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Alaska State Legislature
House of Representatives
Office of the Chief Clerk


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Juneau, AK 99801-1182
(907) 465-3725

MEMORANDUM

DATE: January 26, 1994

TO: Community & Regional Affairs and Finance Committees

FROM: Suzi Lowell 
Chief Clerk

SUBJECT: Referral

Attached is the report of the Local Boundary Commission to the Second Session of the Eighteenth Alaska Legislature. The Speaker referred consideration to the Community & Regional Affairs and Finance Committees on January 26, 1994.

DRAFT

REPORT OF THE LOCAL BOUNDARY COMMISSION TO THE SECOND SESSION OF THE EIGHTEENTH ALASKA LEGISLATURE

January 19, 1994



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Darroll Hargraves, Chairperson, at-large
Shelley Dugan, Vice-Chairperson,
4th Judicial District



Frances Hallgren, 1st Judicial District
Myrtle Johnson, 2nd Judicial District
H. Toni Salmeier, 3rd Judicial District

REPORT OF THE LOCAL BOUNDARY COMMISSION TO THE SECOND SESSION OF THE EIGHTEENTH STATE LEGISLATURE

January 19, 1994

LOCAL BOUNDARY COMMISSION

Darroll Hargraves, Chairperson, at-large
Shelley Dugan, Vice-Chairperson, 4th Judicial District
Frances Hallgren, Member, 1st Judicial District
Myrtle Johnson, Member, 2nd Judicial District
H. Toni Salmeier, Member, 3rd Judicial District



Walter J. Hickel, Governor



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CHAIRMAN'S MESSAGE

1993 was an active year for the Local Boundary Commission. The Commission met on twenty occasions over the past 12 months.

During the year just ended, 12 municipal annexations were implemented or approved. In some cases, petitions requesting the boundary changes were amended by the Commission prior to approval. The Commission also denied one annexation petition.

Three of the annexations that were approved by the Commission during 1993 are subject to review by the Legislature. Formal recommendations for these annexations are included in this report. Under Article X, § 12 of Alaska's Constitution, these recommendations gain automatic legislative approval 45 days after the filing of this report (or at the end of the session, whichever is earlier) unless denied by concurrent legislative resolution.

This report also includes details about other activities of the Commission during the year just ended. These include information about petitions which have been filed but not yet acted upon, boundary proposals being considered at the local level and the status of pending litigation involving the Commission.

Additionally, the report raises special issues that the Commission wishes to bring to the attention of the Legislature. Certain of these issues have been raised in prior years. Of particular interest to the Commission is the recommendation that the Legislature adopt CSSB 164(CRA).

1994 promises to be even more active and exciting for the Commission. As noted in the report, a number of Alaska's 165 municipal governments and 100 or so unincorporated communities and regions have filed or are preparing proposals to come before the Commission in 1994. Certain of these will involve crucial policy issues relating to the dissolution of cities and the establishment and alteration of borough boundaries.

The Commission looks forward to the Legislature's consideration of the three formal recommendations and other topics addressed in this report.

Cordially,

A handwritten signature in cursive script that reads "Darroll R. Hargraves".

Darroll R. Hargraves
Chairman, Local Boundary Commission





Contents

INDEX

CHAPTER I - OVERVIEW - LOCAL BOUNDARY

COMMISSION	1
ROLE AND PURPOSE OF THE COMMISSION	1
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS	1
PROCEDURES	2
MEMBERSHIP	6

CHAPTER II - SUMMARY OF 1993 ACTIVITIES 8

CITY ANNEXATIONS	8
CITY DISSOLUTIONS	9
CITY INCORPORATIONS	10
CITY DETACHMENTS	11
CITY/BOROUGH CONSOLIDATION OR MERGER	11
BOROUGH INCORPORATIONS	12
BOROUGH DETACHMENTS	13
BOROUGH ANNEXATIONS	14
BOROUGH DISSOLUTIONS	14
LITIGATION	15

CHAPTER III - RECOMMENDATIONS FOR ANNEXATION 18

A RECOMMENDATION FOR THE ANNEXATION OF APPROXIMATELY 21 SQUARE MILES TO THE CITY OF KING COVE.	19
A RECOMMENDATION FOR THE ANNEXATION OF APPROXIMATELY 42.8 ACRES TO THE CITY OF SELDOVIA.	25
A RECOMMENDATION FOR THE ANNEXATION OF APPROXIMATELY 1.8 ACRES TO THE CITY OF SELDOVIA.	33

CHAPTER IV - SPECIAL ISSUES 38

SUGGESTED CHANGES TO AS 29	38
COMPENSATION	39
MUNICIPAL TAX ISSUES	41
OTHER ISSUES	42





Index

A

Afognak 14
Akhiok 9, 14
Aleknagik 12
Ambler 12
Atmautluak 9

B

Bay City 10
Big Lake 10, 14
Bird Creek 13
Bristol Bay Coastal Resource
Service Area 12
Buckland 12

C

Chase 14
Cheformak 10
Chena Hot Springs 12, 14
Chenega 13
Chickaloon 14
Chiniak 14
Clark's Point 12
Coffman Cove 13
Cordova 8
Craig 9, 13
Crooked Creek 10

D

Deering 12
Dillingham 12
Dillingham Region Borough 12

E

Edna Bay 13
Egegik 10
Eielson Air Force Base 12, 14
Ekuk 12
Ekwook 12
Elfin Cove 13
Ester 14

F

Fairbanks 8, 9, 12, 14
Fairbanks North Star Borough 12, 13, 14
Fort Yukon 38
Fox 14

G

Galena 38
Girdwood 13
Glacier Bay Borough 13
Gravina 10
Gustavus 10, 13

H

Haines 8, 9
Hoonah 8, 13
Houston 14
Hydaburg 13

I

Indian 13

K

Kachemak Selo 10
Kake Borough 13
Karluk 14
Kasaan 13
Kasigluk 9
Ketchikan 9, 11, 39
Ketchikan Gateway Borough 11, 14, 39
Kiana 12
Kivalina 12
Klawock 13
Knik 14
Kobuk 12
Kodiak 12, 14
Kodiak Island Borough 12
Kotzebue 12
Kupreanof 13

L

Lake Louise 14
Larsen Bay 14

M

Manokotak 12
Matanuska-Susitna Borough 13, 14
Mekoryuk 10
Misty Fjords National Monument 14



N

Nelchina 14
New Stuyahok 12
Newhalen 9
Nightmute 10
Nikiski 10, 38
Nikolaevsk 10
Noatak 12
Noorvik 12
North Pole 12, 13, 14
North Pole Borough 12, 14
Northwest Arctic Borough 12

