

BOOK 0327 PAGE 222

After recording return to:  
Cape Fox Corporation  
P.O. Box 8558  
Ketchikan, AK 99901

Ketchikan Recording District

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CAPE FOX CORPORATION  
SHAREHOLDER HOMESITE PROGRAM  
PERTAINING TO THE FOLLOWING DESCRIBED SUBDIVISION

Coon Island Subdivision, as described in and according to Plat No. 2000-59, recorded on October 17, 2000; all located in Sections 12 & 13, Township 74 South, Range 91 East and Sections 7 & 18, Township 74 South, Range 92 East, Copper River Meridian, Ketchikan Recording District, State of Alaska, containing 48.0 acres, more or less.

In order to protect and preserve the homesite lots conveyed pursuant to the Cape Fox Corporation Shareholder Homesite Program approved by the shareholders of Cape Fox Corporation on October 30, 1999, as it may be amended from time to time, Cape Fox Corporation does hereby restrict each Lot in this Subdivision as set forth in this Declaration of Covenants, Conditions and Restrictions.

1. Definitions.

(a) "Lot" means any interest in real estate in this Subdivision conveyed by Cape Fox Corporation pursuant to the Shareholder Homesite Program. The original deed for each Lot shall state that the Lot is conveyed pursuant to the Shareholder Homesite Program. Cape Fox Corporation may, in its sole discretion, declare by recording an appropriate instrument that any identified real property within this Subdivision constitutes a Lot even if it has not been conveyed pursuant to the Shareholder Homesite Program.

(b) "Lot owner" or "Lot owners" means the record owner and their successors in interest, whether one or more persons or entities, of an interest in any Lot in this Subdivision, including contract sellers and contract buyers and all other persons having possession or control of any Lot, but excluding those having such record ownership interest merely as security for the performance of an obligation unless actually possessing or controlling the Lot.

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(c) "Parcel" or "Parcels" means any and all parcels created by a subdivision of a Lot or Parcel.

(d) "Parcel owner" or "Parcel owners" means the record owner and their successors in interest, whether one or more persons or entities, of an interest in any Parcel in this Subdivision, including contract sellers and contract buyers and all other persons having possession or control of any Parcel, but excluding those having such record ownership interest merely as security for the performance of an obligation unless actually possessing or controlling the Parcel.

(e) "Shareholder Homesite Program" means the Cape Fox Corporation Shareholder Homesite Program approved by the shareholders of Cape Fox Corporation on October 30, 1999, as it may be amended from time to time.

(f) "Subdivision" means the Coon Island Subdivision, as shown in Plat No. 2000-59, filed in the Ketchikan Recording District October 17, 2000.

(g) "Top of the beach" means the lower limit of upland vegetation, as illustrated by ATTACHMENT 1, which is attached and incorporated in this Declaration by reference.

(h) "Adjacent Property" means any lands or interest in lands now or hereafter owned by Cape Fox Corporation that now or hereafter touch or have any common boundary with this Subdivision, with any Lot or Parcel in this Subdivision or with any resubdivision of this Subdivision.

## 2. Approvals or Action.

(a) Except for the right of first refusal provided by Section 8, the consent or other action by Cape Fox Corporation is required only so long as Cape Fox Corporation either owns an interest in Adjacent Property or owns an interest in real estate in this Subdivision. Except for the right to approve cottage industries and other commercial uses under Section 3(e), Cape Fox Corporation may convey any Adjacent Property or interest in real estate in this subdivision specifically subject to the benefit of this Declaration. Unless Adjacent Property or such real estate is specifically so conveyed, it shall be deemed conveyed without the benefit of this Declaration.

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(b) Whenever this Declaration requires the consent or other action of the Lots in this Subdivision, then the interests of each Lot shall be represented as follows:

(1) If a Lot has been subdivided into Parcels then, unless the Parcel owners otherwise agree in writing, the Parcel owners may act only as to their interest in their Parcel and their proportionate part of the Lot<sup>1</sup>; and

(2) if the Lot or Parcel is owned in common or jointly by 2 or more persons then, unless all such persons otherwise agree in writing, the Lot or Parcel owners must unanimously agree to the consent or action on behalf of the Lot or Parcel. In the absence of such agreement, no consent or action may be taken on behalf of that Lot or Parcel.

