

POSSIBLE MOTION

I MOVE TO approve Ordinance 2015-48 on second and final reading.



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

MEMORANDUM

To: Mark Gorman, Municipal Administrator
Mayor McConnell and Members of the Assembly

From: Maegan Bosak, Planning and Community Development Director *MB*

Subject: Ordinance 2015-48 Authorizing the Lease renewal of Tidelands Lease Tract #3 to Cove Marina, Inc. at 4701 Halibut Point Road

Date: September 14, 2015

Multiple leases of the tidelands at Cove Marina, Inc., located at 4701 Halibut Point Road, are set to expire June 12, 2016. Ordinance 2015-48 is on the Assembly's agenda to authorize the issuance of a new five year lease for the lease tract #3.

The proposed market rent, based on the value established by the Assessor, will be \$5,900 a year. This new lease is based on the 9% lease rate for tidelands set by Wendy Lawrence, Assessing Director.

Lease area #3 is 8,832 square feet of submerged tidelands and was authorized to lease by the Assembly in 2006. It is legally defined as A 8,832 square foot portion of Alaska Tidelands Survey 1189. The State of Alaska is the upland property owner.

The applicant is requesting the lease renewal to continue operations as Cove Marina, Inc. adding additional infrastructure as necessary.

There are four tideland lease areas associated with this property. The largest, which was acquired from the State of Alaska, expires in 2021. These associated leases will be set for a five year term, expiring at the same time, so that all leases can be incorporated into one new lease.

Following the passage of Ordinance 2015-48, a new lease for the tidelands will be prepared and executed.

RECOMMENDED ACTION: Approve the ordinance.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2015-48

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AUTHORIZING THE LEASE OF APPROXIMATELY 8,832 FEET OF TIDELANDS IN ALASKA TIDELANDS SURVEY 1189

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.

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

3. **PURPOSE.** The purpose of this ordinance is to renew the existing tidelands lease and facilitate the construction of additional dock improvements. There are multiple leases for Cove Marina and the expiration of this lease is the same as the other leases.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka.

A. The leasing of approximately 8,832 square feet of Alaska Tideland Survey 1889 is hereby authorized with the following terms:

- 1) The parcel is valued at \$65,800.
- 2) The annual lease payments shall be 9% per year of the value of the tidelands.
- 3) The lease term is run concurrent with the existing Cove Marina lease that expires on June 12, 2021 and may be considered for renewal prior to the expiration.
- 4) Lease payments shall be adjusted per SGC 18.16.210.
- 5) Prior to execution of a lease, a lease plat must be prepared and approved by the Planning Office.

B. The administrator is authorized to execute a lease documents consistent with the terms of this ordinance, SGC Title 18 that governs tidelands leases, and, existing municipal policies and practices on tideland leases. The lease renewal clause shall be consistent with the existing Cove Marina tidelands lease.

C. The assembly determines that Sitka General Code 18.16.130 Preference Rights and Nonpreference Rights does not apply since the State of Alaska is the upland owner.

