

**S J R**

**19**

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2.9.89  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

1/31/89

DATE TURNED INTO OFFICE 2.14.89

Mr. President:

C&RA

Committee considered

SJR 19

Disapproving the Local Boundary Commission recommendation for annexation of territory to the Fairbanks North Star Borough

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Mark DO NOT PASS*

*Mike J. ... - no Rec.*

*John ... no Rec*

*Al Adams - DO PASS*

Chairman signature and recommendation

Committee backup attached

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "Disapproving Annexation of  
 territory to Fairbanks North Star Borough"  
 Sponsor: Binkley  
 Requestor: \_\_\_\_\_

Agency Affected: C&RA  
 BRU: Local Government Assistance  
 Components: Local Sundry Commission

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Jim Beraman  
 Division: Municipal & Regional Assistance

Phone: 465-4750  
 Date: 2/13/89

Approved by Commissioner: [Signature]  
 Agency: Community & Regional Affairs

Date: 13 Feb 89

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

February 14, 1989

TO: Senator Al Adams  
Representative Eileen MacLean

FROM: Mike Walleri, Attorney  
Tanana Chiefs Conference, Inc.

This is in response to the request of both Senate and House Committee and Regional Affairs Committees to provide written data regarding your testimony presented to the Joint CRA Committees.

As you remember, we criticized the Local Boundary Commission goal of per capita tax base equalization for failure to adjust for cost of service differentials. Attached are our calculations. As you can see, when adjustments are made for the cost of service delivery, the T.C.C. area is very close to average assessed valuation in the State. If you have any other further questions, please feel free to contact me

Sincerely,

Mike Walleri  
Attorney  
Tanana Chiefs Conference, Inc.

Attachments

TAX CAP CALCULATIONS

VALUE OF TAXABLE PROPERTY IN REGION

DCRA ESTIMATES:<sup>1</sup> 1.676 bil. without annexation  
1.513 bil. with annexation

TCC ESTIMATES: 1.428 bil. without annexation  
1.266 bil. with annexation

RANGE: w/o annexation 1.676 to 1.428 billion  
w/ annexation 1.513 to 1.266 billion

(based on D.C.R.A report to Senator Steve Frank 1/13/89)

POPULATION:<sup>2</sup>

9,635 (D.C.R.A. raw estimates)  
13,400 (D.C.R.A. adj./TCC Health  
Plan Stats)

11,175 (Permanent Fund mail out to  
Region by zipcode)

TAX CAP<sup>3</sup>

(taxable assessed value in region)

DCRA # 9,635 (pop) x 2.25 x \$83,430 (per capita assessed value)=1.8

TCC #13,400 x 2.25 x \$83,430 =2.7

PF #11,175 x 2.25 x \$83,430 =2.08

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<sup>1</sup> includes estimates of property value based when per capital statewide values. DOES NOT adjust for tax exempt status of land under Federal Housing Programs, AWCSA, Allotment Act and Townsite Act.

<sup>2</sup> excludes Delta-Greely study area except for village of Healy Lake.

<sup>3</sup> based on formula (b) AS. 29.45.080

## ADJUSTED TAX EQUALIZATION

### COSTS OF SERVICE DIFFERENTIALS

Fairbanks:	1.04
Yukon Flats	1.46
Yukon Koyukuk	1.34
Galena	1.30
Tanana	1.30
Iditarod	1.33

### RANGE OF DIFFERENTIAL VARIANCE (FBX and TCC Region)

26% to 40%

(Source: Dept. of Education)

### PERCENTAGE OF PER CAPITA VALUE (Statewide average)

Fairbanks with Annex = 71.1

Fairbanks w/o Annexation = 68.0

TCC Region w/o Annex<sup>1</sup>

	per capita	% state wide	adj <sup>2</sup>
1,676,000,000 (DCRA Value#) ÷ 11,175 = 150,000	204%		155 to 122%
1,428,000,000 (TCC Value #) ÷ 11,175 = 128,000	175%		133 to 105%
1,513,000,000 (DCRA/Value#) ÷ 11,175 = 135,000	184%		140 to 110%
1,266,000,000 (TCC/Value#) ÷ 11,175 = 114,000	155%		115 to 93%

1 Using Permanent Fund Pop #'s Values rounded.

2 Adjustment Relative to Fairbanks per capita.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Disapproving the Local Boundary  
Comm. recommendation for annex. of  
territory to FDKS. No. Star Borough  
Sponsor: Binkley and Adams  
Requestor: Senate C&RA

Agency Affected: Department of Revenue  
BRU: Oil and Gas Audit

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING						
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		[1,981.2]	*	*	*	*

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		-0-	-0-	-0-	-0-	-0-
TEMPORARY		-0-	-0-	-0-	-0-	-0-

**ANALYSIS : (Attach a separate page if necessary)**

Assumed to be effective for FY90, 1-1-90 for property tax purposes. Value estimated to be \$161,820,000 as of 1-1-90 with a mill rate of 12.243.

\*Property valuation is projected to decline at a rate of 7% per year. Declining valuation will reduce the estimated total dollar loss to the state.

Prepared by: C. D. Heier Phone: 276-1363  
Division: Oil and Gas Audit Date: 2/13/89

Approved by Commissioner: Hugh Malone Date: 2/13/89  
Agency: Department of Revenue

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STEVE COWPER, GOVERNOR

**LOCAL BOUNDARY COMMISSION**

949 EAST 36TH AVENUE, SUITE 404  
ANCHORAGE, ALASKA 99508  
PHONE: (907) 561-8586

January 18, 1989

The Honorable Tim Kelly  
President  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Dear Senator Kelly:

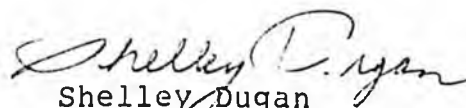
On behalf of the Alaska Local Boundary Commission I am pleased to submit the enclosed recommendations regarding annexation of contiguous territory to the Kodiak Island Borough and the Fairbanks North Star Borough.

Pursuant to Article X Section 12 of the State Constitution, AS 44.47.567 and AS 29.06.040, these recommendations take effect forty-five days from the date of their receipt or at the end of the Session, whichever is first, unless disapproved by a concurrent resolution of the House and Senate.

A full report of Local Boundary Commission activities for the calendar year 1988 shall be submitted shortly. That report will present not only an overview of formal Commission activities for the year, but contemporary issues affecting the Commission which will be of interest to the Legislature.

Commission members will meet with House and Senate Committees on Community and Regional Affairs to discuss our recommendations and report. The meeting is tentatively scheduled for January 31, 1989. As we do every year, we look forward to meeting with Committee members again this year.

Sincerely,

  
Shelley Dugan  
Acting Chairperson

LBC RECOMMENDATION TO THE FIRST SESSION  
OF THE SIXTEENTH STATE LEGISLATURE

ANNEXATION TO THE KODIAK ISLAND BOROUGH

SUMMARY OF PROPOSED ANNEXATION

On October 14, 1988, under the provisions of AS 29.06.040(b), the Kodiak Island Borough submitted a petition for annexation of approximately 12,825 square miles. The territory was comprised of approximately 2,130 square miles of land and approximately 10,695 square miles of water.

On November 10, 1988, voters in the adjacent Lake and Peninsula REAA petitioned for the incorporation of a home rule borough encompassing an estimated 26,675 square miles of land and waters offshore. Nearly all of the estimated 2,130 square miles of land and much of the waters sought for annexation by the Kodiak Island Borough were also included in the area proposed for incorporation.

On December 2, 3 and 4, 1988, a series of public hearings were scheduled to be held by the Commission in the communities of Kodiak, Iliamna, Port Heiden and Chignik Bay concerning the proposed borough incorporation and the proposed annexation of a portion of the same territory to the Kodiak Island Borough. Weather and technical problems at two airports however, forced the Commission to conduct these meetings via teleconference from Anchorage with all communities scheduled for hearings.

A decisional session was held December 4, 1988 in Anchorage. The four participating Commission members voted 3 to 1 to approve the annexation petition with amended boundaries. The amended boundaries resulted in exclusion of that portion of the Alaska Peninsula and waters offshore lying southwest of Cape Kilokak. The area approved for annexation consists of that portion of the Alaska Peninsula which drains into the mainland district of the Alaska Department of Fish and Game Kodiak Area Salmon District (Cape Douglas to Cape Kilokak), Chirikof Island, the Semidi Islands and the waters offshore of these lands (see Exhibit A). Much of the water area is presently outside the boundaries of the State (and thus the potential jurisdiction of the Borough). However, Borough officials anticipate that actions contemplated by the federal government may extend the jurisdiction of the State and the Borough in this area.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In arriving at its findings, the LBC has considered documents and evidence including but not limited to, the petition for annexation, accompanying brief, the report and recommendation of the Department, and oral testimony provided during the series of public hearings on December 2, 3 and 4. Because of the competing nature of the annexation petition from the Kodiak Island Borough and the borough incorporation

U.B.C. RECOMMENDATION TO THE FIRST SESSION  
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petition from the Lake and Peninsula area, the findings of fact and conclusions of law listed below include consideration of the competing petition standards as well as other standards for annexation and incorporation. For the sake of expediency, only those standards satisfied by each petition are discussed. If the standard is not mentioned, it may be assumed that it was not met.

I. Under competing petitions standards, it is appropriate that those lands on the Alaska Peninsula which drain into Shelikof Strait and the Pacific Ocean from the Kenai Peninsula Borough boundaries to Cape Kilokak and the waters offshore be included within the Kodiak Island Borough rather than the proposed Lake and Peninsula Borough.

a. Ability to Serve the Territory in Question

The proposed Lake and Peninsula Borough would initially exercise only the powers of education, planning and tax collection. As the need arose, the Borough could assume other powers. The Kodiak Island Borough currently exercises (on an areawide or non-areawide basis), the powers of solid waste collection and disposal and economic development along with other required and discretionary powers.

The territory in question is unpopulated, therefore the need for services is greatly limited. Both the Kodiak Island Borough and the proposed Lake and Peninsula Borough would have the capacity to provide the required degree of planning, land use regulation and tax collection and assessment.

However, the Kodiak Island Borough exercises the power of economic development by engaging in commercial salmon enhancement activities within its boundaries. It is estimated that 67 salmon streams exist in that portion of the Alaska Peninsula which drains into the Alaska Department of Fish and Game Kodiak Area Salmon District (within the contested area). Commercial harvests of salmon, herring, bottomfish and shrimp in this district are carried out predominantly by residents of the Kodiak Island Borough. It is unlikely that the Lake and Peninsula Borough would spend funds for salmon enhancement for the principal benefit of residents of an adjacent borough if this area were included within its boundaries.

Further, the Kodiak Island Borough provides solid waste collection and disposal within the City of Kodiak and the area outside of all other cities in the borough. The Borough anticipates expansion of this service as a result of recently enacted federal legislation known as MARPOL which was effective December 31, 1988.

