

AMENDMENT NO. 1 TO THE TRAILS EASEMENT AGREEMENT

The City and Borough of Sitka ("Sitka"), 100 Lincoln Street, Sitka, Alaska 99835, and Baranof Island Housing Authority ("Grantor"), PO Box 571, Sitka, Alaska 99835, agree to amend and modify the Trails Easement Agreement ("Agreement") dated May 8, 1998. This Amendment No. 1 amends Section 1 and 3 of the Agreement as follows (new language underlined):

1. **Grant of Easement.** Grantor hereby grants to Sitka a perpetual nonexclusive easement over, across and through the land described on Exhibit A for sole purpose of building, using and maintaining a walking and non-motorized vehicle use trail as a part of a regional trail system (the "Easement"). A sketch showing an approximate proposed location of the Easement is attached hereto and marked Exhibit B. The exact location of the Easement shall be specifically agreed to and designated by the Grantor and Sitka in writing. The easement shall be twenty feet wide.

* * *

3. **Use of Easement.** The Easement shall be used solely for pedestrian walking and non-motorized vehicle use trails for the public, and appurtenant passive trail facilities such as benches and signs. The Easement may also be used by Grantor in connection with its program activities. The Easement shall not be used by Sitka, nor shall Sitka permit its use, in a way which is in violation of applicable environmental, penal or health or safety rules, ordinances, codes, statutes and regulations. In addition to its other remedies under law, if the Easement is used in violation of this Section 3, after 10 days written notice, Grantor shall have the option to pay to remedy the breach, and Sitka shall reimburse Grantor for such costs upon demand, or alternatively, Grantor may close the Easement and trail until such time as the offending condition is remedied.

* * *

All other sections of the Agreement that are not modified by this Amendment remain in full force and effect.

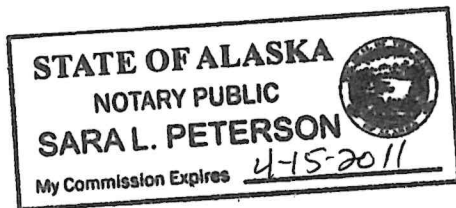
CITY AND BOROUGH OF SITKA



James Dinley, Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the 5 day of August, 2009, before me, a Notary Public in and for the State of Alaska, personally appeared JAMES DINLEY, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality corporation organized under the laws of the State of Alaska, and by signing this document verifies that he has been authorized to execute the documents on its behalf, and he signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.




Notary Public for Alaska
My Commission expires: 4-15-2011

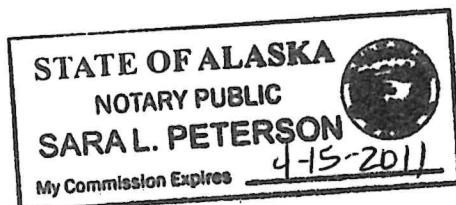
BARANOF ISLAND HOUSING
AUTHORITY



By: BART M MEYER
EXECUTIVE DIRECTOR

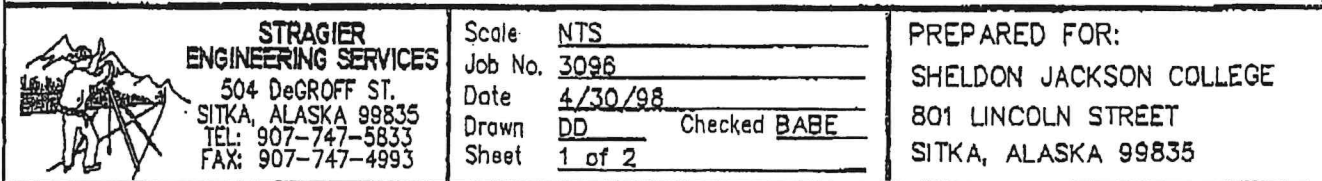
STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

