

**HOUSE AND SENATE  
JOINT JOURNAL SUPPLEMENT**

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**January 29, 1999**

**Friday**

**No. 2**

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**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**

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**January 29, 1999**

**Juneau, Alaska**



The following proposed local boundary change, in accordance with AS 44.47.567(b)(2), by the Alaska Local Boundary Commission is incorporated in their Annual Report. The complete 1998 report, dated January 28, 1999, is available through the Local Boundary Commission's web site at [http://www.comregaf.state.ak.us/MRAD\\_LBC.htm](http://www.comregaf.state.ak.us/MRAD_LBC.htm) or by calling (907) 269-4500 or TDD (800) 930-4555.

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**Chapter 3  
Recommended Boundary Change**

**Recommendation Number One  
of the Local Boundary Commission  
to the First Session of the  
Twenty-First Alaska Legislature**

**A Recommendation for Annexation of  
Approximately 6.5 Square Miles to the City of Haines**

**Section I - Introduction**

As allowed by 19 AAC 10.420, the City of Haines on March 12, 1997, petitioned the Local Boundary Commission to annex 6.5 square miles within the Haines Borough. The territory proposed for annexation consists of two areas: one encompasses 2.7 square miles adjoining the western boundary of the City. The second area contains 3.8 square miles located immediately south of the City. The City's jurisdiction presently covers 14.4 square miles. According to the Department of Community and Regional Affairs (DCRA), the City of Haines had a population of 1,400 at the time the petition was filed. DCRA estimated that the two areas proposed for annexation were inhabited by 278 people at the time of the petition.

**Section II — Proceedings**

Upon a staff determination that the form and content of the City's annexation petition were sufficient, notice of its filing was published and posted in accordance with 19 AAC 10.450. Notice was also mailed to fifty-four individuals and organizations. Under Commission regulations, responsive briefs were filed by the Haines Borough and by a group of local residents known as the Haines Borough Citizens Against Annexation (HBCAA). Preliminary and final staff reports, responsive briefs and other timely written comments were made a part of the record. As required by law, notice of the Commission's November 15, 1997 hearing was published in several newspapers and posted throughout the Haines community. Notice of the hearing was also mailed to ninety-five individuals and organizations, including local media. No objections to notice or the date and place of the Commission's hearing were raised to staff or to the Commission in this proceeding.

After an inspection of the Haines area by air and automobile, the Commission convened the hearing in Haines as scheduled on November 15, 1997. Approximately seventy-five individuals attended the hearing. At the hearing, the Commission received both sworn and unsworn testimony from the City of Haines, the Haines Borough, HBCAA, and approximately twenty-six individuals. The hearing lasted approximately four and one-half hours. Following the hearing, the Commission deliberated for approximately two hours before approving the petition by a vote of four to one. Commissioners Waring, Cannington, Tesche, and Walters voted to approve the petition. Commissioner Wasserman cast a dissenting vote. The Commission issued a 21-page decisional statement in the matter on November 26, 1997.

On December 15, 1997, a two-page request for reconsideration was submitted by HBCAA. The Commission met by teleconference on December 18, 1997 to address the request for reconsideration. Four members of the Commission participated. Commissioners Waring, Wasserman, and Walters voted to deny the request for reconsideration (Commissioner Cannington was disconnected from the teleconference due to technical difficulties on the part of the telephone utility).

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The City of Haines, the Haines Borough, and HBCAA subsequently asked the Commission to defer the filing of its recommendation for annexation with the Second Session of the Twentieth State Legislature.<sup>7</sup> The deferral was endorsed by Senator Jerry Mackie and Representative Albert Kookesh in a joint letter dated January 20, 1998.<sup>8</sup> The deferral was sought to provide the three parties and local citizens a reasonable opportunity to consolidate the first class City of Haines with the third class Haines Borough. Consolidation would have dissolved the two existing Haines municipal governments and created a single consolidated borough.<sup>9</sup>

The Commission found the prospect of consolidation of the City of Haines and the Haines Borough to be attractive from the standpoint of political and social policy. Article X, §1 of Alaska's constitution calls for the minimization of the number of local government units. Consolidation would reduce by half the number of municipal corporations providing local services to the citizens of the greater Haines area. Further opportunity to streamline local government in Haines exists in the context of the possible reconfiguration of the multitude of local service areas. Such reconfiguration could occur concurrent with or subsequent to consolidation.

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<sup>7</sup> The City of Haines was the party that filed the petition for annexation of the 6.5 square miles in question. The City of Haines' request to defer the submission of the recommendation for annexation was presented in the form of Resolution No. 97/98-27, adopted January 19, 1998. The Haines Borough and the Haines Borough Citizens Against Annexation were the only parties who filed responsive briefs in opposition to the annexation proposal under 19 AAC 10.480. Their requests to defer the submission of the annexation recommendation were presented, respectively, in the form of Haines Borough Resolution No. 437, adopted January 20, 1998 and the January 19 resolution of the Haines Borough Citizens Against Annexation.

<sup>8</sup> Senator Mackie and Representative Kookesh are, respectively, the State Senator and State House Representative serving the area encompassing the City of Haines and the Haines Borough.

<sup>9</sup> Third class boroughs may not be formed through consolidation. (AS 29.06.090)

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Consolidation would also eliminate the State's only third class borough. The legislature authorized that class of borough government in 1968. However, the legislature amended the law in 1985 to prohibit the incorporation of new third class boroughs. The Haines Borough was the only third class borough to have formed during the seventeen-year period allowed for the incorporation of third class boroughs. That particular class of borough has been widely recognized to be lacking in terms of its ability to provide essential areawide and nonareawide services and to execute duties assigned by the legislature to other classes of organized boroughs.<sup>10</sup>

Consequently, on January 21, 1998, the Commission agreed to defer its recommendation for annexation. By doing so, the Commission extended an opportunity for the local governments and citizens of Haines to focus on the issue of consolidation. If the voters approved consolidation at an election conducted pursuant to AS 29.06.140(a), the Commission's November 26, 1997 decision concerning annexation to the City of Haines would have become moot since there would no longer be a City of Haines. However, the Commission stated that if such voter approval were not obtained prior to the deadline for filing municipal boundary change recommendations with the First Session of the Twenty-First Alaska State Legislature, the public interest dictated that the annexation to the City of Haines should proceed.

A petition for consolidation of the two local governments in Haines was filed on March 31, 1998. The Commission approved the petition on August 21, 1998. A proposition to consolidate was submitted to the voters in Haines on November 3, 1998. By a margin of 545 (50.1%) to 542 (49.9%), Haines Borough voters

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<sup>10</sup> All other organized boroughs are required by state statute to exercise areawide planning, platting, and land use regulations. The third class borough has no such responsibility. In fact, it expressly lacks authority to exercise such powers on an areawide basis. The third class borough is permitted to exercise only two areawide powers: education and tax assessment/collection. It is permitted to exercise only one nonareawide power: hazardous substance control. All other powers of a third class borough may be exercised only on a service area basis.

rejected the consolidation proposal. In accordance with the decision rendered by the Commission on January 21, 1998, this recommendation for annexation of 6.5 square miles to the City of Haines is submitted to the 1999 Legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. Section III of this recommendation sets out the findings and conclusions of the four members of the Commission that voted in favor of the petition. Section IV sets out the basis for the dissenting vote by Commissioner Wasserman.

### **Section III — Findings and Conclusions**

The record in this proceeding includes the City of Haines' annexation petition, the responsive brief of the Haines Borough, the responsive brief of HBCAA, written comments on the petition submitted directly to DCRA by nineteen individuals, DCRA's draft report, written comments on DCRA's draft report from five individuals, DCRA's final report, records relating to a similar annexation proposal rejected by the 1984 Legislature, and testimony and comments at the Commission's November 15, 1997 hearing on this matter. Based on the evidence in that record, the Commission reached the findings and conclusions set out in this section of the decisional statement.

