

**SENATE AND HOUSE
JOINT JOURNAL SUPPLEMENT**

January 22, 1997

Wednesday

No. 3

**Recommendations by the
Alaska Local Boundary Commission**

in accordance with AS 44.47.567

and

Article X, Section 12

Constitution of the State of Alaska

January 22, 1997

Juneau, Alaska

THE UNIVERSITY OF CHICAGO

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The following proposed local boundary changes, in accordance with AS 44.47.567(b)(2), by the Alaska Local Boundary Commission are incorporated in their Annual Report. A complete copy of the report may be obtained from the Department of Community and Regional Affairs.

**CHAPTER III - ACTIONS
REQUIRING LEGISLATIVE
REVIEW**

This chapter presents a formal recommendation of the Commission to the First Session of the Twentieth Alaska Legislature for boundary changes pursuant to Article X, Section 12 of Alaska's constitution. The first recommendation is for the detachment of 13 acres from the City of Fairbanks. The second recommendation is for the annexation of territory to the City and Borough of Yakutat.

Under the constitution and statutes, these recommendations receive automatic legislative approval, unless rejected by resolutions adopted by the House and Senate within 45 days of the date that the recommendations are filed (or at the end of the session, whichever is earlier). Forty-five days from the date of filing of these recommendations is March 8, 1997.

The recommended boundary changes will take effect only upon tacit legislative approval, satisfaction of any conditions imposed by the Commission, and demonstration of compliance with the federal Voting Rights Act.



Local Boundary Commission

Darroll Hargraves, Chairperson

Kathleen S. Wasserman, Vice-Chairperson, First Judicial District

Nancy E. Cannington, Member, Second Judicial District

Kevin Waring, Member, Third Judicial District

William Walters, Member, Fourth Judicial District

**RECOMMENDATION NUMBER ONE OF THE LOCAL
BOUNDARY COMMISSION TO THE FIRST SESSION
OF THE TWENTIETH ALASKA LEGISLATURE**

**A recommendation for detachment of 13 acres
from the City of Fairbanks**

SECTION I

BACKGROUND AND DESCRIPTION OF AREA

On February 29, 1996, the Fairbanks North Star Borough (FNSB) petitioned the Local Boundary Commission (LBC) to detach a tract from the jurisdiction of the City of Fairbanks. The tract is the location of the Badger Road solid waste transfer station.

The area proposed for detachment is an uninhabited and unimproved thirteen acre parcel on the eastern edge of Fort Wainwright. Fort Wainwright was annexed to the City in 1973. The land is not used for military purposes. The site is level, covered with black spruce and shrub vegetation. The property is located south of Holmes Road-Badger Road intersection. The thirteen acre parcel has recently been bisected from a larger tract of the military property by the construction of Holmes Road. The road

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centerline establishes the northern boundary of the thirteen acre parcel. The parcel is located in the south half of section 16 , T1S, R1E, F.B. & M.

Detachment has been proposed because conditions upon the bonds to fund development of the solid waste transfer station require that the property be outside the boundaries of city governments. Detachment of the property will not change the military interest in the property. The Borough has secured ownership of part of the tract proposed for detachment, and is working with the City, Department of the Army and the Bureau of Land Management to secure ownership of the entire 13 acres.

No responsive briefs or letters were filed in opposition to the detachment proposal.

The proposed detachment has been non-controversial and is supported by the City of Fairbanks.

Summary of Proceedings

Filing of Petition. The petition for detachment was filed with the Department of Community and Regional Affairs (DCRA) on February 29, 1996. On March 8, 1996, DCRA notified the petitioner and interested parties that the petition had been accepted for filing.

Deadline for Responsive Briefs & Comments. Interested parties were advised that May 17, 1996 was the deadline for briefs and comments on the detachment proposal.

Responsive Briefs and Comments Filed. No responsive briefs or written comments were filed.

DCRA Provisional Report. A 17-page provisional report and recommendation concerning the proposed detachment was issued to 29 interested parties on September 13, 1996. The provisional report recommended that the petition be approved, without amendment. October 11, 1996 was established as the deadline for comments on the provisional report.

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Review of Provisional Report. Timely comments endorsing DCRA's report were received from only the City of Fairbanks. The City endorsed the recommendation contained in the DCRA provisional report.

Final Report. On October 30, DCRA issued its final report and recommendation regarding the petition. The detachment proposal was initiated by the FNSB to allow it to construct a solid waste transfer station using nonareawide funds. The final DCRA recommendation was that the detachment be approved, as submitted.

Notice of LBC Public Hearing. On November 1, DCRA issued notice of the December 6 hearing on the petition. The notice was posted, published for three consecutive weeks in the *Fairbanks News-Miner* and broadcast media were requested to announce the hearing time and place as a public service announcement. Notice of the hearing was sent to 35 parties by DCRA.

LBC Public Hearing. The Local Boundary Commission's public hearing regarding the petition for detachment of approximately 13 acres from the City of Fairbanks began at 7:30 p.m. at the FNSB Assembly Chambers. Commissioners Hargraves and Walters were present at the hearing site. Commissioners Waring and Wasserman participated via teleconference.

LBC Decisional Meeting. The LBC rendered its decision immediately upon conclusion of the December 6 public hearing. All four members of the Commission participating in the hearing voted to approve the petition, as submitted.

SECTION II

FINDINGS REGARDING CITY DETACHMENT STANDARDS

State law (19 AAC 10.260) provides that a detachment petition may be granted only if the LBC determines that such will "serve the balanced best interest of the state, the territory to be detached, and the political subdivisions affected by the detachment." In making its determination, the LBC is free to examine any factor that it

considers to be relevant. The following ten factors set forth in 19 AAC 10.260 were considered by the Commission in the evaluation of the proposed detachment. The Commission's finding regarding the factors are as follows:

1. Health, safety and general welfare of the city and the territory after detachment.

The record clearly suggests that there will be no [negative] impact upon the City of Fairbanks "*since this is an insignificant piece of land which receives no City services and is uninhabited.*"¹ The territory proposed for detachment will be used to provide a basic public facility for residents in the vicinity. The tract was declared surplus by the U.S. Army. The U.S. Army has transferred ownership of part of the parcel to the Borough, and efforts are underway to secure transfer of the remainder of the parcel.

2. Ability of the city or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment.

As an undeveloped, uninhabited parcel owned by the military, the area proposed for detachment currently neither receives nor requires services from the City of Fairbanks. The Fairbanks North Star Borough has committed to developing, maintaining and operating the solid waste transfer site in the territory proposed for detachment.

3. Reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment.

There is no reasonable likelihood that the area proposed for detachment will be subject to population growth or significant economic development, other than the solid waste transfer site and associated facilities and functions.

¹ Petitioner's Brief, Exhibit F, Petition for Detachment, pg. 21.

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- 4. Historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory.**

Since the area has remained undeveloped and unpopulated, there is no historical pattern of provision of municipal services to the area.

- 5. Historical pattern of cooperation and shared commitment between the people of the city and the people of the territory.**

The area proposed for detachment is uninhabited and undeveloped, hence the factor is not relevant to the proposed boundary change.

- 6. Extent to which detachment might enhance or diminish the ability of the remaining city to meet the standards for incorporation required under AS 29.05 and 19 AAC 10.010 - 19 AAC 10.040.**

The proposed detachment would have no bearing upon the ability of the City of Fairbanks to meet the standards for city incorporation.