O

Old Harbor 14
Ouzinkie 14

P

Palmer 8, 14
Pelican 13
Petersburg Borough 13
Point Baker 13
Port Lions 14
Port Protection 13
Portage 13
Portage Creek 12
Portage Pass Borough 13
Prince of Wales Island Borough 13

Q

Quinhagak 10

R

Razdolna 10

S

Salcha 12, 13, 14
Sand Point 9
Saxman 11
Selawik 12
Seldovia 8, 10
Shungnak 12
Skwentna 14
Soldotna 8
St. Mary's 11
Susitna 14
Susitna Borough 13
Sutton 14

T

Talkeetna 14
Tenakee 13
Thom's Place 13
Thorne Bay 8, 13
Togiak 12
Tooksok Bay 10
Tuluksak 9
Tununak 9
Twin Hills 12
Two Rivers 12, 14

U

Unalaska 11

V

Voznesenka 10

W

Ward Cove 10
Wasilla 14
Whale Pass 13
Whittier 9, 13
Womans Bay 14
Wrangell 13
Wrangell Borough 13



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CHAPTER I OVERVIEW - LOCAL BOUNDARY COMMISSION

ROLE AND PURPOSE OF THE COMMISSION

The Alaska Constitution and statutes provide that decisions concerning the establishment and alteration of municipal boundaries are to be made at the state level.¹ This was done to ensure that arguments for and against municipal boundary proposals would be analyzed objectively, taking areawide and statewide needs into consideration. The Local Boundary Commission (LBC) was created by the Alaska Constitution to carry out those responsibilities.²

The work of the LBC typically requires broad judgments of political, economic and social policy.³ Pursuant to statutory authority, the LBC has developed standards and procedures to guide its discretion in determining whether a municipal boundary

“An examination of the relevant minutes of [the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section [of the Constitution] was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.”

*Alaska Supreme Court - 1962
Fairview Public Utility Dist. vs. City of Anchorage*

petition should be accepted, amended or rejected.⁴

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

The Alaska Constitution also called for a State agency to advise and assist local governments.⁵ The Department of Community & Regional Affairs (DCRA) serves in that capacity. In addition to its more general duty to aid local governments, DCRA provides staff, research and assistance to the LBC. In its role as LBC staff, DCRA investigates municipal boundary proposals and prepares reports to the LBC conveying DCRA's recommendations.

The LBC staff also offers technical assistance to petitioners and other parties interested in municipal boundary proposals. Additionally, the LBC staff maintains the official records of the Commission, as well as the official records concerning the corporate status of each of Alaska's 165 municipal governments.

¹ Alaska Constitution Article X, §12; AS 29.05, AS 29.06.

² Fairview Public Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

³ Port Valdez Co., Inc. v. City of Valdez, 522 P.2d 1147, 1155 (Alaska 1974); Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 98 (Alaska 1974); Valleys Borough Support Committee v. Local Boundary Commission, Slip Op. No. 4022 (Alaska November 12, 1993).

⁴ 19 AAC 10.

⁵ Alaska Constitution Article X, § 14

PROCEDURES

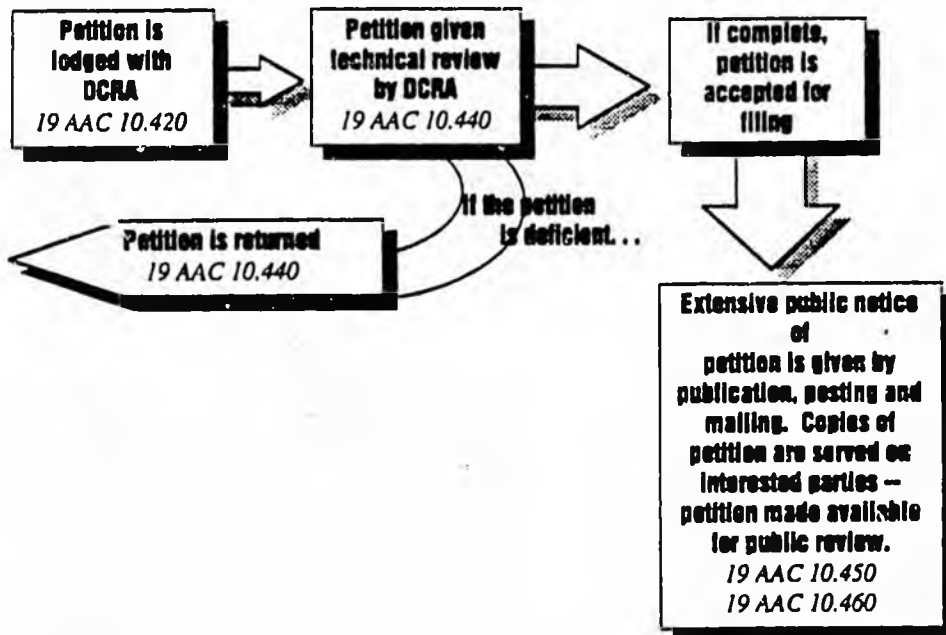


Procedures for establishing and altering municipal boundaries are designed to ensure that decisions regarding such matters are based upon complete information and analysis of the facts, the applicable legal standards and with due consideration to the position of interested parties. Procedures used by the LBC are crafted to secure the reasonable, timely and inexpensive determination of every proposal to come before it. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the LBC, and opportunity for reconsideration by the LBC. A summary of the procedures is presented below.⁶ Examples of the manner in which the procedures were implemented in two cases during the past year are provided in Chapter III.

STAGE ONE – FILING OF PETITION

DCRA offers technical assistance and petition forms to prospective petitioners. Parties are routinely encouraged to submit draft petitions to DCRA for technical review before gathering signatures. This minimizes the chance that a petition will be rejected on technical grounds. The following steps occur once a petition is formally lodged with DCRA.

- 6 When a boundary proposal is relatively simple and supported by the owners and resident voters of the territory, streamlined procedures may apply. Additionally, in any case, the LBC may relax or suspend a procedural requirement if it determines that a strict adherence would work injustice or result in a substantially uninformed decision.





