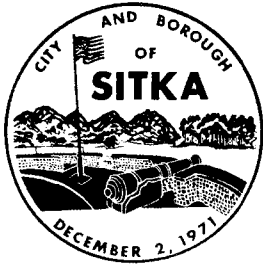


## **POSSIBLE MOTION**

**I MOVE TO** approve an amendment to the Sitka Coastal management Plan Enforceable Policy 1.4 to delete Picnic Cove as a permitted personal use float house site due to ongoing obstruction of public boat anchorage and use.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

DATE: March 31, 2014  
MEMO TO: Mayor and Assembly  
Mark Gorman, Municipal Administrator  
FROM: Marlene Campbell, Government Relations Director  
SUBJECT: Modification of CBS Coastal Management Enforceable Policy 1.4

**Background:** In 2011, the State of Alaska terminated Alaska's participation in the national Coastal Management Program. The City Assembly adopted the City's Coastal Program by Ordinance 2011-22. Section 3, Purpose, states "This ordinance adopts the previously approved Enforceable Policies of the City and Borough of Sitka Coastal Management Plan, as a regulatory Coastal Zone plan for managing activities occurring on property owned by the City and Borough and provides advisory guidance for permitting for activities in the Coastal Zone throughout the City and Borough of Sitka." See attached copies of Ordinance 2011-22 and Sitka Coastal Management Plan Enforceable Policy 1.4.

The Alaska Department of Natural Resources (DNR) has supported the CBS Enforceable Policies relating to personal use floathouse siting, including Policy 1.4, which limits permitting private floathouses for residential use on public tidelands within Sitka Sound to only a few "grandfathered" locations which already had floathouses in 1987 when this policy was originally approved. One of these locations was Picnic Cove, south of Sitka on the way to Goddard Hot Springs. Picnic Cove was a popular public use and safe anchorage area for small boats near a major transit route until the existing floathouse took over a large portion of the inner cove. Picnic Cove is so small that boats trying to anchor must do so very close to the floathouse, which both physically and aesthetically obstructs public anchorage and use. This portion of Policy 1.4 listing approved floathouse sites states: "Within Picnic Cove, as shown on Figure 3d, *so long as boat anchorage use is not obstructed.*"

For more than two decades the public has complained that Picnic Cove is a bad site to permit private, personal use floathouses since public access and use have been severely restricted or denied. Several years ago there was a successful court case against the Picnic Cove floathouse owner, and DNR subsequently required the owner remove the floathouse. The owner did not comply and expanded the facility to include a barge. The owner is now deceased, and the heir wants to keep the floathouse in Picnic Cove. At least one other party has also applied to DNR for a floathouse permit in Picnic Cove. Of the four approved personal use floathouse sites, Picnic Cove is the only one that generates continuing complaints. The other three sites have proved generally acceptable.

**RECOMMENDATION:** Given the inadequacy of Picnic Cove to not obstruct public boat anchorage and use as required in the policy, CBS planned to amend its plan to remove Picnic Cove from the list of personal use floathouse areas, but this was not accomplished due to the demise of the ACMP. **It is therefore recommended that the Sitka Coastal Management Plan Enforceable Policy 1.4 be amended to delete Picnic Cove as a permitted personal use floathouse site due to ongoing obstruction of public boat anchorage and use.** DNR has agreed to not consider further actions concerning these applications until the Assembly addresses this issue.

Providing for today ... preparing for tomorrow

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2011-22

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA TO AMEND THE SITKA GENERAL CODE TO ADD A NEW CHAPTER 20.05, COASTAL MANAGEMENT, TO ADOPT AND REGULATE ACTIVITIES IN THE SITKA COASTAL MANAGEMENT AREAS TO COINCIDE WITH COASTAL MANAGEMENT PLANS/REGULATIONS UNDER THE STATE OF ALASKA (IF APPLICABLE) AND FEDERAL GOVERNMENT.

