

Association of Western State Engineers 2016 Fall Meeting

“Using Critical Water Management Areas”

An Alaskan Perspective

September 26, 2016

STATE OF ALASKA / *BILL WALKER, GOVERNOR*

DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER Water Resources Section

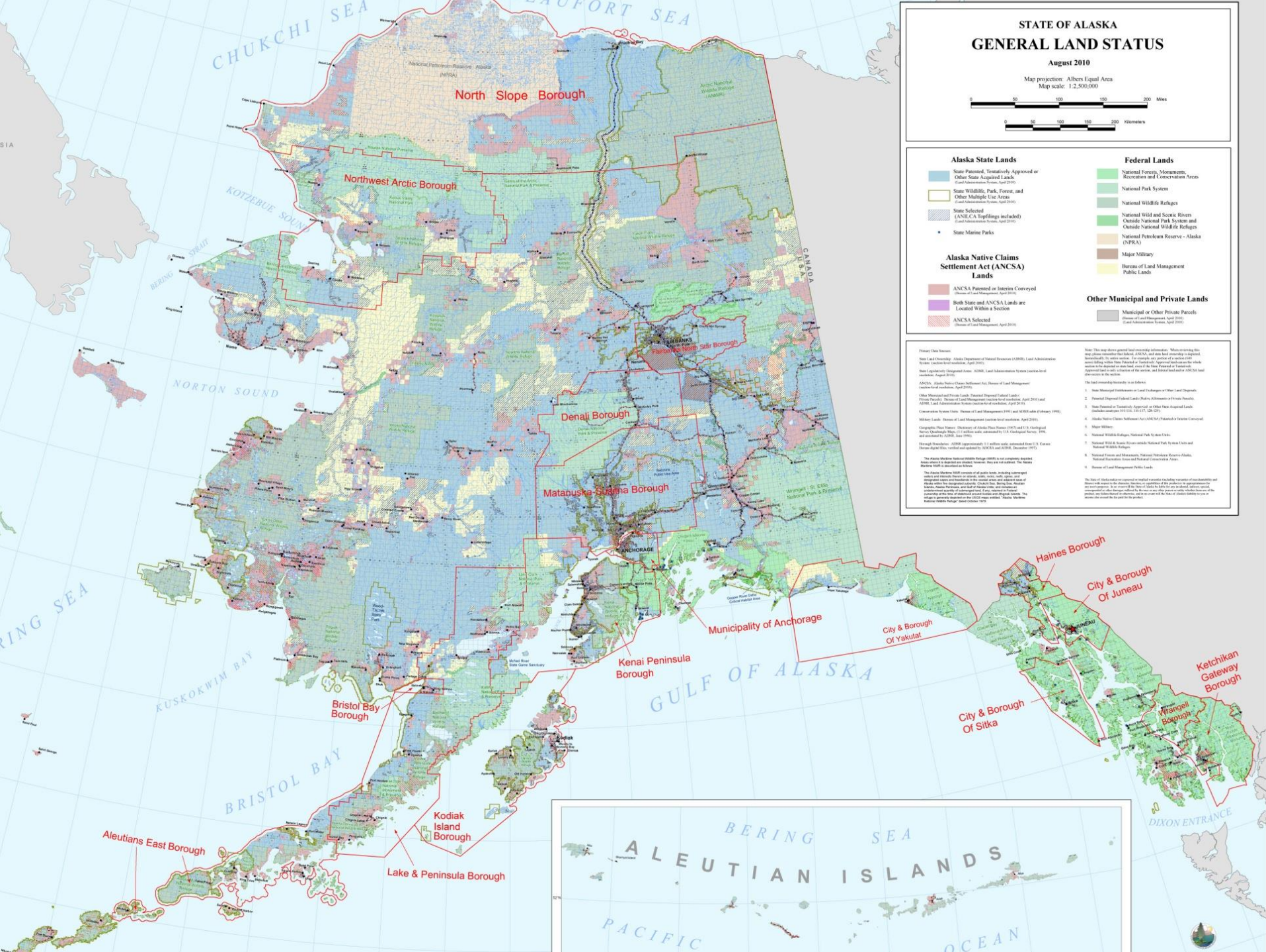


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Map projection: Albers Equal Area
Map scale: 1:2,500,000

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Map scale: 1:2,500,000

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- Land Area 586,412 Square Miles or 375 Million Acres
 - Alaska State Land - 103 million acres
 - National Wildlife Refuges - 76 million acres
 - National Parks - 52 million acres
 - BLM other - 49 million acres
 - Native Corporation Land - 44 million acres
 - BLM – NPRA - 23 million acres
 - National Forests - 22 million acres
 - Private - 4 million acres
 - Military - 2 million acres

Note: This does not include 60 million acres of submerged lands, tidelands, and shorelands

Critical Water Management Area (CWMA)

A CWMA is a geographic or hydrologic area that may be designated by the Commissioner of DNR if: there is or may be a water shortage due to drought, over appropriation, salt water intrusion or chemical or toxic contamination rendering the water source unusable.