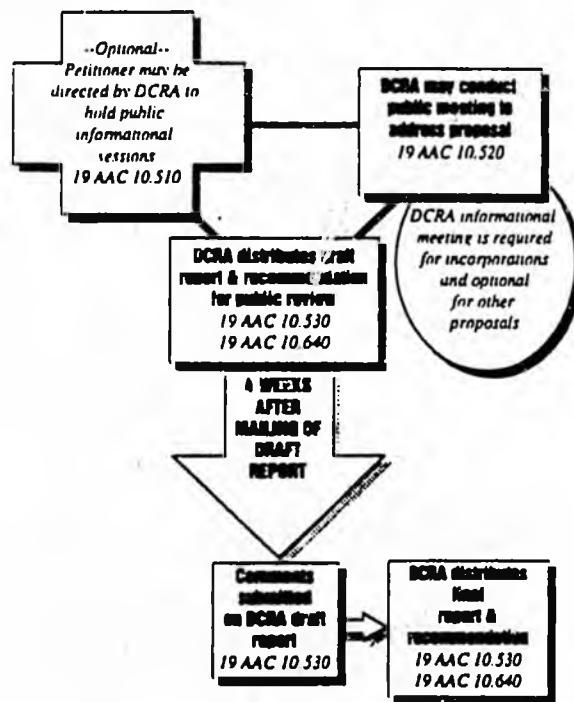
STAGE TWO – PUBLIC COMMENT

Individuals and organizations are given at least seven weeks to submit responsive briefs and comments in support of or in opposition to a petition. Those who file briefs are designated as respondents and gain certain procedural rights throughout the proceeding. The petitioner may file one brief in reply to all the responsive briefs. These steps and the regulations that govern them are outlined below.



STAGE THREE – ANALYSIS

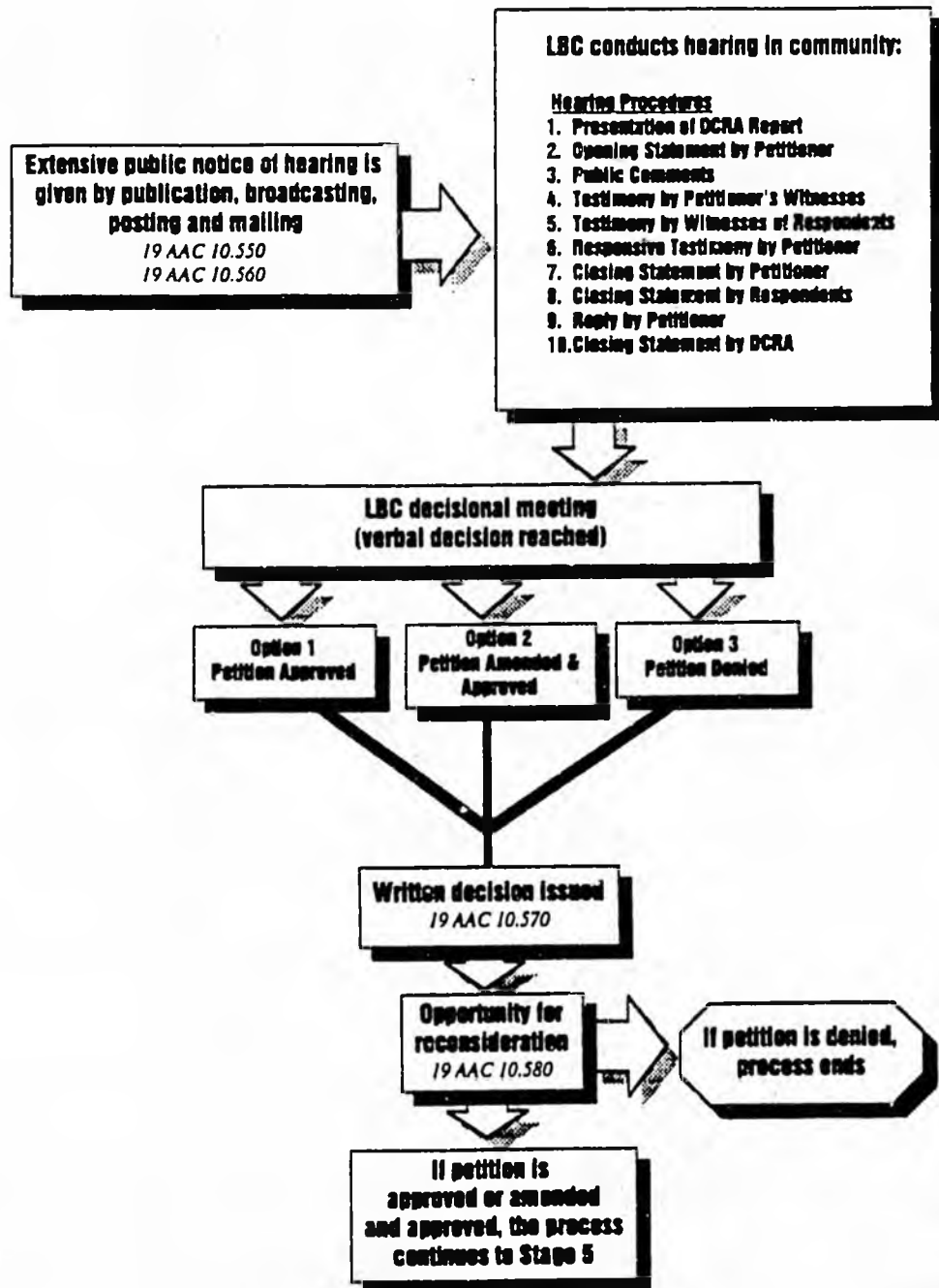
DCRA analyzes the petition, responsive briefs, written comments, reply brief and other materials as part of its investigation of a boundary proposal. Informational meetings may be conducted by the petitioner and DCRA to gather additional information. DCRA then issues a preliminary report. Following public review and comment on the preliminary report, DCRA issues its final report containing recommendations to the LBC. The steps associated with this stage are summarized below.





