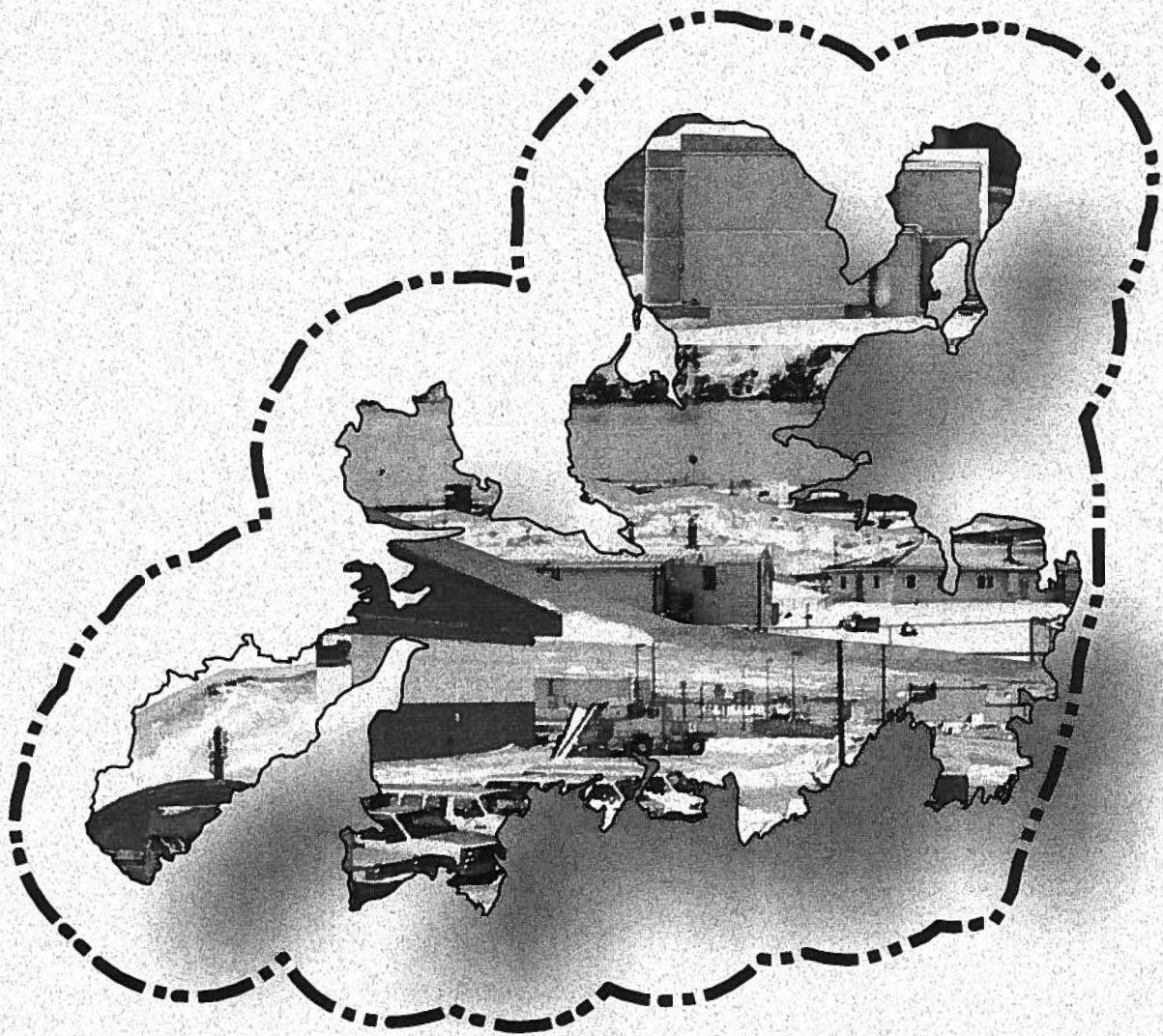


Preliminary Report to the Local Boundary Commission Regarding the Petition to Incorporate the Second Class City of Adak

February 2000



Tony Knowles
Governor

Deborah Sedwick
Commissioner



This is the Department of Community and Economic Development's (DCED) executive summary and preliminary report regarding the petition to incorporate the second class city of Adak. The report can also be found on the internet at the following address:

http://www.dced.state.ak.us/mra/Mrad_lbc.htm

The report is preliminary in the sense that it is issued as a draft for public review and comment in accordance with 3 AAC 110.530(b). The law requires DCED to issue a final report after considering written comments on the preliminary report.

DCED complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at (907) 269-4560.





Tony Knowles, Governor

Department of Community and Economic Development

Municipal & Regional Assistance Division

550 W. 7th Avenue, Suite 1790, Anchorage, AK 99501-3510

Telephone: (907) 269-4580 • Fax: (907) 269-4539 • Text Telephone: (907) 465-5437

February 19, 2000

Attached is the preliminary report (with executive summary) of the Alaska Department of Community and Economic Development (DCED) concerning the petition to incorporate a second class city of Adak.

The preliminary report concludes that standards for incorporation in State law have not been met in this case. As such, the report makes a preliminary recommendation that the Local Boundary Commission deny the incorporation petition.

Written comments on the preliminary report are welcome. To be considered in the preparation of DCED's final report, comments must be **received** at the following office on or before March 22, 2000:

Local Boundary Commission Staff
Department of Community and Economic Development
550 W. 7th Avenue, Suite 1790
Anchorage, Alaska 99501
Primary fax number: 907-269-4539
E-mail address: Gene_Kane@dcled.state.ak.us

DCED's final report in this matter will be issued by April 7, 2000. The Local Boundary Commission will hold a hearing on the incorporation petition in Adak at the following date, time, and location:

6:30 p.m.
April 28, 2000
Bob Reeve High School Recreation Room

Additional copies of the DCED preliminary report and recommendation are available through the offices of the Local Boundary Commission staff listed above. The report is also available on the Internet at:

http://www.dced.state.ak.us/mra/Mrad_lbc.htm

Cordially,

Patrick K. Poland
Director

"Promoting a healthy economy and strong communities"

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Acknowledgement

Policy direction concerning the Department of Community and Economic Development's (DCED) recommendation to the Local Boundary Commission was provided by the following DCED policy makers:

- Deborah B. Sedwick, Commissioner
- Jeff Bush, Deputy Commissioner
- Bernice Joseph, Deputy Commissioner
- Patrick Poland, Director, Municipal & Regional Assistance

Written by:

- Gene Kane, Local Boundary Commission Staff, DCED

Page layout by:

- Jennie Morrison, Publication Technician, DCED

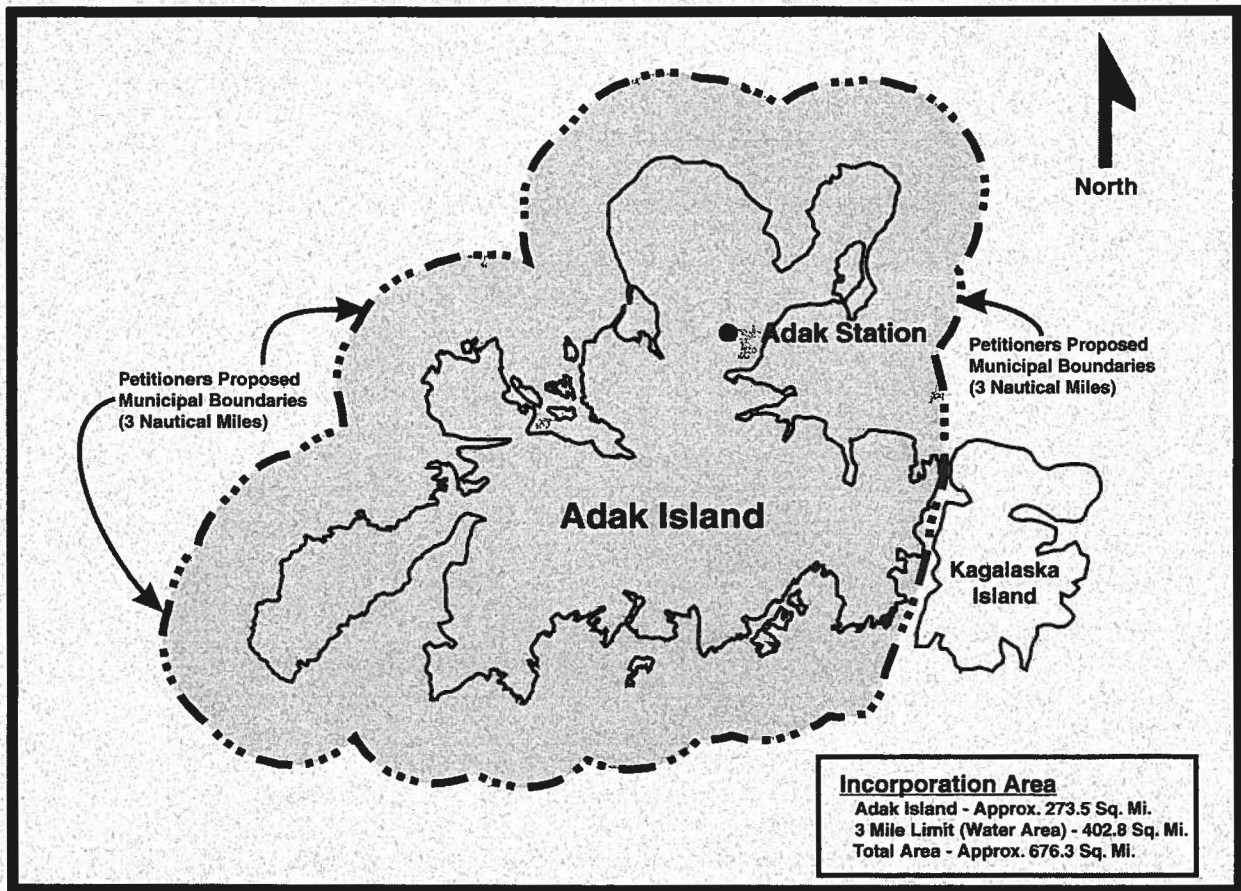
Many others provided information or assistance in the development of this report, including:

- David B. Allen, Regional Director, U.S. Fish and Wildlife Service
- Dan Bockhorst, DCED
- Paul Bowers, Director, Statewide Aviation, Department of Transportation and Public Facilities
- Fran Brown, Adak Community Council
- Forest Bower, Alaska Department of Fish and Game
- Larry Byrne, Alaska Department of Fish and Game
- Mark Burnham, U.S. Navy Engineering Field Activity, Northwest
- Karen Callay, Aleutian School District
- Tess Carr, Alaska Department of Environment Conservation
- Susan Christianson, Christianson Communications
- Lamar Cotten, Alaska Industrial Development Authority
- Michael C. De Lacy, Naval Facilities Engineering Command
- Christopher Gates, Adak Enterprise Corporation
- Skip Gish, Alaska Department of Fish and Game
- John Gliva, DCED
- Joanne Grady, Grady and Associates
- John Horn, Director, Central Region, Alaska Department of Transportation and Public Facilities
- Danielle Jerry, U.S. Fish and Wildlife Service
- Carl Kalugan, Adak Community Council
- Laura Kalugan, Adak Community Council
- Agafon Krukoff, Jr., Petitioners' Representative
- Tom Lefebvre, Aleutian Pribilof Islands Association
- John L. Martin, Refuge Manager, Alaska Maritime National Wildlife Refuge
- Rance Morrison, Alaska Department of Fish and Game
- Kevin Oates, U.S. Environmental Protection Agency
- George Plumley, DCED
- Bill Rohrer, U.S. Greiner
- Bill Rolfzen, DCED
- Kjetil Bartold Solberg, General Manager, Adak Seafoods, LLC
- Richard K. Stoll, U.S. Navy Engineering Field Activity, Northwest
- Joette Storm, FAA
- Robert Urich, U.S. Navy Engineering Field Activity, Northwest
- Laura Walters, DCED
- Barbara Whiting, Division of Elections

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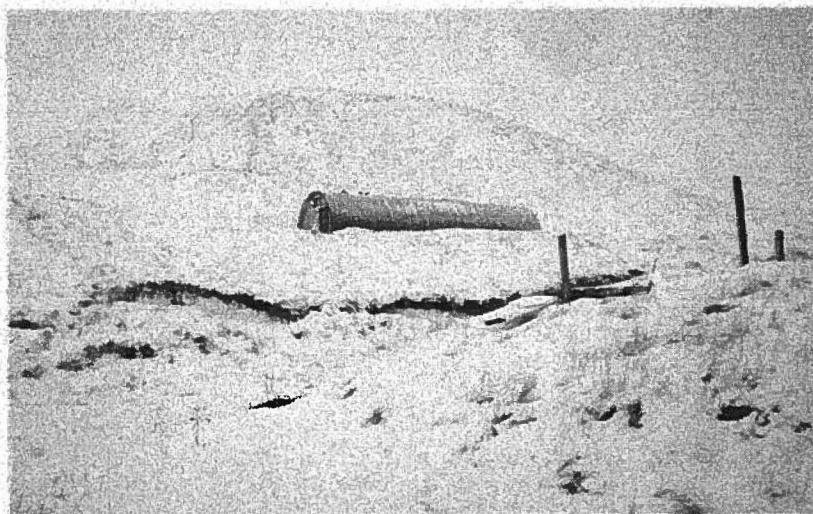
Area proposed for Incorporation

Executive Summary

DCED's preliminary conclusions and recommendation regarding the extent to which the Adak city incorporation petition meets the applicable standards for incorporation of a second class city in the unorganized borough are summarized are set forth herein. The application of the incorporation standards in this summary is synopsized from Chapter 3 of the full report.

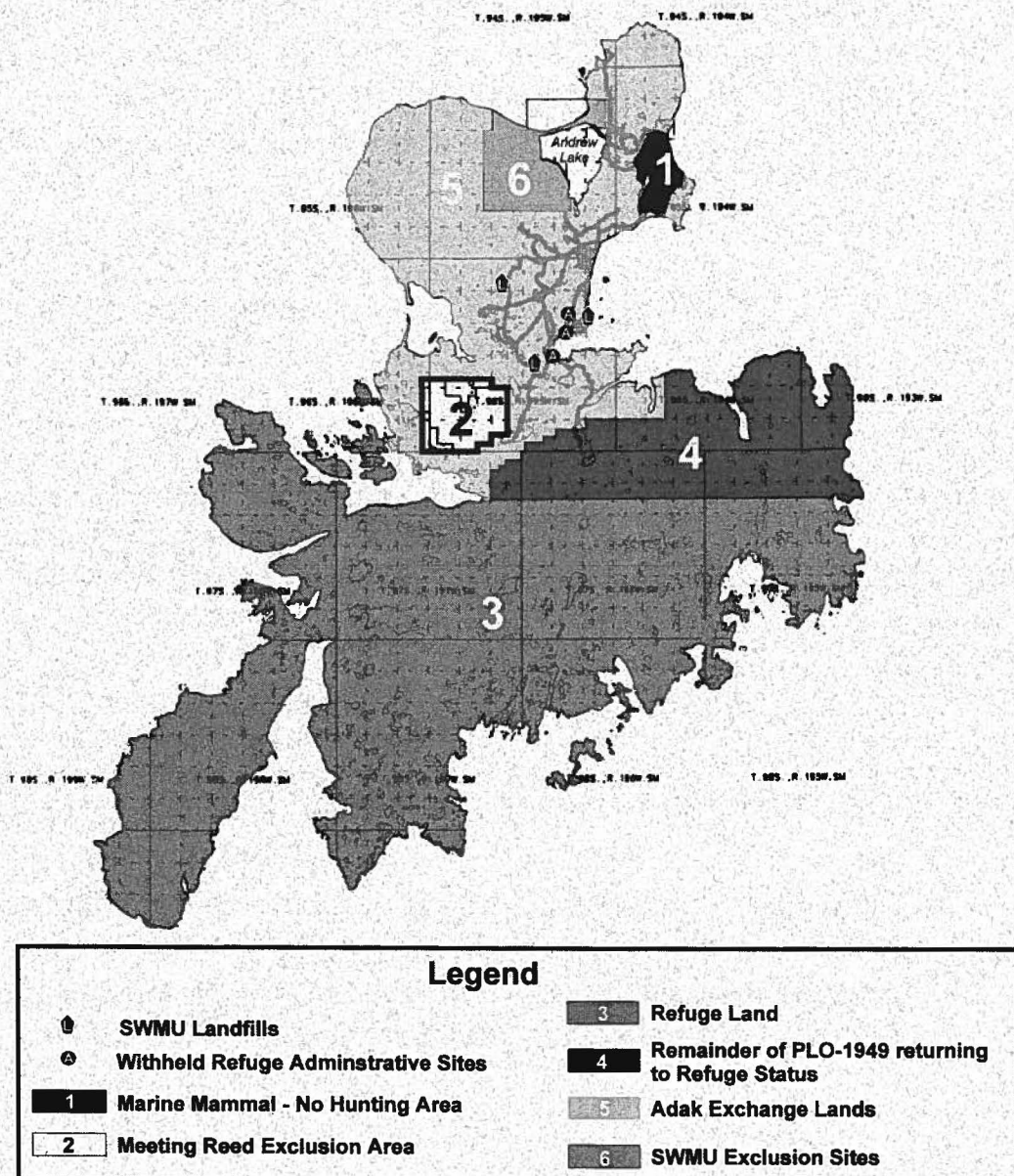
1. The boundaries of the proposed city do not include all land and water necessary to provide the full development of essential city services on an efficient, cost effective level as required by AS 29.05.011(a)(2) and 3 AAC 110.040.

- Land use and ownership patterns do not support inclusion of the entire area.
- The expansive area within the boundaries proposed by the petition population density has only about 100 year-round residents. Much of the territory sought by the petitioners for inclusion in the proposed city consists of territory that will never be inhabited, such as the federal wilderness area on the south half of Adak Island and waters adjacent to the island.
- Existing and reasonably anticipated transportation patterns and facilities do not support the expansive boundaries proposed by the petition.
- Natural geographic features and environmental factors do not justify inclusion of the entire area within city boundaries.
- Considerations relating to extraterritorial powers of cities do not support the expansive boundaries proposed by the petition.



Abandoned quanset hut within the area proposed for incorporation.

Adak Naval Complex Proposed Exchange



3. The proposed city boundaries include entire geographic regions and large uninhabited areas not justified by the application of other annexation standards. 3 AAC 10.040(c)

- The area sought for inclusion in the proposed City of Adak boundaries encompasses a geographic region and large uninhabited areas not justified by the application of the other incorporation standards. If the petition is approved the LBC is urged to first amend the boundaries set forth in the petition. Amended boundaries should be generally based upon the Adak historic district boundary and the offshore area immediately adjacent to the historic district boundary.
-

4. The economy of the proposed city may not include the human and financial resources necessary to provide essential city services on an efficient, cost effective level. [AS 29.05.011(a)(3); 3 AAC 110.020]

- Reasonably anticipated initial functions of the proposed city are minimal. The petition suggests that the proposed city would have no initial direct role in the operation of such vital community requirements as essential utilities. However, the transition plan in the petition contains vague references to city assumption of additional public facilities subsequent to incorporation. The potential that a new second class city with a modest population and modest revenues could reasonably assume responsibility for any of the key infrastructure developed by the Navy is troubling, given the enormous costs associated with many of the basic community facilities.
- The anticipated ability of the proposed city to generate and collect local revenue and income is questionable at this time. The economy of Adak is in transition. The economic transition underway renders it difficult to predict the future economy of the community with confidence. However, the Navy has retained the services of professional consultants through Arthur Andersen Associates to evaluate and report on the anticipated economic viability of Adak. That report has not yet been issued, but its release is anticipated before issuance of the DCED final report concerning the incorporation petition.
- The anticipated operating budget of the proposed city through its first three years does not appear reasonable and plausible. For example, costs of such key expenditures as city personnel appear low.

- As a consequence of factors including the large scale of the Adak infrastructure and Adak's remote location, the cost of operating the infrastructure at Adak is extremely high. Operating and maintaining NAF Adak has required the Navy to spend about \$15 million per year during the period since the base closure. The nascent economic base of the proposed City does not appear adequate to sustain this infrastructure.
- If a functioning airport does not serve the community, the community would not be viable. Continued operation of the airport may depend upon a special appropriation from the federal government to maintain operations for five years.
- Property Valuations for the Proposed City do not support city incorporation since the petition does not seek authorization to levy a real or personal property tax.
- Land use for the proposed city suggests that appropriate boundaries for the proposed city would be much more compact than the 676.3 square miles proposed by the petition.
- Existing and reasonably anticipated industrial, commercial, and resource development for the proposed city is questionable.
- Personal income of residents of the proposed city is unclear. Since base closure activities have transformed Adak's economy since 1990, available decennial census figures do not reflect the current income level of the community. The record does not provide any clear, specific, current data relevant to this factor.
- Employable skilled and unskilled persons to serve the proposed city are available now, since there is a core group of permanent Adak residents interested in serving the proposed city. However, local maintenance of the elaborate infrastructure in the community would be a daunting prospect, given the limited anticipated year-round population of Adak.



Power plant on Adak Island.

- Commitment and interest of the residents in sustaining a city is evident since there are Adak residents who profess commitment to remaining the Adak permanently. However, it is not conclusively demonstrated that such is reasonably predictable for the future.

5. The population of the proposed city is presently large enough to support city government. However, it may not be stable enough in the future. [AS 29.05.011(a)(4), 3 AAC 110.030]

- The Alaska Department of Labor and Workforce Development estimated the July 1, 1999 Adak population to be 106.
- The record suggests that many, if not most, of the people present in the community are short-term visitors working for Navy contractors, transients employees of the local fish processor, the Adak Reuse Corporation, or Aleut Enterprise Corporation subsidiaries.
- A decade ago, the population of Adak was more numerous than the present population of six organized boroughs in Alaska. Normally, if a community suffered a population decline from about 6,000 to about 100 during the course of a decade, this would be tantamount to abandonment of the community.
- The population of Adak fluctuates because of two factors, the number of employees of Navy contractors present to conclude base closure activities and the number of seasonal seafood processors working in the community.
- As of November 30, 1999, there were 31 students at the Adak School, including six high school students.^A On January 25, petitioners' representative Agafon Krukoff indicated that the enrollment at that time was between 31 and 35. The Department of Education and Early Development has advised that the Average Daily Membership (ADM) for October 1999 was 44.15. That number reflects an average attendance for a 20-day period in October, 1999.
- The present population of Adak appears to be large enough to support a second class city government exercising minimal functions. However, it is questionable whether the population will be large and stable enough to support a municipal government over time, given the impacts of cessation of Navy operation of the airport and other infrastructure on September 30, 2000 and uncertainty associated with such cessation.

A Personal communication, Karen Callay of the Aleutian School District.