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected thereby.

3. PURPOSE. This ordinance adopts the previously approved Enforceable Policies of the City and Borough of Sitka Coastal Management Plan, as a regulatory Coastal Zone plan for managing activities occurring on property owned by the City and Borough and provides advisory guidance for permitting for activities in the Coastal Zone throughout the City and Borough of Sitka.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code is amended to add a new Chapter 20.05, Coastal Management, to read as follows (new language underlined; deleted language stricken):

Title 20  
MISCELLANEOUS PERMIT REGULATIONS

Chapters:

20.04 Floodplain Management

20.05 Coastal Management

\* \* \*

Chapter 20.05  
COASTAL MANAGEMENT

Section:

20.05.010 Adoption by reference – City and Borough of Sitka Coastal Management Plan (CMP) Enforceable Policies.

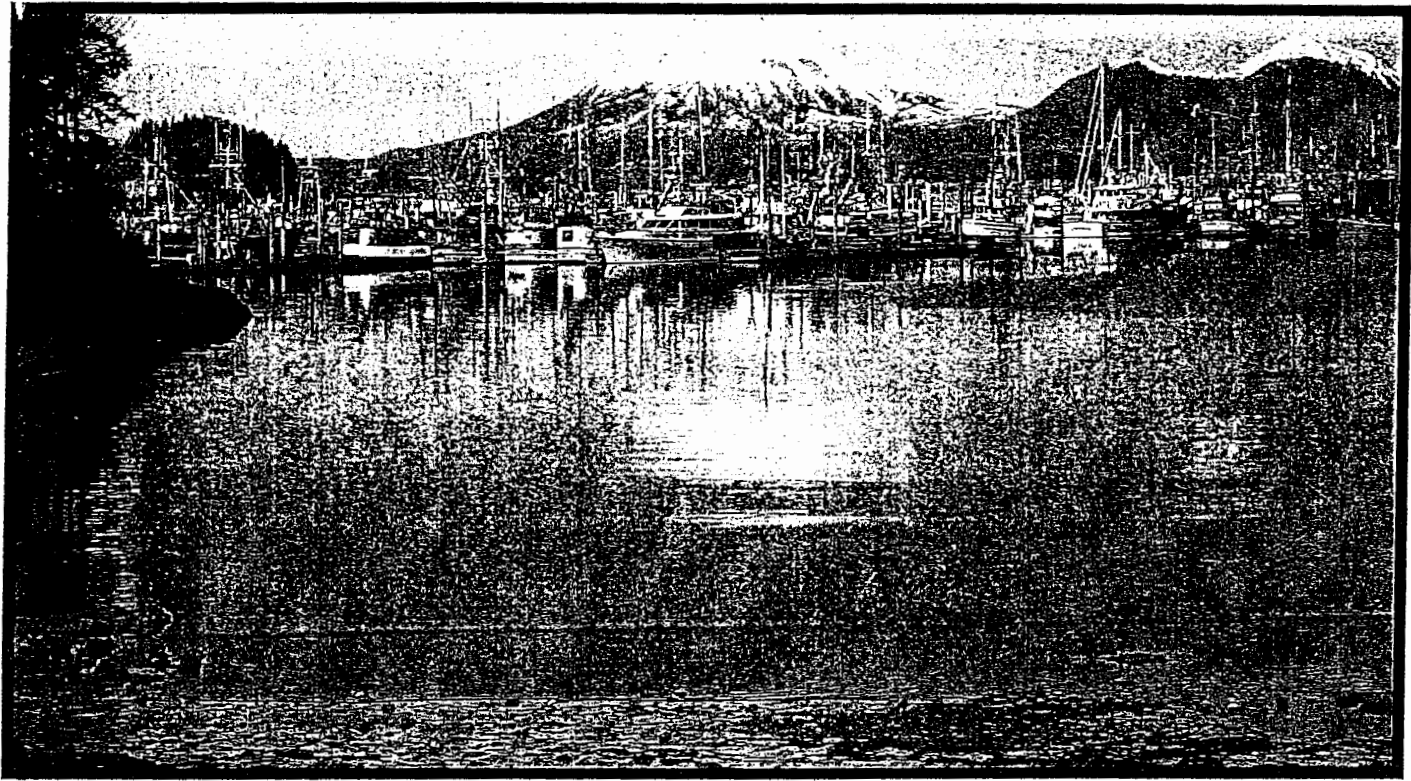


Photo by Gabrielle LaRoche

# City and Borough of Sitka Coastal Management Plan

Final Plan Amendment, December 2006  
Effective April 8, 2007

*\* See 6th page of this attachment for enforceable  
Policy 1.4.*

Prepared By:



LaRoche+Associates

*These pages from the Coastal Development section  
provide background on floating facilities and their priorities,  
including policy 1.1-1.4.*

standards “to guide public and private uses of land and water within that district ...”. Guidance policies are policies that may not meet one or more tests of enforceability contained in state statute but that can help guide coastal uses within the district. Guidance policies are not enforceable and cannot be used to require conditions or stipulations on projects during the project consistency review process. The guidance policies are located in Appendix-2 as required by the State.

Enforceable Policies of the City and Borough of Sitka relate to the development and use of specific coastal resources. They are binding on the City and Borough, the public, state agencies, and federal agencies to the extent they are consistent with other applicable local, state and federal regulations. These are the “enforceable policies” discussed in the requirements of 11 AAC 114.270. These enforceable policies are listed again in a stand-alone section with definitions and map references (see Appendix -1). In many cases, enforceable policies only apply to certain geographic areas. Please refer to Table 3 for policy applicability.