#### ***A. Needs of the Territory Proposed for Annexation.***

An area may be annexed to a city provided, in part, that the Commission determines there is a reasonable need for city government in the area. [19 AAC 10.090(a)] Section III A 1-8 of this decisional statement examines specific governmental needs of the territory proposed for annexation.

State law requires the Local Boundary Commission to apply the specific standards for annexation to cities provided by 19 AAC 10.090 - .140. Those standards are addressed in this section.

#### **1. Regarding Police Protection.**

The City's annexation petition indicates that the City of Haines police department annually responds to the approximate equivalent of one call from every seven households in the territory proposed for annexation. Some who provided unsworn public comment at the

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November 15 hearing contested that claim. The City's claim was supported by a sworn affidavit from the City Administrator indicating that the information in the City's petition is factual to the best of his knowledge. Additionally, strong gratitude for the City's willingness to provide extraterritorial police service was expressed in the July 15, 1997 letter from Alaska State Trooper Captain Bachman. That demonstrated that the City is indeed providing such service.

Further, based on the territory's estimated population of 278, it seems reasonable that there is a need for more comprehensive police protection than can be provided by a lone State Trooper assigned to a vast area extending far beyond the community of Haines. Regarding the need for police in relatively heavily populated areas, Captain Bachman noted in his July 15 letter that, "*As the population increases and we see more and more of the criminal justice infrastructure migrate into areas where they have not previously been, it may well fall to the local communities to provide their own police services where they haven't before.*"

The record also shows that a need exists for greater police protection at the Haines airport, which is located in the western territory proposed for annexation. The owner of the Haines Airport terminal indicated that the terminal building had been broken into three times between August 1996 and July 1997. The airport contains considerable development and is reasonably expected to undergo further development. Criminal activity at the airport such as breaking and entering or vandalism threatens the health and safety of community residents and others. Such safety threats are exacerbated whenever aircraft are the target of such criminal activity.

The Commission finds from the foregoing that there is a need for comprehensive police coverage in the territory proposed for annexation and that this need exceeds the capabilities of the lone State Trooper assigned to the Haines area.

**2. Regarding Planning, Platting, and Land Use Regulation.** Planning, platting, and land use regulation have been generally recognized as essential municipal services by the Alaska legislature since 1961. At that time, the legislature prescribed that each

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organized borough must provide those services on an areawide basis. The legislature made an exception to the requirement for areawide planning, platting, and land use regulation by organized boroughs in 1968 when it authorized the incorporation of third class boroughs. However, in 1985, the legislature repealed the law allowing the incorporation of new third class boroughs. The Haines Borough is the only third class borough to have incorporated.

In addition to requiring that most organized boroughs exercise planning, platting, and land use regulation, the legislature also mandated that home rule and first class cities in both the unorganized borough and third class boroughs provide planning, platting, and land use regulation. Today, thirty-four cities and boroughs, including the City of Haines, are required by state law to provide planning, platting, and land use regulation. Those municipalities serve more than ninety-one percent of all Alaskans.

The general need for municipal planning, platting, and land use regulation has also been recognized by other Legislative branches of state government. As the record reflects, officials of the Alaska Department of Environmental Conservation, the executive branch agency charged with protecting the health and environment of Alaskans, consider municipal platting to be an important function as well.

The need for planning, platting, and land use regulation is also reflected by the growth and development of the territory proposed for annexation. The record indicates that the area has grown very substantially since 1982. This growth is evidenced by the increase in assessed value in the area from \$6,726,150 in 1982 to \$21,348,214 in 1996. That represents an increase of more than 217% (123.8% adjusted for inflation). The record indicates further that the area proposed for annexation has been subject to significant ongoing development and that there is a reasonable likelihood of continued substantial development in the foreseeable future. The Commission had the opportunity to view recent and ongoing development during its extensive tour of the territory prior to the hearing. Existing, ongoing, and potential development is clearly an integral part of the community of Haines.

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The record indicates that the territory proposed for annexation currently receives no municipal planning, platting, and land use regulation from the third class Haines Borough. The Commission noted that the effects of the lack of such services were evident with regard to the University of Alaska's just-completed Letnikof Estates subdivision, which is located a short distance from the southern territory proposed for annexation. Having toured the area, the Commission found the streets in that subdivision to be extremely narrow and the cul-de-sacs to be inadequately sized. Such circumstances make it more difficult and expensive to maintain the streets in the subdivision (e.g., road graders and snow plows will have greater difficulty passing oncoming traffic and will also have difficulty turning around in the small cul-de-sacs).

The Commission recognizes that the time to provide proper land use planning is prior to development. Now is the appropriate time to extend those services to the territory proposed for annexation.

Thus, the Commission finds that there is a clear need for planning, platting, and land use regulation in the territory proposed for annexation.

### **3. Regarding Road Maintenance.**

Public roads in the area proposed for annexation are maintained either by the Alaska Department of Transportation and Public Facilities (DOT&PF) or by the Haines Borough. The Borough provides road maintenance on a service area basis.

The record reflects that officials of DOT&PF indicate that there is an increasingly greater need for improved maintenance of the State's category 3 roads in the area proposed for annexation. Those roads have the lowest priority for maintenance by DOT&PF. The level of maintenance, particularly snow removal, provided for those roads is often inadequate.

Category 3 roads in the area proposed for annexation include Comstock Road, Beach Road, FAA Road, Menaker Road, Piedad Road, Sawmill Road, and Small Tract Road. It is the policy of

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DOT&PF to strongly encourage local governments to assume responsibility for the maintenance of such roads.

In 1997, DOT&PF and the City of Haines engaged in negotiations for the transfer of maintenance responsibility for certain category 3 roads in the area proposed for annexation. However, those negotiations stalled because of uncertainty over the outcome of the City's annexation proposal. State and federal officials insisted on a long-term commitment for the maintenance, by the City of the roads in question.. However, the City was unwilling to make that commitment without assurance that the roads and adjoining property will be included within its corporate boundaries.

Concerns were expressed at the November 15 hearing regarding the City's ability to provide adequate road maintenance within its current boundaries. However, during the Commission's extensive tour of the community, the roads maintained by the City appeared to be in good repair.

The Commission finds from the facts outlined above that there is a need for greater road maintenance in the territory proposed for annexation.

#### **4. Regarding Water and Sewer Utilities.**

The City of Haines provides water utility service to approximately 38% of the households in the territory proposed for annexation. The City also provides sewer utility service to approximately 5% of those households. Otherwise, the territory lacks public water and sewer utilities.

The Commission finds from the foregoing that there is need for the water and sewer utilities in parts of the territory proposed for

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annexation. The need is greatest with respect to future development. Additionally, some parts of the Piedad Road and Comstock Road areas have a history of failed septic systems due to poor drainage.<sup>11</sup>

### **5. Regarding Access to Services of the City of Haines.**

Residents of the territory proposed for annexation already have access to and benefit from a variety of local governmental services provided by the City of Haines. These include fire protection, emergency medical services, and emergency dispatch services provided by the City on a contractual basis within the adjoining Borough service areas.

Residents of the territory proposed for annexation also have access to or benefit from a number of non-site specific services and facilities provided by the City of Haines. For example, the City commits very substantial resources to promote economic development, including tourism. This creates employment and economic opportunities that are available to residents throughout the community of Haines, including the area proposed for annexation.

Additionally, certain facilities and services provided by or supported by the City of Haines are of direct or indirect benefit to the residents of the territory proposed for annexation. These include police and dispatch services, canine control, household hazardous waste disposal, grants to community organizations, the NOAA weather radio facility, emergency operations center, Senior Center, Human Resources Building (containing mental health program, Alcoholics Anonymous, pre-school, and Head Start), public restrooms, and port facilities which handle all of the community's freight.

The Commission finds from the foregoing that residents of the territory proposed for annexation have access to substantial services and facilities provided by or supported by the City of Haines.