- In terms of stability, the fact that there are families living in the community on a year-round basis who regard the community as a permanent home suggests an element of population stability consistent with satisfaction of the standard. However, the record suggests that many, if not most, people present in the community are short-term visitors working for Navy contractors, transients employees of the local fish processor, the Adak Reuse Corporation, or Aleut Enterprise Corporation subsidiaries.
 - The record demonstrates that the viability of the Adak community over the long term is doubtful. Thus, while the *current* size and stability of the Adak population satisfies the requirements of AS 29.05.011(a)(4), the uncertainty of the viability of the community's population over the long-term suggests that the standard is not met in this case.
-

6. The territory may not demonstrate a need for city government. [AS 29.05.011(a)(5); 3 AAC 110.010]

- The petition seeks that incorporation of the proposed city be contingent upon voter approval of the institutional controls ordinance. The institutional controls ordinance has not yet been finalized. It would be unreasonable for the Local Boundary Commission could approve incorporation of a city contingent upon voter approval of a specific ordinance that has not yet been finalized.
- The fact that a political subdivision of the State is the preferred entity to execute institutional controls functions does not necessarily equate to a demonstrated need for city government. For example, DCED is aware of no overriding legal or theoretical impediment to the Alaska Department of Environmental Conservation performing such a function, provided funds were made available for the purpose. Further, if an organized borough were incorporated in the region, the borough could perform the institutional controls function.
- Adak clearly exhibits well-documented health and safety issues.
- If a community is not viable over the long term, there is no demonstrated need for City government. Incorporation of a non-viable city government at Adak could prove counter to the best interests of the State of Alaska. If the airport is closed, the community would become unsuitable for community living and its minimal population would dwindle. The City government would likely then become dormant and the community would no longer

meet the minimum standards prescribed for incorporation. In such cases, 29.06.450(b) requires that *"The department shall investigate a municipality that it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The Commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in art. X, sec. 12 of the state constitution."*

- If dissolution of a City of Adak were to occur, AS 29.06.520 would require the State of Alaska to be the successor to all assets and liabilities of the dissolved city. The ultimate effect could be to saddle the State of Alaska with liability for a ghost town located on a superfund site. In DCED's view, such should be assiduously avoided, if possible.
- The Adak proposal is in certain respects similar to the development city option enacted by the legislature in 1972.⁸ (Ch. 106, SLA 1972 - formerly codified as AS 29.18.220 - 29.18.460) The provisions of former AS 29.18.220 stated, in part, *"The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector."*
- It is noteworthy that the development city statutes were repealed by the legislature in 1985. Repeal of the development city statutes by the legislature indicates that the development city concept was proven to be a failure in practice.
- The State of Alaska declined the opportunity to be the reuse authority for Adak. Incorporation of a second class city could ultimately produce the same effect. If a city is incorporated and the community does not prove to be viable and sustain a local population, dissolution of the city would result in the transfer of liabilities associated with the City to the State of Alaska. The State would effectively be compelled to assume a role that it previously declined.

B Appendix A contains the repealed development city statutes.

7. Essential City Services cannot be provided more efficiently or more effectively by annexation to an existing city or provided by an existing organized borough? 3 AAC 110.010(b)

- Annexation of Adak to the nearest city, the City of Atka, is not plausible because of distance. The absence of any organized borough in the regions renders delivery of services by an existing organized borough impossible.

8. The petition does not include a practical plan demonstrating the proposed city's intent and capability to extend essential municipal services in the shortest practicable time after incorporation? 3 AAC 110.900(a)

The petition does not include a practical plan demonstrating its intent and capability to extend essential municipal services in the shortest practicable time after incorporation.

In order for the transition plan to satisfy the requirements of 3 AAC 110.900(a), key aspects of the proposed transition require clarification.

DCED Recommendation

DCED recommends that the Local Boundary Commission deny the petition for Adak city incorporation.

However, should the Commission support incorporation the City of Adak against DCED's recommendation, DCED urges that the LBC first amend the boundaries proposed by the petition. Such amended boundaries should be generally based upon the Adak historic district boundary and the offshore area immediately adjacent to the historic district boundary, collectively comprising about 72 square miles.

If the Commission approves the petition, it should also make incorporation contingent upon approval by Adak voters of three additional ballot propositions.^c

1. Voter authorization of the levy by the City of Adak of a 3% sales tax;
2. Voter authorization of the levy by the City of Adak of a 2% fuel transfer tax.

^c DCED recognizes that the petitioners have requested that incorporation be made contingent upon voter authorization of an ordinance by the City of Adak to adopt Navy-required institutional controls. However, no such ordinance has been finalized. At this point, DCED cannot reasonably recommend that city incorporation be made contingent upon approval of an ordinance that is still being drafted.

Chapter 1

Proceedings

1.1. Introduction

This chapter summarizes the proceedings to date and future proceedings regarding the petition for incorporation of the City of Adak.

1.2 Proceedings to Date

On April 29, 1999, 38 registered voters in Adak petitioned the State of Alaska Local Boundary Commission¹ (LBC or Commission) to incorporate a second class city with boundaries encompassing 676.3 square miles. On May 10, 1999, LBC staff completed its technical review of the petition in accordance with AS 29.05.070, and accepted the petition for filing.

¹ Appendix A provides information concerning current Local Boundary Commission members.

Deadline for Filing of Briefs Established

Pursuant to 3 AAC 110.640, the LBC Chairperson established July 20, 1999, at 5:00 p.m., as the deadline for filing responsive briefs and comments regarding the petition. Public notice of the filing of the petition was published on May 12, May 19, and May 26, 1999. Notice of the petition filing was posted by the Petitioners' representative at four locations within the territory proposed for incorporation on May 20, 1999.

Notice of Filing Given

Public notice of the filing of the petition was given in accordance with the requirements of 3 AAC 110.450. Specifically, notice was given as follows:

05/10/99 Notice of the filing was mailed by LBC staff to 74 potentially interested agencies and individuals. Notice was prominently posted in 8.5-inch by 11-inch format at the following locations in Adak: Ann C. Stevens Elementary School, Bob Reeve High School, V.F.W. Post 1721, the Space Mark Administration Building, and the

Adak Health Clinic. The notice remained posted at the locations noted for at least 14 consecutive days from the date of posting.

- 05/12/99** Notice was published for the first time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long.
- 05/19/99** Notice was published for the second time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long.
- 05/26/99** Notice was published for the third time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long.
- 06/03/99** Notice was mailed or hand delivered by the Petitioners to the City of Unalaska, Aleutians East Borough, City of Atka, City of St. Paul, City of St. George, Kodiak Island Borough, and the City of Kodiak.

Notice of filing of the petition was also published in the *Aleutian Solution* in the May 1999, June 1999 and July 1999 editions of that local publication.

Petition Served on Interested Parties

On June 3, 1999, the Petitioners served a copy of the petition on the Aleutians East Borough, the City of Unalaska, the City of Atka, the City of Kodiak, the City of St. George, the City of St. Paul, and the Kodiak Island Borough in accordance with 3 AAC 110.640(a).

Petition Made Available for Public Review

Pursuant to 3 AAC 110.640(b), a copy of the complete petition documents was made available for public review at the Bob Reeve High School in Adak beginning May 20, 1999.

Timely Comments Filed

Written comments were submitted by the following parties prior to the July 20, 1999 deadline:

- The Aleut Corporation, (TAC) Ellary Gromoff, Jr. President and CEO (supporting incorporation);
- City of Atka, Julie Dirks, City Administrator (opposing incorporation);
- Atka IRA Council, Mark Snigaroff, President (opposing incorporation); and
- A.L. Cozzetti (opposing incorporation).

Responsive Brief Filed

On July 20, 1999 the U.S. Fish and Wildlife Service filed a 9-page responsive brief. Thus, pursuant to 3 AAC 110.480, for purposes of this proceeding, the U.S. Fish and Wildlife Service (U.S.F.W.S.) is the sole Respondent.

The summary of the U.S.F.W.S. brief states, in part, that *"The U.S. Fish and Wildlife Service supports establishment of a second class city on Adak Island but objects to the Petitioners' inclusion of the entire*

island within the proposed boundaries of the City." The brief concludes that *"Adak Island is geographically and politically separated from other local governmental bodies in the State. The lack of a political structure to govern the community of Adak may justify the establishment of a second-class city, but it does not justify creating a borough-sized city as proposed for a community which, according to the Petitioners' own estimates, is likely to remain*

small for the foreseeable future. The proposed petition to incorporate the city of Adak should not be approved as proposed."

The U.S.F.W.S. recommended that *"the Petitioners should redraw their proposed city boundaries to exclude all Refuge lands presently outside the military withdrawal that have been designated as Wilderness."*



U.S. Fish and Wildlife Service building in Adak.

Respondent Rights

Respondents are entitled to certain rights and privileges in this proceeding. These consist of entitlements to:

- service of the Petitioners' reply brief;
- notice of DCED's informational meetings;
- be provided DCED's provisional report and recommendation;
- be provided DCED's final report and recommendation;
- be served any amendments to the petition;
- be provided notice of LBC hearings on the proposal;

- make an opening statement, call witnesses, and make a closing statement at the LBC hearings;
- be provided a copy of the LBC decisional statement;
- file a brief supporting or opposing any requests for reconsideration.

Petitioners' Reply Brief Filed

On August 27, 1999, the Petitioners filed a 30-page reply brief pursuant to 3 AAC 110.490. A copy of the reply brief was served on the U.S.F.W.S. on that date.

DCED Informational Meeting

AS 29.05.080 and 3 AAC 110.520 require DCED to conduct at least one public informational meeting in the territory proposed for incorporation. DCED staff conducted a public informational meeting on the incorporation proposal at the Bob Reeve School in Adak on January 24, 2000. Notice of the meeting was sent to 83 parties, published twice in the Anchorage Daily News and the Adak Update. Notice was also posted at Adak. The meeting began at approximately 7:00 p.m., and concluded at 8:40 p.m. The meeting was attended by the members of the Adak Community Council and about 35 others.



Public participation at a public informational meeting held on January 25, 2000.

1.3 Future Proceedings

Review of Provisional Report

3 AAC 110.530 requires that DCED's provisional report be provided to the Petitioners and respondents. Additionally, DCED typically provides a copy of its provisional report - or if the report is particularly lengthy,

an executive summary - to all potentially interested individuals and organizations.

At least 28 days must be allowed for comment on the provisional report from the date the report was mailed to the petitioner. (3 AAC 110.640) Accordingly, the LBC Chairperson has established **March 22, 2000** as the deadline for the receipt of written comments on this provisional report. To be considered in the development of DCED's final report on this matter, written comments must be received at the following location by the deadline:

**Local Boundary Commission Staff
550 W. 7th, Suite 1790
Anchorage, Alaska 99501-3510
facsimile: (907) 269-4539
e-mail: Gene_Kane@dced.state.ak.us**

Final Report

3 AAC 110.530 requires DCED to issue a final report after giving due consideration to comments on its provisional report. Often, conclusions and recommendations contained in DCED's preliminary reports to the LBC become final without modification. If substantive comments are received on DCED's preliminary report, the final report will be more comprehensive.

The final report must be mailed to the petitioner at least 21 days prior to the LBC's hearing on the petition.

LBC Public Hearing(s)

The LBC has scheduled a public hearing on the incorporation petition beginning at 6:30 p.m., April 28, 2000, at the Bob Reeve High School Recreation Room, Adak. Notice of the hearing(s) will be published at least three times, with the initial publication occurring at least 30 days prior to the first hearing. Notice will also be posted in the area proposed for incorporation and mailed to interested parties.

In compliance with Title II of the Americans with Disabilities Act of 1990, DCED will make available auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing(s) concerning this matter. Persons needing such accommodations should contact LBC staff at 269-4500, or TDD 800 930-4555 at least one week prior to the hearing(s), to make necessary arrangements.

If anyone attending the hearing(s) does not have a fluent understanding of English, the LBC will allow time for translation. Unless other arrangements are made before the hearing(s), the LBC will rely upon someone present to serve as translator if such is required. Upon request, and if local facilities permit, arrangements can be made to connect other communities to the hearing(s) by teleconference.

Agenda

The tentative hearing agenda concerning the Adak incorporation proposal is outlined to the right. The Commission may amend the order of the hearing proceedings and change allotted times, if such will promote efficiency without detracting from the LBC's ability to make an informed decision. The LBC Chairperson will regulate the time and content of testimony to exclude irrelevant or repetitious testimony. A member of the Commission may question persons appearing for public comment or as a sworn witness. The Commission may also call additional witnesses.

No brief or other document may be filed at the time of the public hearing unless the Commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents and for consideration in DCED's report and recommendation.



Members

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Galstad
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

Ardith Lynch
Member
Fourth Judicial District



Draft LBC Agenda Adak Incorporation Hearing

April 28, 2000 - 6:30 PM
Bob Reeve High School
Recreation Room

- I. Call to order
- II. Comments by members of the public concerning matters not on the agenda
- III. Public hearing on the Adak Incorporation Petition
 - A. Summary of DCRA's report & recommendations
 - B. Opening statement by the Petitioner (limited to 10 minutes)
 - C. Opening statement by the Respondent (limited to 10 minutes)
 - D. Sworn testimony of witnesses called by the Petitioner
 - E. Sworn testimony of witnesses called by the Respondent
 - F. Sworn responsive testimony of witnesses called by the Petitioner
 - G. Period of public comment by interested persons (limited to 3 - 5 minutes per person)
 - H. Closing statement by the Petitioner (limited to 10 minutes)
 - I. Closing statement by the (limited to 10 minutes each)
 - J. Reply by the Petitioner (limited to 5 minutes)
 - K. Closing statement by DCRA
- VII. Decisional session (optional at this time)
- VIII. Adjourn

* The LBC Chairperson will preside at the hearing, and may regulate the time and content of testimony to exclude irrelevant or repetitious testimony. The LBC may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the LBC's ability to make an informed decision.

LBC Decisional Meeting

Within 90 days of the conclusion of the hearing, the LBC must convene a decisional session in accordance with 3 AAC 110.570. Often, the Commission will convene the decisional session immediately after the last hearing or within a few days of the last hearing. During the decisional meeting, no new evidence, testimony or briefing may be submitted. However, the LBC may ask its staff or others for a point of information or clarification.

Within 30 days of its decision, the LBC must issue a written statement explaining all major considerations leading to its action. A copy of the statement will be provided to the petitioner, all respondents and to other interested persons who request a copy. A decision of the LBC becomes final once the written statement of decision is mailed to the petitioner, the respondents, and those who have requested a copy.

Reconsideration

Any party may ask the LBC to reconsider its decision in this matter. The provisions of 3 AAC 110.580 provide details concerning requests for reconsideration.

Request for reconsideration of the Commission's decision may be filed within 20 days after the decision becomes final. The LBC may also order reconsideration of all or part of its decision on its own motion.

Requests for reconsideration must describe, in detail, the facts and analyses that support the request for reconsideration. If the Commission takes no action on a request for reconsideration within 30 days after its decision becomes final, the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner and respondents opposing reconsideration may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

Judicial Appeal

A decision of the LBC may be appealed to Superior Court. Judicial appeals must be filed within 30 days after the last day on which reconsideration may be ordered by the Commission. Alaska Rules of Appellate Procedure, Rule 601 et seq.

Incorporation Election

If the LBC approves or amends and approves the Adak incorporation petition, the State of Alaska will conduct an incorporation election. The LBC will notify the Division of Elections of the need to conduct the election once the opportunity to reconsider its decision has expired.

In accordance with AS 29.05.110(a), the Director of the State Division of Elections must order the incorporation election within 30 days of being notified by the LBC of the approval of the petition. Once the election order is issued, DCED will submit a request to the U.S. Justice Department to permit the incorporation and the election in the context of the Federal Voting Rights Act. That process typically requires a review of about 65 days; however, it is possible to seek expedited consideration. The election itself must be held not less than 30 or more than 90 days after the date of the election order.

The incorporation election will provide for the election of the initial city council consisting of seven members, all elected at large. The election order will specify the dates during which nomination petitions for election of the city council may be filed. Petitions to nominate initial officials of a second class city must include the signature and resident address of ten voters in the area of the proposed city.

In addition to the proposition on incorporation and the election of the initial city council, the incorporation election will address any propositions to authorize the city to levy taxes. In this case, the Petitioners have proposed to include propositions authorizing the city to levy a 3% sales tax and a 2% fuel transfer tax. The Petitioners have further requested that voter approval of the Navy required institutional controls ordinance be made a condition for incorporation.

Only individuals who have been resident registered voters in the area approved for incorporation for at least 30 days before the date of the election order may vote. The Division of Elections may conduct the election by mail.

Incorporation requires approval by a majority of those who vote on the question. Provided the voters approve incorporation and any requisite proposition authorizing the levy of taxes, incorporation takes effect upon certification of the election results. The initial city council takes office on the Monday following certification of their election.

1.4 LBC Options

The LBC may take any one of three alternative actions with respect to the petition. It may:

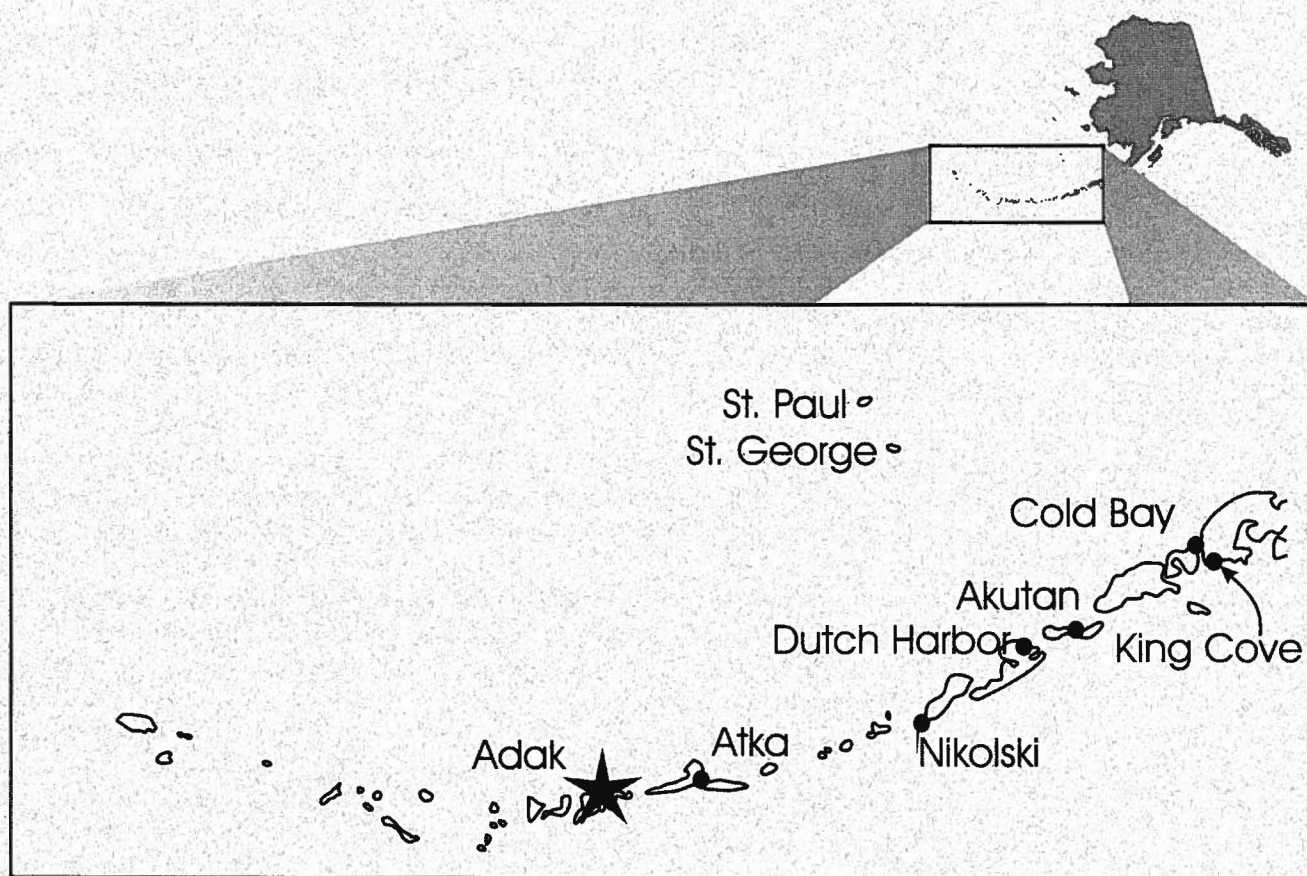
1. approve the petition as presented;
 2. reject the petition; or
 3. amend any aspect of the petition, including the boundaries, and/or impose conditions, and approve the amended petition.
-

² Appendix B of this report contains provisions of the Alaska Statutes and Alaska Administrative Code establishing standards for incorporation of cities.

1.5 Criteria Relating to Incorporation of Cities in the Unorganized Borough.²

Standards for the incorporation of cities are set forth in AS 29.05.011. For second class cities in the unorganized borough, the standards require that:

1. The boundaries of the proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. [AS 29.05.011(a)(2) and 3 AAC 110.040]
2. The area proposed for incorporation must be limited to the present local community, plus reasonably predictable growth, development and public safety needs during the decade following the effective date of incorporation. [3 AAC 110.040(b)]
3. The proposed city boundaries must not include entire geographic regions and large uninhabited areas not justified by the application of other incorporation standards. [3 AAC 10.040(c)]
4. The economy of the proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost effective level. [AS 29.05.011(a)(3); 3 AAC 110.020]
5. The population of the proposed city must be large and stable enough to support city government. [AS 29.05.011(a)(4), 3 AAC 110.030]
6. The territory proposed for incorporation must demonstrate a need for city government. [AS 29.05.011(a)(5); 3 AAC 110.010]
7. Essential city services cannot be provided more efficiently or more effectively by annexation to an existing city or by an existing organized borough. [3 AAC 110.010(b)]
8. The petition must include a practical plan demonstrating the proposed city's intent and capability to extend essential municipal services in the shortest practicable time after incorporation. [3 AAC 110.900(a)]



Area map

Chapter 2

Profile of Area Proposed for City Incorporation

2.1 Location

Adak is located in the Andreanof Islands of the Aleutian chain, 1,300 miles southwest of Anchorage, 90 miles west of the Atka, and 350 miles west of the City of Unalaska. Adak is the southern-most community in Alaska, at approximately 51° 45' N Latitude. The incorporation petition seeks to encompass all of Adak Island and contiguous offshore areas within the boundaries of the proposed City of Adak.

2.2 Adak Island Natural Features

Adak Island lies in the maritime climate zone, characterized by frequent storms, overcast skies, high winds, and fog. Winter squalls

produce wind gusts in excess of 100 knots. Extensive fog forms over the Bering Sea and North Pacific during the summer. Annual precipitation averages 64 inches, with an average accumulated snowfall of 100 inches, primarily in the mountains. The area is subject to frequent seismic activity.



Kuluk Bay near 'Downtown' Adak.

2.3 Recent History

In 1913, Adak Island was set aside as a preserve and breeding ground for wildlife and development of fisheries. In 1940, the island was added to the National Wildlife Refuge System. Adak is considered an area of national historic importance as a consequence of its role in World War II and the Cold War.

Development of the Davis Army Airfield began in August 1942. In 1943, the Navy constructed a seaplane base, known as Mitchell Field. The island became the staging point for the 1943 offensives on

Attu and Kiska. During that period, the U.S. military personnel at Adak numbered approximately 90,000, with more than 100 ships in the harbor.

By the early 1950s Adak was the only major base in the Aleutians and was the major U.S. Naval base in the northern Pacific. It soon became strategically important to the Cold War as the location of fleet communication antennas, listening posts, and a support base for anti-submarine patrol aircraft.³ During the early 1990s, the station housed about 6,000 naval personnel and dependents. In 1994, major military personnel reductions occurred at Adak.

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- 3 Excerpted from the Adak Historical Guide, originally prepared by the Adak Historical Society and updated by the U.S. Navy, Engineering Field Activity Northwest
-

2.4 Naval Air Facility Closure

In 1995, Adak was included on a list of Department of Defense installations to be closed or realigned pursuant to the Defense Base Closure and Realignment Act of 1990. Because Congress did not disapprove the list, it became final and binding on the Secretary of

Defense. Naval Air Facility Adak officially closed on March 31, 1997.