Given the service needs relating to economic development and solid waste collection and disposal, the Commission found that the Kodiak Island Borough would be better able to serve that portion of the Peninsula which drains into the Kodiak Area Salmon

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District and the waters offshore.

b. Importance of the Region to the Financial Viability of each Competing Entity

The contested area offers relatively little to either municipality in revenues from the State Business Fisheries Tax. Fish processing may occur on floating bottomfish catcher/processors, many of whom operate outside of the jurisdiction of the State. Thus the potential for revenues to either borough from the State Business Fisheries Tax from this activity would be limited.

The contested area is estimated by the Kodiak Island Borough to have a taxable value of \$5,110,000. That value represents approximately 1.2% of the total value of taxable property within the Kodiak Island Borough. Given the current levy of ad valorem taxes, the Kodiak Island Borough would generate \$22,995 in revenues from the entire area proposed for annexation. However, the portion of the area proposed for annexation consisting of the land on the Peninsula which drains into the Kodiak Area Salmon District is reported to be owned almost entirely by the State and Federal governments. It is believed that the Koniag Regional Corporation owns limited oil and gas subsurface rights in the area around Wide Bay. The value of those rights, if any, is undetermined. As such, the particular area in question has virtually no taxable value and would provide the Kodiak Island Borough with no opportunity to generate property tax revenues. The contested area represents an estimated 15.9% of the total property value within the Lake and Peninsula Borough. However, that prospective borough does not propose to levy a property tax. Therefore, the area means no loss in potential ad valorem taxes to the prospective Lake and Peninsula Borough.

The potential for revenues from a municipal sales and use tax on commercial fishing in the contested area is more significant to the proposed Lake and Peninsula Borough than to the Kodiak Island borough. Currently the Kodiak Island Borough levies no sales tax. The proposed Lake and Peninsula Borough will levy a 1% sales and use tax. Although the precise structure of the proposed sales and use tax is unknown at this time, the tax could be levied at the point of sale of the fish as currently implemented by at least one other borough in the state. The Alaska Department of Fish and Game in Kodiak has reported that the 1988 value of salmon caught for the mainland of the Kodiak Management Area (from Cape Douglas to Cape Kilokak) was \$13,938,400. Noting that this was an unusually large catch (30% - 50% higher than the average poundage for the area) with record prices, the Department of Community and Regional Affairs conservatively estimated the value of the annual harvest of salmon in the area at \$6,000,000. Since the Kodiak Island Borough levies no sales and use tax, these fish offer no sales or use tax revenues to it. However, since the Lake and Peninsula Borough will levy a 1% sales and use tax, these salmon represent a potential \$60,000 in annual revenues to the new Borough. That amount represents 6.9% of the total local revenues for the Lake and

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Peninsula Borough. However, in relative terms of total revenues (local, state and federal), the \$60,000 amounts to only 0.8% of the income anticipated by the Borough in FY 92.

In relative terms, the territory is more important to the financial viability of the Lake and Peninsula Borough than it is to the Kodiak Island Borough. The potential revenues generated within the area represent 6.9% of the locally generated revenues of the Lake and Peninsula Borough and only 1.2% (0% in the area which drains into the Kodiak Area Salmon District) of the locally generated revenues of the Kodiak Island Borough.

However, in absolute terms the importance of the contested area to the financial viability of each of the competing entities is much different. At most, there would be an estimated annual loss of \$60,000 to the Lake and Peninsula Borough if the area were included within the Kodiak Island Borough. The loss to the Kodiak Island Borough would represent a maximum annual loss of \$22,995. The loss of such funds to either entity would not render either one infeasible. Therefore, while the Commission found that in relative terms the area is more important financially to the Lake and Peninsula Borough, the level of funding involved is so small (less than 1% of the projected FY 92 budget of the Lake and Peninsula Borough) that this factor was given minimal consideration in judging the competing interests.

c. Satisfaction of Standards for Annexation and Incorporation.

Of the many standards which apply to incorporation and annexation proposals, the principal ones of interest here which have not yet been examined relate to the social, cultural and economic interrelationship between the populations of each competing entity within the area in question and how this area conforms to the natural geography of the area encompassed by the competing entities.

Those lands on the Alaska Peninsula which drain into Shelikof Strait and the Pacific Ocean ranging from the Kenai Peninsula Borough boundaries to Cape Kilokak and the waters offshore are of vital economic importance to the residents of the Kodiak Island Borough. As noted earlier, the waters in this area comprise the Kodiak Area Salmon District (Mainland District). The area also includes most, but not all of the Kodiak Shellfish District. Commercial harvests of salmon, herring, bottomfish, shrimp and crab in these waters are carried out predominantly by residents of the Kodiak Island Borough. Kodiak area fishermen also use the uplands for storage of fishing gear. If the area were included within the proposed Lake and Peninsula Borough, it is unlikely that sales and use taxes levied in the area in question by that government would be used to support services and facilities available to those paying the tax in that particular area. In other boroughs (notably the Aleutians East Borough and the Bristol Bay Borough) those who pay taxes on fish caught in those respective regions also use the public facilities and services located in those areas.

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To divide the Shelikof Strait so the waters are located within two separate boroughs would likely create problems in the management of the area. Difficulties in the enforcement of municipal tax levies and the management of natural resources (particularly commercial fishing) are likely to result.

Cultural and historical ties to the territory in question exist for the areas within the Kodiak Island Borough as well as the Lake and Peninsula Borough. Based on testimony and documents submitted to the Commission, the strength of these ties appears to be equal if not greater for the Kodiak Island Borough.

The area in question is also more geographically related to the Kodiak Island Borough than to the proposed Lake and Peninsula Borough. The Aleutian Range on the Alaska Peninsula, which determines river drainage patterns, serves as a natural topographical divider for those rivers that drain into Shelikof Strait. The Strait in turn unites the rivers on Kodiak Island with these same rivers as a common drainage basin.

The Commission found that the appropriate standards for annexation and incorporation support the inclusion into the Kodiak Island Borough of those lands on the Alaska Peninsula which drain into Shelikof Strait and the Pacific Ocean ranging from the Kenai Peninsula Borough boundaries to Cape Kilokak and the waters offshore. Further references to the territory considered for annexation include the territory described in this section plus those areas proposed for annexation to the Kodiak Island Borough which do not overlap the territory proposed for incorporation by the Lake and Peninsula Borough.

**II. The territory considered for annexation is in need of municipal services which the Borough can provide more efficiently than another municipality or the State**

As previously noted, much of the contested area is in need of planning, economic development and solid waste collection and disposal services which can best be provided by the Kodiak Island Borough. The facts which supported that conclusion also support the conclusion that the entire area considered for annexation is in need of municipal services which the Kodiak Island Borough can provide most efficiently.

**III. There is a reasonable likelihood that future growth and development will occur within the territory considered for annexation and that annexation of that territory will enable the Borough to plan for and control that development**

Kodiak Island Borough officials testified that there is potential for development of mineral, oil and gas and fishing activities in the area considered for annexation. The petitioner has observed that mineral exploration continues to take place in the area considered for annexation. Oil and gas lease sale #114 is scheduled to be held by the

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Federal government in September of 1990. Both activities have the potential for resource development and attendant impact on the area considered for annexation.

The petitioner has observed growth in the number of offshore floating processors in this area. While the actual number of fish processors will certainly fluctuate with the fish harvest, the petitioner observes that it is likely the area will see added growth in the use of offshore processors since it is also likely that larger and more varied fish harvests will be experienced in the future.

Finally, officials of the Kodiak Island Borough have testified that the Federal government has prepared and carried out plans for the management of lands in the area considered for annexation without regard to their concerns. Annexation of the area will allow more extensive and influential input from the borough on the use and management of these lands.

**IV. The annexation is otherwise necessary to accomplish a valid public purpose**

The Kodiak Island Borough noted that the number of offshore processors, which typically operate with self-contained out-of-state crews, has increased substantially in recent years. The petitioner contends that these processors have attracted the fish which would normally be delivered to on-shore facilities, thus denying the Borough the proportionate amount of raw fish tax revenues as well as its residents the dollars that would normally be dispersed into the local economy. The economic welfare of the region is thus negatively affected. Annexation of the area in question would mitigate these negative effects.

**V. The Kodiak Island Borough is capable of and willing to extend areawide and non-areawide services to the area considered for annexation**

As indicated earlier, the need for services in the area considered for annexation is limited. The extension of areawide and non-areawide services to this territory would require little expenditure by the Borough. The Kodiak Island Borough appears willing and capable of serving the contested area.

**VI. The Kodiak Island Borough, with the addition of the area considered for annexation, still satisfies the standards for incorporation of a borough as required by 19 AAC 10.220**

A. The population within the expanded boundaries of the borough remains interrelated and integrated as to its social, cultural, and economic activities. The area proposed for annexation is uninhabited. However, as noted earlier there are strong social, cultural and economic ties between the area considered for annexation and the population of the Borough.

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B. The population within the expanded boundaries of the borough remains large and stable enough to support borough government. Again, since the area considered for annexation is uninhabited, the size and stability of the Borough's population would not be affected by the annexation.

C. The expanded boundaries of the borough still conform generally to natural geography and include all areas necessary for full development of municipal services. With the annexation, the Borough's boundaries would follow the natural geography of the region.

D. The economy of the expanded borough still includes the human and financial resources capable of providing municipal services. Again, because there is no population change, the annexation would have no effect on the human resources of the Kodiak Island Borough. Any impact on the financial resources of the Borough would be positive.

E. The land, water and air transportation facilities of the expanded borough still allow the communication and exchange necessary for the development of integrated borough government. This annexation will not affect the ability of residents of the Kodiak Island Borough to communicate and interrelate.

LBC DECISION AND RECOMMENDATION

Based upon the findings of fact and conclusions of law summarized herein, the proposed annexation of approximately 12,825 square miles of territory to the Kodiak Island Borough does not, in its entirety, satisfy the applicable requirements of State statute and regulation regarding annexation of contiguous and competing territory to a borough. However, there is an approximate 12,343 square mile area which has been found to satisfy these requirements.

*THEREFORE*, the Commission ordered the amendment of the petition to include: 1. (with respect to the area in competition involving the proposed Lake and Peninsula Borough) only those lands on the Alaska Peninsula which drain into Shelikof Strait and the Pacific Ocean from the Kenai Peninsula Borough Boundaries to Cape Kilokak and the waters offshore; and 2. all other territory sought for annexation by the Kodiak Island Borough.

*IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE X, SECTION 12 OF THE STATE CONSTITUTION*, the Commission hereby recommends to the First Session of the Sixteenth Legislature, the annexation of the territory described herein. The resulting boundary description of the Kodiak Island Borough reads as follows:

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Beginning at Cape Douglas on the west side of Cook Inlet at the NE Corner of protracted Section 27, Township 15 South, Range 24 West, Seward Meridian (S.M.); thence west to the NE Corner of protracted Section 29, Township 15 South, Range 26 West, S.M.; thence south to the SE Corner of protracted Section 32, Township 16 South, Range 26 West, S.M.; thence west to the NE Corner of protracted Section 1, Township 17 South, Range 28 West, S.M.; thence south to the SE Corner of protracted Section 36, Township 17 South, Range 28 West, S.M.; thence west to the NE Corner of protracted Section 1, Township 18 South, Range 31 West, S.M.; thence south to the SE Corner of Section 1, Township 20 South, Range 31 West, S.M.; thence west to the NW Corner of protracted Section 11, Township 20 South, Range 31 West, S.M.; thence south to the SW Corner of protracted Section 23, Township 20 South, Range 31 West, S.M.; thence west to the NW Corner of protracted Section 29, Township 20 South, Range 31 West, S.M.; thence south to the SW Corner of protracted Section 32, Township 20 South, Range 31 West, S.M.; thence west to the NW Corner of Section 2, Township 21 South, Range 32 West, S.M.; thence south to the SW Corner of protracted Section 11, Township 21 South, Range 32 West, S.M.; thence west to the NW Corner of protracted Section 18, Township 21 South, Range 32 West, S.M.; thence south to the SW Corner of protracted Section 19, Township 21 South, Range 32 West, S.M.; thence west to the NW Corner of protracted Section 30, Township 21 South, Range 33 West, S.M.; thence south to the SW Corner of protracted Section 31, Township 21 South, Range 33 West, S.M.; thence west to the NW Corner of protracted Section 5, Township 22 South, Range 34 West, S.M.; thence south to the SW Corner of protracted Section 5, Township 22 South, Range 34 West, S.M.; thence west to the NW Corner of Section 9, Township 22 South, Range 35 West, S.M.; thence south to the SW Corner of Section 16, Township 22 South, Range 35 West, S.M.; thence west to the NW Corner of Section 19, Township 22 South, Range 35 West, S.M.; thence south to the SW Corner of Section 30, Township 22 South, Range 35 West, S.M.; thence west to the NW Corner of Section 31, Township 22 South, Range 36 West, S.M.; thence south to the SW Corner of protracted Section 7, Township 23 South, Range 36 West, S.M.; thence west to the NW Corner of Section 16, Township 23 South, Range 37 West, S.M.; thence south to the SW Corner of protracted Section 9, Township 24 South, Range 37 West, S.M.; thence east to the SE Corner of protracted Section 10, Township 24 South, Range 37 West, S.M.; thence south to the NE Corner of protracted Section 11, Township 25 South, Range 37 West, S.M.; thence west to the NW Corner of protracted Section 10, Township 25 South, Range 37 West, S.M.; thence south to the NE Corner of protracted Section 4, Township 27 South, Range

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37 West, S.M.; thence west to the NW Corner of protracted Section 1, Township 27 South, Range 38 West, S.M.; thence south to the NE Corner of protracted Section 23, Township 27 South, Range 38 West, S.M.; thence west to the NW Corner of protracted Section 21, Township 27 South, Range 38 West, S.M.; thence south to the NE Corner of protracted Section 32, Township 27 South, Range 38 West, S.M.; thence west to the NW Corner of protracted Section 33, Township 27 South, Range 39 West, S.M.; thence south to the NE Corner of protracted Section 20, Township 28 South, Range 39 West, S.M.; thence west to the NW Corner of protracted Section 19, Township 28 South, Range 39 West, S.M.; thence south to the SW Corner of protracted Section 31, Township 28 South, Range 39 West, S.M.; thence west to the NW Corner of protracted Section 3, Township 29 South, Range 40 West, S.M.; thence south to the NE Corner of protracted Section 16, Township 29 South, Range 40 West, S.M.; thence west to the NW Corner of protracted Section 14, Township 29 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 26, Township 29 South, Range 41 West, S.M.; thence east to the SE Corner of protracted Section 25, Township 29 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 31, Township 29 South, Range 40 West, S.M.; thence east to the SE Corner of protracted Section 31, Township 29 South, Range 40 West, S.M.; thence south to the SW Corner of protracted Section 5, Township 30 South, Range 40 West, S.M.; thence west to the NW Corner of protracted Section 12, Township 30 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 12, Township 30 South, Range 41 West, S.M.; thence west to the NW Corner of protracted Section 14, Township 30 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 14, Township 30 South, Range 41 West, S.M.; thence west to the NW Corner of protracted Section 22, Township 30 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 22, Township 30 South, Range 41 West, S.M.; thence west to the NE corner of protracted Section 29, Township 30 South, Range 41 West, S.M.; thence north to the NE Corner of protracted Section 8, Township 30 South, Range 41 West, S.M.; thence west to the NW Corner of protracted Section 7, Township 30 South, Range 41 West, S.M.; thence south to the SW Corner of protracted Section 7, Township 30 South, Range 41 West, S.M.; thence west to the NW Corner of protracted Section 14, Township 30 South, Range 42 West, S.M.; thence south to the NE Corner of protracted Section 27, Township 30 South, Range 42 West, S.M.; thence west to the NW Corner of protracted Section 27, Township 30 South, Range 42 West, S.M.; thence south to the NE Corner of protracted Section 33, Township 30 South, Range 42 West, S.M.; thence west to the NW Corner of protracted Section 33, Township 30 South, Range 42 West, S.M.;

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thence south to the NW Corner of protracted Section 9, Township 31 South, Range 42 West, S.M.; thence west to the SE Corner of protracted Section 2, Township 31 South, Range 43 West, S.M.; thence north to the NE Corner of protracted Section 2, Township 31 South, Range 43 West, S.M.; thence west to the NW Corner of protracted Section 1, Township 31 South, Range 44 West, S.M.; thence south to the NE Corner of protracted Section 14, Township 31 South, Range 44 West, S.M.; thence west to the NW Corner of protracted Section 14, Township 31 South, Range 44 West, S.M.; thence south to the NE Corner of protracted Section 22, Township 31 South, Range 44 West, S.M.; thence west to the NW Corner of protracted Section 21, Township 31 South, Range 44 West, S.M.; thence south to the NE Corner of protracted Section 5, Township 32 South, Range 44 West, S.M.; thence west to the NW Corner of protracted Section 6, Township 32 South, Range 44 West, S.M.; thence south to the NE Corner of protracted Section 36, Township 32 South, Range 45 West, S.M.; thence west to the NW Corner of protracted Section 35, Township 32 South, Range 45 West, S.M.; thence south to the SW Corner of protracted Section 35, Township 32 South, Range 45 West, S.M.; thence east to the NW Corner of protracted Section 4, Township 33 South, Range 45 West, S.M.; thence south to the NE Corner of protracted Section 8, Township 33 South, Range 45 West, S.M.; thence west to the NW Corner of protracted Section 12, Township 33 South, Range 46 West, S.M.; thence south to the NE Corner of protracted Section 26, Township 33 South, Range 46 West, S.M.; thence west to the NW Corner of protracted Section 27, Township 33 South, Range 46 West, S.M.; thence south to the NE Corner of protracted Section 16, Township 34 South, Range 46 West, S.M.; thence west to the NW Corner of protracted Section 18, Township 34 South, Range 46 West, S.M.; thence south to the SW Corner of protracted Section 6, Township 35 South, Range 46 West, S.M.; thence east to Cape Kilokak on the Pacific Ocean; thence due South to a point at  $56^{\circ} 45'$  North Latitude,  $156^{\circ} 19' 43''$  West Longitude; thence southwesterly to  $56^{\circ} 16' 10''$  North Latitude,  $157^{\circ} 07' 40''$  West Longitude; thence southeasterly to a point that is three geographical miles seaward from the Pacific Coast of South Island in the Semidi Islands; thence southeasterly to a point that is three geographical miles seaward from the Pacific Coast of Chirikof Island; thence northeasterly to a point that is three geographical miles seaward from the Pacific Coast of Cape Sitkinak; thence continuing northerly along a line that is three geographical miles seaward from the Pacific Coast of Sitkinak, Geese, Two Headed, Sitkalidak, Ugak, Woody, Kodiak, Spruce, Marmot, Afognak and Shuyak Islands; thence north to the point of intersection with a point that is three geographical miles east of the easternmost point of East Amatuli Island; thence northeasterly to the SE Corner of protracted Section 31, Township

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12 South, Range 14 West, S.M., adjoining the southern boundary of the Kenai Peninsula Borough; thence southwestly continuing along said boundary to 59° 02' North Latitude, 153° West Longitude; thence south along said boundary to the NE Corner of protracted Section 27, Township 15 South, Range 25 West, S.M., at Cape Douglas, the point of beginning.

With respect to the water areas, the boundaries of the Kodiak Island Borough extend to the limits of the State's jurisdiction under AS 44.03.010.

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ANNEXATION TO THE FAIRBANKS NORTH STAR BOROUGH

SUMMARY OF PROPOSED ANNEXATION

On September 28, 1988, the Fairbanks North Star Borough submitted a petition for the annexation of approximately 216 square miles of territory (see Exhibit B). The Local Boundary Commission conducted a hearing on this matter in Fairbanks on November 18, 1988. Because of a conflict of interest, Commission Chair, C. B. Bell'sworth, abstained from participating in any of the proceedings related to this matter. A decisional session was held on December 2, 1988. During that meeting the Commission voted 3 to 1 to approve the petition without amendment. The dissenting Commission member issued a minority opinion which follows the body of this recommendation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In arriving at its findings, the LBC has considered documents and evidence including but not limited to, the petition for annexation, accompanying brief, and the report and recommendation of the Department of Community and Regional Affairs. For the sake of expediency, only those standards satisfied by the petition are discussed. If the standard is not mentioned, it may be assumed that it was not met.

I. Based upon the following facts, the Commission has concluded that the annexation is necessary to accomplish a valid public purpose in satisfaction of the standard for annexation set out in 19 AAC 10.190(a)(8).

a. Annexation Would Enhance the Tax Base of the Borough.

The Fairbanks North Star Borough's tax base is relatively weak. In January, 1988, the Department of Community and Regional Affairs published a report showing that the values of taxable property in the Borough (measured as value per student) were 14.9% below the average of all of the existing boroughs in the state (excluding the North Slope Borough whose value is disproportionately high).

Presently, the Fairbanks North Star Borough levies an areawide tax on real property (personal property is exempted) of 11.178 mills and an additional 1.065 mills for services outside cities (non-areawide). The areawide taxes are used to support education, planning, tax assessment and collection, and general administration. In its current fiscal year, approximately 73% of the areawide taxes will be spent in direct support of education within the Borough. The non-areawide taxes are used to support emergency services, economic development and solid waste disposal.

The efforts of the Borough to support its local services compares favorably with the majority of other municipalities in Alaska as demonstrated by its mill rate equivalent.

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The mill rate equivalent of the Borough (combined areawide and non-areawide) is greater than 58% of the cities and boroughs which received State Revenue Sharing in the most recent fiscal year. The greater tax effort of the Borough can be attributed in large measure to its relatively weak tax base.

The taxable territory proposed for annexation is comprised of an estimated 16 miles of the Tans-Alaska Oil Pipeline and Pump Station Number 7. Annexation of this area would increase the value of taxable property in the Borough by an estimated \$162,600,000. This would raise the total value of taxable property of the Borough by 5.2% to \$3,292,754,477.