- 7. Extent to which a transition plan of a previous annexation has been implemented and is effective.**

The area is not subject to any transition plan of a previous annexation.

- 8. Effect of the proposed detachment on the long-term stability of the finances of the remaining city, other municipalities, and the state.**

Since the property proposed for detachment is owned by the U.S. Army and the FNSB, it is tax exempt. Thus, detachment would have no measurable effect on the finances of the City of Fairbanks. The effect of detachment upon the finances of the Fairbanks North Star Borough would be negligible. There would be no measurable effect upon the finances of the State of Alaska as a consequence of approval of the detachment petition.

9. Whether the proposed detachment will promote local self-government with a minimum number of governmental units.

Detachment would not increase the number of local government units. It would not diminish local self-government. Since the area is uninhabited, no individual would lose voting rights. Since the area proposed for detachment is tax exempt, it produces no revenue to the City of Fairbanks, the City would not experience diminished resources to serve its residents. The number of government units would not be increased.

10. Whether the territory's requirements for local government services will be adequately met following detachment.

A portion of the thirteen-acres proposed for detachment is developed as a solid waste transfer site, operated and maintained by the Fairbanks North Star Borough. Most of the 13-acre parcel will remain undeveloped, and serve as a buffer between the solid waste transfer site and residential development adjacent to the area proposed for detachment.

Based on the foregoing findings, the Local Boundary Commission concluded that the proposed detachment will serve the balanced best interests of the State of Alaska, the territory proposed for detachment, the Fairbanks North Star Borough and the City of Fairbanks.

Conclusion

The Local Boundary Commission concludes that the proposed will serve the balanced best interests of the State of Alaska, the territory proposed for detachment, the Fairbanks North Star Borough and the City of Fairbanks.

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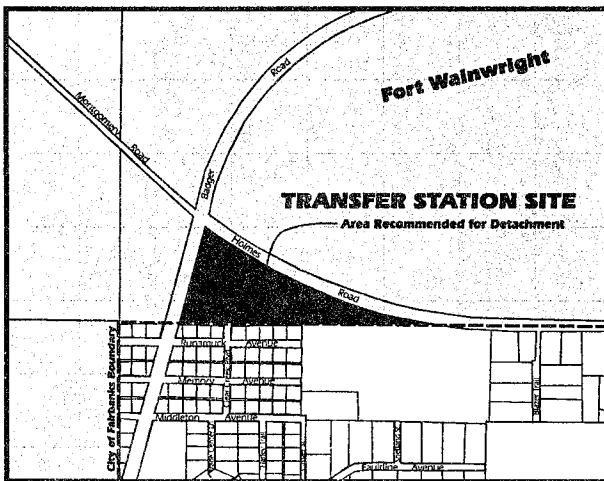
January 22, 1997

**SECTION III
RECOMMENDATION**

The Local Boundary Commission hereby recommends to the First Session of the Twentieth Alaska Legislature the detachment, from the City of Fairbanks, of the territory described below. This recommendation is offered in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

The area recommended for detachment encompasses an estimated 13 acres described as follows.

Beginning at the W 1/16 corner on the section line Common to Sections 16 and 21, T1S, R1E, F.B. & M.; thence, S89°55'43"E 377.92 feet to the true point of beginning on the centerline of Badger Road, State of Alaska, Department of Transportation and Public Facilities Project No. RS-0622(6); thence, N14°58'36"E 759.31 feet to the point of intersection with the centerline of Holmes Road, Project No. RS-0622(1)/63872; thence S61°08'52"E 540.00 feet to a P. C. at station 5+40.00; thence along a curve to the left whose radius is 3,819.72 feet and chord is 980.54 feet to a P. T. at Station 24+59.63; thence S02°32'10"W 17.00 feet to the Section Line common to Sections 16 and 21, T1S, R1E, F.B. & M.; thence N89°55'43" W 943.75 feet to the true point of beginning.





Local Boundary Commission

Darroll Hargraves, Chairperson

Kathleen S. Wasserman, Vice-Chairperson, First Judicial District

Nancy E. Cannington, Member, Second Judicial District

Kevin Waring, Member, Third Judicial District

William Walters, Member, Fourth Judicial District

RECOMMENDATION NUMBER TWO OF THE LOCAL BOUNDARY COMMISSION TO THE FIRST SESSION OF THE TWENTIETH ALASKA LEGISLATURE

In the Matter of the February 7, 1996 Petition of the City and Borough of Yakutat to Extend its Western Corporate Boundary from the 141st Meridian to Cape Suckling

SECTION I - INTRODUCTION AND BACKGROUND

Existing and Proposed Boundaries of the CBY

The City and Borough of Yakutat (CBY) petitioned the Local Boundary Commission (LBC) in February of this year to annex an estimated 2,878 square miles of land and 8,492 square miles of submerged lands and tidelands.²

² The annexation petition states that the estimate of the tidelands and submerged lands "assumes that the State's and therefore the Borough's territorial jurisdiction extends beyond the 3-mile limit, an issue which is in dispute. If the State's jurisdiction is limited to 3 miles, then the area proposed for annexation to the Borough would encompass only 321 square miles of submerged lands and tidelands."

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The annexation petition has its origins in the unsuccessful attempt to include the territory in question within the original boundaries of the CBY. In October 1990, residents of Yakutat submitted a petition to incorporate the CBY with boundaries extending to Cape Suckling.

The LBC held hearings on the CBY incorporation proposal on January 17, 1992, in Cordova, Valdez, Whittier, Juneau, Hoonah, Gustavus and Pelican. Members of the LBC and staff were in the various communities for the January 17 hearings.³ On January 18 and 19, 1992, the LBC held a hearing on the matter in Yakutat.

Following the hearings, the LBC held decisional sessions concerning the incorporation on February 5, and March 17, 1992. By a vote of 3 to 2, the LBC amended the incorporation petition on March 17 to exclude territory west of the 141st meridian. The LBC then approved the amended petition by a vote of 4-1.

On June 4, 1992, the Petitioners for incorporation of the CBY filed an appeal with the Superior Court over the amendment of their petition. On August 10, 1992, the Chugach Alaska Corporation (CAC) countered with an appeal objecting to the approval of the amended CBY incorporation proposal. The two appeals were consolidated on October 6, 1992.

On September 8, 1992, the State Division of Elections conducted an election on the incorporation proposition. Two hundred and thirty-two votes were cast in favor of incorporation of the CBY and twenty-three votes were cast in opposition. The incorporation of the CBY was certified effective September 22, 1992.

On June 7, 1993, the Superior Court affirmed the action of the LBC. The CBY appealed the decision to the Alaska Supreme Court. On April 28, 1995, the Supreme Court affirmed the decision of the

³ There was an interval of some 15 months between the submission of the petition and the conduct of hearings on the matter. This was due to several factors including the rejection of the initial petition on technical grounds, the need to modify the LBC's regulations providing borough incorporation standards, and other factors. DCRA's Provisional Report on the CBY annexation proposal provides a detailed account of the incorporation proceedings.

Superior Court. The CBY then petitioned the Supreme Court for a rehearing. The petition for the rehearing was denied on September 14, 1995.

**SECTION II
CURRENT ANNEXATION PROCEEDINGS**

Petition Submitted and Accepted for Filing. The CBY lodged its petition for annexation on February 7, 1996, with the Alaska Department of Community and Regional Affairs (DCRA). On February 9, 1996, DCRA completed its technical review of the CBY's petition in accordance with AS 29.05.070, and accepted the petition for filing.