Satellite view of the Adak Naval Base. Photo obtained from <http://www.adakisland.com>.

When the Department of Defense closes bases, the military assets involved are transferred to local reuse authorities. In most cases, military bases are located within or adjacent to the boundaries of municipal governments. Since Adak is located in the unorganized borough, the State of Alaska formed the Adak Reuse

Planning Committee (ARPC) to serve as the planning local redevelopment authority. In 1996, ARPC commissioned a study by a consultant team headed by Tryck Nyman Hayes, Inc., an Anchorage based engineering firm.⁴

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- 4 The Tryck Nyman Hayes Adak Reuse Plan Project Final Report is frequently referenced in this document. It was developed by professional consultants under contract to the former State of Alaska Department of Community and Regional Affairs (DCRA) through Economic Development Administration Award No. 07-49-03587. A copy of the report has been provided to members of the Local Boundary Commission for their consideration in this matter.
-

In September, 1997, the State of Alaska approved the formation of the Adak Reuse Corporation (ARC) comprised of The Aleut Corporation (TAC), Aleutian Pribilof Island Community Development Corporation, the United Aleut Nation, Reeve Aleutian Airways, the community of Atka, and representatives of 13 Aleutian village corporations.

2.5 Environmental Remediation

Naval Air Facility Adak was put on the national priority list of superfund sites identified for long-term cleanup action in 1994. The United



One of many signs warning of potential safety hazards throughout the area proposed for incorporation.

States Navy; the United States Environmental Protection Agency (EPA), and the Alaska Department of Environmental Conservation (ADEC) have been engaged in petroleum and chemical remediation efforts pursuant to a federal facilities agreement for closure of the Naval Air Facility. The agencies applied federal standards defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as the framework for the remediation decisions made on Adak.

CERCLA is sometimes referred to as the 'superfund' law. The Navy holds responsibility for cleanup and closure, while the EPA and ADEC have federal and state regulatory oversight.

Remedial decisions have been made on approximately 200 sites on the island. The studies and investigation and cleanup activities have cost approximately \$160 million to date.

Some of the tasks and objectives completed to facilitate base closure on Adak include:

- Establishment of a Restoration Advisory Board (RAB), a citizen-based group, to review documents and provide input for cleanup issues on Adak. The RAB has held public, monthly meetings.
- Studies of sites on Adak contaminated by chemicals and petroleum.

- Closure of three landfills and closure or removal of approximately 375 underground storage and field-constructed tank sites.
- Recovery of more than 170,000 gallons of fuel from 15 sites.⁵

5 Source: <http://www.adakupdate.com>

Space Mark, Inc., a subsidiary of TAC, is the contracted caretaker of the Adak facilities while environmental remedial work is being completed.

2.6 Pending Land Exchange

A land transfer agreement between The Aleut Corporation, the Navy and the Department of Interior is anticipated to be enacted during the fall of 2000. Under terms of the draft agreement, the Navy will relinquish its lands to the U.S. Fish and Wildlife Service, The Aleut Corporation will transfer about 46,000 acres to the jurisdiction of the U.S. Fish and Wildlife Service and receive about 76,000 acres on Adak Island.

2.7 Community Facilities

The U.S. Navy developed a complete range of community facilities in the Adak core area. The 1990 U.S. Census recorded 1,051 total housing units. The family housing units were vacated in 1994 and local schools were closed.



Housing area for the U.S. Fish and Wildlife Service employees.

Utilities

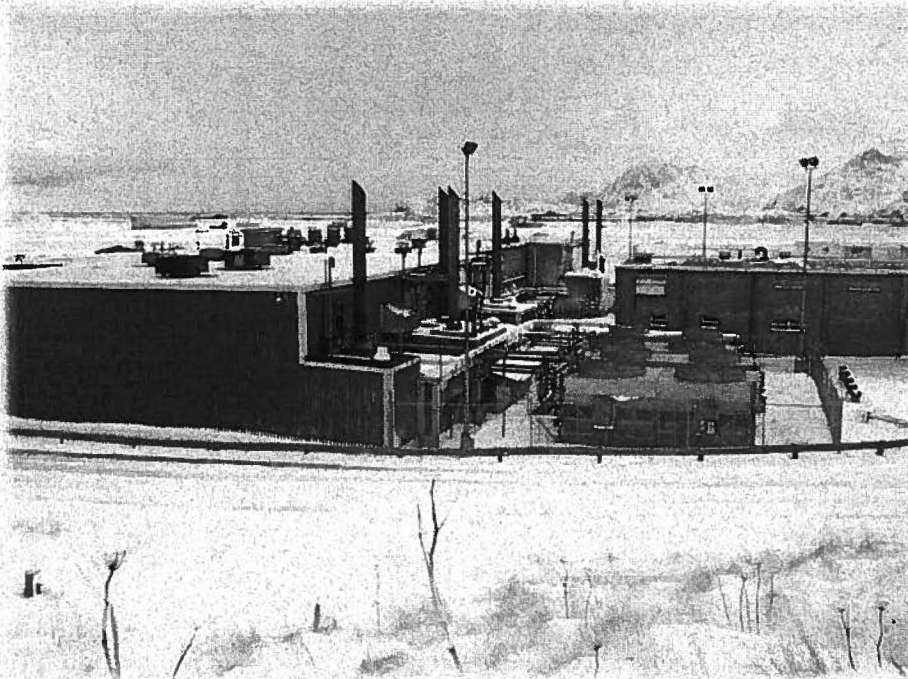
- **Water.** Water is derived from Lake Bonnie Rose and Lake De Marie. Surface water feeds into a gravity distribution network, stored in tanks and piped to facilities and housing units. The system includes 47 miles of conduit. There are no groundwater supply wells for potable water.⁶
- **Wastewater.** The main sewage treatment plant at Kuluk Bay has a 900,000 gallon per day capacity. The facility is operating at a reduced capacity. Wastewater is discharged through a marine outfall line to Kuluk Bay. The Tryck Nyman Hayes Adak Reuse Final Report states *"The current system will have to be modified in order to work effectively for the low and middle population scenarios."*

6 Draft BRAC Cleanup Plan, 10/29/97

It estimated 'low scenario' capital costs for the system at \$2,755,520 and 'low scenario' operations and maintenance costs at \$64,600.

- **Landfills.** Tryck Nyman Hayes reported two landfills in use at that time. The 33-acre Roberts landfill is located at the top of a 300 foot bluff. The Roberts Landfill was filled nearly to capacity and the facility's permit is to expire on March 1, 2000. The Navy is in the process of capping the Roberts landfill. Refuse is burned or baled before disposal in the landfill.
- **Electricity.** According to the Tryck, Nyman Hayes report, "The power system serving the Naval Air Facility, Adak has grown and evolved over the past 50 years. These systems were first established to power support for military supply and protection of the Aleutian Islands. Throughout the next 40 years Adak operations evolved into a sophisticated communications and

submarine surveillance station protecting the entire West Coast of North America." Electricity is generated at Power Plant No. 3. The plant has nine diesel generator sets, including six Cooper-Bessemer 3.0 MW generator sets and three 800KW Caterpillar generator sets. The Cooper-Bessemer engine/generator sets are too large for use under any reuse scenario and will be retired.



Power Plant No. 3 on Adak Island.

provided through a transmission system which included eight substations, 26 miles of overhead power line and 20 miles of underground power line. Both overhead and underground distribution is used. Power use is now limited to the 'downtown' area.

Power distribution was

- **Bulk Fuel Storage.** The Defense Fuel Supply Point (DSEP), Adak, was established during the mid-1950s. Storage capacity for about 19.5 million gallons of product storage is in relatively good condition and is available for use. Of the more than 14 miles of fuel pipeline, about six miles are in good to excellent condition. The remaining eight miles of pipeline is either *"known to be in extremely poor shape or is aged and is of concern because its condition is unknown."*⁷ In November, 1996, Tryck, Nyman Hayes estimated the 'low scenario' operating costs of the fuel supply enterprise at \$2,58,617 and the 'low scenario' capital maintenance costs of the system at \$1,375,844.
- **Steam.** Heat is provided by steam or hot water boilers in the individual facilities being heated. There were 75 active boilers operating when the base was at full capacity. Most of those are no longer utilized.
- **Cable Television.** Cable television is provided by Adak Cablevision, which owns and operates its own equipment including satellite dishes, distribution and wiring to structures. The Navy pays for cable TV for all personnel on Adak.
- **Telephone.** The phone switching system and local lines are owned by the Navy. The system is capable of handling 3,400 lines. Operation of the switching system requires one person to be at the switching station each day to deal with equipment maintenance.⁸

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- 7 Tryck Nyman Hayes
Adak Reuse Plan
Project Final Report,
at I-31.
 - 8 Draft BRAC Cleanup
Plan, Appendix J,
October 29, 1997
-

2.8 Transportation.

Airport

The Adak airport has two paved runways. The primary runway is 7,800 feet long and 200 feet wide. The secondary runway is 7,600 feet long and 195 feet wide. Airport infrastructure includes taxiways, aircraft parking pavement, two aircraft hangers, ground support equipment, control tower, the Pat Kelly Terminal, and an air rescue fire fighting facility. Commercial airline service is currently available twice a



Adak airport.

week from Anchorage. Tryck Nyman Hayes estimated operation and maintenance costs to operate the Adak airport as a minimal level of service for Part 139 certificated airport operations at \$1,279,00 annually.

Alternatively, the airport could be operated at a reduced scale as a non-certificated airport. As a non-certificated airport, scheduled passenger operations by an air carrier would be limited to aircraft with less than 30 passenger seats, however Adak Airfield could still be used for aircraft charter operations with more than 30 passenger seats. Cargo aircraft would not be impacted under this scenario. The estimate for operating the Adak airfield as a non-certificated airport was \$856,000.⁹

⁹ Adak Reuse Plan, Tryck Nyman Hayes, at I-19 and I-20.

Port Facilities

Port facilities include two deep-water docks, a fuel pier, a barge unloading ramp and a 51-ton crane and harbor master facilities.



Adak port facilities.

Roads

Approximately 17 miles of paved roads and 100 to 150 miles of unpaved gravel roads exist on Adak Island. The paved roads are located on and around the airport, the housing areas, the port and storage buildings and Bering Hill.

Recreational Facilities

Such facilities include a movie theater, roller skating rink, swimming pool, ski lodge, bowling alley, skeet range, auto hobby shop, photo lab, racquetball and tennis courts.

2.9 Adak Population

In recent years, the population has fluctuated seasonally. The Alaska Department of Labor and Workforce Development estimated the July 1, 1999 population to be 106. As of October 4, 1999, at the height of the field maintenance season, there were approximately 400 people on Adak. On December 1, 1999, there were about 200.¹⁰ Families with school-age children began relocating to Adak in September 1998. As of November 30, 1999, there were 31 students attending school at Adak, including six high school students.



Bering Building recreation facility at Adak, now closed.

10 Mark Burnham,
Engineering
Field Activity
Northwest

2.10 Adak Economy

Adak's economy is in transition as a result of the Navy's phasing out of its subsidization of operation and maintenance of the community's infrastructure. Most Navy staff left NAF Adak by April, 1997. The Navy, in conjunction with its contractor (Space Mark, Inc.) has been operating NAF Adak on caretaker status. Space Mark is the principal local employer. Seafood processing is currently underway at Adak by Adak Seafoods, LLC, which began processing cod, pollock, mackerel, halibut, and albacore in 1999. A grocery and ship supply store and restaurant are in operation.

At this time, there are unresolved questions regarding the funding for operation of basic and essential community facilities, notably the airport.

The 1996 Tryck Nyman Hayes study examined three reuse scenarios: low use, middle use, and high use.

- "Low use" would include government uses, airport fixed-base operations, port operations, lodging and food services, continuing environmental cleanup operations, and support of fueling and fishing activities, with a population of 123.
- "Middle use" would have the same services as low use, but with greater presence and economic activity. Middle use would also include seasonal tourism and expanded fish processing and support, with a population of 135 within 3-5 years of transfer.
- "High use" would have the same services as middle use, but at higher levels than middle use. High use might include staging of geologic resources (zinc, coal, petroleum). High use might also eventually include use of Adak's ice-free harbor as a transshipment point or staging area for bulk cargos. This scenario was expected to occur between 5 and 10 years following transfer.

The Tryck Nyman Hayes study concluded that *"The initial capitalization of the Adak Reuse Authority as well as the lack of access to normal State support, such as airport operations and municipal assistance, results in an unfavorable expectation for break-even for the ARA under the initial or base case scenario."* The findings of the Tryck Nyman Hayes study were instrumental in the decision by the State of Alaska that it would not become the reuse authority.

Chapter 3

Application of City Incorporation Standards

This chapter provides DCED's analysis of the extent to which the Adak city incorporation petition meets the applicable standards. The LBC and DCED are independent of one another concerning policy matters. Therefore, DCED's recommendations in this matter are not binding upon the LBC.



Adak as seen from Mt. Moffett.

The headings in Sections 3.1 - 3.8 are the standards for incorporation paraphrased as questions. Regulatory standards and factors for consideration set forth in the Alaska Administrative Code 3 AAC 110.010 - 3 AAC 110.040 are then examined in each section, including synopses of the positions taken by the Petitioners, respondent, and correspondents regarding each factor.

Standards for the incorporation of cities are set forth in AS 29.05.011. For second class cities in the unorganized borough, the standards require that:

1. The boundaries of the proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. [AS 29.05.011(a)(2) and 3 AAC 110.040]
2. The area proposed for incorporation must be limited to the present local community, plus reasonably predictable growth, development and public safety needs during the decade following the effective date of incorporation. [3 AAC 110.040(b)]
3. The proposed city boundaries must not include entire geographic regions and large uninhabited areas not justified by the application of other incorporation standards. [3 AAC 10.040(c)]
4. The economy of the proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost effective level. [AS 29.05.011(a)(3); 3 AAC 110.020]
5. The population of the proposed city must be large and stable enough to support city government. [AS 29.05.011(a)(4), 3 AAC 110.030]

6. The territory proposed for incorporation must demonstrate a need for city government. [AS 29.05.011(a)(5); 3 AAC 110.010]
7. Essential city services cannot be provided more efficiently or more effectively by annexation to an existing city or by an existing organized borough. [3 AAC 110.010(b)]
8. The petition must include a practical plan demonstrating the proposed city's intent and capability to extend essential municipal services in the shortest practicable time after incorporation. [3 AAC 110.900(a)]

The Alaska Administrative Code standards and factors for the Commission to consider are included, for reference purposes, in Appendix B of this report.

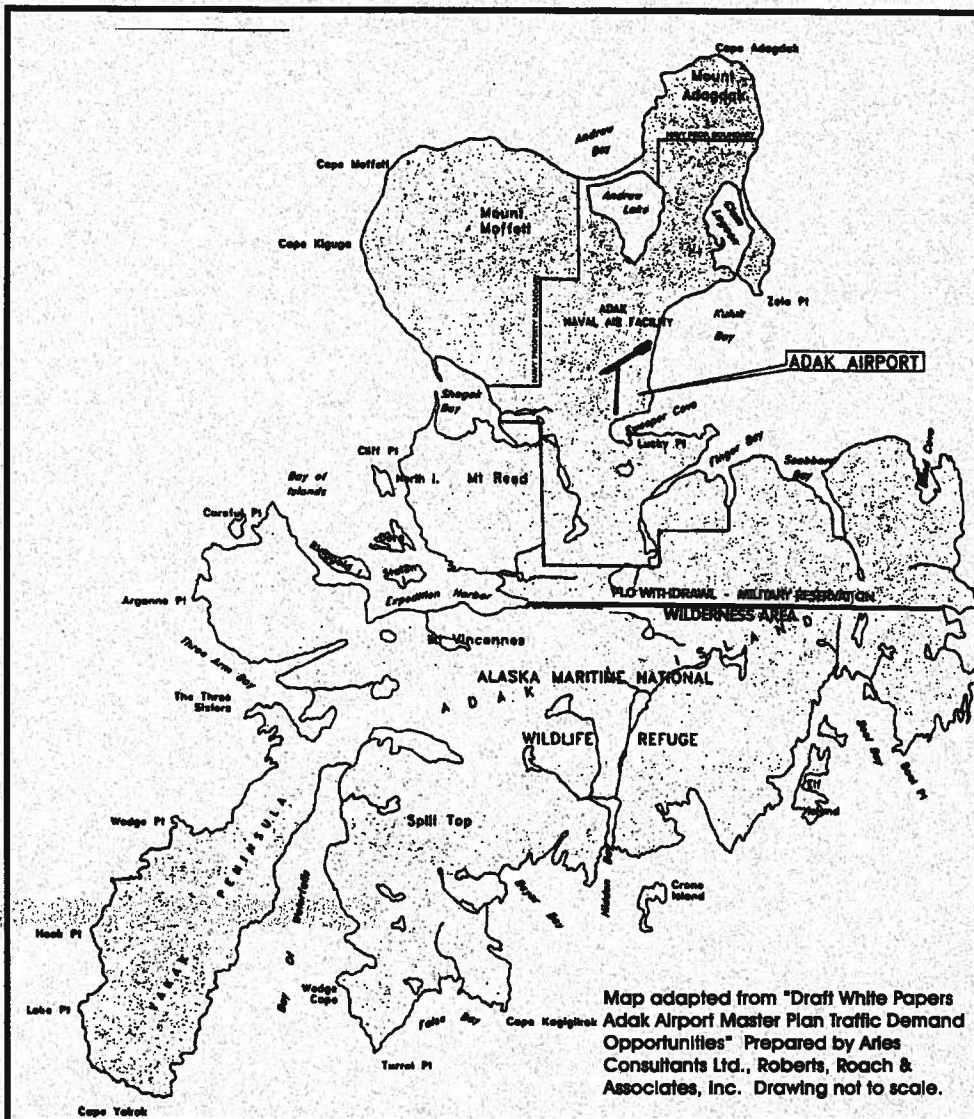
The Alaska Supreme Court has formally recognized that determinations by the Commission may involve broad judgments of political and social policy and that the Commission has been given broad power to decide in the unique circumstances presented by each petition. [*Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 98-99 (Alaska 1974)]

3.1. Do the boundaries of the proposed city include all land and water necessary to provide the full development of essential city services on an efficient cost effective level? [AS 29.05.011(a)(2); 3 AAC 110.040(a)]

A. Land use and Ownership Patterns. [3 AAC 110.040(a)(1)]

Views Stated in Petition

The petition for incorporation states "*Lands available for taxation by a City of Adak are expected to be limited by provisions contained in the Land Transfer Agreement between the federal government as represented by the Department of the Interior, the US Navy and The State of Alaska and The Aleut Corporation. The Land transfer Agreement stands as the formal arrangement between the seller and the buyer of Adak. The Land Transfer Agreement contains provisions regarding INSTITUTIONAL CONTROLS imposed over lands on Adak, and establishes the premise that lands will not be "taxable" until they are sold, leased or put into a direct and measurable commercial use.*" (at 3)



The south half of Adak Island is a wilderness area.

On page 32 the petition states, "Land uses in the coastal zone are expected to be influenced by those who are most impacted by the decisions and the State of Alaska. City ordinances that can assist the CRSA (Aleutians West Coastal Resource Service Area) to implement and enforce reasonable coastal protections around Adak Island will ensure consistent application of federal and state coastal zone management goals."

Views of Respondent

The July 20 responsive brief of the U.S.F.W.S provides the following statements regarding the Naval Air Facility. "Until the land exchange is successfully finalized, there will be no non-

Federal land upon which to establish a community. With the exception of a few small privately-owned historic sites located outside the military withdrawal, Adak Island is Federally owned as part of the Alaska Maritime National Wildlife Refuge. The military withdrawal encompasses approximately 78,000 acres of the northern portion of the island and is managed by the U.S. Navy. Although there is nothing in statute or regulation that prevents Federally owned land from being incorporated into municipal boundaries, the community on Adak is dependent on a Navy lease for its existence." [at 1]

"Adak was closed in 1997 under the Base Realignment and Closure procedures. A portion of Adak Island was withdrawn in 1913 as a wildlife preserve and in 1940, the entire island was designated a

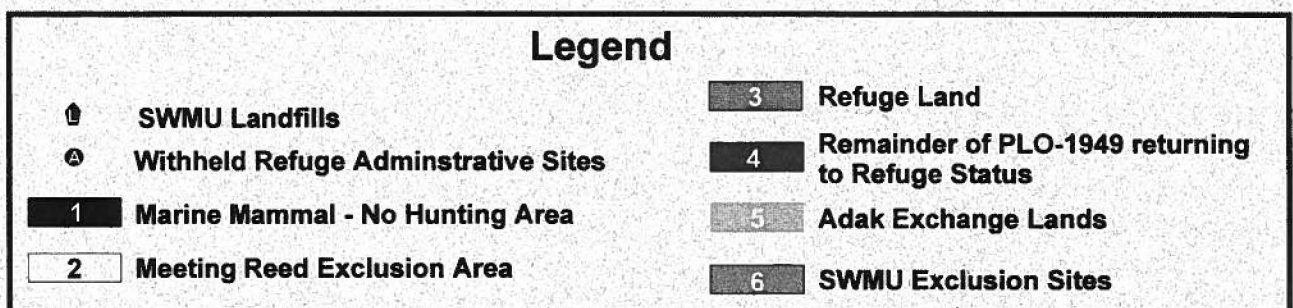
National Wildlife Refuge. In 1980, the Alaska National Interest Lands Conservation Act incorporated Adak Island into the Alaska Maritime Refuge and the southern half of the island was designated as Wilderness. During World War II, the northern part of Adak Island was extensively used by the United States Navy and Army. In 1959, the northern portion of Adak was withdrawn and reserved for use by the Navy for military purposes (the underlying land remained within the Refuge). The Navy-built city on Adak supported about 6,000 people at its peak. The 1959 military withdrawal area on Adak is a "Superfund Site" that is in process of being cleaned up. The Navy is expected to request revocation of this Public Land Order sometime in the future as part of its base closure. After the closure of the Naval Air Station was announced, The Aleut Corporation (TAC) offered to exchange a portion of its Alaska Native Claims Settlement Act entitlement to the Service in exchange for the Naval Complex. An unequal value exchange agreement in concept was negotiated by the [U.S. Fish and Wildlife] Service, the Navy, and TAC in 1996. The Aleut Corporation offered about 47,000 acres of their ANCSA entitlement for an equal number of acres including substantial improvements on the Adak Naval Complex.

In 1998, the Navy found archival evidence from World War II of additional ordnance impact areas and ranges in various locations on Adak Island both within the 1959 military withdrawal area, and in areas to the south administered by the U.S. Fish and Wildlife Service. This discovery stalled negotiations and raised safety and liability concerns about transferring the land out of Federal ownership, since only 3,000 acres have been cleared of unexploded ordnance (UXO). The characterization and remediations of UXO have become a major point of contention among the signatories of the Federal Facilities Agreement that controls the Superfund cleanup. Although land exchange negotiations are stalled in large part because of unresolved issues concerning UXO, TAC and subcontractors continue to operate on Adak as Navy contractors for the cleanup. Because of the difficulty and expense in finding and removing all UXO, the Navy has recommended institutional controls (administrative actions to control human encounters with UXO and other contaminants) as part of the long-term management of Adak.



