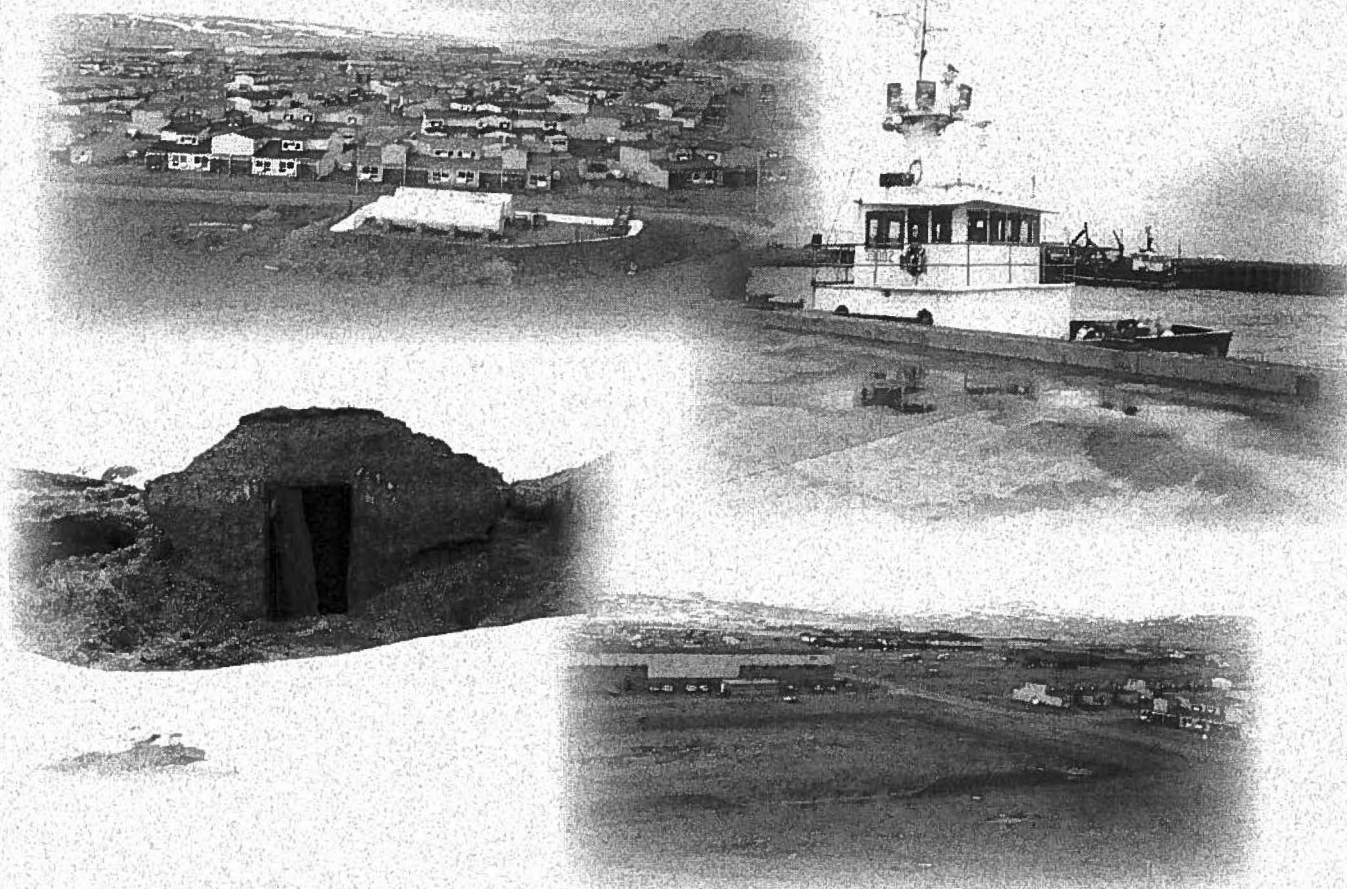


Supplementary Report to the Local Boundary Commission Regarding the Petition to Incorporate the Second Class City of Adak

September 2000



Tony Knowles
Governor

Deborah B. Sedwick
Commissioner





This is the Department of Community and Economic Development's (DCED) supplementary report regarding the petition to incorporate the second class city of Adak. This report supplements the preliminary and final reports issued by DCED concerning the Adak incorporation petition. The report can also be found on the Internet at the following address:

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

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

Acknowledgements

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:

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- John Gliva, Division of Community and Business Development
- Danielle Jerry, U.S.F.W.S
- Agafon Krukoff, Jr., Petitioners' Representative
- Gordon Kruse, Alaska Department of Fish and Game
- Bernhard Richert, Economic Development Representative, U.S. Department of Commerce, Economic Development Administration
- Vince Tutiakoff, Sr., Adak Reuse Corporation
- Robert K. Urich, Director, Land Management, Department of the Navy, Engineering Field Activity Northwest

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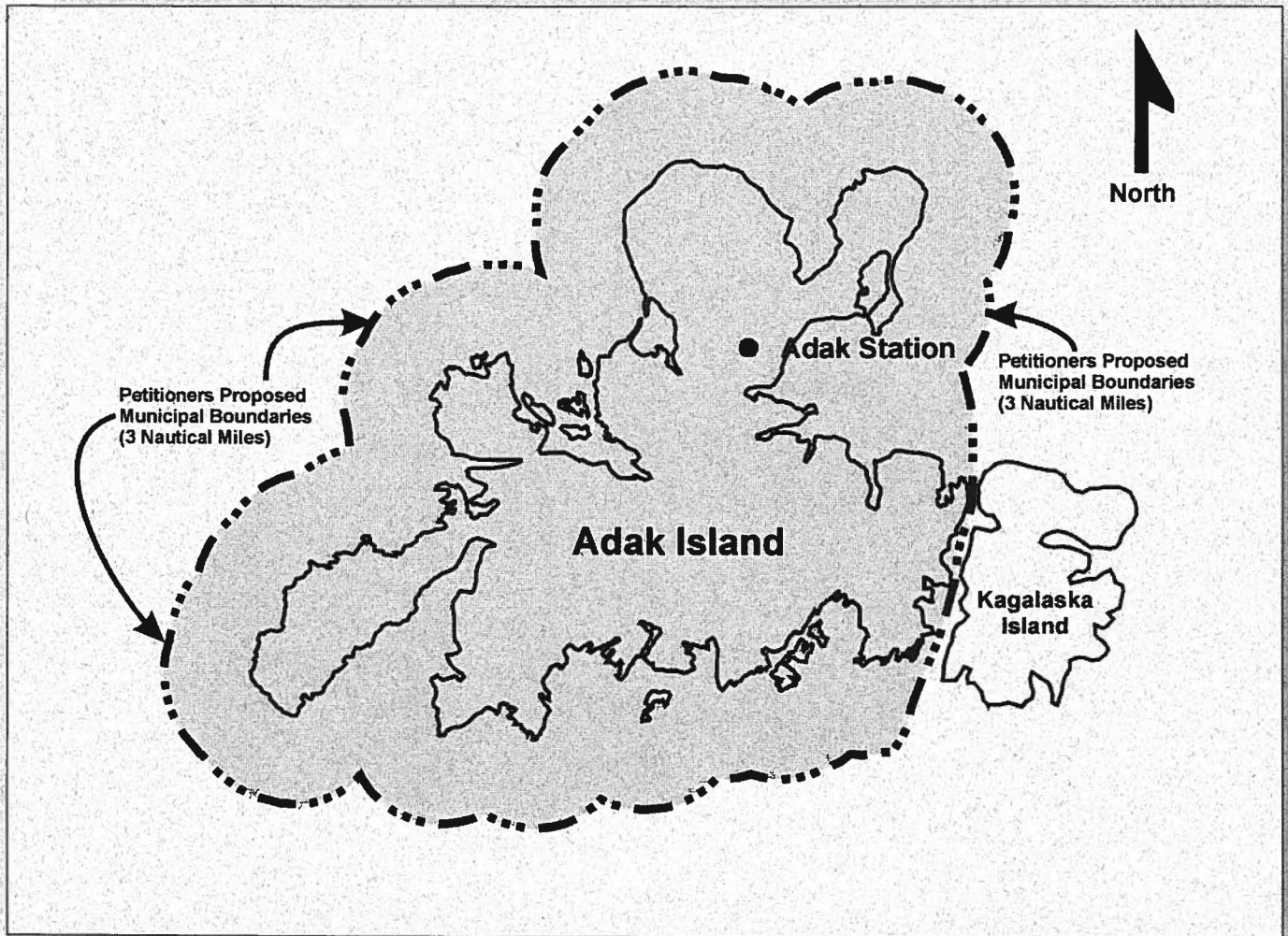
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Area proposed to be incorporated as the City of Adak



Part I Introduction and Background

This document supplements the Department of Community and Economic Development's (DCED or Department) preliminary and final reports concerning the petition by Adak residents to incorporate a second class city with boundaries encompassing 676.3 square miles.¹ This supplementary report was developed at the direction of the Local Boundary Commission. (LBC or Commission)

On April 28, 2000, all five members of the LBC met in Adak. At that meeting, the Commission conducted a public hearing on the petition. The Commission heard seven hours of public testimony at the April hearing.