3. Enforcement/Arbitration. Any claim or controversy arising out of or relating to this Declaration shall be settled by arbitration by a single arbitrator administered by the American Arbitration Association under its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

4. Running With the Land. The benefits and burdens of each covenant, condition and restriction contained in this Declaration run with the land constituting a Lot, Parcel or Adjacent Property as follows: The burden rests upon all Lots and Parcels. The benefit inures to Cape Fox Corporation, each Lot, each Parcel and, if Cape Fox specifies pursuant to Section 2(a), the Adjacent Property. This Declaration does not apply to real property within the Subdivision that does not constitute a Lot or Parcel. The purchase or receipt of any Lot or Parcel constitutes an agreement on the part of the purchaser or transferee, and his, her or its heirs, executors, administrators, successors and assigns, to be bound by and comply with the covenants, conditions and restrictions contained in this Declaration.

<sup>1</sup> For example, suppose a Lot owner who originally owned 1 1/2 acres subdivides the Lot into 2 Parcels of one acre and one-half acre. Suppose further that the one acre parcel is owned by a single person and the one-half acre is owned by 2 people. The consent of the single, one acre Parcel owner would be treated as consent for 2/3 of the Lot. Unless the common parcel owners agree in writing that one may act for them both, then both the common parcel owners must consent as to the other 1/3 of the Lot. Lot and Parcel owners could also consent in writing that one or more persons could represent the interests of several Lots and Parcels. If the action requires the consent of "the owners of not less than 2/3 of the Lots", then the owners of Lots and Parcels equal to at least 2/3 of the original Lots would have to agree. In this example, the intent is that the votes of the owners of 2/3 of one Lot could be considered with the votes of the owners of up to 1/3 of any other Lot and be deemed the consent of the owners of a single Lot.

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5. Land Use.

(a) Each Lot and Parcel shall comply with the restrictions applicable to the Future Development Zone ("FD Zone") of the Ketchikan Gateway Borough, as it may be amended from time to time. If the FD Zone is eliminated, or materially revised to alter the general character of presently permitted and prohibited use of Lots in the Subdivision, the provisions of the FD Zone in force before such elimination or revision shall continue in force in lieu of the rezoned or revised uses unless Cape Fox Corporation and the owners of at least  $\frac{2}{3}$  of the Lots in this Subdivision agree to substitute the rezoned or revised uses. The agreement of Cape Fox Corporation and the owners of the Lots shall be in writing and duly recorded.

(b) The Lot or Parcel owner may harvest or clear trees and other vegetation only in connection with his, her or its reasonable use, enjoyment and development of the Lot or Parcel, and not for commercial purposes.

(c) No Lot or Parcel may be used as a dumping, storage or recycling area for rubbish, trash, garbage, junk automobiles, equipment, wreckage, hazardous, toxic or other waste or otherwise constitute a nuisance. Lot and Parcel Owners may dispose of personal trash, garbage or similar waste by controlled, on site burning or by hauling to a proper disposal site. On site burial or deposit of waste is not allowed.

(d) No Lot or Parcel may be used as a source of commercial gravel, sand or other subsurface material.

(e) No Lot or Parcel may be used for cottage industries or other commercial purposes, unless approved by Cape Fox Corporation. Cape Fox Corporation may approve such uses in its sole discretion. Approval of one use does not require approval of any similar or other use. This approval right is personal to Cape Fox Corporation and may not be conveyed or assigned to any other party. No Lot or Parcel owner may exercise this approval or enforce this requirement. This restriction does not apply to customary and traditional uses of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for barter, or sharing for personal family consumption; and for customary trade.

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(f) For a period of 10 years after the original conveyance by Cape Fox Corporation pursuant to the Shareholder Homesite Program, each Lot and Parcel in this Subdivision shall be used only for single-family (including traditional extended family customs) residential occupancy. Afterwards, no Lot or Parcel shall be used except for single family residential (including traditional extended family customs) and noncommercial recreational, traditional and subsistence purposes.