REGULATIONS:

Relating to establishing a CWMA

- 11 AAC 93.500 Initiating Designation Proceedings
- 11 AAC 93.510 Public Notice and Hearing
- 11 AAC 93.520 Department Order
- 11 AAC 93.530 Effect of the Order
- 11 AAC 93.540 Appeals

11 AAC 93.500. Initiating designation proceedings

The commissioner will, in his or her discretion, initiate proceedings to designate a particular geographic or hydrologic area, including surface and ground water, as a critical water management area if

(1) the commissioner determines that there is or might be an imminent water shortage in the area, for all or part of the year, affecting a substantial number of permittees or certificate holders of record so that their ability to reasonably acquire water has been or will be affected by existing or potential overappropriation, drought, saltwater intrusion, or a chemical or toxic contamination rendering the water source unusable;

(2) an agency or political subdivision of the state, or an agency of the United States, petitions for the designation of the area as a critical water management area and demonstrates that a condition in (1) of this section exists; or

(3) 25 percent or more of the permittees and certificate holders of record in a geographic or hydrologic area petition for the designation of a critical water management area and demonstrate that at least one condition in (1) of this section exists.

History: Eff. 11/7/90, Register 116

Authority: AS 46.15.010 , AS 46.15.020

11 AAC 93.510. Public notice and hearing

Before the commissioner designates a geographic or hydrologic area as a critical water management area, or revokes or amends a designation, the department will

(1) **publish a notice** of the proposed designation, revocation, or amendment in a newspaper of general circulation in the area affected once a week for four consecutive weeks, soliciting public comment and announcing the date, time, and place of a public hearing;

(2) **solicit comments** on the proposed designation, revocation, or amendment by certified mail, return receipt requested, from appropriators and property owners of record within the area; affected federal, state, and local agencies, including the Departments of Fish and Game and Environmental Conservation; and any affected regional or village corporation; and

(3) **hold a public hearing in the affected area** to take written and oral comments on the proposed designation, revocation, or amendment; the department will accept additional written comments submitted up to 30 days after the hearing date.

11 AAC 93.520. Department order

The **decision to designate** a geographic or hydrologic area as a critical water management area, or revoke or amend a designation, **will be in writing**, and will, as appropriate,

- (1) **state the reasons** for the designation, revocation, or amendment;
- (2) **define the boundaries** of the area or amendment;
- (3) **predict the likelihood** of an imminent or continued water shortage or contamination problem;
- (4) **state how additional appropriations would affect the rights of permittees or certificate holders of record, or the public interest under AS 46.15.080 ; and**
- (5) **state whether, after a specific date, applications for water rights will be accepted or adjudicated.**

History: Eff. 11/7/90, Register 116

11 AAC 93.530. Effect of the order

- (a) **Within 30 days** after signing a department order to designate a geographic or hydrologic area as a critical water management area, or revoke or amend a designation, the commissioner **will announce the decision by publishing the order** in a newspaper of general circulation in the affected area once a week for four consecutive weeks. The order will also be mailed to permittees or certificate holders of record and property owners of record in the area; affected federal, state, and local agencies, and affected regional and village corporations.
- (b) After the commissioner takes action under (a) of this section, **the department may take the following actions:**
 - (1) **restrict or deny the acceptance of applications** for new water appropriations or applications for additional quantities for existing appropriators of record, until the order is amended or revoked;
 - (2) **seek voluntary agreement** among permittees and certificate holders to limit the quantity of their water use on an equitably apportioned basis during all or part of the year;
 - (3) **fix a time limit for accepting new applications** for water rights for existing water uses;
 - (4) **designate all water uses as significant;**
 - (5) **require notice of all applications;**
 - (6) **require conservation measures;**
 - (7) **take any other actions necessary** to fully inform the public of the order; or
 - (8) **enforce actions** under 11 AAC 93.280, 11 AAC 93.290, AS 46.15.255 , and AS 46.15.256 .

History: Eff. 11/7/90, Register 116; am 8/20/2004, Register 171

Sec. 46.15.080. Criteria for issuance of permit.

