

**SENATE AND HOUSE
JOINT JOURNAL SUPPLEMENT**

January 25, 2008

Friday

No. 11

Local Boundary Commission

**Statement of Decision
dated December 5, 2007**

**Recommendation for Annexation to the
Ketchikan Gateway Borough**

**Pursuant to Article X, Section 12
Constitution of the State of Alaska**

**Submitted to the 25th Alaska Legislature
January 23, 2008**

Juneau, Alaska

**Legislative Review Annexation by the
Ketchikan Gateway Borough**

The Local Boundary Commission hereby presents to the Second Session of the Twenty-fifth Legislature the Commission's recommendation under article X, section 12, Constitution of the State of Alaska for annexation of approximately 4,510 square miles to the Ketchikan Gateway Borough (hereinafter, "Ketchikan"). The Commission's decision approving the annexation is enclosed herewith. Under article X, section 12, the change becomes effective forty-five days after presentation to the Legislature or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

The Framers of Alaska's Constitution expected that local-governmental annexations would often be very controversial. Ketchikan's annexation petition certainly reflects that expectation. Among other things, a local-action petition for incorporation of a Wrangell borough sought 191 square miles of area that was also requested for annexation by Ketchikan. Other issues in the proceeding involved (1) a request by the Metlakatla Indian Community to not approve Ketchikan's southern boundary to include Duke Island because of a proposed federal expansion effort by Metlakatla to extend the Annette Islands Reservation to include waters south to the Canadian border; and (2) National Forest Receipts gains/losses in southeast Alaska. The record of the proceeding is extensive, and the Commission's decision is reflective of its thorough and careful review of that record and the standards and procedures for annexation proposals. I also note that the Department of Education and Early Development (DEED) reviewed Ketchikan's annexation and filed a letter of nonobjection to the proposal. A copy of that letter is enclosed for your reference.

In the end, the Commission did not approve Ketchikan's original petition to annex 4,701 square miles. Instead, the Commission amended the petition and approved annexation of 4,510 square miles. The reduction was the contested 191 square-mile area encompassing Meyers Chuck and Union Bay, which the Commission included in the incorporation of the new Wrangell borough. A map of Ketchikan's boundaries following the approved annexation is enclosed for your reference.

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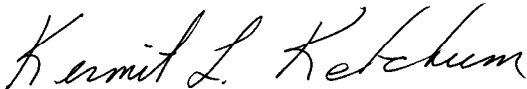
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The Commission looks forward to reviewing its Ketchikan annexation recommendation with the Senate Community and Regional Affairs Committee.

Sincerely,

LOCAL BOUNDARY COMMISSION

/s/

A handwritten signature in black ink that reads "Kermit L. Ketchum". The signature is written in a cursive style with a large, prominent "K" at the beginning.

Kermit L. Ketchum
Chairman

Enclosures:

LBC *Statement of Decision*, Ketchikan Gateway Borough Annexation
Letter of nonobjection from DEED
Map of Ketchikan Gateway Borough following annexation

cc/enc: The Honorable Donny Olson, Chair
Senate Community and Regional Affairs Committee

**LBC *Statement of Decision*, Ketchikan Gateway Borough
Annexation**

STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

Before Commissioners: Kermit L. Ketchum, Chair
Robert Harcharek, Vice Chair
Lynn Chrystal
Lavell Wilson

In the Matter of the Petition by the **Ketchikan Gateway**)
Borough for Legislative-Review Annexation of Approximately)
4,701 Square Miles to the Ketchikan Gateway Borough)
)
)

STATEMENT OF DECISION

I. BACKGROUND AND SUMMARY OF PROCEEDINGS

Before the Commission in this proceeding is a Petition filed by the Ketchikan Gateway Borough (KGB, Borough, or Petitioner) for legislative-review annexation of approximately 4,701 square miles.¹ A detailed history regarding this annexation proposal is contained in the Petition, Petitioner’s Reply brief, and the reports issued by the Department of Commerce, Community, and Economic Development (DCCED). Therefore, only a brief summary will be set out here.

The area proposed for annexation lies entirely within Alaska’s unorganized borough. The proposal generally extends the southern and eastern boundaries of the Borough to the Canadian border. The Petition also proposes to expand the Borough’s jurisdictional boundaries northward to include most of the Cleveland Peninsula. On the west, the Borough’s proposed new boundaries would extend to

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Clarence Strait. The area proposed for annexation includes the settlement of Meyer's Chuck and the adjoining area in and around Union Bay but excludes the Annette Islands Reserve encompassing Metlakatla and a 205-square-mile area in and around Hyder.

As previously noted, the Borough is using the "legislative review annexation" method. That method, authorized by article X, section 12 of the Alaska Constitution, provides that the LBC may present proposed municipal boundary changes to the legislature during the first ten days of any regular session. The proposal becomes effective forty-five days after presentation by the LBC or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

Under 3 AAC 110.425(a), before a petition for annexation by the legislative-review process may be submitted, the prospective petitioner must, among other things, conduct a public hearing on the annexation proposal. On January 21, 2006, the KGB Assembly held a public hearing on its proposed legislative-review petition. Detailed information regarding that hearing is included with the Petition.² On February 6, 2006, the KGB Assembly authorized the filing of the Petition to expand the area within the Borough's corporate boundaries by 4,701 square miles. The Petition was received by DCCED³ on February 14, 2006.

DCCED completed its technical review of the form and content of the Petition on February 22, 2006, and accepted it for filing on that date. The Chair of the LBC set April 28, 2006, as the deadline for receipt of responsive briefs and comments concerning the original Petition. Extensive notice of the filing of the Petition and service thereof was provided by the Petitioner in accordance with law.

Nineteen sets of written comments regarding the Petition were timely filed with DCCED. A list of those commentators is attached to this Decision as Appendix A. Responsive briefs were timely filed by Peter Caffall-Davis, the City of Wrangell (Wrangell), and the Metlakatla Indian Community (Metlakatla).

