



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*  
*Scott Ruby, Director*

Division of Community and Regional Affairs

# Report to the Local Boundary Commission

Regarding the proposal  
to annex by the unanimous consent local option method,  
approximately  
130.02 square miles of land and water  
to the City of Akutan

March 2012

550 W. 7th Avenue, Suite 1770, Anchorage, Alaska 99501  
Telephone: (907) 269-4587 Fax: (907) 269-4539  
Email: [lbc@alaska.gov](mailto:lbc@alaska.gov) Website: <http://commerce.alaska.gov/dca/lbc/lbc.htm>



This is the *Report to the Local Boundary Commission Regarding the Proposal to Annex 130.02 square miles of Land and water to the City of Akutan*. The report was written by staff to the Local Boundary Commission. LBC staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address:

[http://commerce.alaska.gov/dca/lbc/2011\\_City\\_of\\_Akutan\\_Annexation\\_Petition/](http://commerce.alaska.gov/dca/lbc/2011_City_of_Akutan_Annexation_Petition/)

This report is issued in accordance with Local Boundary Commission regulation 3 AAC 110.530 and 3 AAC 110.590 which require Commerce to issue a report after considering written comments regarding the city's annexation petition.

Commerce 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. Such requests should be directed to the Local Boundary Commission staff at 907-269-4587 or [lbc@alaska.gov](mailto:lbc@alaska.gov).

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine accuracy of the illustrations.

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# Chapter I. Background

## Local Boundary Commission's Constitutional Foundation

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Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").<sup>1</sup> The commission is responsible for establishing and modifying proposed municipal government boundaries. Those Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise. The drafters of the Alaska State Constitution also asserted their belief that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."<sup>2</sup> Placing decision-making authority with a state body allows arguments for and against boundary changes to be analyzed objectively, taking areawide or statewide needs into account.<sup>3</sup>

## Local Boundary Commission's Statutory Authority

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Pursuant to 29.06.040(a) "the Local Boundary Commission may consider any proposed municipal boundary change." AS 29.06.040(a) further reads:

the commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets the applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.

## LBC Duties and Functions

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The LBC acts on proposals for several different municipal boundary changes. These are:

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<sup>1</sup> Article X, section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

<sup>2</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing *Alaska Constitutional Convention Minutes of Committee on Local Government*, November 28 and December 4, 1955).

<sup>3</sup> *Id.*



- Incorporating municipalities<sup>4</sup>
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities
- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

In addition to the above, the LBC under AS 44.33.812 shall:

- Make studies of local government boundary problems
- Adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution

The LBC may present proposed local boundary changes to the legislature concerning boundary changes under article X, section 12 of Alaska’s constitution.

### **Nature of the Commission**

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Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution’s separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes.

### **Quasi-Legislative**

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that Alaska’s constitution gives the LBC legislative authority to make fundamental public policy decisions. The court stated that:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission’s reading of the standards and its evaluation of the evidence.<sup>5</sup>

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts “regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . .”<sup>6</sup>

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<sup>4</sup> The term “municipalities” includes both city governments and borough governments.

<sup>5</sup> *Mobil Oil Corp. v. Local Boundary Comm’n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm’n*, 863 P.2d 232, 234 (Alaska 1993).

<sup>6</sup> See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm’n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in

## **Quasi-Executive**

Article X, section 12 of Alaska's constitution placed the LBC in the state's executive branch. The commission's duty under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the LBC's quasi-executive nature.

## **Quasi-Judicial**

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

## **Limits on Directly Contacting the LBC**

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly.

To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is appealed to the court, the *ex parte* contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC. All communications with the commission must be submitted through the LBC's staff.

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commission proceedings.

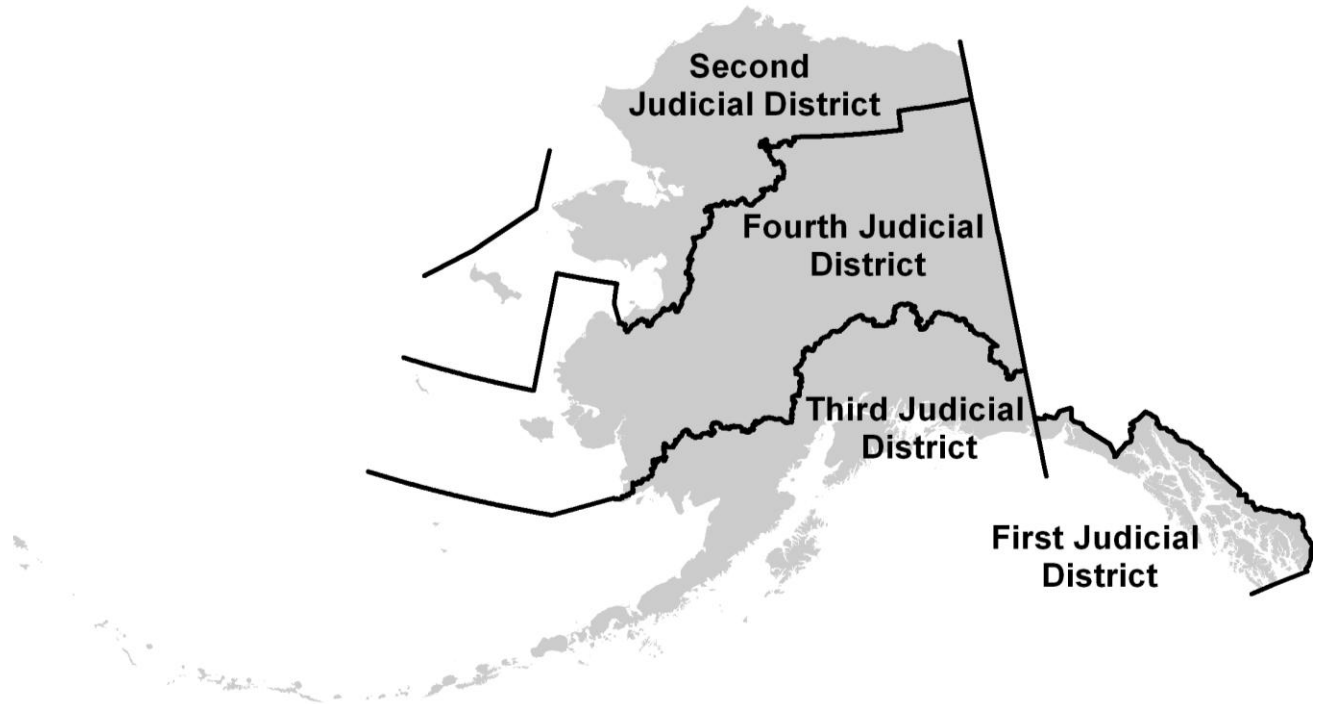
## **LBC Membership**

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The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, however, LBC commissioners serve at the governor's pleasure (AS 39.05.060(d)).

The LBC is comprised of five members (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.

## **ALASKA JUDICIAL MAP**



The biographies of LBC members:



**Lynn Chrystal, Chair, At Large Appointment, Valdez**

Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009. Mr. Chrystal is a current resident and former mayor of the City of Valdez, and former member of the Valdez City Council. He has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2013.



**John Harrington, First Judicial District, Ketchikan**

Governor Parnell appointed John Harrington of Ketchikan as the member from the First Judicial District on the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington state from 1972-84. He served on the Ketchikan Gateway Borough Assembly 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2016.



**Robert "Bob" Harcharek, Second Judicial District, Barrow**

Governor Knowles appointed Robert "Bob" Harcharek as the member from the Second Judicial District on the Local Boundary Commission on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He has served as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. In 1977 he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. Commissioner Harcharek recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a member of the Barrow City Council for fifteen years, and is currently Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ends January 31, 2014.



**Larry Semmens, Vice Chair, Third Judicial District, Soldotna**

Governor Parnell appointed Larry Semmens of Soldotna as the member from the Third Judicial District on the Local Boundary Commission, on September 10, 2009. In May 2010, his fellow commissioners elected him to a three-year term as vice chair. Mr. Semmens is a certified public accountant and the manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He also served the Kenai Peninsula Borough as finance director from 1995-96, controller from 1988-95, and treasury manager from 1981-88. Commissioner Semmens currently chairs the Alaska Public Entities Insurance Pool, and is a member of the Alaska Municipal Managers Association, the American Institute of Certified Public Accountants, and the International City Managers Association. Commissioner Semmens served in the U.S. Air Force from 1973-76 and earned a bachelor's degree in business administration from Boise State University. Mr. Semmens was the recipient of the Alaska Municipal League 2006 Vic Fisher Local Government Leadership Award. His current term on the LBC ended January 31, 2012.



**Lavell Wilson, Fourth Judicial District, Tok**

Governor Palin appointed Lavell Wilson, a Tok resident, as the member from the Fourth Judicial District on the Local Boundary Commission, on June 4, 2007. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineers' Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. Commissioner Wilson has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2015.

**Local Government Agency**

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**Constitutional Origin**

Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as the constitutional local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce) pursuant to AS 44.33.020(a)(4)<sup>7</sup>. Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. In addition to its more general duty to aid local governments, DCRA provides staff, research, and assistance to the LBC.

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<sup>7</sup> AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

## LBC Staff Role

3 AAC 110.435 sets out the role of the LBC staff. LBC staff is required by 3 AAC 110.530<sup>8</sup> to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public as well. Staff follows a reasonable basis standard in developing recommendations on matters before the LBC. Its recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC staff provides support to the commission. The LBC's staff also delivers technical assistance to municipalities, to residents of areas impacted by existing or potential petitions to create or alter municipal governments, to petitioners, to respondents, to agencies, and to others.

Assistance the LBC staff provides includes:

- Answering citizen, legislative, and other governmental inquiries relating to municipal government issues
- Writing reports on petitions for the LBC
- Drafting LBC decisions
- Traveling to communities to hold meetings and to answer questions about proposed local boundary changes
- Drafting for the LBC an annual report to the legislature
- Developing and updating municipal incorporation or alteration forms
- Sending local boundary change forms and materials to interested persons
- Providing a link between the LBC and the public
- Maintaining incorporation and boundary records for Alaska's municipal governments
- Coordinating and scheduling LBC public meetings and hearings
- Developing orientation materials and providing training for new LBC members
- Maintaining and preserving LBC records in accordance with Alaska's public records laws

The LBC staff contacts:

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<sup>8</sup> *Also see AS 29.04.040, AS 29.05.080, AS 29.06.110, and AS 29.06.480 - 29.06.490.*

**Local Boundary Commission staff**  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
**Fax:** (907) 269-4539  
[lbc@alaska.gov](mailto:lbc@alaska.gov)

**Brent Williams:** (907) 269-4559  
[brent.williams@alaska.gov](mailto:brent.williams@alaska.gov)

**Don Burrell:** (907) 269-4587  
[don.burrell@alaska.gov](mailto:don.burrell@alaska.gov)

## **Petition Procedures**

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal's reasonable and timely determination. The procedures are also intended to ensure commission decisions are based on an analysis of the facts and the applicable legal standards. Procedures are as follows:

### **Preparing and Filing a Petition**

The LBC staff offers technical assistance, information, and forms to prospective petitioners. LBC staff routinely advises submitting drafts so staff can identify any technical deficiencies in form and content. This allows the petitioner to correct the draft before it is circulated for voter signatures, or before adoption by a municipal government. Once a formal petition is prepared, it is submitted to LBC staff for technical review. If it contains all the required information, the LBC staff accepts it for filing.

### **Public Notice and Public Review**

Once a petition is accepted for filing, the staff arranges extensive public notice. There is ample opportunity for public comment during the process. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief replying to public comments and responsive briefs.

### **Analysis**

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials. The petitioner and the LBC staff can conduct informational meetings. If the petition is for incorporation, the LBC staff must hold at least one public meeting within the boundaries proposed for incorporation. When it ends its analysis, the LBC staff issues a preliminary report including a recommendation to the LBC.

The preliminary report is circulated for public review and comment typically for a minimum of four

weeks. After reviewing the comments on its report, the LBC staff typically issues its final report<sup>9</sup>. The final report typically discusses comments received on the preliminary report, and notes any changes to the LBC staff's recommendations to the commission. The final report must be issued at least three weeks prior to the LBC's public hearing.

### **Commission Review of Materials and Public Hearings**

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff reports. The LBC is an autonomous commission. While the commission is not obligated to follow the staff's recommendations, it has historically considered the LBC staff's analyses and recommendations to be critical components of the record in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

The commission may tour the subject area before the hearing. Following extensive public notice, the LBC conducts at least one hearing in or near the affected area or territory. The commission must act on the petition within 90 days of its final public hearing.

