and equipment including anchors will be deployed between the months of October and December and removed after harvest the following spring, except for helical anchors, which may or may not remain fixed.

Gear and Equipment Type: Gear deployed will include one of two Anchor Systems Either *Removable* or *Fixed*. The *Removable* system is composed of four 250 to 500 pound steel Danforth anchors and galvanized chain with surface mooring buoys, Alternatively the *Fixed* Anchor System utilizes helical anchors, which may not be removed seasonally, with mooring rode and 5/8" or ¾" chain with surface mooring buoys. A total of four surface floats or mooring buoys, one per anchor at each end of two submerged longlines/parcel corners, will be deployed with two *temporary* surface floats mid span of the submerged long lines. The two temporary surface floats will be used during initial deployment of the gear and as needed during the growout phase. A total of six surface floats including mooring buoys will be visible on the water surface during the growing season. All surface floats will then be removed after harvest.

Four submerged lines forming the *Structure Perimeter* will be anchored at the parcel corners measuring a total of 1,500 Lineal feet. These submerged lines forming the structure perimeter will be removed after harvest.

Up to thirty---five Grow lines totaling approximately 7,000 lineal feet of ½" up to 5/8" blue steel line or equivalent; with seeded string, will span back and forth approximately two hundred feet between two submerged long lines, attached to

Attachment B Development Plan

the *perimeter structure*. All gear will be maintained at minimum seven feet below the water surface including at extreme low water. Because these lines are under tension at a fixed depth and attached to the structure perimeter all submerged lines will generally be significantly deeper than seven feet below the water surface.

All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or *temporary* anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the *Fixed* anchor system may remain onsite or be removed before April 14.

Harvest Equipment and Method: Kelp will be harvested in early spring during the month of April using a commercial fishing vessel and/or support skiff. Grow lines will be pulled onboard manually or using hydraulic drum and cut with a knife into brailer bags and/or totes and transported in fish holds, totes or bags. After harvest all grow lines will be removed, cleaned, and stored in the City and Borough of Juneau. Gear including grow lines, submerged long lines, chains, anchor ropes, *Temporary* Anchor systems, and surface buoys will be removed after each harvest. Helical anchors may or may not be removed after harvest.

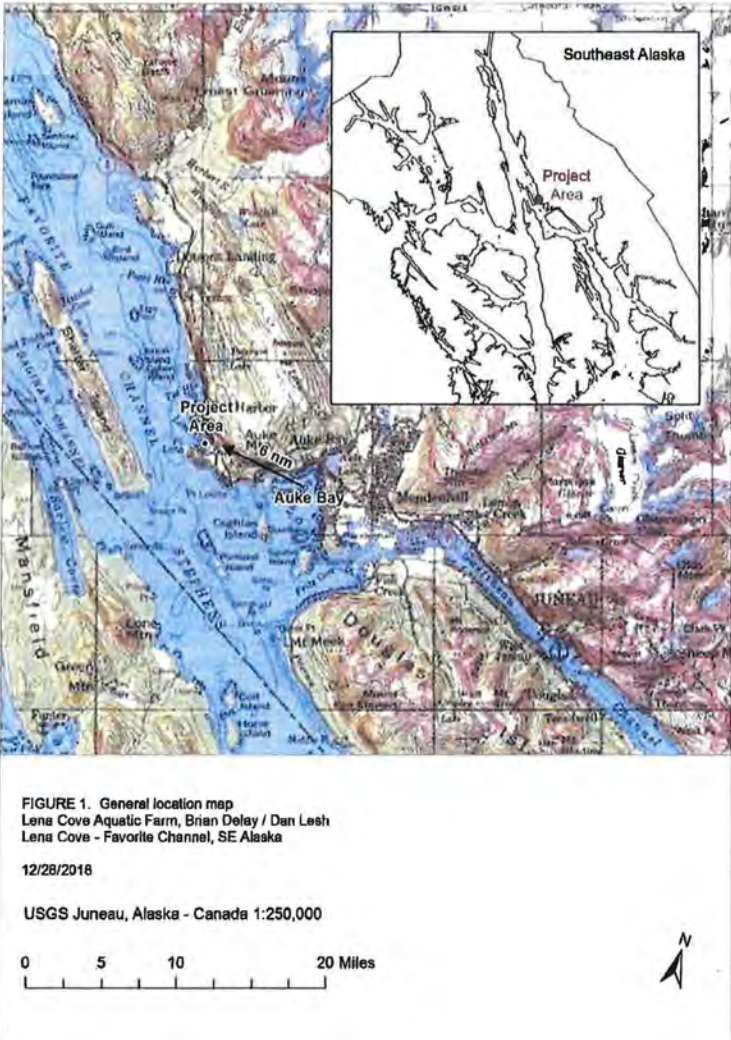
Operation Schedule: Gear and Equipment including one of two anchor systems will be deployed after October 1 up to December after salmon fisheries have mostly concluded. Outplanting of seeded lines from a skiff will occur in October, November or December. The farm will be monitored from shore daily for interaction with the public and wildlife. After outplanting and during the growout phase (December to – April) growth data will be collected from the site weekly. Regular inspection for fouling or movement of gear and equipment, after storms or weather events will be performed as needed. Kelp will be harvested before April 15. All gear and equipment including removable anchor systems will be removed from the site before the opening of salmon fisheries typically in late April.

Support Facilities: No upland facilities or support structures will be used on this proposed aquatic farm at this time.

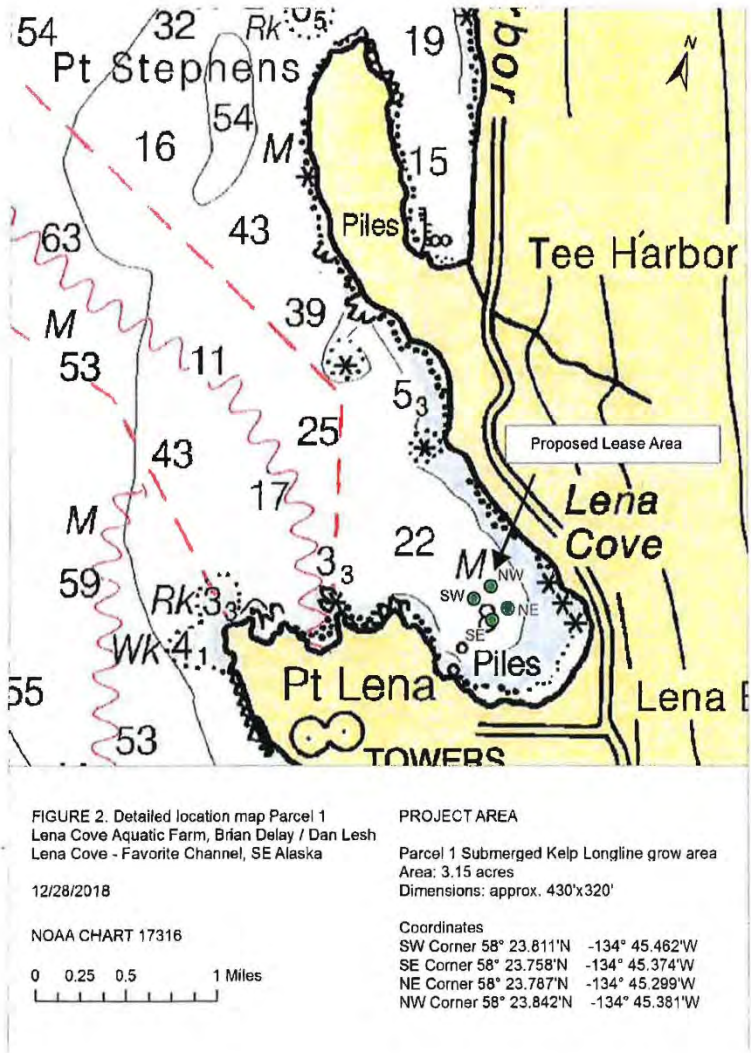
Access: Growing areas will be accessed by skiff from Tee Harbor or Auke Bay launch ramp and/or main dock at Statter Harbor. The site will be monitored daily during winter growing season.

Storage: All gear while not in use will be stored on private property in the City and Borough of Juneau.

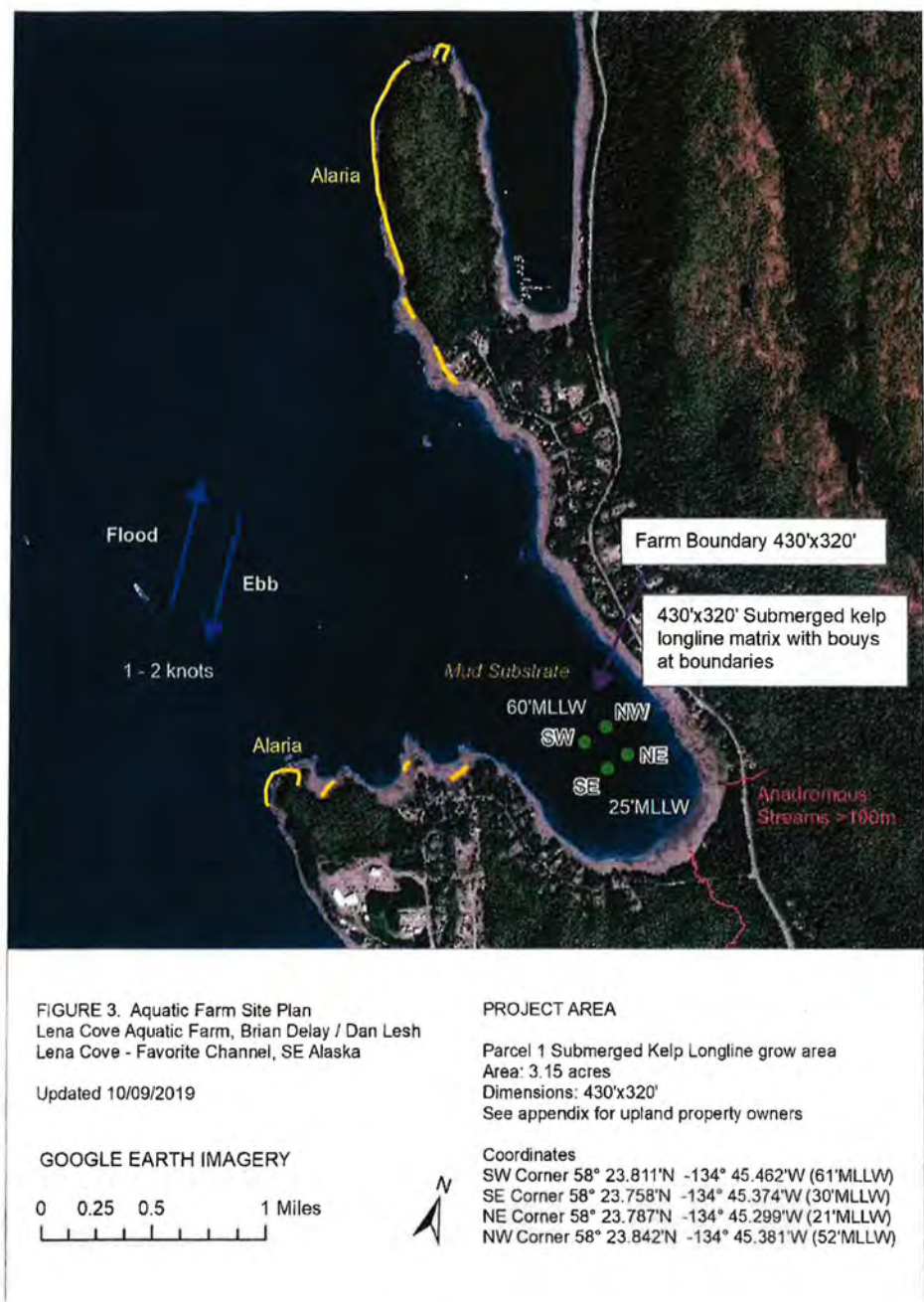
Attachment B
Development Plan



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Development Plan



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Development Plan



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Development Plan



FIGURE 4. Detailed aquatic site plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 320 640 960 1280 feet



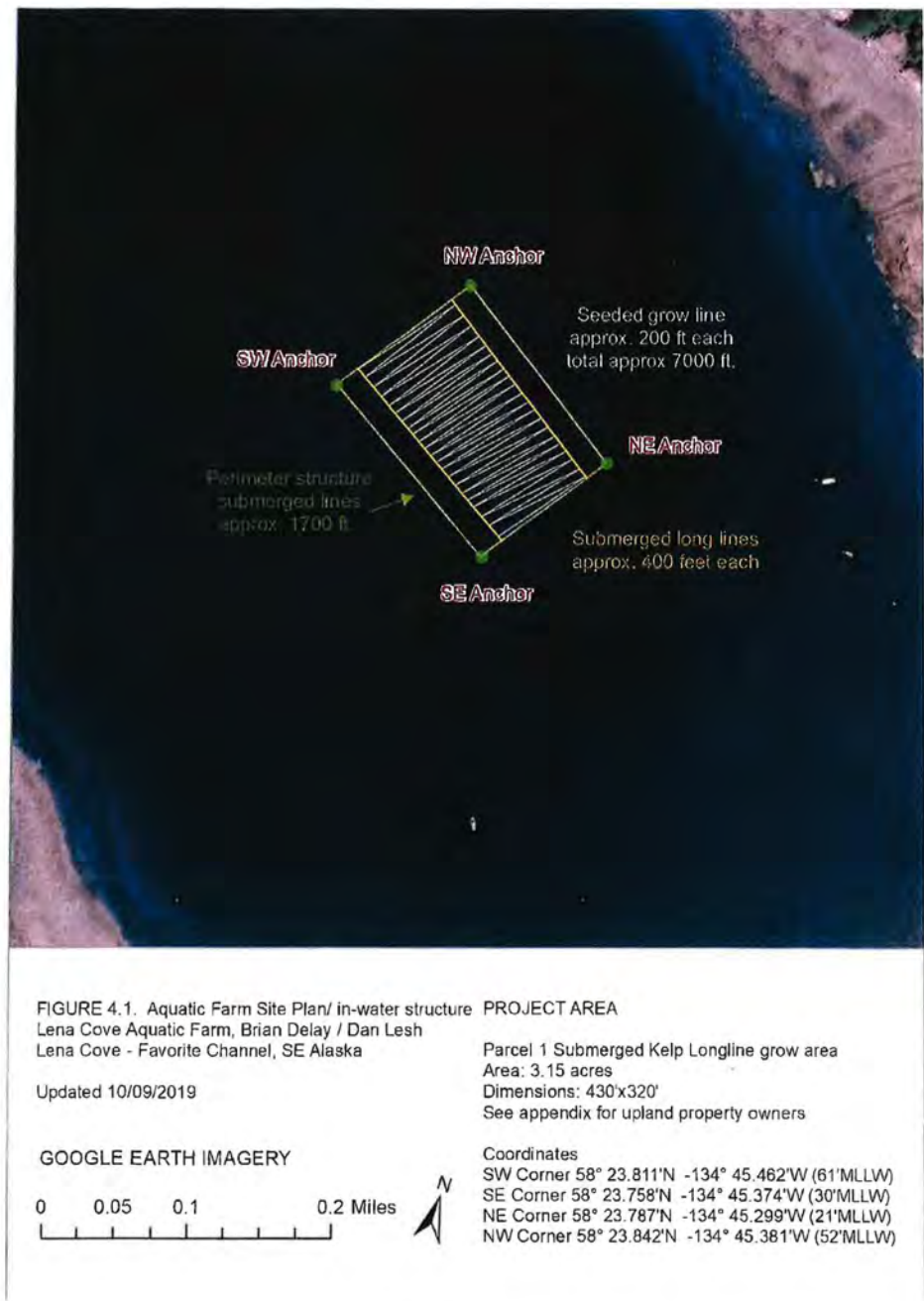
PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

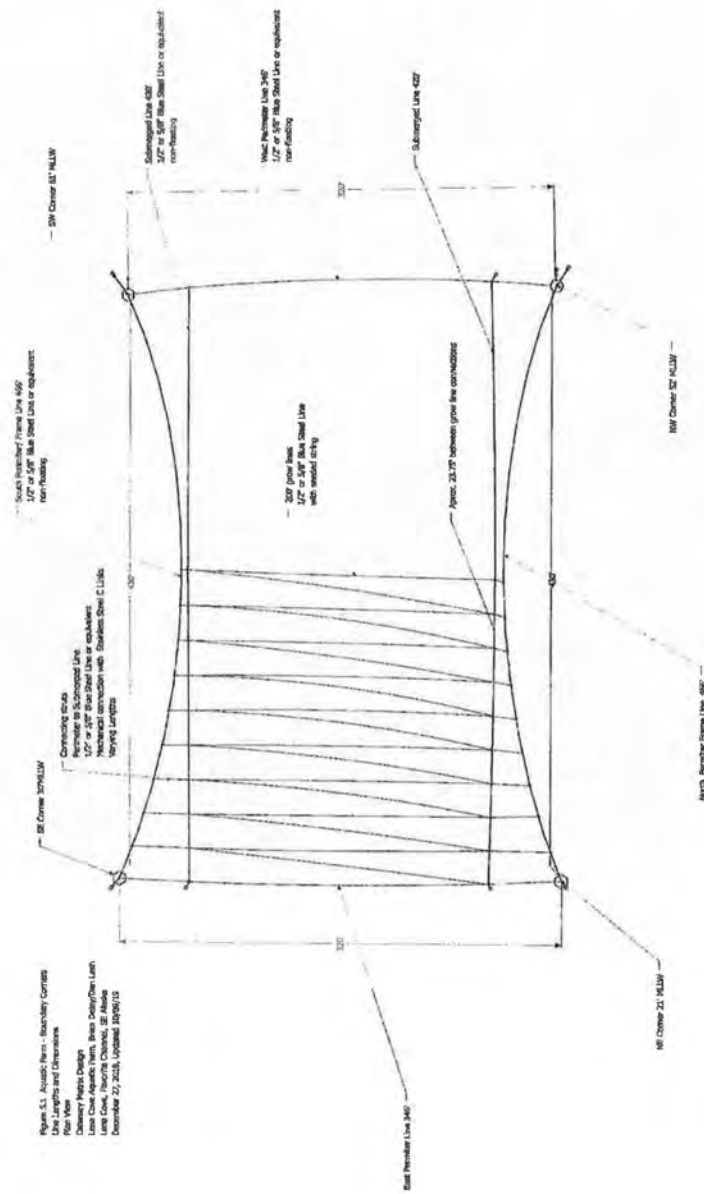
SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.298'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

Attachment B
Development Plan



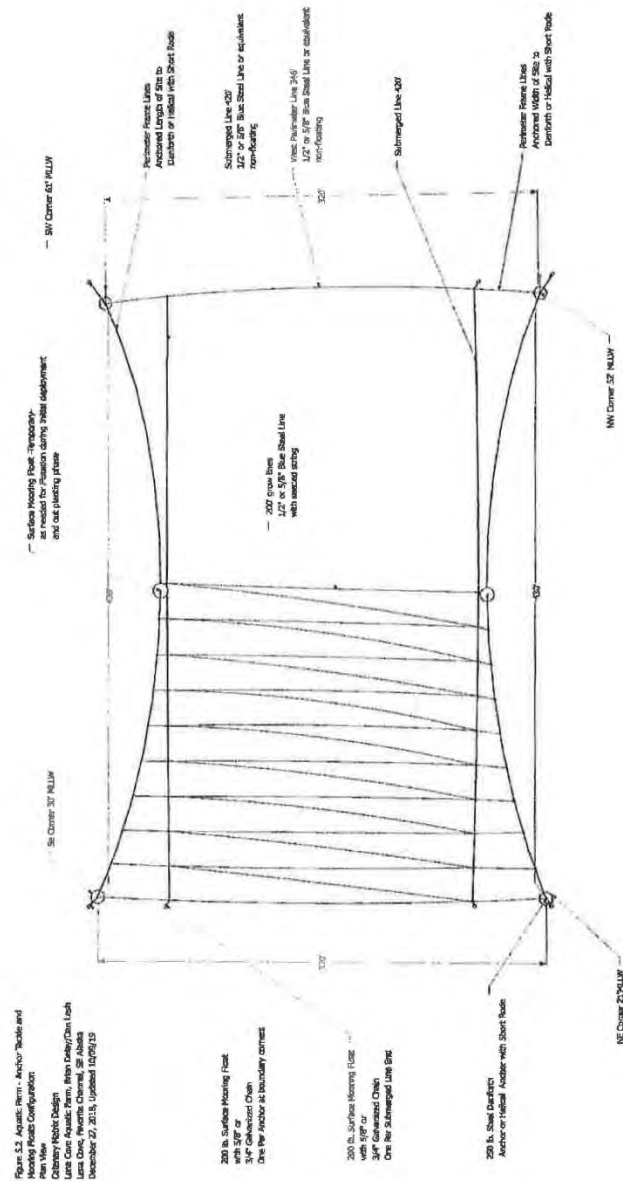
Attachment B

Development Plan

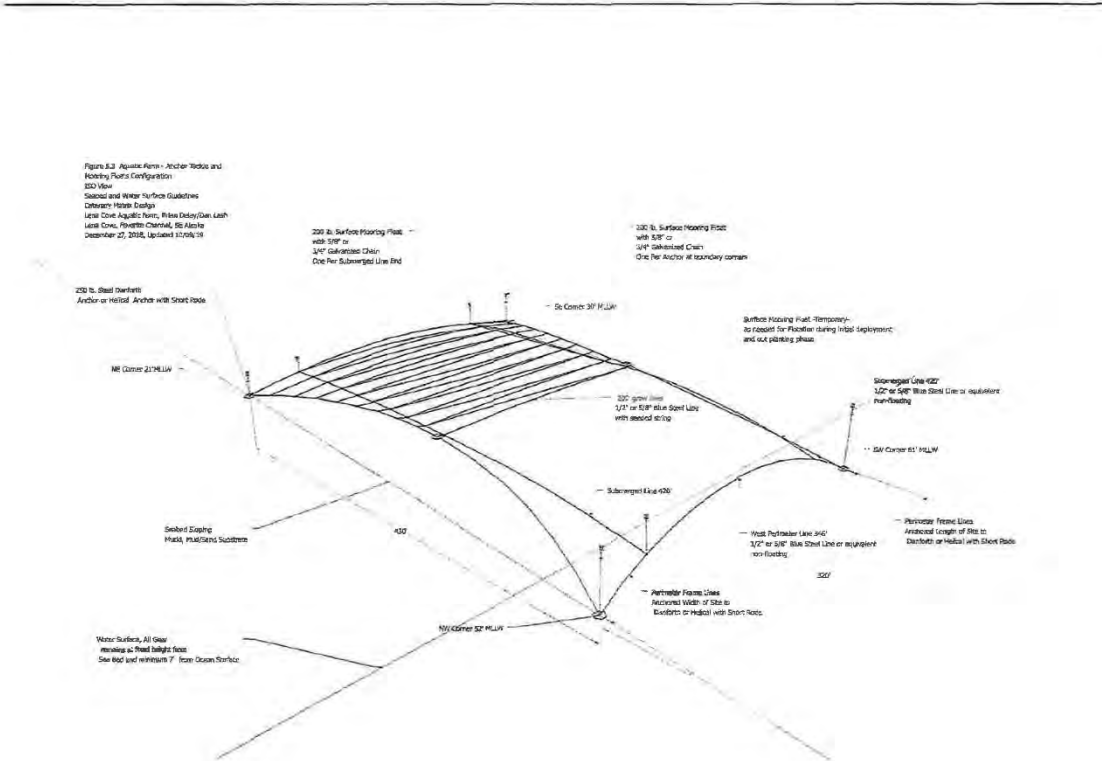


Attachment B

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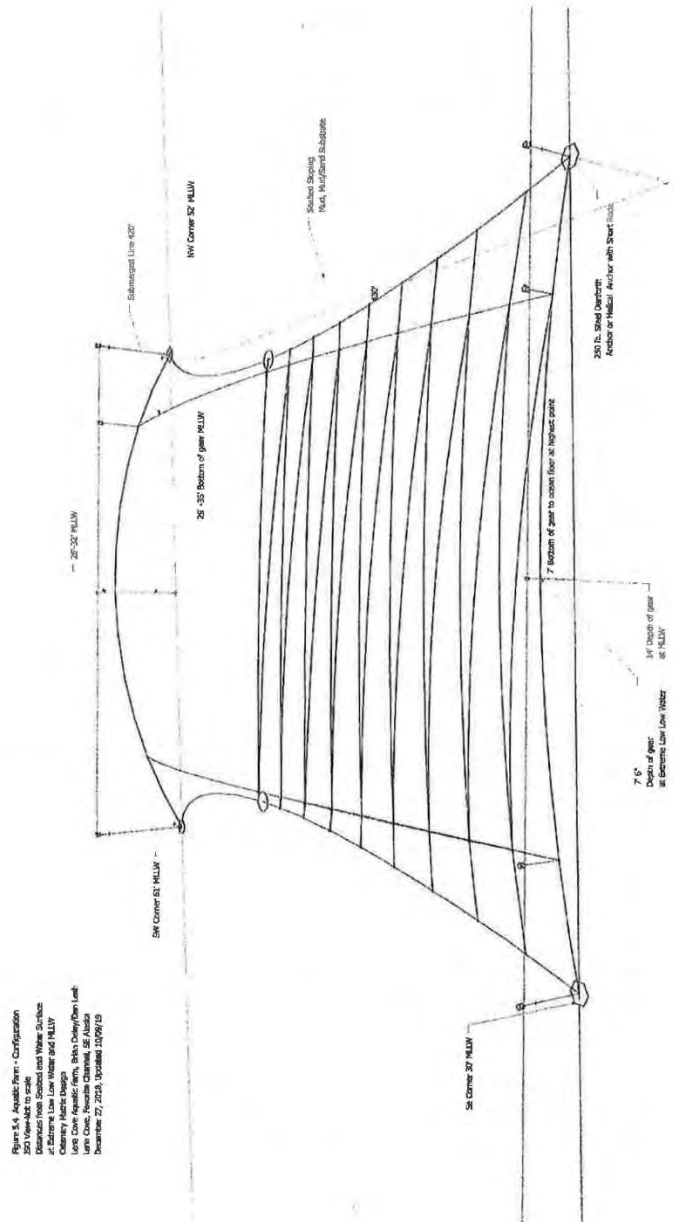


Attachment B
Development Plan



Attachment B

Development Plan



Attachment B Development Plan



***Complete one operation and development plan for each species**

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – PART A	
Name <u>Brian Delay / Dan Lesh</u>	Species <u>Nereocystis luetkeana, Bull kelp</u>
ADNR Lease ADL No. <u>233370</u>	ADF&G Permit No. <u>- - -</u>

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 2:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 3:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 4:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 5:	Number of Days <u>180</u>	Number of People <u>3</u>

2. Site Monitoring/Maintenance

- 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 30 (days/month) Winter months 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?
On private property in the city and borough of Juneau.
- c. How will you keep the gear and shellfish free of fouling organisms (hot-dip, air dry, pressure washing, etc.)?
Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried
- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean.
- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?
N/A

Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? Growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed degree and type of fouling.
- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? Yes ☒ No ☐ Describe: Will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by longline and section of longline. Data collected in field notebooks and then in Excel Spreadsheets on multiple computers.

Attachment B Development Plan

- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? Yes ☒ No ☐ Describe: As feasible will regularly collect data on temperature, solar exposure and salinity.

4. Harvest

- a. How often do you intend to harvest your product? Annually in early spring before April 14.
- b. How do you intend to harvest your product? Suspended: Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel or skiff.

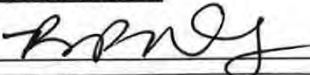
5. Sales

- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery.
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature:  Date: 3-19-20

Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the Fixed anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370		ADF&G Permit No.:		Species: <i>Nereocystis luetkeana</i> , Bull Kelp		
Calendar Year	Installation Schedule			# of Hatchery- Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 1) 2020		35 - 200 ft submerged growout lines; 1700 ft of submerged perimeter frame line; 850 ft of submerged growlines connecting growlines (removed and reinstalled @ year - *See note above)	4 - 250 to 500 lb Danforth anchors, galvanized chain, and float (removed and reinstalled @ yr); or 4 helical anchors, rope and float (either remain onsite or removed @ yr) *See note above.	1,414,000 (202 seed per ft)		\$ 0		0
(Year 2) 2021		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 15,000		20,000
(Year 3) 2022		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 22,500		30,000

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Attachment B Development Plan

(Year 4)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 35,000		35,000
(Year 5)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000
2023								
2024								

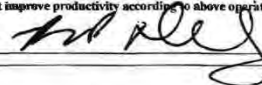
¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.

⁴ By the end of your 5th year, projected sales for all species combined must meet the commercial use requirement (CUR) defined as the annual sales of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less (11 AAC 63.03(b)). The CUR applies to combined total of all species, is not a "per species" requirement and must be maintained or increased in Years 6-10.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature:  Date: 3-19-20

Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the *Fixed* anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B (continued)

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

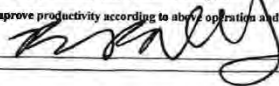
Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370		ADF&G Permit No.:		Species: Nereocystis luetkeana, Bull Kelp		
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 6) 2025		Same as 1 st year.	Same as 1 st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000
(Year 7) 2026		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 8) 2027		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 9) 2028		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 10) 2029		Same as 6 th year.	Same as 1 st year.			\$ 45,000		45,000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can be amended to reflect any changes as the aquatic farm operations develop.

Signature:  Date: 3-19-20

Attachment B Development Plan



***Complete one operation and development plan for each species**

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART A

Name Brian Delay / Dan Lesh Species Eularia fistulosa, Dragon Kelp
ADNR Lease ADL No. 233370 ADF&G Permit No. - - -

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 2:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 3:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 4:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 5:	Number of Days <u>180</u>	Number of People <u>3</u>

2. Site Monitoring/Maintenance

- 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 30 (days/month) Winter months 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?
On private property in the city and borough of Juneau.
- c. How will you keep the gear and shellfish free of fouling organisms (hot-dip, air dry, pressure washing, etc.)?
Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried
- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean.
- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?
N/A

3. Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? Growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed degree and type of fouling.
- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? ☒ Yes ☐ No ☐ Describe: Will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by longline and section of longline. Data collected in field notebooks and then in Excel Spreadsheets on multiple computers.

Attachment B Development Plan

- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? **Yes** ☒ **No** ☐ **Describe:** As feasible will regularly collect data on temperature, solar exposure and salinity.

4. Harvest

- a. How often do you intend to harvest your product? Annually in early spring before April 14.
- b. How do you intend to harvest your product? **Suspended:** Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel or skiff.

5. Sales

- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery.
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature: _____

Date: _____

3-19-20

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Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the Fixed anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370	ADF&G Permit No.:	Species: Eularia fistulosa, Dragon Kelp				
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 1)		35 - 200 ft submerged growout lines; 1700 ft of submerged perimeter frame line; 850 ft of submerged growlines connecting growlines (removed and reinstalled @ year - *See note above)	4 - 250 to 500 lb Danforth anchors, galvanized chain, and float (removed and reinstalled @ yr); or 4 helical anchors, rope and float (either remain onsite or removed @ yr) *See note above.	1,414,000 (202 seed per ft)		\$ 0		0
2020				1,414,000 (202 seed per ft)		\$ 15,000		20,000
(Year 2)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 22,500		30,000
2021				1,414,000 (202 seed per ft)				
(Year 3)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)				
2022								

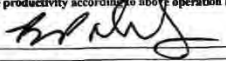
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Development Plan

(Year 4) 2023		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 35,000		35,000
(Year 5) 2024		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.
² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.
³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.
⁴ By the end of your 5th year, *projected sales for all species combined must meet the commercial use requirement (CUR)* defined as the annual sales of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less (11 AAC 63.03(b)). The CUR applies to combined total of all species, is not a "per species" requirement and must be maintained or increased in Years 6-10.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature:  Date: 3-19-20

Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the *Fixed* anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B (continued)

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370		ADF&G Permit No.:		Species: Eularia fistulosa, Dragon Kelp		
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 6) 2025		Same as 1 st year.	Same as 1 st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000
(Year 7) 2026		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 8) 2027		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 9) 2028		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 10) 2029		Same as 6 th year.	Same as 1 st year.			\$ 45,000		45,000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can be amended to reflect any changes as the aquatic farm operations develop.

Signature: [Signature] Date: 3-19-20

Attachment B Development Plan



***Complete one operation and development plan for each species**

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – **PART A**

Name <u>Brian Delay / Dan Lesh</u>	Species <u>Saccharina latissima Sugar kelp</u>
ADNR Lease ADL No. <u>233370</u>	ADF&G Permit No. <u>- - -</u>

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 2:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 3:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 4:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 5:	Number of Days <u>180</u>	Number of People <u>3</u>

2. Site Monitoring/Maintenance

- 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 30 (days/month) Winter months 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?
On private property in the city and borough of Juneau.
- c. How will you keep the gear and shellfish free of fouling organisms (hot-dip, air dry, pressure washing, etc.)?
Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried
- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean.
- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?
N/A

3. Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? Growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed degree and type of fouling.
- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? Yes ☒ No ☐ Describe: Will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by longline and section of longline. Data collected in field notebooks and then in Excel Spreadsheets on multiple computers.

Attachment B Development Plan

- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? Yes ☒ No ☐ Describe: As feasible will regularly collect data on temperature, solar exposure and salinity.

4. Harvest

- a. How often do you intend to harvest your product? Annually in early spring before April 14.
- b. How do you intend to harvest your product? **Suspended:** Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel or skiff.