Following receipt of the Responsive Briefs and written comments on the Petition, the LBC Chair set June 21, 2006, as the deadline for the Petitioner to file its Reply Brief. The KGB filed its Reply Brief on

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June 19, 2006, with service on commentors, Respondents, and others. In its Reply Brief, the KGB summarized and responded to the comments and Responsive Briefs.

Statutory procedures for legislative-review annexation are set out in AS 29.06.040 and AS 44.33.812 – 44.33.828. State law (AS 44.33.812(a)(2)) requires the LBC to adopt regulations providing standards governing annexation. The LBC has complied with that requirement by adopting standards for borough annexation in 3 AAC 110.160 - 3 AAC 110.210 and 3 AAC 110.900 - 3 AAC 110.980. Additionally, as required by AS 44.33.812(a)(2), the LBC has adopted procedural regulations for all its boundary-change proceedings, including annexation. Those procedures are set out in 3 AAC 110.400 - 3 AAC 110.660 and 3 AAC 110.900 - 3 AAC 110.990.

AS 29.06.040(a) provides that the LBC may amend and impose conditions on the proposal. That law further provides that the Commission may approve a legislative-review proposal only if the LBC determines that the proposal meets applicable standards under the Alaska Constitution and the Commission’s regulations and is in the best interests of the State. Otherwise, the LBC must reject the proposal.

Also of note to this proceeding is the April 6, 2006, petition for incorporation of a 3,465 - square-mile City and Borough of Wrangell (“the Wrangell Petition”). That proposal seeks boundaries that overlap a portion of the area proposed for annexation to the KGB. Specifically, both the KGB Petition and the Wrangell Petition include the same 191-square mile area in and around Meyers Chuck and Union Bay. While the Wrangell Petition is considered separately, the decision regarding the 191-square mile overlap affects both proceedings.

DCCED's 161-page *Preliminary Report* was published on July 13, 2007. In its *Preliminary Report*, DCCED concluded that the Petition satisfies all legal standards applicable to the pending annexation proposal and recommended that it be approved.⁴ The deadline for filing written comments on the *Preliminary Report* was September 4, 2007. Written comments were received from Respondents Wrangell and Metlakatla and from the Meyers Chuck Community Association (Meyers Chuck), City of Craig, and Dan Eichner.

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On October 15, 2007, DCCED published its 216 page *Final Report to the Local Boundary Commission on Ketchikan Local Government Consolidation (Final Report)*, and included therein the comments submitted in response to DCCED's *Preliminary Report*.⁵ In its *Final Report*, DCCED readopted the conclusions and recommendations reached in the *Preliminary Report*.

October 23, 2007, was the deadline for filing lists of witnesses to be called by the Petitioner or Respondents at the public hearing. The Petitioner timely filed its list of eight witnesses; Respondent Metlakatla timely filed a list of two witnesses; Respondent Wrangell did not file a witness list; and Respondent Caffall-Davis filed notice that he did not intend to call witnesses.

DCCED provided each member of the Commission with a copy of the entire record in the proceeding.

The public hearing on the annexation proposal was set for 9 a.m., November 6, 2007, in the Ketchikan City Council Chambers. Extensive public notice of the hearing was given.

Commissioners Ketchum, Harcharek, Chrystal, and Wilson traveled to Ketchikan to conduct the public hearing. Commissioner Zimmerle is recused from participation in this proceeding.

The Commission convened the public hearing at 9 a.m. Aside from the Commission and its Staff, approximately 60 individuals attended the hearing, either in person or by teleconference.

The hearing began with a summary by Commission Staff of its reports and recommendations to the Commission. In brief, Staff recommended that the Commission approve the KGB annexation Petition. Following Staff's summary, opening and closing statements were made by the Petitioner and each Respondent.

Testimony and public comment were offered by the list of witnesses and commentators attached to this decision as Appendix C. The hearing adjourned at approximately 6 p.m.

Statements and testimony by the Petitioner elaborated on the merits of the annexation Petition and addressed differences between the 1998 annexation proposal and the current proceeding. Statement by

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Respondents paralleled their written comments in this proceeding, except that Metlakatla clarified the reservation expansion request it had filed with the Secretary of Interior. That request sought an expansion of the reserves maritime boundaries; it was not a land acquisition request for Duke Island.

The majority of commentors opposed the KGB annexation because of the loss of National Forest Receipt (NFRs) by school districts on Prince of Wales Island. Others commentors opposed the inclusion of the Meyers Chuck/Union Bay area in the KGB annexation, proposing instead that the area be allowed to be an enclave similar to Hyder⁶ or included in the Wrangell borough. A few commentors also endorsed the exclusion of Duke Island from the annexation as requested by Metlakatla.

The Commission convened a decisional session, pursuant to 3 AAC 110.570, on November 7, 2007, in Ketchikan. The decisional session regarding the KGB annexation proposal followed the decisional session regarding the Wrangell borough incorporation proposal. In the Wrangell decisional session, the Commission determined that the Meyers Chuck/Union Bay area more appropriately belonged in the Wrangell borough, and, thus, amended the KGB annexation proposal to delete that area. The Commission deliberated on the amended KGB annexation proposal for approximately an hour. At the conclusion of the deliberations, the Commission voted unanimously to approve the Petition, as amended to delete the Meyers Chuck/Union Bay area. DCCED will work with the KGB and the newly created Wrangell borough to determine the descriptions of their respective boundaries resulting from the inclusion of the Meyers Chuck/Union Bay area in the Wrangell borough.

To explain the basis for the Commission's decision in this proceeding, the following are Commission's findings and conclusions with respect to the Petition. In rendering its determination on the KGB annexation proposal, the Commission agreed with the majority of DCCED's findings, conclusions, and recommendations regarding the annexation, except with regard to the Meyers Chuck/Union Bay area.