LBC listening to testimony in Adak during the April 2000 hearing.

The following day, the Commission reconvened the meeting and began its decisional session regarding the Adak petition. The Commission deliberated for nearly two hours before determining, by unanimous vote, to postpone action on the petition. The Commission requested additional information concerning the Adak incorporation proposal because it concluded that several key issues relating to Adak's transition from a former major Naval base to a smaller civilian settlement were unresolved, rendering issuance of a final decision premature. The Commission noted that there were several matters pending that would collectively determine Adak's economic development, land and facility ownership, and the viability of the proposed city.

¹ The 112-page preliminary report and the 27-page final report were issued February 19, 2000 and April 6, 2000, respectively.

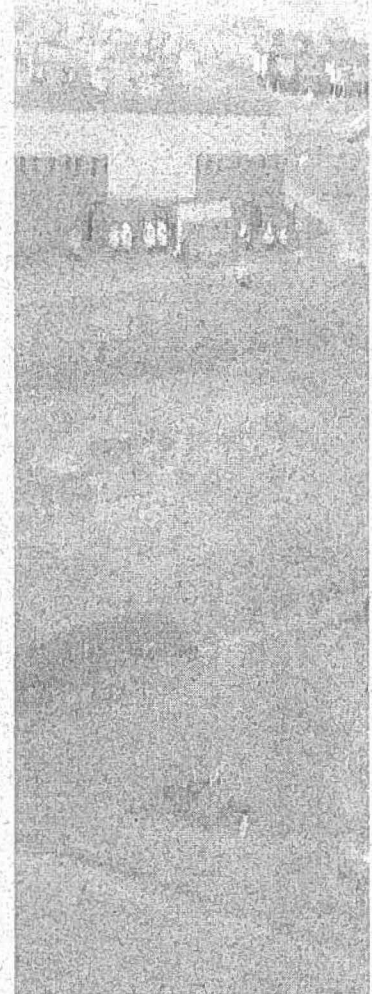
The Commission voted to recess its meeting, postpone its decision and reopen the record concerning the Adak incorporation proposal until August 29, 2000 with the expectation that sufficient information would be available by that date to allow the Commission to render a decision on the petition. Commission members listed 21 documents, studies, and actions expected to be completed and available by the August 29 deadline. Specific information items are listed in Part 2 of this document.

On August 29, 2000, the Petitioners submitted several documents in response to the Local Boundary Commission's request. Part 2 of this report provides details regarding the content of the August 29 submission. Earlier procedural actions relating to the Adak incorporation petition are addressed in the DCED preliminary and final reports concerning the matter.

The LBC will meet by teleconference 9:00 a.m., Thursday, October 19, 2000 to reconvene the Commission's recessed April 29, 2000 decisional session. A notice with details concerning the October 19, 2000 meeting is included in this supplementary report as Appendix F.



LBC hearing at Adak.



Part 2

Supplemental Information Requested from Petitioners

At its April 29, 2000 decisional session, the Commission requested that the Petitioners provide information regarding the following specific actions or documents by the August 29 deadline:

1. Airport demand study;
2. Arthur Andersen report from the Navy;
3. Final transfer agreement between the federal government and The Aleut Corporation;
4. Permit transition study;
5. Contract between The Aleut Corporation and the Adak Reuse Corporation;
6. Community health care plan;
7. Public safety plan addressing police, fire and rescue;
8. Proposed contract between the Aleut Reuse Corporation and the proposed city that sets out what powers, duties, services, and facilities the city will pick up during the first three years of city operation;
9. Utility transition plans (Adak Infrastructure Planning Study);
10. Revised city budget (January 1, 2000 forward);
11. Landfill siting study;
12. Finding of suitability to allow transfer of Adak property from the federal government to the Aleut Corporation;
13. Transition plan addressing roads, airport, harbor, health, utilities (landfill, water, sewer, electricity, telecommunications), public safety (fire, rescue, emergency medical services) and miscellaneous departments (budget, administration, library, and parks);²
14. Updated Anticipated City of Adak budget;

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- 2 The Commission requested information from the Petitioner regarding what organization would perform essential functions upon incorporation, the timing of assumption of responsibility for functions, the manner in which such functions would be performed, and what existing facilities would be utilized in performance of such functions.

15. Statement from Aleut Corporation reflecting the commitments it is prepared to make to Adak;
16. Determination of Indemnity;³
17. Final negotiated land transfer agreement with the federal government (including landfill agreement);
18. Draft transfer agreement to the Adak Reuse Corporation;
19. Preliminary proposed agreement between Adak Reuse Corporation and the prospective city regarding facilities, services, and equipment transferred as of the date of incorporation;
20. Updated population data projected to January 1, 2001;
21. Consideration of boundaries proposed by DCED compared to boundaries sought by the Petitioners.

DCED's Comments Regarding Supplementary Information Provided by the Petitioners in Response to the Local Boundary Commission's Request for Additional Information

1. **Airport demand study.** The Petitioners provided a May 2000 draft *Air Traffic Demand and Existing Airport Facilities prepared by Aires Consultants, Ltd.*, for the Adak Reuse Corporation. That document contains assumptions about passenger loads to and from Adak and sets forth high and low airport demand projections based upon the assumptions. The section of the report entitled 'Findings and Recommendations' was not included in the draft study submitted on August 29.

The supplemental materials submitted by the Petitioners referred to "attached correspondence" from Air Force General Wascow. That correspondence, consisting of an internal Air Force memorandum was submitted to DCED on September 1, 2000. It stated, in part:

"Request your assistance in retaining TACAN NAVAID at Adak Airfield, Alaska. As part of the Base Realignment and Closure initiative, the U. S. Navy is closing their operations at Adak Airfield. By 30 Sep 00, the Navy will transfer all airfield operations to the Adak Reuse Corporation. In

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- 3 The Commission requested to be provided with documentation regarding whether or not The Aleut Corporation would insert in any agreement involving TAC, the Adak Reuse Corporation and the prospective city, language providing that, if the proposed City of Adak became subject to dissolution, The Aleut Corporation would render the State of Alaska a third party beneficiary of that agreement and promise to indemnify or hold the State harmless to certain extent.

addition, the Navy will remove their TACAN by 26 Sep 00 and remove all approach plate information, for which they are responsible, from the Flight Information Publication.

The TACAN is required to support OPLAN, exercise, and aircraft movement commitments in the Pacific region. For example, fighter aircraft use Adak as one of two divert bases on the northern route between CONUS and western Pacific locations. Given the poor weather conditions prevailing in the Adak region, the Adak TACAN provides a critical IFR landing alternative for aircraft unable to refuel."

2. **Arthur Andersen Study.** In a July 21, 2000 letter to DCED, Northwest Region Field Activity Navy land management director Robert Uhrich advised "Navy terminated that effort because available information was insufficient to enable credible and supportable conclusions."

3. **Final Land Transfer Agreement.** The Petitioners' August 29 submission stated "the exhibits are in the process of being bound and finalized and are not completely available for submission, however available exhibits are attached." The August 29 submission contains a draft version of a land transfer agreement entitled "Navy draft 10 August 2000." That draft refers to Exhibits A through L. Only Exhibits 'A', 'C', and 'D' were included in the August 29 submission.

According to a Navy newsletter regarding Adak Reuse, the Board of Directors of The Aleut Corporation met Thursday, August 10, 2000 and approved a draft land exchange agreement between the United States Navy, the Department of Interior and TAC. TAC reportedly signed the draft agreement on September 13, 2000 and representatives of the U.S.F.W.S. and the Navy have also reportedly signed the draft agreement. Finalization and execution of the land exchange will require formal execution of the agreement by the parties and ratification by the United States Congress. The formal land transfer is expected to occur within the next two years. The current draft of the Land Transfer Agreement provides for the transfer of just over 47,000 acres to TAC in exchange for an equal amount of TAC land holdings. A map designating the land proposed for transfer is attached to this report as Appendix D. The agreement requires continuing Navy responsibility for any remaining environmental issues resulting from Department of Defense activities and contains provisions that specifically deal with any future discovery of previously unknown Department of Defense contamination of Adak.⁴



4 Excerpted from Adak Update at http://www.adakupdate.com/NEWSLETTERS_Aug.htm

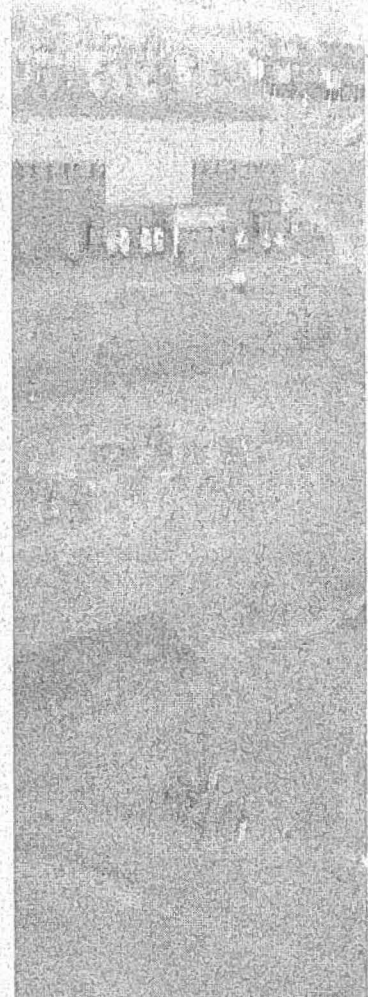
The revised Appendix D of the draft land transfer agreement states that The Aleut Corporation will convey the following improvements to the prospective City for public purposes.