5. Sales

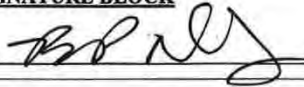
- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery.
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature: _____



Date: _____

3-19-20

Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the Fixed anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370		ADF&G Permit No.:		Species: Saccharina latissima Sugar kelp		
Calendar Year	Installation Schedule			# of Hatchery- Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 1)		35 - 200 ft submerged growout lines; 1700 ft of submerged perimeter frame line; 850 ft of submerged growlines connecting growlines (removed and reinstalled @ year - *See note above)	4 - 250 to 500 lb Danforth anchors, galvanized chain, and float (removed and reinstalled @ yr); or 4 helical anchors, rope and float (either remain onsite or removed @ yr) *See note above.	1,414,000 (202 seed per ft)		\$ 0		0
2020								
(Year 2)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 15,000		20,000
2021								
(Year 3)		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 22,500		30,000
2022								

Page 3 of 4

Attachment B Development Plan

Note: All surface floats, submerged lines, grow lines, and associated gear including mooring ropes, chains and removable or temporary anchor systems will be removed from the site before April 14 and reinstalled again after October 1 each year. Helical anchors associated with the Fixed anchor system may remain onsite or be removed before April 14.

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B (continued)

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

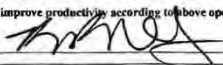
Name: Brian Delay / Dan Lesh Rainy Dawn Fisheries		ADL No.: 233370		ADF&G Permit No.:		Species: Saccharina latissima Sugar kelp		
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 6) 2025		Same as 1 st year.	Same as 1 st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000
(Year 7) 2026		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 8) 2027		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 9) 2028		Same as 1 st year.	Same as 1 st year.			\$ 45,000		45,000
(Year 10) 2029		Same as 6th year.	Same as 1 st year.			\$ 45,000		45,000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its first point of sale.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can be amended to reflect any changes as the aquatic farm operations develop.

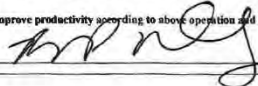
Signature:  Date: 3-19-20

Attachment B
Development Plan

(Year 4) 2023		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 35,000		35,000
(Year 5) 2024		Same as 1st year.	Same as 1st year.	1,414,000 (202 seed per ft)		\$ 45,000		45,000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.
² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.
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⁴ By the end of your 5th year, projected sales for all species combined must meet the commercial use requirement (CUR) defined as the annual sales of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less (11 AAC 63.03(b)). The CUR applies to combined total of all species, is not a "per species" requirement and must be maintained or increased in Years 6-10.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature:  Date: 3-19-20

**Alaska Department of Fish and Game
AQUATIC FARM OPERATION PERMIT
DFG-2019-101-AF-SE**



**Effective Date: May 13, 2021
Expiration Date: May 31, 2031**

This permit, in accordance with Alaska statutes 16.40.100-199 and Title 5 Alaska Administrative Code 41.200-400, allows the permit holder to operate an aquatic farm, subject to the terms and conditions herein.

Issued to:

Brian Delay	907-523-6068
Rainy Dawn Fisheries	Brian.delay@gmail.com
16955 Glacier Hwy.	
Juneau, AK 99801	

Other major authorizations and permits that apply to this project include:

DNR Aquatic Farm – Site Lease ADL 233370
USACE Section 10 Individual Permit, Nationwide Permit, or Letter of Permission

Project Description

The aquatic farm operation is located within Lena Cove, approximately 13 miles northwest from the community of Juneau, Alaska, on state-owned submerged lands. Access to the site is by boat from Auke Bay. The aquatic farm site consists of one parcel, measuring 430 ft x 320 ft, totaling about 3.15 acres.

The operation on Parcel 1 will use submerged longline system for cultivating bull kelp, dragon kelp and sugar kelp. A total of 35 – 200 ft longlines submerged 7 ft under the surface of the water will hold seeded line. Longlines will use depth control systems made of floats and weights, spaced every to maintain the depth as the kelp product grows. The anchoring system will consist of two types, Removable and Fixed.

The Removable system is composed of four 250 to 500 pound steel Danforth anchors and galvanized chain with surface mooring buoys, Alternatively the Fixed Anchor System utilizes helical anchors, which may not be removed seasonally, with mooring rode and 5/8" or 3/4" chain with surface mooring buoys. A

total of four surface floats or mooring buoys, one per anchor at each end of two submerged longlines/parcel corners, will be deployed with two temporary surface floats mid span of the submerged long lines. The two temporary surface floats will be used during initial deployment of the gear and as needed during the growout phase. A total of six surface floats including mooring buoys will be visible on the water surface during the growing season. All surface floats will then be removed after harvest. Four submerged lines forming the Structure Perimeter will be anchored at the four Danforth, an anchor line, and orange polyform buoy at each end of the longline. A total of 4 anchor systems are onsite. The longlines will be in parallel configurations paced 15 feet apart.

The operation may acquire seeded lines from permitted hatcheries in any combination of species not to exceed permitted gear, with appropriate stock transport permits.

Site Location

The permitted farm site is located, in major part or in whole, within SW ¼ of Section 18, Township 40 South, Range 65 East, Copper River Meridian. The latitude and longitude of each corner, to the nearest 0.001 minute using NAD 83 datum, beginning at the northeastern-most corner and moving clockwise, is approximately:

Parcel 1: suspended grow-out area (430 ft x 320 ft; 3.15 acres)

NE Corner	58° 23.787' N, 134° 45.299' W
SE Corner	58° 23.758' N, 134° 45.374' W
SW Corner	58° 23.811' N, 134° 45.462' W
NW Corner	58° 23.842' N, 134° 45.381' W

Species Approved For Culture

The following species are approved for culture at this farm site:

1. Bull kelp, *Nereocystis luetkeana*
2. Dragon kelp, *Eularia fistulosa*
3. Sugar kelp, *Saccharina latissima*

Culture Gear Approved for Use

The following gear is approved for use at the farm site:

1. Submerged longlines (35 – 200 ft)
2. Depth control systems
3. Anchors and anchor line
4. Buoys

Permit Conditions

It is the operator's responsibility to understand and conduct business within Alaska statutes 16.40.100-199 and ADF&G regulations 5 AAC 16.40.200-400.

- An annual report on a form provided by the department is due no later than January 31 of the following year.
- Transfer of stock to, from, or between an aquatic farm, hatchery, or stock acquisition site may not occur without a stock transport permit issued by the commissioner. An applicant shall apply on a stock transport permit application form provided by the department and submit the application form to the department at least 45 days before date of transport. Forms may be found at <http://www.adfg.alaska.gov/index.cfm?adfg=fishingaquaticfarming.forms>
- The permit holder must provide access to aquatic plants, fish, shellfish, and wildlife resources, other than the aquatic farm product being cultured at the site and provide access to other established uses of these resources, to the extent that such access does not disrupt the operation of the farm, disturb the species being cultured, or damage any of the aquatic farm equipment, facilities, or gear.
- Aquatic farm facilities shall be designed, constructed, maintained, operated, and appurtenances placed in a manner and location that does not restrict free public access for commercial or recreational purposes.
- Activities at the site may not be conducted in eelgrass or kelp beds. Disturbance of tidelands must be kept to the minimum necessary to practicably accomplish the work. Entrance to and exit from the site must be made where there is no eelgrass.
- No portion of the floating facilities may ground at any tidal stage, other than grounding for purposes of defouling. Defouling activities must be confined to areas designated for that purpose.
- The permit holder is required to monitor all predator exclusion devices used in permitted operations for entanglement or harm of fish and wildlife and shall report all incidences to the Permit Coordinator. All project-related equipment and materials must be removed within 90 days of cessation of activities. Careful monitoring of predator exclusion devices and removal of all farming equipment and structures at the conclusion of farming activities will minimize hazards to fish and wildlife transiting or inhabiting the site.
- If herring spawn on the site, the herring eggs must not be disturbed or removed. All eggs must be allowed to hatch. The Department of Fish and Game shall be notified within five days of the initial discovery by the operator.
- To minimize the potential introduction of invasive species, the permit holder will implement best management practices to prevent the introduction or spread of aquatic invasive species that can occur when aquatic farm activities translocate gear and product including:
 - a. Any previously-used in-water infrastructure must be inspected for nonindigenous or invasive species prior to relocation. If non-native species are detected, infrastructure must be decontaminated prior to relocation by removing it from the water for decontamination. It may be left "high and dry" for at least 30-days or thoroughly washed with hot, pressurized water prior to being re-submerged. After decontamination measures have been taken and prior to deployment, infrastructure should be surveyed to ensure decontamination efforts were effective.
 - b. Use "hot dipping" protocols to remove fouling organisms from Pacific oysters; this is a common and effective practice in aquatic farming.
 - c. Develop a monitoring schedule to periodically inspect in-water infrastructure for invasive species, such as *Didemnum vexillum*.

- d. Develop a response plan that identifies steps for quickly responding to observance of invasive species in any aspect of in-water operations.
- e. Report observations of non-native or exotic species occurring on the aquatic farm site to dfg.dsf.InvasiveSpecies@alaska.gov;
- Seeded lines for macroalgae must be obtained from a permitted hatchery in the state. Managed cultivation of macroalgae will be limited to suspended culture and not include any on-bottom culture. Culture gear for these macroalgae will conform to the gear types currently permitted at the site.
- To minimize the risk of genetic or disease impacts on wild populations, hatchery-cultivated macroalgae seedstock may only be out-planted at the farm site if it is within 50 km (by water) of the broodstock (parent) collection site.
- The permit holder will implement best management practices to reduce impacts to marine mammals including the following:
 - a. regular maintenance of farm structures (i.e. keeping lines secured and anchor wraps under tension);
 - b. limiting the use of underwater lighting;
 - c. ensuring waste material and debris are collected and disposed of correctly;
 - d. using caution when operating vessels, and
 - e. directing aquatic farm workers to avoid interacting with or feeding marine mammals
 - f. ensure aquatic farm workers are familiar with the NOAA Fisheries Alaska Marine Mammal Viewing Guidelines and Regulations (available as a printed booklet).
- Any marine mammal entanglements should be immediately reported to the Alaska Department of Fish and Game, (907)465-4724 and dfg.dcf.aquaticfarming@alaska.gov) and National Marine Fisheries Service Alaska 24 hr. Stranding Hotline at (877) 925-7773.
- To reduce disturbances to harbor seals that are hauled-out onshore of any recognized harbor seal haulout, vessels used by the aquatic farming operation should remain a minimum of 500 meters offshore when passing the haulout area and 1500 ft. away when approaching by aircraft without compromising safe navigation.
- To limit conflict with established sportfish uses and existing permits in Lena Cove, the permit holder shall:
 - a. Cease all aquatic farm activities onsite from April 14 to October 1 each year. In years when sport fishing for Chinook salmon is closed and there are no operational or scheduling conflicts with other permittees (i.e., DIPAC), the permittee may request an extension from the Permit Coordinator.
 - b. Remove all inwater aquatic farm gear and structures from April 14 to October 1, except that fixed anchors (e.g. helical anchors) may remain onsite throughout the year if they extend above the substrate not more than 12 inches. When the permittee dives on the site to deploy gear in the fall, they must inspect the fixed anchor parts and notify the permit coordinator if any sport fishing gear (e.g., crab pots, fishing line, downrigger wire) has accumulated on the anchors during the seasonal closure period (i.e., April 14 to October 1). If sport fishing gear is getting hung up, the permittee may experiment with the use of cones or covers to prevent snagging of sportfish gear. If the department determines that the fixed anchors are impacting the sport fishery, the permittee will be required to remove the fixed anchors and use an alternate anchoring system that can be removed each season.

Permit Modifications

This permit reflects current provisions in the Alaska statutes and Alaska Administrative Code, and any other applicable authorizations. The commissioner may review this permit and amend or append conditions to this permit, consistent with new or revised regulations adopted to implement statutes or judicial decisions applicable to the aquatic farm program.

Any changes to species to be cultured, parcel size, or significant changes to gear, equipment, or the operation and development plan require an amendment. A permit holder may submit a request to the department for an amendment to the operation permit on the amendment form provided by the department.

Permit Renewal or Transfer

This operation permit may be renewed or transferred in accordance with 5 AAC 41.280. At least 30-days before the expiration date of the operation permit or the date of transfer, an aquatic farm or hatchery operation permit holder must apply for the renewal or transfer by submitting an application on a form provided by the department and the associated fee. If the permit holder intends to renew, or is interested in transferring this permit, please contact the Permit Coordinator in advance of this 30-day period for assistance.

Authorization History

- Original DNR lease ADL 233370 issued to Brian Delay, Rainy Dawn Fisheries on April 20, 2021 for a 10-year period, effective March 12, 2021 and expires March 11, 2031.

AUTHORIZED BY



5/13/21

Garold V. Pryor
Aquaculture Section Chief
ADF&G Division of Commercial Fisheries

Date



5/13/21

Peter Bangs
Assistant Director
ADF&G Division of Commercial Fisheries

Date

PERMIT VALIDATION requires permittee's signature agreeing to abide by permit conditions, before beginning aquatic farm operations:

Signature of Permittee

Date

ecc: Aquatic Farming Files
David Harris, Area Management Biologist, ADF&G
Matt Catterson, R1 SF Enhancement and Access Coordinator, ADF&G
Chris Habicht, Fisheries Geneticist, ADF&G
Ted Meyers, Statewide Pathology Laboratory Supervisor, ADF&G
Tammy Davis, Invasive Species Coordinator, ADF&G
Aquatic Farm Program, ADNR
Carol Brady, Shellfish Program Coordinator, ADEC
District Office, USACE, regpagemaster@usace.army.mil
Alaska Wildlife Troopers

RECEIVED

COPY

COMMERCIAL
FISHERIES

For Office Use Only ADNR File No: 233370

DATE STAMP:

ADF&G No:

AQUATIC FARM PROGRAM APPLICATION

You are encouraged to submit a completed application as early in the filing period as possible. The 2012 application form must be used and properly completed before state agencies can process your project. An **incomplete application will not be processed**. A checklist is included to assist you in meeting this requirement. The best way to facilitate the review of your application is to schedule a pre-application meeting with DNR and ADF&G to discuss your project. The original application including attachments and all required fees must be delivered and physically present in the Alaska Department of Natural Resources office no later than 5:00 p.m. on April 30th.

The project location is in: (Check one) ☒ Southeast Alaska ☐ Southcentral Alaska
(Southeast Projects south of or in the Yakutat area / Southcentral = Projects north of Yakutat)

A. APPLICANT INFORMATION

Name Brian P. Delay
Business Name (If Applicable) Rainy Dawn Fisheries
Mailing Address (PO Box or Street Address) 16955 Glacier Hwy
Juneau AK 99801
City Juneau State AK Zip 99801
Email Address Brian.delay@gmail.com
Home/Office Phone 907-523-6068 Cell Phone 907-321-1952

If you live in a remote area please provide a contact person (name, phone & email address) who can be easily reached.

Contact Name

Contact Phone Number

Business Partner Name (If applicable)

Business Partner Email Address (If applicable)

Business Partner Phone (If applicable)

*Please Answer (✓) the following questions:

This project is: ☒ First time application ☐ Amendment ☐ Second time application (years 11-21)

I plan to farm: ☐ Pacific oyster ☐ Pacific littleneck ☐ geoduck ☐ blue mussel ☐ cockle
☐ sea urchin ☒ aquatic plant (kelp) ☐ other

I plan to utilize the following area/culture method: ☒ subtidal suspended ☐ subtidal on-bottom
☐ intertidal near-bottom ☐ intertidal on-bottom ☐ other

I plan to utilize the following gear/equipment: ☐ grow-out rafts and ☐ trays (plastic), or ☐ cages (metal)
☐ longlines and lantern nets ☐ flip-flop bags and line ☐ floating shark fin bags ☐ vexar bags
☐ tubes (PVC or vexar) ☐ predator netting ☒ other submerged longlines

My support facilities will include: ☐ work raft ☐ enclosed processing facility ☐ processing raft
☐ floating dock(s) ☐ personnel/caretaker housing facility ☐ other

Receipt Type: 76

See current Director's Fee Order for applicable fees.

For Office Use Only ADNR File No: _____	DATE STAMP: _____
ADF&G No: _____	

AQUATIC FARM PROGRAM APPLICATION

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The project location is in: (Check one) Southeast Alaska Southcentral Alaska
 (Southeast = Projects south of or in the Yakutat area / Southcentral = Projects north of Yakutat)

A. APPLICANT INFORMATION

Brian Delay

If you live in a remote area please provide a contact person (name, phone & email address) who can be easily reached.

Name

Rainy Dawn Fisheries

Contact Name

Business Name (If Applicable)

16955 Glacier Highway

Contact Phone Number

Dan Lesh

Mailing Address (PO Box or Street Address)

Juneau, AK 99801

Business Partner Name (If applicable)

daniel.d.lesh@gmail.com

City

State

Zip

brian.delay@gmail.com

Business Partner Email Address (If applicable)

907-321-7080

Email Address

907-523-8068

907-321-1952

Home/Office Phone

Cell Phone

Business Partner Phone (If applicable)

***Please Answer (✓) the following questions:**

This project is: ☒ First time application ☐ Amendment ☐ Second time application (years 11-21)

I plan to farm: ☐ Pacific oyster ☐ Pacific littleneck ☐ geoduck ☐ blue mussel ☐ cockle
☐ sea urchin ☒ aquatic plant (kelp) ☐ other _____

I plan to utilize the following area/culture method: ☒ subtidal suspended ☐ subtidal on-bottom
☐ intertidal near-bottom ☐ intertidal on-bottom ☐ other _____

I plan to utilize the following gear/equipment: ☐ grow-out rafts and ☐ trays (plastic), or ☐ cages (metal)
☐ longlines and lantern nets ☐ flip-flop bags and line ☐ floating shark fin bags ☐ vexar bags
☐ tubes (PVC or vexar) ☐ predator netting ☒ other submerged longlines

My support facilities will include: ☐ work raft ☐ enclosed processing facility ☐ processing raft
☐ floating dock(s) ☐ personnel/caretaker housing facility ☐ other _____

B. PROJECT DESCRIPTION

On a separate piece of paper, please provide a general description of your proposed aquatic farm site and operations. This should be a narrative of your proposal that includes where your project will be located, overall size including any hardening area, all species you intend to culture, type of farm gear, equipment, support facilities, and associated housing to be used including size, number, and construction materials. Your narrative should match the rest of the application information you provide. Please label your narrative, "PROJECT DESCRIPTION". The following check-off list can be used to assure all items are covered in your project description.

- | | |
|---|---|
| ✓ Site location | ✓ Support Facilities (type, size, number, configuration, material, and anchoring) |
| ✓ Site dimensions, acres for each parcel | ✓ Access to and from site |
| ✓ Total acres of all parcels | ✓ Storage location of equipment and gear when not in use |
| ✓ Species you intend to farm | |
| ✓ Culture Method | |
| ✓ Gear (type, size, number, configuration, material, mesh size, and anchoring system) | |
| ✓ Equipment (type, size, number, configuration, material, and anchoring system) | |
| ✓ Harvest equipment and method | |

Note: All floating raft structures should use non-treated wood supported by closed cell (extruded) expanded polystyrene or equivalent material

EXAMPLE OF A PROJECT DESCRIPTION:

The proposed aquatic farm site is composed of three separate parcels located on state-owned tidal and submerged lands, totaling about 4.07 acres. Parcels include:

- *growing area measuring 292 ft x 546 ft (3.66 acres) for subtidal suspended culture of Pacific oysters using grow-out raft and cage system (Parcel 1);*
- *intertidal area measuring 60 ft x 154 ft (0.21 acre) for hardening and defouling (Parcel 2); and*
- *support facility area measuring 46 ft x 190 ft (0.20 acre) for a dock and dock and storage (Parcel 3).*

The proposed aquatic farm is located about 24.7 nautical miles south-southwest of Wrangell near Rocky Bay, a small bay near the mouth of Mosman Inlet on Etolin Island in southeastern Alaska. (Attachments 1-5)

Parcel 1 will hold eight (8) – 16 ft by 20 ft oyster grow-out rafts. Each grow-out raft will use 100 to a maximum of 300 Aquamesh cages stacked 10-high. Each cage will measure 22 inches wide x 22 inches long x 6 inches deep, manufactured of 1-inch by 1-inch PVC coated wire mesh. The 6 ft stacks of cages would hang 8 ft under the water's surface. In addition, in the southwestern portion of the parcel, a 40 ft x 40 ft processing float with one 16 ft x 16 ft work shed, a covered area, and two 20 ft x 4 ft work platforms on each side will be used to accommodate oyster grow-out rafts during processing. The anchor system for all rafts would consist of floating anchor lines from each corner secured using 300 lb concrete anchors in water 60 ft deep. All rafts are constructed of untreated local wood with floatation made of closed cell (extruded) expanded polystyrene. (Attachments 6 – 10)

Parcel 2 will be used for hardening and defouling of Pacific oysters, using Aquamesh trays measuring 22 inches wide by 22 inches long by 6 inches deep (Attachment 11).

Upland facilities and support structures are located on National Forest Service lands adjacent to the farm site. Access to the site is by skiff from the adjacent uplands. Equipment and gear storage will be located on the permitted uplands or in Ketchikan.

C. 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). A handheld GPS unit can be provided with a \$100 security fee by contacting the ADF&G at (907) 465-6150.

Parcel 1:	NE Corner No. 1: Latitude	58 23.787' N	Longitude	134 45.299' W
	SE Corner No. 2: Latitude	58 23.758' N	Longitude	134 45.374' W
Kelp Longline	SW Corner No. 3: Latitude	58 23.811' N	Longitude	134 45.462' W
(e.g. Grow-out Area)	NW Corner No. 4: Latitude	58 23.842' N	Longitude	134 45.381' W
Parcel 2:	NE Corner No. 1: Latitude		Longitude	
	SE Corner No. 2: Latitude		Longitude	
	SW Corner No. 3: Latitude		Longitude	
(e.g. Hardening Area)	NW Corner No. 4: Latitude		Longitude	
Parcel 3:	NE Corner No. 1: Latitude		Longitude	
	SE Corner No. 2: Latitude		Longitude	
	SW Corner No. 3: Latitude		Longitude	
(e.g. Support Facility Area)	NW Corner No. 4: Latitude		Longitude	

2. Site Size (please use the following formula to compute area)

1. To compute the total area (sq. ft), multiply the width (ft) by the length (ft) of site 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 acres of each Parcel to get the total tideland acres for your proposed farm site.
5. Write the amount of Total Acres on the line where indicated.
6. Note that the number of acres must correspond to your farm site maps and drawings.

Parcel 1:	430	feet (x)	320	feet =	137,600	square feet (+) 43,560 =	3.15
	(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): 3.15
(Total Acres)

If you are also applying for state owned uplands for support facilities, how many total upland acres are you applying for? n/a
(Total Upland Acres)

3. Maps and Diagrams

Provide copies of maps and diagrams including general and detailed location maps, site plan map (an over view), cross-sectional diagram and detailed drawings. If the project has multiple parcels, you must provide maps of each location. Copies of the maps and drawings should be no larger than 8½" x 11" (standard letter

size). Examples are provided at the end of the application.

A list of locations to obtain maps is provided below:

USGS Topographic quadrangle maps	State of Alaska Land Records – http://mapper.landrecords.info
NOAA nautical charts	NOAA – www.charts.noaa.gov
	Other suppliers – www.naco.faa.gov/agents_acc.asp
Other specialized maps	State of Alaska Land Records – http://tidelands.landrecords.info
ShoreZone mapping system	http://alaskafisheries.noaa.gov/habitat/shorezone/szintro.htm
Catalog of Anadromous Streams	http://www.sf.adfg.state.ak.us/SARR/AWC/index.cfm/FA/maps.interactive

***Be sure to include a legend box on all maps and diagrams you provide with your application with the following information:**

FORMATTING

Figure No. and Title
Applicant Name (Business Name)
Waterbody
Area/Region
Today's Date

LEGEND BOX EXAMPLE

FIGURE 1 Detailed Location Map
Alaska's Best Oysters
Jerryton Bay
East of Prince of Wales Island, Southeast AK
March 30, 2012

- a. **General Location Map** – This map is a larger scaled map showing larger surrounding area with less detail (See Figure 1). Use a USGS Topographic quadrangle map (scale: 1" = one mile (1:63,360)) and label it "Figure 1" and show the following information:
 - ☒ USGS Map Name (e.g. Craig B-4) Juneau B3
 - ☒ General location of the farm site
 - ☒ Distance (in nautical miles), and direction (arrow) of the site from the nearest community
 - ☒ A directional arrow identifying North
 - ☒ Scale
 - ☒ Legend box (example above)
- b. **Detailed Location Map** – This map is a smaller scaled map showing more detail (See Figure 2). Use a National Oceanic and Atmospheric Administration (NOAA) navigational chart and label it Figure 2 and show the following information:
 - ☒ NOAA Chart No. 17316
 - ☒ Boundaries of each farm area parcel and clearly label all corners (NE, SE, SW, and NW)
 - ☒ Coordinates
 - ☒ Directional arrow identifying North
 - ☒ Scale on map
 - ☒ Legend box (example above)
 - ☐ If uplands area is proposed:
☐ location and type of use (e.g. housing, storage shed, etc.)
- c. **Site Plan Map** – Draw an overhead view of the farm area parcel(s) and surrounding area (See Figures 3 and 4). Label it "Figure 3" and show the following information:
 - ☒ Boundaries of each farm area parcel and clearly label all corners (NE, SE, SW, and NW)
 - ☒ Distance (in feet) between corners of each parcel
 - ☒ All in-water structures and anchoring systems (All anchoring systems and anchor scope have to be inside the farm parcel boundary)
 - ☒ Acres of each parcel.
 - ☒ All equipment and support facilities with dimensions (in feet)
 - ☒ Areas of eelgrass beds (intertidal zone) None charted in ShoreZone in this area.

- ☒ Areas of kelp beds (subtidal zone)
- ☒ Fuel and chemical storage None.
- ☒ Nearby anadromous streams (salmon) Picnic Creek
- ☒ Major natural and man-made features (on site or nearby) None.
- ☒ Bottom characteristics (sand, mud, silt, clay, bedrock, cobble, shells, rockweed, algae/seaweed)
- ☒ Locations of all known existing uses, as provided in Section E of this application
- ☒ Legend box (example on previous page)

d. Cross-Sectional Diagram(s) - Provide Cross-Sectional Diagram(s) of all support facilities, equipment, and gear showing their placement and anchoring systems (See Figure 5). Note that more than one diagram may be required. Label it "Figure 5" (and so on) and show the following information:

- ☒ Distance between all facilities, gear or equipment on the proposed farm site
- ☒ Distance from bottom of gear to ocean bottom at mean lower low tide
- ☐ If suspended or on-bottom culture:
 - ☒ water depth at low tide
 - ☒ major on-bottom physical features (e.g. bottom contours)
- ☒ Dimensions of the anchoring configuration and poundage
- ☒ Dimensions of the marker buoy configuration
- ☒ Scale
- ☒ Legend box (example on previous page)

e. Detailed Drawing(s) - Provide Detailed Drawing(s) of all support facilities, equipment, and gear (See Figure 5). Note that more than one diagram may be required. Label and show the following information:

- ☒ Draw and label the dimensions (length/width/height) of all proposed gear and equipment.
- ☒ If suspended, indicate water depth at low tide in relation to structures and gear.
- ☒ Identify the construction materials used for all support facilities, equipment, and gear proposed.
- ☒ Legend box (see below*)

D. SITE SUITABILITY - PHYSICAL AND BIOLOGICAL CHARACTERISTICS

1. Is the proposed location protected from severe storms, winter ice, and away from boat traffic? Yes ☒ No ☐
2. Are the proposed operation support facilities, equipment, gear and anchoring systems built to withstand high strong tidal currents and/or storms? Yes ☒ No ☐
3. Does your site have good water exchange? Yes ☒ No ☐
4. Are water temperatures suitable for proposed culture species? Yes ☒ No ☐
(Note: temperatures > 60° F and < 31° F may pose problems such as Vibrio bacteria contamination or icing.)
5. Is there any significant freshwater influence near the farm? Yes ☐ No ☒
6. (Note: freshwater may impact shellfish growth and/or survival or carry fecal coliform or other pollutants)
7. Is the salinity concentration at your proposed farm site above 28 ppt? Yes ☐ No ☐ Unsure
8. 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.)
9. 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).)
10. For on-bottom culture, are the bottom characteristics suitable for the proposed species? Yes ☐ No ☐
Sand ☐ Mud ☐ Silt ☐ Clay ☐ Bedrock ☐ Cobble ☐ Shells ☐ Rockweed ☐ Other _____
11. What is the bottom contour like? Flat ☒ Steep ☐ or Rough ☐
12. For suspended culture, is the water depth sufficient to prevent gear from grounding and impacting the benthos under floating structures? Yes ☒ No ☐ Depth of Gear (in ft): 7 feet Water depth at low tide (in ft): 22 feet at lowest

7-26' at Extreme low water

13. Have you monitored the presence and extent of possible fouling organism within or around your proposed site (barnacle, mussels, algae, etc.)? Yes ☐ No ☒ If yes, findings: _____
14. Is your proposed site more than 300 ft from an anadromous fish (e.g. salmon) stream? Yes ☒ No ☐
15. Are you aware of any eelgrass or kelp beds on or near your proposed farm site? Yes ☒ No ☐ If yes, describe: Small eelgrass bed 800ft East of site - approx. 100 sq. ft.
Alaria at Point Lena + Pt. Stephens noted on Fig 3
16. For farming using on-bottom culture methods, what is the approximate density of the target species on the proposed farm site? High ☐ Medium ☐ Low ☐
17. What are the shellfish predators and what measures will you take to control, discourage, or eliminate them at your proposed farm site? n/a Predators such as urchins will be carefully removed and returned to the sea.
18. Is your proposed farm site in a sensitive area as listed in section C of Part 1 Application Process, Guidelines, Authorizations and Contacts? Yes ☐ No ☒ If yes, describe how your farm site can be sited without significant impact to the area? _____

E. KNOWN EXISTING USES

Please check the boxes below, to indicate existing human and/or wildlife uses observed or known to exist at or within three miles of the proposed farm site. Indicate the locations of these existing uses on the Site Plan Map (refer to page 4, Section 3c).

- | | |
|---|--|
| ☐ mining | ☐ commercial fishing |
| ☐ timber harvest or transfer | ☒ sport fishing terminal release site fishing does not overlap operations season |
| ☒ residential use | ☒ salmon hatcheries DIPAC release site (season does not overlap operations) |
| ☐ harbor development | ☐ hunting |
| ☒ sheltered boat anchorage mostly summer months | ☐ seafood processing plants |
| ☐ seaplane landing | ☐ upland access route(s) areas, bear trails, etc. shorebirds shelter during storms |
| ☐ commercial lodges | ☒ wildlife uses, (e.g. shorebirds, sea mammal haul-outs) |
| ☐ sightseeing | ☐ subsistence; list species and frequency _____ |
| ☒ recreation Lena Beach Recreation Area | _____ |
| ☒ tourism charter fishing season does not overlap operation | _____ |
| ☒ historical/cultural/archeological site canoe landing for celebration (outside of season of operation) | _____ |
| ☐ other aquatic farm projects | _____ |
| ☐ navigational channels: _____ | _____ |
| ☐ other; list _____ | _____ |

1. Do any of the existing uses checked above impact your project feasibility? Yes ☒ No ☐ If yes, describe the impact and how you propose to mitigate or eliminate the impacts? _____

The winter timing of the proposed aquatic farm operations greatly reduces conflict with other users. DIPAC's permit authorizes use starting April 15th. Coordination and productive engagement with hatchery officials will be critical to resolve any potential issues.

Engagement with nearby landowners and other users will be needed to identify other issues and minimize any conflicts.

updated 10/19/19
[Signature]

2. Describe how your project may impact any of the existing uses checked above (consider navigational channels, especially in cases where they may be limited). _____
 See above. No known major conflicts but several issues to keep track of and proactively address.

F. SUPPORT FACILITIES AND CITY AND BOROUGH CONTACTS

1. Personnel/Caretaker Housing*

Are you proposing any personnel/caretaker housing? Yes ☐ No ☒

If yes, the proposed size will be: _____ (Width) _____ (Length) _____ (Height)

Please attach diagrams/drawings with labels clearly showing the Personnel/Caretaker housing.

What would be the maximum number of people housed per day? _____ (Needed for USACE)

***Note: Annual rent for associated housing facilities will be determined by fee schedule, reviewed every two years by the Department of Natural Resources Appraisals Section to comply with the two-year age provision of AS 38.05.840.**

Note: you may stay a maximum of 14 consecutive days at your site on state-owned uplands or tidelands without applying for personnel/caretaker housing.

2. Enclosed Processing Facility

a. Are you proposing any enclosed processing facility? Yes ☐ No ☒

If yes, the proposed size will be: _____ (Width) _____ (Length) _____ (Height)

Please attach diagrams/drawings with labels clearly showing the processing facility.

3. Upland Property

Do you currently own or lease upland property adjacent to, or near, the proposed farm site that you plan to use in conjunction with your proposal? Yes ☒ No ☒ If yes, attach a copy of ownership deed or lease. Applicant owns upland property but not currently planning to use as part of farm site.

If you are the adjacent upland owner, are you applying for a preference right under 11 AAC 63.040(f)?