While the annexation would provide financial benefits to the Borough, its tax base would still remain below the average of other boroughs. Adjusting the figures in the Department of Community and Regional Affairs' 1988 report to reflect the annexation would still leave the Borough nearly 12% below that of the average of all existing boroughs (excluding the North Slope Borough).

b. The Annexation Represents Sound Public Policy.

In the debate regarding this proposal, attention was focussed on the policy questions inherent in this annexation. The issues centered on the merits of an annexation which would impose virtually no additional service requirements on the Borough but would increase its annual revenues by as much as \$2 million. These revenues would be gained at the direct expense of the State since taxes levied by the Borough against the pipeline facilities would be applied as a credit to the taxes currently levied by the State. In response to these concerns, the Commission has concluded the following.

1. Financial Gain to the Borough is Not Excessive or Unwarranted.

With approval of the annexation, the Borough could begin taxing property in the annexed area in 1990. At the present value and current rates of taxation the Borough would collect \$1,990,712 from the area each year. This increase in revenues, however, would be offset substantially by a reduction in the level of funds received by the Borough under the State Education Foundation Program beginning in 1992. Based on the present value of the property in the area proposed for annexation, that reduction would amount to \$650,400 annually (the equivalent of a 4 mill tax on the property), leaving a net increase of \$1,340,312. While that figure remains substantial, its relative impact to the Fairbanks North Star Borough is not. That is, the Borough is the second most populous municipality in the state. Viewed in this light, the net revenues (following the adjustment to the foundation formula) amount to only \$17.85 per capita.

At the present value and the current rates of taxation, the total revenues which would be collected by the Borough from taxes levied on the pipeline property facilities (existing boundaries plus area proposed for annexation) would amount to \$8,585,463.

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The value of the pipeline property within the Borough would, however, reduce its level of annual funding under the State Education Foundation Program by \$2,805,019. Thus, the net effect is an annual gain in revenues of \$5,780,444 from taxes on the pipeline. This amounts to \$76.99 per capita.

The revenue characteristics of the proposed annexation are in no sense extreme. Many municipalities receive per capita revenues from *non-local sources* unique to their area which are equal to or greater than the net \$76.99 per capita. Some examples include: the North Slope Borough - \$27,198 per capita (1987 taxes on oil and gas facilities under AS 43.56); the City of Valdez - \$6,649 per capita (\$6,604 from 1987 taxes on oil and gas facilities under AS 43.56 and \$45 from State shared raw fish taxes); City of Chignik \$2,183 per capita (FY 88 State shared raw fish taxes); City of Akutan - \$1,374 per capita (FY 88 State shared raw fish taxes); and the Bristol Bay Borough - \$1,062 per capita (FY 88 State shared raw fish taxes.) In fact, more than 30% of the municipalities which received State shared raw fish taxes in FY 88 received per capita revenues of \$77 or more.

2. Approval of this Annexation is Not Inconsistent with the Commission's *Statement on Borough Government in Alaska*.

The Local Boundary Commission advocates a reassessment of State financial aid to municipalities in an effort to provide for greater equity to all municipalities. The Commission's position on this matter is addressed in its *Statement on Borough Government in Alaska* which was adopted on December 2, 1988.

Approval of this annexation has been viewed as being inconsistent with the call for a re-examination of the current structure of financial aid to municipalities. It is argued that this annexation is tantamount to *piecemeal assistance* which exacerbates the inequities. It has been further argued that the annexation will diminish the incentive on the part of the Fairbanks area legislators to deal with the matter.

The Commission has rejected these arguments. This annexation is not inconsistent with its *Statement on Borough Government in Alaska*. In point of fact, the Commission adopted this statement at the same meeting that it approved the annexation to the Fairbanks North Star Borough.

The Fairbanks North Star Borough has a legitimate need to enhance its tax base. Certainly this Commission would view differently an annexation proposal of this nature by a municipality whose tax base was greater than the average of other boroughs. However, while the annexation enhances the tax base of the Borough, the Borough will continue to have a relatively weak tax base even after the annexation. As stated previously, the Borough's tax base is presently 14.9% below the average of other existing boroughs. It will remain 12% below that average after the annexation. Thus, there will

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continue to be a strong incentive for the Borough and Fairbanks area legislators to support the re-examination of financial aid to municipalities to provide greater equity.

3. The Proposed Annexation Would Not Diminish the Viability of a Potential Borough in the Adjacent Region.

The territory proposed for annexation is presently located within the Yukon Flats Regional Educational Attendance Area (REAA). At the beginning of this year, the Department of Community and Regional Affairs reported that the Yukon Flats REAA had the greatest level of taxable property of any unincorporated region of the state. The value of taxable property in that region (measured as value per student) was reported to be in excess of 5 times that of the average of all of the existing boroughs in the state (even excluding the North Slope Borough whose value is disproportionately high).

Adjusting the figures in that report to account for the value of the pipeline property, approval of the area proposed for annexation would still leave the Yukon Flats REAA with a level of taxable property per student second only to the North Slope Borough. The value of taxable property would remain more than five times that of the average of existing boroughs (again, exclusive of the North Slope Borough).

Further, the value of property in the Yukon Flats region is so great that State law (AS 29.45.090) would preclude a borough in that region from taxing all of the property. The law would limit the authority of a borough there to tax no more than \$311,047,897 of the property (225% of the statewide per capita assessed full and true value multiplied by the population of the borough). Recent estimates place the value of property in that region at \$805,000,000. Even if the subject annexation were to occur, the area would have \$642,400,000. This is more than twice as much property as it could legally tax under the law. Thus, it is concluded that the annexation would not adversely affect the viability of a borough in the adjacent region.

4. There Is Precedent for the Expansion of Borough Boundaries to Enhance Revenues of a Borough.

While attempts to expand the perimeter of boroughs in Alaska on any basis have been rare, there is precedence for the type of annexation being sought by the Fairbanks North Star Borough. In 1974, the Commission approved an annexation of 221 square miles of land and 96 square miles of water to the Haines Borough. The purpose of the annexation appears to have been principally to enhance the revenues of that borough.

The Haines Borough was at the time, and remains today, disadvantaged by a relatively low tax base. The present extent of this disadvantage exceeds that even of the Fairbanks North Star Borough. The Department of Community and Regional Affairs noted in its

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January, 1988, study that the full and true value of taxable property in the Haines Borough was found to be 35.7% below the average (again, excluding the North Slope Borough).

In the report of the Local Boundary Commission submitted to the 1975 legislature, the following was noted with respect to the proposed annexation to the Haines Borough (emphasis added):

WHEREAS, the territory sought to be annexed by the Haines Borough meets the standards for annexation in that the territory will be subject to future growth and development and annexation will enable the Borough to assist in and receive benefits from that development; and

WHEREAS, annexation of the territory would allow the Haines Borough to more fully meet standards for formation of a borough in that the new boundaries established would more closely approximate *natural geography*, altering the geographical southern boundary of the Haines Borough, an arbitrary line extending east and west bisecting the Chilkat Peninsula, a natural geographic part of the Haines Borough; and

WHEREAS, the Haines Borough is being denied certain revenues (specifically, raw fish taxes and stumpage fees) to which it, as the regional entity responsible for governmental services, is rightfully entitled . . .

With respect to the first *Whereas* clause, it should be noted that the Haines Borough is (and always has been) a third class borough. As such, it is not obligated by law to provide planning, platting and zoning, nor does it do so on a voluntary basis. Therefore, it is concluded that the findings of the Commission concerning the possibility of growth and development in the area then proposed to be annexed to the Haines Borough cannot be construed as satisfying the standard presently set out in 19 AAC 10.190 (a)(4). This standard provides that there is a reasonable likelihood that future growth and development will occur within the territory and annexation of the territory will enable the organized borough to plan for and control that development.

The need for services in the area proposed for annexation to the Haines Borough was limited in 1974 and remains so today. The only *services* presently provided to the area are tax assessment/collection and education. With respect to the latter, the Haines Borough does not provide a school in the territory annexed in 1974/1975, but offers education through correspondence. According to a Borough official, *in the past there has typically been one or more students in the area annexed in 1974/1975 who have enrolled in the Borough's correspondence program. However, this year, all of the students in that area have either elected to use the State correspondence education program (bypassing the Borough) or have made arrangements for private schooling.*

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Yet, for FY 87 the Haines Borough received \$166,894.87 in State-shared raw fish taxes. The vast majority of these revenues were generated in the area annexed in 1974/1975. In fact, according to the Alaska Department of Fish and Game, 99.6% of the ex-vessel value of fisheries landed at shore-based processors in the Haines Borough in 1987 were landed in the area annexed in 1974/1975 (\$3,915,831 of \$3,930,180). The FY 87 State shared raw fish tax revenues paid to the Haines Borough amount to \$83.82 per resident (compared to \$76.99 in net post annexation pipeline taxes for the Fairbanks North Star Borough). In addition, the 1974/1975 annexation involved an estimated 141,440 acres of the Tongass National Forest. Consequently, the entitlement of the Haines Borough to funds under the National Forest Receipts program was increased annually by an estimated 50%. The average annual payment received by the Haines Borough under the National Forest Receipts program during Federal fiscal years 1982 - 1986 amounted to \$81,677, or \$41.02 per capita. Together, the FY 87 State-shared fish taxes and the 1982-1986 average annual National Forest Receipts program payment generated \$124.84 per capita for the Haines Borough. Most of those revenues were generated as a direct consequence of the 1974/1975 annexation.

5. Without Other Supporting Circumstances, Revenue Enhancement Alone May Not Justify the Expansion of the Boundaries of a Borough.

The action of the Commission in the Haines Borough annexation was further supported by the fact that the proposed boundary change helped to perfect the boundaries of the Haines Borough in terms of conformance to natural geography. Prior to the annexation, the southern boundary of the Borough was an arbitrary east-west line. The annexation extended the southern boundary to encompass the end of the Chilkat Peninsula.

This is not to say that the Haines Borough annexation provided optimum or perfect boundaries for the Borough, but rather it improved the prior boundaries. Indeed, three years later the Commission authorized another annexation to the Haines Borough (a former military reservation). Even today, the Commission recognizes the existence of an apparent need to modify the boundaries of the Haines Borough due to the fact that Klukwan exists as an enclave within the Borough.

In the case of the Fairbanks North Star Borough, the annexation is supported by social, cultural and economic ties between the territory proposed for annexation and the rest of the region. The majority of the workers at Pump Station #7 are believed to be residents of the Borough. The Pump Station is located approximately 10 miles north of the present boundaries of the Borough. The area and the Borough are connected by a modern highway.

As in the case of Haines, the Commission does not believe that the proposed post-annexation boundaries of the Fairbanks North Star Borough are necessarily optimum

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or perfect boundaries. However, the proposed annexation will help to perfect the boundaries under two important considerations. The first (from a financial standpoint) furthers the satisfaction of the borough incorporation standard that requires the boundaries of the borough to *include all areas necessary for full development of municipal services* and that the *economy of the area includes the human and financial resources capable of providing municipal services* (AS 29.05.031(a)(2) and (3)). The second furthers the satisfaction of borough incorporation standards in terms of the social and economic ties of the area to Fairbanks (AS 29.05.031(1)).