The LBC may act by:

- Approving the petition as presented
- Amending the petition (e.g., expanding or contracting the proposed boundaries)
- Imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability)
- Denying the petition

### **LBC Decisions Must Have a Reasonable Basis**

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.<sup>10</sup> The LBC must proceed within its jurisdiction, conduct a fair hearing and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

While the law allows the commission 90 days following its last petition hearing to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within 30 days of its decision date, the LBC must adopt a written decision stating the basis for its decision. Decision copies are provided to the petitioner, respondents, and others who request them.

At that point the decision becomes final, but any person may ask the LBC to reconsider its decision. Such requests must be filed within 18 days after the decision is mailed. The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests

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<sup>9</sup> "Typically" refers to the fact that under 3 AAC 110.590, procedures for some kinds of local action petitions are modified. This pertains to annexations if the municipality already owns the property to be annexed, or if all the property owners and voters in the area proposed to be annexed petition the municipality's governing body.

<sup>10</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.



within 30 days of the decision's mailing date, all such requests are automatically denied.

### **Implementation**

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a petition, the proposal is typically subject to approval by voters or disapproval by the legislature, depending on whether it was filed as a local action petition, or a legislative review petition, respectively. A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election was held, certification of the legally required voter approval of the LBC's final decision is needed from the director of elections or the appropriate municipal official. The action must also receive favorable review under the federal Voting Rights Act of 1965. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the effective change.

## **Legal Standards for Annexation to Cities**

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The criteria to be used by the commission to evaluate the City of Palmer annexation proposal are set out in 3 AAC 110.090 - 3 AAC 110.140, 3 AAC 110.900 and 3 AAC 110.910. A summary of the criteria follows:

1. There must be a reasonable need for city government in the territory proposed for annexation.
2. The territory may not be annexed if essential city services<sup>11</sup> can be provided more efficiently and more effectively by another existing city or by an organized borough.
3. The territory must be compatible in character with the annexing city.
4. The economy in the city's proposed expanded boundaries (territory within existing city, plus territory proposed for annexation) must include sufficient human and financial resources to provide essential city services on an efficient, cost-effective level.
5. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
6. The proposed city boundaries must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.

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<sup>11</sup> "Essential city services" are defined by 3 AAC 110.990(8) to mean "those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; 'essential city services' may include: (A) assessing, levying, and collecting taxes; (B) providing primary and secondary education in first class and home rule cities in an unorganized borough; (C) public safety protection; (D) planning, platting and land use regulation; and (E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community."

7. Absent a specific and persuasive showing to the contrary, the LBC will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.
8. The proposed boundaries of the city must be on a scale suitable for city government and include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following annexation.
9. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards, and are otherwise suitable for city government.
10. If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, the petition must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If a petition for annexation describes boundaries overlapping the boundaries of another existing city, the petition must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.
11. The proposed annexation is in the best interests of the state under AS 29.06.040(a).
12. A petition for annexation must include a practical transition plan:
  - demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practicable time after the effective date of the proposed boundary change;
  - providing for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, unorganized borough service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. It must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change;
  - providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partly in the boundaries proposed for change. The plan must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities;

- stating the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.
13. The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
  14. If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.
  15. In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.
  16. Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

## Conclusion

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This chapter has described the Local Boundary Commission's background, including its legal basis, powers, membership, and procedures. It also gave an overview of legal standards for annexations to cities. Chapter 2 will discuss this petition's proceedings to date.

## Chapter II To Date and Future Proceedings

### Submission and Review of Petition

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The petition was submitted to LBC staff on November 4, 2011, and accepted for filing on December 19, 2011.

### Public Notice

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Notice was published in the *Anchorage Daily News* on December 16, 2011. As well, the same public notice was published in the *Alaska Dispatch* on December 23, 2011.

On December 22, 2011, a public service announcement was sent to the following radio station to request broadcast for 14 days:

- KDLG

The radio station declined to run the PSA on the petitioner's behalf.

### Service of Petition

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On December 22, 2011, the city of Akutan served the following communities, in person or via United States Postal Service, complete copies of the petition:

**Aleutians East Borough**

**Akutan Corporation**

### Posting of Notice

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On December 21, 2011 notice was posted at the following locations surrounding the area proposed for annexation:

**City of Akutan Administration Building**

**City of Akutan Anchorage Office**

**Akutan Post Office**

**McGlashan Store**

**Akutan Traditional Council Office**

**Akutan Corporate Building**

**Trident Seafoods Corporation, Akutan Office**

On December 21, 2011, notice of the filing of the Petition was also posted within the existing boundaries of the City of Akutan:

**Aleutians East Borough**

**Akutan Corporation**

## **Deposit of Petition**

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On December 21, 2011, the City of Akutan provided a copy of the City's prospective petition in notebooks at the following location:

**City of Akutan Administration Building**

**City of Akutan Anchorage Office**

**Aleutians East Borough Sand Point Office**

## **Deadline for Initial Comments and Responsive Briefs**

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The notice of filing invited written public comment concerning the proposed annexation by December 30, 2011. One non-objective comment was submitted by the State Department of Transportation regarding certain taxation policies that may apply to the petition.

## **Deadline for Comments on this Report**

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The deadline for receipt of written comments concerning this report and recommendation by LBC staff is 4:30 p.m., Tuesday, March 27, 2012. Submit written comments to:

LBC staff

550 W. 7<sup>th</sup> Avenue, Suite 1770

Anchorage, Alaska 99501-3510

Fax: 907-269-4539

Email: [lbc@alaska.gov](mailto:lbc@alaska.gov)

## **LBC Public Hearing**

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The Local Boundary Commission has scheduled a telephonic public hearing in Anchorage on the Akutan annexation proposal for Thursday, March 29<sup>th</sup>. The hearing is scheduled to begin at 10 a.m. Individuals and entities that wish to participate in the teleconference, please call 1-800-315-6338, and type in 4587\*. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff as soon as possible.

Formal notice of the public hearing was published in the *Anchorage Daily News* February 24<sup>th</sup>. Public notice of the hearing has also been posted in prominent locations throughout the community. Additionally, notice was mailed to the Petitioner. (3 AAC 110.550)

The hearing will begin with a summary by LBC staff of its conclusions and recommendations concerning the pending proposal. Following LBC staff's summary, the LBC may allow the Petitioner to make an opening statement limited to ten minutes.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. No time limit on testimony by the Petitioner is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

At the conclusion of the testimony phase of the hearing, the commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes.

No brief or other evidence may be filed at the time of the public hearing unless the commission determines that good cause exists for such materials not being presented in a timely manner for written response by the petitioner or respondents, or for consideration in the LBC reports.

In compliance with Title II of the Americans with Disabilities Act of 1990, LBC staff will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact LBC staff at [lbc@alaska.gov](mailto:lbc@alaska.gov) at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

## **LBC Decisional Meeting**

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The LBC must render a decision within 10 days of the hearing (3 AAC 110.570). If the commission determines that it has sufficient information to properly judge the merits of the annexation proposal following the hearing, the LBC may convene a decisional session shortly after the conclusion of the hearing. During the decisional meeting, no new evidence, testimony, or briefing may be submitted. However, commission members may ask their staff or other persons for a point of information or clarification.

Within thirty days after the commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the City of Akutan's annexation petition. A copy of the statement will be provided to the Petitioner and any others who request a copy.

## **Reconsideration**

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Any interested person or organization may ask the commission to reconsider its decision in this matter. A request for reconsideration may be filed within 10 days after the written decisional statement has been mailed to the Petitioner.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. The LBC will reconsider a decision only if:

- there was a substantial procedural error in the original proceeding;
- the original vote was based on fraud or misrepresentation; or
- the commission failed to address a material issue of fact or a controlling principle of law; or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the commission. Ten days are allotted for the filing of such a brief.

## **Voting Rights Act of 1965 Preclearance**

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If the Commission approves the petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the federal Voting Rights Act of 1965. The Voting Rights Act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of Columbia. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (see 28 CFR § 51.22). Annexation will not take effect until the City provides LBC staff with evidence that the Justice Department or the U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630), and a Certificate of Boundaries has been issued by State of Alaska Department of Commerce, Community and Economic Development Commissioner. LBC staff is available to answer questions from cities in understanding their obligations under the Voting Rights Act.

## **Judicial Appeal**

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A decision of the LBC may be appealed to Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2).

## **Local Action**

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Annexation by local action using the method informally known as unanimous consent requires all property owners and registered voters residing in a territory adjoining the city to sign a simple petition for annexation. The city must then adopt an ordinance to authorize a petition to the LBC and submit a petition in the form and content required by law. (AS 29.06.040(c)(4); 3 AAC 110.150(2); 3 AAC 110.590).

## **Conclusion**

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This chapter has described the proceedings to date, and the future proceedings and deadlines. Chapter 3 will discuss the department's analysis.



## Chapter III Department's Analysis

### Introduction

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This report provides recommendations to the Local Boundary Commission.

The Local Boundary Commission staff (hereafter "LBC staff," "staff," "Commerce," or "department") received one timely received comment during the public comment period that ended December 30, 2011. The petition and all public comments have been read, reviewed, and considered by the department in writing this report. The comment is attached in Appendix A.

The report addressed the standards by analyzing the factors which the LBC may consider. The comments addressed some standards more heavily than others, and the department's analysis reflects that.

Although each comment has been read and considered, not every comment is specifically addressed. Also, while the comments are reproduced in the appendix of this report, the department may quote or refer to what it feels is the most pertinent part of the comment in its analysis and findings.

## Section 1: Needs of the Territory

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The standard established in law:

3 AAC 110.090. Needs of the territory.

- (a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including
- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city;
  - (2) existing or reasonably anticipated health, safety, and general welfare conditions;
  - (3) existing or reasonably anticipated economic development;
  - (4) adequacy of existing services;
  - (5) extraterritorial powers of the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and
  - (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.
- (b) Territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

### **Commerce Findings and Conclusion:**

Commerce finds that the territory does exhibit a reasonable need for city government. As was the case in Gustavus, the City of Akutan is undergoing significant changes in its area. An airport is being built on nearby Akun Island (there will be a hovercraft connecting the city with the airport). A small boat harbor is being built. Geothermal energy is also being examined.

The airport is outside of the present city limits. Upon the airport's completion, the city will operate the passenger shelter. The airport has a need for city government to provide that function.

Also, the city would provide police and fire services to the territory proposed for annexation. Akutan has a state provided Village Public Safety Officer (VPSO). The officer would respond to calls throughout the territory. He would travel on the city skiff. The skiff can also carry fire fighting apparatus, as the volunteer fire department would respond to fires in the territory.

Further, the city would provide planning services in the territory. Akutan is in the Aleutians East Borough (AEB). The AEB has delegated its planning authority to the city. As the territory has present and potential future development, it is important that it has adequate planning. The city cannot provide these planning services unless the territory is in the city.

For all of these reasons, Commerce finds that the territory exhibits a reasonable need for city government.

Further, under 3 AAC 110.090(b), Commerce finds that essential city services cannot be provided more efficiently and more effectively by another existing city, or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area. The AEB does not have a police force. Planning power, even if not ceded to the city, can be best performed locally, because the Akutan residents have the best idea of what the planning needs are. If the city did not carry out the airport operations, there is no other city that could. No showing has been made that the AEB would undertake the operations. The levying and collection of taxes is best done on the level closest to the people and businesses being taxed.

Commerce finds that 3 AAC 110.090 is met.

## **Section 2: Character of the territory**

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The standard established in law:

3 AAC 110.100. Character.

The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

### **Commerce Findings and Conclusion:**

Commerce finds that the territory is compatible in character with the annexing city. At first glance some differences appear, such as the fact that Akutan has over 1,000 people, and the territory is unpopulated. But, in a broader sense, Akutan and the territory are compatible in other characteristics

such as topography. Much of the city, and of the territory, is hilly (although some parts of Akun Island are less so, which is why the airport is being built there).

The proposed expanded boundary of the city also has the common characteristic of water. Akutan is a fish processing community. The proposed post-annexation city size consists of 65.58 square miles of land, and 82.33 square miles of water. If the petition is approved, the city would be over half water. The existing city and the territory would be linked by water transportation - by the hovercraft which would act as a shuttle from the airport to the city center.

For those reasons, Commerce finds that 3 AAC 110.100 is met.

### **Section 3: Resources**

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The standard established in law:

3 AAC 110.110. Resources.

The economy within the proposed boundaries of the 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 may consider relevant factors, including the

- (1) reasonably anticipated functions of the city in the territory being annexed;
- (2) reasonably anticipated new expenses of the city that would result from annexation;
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the third full fiscal year of operation after annexation;
- (5) economic base of the city after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled persons to serve the city as a result of annexation.