- Fire Station on Crash Station Road
- Airport Terminal
- Seawall
- Police Station on the corner of Main and Public Works Road
- GE Building on the corner of Main and Public Works Road
- School off of Mechanic Road
- Unnamed building north of Seawall Road
- Sewer Treatment Plant
- Palisades Cemetery – 5 acres
- Adak National Park – 5 acres
- New Landfill – 5 acres
- Utilities (water, sewer, storm, etc ...)

A map showing the location of improvements identified for transfer to the city is attached as Appendix E of this report.

4. **Permit transition study.** Utility transfer permits have not yet been secured. The Petitioners submitted a document stating that applications for water, wastewater and electric utility certificates of convenience were submitted to the Regulatory Commission of Alaska (RCA) on August 24, 2000. According to the Petitioners, the application for a telephone certificate of convenience is still under development. According to RCA staff, that agency has requested additional information to supplement the applications. The RCA deadline for receipt of additional information is October 6, 2000.⁵
5. **Contract between The Aleut Corporation and the Adak Reuse Corporation.** The cover letter to the Petitioners' August 29, 2000 supplementary submission states, *"No stand-alone contract exists outside of Exhibit D of the Land Transfer Agreement. The existence of the corporation's Articles, Bylaws and federal/state mandate for reuse planning and implementation place the mission of the ARC as reuse coordination and implementation. No other agreement is felt to be needed."*

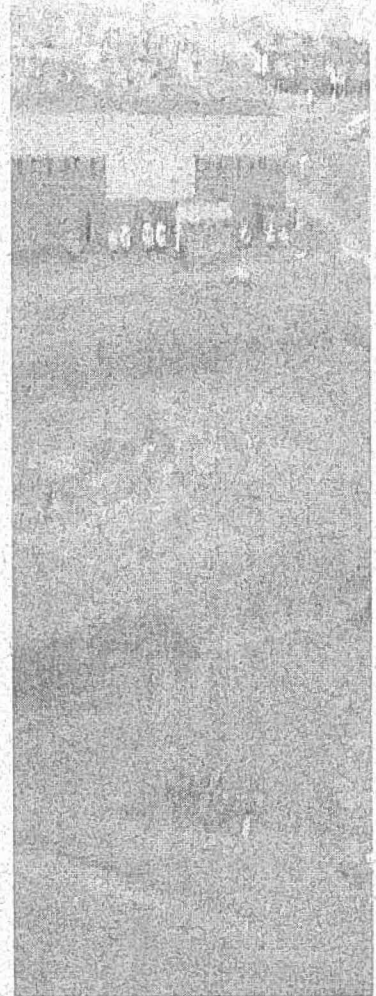
⁵ Personal communication, Joyce McGowan, Supervisor, Records and Filing, RCA. The electric utility application was filed as RCA application U00-128, the water utility application is U00-129, and the wastewater utility application is U00-130.





- 6. Community health-care plan.** A “proposed medical plan” was provided as Exhibit E of the Petitioners’ August 29, 2000 supplementary submission. It suggests that an Aleut Corporation subsidiary is negotiating with a physician to set up a clinic and train local staff. It suggests a conceptual work in progress. The cover letter from Petitioners’ Representative Agafon Krukoff, Jr., states, *“Primary funding is expected to be from the U.S. Department of Commerce grants. Recent conversations with federal health care personnel confirm that Adak is in the federal system.”*
- 7. Public safety plan addressing police, fire, and rescue.** The draft budget for FY 2001 calls for expenditure of \$356,000 for public safety, including \$50,000 to pay a Village Public Safety Officer. The cover memo states that public safety services would be *“modeled after those provided by the City of St. Paul.”*
- 8. Proposed contract between the Aleut Reuse Corporation and the proposed city that sets out what powers, duties, services, and facilities the city will pick up during the first three years.** The revised Appendix D of the draft land transfer agreement identifies specific facilities that are to be conveyed by TAC to the proposed city. These are listed under #3.
- 9. Utility transition plans (Adak Infrastructure Planning Study).** The Petitioners submitted a draft *Utilities and Public Works Facilities Transition Plan*, dated June 29, 2000. The document addresses transition of drinking water, wastewater, electrical and solid waste.
- 10. Revised city budget (January 1, 2000 forward).** The revised draft city budget anticipates projected FY 2001 revenues of \$8,527,900 and expenditures of \$7,000,000. For FY 2002, the Petitioners anticipate city revenues of \$3,110,900 and expenditures of \$3,090,720. They anticipate \$220,000 in general sales tax (including fish sales) during the first year, increasing to \$250,000 in the third year of operation. This anticipated sales tax revenues are about 60% higher than the estimate in the original petition. Substantial additional staff expenses are suggested by the revised budget as compared to the original petition. The original petition anticipated first year expenditures of \$292,637. The revised petition contemplates first year expenditures of \$8,527,900.
- 11. Landfill siting study.** The cover letter to the supplementary information provided by the Petitioners’ Representative on August 29 states, *“The Landfill Siting Analysis portion of the ASCG engineering contract has not been completed as of this date. However, the US Navy has recently completed construction of a new community landfill for Adak in the area proposed for consideration by the community. The ARC plans to redirect its alternatives assessment funds in the US Département of Commerce grant to develop a detailed operating plan for the new waste system.”*

- 12. Finding of suitability to allow transfer (FOST) from the federal government to the Aleut Corporation.** The Petitioners' supplementary submission of August 29 states that *"This document is not expected to be written or released by the Environmental Protection Agency until December 2001 at the earliest. During our April testimony to the LBC we said that the Navy anticipated completing the OU-B, unexploded ordinance work this summer, 2000. This could have produced a FOST as early as December of this year. In fact, the Navy only has accomplished 450 of the programmed 938 linear miles of survey in 2000. They will continue to work through November and will finish the survey work in the 2001 field season. EPA cannot issue a Finding of Suitability to Transfer (FOST) until later in 2001 – after writing and approving the reports generated from the field work."*
- 13. Transition plan, covering two years, that addresses, at a minimum, roads, airport, harbor, health, utilities (landfill, water, sewer, electricity, telecommunications), public safety (fire, rescue, ems) and miscellaneous departments (budget, administration, library, and parks).** See #9.
- 14. Updated anticipated City of Adak budget.** The August 29 supplementary information provided by the Petitioners responded to this request with Exhibit G, entitled *Plan for \$3 million EDA Grant and City of Adak 3 Year Plan*. The revised draft city budget anticipates projected FY 2001 revenues of \$8,527,900 and expenditures of \$7,000,000. For FY 2002, the Petitioners anticipate city revenues of \$3,110,900 and expenditures of \$3,090,720. They anticipate \$220,000 in general sales tax (including fish sales) during the first year, increasing to \$250,000 in the third year of operation. The revised estimates of anticipated sales tax revenues are about 60% higher than the estimate in the original petition. Substantial additional staff expenses are suggested by the revised budget as compared to the original petition. The original petition anticipated first year expenditures of \$292,637. The revised petition contemplates first year expenditures of \$8,527,900.
- 15. Statement from Aleut Corporation reflecting the commitments it is prepared to make to Adak.** The Petitioners' August 29 supplementary submission states, *"Please see Exhibit D which documents the commitments of public buildings and facilities that TAC is making to the Adak Reuse Corporation (ARC), and which ARC is making to the new community."*



16. Executed agreements demonstrating whether the Aleut Corporation is willing to offer indemnity to the State of Alaska in the event the new city does not work out.⁶ A letter dated May 8, 2000, from Vincent Tutiakoff, Sr., Chairman and President of The Aleut Corporation, stated, in part, "You have informed me that the Local Boundary Commission has inquired whether, in the event that the City of Adak should fail, the Aleut Corporation would be willing to assume ownership of, and be responsible for, the streets and other public facilities that are to be conveyed to the City.

The answer to this question is 'no.'

The Aleut Corporation (TAC) is a private, for profit corporation. It has always been willing to put public facilities on Adak into a local government. This is evidenced by our numerous meetings with State of Alaska officials to craft and approve a public facilities transfer exhibit to our land transfer agreement with the federal government.

TAC believes that the State should be willing to shoulder the responsibilities that go hand in hand with the creation of a political subdivision. One of those responsibilities is to assume responsibility for the public facilities if the city government should fail. Certainly, the State has assumed this responsibility with regard to every other city that has been incorporated in Alaska, and TAC can see no reason for treating Adak differently than every other community in Alaska.