6. Location of Buildings and Improvements.

(a) No permanent structure, habitable improvement, satellite dish or antenna may be located on the beach or within 25 feet inland from the top of the beach. Semi-permanent and temporary structures or improvements (such as uninhabited boathouses, storage sheds, docks, structures without permanent foundations, or any other structures) crossing the beach, or extending to the mean high tide line may be located on the beach or within 25 feet inland from the top of the beach. That portion of the Lot or Parcel seaward of the top of the beach shall be considered beach as illustrated by ATTACHMENT 1. Disputes regarding the location of the top of the beach shall be resolved as follows:

(1) So long as Cape Fox Corporation owns any Adjacent Property or any interest in real estate within the Subdivision, upon request of any Lot or Parcel owner Cape Fox Corporation shall have the right to inspect the property and mark the location of the top of the beach of that Lot or Parcel. The top of the beach shall be marked by witness corners or other means approved by Cape Fox Corporation. Cape Fox Corporation or the Lot or Parcel owner may, at his, her or its own expense, have the location of the top of the beach as marked by Cape Fox Corporation surveyed by an independent, registered land surveyor. The surveyor shall prepare either a survey drawing that shows the location of the top of the beach as marked by Cape Fox Corporation or states a metes and bounds description of the location of the top of the beach as marked by Cape Fox Corporation. Upon review and acceptance of the survey drawing or description by Cape Fox Corporation, Cape Fox Corporation and the Lot or Parcel owner shall execute and record an appropriate instrument identifying the location of the top of the beach for that Lot or Parcel.

(2) If Cape Fox Corporation does not own any Adjacent Property or any interest in real estate within the Subdivision, or if Cape Fox Corporation declines to mark the location of the top of the beach, then the Lot or Parcel owner shall employ an independent hydrologist or other qualified expert to inspect the property and mark the location of the top of the beach. The top of the beach shall be marked by witness corners or other means approved by Cape Fox Corporation. The expert shall be approved by Cape Fox Corporation, or the owners of the 2

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Lots closest to each side of the Lot<sup>2</sup> if Cape Fox Corporation does not then own any Adjacent Property or any interest in real estate within the Subdivision. Consent shall not be unreasonably withheld or delayed. Any Lot or Parcel owner may, at his, her or its own expense, have the location of the top of the beach, as marked by the approved expert surveyed by an independent, registered land surveyor. The surveyor shall prepare either a survey drawing that shows the location of the top of the beach as marked by the expert or states a metes and bounds description of the location of the top of the beach as marked by the expert. Upon review and acceptance of the survey drawing or description by the expert, the Lot or Parcel owner shall execute and record an appropriate instrument identifying the location of the top of the beach and setting forth in detail the owner's compliance with this paragraph. See illustration at ATTACHMENT 1.

(b) No permanent structure or improvement may be located within 15 feet from the Lot's side lines (the lot lines approximately perpendicular to the Lot's shoreline and rear lot line), as illustrated by ATTACHMENT 1.

(c) No permanent structure or improvement may be located within 20 feet from the Lot's rear line (the lot line approximately parallel to and farthest from the shoreside lot line), as illustrated by ATTACHMENT 1.

(d) No structure or improvement may be located within any reserved easement.

7. Water Supply and Sewage Disposal. No individual water supply system or sewage disposal system shall be permitted on any Lot unless such system is designed, located, constructed, and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation and any other governmental authority that may have jurisdiction. No sewage disposal system may be closer than one hundred feet (100') to any water body unless the Alaska Department of Environmental Conservation or other governmental authority exercising such authority approves a lesser distance.