## Commerce Findings and Conclusion:

Commerce finds that the economy within the proposed boundaries of the city includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

According to budget documents submitted to the department, in the past several years, the city's general fund had a net of \$0 in FY 2012, a net of \$152,305 in FY 2011, a net of \$471,915 in FY 2010, a net of (\$35,407) in FY 2009, and a net of \$359,972 in FY 2008.<sup>12</sup> The city has several other smaller funds as well. Based on this, Commerce finds that the city's general financially sound

Regarding city income, Commerce finds that fish revenue is the backbone of the Akutan economy. The petition states on page 25 that its primary income comes from its 1% raw fish sales tax, and from the State Fisheries Business Tax. The petition further asserts that the Total Allowable Catch (TAC) for Pollock increased by 56% in 2011, and that fish revenues are expected to be materially higher.<sup>13</sup> That may be so, but fish yields have been known to fluctuate from year to year. Notwithstanding, Commerce finds it reasonable that fisheries income will suffice to provide income for city functions in the foreseeable future.

The petition states that fish tax income will rise, and that other local revenues will also rise. The petition further says that while the city can absorb the additional expense of the annexation, eventually new revenues will be needed to support new development. It further states that Akutan has low taxes compared to other municipalities in the region. Although unrelated to the annexation directly, the city will incur the cost of operating the passenger shelter at the airport. This is expected to cost about \$50,000 annually.<sup>14</sup>

Given the city's income, the stability of its general fund, the potential levy of new taxes if necessary, and the low expenses resulting from annexation, Commerce finds that the economy within the proposed boundaries of the city includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Commerce finds that 3 AAC 110.110 is met.

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<sup>12</sup> [http://commerce.alaska.gov/dca/commfin/CF\\_FinRecResults.cfm](http://commerce.alaska.gov/dca/commfin/CF_FinRecResults.cfm)

<sup>13</sup> Petition, pp. 25 – 26.

<sup>14</sup> *Id.* at p. 26

## Section 4: Population

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The standard established in law:

3 AAC 110.120. Population.

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.
- (6) contemporary and historical public school enrollment data; and
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.

### **Commerce Findings and Conclusion:**

Commerce finds that 3 AAC 110.120 is met. The territory is unpopulated. Annexation it will not increase the city's population.

Akutan's population has increased from 101 in 1970, to 169 in 1980, to 589 in 1990, to 713 in 2000, to 1,027 in 2010. It has increased over tenfold in 41 years. The increase largely results from the 1980s expansion of the Trident fish processing facility.

It should be noted that the vast majority of the population are seasonal Trident workers. They are not there permanently. The primary seasons are in the first three to four months of the year, and then again during the summer. The permanent residents number about 90. That figure has been largely stable.

Additionally, with the increased development of the boat harbor, possible geothermal energy, and most importantly, more reliable air transportation, in time the population could spread out into the present territory. Commerce finds that the air transportation will be more reliable because while it is still weather dependant, it will no longer be based upon an aging Grumman Goose.

The airport will require some extra workers. The petition states that the airport and the hovercraft will require 6-7 full time jobs. But, even given Akutan's small number of permanent residents, Commerce finds it reasonable that the local community will be able to fill those jobs.

In sum, Commerce finds that the population is large and stable enough to support the extension of city government despite the comparatively low number of permanent residents.

## Section 5: Boundaries

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The standard established in law:

### 3 AAC 110.130 Boundaries

(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may 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) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

(c) To promote the limitation of community, the proposed expanded boundaries of the city

- (1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and
- (2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.



## Commerce Findings and Conclusion:

In analyzing 3 AAC 110.130(a), the proposed post-annexation city size consists of 65.58 square miles of land and 82.33 square miles of water. If the petition is approved, the city would be over half water. Commerce finds there is sufficient land and water to provide the development of essential municipal services. Additionally, the proposed expanded boundaries of Akutan include territory suitable for hydropower and geothermal energy. By definition, both involve water. Energy could be considered an essential municipal service. Having access to this water increases Akutan's ability to provide essential municipal services.

In analyzing 110.130(b), the territory is contiguous to the city. The annexation would not create enclaves.

For 3 AAC 110.130(c)(1), the proposed post-annexation city size would consist of 65.58 square miles of land, and 82.33 square miles of water, or 147.91 total square miles. While this is larger than many cities, Commerce finds that it is still on a scale suitable for a city.

As Commerce found with the Dillingham petition, other Alaskan municipalities are reasonably large, but still on a scale suitable for city government. St. Paul, for example, has 40 square miles of land, and 255.2 of water, for a total city size of 295.2 square miles. Togiak has 45.2 square miles of land, and 183.3 of water, for a total city size of 228.5 square miles. Valdez has 222 square miles of land, and 55.1 square miles of water, totaling 277.1 square miles. Skagway has 464.3 municipal square miles, which was the total municipal size when it was a city, as well as the size after the city was dissolved and incorporated as a borough.<sup>15</sup> The LBC recently approved a Dillingham annexation petition that brought that city's size to over 400 square miles of land and water. This shows that Akutan's size is comparable to other cities, and is of a scale suitable for city government.

As for the rest of 3 AAC 110.130(c)(1)'s requirements, Commerce finds that as Akutan is an incorporated city, it is a community. Commerce finds that the territory includes reasonably predictable growth, development, and public safety needs because the petition discussed possible future geothermal and hydropower development in the territory. That is related to growth and development. The new airport will likely spur growth. Additionally, the territory will have public safety needs as well. Commerce finds that 3 AAC 110.130(c)(1) has been met.

For 3 AAC 110.130(c)(2), Commerce finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. The terms "region" and "area" apply to boroughs. 3 AAC 110.990(28) states that "region"

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<sup>15</sup> *Preliminary Report to the Local Boundary Commission Regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham, p. 57*

“(A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;

(B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section.”

3 AAC 110.990(15) defines “area” as “the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.”

Commerce finds that as the terms “region” and “area” apply to boroughs, they are not pertinent here. Akutan is not attempting through its annexation proposal to be the size of a borough. If, *arguendo*, the territory did include entire geographical regions or large unpopulated areas, then by 3 AAC 110.130(c)(2) those boundaries are justified by applying the standards of 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government. As this report shows, we have found that the proposed expanded boundaries meet the standards of 3 AAC 110.090 - 3 AAC 110.135, and are otherwise suitable for city government.

In sum, Commerce finds that the standards of 3 AAC 110.130 are met.

## Section 6: Best Interests of the State

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The standard established in law:

**3 AAC 110.135. Best interests of state.** In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), which states,

“The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).”

the commission may consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local services.

### Commerce Findings and Conclusion:

The petition would be in the best interests of the state for several reasons. First, the annexation would promote maximum local self government by further empowering the City of Akutan. This is so because the city would have potential geothermal and hydropower in its borders. The city would also have the new airport inside its boundaries. The city would also have potential for increased tax revenue.

Secondly, it would promote a minimum number of local government units because there would be no new municipalities. Instead, an existing city would expand. This in turn would help the AEB because it would have a stronger Akutan within its borders.

Commerce concludes from the findings above that annexation is in the best interests of the state. Commerce finds that 3 AAC 110.135 is met.

## Section 7: Transition

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The standard established in law:

3 AAC 110.900. Transition.

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

(e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.

## **Commerce Findings and Conclusion:**

In 3 AAC 110.900(a), the city indicates in its transition plan that there are a number of essential municipal services it anticipates extending to the territory proposed for annexation to include water and sewer, planning and land use, public safety, etc. The city anticipates, based on its transition outline, completing its transition within the required two years, and without the necessity for any transfer of assets or liabilities from the borough, Akutan Corporation, or any other corporate, tribal, or governmental organization or agency.

If the commission approves annexation, most parts of the transition plan would take effect almost immediately, and there would not be a need for a local election as all property owners have unanimously consented to the city annexing the territory to provide essential municipal services. The plan demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change.

For 3 AAC 110.900(b), as above, the transition is fairly minimal. The petition has described how Akutan will extend existing powers, rights, duties, and functions to the territory proposed for annexation. The plan was prepared in extensive consultation with borough officials, and corporation leadership.

Regarding 3 AAC 110.900(c), there was no mention of transfer of any assets or liabilities of another municipality or other entity.

3 AAC 110.900(d) is not a requirements, but it's an option that the LBC may exercise to require an agreements for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

For 3 AAC 110.900(e), the petition listed the officials consulted for the transition plan. The petitioner also listed the dates and subjects discussed.

This transition plan is feasible, and meets the standard. 3 AAC 110.900 has been met.

## **Section 8: Statement of Non-discrimination**

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The standard established in law:

3 AAC 110.910. Statement of non-discrimination. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

## **Commerce Findings and Conclusion:**

Nothing in these proceedings suggest that the proposed annexation will adversely affect the enjoyment of any individual's civil or political rights, including voting rights, because of race, color, creed, sex, or national origin. Commerce sees no other indication that the proposed annexation would adversely affect the enjoyment of any individual's civil or political rights.

Based on the foregoing, Commerce concludes that annexation will not result in any form of discrimination. The standard set out in 3 AAC 110.910 is satisfied.

### **3 AAC 110.970. Determination of essential municipal services**

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(c) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that

- (1) are reasonably necessary to the community;
- (2) promote maximum, local self-government; and
- (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

(d) The commission may determine essential municipal services for a city to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing the value of taxable property;
- (3) levying and collecting taxes;
- (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;
- (5) public safety protection;
- (6) planning, platting, and land use regulation; and
- (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.

## **Commerce Findings and Conclusion:**

Commerce finds that the essential municipal services related to this petition are fire fighting because that protects life and property, and so is reasonably necessary to the community. Commerce also finds the levying and collection of taxes to be an essential municipal service because without it, a municipality cannot function. For that reason it is reasonably necessary to the community.

Commerce also finds that in an isolated roadless island, that the public boat dock and the airport operations to be essential municipal services. They are reasonably necessary to the community

because they enhance Akutan's links to the outside world. That is important in considering a community in the Aleutian chain. The city's airport operations include operating the passenger shelter, and shuttling passengers and cargo between the airport and the Surf Bay hovercraft landing. Commerce also finds that land use, planning, and platting to be an essential municipal service because of the potential development in the city's proposed expanded boundaries. It is reasonably necessary to the community because if development and growth occurs, then Akutan is in a position to plan it.

All of these services promote maximum, local self-government because they empower Akutan to run more of its own affairs, as opposed to either having no services, or to having the services provided by the AEB or the state. It puts the city government and its citizens in a position of being proactive.

These essential municipal services cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. Akutan already is in a borough, the AEB. As both the AEB and the City of Akutan already exist, there is no need to modify or create another political subdivision.

Commerce concludes that 3 AAC 110.970 is met.

### **3 AAC 110.981. Determination of maximum local self-government**

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In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

(8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area;

#### **Commerce Findings and Conclusion:**

Commerce finds that the annexation petition would extend local government to the current territory of the AEB where local government needs for planning, and other municipal services cannot be met more efficiently or effectively by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area. Akutan can provide these local government services more effectively. This is so because the borough offices are further away, there is no close-by city, and there is no borough service area. No other local government can meet the territory's governmental needs for that reason.

Commerce concludes the petition meets 3 AAC 110.981.

### **3 AAC 110.982. Minimum number of local government units**

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Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;

#### **Commerce Findings and Conclusion:**

Commerce finds that by annexing this territory, the city would not enlarge its boundaries to the degree that would instead better promote incorporating a new city. The territory could not be self-sustaining if it were to incorporate as its own local government unit because it is unpopulated.

The territory proposed for annexation promotes a minimum number of local government units because it expands an existing municipality, instead of creating a new one. Commerce concludes the petition does promote a minimum number of local government units and therefore meets this regulation.



## Chapter IV General Conclusion and Recommendation

Commerce concluded in Part III of this report that all of the applicable standards for annexation of the territories are met. Based on the findings and conclusions set out in Part III, Commerce recommends that the LBC grant the city's annexation petition. If approved, the city of Akutan would encompass 65.58 square miles of land, and 82.33 square miles of water, or 147.91 total square miles. If the LBC approves the petition, annexation will take effect when the city provides notification to the commission that the U.S. Department of Justice has granted preclearance for the annexation under 42 U.S.C. 1973c (Voting Rights Act of 1965). Following such notification, DCCED will issue a certificate describing the annexation.