TAC is not willing, in any event or circumstance, to obligate itself for an unknown liability. The State's suggestion would saddle our shareholders with a long-term, unknown liability. Conceivably, the City could pollute the land or destroy other people's property that TAC would be asked to remedy. This would not be possible for any company to do. After reading the memorandum from the State's AG office, it seems that they concur that it is inappropriate to ask TAC to take on any unknown liability."

17. Final negotiated land transfer agreement with the federal government (including landfill agreement). As noted, the Petitioners indicated that the land transfer agreement was not finalized by the August 29, 2000 deadline.

18. Draft transfer agreement to the Adak Reuse Corporation. The cover letter to the Petitioners' August 29, 2000 submission states, "Please note Exhibit D of the Land Transfer Agreement contains

6 The Commission requested to be provided with provisions that The Aleut Corporation was willing to insert in any agreement involving TAC, the Adak Reuse Corporation and the City in which the Aleut Corporation makes the State of Alaska a third party beneficiary of that agreement and promises to indemnify or hold the State of Alaska harmless to certain extent.



the conditions and expected process of transferring public facilities from the Adak Reuse Corporation to the City of Adak.” Exhibit D is also referred to as Appendix D. It appears that this document has continued to be subject to revision since the August 29 submission was made by the Petitioners.

- 19. Agreement between Adak Reuse Corporation and the prospective city regarding public services.** The cover letter submitted by the Petitioners with the August 29 supplementary information states, *“There is no stand-alone agreement between the ARC and the City to provide public services. The ARC is preparing to provide utilities, airport, public safety and public works services on October 1, 2000, and carry those services while utility companies are formed and a city is installed. ARC will turn over public services to the City of Adak using the process noted in Exhibit D of the Land Transfer Agreement.*
- 20. Updated population data projected to 1/1/01.** The Petitioners referenced a June 29, 2000 *draft Utilities and Public Works Facilities Transition Plan* prepared by ASCG, Incorporated. That document estimates that there will be an Adak population of 190 as of October 1, 2000. The estimate is based upon an assumption that there will be 126 employed residents at Adak and that there will be one additional dependent for every two persons employed in the community.
- 21. Projections should also consider boundaries proposed by DCED.** A letter co-signed by Petitioners’ Representative Agafon Krukoff and Vincent Tutiakoff, Sr. as President of the Adak Reuse Corporation, was included as Exhibit H of the supplementary information. In that letter, he offered the following comments in response to this request.
- “The Adak Reuse Corporation and the citizens of Adak remain very concerned about statements from the Commission that the revenue associated with fish transfer operations in the south half of Adak island, or the expected requirement of the city to provide search and rescue and “Blue Card” services to the south part of Adak are not important enough to justify a larger than normal second Class city of Adak.*
- As the stakeholders we would like to use the strongest language possible to express our certainty that a city covering the whole of Adak is in the short and long term best interests of the community and the State of Alaska. We are extremely concerned that you might move to adopt a city boundary that cannot provide the funding needed for expected city growth or that understands the reality of our providing services to the*



south half of Adak. These are real concerns and we urge you to allow the community to not be fragmented with the federal government controlling over half of Adak without local involvement in their planning and use of the land.

We are already seeing fishing vessel product transfers in southern Adak waters. Also we hear people planning for the day when floating residences and lodges can be placed adjacent to federal lands. These need to fall under consistent city planning and zoning. We also are very concerned about the structural inability of the USF&WS to prohibit access to Aleut burial and ancient midden sites due to provisions of ANILCA. The city would have the ability to overlay federal inabilities with local ordinances designed to strengthen the protection of invaluable, 6000 year old, Aleut cultural sites and resources.

The Adak Reuse Corporation and the Adak Community Council urges you to allow our one contiguous island to come under one government partnership between the City of Adak, the State of Alaska and the U.S.F&WS."



Part 3

Application of Standards

Since the standards for incorporation of a second class city were extensively examined in the DCED preliminary and final reports, the following is an abbreviated review of the standards for city incorporation set forth in AS 29.05.011. This discussion is intended to briefly update the analysis of the city incorporation standards contained in the previous DCED reports to the Local Boundary Commission regarding the Adak proposal.

(1) Do the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale?

DCED's final report recommended that, if the Local Boundary Commission approves the petition for incorporation, it should amend the area proposed for incorporation to encompass an estimated 71.72 square miles instead of the 676 square miles proposed by the incorporation petition. DCED does not consider the supplemental information provided by the Petitioners on August 29, 2000 to contain facts or analysis that would justify altering the previous recommendation that, if the incorporation petition is approved, the proposed boundaries of the city should be amended. As noted in the DCED preliminary and final reports, DCED does not consider the record to demonstrate that application of the other incorporation standards justifies inclusion of 'large geographic regions' or 'large uninhabited areas' within the boundaries of the proposed City of Adak. DCED considers amending the petition to significantly reduce the 676 square miles sought by the Petitioners to a size more commensurate with existing and potential development to be appropriate.

On September 18, 2000, staff of the Respondent U.S.F.W.S. advised DCED staff that the U.S.F.W.S. continued to maintain the position stated in its July 20, 1999 responsive brief. That brief stated, in part;

"The U.S. Fish and Wildlife Service supports establishment of a second class city on Adak Island but objects to the Petitioner's inclusion of the entire island within the proposed boundaries of the City."



The July 20, 1999 U.S.F.W.S. responsive brief 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.”*

With respect to fishing vessel product transfers and floating residences and lodges in southern Adak waters, the U.S.F.W.S responsive brief stated:

“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.

U.S.F.W.S. staff expressed doubt about the assertion in the Petitioners' August 29, 2000 submission that a City of Adak would *“have the ability to overlay federal inabilities with local ordinances designed to strengthen the protection of invaluable, 6000 year old, Aleut cultural sites and resources.”*

U.S.F.W.S. staff confirmed that cemetery and historic sites were selected by The Aleut Corporation in the south portion of Adak Island. Those sites were withdrawn under Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 6 1601, et seq.). Some or all of the sites will be conveyed. Although, as



private property, those sites are not subject to trespass enforcement by the U.S.F.W.S., enforcement of municipal trespassing prohibitions in the remote southern portion of the Island is considered by U.S.F.W.S. to be extremely difficult for a second class City of Adak to effectively implement. Further, under the federal Archeological Resource Protection Act, the U.S.F.W.S. has the authority to protect sites under federal jurisdiction from vandalism and trespassing and the U.S.F.W.S actively prosecutes offenders.⁷

Supplemental DCED Position. DCED affirms its April 6, 2000 recommendation that if the Commission approves the petition, it should amend the boundaries to encompass an area of approximately 71.72 square miles as shown on the map on the adjacent page.

(2) Does the economy of the community include 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.

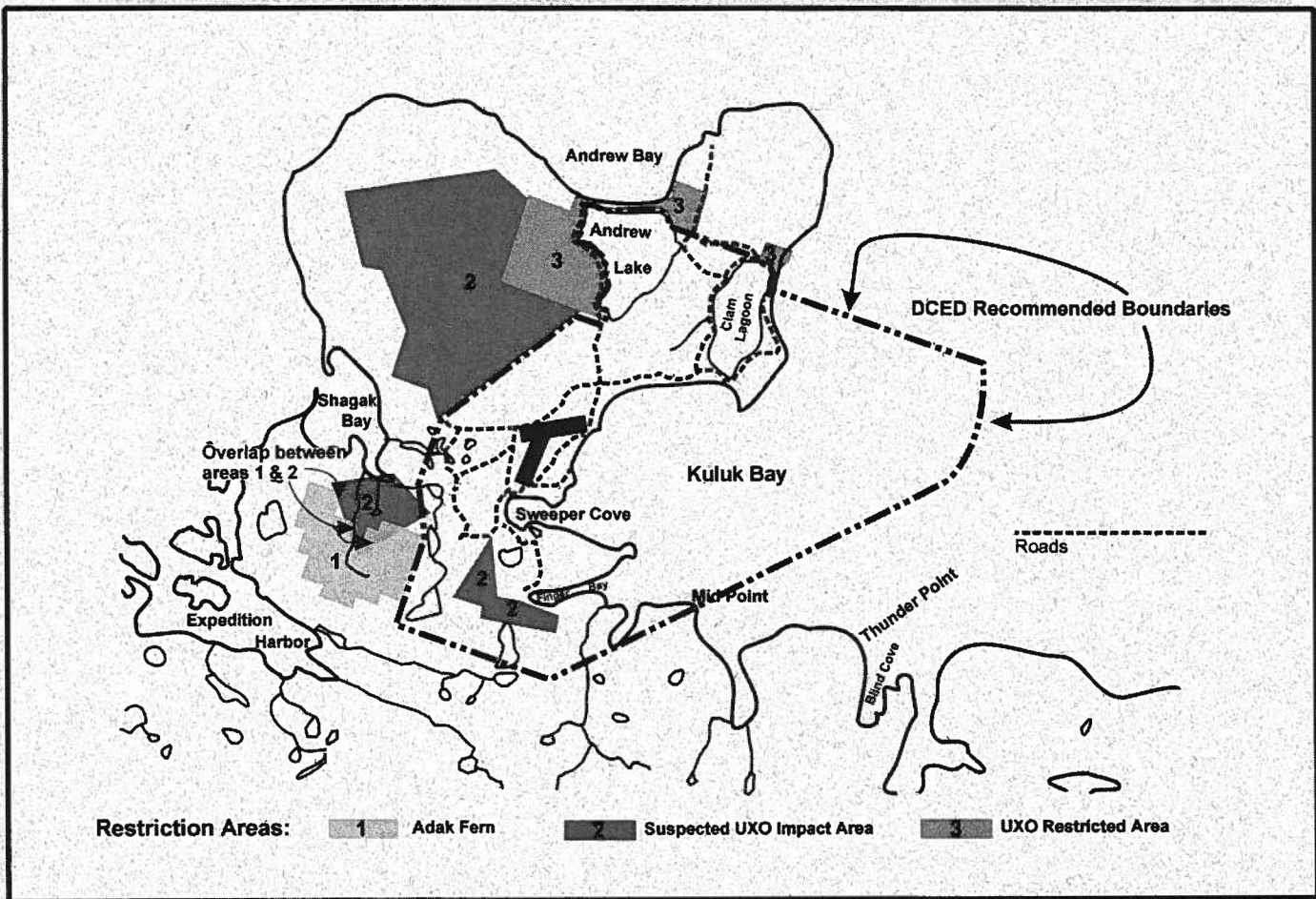
DCED considers the economic prospects for Adak to have been enhanced since the draft and final DCED reports were issued.