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<sup>11</sup> The Commission was aware at the time of its hearing that the Alaska Public Utilities Commission was considering competing proposals from the City of Haines and a private developer for the right to provide water and sewer utilities to a portion of the western territory proposed for annexation.

**6. Regarding Existing or Reasonably Anticipated Economic Development**

The Alaskan and Proud Market, one of two relatively large grocery stores in Haines, has announced plans to relocate its operations from downtown Haines to the territory proposed for annexation. Other businesses, including a licensed liquor package store, have relocated or are planning to relocate to the territory proposed for annexation.

The record reflects that the owner of the Alaskan and Proud Market emphasized that his business is in need of services provided specifically by the City of Haines. These include, in particular, police protection, water utility service, and sewer utility service.

The owner of the Alaskan and Proud Market also recognized that the relocation of his business operations would have significant adverse impacts on the City of Haines' sales and property tax revenues if the property were not annexed. The business owner indicated that he wants the Alaskan and Proud Market to continue to be a "good corporate citizen" in Haines. He emphasized that being a good corporate citizen, in part, means paying a "fair share" for the services provided.

The record also shows that Haines Airport Terminal and Services plans to construct a 9,600 square foot building to expand its existing operations at the Haines airport. The planned facility would provide space for the agents of all air carriers serving Haines. In addition, a small gift shop, restaurant, lounge, and rental car service would be housed in the expanded airport terminal facility.

In addition to the prospective developments noted, Waldo Enterprises is relocating its concrete mixing plant from the City to the territory proposed for annexation.

The Commission finds from the foregoing that economic development in the territory proposed for annexation is ongoing.

**7. Regarding Existing or Reasonably Anticipated Health, Safety, and General Welfare Problems**

The record reflects that officials of the Alaska Department of Environmental Conservation (DEC) indicate that problems relating to failed septic systems in the Piedad Road and Comstock Road area noted in the City's annexation petition have been corrected. However, those same officials indicate that, "*The Piedad Road and Comstock Road area has a history of failed systems. . .*" As such, it is anticipated that there may be additional future problems relating to failed septic systems in the area.

Although DEC has responded to problems relating to improperly operating septic systems in the territory proposed for annexation, officials of that agency indicate that, "*The State's long-term goal is to have communities take over management of wastewater and drinking water.*"

Considering the foregoing, the Commission finds that the history of public health threats relating to fecal coliform contamination in the Comstock Road and Piedad Road area demonstrates a need for city government in that area. This is consistent with the State's long-term goal to promote local responsibility for such matters.

**8. Regarding State Policies Relating to Local Responsibility**

In Fiscal Year 1996, the State Long Range Financial Planning Commission (SLRFPC) announced that, "*The State is spending \$524 million more than it will take in during the current fiscal year. The gap will grow to \$1.3 billion per year in today's dollars by 2005 if we make no changes to the State's spending and revenues policies.*" The SLRFPC recommended that state spending be cut by \$100 million over three years. One of the "key elements" of the plan prepared by the SLRFPC was to ". . . *shift revenues and responsibilities to local governments.*" The Alaska legislature announced plans in 1997 to trim state spending by \$250 million over five years.

The City of Haines takes the position that continued reductions in state funding require local areas to take on a greater share of the responsibility for services such as police, road maintenance, and land

use regulation. The City's views regarding state policy in this matter conform closely to the views expressed in the SLRFPC Report.

Based on the foregoing, the Commission finds that it is consistent with policies expressed by the State Long Range Financial Planning Commission for the City of Haines to assume responsibilities for maintenance of state category 3 roads and to provide planning, platting, land use regulation, police protection, and other relevant services in the territory proposed for annexation.

Based on the foregoing findings, the Commission concludes that there is a reasonable need for city government in the territory proposed for annexation and that the city annexation standard set out in 19 AAC 10.090(a) is satisfied.

***B. Comparative Ability of the City of Haines and the Haines Borough to Deliver Essential Services to the Area.***

An area may be annexed to a city provided, in part, that the Commission determines that the annexing city can provide essential city services as defined by 19 AAC 10.990(8) to the area more efficiently and effectively than another existing municipality [19 AAC 10.090(b)]. The determinations of the Commission on this point are summarized below.

**1. Powers of the City of Haines.**

A city within a borough is authorized to "exercise any power not otherwise prohibited by law." (AS 29.35.250) Additionally, as a first class city within a third class borough, the City of Haines is mandated by state law to provide planning, platting, and land use regulation throughout its jurisdiction. (id.) The Commission finds from this that the City of Haines enjoys the authority to provide any municipal service except for education, tax assessment, and tax collection, which are mandatory areawide duties of the Haines Borough.

**2. Powers and duties of the Third Class Haines Borough**

As a third class borough, the Haines Borough is authorized by law to provide only two services on an areawide basis – education and taxation. (AS 29.35.160 - 29.35.170) Additionally, it is authorized

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by law to provide one service on a non-areawide basis (the area outside cities). The single authorized non-areawide service is the power to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance; including the ability to address oil pollution control under AS 46.04, hazardous substance releases under AS 46.08, and hazardous substance release control under AS 46.09. [AS 29.35.220(e)]

Other than the three services noted above, all services by a third class borough may be provided only on a service area basis. [AS 29.35.220(d)] A third class borough may exercise in a service area any power not otherwise prohibited by law, if the exercise of the power is approved by a majority of the voters residing within the service area. [AS 29.35.490(b)]

However, borough service areas may only be established within the provisions of Article X, § 5 of Alaska's constitution and AS 29.35.450. Those provisions stipulate that a service area may not be created if services can be provided through annexation to an existing city. The Commission finds that, in contrast to the City of Haines, the Haines Borough has significant legal constraints on its ability to provide services to the area in question (other than education, tax assessment, tax collection, and control of hazardous materials).

### **3. Service Area Issues**

Given the limitations of the Haines Borough to provide services on a service area basis, issues concerning constitutional and statutory aspects of borough service areas are fundamental to the question of whether needed services can be provided most efficiently and effectively by the City of Haines or the Haines Borough.

The intent of the constitutional convention delegates regarding the constitutional provisions relating to service areas is addressed in the following - *Handbook on the Alaska Constitution* (the ability to determine if it is possible to provide services to the area in question)

*Borough Government in Alaska* (at 42), a leading treatise on Alaska's unique form of regional government.<sup>12</sup>

*The stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for the constitutional provision that "A new service area shall not be established if...the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city."<sup>13</sup> The committee's objective was to avoid having "a lot of separate little districts set up...handling only one problem..."; instead, services were to be provided wherever possible by other jurisdictions capable of doing so.<sup>14</sup> Moreover, an amendment to eliminate the preference given to city incorporation or annexation over establishment of new service areas was defeated by the convention. (Emphasis added)*

In 1983, the Commission determined that the City of Haines was capable of serving nearly the same territory presently proposed for annexation. Notwithstanding, the Haines Borough continued to operate a fire service area immediately adjoining the City of Haines that had been established in 1977. Further, the Haines Borough has since added *seven new service areas* in the territory proposed for

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<sup>12</sup> *Borough Government in Alaska*, University of Alaska, March 1971, was written by Thomas Morehouse and Victor Fischer. Mr. Morehouse and Mr. Fischer are regarded as experts relating to borough government in Alaska. Both individuals have published a number of works dealing with the topic. Further, Victor Fischer was not only a delegate to the Alaska Constitutional Convention, but was secretary to the Convention's Committee on Local Government. Additionally, the Alaska Supreme Court relied on *Borough Government in Alaska* in Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974) and Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995).

<sup>13</sup> Constitution of the State of Alaska, Article X, Section 5.

<sup>14</sup> *Alaska Constitutional Convention Proceedings*, November 1955 to February 1956, Alaska Legislative Council at 2715.

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annexation. Four of the seven new service areas are located wholly within the territory proposed for annexation. The other three new service areas encompass all of the territory proposed for annexation and more.