Yes ☐ No ☒

a. Please provide the names and addresses of the upland owners within one-half mile on each side of your proposed farm site. This information may be obtained through borough/city property tax records, state, or federal land records. Note: all adjacent upland owners within one-half mile on each side of your proposed farm site **must** be notified.

see attachment

UPLAND OWNER(S)	ADDRESS
UPLAND OWNER(S)	ADDRESS

UPLAND OWNER(S)	ADDRESS
UPLAND OWNER(S)	ADDRESS

4. City/Borough Authorization

If you are applying within a recognized first class city or borough, please contact the appropriate Planning Section as additional authorizations may be required from them. Please provide the name, address, and telephone number of the person(s) you contacted and list any required authorizations.

CITY/BOROUGH	PHONE	CONTACTED?	
Ketchikan Gateway Borough - Planning & Community Development....	228-6625	Yes	No
City of Craig - Planning & Zoning.....	826-3275	Yes	No
✓ City and Borough of Juneau - Permit Center.....	586-0770	Yes	✓ No
City and Borough of Sitka - Planning & Community Development.....	747-1824	Yes	No
City of Thome Bay	828-3380	Yes	No

CBJ - Terry Camery, Planner, 586-0755. Conditional Use Permit required.

City and Borough of Yakutat – Planning & Zoning Commission.....	784-3281	Yes ☐ No ☐
Kenai Peninsula Borough – Land Management Division.....	714-2200	Yes ☐ No ☐

Type of authorization required by City or Borough: Conditional Use Permit.

G. WATER QUALITY INFORMATION – Department of Environmental Conservation

Do you plan to use a boat on your farm site? Yes ☒ No ☐ If yes, indicate the type of marine sanitation device. 15 gallon marine holding tank

1. If you plan to have personnel housing or caretaker facilities:
Will wastewater be discharged from these facilities? Yes ☐ No ☒ If yes, what are the daily maximum and average discharge volumes? Maximum _____ Average _____
2. Were there any sources of past pollution at the site, such as a shore-based seafood processor, log transfer facility, industrial facility, oil spill contamination, or town or village? Yes ☐ No ☒ Unknown ☐
If yes, identify:
 - a. The type of previous use (e.g. mine, village, seafood processor, oil spill). _____
 - b. The last known date of use. _____
 - c. The distance from the site previously used to your proposed site. _____
3. Are you aware of any current potential sources of human or industrial pollution in the area? (e.g. sewage outfalls, oil contamination, industrial transfer facilities upland operations, boat harbors, etc.)
Yes ☐ No ☒ If yes, describe: AK DEC did a study in 2012 with no concerning findings. Available on request.
 - a. The type of discharge(s). _____
 - b. The location and distance from your site. _____
 - c. The name of the discharger(s), if known. _____
4. Are you aware of any other planned development in the general area of your proposed site?
Yes ☐ No ☒ If yes, describe the planned development. _____
5. The DEC may request that you provide a map for certain projects to show the following information:
 - a. areas of wastewater disposal systems, including both sewage and grey water discharge points (grey water means domestic wastewater from laundry, kitchen, etc., which does not contain human waste)
 - b. location of drinking water, including drinking water wells or other drinking water system sources (fresh water and salt water), within 200 feet of any proposed or existing wastewater disposal systems
 - c. location of solid waste storage and disposal sites (Note: you are encouraged to use existing permitted sites for the disposal of solid wastes. If there are not any existing permitted disposal sites in the area and they are necessary in your operation, you must contact the ADEC for authorization)
 - d. areas used for fuel and chemical storage

I. US ARMY CORPS OF ENGINEERS GENERAL PERMIT EVALUATION

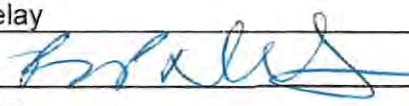
The US Army Corps of Engineers (USACE) has developed a General Permit (GP) for Aquatic Farm Structures within the State of Alaska. The GP only applies to projects that can meet the specific GP conditions. The Departments of Natural Resources and Fish and Game will evaluate your application and help determine if you can apply for authorization under the GP. If your proposed project does not meet the GP conditions, you will need to apply to the USACE for an Individual Permit using Department of Army (DA) permit application.

J. APPLICATION SIGNATURE BLOCK**AQUATIC FARM APPLICATION SIGNATURE AND
PROGRAM CERTIFICATION STATEMENT**

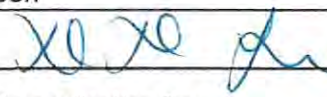
The information contained in this aquatic farm application is true and complete to the best of my knowledge and certify that the proposed activity complies with, and will be conducted in a manner consistent with all State and Federal Agency policies and regulations. I understand that modifications to the proposed activity may require additional review and that I may need to apply for an Individual Permit with the US Army Corps of Engineers.

This certification statement does not provide authorization necessary to sell my product. I understand I must separately apply for and hold a Growing Area Certification and a Harvesters Permit from the Department of Environmental Conservation.

Printed Name Brian Delay

Signature of Applicant  Date January 1, 2019

Printed Name Dan Lesh

Signature of Applicant  Date January 1, 2019

☒ I have enclosed the application fee.

Updated 10/10/19 

K. AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – PARTS A & B

Your 10-year operation and development plan (ODP) is an important tool for both you and state agencies. Your aquatic farm is a commercial endeavor. Personal use or subsistence is not part of the Aquatic Farm Program. Therefore, your farm must meet a commercial use requirement (CUR) no later than the end of the fifth year of your lease and sales must be maintained or increased in the remaining years of the lease. Commercial use of the site means annual sales of aquatic farm products, as defined in AS 16.40.199, of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less. The CUR applies to the combined total of all species and is not a "per species" requirement. The 10-Year ODP should be an accurate reflection of your operations for each year you are farming. Therefore, the estimated amount of sales must correlate to the estimated amount of seed you plan to purchase minus mortality rates. ***Note: You must complete one 10-Year Operation and Development Plan for each species you propose to farm.**

AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.

***Complete one operation and development plan for each species****AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – PART A**Name Brian Delay / Dan LeshSpecies Saccharina latissima, Sugar KelpADNR Lease ADL No. 233370ADF&G Permit No. - - -

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 2:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 3:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 4:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 5:	Number of Days <u>180</u>	Number of People <u>3</u>

2. Site Monitoring/Maintenance

- 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 20 (days/month) **Winter months** 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?

On Private Property in the city and borough of Juneau

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

Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried.

- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean

- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?

3. Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed, degree and type of fouling

- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? Yes ☐ No ☐ Describe: Yes, will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by long line and section of long line. Data collected in field notebooks and then in excel spreadsheets on multiple computers

- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? Yes ☐ No ☐ Describe: yes, as feasible will regularly collect data on temperature, solar exposure and salinity

4. Harvest

- a. How often do you intend to harvest your product? Annually, in late winter and early spring (march-april)
- b. How do you intend to harvest your product? **Suspended:** Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel, or skiff

5. Sales

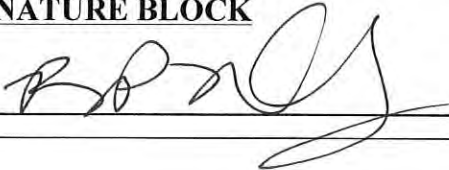
- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature: _____



Date: updated 10/10/19

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh ADL No.: 233370 ADF&G Permit No.: _____ Species: Saccharina latissima, Sugar Kelp

Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 1) 2020	none	<(35) 200' grow lines approx. 7000 feet plus	4-250 # Danforth type anchors with	1,414,000 202 per ft.	N/A	\$ 0		0
(Year 2) 2021	none	Submerged perimeter frame line, 1,700 ft.	Galvanized chain, float	"	"	\$ 15,000		20,000
(Year 3) 2022	none	Submerged longlines connecting grow lines	Or Helical anchor, rode	"	"	\$ 22,500		30,000
(Year 4) 2023	none	Approx.. 850 feet	And float	"	"	\$ 35,500		35,000
(Year 5) 2024	none	Same all years	Same all years	"	"	\$ 45,000		45000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

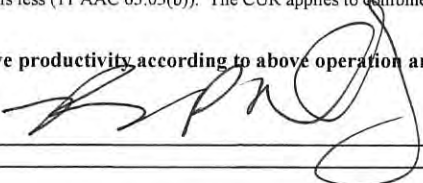
² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its' first point of sale.

⁴ By the end of your 5th year, **projected sales for all species combined must meet the commercial use requirement (CUR)** defined as the annual sales of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less (11 AAC 63.03(b)). The CUR applies to combined total of all species, is not a "per species" requirement and **must be maintained or increased in Years 6-10.**

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature

: 

Date: updated 10/10/19

***Complete one operation and development plan for each species****AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – PART A**Name Brian Delay / Dan LeshSpecies Alaria Marginata, Ribbon KelpADNR Lease ADL No. 233370ADF&G Permit No. - - -

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1: Number of Days 180Number of People 4Year 2: Number of Days 180Number of People 4Year 3: Number of Days 180Number of People 3Year 4: Number of Days 180Number of People 3Year 5: Number of Days 180Number of People 3**2. Site Monitoring/Maintenance**

- 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 20 (days/month)**Winter months** 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?

On Private Property in the city and borough of Juneau

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

Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried.

- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean

- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?

3. Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed, degree and type of fouling

- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? ☒ Yes ☐ No ☐ Describe: Yes, will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by long line and section of long line. Data collected in field notebooks and then in excel spreadsheets on multiple computers

- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? ☒ Yes ☐ No ☐ Describe: yes, as feasible will regularly collect data on temperature, solar exposure and salinity

4. Harvest

- a. How often do you intend to harvest your product? Annually, in late winter and early spring (march-april)
- b. How do you intend to harvest your product? **Suspended:** Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel, or skiff

5. Sales

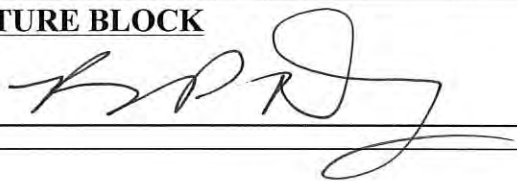
- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature:



Date: updated 10/10/19

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B (continued)

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: <u>Brian Delay / Dan Lesh</u>		ADL No.:		ADF&G Permit No.:		Species: <u>Alaria Marginata, Ribbon Kelp</u>		
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 6) 2025	<u>none</u>		<u>same</u>	\	\	\$ <u>45,000</u>		<u>45,000</u>
(Year 7) 2026	<u>none</u>		<u>same</u>	\	\	\$ <u>same</u>		<u>same</u>
(Year 8) 2027	<u>none</u>		<u>same</u>	\	\	\$ <u>same</u>		<u>same</u>
(Year 9) 2028	<u>none</u>		<u>same</u>	\	\	\$ <u>same</u>		<u>same</u>
(Year 10) 2029	<u>none</u>		<u>same</u>	\	\	\$ <u>same</u>		<u>same</u>

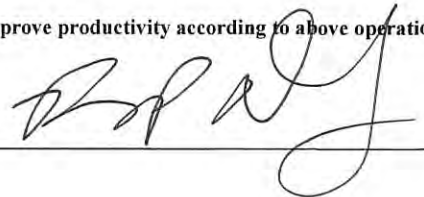
¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its' first point of sale.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature

: 

Date: updated 10/10/19

***Complete one operation and development plan for each species****AQUATIC FARM OPERATION AND DEVELOPMENT PLAN – PART A**Name Brian Delay / Dan LeshSpecies Nereocystis luetkeana, Bull KelpADNR Lease ADL No. 233370ADF&G Permit No. - - -

1. Provide an estimate of the total days and number of people (including yourself) that will be needed to operate your farm site for each year:

Year 1:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 2:	Number of Days <u>180</u>	Number of People <u>4</u>
Year 3:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 4:	Number of Days <u>180</u>	Number of People <u>3</u>
Year 5:	Number of Days <u>180</u>	Number of People <u>3</u>

2. Site Monitoring/Maintenance

- 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 20 (days/month) **Winter months** 30 (days/month)

- b. Where will you store any farm gear and/or equipment when not in use?

On Private Property in the city and borough of Juneau

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

Washing at harvest to remove fouling organisms. Gear will be removed during or after harvest, pressure washed and dried.

- d. How will you manage incidental species over the course of operations (sea urchins, sea cucumbers, butter clams, or other non-targeted species)? Any non-target species encountered will be carefully returned to the ocean

- e. For on-bottom culture, if you intend to use predator netting, how long will you keep netting over your product?

3. Recordkeeping

- a. What methods are you going to use to measure the success of your operation (growth, survival or mortality rates, production, etc.)? growth rates (length of fronds), pounds of seaweed produced per foot of line, quality and consistency of seaweed, degree and type of fouling
- b. Will you maintain records of aquatic farm product, such as counts and measurements to track survival and growth? **Yes** ☐ **No** ☐ **Describe:** Yes, will track with digital photos and data collection of items listed in 3a. Data collected will be broken down by long line and section of long line. Data collected in field notebooks and then in excel spreadsheets on multiple computers
- c. Do you plan to record other physical or environmental parameters at your site such as water temperatures and salinity? **Yes** ☐ **No** ☐ **Describe:** yes, as feasible will regularly collect data on temperature, solar exposure and salinity

4. Harvest

- a. How often do you intend to harvest your product? Annually, in late winter and early spring (march-april)
- b. How do you intend to harvest your product? **Suspended:** Manual ☐ Other: Manual
On-Bottom: Hand/Digging ☐ Hydraulic wand ☐ Manual ☐ Other: Commercial fishing vessel, or skiff

5. Sales

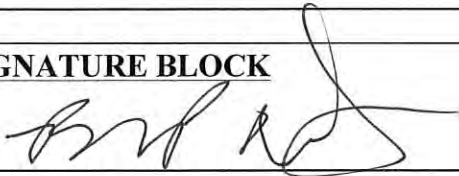
- a. DNR has a commercial use requirement (CUR) of \$3,000 per acre per year or \$15,000 per farm, whichever is less. What is your anticipated total production using farm gate value by the end of year 5?
\$ 45,000

6. Seed Acquisition

- a. Which certified shellfish seed source(s) will you use? Blue Evolution, Kodiak Hatchery or other state approved hatchery
- b. Applicable for indigenous species (mussels, scallops, abalone, etc.), how do you intend to collect wild seed?
N/A

PART A – SIGNATURE BLOCK

Signature: _____



Date: updated 10/10/19

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: Brian Delay / Dan Lesh ADL No.: 233370 ADF&G Permit No.: _____ Species: Nereocystis luetkeana, Bull Kelp

Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 1) 2020	none	<(35) 200' grow lines approx. 7000 feet plus	4-250 # Danforth type anchors with	1,414,000 202 per ft.	N/A	\$ 0		0
(Year 2) 2021	none	Submerged perimeter frame line, 1,700 ft.	Galvanized chain, float	11	11	\$ 15,000		20,000
(Year 3) 2022	none	Submerged longlines connecting grow lines	Or Helical anchor, rode	11	11	\$ 22,500		30,000
(Year 4) 2023	none	Approx.. 850 feet	And float	11	11	\$ 35,500		35,000
(Year 5) 2024	none	Same all years	Same all years	11	11	\$ 45,000		45000

¹ Support facilities examples: caretaker, storage, or processing facilities, work rafts, etc. This must correspond to diagrams and drawings.

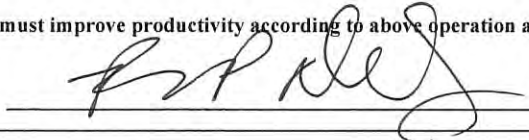
² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its' first point of sale.

⁴ By the end of your 5th year, **projected sales for all species combined must meet the commercial use requirement (CUR)** defined as the annual sales of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less (11 AAC 63.03(b)). The CUR applies to combined total of all species, is not a "per species" requirement and must be maintained or increased in Years 6-10.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature

: 

Date: updated 10/10/19

AQUATIC FARM OPERATION AND DEVELOPMENT PLAN - PART B (continued)

Complete one operation and development plan for each species using a reasonable expectation of what you believe is possible for each year of the 10-year lease and operation permit. This is a projection to help you visualize a 10-year farming plan keeping in mind that annual sales at the end of year 5 must meet or exceed the commercial use requirement and sales must then be maintained or increased in the remaining years of the lease. Commercial use equals the annual sum of farm sales from all species combined. The commercial use requirement does not have to be met for each species. Your plan can be amended to reflect any changes as the aquatic farm operations develop.

Name: <u>Brian Delay / Dan Lesh</u>		ADL No.:		ADF&G Permit No.:		Species: <u>Nereocystis luetkeana, Bull Kelp</u>		
Calendar Year	Installation Schedule			# of Hatchery-Produced Seed	# of Seed Collected Onsite (Only applies to indigenous sp.)	Aquatic Farm Production Projected Harvest and Sales		
	Support Facilities ¹	Equipment/Gear Types and Numbers ²	Anchoring Systems			Projected Sales ³ (\$)	# of Organisms	# of Pounds
(Year 6) 2025	<u>none</u>		<u>same</u>	\\	\\	\$ <u>45,000</u>		<u>45,000</u>
(Year 7) 2026	<u>none</u>		<u>same</u>	\\	\\	\$ <u>same</u>		<u>same</u>
(Year 8) 2027	<u>none</u>		<u>same</u>	\\	\\	\$ <u>same</u>		<u>same</u>
(Year 9) 2028	<u>none</u>		<u>same</u>	\\	\\	\$ <u>same</u>		<u>same</u>
(Year 10) 2029	<u>none</u>		<u>same</u>	\\	\\	\$ <u>same</u>		<u>same</u>

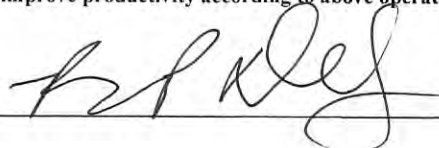
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² Equipment examples: grow-out rafts, longlines, buoys, etc. Gear examples: trays, tiers of lantern nets, or predator netting. This must correspond to diagrams and drawings.

³ Projected sales are based on Farm Gate Income which is defined as the unprocessed value, excluding the cost of packaging or transport of the product to its' first point of sale.

I understand I must improve productivity according to above operation and development plan for this species and that this plan can amended to reflect any changes as the aquatic farm operations develop.

Signature

: 

Date: updated 10/10/19

**Project Description
Rainy Dawn Fisheries
10/8/2019**

Aquatic plant farm using submerged kelp grow lines and submerged long line structure.

Location: Lena Cove-Favorite Channel. Approximately 6 nautical miles from Auke Bay, .7 nautical miles east of Point Lena, Southeast Alaska.

The proposed aquatic farm site is composed of a single parcel located on state-owned submerged lands totaling 3.15 acres.

- Parcel 1 - 430 feet x 320 feet (3.15 acres)

Species: *Nereocystis luetkeana* (bull kelp), *Eularia fistulosa* (dragon kelp), *Saccharina latissima* (sugar kelp).

Culture Method: Seeded string wrapped around submerged long lines (submerged minimum 7 feet below water surface). Seed stock will be acquired from a state permitted hatchery and out-planted within 50km by water from brood-stock acquisition location. Equipment including seeded line will be deployed between the months of October and December and removed after harvest the following spring.

Equipment Type: Gear deployed will include; four anchors- 250 pound steel Danforth anchors and galvanized chain **or** helical anchors(may not be removed) with mooring rode and 5/8" or 3/4" chain with surface mooring buoys, four surface floats-one at each end of two submerged longlines and two temporary surface floats mid span of submerged long lines during deployment and as needed during growout phase.

Four submerged lines forming the *Structure Perimeter* will be anchored at the parcel corners measuring a total of 1,500 Lineal feet.

Up to thirty-five Grow lines totaling approximately 7,000 lineal feet of 1/2" or 5/8" blue steel line, with seeded string, will span back and forth approximately two hundred feet between two submerged long lines, attached to the *perimeter structure*. All gear will be maintained at minimum seven feet below the water surface including at extreme low water.

Harvest Equipment and Method: Kelp will be harvested in early spring during the month of April using a commercial fishing vessel and/or support skiff. Grow lines will be pulled onboard manually or using hydraulic drum and cut with a knife into brailer bags and/or totes and transported in fish holds, totes or bags. During harvest all grow lines will be removed, cleaned, and stored in the City and Borough of

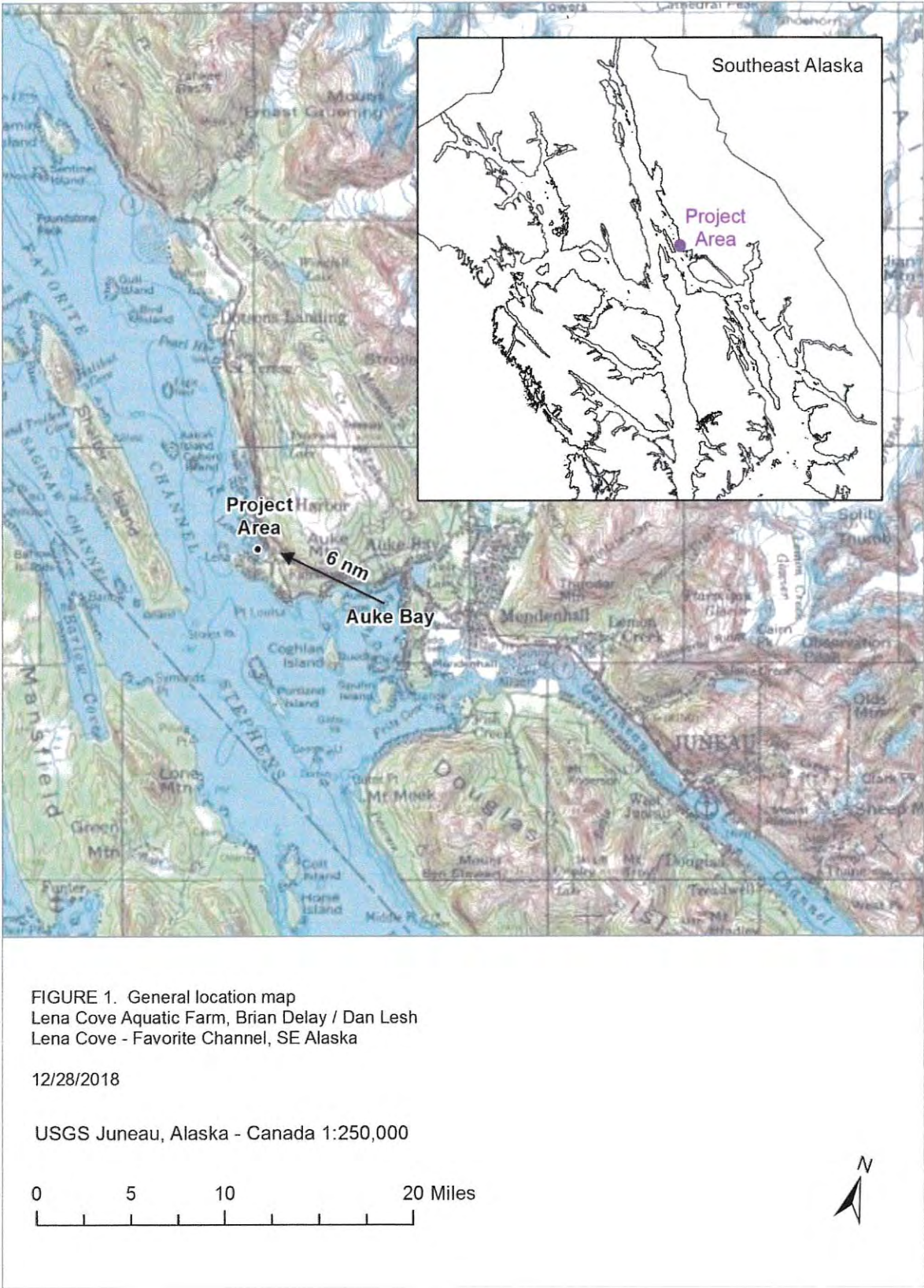
Juneau. Gear including grow lines, submerged long lines, chains, anchor rode and surface buoys will be removed after harvest. Helical anchors may or may not be removed.

Operation Schedule: Gear and Equipment will be deployed between the months of October and December after salmon fisheries have mostly concluded. Out planting of seeded lines from a skiff will occur in November or December. The farm will be monitored from shore daily for interaction with the public and wildlife. After outplanting and during the growout phase (December – April) growth data will be collected from the site weekly. Regular inspection for fouling or movement of equipment, after storms or weather events will be performed as needed. Kelp will be harvested in Mid to late April and equipment removed from the site before the opening of salmon fisheries typically in late April.

Support Facilities: No upland facilities or support structures will be used on this proposed aquatic farm at this time.

Access: Growing areas will be accessed by skiff from Tee Harbor or Auke Bay launch ramp and/or main dock at Statter Harbor. Site will be monitored daily during winter growing season.

Storage: All gear not in use will be stored on private property in the City and Borough of Juneau.



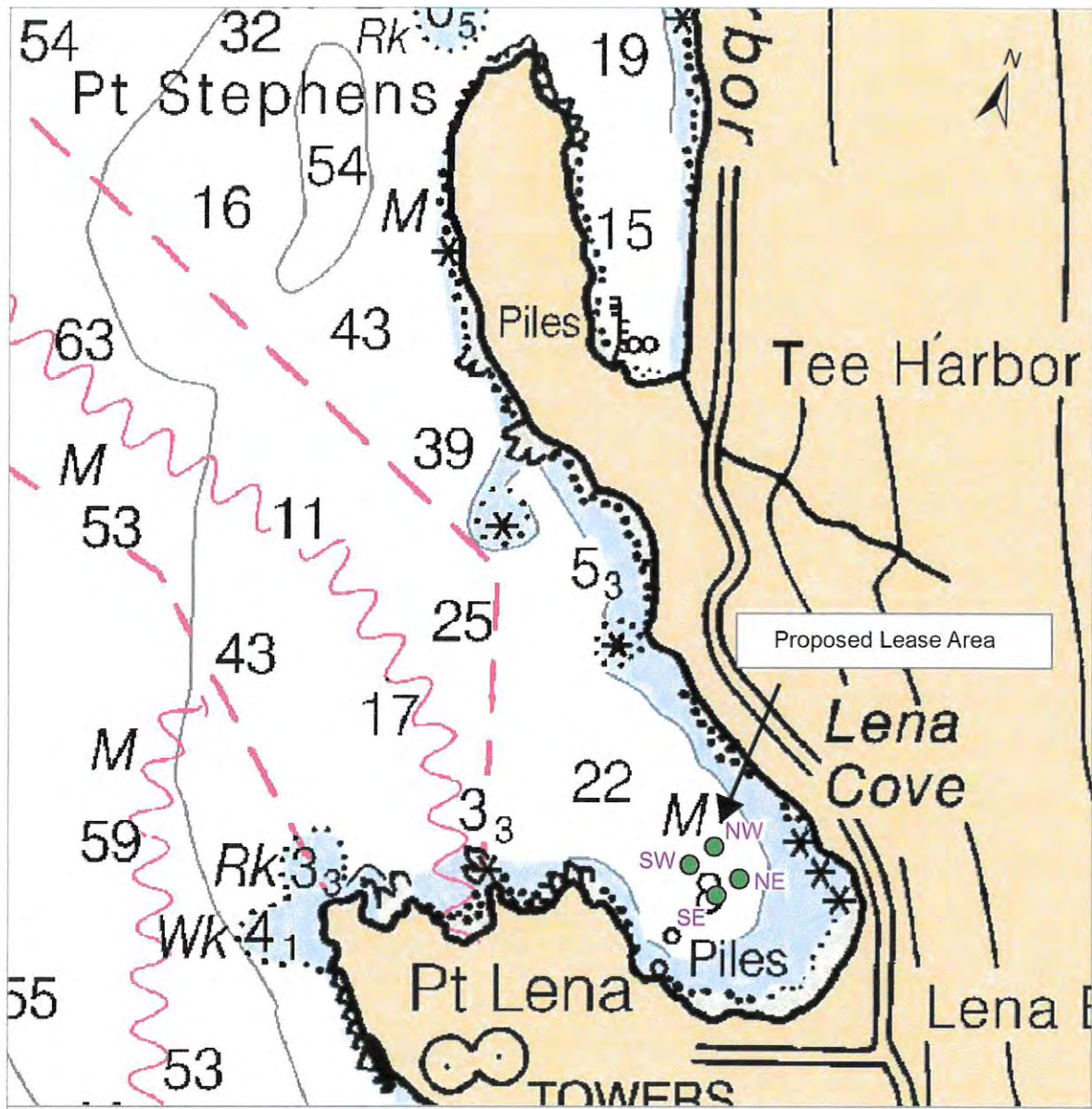
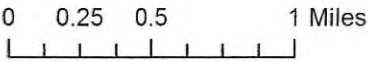


FIGURE 2. Detailed location map Parcel 1
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

12/28/2018

NOAA CHART 17316



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: approx. 430'x320'

Coordinates
SW Corner 58° 23.811'N -134° 45.462'W
SE Corner 58° 23.758'N -134° 45.374'W
NE Corner 58° 23.787'N -134° 45.299'W
NW Corner 58° 23.842'N -134° 45.381'W



FIGURE 3. Aquatic Farm Site Plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 0.25 0.5 1 Miles



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)



FIGURE 4. Detailed aquatic site plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 320 640 960 1280 feet



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

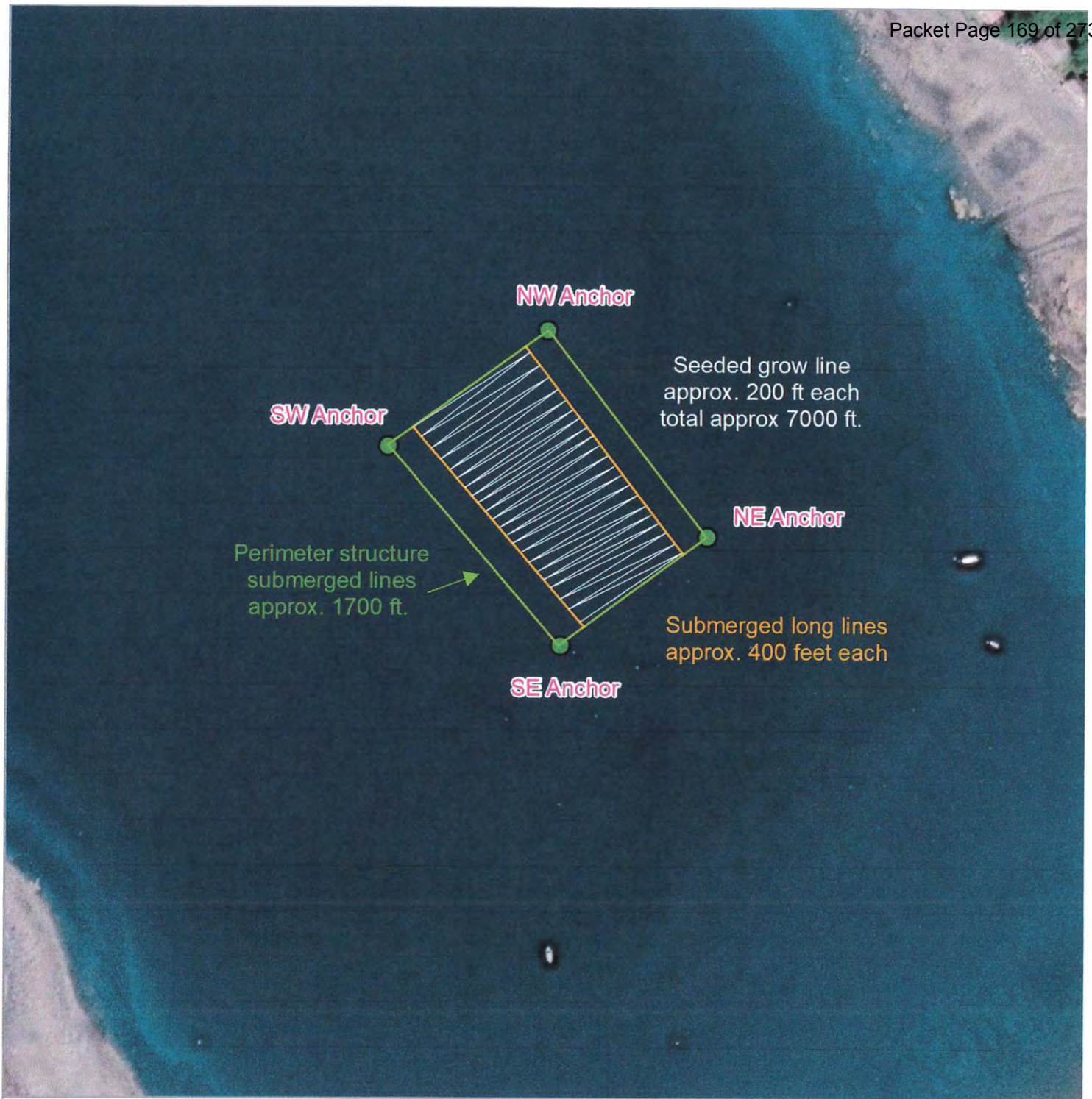


FIGURE 4.1. Aquatic Farm Site Plan/ in-water structure PROJECT AREA

Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

GOOGLE EARTH IMAGERY

0 0.05 0.1 0.2 Miles



Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

Figure 5.1 Aquatic Farm - Boundary Corners
Line Lengths and Dimensions
Plan View
Catenary Matrix Design
Lena Cove Aquatic Farm, Brian Delay/Dan Lash
Lena Cove, Favorite Channel, SE Alaska
December 27, 2018, Updated 10/09/19