Deadline for Filing of Briefs Established. Pursuant to 19 AAC 10.640, the LBC Chairperson established May 17, 1996, at 5:00 p.m., as the deadline for the filing of responsive briefs and comments regarding the petition. As noted below, public notice of the filing of the petition was first published in a newspaper of general circulation or posted in the territory proposed for annexation on February 26, 1996. The May 17 deadline was 81 days from the date of such publication or posting of the notice. Thus, the period allowed for filing of responsive briefs and comments was 32 days (65%) more than the 49-day minimum time required by 19 AAC 10.640(b)(1).

Notice of Filing Given. Public notice of the filing of the petition was given in accordance with the requirements of 19 AAC 10.450. Specifically, notice was given as follows:

- | | |
|----------|--|
| 02/13/96 | Notice was mailed by DCRA to 39 potentially interested agencies and individuals (8.5-inch by 11-inch format). |
| 02/16/96 | Notice was mailed or hand delivered by the CBY to 56 potentially interested individuals and organizations designated by DCRA (8.5-inch by 11-inch format). |
| 02/19/96 | Notice was published for the first time in the Alaska Administrative Journal. |

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- 02/20/96 or before Notice was prominently posted in 8.5-inch by 11-inch format at the following locations in the CBY: CBY offices, Mallott's General Store, Yakutat Court House, Yakutat Post Office, Yakutat branch of Key Bank, Yakutat Hardware, Monti Bay Foods, Yakutat Airport, and Lighthouse Cafe. The notice remained posted at those locations for at least 14 consecutive days from the date of posting.
- 02/26/96 Notice was published for the first time in the Anchorage Daily News as a display advertisement 2-columns wide and six-inches long. Notice was published for the second time in the Alaska Administrative Journal.
- 02/28/96 Notice was published for the first time in the Juneau Empire as a display advertisement 2-columns wide and six-inches long.
- 03/01/96 or before Notice was prominently posted at Yakataga, Wasser & Winters' office at West Icy Bay and the Ben Thomas, Inc., cookhouse at East Icy Bay. The notice remained posted at those locations for at least 14 consecutive days from the date of posting.
- 03/04/96 Notice was published for the second time in the Anchorage Daily News as a display advertisement 2-columns wide and six-inches long. Notice was published for the third time in the Alaska Administrative Journal.
- 03/06/96 Notice was published for the second time in the Juneau Empire as a display advertisement 2-columns wide and six-inches long.
- 03/11/96 Notice was published for the third time in the Anchorage Daily News as a display advertisement 2-columns wide and six-inches long. Notice was published for the fourth time in the Alaska Administrative Journal.
- 03/13/96 Notice was published for the third time in the Juneau Empire as a display advertisement 2-columns wide and six-inches long.
- 03/18/96 Notice was published for the fifth time in the Alaska Administrative Journal.

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- 03/25/96 Notice was published for the sixth time in the Alaska Administrative Journal.
- 04/08/96 Notice was published for the seventh time in the Alaska Administrative Journal.
- 04/15/96 Notice was published for the eighth time in the Alaska Administrative Journal.
- 04/22/96 Notice was published for the ninth time in the Alaska Administrative Journal.
- 04/29/96 Notice was published for the tenth time in the Alaska Administrative Journal.
- 05/06/96 Notice was published for the eleventh time in the Alaska Administrative Journal.

Petition Served on Interested Parties. In accordance with 19 AAC 10.640(a), on February 16, 1996, the CBY served a copy of the petition on entities designated by DCRA. The entities included the City of Cordova, City of Whittier, City of Valdez, Native Village of Tatitlek, Native Village of Chenega, Chugach REAA School District, CAC, Wasser & Winters Company, Ben Thomas, Inc., and the law firm of Birch Horton Bittner & Cherot.

Petition Made Available for Public Review. Pursuant to 19 AAC 10.640(b), a copy of the complete petition documents was made available for public review at the offices of the CBY beginning February 20, 1996.

Responsive Briefs and Comments Filed. Timely responsive briefs opposing the annexation were filed under the provisions of 19 AAC 10.480 by:

1. City of Cordova, a home-rule municipal corporation with boundaries extending within approximately 75 miles of the territory proposed for annexation (the submission consisted of a 17-page brief and 6 attachments comprising 37 pages); and

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2. CAC, a regional corporation established under the Alaska Native Claims Settlement Act (ANCSA) with boundaries extending from the 141st meridian to the tip of the Kenai Peninsula (the submission consisted of a 27-page brief and 7 attachments comprising 42 pages).

Additionally, sixteen letters were submitted in a timely fashion opposing the annexation proposal. The letters were written by the following individuals and organizations:

1. City of Cordova (1-page resolution opposing annexation);
2. Chugach School District (1-page letter and 2-page resolution opposing annexation);
3. Preston Gates and Ellis on behalf of Alaska Gulf Coast Adventures, Inc. (2-page letter opposing annexation);
4. The Tatitlek Corporation (1-page letter opposing annexation);
5. Carl Glanville (1-page letter opposing annexation);
6. The Eyak Corporation (1-page letter opposing annexation);
7. The Native Village of Eyak Tribal Council (1-page letter opposing annexation);
8. City of Valdez (1-page letter and 1-page resolution opposing annexation);
9. City of Whittier (2-page letter opposing annexation);
10. Stephen C. Henson III (1-page letter opposing annexation);
11. Jim H. Keeline, Inc. (2-page letter opposing annexation);
12. Scott Oman, Vice President of See Alaska (1-page letter opposing annexation);
13. Bruce Schneuer (1-page letter opposing annexation);
14. Ralph J. Swarthout (1-page letter opposing annexation);
15. John E. Willis, Supervisor, Ben Thomas' Icy Bay logging camp (2-page letter opposing annexation);
16. Ed. E. Bilderback (1-page letter opposing annexation).

Timely letters supporting the annexation proposal were submitted by the following three organizations:

1. Yak-Tat Kwaan, Inc. (2-page letter supporting annexation);

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2. Winner & Associates on behalf of the University of Alaska (3-page letter and 10 pages of attachments supporting annexation); and
3. Yakutat Tlingit Tribe Historic Preservation Plan (1-page letter and 2 pages of attachments supporting annexation).

Five individuals and organizations submitted comments past the May 17, 1996, 5:00 p.m. deadline. Those written comments were not considered by the LBC.

CBY Reply Brief Filed. On July 1, 1996, the CBY filed a 61-page brief pursuant to 19 AAC 10.490 in reply to the responsive briefs and comments.

Request to Respond to CBY Reply Brief. On July 26, 1996, CAC filed a request to respond to the CBY's July 1 reply brief. The CBY opposed CAC's request in the context of the limitations on advocacy imposed by 19 AAC 10.500(a). On August 30, the Chairperson of the LBC rejected CAC's request to file the additional brief.

DCRA Provisional Report. Pursuant to 19 AAC 10.530(b), DCRA released its Provisional Report regarding the CBY annexation proposal on October 11, 1996. The Provisional Report, comprised of 75 pages, was hand delivered on the date of its release to the Petitioner and both respondents. Pursuant to 19 AAC 10.640(b)(3), the LBC Chairperson established November 8, 1996 as the deadline for comment on the Provisional Report.

The Provisional Report was mailed to members of the LBC on Monday, October 14. The report was mailed to the Commissioner of the Department of Education on October 16.