II. FINDINGS AND CONCLUSIONS

State law, AS 29.06.040(a), provides as follows regarding a proposed municipal annexation, including one using the legislative review method:

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

The Alaska Supreme Court has held that statutory standards for borough incorporation were intended to be flexibly applied to a wide range of regional conditions. The Court stated further that the Commission's determinations regarding whether such standards are satisfied should be affirmed if the Court perceives that the LBC's reading of the standards and its evaluation of the evidence has a reasonable basis. Specifically, the Court stated in *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974) (emphasis added):

A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy. The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as 'large enough', 'stable enough', 'conform generally', 'all areas necessary and proper', 'necessary or desirable', 'adequate level' and the like. The borough concept was incorporated into our constitution in the belief that one unit of local

government could be successfully adapted to both urban and sparsely populated areas of Alaska,^[7] and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

For reasons set out in Part A below, the Commission finds no basis to distinguish between borough *incorporation* and *annexation* in terms of whether the applicable standards should be flexibly applied and whether the law should be read to uphold Commission decisions approving borough annexation as well as borough incorporation whenever the applicable requirements have been met. Moreover, the Commission concludes that borough incorporation and borough annexation of areas that meet applicable standards are equally encouraged by the law.

Parts A through K below set out the Commission's findings and conclusions regarding each of the standards for borough annexation applicable to the KGB annexation proposal.

Part A. Annexation to the KGB will promote maximum local self-government in accordance with article X, section 1 of the Alaska Constitution.

Article X, section 1 of the Alaska Constitution promotes "maximum local self-government." DCCED addressed this standard on pp. 5 - 18 of its *Preliminary Report* and concluded that the proposed annexation will provide for maximum local self-government. DCCED affirmed that review and analysis in its *Final Report*. Based on its review of the Alaska Constitution, prior decisions of the Commission, and other relevant materials, DCCED concluded that maximum local self-government is achieved whenever organized borough government is extended to an unorganized area in accordance with applicable

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standards, regardless of any particular need for municipal services. The Commission agrees. In fact, that conclusion is incorporated in the Commission's recent adoption of new 3 AAC 110.981(2):

In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider . . . for borough annexation, whether the proposal would extend local government to portions of the unorganized borough.

DCCED's analysis and conclusions regarding this standard address the area proposed for annexation vis-à-vis the KGB 1998 annexation proposal and the Commission's 1999 decision which rejected the annexation because it excluded the area of Meyers Chuck and Hyder, which were part of the KGB Model Borough Boundaries. The 1999 Commission stated that the annexation proposal failed to advance the constitutional principle of maximum local self-government because it excluded Hyder and Meyers Chuck. DCCED analyzed that prior decision in great detail and determined that "that restricted conclusion to be an unduly narrow reading of article X, section 1 of the Alaska Constitution."

This Commission agrees and notes that in the 1998 annexation, the KGB proposed to annex an area nearly identical to its Model Borough Boundaries. The area proposed for annexation at that time was 5,524 square miles, but it excluded two small enclaves of 21.4 square miles encompassing Meyers Chuck and Hyder. The effect of that annexation rejection was to leave over 5,500 square miles in the unorganized borough for the sake of 21.4 square miles. Not only is that an "unduly narrow reading of article X, section 1," it strikes this Commission as groundless in view of the Constitutional Framer's intent to provide "local government for regions as well as localities and encompass lands with no present municipal use."

Moreover, this Commission believes that elevating the importance of Model Borough Boundaries over the intent of the Constitution not only misconstrues the intent behind their adoption but is also clearly erroneous. In its recent proceeding considering the formation of the Skagway borough, and again during its proceeding to revise its regulations, the Commission clarified that the purpose of the Model

Borough Boundaries is for use only as a reference tool. They are not intended to totally constrain the formation of boroughs or annexation thereto.

Further, as noted above and discussed in more detail below, at its decisional sessions regarding the KGB and Wrangell petitions, this Commission concluded that the Meyers Chuck/Union Bay area has more in common with Wrangell than Ketchikan and, thus, included that area in the boundaries of the new Wrangell borough, a decision that obviously affected the Model Borough Boundaries of both the KGB and Wrangell.⁸

Overall, the Commission concurs with DCCED's analysis and findings regarding this standard and adopts them by reference for purposes of this decisional statement. The Commission finds that the KGB proposal, as amended, satisfies this standard.

Part B. Annexation to the KGB will promote a minimum number of local government units in accordance with article X, section 1 of the Alaska Constitution.

In addition to promoting maximum local self-government, article X, section 1 of Alaska's constitution encourages a minimum number of local government units. DCCED addressed this standard on pp. 18 - 22 of its *Preliminary Report* and concluded that the proposed annexation will promote a minimum number of local government units. DCCED affirmed that review and analysis in its *Final Report*. The Commission concurs with DCCED's analysis of this standard and adopts that analysis by reference for purposes of this decision statement.

Among other things, DCCED stated:

The constitutional constraint on the number of local government units is an important factor in the character of borough government. Principles articulated by the Local Government Committee at the Constitutional Convention included that "in the formation of the new areawide government units [boroughs] . . . should be large enough to prevent too many subdivisions in Alaska . . . [and] should cover

large geographic areas with common economic, social, and political interests.” (Victor Fischer, *Alaska’s Constitutional Convention*, p. 119 (1975).)

DCCED *Preliminary Report*, p. 19.

The current boundaries of the KGB encompass the third-smallest area of the seventeen organized boroughs. The Commission’s approval of the KGB annexation, as amended to exclude the 191square mile area of Meyers Chuck and Union Bay, increases the geographic size of the KGB from approximately 1,752 square miles to approximately 6,262 square miles, an increase of 257 percent.