Furthermore, we have worked hard negotiating a land exchange to allow the facilities on Adak to be effectively used. Negotiations on the exchange have stalled, largely on the cleanup of UXO. The ultimate success of the land exchange is still unknown. While we hope that the land exchange is successful, and we recognize that

The map displays the Lake Superior region with six numbered areas. Area 1 is a small black-shaded area in the northeast. Area 2 is a white-shaded area in the center, outlined with a thick black border. Area 3 is a large dark-shaded area in the south. Area 4 is a dark-shaded area in the east. Area 5 is a light-shaded area in the northwest. Area 6 is a light-shaded area in the north, adjacent to Andrew Lake. The map includes a grid with coordinates such as T. 945. .R. 104W. SM and T. 965. .R. 100W. SM. Other features include Andrew Lake, the St. Marys River, and various smaller lakes and islands.



Draft Land Exchange map. Source: United States Fish and Wildlife Service.

Federal land may be incorporated into a city, we feel the Commission should understand the implications of incorporating an entirely Federal island as a second class city.

1. *There is presently no private land on Adak Island except several small cemetery and historic sites withdrawn under Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 6 1601, et seq.) in the portion of the island south of the military withdrawal.*
2. *There will be no other private land on Adak Island unless and until the Department of Interior completes a land exchange with TAC. We are negotiating with TAC and the Navy to do just that, but negotiations are stalled largely because of issues related to UXO.*
3. *The National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57) requires that prior to initiating a new use on a national wildlife refuge that we determine if such use is compatible with the purposes of the refuge and the mission of the Service. The community of Adak, although located within Refuge boundaries, is under management of the Navy until the military withdrawal is revoked. In either case, governance of Adak is circumscribed by the controlling Federal agency.*
4. *The stability of the population and the economy on Adak is dependent on the land trade. The backbone of the current population is Navy contractors maintaining the base during the cleanup and the contractors actually conducting the cleanup. Although TAC has succeeded in attracting private enterprise to the island, their stay is tenuous until land is exchanged into private ownership. (at 4-5)*

" . . . The backbone of the current population is Navy contractors maintaining the base during the cleanup and the contractors actually conducting the cleanup. Although TAC has succeeded in attracting private enterprise to the island, their stay is tenuous until land is exchanged into private ownership." U.S.F.W.S. Responsive Brief

"Until the (Aleut Corporation and U.S. Navy) land exchange is successfully finalized, there will be no non-Federal land upon which to establish a community. With the exception of a few small privately-owned historic sites located outside the military withdrawal, Adak Island is Federally owned as part of the Alaska Maritime National Wildlife Refuge. The military withdrawal encompasses approximately 78,000 acres of the northern portion of the island and is managed by the U.S. Navy." (at 2)

DCED's Views

Land use and ownership patterns do not support inclusion of the entire area sought for incorporation within the boundaries of a second class City of Adak. Although the Aleut Corporation is scheduled to take ownership of much of the north half of Adak Island, ANCSA regional corporation land ownership, while relevant to borough boundaries, is not directly germane to second class city boundaries.

Land use patterns do not support inclusion of the entire area sought by the petitioners for the following reasons.

- Access to remote areas of Adak Island would impose practical limitations upon the delivery of city services to most of the area proposed for city incorporation.
- The wilderness classification of the south half will limit use of that area on a permanent basis.
- There will be no developable private land on Adak Island unless and until the land exchange between The Aleut Corporation and U.S. Navy occurs.

B. Population Density. [3 AAC 110.040(a)(2)]

Views Stated in Petition

The Petitioners' brief states "*Population density is expected to be no greater than 1,000 per square mile in the downtown area and 50 per square mile outside of the area enclosed by the runways.*" (Exhibit I, page 31)

Views of Respondent

The U.S.F.W.S. contends that this factor is not satisfied by the petition since "*The southern half of Adak Island is unoccupied and cannot be populated since it is a designated Wilderness Area.*"

DCED's Views

Population density does not support the expansive boundaries proposed by the petition. The entire area proposed for

incorporation has only about 100 year-round residents. Much of the territory sought by the petitioners for inclusion in the proposed city consists of areas that will never be inhabited, such as the federal wilderness area on the south half of Adak Island and waters adjacent to the island. Population density and development in the area proposed for incorporation are inconsistent with city boundaries resembling those proposed by the petition for incorporation.

***C. Existing and Anticipated Transportation Patterns and Facilities.
[3 AAC 110.040(a)(3)]***

Views Stated in Petition

The Petition suggests that the entire island should be included within the boundaries of the proposed city since:

"Adak's Bays and Inlets have been, are and will be used by commercial, sport and recreational boats originating from the City of Adak and from adjacent waters. In the past, Adak hosted commercial crab processing facilities within Finger Bay that clearly demonstrated the linkage between the existence of support improvements on Adak and the bays and inlets where crab was caught (along with crab caught in deeper water). It was clear that - but for -Adak's availability for logistical support and processing of the island for crab fishing support would not have taken place. (In fact local crab fishing stopped soon after access to Adak facilities were closed by the Navy. Presently, a new fish processing company has started operations on Adak. New activity is starting. Fishing boats are delivering near-shore caught fish to the Adak processor. Control of the use of shore areas on Adak Island, in the bays and inlets, as well as controlling acceptable and unacceptable practices of vessels in bays can be enforced by city control of the island. Without city coverage over the island boats could go to the next bay and perform activities that are not acceptable to the community of Adak." (at 30)

"There will be a need to provide emergency services to tourism charters and guided hunting on Adak. The city will be providing services to users of the recreational assets of the entire island. All

". . . Adak's Bays and Inlets have been, are and will be used by commercial, sport and recreational boats originating from the City of Adak and from adjacent waters. In the past, Adak hosted commercial crab processing facilities within Finger Bay that clearly demonstrated the linkage between the existence of support improvements on Adak and the bays and inlets where crab was caught (along with crab caught in deeper water)." Petition to Incorporate the second class city of Adak.

hunting for Adak will originate in the more developed areas. Proliferation of floating cabins or non-seaworthy vessels, or dealing with abandoned vessels may best be dealt with by a combination of city and federal oversight. Frequency of use of the south half of Adak for hiking and hunting and the need to maintain the rescue barrels in the south half of the island for resident safety. (with permission of USF&WS). Use of Adak will take place over the whole island not just in the northern, developed portion. ANILCA provisions prohibit federal managers from prohibiting access and some uses of their land on Adak. The City can supplement federal management with reasonable use and development ordinances.” (at 31)

“Most trails originate within the City of Adak, but extend from the city area throughout the south end of the island. Protected anchorages around the entire island will be used by numerous fishing tour and commercial vessels. Kagalaska Strait is a particularly valuable area for the community as it provides a natural access path to the entire south end of Adak and to adjacent islands.” (at 32)

Views of Respondent

The U.S.F.W.S. brief states, “Petitioners cite transportation patterns on the island as a justification for including the whole island in the

“... Granted, many trails start in the developed portion of Adak and extend into the Wilderness or other remote areas on the island. However, responsibility for any trails on land that remains within the Refuge will not be transferred to the city regardless of city boundaries. Use of those trails is under the exclusive jurisdiction of the Fish and Wildlife Service. The proposed city would have no authority to regulate use of the trails.” U.S.F.W.S. Responsive Brief

proposed city boundaries. The Service considers this a specious argument for incorporating large areas of remote Federally-owned Wilderness not open to future city expansion or development. Granted, many trails start in the developed portion of Adak and extend into the

Wilderness or other remote areas on the island. However, responsibility for any trails on land that remains within the Refuge will not be transferred to the city regardless of city boundaries. Use of those trails is under the exclusive jurisdiction of the Fish and Wildlife Service. The proposed city would have no authority to regulate use of the trails.” (at 8)

Views Stated in Reply Brief

The Petitioners' reply brief stated: *"Transportation patterns on Adak are not the sole reason to allow a full island boundary for the community, but they are a consideration. The downtown area will be the jumping off point for users of the island both north and south. Virtually all who use (U.S.F.W.S) Service lands will access through city owned and managed corridors. Users will also access Service land by boats from Adak's small boat harbor. Users of Service land will all receive city run briefings on the residual dangers of unexploded ordinance. These transportation patterns create public service delivery costs to the city that can be partially covered by including Service lands within the city."* (at 14)



Sweeper Cove

DCED's Views

Existing and reasonably anticipated transportation patterns and facilities do not support the expansive boundaries proposed by the petition. Given its remote location, Adak cannot function as a viable community without an operational airport. At this point, there is no arrangement finalized to keep the Adak airport operating at its current level after the Navy ceases operation of the facility on September 30, 2000. The Alaska Department of Transportation and Public Facilities (ADOTPF) does not have funding to operate or maintain the airport. Neither does the Federal Aviation Administration. ADOTPF estimates that the annual cost to the State of Alaska to operate and maintain the Adak airport would total about \$1.1 million annually. Tryck Nyman Hayes estimated operation and maintenance costs to operate the Adak airport as a minimal level of service for Part 139 certificated airport operations at \$1,279,000. The Navy spent about \$800,000 to operate and maintain the airport last year.

Alternatively, the airport could be operated at a reduced scale as a non-certificated airport. As a non-certificated airport, scheduled passenger operations by an air carrier would be limited to aircraft

¹¹ This has been confirmed by John Horn, Central Region Director, and Director of Statewide Aviation and Paul Bowers, personal communication, January 31, 2000 and February 4, 2000, respectively.

with less than 30 passenger seats, however Adak Airfield could still be used for aircraft charter operations with more than 30 passenger seats. Cargo aircraft would not be impacted under this scenario. The estimate for operating the Adak airfield as a non-certificated airport was \$856,000. Paul Bowers, Director of Statewide Aviation for ADOTPF, indicated that the costs of operation and maintenance of the Adak airport without certification could be lower than the \$856,000 Tryck Nyman Hayes estimate, but believed that even a minimal airport operation, coupled with deferred maintenance, would still cost several hundred thousand per year. ADOTPF officials have confirmed that ADOTPF has no plans to operate or maintain the Adak airport and has no funding for the purpose.¹¹ Efforts are reportedly underway by the Aleut Corporation to secure federal funds for the airport operation and maintenance through Senator Stevens' office.

D. Natural Geographic Features and Environmental Factors.
[3 AAC 110.040(a)(4)]

Views Stated in Petition

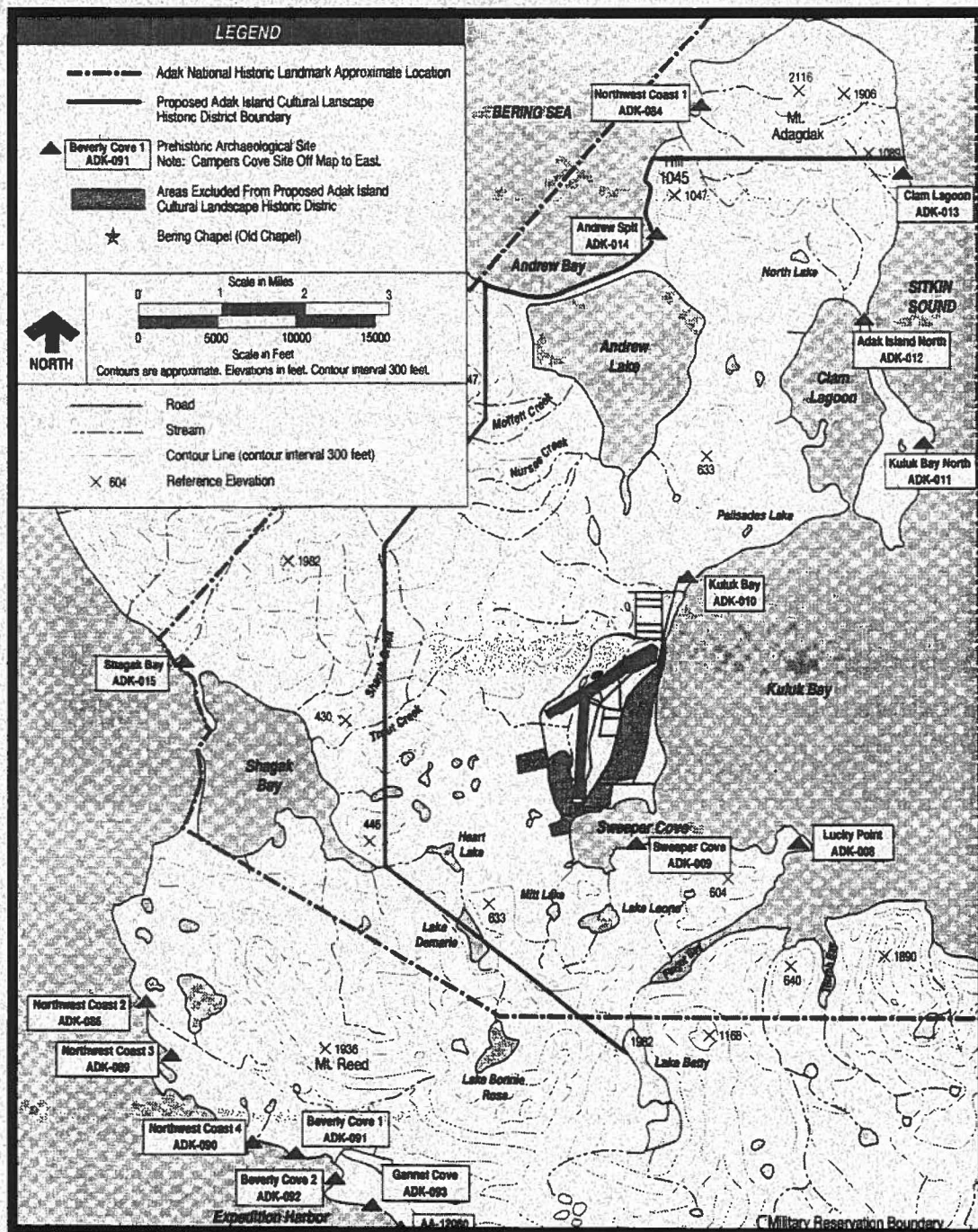
The petition states *"As an island Adak has a natural geographic feature that acts as a partition between Adak and other land masses in the area."*

Views of Respondent

The response brief of the U.S.F.W.S. states, *"The Petitioners argue that because Adak is an island, it is natural to include the entire island within the boundaries. The natural geographic features and partitions between Adak and other land masses in the area do not justify inclusion of the entire island in the city under this petition. There is no need for services now or in the future from the proposed city to the south of the existing military withdrawal, since it is unoccupied and will remain so because it is designated Wilderness within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge."* (at 6)

Views Stated in Reply Brief

The reply brief stated: *"It is obvious to all that Adak & an island. It's geographic features mesh perfectly with the intent of the law's sensitivity towards considering natural geographic features when establishing boundaries for a new city."*



Map showing the Adak National Historic Landmark location (approximate), proposed Adak Island Cultural Landscape Historical District boundary, and shows prehistoric archaeological sites. Source: _____

It is just as obvious that the lack of any distinctive geographic feature with the Service- recommended city boundary ignores the desire of the law to consider natural geographic features when formulating a boundary. The Service is right in saying that the island's geographic features do not in and of itself justify a boundary around the entire island, but it does meet the stated interest of the law in aligning a boundary with obvious geographic features. In this particular case, using the entire island as the city boundary is efficient and workable in light of:

- 1. the city's on-going obligation (to Navy, EPA and ADEC) to inform visitors to Service land, as well as other land on Adak, to the dangers related to a small amount of residual unexploded or discarded ordinance,*
- 2. to guarantee protection of over 30 ancient archeological sites (Perhaps in a more comprehensive manner than the Service),*
- 3. to receive some added fish tax revenue for city departments,*
- 4. to ensure proper management of floating hotels or other specialty vessels that the Service may allow,*
- 5. to provide a "stronger" voice in coastal zone management negotiations, and*
- 6. to provide some measure of search and rescue service to the whole island." (at 11-12)*

DCED's Views

Natural geographic features and environmental factors do not justify inclusion of the entire area within city boundaries. The area's extreme climate and rugged terrain renders venturing out of the downtown area potentially hazardous. Further, adjacent undeveloped areas contain extensive uncleared World War II minefields.

E. Extraterritorial Powers of Cities. [3 AAC 110.040(a)(5)]

Views Stated in Petition

The Petitioners' brief states "No other government in the region has either the intention or the financial resources for assuming provision of essential city services. Therefore the services to be provided by the proposed City of Adak cannot be provided by the closest organized borough or by annexation to an existing city within the region — the nearest being some 70 miles to the east." (at 25)

On page 30 the petition includes a statement by the Adak Community Council urging a "Large City concept". That statement reads, in part, *"The closest possible annexation partner is the Community of Atka located approximately 70 miles to the east. Due to the different development paths of the two communities it is highly unlikely that the Community of Atka would interface in the operation of the City of Adak. The distance between the two communities is a good reason to support the "whole island" coverage by the City of Adak."*

DCED's Views

No factors relating to extraterritorial powers of cities support the expansive boundaries proposed by the petition. The area outside of 'downtown' Adak is entirely uninhabited and would remain so even if a civilian community managed to sustain itself on the island. The southern half of the island is a federal wilderness area. Presently, the entire population of the area is concentrated in the compact community center.

F. Conclusion

The proposed boundaries do not satisfy standards required by AS 29.05.011(a)(2) or 3 AAC 110.040(a). Land use and ownership patterns do not support inclusion of the entire area sought for incorporation within the boundaries of the proposed city. Population density does not support the extensive boundaries proposed by the petition. Existing and reasonably anticipated transportation patterns do not support the expansive boundaries proposed by the petition. Natural geographic features and environmental factors do not justify the proposed boundaries. Extraterritorial powers of cities are not directly relevant to the proposal. The rationale provided by the petition for the expansive city boundaries are not applicable to second class city boundaries.

3.2. Is the area proposed for incorporation limited to the present local community, plus reasonably predictable growth, development and public safety needs during the decade following the effective date of incorporation?

[3 AAC 110.040(b)]

A. Examination of Standard

Views Stated in Petition

The Petitioners' brief states that *"There are many families on Adak engaging in commerce and new business. Citizens desire to establish a Second Class city to ensure the proper development of Adak as it transitions into what may be a city of 1-2000 people within five years"* (Petition, Exhibit A).

Views of Respondent

Much of the responsive brief is devoted to demonstrating that 3 AAC 110.040(b) is not satisfied by the incorporation proposal. The brief opens with the following premise *"By inclusion of the southern half of the Island, Petitioners have exceeded the area a second class city*

may include. 19 AAC 10.040(b) limits boundaries to "including only that territory comprising a present local community, & reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation of that city."

" . . . All of the Refuge lands south of the existing military withdrawal area are part of the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge and are designated Wilderness. U.S.F.W.S. Responsive Brief

All of the Refuge lands south of the existing military withdrawal area are part of the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge and are designated Wilderness.

Consequently, they may not be developed or occupied and as a result the proposed city will never be able to expand into them. No services from the proposed city need be delivered to the area because it cannot be populated and is under the jurisdiction and active management of the Fish and Wildlife Service. In other words, none of those lands meet the criteria in 19 AAC 10.040(b) f or inclusion within the proposed city boundary.

The Petitioners argue that because Adak is an island, it is natural to include the entire island within the boundaries. The natural geographic features and partitions between Adak and other land masses in the area do not justify inclusion of the entire island in the city under this petition. There is no need for services now or in the future from the proposed city to the south of the existing military withdrawal, since it is unoccupied and will remain so because it is designated Wilderness within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

Petitioners argue the distance from potential annexation partners justify inclusion of the entire island. While the distance from potential annexation partners justifies establishment of a second class city on Adak rather than inclusion of the area within the boundaries of another existing city, it has no bearing on the size of the proposed city on Adak.

Petitioners cite the historic use of bays and inlets by the commercial fishing fleets and likely future use by recreational boaters of the bays and inlets as a reason for inclusion of the entire island within the boundaries of the proposed city. As part of the Alaska Maritime National Wildlife Refuge, the southern half of Adak Island is managed by the Fish and Wildlife Service. Since it is a designated Wilderness Area, no commercial development of the shores or uplands may be made of the southern half of Adak Island."

At the conclusion of the responsive brief, the U.S.F.W.S. stated: "The lack of a political structure to govern the community of Adak may justify the establishment of a second-class city, but it does not justify creating a borough-sized city as proposed for a community which, according to the Petitioners' own estimates, is likely to remain small for the foreseeable future." (July 20, 1999 Responsive Brief, page 9)

DCED's Views

The proposed city boundaries include extensive territory that will not be subject to growth and development during the next decade. The area outside of 'downtown' Adak is entirely uninhabited and would remain so even if a civilian community managed to sustain itself on the island. The southern half of the island is a federal wilderness area. Presently, the entire population of the area is concentrated in the compact community center.

" . . . While the distance from potential annexation partners justifies establishment of a second class city on Adak rather than inclusion of the area within the boundaries of another existing city, it has no bearing on the size of the proposed city on Adak"
U.S.F.W.S Responsive Brief

B. Conclusion

The area proposed for incorporation does not satisfy the standard set forth in 3 AAC 110.040(b), since the area is not limited to the present local community, plus reasonably predictable growth, development and public safety needs during the decade following the proposed effective date of incorporation.

3.3. Do the proposed boundaries include entire geographic regions or large uninhabited areas not justified by the application of other incorporation standards? 3 AAC 110.040(c)

A. Examination of Standard

Views Stated in Petition

Pages 30 and 31 of the petition provide eleven reasons why the Adak Community Council urged the Local Boundary Commission to approve a "large city" concept for Adak. The rationale was as follows:

"1) Natural geographic features and partitions between Adak and other land masses in the area. As an island Adak has a natural geographic feature that acts as a partition between Adak and other land masses in the area.

" . . . Historical use of Adak Island Bays and Inlets by the commercial fishing fleets Adak's Bays and Inlets have been, are and will be used by commercial, sport and recreational boats originating from the City of Adak and from adjacent waters." Petition to Incorporate the second class city of Adak

2) Distance from potential annexation partners

The closest possible annexation partner is the Community of Atka located approximately 70 miles to the east. Due to the different development paths of the two

communities it is highly unlikely that the Community of Atka would interface in the operation of the City of Adak. The distance between the two communities is a good reason to support "whole island" coverage by the City of Adak.

3) Historical use of Adak Island Bays and Inlets by the commercial fishing fleets Adak's Bays and Inlets have been, are and will be used by commercial, sport and recreational boats originating from the

City of Adak and from adjacent waters. In the past, Adak hosted commercial crab processing facilities within Finger Bay that clearly demonstrated the linkage between the existence of support improvements on Adak and the bays and inlets where crab was caught (along with crab caught in deeper water). It was clear that - but for - Adak's availability for logistical support and processing - use of the island for crab fishing support would not have taken place. (In fact local crab fishing stopped soon after access to Adak facilities were closed by the Navy. Presently, a new fish processing company has started operations on Adak. New activity is starting. Fishing boats are delivering near-shore caught fish to the Adak processor. Control of the use of shore areas on Adak Island, in the bays and inlets, as well as controlling acceptable and unacceptable practices of vessels in bays can be enforced by city control of the island. Without city coverage over the island boats could go to the next bay and perform activities that are not acceptable to the community of Adak.

"... It is unreasonable to think that a vessel near or west of Adak would go to Atka or Unalaska for emergency medical, fire, search, rescue, law enforcement support. They will expect all these services and more from the City of Adak." Petition to Incorporate the second class city of Adak

4) Fishing vessels in the Adak area will be using city services.

