

POSSIBLE MOTION

I MOVE TO approve Ordinance 2015-47 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 

Subject: Ordinance 2015-47 Authorizing the Lease renewal of Tidelands Lease Tract #2 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 2015-47 is on the Assembly's agenda to authorize the issuance of a new five year lease for the lease tract #2.

The proposed market rent, based on the value established by the Assessor, will be \$3,300 a year. This new lease is based on the 9% lease rate for tidelands set by Wendy Lawrence, Assessing Director.

Lease area #2 is 16,436 square feet of submerged tidelands and was created in 2003. It is legally defined as a 16,436 square foot portion of Alaska Tidelands Survey 1559, Tract A and Alaska Tidelands Survey 1189. Both neighboring tracts are leased by Cove Marina, Inc.

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 2015-47, a new lease for the tidelands will be prepared and executed.

RECOMMENDED ACTION: Approve the ordinance.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2015-47

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AUTHORIZING THE LEASE OF APPROXIMATELY 16,436 FEET OF SUBMERGED TIDELANDS IN ALASKA TIDELANDS SURVEY 1189 and 1559 TRACT A

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.

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

A. The leasing of approximately 16,436 square feet of Alaska Tideland Survey 1889 and Alaska Tidelands Survey 1559 Tract A is hereby authorized with the following terms:

- 1) The parcel is valued at \$37,000
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.

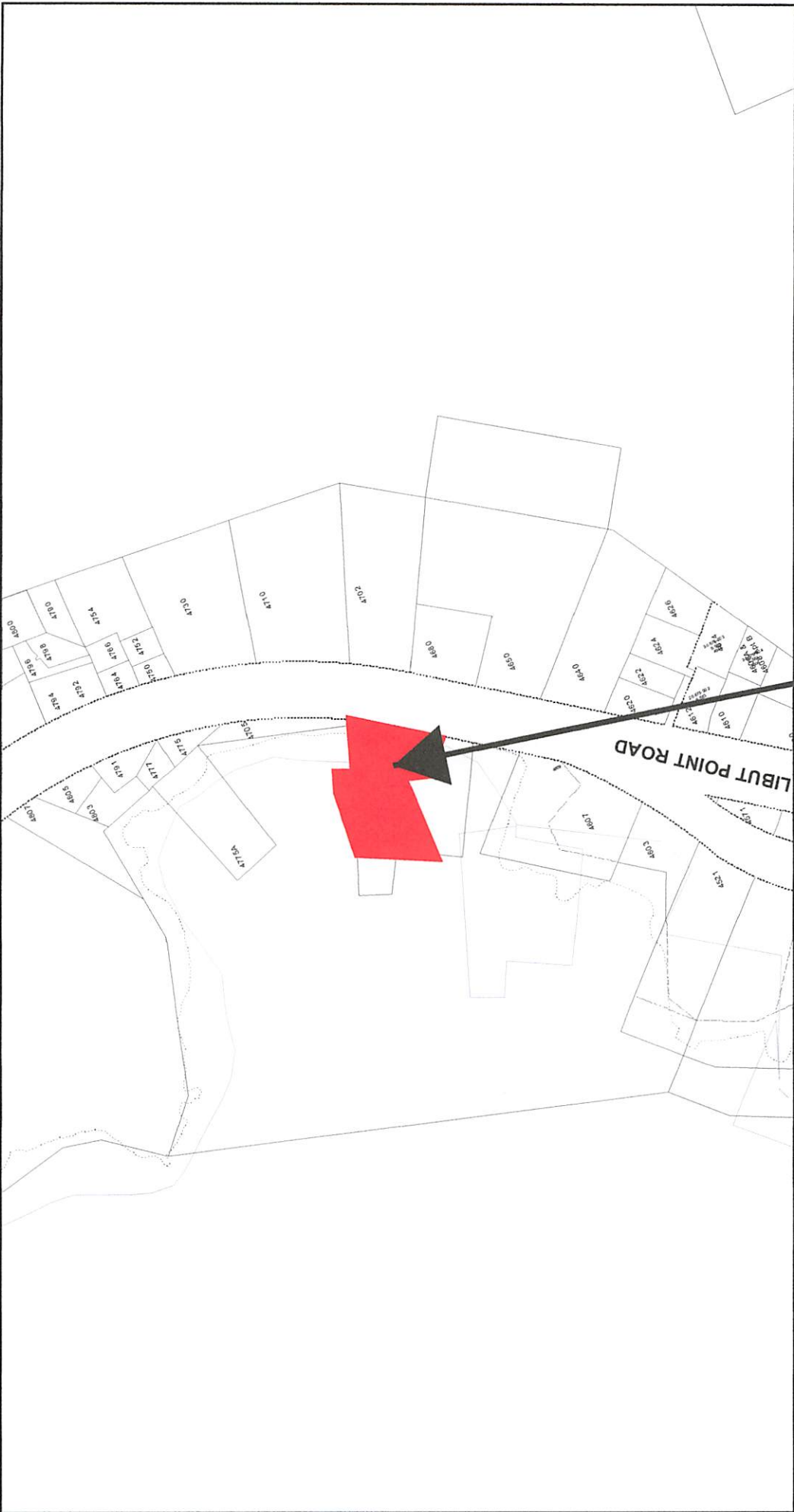
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