The Alaska Constitution promotes boroughs that embrace large and natural regions. The KGB annexation proposal, as amended and approved by the Commission, is in keeping with that intent. The standard set out in article X, section 1 of the Alaska Constitution is satisfied by the KGB annexation, as amended and approved by the Commission.

Part C. The proposed expanded boundaries of the KGB, as amended, embrace an area and population with common interests to the maximum degree possible and, on a scale suitable for borough government, have a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities (article X, section 3, Constitution of the State of Alaska; 3 AAC 110.160(a)).

At pp. 23 - 48 of its *Preliminary Report*, DCCED addressed the issue of whether the KGB’s proposed expanded boundaries are appropriate under this standard. DCCED noted that article X, section 3 of Alaska’s Constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible. Further, Staff observed that 3 AAC 110.160(a) allows annexation of an area if, on a scale suitable for borough government, the post-annexation boundaries of the borough would embrace a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities. Staff stated that in the context of boroughs embracing large and natural regions, the large area and small population proposed for annexation have many interests in common with the area and population within the existing boundaries of the KGB.

Based on its review of the Alaska Constitution, prior decisions of the Commission, and other relevant materials, DCCED concluded that the KGB annexation proposal satisfied this standard. DCCED affirmed that review and analysis in its *Final Report*. The Commission concurs with much of DCCED's analysis of this boundary standard and adopts that analysis by reference for purposes of this decision statement, except with regard to the Meyers Chuck/Union Bay area.

As discussed at the decisional session considering the Wrangell borough incorporation and the KGB annexation, the Commission concluded that the Meyers Chuck/Union Bay area had more in common with Wrangell than Ketchikan. Among other things, the Commission noted that although the Mandatory Borough Act adopted over 40 years ago and the Model Borough Boundaries adopted 16 years ago placed Meyers Chuck in the KGB Model Borough Boundaries, the Commission must consider the placement of Meyers Chuck and Union Bay in light of the residents' circumstances and commonality, transportation and communication between communities that exist today and into the future. While there could be significant debate regarding the intent and circumstances that led to the drawing of boundary lines 20 to 40 years ago. What is more germane is what is important and applicable today and into the future. In addition, the Commission must consider the optimal benefit to the residents of those communities through delivery of relevant new services.

The Wrangell petition and citizens of Meyers Chuck presented specific and persuasive testimony and comment to support the inclusion of the 191 square mile Meyers Chuck/Union Bay area in the proposed Wrangell borough rather than in the KGB. That support included:

- Written comments submitted by the residents of Meyers Chuck indicated that they prefer inclusion in a Wrangell borough. The residents believe they have more in common with Wrangell and that it makes more sense to be included in the Wrangell borough on a social, economic, geographic and cultural basis. Fifteen residents giving addresses as Meyers Chuck or Union Bay signed the petition requesting incorporation of a Wrangell borough, feeling their needs more readily met by Wrangell.

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- The residents of Meyers Chuck and Union Bay share common rural lifestyles and sensibilities with other residents of the proposed borough.
- The residents of Meyers Check and Union Bay have historically shared the same geographic areas as the Wrangell community for hunting and fishing.
- There are strong economic and social ties between Meyers Chuck and Union Bay area and Wrangell. Meyers Chuck and Union Bay residents have testified that they shop at the grocery and hardware stores in Wrangell regularly, and complete boat repair and maintenance in Wrangell.
- Residents of Meyers Chuck receive radio signal from KSTK in Wrangell. There is a locally published newspaper, the Wrangell Sentinel that is available to Meyers Chuck residents should they choose to subscribe. The local newspaper is available to residents in the proposed Wrangell borough.
- Clarence Strait is a major transportation impediment for residents of Meyers Chuck and Union Bay. The exposed route along Clarence Strait from Meyers Chuck to Ketchikan features rough water with strong tidal currents that are frequently at odds with the prevailing southeast winds. There are no safe harbors between Lemesurier Point and Tongass Narrows. Caamano Point experiences rough weather that compares closely to Southeast Alaska's major capes. The out-flowing tides of Clarence Strait and Behm Canal water meet at this point and the waves can stack up dangerously. Small boats and skiffs more readily access Wrangell for fuel and supplies via the protected Ernest Sound and Zimovia Strait route.
- Maritime connections are more important than overland connections for Meyers Chuck and Union Bay residents.
- Meyers Chuck and Union Bay residents are engaged in self-reliant life-styles typical of more remote settlements, featuring substantial lifestyles that are more compatible with those of Wrangell residents than with the residents of the more urban Ketchikan area.

- Wrangell community leaders are committed to incurring the expense necessary to establish communication facilities to allow residents of outlying areas such as Thoms Bay and Meyers Chuck and Union Bay to participate in public hearings and other important public proceedings of the proposed new borough. Wrangell community leaders are also committed to working with residents of Meyers Chuck and Union Bay to explore opportunities for working together and assistance for residents compatible with their desired life-style.
- The KGB did not formally object to Wrangell's proposal to include a portion of the KGB's Model Borough Boundaries, specifically the Meyers Chuck/Union Bay area, within Wrangell's proposed boundaries.

The most compelling factors supporting the inclusion of the 191 square mile area of western Cleveland Peninsula, including Meyers Chuck and Union Bay, in the Wrangell borough rather than the KGB, is the relevant governmental services that would be provided to the area. Areawide powers and services of both the proposed Wrangell borough and the KGB are similar with regard to education, planning, platting, land-use regulation, taxation and assessment, library, economic development, and parks and recreation. Each area is served by an airport providing jet service.

However, additional areawide services that are offered by the KGB are minimally relevant to the residents of Meyers Chuck and Union Bay. They feature public transportation, animal control, and regulation of fireworks. The KGB petition anticipates that "[I]t is not intended to extend any public transportation services within the area proposed for annexation at this time." Moreover, the KGB Petition also anticipates that animal control services "will likely be continued on an ad-hoc, unofficial basis consistent with current practice." Finally, the KGB petition states "it is expected that residents of Meyers Chuck will at some time in the future form a service area to provide services such as dock maintenance, solid waste disposal, wastewater treatment and disposal, or water treatment and distribution, depending upon when residents wish to organize and pay for provision of these services."