<sup>2</sup> In other words, if the Lots are in a row in a north-south orientation, the owner of a Lot in the middle of the Subdivision would need to obtain the consent of the owners of 4 Lots: the Lot immediately to the north of the Lot and the Lot immediately north of that Lot, as well as the 2 Lots immediately to the south of the Lot. The owner of the Lot at the south end of the Subdivision would need to obtain the approval of just the owners of the 2 Lots immediately north of the Lot. Approval by the Lot owners would have to conform to the requirements of Section 2(b) of this Declaration

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**8. Right of First Refusal.**

(a) No Lot owner or Parcel owner may transfer any interest — whether voluntarily, by way of contract, sale, exchange, mortgage, gift, testate succession, or otherwise, or involuntarily by way of creditor levy, foreclosure, bankruptcy proceeding, intestate succession, or otherwise — in any Lot or Parcel, other than to a person who then owns and has a right to vote Settlement Common Stock issued by Cape Fox Corporation, unless they first consult with Cape Fox Corporation and offer the interest in writing to Cape Fox Corporation. Cape Fox Corporation may notify all Cape Fox Corporation shareholders that the Lot or Parcel is proposed for transfer so that any such shareholder may independently negotiate to acquire the Lot or Parcel.

(b) The offer to Cape Fox Corporation shall include the identity of any proposed transferee, the proposed terms and conditions of transfer, a copy of any written document relating to the proposed transfer (for example, an earnest money agreement or deed of trust), and such other information as Cape Fox Corporation may request. Cape Fox Corporation may require that the Lot or Parcel owner and proposed transferee provide any appraisals or other evaluation materials they have and that the proposed transferee provide sufficient evidence of his, her or its ability to complete the transfer according to the proposed terms and conditions. Cape Fox Corporation may use and disclose to the Lot or Parcel owner all information provided to it, but Cape Fox Corporation shall otherwise keep such information confidential, including from other shareholders interested in acquiring the Lot or Parcel independently.

(c) Cape Fox Corporation shall have 60 days after all information is delivered to it to complete the consultation and to accept or reject the offer.

(d) If the offer is timely accepted by Cape Fox Corporation, Cape Fox Corporation shall acquire the interest on the same terms and conditions by which the Lot or Parcel owner proposed to transfer the interest. If the purchase price includes noncash consideration, Cape Fox Corporation may, at its option, pay the fair market value of the noncash consideration. In the case of testate or intestate succession, the purchase price shall be the fair market value of the interest payable in cash at closing.

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(e) If Cape Fox Corporation rejects, waives or does not timely accept the offer, or rescinds its acceptance pursuant to paragraph (d), then for a period of sixty (60) days the Lot or Parcel owner may transfer the interest to the identified, proposed transferee or to other third persons on terms and conditions not more favorable than those offered to Cape Fox Corporation. Any instrument transferring an interest in a Lot or Parcel shall contain a sworn acknowledgment by the transferee attesting to compliance with this section.

(f) Any instrument transferring an interest in a Lot or Parcel to someone who then owns and has a right to vote Settlement Common Stock issued by Cape Fox Corporation shall contain a sworn acknowledgment by the transferee attesting to that fact.

(g) Any transferee of a Lot or Parcel owner shall be similarly subject to this right of first refusal.

(h) This right of first refusal shall expire 21 years after the death of all persons who presently are shareholders of Cape Fox Corporation or presently are living issue of present shareholders of Cape Fox Corporation, but not later than December 31, 2100.

9. Term. The covenants, conditions and restrictions shall be effective for a term of 20 years from the date this Declaration is recorded, after which time these covenants, conditions and restrictions shall be automatically extended for succeeding, additional terms of 10 years each unless this Declaration is amended in accordance with Section 10 to terminate the covenants, conditions and restrictions or amend their term. An instrument signed by the Lot owners agreeing to the termination or amendment of the term shall be recorded and shall take effect at the end of the then-current term period. The right of first refusal provided by Section 8 may not be terminated or amended by termination or amendment of this Declaration.

10. Amendment. Except as provided in this section, the covenants, conditions and restrictions in this Declaration may be amended by an instrument signed by the owners of not less than 75% of the Lots and Cape Fox Corporation. The following covenants, conditions and restrictions may not be amended:

- (i) the right to approve cottage industries or other commercial uses pursuant to Section 5(e),
- (ii) the limitation on use during the first 10 years after the original conveyance pursuant to Section 5(f),



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(iii) the right of first refusal provided by Section 8, and

(iv) the initial 20 year term, the continuous extensions of the term, and the procedure for termination and of determining the effective date of termination as provided by Section 9.