Federal Funding – The Adak Reuse Corporation anticipates receipt of \$3,000,000 from the U.S. Economic Development Administration and \$7,000,000 from the Department of Defense Office of Economic Adjustment. A September 13, 2000 letter from Bernhard Richert of the U.S. Department of Commerce describing federal funding sources expected to defray costs of the transition of Adak facilities to civilian community uses is included as an appendix to this supplementary report.

Adak Fisheries Development – In July, 2000, it was announced that the Seattle-based seafood company Norquest had acquired “certain assets” of Adak Seafoods and would operate the processing plant under the name NorQuest-Adak, Inc. The plant processes cod, halibut, crab and other seafood. The commitment of additional investors to the nascent local commercial Adak

⁷ Personal communication, Danielle Jerry, Division of Realty, U.S.F.W.S. September 18, 2000





fishery appears to reflect industry optimism about the financial viability of conducting business at Adak. This view appears to be shared by the Alaska Board of Fisheries. At its March, 2000 meeting, that board established an Adak Small Boat Exclusive Zone.⁸ Pacific cod and rockfish may not be commercially harvested within zone by vessels longer than 60 feet. Pacific cod and rockfish may be taken only with pots, longline, mechanical jig, and hand troll gear in the area from May 1 through September 15.

⁸ 5 AAC 28.690(a).

The record of the board's meeting reflects a "belief that the fishery will develop."⁹

Effective September 1, 2000, the National Marine Fisheries Service (NMFS) closed directed fishing for Pacific cod for catcher vessels 60 feet or longer in overall length using hook and line gear and vessels 60 feet or longer using pot gear in the Aleutian Islands management area. It is as yet unclear how or if the Adak fishery will be affected by the NMFS restrictions.¹⁰ An article from the September, 2000 issue of *Alaska Fishermen's Journal* regarding the issue is included in the appendix to this document. It is also unclear at this time how or if the Adak cod fishery will be impacted by an injunction issued by Seattle federal judge Thomas Zilly in August, 2000, prohibiting all trawl fishing in areas designated as critical habitat for Steller sea lions until the NMFS produces a required biological opinion. DCED recognizes that brown king crab, halibut and black cod are also processed by NorQuest-Adak.¹¹

Supplemental DCED Position. DCED's April 6, 2000 final report regarding the Adak incorporation petition noted that in spite of concerns stemming from uncertainty about the future operation of basic Adak community infrastructure, such concerns were not sufficient to recommend denial of the petition. DCED considers developments that have occurred since the Commission's April, 2000 meeting at Adak to have enhanced the financial resources available to Adak. For example, favorable developments regarding federal funding have transpired and NorQuest's investment in Adak fish processing is underway. DCED recognizes that successful establishment of a long-term civilian community at Adak it is by no means certain. Nevertheless the prospects for such a successful transition to a functioning civilian community appear more favorable currently than they appeared when the Local Boundary Commission began its deliberations on the incorporation, DCED considers the standard to be at least minimally satisfied.

9 A summary of the Board of Fisheries action can be found at <http://www.state.ak.us/adfg/boards/fishinfo/actions/actions.htm>

10 Gordon Kruse, Alaska Department of Fish and Game, personal communication September 14, 2000

11 Personal communication, NorQuest Seafoods President Terry Gardiner, September 15, 2000.



(3) Is the population of the community stable enough to support city government?

In response to the Local Boundary Commission's request for updated population figures for Adak, the Petitioner's referenced a June 29, 2000 draft Utilities and Public Works Facilities Transition Plan prepared by ASCG, Incorporated. That document estimates that there will be an Adak population of 190 as of October 1, 2000. The estimate is based upon the assumption that there will be 126 employed residents at Adak and that there will be one additional dependent for every two persons employed in the community.

Civilian families with children began relocating to Adak in September, 1998. The Alaska Department of Education reported that as of October 1, 1999, there were a total of 45 students enrolled in grades K-12 at Adak. As of November 30, 1999, 31 students, including six high school students were reportedly enrolled in school in the community. On August 31, 2000, the Adak head teacher stated that the school would begin the 2000-2001 with about 30 students.¹² When DCED telephoned the school on September 8, 2000 to inquire about the number of students, a school employee stated that there were 22 students enrolled.

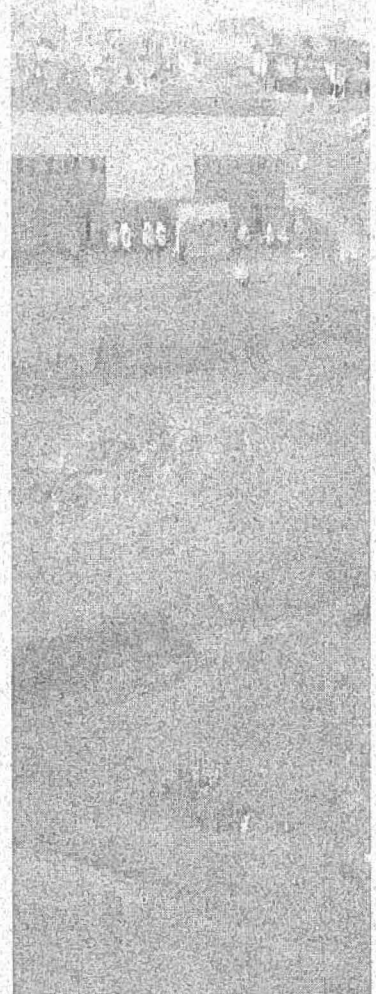
Supplemental DCED Position. As stated in both the DCED preliminary and final reports concerning the Adak incorporation petition, DCED considers the present population of Adak to be large enough to support a second class city government exercising minimal functions. DCED recognizes that the most recent Alaska Department of Labor and Workforce Development estimate is that there were 106 residents of Adak as of July 1, 1999. Although the figure of 106 Adak residents enumerated by the Department of Labor and Workforce Development is significantly less than the 190 estimated by ASCG, there are still 19 active second class cities with less population than Adak. Therefore, DCED considers the standard to be met.

¹² Joe Beckford, personal communication August 31, 2000.

(4) Is there a demonstrated need for city government?

The April 6, 2000 DCED final report concerning the Adak incorporation petition noted that it is implicit that a diminution of the need for city government would occur if Adak does not successfully evolve into a residential community. DCED recognizes that there is an element of risk that such will not occur. Nevertheless, it is possible that the community will survive and that establishment of a municipal government to provide essential local services may be a factor that contributes to the long-term survival of Adak as a residential community.

Supplemental DCED Position. DCED considers the standard to be at least minimally satisfied.



Part 4 - Conclusions and Recommendation

DCED's Final Report, issued April 6, 2000, recommended approval of an amended petition for incorporation of a second class City of Adak.

DCED reaffirms the recommendations contained in the April 6, 2000 final report, with one exception. That is, DCED withdraws its recommendation that *"the Local Boundary Commission condition city incorporation upon execution of an agreement between the State of Alaska and The Aleut Corporation that, at the discretion of the State, any real property transferred to the City of Adak by The Aleut Corporation or its subsidiaries revert to ownership of The Aleut Corporation, subsidiaries of The Aleut Corporation, or an organized borough, if the City of Adak is dissolved as a result of proceedings initiated within a defined period of time to be determined by the Local Boundary Commission, but no less than ten years from the date of incorporation."*

In withdrawing the aforementioned suggested amendment, DCED was principally influenced by three considerations. These were:

- An April 26, 2000 memorandum from Assistant Attorney General Marjorie Vandor, that stated, in part, *"... we are not able to find legal or historical evidence of comparable agreements related to municipal incorporation. Therefore, we cannot conclude that the perceived executory contract with the Aleut Corporation is clearly prohibited under law; however, we also cannot provide you with assurance of its legality as a matter of public policy or under rules of contract."* (A copy of Ms. Vandor's April 26 memorandum is included in the appendix to this report.)¹³
- Page 21 of the most recent draft of the land transfer agreement¹⁴ states *"Any additional remedial action found to be necessary after conveyance of the property as a result of the release or threatened*

¹³ At the Commission's April 29, 2000, decisional session, Commissioner Tesche, a municipal attorney, suggested that he did not consider development of an indemnification agreement to constitute an insurmountable legal challenge.