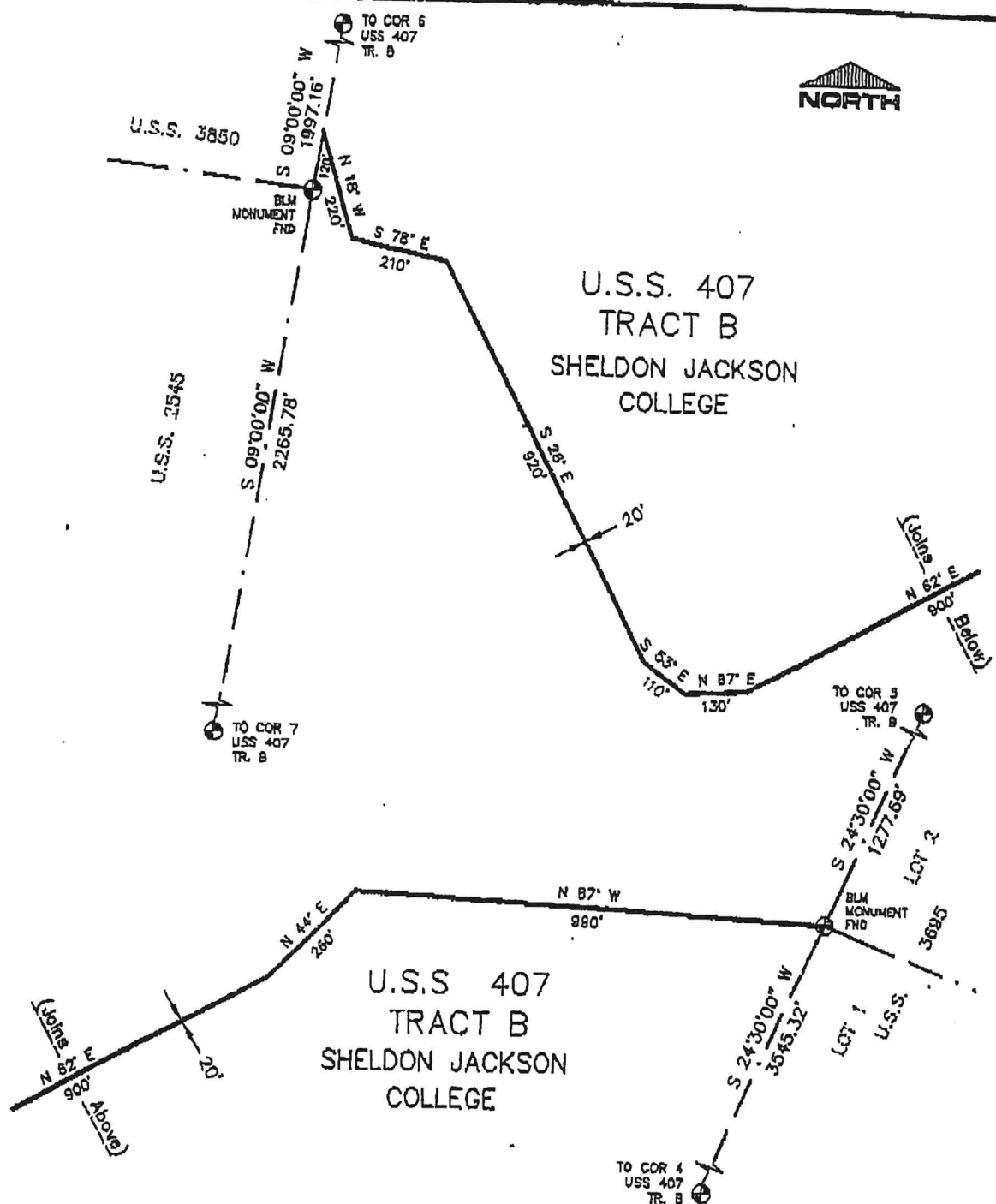
THIS IS TO CERTIFY that on this 6 day of August, 2009, before me the undersigned, a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared Bart Meyer BIHA Executive Director, known to be the person who executed the above and foregoing instrument, and acknowledged to me that he signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.




Notary Public for Alaska
My Commission expires: 4-15-2011



**EXHIBIT B****20' WIDE TRAIL EASEMENT LOCATION****STRAGIER
ENGINEERING SERVICES**

504 DeGROFF ST.
SITKA, ALASKA 99835
TEL: 907-747-5833
FAX: 907-747-4993

Scale 1"=300'

Job No. 3096

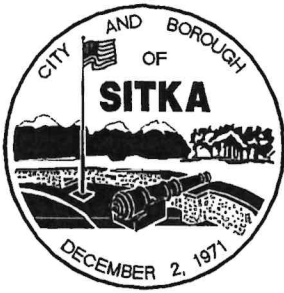
Date 4/30/98

Drawn DD Checked BABE

Sheet 2 of 2

PREPARED FOR:

SHELDON JACKSON COLLEGE
801 LINCOLN STREET
SITKA, ALASKA, 99835



City and Borough of Sitka

Parks & Recreation • 100 Lincoln Street • Sitka, Alaska 99835

ph: 907.747.1852 • fax: 907.747.7403 • parks@cityofsitka.com

Date: 7/23/2009

To: Mayor McAdams and Assembly Members
Jim Dinely, City Administrator

Through: Mary Larsen, Public Works Director
Scott Brylinsky, Public Works Op's Chief

From: Lynne McGowan, Parks and Recreation Manager

Subject: Request Approval to Amend Cross Trail Easement Agreement

Background: BIHA purchased the large tract of SJC uplands adjacent to their Indian River Road housing development this past spring. A trail easement agreement for the Cross Trail as it crosses this property has been in place between CBS and SJC since 1998. The terms of this easement were accepted by BIHA at the time of their property purchase but BIHA has agreed to make an amendment to the trail easement agreement to allow for bicycle use on the trail.

In the current agreement allowable activity is stated as "walking" and "pedestrian walking" but BIHA would like to amend the agreement to include "non-motorized use" in addition to pedestrian use. An amendment to Sections 1 and 3 of the Trails Easement Agreement which reflect the proposed use was drafted by the municipal attorney and has been approved by BIHA and is attached. The additions to the agreement are underlined.

Analysis: Use of the Cross Trail as a non-motorized transportation route is a publicly vetted objective. The Assembly approved 2003 Sitka Trail Plan includes the following language "One objective of the Sitka Cross Trail project is to upgrade the trail tread over the entire Cross Trail length for use by bicyclists."

Sitka Trail Works Board of Directors, Parks and Recreation Committee members and STW and CBS Parks' staff are in support of upgrading the existing Cross trail to allow for bicycle use.

Impact to the Community: Currently no funding has been secured to upgrade this section of trail to a non-motorized standard. A proposal to upgrade and relocate sections of the trail that are in the muskeg on BIHA's property will be considered in upcoming months.

Fiscal Note: No costs are associated with making this amendment.

Recommendation: Approve amendment No. 1 to the BIHA Cross Trail easement agreement dated May 8, 1998.

After recording return to:
Sheldon Jackson College
801 Lincoln Street
Sitka, Alaska 99835

Attn: S. Denslow

TRAILS EASEMENT AGREEMENT

This Trails Easement Agreement, dated as of this 8th day of May, 1998, is made and entered into by Sheldon Jackson College, an Alaska nonprofit corporation ("Grantor") located at 801 Lincoln, Sitka, Alaska 99835, and the City and Borough of Sitka, Alaska ("Sitka") with offices at 100 Lincoln Street, Sitka, Alaska 99835.

RECITALS

WHEREAS, Sitka is developing a trail system, and has approached Grantor to request the right to establish a public walking trail across land belonging to Grantor, legally described on Exhibit A, as part of a regional trail system; and

WHEREAS, Grantor is willing to allow Sitka to establish a trail across a portion of its property described as Exhibit A on the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Grant of Easement.** Grantor hereby grants to Sitka a perpetual nonexclusive easement over, across and through the land described on Exhibit A for sole purpose of building, using and maintaining a walking trail as a part of a regional trail system (the "Easement"). A sketch showing an approximate proposed location of the Easement is attached hereto and marked Exhibit B. The exact location of the Easement shall be specifically agreed to and designated by the Grantor and Sitka in writing. The easement shall be twenty feet wide.
2. **Relocation of the Easement.** Sitka acknowledges that the Grantor intends to eventually develop some or all of the land across which the Easement passes for residential and/or other uses. Therefore, the Grantor, at its sole discretion, shall have the right to relocate the Easement within the land described on Exhibit A to facilitate said development. The Easement shall be located contiguous to residential streets wherever possible. If suitable relocation of the Easement as designated by Grantor will not or cannot be paid for by Sitka, the trail and Easement will be closed until Sitka commits the funds to pay for such relocation. The owners of the lots subject to or abutting the Easement shall have the right to cross the Easement for purposes of ingress, egress and access to their properties. Sitka, as the jurisdiction which would be involved in development decisions affecting the land described on Exhibit A, agrees that it shall not impose conditions on the Grantor's development because of the existence of the Easement, so long as Grantor provides for a reasonable alternate route for such trail Easement consistent

*TRAILS EASEMENT AGREEMENT
SHELDON JACKSON COLLEGE and CITY AND BOROUGH OF SITKA
PAGE - TWO*

with this agreement. All costs involved in relocating and rebuilding the Easement shall be paid by Sitka, unless Sitka decides not to relocate the Trail and abandons the Easement.