II. Based upon the following facts, the Commission has concluded that the post-annexation boundaries of the Fairbanks North Star Borough still conform to the standards for formation of a borough as required by 19 AAC 10.220.

a. The population within the expanded boundaries of the borough remains interrelated and integrated as to its social, cultural, and economic activities.

The area proposed for annexation is uninhabited. However, an estimated 36 workers are employed at an industrial facility located in the area. The majority of these workers are believed to reside within the boundaries of the Borough. As noted previously, there are strong social, cultural and economic ties between the area proposed for annexation and the population of the Borough.

b. The population within the expanded boundaries of the Borough remains large and stable enough to support borough government.

Again, since the area considered for annexation is uninhabited, the size and stability of the Borough's population would not be affected by the annexation.

c. The expanded boundaries of the Borough still conform generally to natural geography and include all areas necessary for full development of municipal services.

The existing boundaries of the Borough in the area adjacent to the territory proposed for annexation follow township and range lines. This annexation would simply extend those lines twelve miles to the north and eighteen miles to the east.

In preparing the petition for the subject annexation, several alternative boundaries were considered by the Assembly of the Fairbanks North Star Borough. These ranged from the subject proposal approved by the Commission, to a much larger area encompassing the *historic interests* of the Fairbanks region. The latter follows the Yukon River along the north (from Tanana lying 100 miles west of the existing boundaries to the Canadian border lying 85 miles east of the existing boundaries) and follows the Alaska Range along the south.

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After careful consideration, the Fairbanks North Star Borough Assembly selected the boundaries of the subject proposal. The petitioner's representative has indicated that *it was clear the members (of the Assembly) did not want to include areas of existing concentrated or organized populations such as Livengood or Delta.*

The Commission did not conclude that the proposed annexation would necessarily establish *optimum boundaries* for the Borough. However, given the present structure for the delivery of regional services throughout the state (as discussed in the Commission's *Statement on Borough Government in Alaska*), the Assembly's position to avoid populated areas is understandable. If the Borough had attempted to annex populated areas, opposition to the proposal would likely have been much more formidable. In such an event, the chances of success would likely have been diminished.

Thus, given the evidence before the Commission, it appears that the boundaries of the annexation proposal are reasonable. If this region (the existing Borough and the area proposed for annexation) were incorporating today for the first time, the Commission would find the boundaries to be appropriate. With the annexation, the Commission has found that the Borough's boundaries would generally follow the natural geography of the region to the extent of other organized boroughs.

d. The economy of the expanded borough still includes the human and financial resources capable of providing municipal services.

Again, because there is no population change, the annexation would have no effect on the human resources of the Borough. With respect to financial resources, this annexation would obviously enhance the extent to which the Borough meets this standard.

e. The land, water and air transportation facilities of the expanded borough still allow the communication and exchange necessary for the development of integrated borough government.

This annexation will not affect the ability of residents of the Fairbanks North Star Borough to communicate and interrelate. Therefore, this standard is considered to be satisfied.

III. Based upon the following facts, the Commission has concluded that the territory is in limited need of municipal services which the Fairbanks North Star Borough can provide more efficiently than another municipality or the State. This conclusion satisfies the standard for annexation set out in 19 AAC 10.190(a)(3).

The Fairbanks North Star Borough exercises the following powers on an areawide or non-areawide basis: education, planning, platting, zoning, elections, assessment and collection of taxes, emergency medical services, parks and recreation, animal control,

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libraries, air quality control, solid waste disposal, flood control (Chena River only), economic development, and transportation.

According to the Fairbanks North Star Borough, *all six townships (216 square miles) are either State tentative approved or are conveyed to the State. There appear to be about three dozen 40 acre mining claims (and) about three or four U.S. Surveys which would indicate homesites, homesteads or another private interest.* Assuming there were four U.S. Surveys, each comprised of 40 acres, these (along with the mining claims) would total approximately 1,600 acres or 1.2% of the total area proposed for annexation. The area also includes the right-of-way for the Trans-Alaska Oil Pipeline. Approximately 16 miles of the pipeline and Pump Station Number 7 are located in this area. Together, these facilities are estimated to have a taxable value of \$162,600,000.

The Fairbanks North Star Borough testified that the area proposed for annexation is uninhabited. However, there are an estimated 36 individuals employed at Pump Station Number 7. Given the characteristics of the region, the demand for services is limited. However, if a fire or medical emergency were to occur at the pump station which would be beyond the resources of the station personnel to control, the Fairbanks North Star Borough would provide emergency assistance.

Even though the Commission has found that there is limited need for services in this case, the Commission notes that inclusion of uninhabited areas which have little or no need for services is not uncommon in other boroughs. Boroughs are regional governments which must rely on regional resources (often found in uninhabited areas) to help support the delivery of services to populated areas.

IV. Based upon the following fact, the Commission has concluded that property owners within the territory receive or can be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate property tax contributions, whether borough services are rendered or received inside or outside the borough. This conclusion satisfies the standard for annexation set out in 19 AAC 10.190(a)(7).

Officials of the Fairbanks North Star Borough have testified that the Borough would extend emergency services to the area proposed for annexation in the event of need. However, the cost of such is insignificant when compared to the revenue generating potential of the area.

V. Based upon the following facts, the Commission has concluded that the Fairbanks North Star Borough is capable of and willing to extend areawide and non-areawdie services to the area proposed for annexation as required by 19 AAC 10.200.

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As indicated previously, the need for services in the area proposed for annexation is limited. The extension of areawide and non-areawide services to this territory would require little expenditure by the Borough. The Fairbanks North Star Borough appears willing and capable of serving the territory proposed for annexation.

COMMISSION MINORITY  
SUMMARY POSITION

The following summary of the minority position concerning the Local Boundary Commission 1988 Fairbanks Annexation petition was prepared by Commissioner Cotten.

1. There is no precedent for the decision. Despite the effort to claim some type of parallel with an unrelated annexation by Haines in the early 1970's, this effort has no precedent. No municipality has claimed additional property to the tune of \$162 million and not met one standard other than the ill-defined open-ended *valid public purpose* standard.
2. The annexation allows additional control and financial benefit with no additional responsibility or service. The Borough takes on no new service or responsibility but receives, to the detriment of the rest of the state, \$1.3 million annually. The staff position doesn't even pretend the annexation is anything but a money grab.
3. The annexation is illogical, piecemeal and counter-productive to encouraging regional government in the unorganized borough. The annexation does not follow any natural boundary and serves notice to others that a piecemeal approach to regional government may be acceptable. Moreover, it is politically self-defeating if the Commission wishes to convince the Legislature of needed changes to state assistance programs if it allows the second largest community to obtain the benefits of the needed changes without any effort.
4. The borough argument of a higher than average local contribution in Fairbanks is specious and misleading. Nowhere is the issue of what services cost in Fairbanks described or if there is a possibility that the borough simply promised too much and politically is not brave nor competent enough to make cuts or increase revenues from users.
5. 36 people employed in a pump station is not a rational basis for the annexation. It was argued that since the 36 people employed at the pump station lived in Fairbanks, it was logical to have it annexed. This simply doesn't make any sense. The 36 people represent 0.048% of the borough population. To state that because such a small percentage of the borough

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population works in the unorganized borough but resides inside is justification to annex the area is simply grasping for straws.

**LBC DECISION AND RECOMMENDATION**

Based upon the findings of fact and conclusions of law summarized herein, the proposed annexation of approximately 216 square miles of territory to the Fairbanks North Star Borough has been found to satisfy the applicable requirements of State statute and regulation regarding annexation of contiguous territory to a borough.

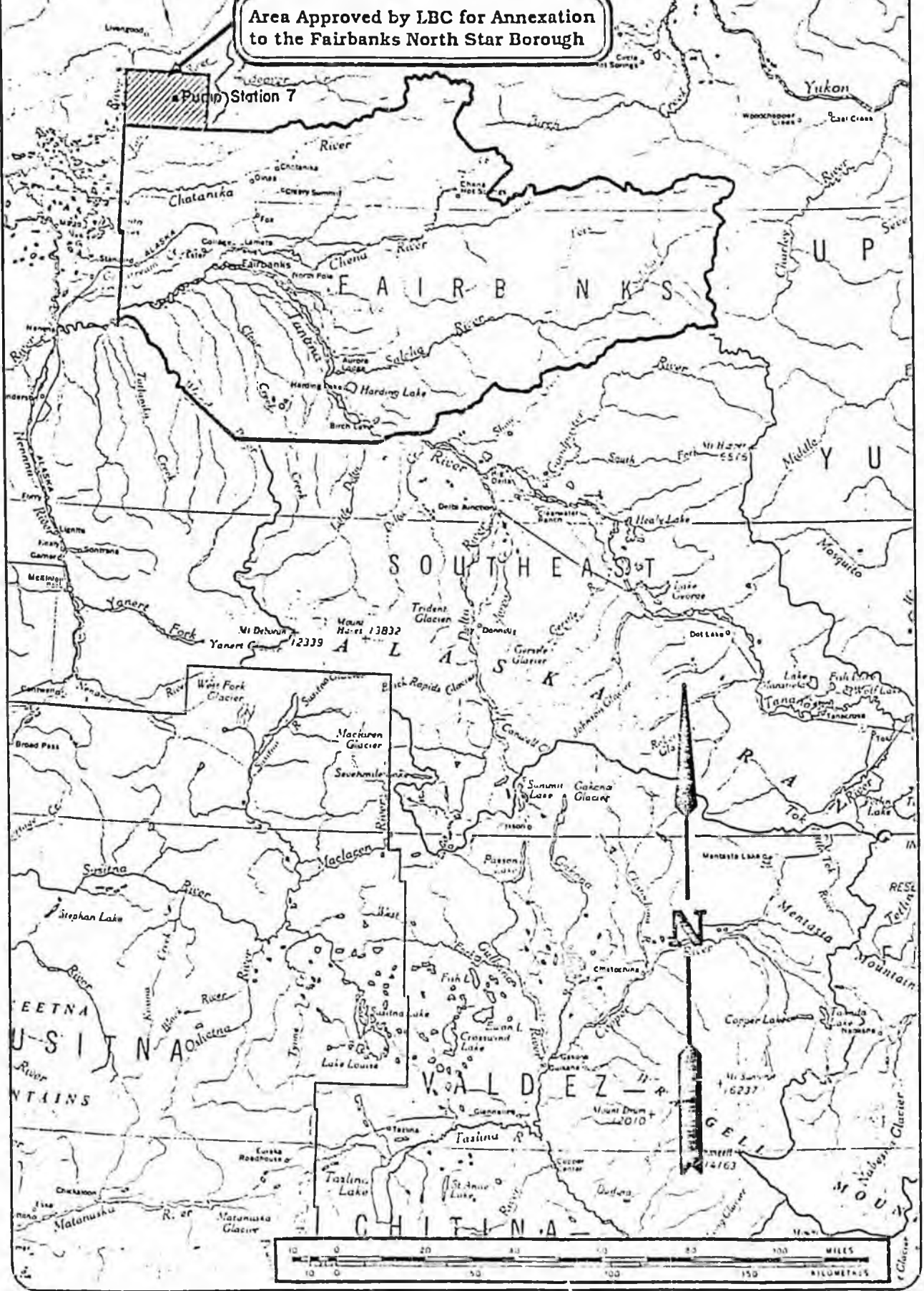
*THEREFORE, AND IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE X, SECTION 12 OF THE STATE CONSTITUTION*, the Commission hereby recommends to the First Session of the Sixteenth Legislature, the annexation of the described territory. The resulting boundary description of the Fairbanks North Star Borough reads as follows:

Beginning at the NW Corner of Township 6 North, Range 5 West, Fairbanks Meridian (F.M.); thence easterly along the north line of Township 6 North to the NE Corner of Township 6 North, Range 3 West, (F.M.); thence south along the range line to the NW corner of Township 4 North, Range 3 West (F.M.); thence easterly along the north line of Township 4 North to the ridge between the headwaters of the Trail and Poker Creeks; thence northeasterly following this ridge south of Ophir and Nome Creeks and around the headwaters of Hope and Charity Creeks; thence southeasterly following the ridge south of the headwaters of Bachelor and McKinley Creeks across the Steese Highway at Twelvemile Summit; thence following the divide around the headwaters of Harrington and Crooked Creeks; thence around the headwaters of Boulder Creek and the North Fork of the Chena River to the summit of Far Mountain; thence easterly along the divide around the headwaters of Lawson Creek and Cash Creek; thence following the ridge north of the headwaters of the East Fork of the Chena River and around the headwaters of the Salcha River; thence southerly around the headwaters of Lost Creek to the ridge north of the Goodpaster River; thence southwesterly along this ridge, around the headwaters of Indian Creek, Gillis Creek and Rosa Creek and continuing along the ridge between Buckeye Creek and Tenderfoot Creek across the Richardson Highway to a point in midstream of the Tanana River; thence downstream in midstream of the Tanana River to its intersection with the south line of Township 7 South; thence west on this township line to a point mid-stream in the Wood River; thence downstream in the midstream of the Wood River to a point midstream in the Tanana river; thence north and east in midstream of the Tanana River to its point of intersection with the west line of Range 5 West; and thence north on this range line to the NW Corner of Township 6 North, Range 5 West, (F.M.), the point of beginning.



EXHIBIT B  
ANNEXATION TO THE FAIRBANKS NORTH STAR BOROUGH

Area Approved by LBC for Annexation  
to the Fairbanks North Star Borough



COMMISSION MINORITY  
SUMMARY OF POSITION ON FAIRBANKS ANNEXATION

The following summary of the minority position concerning the Local Boundary Commission 1988 Fairbanks Annexation petition was prepared by Commissioner Cotten.

1. There is no precedent for the decision. Despite the effort to claim some type of parallel with an unrelated annexation by Haines in the early 1970's, this effort has no precedent. No municipality has claimed additional property to the tune of \$162 million and not met one standard other than the ill-defined open-ended "valid public purpose" standard.
2. The annexation allows additional control and financial benefit with no additional responsibility or service. The Borough takes on no new service or responsibility but receives, to the detriment of the rest of the state, \$1.3 million annually. The staff position doesn't even pretend the annexation is anything but a money grab.
3. The annexation is illogical, piecemeal and counter-productive to encouraging regional government in the unorganized borough. The annexation does not follow any natural boundary and serves notice to others that a piecemeal approach to regional government may be acceptable. Moreover, it is politically self-defeating if the Commission wishes to convince the Legislature of needed changes to state assistance programs if it allows the second largest community to obtain the benefits of the needed changes without any effort.
4. The borough argument of a higher than average local contribution in Fairbanks is specious and misleading. Nowhere is the issue of what services cost in Fairbanks described or if there is a possibility that the borough simply promised too much and politically is not brave nor competent enough to make cuts or increase revenues from users.
5. 36 people employed in a pump station is not a rational basis for the annexation. It was argued that since the 36 people employed at the pump station lived in Fairbanks, it was logical to have it annexed. This simply doesn't make any sense. The 36 people represent 0.048% of the borough population. To state that because such a small percentage of the borough population work in the unorganized borough but reside inside is justification to annex the area is simply grasping for straws.

# STATE OF ALASKA

## DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

STEVE COWPER, GOVERNOR

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January 6, 1989

The Honorable Shelley Dugan  
Acting Chairperson  
Local Boundary Commission  
P.O. Box 55109  
North Pole, AK 99705

Dear Commissioner Dugan:

I am writing this letter in response to actions taken by the Local Boundary Commission concerning the proposed annexation of territory to the Fairbanks North Star Borough. Clearly, the proposal is among the more complex and controversial of those the Commission has faced.

I commend the members of the Commission for their commitment to their individual views on this matter and respect the different philosophies which have emerged. I am, however, troubled by the fact that the Commission is now in a position of having to submit a recommendation to the legislature which does not enjoy the support of a majority of the members of the Commission.

Additionally, I find it disturbing that at this point, the matter has been decided on the basis of parliamentary procedure. To my knowledge, there has never been an instance where the Commission has submitted a recommended boundary change to the legislature which has not been supported by a majority of its members.

I assure you that my comments are in no way precipitated by the statements made by officials of the Tanana Chiefs Conference or others. Rather, my concern stems from a desire to avoid the establishment of what I view as an extremely poor precedent concerning the procedures of the Commission.


Consequently, I respectfully urge the Commission to formally reconsider its approval of the petition for annexation by the Fairbanks North Star Borough. Should the Commission desire, the Department is prepared to carefully reexamine all aspects of the proposed annexation. Such an effort on our part would result in the preparation of a supplemental report and recommendation on the matter. Further, the Commission could choose to conduct additional hearings on the proposal.

The Honorable Shelley Dugan  
January 6, 1989  
Page Two

Taking such action would allow the Commission to enter a clear decision on the petition of the Borough. Because such a decision would be based on the full record and would require a majority of Commission members approval, it would dispel most, if not all, criticism regarding procedures used to arrive at a final decision.

A copy of this letter is being provided to other members of the Commission and interested parties. I would welcome the opportunity to discuss this matter with you and other members of the Commission at your convenience.

Sincerely,

  
Marty K. Rutherford  
Director

cc: The Honorable Jo Anderson, Member, LBC  
The Honorable Lamar Cotten, Member, LBC  
The Honorable Ben Nageak, Member, LBC  
The Honorable Juanita Helms, Mayor, FNSB  
- Senator John Binkley, Alaska State Legislature  
David G. Hoffman, Commissioner, DCRA  
Rex Nutter, Petitioner's Representative, FNSB  
Mitch Demientieff, President, TCC  
Robert I Shoaf, Alyeska Pipeline Service Company  
Mike Walleri, TCC

**STATEMENT OF  
TANANA CHIEFS CONFERENCE, INC.**

**BEFORE THE  
LOCAL BOUNDARY COMMISSION  
STATE OF ALASKA**

**JANUARY 3, 1989**

**BY**

**MICHAEL J. WALLERI  
ATTORNEY**

The Tanana Chiefs Conference, Inc. (TCC) is the regional Native non-profit for the Interior of Alaska serving 43 villages from Holy Cross to Eagle. To date, TCC has not been involved in the consideration of the proposal by the Fairbanks North Star Borough (FNSB) to annex 216 square miles of land north of its present borders. We apologize for our late entry into this issue, however, the FNSB's proposal has only recently come to our attention. The full impact upon the region could not have been foreseen in light of the draft borough studies released by the Department of Community and Regional Affairs this month. Thus while our intervention in this matter is late, it could not be avoided. Again we apologize to the Commission.

#### PART I

NEW INFORMATION NOT AVAILABLE AT THE TIME OF THE NOVEMBER 18th HEARING REQUIRES RECONSIDERATION OF THE FNSB PROPOSAL.

In September of this year, the Fairbanks North Star Borough submitted a petition for annexation of 216 sq. miles of land within the Yukon Flats REAA. A hearing was held on November 18, 1988. Based on that hearing, the petition was approved on December 2. On December 28, the LBC voted to reconsider the issue, denied the request, rescinded the denial, and approved the petition setting a hearing on the matter for January 3, 1989 and invited TCC to offer comments.

During this summer, however, collateral developments occurred which raised new issues. Last year, the legislature considered S.B. 1, which proposed incorporation of the unorganized borough. While the bill did not pass, a series of studies were commissioned by the Department of Community and Regional Affairs as to the feasibility of borough incorporation. Study areas included the Yukon-Koyukuk REAA, Denali, Delta-Greely and the Copper River areas. Those studies have not yet been finalized, however, within the last month, the Department has released draft copies,

which we have only hurriedly reviewed. A prior study of a Yukon Flats borough was completed in 1979.

In response to these actions, some of our subregional Boards, which have been meeting, requested that we study the issue and report back to them this winter. We are currently in the process of doing this.

Essentially, the 1979 report on the Yukon Flats suggested that a borough would not be feasible. The Yukon Flats has a tax base which is roughly equal to that of the Yukon-Koyukuk REAA. However, the draft study released this month by the Department of Community and Regional Affairs suggest that the Y-K REAA could support a minimal borough government, similarly, the Department draft studies conclude that the Copper River and Delta-Greely areas similarly could support minimal boroughs, while the Denali area could not.

Our preliminary review of the studies leads us to a conclusion that the proposed areas of incorporation are too small. Large areas of the TCC region would be outside any borough and have no tax base to support future organization. These include the Upper Tanana, Upper Kuskokwim and Lower Yukon. For these areas, borough government would not be feasible within the foreseeable future. On the other hand, the Yukon-Koyukuk, and Yukon Flats areas would have small populations with a large tax base of which the pipeline amounts to about 98% of assessable property. As noted in the Departments report on the proposed annexation, the effect of the state tax cap on pipeline property would create surplus taxable value in the pipeline which these borough's could not legally tax. The effect of the tax cap would substantially limit the size of these boroughs and does not take into consideration the relatively high costs of service in the area.

Our preliminary investigations suggest that if boroughs are to be organized in the Interior, it would be better to organize the

entire TCC region (excluding Delta-Greely) as a single borough. According to the TCC Long Range Health Plan completed in 1988, there are 17,319 people within the TCC region (excluding Delta-Greely). We estimate that the pipeline within this area amounts to about \$1.4 billion in assessed valuation, which presently generates about \$28 million a year in tax revenues (20 mil). Based upon the recent DCRA reports, we also estimate that the pipeline constitutes 98%+ of taxable property in the region. A tax rate equivalent to the FNSB mill. rate of 12.243 would yield about \$17 million in tax revenue. Out of these proposed revenues, we estimate that the local contribution to education in the proposed borough would be about \$11 million. Which would be equivalent to about 7.85 mills.<sup>1</sup>

These basic facts were not available prior to our analysis of the DCRA reports which were intended to promote a discussion of borough formation. While we cannot support the proposals to break up the TCC region into weak and powerless boroughs with limited tax bases, we believe that a single TCC region borough deserves serious consideration. This information was not available at the November 18th hearing, and the LBC should reconsider the FNSB proposal in light of this new information. The emergence of a proposal for a single TCC region borough raises questions regarding constitutional, legislative, and administrative standards not previously considered by the LBC.