¹⁴ Exhibit B of the supplementary information provided by the Petitioners' Representative on August 29, 2000 is titled 'Navy draft 10 August 2000 AGREEMENT CONCERNING THE CONVEYANCE OF PROPERTY AT THE ADAK NAVAL COMPLEX ADAK, ALASKA'

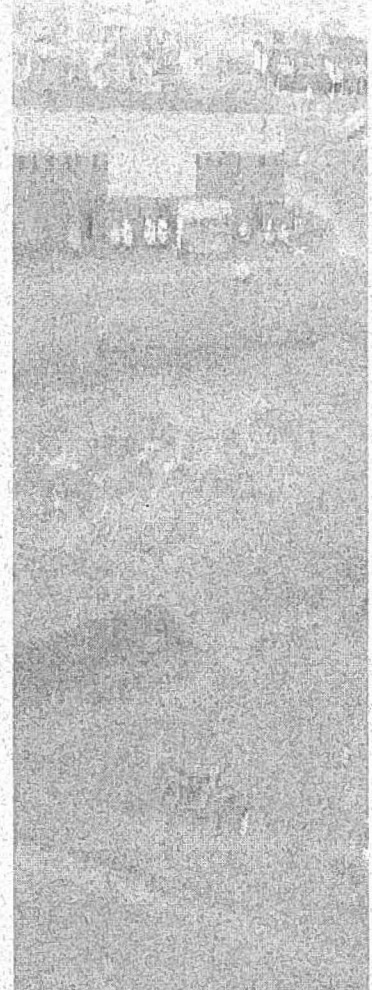


release of any hazardous substance, petroleum or petroleum derivative, or unexploded or abandoned ordnance shall be conducted in accordance with applicable laws by the United States, acting by and through the Department of the Navy.” (at 21-22)

- DCED considers it likely that \$10 million in federal funding to facilitate transition of Adak to a civilian community will become available. Availability of such prospective federal funding has become evident since the Commission’s April 29, 2000 meeting at Adak.

Again, DCED reaffirms the other amendments recommended by DCED in its April 6, 2000, final report. Specifically:

- The Local Boundary Commission should amend the boundaries of the area proposed for city incorporation to encompass an estimated 71.72 square miles instead of the 676 square miles proposed by the petition.
- City incorporation should be conditioned upon voter authorization at the incorporation election of the levy of a 3% sales tax by the City of Adak.
- City incorporation should be conditioned upon voter authorization at the incorporation election of the levy of a 2% fuel transfer tax.
- The petition should be amended to remove the provision that incorporation shall be contingent upon voter approval of an institutional controls ordinance.



Report Appendices

Appendix A – April 26, 2000 memorandum from Marjorie Vandor to Patrick Poland

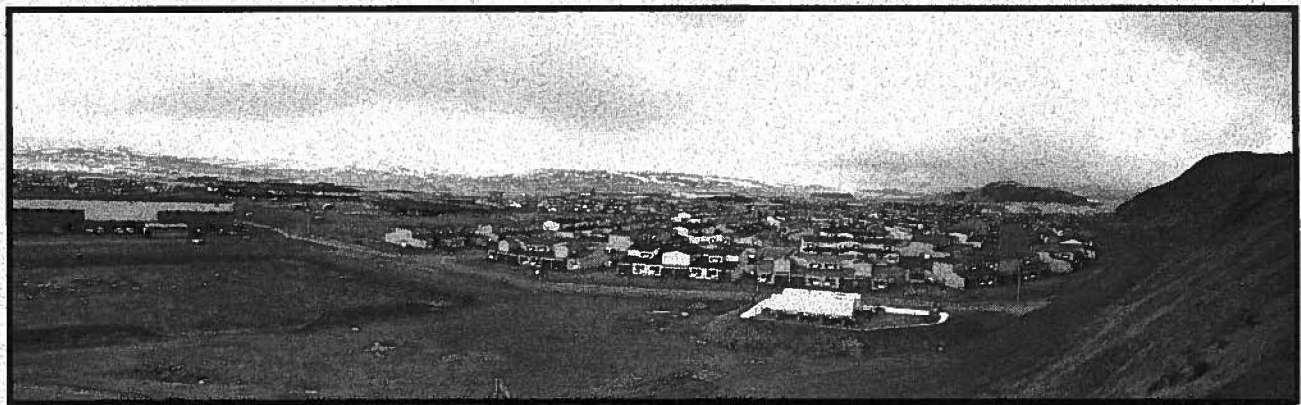
Appendix B – September 13, 2000 letter from Bernhard Richert of the U.S. Department of Commerce

Appendix C – September 2000 article from Alaska Fishermen's Journal

Appendix D – Map showing current Adak land exchange proposal

Appendix E – Map showing improvements designated for transfer to proposed City of Adak

Appendix F – Notice of Meeting on the Petition to Incorporate the City of Adak



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Appendix A

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LAW GOV. AFF/LEGIS

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MEMORANDUM

State of Alaska
Department of Law


TO: Patrick K. Poland, Director
Municipal and Regional Assistance Division
Dept. of Community & Economic Development

DATE: April 26, 2000

FILE NO: 663-00-0144

TEL. NO: 465-3600

SUBJECT: Adak Incorporation petition; prospective
agreement for private entity to assume
assets and liabilities if city dissolves


FROM: Marjorie L. Vandor
Assistant Attorney General
Governmental Affairs Section - Juneau

You have asked us to consider whether it is a legally viable option for the Local Boundary Commission (Commission) to condition approval of the petition for incorporation of the City of Adak on the execution of a prospective agreement between the State of Alaska (state) and a private entity, the Aleut Corporation, that essentially will provide for the Aleut Corporation succeeding to the assets and liabilities of the City of Adak in lieu of the state under AS 29.45.520 in the event the city dissolves under AS 29.06.450(b) and no other municipal entity is in the line of succession, or if in succession, refuses to act as successor. In brief, we cannot conclude through our research that such an agreement between the state and the Aleut Corporation is clearly prohibited under Alaska law. Conversely, we cannot assure you of its legal enforceability under general rules of contract law or public policy. Our reasons are discussed below.

Under AS 29.06.520, once dissolution of a city occurs, a municipality (presumably the borough within which the city is located) would normally succeed to all rights, powers, duties, assets, and liabilities of the dissolved city. Otherwise, the state succeeds to those rights, powers, duties, assets, and liabilities. Assuming Adak incorporates as a second class city, it will not be located within a borough. Further, a borough forming in that area of the state in the near future is not anticipated. Therefore, it is highly likely that the state, by operation of law, would be the successor to the city's assets and liabilities in the event Adak dissolves. Under AS 29.06.520, if the state succeeds, it may enter into a contract for the performance of duties or powers in the area of the dissolved municipality.

In the past, the Commission, during the process of dissolving several second class cities in the unorganized borough, conditioned dissolution on the successful execution of an agreement transferring the assets of the dissolving cities to be transferred to private entities

Patrick K. Poland
Our file no. 663-00-0144

April 26, 2000
Page 2

(mainly tribal governments) so that the assets would be operated and maintained for public use. The differences between the Commission's conditioning of dissolution on the transfer of assets and liabilities under the former dissolutions and the one anticipated with Adak, are: (1) the state had the legal capacity under AS 29.06.520 to deal with the dissolution and enter into a contract regarding the assets and liabilities of the former cities; and (2) the assets and liabilities of the dissolved cities were known commodities (i.e., particular lands, buildings, generator plants, land fills, etc.) at the time the agreements between the state and the private entities were entered into by the parties. With Adak, the city has not yet been incorporated and its dissolution process obviously not begun; thus it is arguable that the state does not have the legal capacity to enter into an enforceable contract at this juncture under AS 29.06.520. A contract between the state and the Aleut Corporation requiring the latter to assume all assets and liabilities (environmental or otherwise) of the dissolved City of Adak would not contain known items.¹

The essential elements of a contract are:

- (1) competent parties (i.e. legal capacity);
- (2) subject matter;
- (3) legal consideration;
- (4) mutuality of agreement; and
- (5) mutuality of obligation.

Black's Law Dictionary, (5th ed. 1979). It may not be possible to enforce a contract in which essential elements of the contract are arguably missing: namely, the subject matter (the actual assets and liabilities for which the Aleut Corporation would be assuming) and the legal capacity of a party (the state entering into a contract before dissolution is sought under AS 29.06.450 - 29.06.530).