On October 14, DCRA also released a 6-page executive summary of its Provisional Report. Copies of the executive summary were mailed or delivered on that date to 124 potentially interested individuals and organizations. A copy of the executive summary was provided to one other party on November 6.

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The executive summary invited readers to request DCRA's complete Provisional Report. Fourteen organizations and individuals subsequently requested and received a copy of the Provisional Report.⁴

During the period from October 31 to November 8, 1996, eleven organizations and individuals requested that the LBC extend the deadline for comment on DCRA's Provisional Report.⁵ The requests sought various extensions of the comment deadline ranging from December 13, 1996, to the first week of February 1997.

On November 7, the LBC met to consider the requests for extension of the comment period. Interested parties were allowed to address the LBC concerning their requests for extension. Following discussion among the members of the LBC, the Chairperson extended the deadline for comment to November 12, 1996. Notice of the extension was provided to 18 individuals and organizations, including radio stations serving the Prince William Sound and Yakutat areas.

⁴ These were Mark Wittow (10/21/96), Steve Planchon (10/22/96), Bob Henrichs (11/5/96), Copper River Prince William Sound Native Fishermen's Association (11/5/96), Native Village of Eyak (11/5/96), Chenega Bay IRA Council (11/5/96), Prince William Sound Economic Development Council (11/5/96), Lee Sharp of Preston Gates and Ellis (11/6/96), John Hoffer of the Chenega Corporation (11/8/96), Gary P. Kompkoff (11/12/96), John E. Willis (11/12/96), James Sinnett (11/12/96), John Schmidt of Browning Timber, which reportedly purchased the West Icy Bay logging camp operation from Wasser & Winters (11/13/96), and Dave Morgan of the City of Whittier (11/25/96).

⁵ Nine of the eleven requests were submitted prior to the meeting of the LBC on November 7, 1996. The nine requests submitted prior to the meeting were from the City of Cordova, Chenega Bay IRA Council, CAC, Prince William Sound Economic Development Council, Chugach Regional Resources Commission, Chenega Corporation, Native Village of Eyak, Copper River Prince William Sound Native Fishermen's Association, and Robert J. Henrichs. The City of Whittier and the City of Valdez submitted requests after the November 7 meeting.

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Thirty written comments regarding DCRA's Provisional Report were received by the extended deadline.⁶ In addition, LBC member Kevin Waring verbally requested that DCRA address certain issues in its final report.

Written comments on DCRA's Provisional Report were submitted by:

1. Carl Glanville, resident of Anchor Point (one-page letter dated October 28);
2. Bob Henrichs, resident of Cordova (two-page letter dated November 1);
3. Bob Henrichs, President of the Copper River Prince William Sound Native Fishermen's Association (two-page letter dated November 1);
4. Donald P. Kompkoff, Sr., President, Chenega Bay IRA Council (one-page undated letter, received on November 8);
5. Stephen C. Planchon, Executive Director, Mental Health Trust Land Office, Alaska Department of Natural Resources (one-page letter dated November 6, 1996);
6. Mark H. Wittow, Attorney for Alaska Gulf Coast Adventures, Inc. (two-page letter dated November 5);
7. James T. Brennan, Attorney for the CBY (eighteen-page letter dated November 8, with 3 attachments comprising 17 pages);

⁶ Three of the letters among those listed were submitted as requests to extend the original November 8 deadline for comment on DCRA's Provisional Report. Those consisted of the letter from Bob Henrichs (written as a resident of Cordova), the letter from Bob Henrichs (written as President of the Copper River Prince William Sound Native Fishermen's Association) and the letter from the Chenega Bay IRA Council. Those three letters were included in the context of comments on DCRA's Provisional Report because: (a) they offered general views against extending Yakutat's boundary beyond the 141st meridian; and (b) subsequent comments were not received by November 12 from the Chenega Bay IRA Council or Mr. Henrichs, either as an individual or as President of the Copper River Prince William Sound Native Fishermen's Association (although Mr. Henrichs did submit subsequent comments on behalf of the Native Village of Eyak Tribal Council).

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8. Benna Mac Hughey, member of the Board of Directors of CAC, Corporate Secretary of CAC, Acting Office Manager of the Valdez Native Tribe and IHS Health Program Director for the Valdez Native Tribe (one-page letter dated November 12);
9. Rick Nelson, member of the Board of Directors of CAC (one-page letter dated November 12);
10. Gilbert Ollestad, member of the Board of Directors of CAC, CAC shareholder, retired commercial fisherman and longshoreman (one-page letter dated November 12);
11. John E. Willis, Camp Manager of the East Icy Bay logging camp operated by Ben A. Thomas, Inc., (one-page letter dated November 8);
12. Shane Stephenson, charter pilot who resides in Yakutat (two-page letter dated November 4);
13. David Dengel, Assistant City Manager of the City of Valdez (one-page letter dated November 1, with attachments comprising two pages);
14. Carroll Kompkoff, President, The Tatitlek Corporation (two-page letter dated November 12);
15. D. J. Burnham, resident of Cape Yakataga (three-page undated letter received November 12);
16. Gary P. Kompkoff, Chief, Native Village of Tatitlek (two-page letter dated November 9);
17. W. Scott Janke, City Manager of the City of Cordova (two-page letter dated November 12 with attachments consisting of four pages);
18. Derenty Tabios, Executive Director, Chugachmiut (four-page undated letter received November 12);
19. James Sinnett, Planning Director, Chugach Heritage Foundation (one-page undated letter received November 12);
20. Georgianna Lincoln, Alaska State Senator (one-page letter dated November 7);
21. Steven C. Planchon, Executive Director, Mental Health Trust Land Office, Alaska Department of Natural Resources (two-page letter dated November 12);
22. Mark Stahl, Manager, Lands and Resources Department for Chugach (three-page letter dated November 12);
23. Charles W. Totemoff, President & CEO of Chenega Corporation (two-page letter dated November 12);

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24. Ralph J. Swarthout, holder of mining leases in the Cape Yakataga area (two-page letter dated November 12);
25. David Morgan, Acting City Manager of the City of Whittier (two-page letter dated November 11, with 9 exhibits comprising 27 pages);
26. John Christensen, Chairman of the Board, CAC (two-page letter dated November 12);
27. John F. C. Johnson, member of the Board of Directors of CAC (one-page letter dated November 12);
28. Bob Henrichs, President, Native Village of Eyak (one-page letter dated November 1);
29. Patty Brown-Schwalenberg, Executive Director, Chugach Regional Resources Commission (three-page letter dated November 8, 1996);
30. Philip Blumstein, attorney for CAC (two-page letter dated November 12, transmitting 57 pages of comments accompanied by 19 exhibits comprising 131 pages; also incorporated by reference was the administrative record of the proceedings before the LBC on the CBY's petition to incorporate the CBY which consists of 4,685 pages and 6 video tapes).

LBC Hearings and Decisional Session Scheduled. The LBC scheduled three hearings on the CBY annexation proposal. The first was scheduled to begin at 10:00 a.m. on Saturday, December 14, 1996 in the Cordova Library Meeting Room. The second hearing was scheduled to begin at 10:30 a.m. on Sunday, December 15, 1996. It too was scheduled to be held at the Cordova Library Meeting Room with teleconference sites at the logging camps in East Icy Bay and West Icy Bay. The third hearing was scheduled to begin at 6:00 p.m. on Sunday, December 15, 1996 at the Alaska Native Brotherhood (ANB) Hall in Yakutat. The LBC scheduled its decisional session for Monday, December 16, 1996, beginning at 8:00 a.m. at the ANB Hall in Yakutat.