## Chapter V Appendix

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## Appendix A: Public Comment

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### **Burrell, Don (CED)**

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**From:** Maggard, Roger K (DOT)  
**Sent:** Wednesday, December 28, 2011 1:20 PM  
**To:** Commission, Boundary (CED sponsored)  
**Cc:** [REDACTED]  
**Subject:** FW: CITY OF AKUTAN PETITION FOR ANNEXATION  
**Attachments:** PUBLIC NOTICE - Akutan Annexation Filing.pdf; ATT557425.htm; AO 12- Annexation.pdf; ATT557426.htm; Petition for Annexation to the City of Akutan - 4Nov2011.pdf; ATT557427.htm; AIP - airport\_sponsor\_assurances 3\_2011.pdf

Local Boundary Commission:

The Alaska Department of Transportation and Public Facilities (DOT&PF) has the following comment on the Petition for Annexation.

The potential for additional revenue sources to support new development is discussed on page 26 of the City of Akutan Petition for Annexation. The new airport, owned by the DOT&PF, included within the proposed area of annexation was funded with federal Airport Improvement Program (AIP) money to a large extent. The airport is subject to the AIP grant assurances, which are attached. If the City of Akutan is considering any future local taxes on airport fuel sales, Grant Assurance # 25 should be carefully reviewed to ensure compliance. Grant Assurance # 25 states the following:

#### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

**ASSURANCES**  
**Airport Sponsors**

---

**A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

**B. Duration and Applicability.**

1. **Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

- C. Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

**Federal Legislation**

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - Title 42 U.S.C. 4601, et seq.<sup>1,2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.<sup>1</sup>
- r. Power Plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- t. Copeland Anti Kickback Act - 18 U.S.C. 874.1
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

**Executive Orders**

Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>  
Executive Order 11990 - Protection of Wetlands  
Executive Order 11988 – Flood Plain Management  
Executive Order 12372 - Intergovernmental Review of Federal Programs  
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>  
Executive Order 12898 - Environmental Justice

## **Federal Regulations**

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantaged Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.<sup>1 2</sup>
- m. 49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.<sup>1</sup>
- o. 49 CFR Part 29 - Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.<sup>1</sup>

## **Office of Management and Budget (OMB) Circulars**

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

**2. Responsibility and Authority of the Sponsor.**

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or

modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall ensure that such arrangement also requires compliance therewith.
- g. It will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.



6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which the project is proposed.
9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty (60) days after the project application has been received by the Secretary.
11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.
12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for

access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**
  - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
  - b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and

schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

**17. Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.** In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon

which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
- 23. Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a

single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

**24. Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

**25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit



report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

**26. Reports and Inspections. It will:**

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –**

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

**30. Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or



benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

**31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such

land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.
33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program,

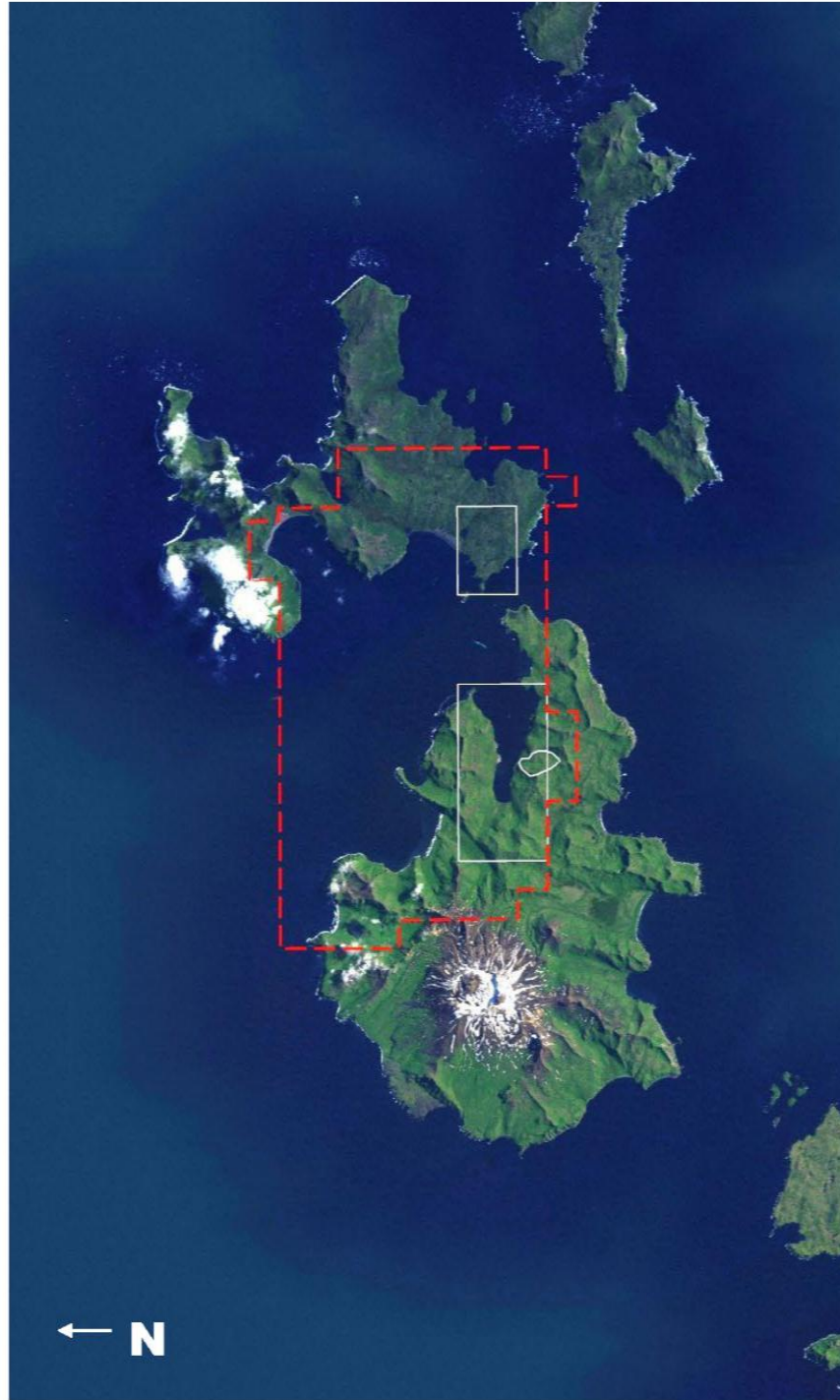
the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.
- 39. Competitive Access.**
- a. If the airport owner or operator of a medium or large hub airport (as defined in Section 47102 of Title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
    - (1) Describes the requests;
    - (2) Provides an explanation as to why the requests could not be accommodated; and
    - (3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
  - b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six (6) month period prior to the applicable due date.

## Appendix B: Maps

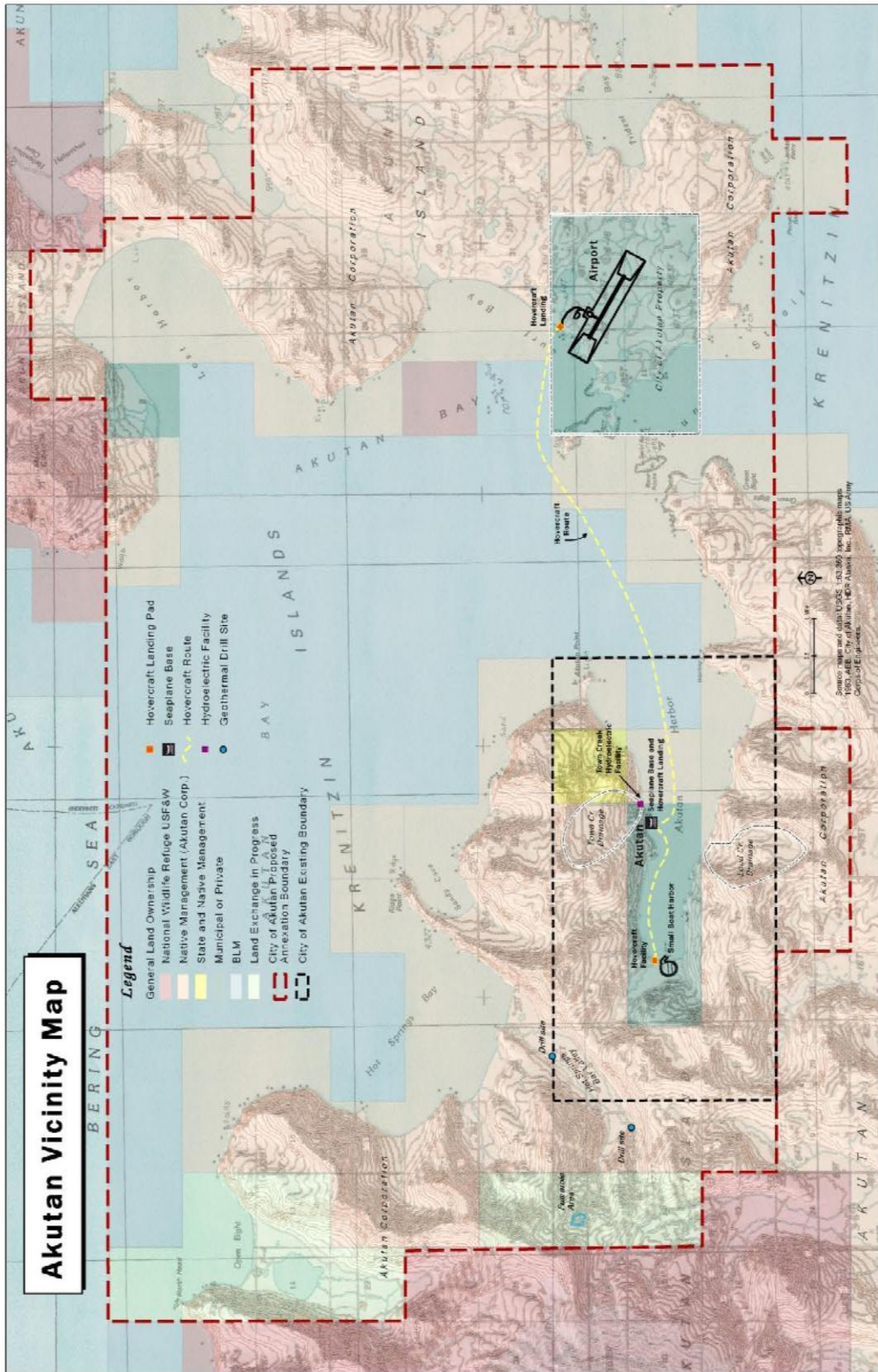
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Existing and Proposed Boundaries and City Property on Akun – Aerial Photograph