## **B. USES AND ACTIVITIES**

### **1. COASTAL DEVELOPMENT**

#### **a. INTRODUCTION**

The State coastal development standard applies only to development in or adjacent to coastal waters. (See definitions of “adjacent” and “coastal waters” in Appendix -1.) District enforceable policies may be district wide or area specific.

The standard does two things. First, it sets forth a requirement that the districts prioritize the uses and activities in the coastal area based upon whether the uses are water-dependent, water-related, or neither but without an inland alternative. It is simply a requirement that the more water-dependent the use or activity, the higher priority it shall receive. Second, the statewide standard provides a basis for district enforceable policies that address the placement of structures and the discharge of dredged or fill material into coastal waters. But authority under this standard is limited to those parameters: structures or discharge being placed in coastal waters (i.e., not on land).

In order to provide necessary specificity and enforceability to the wide spectrum of uses and activities covered under this Coastal Development title, the two parts of the standard are considered separately in this chapter. A discussion of each use is located with the policies that are intended to be applied to that use.

#### **b. FLOATING FACILITIES**

##### **1) Application of Enforceable Policies**

Enforceable policies apply to development in or adjacent to coastal waters throughout the entire coastal resource district unless otherwise noted in the policy. Refer to Table 3 for policy applicability.

## 2) Floating Facilities Issues of Local Concern

Floating facilities located in the public domain provide exclusive private use of a public resource, and therefore usurp public use of such utilized tidelands and adjacent submerged lands. The 1983 Sitka Coastal Management Program provided general regulatory guidelines and a General Permit authority received from the Corps of Engineers to address floating facility concerns. However, increasing use of public tidelands and submerged lands by floating facilities, and decreasing availability of public access to uplands and tidelands within the City and Borough of Sitka, have generated increasing competition and conflicts with other resource groups. A more specific process to regulate the uses and placement of floating facilities is necessary to protect public use.