STAGE FOUR – HEARING, DECISION & RECONSIDERATION

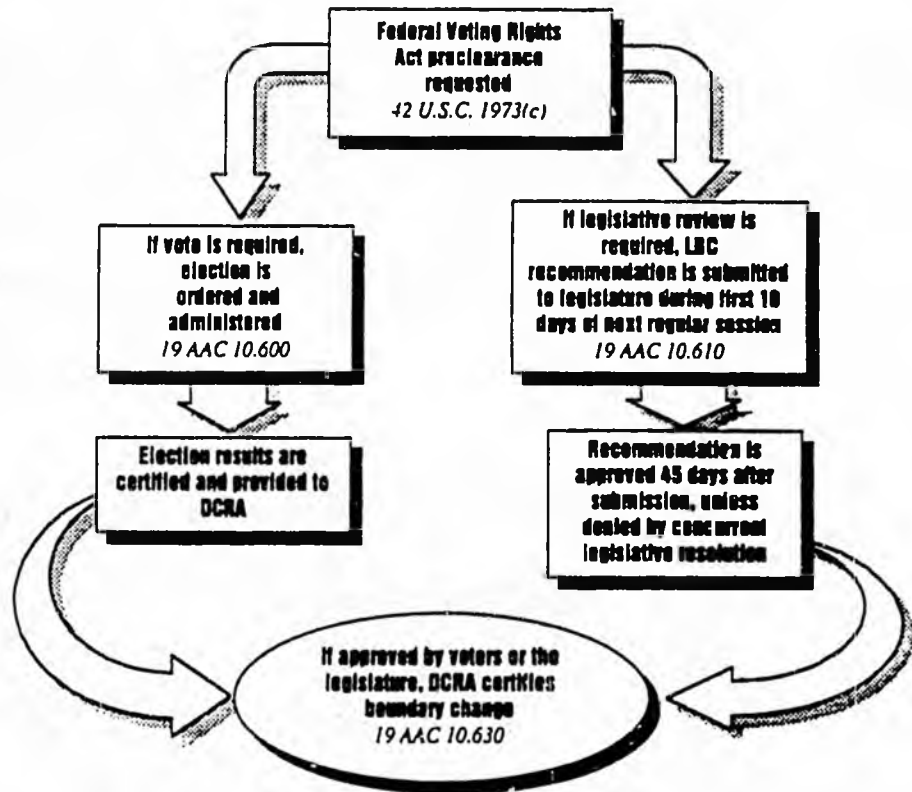
Before a public hearing, members of the LBC carefully review the petition, responsive briefs, written comments, reply brief and DCRA reports. Typically, Commission members also tour the area in question to gain a better understanding of the proposal. The steps involved in the hearing, decision and reconsideration are summarized below.





STAGE FIVE – IMPLEMENTATION

If the Commission accepts or amends a petition, the proposal may be subject to approval by the voters at a state or municipal election or by the legislature. The following is a summary of this final stage.



MEMBERSHIP



The LBC consists of five members appointed by the Governor for staggered five-year terms. The chairperson is appointed from the state at-large. Additionally, one member is appointed from each of the state's four judicial districts.

Members of the Commission serve without compensation. The present members of the Local Boundary Commission are:

Members of the Local Boundary Commission are appointed, "on the basis of interest in public affairs, good judgment, knowledge and ability in the field, . . . and with a view to providing diversity of interest and points of view in the membership."⁷



Darroll Hargraves, Chairperson:

Commissioner Hargraves is a resident of Ketchikan. He joined the Commission in March 1991,

and was appointed Chairperson on May 27, 1992. Commissioner Hargraves has been a school superintendent in Ketchikan and Nome and has taught school in Barrow, Kivalina and Gambell. He has also been an administrator at the University of Alaska, Fairbanks. Mr. Hargraves currently works as a communications and management consultant. His present term expires on January 31, 1997.



Shelley Dugan, Vice-Chairperson, 4th Judicial District:

Commissioner Dugan lives in Fairbanks. She was appointed to the Commission in September 1987. In 1988, she became Vice-Chairperson. Commissioner Dugan owns and operates a small business and serves as the Clerk/Treasurer of the City of North Pole. Her current term expires January 31, 1995.



⁷ AS 39.05.060.



Frances Hallgren, 1st Judicial District: Commissioner Hallgren lives in Sitka. She was appointed to the Commission in May 1992. She is a former music teacher and currently works as a legal secretary. She also operates a home custom sewing business. Her present term expires January 31, 1996.



Myrtle Johnson, 2nd Judicial District: Commissioner Johnson began her present term on the Commission in 1991. She had served on the Commission previously under Governor Miller. Commissioner Johnson lives in Nome and works at the Nome Senior Citizens Center. Her current term expires January 31, 1994.



H. Toni Salmeier, 3rd Judicial District: Commissioner Salmeier joined the Commission in April 1993. She is a resident of Anchorage. Commissioner Salmeier owns and operates a small business serving tourists on remote fishing and hunting trips. She also manages real estate. Commissioner Salmeier has served on a number of community boards. These include the Zoning Board of Appeals for the Municipality of Anchorage. Her present term on the Commission ends January 31, 1998.

CHAPTER II SUMMARY OF 1993 ACTIVITIES



During 1993, varying degrees of interest were expressed by local government officials and residents in almost every type of proposal that may conceivably come before the LBC. These include city and borough incorporations, annexations, detachments, dissolutions, mergers and consolidations. In several instances, formal petitions were filed and action was taken by the LBC. In some cases petitions for municipal boundary proposals are being prepared. In other cases, local officials or residents are exploring particular proposals.

This chapter summarizes the various activities that occurred during 1993. Also included is a report of the status of Supreme Court and Superior Court appeals stemming from decisions of the LBC.

CITY ANNEXATIONS

During 1993, nine annexations to cities took effect. These consisted of the following.

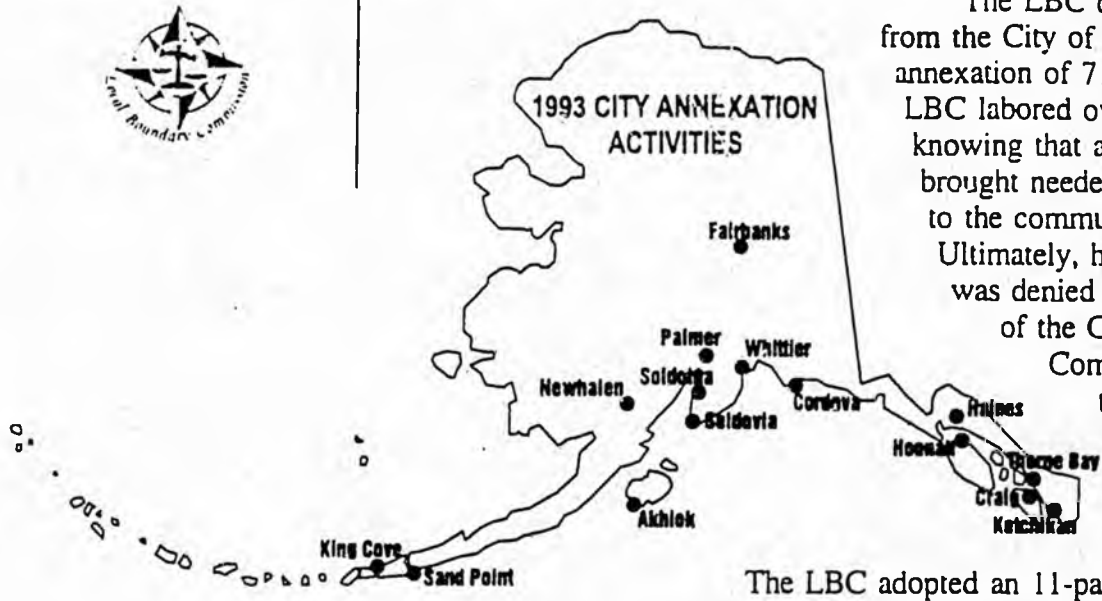
- Cordova** (68.23 square miles - effective March 30, 1993)
- Palmer** (7.5 acres - effective September 24, 1993)
- Hoonah** (7.25 square miles - effective March 30, 1993)
- Haines** (4.75 square miles - effective March 24, 1993)
- Haines** (separate annexation of 11 square miles - effective March 24, 1993)
- Fairbanks** (300.3 acres - effective July 26, 1993)
- Seldovia** (10 acres - effective February 4, 1993)
- Soldotna** (1.45 acres - effective April 2, 1993)
- Thorne Bay** (6 square miles - effective April 9, 1993)