(b) In **determining the public interest**, the commissioner shall consider

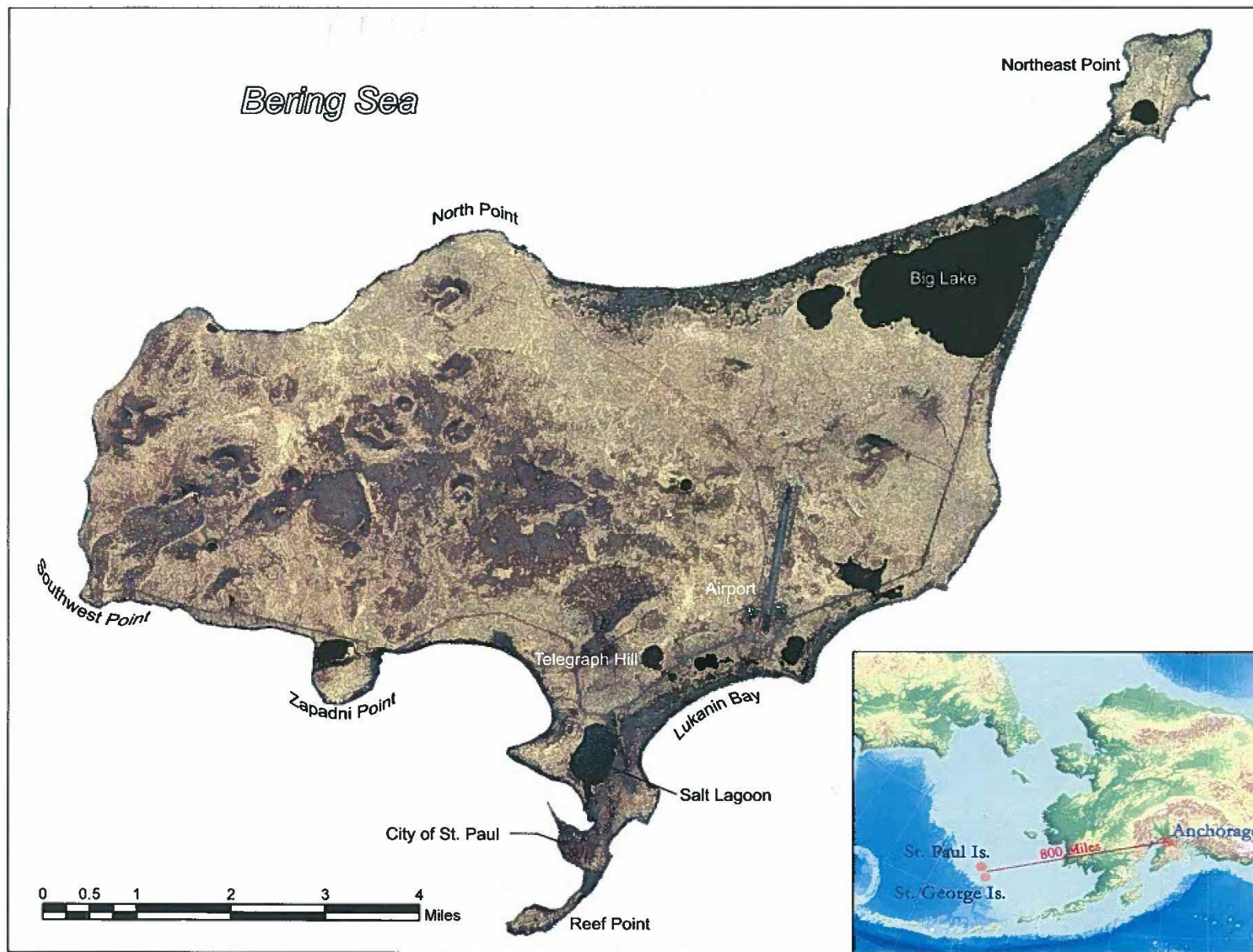
- (1) *the benefit to the applicant* resulting from the proposed appropriation;
- (2) *the effect of the economic activity* resulting from the proposed appropriation;
- (3) *the effect on fish and game resources* and on *public recreational opportunities*;
- (4) *the effect on public health*;
- (5) *the effect of loss of alternate uses of water* that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;
- (6) *harm to other persons* resulting from the proposed appropriation;
- (7) *the intent and ability of the applicant to complete the appropriation*; and
- (8) *the effect upon access to navigable or public water.*

11 AAC 93.540. Appeals

An eligible person affected by a decision under 11 AAC 93.520 - 11 AAC 93.530 may appeal that decision as provided in 11 AAC 02.