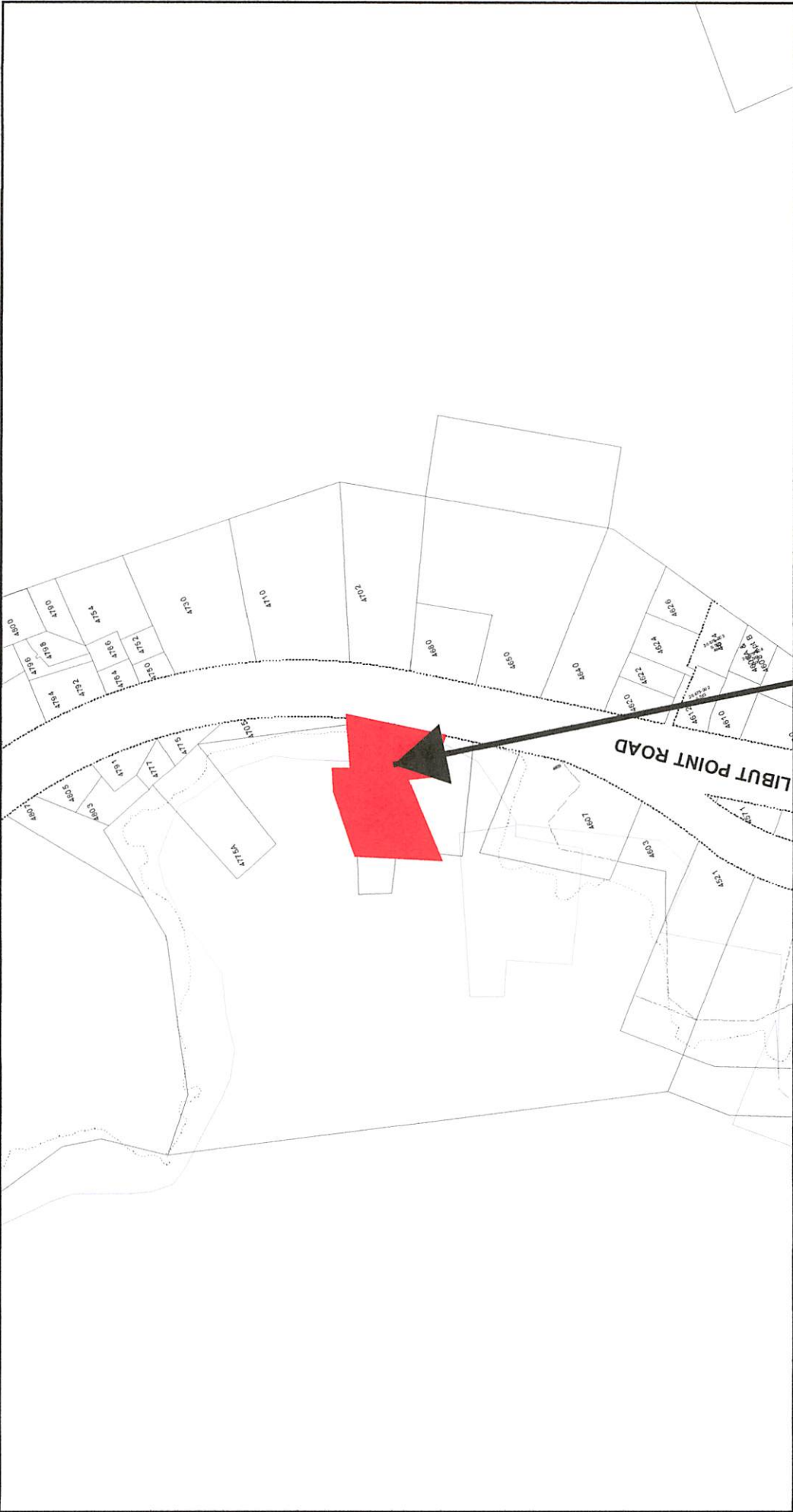
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 13th day of October, 2015.

Mim McConnell, Mayor

ATTEST:

Sara Peterson, CMC
Municipal Clerk





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Halbut Point Road

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Memorandum

To: Maegan Bosak, Planning and Community Development Director

From: Wendy Lawrence, Assessing Director

Re: Cove Marina, Inc. Lease Renewals

Date: September 14, 2015

The upland and submerged tidelands currently leased and/or occupied by Cove Marina, Inc. have been inspected for their lease renewal application. The site is located at 4701 Halibut Point Road, with northwest sloping adjacent tidelands. Access is attained from both HPR as well as via marine floats extending into the tidelands, with the depth of the water at about 5'-30' more or less. Utilities are all located in the right of way, and the upland site is zoned Industrial.