If the City of Adak incorporates and functions as a municipal government for several years, it is simply impossible to determine at this juncture what kinds of debts, assets or other liabilities it will acquire during that time. Conversely, it is not possible to determine whether the city will keep assets transferred to it at time of incorporation or whether it will sell or transfer those assets prior to dissolution. Again, these unknown elements of an executory contract may result in its enforceability.

¹ We appreciate that the incorporation of Adak is unique due to its military base history and its remote location. If a city is incorporated, it will evidently inherit existing assets that are physically present at the former base and for which major liabilities could result over the years due to operation costs as well as environmental liabilities. However, rules of contract law are not altered due to these unique facts.

Patrick K. Poland
Our file no. 663-00-0144

April 26, 2000
Page 3

We are aware of the Commission's broad powers to amend petitions for incorporation under AS 29.05.100(a). However, in the past, the use of those powers to amend petitions or to condition incorporation (i.e., on passage of a sales tax), was for the purpose of enhancing the viability of the municipal government in order to approve the petition for incorporation, not to enhance its dissolution.

In conclusion, we are not able to find legal or historical evidence of comparable agreements related to municipal incorporation. Therefore, we cannot conclude that the perceived executory contract with the Aleut Corporation is clearly prohibited under law; however, we also cannot provide you with assurance of its legality as a matter of public policy or under rules of contract.

We hope this addresses your concerns.

MLV:jn

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Appendix B

UNITED STATES DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION
"JOBS FOR YOUR COMMUNITY"

550 WEST SEVENTH AVENUE, SUITE 1780
ANCHORAGE, ALASKA 99501

Telephone: (907)271-2272
Facsimile: (907)271-2274
E-Mail: brichert@doc.gov
& berney@alaska.net

September 13, 2000

Mr. Dan Bockhorst
Local Boundary Commission
Alaska Department of Community and Economic Development
550 West Seventh Avenue, Suite 1790
Anchorage, AK 99501

Dear Mr. Bockhorst:

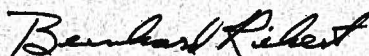
This letter is to confirm and to expand somewhat on a conversation which we had yesterday concerning the Adak Reuse Corporation (Authority) (ARC) and anticipated funds which that entity is to receive during a transition period as the U. S. Navy prepares to finalize its pullout from the former Adak Naval Air Station.

Pursuant to conversations with the Department of Defense's Office of Economic Adjustment (OEA), headquarters office of the Economic Development Administration (EDA) and the Department of the Navy, the initial three million dollars (\$3,000,000) is in the process of being transferred to EDA for award to the Adak Reuse Corporation. The additional seven million dollars (\$7,000,000) is nearing availability for transfer through the OEA to EDA. The \$7 million is in the Defense Appropriations Conference Report and is awaiting the President's signature.

The initial \$3 million is to provide operation of utilities and other "city-like" functions for a period of approximately three months through a transition Technical Assistance Economic Adjustment Grant from EDA. These initial funds must be awarded by September 30, 2000. Certain agreements among the ARC, the Navy and the OEA must be in place prior to transfer of the \$7 million from EDA to the ARC sometime after the beginning of the new Federal fiscal year, October 1, 2000. The \$7 million is expected to be a "Construction" grant from EDA, and it is anticipated that such construction will begin to lay the groundwork for a "city-sized" operation in such areas as meaningful reductions in electrical generation to reflect actual needs, replacement of sewer and water lines, development of a new and approved dump site and other necessary infrastructure. The Construction grant will also likely include allowance for ARC administration.

I hope that this rather limited information may prove helpful to you and the Local Boundary Commission in your deliberations.

Sincerely,



Bernhard Richert
Economic Development Representative

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Local Boundary Commission

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Appendix C

Alaska Fisherman's Journal, September 2000 Zilly Ruling Clouds Adak Future

But NorQuest investors remain optimistic

Sometimes timing is everything. On May 19 NorQuest and Adak Seafoods announced the formation of NorQuest-Adak, Inc. through the purchase of the only multi-species processing facility between Dutch Harbor and Russia. NorQuest was investing money to speed up the expansion of one-year-old Adak Seafoods and gaining a new plant smack in the middle of some of the richest fishing grounds.

One day later a federal court judge closed a large portion of the Bering Sea to towal fishing for cod, the species that accounted for over 70 percent of Adak Seafoods' first-year production.

Now the buyer and seller say they face an economic life-and-death struggle in which fishing and cod are again key elements.

"The plant has been built on cod. It does bear the heart out of it if there's no cod fishery," said Terry Gardner, president of NorQuest Seafoods. "Our effort is to build a year-round shorebased operation that does many species, but we can't get from Point A to Point B without the species that has taken us this far.

"Without cod it isn't going to be financially feasible," Gardner declared.

Fortunately Judge Zilly's order applies only to tankers, and recently created state-waters fisheries for Pacific cod and other species may help NorQuest-Adak dodge the bullet.

Adak Seafoods, Norwegian founder, Kjell Solberg and Igen Hovsen signed a contract with the Aleut Development Corporation making them the only seafood processor on the island for the next ten years. The Aleut Corporation is scheduled to takeover ownership of Adak Island from the U.S. Navy this fall, complete with multi-millionaire dollars worth of harbor, berkeage and other industrial facilities and scores of modern housing units left from the days when 6,000 people lived and worked at the Cold War outpost.

Adak had plans to open packout operations and cut 400 sea miles off the delivery route from western U.S. Bering Sea waters to Dutch Harbor when the plan was spurned by the American Fisheries Act, which granted processing rights only to existing facilities.

"The American Fisheries Act struck us in the middle of our belly. We weren't aware of that," said Solberg, who will continue with

Hovsen as co-managers of NorQuest-Adak. Even without packout, the rich grounds, protected harbor and ready buyer were attracting harvesters. Adak Seafoods had plans to double its cold storage capacity and install a new crab line for the four species of crab still being harvested in the area.

"What we could do in five or six years [by ourselves] with the right partner we could do in one year," Solberg said. "NorQuest came in to create growth quicker than we could."

Gardner said the prospects remain high and that expansion plans continue.

"It's been a real exciting response [from harvesters]. Everyday we get phone calls to the plant or to the office saying, are you guys doing the Adak thing? Do you have ice out there?" Gardner said. "There's a lot of interest from people."

The Department of Fish and Game has also noticed growing small boat curiosity about the Adak region, but the agency wasn't sure how much, or how soon it would impact the island processor.

"There are quite a few more small boats in the Adak area this year that are using long-line, pot and jig gear. They might be able to make up what has been taken away by the trawl closures," said ADFG biologist Skip Gibb in Dutch Harbor.

Figures from 1999 suggest that non-trawlers could keep the same line running. In the area west of 171 degrees, 6.7 million pounds of Pacific cod were delivered to three processors last year, and only about 34 percent of the total were trawl-caught. Pot boats landed nearly 3.6 million pounds. Longlines and jig boats accounted for another half-million pounds of cod.

With under-utilized quotas of Alaska mackerel, and rock fish, in addition to halibut, haddock and crab, NorQuest-Adak still has plenty of potential. And Gardner has no shortage of optimism.

"Besides the Zilly decision we don't have a problem. That's the first big one," Gardner said. "The next is just the hard work of day-to-day grind of expanding the processing capacity and making fishermen aware that the service is there now."