11 AAC 02.010. Applicability and eligibility

- (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.
- (b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.
- (c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.
- (d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.
- (e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.
- (f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.
- (g) A person may not both appeal and request reconsideration of a decision.



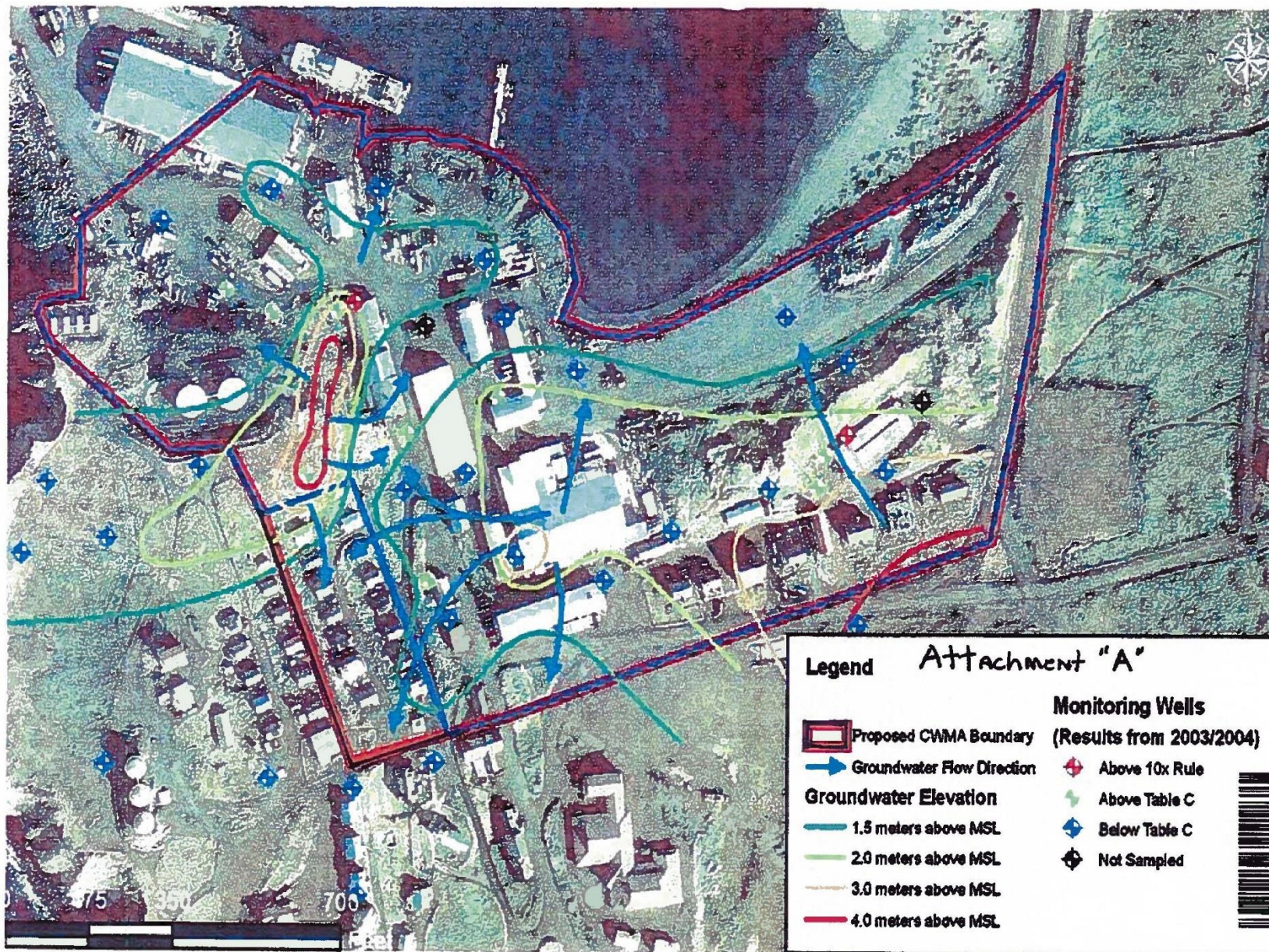
Figure

1

St. Paul Island Vicinity Map






Source: Ikonos Satellite Imagery, 2001