It is unreasonable to think that a vessel near or west of Adak would go to Atka or Unalaska for emergency medical, fire, search, rescue, law enforcement support. They will expect all these services and more from the City of Adak. The City, will provide some of these services in the beginning years of its formation, and will provide more services to these vessels over the years. Adak will need Fish Tax revenue from fish transfers in and around Adak Island to cover the cost of providing services to these fishing boats and crew.

5) Navy-required "Institutional Controls" seek to protect people from hazards on Adak. The transfer of Adak from federal ownership is contingent upon the community establishing and enforcing certain INSTITUTIONAL CONTROLS. Some of these include establishing and enforcing a dig permit program, managing a "Blue Card" program where visitors are informed of the possibility of a small amount of residual World War II ordinance possibly remaining on Adak and maintaining fencing and signage constructed by the Navy to inform residents of possible hazards.

6) Tourism charter potential around Adak Island -

There will be a need to provide emergency services to tourism charters and guided hunting on Adak. The city will be providing services to users of the recreational assets of the entire island. All

hunting for Adak will originate in the more developed areas. Proliferation of floating cabins or non-seaworthy vessels, or dealing with abandoned vessels may best be dealt with by a combination of city and federal oversight. Frequency of use of the south half of Adak for hiking and hunting and the need to maintain the rescue barrels in the south half of the island for resident safety. (with permission of USF&WS). Use of Adak will take place over the whole island not just in the northern, developed portion. ANILCA provisions prohibiting access and some uses of their land on Adak. The City can supplement federal management with reasonable use and development ordinances.

7) Natural nexus of activity for the use of the entire island

If anyone is using Adak, north or south, it can be reasonable expected that they will be using city services. Citizens of Adak will be extensively using the south half of Adak island for recreation, subsistence and commercial berry and harvesting activities. It is not reasonable to expect State Troopers to come to Adak to respond to

" . . . a hiker from the developed portion of Adak fell down while hiking in the southern half of the island. The Blue Card system initiated a search when it was noticed that he was overdue . . . The hiker was recovered, stabilization was attempted at Adak clinic and he was medi-vac from Adak to the hospital in Anchorage . . . In all such events the logical responder and provider of services will be the City of Adak, not the State Troopers or the VPSO from Atka." Petition to Incorporate the second class city of Adak

public safety concerns that the city will have to address due to time and logistics. One example, a hiker from the developed portion of Adak fell down while hiking in the southern half of the island. The Blue Card system initiated a search when it was noticed that he was overdue. They eventually found him and initiated a recovery action. The hiker was recovered, stabilization was attempted at Adak clinic and he was medi-vac from Adak to the hospital in Anchorage where he subsequently died from complications related to exposure. In all such events the

logical responder and provider of services will be the City of Adak, not the State Troopers or the VPSO from Atka.

8) Focus point for all unexploded ordinance education and response for activities on the entire island. The Navy is leaving the island with unexploded ordinance contamination. The responders for any UXO "find", or emergency medical help will originate from the City of Adak. The City of Adak must have statutory coverage over the entire island to enforce INSTITUTIONAL CONTROLS mandated by the Navy. The city must have the ability to restrict access to areas of the island if a person avoids a required UXO warning briefing."

The U.S. Department of Defense is performing extensive investigations for residual hazardous contamination during the summer of 1999. If the investigation finds added hazards additional clean up efforts will be conducted from Adak. Additionally, formerly used defense sites (FUDS) clean up of the southern half of Adak will be administered and performed using services and facilities in the more developed portion of the island.

9) Existing and reasonably anticipated transportation patterns and facilities

Most trails originate within the City of Adak, but extend from the city area throughout the south end of the island.

Protected anchorages around the entire island will be used by numerous fishing tour and commercial vessels. Kagalaska Strait is a particularly valuable area for the community as it provides a natural access path for the entire south end of Adak and to adjacent islands.

" . . . Protected anchorages around the entire island will be used by numerous fishing tour and commercial vessels. Kagalaska Strait is a particularly valuable area for the community as it provides a natural access path for the entire south end of Adak and to adjacent islands."
Petition to incorporate the second class city of Adak

10) Enhanced protection of cultural sites

The regional Aleut community is intensely interested in protecting former middens and Aleut cultural site which are found throughout Adak. Presently the federal government has restrictions over control of access to the south half of Adak. City ordinance coverage concerning restricted Aleut historical sites is required.

Coastal Zone management and control

Land uses in the coastal zone are expected to be influenced by those who are most impacted by the decisions and the State of Alaska. City ordinances that can assist the CRSA to implement and enforce reasonable coastal protections around Adak Island will ensure consistent application of federal and state coastal zone management goals."

Views of Respondent

The U.S.F.W.S. responsive brief states, "Moreover, inclusion of Refuge lands outside of the military withdrawal and designated as Wilderness is both unjustified and contrary to both AS 29.05011 and 19 AAC 10.040. As explained below, there is no justification for inclusion of land within the boundaries of the proposed city that has

never been offered for exchange to TAC, is outside of the military withdrawal, and is designated Wilderness. Refuge lands south of the military withdrawal, the designated Wilderness Area, should be excluded and the boundaries of the proposed city limited to an area not to exceed the boundaries of the existing military withdrawal.” (at 2)

On pages 6 and 7 of the responsive brief, the U.S.F.W.S. states “By inclusion of the southern half of the Island, Petitioners have exceeded the area a second class city may include. 19 AAC 10.040(b) limits boundaries to “includ[ing] only that territory comprising a present local community, & reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation of that city.” All of the Refuge lands south of the existing military withdrawal area are part of the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge and are designated Wilderness. Consequently, they may not be developed or occupied and as a result the proposed city will never be able to expand into them. No services from the proposed city need be delivered to the area because it cannot be populated and is under the jurisdiction and active management of the Fish and Wildlife Service. In other words, none of those lands meet the criteria in 19 AAC 10.040(b) for inclusion within the proposed city boundary.

“... There is no need for services now or in the future from the proposed city to the south of the existing military withdrawal, since it is unoccupied and will remain so because it is designated Wilderness within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.” U.S.F.W.S. Responsive Brief

Petitioners state 12 factors were considered when the extended boundary of the proposed city was determined. When the Adak Community Council met and voted on the boundary, it advanced 11 reasons for inclusion of the entire island within the city boundary. As shown below, none of the Council's 11 stated reasons support inclusion of the Wilderness designated portion of Adak Island in the proposed city.

The Petitioners argue that because Adak is an island, it is natural to include the entire island within the boundaries. The natural geographic features and partitions between Adak and other land masses in the area do not justify inclusion of the entire island in the city under this petition. There is no need for services now or in the future from the proposed city to the south of the existing military withdrawal, since it is unoccupied and will remain so because it is designated Wilderness within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

2. *Petitioners argue the distance from potential annexation partners justify inclusion of the entire island. While the distance from potential annexation partners justifies establishment of a second class city on Adak rather than inclusion of the area within the boundaries of another existing city, it has no bearing on the size of the proposed city on Adak.*

3. *Petitioners cite the historic use of bays and inlets by the commercial fishing fleets and likely future use by recreational boaters of the bays and inlets as a reason for inclusion of the entire island within the boundaries of the proposed city. As part of the Alaska Maritime National Wildlife Refuge, the southern half of Adak Island is managed by the Fish and Wildlife Service. Since it is a designated Wilderness Area, no commercial development of the shores or uplands may be made of the southern half of Adak Island. To the extent use of the bays and inlets require regulation, those uses will be regulated by existing Federal and State agencies in accordance with applicable authorities. No services are proposed to be offered by the proposed city nor is there a regulatory role for a second class city of the use of those bays and inlets. A second class city is not needed to regulate fishing vessels in bays and inlets around the Island beyond the immediate community. Such use is already closely regulated by Federal and State governments depending on the resource involved and the ownership of the underlying land and waters.*

A city government overlaying these underlying jurisdictions might legislate against dumping of wastes in these waters, but such legislating would duplicate existing Federal and State regulations. Further, enforcement without city-owned boats would be ineffective except in close proximity to the existing community. As for any activities involving Refuge lands, the Fish and Wildlife Service has both the responsibility and the law enforcement authority under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee), as well as a presence on Adak, to enforce laws and regulations applicable to those Refuge lands.

Petitioners argue they need the larger area to provide fish tax revenues to support the delivery of various services - principally emergency and public safety type services - for the people using Adak. The petition is devoid of any documentation on the level of services Petitioners propose to provide, what they will cost, or whether the proposed source of funding, the fish tax revenue, will support delivery of the services.

" . . . A second class city is not needed to regulate fishing vessels in bays and inlets around the Island beyond the immediate community. Such use is already closely regulated by Federal and State governments depending on the resource involved and the ownership of the underlying land and waters." U.S.F.W.S. Responsive Brief

5 & 8. "Institutional controls" are cited by Petitioners as a reason for including all of Adak Island. Institutional controls are administrative methods to control exposure to contaminants or UXO that are left in place rather than removed. There are ongoing negotiations concerning institutional controls on Adak among the Navy, TAC, the Environmental Protection Agency, the Alaska Department of Environmental Conservation, and the Service. Some agreement on institutional controls is expected to be part of the final land trade agreement for those lands being conveyed to TAC. The Fish and

Wildlife Service would support administration of institutional controls by a second-class city of Adak for those lands transferred out of Federal ownership. However, no institutional controls will be placed on lands under the jurisdiction of the Fish and Wildlife Service. Therefore, the rationale for proposing inclusion of the lands south of the existing military withdrawal cannot be sustained.

"... However, no institutional controls will be placed on lands under the jurisdiction of the Fish and Wildlife Service. Therefore, the rationale for proposing inclusion of the lands south of the existing military withdrawal cannot be sustained." U.S.F.W.S. Responsive Brief

6 & 7. Petitioners argue the providing of emergency services to tourists and others visiting the southern part of the Island and possible placement of "rescue barrels" justifies

inclusion of the entire Island within the city boundaries. Petitioners proposed budget is devoid of any reference to the providing of these services. No personnel or equipment to provide emergency services are included in their 3-year budget submission. The cost of acquiring and maintaining a rescue boat capable of safely circumnavigating the island would be a major expense that would provide no revenue to the proposed city. Based upon the budget for the proposed city, it is apparent Petitioners expect search and rescue and emergency medical services on the remote portions of Adak Island will continue to be covered by a mix of Federal (Coast Guard, Fish and Wildlife Service), State (Troopers), and volunteers for the foreseeable future. In this regard, it is worth noting the Petitioners' proposal does not include police protection therefore it must be assumed that Adak, like most other small communities of this type, will be looking to the State Troopers for police services. It is unrealistic if not fiscally imprudent for the Petitioners to suggest that 155 square miles of Federal Wilderness should be incorporated into a second class city in order that the city may undertake to provide services it can ill afford to provide according to its own revenue projections.

9. Petitioners cite transportation patterns on the island as a justification for including the whole island in the proposed city boundaries. The Service considers this a specious argument for

incorporating large areas of remote Federally-owned Wilderness not open to future city expansion or development. Granted, many trails start in the developed portion of Adak and extend into the Wilderness or other remote areas on the island.

However, responsibility for any trails on land that remains within the Refuge will not be transferred to the city regardless of city boundaries. Use of those trails is under the exclusive jurisdiction of the Fish and Wildlife Service. The proposed city would have no authority to regulate use of the trails.

10. Petitioners state they need to protect cultural sites. Historical sites selected by or conveyed to The Aleut Corporation under section 14(h)(1) of ANCSA on Adak Island are the responsibility of the existing land managing agency, the Fish and Wildlife Service in the case of sites not yet conveyed, or The Aleut Corporation as the owner for those sites which have been conveyed. The proposed city would have no statutory role. (It should also be noted Petitioners have not included any funding in their proposed budget for this activity.)

11. Land uses of the coastal zone are cited as a reason for inclusion of the southern part of Adak Island within the proposed city. The Fish and Wildlife Service is ultimately responsible for what uses may be made of the land. Since the entire area is designated as Wilderness, development is highly unlikely. Not including the southern half of the Island in the boundaries does not bar the proposed city from commenting on or participating in any decisions pertaining to the coastal zone in that area."

Views Stated in Reply Brief

The August 27, 1999 reply brief by the petitioners states, "The Land Transfer Agreement area has little to do with the proper sizing of a community on Adak. The community needs to have a boundary that makes good sense in relation to the demands placed upon it. Just because the document that transfers the base to private status contains x acres does not mean that the city should be limited to x acres (or should include x acres)." (at 9)

" . . . The boundary and definition of a city should stand or fall on the area needed to accomplish the goals of the community. In this case there is a reasonable need to provide zoning and public safety type services around all of Adak Island." Petitioners Reply Brief

On page 10, of the reply brief, the Petitioners state, "The boundary and definition of a city should stand or fall on the area needed to accomplish the goals of the community. In this case there is a reasonable need to provide zoning and public safety type services

around all of Adak Island. The land area to be included in the Land Transfer Agreement is only part of the area that will generate a need for public services on Adak. The boundary should be set to include the area that will produce both direct and indirect requirements on the city."

DCED's Views

The Petitioners' rationale for the expansive proposed boundaries would be relevant to the standards for borough incorporation but are not applicable to second class city boundaries.

B. Conclusion

The area sought for inclusion in the proposed City of Adak boundaries encompasses a geographic region and large uninhabited areas not justified by the application of the other incorporation standards. If the petition is approved the LBC is urged to first amend the boundaries set forth in the petition. Amended boundaries should be generally based upon the Adak historic district boundary and the offshore area immediately adjacent to the historic district boundary.

**3.4. Does the economy of the proposed city include the human and financial resources necessary to provide essential city services on an efficient, cost effective level?
[AS 29.05.011(a)(3); 3 AAC 110.020]**

A. Reasonably Anticipated Functions of the Proposed City. 3 AAC 110.020(a)(1)

Views Stated in Petition

The petition for incorporation states that services to be provided by the proposed city would be limited to library, volunteer fire department, cemetery, street maintenance, parks, and recreation.

The Petitioners projected three-year operating budget anticipates expenses of \$292,637, \$307,410 and \$349,260.

Views Expressed by Others

In his July 9, 1999 letter expressing opposition to the petition, Mark Snigaroff, President of the Atka Village Council, wrote that the extensive infrastructure at Adak *"will be a serious drain on the resources of the city to maintain and operate."*

DCED's Views

Reasonably anticipated initial functions of the proposed city are minimal. The petition suggests that the City would have no direct role in the operation of such vital community requirements as essential utilities. However, it is troubling that the transition plan in the petition contains a somewhat vague reference to city assumption of additional public facilities subsequent to incorporation. *"Personal property related specifically to the operation of public facilities is also anticipated to be transferred to the City of Adak corporation, or by the Adak Reuse Corporation. Additional public facilities can be added, or the transfer of listed public buildings can be delayed with the mutual consent of the City of Adak and The Aleut Corporation."* The expectation that a new second class city with a modest population could reasonably assume responsibility for any of the key infrastructure developed by the Navy is troubling, given the enormous costs associated with many of the basic community facilities.

B. Anticipated Expenses of the Proposed City. 3 AAC 110.020(a)(2)

The petition provides the anticipated budget for the first three years of city operation. The anticipated budget is shown on the next page.

Views of Respondent

The U.S.F.W.S. notes that the petitioners propose that the City provide search and rescue services in throughout the greater Adak area, but have no funds budget for this purpose.

Views Expressed by Others

In his letter of June 20, 1999, A.L. Cozzetti commented that *"Adak is sinkhole in the ocean to throw money into."* He noted that *"The airfield has to be pumped out daily."*

Views Stated in Reply Brief

Page 15 of the reply brief states, *"The city expects to be the recipient of calls seeking help for stranded boats and lost hunters around Adak. The city may or may not have the means to conduct professional searches and/or rescues in its early years, but it will always do what it can to assist distressed people all over the island."*

City Expenses	Year 1	Year 2	Year 3
Personnel			
City Administrator	\$35,000	\$38,000	\$40,000
City Clerk (1/2 time)	\$12,250	\$15,000	\$20,000
Two Maintenance Workers, to operate landfill, roads & equipment	\$60,000	\$66,000	\$70,000
Total Salaries	\$107,250	\$119,000	\$130,000
Benefits			
FICA: 7.65%; Health Ins. 6.85%; ESC. 2.5%; Workers Comp. 6% = 23%	\$24,667	\$27,370	\$29,900
Total Personnel Costs	\$131,917	\$146,370	\$159,900
Travel	\$6,920	\$7,240	\$7,560
Equipment/Materials/Repairs			
Critical Equipment Replacement	\$15,000	\$15,000	\$20,000
Office Supplies	\$3,000	\$3,000	\$3,000
Fire Department support	\$45,000	\$45,000	\$55,000
Recreational/pool support	\$10,000	\$10,000	\$15,000
Street Maintenance, fuel and support	\$22,000	\$22,000	\$30,000
Total	\$95,000	\$95,000	\$123,000
Utilities			
Street lights	\$5,000	\$5,000	\$5,000
Office @ \$175 per month	\$2,100	\$2,100	\$2,100
Total	\$7,100	\$7,100	\$7,100
Communications			
Facsimile and Telephone	\$2,100	\$2,100	\$2,100
Postage	\$1,200	\$1,200	\$1,200
Total	\$3,300	\$3,300	\$3,300
Insurance			
General Liability	\$8,000	\$8,000	\$8,000
Pool	\$15,000	\$15,000	\$15,000
Total	\$23,000	\$23,000	\$23,000
Stipends			
Mayor	\$1,200	\$1,200	\$1,200
Council	\$4,200	\$4,200	\$4,200
Total	\$5,400	\$5,400	\$5,400
Legal and Professional Services	\$8,000	\$8,000	\$8,000
Audit	\$2,000	\$2,000	\$2,000
Contingencies	\$10,000	\$10,000	\$10,000
Total Expenses	\$292,637	\$307,410	\$349,260

(Petition for incorporation, pages 12-17)

DCED's Views

Anticipated expenses of the proposed City may be underestimated. In terms of expenditures, the City anticipates spending \$35,000 annually to retain the services of a city administrator and anticipates two maintenance workers paid \$30,000 each to maintain local roads and maintain roads and equipment. Such suggests a very minimal staff receiving modest remuneration, given the costs of living in a remote and expensive community.

The level of revenue anticipated from recreation fees appear to be based upon expectations of rapid population growth in the community. Such expectations are considered speculative.

C. Anticipated Income and Ability of the Proposed City to Generate and Collect Local Revenue and Income. 3 AAC 110.020(a)(3)

The petition states that fisheries activity at Adak is expected to involve:

1. Locally caught and delivered fish for on-shore processing;
2. Distant fish sold for on-shore processing;
3. Distant fish transloaded for shipment to international and domestic ports; and
4. International fish brought to Adak for cold storage and transshipment.

The petition provides the following projected revenues.

Projected Revenues and Sources	Year One	Year Two	Year Three
3% City Sales Tax (fisheries)	\$105,000	\$105,000	\$105,000
Other sales tax receipts	\$24,600	\$27,600	\$52,500
State shared Raw Fish Tax Revenues	\$60,000	\$60,000	\$60,000
Fuel transfer tax 2% on sales of \$2,000,000	\$40,000	\$50,000	\$70,000
Recreation fees \$0.75 each X \$35 X 12	\$31,500	\$42,000	\$53,000
State Transitional Assistance Funds	\$50,000	\$25,000	-0-
Total Revenues	\$311,100	\$309,600	\$340,500

The petition states "Revenue is conservatively estimated at 10 million pounds of cod per year at an ex-vessel price of \$.35 for a total ex-vessel value of \$3,500,000. A City sales tax on fish caught and sold to processors by commercial fishermen in the Adak area amounts to \$105,000.



Docking facility on Adak.

Fuel transfer fees will also contribute to the general fund of the city. [The proposed] 2 % fuel transfer assessment on an estimate of 2,000,000 gallons creates a \$40,000 contribution to the city.

Raw fish tax receipts, given the new requirement of state required pilots to impose a penalty for operating foreign reefer vessels west of Adak should produce at least \$60,000 in raw fish tax revenues to the City of Adak."

Views of Respondent

The U.S.F.W.S. brief stated, "The petition is devoid of any documentation on the level of services. Petitioners propose to provide, what they will cost, or whether, the proposed source of funding; the fish tax revenue, will support delivery of the services."

(at 7)

Views Stated in Reply Brief

Page 11 of the Petitioners' reply brief states, "It is impossible to estimate an amount of fish transfer activity that will occur around Adak as the community develops. It is accurate to say that fish transfers are presently occurring and will likely grow over time. These incremental funds, whether one dollar or ten thousand will assist the city to operate in a very high cost area of the state. The purpose of the state's fish tax reimbursement program is, in part, to compensate communities for general impacts associated with the fishing vessels and fishers who use city services. Just because the community cannot accurately determine the amount of fish tax revenue coming from a particular area on Adak does not mean that there is not good reason to capture these funds for fishing related community impacts.

The community will be a Good-Samaritan responder to the degree it can safely do so. It is a normal and expected part of community life on the Aleutians. In the beginning it may or may not be a formal "service" offered by the city, but nevertheless the city will provide life safety assistance when needed and able to do so."

DCED's Views

The anticipated ability of the proposed city to generate and collect local revenue and income is questionable at this time. As noted by the petition, the economy of Adak is in transition. The economic transition underway renders it difficult to predict the future economy of the community with confidence. However, the Navy has retained the services of professional consultants through Arthur Andersen Associates. The Arthur Andersen report on the anticipated economic viability of Adak may support the Petitioners' expectations that Adak will have a flourishing economy. It may suggest otherwise. The petition does not demonstrate that this factor is satisfied at this time, but the pending Arthur Andersen report should provide additional information relevant to this factor prior to issuance of a final report and recommendation on the petition. Provided that the Arthur Andersen analysis is completed prior to the issuance of the final DCED report, relevant findings will be considered and reflected in the final DCED report and recommendation to the LBC prior to the Commission's hearing at Adak.



One of the many roads within the proposed second class city boundaries.

D. Feasibility and Plausibility of Anticipated Operating Budget of the City Through Its First Three Years: 3 AAC 110.020(a)(4)

Views Stated in Petition

As noted in the discussion of 3 AAC 110.020(a)(1), the petition states that services to be provided by the proposed city would be limited to library, volunteer fire department, cemetery, street maintenance, parks, and recreation. The budget for the first three years designates limited funds for such purposes. [see discussion of 3 AAC 110.220(a)(2).]

Views of Respondent

The U.S.F.W.S responsive brief states, "Petitioners argue the providing of emergency services to tourists and others visiting the southern part of the Island and possible placement of "rescue barrels" justifies inclusion of the entire Island within the city boundaries. Petitioners' proposed budget is devoid of any reference to the providing of these services. No personnel or equipment to provide emergency services are included in their 3-year budget submission. The cost of acquiring and maintaining a rescue boat capable of safely circumnavigating the island would be a major expense that would provide no revenue to the proposed city. Based upon the budget for the proposed city, it is apparent Petitioners expect search and rescue and emergency medical services on the remote portions of Adak Island will continue to be covered by a mix of Federal (Coast Guard, Fish and Wildlife Service), State (Troopers), and volunteers for the foreseeable future.* In this regard, it is worth noting the Petitioners' proposal does not include police protection therefore it must be assumed that Adak, like most other small communities of this type, will be looking to the State Troopers for police services. It is unrealistic if not fiscally imprudent for the Petitioners to suggest that 155 square miles of Federal Wilderness should be incorporated into a second class city in order that the city may undertake to provide services it can ill afford to provide according to its own revenue projections." (at 7)

Views Expressed by Others

Atka Village Council President Mark Snigaroff letter of July 9, 1999 stated, "The infrastructure left in place by the Navy far exceeds present need and will be a serious drain on the resources of the City to maintain and operate."