There are significant differences in relevant additional services offered by the Wrangell borough that would immediately benefit the Meyers Chuck/Union Bay residents. Those services include search and rescue

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services, police, city hospital, boat harbor, and incarceration facilities. The leaders in Wrangell made a persistent and enthusiastic effort to contact residents of Meyers Chuck and Union Bay to assure and confirm the services that would benefit the residents of the area. To their credit, the people of Wrangell obviously showed energetic enthusiasm to be friendly, welcoming and helpful to the people of the outlying areas of their proposed borough as they developed their petition.

In addition, the Commission also addresses recent comments by residents of the Meyers Chuck/Union Bay communities withdrawing from their previous testimony supporting inclusion in the Wrangell borough. Some individuals made statements favoring the creation of an enclave and inclusion, at some future time, in a Prince of Wales Island borough. The Commission believes that such an enclave would violate the minimum number of local government units clause of article X, section 1 of the Alaska Constitution. If such an enclave were authorized, it would have impacted the Wrangell petition because of the constitutional mandate to embrace an area with common interests to the maximum degree possible.⁹ The common interests and interrelationships of Wrangell, Meyers Chuck and Union Bay is well documented in these proceedings and especially emphasized in initial written comments received from Meyers Chuck and Union Bay residents. The Commission believes that the preferences of the local residents of Meyers Chuck and Union Bay were, at a minimum, ambiguous.

The Commission noted that including the Meyers Chuck/Union Bay area in the Wrangell borough rather than in the KGB differs from the recommendations by DCCED. However, the Commission found that the records contain a specific and persuasive argument that a sufficient level of interrelationship exists between that 191 square mile area and the Wrangell borough. That decision requires an amendment to the KGB Petition to exclude that area from the proposed annexation and the KGB Model Borough Boundaries. The Commission does not support the proposal of leaving the Meyers Chuck/Union Bay area in the unorganized borough, thereby creating an unjustified enclave.

Even with that 191 square mile deletion from the proposed KGB annexation boundaries and the sparse population of the remaining area, the Commission finds that the KGB annexation proposal satisfies this standard.

Part D. The communications media and transportation facilities allow for the level of communications and exchange necessary to develop an integrated borough government (3 AAC 110.160(b)).

At pp. 48 - 55 of its *Preliminary Report*, DCCED addressed the issue of whether the KGB proposal satisfied this standard. DCCED observed that in the context of large and natural regions, the communications media and transportation facilities in the proposed expanded boundaries of the KGB allow for the level of communications and exchange necessary to develop an integrated borough government.

Based on its review of the Alaska Constitution, prior decisions of the Commission, and other relevant materials, DCCED concluded that the KGB annexation proposal satisfied this standard. DCCED affirmed that review, analysis, and conclusion in its *Final Report*.

The Commission concurs with DCCED's analysis of this boundary standard and adopts that analysis by reference for purposes of this decision statement. The Commission observes that in southern southeast Alaska, Ketchikan is the regional center for transportation, retail, business, medical, and other services.¹⁰ The Commission agrees that the KGB proposal satisfies this standard.

Part E. The population within the proposed expanded KGB boundaries, as amended, is sufficiently large and stable to support the resulting borough (3 AAC 110.170).

This standard is addressed on pp. 55 - 59 of its *Preliminary Report*. Among other things, DCCED noted that the KGB's population is 63 percent greater than the median population of all organized boroughs in Alaska. DCCED also noted that the minimal population and federal ownership of much of the land in the area proposed for annexation will place little demand on borough services. Thus, DCCED found it reasonable to conclude that the size and stability of population within the proposed new KGB boundaries are sufficient to support the expanded borough. DCCED concluded that the KGB proposal satisfies this standard. DCCED affirmed that review, analysis, and conclusion in its *Final Report*.

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The Commission concurs with DCCED’s analysis of this standard and adopts that analysis by reference for purposes of this decision statement. The deletion of the Meyers Chuck/Union Bay area from the KGB’s proposed boundaries has minimal or no effect on this conclusion. The Commission finds that the KGB proposal satisfies this standard.

Part F. The economy within the proposed borough boundaries, as amended, includes the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level (3 AAC 110.180).

DCCED addressed this standard on pp. 59 - 82 of its *Preliminary Report*. DCCED found that given the reasonably anticipated functions, expenses, and income of the KGB in the area proposed for annexation; the ability of the KGB to generate and collect local revenue; and the feasibility and plausibility of the KGB’s anticipated operating and capital budgets, the KGB annexation proposal is fiscally sound. DCCED further stated that the economic base, property valuations, land use, existing and reasonably anticipated development, and personal income in the KGB’s proposed expanded boundaries demonstrate that the economy in the greater Ketchikan region is capable of supporting the proposed expanded borough government. Moreover, DCCED noted that there are sufficient employable persons to serve the needs of the proposed expanded borough. DCCED concluded that the KGB proposal satisfies this standard. DCCED affirmed that review, analysis, and conclusion in its *Final Report*.

The Commission concurs with DCCED’s analysis of this standard and adopts that analysis by reference for purposes of this decision statement. The deletion of the Meyers Chuck/Union Bay area from the KGB’s proposed boundaries has minimal or no effect on this conclusion. The Commission finds that the KGB proposal satisfies this standard.

Part G. The proposed new boundaries of the borough, as amended, conform generally to natural geography; include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level; and are otherwise proper (3 AAC 110.190).

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This standard is addressed on pp. 82 - 91 of DCCED's *Preliminary Report*. DCCED examined land-use and ownership patterns, population density patterns, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, model borough boundaries, and other factors. DCCED found it is evident that the proposed new boundaries of the KGB conform generally to natural geography, include all land and water necessary to provide the full development of essential borough services on an efficient and cost-effective level, and are otherwise proper.