In addition, the LBC approved three other city annexations, subject to review by the 1994 Legislature. Briefly, these consisted of the following:

King Cove (21 square miles). Details of the annexation, including the formal recommendation for the annexation begin on page 19.

Seldovia (42.8 acres). Details of the annexation, including the formal recommendation for the boundary change begin on page 25.

Seldovia (1.8 acres). Details of the annexation, including the formal recommendation for the annexation begin on page 33.



The LBC denied a petition from the City of Akhiok for the annexation of 71 square miles. The LBC labored over the decision knowing that approval would have brought needed financial benefits to the community of 81 residents. Ultimately, however, the petition was denied by unanimous vote of the Commission. The Commission concluded that the petition failed to meet the standards governing annexation of territory to cities.

The LBC adopted an 11-page decisional statement on November 9, 1993, explaining the major considerations that led to the denial of the petition. A copy of the decisional statement is available upon request.

The City of Sand Point lodged a formal petition for annexation of 32 square miles in the fall of 1993. Following a technical review of the petition, DCRA accepted the petition for filing in November. The petition is currently in the public comment stage. The LBC will hold a hearing on the petition later this year.

Several cities are developing annexation proposals or are considering doing so. These include the Cities of Fairbanks (multiple proposals), Haines, Whittier, Craig, Newhalen, and Ketchikan.

CITY DISSOLUTIONS

State law provides that DCRA "shall investigate a municipality that it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in art. X, sec. 12 of the state constitution."⁸ DCRA has identified the following five cities that it believes have been inactive for three or more years.

- Atmautluak
- Kasigluk Newtok
- Tuluksak Tununak

⁸ AS 29.06.450(b).

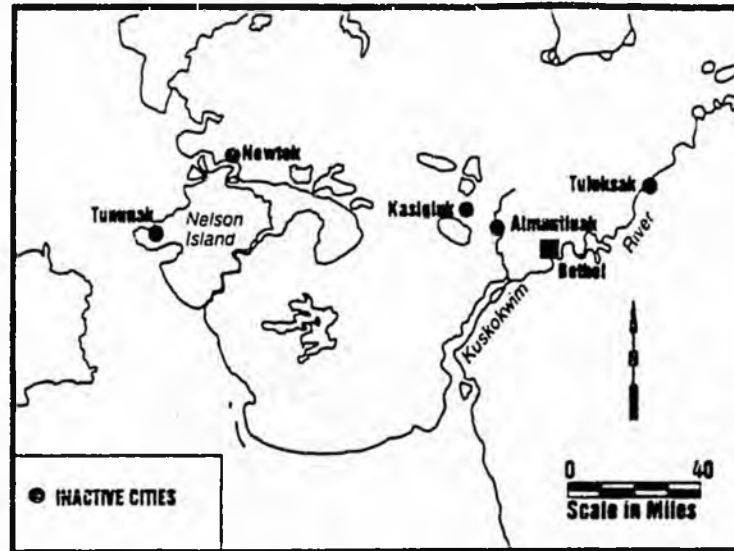
It is anticipated that the proceedings for the dissolution of the five cities in question will present the LBC with several fundamental policy issues. Some will involve basic questions such as the role of cities – as compared to

village governments and non-profit corporations – in the delivery of community services. The LBC is certain to be faced with other critical issues concerning the consequences of dissolution. For example, if the cities dissolve, their assets and liabilities are transferred to the State.⁹ Ideally, arrangements will be made wherein the communities maintain responsibility for and control over facilities needed to provide local services. Too, the State must be prudent in accepting liabilities that rightfully belong at the local level (e.g., indebtedness, potentially contaminated landfills & bulk fuel storage facilities, et cetera). One solution may be for the State to reconvey appropriate lands to some suitable organization in the community as authorized by AS 44.47.150(a)(2).

DCRA's investigation into this matter began last September. The LBC anticipates holding hearings this fall. If the LBC approves the dissolution of any of the cities in question, it is expected that formal recommendations for dissolution will be filed with the Legislature in January 1995.

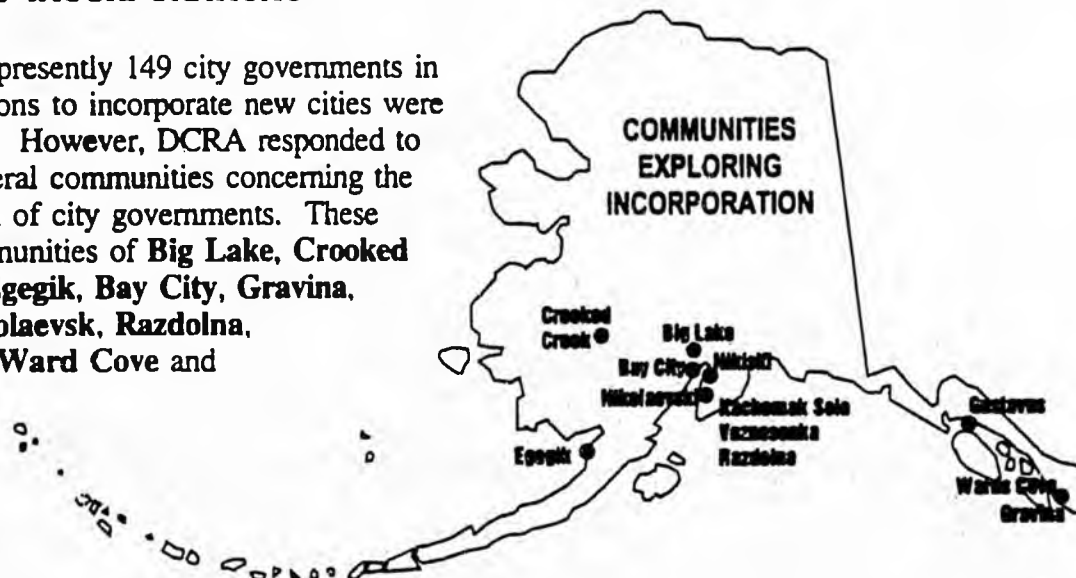
Residents of other communities have expressed interest in dissolving their city governments. These include the communities of **Chefornak, Mekoryuk, Nightmute, Quinhagak, Tooksook Bay, St. Mary's and Seldovia**. At the end of last year, a petition for the dissolution of the City of Seldovia was being prepared.