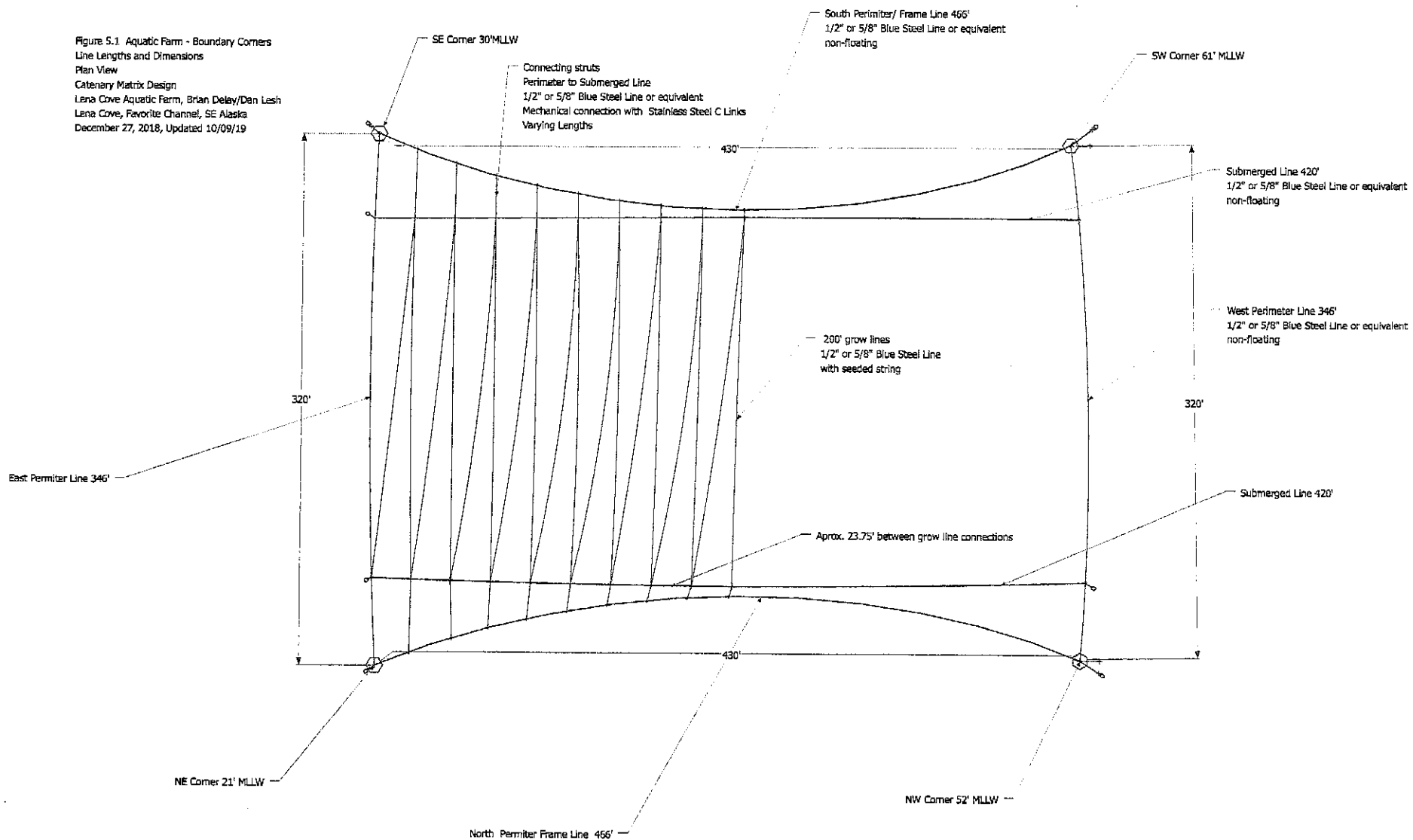


Figure 5.2 Aquatic Farm - Anchor Tackle and Mooring Floats Configuration
Plan View
Catenary Matrix Design
Lena Cove Aquatic Farm, Brian Delay/Dan Lash
Lena Cove, Favorite Channel, SE Alaska
December 27, 2018, Updated 10/09/19

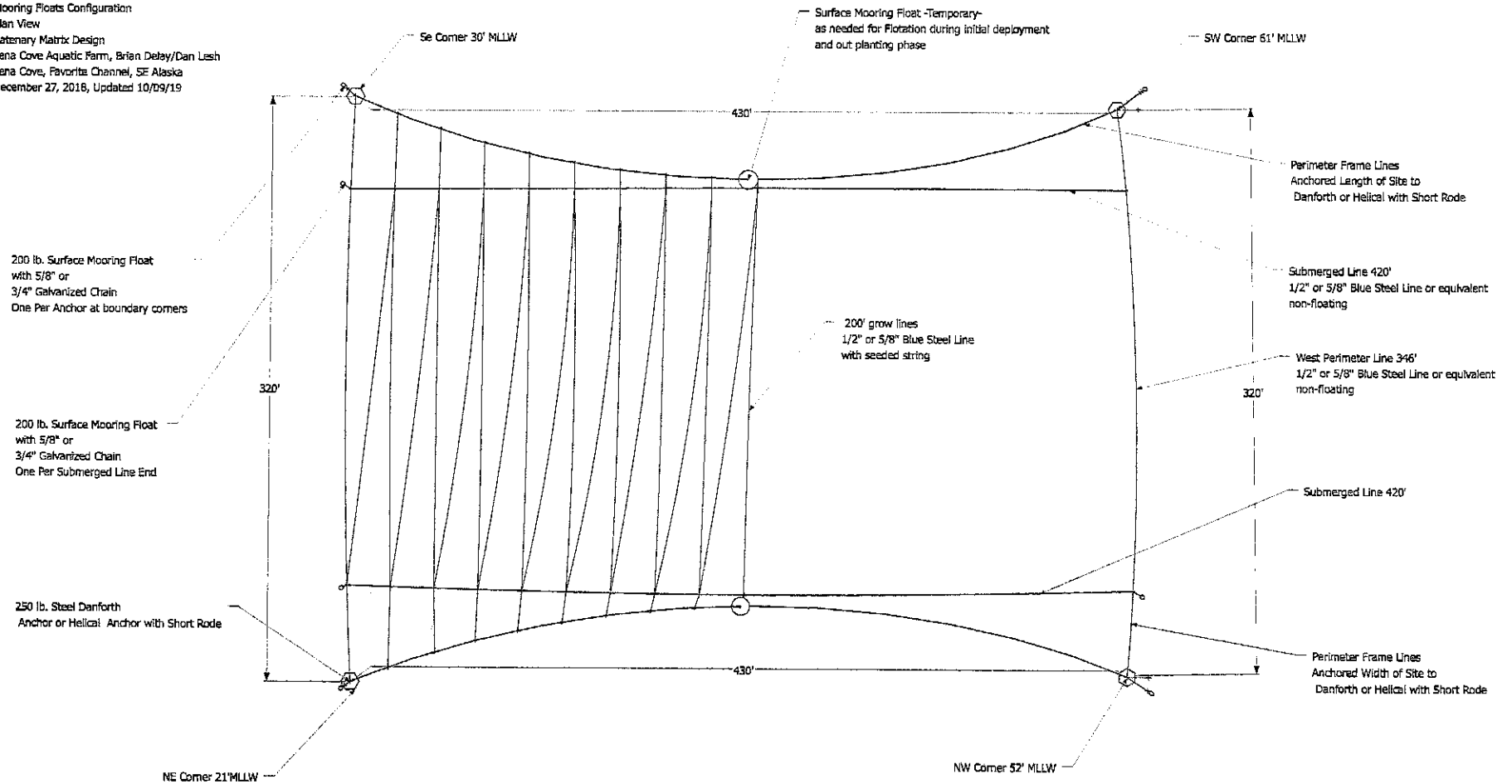


Figure 5.3 Aquatic Farm - Anchor Tackle and Mooring Floats Configuration
 ISO View
 Seabed and Water Surface Guidelines
 Catenary Matrix Design
 Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
 Lena Cove, Favorite Channel, SE Alaska
 December 27, 2018, Updated 10/09/19

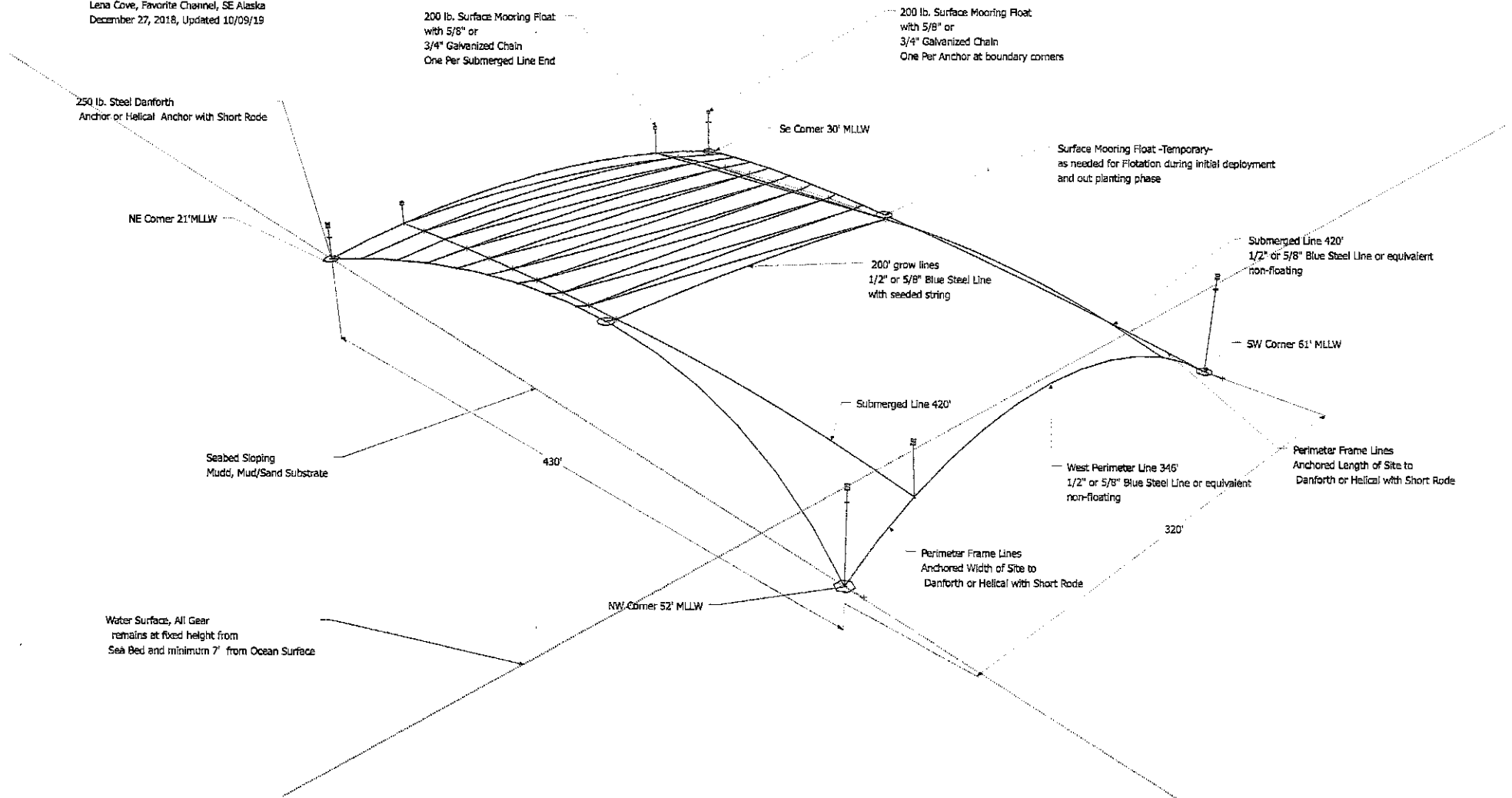
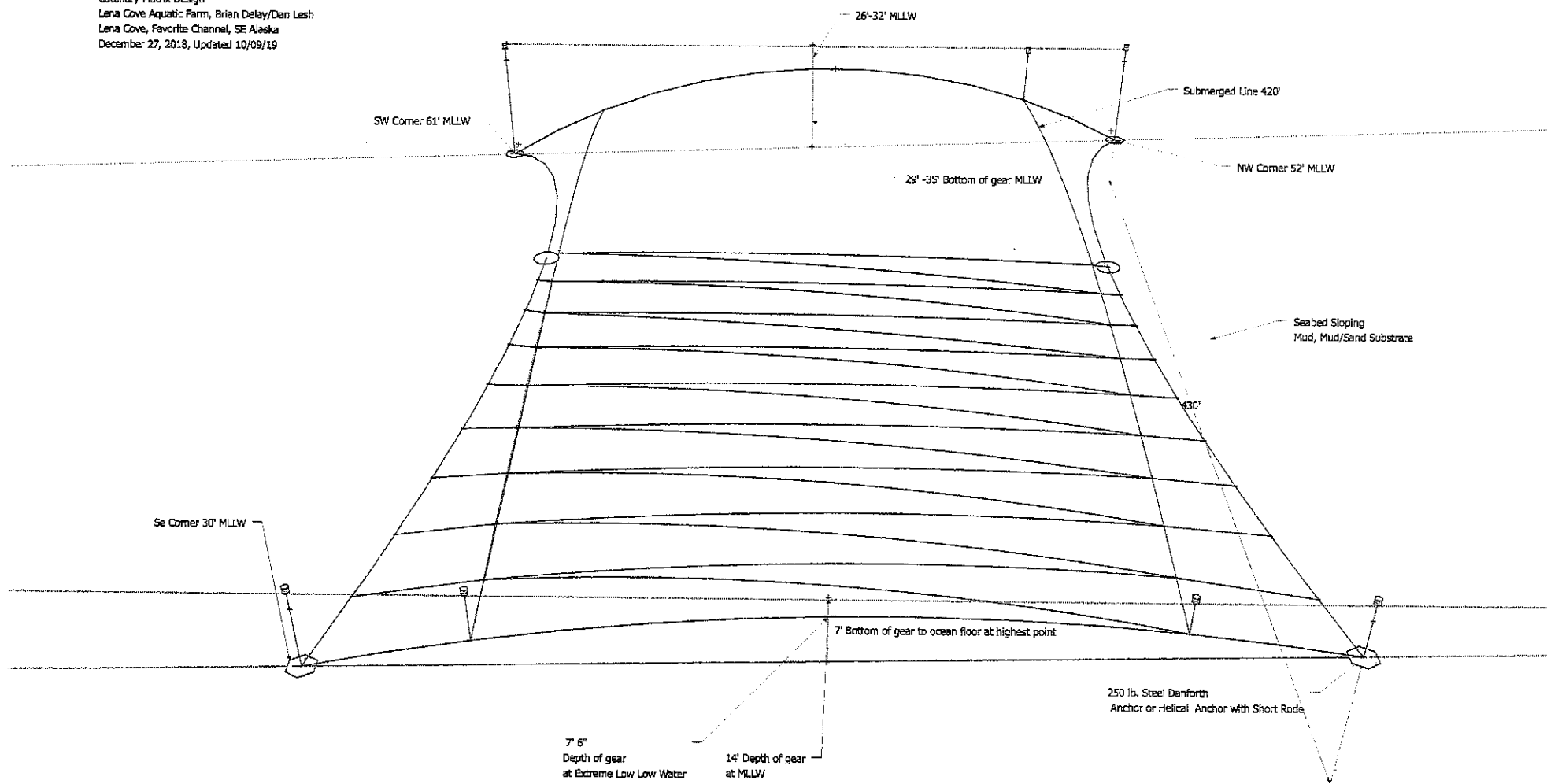


Figure 5.4 Aquatic Farm - Configuration
 150 View-Not to scale
 Distances from Seabed and Water Surface
 at Extreme Low Low Water and MLLW
 Catenary Matrix Design
 Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
 Lena Cove, Favorite Channel, SE Alaska
 December 27, 2018, Updated 10/09/19



**U.S. ARMY CORPS OF ENGINEERS
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT**

33 CFR 325. The proponent agency is CECW-CO-R.

OMB APPROVAL NO. 0710-0003
EXPIRES: 28 FEBRUARY 2013

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PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME First - Middle - Last - Company - E-mail Address -		8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required) First - Middle - Last - Company - E-mail Address -	
6. APPLICANT'S ADDRESS: Address- City - State - Zip - Country -		9. AGENT'S ADDRESS: Address- City - State - Zip - Country -	
7. APPLICANT'S PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax		10. AGENTS PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax	

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

SIGNATURE OF APPLICANT

DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)			
13. NAME OF WATERBODY, IF KNOWN (if applicable)		14. PROJECT STREET ADDRESS (if applicable) Address	
15. LOCATION OF PROJECT Latitude: °N Longitude: °W		City - State - Zip -	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality Section - Township - Range -			

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type	Type	Type
Amount in Cubic Yards	Amount in Cubic Yards	Amount in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres
or
Linear Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Complete? ☐ Yes ☐ No IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

a. Address-

City - State - Zip -

b. Address-

City - State - Zip -

c. Address-

City - State - Zip -

d. Address-

City - State - Zip -

e. Address-

City - State - Zip -

26. List of Other Certificates or Approvals/Denials received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for permit or permits to authorize the work described in this application. I certify that this information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.



SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The Application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.



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

Department of Fish and Game

Division of Commercial Fisheries
Headquarters Office

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.4210
Fax: 907.465.2604

Aquatic Farming Coordinator Main: 907.465-6150

March 20, 2020

Brent Reynolds
Aquatic Farm Program
Southcentral Region
550 West 7th Avenue, Suite 900C
Anchorage AK 99501

Re: Alaska Department of Fish and Game Agency Review Comments Updated
Delay / Lesh, Rainy Dawn Fisheries Aquatic Farm Site Proposal – Lena Cove
DNR File No.: ADL 233370

Dear Mr. Reynolds:

The Alaska Department of Fish and Game (ADF&G) has updated the preliminary review of the proposal, **ADL 233370**, relevant to authorizations regulating permitting of this activity (AS16.40.105 and 5 AAC 200-400) based on recent modifications to the proposed operation made by the applicant, Mr. Brian Delay. The applicant worked with department staff to address potential concerns with the proposed project. Mr. Delay agreed to cease activities from April 14 to October 1 each year and to remove all inwater aquatic farm structures, except that fixed anchors may remain onsite throughout the year if they extend above the substrate not more than 12 inches and are not snagging sport fish gear. More details on the stipulation can be found in recommended site-specific condition A #1. Modifications were made to the application project description and operation and development plans (see attached). The updated application proposal is recommended for approval of an aquatic farm operation permit with site-specific conditions to meet review criteria provisions specified in the Alaska Aquatic Farming Regulations.

Any comments from any other government agencies or through the public comment period will be considered as part of the final department review for an aquatic farm operation permit. Recommendations from this updated preliminary review are summarized below.

Department Advisory

Please advise the applicant that if the project is approved, the site-specific conditions listed below have been recommended to make the project consistent with the Alaska Fish and Game statutory and regulatory provisions for issuance of an aquatic farm operation permit. In addition, general conditions also listed below will be part of the aquatic farm operation permit. Our department requests that the Department of Natural Resources consider providing this in the Department of Natural Resource's Preliminary Decision as an advisory to the applicant and for public reference.

A. Recommended Site-specific Conditions

1. To limit conflict with established sportfish uses and existing permits in Lena Cove, the permit holder shall:
 - a. Cease all aquatic farm activities onsite from April 14 to October 1 each year. In years when sport fishing for Chinook salmon is closed and there are no operational or scheduling conflicts with other permittees (i.e., DIPAC), the permittee may request an extension from the permit coordinator.
 - b. Remove all inwater aquatic farm gear and structures from April 14 to October 1, except that fixed anchors (e.g. helical anchors) may remain onsite throughout the year if they extend above the substrate not more than 12 inches. When the permittee dives on the site to deploy gear in the fall, they must inspect the fixed anchor parts and notify the permit coordinator if any sport fishing gear (e.g., crab pots, fishing line, downrigger wire) has accumulated on the anchors during the seasonal closure period (i.e., April 14 to October 1). If sport fishing gear is getting hung up, the permittee may experiment with the use of cones or covers to prevent snagging of sportfish gear. If the department determines that the fixed anchors are impacting the sport fishery, the permittee will be required to remove the fixed anchors and use an alternate anchoring system that can be removed each season.
2. The permit holder must provide public access to aquatic plants, fish, shellfish, and wildlife resources, other than the aquatic farm product being cultured at the site, and provide access to other established uses of these resources, to the extent that such access does not disrupt the operation of the farm, disturb the species being cultured, or damage any of the aquatic farm equipment, facilities, or gear.
3. Aquatic farm facilities shall be designed, constructed, maintained, operated, and appurtenances placed in a manner and location that does not restrict free public access for all existing uses including for commercial, subsistence, personal, or recreational purposes.
4. To minimize the potential introduction of invasive species, the permit holder will implement best management practices to prevent the introduction or spread of aquatic invasive species that can occur when aquatic farm activities translocate gear and product including:
 - Any previously used in-water infrastructure must be inspected for nonindigenous or invasive species prior to relocation. If non-native species are detected, infrastructure must be decontaminated prior to relocation by removing it from the water for decontamination. It may be left “high and dry” for at least 30-days or thoroughly washed with hot, pressurized water prior to being re-submerged. After decontamination measures have been taken and prior to deployment, infrastructure should be surveyed to ensure decontamination efforts were effective. Contact the Invasive Species Coordinator at (907) 465-6183 for more details.

5. This operation permit provides for culture of specific macroalgae (Sugar kelp, *Saccharina latissima*, Ribbon or winged kelp, *Alaria marginata*,) using seedstock of these specific macroalgae obtained from a permitted hatchery in the state. Managed cultivation of these macroalgae will be limited to suspended culture and not include any on-bottom culture.
6. To minimize the risk of genetic or disease impacts on wild populations, hatchery-cultivated macroalgae seedstock can only be transported for out planting within 50 km (by water) of the broodstock (parent) collection site. If applying for a stock transport permit for macroalgae, the permit holder must provide with the permit request the following items before seed transport from a hatchery [to an aquatic farm] will be considered by the department:
 - a. identification of species to be transported;
 - b. a map of the collection sites and the outplanting site and distance in km between the sites; and
 - c. a table of collection location coordinates and number of cultured broodstock used to produce the seedstock progeny.
7. To minimize loss of adaptive potential within cultured broodstock, offspring destined for out planting must be derived from wild broodstock consisting of ≥ 50 unrelated individuals. While the mechanics of culture will largely dictate broodstock size, this number will retard the short-term loss of adaptive potential. Parental plants should be collected from dispersed locations along a shoreline to reduce the chances of sampling related individual plants.
8. To maintain the health of macroalgae beds, efforts should be made by the collector(s) to take the following precautions while collecting to prevent localized depletions:
 - a. Collect sori rather than removing whole plants, unless collecting for initial identification purposes;
 - b. collect no more than 10% from any given patch, bed, group, cluster or aggregation depending on the genus of macroalgae; and
 - c. spread out the collection sites within the area.
9. The permit holder, working in cooperation with a permitted hatchery issued the stock acquisition and transport permit for macroalgae, will provide the department's Gene Conservation Laboratory with small tissue samples from 60 individuals (or all individuals collected if less than 60 are collected under the permit) of each species for genetic analyses. Samples are to be representative of all collection sites within the approved acquisition area. Contact Judy Berger (judy.berger@alaska.gov or (907) 267-2175), or Chris Habicht (chris.habicht@alaska.gov or (907) 261-2169), for a collection kit that includes directions and sample materials.
10. The permit holder will implement best management practices to reduce impacts to marine mammals including the following:

- a. regular maintenance of farm structures (i.e. keeping lines secured and anchor wraps under tension);
 - b. ensuring waste material and debris are collected and disposed of correctly;
 - c. using caution when operating vessels; and
 - d. directing aquatic farm workers to avoid interacting with or feeding marine mammals.
11. Any marine mammal entanglements should be immediately reported to National Marine Fisheries Service Alaska 24 hr. Stranding Hotline (phone 877. 925.7773) and the department aquatic farming coordinator (phone 907.465.6150 and dfg.dcf.aquaticfarming@alaska.gov).
12. To reduce disturbances to harbor seals that are hauled-out onshore of any recognized harbor seal haulout, vessels used by the aquatic farming operation should remain a minimum of 500 meters (1640 feet) offshore in these areas and maintain a 457 meter (1500-foot) minimum attitude when traveling by aircraft over haulouts without compromising safe navigation.
13. If approved, any advisories or mitigation steps recommended by NOAA Fisheries as part of the Section 7 consultation will be reviewed and considered for recommendation for our department authorization.

B. Aquatic Farm Operation Permit Conditions

1. The permit holder will improve productivity of the species intended for culture according to the operation and development plan. (5 AAC 41.250(a)(1))
 - If modifications need to be made to the plan over the duration of this permit, an amendment request to update the operation and development plan, and the revised plan, must be submitted to the department for review and approval.
2. The permit holder will limit an aquatic farm or hatchery to the culture of species approved by the department. (5 AAC 41.250(a)(2))
3. The permit holder may not store, or otherwise possess, animals of the same species being cultured that have been commercially or recreationally harvested, unless the commercially or recreationally harvested animals are clearly separated from cultured species, labeled, and if applicable, accompanied with a receipt of purchase. (5 AAC 41.250(a)(3))
4. The permit holder must prevent aquatic farm operations from significantly altering an established use of fish and wildlife resources. (5 AAC 41.250(a)(5))
 - The project may not impede access to plants, fish, and wildlife resources, and shellfish other than the species being cultured at the site to the extent that such access does not

disrupt the operation of the aquatic farm, disturb the species being cultured, or damage any of the shellfish aquatic farm culture equipment, facilities, or gear.

5. The permit holder must conduct aquatic farm operations in a manner that avoids significantly affecting fish, wildlife, and their habitats in an adverse manner. (5 AAC 41.250(a)(6))
 - If herring spawn on the site, the herring eggs must not be disturbed or removed. All eggs must be allowed to hatch. The Department of Fish and Game shall be notified within five days of the initial discovery by the operator.
 - Activities at the site may not be conducted in eelgrass or kelp beds. Disturbance of tidelands must be kept to the minimum necessary to practicably accomplish the work. Entrance to and exit from the site must be made where there is no eelgrass.
 - No portion of the floating facilities may ground at any tidal stage, other than grounding for purposes of defouling. Defouling activities must be confined to areas designated for that purpose in attachments to this permit.
6. The permit holder must avoid adverse effects of predator exclusion methods on the environment and incidental species. (5 AAC 41.250(a)(7))
 - The permit holder is required to monitor all predator exclusion devices used in permitted operations for entanglement or harm of fish and wildlife and shall report all incidences to the department's aquatic farming coordinator. All project-related equipment and materials must be removed within 90 days of cessation of activities. Careful monitoring of predator exclusion devices and removal of all farming equipment and structures at the conclusion of farming activities will minimize hazards to fish and wildlife transiting or inhabiting the site.
7. The permit holder must report all acquisitions of wild stock of the species intended for culture. (5 AAC 41.250 (a)(8))
8. The permit holder will report observations of nonnative or exotic species occurring on the aquatic farm site. (5 AAC 41.250(a)(9))
9. If the commissioner determines that the holder of an aquatic farm or hatchery operation permit is not complying with the permit conditions, or is not in compliance with the provisions of AS 16.40.100 - 16.40.199 or 5 AAC 41.200 - 5 AAC 41.400, the commissioner will notify the permit holder in writing of the noncompliance. Within 30 days after the date of the notification, the permit holder shall provide the commissioner with a plan to correct the noncompliance. If the commissioner approves the plan to correct the noncompliance, the department will notify the permit holder of the approval and will provide the permit holder 90 days after the date of that notification to implement the plan to comply with the permit conditions. If the permit holder does not comply with the permit conditions within 90 days after the date of the notification, the commissioner may revoke the permit. (5 AAC 41.250(c))

Thank you for the opportunity to provide comments on this aquatic farm proposal. If you have any questions, please contact me at (907) 465-6150.

Sincerely,



Cynthia Pring-Ham
Aquatic Farming Coordinator

Enclosures: Project Description
 Operation and Development Plans

ecc: Garold V. Pryor, Aquaculture Section Chief, ADF&G, Juneau
 Peter Bangs, Assistant Director, ADF&G, Juneau
 Brian Delay, Rainy Dawn Fisheries, Juneau
 Dan Lesh, Rainy Dawn Fisheries, Juneau
 Brock Meredith, DIPAC, Juneau
 Katie Harms, DIPAC, Juneau
 Eric Prestegard, DIPAC, Juneau



Douglas Island Pink and Chum, Inc.

2697 Channel Drive • Juneau, Alaska 99801

(907) 463-5114 • www.dipac.net

March 20, 2020

Flip Pryor, Aquaculture Section Chief
State of Alaska
Department of Fish and Game
Division of Commercial Fisheries
1255 W. 8th Street
P.O. Box 115526
Juneau, AK 99811-5526

Dear Flip:

Since 2014 Douglas Island Pink and Chum, Inc. (DIPAC) has leased from the State of Alaska an approximately 2.1-acre tideland parcel (Tideland Permit LAS 29306) at Lena Cove (approximately mile-16 Glacier Highway, north of Juneau) with which to annually install and operate a saltwater Chinook salmon rearing and release site. The objective of the project is to provide approximately 2,400 additional returning adult Chinook salmon annually to the fisheries of Northern Southeast Alaska to help mitigate the impacts of reduced wild stock harvest mandated by the revised Pacific Salmon Treaty. The primary goal is to disperse the Chinook sport fishing effort and to increase the catch rate of this species in the Juneau area. An ancillary benefit from this hatchery production increase will be that more Chinook adults will be available to the commercial troll fisheries in the region. Returns to date from this project exceed 6,300 adult Chinook and has indeed contributed significantly to both sport and commercial user groups.

In looking at the site development plan for a proposed aquatic kelp farm in Lena Cove by Rainy Dawn Fisheries, DIPAC had some immediate concerns with the project's location and operating window. The original project plan showed an overlapping footprint between DIPAC's existing permitted footprint (particularly our northwest anchor) and that proposed for the kelp farm. The proposed operating season for the project, which ran through the month of April, likewise conflicted with DIPAC's permitted operating window of April 15 through June 30 of each year.

We spoke earlier today with Dan Lesh and Brian Delay of Rainy Dawn Fisheries and explained our reservations regarding their proposal. The conversation clarified the potential conflicts between the two operations and they agreed that either the location or timeline of their project will be amended to alleviate this overlap. Since this conversation, the "Recommended Site-specific Conditions for the kelp farm enterprise has been amended to stipulate: "Cease all aquatic farm activities onsite from April 14 to October 1 each year. In years when sport fishing for Chinook salmon is closed and there are no operational or scheduling conflicts with other permittees (i.e., DIPAC), the permittee may request an extension from the permit coordinator". With this revised timeline the potential conflict is, from DIPAC's perspective, resolved and we fully support the worthwhile efforts of Mr. Delay and Mr. Lesh at Lena Cove.

Sincerely,

Katie Harms
Executive Director
Douglas Island Pink and Chum, Inc.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
February 28, 2020

Brett Reynolds
Alaska Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region
500 W. 7th Ave., Suite 900C
Anchorage, AK 99501-3577

Dear Mr. Reynolds:

The National Marine Fisheries Service (NMFS) has reviewed the Agency Review Notice and project description from the State of Alaska Department of Natural Resources Division of Mining, Land and Water for ADL 233370. This project is a proposed 10-year aquatic farmsite lease of approximately 3.15 acres of state tide and submerged lands located in Lena Cove, Favorite Channel, Southeast Alaska, operated by Brian Delay (doing business as Rainy Dawn Fisheries). Mr. Delay has requested a lease for the installation of a submerged longline culture system using seeded line produced from a permitted hatchery for the commercial growth and harvest of three local species of macroalgae. Our comments and recommendations are outlined below.

Marine Mammal Considerations

The following marine mammals under NMFS's jurisdiction could be present in the proposed Lease Area:

Species		ESA Listed?	Critical Habitat in lease area?
Common Name	Scientific Name		
Western DPS Steller sea lion	<i>Eumetopias jubatus</i>	Endangered	No
Eastern DPS Steller sea lion	<i>Eumetopias jubatus</i>	No	No
Harbor seal	<i>Phoca vitulina</i>	No	No
Hawaii DPS humpback whale	<i>Megaptera novaeangliae</i>	No	Proposed
Mexico DPS humpback whale	<i>Megaptera novaeangliae</i>	Threatened	Proposed
Killer whale	<i>Orcinus orca</i>	No	No
Harbor porpoise	<i>Phocoena phocoena</i>	No	No
Dall's porpoise	<i>Phocoenoides dalli</i>	No	No
Minke whale	<i>Balaenoptera acutorostrata</i>	No	No
Northern elephant seal*	<i>Mirounga angustirostris</i>	No	No



Species		ESA Listed?	Critical Habitat in lease area?
Common Name	Scientific Name		
Northern fur seal*	<i>Callorhinus ursinus</i>	No	No
Pacific white-sided dolphin*	<i>Lagenorhynchus obliquidens</i>	No	No
Gray whale*	<i>Eschrichtius robustus</i>	No	No
Sperm whale*	<i>Physeter macrocephalus</i>	Endangered	No
*rare but possible occurrence in proposed lease area			

Interactions between marine mammals and aquatic farms result from an overlap between the spatial location of the facilities and the habitats, feeding areas, or migration routes of the marine mammals (Clement 2013). The potential effects of the proposed action on listed marine mammal species include entanglement, vessel interactions (collisions and noise), and habitat exclusion.