Some of the major potential problems associated with floating facilities are as follows:

- Exclusive use of public tidelands and submerged lands/ displacing or causing conflicts with other users of forest and water resources;
- Lack of proper sewerage and litter disposal;
- Interference with navigation;
- Siting near areas of habitat concern, causing damage to the habitat;
- Placement of support buildings or ties on public lands;
- Lack of a tidelands permit granting such exclusive use following a public process;
- Lack of safe building construction causing short life and increased potential for debris accumulation on the public domain;
- Exclusive use causing a socioeconomic loss to other users including charter boats, visitors, subsistence users, or local recreation users who seek an alternate location to provide a wilderness or remote experience;
- A lack of mobility and difficulty in transporting the facility to another location; and
- The lack of any real enforcement action to remove floating facilities or remains from areas where not approved.

With so much of the City and Borough of Sitka's socioeconomic base dependent upon water-related activities, floating facilities which support major industries within the City and Borough, particularly commercial fisheries, timber and tourism, are important to the economy. The City and Borough recognizes the economic necessity for floating facilities directly involved in these industries and supports permitting those facilities that meet the District Plan requirements, in consideration of the compelling public benefits accruing from these contributions to a healthy economy.

In its significant amendment approved in 1989, the Sitka Coastal Management Program severely restricted the placement of "floathouses" (including floating homes, barges, vessels, or any other floating facility used for private residential use) within Sitka Sound to a few locations where such uses could receive appropriate permits. In all other locations, the placement of private, personal use floathouses in Sitka Sound for more than 14 days was not permitted. The reason for this restrictive policy was that there was very strong public sentiment that private, personal use of public tidelands should not restrict the public's right to also use those tidelands. The long-term moorage of a floathouse in a sheltered anchorage effectively preempts that area from being used by the public. Policy 1.4 was therefore developed to severely restrict the locations where private, personal use of tidelands could limit the public's access to those tidelands and by default, the adjacent uplands. It was agreed that areas that already had floathouse use at the time would be "grandfathered" to permit existing facilities to remain, but no new sites have been added within Sitka Sound. Outside of Sitka Sound, floathouse applications are considered on a case-

by-case basis, but the public generally mounts strong opposition to private, personal use of any areas providing good anchorage and recreational and subsistence opportunities for the public.

### 3) Floating Facilities Resource Inventory and Analysis

Appendix-6, with Management Recommendations, which reprints in its entirety the approved Resource Inventory and Analysis for the Sitka CMP first adopted in 1981 and re-approved in 1989, contains specific information about the resource values, suitability and sensitivity of coastal shorelands and tidelands, and the anticipated effects of development on these resource values. In mandating statewide revisions of district coastal plans within one year, OPMP represented to districts that thorough revision of currently approved Resource Inventory and Analysis documents would not be required. Appendix-6 read in conjunction with the Issues of Local concern articulated in the preceding section "2" comprise the need and justification for enforceable policies 1.1 – 1.5.

For Policy 1.3: The U.S. Forest Service manages much of the area within the City and Borough of Sitka's coastal zone boundary through the Tongass Land Management Plan. This plan maps and describes designated wilderness areas (See Figure 2). The plan is available on request. *Note: See Appendix-3 References for information.*

The Sitka Public Use Management Plan (Sitka PUMP, 1993) identified the most outstanding recreation use areas within the Sitka Coastal District outside the Sitka road system and provided management guidelines and enforceable policies for those areas. When this plan was revised in 2006, the Sitka PUMP was included as Chapter V: Special Management Areas.

### 4) Current Floating Facilities Regulations

The State of Alaska owns nearly all of the tidelands and submerged lands from the line of mean high water out to the three mile limit. When a private party seeks to use this public resource (whether for a dock, floathouse, or other use), the party requesting use of the tidelands is expected to seek approval for this use through a public process. An uplands owner has, in some instances, first preference to the use of the tidelands adjacent to the owner's property, if criteria pursuant to AS 38.05.075(c) are met. The following is a general summary of the regulations and requirements of the various local, state and federal agencies that may have jurisdictional authority over floating facilities:

**Alaska Department of Natural Resources:** For the mooring of any floating facility for any period exceeding fourteen (14) days, a tidelands use authorization from the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water shall be required. An uplands owner adjacent to the tidelands has, in some instances, first preference to the use of the tidelands adjacent to the owner's property.