Notice of the hearings and decisional session was given in accordance with 19 AAC 10.550. Specifically, notice was provided as follows:

11/12/96

Notice was mailed by DCRA to 139 individuals and organizations (8.5-inch by 14-inch format).

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- 11/12/96 Notice was published for the first time in the *Anchorage Daily News* (2-column by 6-inch format).
- 11/14/96 Notice was posted (8.5-inch by 14-inch format) at the Browning Timber - West Icy Bay logging camp at the following locations: cookhouse bulletin board, office, Homeguard mail boxes and above the timecard box. Additionally, requests that public service announcements concerning the hearings be broadcast from November 22 - December 15, 1996, were mailed to the following radio stations serving the Prince William Sound and Yakutat areas: KCAW-FM, KCHU-AM, KJFP-FM and KLAM-AM.
- 11/15/96 Notice was posted (8.5-inch by 14-inch format) at the following locations in Yakutat: Mallott's General Store, Monti Bay Foods, KJFP Radio Station, Yakutat Hardware, U.S. Forest Service offices, City/Borough Hall, ANB Hall, Yakutat Lodge, Glacier Bear Lodge, U.S. Post Office and Key Bank of Alaska. Additionally, a request to broadcast public service announcements concerning the hearings from November 22 - December 15, 1996, was mailed to KVAK-AM in Valdez.
- 11/19/96 Notice was posted (8.5-inch by 14-inch format) at the following locations in Cordova: City Hall bulletin board, Post Office bulletin board, and Library bulletin board.
- 11/20/96 Notice was posted (8.5-inch by 14-inch format) at the following locations at the Ben Thomas, Inc. - Icy Bay East logging camp: office, cookhouse, commissary, and bunkhouse.
- 11/21/96 Notice was published for the second time in the *Anchorage Daily News* (2-column by 6-inch format).
- 11/25/96 Notice was published for the first time in the *Alaska Administrative Journal*.
- 11/26/96 Notice was published for the third time in the *Anchorage Daily News* (2-column by 6-inch format).
- 12/02/96 Notice was published for the second time in the *Alaska Administrative Journal*.

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12/09/96 Notice was published for the third time in the *Alaska Administrative Journal*.

DCRA Final Report. Pursuant to 19 AAC 10.530(d), DCRA released its Final Report concerning the CBY annexation proposal on November 22, 1996. The report, consisting of 31 pages, was delivered to the Petitioner and both respondents on that date. The report was also mailed to 139 others November 22, 1996. Additionally, the report was mailed to three others on November 25, 1996.

LBC Hearings. The LBC conducted its first hearing in Cordova on Saturday, December 14, 1996. Participation at the hearing was allowed by teleconference from sites at the Valdez City Hall, the Valdez offices of the Prince William Sound Economic Development Council, the Anchorage offices of Preston Gates and Ellis, the offices of the City and Borough of Yakutat, the residence of Nancy Barnes in Juneau, the residence of Paula Terrel in Juneau and the residence of Joe Burnham in Anchorage. Additionally, arrangements were made to broadcast the hearing over radio station KJFP in Yakutat. The hearing lasted approximately 6 hours.

The LBC conducted its second hearing in Cordova on Sunday morning, December 15, 1996. Participation at the hearing was allowed by teleconference from sites at the FAA building at Cape Yakataga, the CBY offices in Yakutat, the Ben Thomas, Inc., logging camp at East Icy Bay, the Anchorage residence of Joe Burnham and at Ben Thomas' residence in Woodland, Washington.⁷ The hearing lasted approximately 2 hours.⁸

⁷ Arrangements had been made to allow participation from the Browning Timber Camp at West Icy Bay. However, John Schmidt, who was to serve as the site coordinator, was unavailable. Additionally, arrangements had also been made to allow Jim Keeline, a resident of Icy Bay who was in Minnesota on business, to participate. However, Mr. Keeline failed to initiate the teleconference link.

⁸ Due to the failure of long-distance telephone service with Yakutat, the hearing ended when the Petitioner's Representative, participating by teleconference from the CBY offices, was approximately 1 minute and 30 seconds into his closing statement. The LBC recessed the meeting to be continued with the closing statements by the Petitioner and Respondents, and the reply by the Petitioners beginning at 6:00 p.m. that day at Yakutat.

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The LBC conducted its third hearing in Yakutat on Sunday, December 15, 1996. The hearing was recessed at 12:45 a.m. on Monday and reconvened at approximately 8:10 a.m. that day. The third hearing lasted approximately 7.5 hours.

Immediately following the conclusion of the third hearing, the LBC convened a decisional session to act on the petition. The LBC deliberated for approximately two hours during which it reached the findings and conclusions set out in Section III.

SECTION III - FINDINGS AND CONCLUSIONS

Based on the evidence in the record of this proceeding, the LBC hereby makes the findings and conclusions set out in this section.

A. Regarding Maximum Local Self-Government with a Minimum of Local Governmental Units.

Article X, § 1 of Alaska's constitution promotes maximum local self-government with a minimum of local governmental units. More than two decades ago, the Alaska Supreme Court ruled that Article X, § 1 favors upholding borough formation whenever the requirements for such were minimally met. Further, the Court concluded that Article X, §1 encourages borough incorporation. With respect to these points, the Court stated:

The appellants argue that neither the geography nor the transportation standard is satisfied by the record evidence. Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. Art. X, §1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 99, 101 (Alaska 1974)

Earlier this year, the LBC addressed Article X, § 1 in the context of the proposal to detach Lake Louise from the Matanuska-Susitna Borough. The LBC stated in that regard as follows:

Article X, § 1 of the Constitution of the State of Alaska calls for maximum local self-government. That section of the constitution has been viewed by the Alaska Supreme Court as encouraging the creation of borough governments. Further, the Supreme Court reads the provision to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

The Commission finds that, as a matter of public policy, great importance should be placed on the constitutional provision calling for maximum local self-government. The Commission further finds that detachment of territory from an organized borough to the unorganized borough results in a serious diminution of local self-government. Consequently, both the factors and the standard set out in the previously listed provisions of 19 AAC 10.270(a) will be prejudicially affected by any proposal to detach territory from an organized borough to the unorganized borough.

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Based on the foregoing findings, the Commission concludes that any detachment from an organized borough to the unorganized borough is to some degree contrary to the provisions of Article X, § 1 of Alaska's constitution. Approval of the detachment petition as presented would, in fact, remove local self-government from Lake Louise. This would not, however, be the case if the territory were being detached to become part of another organized borough or part of a city government within the unorganized borough.

Statement of Decision in the Matter of the Petition for Detachment from the Matanuska-Susitna Borough of the Lake Louise Area, Encompassing an Estimated 648 Square Miles, page 4, January 12, 1996.

The conclusions concerning Article X, § 1 reached by the Alaska Supreme Court in Mobil Oil and by the LBC regarding the Lake Louise detachment are not limited to borough incorporation and detachment, but are applicable to borough annexation as well.

Article X, §1 concerns the opportunities of Alaskans to provide for and participate in local self-government. It also implies that citizens have an obligation to contribute to local self-government.

In the present proceedings, the LBC regards its decision as a choice among three alternative structures for local governance of the unincorporated area proposed for annexation by the CBY:

- ✓ approval of annexation of all or part of the area included in the CBY's petition;
- ✓ rejection of the CBY's annexation petition in favor of the status quo; or
- ✓ rejection of the CBY's annexation petition in anticipation of the area's incorporation into a future Prince William Sound borough, most likely based in or dominated by Valdez.