The Haines Borough indicates that it is prepared to create still more service areas to provide needed services in the territory proposed for annexation. For example, the Borough states in its responsive brief that, *“If the residents of the area to be annexed come to the decision that they need to exercise planning, platting, and zoning powers, they are already able to do so through the current service area system used by the Borough of Haines.”*

Victor Fischer, preeminent expert on borough government and related constitutional principles, commented on the current annexation proposal of the City of Haines. In the context of the issue of service areas, Mr. Fischer indicated that,

*In the Haines case, I would go further than the City’s argument that creation of service areas is “inconsistent” with Section 5 of the constitution – I believe it violates both the intent and specific language of this section. (emphasis original)*

*The position that establishment of new service areas is the constitutionally preferred alternative to city annexation or on par with cities is completely wrong, it’s nonsense. There is no basis whatsoever to support that view. All provisions of Article X make it totally obvious that there are two preferred types of local government units under Alaska’s constitution: cities and boroughs. Service areas are subsidiary units of boroughs. Section 5 unequivocally establishes that annexation is a preferred alternative to creation of a new service area.*

The Commission finds that the area proposed for annexation has developed as the antithesis of the model envisioned by Alaska’s constitutional convention delegates more than forty years ago. What the delegates wanted to avoid is precisely what now exists outside the corporate boundaries of the City of Haines — *“a lot of separate little districts set up . . . handling only one problem . . .”* Given the

Borough's assurance that it is prepared to create yet more service areas in the territory proposed for annexation, the problem is only likely to worsen without annexation.

Based on the above findings, the Commission concludes that the City of Haines' capability to provide essential services to the area (exclusive of education, taxation, and control of hazardous materials) is superior to that of the Haines Borough.

***C. Compatibility of the Territory Proposed for Annexation and the Area Within the City of Haines.***

Under 19 AAC 10.100, an area may be annexed to a city if the Commission determines the area to be compatible in character with the annexing city.

The Commission recognized that there are differences with respect to land use in parts of the territory proposed for annexation and the area within the City of Haines. However, there are also differences regarding land use *within* the territory proposed for annexation itself. For example, there are 141 homes in the territory proposed for annexation. There are also thirty-four businesses in the territory. Some of the businesses are home-based, while others are located in separate commercial or industrial facilities. These differences do not mean that the areas in question are incompatible.

The Commission notes that the City of Haines' Code accommodates differences in land use. Specifically, Section 18.70.100 of the City's Code makes the following accommodations for newly annexed territory:

*[A] Multiple Use district will be established in . . . areas upon the effective date of their annexation. Recognizing the previous lack of land use planning in areas outside the City and the need to provide a reasonable transition toward land use regulation, the Multiple Use district is intended to allow as broad a range of land uses as possible. The Multiple Use district is intended to be temporary, however, in order to allow present land use patterns to continue until more specific land use regulations are adopted. The City shall conduct public*

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*hearings following the annexation, and within two years of the effective date of the annexation, the City may rezone this district according to the results of the public hearing process. The process may result in a rezoning of Multiple Use district areas to more restrictive land use classifications.*

The Commission recognizes that the population density of the territory proposed for annexation is less than that within the existing boundaries of the City of Haines. However, it is also greater than the average of all 145 cities in Alaska. The patterns of housing development in the area proposed for annexation are compatible with those in adjacent areas inside the corporate boundaries of the City of Haines. If the annexation occurs, the population density of the expanded City of Haines will be at least twice the average of all 145 cities in Alaska.

The area within the City and the territory proposed for annexation are a mixture of relatively small lots, larger lots, and large undivided parcels. The record indicates that there is a strong market for property in the area proposed for annexation and within the City of Haines. The Commission finds that the subdivision characteristics and characteristics relating to the salability of property in the territory proposed for annexation are compatible in character with the territory inside the current boundaries of the City of Haines.

The territory proposed for annexation and the area within the current boundaries of the City of Haines are one in the same community. The two areas are closely interconnected and interdependent. Thus, the Commission finds that land use within the territory proposed for annexation and the suitability of the territory for reasonably anticipated community purposes are compatible with such characteristics of the area within the boundaries of the City of Haines.

Considering the above findings, the Commission concludes that the territory proposed for annexation is compatible in character with the territory inside the current boundaries of the City of Haines. Thus, the standard set out in 19 AAC 10.100 is fully satisfied.

***D. Adequacy of the Human and Financial Resources***

State law allows an area to be annexed to a city provided, in part, that the Commission determines the area within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. [19 AAC 10.110]

The Commission found that all of the functions of the City of Haines, with the exception of its water and sewer utilities, were reasonably anticipated to be extended to the area proposed for annexation by the beginning of the next fiscal year following annexation.

The Commission also finds that the City of Haines is projected to realize an increase in revenue as a result of annexation equal to approximately \$113,500 annually (based on current property values, projected taxable sales, and a projected City property tax rate that is 80% of the current level). The City of Haines has projected that its operating expenditures will increase by \$79,300 annually as a result of annexation.

The Commission inquired whether the City's projected expenditures were unrealistically low. In that regard, it was noted that the City could increase its level of expenditures in the area proposed for annexation from \$79,300 to \$113,500 annually without incurring any adverse fiscal impact as a result of annexation. Still, that would represent an increase of only 3.7% in the level of funding appropriated by the City Council in the prior fiscal year (\$3,099,297) compared to a population increase of 20% as a result of annexation.

In its examination of the issue, DCRA characterized approximately two-thirds of the City's expenditures (\$2,081,271) as "fixed costs" in the context of annexation. Based on that characterization, the \$113,500 increase in spending would represent an 11% increase in funding for variable costs of the City (\$1,018,026). Still, that figure is little more than half of the relative increase in population that the City will experience.

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However, DCRA also noted that certain efficiencies could be reasonably expected due to increased economies of scale. For example, it was noted that the City of Haines spent \$305 per resident to provide police services in 1995. That figure was 42% higher than the average of all municipalities in Alaska that spent at least \$50,000 annually on police and police dispatch services. By expanding the population served by the City without increasing the number of police officers, the per capita cost of providing that service would decline.

The Commission recognized that any remaining concerns over the City's projected expenditures for the territory proposed for annexation did not detract from the ability of the area in question to satisfy the annexation standard at hand. In other words, either through the expenditure of more funds than originally projected by the City or by achieving greater efficiencies such as those anticipated with respect to the extension of police services, the Commission finds that city services can be efficiently and effectively delivered to the territory.

Property values in the territory proposed for annexation will enhance the ability of the City of Haines to provide essential city services. The per capita taxable value of property in the area proposed for annexation is fifty-one percent higher than it is within the current boundaries of the City. If annexation occurs, the per capita assessed value of the City of Haines would be greater than twenty-three of the thirty-eight municipalities in Alaska that levy property taxes.

The Commission notes that the area within the proposed post-annexation boundaries of the City of Haines enjoys a vibrant economy. On a per capita basis, taxable sales in the proposed new boundaries of the City of Haines are greater than they are in the City and Borough of Juneau. Per capita values of taxable property are 21% higher in the proposed post-annexation boundaries of the City compared to the average of the thirty-eight municipalities in Alaska that levy property taxes.

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The 1990 personal income of residents of the territory proposed for annexation and the City of Haines was more than 9% above the average of all 145 cities in Alaska.

The record reflects that the City of Haines had substantial fund balances on June 30, 1996, the most recent date for which audited figures are available. In aggregate, the City's fiscal year end balance was equivalent to 76.1% of expenditures for the year. That figure is 4.7 times greater than the national average.

The City's general obligation debt totaled \$1,911,200 as of June 30, 1996. However, the City of Haines has substantial assets as well. On June 30, 1996, the City's *net* equity and other credits amounted to \$28,275,313, or \$20,197 per resident.

Considering the preceding findings, the Commission concludes that the economy within the proposed new boundaries of the City of Haines includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

Thus, the standard set out in 19 AAC 10.110 is fully satisfied.