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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4730

4710

4702

4670

4700

4732

4700

4775

4705

4660

4680

4640

4620

4701

4607

4603

Halibut Point Road

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' X 58' 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



2003-000733-0

Recording Dist: 103 - Sitka
3/24/2003 8:36 AM Pages: 1 of 6

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cc

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

**COVE MARINA
TIDELANDS LEASE**

THIS LEASE, made and entered into this 4th day of February, 2003, by and between CITY AND BOROUGH OF SITKA, hereinafter referred to as the Lessor, and Cove Marina, Inc. hereinafter referred to as the Lessee,

WITNESSETH:

WHEREAS, the Lessor is the owner of certain tidelands in the Sitka Sound, seaward of 4701 Halibut Point Road, Sitka Alaska, described as a 16,436 square foot portion of Alaska Tidelands Survey (ATS) 1559, Tract A and Alaska Tidelands Survey (ATS) 1189. Said property is graphically represented on the copy of the attached plat provided as Exhibit A.

WHEREAS, Lessor has held an auction pursuant to Sitka General Code Chapter 18.16.110 to lease the described tidelands; and

WHEREAS, Lessee was the successful bidder,

NOW, THEREFORE, for and in consideration of the agreements hereinafter contained, Lessor and Lessee agree as follows:

1. Lessor hereby devises and leases unto the Lessee, the above described property for a term of approximately thirteen and one half (13 ½) years, beginning February, 4th, 2003 and ending June, 12, 2016.

2. Lessee, in consideration of lease from Lessor, agrees as follows:



(a) To pay rent therefore to Lessor the sum of \$1,380.64 annually on the first day of January of each year in advance. It is acknowledged that the first year's payment has been made. In addition to said rental, lessee shall pay to the City and Borough of Sitka, sales tax on the amount of each rental not exempt from such sales tax.

(b) The parties hereby agree that said annual rent is subject 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 land value on the official municipal real property assessment roll for the tax year 2002, compared with a similar calculation using the figures seven years later. The base figure for the tax year 2002 is \$73,908.

(c) This lease may not be assigned or sublet by the Lessee without the consent of the Lessor.

(d) If the rent shall be in arrears, or Lessee, its representatives or assigns, do or shall neglect agreements herein contained which are to be performed and in the event Lessee fails to remedy default within thirty (30) days after receipt of written notice of any such rental arrears or neglect, the Lessor may immediately, or at any time thereafter, while such neglect or default continues, enter into and on the premises, or any part thereof terminate the lease and repossess the same as of their former estate, and expel Lessee and those claiming under it and remove its effects (forcefully if necessary) without being guilty of any trespass and without

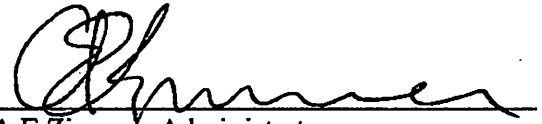
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[Signature]

prejudice to any remedies which might otherwise be used for arrears or rent, or proceedings on breach of agreement.

(e) The Lessee herein agrees to pay any Local Improvement District assessments that may be levied against the property leased herein to the same extent and in the same amount as if the Lessee were the owner of the property leased herein 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.)