Approval of the annexation would enhance the ability of the CBY to exercise self-government over an area where its residents have demonstrated important personal interests affecting their lives.

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Additionally, the individuals who reside in the area proposed for annexation would realize greater ability to exercise local self-government. Residents of the area would be participants in the CBY's municipal government structure. They would also assume obligations as citizens to support local governmental services.

There is a history of significant land use and resource management conflicts in the area proposed for annexation. It appears fairly certain that additional land use conflicts will arise in the future. As such, there is a need for much greater planning in the area. The territory proposed for annexation is in need of other local government services as well.

The CBY annexation would extend essential *municipal* services and powers to an area that currently lacks such services or depends entirely on the State for them. These services and powers include: education, platting, planning, land use regulation, emergency medical services, police protection, tax assessment, and tax collection.

It is also appropriate to consider Article X, §1 in the context of a hypothetical Prince William Sound borough. This is particularly fitting since representatives of the Prince William Sound region testified before the LBC in this proceeding that a petition for incorporation of a Prince William Sound borough may be filed in as few as four to six months. Expressions of support for a Prince William Sound borough have been given by the City of Cordova, the Chugach Alaska Corporation, City of Whittier, Chenega Bay IRA Council, and others. The LBC views such expressions as credible interest in creating an organized borough to serve the region. However, it is noteworthy that the City of Valdez *“does not support the formation of a Prince William Sound Borough at this time.”* (May 9, 1996 letter from David Dengel, Assistant City Manager, City of Valdez). Given the lack of municipal support for borough formation by the City of Valdez, the prospect of forming a Prince William Sound borough – with or without Valdez – is limited. If Valdez is included in a proposal to form a Prince William Sound borough, its voters may oppose the proposal in sufficient numbers to

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defeat it. If Valdez is excluded from a Prince William Sound borough, the proposal may fail to meet the applicable standards for borough formation.

If a Prince William Sound borough were formed that included the area currently proposed for annexation, the area would be relatively remote and isolated from the populated areas of the borough. This would be particularly the case if the borough in question included the community of Valdez. In that case, Valdez would likely be the administrative center of the borough.

Residents of the area from the 141st meridian to Cape Suckling would have far less ability to participate in and influence local government in a Prince William Sound borough than they would in the CBY. That view, however, should not be construed as a general policy of promoting boroughs with smaller populations in order to offer residents a greater voice. In the case at hand, the choice is simply between the CBY or a hypothetical Prince William Sound borough.

In addition to the numerical strength of representation, consideration should be given to commonality of interests. The interests of a Prince William Sound borough would be much more diverse than are the interests of the CBY. There is a strong correlation between common interests and responsive local government.

Further, the pending annexation proposal is a more immediate fulfillment of Article X, § 1 when compared to a hypothetical Prince William Sound borough. If approved by the LBC and legislature, annexation could take effect as early as March 1997.⁹ In contrast, if

⁹ Tacit approval by the legislature under the provisions of Article X, § 12 of Alaska's constitution would be forthcoming no later than March 8, 1997. Assuming legislative approval is granted, annexation would take effect under the provisions of 19 AAC 10.630 after the CBY provided documentation to DCRA that it has complied with 42 U.S.C. 1973c (Voting Rights Act of 1965). Upon adoption of the decisional statement, the annexation proposal became ripe for submission of a federal Voting Rights Act preclearance request by the CBY to the U.S. Justice Department. The Justice Department typically takes about 65 days to act on such requests.

a petition for incorporation of a Prince William Sound borough were filed, incorporation would probably not occur until at least June 1998.

Based on the foregoing, the LBC concludes that Article X, § 1 of Alaska's constitution favors the inclusion of the area in question within an organized borough. The principles embodied in Article X, § 1 would be best implemented by annexation of the area in question to the CBY. Such will have the more immediate effect of extending local self-government to the territory in question. Further, it will give the residents of the area in question a greater voice in the affairs of their local government. Additionally, the area in question has a greater commonality of interests with the CBY than it does with the more diverse Prince William Sound region.

B. Regarding Common Interests.

Article X, § 3 of Alaska's constitution provides as follows:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Additionally, 19 AAC 10.160 provides that annexation to an organized borough may occur only if the social, cultural, and economic characteristics and activities of the people in an area proposed for annexation are interrelated and integrated with the characteristics and activities of the people in the existing borough. It further requires that the communications media and the land, water, and air transportation facilities throughout the proposed

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post-annexation boundaries of the borough will allow for the level of communications and exchange necessary to develop an integrated borough government.

The respondent CAC and others opposed to annexation placed great emphasis on the 141st meridian as a boundary representing the proper division between the Yakutat and Prince William Sound regions. In particular, CAC relied heavily on its border with the Sealaska Corporation as an appropriate measure of social, cultural, historical and economic differences between the two regions.

The LBC recognizes the significance of the area in question to the CAC. The CAC is, by far, the largest single private landowner in the area proposed for annexation. It owns the surface and subsurface estate of 58,223 acres between Cape Suckling and the 141st meridian. In addition, it has selected an additional 32,079 acres for conveyance in the territory proposed for annexation. However, the ties between Native regional corporate boundaries and borough government boundaries in Alaska is limited.

As noted in DCRA's Provisional Report (Appendix B, pages 1 - 9), few existing and model borough boundaries correlate directly with the boundaries of Native regional corporations. A number of existing and model boroughs include portions of more than one Native regional corporation. Some Native regional corporations include all or portions of more than one existing or model borough. For example, Sealaska has landholdings in five organized boroughs as well as the unorganized borough.

The LBC considered the significance of other formally established boundaries based on the 141st meridian in the context of proper borough jurisdictional boundaries in this proceeding. Those included State house election districts, State judicial districts, regional educational attendance areas, recording districts, census districts, local emergency planning districts and economic development organizations. The LBC found that, at least in this matter, such boundaries were not particularly suitable as the basis for a borough government.

The LBC found that historical use of the area proposed for annexation has overlapped between the Yakutat and the Prince William Sound regions. Evidence was provided to the LBC of strong historical links between the area proposed for annexation and the Prince William Sound region, particularly the Cordova and Eyak areas. However, Yakutat appears to have even stronger historical links to the area proposed for annexation.

In the context of setting borough boundaries, contemporary and future ties to the area proposed for annexation were found to be more relevant than historical ties. The LBC notes that the area in question is presently subject to subsistence use, commercial fishing, tourism, recreational activities, timber extraction, and mineral development. Those activities are expected to continue for the long-term future. This is particularly the case with commercial fishing, tourism and recreational activities. The future also offers the prospect of greater mineral development. Further, the area may be affected by exploration for and development of onshore and offshore oil and gas deposits.

As with the historical use, various aspects of current use of the area are oriented in different directions. For example, logging, commercial fishing and subsistence activities in the area proposed for annexation are clearly linked more with Yakutat than with Cordova or other portions of Prince William Sound. On the other hand, guided commercial sports fishing and hunting activities appear to be connected more with Cordova. It is unknown at this point whether exploration for and development of oil and gas deposits will occur in the area. If such does occur, it is uncertain whether the Prince William Sound region or Yakutat will serve as the center of such activities.