***E. Size and Stability of the Population of the Proposed Expanded City.***

State law allows an area to be annexed to a city provided, in part, that the Commission determines the population within the proposed post-annexation boundaries of the city is large and stable enough to support the extension of city government. (19 AAC 10.120)

The Commission finds that the 1,678 residents within the proposed new City boundaries represent a population numerous enough to support the extension of city government. Annexation would increase the City's population by 20%. The expanded City of Haines would rank 21st in terms of population among Alaska's 145 city governments.

The Commission finds that the duration of residency, historical population patterns, and seasonal population changes in the City of

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Haines and the area proposed for annexation reflect a stable population.

Annexation is projected to increase the number of citizens in the age group most likely to be involved in operating and governing the City of Haines by 194 (20%).

Considering the above findings, the Commission concludes that the area within the proposed *post-annexation* boundaries of the City of Haines is sufficiently large and stable to support the extension of city government. Thus, the standard set out in 19 AAC 10.120 is fully satisfied.

### ***F. Inclusion of all Land and Water Necessary to Provide the Full Development of Essential City Services on an Efficient, Cost-Effective Level.***

State law specifies that an area may be annexed to a city provided, in part, that the Commission determines that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. [19 AAC 10.130(a)]

The Commission views this particular standard as a threshold criterion. In other words, the Commission does not consider the standard to require a determination that the proposed new boundaries are ideal. Instead, the standard is satisfied if the proposed new boundaries of a city include territory needed to provide the full development of essential city services efficiently and effectively.

In that context, the Commission recognizes that there *may* be additional territory outside the proposed new boundaries of the City of Haines that need essential city services. Such *may* include the area extending to Letnikof Cove adjoining the southern area proposed for annexation, as well as the property of Southeast Road Builders, Incorporated, adjoining the western territory proposed for annexation. However, the Commission makes no judgment concerning the merits of expanding the boundaries beyond the City's proposal since there has been no opportunity for the Commission to formally consider that matter.

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The Commission finds that the territory proposed for annexation includes a number of facilities owned or operated by the City of Haines on an extraterritorial basis. These consist of water utility service to fifty-three of the estimated 141 homes in the territory, sewer utility service to seven of the estimated 141 homes, Lily Lake, the City's water treatment facility, and the City's cemetery. Additionally, the City provides emergency police protection to the territory on an extraterritorial basis.

Further, the City proposed in July of 1997 to assume responsibility for maintenance of FAA Road from the Alaska Department of Transportation and Public Facilities. That road extends 1,800 feet beyond the current boundaries of the City of Haines. An agreement to transfer maintenance of the road stalled because state and federal officials stipulated that the City must commit to maintain the road on a long-term basis. The City was unwilling to do so given the uncertainty of the outcome of its annexation proposal.

Further, the City provides fire protection services and ambulance services, including dispatch for both, outside its corporate boundaries. Those functions are performed as a contractor to the Haines Borough under the Borough's jurisdictional authority.

Annexation would eliminate the extraterritorial nature of all of the services and facilities noted above. The Commission concludes that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. Thus, the standard set out in 19 AAC 10.130(a) is satisfied.

### ***G. Contiguous Nature of the Territory Proposed for Annexation.***

State law specifies that an area may be annexed to a city provided, in part, that it is contiguous to the annexing city (unless a compelling reason exists for annexation of non-contiguous territory). [19 AAC 10.130(b)]

The Commission finds that the western and southern areas proposed for annexation adjoin the current boundaries of the City of Haines.

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Thus, the Commission concludes that the standard set out in 19 AAC 10.130(b) is fully satisfied.

### ***H. Inclusion of the Community, Plus Areas Reasonably Predicted to Grow Over the Next Ten Years***

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following the effective date of annexation of that city. [19 AAC 10.130(c)]

The Commission finds that the territory proposed for annexation and the area within the current boundaries of the City of Haines are the same community. This is readily apparent when Haines is viewed from the air, as the Commission did prior to the November 15 hearing. It is equally apparent as one traverses the community from the ground, as the Commission also did extensively prior to the hearing. The area proposed for annexation is clearly an interdependent part of the community of Haines.

The Commission also finds that the territory proposed for annexation is contiguous to the City of Haines and is relatively compact. The estimated 278 residents of the territory reasonably appear to make extensive use of the area within the corporate boundaries of the City for their social, economic, educational, medical, governmental, and other service needs. Similarly, the 1,400 residents of the City seem to rely on public and private facilities in the area proposed for annexation to meet certain of their needs (e.g., water supply, landfill, airport, commercial facilities, and industrial facilities).

The Commission notes that it is difficult to accurately predict what growth will occur over the next ten years. However, the area proposed for annexation has undergone very significant growth over the past fourteen years. Evidence of ongoing growth and development is also present. Further, as noted previously, plans have also been announced for the construction of a new shopping center west of the current boundaries of the City. A proposal to construct a much larger terminal at the Haines Airport is also under

consideration. Testimony was also provided to the Alaska Public Utilities Commission by a private developer with substantial holdings in the territory proposed for annexation that the area in question is expected to undergo significant development. Therefore, the Commission finds that it is reasonable to assume that the area proposed for annexation will continue to grow over the next ten years.

Considering the above findings, the Commission concludes that the proposed boundaries of the City of Haines include only that area comprising the community of Haines, plus reasonably predictable growth, development, and public safety needs during the next ten years. Thus, the standard set out in 19 AAC 10.130(c) is fully satisfied.

***I. Exclusion of Geographical Regions and Large Unpopulated Areas***

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. [19 AAC 10.130(d)]

The terms "entire geographical regions" and "large unpopulated areas" are broad and should be considered in the context of other cities in Alaska. While the Commission recognizes that the jurisdictional needs of each city are unique, a general comparison to other cities in Alaska is useful. In that regard, it is noted that although the City of Haines is presently the 22nd most populous city among the 145 cities in Alaska, it ranks 60th in terms of the size of territory within its corporate boundaries. In other words, the City of Haines' ranking in terms of its jurisdictional boundaries is not commensurate with its ranking in terms of population. Even if annexation occurs, the City would rank 21st in population and only 47th in terms of the size of its jurisdictional area among the 145 cities in Alaska.

The average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. The average size of the jurisdictional area of the twenty-two cities in Alaska with a population of 1,400 or more

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is 44.7 square miles. If the annexation occurs, the new boundaries of the City of Haines would encompass 20.9 square miles, 22.8% less than the average of all cities and 53.2% less than the average of cities with a population of 1,400 or more.

As noted previously, there are an estimated 278 individuals living in 141 homes in the area proposed for annexation. Most of the residents live along Beach Road, Mud Bay Road, Small Tract Road, FAA Road, Comstock Road, Piedad Road, and that portion of the Haines Highway immediately outside the current western boundary of the City of Haines.

Although parts of the territory are uninhabited and undeveloped, residential and commercial growth in the areas proposed for annexation appear to be reasonably likely. John Floreske, Jr., (developer of the Meadowland Subdivision in the area proposed for annexation and owner of the Chrystal Cathedral Water and Sewer System, Inc., which, at the time of the Commission's hearing, was seeking APUC authority to provide utility service to a portion of the area) testified before the APUC on June 12, 1997, that he envisions nearly eighty homes and "several commercial customers" in the area proposed for annexation, *in addition* to those presently served by the City's Piedad utility system.

The Haines airport, located in the westernmost portion of the territory proposed for annexation, is the fifth busiest airport in Southeast Alaska in terms of numbers of commercial passengers who boarded flights at those airports in 1995 (the most recent year for which data are available). The five commercial air carriers that used the Haines airport on a regular basis in 1995 reported to FAA that 29,812 commercial passengers boarded at the Haines airport that year. That is the equivalent of more than 12.5 boardings for each resident of the Haines Borough.