IT IS MUTUALLY AGREED AS FOLLOWS:

1. The terms and conditions herein contained shall apply to and bind the heirs, successors, and assigns of the respective parties.
2. Waiver by Lessor of any agreement or condition herein shall not be considered a waiver of any subsequent breach of said agreement or condition.
3. If Lessee occupies the premises 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 pay Lessor the annual rent paid during the last year of said lease.
4. At any termination of said tenancy, all improvements placed on said 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.
5. Lessee agrees to save the Lessor harmless from any liability for property damage or personal injury to any person or persons on or about the premises and to carry 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.
6. The lease may be renewed in a manner generally consistent with Paragraphs 22 and 23 of Tidelands Lease ADL #31926 which is attached as Exhibit B.



A.E. Zimmer, Administrator
CITY AND BOROUGH OF SITKA



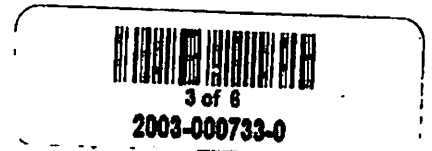
Mike Clementz, Cove Marina, Inc

Sec. Treas.

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mjc

(Notary Page Attached)



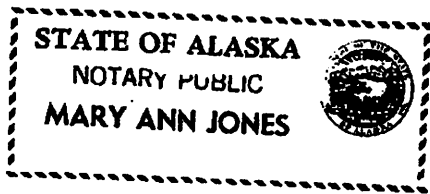
CBS/05-2003

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

MUNICIPAL ACKNOWLEDGMENT

THIS CERTIFIES that on this 4th day of February, 2003, before me, a Notary Public in and for the State of Alaska, personally appeared, A.E.ZIMMER, to me known and known to me to be the person whose name is subscribed to the foregoing lease 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 lease 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.



Mary Ann Jones
Notary Public for Alaska
My commission expires: 10/14/2006

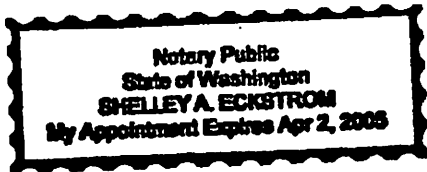
STATE OF WASHINGTON)
) ss.
KITSAP COUNTY)

THIS IS TO CERTIFY that on this 10th day of February, 2003, before me the undersigned, a Notary Public in and for the State of Washington duly commissioned and sworn, personally appeared Michael J. Clementz, to me known to be the person who executed the above and foregoing instrument, and acknowledged to me that _____ signed and sealed the same freely and voluntarily.

as the free act and deed of said corporation. (S)