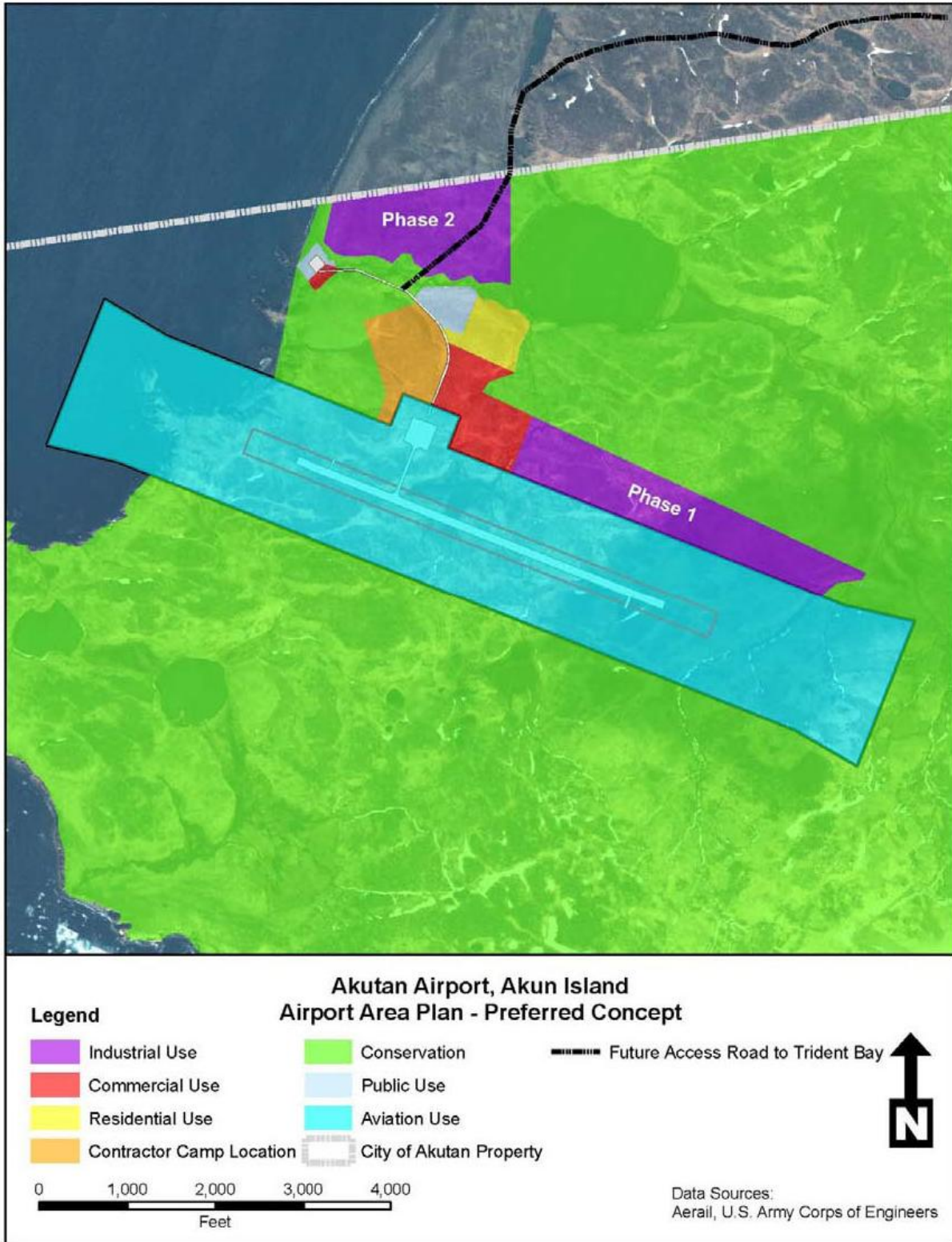
### Existing and Proposed Boundaries



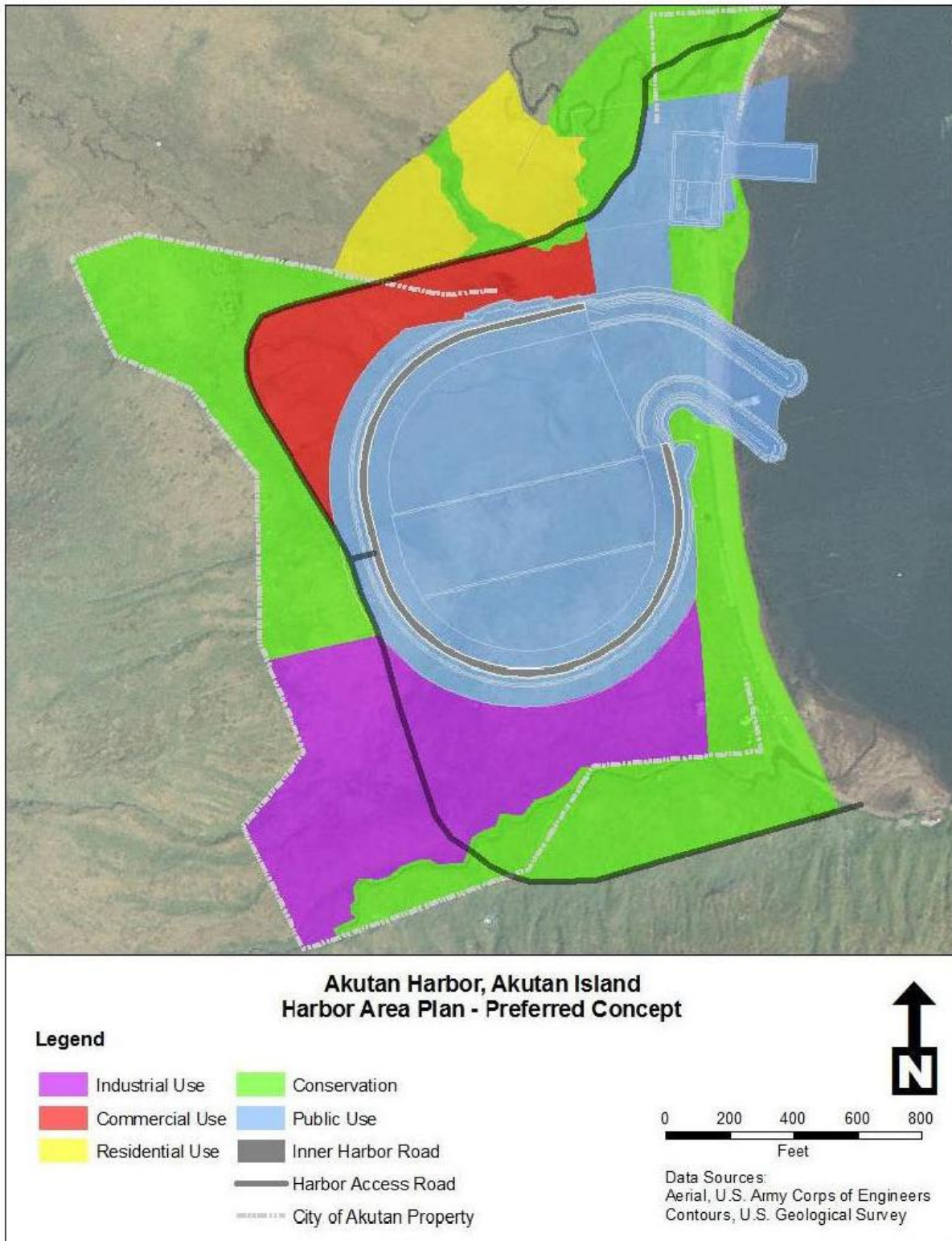




## Akutan Conceptual Land Use – Airport

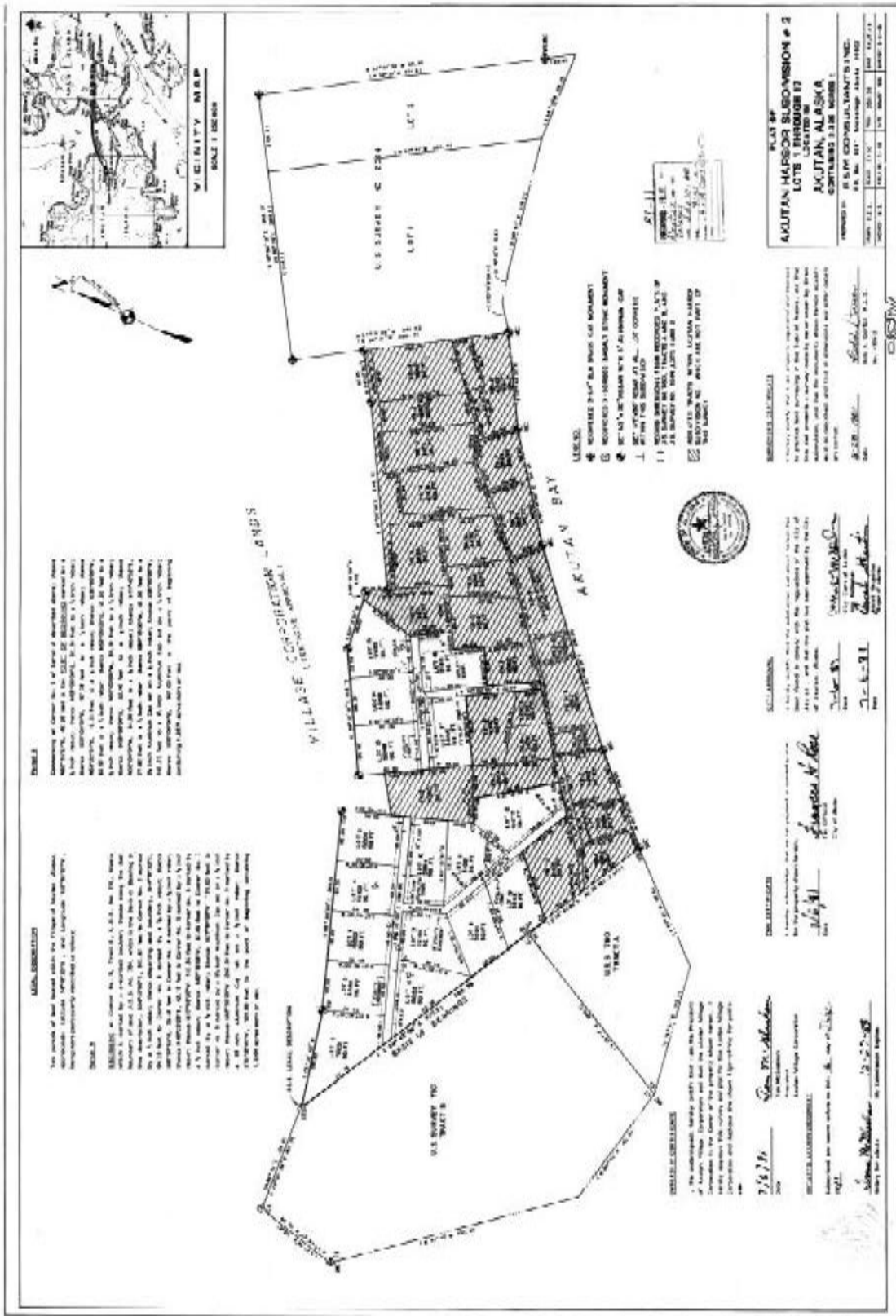


### Akutan Conceptual Land Use – Boat Harbor

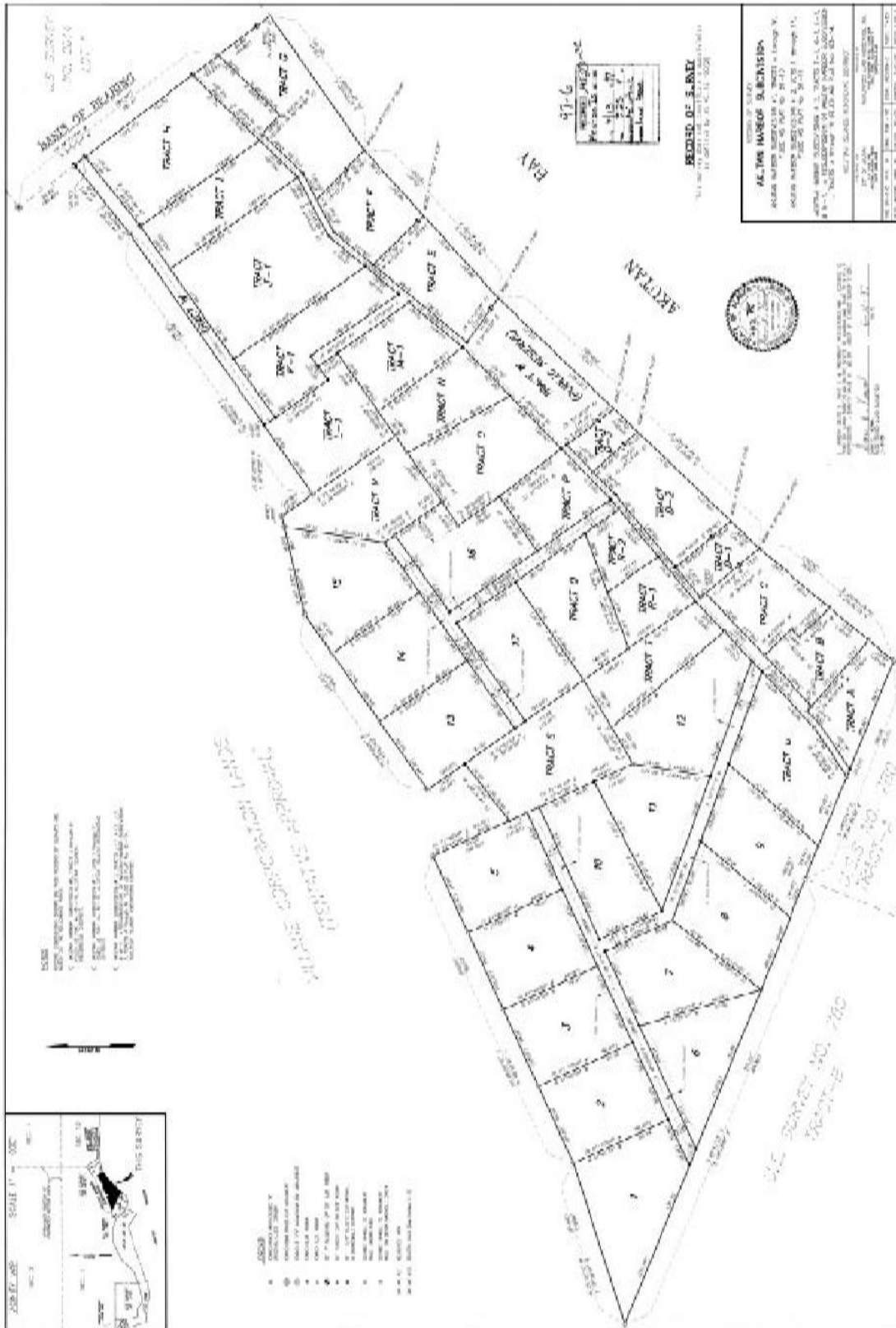




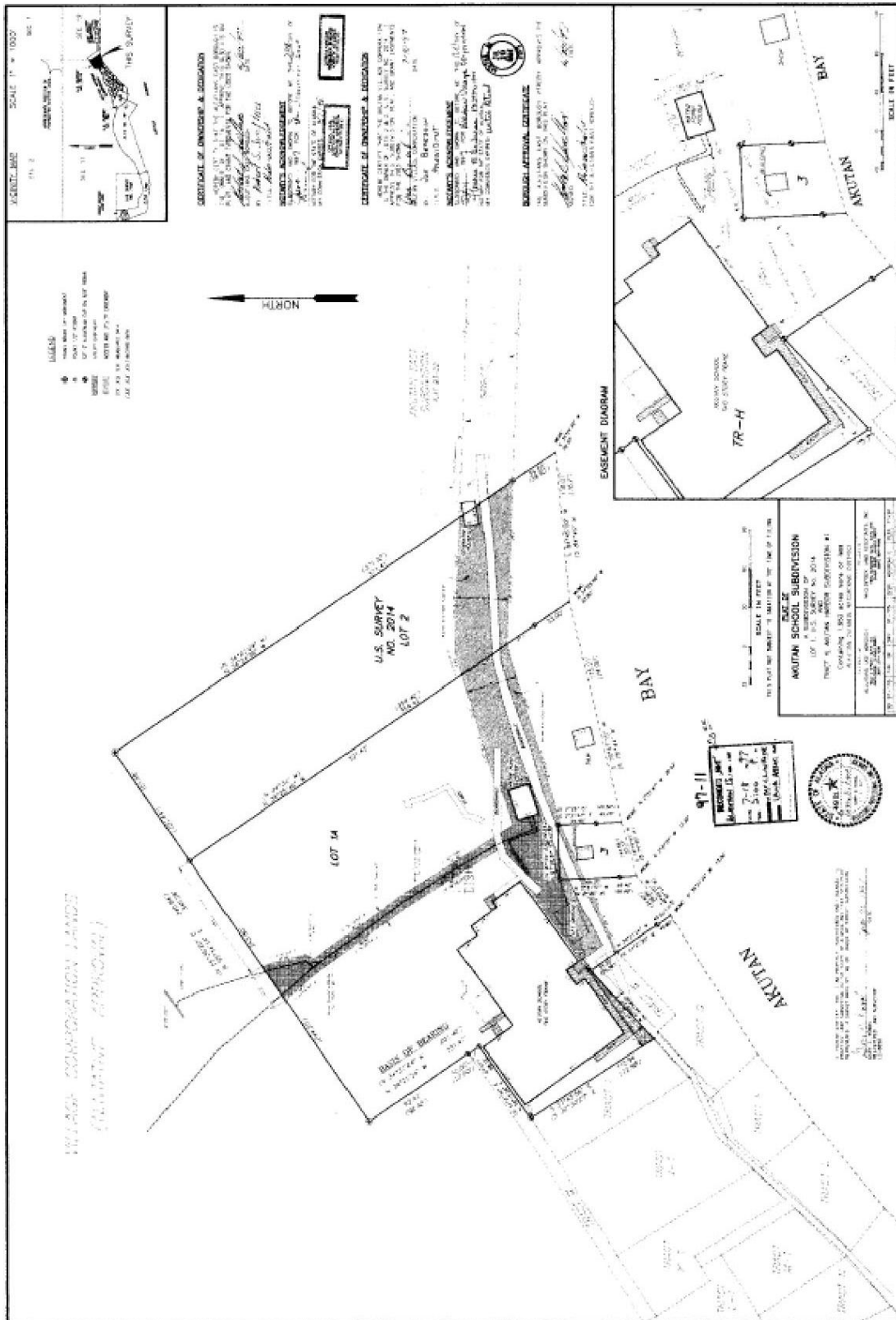
Akutan Existing Subdivision – Akutan Harbor Subdivision (1983)



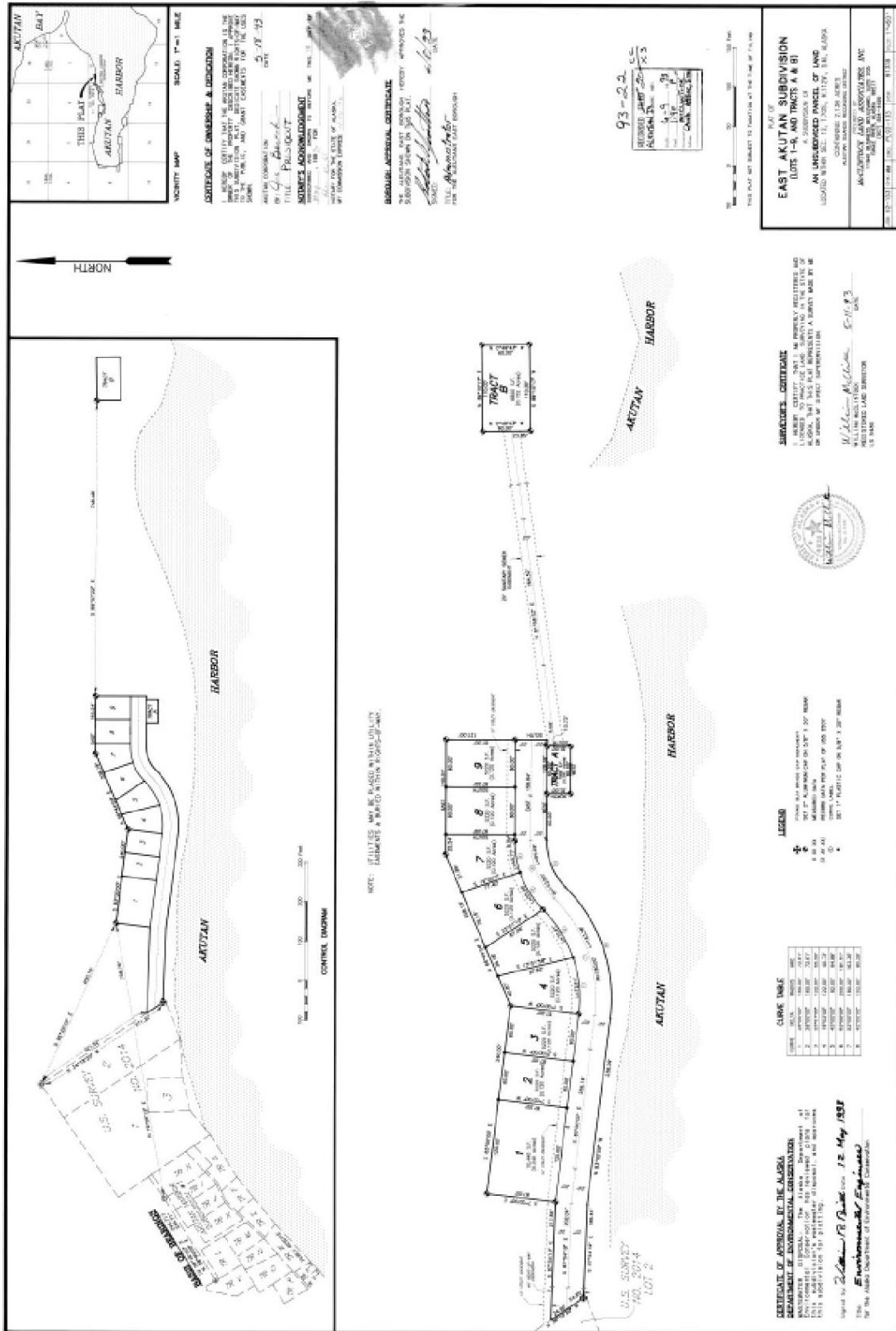
**Akutan Existing Subdivision – Akutan Harbor Subdivision (1997)**



### Akutan Existing Subdivision – Akutan School (1997)



# Akutan Existing Subdivision – East Akutan (1993)

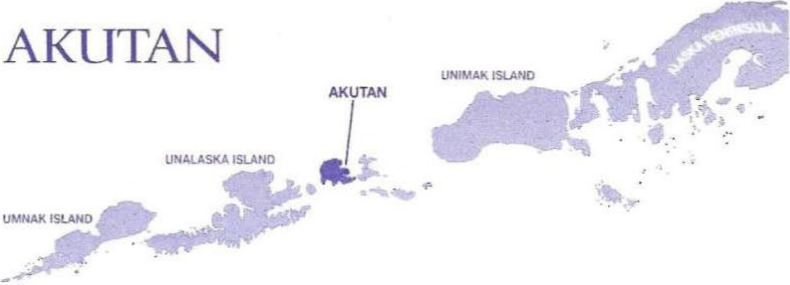


## Appendix C: City of Akutan Resolution

# CITY OF AKUTAN

P.O. Box 109  
Akutan, Alaska 99503-3952

Phone (907) 698-2228  
Fax (907) 698-2202



UNIMAK ISLAND  
UNALASKA ISLAND  
AKUTAN  
UNIMAK ISLAND

Introduced by: Mayor Joe Bereskin  
Date: May 16, 2011  
Public Hearing: May 16, 2011

### CITY OF AKUTAN, ALASKA

#### RESOLUTION NO. 11-15

**A RESOLUTION OF THE CITY OF AKUTAN DESIGNATING THE MAYOR AS PETITIONER'S REPRESENTATIVE AND THE ASSISTANT CITY ADMINISTRATOR AS ALTERNATE REPRESENTATIVE TO EXECUTE REQUIRED DOCUMENTATION ON BEHALF OF THE CITY IN SUPPORT OF ANNEXATION OF PROPOSED TERRITORY.**

**WHEREAS**, the Akutan City Council approved Ordinance No. 10-11 incorporating an amendment to the Akutan Community Plan recommending adoption of Planning Goals and Objective 1.6 to "provide for maximum local self-government, orderly planning, and provision of services through annexation of territory reasonably anticipated as needed for growth or development"; and

**WHEREAS**, Alaska Statute 29.05.040(c)(4) states "an area adjoining the municipality may be annexed by ordinance without an election if all property owners and registered voters in the proposed territory petition the governing body"; and

**WHEREAS**, the City Council has reviewed the PETITION TO THE LOCAL BOUNDARY COMMISSION distributed