Entanglement

This project has the potential to increase risk of entanglement of marine mammals by increasing the number of lines in the water. Humpback whales are known to entangle in net and line within the water column and are particularly susceptible when gear co-occurs with foraging opportunities. Entanglements of Steller sea lions have been reported with trawl, gillnet, and longline fishing gear, marine debris, and commercial salmon hatchery nets (Muto et al. 2018).

Lines used to secure vessels, structures, and gear (e.g., anchor lines, longlines, mooring lines, and shore ties) and other associated aquatic farming gear (e.g., packing bands, mesh bags, other plastics) pose potential entanglement risks to humpback whales and Steller sea lions (Price et al. 2017).

Vessel Interactions

Vessels transiting to and from the farm site and working at the farm site may pose a risk for collisions with marine mammals. Vessels may also contribute to underwater noise in the lease area; however, NMFS notes that this area is regularly used by recreational vessels and the additional noise generated by vessels associated with the proposed farm would not appreciably increase the total noise in the area.

Habitat Exclusion

Habitat exclusion is another potential effect of nearshore aquatic farm facilities (Price et al. 2017). Structures such as longlines, work rafts, and cages may occupy habitats that would otherwise be utilized by wild species. Siting considerations for the construction of new aquatic farms should consider habitat areas of importance to listed species.

Site-specific considerations

Humpback whales are present in waters in and adjacent to Lena Cove throughout the year. Whale numbers peak in the fall, diminish into February then increase again beginning in March. During the summer months, whales in this area tend to feed on herring and krill in the deeper

waters of Stephens Passage and Southern Lynn Canal with foraging trips into shallow water to target other forage species. From March through early June, whales follow spawning herring along the shoreline, often feeding in the intertidal zone during high tide. Releases of hatchery-raised salmon from Amalga Harbor, Lena Cove, and Auke Bay also attract humpbacks into shallow water during the spring months. When adult herring become scarce during the winter, humpbacks concentrate their feeding efforts on juvenile herring at the heads of bays and nearshore. In past years, whales were seen feeding around the docks and pilings of Tee Harbor and Statter Harbor. There is a potential that the farm site will create suitable habitat for juvenile herring, attracting whales into the area. NMFS is concerned that humpback whales will overlap with aquatic farm operations in Lena Cove, increasing the potential for interactions such as entanglement and exclusion from feeding habitat.

Recommendations

NMFS recommends the following best management practices for aquatic farms to minimize interactions with marine mammals:

1. Choose a farm location that minimally overlaps with marine mammal important habitats or migration corridors.
2. Minimize the number of vertical lines.
3. Regularly maintain and monitor aquatic farm structures, keep lines secured, and keep lines tensioned under all tidal conditions.
4. All buoys will be marked and maintained with the aquatic farm's ADL number or other unique identifier. Markings must withstand the elements over time.
5. Grow lines and culture gear will be removed from the water when not in use.
6. Moorings and anchors will be inspected at minimum annually, and after storm events.
7. Waste materials, excess line, and other debris will be collected and disposed of properly.
8. Aquatic farm staff will not interact with or feed marine mammals.
9. A documented predator avoidance plan will be maintained that uses only benign, non-lethal deterrents (e.g., predator netting, increased net rigidity, electric fencing).
10. Acoustic deterrents and acoustic harassment devices will not be used.
11. Vessels will operate at slow speeds and with caution when transiting to the farm site and around the farm site.
12. Vessels will adhere to the Alaska Humpback Whale Approach Regulations when transiting to and from the project site (see 50 CFR §§ 216.18, 223.214, and 224.103(b)).
13. The permittee (or staff) will maintain a logbook of visits to the farm and gear inspections. The logbook will be made available to NMFS upon request.
14. Participation is encouraged in the Whale Alert program to report real-time sightings of whales while transiting in the waters of Alaska and to minimize the risk of vessel strikes (<https://alaskafisheries.noaa.gov/pr/whale-alert>).
15. Follow NMFS marine mammal viewing guidelines at <https://www.fisheries.noaa.gov/alaska/marine-life-viewing-guidelines/alaska-marine->

mammal-viewing-guidelines-and-regulations

16. If any marine mammal is observed entangled or otherwise directly interacting with the facility structures, the permittee (or staff) shall immediately report it to the NMFS Alaska 24 hr. Stranding Hotline: 877-925-7773.

If you have questions regarding the marine mammal information provided in this letter, please contact Julie Scheurer at Julie.scheurer@noaa.gov or (907) 586-7111.

Sincerely,



Jonathan M. Kurland
Assistant Regional Administrator
for Protected Resources

cc: Sue Goodglick sue.goodglick@alaska.gov
Cynthia Pring-Ham Cynthia.pring-ham@alaska.gov

References Cited

- Clement, D. 2013. Literature review of ecological effects of aquaculture. Chapter 4: Effects on marine mammals. Ministry for Primary Industries, Wellington, New Zealand.
- Muto, M. M., V. T. Helker, R. P. Angliss, B. A. Allen, P. L. Boveng, J. M. Breiwick, M. F. Cameron, P. J. Clapham, S. P. Dahle, M. E. Dahlheim, B. S. Fadely, M. C. Ferguson, L. W. Fritz, R. C. Hobbs, Y. V. Ivashchenko, A. S. Kennedy, J. M. London, S. A. Mizroch, R. R. Ream, E. L. Richmond, K. E. W. Shelden, R. G. Towell, P. R. Wade, J. M. Waite, and A. N. Zerbini. 2018. Alaska marine mammal stock assessments, 2017. NOAA Tech. Memo. NMFS-AFSC-378, Alaska Fisheries Science Center 7600 Sand Point Way N.E. Seattle, WA 98115.
- Price, C. S., E. Keane, D. Morin, C. Vaccaro, D. Bean, and J. A. Morris. 2017. Protected species and marine aquaculture interactions. NOAA Technical Memorandum NOS NCCOS 211:85 pp.



File Code: 5500; 2700

Date: April 14, 2020

Brent Reynolds
Natural Resource Specialist II
Department of Natural Resources, Aquatic Farm Program
550 W. 7th Ave., Suite 900C
Anchorage, Alaska

Sent via email to brent.reynolds@alaska.gov

Dear Mr. Reynolds:

Thank you for the opportunity to review the Alaska Department of Natural Resources (DNR) application for an aquatic farm lease ADL 233370. The applicant proposes to lease 3.15 acres of state-owned tide and submerged land located in Lena Cove, adjacent to National Forest System lands, for the cultivation of kelp. The Forest Service cooperates with state and federal agencies to meet industry and public needs for aquatic farming programs and ensure compatibility with other resources and activities.

The Forest Service operates the Lena Beach Picnic Area at the head of Lena Cove. The Picnic Area is roughly 30 acres in size and is the only public land along the densely populated shores of Lena Cove. Over the last few years the Forest Service, Federal Highway Administration and US Fish and Wildlife Service have cooperatively invested around \$1.7 million in site renovation. Renovations include three new outhouses, five new shelters including a fully accessible group shelter, new walkways and paving the road and parking area, replacing the Fish Creek culvert with a bridge, removing a fish ladder and reconstructing a natural stream channel at the beach.

Lena Beach has been in continuous use as a public gathering place since being developed in the 1950s and is presently used by the public every day of the year. There is no commercial use of Lena Beach Picnic Area permitted including access for launching boats for commercial purposes.

In addition to picnicking, the public uses the Lena Beach Picnic Area for walks, access for diving, launching kayaks, surfing, photography, and dog walking. In recent years the Alaska Department of Fish and Game has been stocking the cove with king salmon, and a very popular shore side and boat-based fishing effort has sprung up.

After careful thought and given the diversity of year-round uses at the Lena Beach Picnic Area and the limited public land with beach access in Lena Cove the Forest Service feels this would not be a suitable location to establish an aquatic farm. Although conflicts with existing uses may not be directly evident, this operation would influence recreational use, boat traffic, fishing efforts, and would affect aesthetics.



From experience with similar developments adjacent to National Forest System lands, we anticipate there may be a request for upland use. Please include a note in the DNR preliminary decision that any use of National Forest System lands would require submittal of an application to the Forest Service and a screening and environmental analysis process to determine if the use would be authorized.

I appreciate your consideration of our concerns as you review the application.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Orr", with a stylized, cursive script.

BRAD ORR
District Ranger

cc: Melissa Dinsmore, Sheila Jacobson

AQUATIC FARM SITING RESTRICTIONS

The following ADNR and ADFG farm siting restrictions are offered to assist the applicant in selecting an aquatic farm site that has the **best chance** for approval. The restrictions are not meant to be all inclusive and are in addition to any prohibitions or mitigating requirements that may be included in a district coastal management plan, a state land use plan, municipal or borough land use plans and/or local ordinances or zoning requirements. If your project is located within an area subject to plans/restrictions, **you should consult the appropriate document and/or agency before you submit your application.** A short phone call may alert you to circumstances with a particular site that may not be ideal for locating an aquatic farm. For instance, siting aquatic farm facilities may be more difficult on tidelands designated in an ADNR land management plan for log transfer or storage, anchorage, recreation, and/or settlement. It may be more difficult to site a farm not only because of potential conflicts with existing uses at the site, but also due to water quality degradation from those uses.

If an application is determined to be within an Unacceptable Area, it will be rejected. The responsible resource agency is listed in parentheses after each item.

1. **Seabird Colonies:** No aquatic farms or facilities will be sited within one mile of seabird colonies. (ADFG)
2. **Eagle Nests:** The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) prohibits molesting or disturbing bald and golden eagles, their nests, eggs or young. The U.S. Fish and Wildlife service recommends that aquatic farms or facilities be sited at least 330 feet from eagle nest trees to reduce the likelihood of disturbance. (ADFG)
3. **Sea Lion Haul-outs and Rookeries:** No aquatic farms or facilities will be sited within one mile of sea lion haul-outs or 3 miles of rookeries. (NMFS)
4. **Seal Haul-outs and Pupping Areas:** No aquatic farms or facilities will be sited within one mile of seal haul-outs or pupping areas. (NMFS)
5. **Anadromous Fish Streams:** No aquatic farms or facilities will be sited within 300 feet of anadromous fish streams. (ADFG)

Applicants are encouraged to contact resource agencies for current information on species and identifying the location of habitat types that fall in Unacceptable and Sensitive categories. The Catalog of Waters Important to the Spawning, Rearing or Migration of Anadromous Fishes (Anadromous Waters Catalog) and the map atlas to that catalog show documented anadromous fish streams and are available for viewing at all ADFG offices. You may also view this information at the following website: <http://www.sf.adfg.state.ak.us/SARR/FishDistrib/anadcat.cfm>

6. **Sites with Significant Existing Geoduck Biomass Areas:** No aquatic farms or facilities will be sited in areas where the ADFG has determined by conducting a biomass survey that significant geoduck biomass exists. Significant populations are equal to or more than 12,000 lbs of geoducks on a six acre farm site or equal to or more than an average of 2,000 lbs per acre of an aquatic farm site. (ADFG)

7. **Certain Legislatively Designated Special Areas:** No aquatic farms or facilities are allowed within the following legislatively designated areas:

- State game refuges under AS 16.20.010-080, 5 AAC 95;
- State critical habitat areas under AS 16.20.500-690, 5 AAC 95;
- State game sanctuaries under AS 16.20.090-162, 5 AAC 95; and
- State parks and marine parks under AS 41.21,

Excepting Fox River Flats Critical Habitat Area under AS 16.20.580 and Kachemak Bay Critical Habitat Area under AS 16.20.590, which allow aquatic farms and/or facilities but limited to suspended culture only, per 5 AAC 95.300.

In addition to the areas listed above, applications will not be accepted in the following areas:

- * **Peterson Bay, China Poot Bay, Bear Cove, Southcentral Alaska** - Prohibited in ADFG Kachemak Bay & Fox River Flats Special Use Area Critical Habitat Management Plan.
- * **Day Harbor, Southcentral Alaska** – Prohibited due to an existing seal haul-out area.
- * **Pt. Couverden, Southeast Alaska** – Area identified in the Northern Southeast Area Plan as recommended for inclusion in the state park system. (Application previously denied by ADNR, Division of Mining, Land & Water; same application was found inconsistent with the standards of the Alaska Coastal Management Program (ACMP) by the Office of Project Management and Permitting)
- * **Commercial Geoduck Harvest Areas:** No aquatic farms or facilities will be sited in geoduck commercial harvest areas or those areas that have been selected for future commercial geoduck harvests.

C. GROWING AREA CLASSIFICATION CRITERIA (ADEC)

You must obtain a growing area classification and either a harvester permit or a shellstock shipper permit from ADEC in order to sell an aquatic farm product. As stated previously, a shellfish growing area is closed to shellfish harvesting for commercial sales unless the area has been classified by the ADEC. Without an ADEC classification of your farm site area, you cannot sell your product. The ADEC will use the following items to determine whether your growing area can be classified. You should consider these items before completing the aquatic farm application. If you have any questions about the classification process or requirements, you should contact ADEC directly at the number noted below.

1. Commercial fishing or personal use fishing/hunting in the immediate area or close proximity to the growing area may cause conditions that will prevent classification of the growing area. Avoid siting facilities near hatcheries.
2. Areas used by boats for recreation, moorage and anchorage, or in close proximity to a proposed growing area may cause conditions that will prevent classification of the growing area.
3. No airplane or boat fueling should occur at the growing area site.

5. Facilities should not be sited in areas with waste discharge. Caretaker housing and boats must be a minimum of 300 feet from the boundary of a growing area if sewage is discharged. A sewage disposal system adequate to protect shellfish from contamination will be required for any caretaker facilities associated with an aquatic farm operation.
6. All pets and other animals must be excluded from the growing area structures. Waste from these animals must be prevented from discharging into the growing area.
7. Large wildlife populations in the area and/or the presence of anadromous streams may cause conditions that will affect classification of the growing area by limiting harvest times.
8. An upland area where cabins and homes exist may cause conditions that will prevent classification of the growing area. Note that previously existing facilities may have septic tanks that have been permitted by ADEC with in-water discharge of sewage, which may prevent classification of the growing area. If this condition exists, contact ADEC-Environmental Health for consultation.

For additional information and assistance regarding these health classification guidelines, please contact the ADEC Shellfish Program Coordinator, Division of Environmental Health, at 907-269-7638.

D. SENSITIVE AREAS AS SET FORTH BY THE ADNR, ADFG and ADEC

Each of the following sensitive areas has a set of concerns that, while not insurmountable, must be considered when choosing an aquatic farm site. Applicants who apply in one or more of these sensitive areas should contact the responsible resource agency to determine what issues must be addressed in their application. The applicant must then address the applicable sensitive issue to demonstrate that the proposed farm is feasible and can be sited in the area without significant impact.

1. **Herring Spawning Areas** (ADFG)
2. **Shorebird Concentration Areas** (ADFG)
3. **Waterfowl Concentration Areas** (ADFG)
4. **Sea Otter Concentration Areas** (ADFG)
5. **Shallow Areas - Less Than 40 Feet at MLW** (mean low water) utilizing suspended culture - certain shallow areas serve as nursery areas for fish, shellfish or aquatic plants (ADFG)
6. **Poor Current Circulation Areas** - currents may be too weak to disperse biological wastes (ADEC)
7. **Kelp and Eelgrass Beds** (ADFG)
8. **Black and Brown Bear Concentration Areas and Travel Corridors** (ADFG)
9. **Subsistence Harvest Areas** (ADFG)
10. **Recreational or Personal Use Harvest Areas** within or adjacent to:
 - Intensively used non-commercial hunting and fishing areas
 - Intensively used non-commercial harvest areas for fish and shellfish (ADFG)

11. **Commercial Harvest Areas** within or adjacent to:
 - Intensive commercial fish harvest areas
 - Purse seine hook offs (ADFG)
12. **Heavily Used Anchorages** of local or regional importance (ADFG, Sport Fisheries Division; ADNR, Mining, Land and Water Division – management plans, and/or the applicable U.S. Coast Pilot)
13. **Floatplane Access Areas** (ADEC; ADNR)
14. **Oiled Areas** as depicted on maps as lightly, moderately or heavily oiled in Southcentral coastal waters from the 1989 oil spill (Alaska Resources Library and Information Services - ARLIS)

Upland management intent of parcels subject to Exxon-Valdez Oil Spill Purchase Agreements and/or federal conservation units such as national parks, forests, and wildlife refuges, adjacent to state tide and submerged land, will be considered when processing an application for aquatic farming, in accordance with 11 AAC 63.050(b)(4). The ADNR will consult with the upland manager when determining compatibility of activities.

Prince William Sound applicants are cautioned that the issuance of state authorizations will not guarantee that aquatic farms can operate free of impact from the 1989 Exxon-Valdez oil spill. The state makes no warranty, expressed or implied, nor assumes any liability, whatsoever, regarding the environmental quality of the proposed site. This includes, without limitation, the presence of hydrocarbons now or in the future, the capability of the shellfish growing site, the product to be free from the effects of the 1989 oil spill, and/or meeting the requirements under the National Shellfish Sanitation Program. If you have questions regarding a specific area, please contact the Pipeline Corridor Regional Office at 907-271-4336 for assistance or you may visit the Exxon Valdez Oil Spill Trustee Council's website at: <http://www.evostc.state.ak.us/>

15. **Hatchery Harvest Areas:** Aquatic farms or facilities sited within Special Harvest Areas (SHA) or Terminal Harvest Areas (THA) must have the approval of the hatchery operator/manager. Applications for sites within SHAs and THAs will be rejected unless the applicant requests, and receives, written permission from the Private Non-Profit (PNP) hatchery operator and the major fishing group(s) using the area. (ADFG)

E. AREAS WHERE PREVIOUS APPLICATIONS HAVE BEEN DENIED

Applications were received during previous openings in the following locations and denied due to land use conflicts. If you wish to apply in any of the following areas you are encouraged to contact the responsible agency to determine what issues need to be addressed in your application. The reasons for application denial are included for each site.

Southeast Alaska

- **Dunbar Inlet, Sukkwan Island** - Project found inconsistent with ACMP. Conflicts found with: existing subsistence use of clams; designation of Area Meriting Special Attention in the Hydaburg Coastal Management Plan; and the Southwest Prince of Wales Island Area Plan; and the proximity to anadromous streams in the area. (ADFG/ADNR/ACMP)
- **William Henry Bay** - Conflicts found with the heavily used anchorage at the project

- location; site identified by ADFG for salmon release; state selection of the area to be used for the purposes of community expansion and a possible state ferry terminal site. (ADNR/ADFG)
- **Stedman Cove** - Area found to be at capacity with one existing suspended culture farm site. (ADNR)
 - **Idaho Inlet** - Project found inconsistent with ACMP. Conflicts found with clam harvest from Elfin Cove residents; previous applicants required upland facilities – USFS denied upland Special Area Permit. Applicants did not provide an adequate development plan with their application. (ADNR/ACMP)
 - **North Bight, Neka Bay** - Conflicts found with existing subsistence uses and traditional uses of recreation, hunting, and safe anchorage. (ADNR/ADFG)
 - **Van Sant Cove** - Conflicts found with existing uses of clam harvest (application was for on-bottom culture only). (ADFG/ADNR)
 - **Clam Cove** - Conflicts found with existing uses of clam harvest (on-bottom culture only). (ADNR/ADFG)
 - **Port Santa Cruz** – Application from 1999 opening was found incompatible with traditional and existing uses of Aguada Cove as an anchorage; no mitigation measures were identified that would make the proposal compatible. (Application for on-bottom farming of geoduck denied by the ADNR, Division of Mining, Land & Water; decision appealed to Commissioner of ADNR – Commissioner upheld the original decision). (ADNR)
 - **Coffman Cove** - Conflicts with gear and gillnet commercial fishery use and anchorage (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **South McHenry** - Conflicts with existing sea cucumber commercial fishery use and seal haul- outs (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Ruth** - Conflicts with existing geoduck commercial dive fishery use (2005 application for on- bottom culture only). (ADNR/ADFG)
 - **Onslow Island** - Conflicts with geoduck commercial dive fishery (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **North McHenry** - Conflicts with existing sea cucumber commercial dive fishery, anchorage and seal haul out (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **South Etolin** - Conflicts with existing geoduck commercial dive fishery use (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Mosman Burnett** - Conflicts with anchorage and seal haul out (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Kassan** - Inclusion within state park (2005 application for on-bottom culture only). (DNR/ ADFG)
 - **Hessa Island** - Conflicts with anchorages and existing geoduck commercial dive fishery use (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Deer Island** - Conflicts with anchorages and sea lion haul outs (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Coronation Island** - Conflicts with anchorages and sea lion haul outs (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Corner Bay** - Conflicts with anchorages and seal haul outs (2005 application for on-bottom culture only). (ADNR/ADFG).
 - **Kasiana Island/Sitka Sound** - Conflicts with herring subsistence fishery use (2005 application for on-bottom culture only). (ADNR/ADFG)
 - **Hayward Strait/Eastern Channel** - Conflicts with existing sea cucumber commercial fishery use (2005 application for on-bottom culture only). (ADNR/ADFG)

Southcentral Alaska

- **Paradise Cove** – Area identified from 2001 application process to be limited in anchorage capacity for smaller recreational vessels. (Application for suspended farming of oysters denied by the ADNR.) (ADNR)

Upland management intent of parcels subject to Exxon-Valdez Oil Spill Purchase Agreements and/or federal conservation units such as national parks, forests, and wildlife refuges, adjacent to state tide and submerged land, will be considered when processing an application for aquatic farming, in accordance with 11 AAC 63.050(b)(4). The ADNR will consult with the upland manager when determining compatibility of activities.

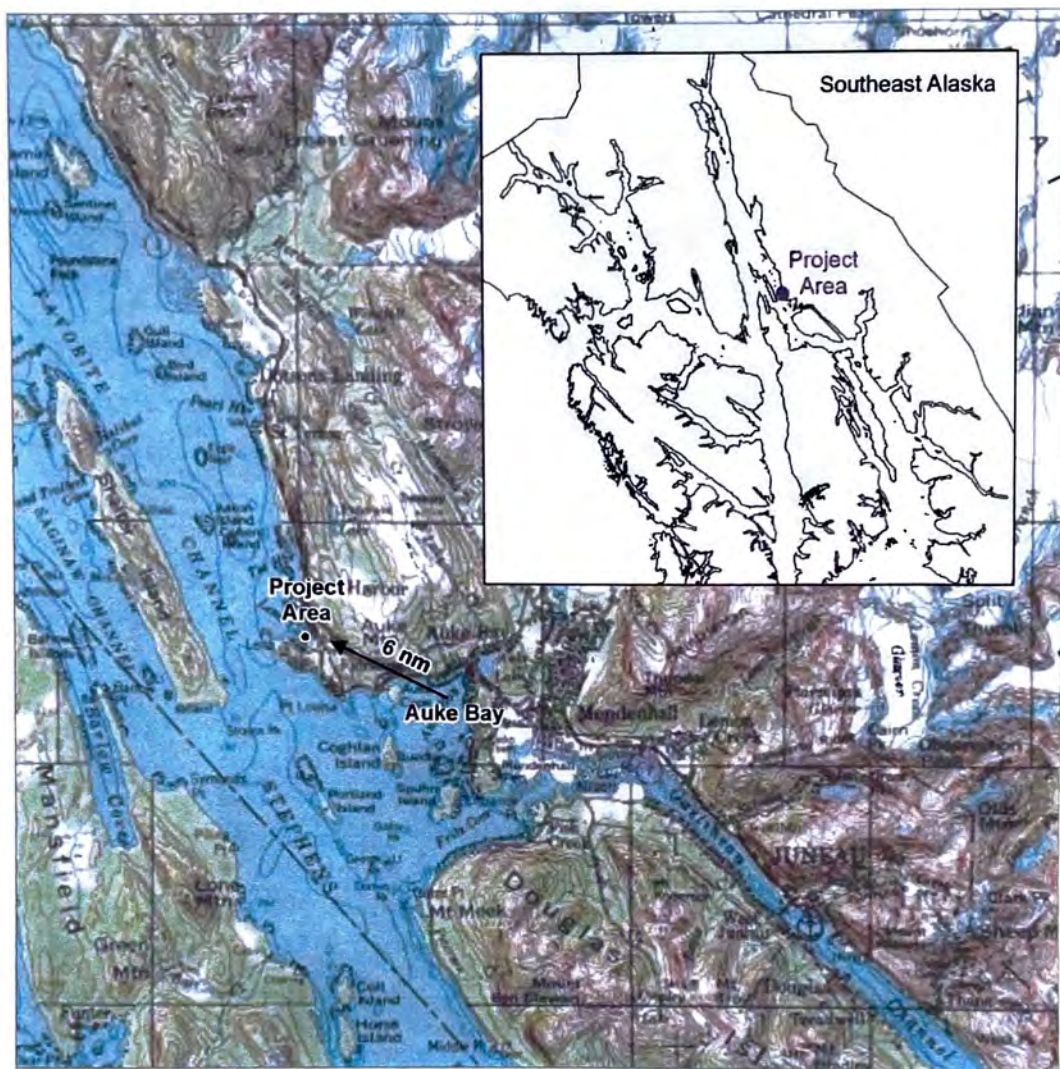


FIGURE 1. General location map
 Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
 Lena Cove - Favorite Channel, SE Alaska

12/28/2018

USGS Juneau, Alaska - Canada 1:250,000

0 5 10 20 Miles



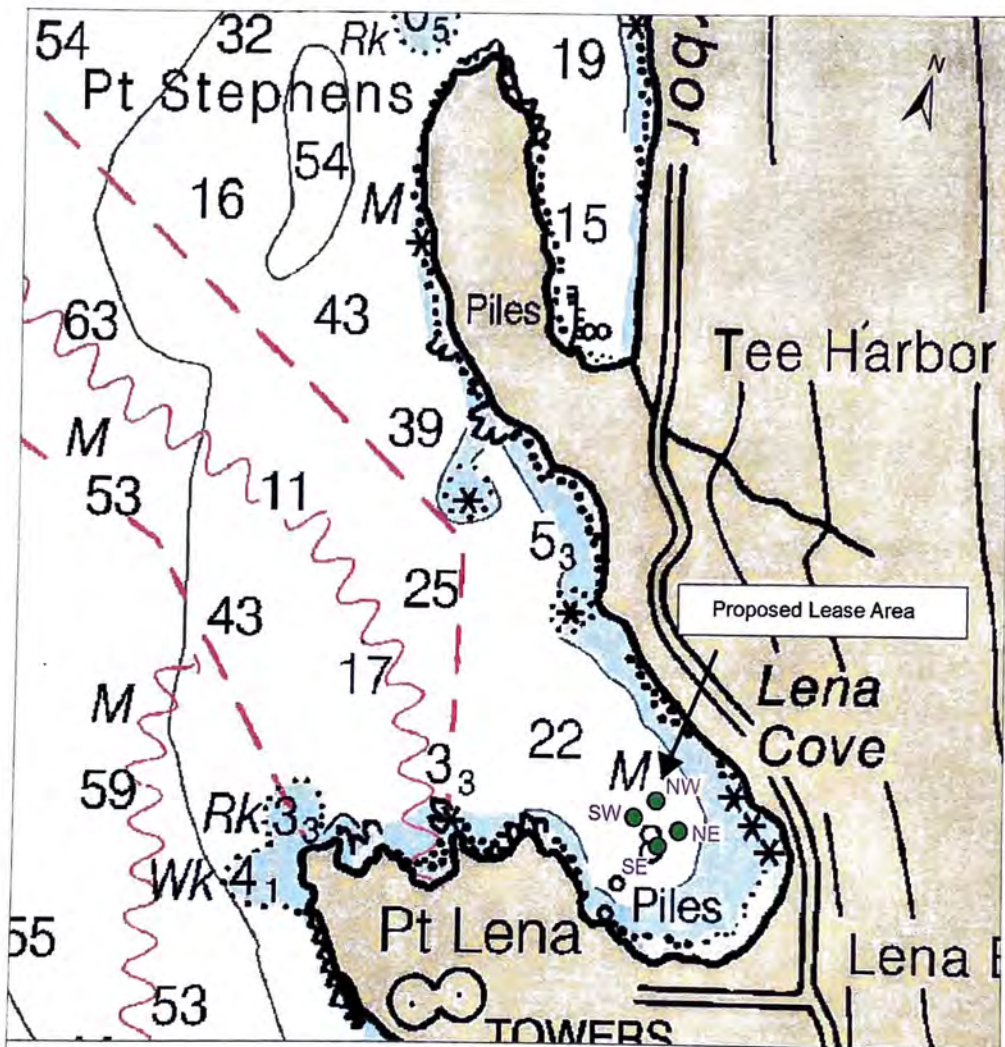


FIGURE 2. Detailed location map Parcel 1
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

12/28/2018

NOAA CHART 17316

0 0.25 0.5 1 Miles

PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: approx. 430'x320'

Coordinates

SW Corner	58° 23.811'N	-134° 45.462'W
SE Corner	58° 23.758'N	-134° 45.374'W
NE Corner	58° 23.787'N	-134° 45.299'W
NW Corner	58° 23.842'N	-134° 45.381'W



FIGURE 3. Aquatic Farm Site Plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 0.25 0.5 1 Miles



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)



FIGURE 4. Detailed aquatic site plan
Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

GOOGLE EARTH IMAGERY

0 320 640 960 1280 feet



PROJECT AREA

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

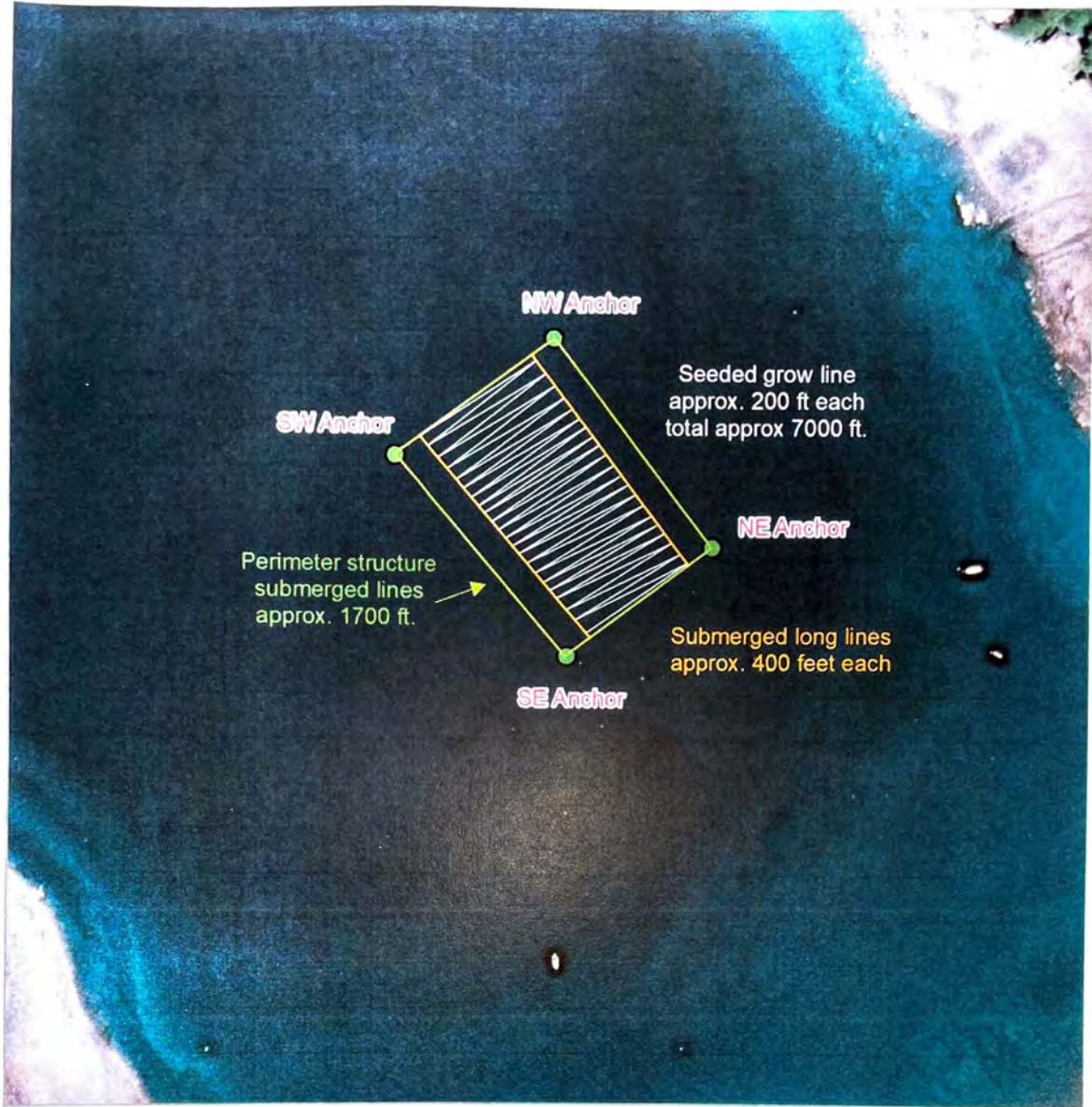


FIGURE 4.1. Aquatic Farm Site Plan/ in-water structure PROJECT AREA

Lena Cove Aquatic Farm, Brian Delay / Dan Lesh
Lena Cove - Favorite Channel, SE Alaska

Updated 10/09/2019

Parcel 1 Submerged Kelp Longline grow area
Area: 3.15 acres
Dimensions: 430'x320'
See appendix for upland property owners