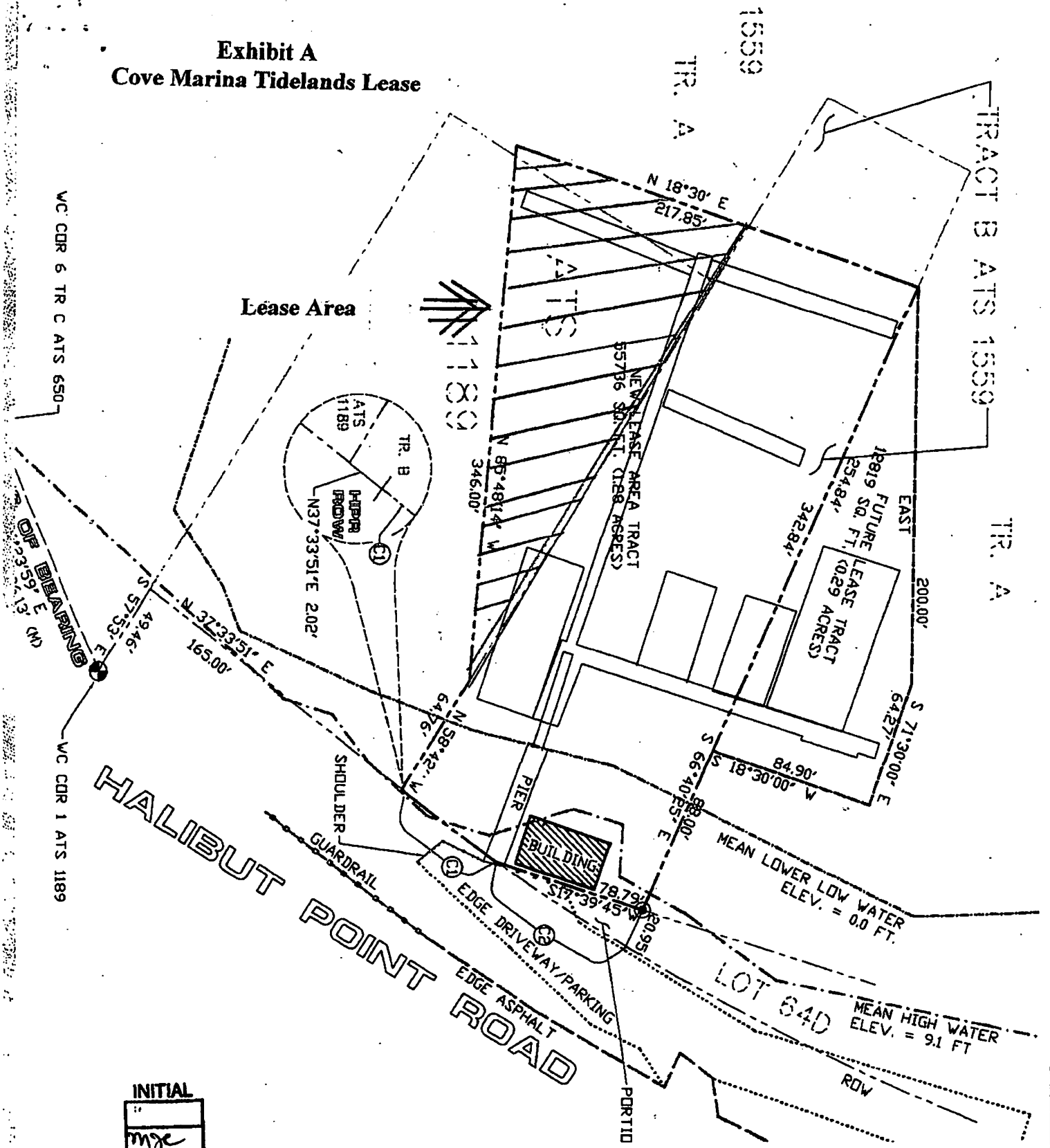
was authorized to execute the instrument and acknowledged it as the Secretary-Treasurer of Cove Marina, Inc., and he

[Signature]
Notary Public for Washington, residing at Kingston
My commission expires: 4/2/05



CS 1/5 2003

Exhibit A
Cove Marina Tidelands Lease



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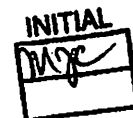
0821

LEGAL DESCRIPTION
COVE MARINA - NEW LEASE AREA

A parcel of Tide and Submerged Lands within Alaska Tideland survey 1559 Tracts A and B, filed as Plat 2000-4, and within Alaska Tideland survey 1189, filed as Plat 82-13, both filed in the Sitka Recording District, First Judicial District, State of Alaska, said parcel being more particularly described as follows:

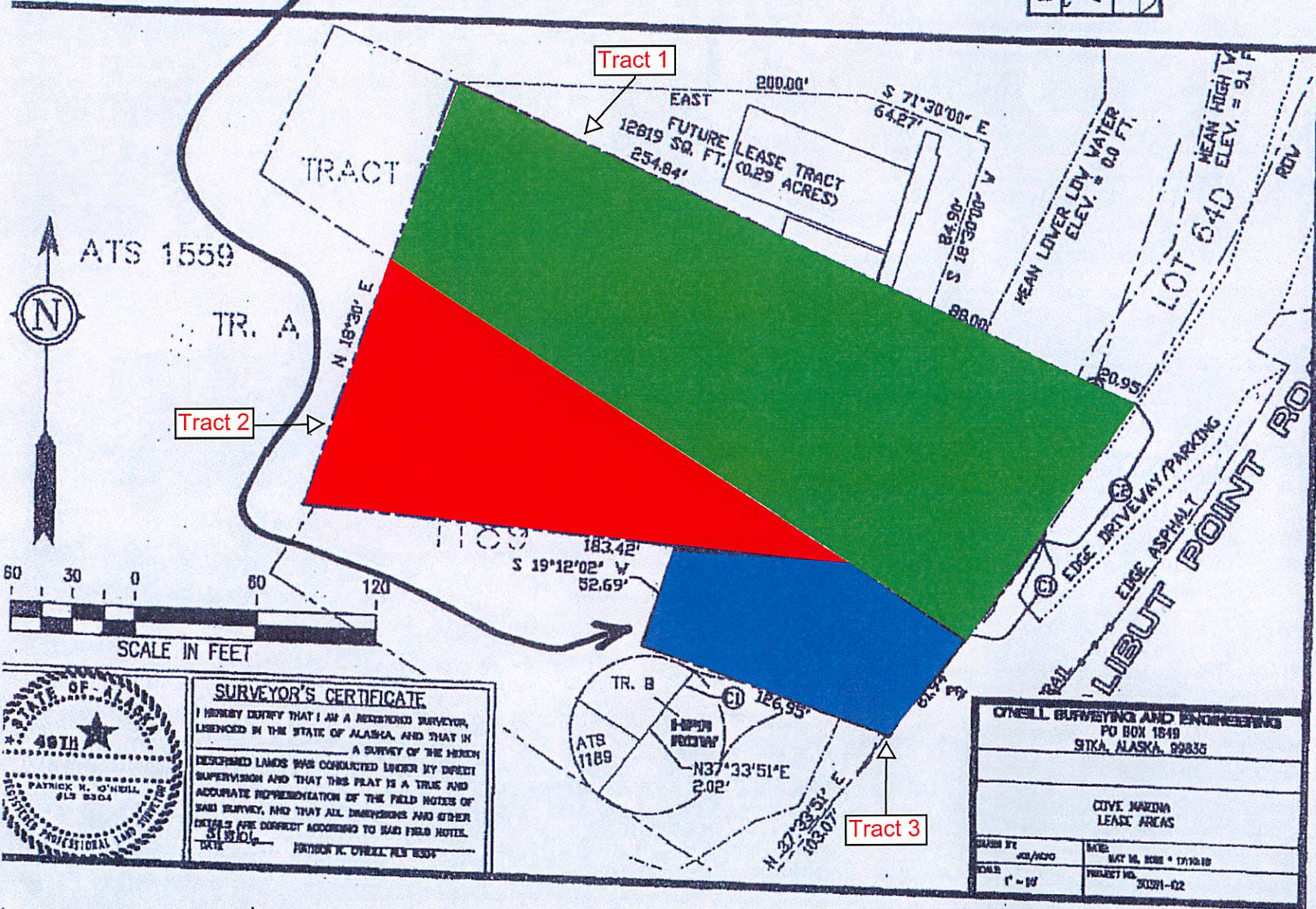
Beginning at a rebar and aluminum cap marking the most easterly corner of ATS 1559 Tract B, said point being identical with the southwest corner of Lot 64D, Hope Subdivision, and the northwest corner of Lot 63, U.S. Survey 3475, and also being the true point of beginning of this description; thence S17°39'45"W 78.79 feet along the easterly ATS 1559 Tract B boundary to a non-tangential curve concave to the west, having a radius of 1203.18 feet, chord bearing of S36°09'45"W and chord length of 58.86 feet; thence along said curve a distance of 58.86 feet; thence S37°33'51"W 2.02 feet; thence seaward N58°42'W 64.76 feet; thence N85°48'14"W 269.46 feet; thence N18°30'E 217.85 feet; thence S66°40'25"E 342.84 feet to the true point of beginning, containing 55,736 square feet, more or less.

Return To:
Cove Marina, Inc.
C/O Mike Clementz
7321 N.E. WILLIAM ROGERS ROAD
INDIANOLA, WA 98342



Cove Marina Lease of Tidelands

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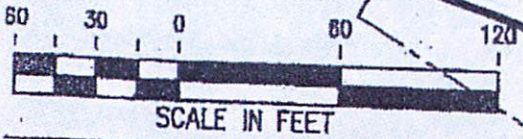
ATS 1559

TR. A

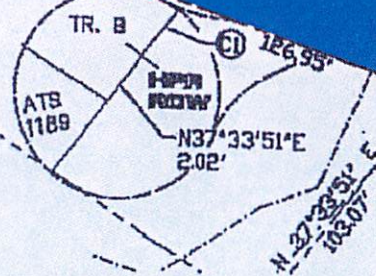
Tract 2

Tract 1

Tract 3



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: 8/18/01
 PATRICK M. O'NEILL, RLS 913 6304



O'NEILL SURVEYING AND ENGINEERING PO BOX 1849 SIKA, ALASKA, 99835	
COVE MARINA LEASE AREAS	
DATE: JUN/2010	DATE: MAY 26, 2008 + 17/10/10
SCALE: 1" = 40'	PROJECT NO.: 30321-02

EXHIBIT A



2007-001786-0