The Haines airport is undergoing growth and development. The number of passenger boardings at the Haines airport in 1995 represented an increase of 7,710 (34.8%) over the prior year. Additionally, as noted previously, Haines Airport Terminal and

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Services has announced plans to build a 9,600 square foot facility at the airport.

The airport is used extensively to support commercial tourism in the Haines area. The petition indicates that, "*Most of the [estimated \$1,007,125] in taxable sales volume [in the territory proposed for annexation] results from summer tour excursion services using the Haines Airport.*" Given the level of development and activity at the airport, coupled with the fact that the City of Haines spends considerable resources to promote tourism (\$289,871 had been appropriated for that purpose in the fiscal year current at the time of the Commission's hearing), it seems particularly fitting that the airport should be included in the boundaries of the City of Haines.

Lily Lake serves as the principal source of water for the City of Haines water utility. The Lake is within a portion of the Chilkat State Park in the southern area proposed for annexation. The legislature has formally preserved the rights of the City of Haines to regulate water use and City facilities within the Chilkat State Park under AS 41.21.112. However, as long as Lily Lake remains outside the City limits, the City of Haines may exercise the specific rights preserved for it under AS 41.21.112 only on an extraterritorial basis. Unlike other extraterritorial powers (e.g., water utility, sewer utility, road maintenance, and cemetery), AS 29.35.020(b) authorizes the exercise of extraterritorial powers needed to protect water supplies and watersheds only on the condition that the municipality in which the water supply and watershed is located grants its approval. In other words, the City of Haines cannot exercise extraterritorial powers to protect the Lily Lake water supply and watershed unless the Haines Borough grants its approval by ordinance.

In response to a question from the Commission, the Mayor of the Haines Borough expressed the belief that the Borough Assembly would be willing to adopt an ordinance authorizing the City of Haines to exercise extraterritorial land use regulation over its watershed and water supply at Lily Lake. The Borough Mayor expressed that belief despite the contrary position taken in the Borough's responsive brief submitted to the Commission. The Borough's brief stated that there is "absolutely no need for city

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government” in the area, *particularly* with respect to City regulation of the watershed and water supply. However, even if the Borough authorized the City to exercise the extraterritorial powers in question, there is still sufficient need to exercise general land use planning power in that area to determine that the standard has been met.

In consideration of the foregoing, the Commission finds that the inclusion of the large uninhabited portions of the territory proposed for annexation, such as the Lily Lake area, Haines airport, and developable privately owned lands is justified through satisfaction of other annexation standards.

Considering the preceding findings, the Commission concludes that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. Thus, the standard set out in 19 AAC 10.130(d) is fully satisfied.

***J. Overlapping Boundaries.***

State law specifies that if a city annexation proposal overlaps the boundaries of a borough, unified municipality, or another city, the city annexation proposal must also address standards for detachment from the borough, unified municipality, or other city; or annexation of the city to the borough or unified municipality. [19 AAC 10.130(e)]

The City of Haines and the territory proposed for annexation are both within the Haines Borough. The City’s annexation proposal does not overlap the boundaries of another existing municipality. Therefore, the Commission concludes that the standard set out in 19 AAC 10.130(e) is fully satisfied.

***K. Balanced Best Interests of the State, the Territory Proposed for Annexation, and Affected Political Subdivisions***

State law provides that the Commission may recommend a municipal boundary change to the state legislature pursuant to Article X, § 12 of Alaska’s Constitution as long as the proposal satisfies the annexation standards set out in 19 AAC 10.090 - 19 AAC 10.130. Additionally, the Commission must determine that annexation will

serve the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions. "Balanced best interests" means that when the interests of all are considered, the proposal must serve the best interests of the whole. Because the proposal may not serve the particular interests of some does not preclude a finding that the standard is satisfied. [19 AAC 10.140]

19 AAC 10.140 lists six factors which the Commission may consider in judging the balanced best interests of those affected by annexation. The first factor is whether the territory is an enclave surrounded by an annexing city. This factor is not specifically relevant to this petition. Nevertheless, although the territory proposed for annexation is not surrounded by the annexing city, it is adjacent to and is integrally tied to the City of Haines. There is too much interplay between the two areas to conclude otherwise. The area proposed for annexation contains key facilities for the community of Haines including the airport, the source of water supply, the landfill, a substantial part of the community's growing residential subdivisions, and a growing number of commercial facilities.

The second factor relates to whether the health, safety, and general welfare of City residents will be or is endangered by conditions as they currently exist. Unregulated land use activities taking place in the area sought for annexation demonstrate that this factor applies in this case. The second factor also supports a finding that annexation serves the balanced best interests of the whole.

The third factor concerns whether the extension of city services or facilities to the territory is necessary to enable the city to provide adequate services to city residents. The record shows that there may be a flight of businesses from the area within the current boundaries of the City of Haines to the area proposed for annexation. This will endanger the tax base of the City. The Commission must consider the economic viability of the existing municipality when it makes an annexation decision. Thus, the third factor supports a determination that annexation is in the balanced interests of all.

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The fourth consideration is whether residents or property owners within the territory proposed for annexation receive direct or indirect benefits of city government without commensurate tax contributions. Given the proximity of the territory proposed for annexation to the City of Haines, the availability of public services to residents and non-residents alike within the City, the lack of other nearby urban centers, and the benefits provided to non-residents on an extraterritorial basis, the Commission finds that residents within the territory proposed for annexation derive substantial direct and indirect benefits from the city government. Although residents of the territory proposed for annexation contribute to the cost of city services through payment of sales taxes and through service with the volunteer fire department, those contributions are not commensurate with the direct and indirect benefits of city government they receive.

In this case, the record indicates that this factor supports annexation since the status quo enables residents of the area proposed for annexation to receive an increasing level of the benefits from the City of Haines without paying a commensurate share. And at the same time businesses have incentives to leave the area within the unnaturally constrained existing corporate boundaries of the City of Haines, making matters worse. Thus, the fourth factor supports a finding by the Commission that annexation is in the balanced best interests of all.

The fifth factor is whether the annexation of the territory will enable the city to plan and control reasonably anticipated growth or development. Previous findings and conclusions of the Commission regarding the current annexation proposal have indicated this to be the case.

The sixth and last factor specifically listed in 19 AAC 10.140 is whether the territory is so sparsely inhabited or so extensively uninhabited by persons who are not landowners that a local election would not adequately represent the interest of the majority of the landowners. Although there is a history of the community not being able to address issues through unification, the area is not uninhabited or sparsely inhabited. The area's inability to resolve its governance dilemmas does not appear to be related to the sixth factor.

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The Commission is not limited to considering just the six factors listed in 19 AAC 10.140, but may consider any other relevant factor as well. In that regard, the Commission notes that the effect of the proposed annexation would be to localize the cost and administrative responsibility for providing some services now funded and provided by state government. The State Long Range Fiscal Planning Commission's goal of closing the state fiscal gap, in part, by promoting greater local responsibility for local services would be supported by annexation. Annexation would facilitate the transfer of maintenance responsibility for so-called category 3 roads from DOT&PF to the City of Haines. Annexation will extend city police services to an area in need of such services thereby relieving the State Trooper assigned to the Haines area of some demands. Annexation will also extend platting authority into the territory, thereby avoiding the assumption of platting responsibilities in the area by the Alaska Department of Natural Resources under the provisions of CSHB 17(RES). Similarly, extension of municipal planning, land use regulation, and platting authority to the area proposed for annexation would enable the City of Haines to assume greater responsibility for proper wastewater disposal, a long-term goal expressed by the Alaska Department of Environmental Conservation. Moreover, several state agencies positively supported the proposed annexation; none opposed annexation. In light of the state's ongoing fiscal condition and policies, the proposed annexation would be advantageous to the state. Lastly, Article X, §§ 1 and 5 of Alaska's constitution encourage annexation in that it would reduce the number of service areas adjacent to the City of Haines.