DCCED recognized that the KGB annexation proposal creates a 205-square mile enclave in and around Hyder, albeit for the short term. However, DCCED found that such an enclave would not result in inefficient, cost-ineffective service delivery in the near-term. DCCED noted that if a Prince of Wales Island Borough were formed, the enclave would become a small remnant of the former Southeast Island Regional Educational Attendance Area, which currently provides education to students in Hyder. DCCED recommend that the Hyder enclave should be annexed to the KGB at that time. In its *Final Report*, DCCED also observed that concerns by the Department of Education and Early Development (DEED) regarding the proposed exclusion of Hyder at this time had been resolved after DEED's review of the Petition in this regard and that it DEED did not oppose the KGB's annexation proposal.

DCCED also noted that the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough. DCCED found that the KGB proposal satisfies this boundary standard and affirmed that review, analysis, and conclusion in its *Final Report*.

With the exception of conclusions regarding the Meyers Chuck/Union Bay area, the Commission concurs with DCCED's analysis of this standard and adopts that analysis by reference for purposes of this decision statement. As discussed above, the Commission concluded that the Meyers Chuck/Union Bay area has more in common with the new Wrangell borough than it does with the KGB, and thus deleted that area from the annexation boundaries proposed by the KGB. The deletion of the Meyers Chuck/Union Bay area from the KGB's proposed boundaries has minimal or no effect on the Commission's analysis regarding this standard.

As noted above, this standard is also relevant to concerns expressed by Respondent Metlakatla, both in writing and at hearing, regarding the southern boundaries of the KGB proposal that includes Duke Island and surrounding waters. The Commission notes Metlakatla's clarification that its reservation expansion request to the Secretary of Interior is only a maritime expansion, not a land expansion for Duke Island. Nonetheless, as noted at its decisional session, the Commission cannot find that Metlakatla's request to the Secretary would be impacted by granting KGB's annexation proposal. The reservation boundary request to the Secretary is a process totally separate from the Commission's boundary-change jurisdiction. If Metlakatla's request is granted and its reservation waters are expanded, primary jurisdiction over those waters would shift. That fact would not change by approval of the KGB expansion.¹¹

In its comments, Metlakatla also raised other issues with regard to the KGB's proposed annexation, including an assertion that it creates Annette Island as an enclave. The KGB's Reply Brief,¹² on pp. 26- 27, addresses these issues. The Commission concurs with those analyses and conclusions.

The Commission agrees with DCCED that this standard is satisfied. However, at its decisional meeting on the KGB annexation, the Commission expressed concern with Hyder's status as an enclave. In approving the KGB annexation, as amended, the Commission directed the KGB to file a petition within five years to annex the Hyder area. In that regard, the Commission encourages the KGB to work toward developing communication, transportation, and economic ties between Hyder and the Borough, including working with the State to help develop these ties. The Commission noted that this was particularly appropriate in view of the federal revenues the Borough will be receiving from the newly annexed area. If such a petition is not filed, the Commission committed to directing DCCED to file such a petition.¹³ In that event, DCCED should develop a petition in coordination with the DEED and KGB staff.

Part H. Annexation is in the best interests of the State (AS 29.06.040 and 3 AAC 110.195).

DCCED addressed this standard on pp. 91 - 98 of its *Preliminary Report*. An annexation proposal may only be approved if the Commission finds that it serves the best interests of the State. DCCED's review of that standard included consideration of the constitutional principles of maximum local self-government and minimum numbers of local government units. DCCED also addressed the manner in which annexation will relieve the State of Alaska of the responsibility of providing local services and how annexation will result in broad policy benefit to the public statewide.

DCCED observed that the KGB annexation would have some adverse fiscal impacts on communities in the unorganized borough, specifically through the loss of NFRs. However, DCCED noted that the Commission has repeatedly indicated that such circumstances are not relevant in terms of the applicable standards and are no basis to deny the proposal.

In its *Preliminary Report*, DCCED determined that the standard regarding the best interests of the State is satisfied. DCCED affirmed that review, analysis, and conclusion in its *Final Report*.

The Commission concurs with DCCED's analysis of this standard and adopts that analysis by reference for purposes of this decision statement. As set out above, the loss of NFRs to other communities in southeast Alaska was the focus of the majority of written and oral comment in this proceeding. As observed at the decisional session, the Commission is very sympathetic to that loss. However, it is not a bar to the development of boroughs or their extension. It is a factor that is considered in consultation with the DEED and when considering the best interests of the State; and DEED does not oppose this annexation proposal.

Further, the Commission observes that commentators focused only on the loss of NFRs by the KGB annexation. No comments were filed in the Wrangell incorporation proceeding regarding the identical NFR loss resulting from such incorporation. The Commission finds this inconsistent view troubling.

Most specifically, the Commission endorses the prior Commission decision rejecting the relevance of ephemeral financial considerations such as NFRs when considering the standards for borough formation

or extension. As asserted by the 1999 Commission, these programs may, over time, operate in a significantly different manner or even no longer exist. “In contrast,” the Commission stated, “the formation of a borough or the extension of a borough over a large area is a much more permanent action.”¹⁴

The Commission finds that the KGB proposal satisfies this standard.

Part I. The proposed annexation meets the legislative-review annexation standard (3 AAC 110.200).

This standard is addressed on pp. 98 - 104 of DCCED’s *Preliminary Report*. The standard allows a legislative-review annexation if any one of certain conditions are present. DCCED found that several of those conditions evident in the KGB proposal. Among those, are that the area proposed for annexation manifests a reasonable need for borough government that can be met most efficiently and effectively by the KGB. Additionally, in a general sense, residents and property owners within the area proposed for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate tax contributions. Annexation of the area will also enable the KGB to plan and control reasonably anticipated growth or development in the area that otherwise may adversely affect the area and population within the KGB.