3. **Use of Easement.** The Easement shall be used solely for pedestrian walking trails for the public, and appurtenant passive trail facilities such as benches and signs. The Easement may also be used by Grantor in connection with its educational activities. The Easement shall not be used by Sitka, nor shall Sitka permit its use, in a way which is in violation of applicable environmental, penal or health or safety rules, ordinances, codes, statutes and regulations. In addition to its other remedies under law, if the Easement is used in violation of this Section 3, after 10 days written notice, Grantor shall have the option to pay to remedy the breach, and Sitka shall reimburse Grantor for such costs upon demand, or alternatively, Grantor may close the Easement and trail until such time as the offending condition is remedied.
4. **Construction and Maintenance of Easement.** Sitka shall be responsible for all costs of constructing and maintaining the Easement and all trails and appurtenant facilities located thereon. The Trail and appurtenant facilities shall be built according to normal trail construction practices and maintained all times in good, clean and safe condition and in statutes and regulations. Upon default of any obligation herein, Grantor, after 10 days written notice, shall not be obligated to but shall have the option to repair or maintain the Easement to the extent required by statutory, regulatory or safety considerations or alternatively to close the trail and Easement until such time as the condition is remedied.
5. **Indemnity.** Sitka shall indemnify and hold harmless Grantor, its trustees, tenants, employees, agents and officers from any claims, losses, actions, judgments, proceedings, expenses (including court costs and reasonable attorneys fees) and/or damages arising in any way as a result of the use of the Easement by the public or Sitka or the failure of Sitka to perform its obligations under this instrument, except if and to the extent the harm is caused by Grantor's active negligence or intentional wrong doing.
6. **Attorneys Fees.** In the event of any action undertaken to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys fees.
7. **Cooperation.** Without derogating from the rights granted herein, the parties agree to cooperate to facilitate the Grantor's future development or sale of the lands burdened with or in the vicinity of the Easement.
8. **Covenant Running with the Land.** The terms of this Agreement touch and concern the real property described on Exhibits A, and shall be deemed

TRAILS EASEMENT AGREEMENT
SHELDON JACKSON COLLEGE and CITY AND BOROUGH OF SITKA
PAGE - THREE

covenants running with the land and shall bind and inure to the benefit of the successors and assigns of Grantor and Sitka. In no case, however, shall Sitka be able to assign away its obligations under this Trail Easement Agreement.

By: [Signature]
David C. Meekhof, President
Sheldon Jackson College

By: [Signature]
Gary L. Paxton, Administrator
City and Borough of Sitka

STATE OF ALASKA)
)ss: CORPORATE ACKNOWLEDGMENT
FIRST JUDICIAL DISTRICT)

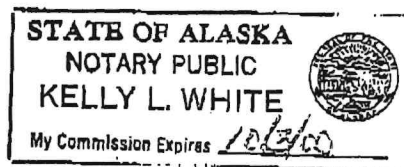
On this 11 day of May, 1998, personally appeared before me **DAVID C. MEEKHOF**, whose identity is personally known to me and who by me duly sworn, did say that he is the **PRESIDENT** of **SHELDON JACKSON COLLEGE**, and acknowledged that said document was signed by him in behalf of said corporation by authority of its bylaws.

[Signature]
Notary Public for Alaska
My Commission Expires:

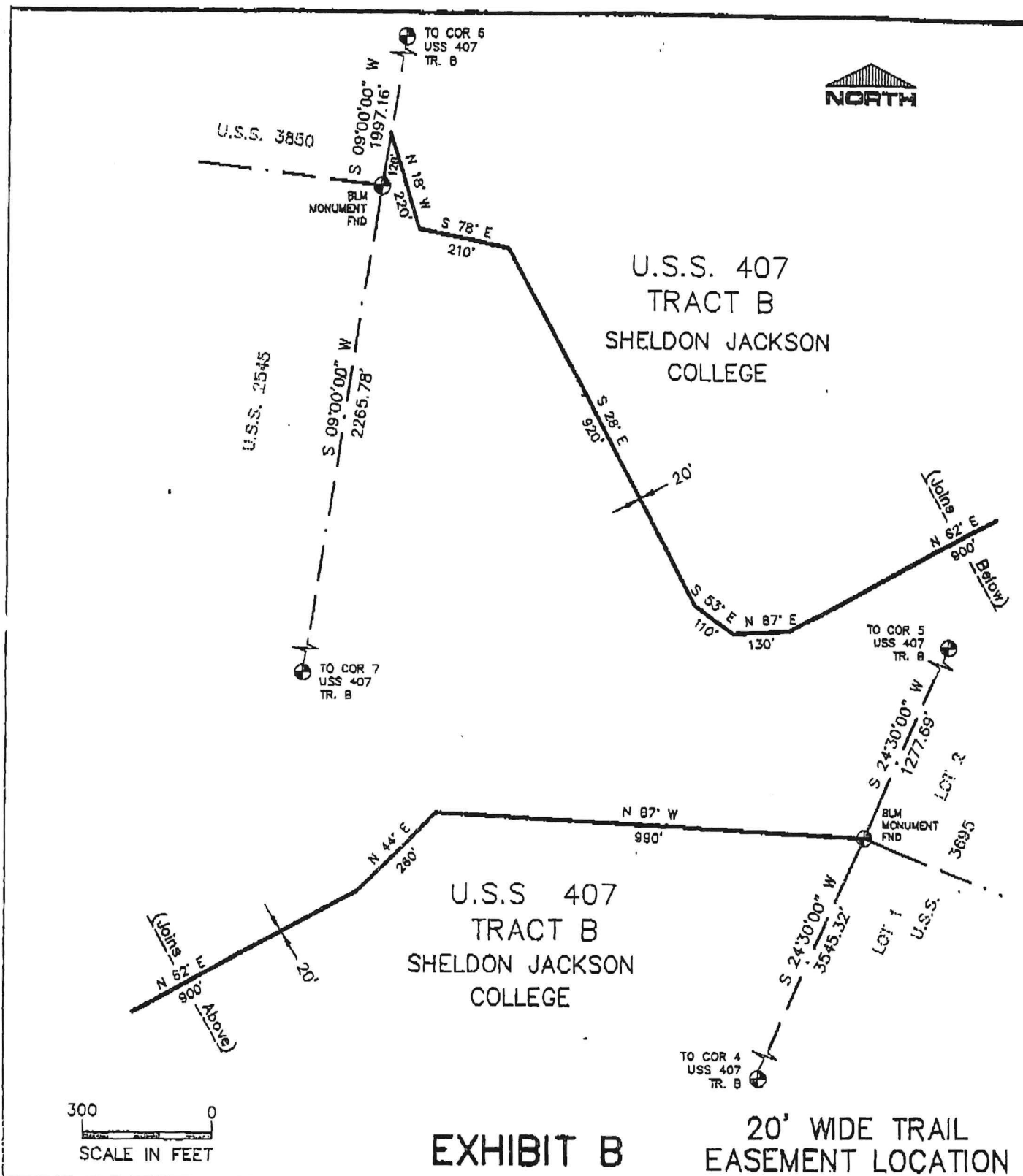
STATE OF ALASKA)
)ss: MUNICIPAL ACKNOWLEDGMENT
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 11 day of May, 1998 before me, a Notary Public in and for the State of Alaska, personally appeared **GARY L. PAXTON** to me known and known to me to be the person whose name is subscribed to the foregoing EASEMENT AGREEMENT, and after being first duly sworn according to law, he stated to me under oath that he is the **ADMINISTRATOR** of the City and Borough of Sitka, Alaska, a corporation organized under the laws of the State of Alaska, that he has been authorized by said corporation to execute the foregoing EASEMENT AGREEMENT on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

WITNESS my hand and official seal the day and year in this certificate first above written.



[Signature]
Notary Public for Alaska
My Commission Expires: 10/3/00



STRAGIER
ENGINEERING SERVICES

504 DeGROFF ST.
SITKA, ALASKA 99835
TEL: 907-747-5833
FAX: 907-747-4993

Scale 1" = 300'

Job No. 3096

Date 4/30/98

Drawn DD Checked BAE

Sheet 2 of 2

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801 LINCOLN STREET
SITKA, ALASKA, 99835