Views Stated in Reply Brief

Page 2 of the reply brief states "While it is true that some resources will have to be expended on infrastructure that is surplus to community needs, that amount is expected to be manageable within both the stated community budget and activity increases expected as a result of successful reuse. The fact of the matter is that the community does not plan to keep up the infrastructure base beyond what it can afford. Much of what the Navy has built on the Island will not be maintained, and in the first 5 to 10 years the community will lose buildings and whole systems built by the Navy. This is OK. When the community ramps up economically more of the infrastructure will be maintained. The existence of a strong, growing and sustainable community on Adak is not dependent upon maintaining all Navy built housing or infrastructure."

DCED's Views

The anticipated operating budget of the proposed city does not appear fully reasonable and plausible. For example, assumptions regarding the volume of cod that would be landed at Adak appear inflated.

Department of Fish and Game officials have advised that the cod price estimate reflected in the petition, \$0.36 per pound, is reasonable for cod fillets. However, they suggested that the volume of cod for last year was closer to 5.3 million pounds than the 10 million pounds suggested by the petition. Such suggests that the city's anticipated \$105,000 in tax revenues from this source by the petition may be somewhat high. This consideration, coupled with the excessively modest cost of such key expenditures as city personnel reflects poorly on the plausibility of the proposed City of Adak budget.



Cold storage facility on Adak Island.

E. Economic Base of the Proposed City. 3 AAC 110.020(a)(5)

Views Stated in Petition

The petition states that "Adak, while still under Navy ownership, and in the process of ramping up commercial reuse has been talking with over one hundred companies, interested, and in various stages of internal analysis about committing to commercial use of port, airport, fueling, research, commercial and other improvements constructed by the Navy." (at 25)

The petition provides the following examples of the economic base of Adak:

- "the lease of a portion of the blue shed and subsequent investment in plant and machinery to produce feedstock";
- "within one month of start up of port operations, cargo transshipping commenced at both the port and within Sweeper Cove";
- "Fuel has been and is currently being offloaded to the fishing fleet";

- *"Supplies have arrived to support fishing operations for two of the largest fleets operating in the western Aleutians";*
- *"Cruise ships have started commercial port operations"*
- *"Current plans call for continuous military on Adak to monitor environmental remedies and unexploded ordinance";*
- *"U.S. Fish and Wildlife Service plans to maintain the western Aleutians regional operations and information center on Adak";*
- *"The Federal Aviation Administration has increased their investment on Adak;"*
- *"Fresh crab transfers to Adak have commenced";*
- *"Prospects for new commercial use from the international fleet fishing in Russian/International waters";*
- *"Prospects for research, enforcement and search and rescue operations increase;"*
- *"School operations commenced October 30, 1998 and over 30 children are enrolled in the Adak school." (at 28-29)*



Paradise Valley contractors camp.

Views Expressed by Others

As noted previously, in his July 9, 1999 letter expressing opposition to the petition Mark Snigaroff, President of the Atka Village Council, wrote that the extensive infrastructure at Adak "will be a serious drain on the resources of the city to maintain and operate."

Views Stated in Reply Brief

The Petitioners' reply brief stated, "While it is true that some resources will have to be expended on infrastructure that is surplus to community needs, that amount is expected to be manageable within

both the stated community budget and activity increases expected as a result of successful reuse. The fact of the matter is that the community does not plan to keep up the infrastructure base beyond what it can afford. Much of what the Navy has built on the Island will not be maintained, and in the first 5 to 10 years the community will lose buildings and whole systems built by the Navy. This is OK. When the community ramps up economically more of the infrastructure will be maintained. The existence of a strong, growing and sustainable community on Adak is not dependent upon maintaining all Navy built housing or infrastructure." (at 2-3)

DCED's Views

The economic base of the proposed City may not be adequate to sustain a residential community. If the community is not served by a functioning airport, its future economic viability is called into question. Continued operation of the airport appears to depend upon a special appropriation from the federal government to maintain operations for five years. If such does not materialize, Adak's economic base would be inadequate to support city government. If such funding does materialize, and a five year "economic incubation period" results, questions arise regarding what happens to the Adak economy after the fifth year. Given this uncertainty, DCED cannot assert that the factor is satisfied.

F. Property Valuations for the Proposed City. 3 AAC 110.020(a)(6)

Views Stated in Petition

The petition states that value of real and personal property within the area proposed for city incorporation totals nearly \$1.471 billion.

Views Expressed by Others

No other parties directly commented upon the property valuations of within the boundaries of the proposed city.

DCED's Views

Property valuations of the proposed city are unknown. The petition suggests that the value of the property within the area proposed for city incorporation totals nearly \$1.5 billion. However, the estimate of the value of the Adak infrastructure does not constitute a compelling factor in favor of second class city incorporation at this time since:

- the property in the area proposed for incorporation has never been subject to real or personal property tax assessment; and
- the petition does not seek authorization to levy a real or personal property tax.



"Downtown" Adak.

G. Land Use for the Proposed City. 3 AAC 110.020(a)(7)**Views Stated in Petition**

On page 31, the petition states: *"The Navy is leaving the island with unexploded ordinance contamination. The responders for any UXO "find", or emergency medical help will originate from the City of Adak. The City of Adak must have statutory coverage over the entire island to enforce INSTITUTIONAL CONTROLS mandated by the Navy. The city must have the ability to restrict access to areas of the island if a person avoids a required."*

On page 32 the petition states, *"Land uses in the coastal zone are expected to be influenced by those who are most impacted by the decisions and the State of Alaska. City ordinances that can assist the CRSA to implement and enforce reasonable coastal protections around Adak Island will ensure consistent application of federal and state coastal zone management goals."*

Views of Respondent

On page 8, the U.S.F.W.S. responsive brief states, *"Land uses of the coastal zone are cited as a reason for inclusion of the southern part of Adak Island within the proposed city. The Fish and Wildlife Service is ultimately responsible for what uses may be made of the land. Since the entire area is designated as Wilderness, development is highly unlikely. Not including the southern half of the Island in the boundaries does not bar the proposed city from commenting on or participating in any decisions pertaining to the coastal zone in that area."*

Views Stated in Reply Brief

In response to the letter from the City of Atka opposing Adak incorporation the Petitioners' reply brief states, *"Implementation of needed land use controls and public easements will be difficult. Adak tidelands need to be transferred/leased to avoid trespass of existing structures on state owned tidelands (the first day after the land transfer). Existing dams need to be transferred to a city. EPA outfall permit may need to be transferred to a political subdivision of the State of Alaska. A local government is needed to implement Navy/EPA/ADEC "Institutional Controls" and to provide community services. A coastal zone management plan needs to be written and adopted." (at 6)*

DCED's Views

Land use for the proposed city supports boundaries much more compact than the 676.3 square miles proposed by the petition. Land use in the southern portion of Adak Island is unsuited to inclusion within the boundaries of a second class city. Land use in the northern portion of the Island outside the 'downtown' area and the city watershed is also inconsistent with second class city jurisdiction. The assertions by the petition that the proposed City of Adak must have "statutory control" over the entire island to exercise institutional controls have not been corroborated. Further, a City of Adak could assist the Aleutians West Coastal Resource Service Area perform its functions whether or not the southern half of Adak Island were within the boundaries of the city.

H. Existing and Reasonably Anticipated Industrial, Commercial, and Resource Development for the Proposed City. 3 AAC 110.020(a)(8)

Views Stated in Petition

Page 24 of the petition states, *"In 1997, the Adak area's commercial fishery effort is expected to increase with the new availability of a substantial commercial fishing port in the western Aleutians. The economic base for the proposed City and the personal income to Adak residents generated from such harvests will create a self-sufficient economy that includes the human and financial resources necessary to provide municipal services."*

Page 25 of the petition states, [the Aleut Enterprise Corporation] *"in the process of ramping up commercial reuse has been talking with over one hundred companies, interested, and in various stages of internal analysis about committing to commercial use of port, airport, fueling, research, commercial and other improvements constructed by the Navy. The most interesting of these are discussed in following paragraphs."*

Page 26 of the petition lists the following possible activities as exhibiting the potential to provide an economic base for the community.



Adak docks.

"Likely potential reuse options with large possibility of impacting regional trends

*Fisheries Support Base
Transshipment Hub*

Likely potential reuse options with low probability of impacting regional trends

*Coast Guard Station
Airport Operations
Research Station
FAA navigation aids
Fish and Wildlife USC
Tsunami Warning/ Weather
station
Military Use
Local Government
Unlikely potential reuse options*

*Manufacturing
Agriculture
Tourism
Waste Storage
Free Trade Zone
Aerospace Support
Drug Enforcement
Civilian Relocation".*

Views of Respondent

The U.S.F.W.S. brief states "Since it is a designated Wilderness Area, no commercial development of the shores or uplands may be made of the southern half of Adak Island." (at 6)

DCED's Views

The long-term viability of Adak as a residential community is doubtful. The Tryck, Nyman Hayes Adak Reuse Plan Project Final Report states, "The analysis indicates that ARA (Adak Reuse Authority) will have difficulties in meeting the costs of providing services and maintaining facilities on Adak. The ARA is unable to generate adequate revenues to meet expenses even under scenarios where facility maintenance is constrained to meet budget limits. A scenario can be envisioned where the ARA achieves a break-even status, but the probability of this scenario is very low . . ." (at V-2)

I. Personal Income of Residents of the Proposed City. 3 AAC 110.020(a)(9)

Views Stated in Petition

On page 24, the petition states, "In 1997, the Adak area's commercial fishery effort is expected to increase with the new availability of a substantial commercial fishing port in the western Aleutians. The economic base for the proposed City and the personal income to Adak residents generated from such harvests will create a self-sufficient economy that includes the human and financial resources necessary to provide municipal services."

Views of Others

In his July 9 letter, Atka IRA Council president Mark Snigaroff wrote *"The economy of Adak at the present time is based on spending under contracts with the U.S. Navy in connection with the base closing. The great majority of residents are on Adak because they are working for Navy contractors."*

DCED's Views

The current level of personal income of Adak residents is unknown. Since base closure activities have transformed Adak's economy since 1990, available decennial census figures do not reflect the current income level of the community. The record does not provide any current data relevant to this factor.

J. Need for and Availability of Employable Skilled and Unskilled Persons to Serve the Proposed City. 3 AAC 110.020(a)(10)

Views Stated in Petition

Exhibit G of the petition, concerning the federal voting rights act, estimated the population of the community to be 200, including nine Navy personnel. It stated that *"Some are associated with work produced as a result of Navy closure of Adak Island. However, commercialization of Adak has started with over 70 non-Navy citizens as of 3/99. Population will be increased as commercialization takes place."*

The transition plan, states *"Road grading during the transitional period would be done by the City of Adak and or the Adak Reuse Corporation depending upon retention of existing operators after Navy departure."* (at 23)

Views Expressed by Others

In his July 9 letter, Atka IRA Council president Mark Snigaroff wrote *"The infrastructure that is being left in place by the Navy far exceeds present need and will be a serious drain on the resources of the city to maintain and operate. The Navy had thousands of people on the island. The population is about 10% of the Navy's population."*



Road on Adak Island.

DCED's Views

The community has employable skilled and unskilled persons to serve the proposed city. The seven-member Adak community council meets regularly and addresses issues such as animal control. There is a core group of permanent Adak residents interested in serving the proposed city. Local maintenance of the elaborate infrastructure in the community would be a daunting prospect, given the limited anticipated year-round population of Adak.

K. Reasonably Predictable Level of Commitment and Interest of the Residents in Sustaining a City. 3 AAC 110.020(a)(11)

Views Stated in Petition

Page 4 of the petition states, "There are many families on Adak engaging in commerce and new business."

Page 28 of the petition states, in part, that "Within six months of Master Lease approval over \$2.5 million dollars have been invested in private commercial enterprises on Adak."



Sandy Cove housing subdivision, Adak.

Views Expressed by Others

In its letter of July 9, 1999, the City of Atka stated, "One of the standards for incorporation of Adak as a city is a historical, stable population. The people who are presently in Adak were transported there by the Adak Reuse Corporation. They have not been there long enough for Adak to be considered as having a historical, long term, stable population base. If these people decide to leave whatever job they have on Adak, one wonders if they would remain on the

island. Of course they would probably be replaced with another body but that can hardly be considered stable population base. Of the 64 signatures on the incorporation petition, only 38 were actually registered voters in Adak."

Views Stated in Reply Brief

Page 4 of the reply brief states *"Over 55 Aleut shareholders have taken residence on Adak, some after selling houses and moving all they have to Adak. We have a strong desire to make the best community possible on Adak. Aleut shareholders desire to reclaim historical Aleut land for a new public and open community that can provide good jobs so that our children don't have to leave the Aleutians to raise a family. Atka has operated a successful community for many thousands of years without the benefit of infrastructure, facilities and personal property that Adak enjoys. It stands as a good case study that shows that Adak can succeed as a community also."*

"... Over 55 Aleut shareholders have taken residence on Adak, some after selling houses and moving all they have to Adak. We have a strong desire to make the best community possible on Adak." Petitioners Reply Brief

DCED's Views

There are residents who express commitment to remaining in Adak permanently. However, if the airport ceases operation, such personal commitment would render sustaining a city impossible. There appears to be a reasonably predictable level of commitment and interest of Adak residents in sustaining a city. DCED staff considers such assertions to this effect made at the public informational meeting of January 24 as persuasive evidence that residents have a bona fide desire for a successful second class city government.

L. Conclusion

The record does not demonstrate that the economy of the proposed city includes the human and financial resources necessary to provide essential city services on an efficient, cost effective level. The petition reflects hopes and expectations of proponents of Adak development, but the anticipated ability of the proposed city to generate and collect local revenue and income is decidedly questionable at this time. As noted by the petition, the economy of Adak is in transition. The economic transition underway renders it difficult to predict the future economy of the community with confidence. However, the Navy has retained the services of Arthur Andersen professional consultants to report on the anticipated economic viability of Adak. That report may support the Petitioners' expectations that Adak will have a flourishing economy. It may suggest otherwise. The petition does not demonstrate that this factor is satisfied at this time, but the pending Arthur Andersen report should provide additional information relevant to this factor prior to issuance of a final report and

recommendation on the petition. Provided that the Arthur Andersen analysis is completed prior to the issuance of the final DCED report, relevant findings will be considered and reflected in the final DCED report and recommendation to the LBC prior to the Commission's hearing at Adak.

3.5 Is the population of the proposed city large enough and stable enough to support city government?

[AS 29.05.011(a)(4), 3 AAC 110.030]

A. *Total Census Enumeration.* 3 AAC 110.030(a)(1)

Views Stated in Petition

On page 2, the petition states that there "are currently 200." The Petitioners' brief states "there are currently 450 men and women on the island." Exhibit G, concerning the federal voting rights act, states "Estimated current population is 200."

DCED's Views

The 1990 census is obsolete, given the base closure. The Petitioners' representative recently indicated that he believes that there are about 100 permanent residents of the community.¹² The Alaska Department of Labor and Workforce Development estimated the July 1, 1999 Adak population to be 106.

¹² Personal communication, Agafon Krukoff, Jr., January 24, 2000.

B. *Duration of Residency* 3 AAC 110.030(a)(2)

Views Stated in Petition

On page 29, the petition states, "Families have been coming to Adak since August, 1998. Employees of the school district have been hired and a 30-child school is currently in operation on Adak. Employees have been hired by the fuel company and are in the process of hire at the on shore processing plant. The majority of people currently on the island work for the Department of Defense in some capacity, either contractor or Navy."

Views of Respondent

The U.S.F.W.S. brief stated "The stability of the population and the economy on Adak is dependent on the land trade. The backbone of the current population is Navy contractors maintaining the base

during the cleanup and the contractors actually conducting the cleanup. Although TAC has succeeded in attracting private enterprise to the island, their stay is tenuous until land is exchanged into private ownership.” (at 5)

Views Expressed by Others

In its letter of July 9, 1999, the City of Atka stated, “One of the standards for incorporation of Adak as a city is a historical, stable population. The people who are presently in Adak were transported there by the Adak Reuse Corporation. They have not been there long enough for Adak to be considered as having a historical, long term, stable population base. If these people decide to leave whatever job they have on Adak, one wonders if they would remain on the island. Of course they would probably be replaced with another body but that can hardly be considered stable population base. Of the 64 signatures on the incorporation petition, only 38 were actually registered voters in Adak. It was difficult to know how many people are actually in Adak since the population figures were inconsistently presented throughout the petition. Additionally, the short term, unstable population of Adak is in direct competition with the stable, historical population of Atka for available fisheries business opportunities in the area.”

“ . . . The people who are presently in Adak were transported there by the Adak Reuse Corporation. They have not been there long enough for Adak to be considered as having a historical, long term, stable population base. If these people decide to leave whatever job they have on Adak, one wonders if they would remain on the island.” City of Atka’s July 9, 1999 letter

Views Stated in Reply Brief

The Petitioners’ reply brief states, “Over 55 Aleut shareholders have taken residence on Adak, some after selling houses and moving all they have to Adak. We have a strong desire to make the best community possible on Adak. Aleut shareholders desire to reclaim historical Aleut land for a new public and open community that can provide good jobs so that our children don’t have to leave the Aleutians to raise a family. Atka has operated a successful community for many thousands of years without the benefit of infrastructure, facilities and personal property that Adak enjoys. It stands as a good case study that shows that Adak can succeed as a community also.” (at 4)

DCED's Views

The record suggests that many, if not most, of the people present in the community are short-term visitors working for Navy contractors, transients employees of the local fish processor, the Adak Reuse Corporation, or Aleut Enterprise Corporation subsidiaries.

C. Historical Population Patterns. 3 AAC 110.030(a)(3)

Views Stated in Petition

Exhibit A of the petition states, "Adak has a population of approximately 400, and will have a stable population of 125 persons (expected 2000 census) when the base is transferred to The Aleut Corporation in 2000. Adak had a population of approximately 6,000 people in 1994."

The brief states, "The population base of Adak is changing. While there are currently (2/99) 450 men and women on the island, that number's not expected in the future." (at 29)

" . . . While it is true that Adak cannot demonstrate the years of existence of other communities, it can demonstrate that the community will have access to a substantial economic base." Petitioners Reply Brief

Views Expressed by Others

In her letter of July 9, 1999, Atka City Administrator Julie Dirks wrote, "The people who are presently in Adak were transported there by the Adak Reuse Corporation. They have not been there long enough for Adak

to be considered as having a historical, long term, stable population base."

Views Stated in Reply Brief

Page 5 of the reply brief states "While it is true that Adak cannot demonstrate the years of existence of other communities, it can demonstrate that the community will have access to a substantial economic base."

DCED's Views

A decade ago, the population of Adak was greater than the present population of six organized boroughs in Alaska. As a military installation, Adak had as many as 90,000 personnel either on the military installation or on ships offshore.

D. Seasonal Population Changes. 3 AAC 110.030(a)(4)

Views Stated in Petition

Exhibit A of the petition refers to "many nonresidents who will work at Adak during the summer tourism and commercial fishing season."

DCED's Views

The Department of Labor and Workforce Development recorded 106 Adak residents as of July 1, 1999.

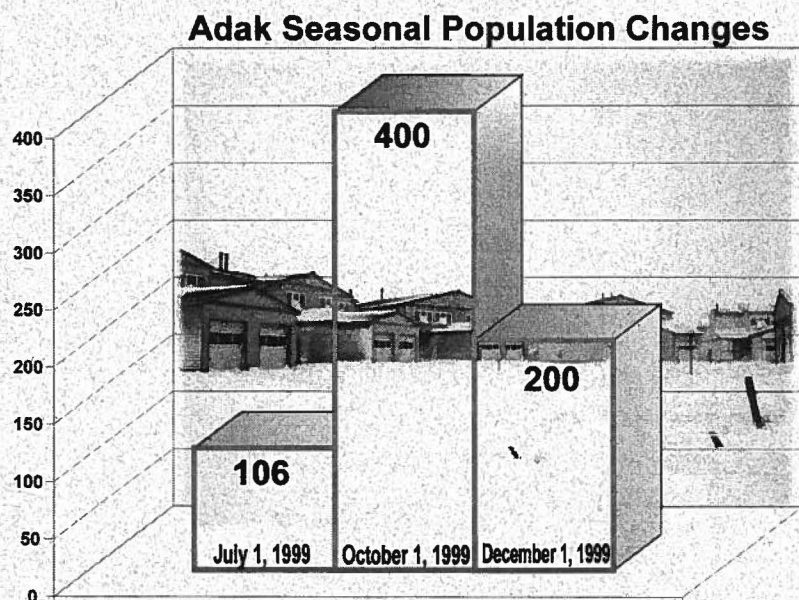
On October 1, 1999, at the peak of the maintenance, season there were reportedly about 400 people on Adak. Of these:

- 240 are employees of Navy contractors;
- 60 are relatives of Navy contractors;
- 10 are Navy civilian and military personnel;
- 60 are employed by Adak Seafoods hired from the job bank in Seattle for 90 day periods; and
- 30 are employed by the Aleutian Region School District, Reeve Aleutian Airlines, Adak Reuse Corporation, Aleut Enterprise Corporation, U.S.F.W.S., or the FAA.

As of December 1, 1999 there were about 200 persons at Adak.

The population of Adak fluctuates because of two factors. These are:

- the number of employees of Navy contractors present to conclude base closure activities; and
- the number of seasonal seafood processors working in the community.



E. Age Distributions. 3 AAC 110.030(a)(5)

Views Stated in Petition

Page 29 of the petition states that "over 30 children are enrolled in the Adak school." It also notes that "*Adak is now operating the largest school in the region outside of Unalaska.*"

DCED's Views

As of November 30, 1999, there were 31 students at the Adak School, including six high school students.¹³ On January 25, the Petitioners' representative Agafon Krukoff indicated that the enrollment at that time was between 31 and 35. The Department of Education and Early Development has advised that the Average Daily Membership (ADM) for October 1999 was 44.15. That number reflects an average attendance for a 20-day period in October, 1999.

13 Personal communication, Karen Callay of the Aleutian School District.

F. Conclusion

The present population of Adak appears to be large enough to support a second class city government exercising minimal functions. However, it is questionable whether the population will be large and stable enough to support a municipal government over time, given the impacts of cessation of Navy operation of the airport and other infrastructure on September 30, 2000.

In terms of stability, the fact that there are families living in the community on a year-round basis who regard the community as a permanent home suggests an element of population stability consistent with satisfaction of the standard. However, the record suggests that many, if not most, people present in the community are short-term visitors working for Navy contractors, transients employees of the local fish processor, the Adak Reuse Corporation, or Aleut Enterprise Corporation subsidiaries.

The record demonstrates that the viability of the Adak community over the long term is doubtful. Thus, while the *current* size and stability of the Adak population satisfies the requirements of AS 29.05.011(a)(4), the uncertainty of the viability of the community's population over the long-term suggests that the standard is not met in this case.