May 11, 2011; and

**WHEREAS**, the City of Akutan owns property located in the proposed territory for annexation on Akun Island in proximity to the Akutan Airport under construction; and

**WHEREAS**, the Akutan Planning Commission passed Resolution 11-02 recommending the Council submit a petition for annexation of the proposed territory in accordance with State law and State of Alaska Local Boundary Commission Regulations; and

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City of Akutan, AlaskaResolution #11-15  
Page 1 of 2

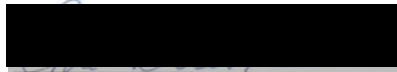
WHEREAS, the legal boundary description of the territory proposed to be annexed is attached hereto and incorporated by reference as ATTACHMENT A and shown on the map as Attachment B;

**NOW, THEREFORE, BE IT RESOLVED:**


**SECTION 1.** The City Council finds that the territory proposed for annexation, generally described as lands and submerged lands in the areas of Hot Springs Bay and Valley, Loud Creek, Open Bight, Akun Straight, Lost Harbor, Surf Bay, Trident Bay, and Akutan Bay, exhibits a reasonable need for city government, and that public services can be provided more efficiently and effectively by the City than by another local government.

**SECTION 2.** The City Council finds that the territory proposed for annexation is compatible in character with the annexing City of Akutan, and extension of local government services and planning authority within the expanded boundaries is justified, as development is occurring now and expected to continue into the future when the Akutan Airport becomes operational and new energy resources are developed.

**SECTION 3.** The City Council designates Mayor Joe Bereskin as the Petitioner's Representative and the Assistant City Administrator Susan Lutz as Alternate Representative, to execute required documents on behalf of the City and submit the Petition for Annexation for technical review by Staff of the Local Boundary Commission.