Prior to the first conveyance of a Lot in the Subdivision by Cape Fox Corporation pursuant to the Shareholder Homesite program, Cape Fox Corporation may amend any provision of this Declaration (including the term provided by Section 9 and the right of first refusal provided by Section 8) in any way it determines to be appropriate without consent of any Lot owner by an instrument signed by Cape Fox Corporation. Any amendment must be recorded to be effective.

11. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

12. Miscellaneous. The following conditions and restrictions may apply to this Subdivision. Cape Fox Corporation makes no representation as to whether the following statements are presently accurate or will be accurate as of the time a Lot owner or Parcel owner acquires an interest in the subdivision.

Only the "surface estate" will be conveyed. The "subsurface estate" will generally be owned by the someone other than Cape Fox Corporation. The meaning of "surface estate" and "subsurface estate" are not clearly known. There is substantial disagreement as to the meaning of "surface estate" and "subsurface estate" and what rights belong to each estate. The surface estate does not include mineral rights and sand and gravel, but Lot owners may have some right to use sand and gravel in connection with use and enjoyment of their Lots.

Sealaska Corporation currently owns the subsurface estate. Sealaska Corporation, or its successors, may have the right to excavate and mine any Lot or Parcel, perhaps without compensation, in which case the Lot or Parcel may be destroyed. Cape Fox Corporation may be unable to prevent Sealaska Corporation from exercising its rights in a manner which is detrimental or destructive to Lots. A Lot owner may obtain from Sealaska a covenant not to explore or develop its subsurface estate. It is not clear whether or to what degree the owner of the surface estate may use the subsurface estate, for example, for installation of pilings. Cape Fox Corporation will discuss an agreement with Sealaska Corporation to grant Lot owners a covenant not to explore or develop the subsurface estate. Waters are owned by the State of Alaska and may be appropriated only pursuant to Alaska state law.

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Cape Fox Corporation will make no warranty regarding the Lots. Cape Fox Corporation will not warrant or guarantee that any Lot is suitable or fit for any purpose or is free from defect, or that it satisfies any governmental requirements, including without limitation Department of Environmental Conservation soil quality requirements, or that public utilities or services will be available or be provided. All Lots will be conveyed without warranty, "as is," "where is." No roads, sewers, water, gas, electric, oil or fire protection services will be provided or completed by Cape Fox Corporation. Engineering and economic considerations, availability of rights-of-way, and the speed and pattern of lot location and development, among other factors, will affect whether such services will be provided by any utility or other person. No utility has agreed to extend service to the Subdivision. It is likely that on-site sewage disposal, water source, bottled gas, electrical generation, oil supply and fire prevention and protection will or may be required. Cape Fox Corporation will make no representation regarding the availability or cost of potable water, the suitability for a septic tank operation or the assurance of service by a central sewage system, or the absence of periodic flooding, muskeg, or erosion. These conditions may make it impossible, illegal or impractical to build on certain Lots. Replacement Lots will not be provided. No director, officer, employee or agent of Cape Fox Corporation is, may or will be authorized to make any warranty or representation regarding any homesite lot or subdivision.

CAPE FOX CORPORATION

Date: 6/12/01

By: Marilyn J. Blain  
President

State of Alaska )

) ss.

First Judicial District )