3.6. Does the territory demonstrate a need for city government? [AS 29.05.011(a)(5); 3 AAC 110.010]

A. Social or Economic Problems. 3 AAC 110.010(a)(1)

Views Stated in Petition

Exhibit A of the incorporation petition states:

"Establishing a political subdivision of the State of Alaska on Adak is a Department of Defense required prerequisite for consummation of a Land Transfer Agreement between the Department of Defense, the Department of the Interior and The Aleut Corporation. The Navy has received permission from the Alaska Department of Environmental Conservation and the U.S EPA, to transfer land that is suspected of containing a small amount of unexploded ordinance - only on the condition that disciplined execution of specific "INSTITUTIONAL CONTROLS", including ordinances requiring City of Adak approval for dig permits, fencing and signage are in place prior to US Navy withdrawal from Adak."

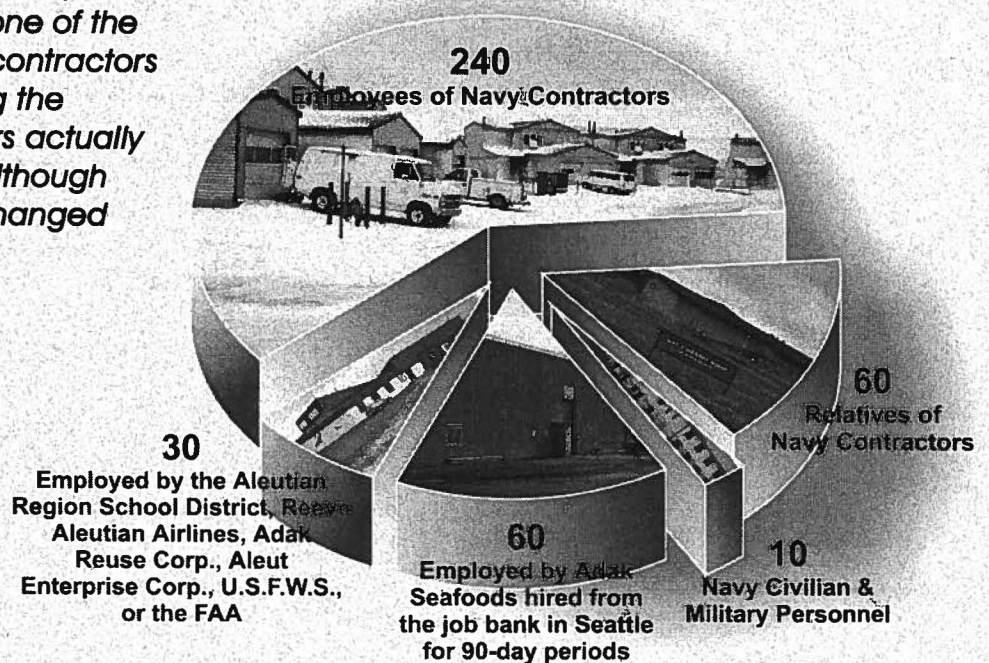
Views Stated in Responsive Brief

Page 5 of the U.S.F.W.S. responsive brief suggests that the future of the Adak economy is uncertain, "... the economy on Adak is dependent on the land trade. The backbone of the current population is Navy contractors maintaining the base during the cleanup and the contractors actually conducting the cleanup. Although TAC has succeeded in exchanged into private ownership."

Views Expressed by Others

Atka Village Council President Mark Snigaroff's letter was skeptical regarding the economic future for Adak. He wrote "The economy of Adak at the present time is based on spending under contracts with the U.S.

Pie chart shows the nature of the business of the 400 people living in Adak on October 1, 1999



Navy in connection with the base closing. The great majority of residents are on Adak because they are working for Navy contractors. There is some fish processing going on and some sale of fuel and ship supplies. Years in the future these may develop into a viable economic base for the community, but at the present time they cannot support the community. The infrastructure that is being left in place by the Navy far exceeds present need and will be a serious drain on the resources of the city to maintain and operate. The Navy had thousands of people on the island. The population is about 10% of the Navy's population."

Views Stated in Reply Brief

Page 2 of the reply brief discounts concerns expressed during the proceedings to date, stating:

- *"The economy of Adak, while currently influenced by environmental remediation work at Adak is not anticipated to be "based on spending under contracts with the US Navy in connection with base closure." The base has successfully started its own private economy based upon fish processing and small community businesses. If the Navy were to leave today, the base*

would have, at times, more residents than Atka, based on the existing businesses."

" . . . If the Navy were to leave today, the base would have, at times, more residents than Atka, based on the existing businesses." Petitioners Reply Brief

- *"It is incorrect to say that the present level of private activity does not constitute a viable community. Companies have invested well over 1.2 million dollars under the premise that the community will be viable after Navy departure."*

- *"While it is true that some resources will have to be expended on infrastructure that is surplus to community needs, that amount is expected to be manageable within both the stated community budget and activity increases expected as a result of successful reuse. The fact of the matter is that the community does not plan to keep up the infrastructure base beyond what it can afford."*

DCED's Views

The fact that a political subdivision of the State is the preferred entity to execute institutional controls functions does not necessarily equate to a demonstrated need for city government. For example, DCED is aware of no overriding legal or theoretical impediment to the Alaska Department of Environmental Conservation performing such a function, provided funds were made available for the purpose.

Further, if an organized borough were incorporated in the region, the borough could perform the institutional controls function.

B. Health, Safety and General Welfare Problems. 3 AAC 110.010(a)(2)

Views Stated in Petition

Page 30 of the petition states, *"Frequency of use of the south half of Adak for hiking and hunting and the need to maintain the rescue barrels in the south half of the island for resident safety."*

At page 31, the petition states, *"There will be a need to provide emergency services to tourism charters and guided hunting on Adak. The city will be providing services to users of the recreational assets of the entire island. All hunting for Adak will originate in the more developed areas. Proliferation of floating cabins or non-seaworthy vessels, or dealing with abandoned vessels may best be dealt with by a combination of city and federal oversight. Frequency of use of the south half of Adak for hiking and hunting and the need to maintain the rescue barrels in the south half of the island for resident safety."*

At page 31, the petition also states, *"It is not reasonable to expect State Troopers to come to Adak to respond to public safety concerns that the city will have to address due to time and logistics. One example, a hiker from the developed portion of Adak fell down while hiking in the southern half of the island. The Blue Card system initiated a search when it was noticed that he was overdue. They eventually found him and initiated a recovery action. The hiker was recovered, stabilization was attempted at Adak clinic and he was medi-vac from Adak to the hospital in Anchorage where he subsequently died from complications related to exposure. In all such events the logical responder and provider of services will be the City of Adak, not the State Troopers or the VPSO from Atka."*

The petition references the need for institutional controls as a public safety issue, *"The Navy is leaving the island with unexploded ordinance contamination. The responders for any UXO will originate from the City of Adak. The City of Adak must have statutory coverage over the entire island to enforce INSTITUTIONAL CONTROLS mandated by the Navy. The city must have the ability to restrict access to areas of the island if a person avoids a required UXO warning briefing."*

Views Stated in Reply Brief

On page 11, the reply brief states, *"If a hiker is in trouble, or a boat in need of immediate aid, we have no doubt that the community will be providing assist services instead of Coast Guard or State Troopers who are located many hours away. (There may be times when*

" . . . If a hiker is in trouble, or a boat in need of immediate aid, we have no doubt that the community will be providing assist services instead of Coast Guard or State Troopers who are located many hours away."

Petitioners Reply Brief

Service boats are available to search for stranded boaters or hikers such as occurred in 1997 with the Navy. But historically it is the owner of the north end of Adak who performs search and rescue functions for the south end.)"

Page 10 of the reply brief states, *"We look to the Commission to establish the boundaries of the city based upon 19 AAC 10,040 (b) that allows public safety and*

zoning considerations that reasonably require a larger-than-normal city. There is certainly no prohibition in state law against including the whole island if public safety services will be needed, perhaps frequently, within the requested area."

DCED's Views

It would be difficult to imagine a community with more dramatic and well-documented health and safety issues than Adak, an extremely isolated and remote facility situated on a superfund site surrounded by minefields, unexploded ordnance, and extreme weather.

C. Conclusion

If a community is not viable over the long-term, there is no demonstrated need for City government. Incorporation of a non-viable city government at Adak could prove counter to the best interests of the State of Alaska. If the airport is closed, the community would no longer meet the minimum standards prescribed for incorporation. The City government would likely then become dormant. In such cases, 29.06.450(b) requires that *"The department shall investigate a municipality that it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The Commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in art. X, sec. 12 of the state constitution."*

If dissolution of a City of Adak were to occur, AS 29.06.520 would require the State of Alaska to be the successor to all assets and liabilities of the dissolved city. The ultimate effect could be to saddle the State of Alaska with liability for a ghost town located on a superfund site. In DCED's view, such should be avoided.

The Adak proposal is in certain respects similar to the development city option enacted by the legislature in 1972.¹⁴ (Ch. 106, SLA 1972 - formerly codified as AS 29.18.220 - 29.18.460) The provisions of former AS 29.18.220 stated, in part, *"The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector."*

14 Appendix A contains the repealed development city statutes.

It is noteworthy that the development city statutes were repealed by the legislature in 1985. Repeal of the development city statutes by the legislature indicates that the development city concept was proven to be a failure in practice.

The State of Alaska declined the opportunity to be the reuse authority for Adak. Incorporation of a second class city could ultimately produce the same effect. If a city is incorporated and the community does not prove to be viable and sustain a local population, dissolution of the city would result in the transfer of liabilities associated with the City to the State of Alaska. The State would effectively be compelled to assume a role that it previously declined.

3.7 Can Essential City Services be provided more efficiently or more effectively by annexation to an existing city or provided by an existing organized borough?

3 AAC 110.010(b)

A. Examination of Standard

Views Stated in Petition

Page 6 of the petition states, *"No other government in the region has either the intention or the financial resources for assuming provision of essential community services. Therefore, the services to be provided by the proposed City of Adak cannot be provided by the*

closest organized Borough or by annexation to an existing city within the region — the nearest being some 90 miles to the east."

DCED's Views

Annexation of Adak to the nearest city, the City of Atka, is not plausible because of distance. The absence of any organized borough in the regions renders delivery of services by an existing organized borough impossible.

B. Conclusion

It is obvious that this standard is not a barrier to incorporation of the City of Adak.

3.8 Does the petition include a practical plan demonstrating the proposed city's intent and capability to extend essential municipal services in the shortest practicable time after incorporation? 3 AAC 110.900(a)

A. Examination of Standard

Views Stated in Petition

Exhibit H of the petition contains a transition plan. The petition expresses the intent to *"transition to city government in the shortest practicable time, not to exceed two (2) years after the effective date of the proposed change."* Emphasis has been added to selected portions of the transition plan referenced in this report.



Naval administration building.

It also states that *"The Adak Reuse Corporation is expected to quickly go out of existence as the community steps up to take over service delivery and as current grants are closed out."*

The plan suggests that the transition of Adak from a military base into Adak to a civilian community will involve three steps.

"a. Interim operation and initializing of commercial reuse while Navy operational forces are withdrawn and the Navy completes environmental and discarded ordinance

remediation in 1998 and 1999. Ownership is to remain in federal hands, but commercial reuse is allowed and starting. (This is the current 2/99) status for former NAF Adak).

b. Formal and legal trade of the real and personal property currently contained on the base to the Aleut Corporation in return for other land and other good and valuable consideration is currently being negotiated between the Department of the Interior, The Department of the Navy and The Aleut Corporation. This is expected to be completed in fall 2000 or in 2001. A "Finding of Suitability to transfer" is expected in 2000 after the Navy finishes environmental and discarded ordinance clean up.

C. Within 120 days of the above transfer, The Aleut Corporation will transfer "Public assets and infrastructure" and other lands, equipment and facilities as spelled out in Exhibit L. (exhibit E of the Land Transfer Agreement.) to the Adak Reuse Corporation to hold in trust for the creation of a new state approved second class city on Adak. Exhibit L., (exhibit E of the land transfer agreement mentioned above) is the primary public involvement and city transfer document for Adak."

"Personal property related specifically to the operation of public facilities is also anticipated to be transferred to the City of Adak Corporation, or by the Adak Reuse Corporation. Additional public facilities can be added, or the transfer of listed public buildings can be delayed with the mutual consent of The City of Adak and The Aleut Corporation."

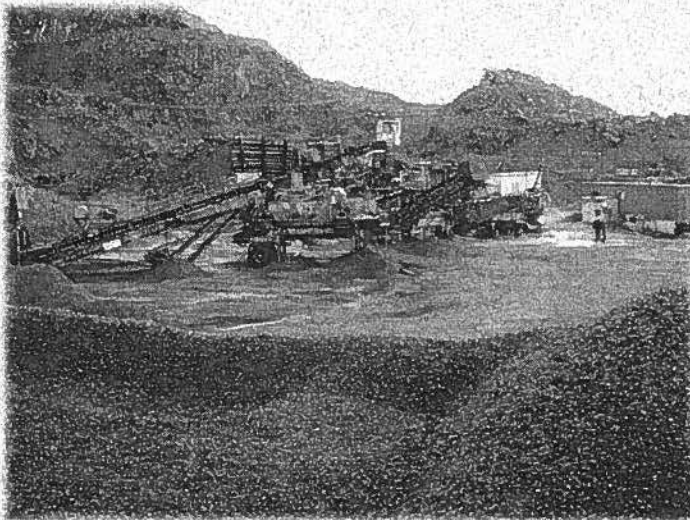
"Although all the facilities shown in Exhibit L. are to be transferred to the Adak Reuse Corporation/City of Adak, not all the facilities are planned to be operated by the City of Adak. Community and Aleut leaders are seeking private operation of some infrastructure (for example electrical service) and services."

"It is the intent of all parties to transfer ownership and operational control of the Exhibit L. facilities to the City of Adak following incorporation, and finalization of the land transfer from the U.S. Federal Government to The Aleut Corporation. In the period of time between submission of this petition and second class city incorporation, operation of city services shall be performed by the US Navy, the Adak Reuse Corporation, and/or by sub-leasees of the Adak Reuse Corporation."

The petition assumes "a smooth transition inasmuch as it is anticipated that community leaders who now are members of the Community Council and the Adak Reuse Corporation, also will be leaders in the new City government."

"It is anticipated that the City of Adak would be approved by the State for incorporation as of 2/1/00. In such a case, it is envisioned that the community will be legally incorporated and administratively functioning, effective 4/1/00. This would allow a two month transition period for municipal functions currently being accomplished by the Adak Reuse Corporation and the US Navy to be performed by the new City administration. assumed that there will be a smooth transition "

"Concerning the providing of community services: fire protection prior to the transition period would be provided by the U.S. Navy with transition to a volunteer force planed for the day that keys are passed to the Adak Reuse Corporation and/or the new city later in 2000. Under the new City government, a volunteer force would perform fire protection."



Gravel pit operations on Adak Island.

"Road grading during the transitional period would be done by the City of Adak and or the Adak Reuse Corporation depending upon retention of existing operators after Navy departure. All facilities, equipment and vehicles used for street maintenance will be transferred to the City by deed/bill of sale from the Adak Reuse Corporation."

"Those solid waste and landfill services that are now being provided by the Navy, will continue to be performed by the Adak Reuse Corporation during the transition period; however a new facility may be opened and readied for use pending closure of the Navy landfill. Likewise, the ongoing operation of recreational and library activities at the community hall will continue under Navy operation, and will be transferred to the new city. During the transition period, community administrative activities will be performed by either the Adak Reuse Corporation or the Adak Community Council depending upon the situation."

Exhibit L of the incorporation petition states, in part:

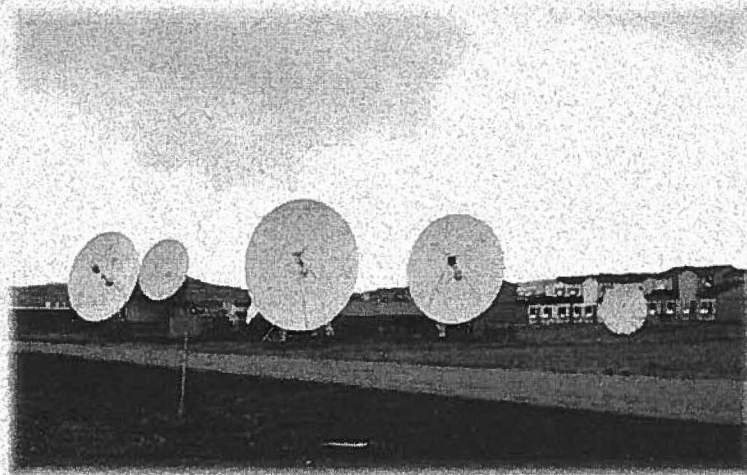
"The land and facilities identified should meet the initial needs of a future city and not the long term needs of a future city. A city will have the ability to lease or purchase facilities in the future."

"The Aleut Corporation shall reconvey title to the facilities and land identified in this appendix by quit claim deed. The surveying of parcels associated with the facilities identified in this appendix shall be the responsibility of the entity receiving the facility and associated land:"

The draft agreement provides that Aleut Corporation shall allow the proposed city ***"use of the facilities and lands in this appendix by means of interim use agreements, and/or easements."*** Although the draft agreement specifies that fees charged by the Aleut Corporation for interim use agreements or easements ***"shall not exceed \$10.00 per year"*** the document provides that ***"holders of an interim use agreement shall pay The Aleut Corporation actual operation and maintenance costs associated with the facilities occupied."***

Section B of the draft agreement identifies land and facilities The Aleut Corporation may either convey or make available for use by the proposed city for a five-year period. Those lands and facilities identified include:

- A dock and staging area;
- Seawall;
- Roads;
- Airport;
- Local government administration building;
- Space for a community center;
- Space for a library;
- Public works building;
- Public safety building;
- A five acre park;
- A five-acre cemetery;
- A twelve-acre landfill site;
- Water, sanitary sewer and storm sewer systems, including dams, lakes and intake lines, lift stations, sewer outfall systems;
- Electric and telephone systems.



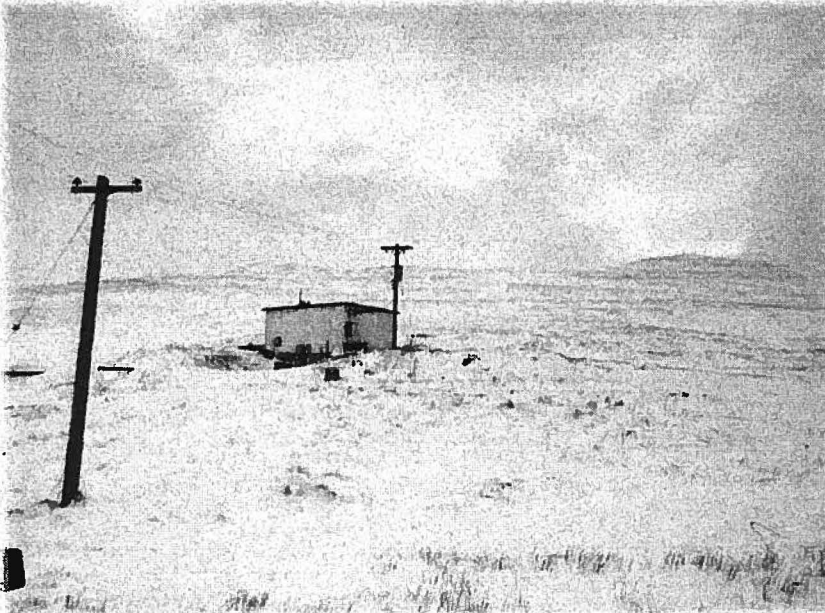
Satellite communication dishes on Adak Island.

Views Expressed by Others

As noted previously, Atka Village Council President Mark Snigaroff wrote that ***"The infrastructure that is being left in place by the Navy far exceeds present need and will be a serious drain on the resources of the city to maintain and operate."***

Views Stated in Reply Brief

Page 6 of the reply brief states, *"Implementation of needed land use controls and public easements will be difficult. Adak tidelands need to be transferred/leased to avoid trespass of existing structures on state owned tidelands (the first day after the land transfer). Existing dams need to be transferred to a city. EPA outfall permit may need to be transferred to a political subdivision of the State of Alaska. A local government is needed to implement Navy/EPA/ADEC "Institutional Controls" and to provide community services.*



Part of the water supply system.

"Adak has received a FAA grant to study the airport, an Economic Development Administration grant to look at reuse, and an Administration for Native Americans grant to look at facilities and infrastructure. We are also seeking assistance to transition utilities and community operating permits. We have no promise or suggestion that any government agency will support Adak after Navy transfer - except the small community formation grant sought from the Department of

Community and Regional Affairs after successful city formation. The city will work hard to get on with development. This may involve seeking as much public support as is possible." (at 8)

DCED's View

The transition plan and the associated attachment is ambiguous, confusing, and somewhat contradictory with respect to the timing of the transition of certain key facilities and the ultimate recipient of the facilities. It does not provide a clear statement of what facilities will be transferred to the proposed city and certain costs associated with such transfers.

B. Conclusion

The petition does not include a practical plan demonstrating its intent and capability to extend essential municipal services in the shortest practicable time after incorporation. Concerns about the transition plan were raised during an informal discussion between LBC staff and four of the seven members of the Adak Community Council on January 25, 2000. During the course of that discussion, concerns were expressed by community council members about the ambiguity relating to the proposed city's role in the following key community facilities and services:

- Water utility;
- Sewer utility;
- Landfill;
- Road maintenance;
- Harbor;
- Airport;
- Fire department; and
- Police.

In order for the transition plan to satisfy the requirements of 3 AAC 110.900(a), key aspects of the proposed transition require clarification.

Chapter 4

Recommendations

DCED recommends that the Local Boundary Commission deny the petition for Adak city incorporation.