Based upon the most recent market data for this area, I have estimated the fee simple per square foot values of \$15.00 & \$2.25 for the upland/filled areas, and tideland areas, respectively. The current city tidelands lease rate is 9%.

Because this entire site and business operation encompasses three separate leases, and one currently unleased but fully utilized tideland area (referred to as Trespass Area on the attached exhibit), analysis of this site for both fee and lease values was a bit challenging. A proposal to lease the current trespass area was denied in 2003, but the area has continued to be occupied and utilized by the marina since the early 1990's. This site visit confirmed the location of a large 30'X58' boat shed and associated floats in this trespass area. The annual lease for this trespass area, as well as lease renewal rates for the other three lease areas, has been summarized in the attached exhibit.

Please feel free to contact me if you need additional information or have questions regarding this complex situation.

Respectfully,

Wendy

Lawrence

Wendy Lawrence, Assessing Director

Digitally signed by Wendy Lawrence
DN: cn=Wendy Lawrence, o=City and Borough of
Sitka, ou=Assessing Department,
email=wendy.lawrence@cityofsitka.org, c=US
Date: 2015.09.14 16:04:59 -0800

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Recording Dist: 103 - Sitka

11/8/2007 11:12 AM Pages: 1 of 6



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Return to:

City and Borough of Sitka
Attn: Assessing Dept
100 Lincoln St.
Sitka, AK 99835

THIS COVER SHEET HAS BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR THE RECORDING DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.

DO NOT DETACH

August 23, 2001

**COVE MARINA, INC.
TIDELANDS LEASE AGREEMENT**

The City and Borough of Sitka, hereafter referred to as the "Lessor," and Cove Marina, Inc., hereafter referred to as the "Lessee," collectively referred to as the "Parties," enter into this Cove Marina, Inc. Tidelands Lease Agreement, hereafter referred to as "Lease," based on the terms and conditions set out in this "Lease," and as approved by the City and Borough of Sitka Assembly in Ordinance 2006-37, effective August 22, 2006.


WHEREAS, the Lessor is the owner of certain tidelands seaward of Cove Marina, Inc. at 4701 Halibut Point Road, Sitka, Alaska, comprising approximately 8,832 square feet in Alaska Tideland Survey 1189, and graphically represented on the copy of the attached Exhibit A, hereafter referred to as the "Subject Property;" and

WHEREAS, the Assembly determines that the criteria in Sitka General Code 18.16.130 Preference Rights and Nonpreference Rights does not apply since the State of Alaska is the upland owner.

NOW THEREFORE, based on the consideration set out below, the Lessor and Lessee agree to the following terms and conditions:

1. Lessor leases to the Lessee the Subject Property described in attached Exhibit A, for a term of approximately ²⁰⁰⁷ten (10) years, effective June 12, 2007, and expiring June 12, 2016. *mje 9 mje 2007 mje JLS JLS*
2. Lessee, in consideration of this Lease, agrees as follows:
 - a. Lease payments shall be made annually to Lessor. For the first year, the amount of the lease payment shall be one thousand, eight hundred dollars and no cents (\$1,800.00), which is the equivalent of 9% of the value of the Subject Property, which is estimated to be twenty thousand dollars and no cents (\$20,000.00), calculated at two dollars and twenty five cents (\$2.25) per square foot. All subsequent annual lease payments shall be subject to adjustment in accordance with Sitka General Code ("SGC") Section 18.16.210, and any subsequent amendment to this code section.
 - b. The current version of SGC Section 18.16.210 subjects the annual lease payment to adjustment on the seventh anniversary of the lease and each seven years thereafter, with the annual lease payment being changed by the percentage change in the amount established by dividing the grand total of the land value on the official municipal real property assessment roll for the initial tax year, compared with similar calculation using the figures seven years later. The base figure the initial tax year is twenty thousand dollars and no cents (\$20,000.00). The Lessee shall be subject to any adjustment to rent as set out in any subsequent amendment to SGC Section 18.16.210.