Coordinates

SW Corner 58° 23.811'N -134° 45.462'W (61'MLLW)
SE Corner 58° 23.758'N -134° 45.374'W (30'MLLW)
NE Corner 58° 23.787'N -134° 45.299'W (21'MLLW)
NW Corner 58° 23.842'N -134° 45.381'W (52'MLLW)

GOOGLE EARTH IMAGERY

0 0.05 0.1 0.2 Miles



Figure S.1 Aquatic Farm - Boundary Corners
Line Lengths and Dimensions
Plan View
Catenary Matrix Design
Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
Lena Cove, Favorite Channel, SE Alaska
December 27, 2018, Updated 10/09/19

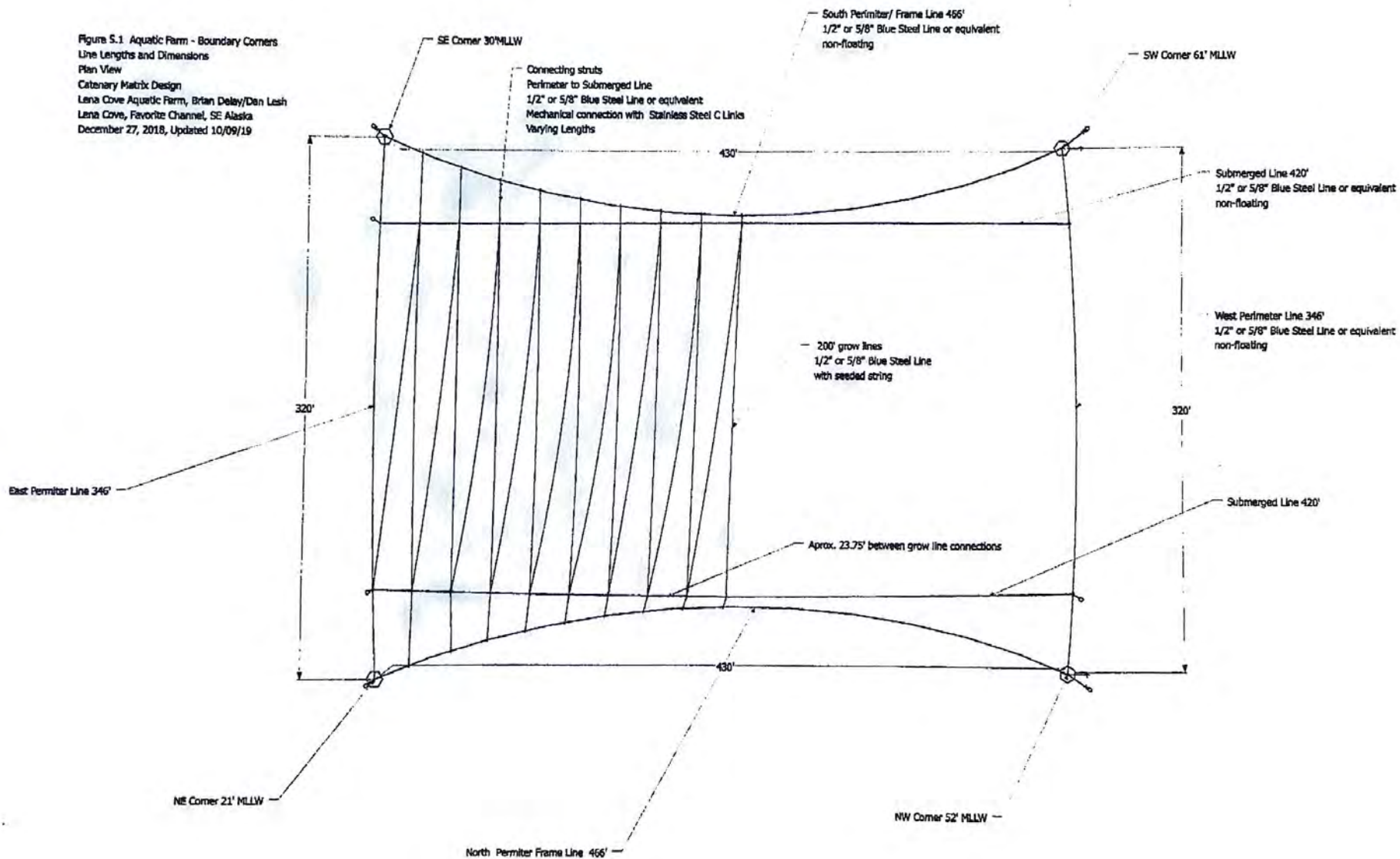


Figure 5.2 Aquatic Farm - Anchor Tackle and Mooring Floats Configuration
Plan View
Catenary Matrix Design
Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
Lena Cove, Favorite Channel, SE Alaska
December 27, 2018, Updated 10/09/19

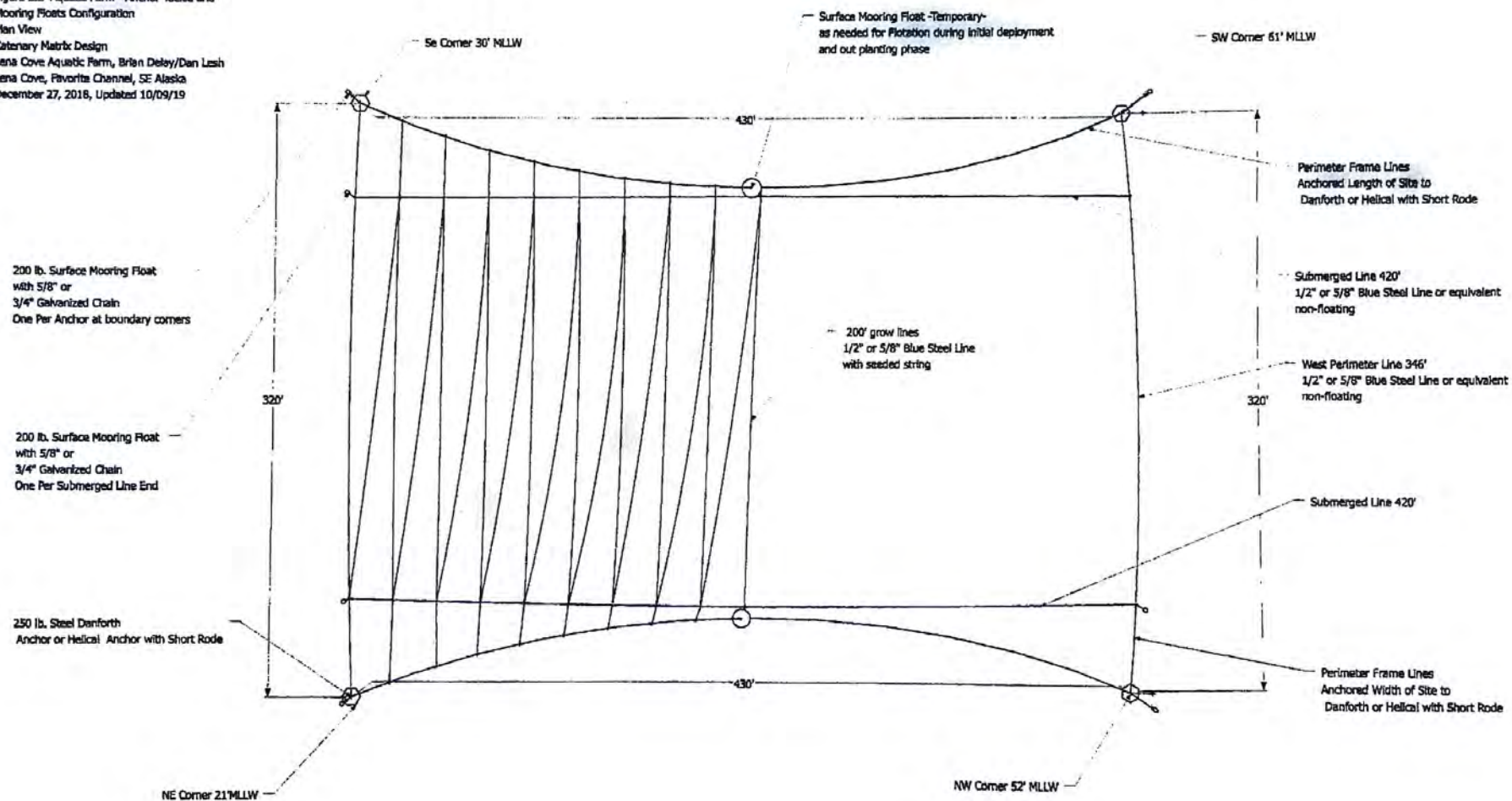


Figure 5.3 Aquatic Farm - Anchor Tackle and Mooring Floats Configuration
 ISO View
 Seabed and Water Surface Guidelines
 Catenary Matrix Design
 Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
 Lena Cove, Favorite Channel, SE Alaska
 December 27, 2018, Updated 10/09/19

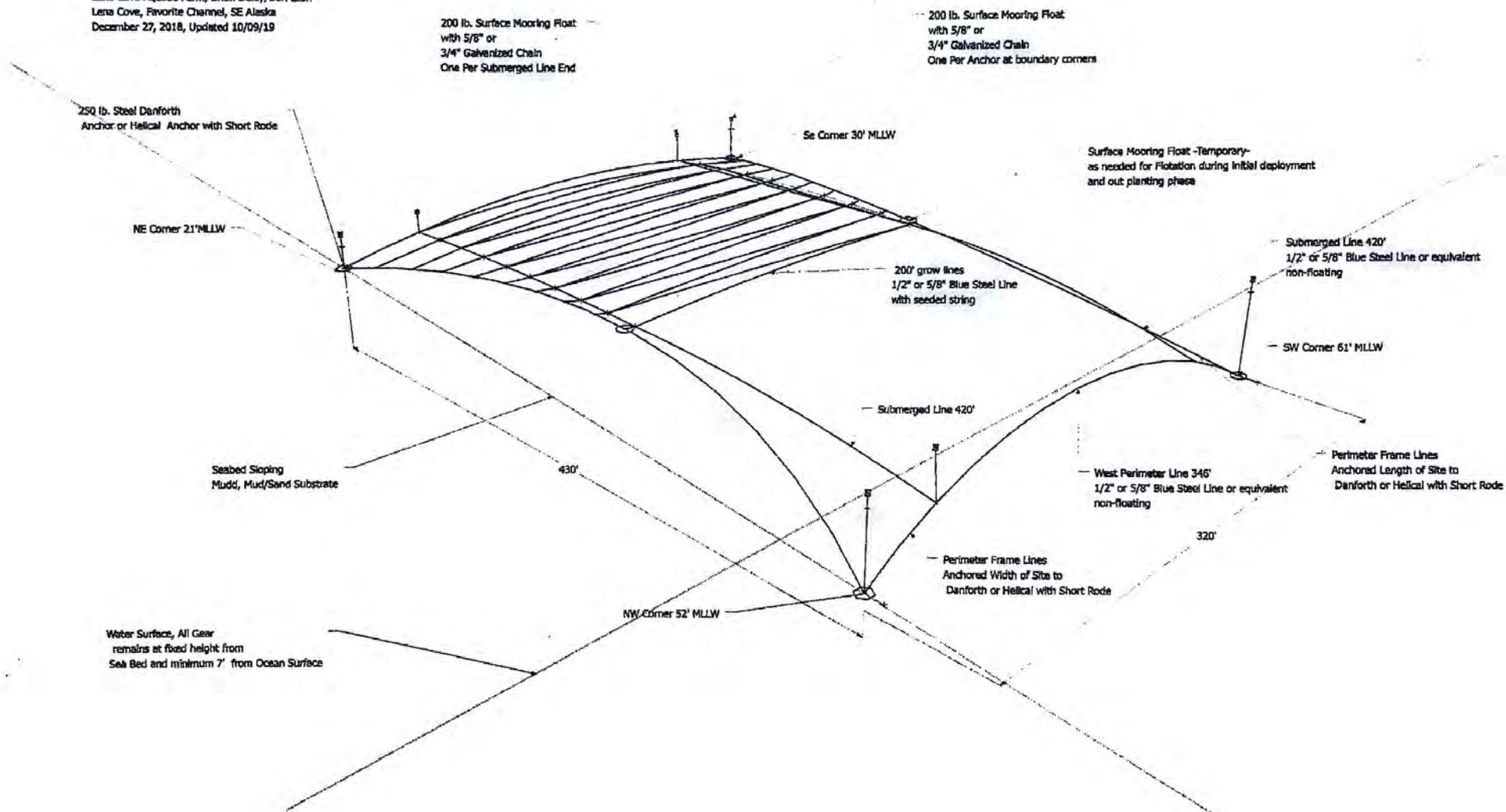


Figure 5.4 Aquatic Farm - Configuration
 ISO View-Not to scale
 Distances from Seabed and Water Surface
 at Extreme Low Low Water and MLLW
 Catenary Matrix Design
 Lena Cove Aquatic Farm, Brian Delay/Dan Lesh
 Lena Cove, Favorite Channel, SE Alaska
 December 27, 2018, Updated 10/09/19

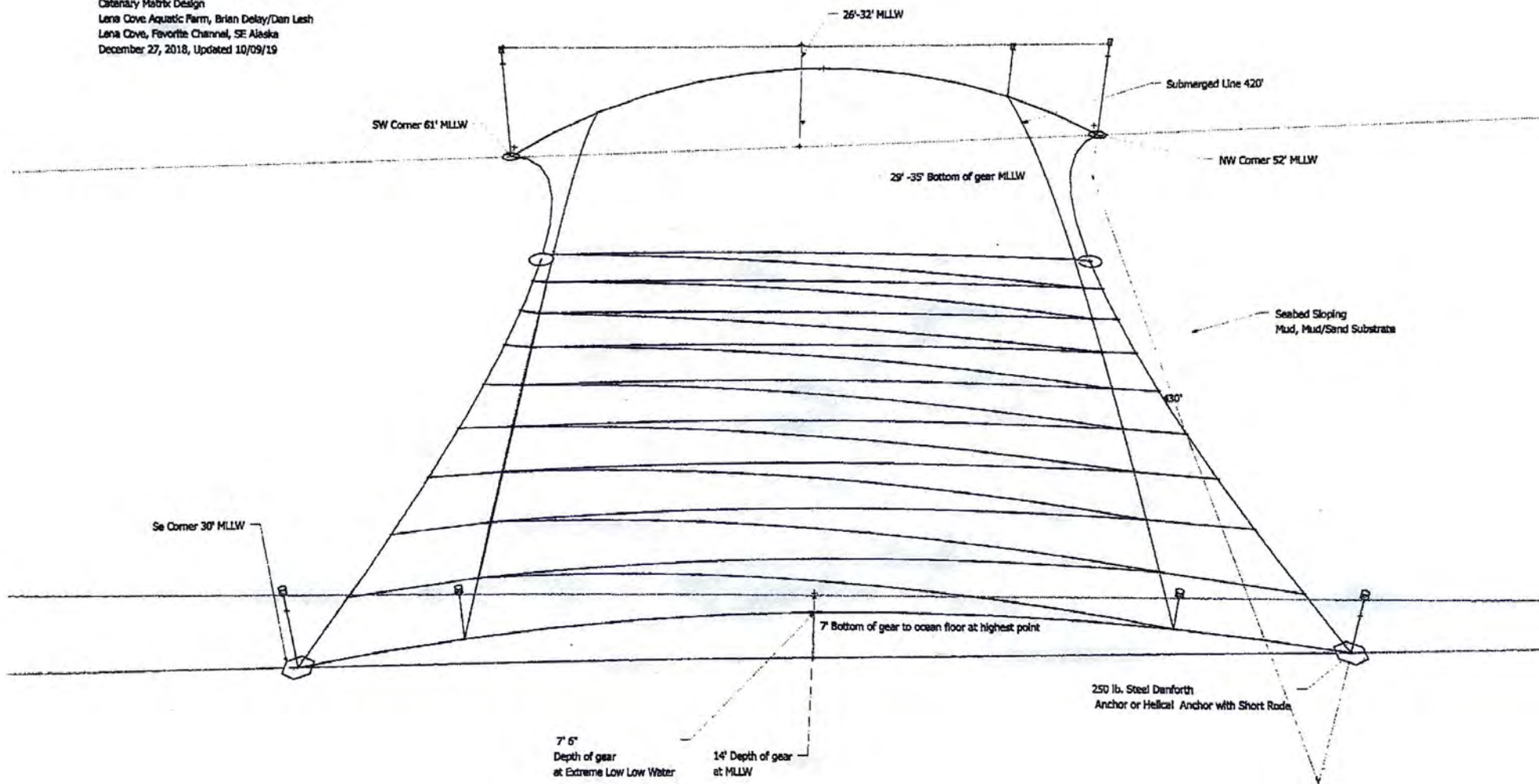


TABLE 1. COMPARISON OF BREAKOUT FORCE FOR MOORING ANCHORS

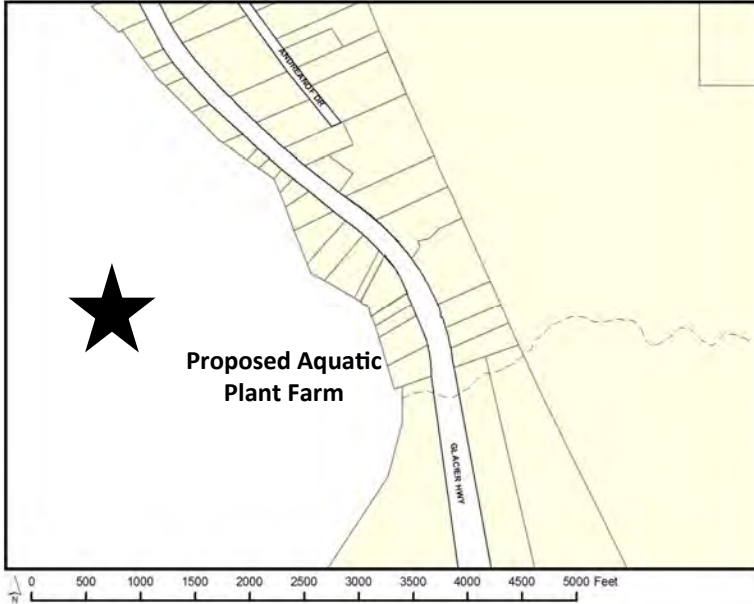


	CONCRETE BLOCKS					MUSHROOMS			DOR-MOR	HELICALS
Test	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	Sarasota Sailing Squadron	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	BoatU.S. Vineyard Haven Sarasota Sailing Squadron
Anchor dry weight	8,000 lbs.	6,000 lbs.	3,000 lbs.	2,000 lbs.	1,500 lbs.	500 lbs.	500 lbs.	350 lbs.	650 lbs.	Various sizes
Breakout force	4,000 lbs.	3,200 lbs.	2,100 lbs.	800 lbs.	800 lbs.	1,200 lbs.	1,700 lbs.	2,000 lbs.	4,500 lbs.	10,000 - 20,800 lbs.
Holding Power*	0.5	0.5	0.7	0.4	0.5	2.4	3.4	5.7	6.9	

BoatU.S. – 1995 BoatU.S. Insurance pull-test conducted by BoatU.S., MIT, and *Cruising World* in Newport, RI
 Vineyard Haven – Test performed at Vineyard Haven, MA by Helix Moorings with harbor masters, marine writers, and BoatU.S. in attendance
 Sarasota Sailing Squadron – 2007 *Practical Sailor* test conducted at the Sarasota Sailing Squadron
 *Holding power is defined as breakout force/anchor dry weight and represents the pounds of force the mooring can hold per pound of anchor dry weight

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice



155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Conditional Use Permit for an aquatic plant farm in Lena Cove, Favorite Channel (approximate location).**

TIMELINE

Staff Report expected to be posted **Monday, August 16, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through August 2

Aug. 3 — noon, Aug. 23

HEARING DATE & TIME: 7:00 pm, August 24, 2021

August 25

Comments received during this period will be sent to the Planner, **Teri Camery**, to be included as an attachment in the staff report.

Comments received during this period will be sent to Commissioners to read in preparation for the hearing.

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/99517564301>. The Webinar ID is: 995 1756 4301. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

The results of the hearing will be posted online.

Phone: **(907)586-0715** ♦ Email: pc_comments@juneau.org
Mail: **Community Development, 155 S. Seward St, Juneau AK 99801**

Printed July 27, 2021

Case No.: USE2021 0007
Parcel No.: N/A
CBJ Parcel Viewer: <http://epv.juneau.org>

From: [Brian Delay](#)
To: [Teri Camery](#)
Subject: Public Notice Sign posted for Aquatic Plant Farm at Lena Cove
Date: Sunday, August 8, 2021 11:29:52 AM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello Teri, as you requested a photo of the posting as of August 8, 2021 at the corner of Pt Lena Loop Rd and Glacier Highway.

Regards, Brian



From: [Bizzarro, Caleb T \(DOT\)](#)
To: [Teri Camery](#)
Cc: [Heidemann, Marie E \(DOT\)](#)
Subject: DOT&PF SCR ROW Review of Lena Cove Kelp Farm Conditional Use Permit Application USE21-07
Date: Thursday, July 22, 2021 4:30:38 PM
Attachments: [APP_USE21-07.pdf](#)

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Good afternoon Teri,

DOT&PF SCR ROW initially reviewed ADL 233370 in February of 2020 and found no cause for objection. DOT&PF SCR ROW has reviewed this conditional use permit application submitted to CBJ and maintains its non-objection. We received no comments or objections from M&O, Design, Planning, and Environmental. Thank you for the opportunity to review and provide feedback.

Best Regards,

Caleb Bizzarro

Right Of Way Agent

Department of Transportation & Public Facilities

Southcoast Region Design & Engineering Services

Ph: (907) 465 4519

Email: caleb.bizzarro@alaska.gov

From: [Augat, Gretchen M \(DEC\)](#)
To: [Teri Camery](#)
Subject: RE: Agency Review request for Lena Cove Aquatic Plant Farm
Date: Friday, July 23, 2021 3:14:50 PM
Attachments: [APP_USE21-07.pdf](#)
[Agency Comments Form_DEC_Lena Cove.pdf](#)

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

The Alaska Department of Environmental Conservation, Division of Water, Nonpoint Source section has no issues with the Conditional Use Permit application for an aquatic plant farm at Lena Cove. The Agency Comment Form (attached) includes a link to the Alaska Beach Program website where two monitoring reports can be found for Juneau beaches. Data evaluation determined marine water in Lena Cove was attaining water quality criteria, and not impaired.

Thank you for the review opportunity. This application has also been forwarded to the DEC Division of Environmental Health, Food Safety and Sanitation Program.

Gretchen Augat, Environmental Program Specialist III
 Alaska Department of Environmental Conservation
[Nonpoint Source Water Pollution Prevention & Restoration Section](#)

Ph: (907) 465-5023
 Email: gretchen.augat@alaska.gov
 Mailing address: P.O. Box 111800
 Juneau, Alaska 99811
 Physical address: 410 Willoughby Ave, Suite 303

From: Teri Camery <Teri.Camery@juneau.org>
Sent: Tuesday, July 13, 2021 10:53 AM
To: 'Brody, Matthew T CIV USARMY CEPOA (US)' <Matthew.T.Brody@usace.army.mil>; Dan Bleidorn <Dan.Bleidorn@juneau.org>; Kanouse, Kate M (DFG) <kate.kanouse@alaska.gov>; Augat, Gretchen M (DEC) <Gretchen.augat@alaska.gov>; Heidemann, Marie E (DOT) <marie.heidemann@alaska.gov>; Charlie Ford <Charlie.Ford@juneau.org>; 'lee.cole@alaska.gov' <lee.cole@alaska.gov>; Brady, Carol S (DEC) <carol.brady@alaska.gov>; 'regpagemaster@usace.army.mil' <regpagemaster@usace.army.mil>; 'tfluharty@fs.fed.us' <tfluharty@fs.fed.us>; George Schaaf <George.Schaaf@juneau.org>
Subject: Agency Review request for Lena Cove Aquatic Plant Farm

Hello everyone,

CDD has received a Conditional Use Permit application for an aquatic plant farm at Lena Cove. Please

review the attached application and provide your comments using the attached Agency Comments form. Please provide comments no later than Friday July 23.

Please let me know if you have questions or need additional information, and thanks very much for your time.

Teri Camery

Teri Camery | Senior Planner, CFM

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0753 extension 4129

Please note that our phone system has changed. My new office number is 907.586.0753, extension 4129.





(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Alaska Department of Environmental Conservation

STAFF PERSON/TITLE: Gretchen Augat

DATE: 7-23-21

APPLICANT: Brian Delay

TYPE OF APPLICATION: Conditional Use Permit

PROJECT DESCRIPTION:

Conditional Use Permit for an aquatic plant farm at Lena Cove

LEGAL DESCRIPTION:

PARCEL NUMBER(S): 9B3401010031

PHYSICAL ADDRESS: Lena Cove

SPECIFIC QUESTIONS FROM PLANNER:

AGENCY COMMENTS:

Lena Cove marine water was monitored from 2011-2013 as part of the Alaska Beach Program; data evaluation determined the beach was attaining water quality criteria, and not impaired. Two reports were generated for SFY2012 and 13, and can be found at <https://dec.alaska.gov/water/water-quality/beach-program/past-reports/>

USE2021-0007
August 24, 2021

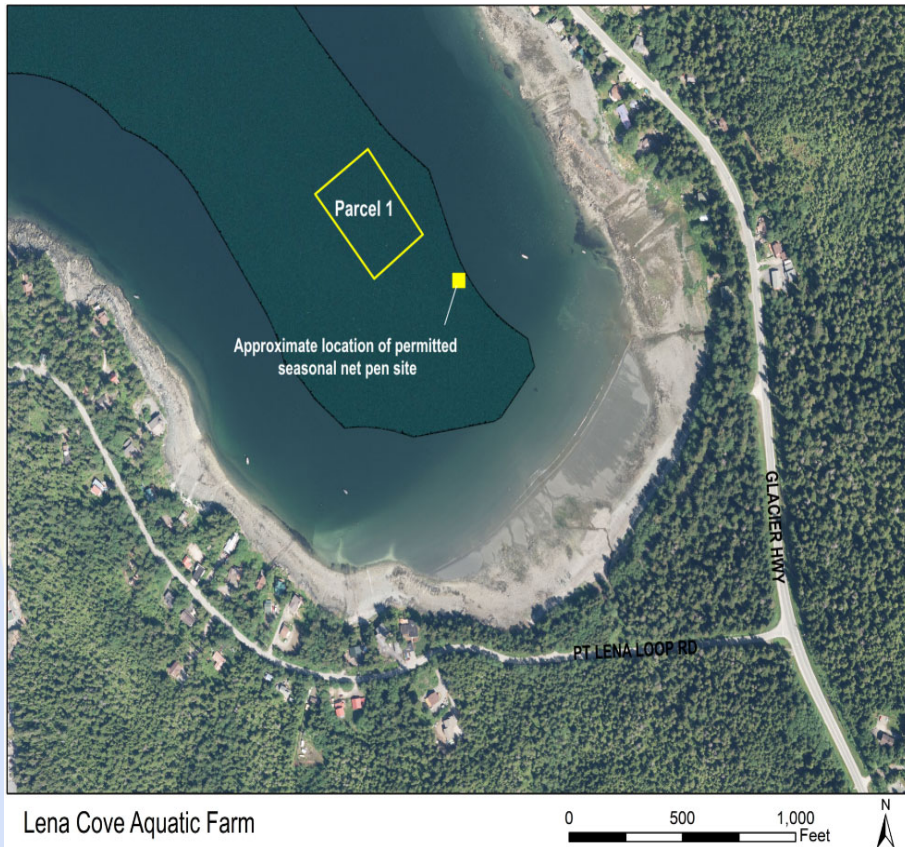
A Conditional Use Permit for an Aquatic Plant Farm at Lena Cove

**Staff recommends approval with
conditions**

Summary of Key Considerations

- Applicant, Brian DeLay
- Property Owner, Alaska Department of Natural Resources
- Farm will operate Oct 1 through April 15 each season; most or all of the structure will be removed in the interim
- Weekly access for maintenance and monitoring will be by commercial fishing vessel or skiff
- Farm has an approved ADNR tidelands lease and ADFG Aquatic Farm Permit

Site Features and Zoning



SURROUNDING ZONING AND LAND USES

North	D1 Residential
South (Zone)	Lena Cove Recreation Area
East (Zone)	D1 Residential
West (Zone)	D3 Residential

SITE FEATURES

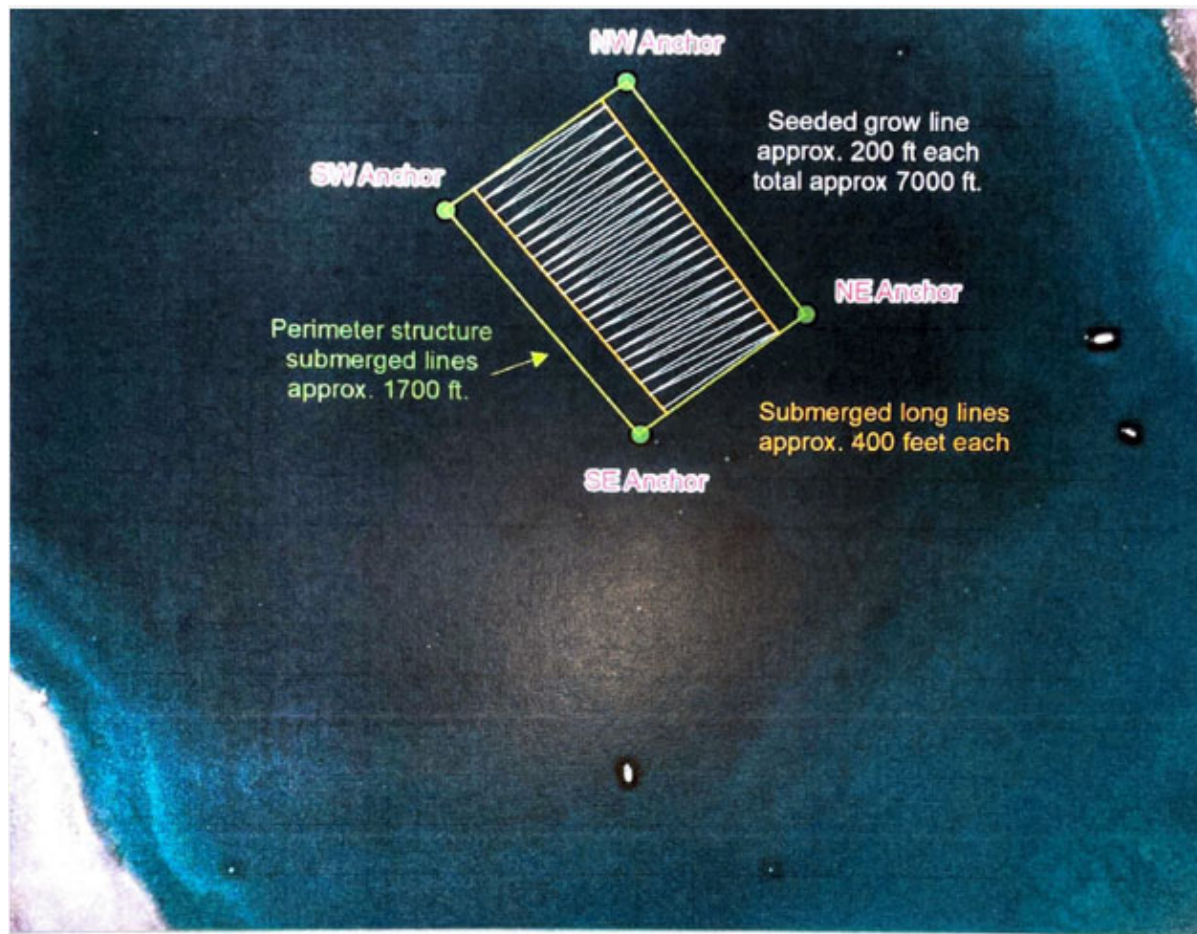
Flood Zone	VE Velocity Flood Zone
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Lena Cove Aquatic Farm

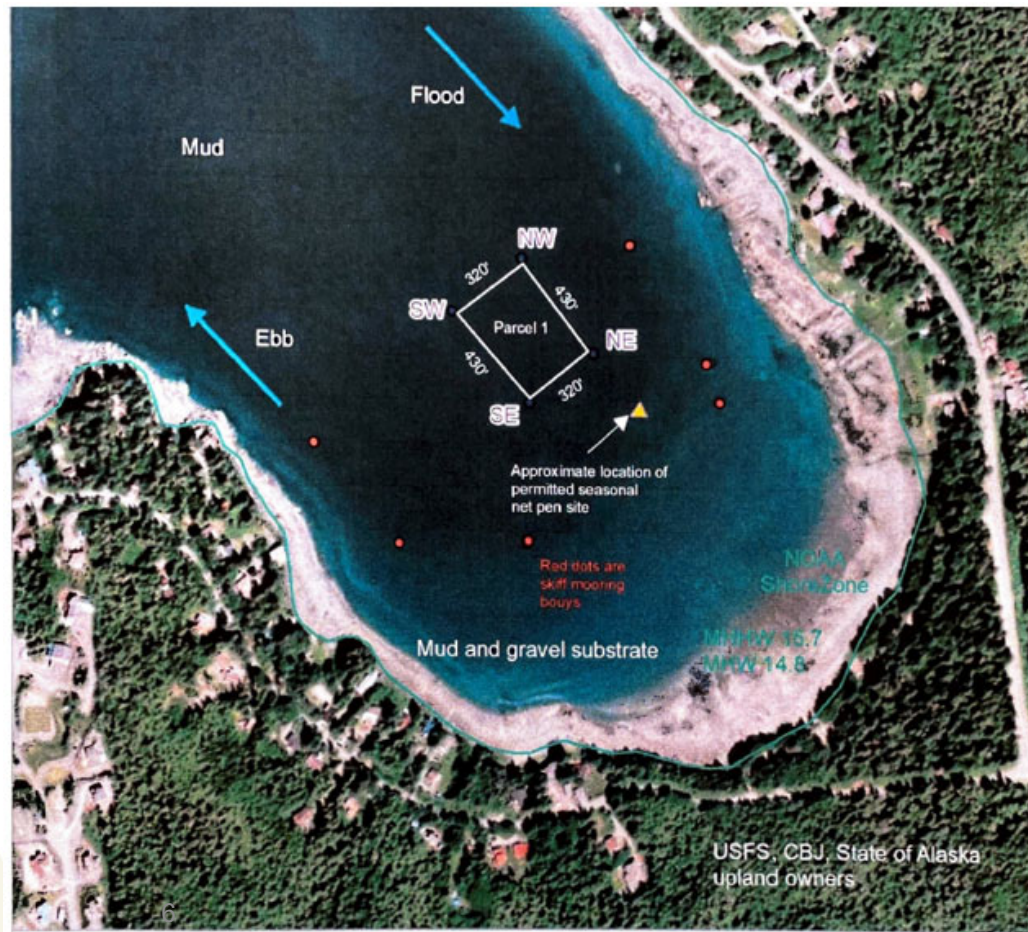
Project Description

- Project Area is 430' x 320'. Development consists of a system of lines, anchors and floats to grow aquatic plants below the ocean surface
- Six buoys will be visible on the surface; USCG-approved signage is on the buoys; lines seeded with kelp are submerged seven feet below the surface
- Benefits habitat as shelter for forage fish, naturally absorbs nitrogen run-off from upland properties, removes carbon dioxide from surrounding waters
- Access to the site from private or commercial facilities in Auke Bay or Tee Harbor. Larger vessel needed for 1-2 days at the beginning and end of operations to install and remove equipment. Regular weekly maintenance will most often be from a small skiff or non-motorized watercraft.