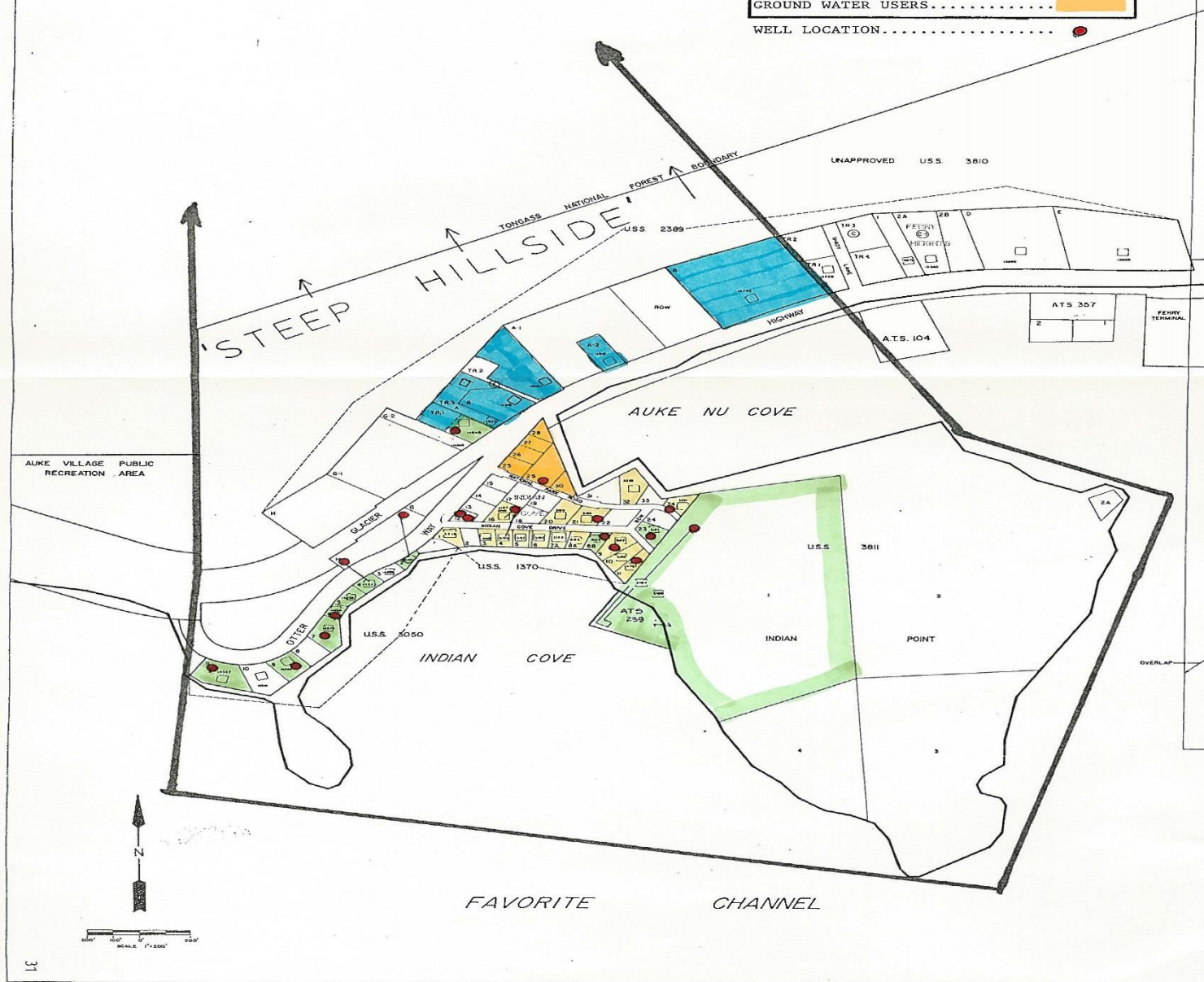






DEVELOPED LOTS

| | |
|--|---|
| SURFACE WATER USERS..... |  |
| GROUND WATER USERS..... |  |
| INDIAN COVE WATER CO. GROUND WATER USERS..... |  |
| AUKE NU CONDO GROUND WATER USERS..... |  |
| WELL LOCATION..... |  |



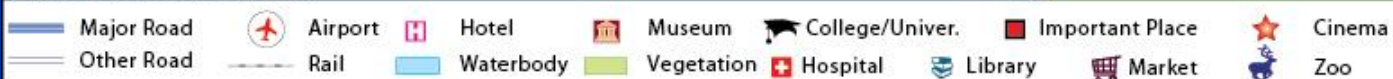
ANCHORAGE CITY



Map not to Scale

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(Updated on 25th Feb., 2013)



Outcome

St Paul Island:

Critical Management Area still in place

Auke Nu – Indian Cove:

Critical Management Area was rescinded

Anchorage:

Critical Management Area was avoided