⁹ AS 29.06.520



CITY INCORPORATIONS

There are presently 149 city governments in Alaska. No petitions to incorporate new cities were filed during 1993. However, DCRA responded to inquiries from several communities concerning the possible formation of city governments. These included the communities of **Big Lake, Crooked Creek, Nikiski, Egegik, Bay City, Gravina, Voznesenka, Nikolaevsk, Razdolna, Kachemak Selo, Ward Cove and Gustavus**.





CITY DETACHMENTS

Officials of the City of Unalaska were contemplating detaching limited areas within the corporate boundaries of that city. They requested and were provided petition forms and information concerning detachment. However, no petition has yet been filed. Forms to petition for the detachment of territory from a city were also provided to a resident of the City of St. Mary's. No petition has been filed in that case either.

CITY/BOROUGH CONSOLIDATION OR MERGER

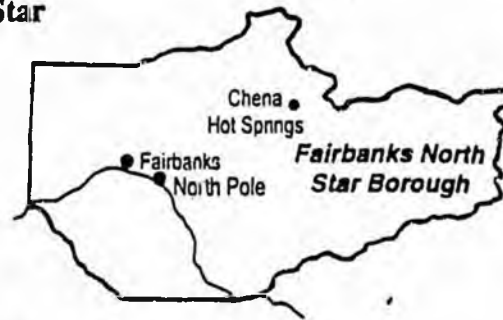
Consolidation is the creation of a new municipality from two or more existing municipalities. The original municipalities are automatically dissolved when the consolidation takes effect. Merger occurs when two or more municipalities join and all but one is dissolved. Unlike unification, consolidation or merger does not require the joining of a borough with all the cities within its boundaries, nor does it prevent the incorporation of new cities within the borough boundaries.

No petitions for merger or consolidation were filed during 1993. However, three regions of the state are actively pursuing or exploring the possibility of consolidation or merger. These consist of the following.



The **Ketchikan** City Council unanimously approved a resolution authorizing the City to petition for the consolidation of the City of **Ketchikan** with the **Ketchikan Gateway Borough**. The petition is currently under development. The proposal envisions the creation of a new home rule borough. The City of **Saxman** would be within the boundaries of the consolidated borough, but would not be legally consolidated with the borough government.

Residents of the **Fairbanks North Star Borough** began circulating a petition to consolidate the City of **Fairbanks** with the Fairbanks North Star Borough. Under the proposal, the City of **North Pole** would remain within the corporate boundaries of the consolidated borough, but would continue to exist as a city government. At last report, the petition drive had secured only about half of the required signatures.



Officials and residents of the **Northwest Arctic Borough** are currently exploring the merits of consolidating the Borough with the Cities of **Deering, Buckland, Selawik, Noorvik, Kiana, Ambler, Shungnak, Kobuk and Kivalina**. As envisioned, the City of **Kotzebue** would be within the boundaries of the consolidated borough, but would remain incorporated as a city. The unincorporated village of **Noatak** would also be included within the boundaries of the consolidated borough.

It is also noteworthy that while the **Kodiak Island Borough** Assembly had adopted a resolution in 1992 directing that a petition for the consolidation of the Borough and the City of **Kodiak** be filed, the resolution was rescinded by the Assembly in February of 1993.

BOROUGH INCORPORATIONS

Several regions of the state are exploring borough formation at various levels. These activities are summarized below:

North Pole Borough. In November, voters began circulating a petition to incorporate a new borough encompassing 9,350 square miles. The proposed borough includes the communities of **North Pole, Two Rivers, Sakha, Chena Hot Springs and Eielson Air Force Base**. The petition had not been lodged with DCRA by the end of last year.

Dillingham Region Borough. The **Bristol Bay Coastal Resource Service Area** conducted a study to determine the feasibility of forming a borough in that region. Communities in the region include **Togiak, Manokotak, Clark's Point, Dillingham, Aleknagik, Ekwok, New Stuyahok, Ekuk, Portage Creek and Twin Hills**. The



The Dillingham City Council adopted a resolution supporting "consideration of the creation of a borough in the Nushagak/Togiak drainage area" and establishing a borough formation com-

study concluded that a borough was financially viable. The Dillingham City Council adopted a resolution supporting "consideration of the creation of a borough in the Nushagak/Togiak drainage area" and establishing a borough formation committee.

Wrangell Borough. Officials of the City of Wrangell are contemplating a borough encompassing the community of Wrangell and possibly the outlying settlement of Thom's Place.

Petersburg Borough. Officials of the City of Petersburg are studying the prospects of forming a borough. Officials and residents of the nearby City of Kupreanof have expressed opposition to inclusion of that community in a Petersburg Borough proposal.

Kake Borough. Officials of the City of Kake have launched a formal study of the merits of incorporating a **Kake Borough**.

Prince of Wales Island Borough. In May of last year, representatives from Prince of Wales Island communities met to discuss aspects of forming a borough encompassing Prince of Wales Island. Communities on the Island include **Hydaburg, Craig, Klawock, Thorne Bay, Kasaan, Coffman Cove, Edna Bay, Whale Pass, Port Protection and Point Baker**.

Portage Pass Borough. Preliminary discussions have occurred among residents of **Whittier** and **Girdwood** about a possible Portage Pass Borough. As envisioned, the Borough might include the communities of **Bird Creek, Indian, Girdwood, Portage, Chenega and Whittier**.

Glacier Bay Borough. Officials of the City of **Hoonah** have reportedly expressed interest in forming a Glacier Bay Borough. As envisioned, the Borough would encompass the communities of **Hoonah, Gustavus, Pelican, Elfin Cove, and Tenakee**.

Susitna Borough. In December of 1993, a group of Talkeetna residents began exploring the prospects of forming a Susitna Borough. The proposal would necessitate detachment of territory from the **Matanuska-Susitna Borough**.