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<sup>1</sup>This is based upon the assumption of educational services for five REAA's and three city operated school districts.

PART II

THE FNSB PROPOSAL IS CONTRARY TO THE LEGISLATIVE STANDARD CONTAINED IN LEGISLATIVE RESOLVE NO. 52

Legislative Resolve No. 52, passed during the last legislature provided that:

Be It Resolved by the Alaska State Legislature that the Local Boundary Commission is requested to take into full consideration the desire of residents of an area in the unorganized borough to be self-governing and give them reasonable time to study the concept of self-government; and

Be It Further Resolved that the Local Boundary Commission is requested to postpone borough annexation procedures until after December 1, 1989, in an area where the formation of an organized borough is being studied if a person residing in the area proposed to be annexed and involved in the organization effort requests the delay.

While the territory to be annexed is not within the areas which were the subject of the DCRA studies, the territory is surrounded and immediately adjacent to the Yukon-Koyukuk and Denali study areas. The study area boundaries were not fixed in concrete and are subject to adjustment after the "full consideration" contemplated in the Legislative Resolve. As the Legislative Resolve indicates, that full consideration was not contemplated to be finished until December 1989, and a moratorium on these types of annexations was intended.

The effect of the Resolve is to establish a legislative standard to guide the LBC in considering borough annexations of territory in the unorganized borough before the residents of the unorganized borough could give full consideration of their organizational options. The process contemplated by the Legislature is only half completed. The DCRA studies commissioned by the legislature have not been finalized, and only draft reports have

been released. It is only now that the residents of the unorganized borough have had a first opportunity to provide input into the self-government study. It can hardly be said that there has been reasonable time to study and adjust the proposals. For the FNSB to seek to annex a tax base which generates \$2 million a year, and withdraw the area from the new borough(s) is obviously contrary to the language and intent of the legislative resolve.

There has been some attempt to suggest that the Legislative Resolve was intended to apply to limited local controversies. This is simply not the case, and is contrary to plain meaning of the language used. The LBC was requested to postpone all annexation procedures in areas where borough organization is being studied when requested. It is fairly obvious that TCC represents the vast majority of residents of the region and that the FNSB is seeking to annex an important part of the region. Considering the Legislative Resolve, we believe that the LBC should postpone consideration of the annexation until December 1989 and that a failure to do so would violate legislative standards.

A one year postponement to allow the TCC region to fully consider borough formation will not significantly impact the FNSB with respect to their stated need. As noted in the LBC findings, the greatest inequity which the FNSB seeks to avoid relates to the reduction in the State education foundation program which will begin in 1992.<sup>2</sup> The goal of the FNSB is to offset this reduction by the revenues generated by annexation. However, if the annexation is approved now, the FNSB will begin collecting revenues from the annexed area in 1990, a full two years in advance of the reduction in state education foundation funding for which FNSB seeks compensation. By contrast, if the annexation proceeds, the proposed TCC region borough would be permanently denied this

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<sup>2</sup>Decision at p. 2.

revenue source, and may result in the proposal proving to be financially unsound. Postponement, as contemplated by the Legislative Resolve No. 52 is clearly warranted.

### PART III

THE DECISION IS INCONSISTENT WITH THE ADMINISTRATIVE STANDARDS ARTICULATED BY THE LBC WHEN A SINGLE BOROUGH IN THE TCC REGION IS CONSIDERED

As stated in the DCRA report to the LBC regarding this matter,

Essentially, the annexation proposal boils down to an attempt by the FNSB to expand its tax base in support of the above services which it provides to the estimated 73,540 individuals residing within its boundaries.

DCRA Report p. 6.

While the LBC decision finds that revenue enhancement of the FNSB is not sufficient to justify annexation, the LBC compared the condition of the FNSB with other municipalities and found equities favoring the FNSB proposal. Moreover, the LBC only considered a scenario of a Yukon Flats borough and found no harm. Given these comparisons and assumptions about the course of borough formation in the Interior, the decision would seem rationale given the stated goals.

However, the basic assumption about the course of borough formation in the Interior is inconsistent with governing constitutional doctrines<sup>3</sup> and prudent response to the recently released DCRA reports. Specifically, the consideration of a single borough in the region would affect the LBC findings in the following ways:

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<sup>3</sup>Please see discussion of constitutional doctrines in infra.

A. Annexation Would Not Equitably Enhance The Tax Base Of The FNSB

There is no question that annexation of the area would enhance the FNSB tax base, however, the relative loss to the TCC region borough's tax base would be substantially disproportionate. It is noted that the taxable property in the FNSB is 14% below the statewide average.<sup>4</sup> Based upon our data respecting population and estimated assessed valuation (see above), we calculate that the per capita assessed valuation within the TCC region, including the subject area, to be 3.1% below the statewide average.<sup>5</sup> However, if the subject area were to be excluded from the TCC region by annexation to the FNSB, the per capita assessed valuation within the TCC region would drop to 17% below the statewide average.<sup>6</sup> The annexation would raise the value of taxable property within the FNSB by 5.2% but lower the taxable property within the proposed TCC borough by 12%. Thus, by trying to correct a perceived inequity with respect to the tax base of the FNSB, the LBC will create a greater inequity with respect to the proposed TCC regional borough.

This effect can be demonstrated more clearly in comparing relative changes in mill rates for educational services. Currently, the FNSB mill rate for local contribution to education is 8.1 mills.<sup>7</sup> The proposed TCC regional borough would require a mill rate of 7.85 mills if the subject area were within the tax base. (supra) However, if the area were excluded from its tax base, the mill rate for education would rise to 9.166 mils, or an increase of 1.69 mils. The revenue enhancement anticipated by the FNSB would only be a reduction of the mill rate by .6 mills. Thus, for local contribution to educational services alone, the

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<sup>4</sup>This is based upon the average statewide per capita assessed valuation figure of \$83,430.

<sup>5</sup>\$80,836.

<sup>6</sup>\$69,288.

<sup>7</sup>See p. 11 of DCRA Report.

relative benefit anticipated by the FNSB is less than half the detriment to be inflicted upon the proposed TCC region borough.

There is no question that the proposed TCC borough will suffer disproportionate harm relative to the benefit sought by FNSB if the annexation is approved.

B. The Annexation Is Contrary To Public Policy As Articulated By The Commission And Prior Judicial Decisions Respecting The Alaska Constitution.

The LBC Decision contains a finding that the annexation represents sound public policy. That finding does not consider the impacts upon formation of a TCC region borough. Consideration of the proposed TCC regional borough substantially alters an analysis of the articulated policy goals and raises a constitutional issue not considered by the LBC.

1) The LBC Did Not Consider Art. X, Sec. I of the Alaska Constitution.

The Local Government Article of the Alaska Constitution provides that,

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

This constitutional doctrine has been interpreted by the Courts as espousing a policy of encouraging the creation of borough governments. See Mobil Oil Corp. v Local Boundary Commission, 518 P.2d 92 (Ak. 1982). More specifically, the policy favors the creation of a minimum number of local government units.

The proposal for a TCC region borough would maximize the local self-government available to the region as noted above, if the Yukon-Koyukuk and Yukon Flats organized separately, the other areas of the Interior would lack a sufficient tax base to support borough government. A single borough would provide a sufficient

population base to allow full local taxation of the regions taxable property under existing state law. Additionally, a single borough would meet the second constitutional goal of creating a minimum number of local government units. Considering the available scenarios for borough organization in the region, the single borough option most closely reflects the standard articulated in Art. X, Sec. I of the Alaska Constitution.

The Alaska Constitution, provides for the LBC to decide boundary questions based upon state-wide considerations rather than local political decisions. Fairview Public Utilities v City of Anchorage, 368 P.2d 540 (Ak. 1962); Oesau v City of Dillingham, 439 P.2d 180 (Ak 1968); City of Douglas v City and Borough of Juneau, 484 P.2d 1040 (Ak. 1971). It is clear that the LBC policy respecting tax base equity reflects a statewide perspective. However, the mandate to encourage maximum local self-government with a minimum of local government units presents a constitutional issue which takes precedence over the Commissions efforts to deal with transitory inequities in tax bases. As noted above, the viability of borough organization for a large part of the state will be adversely impacted and possibly frustrated. Moreover, the effort to give equity to FNSB creates greater inequity respecting the TCC region borough. The balancing of such considerations sharply tip against annexation when the constitutional imperative to encourage organization of the unorganized borough is considered.

2) The Financial Gain To The TCC Borough Is Not Excessive or Unwarranted.

In its policy considerations, the LBC found that the gain to FNSB was not excessive or unwarranted. This was based upon a comparison of the per capita revenues from "non-local sources"<sup>8</sup>

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<sup>8</sup>The characterization of local property taxes on pipelines as "non-local sources" is rather curious. Clearly, direct  
(Footnote Continued)

received by other boroughs. Examples offered by the LBC ranged from \$27,198 to 1,062 per capita. The FNSB would receive \$116 per capita. The per capita receipts from pipeline revenues for the proposed TCC region borough, would also not be excessive amounting to about \$981 per capita<sup>9</sup>, which would be less than the examples of excess used by the LBC.

Moreover, while the net gain to FNSB through annexation would be \$27 per capita<sup>10</sup>, the net loss to the proposed TCC borough would be \$115 per capita, almost four times the gain to FNSB. Thus, in considering the per capita gain to FNSB relative to the per capita loss to the TCC region borough, it is clear that it the FNSB gain is excessive and unwarranted.<sup>11</sup>

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(Footnote Continued)

intergovernmental transfers of revenue through municipal assistance and revenue sharing programs are "non-local funds" since they come from the State's general fund. Direct property taxes on local property within a municipal boundary under a coordinated intergovernmental taxing program is obviously locally generated revenues. Under the proposed definition of "non-local", any property tax could not be considered locally generated given the federal income tax system. For example, property taxes on homes and business may be credited against federal income taxes. Consequently, it can be argued that all such taxes result in an indirect transfer of federal revenues to local government and are therefore "non-local" revenue. Similarly, local municipal bond revenues are tax exempt and result in a similar indirect transfer of revenue from the federal government. Consequently, the only revenues which could be truly considered "local" are sale tax revenues and taxable enterprise revenues, since neither revenue source results in a tax credit under State or federal tax law. The FNSB has no such revenue since it does not levy a sales tax and has no taxable enterprise income. Consequently, under the definition of "non-local" used by the LBC, 100% of the revenues of the FNSB are "non-local." As applied by the LBC in its decision, the distinction can only considered to be arbitrary.

<sup>9</sup>The Statement of Decision is in error on this point. It states that the net gain would be \$76.99, however the correct calculation is  $\$1,980, 712 \div 73, 540 = \$27.07$ .