DCCED further found that annexation of the area will promote maximum local self-government with a minimum number of government units. Annexation of the area will also enhance the extent to which the KGB meets the legal standards for borough incorporation. Finally, DCCED observed that specific policies set out in Alaska’s Constitution are best served through annexation of the area by the legislative review process.

In its *Preliminary Report*, DCCED concluded that this standard is satisfied and affirmed its review, analysis and conclusion in its *Final Report*. The Commission concurs with DCCED’s analysis of this standard and adopts that analysis by reference for purposes of this decision statement. The Commission agrees that the KGB proposal satisfies this standard.

Part J. A proper plan for the orderly transition to borough government has been provided (3 AAC 110.900).

DCCED addressed this standard on pp. 104 - 108 of its *Preliminary Report*. DCCED found that the KGB's transition plan demonstrates the Borough's capacity to extend borough services into the area proposed for annexation in the shortest practicable time after annexation. DCCED also found that the document includes a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by Southeast Island REAA and the State of Alaska in that area. DCCED concluded that KGB's transition plan satisfies this standard.

DCCED concluded that this standard is satisfied and affirmed its review, analysis and conclusion in its *Final Report*. The Commission concurs with DCCED's analysis of this standard and adopts that analysis by reference for purposes of this decision statement. The Commission finds that the KGB proposal satisfies this standard.

Part K. Whether the proposed annexation will have the effect of denying any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin (3 AAC 110.910).

This standard is addressed on pp. 108 - 114 of DCCED's *Preliminary Report*. DCCED found no evidence to indicate that the KGB annexation proposal will have the purpose or effect of discriminating based on race, color, creed, sex, or national origin. DCCED stated that nothing suggests that the proposed annexation will have a retrogressive purpose or effect with regard to any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. No minority-language groups covered by the federal Voting Rights Act exist in the area proposed for annexation. Even if such groups existed in the area, DCCED found that there is no evidence to indicate that annexation will have the purpose or effect of discriminating against a language minority group.

DCCED concluded that this standard is satisfied and that the proposed annexation does not violate any provision of the federal voting rights. Act. DCCED affirmed its review, analysis and conclusion in its *Final Report*.

SENATE AND HOUSE JOINT JOURNAL SUPPLEMENT

No. 11

January 25, 2008

The Commission concurs with DCCED’s analysis of this standard and adopts that analysis by reference for purposes of this decision statement. The Commission finds that the KGB proposal satisfies this standard.

As a final matter, the Commission will address the allegations regarding DCCED Staff in this proceeding, specifically Dan Bockhorst. The Commission finds no basis to support the ethical violations levied against Staff by the City of Craig and others. Mr. Bockhorst and Ms. McPherren have consistently performed their duties as Commission Staff in the most ethical and professional manner possible, including in this proceeding. The Commission holds them both in the highest regard.

III. ORDER OF THE COMMISSION

On the basis set out in Section II of this decision statement, the Commission determines that the Petition, as amended to delete the approximately 191 square mile area of Meyers Chuck and Union Bay, meets all applicable Constitutional, statutory, and regulatory standards for borough annexation and is in the best interest of the State. According, the Petition as amended, is approved.

Unless reconsideration is requested timely under 3 AAC 110.580 or the Commission, on its own motion, orders reconsideration under 3 AAC 110.580, the Commission will submit a recommendation for the KGB annexation proposal approved by this decision to the Second Session of the Twenty-fifth Alaska Legislature under article X, section 12 of the Constitution of the State of Alaska.

Approved in writing this 5th day of December, 2007 (Commissioner Georgianna Zimmerle, not participating).

LOCAL BOUNDARY COMMISSION

/s/

By: Kermit L. Ketchum, Chair

Attest:

/s/

Jeanne McPherren, Staff

RECONSIDERATION BY THE COMMISSION

Within eighteen days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration under 3 AAC 110.180(e).¹⁵ If the Commission has taken no action on a request for reconsideration within twenty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

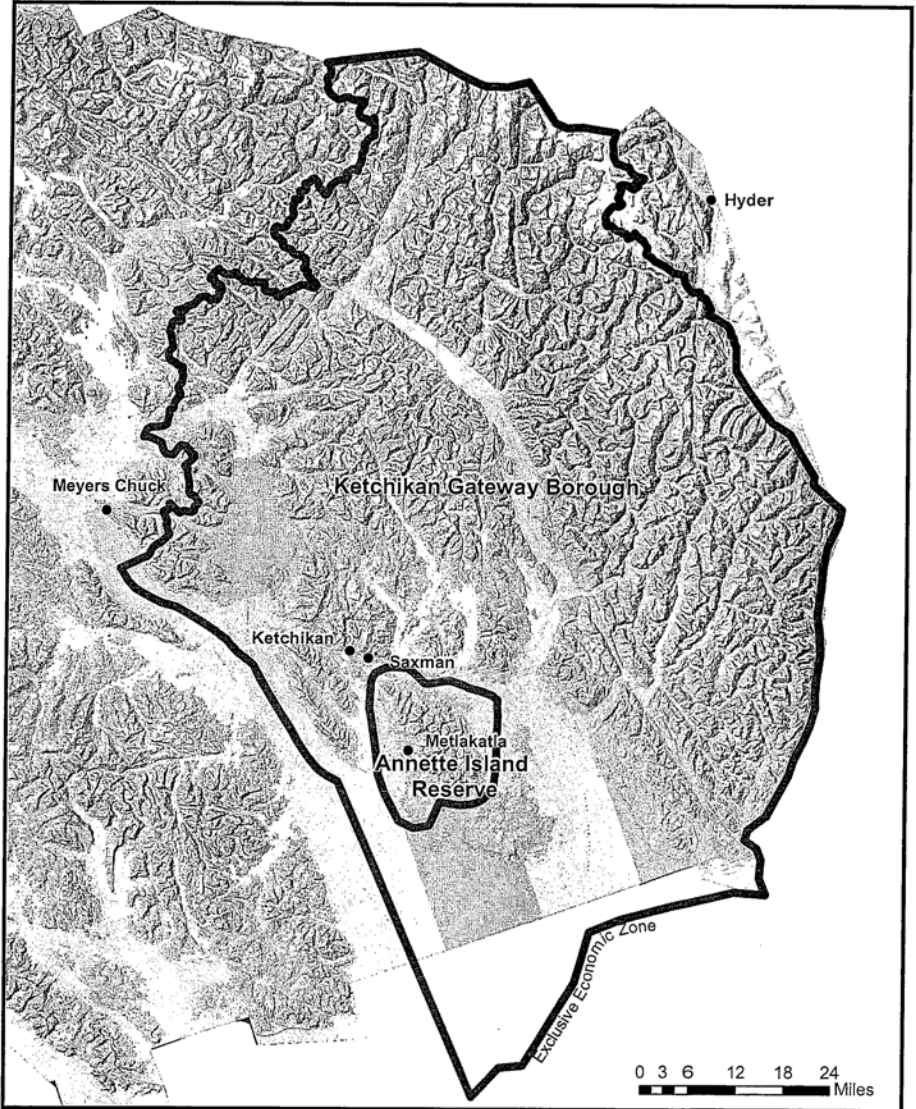
If the Commission grants a request for reconsideration, a party opposing the reconsideration will be allotted ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the Alaska Rules of Appellate Procedure, Rule 601, *et seq.* An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