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| <i>JLS</i> |


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- c. Lessee shall pay sales tax to the City and Borough of Sitka, based on the amount of each annual lease payment.
- d. The first year's payment is due on the date the Lease is signed and executed by all of the parties to the Lease. All subsequent payments shall be made by that same date each year.
- e. The Lease may not be assigned or sublet by the Lessee without the consent of the Lessor.
- f. If the full lease payment is not timely paid, and Lessee fails to remedy default within thirty (30) days after receipt of written notice of any such lease payment arrears, the Lessor may immediately, or at any time thereafter while such default continues, terminate the lease, repossess the Subject Property, enter on Subject Property, expel Lessee and those claiming right to possession or to be on the Subject Property based on the rights of the Lessee, and remove Lessee's effects (forcefully if necessary) without being guilty of any trespass. These rights are in addition to any other rights and remedies, without prejudice, which might otherwise be used for arrears or lease payments, proceedings on breach of agreement, or collection on arrears.
- g. The Lessee agrees to pay any Local Improvement District assessments that may be levied against the Subject Property to the same extent and in the same amount as if the Lessee were the owner of the Subject Property which would be included in the Local Improvement District to be formed or contemplated. The Lessee shall share the Lessor's right as owner in all proceedings under the Local Improvement District (except for payment of assessments) in proportion that the remaining years of the lease bear to twenty (20). (For example: If the lease has five (5) years to run, the Lessee shall have the right to exercise 5/20ths of the Lessor's vote and the Lessor, 15/20ths.)

3. The Parties mutually agree as follows:

- a. The terms and conditions herein contained shall apply to and bind the heirs, successors, and agents of the respective Parties.
- b. Waiver by Lessor of any term or condition setout in this Lease shall not be considered a waiver of any subsequent breach of said term or condition.
- c. Lessee agrees to hold harmless, insure and indemnify the Lessor from any liability for property damage or personal injury to any person or persons on or about the Subject Property and to carry and provide proof of liability insurance in such amounts as may be agreed to between the parties to cover such liability, with the Lessor as an additional named insured.

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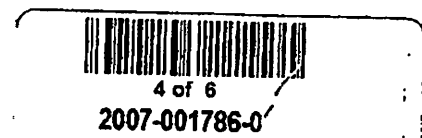


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- d. The Lease may be renewed if upon the expiration of the Lease, the Lessee desires a renewal lease on the Subject Property or property interests covered herein. Lessee shall within thirty (30) days before the expiration of the Lease, make a written request to the Lessor for renewal of lease in which Lessor must certify under oath as to the character and value of all the improvements existing upon the land, the purpose for which Lessee desires a renewal, and such other information as may be required.
- e. If Lessee occupies the Subject Property after the expiration date of this Lease without the consent of the Lessor, such possession shall be construed as an annual tenancy and Lessee shall annually pay Lessor the amount of the rent paid during the last year of the Lease until the Lease is terminated by the Lessor.
- f. The Lessee may terminate the Lease upon giving the Lessor thirty (30) days prior written notice.
- g. At any termination of the Lease, all improvements placed on the Subject Property and attached to the land so as to become part of the real property by common law definition shall become the property of the Lessor.
- h. Each Party to the Lease represents that its representative or agent who signs and executes the Lease has been delegated and is authorized to legally bind each Party regarding this Lease.

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| <i>JLS</i> |



CITY AND BOROUGH OF SITKA

COVE MARINA, INC.