In addition, siting of a floating facility must be found to be consistent with the approved Sitka Coastal Management Program and the Alaska Coastal Management Program before a permit may be issued.

**Enforceable Policies:** The following definitions of potentially unclear words and phrases contained in the enforceable policies of this section are included in the enforceable language to assist in clarifying the intent of said policies, and are not intended to represent the sole meaning of the defined words.

**DEFINITION:** For purposes of this section, a “floating facility” is defined as a boat, houseboat, barge, or any structure located on a raft that is moored or anchored in one location for a period of 14 days or more, during which time it is not primarily used for transportation. Floating facilities may be powered or not. Floating facilities located in harbors and marinas are excluded from this definition. Floating facilities can generally be separated into the following use categories, including:

- Fishing related - processors, buying scows;
- Mariculture/aquaculture related - operations facilities and bunkhouses, research or educational stations, net pens;
- Transportation and/or Tourism related - seaplane, tour boat or other water-based operations;
- Timber related - floating logging camps, reconnaissance or other short term projects, thinning contract camps;
- Mining related - floating mining camps, dredges, support claim development;
- Wild Resource Use - trapping camps, sport fishing lodges, birdwatching stands, base camps for recreational activities;
- Floathouses - primarily designed, intended, or fitted out as a residence or place of habitation and not an integral component of another use category.

**DEFINITION:** For purposes of this section, “public benefit” is defined as: The broad-based socioeconomic gains accruing to the public from a use or activity which creates jobs, maintains the Sitka District’s renewable resources, stabilizes or enhances resource development and economic base, or in other ways serves the public good to a greater extent than the use or activity adversely impacts the general public and/or environment.

**1.1 Policy:** In determining whether to allow or prohibit any floating facility at a specific site, the following priorities shall be considered:

- 1) Highest priority shall be given to those uses and activities that are water-dependent or water-related. Examples of such uses and activities include fish processors, fish buying scows, water-based transportation facilities, aquaculture or mariculture facilities.
- 2) Higher priority consideration shall be given to those uses and activities that are neither water-dependent nor water-related, for which there are no practicable upland alternatives. Examples of such uses and activities include camps supporting logging, thinning contracts, reconnaissance or other short-term projects, mining, or other related activities; research stations; floating log transfer or storage facilities; dredges.
- 3) Lower priority consideration shall be given to those uses and activities that benefit only an individual or limited group, are neither water-dependent nor water-related, and for which there are no upland alternatives. The intent of this policy is to severely restrict placement of those facilities seeking to locate on publicly owned waters that do not generate a public benefit.

Examples of uses and activities under this category include sport-fishing or other floating lodges, trapping camps, base camps for recreational activities.



- 4) Lowest priority consideration shall be given to those uses and activities that benefit only an individual or limited group, are neither water-dependent nor water-related, and for which there are upland alternatives. The intent of this policy is to severely restrict placement of those facilities seeking to locate on publicly owned waters that do not generate a public benefit.


Examples of uses and activities in this category include residential float houses, sport fishing or other floating lodges, trapping camps, or base camps for recreational activities.

**1.2 Policy:** The following important physical and economic criteria shall be considered in determining whether or not to permit a floating facility at a specific site:

- 1) The size and configuration of the site and surrounding area.
- 2) The public benefits or adverse impacts the facility will have on the area itself, as well as on other users of the area considering the number of persons impacted physically and economically both positively and negatively by the facility (from a few individuals to the entire community) and the degree of those impacts on both upland owners and users.
- 3) The length of time the facility will be in place at the site, with seasonal or short-term uses given higher priority consideration than long-term use.
- 4) The complexity of the facility, with greater scrutiny being directed toward a facility taking up a large area and/or having broader or more impacts than a small facility would generate.
- 5) The appropriateness of the site to accommodate a floating facility in terms of its physical characteristics, including anchorage; hazards to navigation, proximity to other floating facilities or upland users, site specificity (the need for the facility to be located at a specific site)."