<sup>10</sup>This assumes a mil rate equal to FNSB.

<sup>11</sup>The use of per capita figures is not adjusted for cost  
(Footnote Continued)

3) The Effect of The Annexation on the TCC Region Borough Is Inconsistent With The Commission's Statement on Borough Government.

The Commission's Statement on Borough Government advocates for reassessment of State financial aid to municipalities to provide greater equity to all municipalities. The decisional statement asserts that:

Certainly this Commission would not view in the same regard an annexation proposal of this nature by a municipality whose tax base was greater than the average of other boroughs.

at p. 3.

The LBC further noted that even after annexation the FNSB will have a weak tax base which will remain 12% below the state-wide average. However, annexation will render the proposed TCC region borough - which would currently be only slightly below average (i.e., 3% below) - to be at a greater inequity than currently experienced by the FNSB (i.e., 17% below average). See supra. Consequently, the means selected by the LBC to provide equity to the FNSB is not rationally related to its goal of achieving statewide equity since it will result in imposing greater relative inequity upon the proposed TCC regional borough.

4) The Annexation Will Diminish The Viability of a Potential Borough in the Adjacent Region

The LBC concluded that the annexation would not adversely affect the formation of the Yukon Flats REAA borough since that area had surplus taxable property as a result of the State tax

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(Footnote Continued)

differentials of doing business between rural and urban Alaska. While the relative per capita net loss to the TCC is greater in absolute dollars, the differentials with respect to the cost of doing business in the rural areas exacerbate the disparity. This should be remembered when comparing all per capita figures used in this statement.

cap on pipeline property.<sup>12</sup> However, as noted above, the formation of a single borough in the TCC region would be more consistent with the directive of the Alaska Constitution, and such a borough would not be affected by the State tax cap. Consequently, there is no surplus assessed valuation in a regional borough proposal, and any diminishment of the regions tax base would diminish the viability of the potential borough in the adjacent region.

5) The Haines Annexation Is Not A Precedence For This Annexation

The LBC found a precedence in the Haines Annexations of the 1970s. The precedence is highly questionable. First, as the findings point out, Haines provides educational services to the annexed area through correspondence. In this case, the Borough does not intend to provide any areawide services. The only service planned is non-areawide, i.e., fire service. There is no evidence that the FNSB plans to include the Pump Station in a fire service area. In fact, Alyeska Pipeline Service Company provides its own fire service, which is eminently better than any response which FNSB might offer. In fact, for FNSB to provide or include the Pump Station within a fire service area, Alyeska would have to consent and pay additional non-areawide taxes. There is no evidence that Alyeska intends to do so.

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<sup>12</sup>The LBC noted that recent estimates property value in the region to be about 805 mil. A review of DCRA valuation estimates used in the 1988 Regional Government Study by DCRA show gross errors in valuation methods in this region. The vast majority of private land in the TCC region is subject to restrictions on taxation by operation of the Native Townsite Act, Native Allotment Act, ANCSA (as recently amended), State exemptions for elderly and housing authority projects, etc. The 1988 report did not fully account for these exemptions. Moreover, recent studies by DNR and BIA allotment appraisals suggest a substantial devaluation in the market value of rural property values which were not reflected in the 1988 study.

Secondly, the annexations did not occur at a time when the adjacent area was considering borough formation. There is no evidence that the adjacent area has ever considered borough formation.

Thirdly, the proposed annexations reflected expansion of the Haines borough to natural geographic boundaries taking into the borough the entire eastern slope of the Chilkat Range located on the Chilkat Peninsula.

Such parallels do not exist with regard to the present proposed annexation and any comparison is transparently suspicious.

6) Revenue Enhancement Is Not A Justification For Expansion Of Borough Boundaries.

It is agreed that revenue enhancement is not a justification for annexation.

PART V

THE STATUTORY AND ADMINISTRATIVE REQUIREMENTS HAVE NOT BEEN MET

As noted in pages 9-14 of the DCRA report, one of the first eight standards and all of the remaining listed standards must be met.

Of the first eight, only numbers 3, 7 (both relating to services) and 8 (policy) could be possibly met. The area is uninhabited, and as noted above, the FNSB does not intend to realistically provide any services. In fact, the proposed area immediately abuts the private property of the closest inhabitants, the Hooper family, which receives educational services from the Yukon Flats REAA. The proposal is gerry mandered to obviously avoid providing municipal services. As to number 8, (policy) the policies considerations outlined above strongly militate against approval.

As to standards 9-14, the service requirements expressed in those standards are very questionable, for the above stated reasons.

PART VI

THE COMMISSION FAILED TO APPLY THE STANDARDS AS PROVIDED IN 19  
AAC 10.200

The regulations governing annexation procedures provide that:

19 AAC 10.200. APPLICATION OF STANDARDS. The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. If the immediate extension of services is not possible, the commission must be satisfied that the services not immediately extended will be extended as soon as possible and that reasonable plans have been formulated for the capital expansion necessary for the extension of services.

The decision of the LBC failed to apply the service standards as provided in this section. Under this regulation, the FNSB was required to demonstrate that both areawide and non-areawide services will be extended to the annexed area immediately. The petitioner admits, and the LBC found that education services (areawide) would not be extended. Additionally, the only non-areawide service discussed by the LBC was fire service, and it was found that fire service was not needed because of the private services provided by Alyeska. Thus, it was implicitly found that services would not be immediately extended to the area. The wide variety of services offered by the borough and their extension to the area were not even considered.

In such an event, the regulation requires that the FNSB develop a reasonable plan for capital expansion necessary for extension of such services and that the Commission be satisfied as to the adequacy of such plans. The FNSB offered no such plans and the Commission failed to make any finding on this issue.

The failure to comply with an administrative requirement renders the decision defective. See Port Valdez Co. v City of Valdez, 522 P.2d 1147 (Ak. 1974). The petition should therefore returned to the FNSB for resubmission.

#### CONCLUSION

In summary, we would request that the decision be delayed to allow the Interior to consider borough incorporation. We again apologize for our lateness in responding to the issue. Given the gravity of the proposal, and the ongoing borough study in the Interior, we believe the Commission should not proceed further at this time.

# Pump station annexation ruling stands

By SAM BISHOP  
Staff Writer

The Local Boundary Commission Wednesday upheld its decision to recommend that the Fairbanks North Star Borough annex Pump Station 7 after learning of objections to the plan.

The decision followed a confusing meeting during which the commission at one point voted to kill the annexation, members said in interviews this morning.

The confusion began when Mike Walleri, an attorney for the Tanana Chiefs Conference, showed up at the meeting to object to the annexation. However, the initial public comment period had already been closed so the commission did not permit him to speak, according to Shelley Dugan, a commission member and North Pole's city clerk.

Walleri said today he believes the commission violated its own procedural rules when it approved the annexation petition Wednesday.

The decision, which takes effect unless the Legislature kills it within 45 days after it convenes Jan. 9, would permit the borough to annex 216 square miles northwest of Fairbanks.

The land surrounds pipeline Pump Station 7. Property taxes on the station and pipeline could add

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## ANNEX

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\$2 million to the borough's annual income. Borough officials advocate the annexation.

Walleri said the commission should not approve the annexation until some broader policy issues have been more thoroughly discussed. TCU is a health service and advocacy organization for rural areas.

At present, the state levies a property tax of 20 mills on the pipeline and facilities in areas that are not within boroughs. When a borough annexes an area, the state reduces its property tax on the pipeline by the equivalent of the borough's property tax. Walleri questioned whether organized boroughs should be taking that money from the state, because it is essentially the rural areas' local contribution to education, Walleri said.

Commission member Dugan agreed that arguments over education funding are behind the annexation proposal, but she supports the idea.

"We think there's a lot of inequities in the state funding programs in school funding and revenue shar-

ing," Dugan said. "Approving the annexation is one way to flag this problem."

Dugan said that if there were a competing borough proposal, the commission might be more hesitant, but there is not.

Walleri said other boroughs are being considered.

"Last year, the Legislature adopted a resolution directing the Local Boundary Commission not to proceed with annexations in areas that were subject to borough studies," Walleri said. "The area that is proposing to be annexed is surrounded by two areas that are under study—the Denali area and Yukon-Koyukuk area."

The reports on those areas were just released by the state Department of Community and Regional Affairs, Walleri said. He is not happy with their recommendations and believes the boroughs proposed by the departments would be too small to support a viable government.

The Fairbanks borough's annexation of Pump Station 7 could make boroughs in the area even less feasible, Walleri said.

Lamar Cotten, a boundary com-

mission member and administrator of the Aleutians East Borough, said he opposes the Fairbanks' borough annexation proposal.

He called the proposal a "land grab." He said it is an obvious attempt to get more money from the state by preempting state taxes without providing any more services.

The Community and Regional Affairs Department said the state should approve the annexation because Fairbanks' tax base is 15 percent lower, per-student, than the average Alaska borough.

Cotten said it's not the boundary commission's responsibility to solve such problems. He suggested that Fairbanks' taxes are higher than other areas because the government provides more services.

The boundary commission took several votes on Wednesday while trying to decide whether to let Walleri testify.

But commission member Ben Nageak of Barrow, after realizing he had voted to kill the petition, made a motion to rescind the decision, Dugan said. Nageak's rescinding motion was successful, she said.

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## Fairbanks grabs for a sugarplum

Civic leaders in the Fairbanks North Star Borough are resourceful people. They've found a way to ease their borough's fiscal troubles and stick Alaskans elsewhere with the bill.

How can Fairbanks do it? With a modern-day land grab. The borough has won preliminary permission to annex an essentially uninhabited area that's home to Alaska's biggest property tax sugarplum: a section of the Trans-Alaska Pipeline System.

It's easy to see why Fairbanks is eager to annex the area. Virtually nobody lives there, so there's no need to deliver any costly services. The borough can just sit back and collect an extra \$2 million a year in property taxes from the pipeline.

But people in the rest of the state have a right to object. Under state tax laws, that \$2 million comes straight from state treasury. Alaska levies its own tax on pipeline property — but every dollar the pipeline pays in local tax is deducted from the amount due the state.

Fairbanks' long-term gain from the move will be somewhat less than \$2 million a year. Under the state's revenue sharing formula for schools, Fairbanks will lose about \$700,000 a year starting in 1992. But grabbing \$1.3 million a year of someone else's money ain't bad work, if you can get it.

The amazing thing about this ploy isn't that Fairbanksans tried it — who can blame them? — but that the state's local boundary commission blessed the deal.

Boundary changes such as this one are supposed to be in public interest. According to the commission, the public interest here is that Fairbanks needs the tax revenue. This is the borough whose voters squawked and howled and eventually repealed a proposed 2 percent sales tax last year. The commission's decision failed to explain why Fairbanks needs the money more than other Alaskans, who will pay the bill through lower state revenues.

By law, the boundary commission's decision goes to the legislature for review. If not rejected within 45 days, the annexation becomes final. Stopping this land grab should be one of legislature's first items of business.