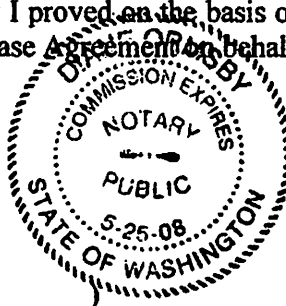


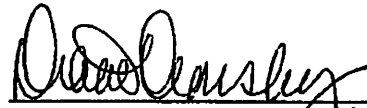
Municipal Administrator


Secretary

STATE OF ALASKA (WA)
Kitsap County) ss.
FIRST JUDICIAL DISTRICT)

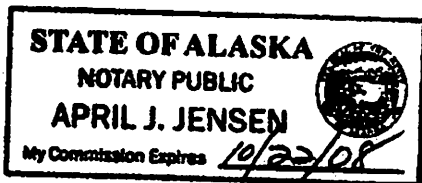
On this 18th day of Oct, 2007, Michael J. Clementz personally appeared before me, whose identity I proved on the basis of satisfactory evidence, and executed the Cove Marina, Inc. Tidelands Lease Agreement on behalf of Cove Marina, Inc.

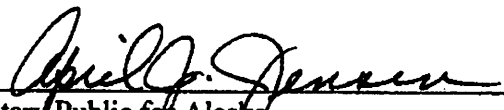


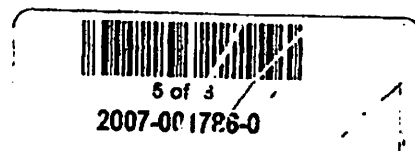

Notary Public for ~~Alaska~~ Washington
My Commission Expires: 5-25-08

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

On this 21st day of September, 2007, John C. Stein personally appeared before me, whose identity I proved on the basis of satisfactory evidence, and he executed the Cove Marina, Inc. Lease Agreement on behalf of the City and Borough of Sitka.




Notary Public for Alaska
My Commission Expires: 10/22/08



Cove Marina lease of Tidelands

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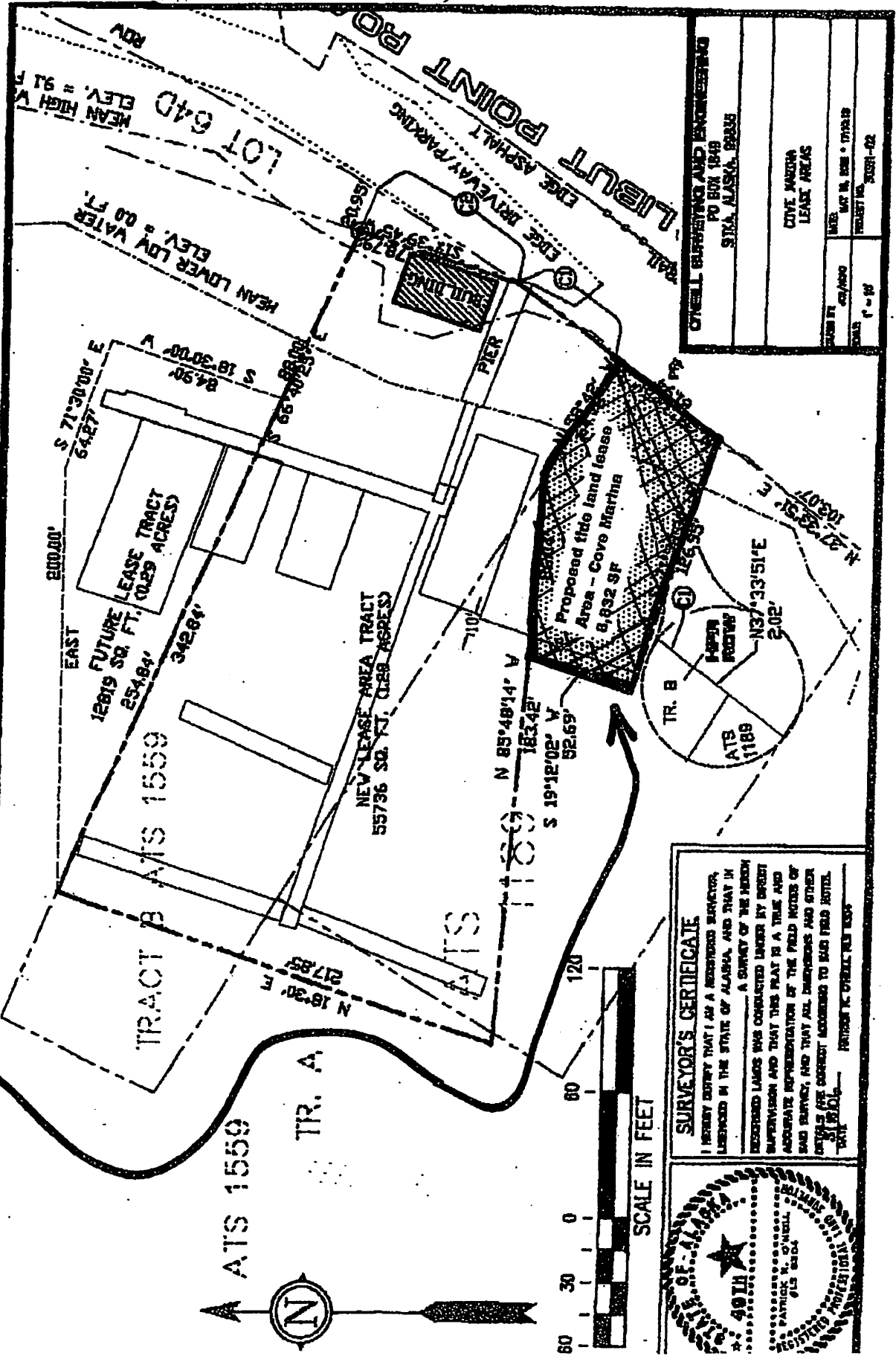
 AS