**Map of Ketchikan Gateway Borough Following Annexation
(Next Page)**

Ketchikan Gateway Borough Boundary



(Endnotes)

¹The vast majority (over 90 percent) of the land proposed for annexation is part of the Tongass National Forest and under federal ownership.

²See also Appendix C to LBC Staff's June 30, 2007, *Preliminary Report to the Local Boundary Commission Regarding the Petition for Annexation of Approximately 4, 701 Square Miles to the Ketchikan Gateway Borough (Preliminary Report)* for more detail regarding the KGB Assembly's January 21, 2006, hearing and public meeting.

³Under AS 44.33.020(a)(4), DCCED serves as staff to the Local Boundary Commission and is alternatively referred to herein as Staff.

⁴DCCED's *Preliminary Report* was written by Dan Bockhorst. In the weeks following completion of his review and analysis, the KGB began its recruitment for a borough manager. Upon seeing a recruitment notice for that position on July 31, 2007, Mr. Bockhorst wrote a memorandum on August 1, 2007, to DCCED's Ethics Supervisor disclosing an interest in applying for the KGB manager position. In his disclosure, Mr. Bockhorst recused himself with respect to any and all future dealings regarding this annexation proposal. DCCED's continuing responsibilities for the annexation proposal was immediately assigned to Jeanne McPherrren, Local Government Specialist IV, to complete. Commission Chair Ketchum was also immediately notified by Mr. Bockhorst of his recusal and the reasons therefor. A timeline regarding Mr. Bockhorst's work in this proceeding is attached to this decision as Appendix B.

⁵As noted above, DCCED's *Final Report* was written by Jeanne McPherrren. She independently reviewed all materials in this proceeding, applicable laws, prior decisions of the Commission, and other relevant material before making her recommendation and writing the *Final Report*.

⁶In proposing the enclave, the commentators contemplated then becoming a part of a Prince of Wales Island Borough when one is formed. In its decisional session regarding the Wrangell incorporation petition, the Commission expressed doubt that such a borough would be proposed in the foreseeable future.

⁷[Footnote 14 in original.] A summary by the local government committee at the constitutional convention of the principles underlying the borough concept is preserved in T. Morehouse & V. Fischer, *Borough Government in Alaska*, at 63-64 (1971). This relates:

Self-government – The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. . . .

Flexibility – The proposed article provides a local government framework adaptable to different areas of the state as well as to changes that occur with the passage of time. . . .

The authors describe how evolution of the borough has reflected this intended flexibility.

(T)wo recognizable types of organized boroughs now exist in Alaska: the *regional borough*, generally covering an extensive area including several widely dispersed small communities, incorporated and unincorporated, and the *urban borough*, having a population concentrated primarily in a single urban core area, characteristically overspilling the boundaries of a central city. It could be anticipated that the local governmental system will evolve in the two directions of unification and regionalism associated with these basic physical and socio-economic patterns.

⁸The KGB Model Borough Boundaries are diminished as a result of this decision. Wrangell is in the Wrangell/Petersburg Model Borough Boundaries, and those boundaries are also diminished as a result of the creation of the new Wrangell borough.

⁹That same conclusion would be applicable to this proceeding if the area had not been included in the Wrangell borough.

¹⁰DCCED *Final Report*, Appendix H.

¹¹DCCED addressed Metlakatla's expansion in its *Final Report*, at pp.17 - 19. The Petitioner also addressed this issue in its Reply Brief at pp. 28 - 30. The Commission concurs with those analyses.

¹²In its *Final Report*, DCCED stated that it believed KGB's Reply brief cogently responded to all comments and briefs (p. 4).

¹³If DCCED is directed to file such a petition, the staff persons working on such would, of course, not include employees assigned to serve as staff to the Commission.

¹⁴KGB 1998 annexation proceeding: LBC 1999 *Statement of Decision*, p. 12.

¹⁵The provisions of 3 AAC 110.580(e) set out the grounds on which reconsideration will be granted by the Commission:

(1) a substantial procedural error occurred in the original proceeding;

(2) the original vote was based on fraud or misrepresentation;

(3) the commission failed to address a material issue of fact or a controlling principle of law;
or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

Please report corrections to the Senate Secretary's office.