For the City itself, it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City

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services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation also has some advantages for the area proposed to be annexed. It would extend the right to participate in the political process of the City. Annexation would also bring improved police service, better road maintenance, and other services of the City of Haines such as planning, platting, and land use regulation. There is some evidence in the record that there are inequities in that many services of the City of Haines are available to residents of the area proposed for annexation, but those residents do not pay a commensurate level of support for those services. When such circumstances arise, it is natural for those residents to oppose annexation. Nonetheless, however controversial the issue is now, in light of the development that is inevitable in the areas adjoining the City, annexation now will prevent more costly and belated remedies in the future. That is, it is much more difficult to address or prevent pollution problems, water supply problems, sanitation problems, and similar issues that may arise in the absence of land planning services.

Lastly, as far as the Haines Borough is concerned, the effects of annexation are negligible. Annexation does not alter its powers or functions. It does not change the population of the Borough, and it does not change the Borough's tax base.

Given the foregoing findings, the Commission concludes that annexation is in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. Thus, the standard set out in 19 AAC 10.140 is satisfied.

### ***L. Effect of Annexation on Civil and Political Rights***

An annexation proposal may not be approved by the Commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. [19 AAC 10:910]

The Commission examined this issue regarding two aspects of the annexation proposal. The first related to the effect that annexation would have on the apportionment of the Haines Borough Assembly. The second concerned the impacts on voting rights of minorities.

**1. Regarding Apportionment of the Haines Borough Assembly**

The Commission notes that arguments have been advanced that the annexation proposal should be rejected because the boundary change would alter the balance on the Haines Borough Assembly between seats held by residents of the City of Haines and seats held by Assembly members residing outside the City.

Nothing in the law requires borough election districts to be based upon city boundaries. (AS 29.20.060 - 29.20.120). Indeed, doing so is a vestige of a constitutional provision abandoned by the State of Alaska twenty-five years ago.

Originally, Article X, § 4 of Alaska's constitution required that, *"Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities."* The purpose of the provision was to promote greater communication and coordination between a borough and cities within the borough.

However, the constitutional provision at issue was repealed in 1972 because the constraint brought about disproportional representation of borough voters. Although the Haines Borough Assembly is fairly apportioned under its current election district scenario, continuing the practice of dividing the Assembly into "city" and "non-city" districts may eventually bring about disproportional representation or will require a change in the composition and apportionment of the Assembly of the Haines Borough.

In fact, the current election districts of the Haines Borough are *not* based on the current boundaries of the City of Haines. There was no change to the Haines Borough Assembly election district boundaries following the 1993 annexation of 11.75 square miles to

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the City of Haines. Although that annexation involved a small population, the fact that the Borough left its election district boundaries intact following the 1993 annexation demonstrates that the Borough is not committed to the apportionment of the Assembly strictly in the manner suggested in its responsive brief. In addition to creating difficulties in achieving fair apportionment, basing the Borough's election districts on the boundaries of the City may promote a sense of separatism between the City of Haines and the rest of the Haines Borough on the part of the Assembly and voters.

The Commission finds from the foregoing that the issue of apportionment of the Haines Borough Assembly is unrelated to the pending issue of annexation to the City of Haines.

**2. Regarding Conformance with the Federal Voting Rights Act**  
Assertions were made that a violation of the Federal Voting Rights Act would occur as a consequence of the annexation since the percentage of minority voters within the City would be reduced. Although the annexation would decrease the minority population in percentage terms of the total population, such reduction in percentage terms would be marginal – 2.06 percentage points (from 19.93% to 17.87%). However, annexation would increase the minority population of the City of Haines by allowing minority voters in the area proposed for annexation a vote in City affairs for the first time. Further, reductions, per se, in the voting strength of minorities are not prohibited by the federal Voting Rights Act.

There is no indication that the proposed annexation involves any purposeful effort or intent to withdraw or diminish the civil or voting rights of any minority individual or group. The proposed annexation would add new voters to the city electorate, including minority voters.

The Commission finds assertions that the annexation proposal violates the provisions of the federal Voting Rights Act to be unfounded. There is no evidence to suggest that implementation of the City's annexation proposal will result in any violation of the federal Voting Rights Act. The annexation has been proposed to serve legitimate needs and to accomplish legitimate public policy

objectives. The provisions of law relating to this issue were never intended to thwart legitimate annexation proposals.

The Commission concludes that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

***M. Adequacy of Transition Plan.***

A petition for annexation must include:

- \* a practical plan demonstrating the intent and capability of the annexing city to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation;
- \* a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed;
- \* a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation. [19 AAC 10.900]

Plans for assumption of powers and functions and transfer of assets and liabilities must be developed in consultation with the officials of the affected borough or service area. The record shows that the City of Haines developed its transition plan with at least minimal consultation with staff of the Haines Borough.

The Commission considers the proposed transition plan to be elementary or uncomplicated with respect to provisions for extension of essential city services into the territory proposed for annexation in the shortest practicable time after annexation. The petition and transition plan state that all of the City's services, except for water and sewer utilities, will be extended to the area proposed for annexation on July 1, 1998. That date anticipated that the

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annexation would take effect in March of 1998. The date for the planned extension of services was less than four months from the date that annexation was expected to take effect. It also coincides with the date on which the City expected to begin to levy ad valorem taxes and sales taxes in the area proposed for annexation.

The Commission finds that the transition will be relatively simple since the City of Haines is already delivering municipal services such as fire protection, emergency medical services, and emergency dispatch services to the area proposed for annexation under terms of contractual agreements with the Haines Borough. Further, the City of Haines is providing other services on an extraterritorial basis. Extension of the City's boundaries will simply eliminate the extraterritorial nature of those services.

The Commission finds that the City of Haines exhibits both the capability and intent to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation.

**Regarding a plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by the Haines Borough will be assumed by the City of Haines.**

The City's transition plan provides that the City will assume the powers, duties, rights, and functions presently exercised within the area proposed for annexation by the Borough on a service area basis. AS 29.05.130 - 29.05.140 provides guidance for the integration of service areas and related transitional measures.

The Commission notes the request from HBCAA that the Commission approve a *"rezoning plan . . . conditioned as to time, [to] protect residents from changes for the first ten years."* Elsewhere, HBCAA states that, *"Protections must be afforded the areas proposed for annexation to continue their rural lifestyle and subsistence uses. Existing City Code does not allow for continuation of animal husbandry, keeping of horses, rabbits, goats, provide agricultural taxation differentials or allow dogs to run free, etc. . ."*

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*if the annexation is recommended to proceed by the LBC to the Legislature without rezoning, that a transitional period of application of City regulations regarding planning and zoning and permit regulations be required in order to allow the residents time to participate in the City's suggested planned hearings for said purpose. The period of this transition should be from 1 to 3 years after the effect of the annexation as determined appropriate to the LBC."*

It is beyond the purpose and powers of the Commission to dictate to the City of Haines and residents of the area proposed for annexation what particular land use regulations will be imposed upon annexation, let alone for the next ten years. The Commission noted, that the multiple use districts provided by the City of Haines Code §18.70.100 as detailed previously provides for much of what HBCAA asks regarding this issue.

HBCAA also requested that the Commission require differential tax zones to be *"implemented for a minimum of ten years and to freeze taxation values on properties to avoid revenue creep without millage increases."* HBCAA also expresses the view that, *"The areas that should be considered for even further tax reductions, than the 80% proposed by the City, should include the large uninhabited areas of Small Tract, Piedad and from One to Four mile along the Haine Highway."* (sic)

Here again, it is beyond the role and authority of the Commission to dictate to the City of Haines that it must impose differential property taxes in the area proposed for annexation. The City is authorized by state law to levy lower taxes in an area of the city *only* if it provides a commensurate lower level of services to that area. Further, neither the Commission, the City of Haines, nor any other party has the authority to "freeze" assessed values of taxable property in the area proposed for annexation. AS 29.45.110 provides that property shall be assessed, "at its full and true value as of January 1 of the assessment year . . ."