Yakutat clearly has far greater ties to the Icy Bay area than do the communities of Prince William Sound. Yakutat's ties to the far western reaches of the territory proposed for annexation appear to be somewhat attenuated. However, the LBC stresses that the territory stretching from the 141st meridian to Cape Suckling is a cohesive geographic area. As such, it would be poor public policy to place that cohesive area into more than one organized borough.

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For purposes of determining the most appropriate *borough boundaries*, the LBC must consider the strength of the current and future ties to the area by comparing Yakutat to the entire Prince William Sound region (as opposed comparing Yakutat to Cordova). In that context, the LBC concludes that the interests of the residents of the Prince William Sound region are more diverse than the interests of the residents of the CBY. The LBC further concludes that the people who live in and otherwise use the area proposed for annexation have a greater intensity of common interests with Yakutat than with the hypothetical Prince William Sound borough. Consequently annexation of the area in question to the CBY is supported by Article X, §3 of Alaska's constitution.

Further, the LBC concludes that the social, cultural, and economic characteristics and activities of the people in the territory proposed for annexation are sufficiently interrelated and integrated with the characteristics and activities of the people in the City and Borough of Yakutat. Additionally, the communications media and the land, water, and air transportation facilities throughout the proposed post-annexation boundaries of the City and Borough of Yakutat will allow for the level of communications and exchange necessary to develop an integrated borough government. Thus, the standards established by 19 AAC 10.160 are satisfied.

C. Regarding the Post-Annexation Size and Stability of the Population of the CBY.

19 AAC 10.170 requires that the population of the proposed borough after annexation must be sufficiently large and stable to support the resulting borough.

The number of people in the area proposed for annexation is minimal. It is obvious that if the area were annexed to the CBY, the population of the expanded borough will remain sufficiently large and stable to support borough government. It is also readily apparent that if this area were included in a hypothetical Prince William Sound borough, that it too would meet the applicable standard.

The LBC concludes that the standard set out in 19 AAC 10.170 is satisfied.

D. Regarding the Human and Financial Resources Necessary to Provide Essential Borough Services on an Efficient, Cost-Effective Level.

19 AAC 10.180 requires that the economy within the proposed post-annexation borough boundaries include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. “Essential borough services” are those *“mandatory and discretionary activities and facilities that are determined by the commission to be reasonably necessary to the territory 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 . . .”* (19 AAC 10.990(7))

It is abundantly clear that the CBY possesses the human and financial resources needed to provide essential borough services on an efficient, cost-effective level. Financial projections prepared by DCRA reasonably indicate that the CBY will spend on the order of \$130,000 annually to serve the area proposed for annexation. DCRA’s projections also reasonably demonstrate that the CBY will take in some \$162,000 to \$200,000 in additional annual revenues as a result of annexation. Thus, the annexation is unlikely to be a financial drain on the CBY. Further, evidence provided to the LBC indicates that the CBY has a healthy financial position that has allowed it to accrue fund balances in excess of \$3 million.

The LBC also considered the standard at issue in the context of a hypothetical Prince William Sound borough. The LBC found that the proposed annexation to the CBY would have no meaningful impact on the financial viability of a future Prince William Sound borough. The LBC also found that the CBY would have less human and financial resources to serve the area proposed for proposed for annexation compared to a Prince William Sound borough.

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Notwithstanding, the CBY clearly has the human and financial resources needed to serve the area in question on an efficient and cost-effective basis. Since its incorporation, the CBY has demonstrated that it has the financial ability to provide services and the willingness to tax its residents. Thus the LBC concludes that the standard set out in 19 AAC 10.180 is satisfied.

E. Regarding Boundary Issues in the Context of Natural Geography, Areas Necessary for Full Development of Services, Model Boundaries, and Education.

State law requires that the post-annexation boundaries of a borough conform generally to natural geography. (19 AAC 10.190) The LBC finds that the Malaspina Glacier, the western edge of which lies near the 141st meridian, is a significant barrier and natural geographic feature. As such, the use of the 141st meridian as the current western corporate boundary of the CBY is not arbitrary in the context of this standard. However, the LBC finds further that the natural geography of the area proposed for annexation is similar to that within the current boundaries of the City and Borough of Yakutat (i.e., the area extending northward from Cape Fairweather).

19 AAC 10.190 also requires that the post-annexation boundaries of a borough must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. As noted previously, evidence in this proceeding was persuasive that the area proposed for annexation is cohesive. As such, the area from the Malaspina Glacier to Cape Suckling should not be placed within the jurisdiction of multiple organized boroughs. It is particularly important that land use planning decisions encompass the entire coast from Cape Suckling to the 141st meridian.

State law provides that absent a specific and persuasive showing to the contrary, the LBC may not approve a borough annexation beyond the model borough boundaries adopted by the LBC and

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identified in the 1992 Interim Report on Model Borough Boundaries. (19 AAC 10.190(c)) The western model borough boundary of the CBY was set at the 141st meridian following action taken by the LBC in 1992 concerning the petition for incorporation of the CBY.

The LBC has stated in previous decisions that the 1961 legislature, in providing for a single residual unorganized borough encompassing all of the state not within organized boroughs, failed to adhere closely to the requirement of Article X, § 3 that each borough – organized and unorganized – embrace an area and population with common interests to the maximum degree possible. That circumstance was the genesis for the establishment of model borough boundaries by the LBC.

Model borough boundaries were meant to be a means of preventing and solving borough boundary problems throughout the state. They were intended to save the LBC, DCRA and prospective petitioners needless effort by guiding interested parties as to what might reasonably be expected with respect to borough boundaries. Model borough boundaries were meant to promote the purpose of Article X, § 1, not frustrate it by perpetuating an absence of local government in the unorganized borough. They were not intended to thwart legitimate borough boundary proposals.

The LBC is unwilling to doom the area in question or any other area of the unorganized borough to an absence of local government for an indefinite period of time while it awaits some action on formation of a borough, if a pending annexation or incorporation petition satisfies constitutional, statutory, and regulatory standards.

Model borough boundaries should not be overturned lightly. A great deal of time and effort went into the establishment of model borough boundaries. In this particular case, strong evidence of the area's social, cultural, economic, geographic, transportation and other ties to the Yakutat region has been provided. The LBC considers such evidence to be sufficiently specific and persuasive to allow the extension of the CBY's corporate boundaries to Cape Suckling.

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The LBC notes, however, that approximately 184 square miles of the territory proposed for annexation lie within the model borough boundaries of the Copper River region. Virtually no attention has been given to that area in this proceeding by the CBY. In fact, when asked, the CBY expressed no objection to the exclusion of the 184 square miles in question. Thus, the LBC finds that the requisite specific and persuasive showing to allow annexation by the CBY of the 184 square miles within the model borough boundaries of the Copper River region has not been achieved.

State law also provides that the LBC will consult with the Department of Education in the process of balancing all standards for annexation to a borough. (19 AAC 10.190(d)) The LBC, through its DCRA staff, has consulted extensively with the Department of Education concerning the current CBY annexation proposal. The Department of Education has taken no position with regard to the pending CBY annexation proposal.