**1.3 Policy:** Floating facilities shall be prohibited in the following areas, unless a significant public benefit results from the proposed use, and there is no practicable upland alternative for the proposed use:

- 1) Designated Recreational Use Areas as shown on map Figures 4- 5 and all Special Management Area Figures in Chapter V.
- 2) State Tidelands adjacent to Wilderness Areas as shown on Figure 2, unless the facility is considered a high-priority use under Policy 1.1, and a public benefit results from the proposed use. Both short-term and long-term benefits will be evaluated.

 **1.4 Policy:** Within the Sitka Sound area, as shown on Figure 3, private floathouses for residential use that are not an integral component of another use category may be permitted on public tidelands only within the following areas:

- 1) Within Jamestown Bay, as shown on Figure 3a, in the area by Guertin and Dove Island currently occupied by floathouses;

- 2) Within Camp Coogan Bay, as shown on Figure 3b, including the immediately adjacent bight currently occupied by floathouses;
- 3) Within the northern bight of Eastern Bay, as shown on Figure 3c;
- 4) Within Picnic Cove, as shown on Figure 3d, so long as boat anchorage use is not obstructed.

1.5 **Policy:** The following requirements shall apply to all floating facilities permitted within the District:

- 1) **Grounding:** Floating facilities shall be sited to avoid shallow areas where they could settle on or abrade the substrate during low tides. To the extent practicable, floating facilities shall be moored in a minimum of 12 feet of water present during mean lower low water or 0.0 tide stage.
- 2) **Proper Anchoring:** Floating facilities shall use anchoring methods similar to a marine vessel and shall not use shore ties or other means which restrict passage around their location unless specifically approved by the appropriate agency or agencies as meeting regulatory requirements. Anchors shall be of sufficient weight and holding capability to keep the facility in its permitted location without being washed up or damaged on the beach.
- 3) **Removal:** An owner or operator shall be responsible for promptly removing and disposing of floats, docks, rafts, boats, and floathouses or other related materials when the lease or permit fees lapse. Abandonment, casting loose, or disposal on a beach are prohibited as disposal methods.
- 4) **Exception to Above Requirements:** The above requirements apply to floating facilities on publicly-owned tidelands rather than those tied with the permission of the dock owner to a private dock on privately owned tidelands.

## C. WATERFRONT AND TIDELANDS DEVELOPMENT

### 1) Application of Enforceable Policies

Enforceable policies apply to development in or adjacent to coastal waters throughout the entire coastal resource district unless otherwise noted in the policy. Refer to Table 3 for policy applicability.

### 2) Waterfront and Tidelands Development Issues of Local Concern

The Sitka Comprehensive Plan (City and Borough of Sitka, 1999) includes the following policies for waterfront development:

- 2.4.13. To consider revising the Coastal Zone Management Program and zoning ordinances to restrict development in sheltered waterfront property to water dependent uses only.