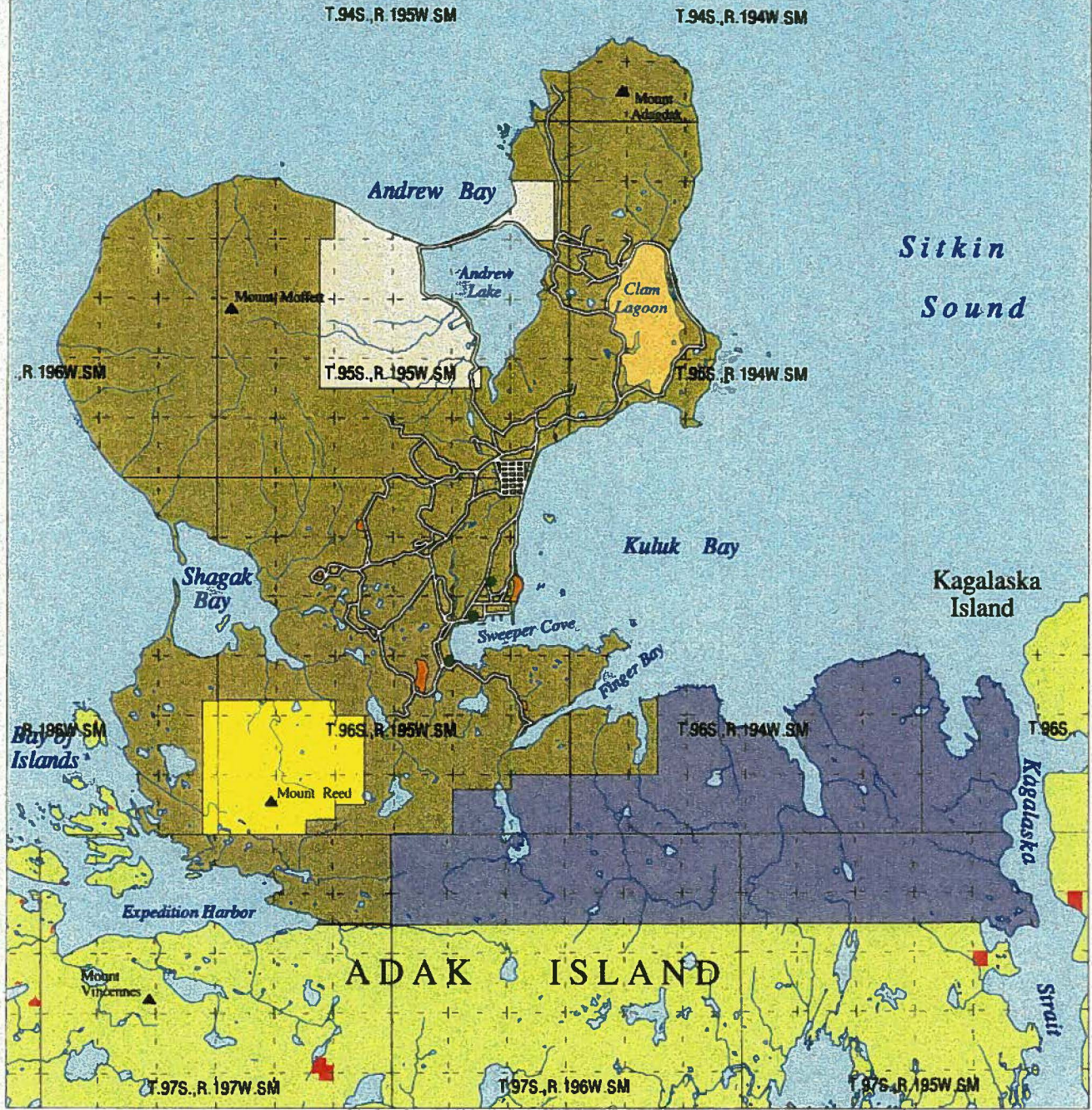
—Bob Thax

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Appendix D

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BERING SEA

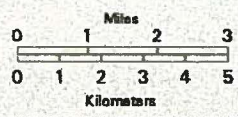


- Adak Exchange Lands
- Remainder of PLO-1949 retained by USFWS
- Mount Reed Exclusion Area retained by USFWS
- Marine Mammal -No Hunting Area
- The Aleut Corporation 14(h)(1) Selections
- USFWS Administrative Facilities -retained
- SWMU Exclusion Zone -retained by Navy
- SWMU Landfills
- Refuge Land

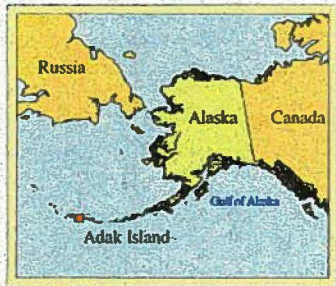


Adak Exchange Naval Complex Proposed Exchange with The Aleut Corporation

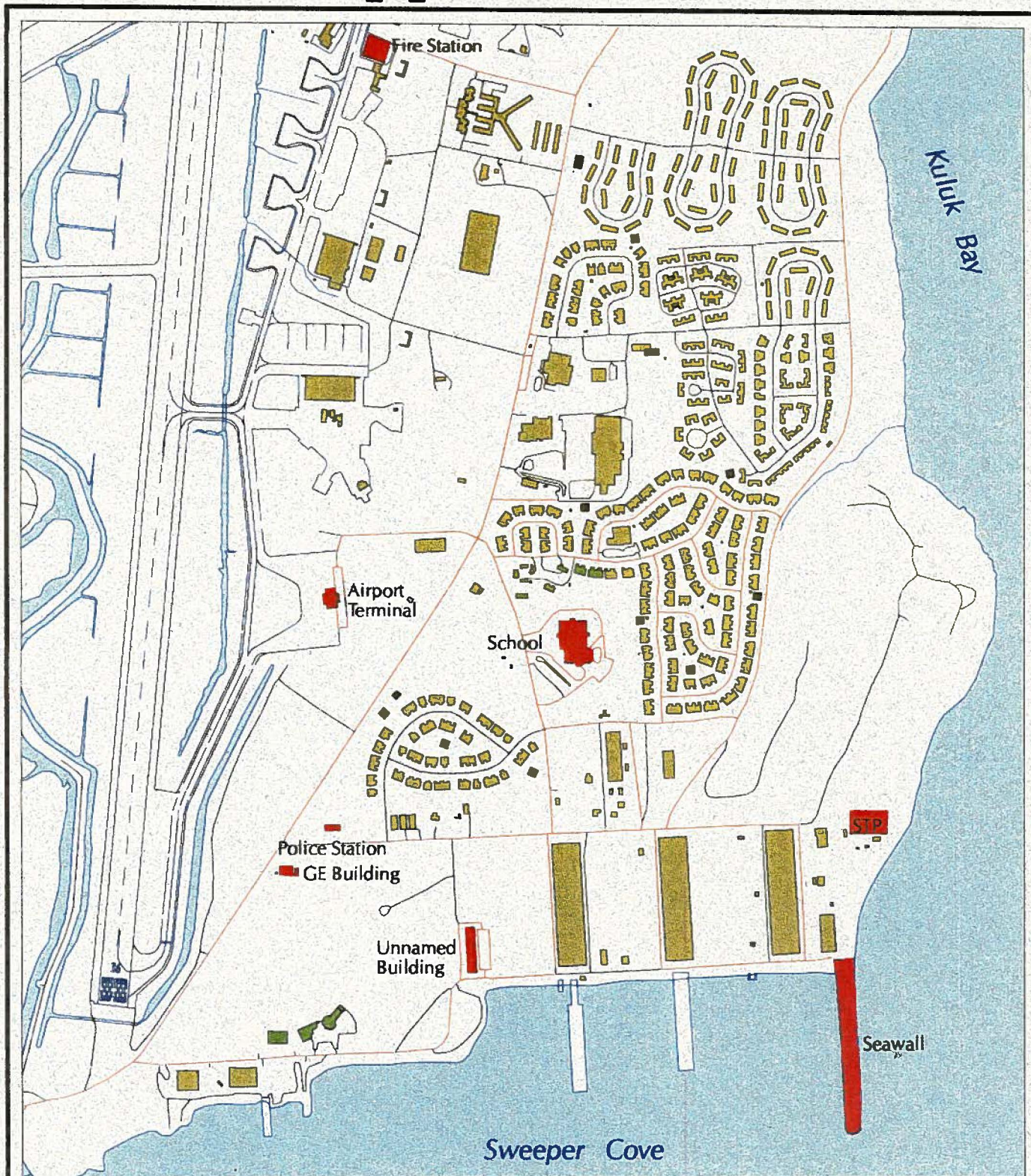
U.S. Fish and Wildlife Service
Alaska Maritime National Wildlife Refuge



Notes:
 - Map Projected in UTM Zone 1.
 - Map date 08/18/2000.
 - Information collected by USFWS.



Appendix E



- Improvements
- Buildings
- Structures
- USFWS Administrative Facilities
- Transportation
- Public Roads



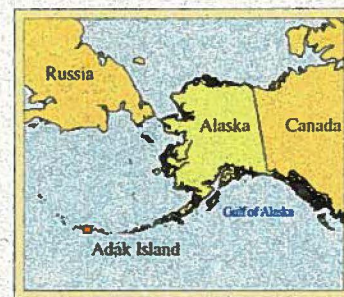
Adak Naval Complex Proposed Exchange Improvement Map

U.S. Fish and Wildlife Service
Alaska Maritime National Wildlife Refuge

Notes:
- Information provided by the Navy.
- Map Projected in Unknown.
- Map date 8/16/2000.



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Appendix F PUBLIC NOTICE

State of Alaska LOCAL BOUNDARY COMMISSION

Notice of Meeting on the Petition to Incorporate the City of Adak

The Alaska Local Boundary Commission will meet by teleconference and reconvene the Commission's recessed April 29, 2000 decisional session concerning the petition to incorporate a second class City of Adak. The meeting will originate at the time and location noted below.

**9:00 a.m., Thursday, October 19, 2000
550 West 7th Avenue, Suite 1760
Anchorage, Alaska**

For additional information call (907) 269-4557 or write to **Local Boundary Commission staff, Department of Community and Economic Development, 550 West 7th Avenue, Suite 1770; Anchorage, AK 99501-3510**. Upon receipt of timely requests, DCED will endeavor to establish one public teleconference site in each community from which requests for teleconference participation in the meeting are submitted. The Commission will not take public testimony at the October 19, 2000 decisional session, although members of the Commission may ask questions of parties attending the meeting.

Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in the meeting should contact the Local Boundary Commission staff at least 48 hours prior to the meeting by calling (907) 269-4557, or (907) 465-5437 for the hearing impaired.

Further information is available by contacting LBC staff by e-mail addressed to **Gene_Kane@dced.state.ak.us** or fax at **(907) 269-4539**.