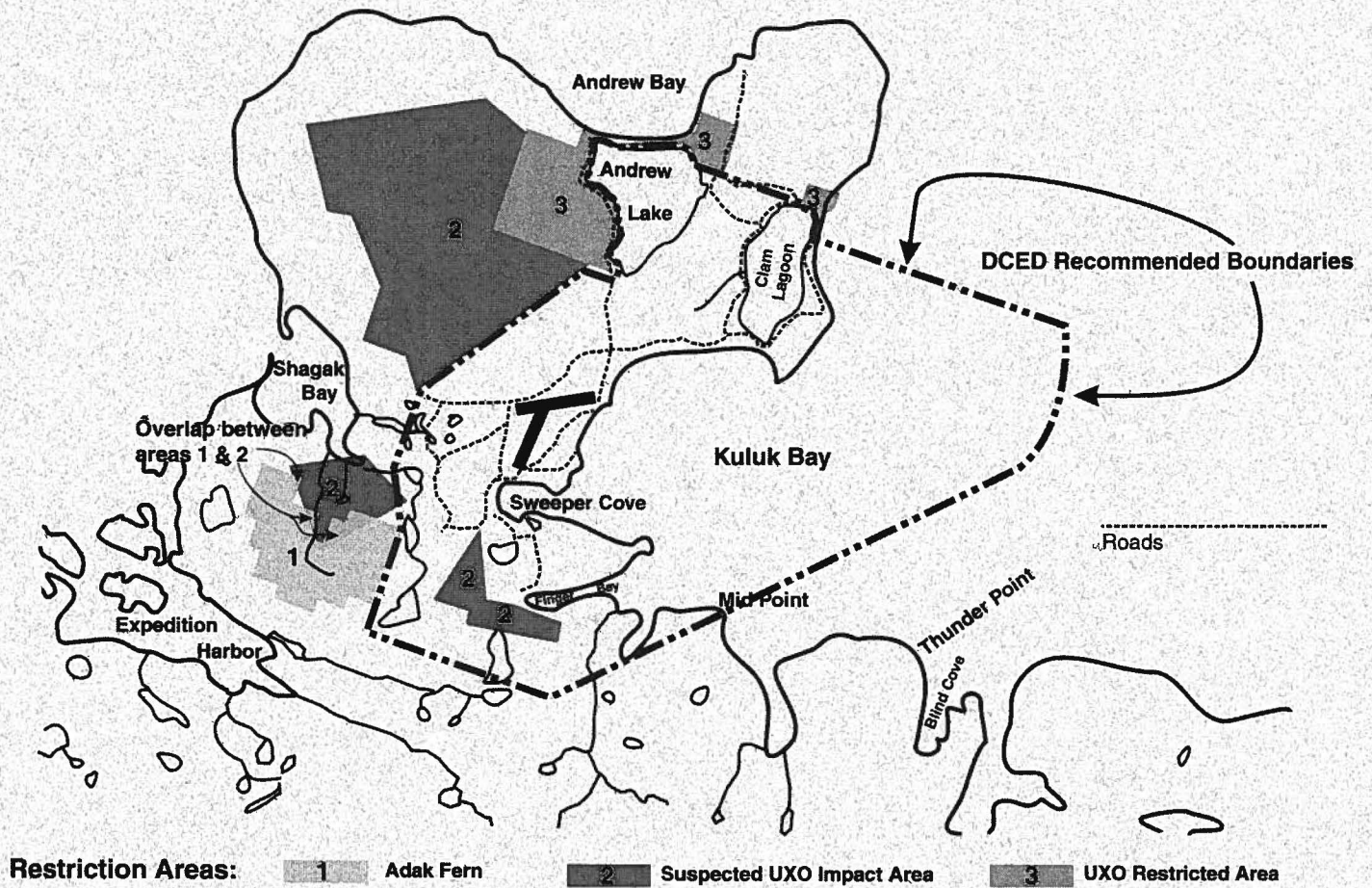
However, should the Commission support incorporation the City of Adak against DCED's recommendation, DCED urges that the LBC first amend the boundaries proposed by the petition. Such amended boundaries should be generally based upon the Adak historic district boundary and the offshore area immediately adjacent to the historic district boundary, collectively comprising about 72 square miles. A map showing DCED's alternative boundaries is shown on the following page.

15 DCED recognizes that the petitioners have requested that incorporation be made contingent upon voter authorization of an ordinance by the City of Adak to adopt Navy-required institutional controls. However, no such ordinance has been finalized. At this point, DCED cannot reasonably recommend that city incorporation be made contingent upon approval of an ordinance that is still being drafted.

If the Commission approves the petition, it should also make incorporation contingent upon approval by Adak voters of three additional ballot propositions.¹⁵

1. Voter authorization of the levy by the City of Adak of a 3% sales tax; and
2. Voter authorization of the levy by the City of Adak of a 2% fuel transfer tax.

DCED recommended boundaries containing approximately 72 square miles.



Appendix A

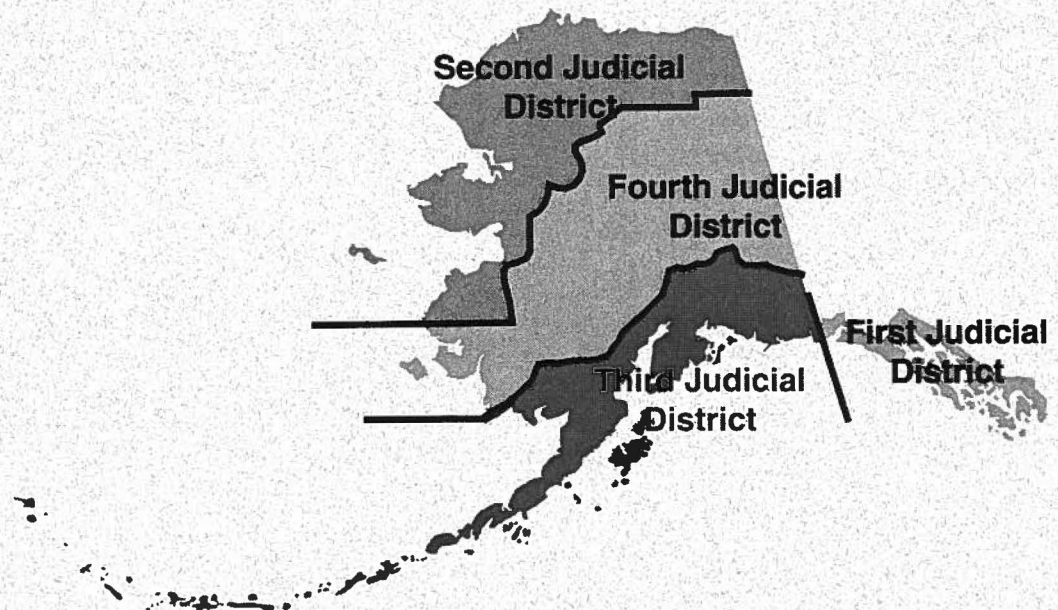
Local Boundary Commission and Department of Community and Economic Development

Petitions to incorporate cities in Alaska are subject to review by the Local Boundary Commission (LBC). The LBC is a State board with jurisdiction throughout Alaska. (Article X, Section 12, Ak. Const., AS 29.05, AS 29.06, and AS 44.33.810 - 44.33.828.) The LBC acts on petitions for the following:

- annexation to cities and boroughs;
- incorporation of cities and boroughs;
- consolidation of cities and boroughs;
- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

The LBC consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, ". . . on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Biographical information about current Commissioners follows.





Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed as Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the former Department of Community and Regional Affairs' original division directors (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. Commissioner Waring served as manager of physical planning for the Municipality of Anchorage's Community Planning and Development

Department from 1998 through February 2000. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman currently serves as Mayor of the City of Pelican. She is also a member of the Board of Directors of the Alaska Municipal League. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan.

Additionally, she has served as President of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.



Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice-Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member

of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. A 25-year resident of Anchorage, he was first employed with the legal department of the former Greater Anchorage Area Borough. After unification of local governments in Anchorage, he served as Deputy Municipal Attorney. Before entering private practice in 1985, Mr. Tesche also served as Director of Property and Facility Management for Anchorage and as Borough Attorney for the Matanuska-Susitna Borough. He is presently a partner in a private firm where he specializes in administrative and municipal law. Mr. Tesche has served in leadership positions on twelve boards and commissions, ranging from the Anchorage Museum

Association, the South Addition Community Council, and the Anchorage Police and Fire Retirement Board. He currently serves as a member of the Assembly of the Municipality of Anchorage. Mr. Tesche's term on the Commission expires January 31, 2002.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.

Communications with the LBC

The LBC is a quasi-judicial board. To preserve the rights of petitioners, respondents, and others to due process and equal protection, 19 AAC 10.500 prohibits private (ex parte) contact with the LBC on all matters pending before it. The law prohibits communication between the LBC and any party in a proceeding, other than its staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains effective through the last date available for the Commission to reconsider a decision under 19 AAC 10.580. Written communications to the Commission must be submitted through its staff.

Staff to the Commission

The Alaska Department of Community & Economic Development (DCED) serves as staff to the LBC. The LBC's staff is required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the LBC concerning such.

The LBC and DCED are independent of one another concerning policy matters. Therefore, DCED'S recommendations in this or any other matter are not binding upon the LBC.

Under the terms of Chapter 58, SLA 1999, the former Department of Community and Regional Affairs (DCRA) was consolidated with other State agencies effective July 1, 1999. The former DCRA'S Municipal and Regional Assistance Division, which includes the Local Boundary Commission staff support component, was consolidated with the Department of Commerce and Economic Development (DCED). The consolidated agency has been renamed the Department of Community and Economic Development. Debby Sedwick, current Commissioner of the DCED, has been named Commissioner of the consolidated agency.

Appendix B

Alaska Statutes and Alaska Administrative Code Standards for Incorporation of Cities

Alaska Statutes

Sec. 29.05.011. INCORPORATION OF A CITY.

(a) A community that meets the following standards may incorporate as a first class or home rule city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support city government;

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

History - (sec. 4 ch 74 SLA 1985; am sec. 6 ch 58 SLA 1994)

Amendment Notes - The 1994 amendment, effective August 22, 1994, inserted "or home rule" in the introductory language in subsection (a).

Decisions - Lack of a valid legislative body would not prevent the valid incorporation of a municipality. - This conclusion is bolstered by noting that Alaska's newly-enacted Municipal Government Code has completely separated the statutes relating to the incorporation procedure from those relating to the borough's legislative body. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974), decided under former AS 29.18.010.

The incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974), decided under former AS 29.18.010.

Stated in *United States v. Pleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Sec. 29.05.021. LIMITATIONS ON INCORPORATION OF A CITY.

(a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city.

History - (sec. 4 ch 74 SLA 1985)

Decisions - Subsection (b) is not in conflict with either AS 29.35.450(b) - or Alaska Const., art. X, sec. 5; rather AS 29.35.450(b), which follows the language of the Alaska Constitution, is a limitation on the creation of new service areas and in contrast, subsection (b) is a limitation on the incorporation of cities. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Alaska Administrative Code**3 AAC 110.010 - NEED.**

(a) In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government. In this regard, the commission will, in its discretion, consider relevant factors including

- (1) existing or reasonably anticipated social or economic problems;
- (2) existing or reasonably anticipated health, safety and general welfare problems;
- (3) existing or reasonably anticipated economic development; and
- (4) adequacy of existing services.

(b) In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough.

History - Eff. 7/31/92, Register 123

Authority - AS 29.05.011; AS 44.47.567; AS 44.47.980

3 AAC 110.020 - RESOURCES.

(a) In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) reasonably anticipated functions of the proposed city;
- (2) reasonably anticipated expenses of the proposed city;
- (3) reasonably anticipated income and ability of the proposed city to generate and collect local revenue and income;
- (4) feasibility and plausibility of the anticipated operating budget of the proposed city through its third full fiscal year of operation;
- (5) economic base of the proposed city;
- (6) property valuations for the proposed city;
- (7) land use for the proposed city;
- (8) existing and reasonably anticipated industrial, commercial, and resource development for the proposed city;
- (9) personal income of residents of the proposed city;
- (10) need for and availability of employable skilled and unskilled persons to serve the proposed city; and
- (11) reasonably predictable level of commitment and interest of the residents in sustaining a city.

History - Eff. 7/31/92, Register 123

Authority - Alaska Const. art. X, sec. 12; AS 29.05.011; AS 44.47.567; AS 44.47.980

3 AAC 110.030 - POPULATION.

(a) In accordance with AS 29.05.011 the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumeration;
- (2) durations of residency;

- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) To become a first class city, the territory proposed for incorporation must have a population of at least 400 permanent residents.

History - Eff. 7/31/92, Register 123

Authority - Alaska Const. art. X, sec. 12; AS 29.05.011; AS 44.47.567; AS 44.47.980

3 AAC 110.040 - BOUNDARIES.

(a) In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation of that city.

(c) The boundaries of the proposed city must not include entire geographical regions or large unpopulated areas, except when such boundaries are justified by the application of the standards in 3 AAC 110.010 - 3 AAC 110.040.

(d) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for incorporation must also address and comply with all standards and procedures for either annexation of the new city to the existing borough, or detachment of the overlapping region from the existing borough, unified municipality, or city. The commission will consider and treat such an incorporation petition as also being either an annexation petition to the existing borough, or a detachment petition from the existing borough, unified municipality, or city.

History - Eff. 7/3/92, Register 123

Authority - Alaska Const. art. X, sec. 12; AS 29.05.011; AS 44.47.567; AS 44.47.980

Appendix C

Article 4. Development Cities.

Revisor's note (1972).—Provisions Also see ch. 110, SLA 1972, which in-
virtually identical to §§ 220—460 of corporated the development city of
this chapter were originally enacted Lost River.
as AS 29.78, in ch. 106, SLA 1972.

Sec. 29.18.220. Legislative findings. The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector. It is the purpose of §§ 220—460 of this chapter to set out the mutual responsibilities of the private and public sectors to achieve these objectives with a view to securing information valuable to future legislatures so that general legislation applicable to the establishment of development cities may be perfected. (§ 19 ch 118 SLA 1972)

Sec. 29.18.230. Development cities. Subject to reclassification under § 400(c) of this chapter, a development city is a city of the class designated by the Department of Community and Regional Affairs. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 nity and Regional Affairs" for "Local amendment, effective July 1, 1972, Affairs Agency."
substituted "Department of Commu-

Sec. 29.18.240. Incorporation. An area not served by an existing municipality which is not reasonably practicable to be served by an existing municipality may be incorporated as a development city by

(1) petition of the industrial developer to the Department of Community and Regional Affairs to be acted on by the Local Boundary Commission; or

(2) act of the legislature. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 and Regional Affairs" for "Local Af- amendment, effective July 1, 1972, sub- fairs Agency" in paragraph (1).
stituted "Department of Community

Sec. 29.18.250. Petition for incorporation. A development city incorporation petition proposed by an industrial developer shall include the following information about the proposed city:

- (1) class,
- (2) name,
- (3) boundaries,
- (4) composition of the council,
- (5) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by the Department of Community and Regional Affairs to show that the proposed city meets the standards for incorporation,
- (6) the proposed agreement required under § 330 of this chapter. (§ 19 ch 118 SLA 1972; am §§ 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 nity and Regional Affairs" for "Local amendment, effective July 1, 1972, Affairs Agency" in paragraph (5).
substituted "Department of Commu-

Sec. 29.18.260. Review. The Department of Community and Regional Affairs shall review the petition for content and shall return deficient petitions for correction and completion. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 Community and Regional Affairs" for "Local amendment, effective July 1, 1972, Affairs Agency." substituted "Department of Commu-

Sec. 29.18.270. Investigation. If the petition contains the required information, the Department of Community and Regional Affairs shall investigate the proposal to determine whether the development expenditures and proposed capital program by the developer serve the public interest and demonstrate a probability of being carried forward to a successful conclusion. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 Community and Regional Affairs" for "Local amendment, effective July 1, 1972, Affairs Agency." substituted "Department of Commu-

Sec. 29.18.280. Report. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation within 60 days of receipt of the petition for incorporation.

(b) The Local Boundary Commission shall review the petition and the findings and recommendations of the Department of Com-

munity and Regional Affairs within 60 days of receiving them. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 Community and Regional Affairs" for "Local amendment, effective July 1, 1972, Affairs Agency" in subsections (a) substituted "Department of Commu- and (b).

Sec. 29.18.290. Decision on development city incorporation. (a) The Local Boundary Commission may reject a petition for incorporation if it finds that

(1) the area proposed for incorporation is served by an existing municipality or could be served by an existing municipality;

(2) it is improbable that the proposed development will take place;

(3) the program and activities contemplated by this chapter may be undertaken through expansion of the corporate limits of an existing city and then declares that city to be a development city for the purpose of preferential designation under §§ 10 and 340—460 of this chapter;

(4) the program and activities contemplated by this chapter may be undertaken by establishing a service area within an existing organized borough for a development project, and declares the service area to be eligible for preferential designation under §§ 410 and 450 of this chapter;

(5) the proposed development does not serve the public interest.

(b) If the Local Boundary Commission finds that a service area within an organized borough is to be designated for preferential treatment under (a) (4) of this section, the assembly may undertake the project in the manner of a development city and shall present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program.

(c) The assembly may decline findings under (b) of this section to establish a service area and in the alternative request the Local Boundary Commission to approve incorporation of a development city.

(d) The Local Boundary Commission may dissolve a development city established under § 20 of this chapter if subsequent to its incorporation

(1) the major economic development projected does not occur within a period of five years; and

(2) if the development project had been reviewed as a new project the Local Boundary Commission determines it would have rejected the petition on the basis that it is improbable the proposed development would have taken place.

(e) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 19 ch 118 SLA 1972)

Sec. 29.18.300. Preliminary planning. The city shall prepare and submit to the state preliminary plans in advance of completion of the final basic comprehensive plan for the city. The preliminary plans shall include

(1) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by reviewing agencies of the state;

(2) a report on the physical and biological character of the proposed city's site and a land and water use plan and the design and siting of the community to be developed based upon these natural factors. (§ 19 ch 118 SLA 1972)

Sec. 29.18.310. Review and report. (a) The division of planning and research, in conjunction with the Departments of Community and Regional Affairs, Natural Resources, and Environmental Conservation and other departments as determined appropriate by the division of planning and research, shall review the preliminary planning and additional data may be requested.

(b) The division of planning and research shall coordinate the preparation of a report and recommendations, if any, which shall be submitted to the governor within 60 days of receipt by the state of the preliminary plans from the city. The city may proceed to the completion of the final basic comprehensive plan upon satisfying any specific recommendations contained in the report.

(c) During the course of planning toward completion of the basic comprehensive development plan the division of planning and research and the Department of Community and Regional Affairs shall be kept currently informed and the final plan shall be subject to review and recommendation by the division of planning and research, which shall act in its coordinating capacity to secure review by the Department of Environmental Conservation and other state agencies as appropriate. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, in subsection (a), deleted "Local Affairs Agency and the" following "conjunction with the" and inserted "Community and Regional Affairs" following "Departments of." In subsection (c), the amendment substituted "Department of Community and Regional Affairs" for "Local Affairs Agency."

Sec. 29.18.320. Limitation. The city may not proceed with commitment of funds or formal undertakings for physical development until it has a signed contract or contracts for sale of the company's products in quantities shown in the economic data and submitted by the company to be adequate to sustain an economically viable operation. The company may submit alternative valid evidence that the projected operation will proceed. The company shall notify the

Department of Community and Regional Affairs of the meeting of this requirement. Unless the Department of Economic Development makes a determination that the data is insufficient, the city may proceed. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the third sentence.

Sec. 29.18.330. Local hire. In consideration of the incorporation of a development city under this chapter, the major developer shall enter into an agreement with the appropriate agencies of the state concerning

(1) establishing and maintaining an approved Department of Labor on-the-job training program to qualify Alaska residents lacking in the requisite technical skills of the activities to be undertaken;

(2) establishing resident hire goals in terms of per cent of employees at the end of the first year, second year and third year of operation;

(3) establishing the responsibilities of the various state agencies towards providing technical assistance, manpower procurement, relocation assistance, job opportunity services to residents in the area, supplemental vocational training, and the scope of effort each state agency has in this regard with specific commitments in terms of numbers of residents, time schedule and dollar value of training;

(4) establishing the penalties and conditions of noncompliance with the agreement. (§ 19 ch 118 SLA 1972)

Sec. 29.18.340. Development city council. The council of a development city has five members consisting of the commissioner of the Department of Community and Regional Affairs, or his designee, and four public members designated by the governor. The governor shall appoint no fewer than two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment. The council shall serve at the pleasure of the governor. The designated councilmen need not be residents of the city during its development stage. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, in the first sentence, substituted "commissioner" for "director" following "consisting of the" and substituted "Department of Community and Regional Affairs" for "Local Affairs Agency."

Sec. 29.18.350. Filling a vacancy. If a vacancy occurs in the council as constituted under § 340 of this chapter, the applicable appointing authority shall designate the replacement during the development stage of the city. (§ 19 ch 118 SLA 1972)

Sec. 29.18.360. Powers and duties of council. During the development stage the council of a development city may

(1) exercise the powers and duties of a school board if the city is located outside an organized borough;

(2) exercise the powers and duties of a planning commission under AS 29.33.080, except that during the first five years or until the development city has 400 permanent residents, zoning and zoning changes will be reviewed and approved by the division of planning and research and the Department of Environmental Conservation. (§ 19 ch 118 SLA 1972)

Sec. 29.18.370. Powers and duties of development city executive director. During the development stage the council shall appoint an executive director of the development city, who may be one of its members, to serve at the pleasure of the council. The executive director shall have the powers and duties of all executive and administrative city officials set out in this title in order to develop the city under a comprehensive community development plan. (§ 19 ch 118 SLA 1972)

Sec. 29.18.380. Procedures. During the development stage, the council may provide for conference telephone or radiophone meetings at times determined by the council and shall determine its own rules and order of business. (§ 19 ch 118 SLA 1972)

Sec. 29.18.390. Development city capital improvement funds. All state agencies shall, where appropriate, adopt procedures to insure that, during the development stage, the needs of a development city are carefully considered in the allocation of funds available for capital improvement projects where those funds have not otherwise been committed by the legislature. (§ 19 ch 118 SLA 1972)

Sec. 29.18.400. Transition. (a) When a development city has 400 permanent residents elections shall take place according to the following schedule:

(1) in the first year two additional councilmen who shall be city residents elected for three-year terms;

(2) in the second year two councilmen who shall be city residents elected for three-year terms to replace one of the councilmen nominated by the industrial developer and one of the public members designated by the governor;

(3) in the third year two councilmen who shall be city residents elected for three-year terms to replace the commissioner of the Department of Community and Regional Affairs and one of the councilmen nominated by the industrial developer;

(4) in the fourth year a mayor who shall be a city resident elected for a three-year term to replace the remaining councilman nominated by the industrial developer.

(b) At the time of the election under (a) (4) of this section, or any time after it, the electorate may exercise the right to become a home rule city as authorized under this title.

(c) If, within a period of five years from the incorporation of a development city, the number of permanent residents does not reach 400, the Department of Community and Regional Affairs shall order an election for city officials and designate a successor class of city based on population as provided in this title. If the department designates a successor class of city, the provisions of this title relating to that class of city apply, and the city shall be reclassified accordingly. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "commissioner of the Department of Community and Regional Affairs" for "local affairs director" in paragraph (3) of subsection (a). The amendment also substituted "Depart-

ment of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence of subsection (c) and substituted "department" for "agency" in the second sentence of that subsection.

Sec. 29.18.410. Housing powers. From the time of the appointment of the first city council and for a period of 10 years following the first election of councilmen, the council may act as its own housing and urban renewal authority if such powers have been granted to cities under applicable provisions of law. (§ 19 ch 118 SLA 1972)

Sec. 29.18.420. Land selection.

Repealed by § 5 ch. 180 SLA 1978, effective July 1, 1978.

Cross reference. — As to general grant land, see 29.18.201 et seq.

Editor's note. — The repealed section derived from § 19, ch. 118, SLA 1972.

As to purpose of repealing act, see § 1, ch. 180, SLA 1978, effective July 1, 1978, in the 1978 Temporary and Special Acts and Resolutions in Binder 9.

Sec. 29.18.430. Revenue bonds. Revenue bonds may be issued by a development city under the provisions of AS 29.58.200—29.53.220. However, no vote of the people is required to issue revenue bonds during the development stage. During the development stage revenue bonds may be issued by a majority vote of the city council. (§ 19 ch 118 SLA 1972)

Sec. 29.18.440. Shared revenue. A development city is entitled to shared revenue and other state funds on the same basis as a city or organized borough of the first class or, if reclassified under § 400(c) of this chapter, on the basis of the reclassification. During the development stage the Department of Community and Regional Affairs may establish an assumed population figure which shall be used to determine shared revenue based on population on per capita grants. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "Department of Commu-

nity and Regional Affairs" for "Local Affairs Agency" in the second sentence.

Sec. 29.18.450. Applicability of other provisions of this title. All applicable provisions of this title consistent with the provisions of this chapter apply to development cities. Provisions of this chapter prevail over other provisions of this title which are inconsistent. (§ 19 ch 118 SLA 1972)

Sec. 29.18.460. Definition. In this chapter "development stage" means that period of time extending from the date of incorporation of a development city until such time as the city may attain a population of 400 permanent residents, or five years from the date of incorporation, whichever is earlier. (§ 19 ch 118 SLA 1972)