Site plans



Site plans



Review—Project Expiration or Modification

ADNR issued a tideland lease valid until March 11, 2031 with conditions regarding insurance, spill response and notification, and navigation markers.

Staff recommends two conditions:

- The Conditional Use Permit shall expire on March 11, 2031.
- Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.

Review--Access

Parking and vessel access to and from the site will use private or commercial facilities at Auke Bay or Tee Harbor.

Access to the site by the applicant's private property adjacent to Lena Cove may be authorized with the approval of ADNR, as noted in the additional stipulations of the lease agreement. The applicant anticipates seeking authorization from ADNR for this option.

No conditions proposed.

Review—Noise and Lighting

- Minimal noise impacts. Larger vessel may be needed for installation and removal at the beginning and end of the season; weekly maintenance will be from smaller vessels or non-motorized crafts
- No lighting proposed or necessary. Emission marking may be considered during the one-week window of the commercial Tanner crab opening in February.

No conditions proposed.

Review—Habitat

- Project meets the ADFG minimum distances from the two salmon streams that flow into Lena Cove.
- Project benefits habitat by providing shelter for forage fish; absorbing nitrogen run-off; and removing carbon dioxide from adjacent waters.
- Project has an approved ADFG Aquatic Farm Operations Permit effective May 13, 2021.

Review—Flood Zone

Lena Cove is a VE Velocity flood zone on approved FEMA maps. Anchoring to withstand flood forces is required.

Staff recommends the following condition:

A Floodplain Development Permit shall be required before development occurs.

Review—Public Health, Safety, and Welfare

- Safety hazards mitigated by signage; gear design, and limited season of operation
- Fixed system of lines are submerged 7 feet below the surface; six vertical floats
- Security consists of electronic monitoring from shore and state and USCG approved markings at farm boundaries.

No conditions proposed.

Review—Property Value or Neighborhood Harmony

- Lena Cove is surrounded by D-1 and D-3 residential and Lena Cove Recreational Area
- Visual impacts limited to six buoys; buoys are common throughout the cove
- No noise impacts
- Farm site is beyond the surf break; will not interfere with recreational winter surfing
- Gear and equipment removed seasonally

Review—Property Value or Neighborhood Harmony

Proposed condition:

Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

Agency Review

- In CDD's review, "no-objection" comments received from ADOT and ADEC
- ADNR tideland lease review
- ADFG Aquatic Farm permit
- ACOE permit applied for

Public Comment

9 public comments received in Additional Materials packet as of Friday 8/20

Includes 4 letters in support, 5 in opposition, plus the applicant's two responses

Public Comment support

Comments in support of the development cite:

- ecosystem benefits, water quality improvement
- support of the mariculture industry, diversifying the economy, first aquatic plant operation in the area
- Low impact, limited conflict with other users with its commercial activity during the off-season
- sustainable development
- Lena resident who uses the cove several times a week states that development will have no impact on their activities and enjoyment of the cove

Public Comment opposed

Comments opposed cite the following concerns:

- anchoring methods and gear/debris on surrounding beaches in winter storms
- invasive species and other environmental impacts
- impacts on recreational and cultural/traditional use of the area
- visual impacts
- incompatibility of a commercial use in a residential area
- danger to vessels seeking a safe anchorage
- future expansion

Public Comment response from applicant

- Supplemental information from ADFG describes the Aquatic Farm review process and compatibility of the bull kelp species with the local ecosystem
- Winter wave action has been factored into the site location and gear design to protect against gear failure. GPS-equipped smart buoys and constant on-shore video monitoring will also be used.
- Operation does not generate debris. Gear is composed of anchors, chains, floats and lines. Gear is fixed, less susceptible to surface conditions.
- Explanation of siting at Lena Cove; Tee Harbor is a well-protected anchorage.
- Development is insured; ADNIR lease requires removal of loose gear within 48 hours.

Public Comment response from applicant

- Numerous commercial and industrial activities are visible within the viewshed of Lena Cove residents, including the NOAA facility, AT&T tower, cruise ships and other commercial tourism vessels; seasonal DIPAC net pens, seasonally anchored small cruise vessels in the cove.
- Expansion of the footprint is highly unlikely due to constraints.
- Lena is not commonly used as a safe harbor in the winter months due to northerly exposure and lack of upland facilities. Farm will be clearly marked.
- Staff notes that visual impact is limited to six buoys.

Findings

1. Application is complete.
2. Appropriate according to the Table of Permissible Uses, CBJ 49.25.300 Section 14.100 for the D-1 and D-3 zoning districts.
3. Complies with all Title 49 requirements.
4. Does not materially endanger public health, safety, or welfare.
5. Will not substantially decrease the value of or be out of harmony with neighboring properties.
6. Complies with all officially adopted plans.

Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of an aquatic plant farm at Lena Cove.

The approval is subject to the following conditions:

1. The Conditional Use Permit shall expire on March 11, 2031.
2. Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.

Recommendation

3. A Floodplain Development Permit shall be required before development occurs.
4. Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.



Planning Commission

(907) 586-0715
PC_Comments@juneau.org
www.juneau.org/plancomm
155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION NOTICE OF DECISION

Date: August 25, 2021
Case No.: USE2021 0007

Brian P. Delay
16955 Glacier Highway
Juneau, AK 99801

Proposal: A Conditional Use Permit for an Aquatic Plant Farm at Lena Cove
Property Address: Lena Cove
Legal Description: Lena Cove
Parcel Code No.: 0
Hearing Date: August 24, 2021

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated August 12, 2021, and approved the Conditional Use Permit to be conducted as described in the project description and project drawings submitted with the application with the following condition as modified by the Commission:

1. Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

Attachments: August 12, 2021 memorandum from Teri Camery, Community Development, to the CBJ Planning Commission regarding USE2021 0007

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the

Brian P. Delay
Case No.: USE2021 0007
August 25, 2021
Page 2 of 2

day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

Effective Date: The permit is effective upon approval by the Commission, August 24, 2021.

Expiration Date: The permit will expire 18 months after the effective date, or February 24, 2022 if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.


Nathaniel Dye, Vice Chair
Planning Commission

8/25/2021
Date


Filed With City Clerk

8/25/2021
Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Additional Materials for August 24, 2021 Planning Commission

ATTACHMENTS:

	Description	Upload Date	Type
▣	Additional Materials for August 24, 2021 Planning Commission	8/23/2021	Appeal

Additional Materials

Regular Planning Commission Meeting

Virtual Meeting Only

7:00pm

Meeting Date: August 24, 2021

1. USE2021 0007:

- a. Public Comment – Erin Harrington, received 8.9.21
- b. Public Comment – John C. and Caren E. Yerkes, received 8.11.21
- c. Public Comment – Roberta Stell, received 8.16.21
- d. Public Comment – Gerry Donohoe, received 8.17.21
- e. Public Comment – Alex Wertheimer, received 8.18.21
- f. Public Comment – Kristy Kissinger-Totten, received 8.18.21
- g. Public Comment – Kathy Hamblett, received 8.18.21
- h. Comments from Alaska Department of Fish & Game submitted by Applicant Brian Delay, received 8.18.21
- i. Public Comment – Max Stanley, received 8.19.21
- j. Public Comment – Aimee & Phillip Richards, received 8.19.21
- k. Applicant Brian Delay's Response to Public Comments, received 8.20.21
- l. Public Comment – Robert Venables, Southeast Conference, received 8.20.21
- m. Public Comment – Meta Mesdag, received 8.20.21
- n. Public Comment – Phil Rigby, received 8.21.21
- o. Public Comment – Keith Criddle, received 8.22.2021
- p. Public Comment – Jessica Gharrett, received 8.23.2021
- q. Public Comment – Brian Holst, received 8.23.2021
- r. Public Comment – Julie Decker, received 8.23.2021
- s.

From: Erin Harrington <erinfish@gmail.com>
Sent: Monday, August 09, 2021 8:31 PM
To: PC_Comments
Subject: Lena Cove seaweed mariculture application

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Good evening

I'm writing to express support for the pending application for a seaweed mariculture site at Lena Cove by applicant Brian Delay.

My comments are in support of the application.

Though I write in a personal capacity, my support for the project is supported by the work I do as a consultant for the former McDowell Group (now McKinley Research Group). In that capacity I am involved in research regarding economic and ecosystem services opportunities related to the mariculture industry in Alaska. I also was able to spend time recently at the remote farm site of a friend on Kodiak Island who is also farming seaweed.

The opportunities related to seaweed in Alaska are immense, but the development of a viable seaweed industry will require the efforts of a group of pioneering entrepreneurs who are willing to navigate the risk and uncertainty of establishing a new industry. Seaweed and kelp are remarkable in their benefits and the near non-existence of associated risks. Presence of kelp and seaweed farming is beneficial to local ecosystems and resident species. Kelp grows and is harvested during a period of time when there is limited conflict with other marine/maritime users. When produced as a food source, it is rich in nutrients and proteins with an extremely low carbon footprint. While growing, it provides biodiversity benefits, as well as benefits, in certain scenarios, for carbon uptake and sequestration. And the farming of seaweed, and the growth of a related industry, can provide sustainable jobs and business opportunities in Juneau and Southeast Alaska more broadly.

I am in strong support of this application, and am confident the proposer can work with other users of the area to ensure that the project is a success and complementary to other activities in Lena Cove.

Thank you
Erin Harrington
907-942-1323

John C. and Caren E. Yerkes
17125 Glacier Highway
Juneau, Alaska 99801
Email: johncyerkes@gmail.com
Phone: 503-385-3377

August 11, 2021

Teri Camery CFM, Senior Planner
City and Borough of Juneau
155 S. Seward St.
Juneau, Alaska 99801
Email: teri.camery@juneau.org

Re: ADL 233370, Lena Cove Proposed Aquatic Farm Site, Comments

Teri,

Thank you for taking time to speak to me about this aquatic farm and pending conditional use variance request.

I would hope that someone could poll residents to get a true input before acting on this.

As you know the planning and zoning is a detailed and somewhat arduous process and should be respected.

The variance from the basically residential/recreational function/zoning, of our neighborhood to one of industrial/commercial activities is akin mixing oil and water. They are basically opposites.

Many of our residents have spent their lives getting to this point and entrust the zoning to protect our physical and aesthetic environmental not to mention our property values. Additionally the Lena Beach recreational area is in constant use year round and is a traditional site for cultural activities. Winter crabbing fishing and, surfing keep us entertained.

One major concern I have is the safe harbor issue and the danger this facility represents to vessels finding safe anchorage. It creates a danger in trying to avoid the site or if dragging anchor of damaging the underwater farm.

All neighbors who I have spoken to have shown some level of concern as to the impacts and if history is an example we can expect expansion requests if any economic success is realized.

Attached are my original comments provided to Alaska DNR.

Thank you for your time.

John C. Yerkes and Caren Yerkes

John C. and Caren E. Yerkes
17125 Glacier Highway
Juneau, Alaska 99801
Email: johncyerkes@gmail.com
Phone: 503-385-3377

Brent Reynolds, Natural Resource Specialist II
State of Alaska, Department of Natural Resources
Southcentral Regional Land Office
550 W. 7th Ave, Suite 900C
Anchorage, Alaska 99501-3577
Email: brent.reynolds@alaska.gov

September 23, 2020

Re: ADL 233370, Lena Cove Proposed Aquatic Farm Site Lease, Comments

Brent, Thank you for taking time to speak to me about this proposed lease.

First, I am curious why the public notice would be posted in Cordova well over 400 miles away from Juneau and in a remote community? To be fair the public comment period should probably be restarted, and the posting should be in Juneau, maybe the Juneau and Auke Bay harbor offices and post offices.

There are a myriad of issues: Public access and use of the property identified, environmental issues, costs to the state and adjacent property owners, financial liabilities to the state, the proposed leasee;, limiting use of a major portion of Lena Cove by existing private and commercial users of the navigable waters, disruption and harm to the aquatic animal population that uses Lena Cove during all times of the year as a terminal as well as transiting Southeasts inside waters. I have organized them loosely to help with keeping my comments short.

Legal complexity: Long term Zoning and planning; Visual underwater survey to existing conditions and items that are present to allow appropriate remediation; Expanded Insurance Coverage to hold adjacent landowners are protected any adverse effects and held harmless.

Public Use Doctrine: This suggested use is in direct conflict with Juneau populations public use; Incompatible with existing and designated development; Individual over Public use; Industrialization of a historically Juneau wide recreational focus area; Ensure Public Trust Doctrine issues are complied with

Historic and Traditional Use: Indigenous site, Crabbing, fishing, water sports, moorage for adjacent residents, Beach fishing, trolling, crabbing, paddle boarding, kayaking, canoeing, surfing, public park facilities,(5 shelters), restrooms, paved streets, local beach access, small carryable boat launch ramp, huge beach area, surfing; Historical residential area for retirees, "premiere" location of views and access; Fish Imprinting operations: this list could go on and on.

SOA, DNR Lease ADL 233370 (comments):

Financial Issues: Cost of monitoring, ADNR, ADFG, ADEC, USFS, Alaska State Lab; Finances; Is there something I am missing? The forecast revenues seem to be insufficient for much if any profit.

Alternative Site Evaluations: Feasible/prudent alternative sites should be identified and evaluated.

Environmental: An EIS review should be done; Protection of existing Biodiversity; Septic systems: should all be evaluated.

Navigable Waters: The proposed footprint displaces navigable anchorage, crabbing, use by beach residents for vessel moorage historically managed by CBJ; Did the USCG comment on use of the Lena Cove as an identified sheltered anchorage?

Operations: What if herring spawn is present. Would the harvesting be postponed?

Future Consideration: Future transfer/sale/expansion limitations requiring a public review/approval process

Liability: Legal challenges; Expanded Insurance Coverage to guarantee adjacent landowners are protected from any adverse effects and held harmless; bonding for reclamation issues should be in place up front.

Miscellaneous: Formal tidelands survey; Details on monitoring, responsibilities, parameters to be watched, public reporting; Safeguards need to be in place to protect ADFG salmon imprinting operations; Information sharing with adjacent landowners

This is a summary of some of the areas of concern. I sincerely hope they are of value to your process of evaluating Lena Cove for this industrial aquatic farming operation. It seems inappropriate to add it to the already highly active year-round recreational and residential use by Juneau's citizens and will have a negative impact on existing public uses.

I would also want to say I am a strong proponent of aquaculture farming and would support the applicant's efforts to find a more suitable site.

Decision makers should have firsthand knowledge of the site both current and historical before making what would be an impactful decision.

17025 Glacier Highway
Juneau, AK 99801
August 10, 2021

RE: Conditional Use Permit for an aquatic plant farm in Lena Cove, Favorite Channel. Case No. USE2021 0007

Planning Commissioners:

Please enter the attached documents into the record regarding the application for the aquatic (kelp) farm in Lena Cove. I submitted my objections and concerns about the location of this aquatic farm to the Alaska Division of Natural Resources, ADL233370 in my letter dated September 20, 2020 (attached). Also attached is my response reiterating my concerns about this project in the copy of my email, dated Wed (9/16/2020), to DNR after reading the various agency responses. My comments and questions remain unchanged.

I've reviewed the available materials and Brian DeLay has offered explanations about this project to close neighbors. The agency responses were very disturbing and disappointing. None addressed the question of introducing a new kelp species into Lena Cove that has historically been absent (nature makes the best decisions and bull kelp does not grow in Lena). It is not native and introducing new species is untested.

The City and Borough has led large campaigns to rid the Borough of "invasive plants". Bull kelp is not native to Lena and nothing in writing I have seen explains the biology of what happens to bull kelp introduced to a new location. How will seeds remain only on the structure??? As a popular boating area, bull kelp will bring unnecessary boating and recreational issues. I recommend the Commission ask the University of Alaska Fairbanks and Southeast marine biologists, whether the research on bull kelp would be considered invasive to a new area; and how are the seeds disseminated or prevented from disseminating?

To highlight my concerns: why introduce a different species of kelp into a recreation area and neighborhood? How will negative results be mitigated? Is the water quality in Lena conducive to growing human food?

Respectfully submitted,



Roberta Stell

RECEIVED
AUG 16 2021
Permit Center/CDD

September 20, 2020

17025 Glacier Highway
Juneau, AK 99801

Re: Brian Delay dba Rainy Dawn Fisheries application for kelp farm

Approval of a farm lease of up to 10 years or more in Lena Cove should not be approved for many reasons. This application may have good intentions, but it is asking to conduct a business in a highly populated neighborhood and adjacent to a public recreation area. This activity is incompatible with the historical, current, and future use of this body of water.

Lena Cove is not a healthy body of water for farming commercial plants when there is a very large, much cleaner ocean out there for kelp farming for human use. Lena Cove is not totally sanitary water; septic systems of over 50+ homes drain into the Cove. Some are over 60 years old and others installed more recently are also draining into this small Cove. There are several kelp farms in the vicinity that are NOT in community neighborhoods.

Kelp of the three species proposed to plant in Lena Cove are not what I know to be "native" to this cove. One non-commercial grade species known as pop weed is used by a few households to add nutrients to their home gardens. Otherwise, it is a Cove barren of kelp. Why would the State of Alaska permit plants to be introduced and farmed in water in which they are not naturally growing or thriving? Lena Cove is not a location that has ever had bull, dragon or sugar kelp in the over 60 years that I have lived on this Cove. This Cove and highly populated neighborhood should not have these species of kelp introduced into its waters, nor have a commercial enterprise in the front "yard".

The application indicates the owners plan to monitor the operation from shore. Really, whose property will they be crossing to get close to "monitor" an underwater operation in the winter?

There is limited access to the water by boat in the winter months; the northerlies are fierce. It is rare to see a boat approaching Lena in the winter from T Harbor or from around Lena Point. I have a permanent buoy permit for my personal boat that I obtained in 1976. By September 10, pleasure boats are all pulled from Lena as the winds are too strong; and these boats are not back on their buoys until May 1 for the same reason. The water is not safe in the winter months and especially not safe for a skiff or small boat to monitor a kelp farm. There would be NO monitoring because it is too dangerous in the winter months. The structure will end up on Lena Beach at the picnic area and strung along our beach fronts.

Lena Cove was used in recent summers by DIPAC for a king salmon hatchery which is a spring operation, but salmon is a public good to replenish the king salmon fisheries and natural habitat for fish. The kelp farm application is for private gain.

Personal use crab pots are scattered over the Cove during the spring and summer. Most are right in the area where this farm is proposed. There will be unintended consequences to the water, the native plants, and to the current public uses of this Cove.

This protected cove is for summer swimming, sports fishermen, trolling, kayaking, paddle boards, and placing personal use Dungeness crab pots during the various seasons. Don't turn this neighborhood Cove and public recreation area into a kelp bed mess.

Kelp farming would change the Cove in unknown ways. Do Not allow this permit to go forward in this location. I can't stress enough that such an operation would change this Cove forever and the application does not justify why kelp would be a good fit for this Cove. Nor is mitigation of unintended consequences addressed in this application. All boaters know that anchoring or trolling where kelp grows is dangerous and to be avoided at all costs. Please do not approve this proposal that is minimal in detail and has maximum potential to cause irreversible damage to this environment.

I understand this proposal is a "winter" operation, however, it has a lot of wire and seeds and anchors and a shallow Cove with fierce northerlies likely to tear the structure apart and become tangled in mooring buoys and on our beaches. I'm strongly opposed to have such an operation in this limited body of water.

I've read the several agency responses; and many are sadly agency boiler plate mediocre statements of non- involvement and none offered encouragement that this farm would made any major difference in availability of commercial kelp; and not one demonstrated any actual knowledge of Lena Cove OR of the impact of seeding non-native kelp species into this Cove. Many are responses from agencies with no personnel in Juneau.

A commercial enterprise in this neighborhood is not justified; there is no scarcity of kelp to warrant potential harm to this community asset.

Sincerely,



Roberta Stell

RE: ADL233370 Public Notice of Preliminary Decision for Aquatic Farm Lease, Lena Cove, Juneau

Robbie Stell <robbiestell@hotmail.com>

Wed 9/16/2020 5:38 PM

To: Reynolds, Brent C (DNR) <brent.reynolds@alaska.gov>

1 attachments (16 KB)

Kelp Farm Permit Letter.docx

Attached is my objection to the proposed Kelp Farm in Lena Cove. It is apparent that some of these agency responses are from employees with little knowledge or concern for Lena Cove's future. Relying upon maps and charts is unacceptable decision-making as it is clear, these principals have little if any real knowledge of this proposed kelp farm in Lena Cove. Even the response from the Aquatic Farm agency is lacking in real information about the impact of non-native kelp species being introduced and harvested in this Cove that has never had these species growing in this water. An Aquatic Farm Lease should be exhaustively researched prior to introducing new species of kelp to this water. The unintended consequences will be devastating. There was not one statement from agencies responses that provided any due that they were making a serious well researched recommendation. Most are clearly boilerplate responses.

I am anticipating that further review will be conducted by the City and Borough and U.S. Corps of Engineers. I believe those of us living on this Cove are prepared to defend this Cove from commercial use and will take actions as warranted.

Respectfully submitted,

Roberta Stell



Sent from Outlook

From: Gerry Donohoe <gdonohoe74@gmail.com>
Sent: Tuesday, August 17, 2021 9:24 PM
To: PC_Comments
Cc: Kathy Hamblett; Jo Boehme
Subject: Lena Cove Aquatic Farm Public Comments

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To Whom It May Concern,

I have been a resident of Lena Cove since 1993. I believe this proposal is an environmental disaster waiting to happen. The winter weather in Lena Cove is treacherous, with winds and waves far exceeding any conditions that this proposed aquatic farm can handle. The result will be all the gear washed up on the beautiful Lena Beach Park and buried in the winter beach sand for us locals to observe for many years to come. Why does this farm have to be at this location? The north winds and waves of winter come roaring into Lena Beach without any obstructions. Just ask the surfers who brave the frozen temperatures to ride the waves produced by the winter storms. What do you think those storms will do to the aquatic farm gear? They will rip out their moorings and toss the gear up onto the beach and then bury it under the onslaught of water and sand. Not a pretty sight indeed. The aquatic farm folks need to find a suitable place that is not exposed to the severe winter weather that pummels Lena Cove. I hope you get my point.

Sincerely,

Gerry Donohoe
17240 Andreanoff Drive
Juneau, AK 99801
907-957-0242

From: Peggy and Alex <alaskawerts@gmail.com>
Sent: Wednesday, August 18, 2021 1:58 PM
To: PC_Comments
Subject: Lena Cove Aquatic Farm Permit

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Dear Planning Commission:

Great idea, wrong place. I support the concept of kelp farming, but I am concerned that the strong winter northeries bringing high frequency swells and gale force winds directly into Lena Cove make this an unnecessarily risky place to put the farm. Any failure of anchor systems or lines supporting the kelp would result in debris blown into the Lena Recreational area, where it will be churned up in the beach gravels and be difficult to remove. Why not site this operation in a more protected area such as Auke Bay or Tee Harbor?

Thank you for the opportunity to comment.

Alex Wertheimer
17200 Andreanoff Drive
Juneau, AK 99801

Comment Submission for Case No.: USE2021 0007

RE: CONDITIONAL USE PERMIT FOR AN AQUATIC PLANT FARM IN LENA COVE,
FAVORITE CHANNEL

From: Kristy Kisssinger-Totten, property owner
16875 Glacier Hwy, Juneau, AK 99801

Submitted: 08/18/2021

I support the granting of a Conditional Use Permit for the purposes of establishing an aquatic plant farm in Lena Cove for the following reasons:

- Kelp is estimated to take in five times more carbon than most land-based plants. Research has also shown that seaweed can help manage **water** quality by absorbing excess nutrient pollution from wastewater treatment facilities, septic outflow systems and storm drainage runoff.
(<https://www.climate.gov/news-features/features/california-oyster-hatchery-farming-native-seaweed-improved-water-quality>)
- A study done north of San Francisco, showed that “native kelp farms could have multiple benefits, not only reducing harvesting pressure on wild seaweeds, but also absorbing carbon and nitrogen pollution in local waters.”
- “A growing body of scientific research indicates seaweed aquaculture can provide ecosystem services that contribute to the reduction of local ocean acidification and assist with pollution remediation,” said California Sea Grant Aquaculture Specialist and Scripps Institution of Oceanography/Moss Landing Marine Laboratories researcher Luke Gardner. There is the potential for using seaweed as a management tool to sequester carbon and reduce organism stress from ocean acidification.
- Nutrients: kelp is a natural source of vitamins A, B1, B2, C, D and E; a rich source of minerals such as zinc, copper, iron, magnesium, potassium, calcium; and kelp contains substantial iodine.

In Summary:

Aquatic Plant Farms for cultivating KELP provide a natural water cleansing service. Seaweed grows fast without the need for any use of fertilizers or fresh water. Fishermen, scientists and consumers are beginning to see the strongly beneficial solutions provided by growing kelp. I believe that we should embrace and support this eco-friendly, healthy community enterprise. This industry can create jobs, and provide healthy nutrients while also protecting and improving our environment.

From: Kathy Hamblett <khamblett@hotmail.com>
Sent: Wednesday, August 18, 2021 7:37 PM
To: PC_Comments
Cc: Gerry Donohoe
Subject: RE: Lena Cove Aquatic Farm Public Comments

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello – To add to the comments below – what regulations are in place for debris removal for the operator/owner when the gear ends up on the recently improved and heavily used (U.S. Forest Service) recreation beach in Lena Cove? Recent experiences in Alaska point to a lack of enforcement options available for abandoned vessels and gear in local, non-navigable waters (vessels Challenger and Lumberman to name two examples). Who will shoulder the burden of removal when the owner/operator defaults and chooses bankruptcy? Are there any protections from this contingency that can be put into place ahead of such an unhappy event?

Sincerely,
 Kathy Hamblett
 Juneau, AK
 907-723-1066

Sent from [Mail](#) for Windows

From: [Gerry Donohoe](#)
Sent: Tuesday, August 17, 2021 9:23 PM
To: PC_Comments@juneau.org
Cc: [Kathy Hamblett](#); [Jo Boehme](#)
Subject: Lena Cove Aquatic Farm Public Comments

To Whom It May Concern,

I have been a resident of Lena Cove since 1993. I believe this proposal is an environmental disaster waiting to happen. The winter weather in Lena Cove is treacherous, with winds and waves far exceeding any conditions that this proposed aquatic farm can handle. The result will be all the gear washed up on the beautiful Lena Beach Park and buried in the winter beach sand for us locals to observe for many years to come. Why does this farm have to be at this location? The north winds and waves of winter come roaring into Lena Beach without any obstructions. Just ask the surfers who brave the frozen temperatures to ride the waves produced by the winter storms. What do you think those storms will do to the aquatic farm gear? They will rip out their moorings and toss the gear up onto the beach and then bury it under the onslaught of water and sand. Not a pretty sight indeed. The aquatic farm folks need to find a suitable place that is not exposed to the severe winter weather that pummels Lena Cove. I hope you get my point.

Sincerely,
 Gerry Donohoe
 17240 Andreanoff Drive
 Juneau, AK 99801
 907-957-0242

From: Teri Camery
Sent: Thursday, August 19, 2021 9:19 AM
To: Chelsea Wallace
Subject: FW: ADFG Comments regarding evaluation process for aquatic farm projects in relation to invasive species.

Hello Chelsea, please include this email in the Additional Materials packet for USE2021-0007. Thanks!

Teri Camery | Senior Planner, CFM
[Community Development Department](#) | City & Borough of Juneau, AK
Location: 230 S. Franklin Street, 4th Floor Marine View Building
Office: 907.586.0753 extension 4129



From: Brian Delay <brian.delay@gmail.com>
Sent: Wednesday, August 18, 2021 8:07 AM
To: Teri Camery <Teri.Camery@juneau.org>; terry schwarz <terry.schwarz@gmail.com>; rainydawnfarms@gmail.com
Subject: ADFG Comments regarding evaluation process for aquatic farm projects in relation to invasive species.

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello Teri,

Please see comments below from ADFG regarding evaluation process for aquatic farm projects in relation to invasive species.

Let me know if you have any questions. Regards, Brian

All aquatic farm applications are reviewed twice by ADF&G staff. Once during the ADNR agency review as a preliminary recommendation for the issuance of a lease and again during the internal review for the issuance of the aquatic farm operation permit. Members of all departments are invited to review the application and recommend stipulations to be included in the permit. This includes (but is not limited to) gene conservation lab (genetics), pathology, and invasive species coordinator. I only mention the relevant ones to this particular situation.

Reviewers must make recommendation on whether or not the application meets the criteria listed in Alaska Statute 16.40.105

Sec. 16.40.105. Criteria for issuance of permits.

The commissioner shall issue permits under AS 16.40.100 on the basis of the following criteria:

- (1) the physical and biological characteristics of the proposed farm or hatchery location must be suitable for the farming or the shellfish or aquatic plant proposed;
- (2) the proposed farm or hatchery may not require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources;
- (3) the proposed farm or hatchery may not significantly affect fisheries, wildlife, or their habitats in an adverse manner;
- (4) the proposed farm or hatchery plans and staffing plans must demonstrate technical and operational feasibility; and
- (5) the proposed farm site may not include more than an insignificant population of a wild stock, on the site, of a shellfish species intended to be cultured.

And Alaska Regulation 5 AAC 41.240

5 AAC 41.240. Review and determination

(a) The commissioner will review aquatic farm and hatchery operation permit applications, department surveys, and other site specific information and will issue an aquatic farm or hatchery operation permit if the commissioner determines that, to the extent practicable,

(1) the physical and biological characteristics of the location are suitable for culture because

(A) the operation is protected from oceanographic and atmospheric extremes or is designed to withstand such extremes;

(B) the water exchange rates, water temperatures, currents, salinity, and primary productivity are sufficient to support an aquatic farm and maintain a healthy environment for other marine organisms;

(C) for on-bottom culture, the substrate composition is suitable for the target species or can be enhanced and still maintain a healthy environment for other marine organisms;

(D) for suspended culture, the water depth is sufficient to prevent gear from grounding and impacting the benthos under floating structures;

(E) the health and abundance of eelgrass and kelp beds can be maintained;

(F) the operation is not located within 300 feet of the mouth of an anadromous fish stream;

(2) the proposed aquatic farm or hatchery does not significantly alter an established use;

(3) the proposed aquatic farm or hatchery is compatible with fish and wildlife resources in the area, and

(A) any predator and pest control methods have been designed to minimize impacts to non-targeted fish and wildlife resources in the area;

(B) does not adversely impact seabird colonies, sea lion haulouts and rookeries, seal haulouts and pupping areas, and walrus haulouts;

(C) does not adversely impact endangered and threatened species recovery and habitat protection efforts;

(4) for on-bottom culture proposals for all other indigenous species where wild stock exists, the commissioner has offered an opportunity to harvest the species;

(5) the proposed aquatic farm or hatchery operation and development plan demonstrates feasibility by describing how

(A) the operation will improve the productivity of the species intended for culture above what would occur in natural conditions using methods that may include

(i) predator exclusion;

(ii) the reduction of competing species;

(iii) density manipulation by culling and redistribution;

(iv) import of naturally-produced seed from either onsite or offsite;

(v) import of hatchery-produced seed;

(vi) programming harvest to optimize growth and shellfish condition;

and

(vii) habitat improvement;

(B) repealed 1/26/2012;

(C) repealed 1/26/2012;

(D) any support facilities, culture gear, and anchoring systems will be installed and maintained;

(E) the projected harvest rotation schedule is consistent with the life history of the species intended for culture;

(6) the proposed aquatic farm site contains an insignificant population of the species intended for culture, as determined under 5 AAC 41.235.