  
\_\_\_\_\_  
Joe Bereskin, Mayor

ATTEST:

  
\_\_\_\_\_  
Sandra Bell Vincler, City Clerk



## Appendix D: City of Akutan Ordinance

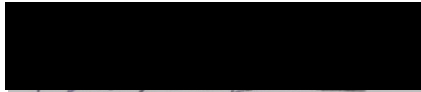
### PETITION BY PROPERTY OWNERS FOR ANNEXATION

TO THE CITY OF AKUTAN:

Subject to approval by the Local Boundary Commission of a petition from a city government, AS 29.06.040(c)(4) allows territory adjoining the petitioning city government to be annexed to that city by ordinance, without an election, if all owners of the property proposed for annexation and all registered voters in the territory proposed for annexation first petition the governing body of that city for annexation. As defined in 3 AAC 110.990(12), "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands.

The City of Akutan (hereinafter referred to as the "Petitioner") hereby petitions for the annexation of the proposed territory to the City of Akutan as described in the petition. Further, we affirm that the Petitioner:

- a) is the property owner of approximately 4.8 square miles of land located on Akun Island in the territory proposed for annexation; and
- b) acknowledges that there are no registered voters in the proposed territory for annexation; and
- c) has reviewed the complete petition, including all exhibits, and understands its terms; and
- d) supports the annexation of proposed territory as described in the attached resolution as it is in the best interests of Akutan, the Borough, and the State of Alaska; and
- e) has authorized the person below to execute the required documentation of consent on behalf of the Petitioner.



Authorized Signature

Joe Beneskin  
Printed Name

City of Akutan  
Name of Property Owner

PO Box 109 Akutan, Alaska 99553  
Address of Property Owner

20 September 2011  
Date Signed

# AKUTAN



## CITY OF AKUTAN PLANNING COMMISSION

### RESOLUTION NO. 11-02 (Amended)

**A RESOLUTION OF THE AKUTAN PLANNING COMMISSION RECOMMENDING THE AKUTAN CITY COUNCIL SUBMIT TO THE STATE OF ALASKA LOCAL BOUNDARY COMMISSION A PETITION FOR ANNEXATION OF PROPOSED TERRITORY.**

**WHEREAS**, by unanimous approval of Resolution 10-04 on June 14, 2010, the City of Akutan Planning Commission approved an amendment to the Akutan Community Plan recommending adoption of Planning Goals and Objective 1.6 to “provide for maximum local self-government, orderly planning, and provision of services through annexation of territory reasonably anticipated as needed for growth or development”; and

**WHEREAS**, the Akutan City Council subsequently approved Ordinance No. 10-11 incorporating the amendment as an element of the Akutan Community Plan; and

**WHEREAS**, on January 18, 2011, by Resolution 11-10, the Council retained RMA Consulting to proceed with City Staff to prepare and submit an Annexation Petition to the State of Alaska Local Boundary Commission (LBC) and as part of the 2011 Work Program; and

**WHEREAS**, Alaska Statute 29.05.040(c)(4) states “an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body”; and

**WHEREAS**, under the provisions of Akutan Municipal Code Chapter 8.10, it is the function of the Planning Commission to recommend to the Council any decision with regard to matters related to land use planning and zoning; and

**WHEREAS**, Akutan Planning Commissioners have reviewed and considered the PETITION TO THE LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF ADJOINING TERRITORY TO THE CITY OF

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City of Akutan, Planning Commission

Resolution 11-02  
Page 1 of 2



AKUTAN BY UNANIMOUS CONSENT OF ALL PROPERTY OWNERS, distributed by City Staff for review and comment on May 11, 2011; and

**WHEREAS**, the legal boundary description of the territory proposed to be annexed is attached hereto and incorporated by reference as ATTACHMENT A and shown on the map at Attachment B;

**NOW THEREFORE BE IT RESOLVED:**

SECTION 1. The Commission finds that the territory proposed for annexation, generally described as lands adjacent to Akutan in the Hot Springs Bay area and lands on adjacent Akun Island, exhibits a reasonable need for city government, and that the services determined to be essential city services can be provided more efficiently and effectively by the City than by another local government.

SECTION 2. The Commission finds that the territory proposed for annexation is compatible in character with the annexing City of Akutan, and extension of local government services and planning authority within the expanded boundaries is justified, as development is occurring now and expected to continue into the future when the Akutan Airport becomes operational and new energy resources are developed at the head of Akutan Bay.

SECTION 3. The Commission authorizes the Mayor to submit to the LBC for preliminary technical review and comment, the City's PETITION FOR ANNEXATION OF ADJOINING TERRITORY TO THE CITY OF AKUTAN BY UNANIMOUS CONSENT OF ALL PROPERTY OWNERS.

SECTION 4. Upon acceptance of the Petition, after technical review by the LBC, the Planning Commission further recommends the Council adopt an ordinance in accordance with State law and State of Alaska Local Boundary Commission Regulations, designating the Mayor as the City's Authorized Representative and the Assistant City Administrator ~~Attorney~~ as Alternative Representative for all matters relating to the Annexation proceeding.

**ADOPTED THIS 16TH DAY OF MAY, 2011, by a vote of 4 in favor and 0 opposed.**



Commission Chair

ATTEST:



Commission Administrator

# Appendix E: Akutan Corporation Resolution

## PETITION BY PROPERTY OWNERS FOR ANNEXATION

TO THE CITY OF AKUTAN:

Subject to approval by the Local Boundary Commission of a petition from a city government, AS 29.06.040(c)(4) allows territory adjoining the petitioning city government to be annexed to that city by ordinance, without an election, if all owners of the property proposed for annexation and all registered voters in the territory proposed for annexation first petition the governing body of that city for annexation. As defined in 3 AAC 110.990(12), "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands.

The Akutan Corporation (hereinafter referred to as the "Petitioner") hereby petitions for the annexation of the proposed territory to the City of Akutan as described in the petition. Further, we affirm that the Petitioner:

- a) is the property owner of all of the uninhabited land proposed for annexation, excluding a 4.71 acre parcel of land owned by the Aleutians East Borough and approximately 4.8 square miles owned by the City of Akutan; and
- b) acknowledges that there are no registered voters in the proposed territory for annexation; and
- c) has reviewed the complete petition, including all exhibits, and understands its terms; and
- d) supports the annexation of proposed territory as described in the attached resolution as it is in the best interests of Akutan, the Borough, and the State of Alaska; and
- e) has authorized the person below to execute the required documentation of consent on behalf of the Petitioner.



Authorized Signature

Darryl Pelkey  
Printed Name

Akutan Corporation  
Name of Property Owner

P.O. Box 8 Akutan Alaska, 99553  
Address of Property Owner

10-11-2011  
Date Signed

## AKUTAN CORPORATION

P.O. Box 8 AKUTAN, ALASKA 99553 (907) 698-2206 FAX (907) 698-2207

### AKUTAN CORPORATION

Resolution No. 2011-02



Whereas, the Akutan Corporation (hereafter “AC”) is the Alaska Native Village Corporation for Akutan village organized under Alaska law pursuant to the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601 *et seq.*, and

Whereas, the City of Akutan has filed a petition with the Alaska Local Boundary Commission to annex territory and expand its boundaries to include the following-described land on Akutan and Akun Islands, much of which is owned by Akutan Corporation:

Beginning at the northwest corner of Section 18, T70S, R112W, Seward Meridian (S.M.), Alaska;

Thence, westerly along the south boundary of Section 12, T70S, R113W, S.M. to the southwest corner of Section 12, T70S, R113W, S.M.

Thence, northerly along the west boundary of Sections 12 and 1, T70S, R113W, S.M. and Sections 36 and 25, T69S, R113W, S.M. to the northwest corner of Section 25, T69S, R113W, S.M.

Thence, westerly along the south boundary of Section 23, T69S, R113W, S.M. to the southwest corner of Section 23, T69S, R113W, S.M.

Thence, northerly along the west boundary of Sections 23, 14 and 11, T69S, R113W, S.M. to the intersection of the mean high water line of the Bering Sea and the west boundary of Section 11, T69S, R113W, S.M.

Thence, continuing northerly along the west boundary of protracted Sections 11 and 2, T69S, R113W, S.M. to the northwest corner of protracted Section 2, T69S, R113W, S.M.

Thence, easterly along the north boundary of protracted Sections 2 and 1, T69S, R113W, S.M., protracted Sections 6, 5, 4, 3, 2 and 1, T69S, R112W, S.M. and protracted Sections 6, 5 and 4, T69S, R111W, S.M. to the intersection of the mean high water line of Akutan Bay and the north boundary of Section 4, T69S, R111W, S.M.

Thence, continuing easterly along the north boundary of Sections 4, 3 and 2, T69S, R111W, S.M. to the southwest corner of Section 35, T68S, R110W, S.M.

Thence, northerly along the west boundary of Section 35, T68S, R110W, S.M. to the northwest corner of Section 35, T68S, R110W, S.M.

Thence, easterly along the north boundary of Sections 35 and 36, T68S, R110W, S.M. to the northeast corner of Section 36, T68S, R110W, S.M.

Thence, southerly along the east boundary of Section 36, T68S, R110W, S.M. to the southeast corner of Section 36, T68S, R110W, S.M.

Thence, easterly along the north boundary of Section 6, T69S, R110W, S.M. to the northeast corner of Section 6, T69S, R110W, S.M.

Thence, southerly along the east boundary of Sections 6 and 7, T69S, R110W, S.M. to the southeast corner of Section 7, T69S, R110W, S.M.

Thence, easterly along the north boundary of Sections 17 and 16, T69S, R110W, S.M. to the northeast corner of Section 16, T69S, R110W, S.M.

Thence, southerly along the east boundary of Sections 16, 21, 28 and 33, T69S, R110W, S.M. and Section 4, T70S, R110W, S.M. to the intersection of the mean high water line of Trident Bay and the east boundary of Section 4, T70S, R110W, S.M.

Thence, continuing southerly along the east boundary of protracted Sections 4, 9 and 16, T70S, R110W, S.M. to the southeast corner of protracted Section 16, T70S, R110W, S.M.

Thence, westerly along the south boundary of protracted Section 16, T70S, R110W, S.M. to the southwest corner of protracted Section 16, T70S, R110W, S.M.

Thence, southerly along the east boundary of protracted Section 20, T70S, R110W, S.M. to the southeast corner of protracted Section 20, T70S, R110W, S.M.

Thence, westerly along the south boundary of protracted Section 20, T70S, R110W, S.M. to the southwest corner of protracted Section 20, T70S, R110W, S.M.

Thence, northerly along the west boundary of protracted Section 20, T70S, R110W, S.M. to the northwest corner of protracted Section 20, T70S, R110W, S.M.

Thence, westerly along the south boundary of protracted Section 18, T70S, R110W, S.M. and Sections 13,14,15 and 16, T70S, R111W, S.M. to the intersection of the mean high water line of the Pacific Ocean and the south boundary of Section 16, T70S, R111W, S.M.

Thence, continuing westerly along the south boundary of Sections 16,17 and 18, T70S, R111W, S.M. to the southwest corner of Section 18, T70S, R111W, S.M.

Thence, southerly along the east boundary of Section 24, T70S, R112W, S.M. to the southeast corner of Section 24, T70S, R112W, S.M.

Thence, westerly along the south boundary of Sections 24, 23 and 22, T70S, R112W, S.M. to the southwest corner of Section 22, T70S, R112W, S.M.

Thence, northerly along the west boundary of Section 22, T70S, R112W, S.M. to the northwest corner of Section 22, T70S, R112W, S.M.

Thence, westerly along the south boundary of Sections 16, 17 and 18, T70S, R112W, S.M. to the southwest corner of Section 18, T70S, R112W, S.M.

Thence, northerly along the west boundary of Section 18, T70S, R112W, S.M. to the Point of Beginning.

Excluding therefrom the area within the current boundary of the City of Akutan, as described in Document No. 80-90, recorded in Book 19, Page 535, Aleutian Islands Recording District.


Containing approximately 130.02 square miles (of which 77.42 is water), all within the Third Judicial District, Alaska. Source: McClintock Land Associates, Inc., 2011, based on maps provided by City of Akutan.

Whereas, the Board of Directors is familiar with the proposed boundaries and location of the above-described land.

Now, Therefore, Be It Resolved, that Akutan Corporation hereby petitions the City of Akutan to annex the above-described land, and further supports and joins in the City of Akutan's petition for annexation of said land. Akutan Corporation's president, Darryl Pelkey, is hereby authorized and directed to sign a "Petition by Property Owners for Annexation" on behalf of Akutan Corporation requesting that the City of Akutan annex the above-described land.

CERTIFICATION

The foregoing resolution was adopted and approved By the Board of Directors on September 27, 2011, by a vote of 6 in favor, 0 opposed, and 1 abstaining.