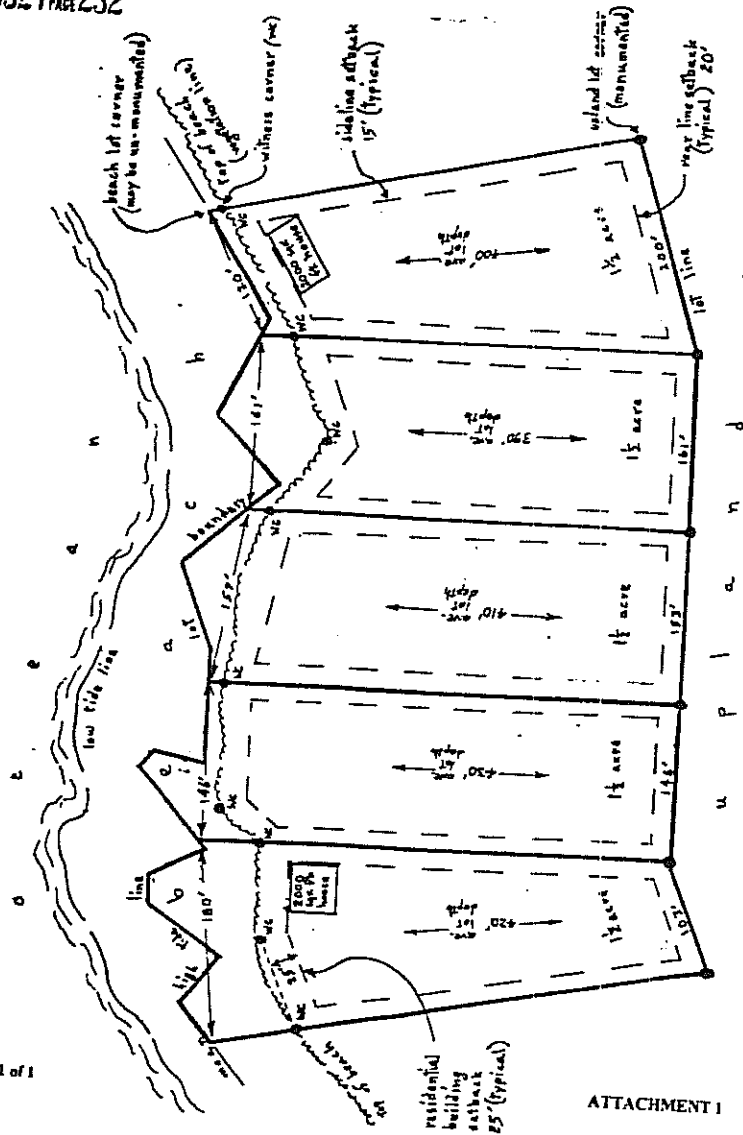
The foregoing instrument was acknowledged before me this 12 day of JUNE, 2001, by Marilyn Blain, President of Cape Fox Corporation, an Alaska corporation, on behalf of the corporation.