BOROUGH DETACHMENTS

Two borough detachment petitions were lodged with DCRA during 1993. In February, a petition to detach **North Pole** and **Salcha** from the



Fairbanks North Star Borough was rejected on technical grounds. The petition was not accepted for filing because it lacked sufficient qualified signatures and had other deficiencies. The petition organizer recently indicated that she plans to refine the proposal and file a new petition in early 1994. It is intended that this petition would compete with another petition for detachment from the Fairbanks North Star Borough. That other petition is noted below.

In November 1993, a petition began circulating to detach an estimated 5,400 square miles from the Fairbanks North Star Borough. The area encompasses the settlements of North Pole, Salcha, Eielson Air Force Base, Chena Hot Springs and Two Rivers. That petition is part of the effort reported earlier to incorporate the North Pole Borough. The detachment petition proposes to reduce the boundaries of the Fairbanks North Star Borough to include only the communities of Fairbanks, Fox and Ester.

Lake Louise property owners were exploring a proposal for detachment of territory from the Matanuska-Susitna Borough. No petition has yet been filed.

Kodiak Island Borough. A resident of Chiniak requested forms to petition for the detachment of territory from the Kodiak Island Borough. The proposal envisions separating the villages within the Borough from the community of Kodiak. Communities within the Borough include Akhiok, Old Harbor, Karluk, Larsen Bay, Kodiak, Port Lions, Womans Bay, Chiniak, Ouzinkie and Afognak.

BOROUGH ANNEXATIONS

Officials of the Ketchikan Gateway Borough are contemplating a proposal to annex the Misty Fjords National Monument. Petition forms were provided to the Borough in November, however, no petition has yet been filed.

BOROUGH DISSOLUTIONS

In November, a group of residents from Talkeetna and Chase indicated that they intended to petition for the dissolution of the Matanuska-Susitna Borough. This group is separate from the one noted earlier that is exploring the formation of a Susitna Borough. Petition forms were provided to the group, however, no petition has yet been filed. Communities within the Matanuska-Susitna Borough include Wasilla, Palmer, Houston, Big Lake, Talkeetna, Chase, Sutton, Chickaloon, Skwentna, Susitna, Knik, Nelchina and Lake Louise.





LITIGATION

Six cases involving the Local Boundary Commission were pending before the Alaska Supreme Court and Superior Courts during 1993. The status of each of these cases is summarized in this section of the report. Further details concerning the status of any of these matters is available upon request.

David Shaw, Valleys Borough Support Committee vs. Local Boundary Commission. On November 12, 1993, the Alaska Supreme Court affirmed a 1992 Superior Court decision upholding the incorporation of the Denali Borough. The ruling was the first Supreme Court decision directly relating to the LBC in 19 years. While the ruling established no new legal principles, it cemented the Supreme Court's long-standing views regarding the LBC and the formation of boroughs. Specifically, the high court affirmed its previous dictum that:

[A] determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy. The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as "large enough", "stable enough", "conform generally", "all area necessary and proper", "necessary or desirable", "adequate level" and the like." The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

* AS 07.10.030 contained the former statutory standards for borough incorporation. It has been replaced by AS 29.05.031. The standards set forth in AS 29.05.031 parallel those found under the prior statute and contain similarly flexible language.



Petitioners for the Incorporation of the City and Borough of Yakutat vs. Local Boundary Commission. On June 7, 1993, Superior Court Judge Michael Thompson affirmed the decision of the LBC regarding the incorporation of the Yakutat Borough. In doing so, the court concluded: 1) the procedures used by the LBC to act on the petition were proper; 2) there was a reasonable basis for the LBC's decision to amend the western boundary; 3) the LBC lacks legislative rulemaking authority for incorporation proceedings, however, it does have authority to adopt interpretive regulations governing incorporation and its incorporation regulations were viewed as such; 4) it may have been a violation of law to use regulations adopted after the petition was filed, however, that potential defect was overcome by de facto incorporation of the borough; and 5) there is a reasonable basis for the LBC's conclusion that the incorporation proposal (with amended boundaries) satisfied the borough incorporation standards.

Concerning the LBC's authority to adopt regulations, the court acknowledged that the LBC does have legislative rulemaking authority for matters involving annexation, detachment, merger and consolidation (the court did not mention dissolution, but the LBC also has express legislative rulemaking authority for such under AS 29.06.450). CSSB 164, which is pending before the Legislature, would give the LBC the authority to adopt legislative regulations concerning incorporation. Judge Thompson noted that interpretive regulations are given less deference by the court than legislative regulations.

The ruling has been appealed to the Supreme Court. At this point, briefs have been filed with the Supreme Court by the appellants and the State.

Jack Keane and Concerned Citizens of Bristol Bay vs. Local Boundary Commission. On December 13, 1991, an unincorporated association of Pilot Point area residents, property owners and fishermen filed an appeal of the LBC's decision to accept the petition to incorporate Pilot Point as a second class city. On September 3, 1992, the Superior Court affirmed the decision of the Local Boundary Commission. The matter was subsequently appealed to the State Supreme Court. Oral arguments were held before the high court on December 7, 1993.

Robert Ed Bailey vs. City of Palmer and the Local Boundary Commission. An appeal was filed January 29, 1993, over the Commission's approval of the annexation of 7.5 acres to the City of Palmer. Oral arguments were held on September 9, 1993, in the Superior Court in Palmer. On September 24, Superior Court Judge Beverly Cutler affirmed the LBC's action. In a 19-page decision, Judge Cutler concluded that "none of [the Appellant's] claims have merit." The decision was not appealed to the Supreme Court.

Russell Babic, et al., The Eyak Corporation vs. DCRA and the Local Boundary Commission. On February 5, 1993, Russell Babic, et al., appealed the Commission's approval of the annexation of 68.23 square miles to the City of Cordova. A separate appeal over the same issue was filed by the Eyak Corporation on March 4, 1993. The two appeals were consolidated on April 2, 1993.



Briefs have been filed by Russell Babic, et al., and the State. Because the Eyak Corporation failed to file an opening brief, the State advised the Court that its appeal should be dismissed under Appellate Rule 511.5. The matter is currently under review by the Court.

City of Ekwok vs. Local Boundary Commission. On February 22, 1989, eleven cities, village councils and native corporations from the Nushagak River area appealed the LBC's December 28, 1988 decision to approve the incorporation of the Lake & Peninsula Borough. On November 18, 1992, Superior Court Judge Joan Katz ruled in favor of the appellants and ordered the LBC to reconsider its decision as it related to the northwest boundary of the Borough. The reconsideration was placed on hold pending appeal to the Supreme Court. Briefs have been filed with the Supreme Court by all parties.