  
Darryl Pelkey, President

Date 10/11/2011

Attest: Colleen Barker  
Secretary

Date 10/11/2011



## Appendix F: Aleutians East Borough Non-objection Resolution

### PETITION BY PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION

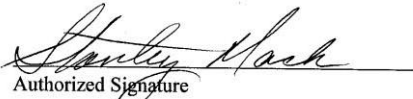
TO THE CITY OF AKUTAN:

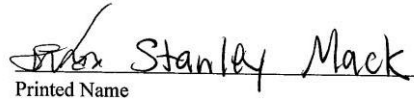
Subject to approval by the Local Boundary Commission of a petition from a city government, AS 29.06.040(c)(4) allows territory adjoining the petitioning city government to be annexed to that city by ordinance, without an election, if all owners of the property proposed for annexation and all registered voters in the territory proposed for annexation first petition the governing body of that city for annexation.

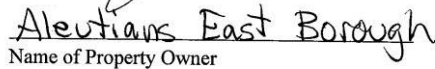
As defined in 3 AAC 110.990(12), "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands.

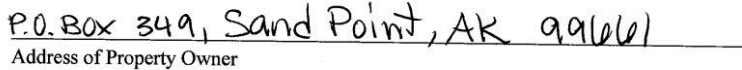
WE, THE UNDERSIGNED, hereby petition for the annexation of the proposed territory adjoining the City of Akutan as described in the complete petition. Further, we affirm that:

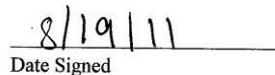
- a) we have reviewed the complete petition for annexation, including all exhibits and we understand its terms; and
- b) we own property in the territory proposed for annexation; and
- c) we support the proposed annexation and have authorized the person below to execute the required documentation of consent.

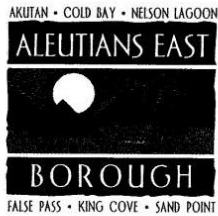
  
Authorized Signature

  
Printed Name

  
Name of Property Owner

  
Address of Property Owner

  
Date Signed



RESOLUTION 11-25

**A RESOLUTION OF THE ALEUTIANS EAST BOROUGH ASSEMBLY SUPPORTING THE CITY OF AKUTAN'S PETITION TO THE STATE OF ALASKA LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF TERRITORY TO THE CITY OF AKUTAN, AND AUTHORIZING THE MAYOR TO EXECUTE REQUIRED DOCUMENTATION OF CONSENT ON BEHALF OF THE BOROUGH.**

**WHEREAS**, the City of Akutan distributed to Borough Assembly Members a petition for annexation of territory adjoining the City, that encompasses approximately 130 square miles, including approximately 25.3 miles on Akutan Island, 27.3 miles on Akun Island, and 77.4 miles of submerged lands; and

**WHEREAS**, under the provisions of Alaska Statute 29.06.040(c), territory adjoining a municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body; and

**WHEREAS**, the Aleutians East Borough is the property owner of an unpopulated, 4.71 acre parcel located on Akun Island near the northern shore of Lost Harbor; and

**WHEREAS**, the City of Akutan City Council has authorized Mayor Joseph Bereskin to submit to the State of Alaska Local Boundary Commission a petition for annexation of territory; and

**WHEREAS**, although the territory proposed for annexation is unpopulated, expected and necessary development within the expanded boundaries of the City will support and justify the extension of city government into that area; and

**WHEREAS**, the Aleutians East Borough Code Section 45.05.030 has delegated to the City of Akutan all the powers and duties of planning, platting, and land use regulations as provided in AS 29.40; and

**WHEREAS**, Akutan is committed to developing its airport and transportation infrastructure to promote economic and employment opportunities through a coordinated, community-wide effort based on planning, awareness, and consensus; and

**WHEREAS**, the annexation of territory to Akutan's City boundaries will also promote orderly development of sustainable energy resources consistent with the local goals and objectives articulated by Akutan residents in their adopted Community Plan and Capital Improvement Program; and

**WHEREAS**, the legal boundary description of the territory proposed to be annexed is attached hereto and incorporated by reference as ATTACHMENT A and shown on the map as ATTACHMENT B;

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ANCHORAGE OFFICE • 3380 C Street, Ste. 205 • Anchorage, AK 99503-3952 • (907) 274-7555 • Fax: (907) 276-7569 • Email: [admin@aleutianseast.org](mailto:admin@aleutianseast.org)  
KING COVE OFFICE • P.O. Box 49 King Cove, AK 99612 • (907) 497-2588 • Fax: (907) 497-2386 • Email: [finance@aleutianseast.org](mailto:finance@aleutianseast.org)  
SAND POINT OFFICE • P.O. Box 349 • Sand Point, AK 99661 • (907) 383-2699 • Fax: (907) 383-3496 • Email: [clerk@aleutianseast.org](mailto:clerk@aleutianseast.org)

**BE IT FURTHER RESOLVED** by the Aleutians East Borough Assembly:

1. The City of Akutan is in the best position to guide community growth, support new enterprise, create jobs, reduce energy costs, improve transportation, develop community infrastructure, and preserve subsistence and traditional values.
2. The territory proposed for annexation is physically, economically, and culturally connected to the community of Akutan, and the City is best situated to govern orderly development and provide efficient, effective services in these areas.
3. The Mayor of the Aleutians East Borough is authorized to execute the required documentation of consent on behalf of the Aleutians East Borough, a property owner within the proposed annexation area.
4. The Aleutians East Borough supports the proposed annexation as it is in the best interests of Akutan, the Aleutians East Borough, the region, and the State of Alaska, and respectfully requests that the Local Boundary Commission approve the Petition for Annexation.
5. This resolution supersedes Resolution No. 09-27.

DATED THIS 6 DAY OF <sup>June</sup>~~MAY~~, 2011

  
Stanley Mack, Mayor

  
Tina Anderson, Clerk



## Appendix G: Public Notices

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### **PUBLIC NOTICE**

NOTICE OF FILING OF  
PETITION FOR ANNEXATION  
BY THE CITY OF AKUTAN TO  
LOCAL BOUNDARY COMMISSION (LBC)

The City of Akutan (Petitioner), a second class city in the Aleutians East borough, has filed an annexation petition by local action with the Local Boundary Commission (LBC). The petitioner's representative is Akutan Mayor Joseph Bereskin. The territory proposed by the city for annexation consists of approximately 130.02 square miles of land and water. The territory contemplated for annexation is generally described as lands and submerged lands in the areas of Hot Springs Bay and Valley, Loud Creek, Open Bight, Akun Straight, Lost Harbor, Surf Bay, Trident Bay, and Akutan Bay.

The legal description of the territory proposed for annexation is set out in the Petition. A map of the area proposed for incorporation can be seen at Akutan City Administration Building, City of Akutan - Anchorage Office, Aleutians East Borough Sand Point Office, or LBC website (listed below).

Standards governing the annexation to cities are established in Article X, Constitution of the State of Alaska; AS 29.06.040 – 29.06.060; 3 AAC 110.090 – 3 AAC 110.150; and 3 AAC 110.900 – 3 AAC 110.990. Procedures governing city annexation by the local action method are set out in Article X, Section 12 of Alaska's constitution, AS 29.06.040, and 3 AAC 110.400 – 3 AAC 110.700.

The petition and related documents are available for public review at the following locations, days, and times: Akutan City Administration Building, P.O. Box 109, Akutan, Alaska 99553, Monday through Friday, 9 a.m. to 5 p.m.; City of Akutan - Anchorage Office, 3380 C Street, Suite 205, Anchorage, Alaska 99503, Monday through Friday, 8 a.m. to 5 p.m.; Aleutians East Borough Sand Point Office, P.O. Box 349, Sand Point, Alaska 99661, Monday through Friday, 8 a.m. to 5 p.m. or LBC website, [http://www.commerce.state.ak.us/dca/lbc/petersburg\\_incorp.htm](http://www.commerce.state.ak.us/dca/lbc/petersburg_incorp.htm), available anytime.

Questions concerning the proposed annexation may be directed to LBC staff at the mailing address, email address, or fax number listed above. The LBC relaxed 3 AAC 110.700(d) so that the public is not required to send an original if an electronic comment has been filed. Any interested person may file with the LBC written comments regarding the annexation petition. Additionally, a person with the capacity to sue may file with the LBC a responsive brief in support of or in opposition to the petition. Responsive briefs must be filed in accordance with 3 AAC 110.480 and 3 AAC 110.590(4). A person who files a responsive brief (as distinguished from written comments) gains certain procedural rights and duties during the petition proceedings. The deadline for filing responsive briefs and written comments with the LBC is 4:30 p.m., December 30, 2011. See 3 AAC 110.480 and 3 AAC 110.590(4) for the procedural requirements to file written comments, or responsive briefs. Responsive briefs and written comments must be received in the office below by that deadline:

Local Boundary Commission staff, 550 West Seventh Avenue, Suite 1770, Anchorage, AK 99501-3510  
Phone: 907-269-4587 • Fax: 907-269-4539 • Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Questions concerning the proposed annexation may be directed to LBC staff at the mailing address, email address, or fax number listed above. Additionally, inquiries may be directed to LBC staff by telephone at (907) 269-4587.

After the Petitioner has an opportunity to answer any responsive briefs and comments, the Alaska Department of Commerce, Community and Economic Development (Commerce) will prepare a report on the proposal. Procedures governing departmental reports are set out in 3 AAC 110.530. The LBC will then hold a public hearing on the proposal. The LBC may conduct the hearing by teleconference. The decisional meeting for this proposal will follow the public hearing.

## **PUBLIC NOTICE**

### NOTICE OF PUBLIC COMMENT PERIOD ON THE REPORT CONCERNING THE CITY OF AKUTAN ANNEXATION PETITION

The report concerning the City of Akutan annexation petition by local action will be released Friday, March 2<sup>nd</sup>. The territory proposed by the city for annexation consists of approximately 130.02 square miles of land and water. The territory contemplated for annexation is generally described as lands and submerged lands in the areas of Hot Springs Bay and Valley, Loud Creek, Open Bight, Akun Straight, Lost Harbor, Surf Bay, Trident Bay, and Akutan Bay. The legal description of the territory proposed for annexation is set out in the Petition.

The report, petition, and other related documents are available for public review at the following locations, days, and times open to the public:

Akutan City Administration Building, P.O. Box 109, Akutan, Alaska 99553, Monday through Friday, 9 a.m. to 5 p.m.; City of Akutan - Anchorage Office, 3380 C Street, Suite 205, Anchorage, Alaska 99503, Monday through Friday, 8 a.m. to 5 p.m.; Aleutians East Borough Sand Point Office, P.O. Box 349, Sand Point, Alaska 99661, Monday through Friday, 8 a.m. to 5 p.m. or LBC website, [http://commerce.alaska.gov/dca/lbc/2011\\_City\\_of\\_Akutan\\_Annexation\\_Petition/](http://commerce.alaska.gov/dca/lbc/2011_City_of_Akutan_Annexation_Petition/), available anytime.

Standards governing the annexation to cities are established in Article X, Constitution of the State of Alaska; AS 29.06.040 – 29.06.060; 3 AAC 110.090 – 3 AAC 110.150; and 3 AAC 110.900 – 3 AAC 110.990. Procedures governing city annexation by the local action method are set out in Article X, Section 12 of Alaska's constitution, AS 29.06.040, and 3 AAC 110.400 – 3 AAC 110.700.

Any interested person may file with the LBC written comments regarding the annexation petition. The deadline for filing a written comment with the LBC is 4:30 p.m., Tuesday, March 27, 2012. See 3 AAC 110.480 and 3 AAC 110.590(4) for the procedural requirements to file written comments. Written comments must be received in the office below:

Local Boundary Commission staff, 550 West Seventh Avenue, Suite 1770, Anchorage, AK 99501-3510  
Fax: 907-269-4539 • Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Questions concerning the proposed annexation may be directed to LBC staff at the mailing address, email address, or fax number listed above. Additionally, inquiries may be directed to LBC staff by telephone at (907) 269-4587.

The LBC has scheduled a public hearing on the proposal for Thursday, March 29, 2012, at 10:00 a.m. in the Atwood Building, 550 West 7th Avenue, Suite 1640 conference room, Anchorage, AK. The LBC will conduct the hearing by teleconference. Participants may attend in Anchorage, or by teleconference. To participate in the teleconference, please call 1-800-315-6338, and type in 4587\*. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff as soon as possible. The decisional meeting for this proposal will follow the public hearing.

A teleconferenced LBC public meeting will be held on April 10<sup>th</sup>. The LBC will approve or amend meeting minutes, and approve or amend the written decision for the City of Akutan Annexation petition.