# Fig. 3: Index to Floathouse Permitted Sites Within Sitka Sound

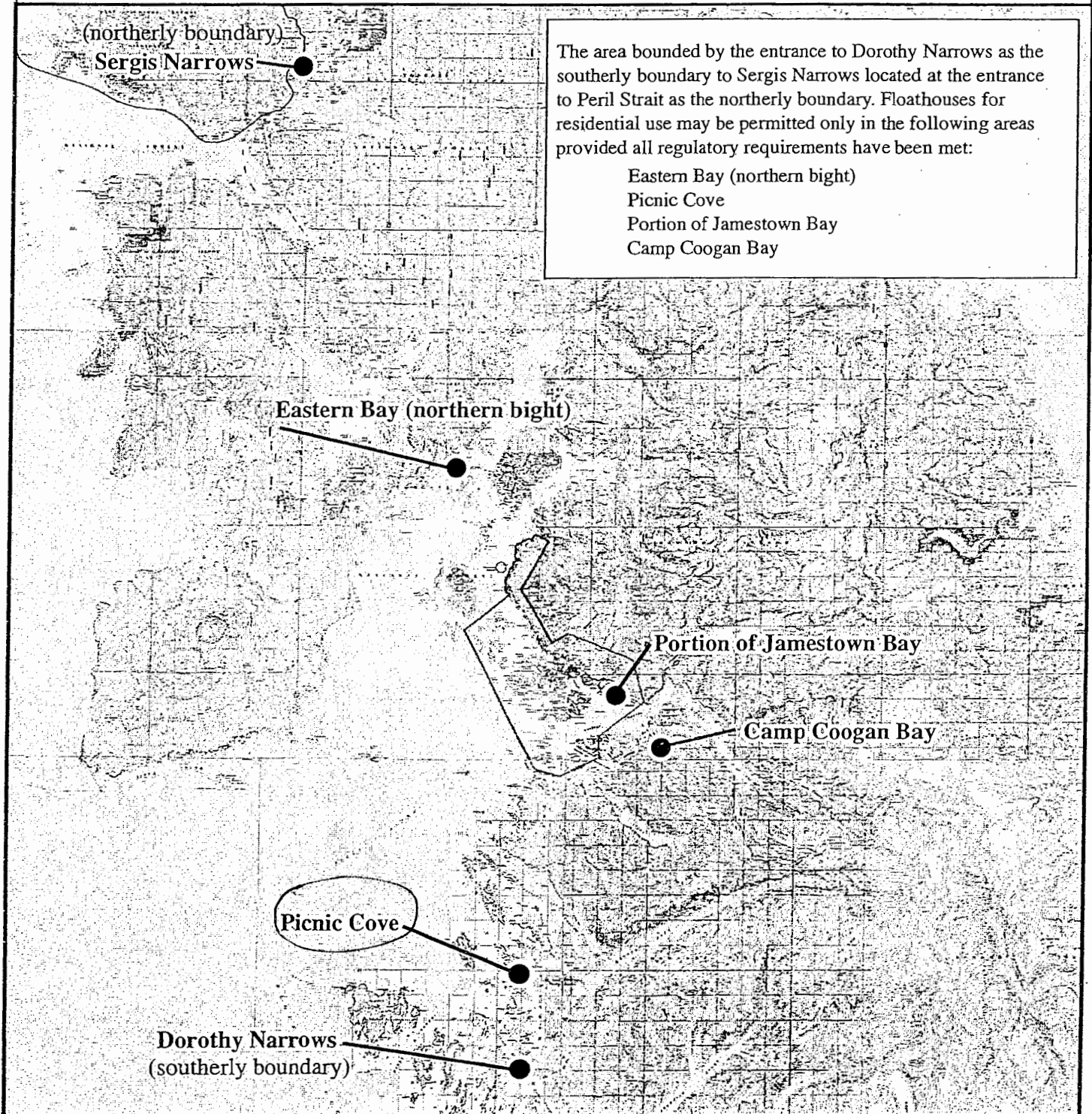


Source: City & Borough of Sitka Planning Department

U.S.G.S. Sitka A4, A5 1:63,360

Federal lands are excluded.

Applicable enforceable policies: 1.3, 1.5, 1.7, 3.1, 3.2, 3.3, 3.4



**Fig. 3d: Detail of Floathouse Permitted Sites  
Picnic Cove**

Sitka Coastal Management Plan, June 2006

— Description —

Picnic Cove, so long as boat anchorage areas are not obstructed. Federal lands are excluded. Applicable enforceable policies: 1.3, 1.5, 1.7, 3.1, 3.2, 3.3, 3.4.



Source: USGS 1:63,360 Point Alexander Quad D5