However, the Department of Education did take a position concerning the inclusion of the area extending to Cape Suckling in the CBY in the context of the earlier incorporation proceedings. On October 14, 1991, Jerry Covey, then-Commissioner of the Department of Education, announced that he had made a determination pursuant to AS 14.17.139 that *“formation of the new school district, as described in the proposed City and Borough of Yakutat, would be in the best interest of the state and the proposed City and Borough of Yakutat School District.”*¹⁰

In summary, the LBC has determined that CBY boundaries extending to Cape Suckling would conform generally to natural geography. Such boundaries would also include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. Further, a specific and persuasive showing has been made to allow the CBY to extend its corporate boundaries to Cape Suckling on the west, exclusive of approximately 184 square miles lying within the model borough boundaries of the Copper River region. The LBC has consulted

¹⁰ CBY incorporation record at 2896.

adequately with the Department of Education in the process of balancing all standards for annexation to a borough. Thus, the LBC concludes that the standards set out in 19 AAC 10.190 are satisfied with the exclusion of territory lying within the model borough boundaries of the Copper River region.

F. Regarding the Balanced Best Interests of the State, the Territory to be Annexed, and all Political Subdivisions Affected by the Annexation.

State law provides that territory that meets the annexation standards specified in 19 AAC 10.160 - 19 AAC 10.190 may be annexed to a borough by the legislative review process if the LBC also determines that annexation will serve the balanced best interests of the State, the territory to be annexed, and all political subdivisions affected by the annexation. (19 AAC 10.200)

Although the annexation of the area to the CBY is reasonably projected to reduce the State's education costs slightly more than \$180,000 annually, those fiscal implications are minimal when compared to the fulfillment of the principles of Article X, § 1 of Alaska's constitution. Maximum local self-government is a highly positive factor affecting the best interests of the State, the territory to be annexed and the political subdivisions affected by the proposal.

Again, the LBC considered this standard in the context of a hypothetical Prince William Sound borough. The LBC found in that regard that the administrative headquarters of a Prince William Sound borough would likely be far removed from the area proposed for annexation. As such, the area from Cape Suckling to the 141st meridian would likely receive scant attention from a Prince William Sound borough. Areas that are far removed from their administrative centers often suffer diminished communications and contact.

The LBC considered the effects of annexation on the interests of the CAC and others opposed to annexation. The LBC has found no prospect of substantial harm to those interests. If the CBY continues

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to function as it has, it will promote a balanced use of fisheries, timber, and other resources. It is unlikely that such would be any different if CAC were dealing with a Prince William Sound borough.

SECTION IV RECOMMENDATION

During its deliberations, the LBC considered the alternative of approving the annexation to the CBY *only* if the territory were not included within a Prince William Sound organized borough within two years. However, that option was rejected by the LBC.¹¹

As a result of the conclusions reached in this case, on December 16, 1996, the LBC inherently amended the CBY's petition for annexation to exclude the estimated 184 square miles petitioned for annexation that lie within the model borough boundaries of the Copper River region. The LBC approved the petition for annexation with the amended boundaries by a unanimous vote among the five members present.

The Local Boundary Commission hereby recommends to the First Session of the Twentieth Alaska Legislature, the annexation, to the City and Borough of Yakutat, of the territory described below. This recommendation is offered in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

The territory recommended for annexation is described as follows:

Beginning at the southern tip of Cape Suckling at North 59° 59' 24" Latitude and West 143° 53' 36" Longitude, the true point of beginning;

¹¹ A motion to conditionally approve annexation as described was made by Commissioner William Walters. However, the motion failed to be seconded by another member of the LBC. Commissioner Walters found that the economic development of the area proposed for annexation will be more closely tied to the Prince William Sound region than to the City and Borough of Yakutat. Nevertheless, in the absence of a specific time line for a Prince William Sound borough to provide this area the local government services required by Article X, § 1 of the Alaska constitution, Commissioner Walters joins in the decision of the other Commissioners.

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Thence due north to the ridge line of the Suckling Hills at North $60^{\circ} 01' 27''$ Latitude, West $143^{\circ} 53' 36''$ Longitude;

Thence northeasterly, along a straight line, to the Northwest corner of protracted T. 16 S., R. 13 E., Copper River Meridian;

Thence due east along the protracted township line separating T. 16 S. and T. 15 S., Copper River Meridian, to the northwest corner of T. 16 S., R. 21 E.;

Thence due south along the protracted township line separating R. 20 E. And R. 21 E., Copper River Meridian, to the southwest corner of T. 16 S., R. 21 E.;

Thence due east along the protracted township line separating T. 16 S. and T. 17 S., Copper River Meridian, to the northwest corner of T. 17 S., R. 25 E.;

Thence due south along the protracted township line separating R.24 E. and R.25 E., Copper River Meridian, to the southwest corner of T. 17 S., R. 24 E.;

Thence due east along the protracted township line separating T. 17 S. and T. 18 S., Copper River Meridian, to the International Boundary between the United States and Canada on the 141st Meridian;

Thence due south along the 141st Meridian to its point of intersection with North $58^{\circ} 48' 30''$ Latitude in the Gulf of Alaska;

Thence due west along a straight line to North $58^{\circ} 48' 30''$ Latitude, West $143^{\circ} 53' 36''$ Longitude in the Gulf of Alaska;

Thence due north, to the Southern tip of Cape Suckling, the true point of beginning.

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With respect to the portion of the territory proposed for annexation that extends into the Gulf of Alaska, notwithstanding the foregoing description, the corporate jurisdictional limits of the City and Borough of Yakutat will extend only to the limits of the State of Alaska's jurisdiction under AS 44.03.010.

Annexation will result in the following corporate boundaries for the City and Borough of Yakutat.

Beginning at the southern tip of Cape Suckling at North 59° 59' 24" Latitude and West 143° 53' 36" Longitude, the true point of beginning;

Thence due north to the ridge line of the Suckling Hills at North 60° 01' 27" Latitude, West 143° 53' 36" Longitude;

Thence northeasterly, along a straight line, to the Northwest corner of protracted T. 16 S., R. 13 E., Copper River Meridian;

Thence due east along the protracted township line separating T. 16 S. and T. 15 S., Copper River Meridian, to the northwest corner of T. 16 S. R. 21 E.;

Thence due south along the protracted township line separating R. 20 E. And R. 21 E., Copper River Meridian, to the southwest corner of T. 16 S., R. 21 E.;

Thence due east along the protracted township line separating T.16 S. and T.17 S., Copper River Meridian, to the northwest corner of T. 17 S., R. 25 E.;

Thence due south along the protracted township line separating R. 24 E. and R. 25 E., Copper River Meridian, to the southwest corner of T. 17 S., R. 24 E.;

Thence due east along the protracted township line separating T. 17 S. and T. 18 S., Copper River Meridian, to the International Boundary between the United States and Canada on the 141st Meridian;

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Thence following, in a generally southeasterly direction, the International Boundary of the United States and Canada, to the Peak of Mt. Fairweather at the International Boundary of the United States and Canada, in T. 35 S., R. 47 E., Copper River Meridian;

Thence southwesterly in a straight line to Cape Fairweather, at North 58° 48' 30" Latitude, West 137° 56' 45" Longitude in T. 36 S., R. 45 E., Copper River Meridian;

Thence due west along a straight line to a point in the Gulf of Alaska at North 58° 48' 30" Latitude, West 143° 53' 36" Longitude.

Thence due north, to the Southern tip of Cape Suckling, the true point of beginning.

With respect to the portion of the City and Borough of Yakutat that extends into the Gulf of Alaska, notwithstanding the foregoing description, the corporate jurisdictional limits of the City and Borough of Yakutat extend only to the limits of the State of Alaska's jurisdiction under AS 44.03.010.

A map showing the existing boundaries of the City and Borough of Yakutat and the territory approved for annexation appears below.