EXHIBIT A



2007-001786-0

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O'NEILL SURVEYING AND ENGINEERING
 PO BOX 1848
 SITKA, ALASKA 99581

COVE MARINA
 LEASE AREAS

DATE: MAY 18, 2006 • 07:14:18
 DRAWN BY: CMO/MSO
 CHECKED BY: PMS/MSO
 SCALE: 1" = 40'

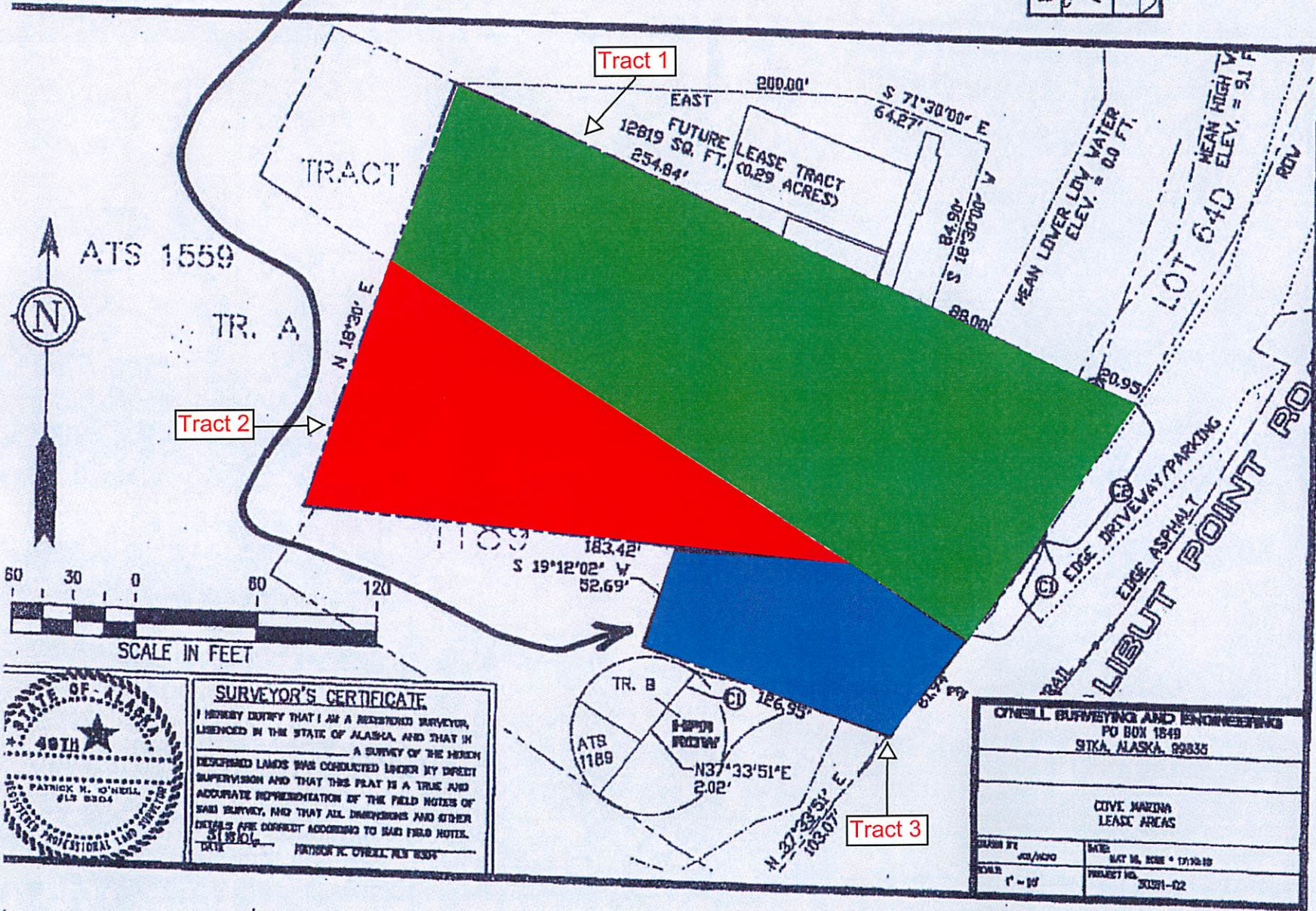
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A REGISTERED SURVEYOR, LICENSED IN THE STATE OF ALASKA, AND THAT IN REGISTERED LANDS WAS CONDUCTED UNDER MY DIRECT SUPERVISION AND THAT THIS PLAN IS A TRUE AND ACCURATE REPRESENTATION OF THE FIELD NOTES OF THIS SURVEY, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT ACCORDING TO SAID FIELD NOTES.

PATRICK W. O'NEILL
 REGISTERED PROFESSIONAL SURVEYOR

Cove Marina Lease of Tidelands

INITIAL
 [Handwritten initials]



ATS 1559

TR. A

Tract 2

Tract 1

FUTURE
 12819 SQ. FT.
 254.84'

LEASE TRACT
 (0.29 ACRES)

LOT 640

LIBERTY POINT ROAD

SCALE IN FEET

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A REGISTERED SURVEYOR, LICENSED IN THE STATE OF ALASKA, AND THAT IN _____ A SURVEY OF THE HEREIN DESCRIBED LANDS WAS CONDUCTED UNDER MY DIRECT SUPERVISION AND THAT THIS PLAT IS A TRUE AND ACCURATE REPRESENTATION OF THE FIELD NOTES OF SAID SURVEY, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT ACCORDING TO SAID FIELD NOTES.

DATE: 5/19/01
 SURVEYOR: PATRICK K. O'NEILL, RLS 9304

O'NEILL SURVEYING AND ENGINEERING
 PO BOX 1849
 SITKA, ALASKA, 99835

COVE MARINA
 LEASE AREAS

| | |
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| DATE: 5/19/01 | DATE: 5/19/01 |
| SCALE: 1" = 30' | PROJECT NO: 30391-02 |

EXHIBIT A



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