The Commission finds that the City has provided a practical plan demonstrating the manner in which all relevant and appropriate

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powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed.

**Regarding a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation.**

The proposed annexation involves negligible, if any, transfer of liabilities or assets of the Borough to the City. As such, there is no substantial issue in this context. Thus the Commission finds that the requirement of 19 AAC 10.900(c) is satisfied.

In summary, the Commission concludes that, the City's petition, existing municipal code, and State statutes provide transition measures sufficient to satisfy the requirements of 19 AAC 10.900.

*N. Rejection of Similar Annexation Proposal by 1984 Legislature.* Opponents of the proposed boundary change have contended that the current petition inappropriately seeks to revive a similar annexation proposal that was rejected by the legislature in 1984.

In rejecting the similar annexation in 1984 and by enacting standards governing exercise of the Commission's power to approve or disapprove proposed annexations, the Alaska legislature has never required the Commission to defer to previous legislative action on a similar annexation. Instead, by state law the Commission must apply the same legal standards to the pending annexation as it would to all others considered by the Commission.

There are some significant distinguishing differences between events and conditions relating to the 1984 annexation proposal and the current annexation petition. For instance, a February 6, 1984 letter from the legislator who sponsored the resolution rejecting the 1984 annexation expressed concern that the 1984 annexation came largely at the request of the Local Boundary Commission. In the context of the current petition, the impetus for the annexation petition came *exclusively* from the City of Haines. Another major distinction is

that in 1984 the Commission approved that annexation with the proviso that it would not take effect if within two years the City of Haines and the Haines Borough unified. That condition was also of significant concern to the sponsor of the legislative resolution to reject the 1984 annexation proposal.

In the current proceedings, the Commission is simply acting on a petition presented to it by the City of Haines. No aspect of the annexation proposal is tied to unification. Thus, the policy issues which concerned the 1984 Legislature do not exist in the context of the current proposal.

Additionally, current conditions in the area proposed for annexation are significantly different than those which existed in 1984. For instance, there has been a proliferation of new Haines Borough service areas. The Commission finds that such proliferation of service areas raises serious legal questions as prominently mentioned in the record of the current proceedings. Additionally, since 1984, major changes have occurred in the types of growth and the consequent demand for municipal services exhibited by the area proposed for annexation. The Commission finds that such changes suggest that the need for annexation of the area has grown significantly since 1984.

Further, state revenues have declined significantly since 1984 and state funding of local services has declined even further. Therefore, the Commission finds that enhanced financial efficiency in the context of municipal service delivery which would be realized as a consequence of the City of Haines' annexation proposal is to be encouraged.

The Commission concludes that legislative rejection of the 1984 annexation petition does not establish a binding precedent for the current proceeding.

***On Constitutional Principles of Maximum Local Self-Government with a Minimum of Local Government Units.***

The Alaska Constitution requires maximum local government with a minimum of local government units and prevention of duplication of

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tax levying jurisdictions. A liberal construction shall be given to the powers of local governments. [Article X, § 1]

The Commission finds that the proposed annexation would result in minimizing the number of local governmental entities since it would eliminate certain service areas. The Commission also finds that annexation would maximize local self-government since the City of Haines is a general government with comprehensive powers.

Therefore, the Commission concludes that the annexation petition is consistent with the principles set out in Article X, § 1 of Alaska's constitution.

### *P. Constitutional Principles Regarding Service Areas.*

The Alaska Constitution provides for establishment of borough service areas to deliver special services. Borough service areas may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if the new service can be provided by an existing service area, by incorporation as a city or by annexation to a city. [Article X, § 5]

The issue now before the Commission does not directly relate to establishment of any new service area. The formation, however, of seven new service areas within the area proposed for annexation after 1984 together with the expected population growth and commercial and residential development in the area support the finding that even more service areas are likely to be created in that area in future years if the annexation is not approved. The Commission finds that the effect of the proposed annexation would be to bring the status quo into harmony with Article X, § 5. Further, the Commission finds that annexation would eliminate the need for formation of any additional service area in the area proposed for annexation that might violate Article X, § 5 of the Alaska constitution.

### **Section IV — Dissenting Views of Commissioner Wasserman**

As noted previously, Commissioner Wasserman concluded that the City of Haines' annexation proposal did not meet certain of the

standards governing annexation. In particular, she expressed uncertainty whether the City of Haines was capable of providing essential city service more efficiently and more effectively to the 6.5 square mile area proposed for annexation than the Haines Borough. In that context, she raised particular reservations regarding the City's ability to provide police service and road maintenance to the area.

Commissioner Wasserman also indicated that she was unconvinced that the area within the proposed new boundaries of the City of Haines has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Further, Commissioner Wasserman concluded that annexation was not in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. In that context she recognized that annexation was in the best interests of the State of Alaska. She also recognized that there is a need for city government to some extent in the territory proposed for annexation. However, the intense opposition to annexation on the part of residents of the territory proposed for annexation was a formidable concern to Commissioner Wasserman. She expressed reservations that annexation would be so divisive that it would drive a wedge between the residents of the territory proposed for annexation and residents of the existing City of Haines.

Lastly, Commissioner Wasserman expressed disappointment over the City of Haines' transition plan. In that context she indicated that greater details should have been provided concerning plans for the proposed differential tax zones. Additionally, she expressed the view that the City should have provided details concerning its municipal code allowing for multiple use zoning in newly annexed areas.

### **Section V — Recommendation**

The Local Boundary Commission hereby recommends to the First Session of the Twenty-First Alaska Legislature the annexation to the City of Haines of the territory described in the City of Haines' March 1997 petition. This recommendation is offered in accordance with the provisions of Article X, §12 of the Constitution of the State of Alaska.

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The area recommended for annexation encompasses an estimated 6.5 square miles. Tacit approval of this recommendation by the legislature will result in jurisdictional boundaries for the City of Haines described as follows and shown on the map that accompanies the description.

### **LEGAL DESCRIPTION OF RECOMMENDED CORPORATE BOUNDARIES OF THE CITY OF HAINES**

Beginning at the point of intersection of the West line of Section 9, T.30S., R.59E., Copper River Meridian (C.R.M.) and the line of mean high tide of Lutak Inlet; thence Northeasterly, across Lutak Inlet to USGS Station "SANKA"; thence Southeasterly to USGS Station "TAIYA PT."; thence Southeasterly to "Indian Rock Light", navigation aid; thence Southerly, across Chilkoot Inlet to the point of intersection of the South line of Section 36, T.30S., R.59E., C.R.M., and the line of mean high tide of Chilkoot Inlet; thence southeasterly along the line of mean high tide of Chilkoot Inlet to the point of intersection with the East line of Section 1, T.31S., R.59E., C.R.M.; thence South along the East line of Sections 1 and 12, T.31S., R.59E., C.R.M. to the East  $\frac{1}{4}$  corner of said Section 12; thence West along the East - West  $\frac{1}{4}$  corner line of Section 12 and 11, to a point of intersection with the line of mean high tide at the Easterly bank of Chilkat Inlet; thence Northwesterly, meandering along the said line of mean high tide of Chilkat Inlet into the confluence along the East bank of the Chilkat River thence continuing along the ordinary high water mark of the East bank of said River to a point of intersection with the South line of Section 19, T.30S., R.59E., C.R.M.; thence East along the South line of Sections 19 and 20, T.30S., R.59E., C.R.M. to the Southeast corner of said Section 20, T.30S., R.59E., C.R.M.; thence North along the West line of Sections 21, 16, and 9, T.30S., R.59E., C.R.M. to said line's intersection with the line of mean high tide of Lutak Inlet; the point of beginning; containing 20.9 square miles, more or less, within the Haines and Skagway Recording Districts, First Judicial District, State of Alaska.

Section line locations based upon U.S.G.S. 1:63360 Skagway (A2 & B2), Alaska, dated 1954 with minor revisions in 1963.