D. Rae  
Notary Public in and for Alaska  
My Commission Expires: 4/20/2004



### ILLUSTRATION OF A POSSIBLE RANGE OF LOT SHAPES

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**ATTACHMENT 1**

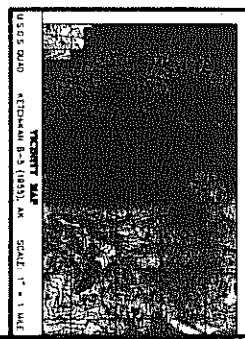
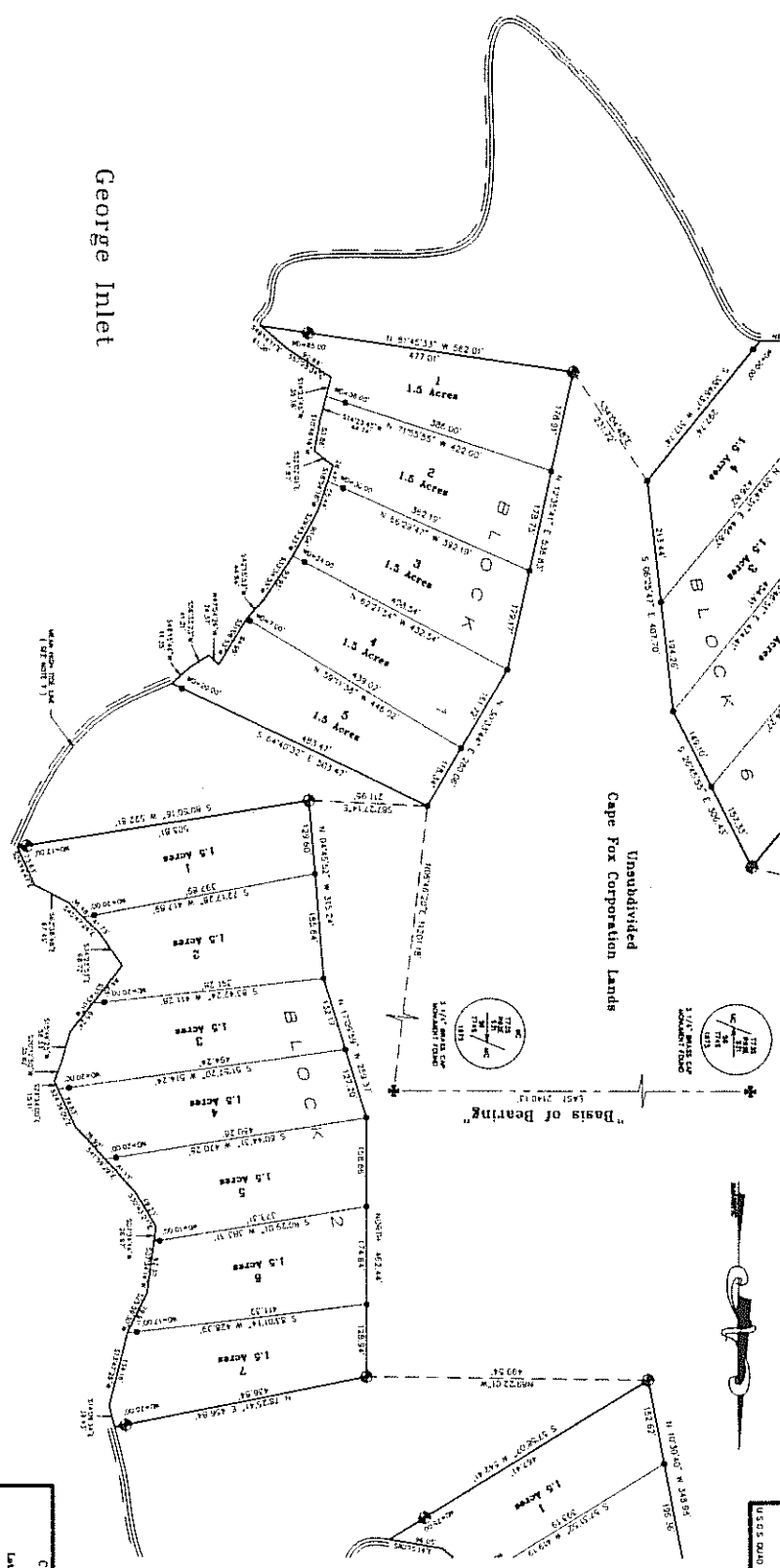
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KETCHIKAN  
RECORDING DISTRICT  
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REQUESTED BY  
KMC

**WASTEWATER DISPOSAL.**

CONCRETE MAY NOT BE SUITABLE FOR DRINK WASTEWATER TREATMENT AND DISPOSAL. ON WATER RESOURCES, AN ALTERNATE TREATMENT DRINKING WATER. ITTMC WILL CALL TO REEVALUATE WASTEWATER. IS THE FEDERAL DEPARTMENT OF ENVIRONMENTAL CONSERVATION CONTACT ARE FOR FURTHER INFORMATION

# “Coon Island Subdivision”



**SENTEC, Inc.**  
 1000 West 10th Avenue, Suite 100  
 Anchorage, Alaska 99501  
 Phone: (907) 243-8888 Fax: (907) 243-8887  
 Telex: 243888 SNTC  
 Cable: SNTC  
 E-mail: sentec@alaska.net

**Coon Island Subdivision**  
 Lots 1-5 Block 1 and Lots 1-7 Block 2  
 A Subdivision of Lands Owned by  
 Cape Fox Corporation  
 P.O. Box 4884, Kodiak, Alaska 99601  
 (Containing 318.5 Acres)  
 Located in the Cape Fox Borough, Alaska

**Recordation**  
 Recordation District  
 1000 West 10th Avenue, Suite 100  
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