(b) Under AS 16.40.100(g), the commissioner will issue an aquatic farm operation permit under this section for an on-bottom culture aquatic farm site for geoducks located in a larval drift zone described in 5 AAC 41.295(f)(2) - (6) only if the site is in a subtidal habitat or environment and the requirements of (a) of this section are met.

(c) The commissioner will approve or deny, in writing, an operation permit for an aquatic farm or hatchery no later than 30 days after the lease is issued by the Department of Natural Resources under 11 AAC 63, unless the commissioner determines that additional review is necessary to determine compliance with the applicable provisions of AS 16.40.100 - 16.40.199 and 5 AAC 41.200 - 5 AAC 41.400.

If the application does not meet these criteria, then staff recommend denial of the application to the Commissioner (or delegate) who makes the final decision. Or there would be certain conditions that would be included in the permit to mitigate any issues. Such as the conditions listed in the Lena Cove permit to resolve the potential conflict with an existing use.

- To limit conflict with established sportfish uses and existing permits in Lena Cove, the permit holder shall:

a. Cease all aquatic farm activities onsite from April 14 to October 1 each year. In years when sport fishing for Chinook salmon is closed and there are no operational or scheduling conflicts with other permittees (i.e., DIPAC), the permittee may request an extension from the Permit Coordinator.

b. Remove all inwater aquatic farm gear and structures from April 14 to October 1, except that fixed anchors (e.g. helical anchors) may remain onsite throughout the year if they extend above the substrate not more than 12 inches. When the permittee dives on the site to deploy gear in the fall, they must inspect the fixed anchor parts and notify the permit coordinator if any sport fishing gear (e.g., crab pots, fishing line, downrigger wire) has accumulated on the anchors during the seasonal closure period (i.e., April 14 to October 1). If sport fishing gear is getting hung up, the permittee may experiment with the use of cones or covers to prevent snagging of sportfish gear. If the department determines that the fixed anchors are impacting the sport fishery, the permittee will be required to remove the fixed anchors and use an alternate anchoring system that can be removed each season.

The current genetics policy for aquatic plant farming consists of two conditions:

1. To minimize the risk of genetic or disease impacts on wild populations, hatchery-cultivated macroalga can only be transported for out planting within 50 km (by water) of the collection site. The department recognizes that life history characteristics and natural dispersal patterns may be significantly different among species and areas. Therefore, the department will consider requests to broaden the 50 km out

planting zone on a case-by-case and species-by-species basis if new studies or other sources of information indicate that disease and genetic concerns are minimal.

2. To minimize loss of adaptive potential within cultured broodstocks, offspring destined for out planting must be derived from wild broodstock consisting of ≥ 50 unrelated individuals. While the mechanics of culture will largely dictate broodstock size, this number will retard the short-term loss of adaptive potential. Parental plants should be collected from dispersed locations along a shoreline to reduce the chances of sampling related individual plants.

While it is in the best interest of the farmer to harvest crop before it reaches the adult reproductive stage for best quality, in the event that there is a circumstance that does not allow that to happen, (storm breaking off plants or gear, inability to harvest) then the genetic risk is low due to these conditions of using local stocks and large numbers for broodstock for diversity. It is assumed that while there may not be bull kelp in Lena Cove, it could be there potentially due to proximity of kelp beds. Introduction of this species to this location was not considered to be an adverse effect or not compatible.

Pathology Lab requires that hatcheries creating seeded lines have their incoming water treated so that pathogens are not transferred from the hatchery location to the farm location along with the seeded line.

Invasive Species requires:

- To minimize the potential introduction of invasive species, the permit holder will implement best management practices to prevent the introduction or spread of aquatic invasive species that can occur when aquatic farm activities translocate gear and product including:
 - a. Any previously-used in-water infrastructure must be inspected for nonindigenous or invasive species prior to relocation. If non-native species are detected, infrastructure must be decontaminated prior to relocation by removing it from the water for decontamination. It may be left “high and dry” for at least 30-days or thoroughly washed with hot, pressurized water prior to being re-submerged. After decontamination measures have been taken and prior to deployment, infrastructure should be surveyed to ensure decontamination efforts were effective.
 - b. Use “hot dipping” protocols to remove fouling organisms from Pacific oysters; this is a common and effective practice in aquatic farming.
 - c. Develop a monitoring schedule to periodically inspect in-water infrastructure for invasive species, such as *Didemnum vexillum*.
 - d. Develop a response plan that identifies steps for quickly responding to observance of invasive species in any aspect of in-water operations.
 - e. Report observations of non-native or exotic species occurring on the aquatic farm site to dfg.dsfi@alaska.gov;

While this relates pretty much just to gear relocation, if there was an issue with growing bull kelp in Lena, then the coordinator would have pointed this out during either review process.

If you want, you can reach out to the following staff members.

Genetics: Chris Habicht (907-267-2169, chris.habicht@alaska.gov)

Pathology: Ted Meyers (907-465-3577, ted.meyers@alaska.gov) he is out till Friday afternoon.

Invasive Species: Tammy Davis (907-465-6183, tammy.davis@alaska.gov)

Hope this helps with your hearing.

Michelle Morris

Permit Coordinator

Alaska Dept of Fish and Game

Division of Commercial Fisheries

Michelle.morris2@alaska.gov

For Aquatic Resource Permits email DFG.FMPD.permitcoordinator@alaska.gov

For Aquatic Farm related topics email DFG.DCF.aquaticfarming@alaska.gov

907-465-4724

...



8/19/21

Letter of Support for USE2021 0007: A Conditional Use Permit for an aquatic plant farm

To Whom it May Concern:

Please accept this letter of support for the conditional use permit for an aquatic farm located in Lena Cove proposed by Brian Delay.

I am co-owner of Barnacle Foods, a Juneau-based food manufacturing business that processes Alaskan grown kelp into shelf-stable products. We have built a business model that increasingly relies on a network of mariculture farmers around the state.

A farm located in Juneau will cut down transportation cost and time while providing us with the highest quality product. We need more farms growing kelp to continue to allow us to grow. We are excited for this project to move forward.

Sincerely,



Max Stanley
Partner
Barnacle Foods

From: Phil Richards <phildo_fish@yahoo.com>
Sent: Thursday, August 19, 2021 5:31 PM
To: PC_Comments
Subject: Public Comment: USE2021 0007: A Conditional Use Permit for an aquatic plant farm

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

August 19, 2021

Dear CBJ Planning Commission,

We are writing in support of the proposed Rainy Dawn Farms aquatic plant farm proposal for Lena Cove.

Although the fish and game resources around Juneau are rich and abundant, along with the commercial industries that depend on those resources, there are currently no plant-based mariculture operations in our area. This proposed project thinks outside the box, is low impact, and could provide the foundation for a fruitful new mariculture program, further diversifying Juneau's economy.

As residents of Juneau and Lena Point, we frequent the Lena recreation area several times per week year-round, during walks, bike rides, swimming, tide-pooling, picnicking, etc. We also frequently boat the waters of Lena Cove while crabbing and fishing. This proposed mariculture project will have no impact on any of these activities. The overall impact of the project will be minimal and will not interfere with our continued use and enjoyment of Lena Cove.

We encourage CBJ to support Rainy Dawn Farms' proposed mariculture project as a future sustainable resource for our community.

Sincerely,

Aimee & Philip Richards

16450 Ocean View Drive

Juneau, AK 99801

From: Teri Camery
Sent: Friday, August 20, 2021 8:11 AM
To: Chelsea Wallace
Subject: FW: Response to Comments Case No.: USE2021 0007

Good morning Chelsea, please add the applicant's response below to the Additional Materials packet. Thanks!

Teri Camery | Senior Planner, CFM

[Community Development Department](#) | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0753 extension 4129



From: Brian Delay <brian.delay@gmail.com>
Sent: Friday, August 20, 2021 8:01 AM
To: Teri Camery <Teri.Camery@juneau.org>; rainydawnfarms@gmail.com
Cc: Daniel Lesh <daniel.d.lesh@gmail.com>; terry schwarz <terry.schwarz@gmail.com>
Subject: Response to Comments Case No.: USE2021 0007

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello Teri,

Please find responses to some of the comments submitted so far. Please let me know if you have any questions or I can provide further assistance. Regards, Brian

8/20/2021 Comment Submission for Case No.: USE2021 0007

RE: CONDITIONAL USE PERMIT FOR AN AQUATIC PLANT FARM IN LENA COVE, FAVORITE CHANNEL

Applicant responses to comments, questions and concerns: August 20, 2021

Comment:

I have been a resident of Lena Cove since 1993. I believe this proposal is an environmental disaster waiting to happen. The winter weather in Lena Cove is treacherous, with winds and waves far exceeding any conditions that this proposed aquatic farm can handle. The result will be all the gear washed up on the beautiful Lena Beach Park and buried in the winter beach sand for us locals to observe for many years to come. Why does this farm have to be at this location? The north winds and waves of winter come roaring into Lena Beach without any obstructions. Just ask the surfers who brave the frozen temperatures to ride the waves produced by the winter storms. What do you think those storms will do to the aquatic farm gear? They will rip out their moorings and toss the gear up onto the beach and then bury it under the onslaught of water and sand. Not a pretty sight indeed. The aquatic farm folks need to find a suitable place that is not exposed to the severe winter weather that pummels Lena Cove. I hope you get my point.

Sincerely, Gerry Donohoe
17240 Andreanoff Drive
Juneau, AK 99801
907-957-0242

Response:

Mr. Donohoe correctly points out the northerly exposure of the proposed farm site and the wave action in the area. These conditions are highly predictable and intermittent during northerly outflow events. From near daily personal observation over the last five years, conditions in excess of six foot swell are the exception and not the norm and might occur six to twelve times each season. I have observed seas in excess of 10 feet only a couple of times. Seas of three feet plus are enough to attract surfers within the surf break a good distance from the proposed farm site.

These occasional conditions at Lena Cove are certainly not an anomaly and have not been overlooked in the gear design or location of this project. Should any gear fail, the financial consequences would be significant to the operator and compromise the viability of the project. If any gear were to break free it would certainly be in the best interest of the operator to conduct a quick and complete recovery. The sand and gravel shoals of the cove are dynamic features of the beach. It is hard to imagine any gear being buried without being completely abandoned or discarded. I cannot conceive of a scenario where any gear that happened to break loose and came ashore would not be immediately noticed and hastily recovered. Finally, the consequences of siting a project where gear could fail and go adrift off shore, poses significantly greater hazards to the public, mariners and marine mammals.

A number of safeguards can be implemented to manage the risks of gear moving from the farm site. Constant on shore video monitoring coupled with GPS equipped smart buoys are two methods that are practical and available.

Comment:

Dear Planning Commission:

Great idea, wrong place. I support the concept of kelp farming, but I am concerned that the strong winter northeries bringing high frequency swells and gale force winds directly into Lena Cove make this an unnecessarily risky place to put the farm. Any failure of anchor systems or lines supporting the kelp would result in debris blown into the Lena Recreational area, where it will be churned up in the beach gravels and be difficult to remove. Why not site this operation in a more protected area such as Auke Bay or Tee Harbor?

Thank you for the opportunity to comment.

Alex Wertheimer
17200 Andreanoff Drive
Juneau, AK 99801

Response:

"Farm equipment AKA "gear" is composed of anchors, chains, floats, and lines. No other gear, equipment, structures, vessels, docks etc. would be stored at the site that could generate "debris". The matrix of lines is carefully constructed to act as a structure. There are no loose parts and pieces to become separated from the total structure. The forces of buoyancy and wave action are dispersed across the matrix of interconnected lines and distributed to the anchors. Every growline of the "structure" has a minimum of two attachment points. Because the gear is fixed and closer to the bottom the structure is less susceptible to surface conditions.

" Why not site this operation in a more protected area such as Auke Bay or Tee Harbor? "

Both Tee Harbor and Auke Bay are vital year round anchorages and especially so during winter months. Lena Cove is mostly a sandy bottom and seldom used for winter anchorage due to the predictable hazardous conditions during northerly outflow events.

While Tee Harbor is well protected it is extremely confined and the multitude of other uses and potential conflict with other users does not make it a suitable location for this type of project. Likewise, Auke Bay is extremely congested with residences and vessel traffic that would present endless challenges to siting a project in that area.

Hello – To add to the comments below – what regulations are in place for debris removal for the operator/owner when the gear ends up on the recently improved and heavily used (U.S. Forest Service) recreation beach in Lena Cove? Recent experiences in Alaska point to a lack of enforcement options available for abandoned vessels and gear in local, non-navigable waters (vessels Challenger and Lumberman to name two

examples). Who will shoulder the burden of removal when the owner/operator defaults and chooses bankruptcy? Are there any protections from this contingency that can be put into place ahead of such an unhappy event?

Sincerely,
Kathy Hamblett
Juneau, AK
907-723-1066

Marine waters below Mean High High Water (MHHW) are managed by the State of Alaska Department of Natural Resources not the U.S. Forest Service.

The applicant/lease holder bears the responsibility as well as liability for gear or “debris” from the farm site. The applicant is insured per DNR requirements with the State of Alaska named as an additional insured. Stipulations in the lease agreement require loose gear or debris that comes ashore be removed within 48 hours.

The public has legitimate cause for concern regarding abandoned or derelict vessels and un-permitted moored vessels given recent experiences in the Juneau area as well as the subsequent costs to State, Municipal and Federal Governments. To compare a licensed, bonded, permitted and established business to a drug den anchored in Gastineau channel is a bit far fetched. The applicant is a 20 year resident of Juneau, has operated a number of legitimate businesses in the State of Alaska and has deep ties to the community and the State of Alaska

Comment:

“....To highlight my concerns: why introduce a different species of kelp into a recreation area and neighborhood ? How will negative results be mitigated? Is the water quality in Lena conducive to growing human food?”

Submitted by Roberta Stell, August 10, 2020. Please see other comments submitted by Ms. Stell.

Response:

Bull Kelp is a naturally occurring species that grows in the area of Favorite Channel and Shelter Island. Please refer to ADFG comments regarding biological concerns relating to invasive species.

Ocean products for human consumption are regulated by the Alaska Department of Environmental Conservation. The farming of Aquatic Plants serves many purposes and is used in myriad products beside those consumed by humans.

Comment:

Re: ADL 233370, Lena Cove Proposed Aquatic Farm Site, Comments
Teri,

Thank you for taking time to speak to me about this aquatic farm and pending conditional use variance request.

I would hope that someone could poll residents to get a true input before acting on this.

As you know the planning and zoning is a detailed and somewhat arduous process and should be respected.

The variance from the basically residential/recreational function/zoning, of our neighborhood to one of industrial/commercial activities is akin mixing oil and water. They are basically opposites.

Many of our residents have spent their lives getting to this point and entrust the zoning to protect our physical and aesthetic environmental not to mention our property values. Additionally the Lena Beach recreational area is in constant use year round and is a traditional site for cultural activities. Winter crabbing fishing and, surfing keep us entertained.

One major concern I have is the safe harbor issue and the danger this facility represents to vessels finding safe anchorage. It creates a danger in trying to avoid the site or if dragging anchor of damaging the underwater farm.

All neighbors who I have spoken to have shown some level of concern as to the impacts and if history is an example we can expect expansion requests if any economic success is realized.

Attached are my original comments provided to Alaska DNR.

Thank you for your time.

John C. Yerkes and Caren Yerkes

Response:

AquaCulture and Mariculture are allowable uses in this area. No variance is being sought for this project.

Numerous commercial and Industrial activities are visible within the view shed of the residents around Lena Cove. Including:

1. Ted Stevens NOAA facility - Lights 24/7
2. ATT Tower Lena Pt. - Lights 24/7
3. Cruise Ship Traffic -Seasonal
4. Whale Watching Vessels- Seasonal
5. Commercial Fishing Vessels- Year Round/Seasonal
6. Barge Traffic- Year round
7. Charter Fishing Vessels- Seasonal
8. DIPAC Net Pen and Hatchery Release-Seasonal
9. Misc. Small Cruise Vessels anchored in Lena Cove- Seasonal

Expansion of the foot print of this project at this location is highly unlikely due to the plethora of existing constraints.

The area of the Farm, 3.15 Acres, is not commonly used as “safe harbor” during winter months due to the northerly exposure and lack of upland facilities. Farm Equipment would be clearly marked and vessels choosing to anchor in the area have space throughout the cove to do so.



Packet Page 263 of 273
612 W. Willoughby Ave., Suite B
P.O. Box 21989, Juneau, AK 99802
Phone (907) 586-4360
www.seconference.org
Email info@seconference.org

SOUTHEAST ALASKA REGIONAL DEVELOPMENT ORGANIZATION

Michael LeVine
Chair, Planning Commission
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

August 16, 2021

RE: Conditional Use Permit USE2021 0007

Members of the City and Borough of Juneau Planning Commission,

Southeast Conference wishes to express its support for mariculture development within the City and Borough of Juneau where appropriate. The venture proposed by Rainy Dawn Fisheries to develop an aquatic plant farm for the purpose of cultivating bull kelp, dragon kelp and sugar kelp fits within the priority objectives of the Comprehensive Economic Development Strategy (CEDS) for Southeast Alaska. Seaweeds, especially kelp, are being utilized for an ever-diversifying array of needs including medicinal products, food, and even biodegradable plastics.

Southeast Conference is the economic development organization for the Southeast Alaska region. Mariculture is a major focus of Southeast Conference as a resiliency driver for the Southeast economy. Southeast Conference recently released its Southeast Alaska 2025 Economic Plan listing mariculture development as one of four priority objectives in its five-year economic plan for the region. The Alaska Mariculture Task Force, created by Governor Walker in 2014, developed a statewide comprehensive plan with the goal of growing mariculture into a \$100 million industry in 20 years. Empowering small businesses like Rainy Dawn Fisheries is a step towards reaching that goal for the benefit of the region.

Southeast Conference urges members to give Rainy Dawn Fisheries' proposal and their aquaculture efforts their fullest support possible.

Sincerely,

Robert Venables
Executive Director
Southeast Conference





August 20, 2021

City and Borough of Juneau Planning Commission
155 South Seward Street
Juneau, Alaska 99801
SENT VIA EMAIL

RE: USE2021 0007 - A CONDITIONAL USE PERMIT FOR AN AQUATIC PLANT FARM AT LENA COVE

Dear Commissioners:

I am writing to express my support for Brian Delay's application for a Conditional Use Permit (CUP) to operate a kelp farm in Lena Cove and to express my opposition to one of the proposed conditions. Lena Cove has long hosted a variety of commercial and recreational activities including salmon hatchery net pens, charter fishing vessels, picnicking, and recreational seafood harvest, and Mr. Delay's proposed kelp farm will complement the existing use of the cove with minimal impacts to the surrounding area.

In part because of the industry's newness to the region, applications for aquatic farms raise many concerns among adjacent landowners, particularly related to visual impacts and conflicting use. Mr. Delay's proposal does a remarkable job to address both concerns. Kelp farming is an activity that occurs from the late fall to early spring and exists almost exclusively below the water's surface. This means the visible portion of the farm will consist of no more than a handful of buoys, which is a common sight within Lena Cove. In addition to that, Mr. Delay plans to address concerns about conflicting use by removing all gear that could create conflicts from April 16th through September 30th each year.

I appreciate the CDD staff recommendation to approve the permit, but I have strong opposition to the proposed expiration date. Aquatic farm leases in Alaska are issued for 10-year terms. Because many aquatic farms take years before they have a marketable product to sell, this short term creates significant uncertainty. Until recently, a farm holding a 10-year lease would have to repeat the entire process of obtaining a new lease in order to secure a renewal following their initial term. In this past legislative session, however, Juneau's District 34 Representative Andi Story sponsored HB115 to allow the Alaska Department of Natural Resources to issue a one-time renewal of aquatic farm leases in good standing. This bill passed with unanimous support in both chambers, and Governor Dunleavy signed the bill into law. The expiration date suggested by CDD staff as a condition on the use permit largely thwarts the positive effect of this change to state law.

The staff report says, "Since ADNR is the landowner, it is necessary for the Conditional Use Permit to expire when the lease does." This justification lacks logic, is inconsistent with CUPs held by entities operating on leased property, including those for my own aquatic farm at Bridget Cove, and should be rejected outright. The list of reasons why the expiration of the initial term of a lease should have no bearing on the CUP includes the fact that leases may convert to a month-to-month tenancy following expiration, the lessee may be required to vacate at the end of the term rendering expiration of the CUP moot, the landowner and tenant may extend the lease, etc.

Aquaculture is identified by the State of Alaska, City and Borough of Juneau, Alaska Fisheries Development Foundation (AFDF), Southeast Sustainable Partnership, Southeast Conference, Juneau Economic Development Council (JEDC) and others as a valuable opportunity for Southeast Alaska. This is an industry that can provide substantial economic and environmental benefits to our community and region, and the suggested expiration of this permit is exceptionally out of step with the broad support within our city, region and state.

For these reasons and many more, I support granting a conditional use permit without expiration to Mr. Delay, dba Rainy Dawn Fisheries.

Sincerely,

A handwritten signature in blue ink, appearing to read "Meta Mesdag". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Meta Mesdag, Owner

From: [Rachelphil](#)
To: [PC Comments](#)
Subject: Approve the Lena Cove kelp farm permit.
Date: Saturday, August 21, 2021 8:55:45 PM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

I live on the shore not far from the proposed site of the Lena Cove kelp farm. I frequently fish and crab as well as kayak in Lena Cove. I believe that all the pertinent issues of concern, such as views, obstruction, water quality, and invasive species have been well addressed by the review process and permit applicant; and I believe the permit should be approved. This farm is a great opportunity to determine the feasibility of developing a new and environmentally compatible business for the Juneau area.

Thank you for the opportunity to comment.

Phil Rigby

Sent from my iPhone

From: [Keith Criddle](#)
To: [PC Comments](#)
Subject: Objection to USE20210007
Date: Sunday, August 22, 2021 11:34:56 AM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Planning Commissioners

My residence abuts Lena Cove, I recreate on the Lena Cove shoreline and in Lena Cove, and I engage in sport fisheries within Lena Cove. Therefore, I strongly urge you to deny the request for a conditional use permit to operate a kelp farm in Lena Cove.

1. The proposed commercial activity is incompatible with recreation associated with Lena Beach Recreation Area. It will adversely impact the residential character and marine viewscape of the Lena Cove Recreation Area and adjacent properties. In addition, the submerged infrastructure will interfere with wintertime sport troll fisheries and impinge on areas used for sport crab fisheries.
2. The submerged infrastructure poses an entanglement risk for Humpback Whales and Orca. Although neither species is listed as threatened or endangered, there is growing concern over the recent population declines of both species in this region. While these species are most frequently observed in Lena Cove during the summer months, I have observed them in Lena Cove during fall, winter, and spring. The risk of marine mammal entanglement is not acknowledged in the application, nor is there evidence to suggest that the applicant has consulted the NOAA Fisheries Protected Resource Division regarding that risk or devised a risk mitigation strategy.
3. Synthetic fibers and plastics used as aquatic farm infrastructure do not degrade in the marine environment and thus pose a risk of being a source of persistent marine debris in the intertidal and subtidal zones in Lena Cove. Globally, aquatic farms are recognized as a leading source of persistent macro- and micro-debris in the marine environment (see, e.g., National Research Council (2009) [Tackling Marine Debris in the 21st Century](#)). Northerly gale-force wintertime winds are frequent in Lena Cove (hence its appeal as a surfing location). Those winds, in combination with low tides, will expose farm infrastructure to severe kinetic stress, particularly when the gear is burdened with heavy pre-harvest kelp loads, increasing the likelihood of gear failure and the release of heavy loads of marine debris and kelp onto the surrounding shoreline. Waves associated with those northerlies will entrain the debris into shoreline substrate from which it will be re-exposed by subsequent storm events for years after the permitted activity ends. The debris mitigation plan presented to you relies on self-monitoring by the applicant; the lack of independent monitoring by state or federal agencies ensures that the mitigation plan is a toothless farce. Moreover, the mitigation plan does not even address monitoring or removing kelp fronds deposited on the shoreline by storm events or as a side effect of kelp harvesting operations. While kelp is biodegradable, windrows of kelp are not a natural feature of the Lena Cove shoreline, and masses of rotting kelp will reduce the appeal of the Lena Beach Recreation Area and alter beach ecology.
4. The claimed ecological benefits of this farm are utter nonsense. The ecological value of

natural kelp forests arises from their permanency. Claiming ecological benefits from the seasonal operation of an aquatic farm that creates an artificial habitat to promote the growth of a species that is not naturally prevalent in Lena Cove is as specious as claiming that a barley farm generates ecological benefits in interior Alaska. By definition, farming alters the natural environment to create an artificial environment favorable to crop production. Some species will exploit that artificial environment; it will harm the competitiveness of other species. The Lena Cove ecosystem is what it is, in part, because Lena Cove is not naturally suitable for the development of a kelp forest. At best, the aquatic farm will not affect the Lena Cove ecosystem. At worst, the farm could alter the Lena Cove ecosystem, favoring some species and harming others.

The proposed farm is an inappropriate activity in this location. Aquatic farms should not be sited adjacent to a popular recreation area; they should not be sited where they impinge on the quality of the residential environment; they should not be sited where they are unprotected from prevailing gale-force winds.

Keith Criddle

From: [J Gharrett](#)
To: [PC Comments](#)
Cc: [ICE A.J. Gharrett](#); [J Gharrett](#)
Subject: Comments in Proposed Kelp Farming site in Lena Cove
Date: Monday, August 23, 2021 10:00:04 AM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To Whom it may Concern:

We (Jessica and Anthony Gharrett) reside on the waterside, at 17825 Point Lena Loop Road, which is located at the head of Lena Cove.

Our comments on the proposed seasonal kelp farm are as follows:

1. This is a heavily used recreation area, including in winter, for numerous activities:
 - a. boating of all sorts, including year-round moorage and vessel deployment by locals, at times, charter boats, and transitory winter use by commercial crabbers for safe anchorages;
 - b. fishing (trolling) and crab pot deployment; as I write this, upwards of 35 or more long-term crab pots are deployed;
 - c. swimming, surfing (including in spring as early as March in recent years) and other water recreational activities.

2. We note that gear related to the proposed enterprise, particularly during early spring (March and April) may present barriers to long-established uses and cause dangerous entanglement with watercraft, mooring lines, etc. Even after off-bottom gear would be removed in April, trolling and other fishing or recreational activities could easily snag or cause damage to fishing equipment, without a obvious mechanism for compensatory relief.

3. It is conceivable that the proposed commercial activity would serve as a source of "seeding" or spreading of kelps, which could cause fouling of established mooring lines and anchors.

4. We are concerned that because Lena Cove is at times used by feeding whales, including in spring 2021, this project could pose an entanglement hazard for this use.

5. Lena Cove faces north/northwest, a direction from which high winds originate, particularly in fall and winter. Our house anemometer frequently records winds of 50 mph or more throughout the fall and winter. These are sufficient to allow surfing activities and may pose a hazard of loose farming gear.

6. We wish to note that this neighborhood includes numerous dwellings and associated structures, some of which are quite aged, and which are not served by city sewage systems. This has the potential to serve as a source of contamination for edible products.

Finally, we think it important to note that there are less-exposed local bays and inlets suitable for the proposed activity that would not compete or conflict with above uses, but with good road and water access (note the Salty Lady oyster farm).

Thank you for the opportunity to express our concerns.

Respectfully,

/s/

Jessica Gharrett

Anthony Gharrett

PO Box 210082 Auke Bay, AK 99821

Tel: 907-789-4819

From: [Brian Holst](#)
To: [PC Comments](#)
Cc: [Jill Maclean](#)
Subject: Rainy Dawn Fisheries Conditional Use Permit, Comments
Date: Monday, August 23, 2021 11:15:53 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Dear Planning Commission,

I am writing to express our support to continued mariculture development in the Juneau area and, specifically, to the Conditional Use Permit solicited by Brian P Delay, Case # USE2021 0007. We oppose inclusion of an expiration date as part of the Conditional Use Permit. An expiration date as a condition is not necessary for CBJ, since the State Department of Natural Resources determines lease lengths and extensions.

The Juneau Economic Development Council supported the passage of HB115 in the Alaska Legislature this year. One of the elements of this bill that we found critical to encouraging further investments in mariculture was the ability of the Department of Natural Resources to issue a one-time renewal of an aquatic farm lease in good standing.

The language in the HB115 reads:

The director may renew a lease issued under this section, AS 38.05.075, 19 38.05.083, or 38.05.810 upon its expiration if the lease is in good standing and the lease renewal is determined to be in the best interests of the state. A renewal issued under this subsection is not subject to AS 38.05.035(e). A lease under this section, AS 38.05.075, 38.05.083, or 38.05.810 may be renewed only once for a term not longer than the initial term of the lease. The director shall provide notice of the lease renewal decision.

Therefore, we ask that you eliminate lease expiration dates as a condition and expressly allow for extension of leases, in alignment with lease renewals by Alaska Department of Natural Resources.

Brian Holst

Brian Holst | Executive Director

[Juneau Economic Development Council](#)

Direct: 907-523-2333 | 612 West Willoughby Avenue

Invest in Juneau: www.JEDC.org/investors



Planning Commission, City and Borough of Juneau
Sent via email

RE: USE2021 0007 – CUP for an Aquatic Plant Farm at Lena Cove

Dear Commissioners:

August 23, 2021

I am writing on behalf of the Alaska Fisheries Development Foundation (AFDF) to support the Conditional Use Permit (CUP) requested by Mr. Brian Delay to operate a kelp farm in Lena Cove and to request amendment of one of the conditions to better align the CUP with a new law passed this year.

AFDF was formed in 1978 to serve as the only statewide research and development entity on behalf of Alaska's seafood industry. Since that time, AFDF has been dedicated to identifying problems common to the Alaska seafood industry and developing efficient, sustainable solutions that provide benefits to the economy, environment and communities.

In 2014, AFDF received a grant from NOAA to pursue the **Alaska Mariculture Initiative** – an effort to accelerate the development of mariculture in Alaska. In late 2019, AFDF began Phase 2 of the Alaska Mariculture Initiative, with funds provided by NOAA. *(NOTE: In this initiative, mariculture is defined as enhancement, restoration, and farming of shellfish and seaweed. Mariculture does not include fin-fish farming, which is prohibited by state law.)*

As a result of the Initiative, the **Alaska Mariculture Task Force** (Task Force) was established in 2016 by Administrative Order #280 and re-authorized in 2018 by AO#297. The administrative orders describe the benefits provided to Alaskans by a fully developed mariculture industry:

- Economic – providing jobs and commerce in coastal communities;
- Environmental – improving the local ecosystem in various ways, such as providing habitat improvement, carbon removal, or countering ocean acidification;
- Cultural – compatible with traditions, cultures, and skills in rural communities;
- Industrial – complements and expands our existing renewable seafood industry, which is Alaska's largest private sector employer;
- Food Security – increases access to local foods for Alaskans.

The Task Force completed the **Alaska Mariculture Development Plan** in 2018 and can be viewed [here](#). Additionally, a brief version of the plan can be viewed [here](#), **with the goal to grow a \$100 million industry in 20 years.**



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The planning process included five advisory committees and a phased economic analysis to inform the development of the comprehensive plan. The [first phase of the economic analysis involved a set of case studies](#) of other regions with successful mariculture industries and relevance to Alaska in terms of species, regulatory structure, etc., which demonstrated common pre-existing elements leading to success (i.e. pre-existing large-scale seafood industry) and common challenges to overcome. The [second phase of the economic analysis provided an economic framework](#) for the development of a \$100 million mariculture industry in 20 years. This framework included the following six species currently under some level of research and development in Alaska and annual revenue goals in 20 years: **oysters (\$30M)**, geoducks (\$10M), **seaweeds (\$15.7M)**, **mussels (\$7.5M)**, sea cucumbers (\$6.5M), and King crab (\$5.7M). The annual revenue goal for seaweed will require growing and harvesting approximately 48 million pounds of seaweed per year. The creation of the Lena Cove farm will help reach the statewide goal to develop a \$100 million per year mariculture industry.

Given the **Alaska Mariculture Initiative** and the work of the **Alaska Mariculture Task Force**, AFDF supports the CUP to operate a seaweed farm submitted by Mr. Delay as an example of the type of community-based farm necessary to reach a fully developed mariculture industry.

The Task Force has also been working on legislation to make this mariculture development goal attainable. During this past legislative session, Representative Andi Story sponsored HB115 to allow the Alaska Department of Natural Resources (ADNR) to issue a one-time renewal of aquatic farm leases, provided the lease was in good standing. This would not require the lease holder and ADNR staff to go through the previously lengthy process (that was essentially identical to receiving a new lease) every ten years. Instead, after 10 years, if the lease holder is compliant, the process is much simpler and quicker. However, the second renewal (after 20 years) still remains the a more lengthy renewal process. This aligns aquatic farm leases with the standards of other types of leases in ADNR.

For these reasons stated above, AFDF supports granting a CUP to Mr. Delay, dba Rainy Dawn Fisheries, and suggests the condition related to the expiration be linked to the ADNR lease to better align with HB 115 which was signed into law this summer.

Thank you for your consideration.

Sincerely,



Julie Decker, Executive Director, AFDF