CHAPTER III RECOMMENDATIONS FOR ANNEXATION

This chapter presents three formal recommendations to the Second Session of the Eighteenth Alaska Legislature for annexation pursuant to Article X, § 12 of Alaska's Constitution. The first recommends the annexation of approximately 21 square miles to the City of King Cove. Recommendations 2 and 3 collectively propose the annexation of 44.6 acres to the City of Seldovia.

Under the law, these annexations receive automatic legislative approval 45 days after presentation to the legislature (or at the end of the session, whichever is earlier) unless disapproved by a concurrent resolution of the legislature. The boundary changes take effect upon legislative approval and demonstration that the municipalities involved have complied with the federal Voting Rights Act.

"[The LBC] may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house."

Alaska Constitution, Article X, § 12.



Darrill Har Graves, Chairperson
Shelley Dugan, Vice-Chairperson,
4th Judicial District

Frances Hallgren, 1st Judicial District
Myrtle Johnson, 2nd Judicial District
H. Toni Salmeier, 3rd Judicial District

Local Boundary Commission

RECOMMENDATION NUMBER ONE TO THE SECOND SESSION OF THE EIGHTEENTH ALASKA LEGISLATURE

A recommendation for the annexation of approximately 21 square miles to the City of King Cove.

INTRODUCTION AND DESCRIPTION OF THE AREA

On April 12, 1993, the City of King Cove petitioned the LBC to annex approximately 28.44 square miles. The area in question is inhabited by 8 residents. Just under one-fifth of the territory consisted of submerged lands (4.88 square miles). The remaining 23.56 square miles consisted of lands extending along the length of the eastern and northern boundaries of the city and continuing along portions of the City's western and southern boundaries. Existing facilities and prospective developments in the territory proposed for annexation include the following:

- Gould Subdivision;
- King Cove airport;
- Road leading to airport;
- Portion of City's sanitary landfill;
- Portion of Ram Creek Subdivision;
- Proposed Delta Creek hydroelectric project;
- Proposed Delta Creek water project; and
- Proposed Lenard Harbor port facility.

PROCEEDINGS

The major steps taken in the formal annexation proceedings are summarized below:

- 04/02/93 – King Cove City Council adopted Resolution 93-12 authorizing the petition.
- 04/12/93 – The City of King Cove lodged its petition with DCRA. DCRA's technical review of the petition disclosed minor errors in the petition.



- 05/03/93 – The City of King Cove filed corrections to its petition.
- 05/04/93 – DCRA accepted the petition for filing.
- 05/14/93 – Notice of the filing of the petition was published for the first time in *The Dutch Harbor Fisherman*, a newspaper of general circulation in King Cove.
- 05/17/93 – Notice of the petition was published in the *Alaska Administrative Journal*.
- 05/19/93 – Notice of the petition was mailed to 17 interested parties. A copy of the petition was provided to the Aleutians East Borough and the City of Cold Bay.
- 05/21/93 – The second notice of the petition was published in *The Dutch Harbor Fisherman*.
- 05/24/93 – The second notice of the petition was published in the *Alaska Administrative Journal*.
- 05/26/93 – Notice of the petition was posted in eight locations in the territory proposed for annexation and the adjacent area. The petition was made available for public review at the King Cove City Clerk's office.
- 05/28/93 – The third notice of the petition was published in *The Dutch Harbor Fisherman*.
- 05/31/93 – The third notice of the petition was published in the *Alaska Administrative Journal*.
- 07/06/93 – The deadline for the filing of responsive briefs and comments was reached. No briefs had been filed. The Aleutians East Borough wrote a letter in support of the proposal.
- 07/30/93 – DCRA published its draft report on the annexation proposal recommending the annexation of 21 square miles. The report was distributed to 28 parties.
- 08/10/93 – Notice of the Commission's October 1 hearing on the annexation was mailed to 42 parties. DCRA requested that the City post the hearing notice in 8 locations by September 9. DCRA also wrote to KSCP-AM and KDLG-AM requesting that they broadcast announcements of the hearing through September 30. DCRA requested publication of the hearing notice in the subsequent four issues of the *Alaska Administrative Journal*.
- 08/27/93 – The deadline for comments on DCRA's draft report was reached. Comments regarding the report and the annexation proposal were submitted by Harry Gould, Sr. (2 letters opposing annexation), homeowners in the Gould Subdivision (opposing annexation), the Bureau of Indian Affairs, the



Department of the Interior and the City of King Cove. Notice of the LBC's October 1 hearing on the annexation was first published in *The Dutch Harbor Fisherman*.

- 09/08/93 – DCRA issued its final report, maintaining the recommendation that the Commission approve the annexation of 21 of the 28.44 square miles petitioned for annexation.
- 09/10/93 – The second notice of the hearing was published in *The Dutch Harbor Fisherman*.
- 09/24/93 – The third notice of the hearing was published in *The Dutch Harbor Fisherman*.
- 10/01/93 – Commissioner Hargraves and Commissioner Hallgren traveled to King Cove. Upon arrival, they toured the territory proposed for annexation. At 7:00 p.m. the Commission convened its hearing on the annexation proposal. Commissioners Hargraves and Hallgren were present at the King Cove Community Building. Commissioners Dugan, Johnson and Salmeier joined the hearing by teleconference from the Kodiak Island Borough Assembly Chambers. Following the hearing, the Commission voted unanimously to amend the petition to reduce the area proposed for annexation from 28.44 square miles to 21 square miles. After the petition was amended, it was approved unanimously.
- 10/15/93 – Arrangements were made for publication and posting of notice of opportunity for reconsideration and the 11/09/93 meeting of the LBC.
- 11/09/93 – The LBC adopted a 10-page written statement outlining the major considerations leading to its decision in this matter. Copies were provided to the parties required by law. The decision of the LBC became final at this point. Parties had the opportunity to seek reconsideration of the decision.
- 11/24/93 – Deadline to request reconsideration of the LBC's decision. No requests were filed.

CONCLUSIONS

Based upon the record, the LBC reached the conclusions outlined below regarding the annexation proposal. Further information on the LBC's conclusions regarding this matter is provided in the LBC's 10-page decisional statement on the annexation of territory to the City of King Cove. A copy of the decisional statement is available upon request.

1. Given the existing and potential development, there is a need to extend the City of King Cove's authority for planning, platting and zoning to the area in question. There is also a need for formalize the City's authority to provide police and fire protection to the area. The City of



King Cove can provide the needed services more efficiently than any other municipality. As such, the standard set out in 19 AAC 10.090 concerning the need for city government is satisfied.

2. While the area proposed for annexation is much less developed than the area within the existing boundaries of the City of King Cove, the character of the territory in question is compatible with the existing city. Thus, the standard set out in 19 AAC 10.100 is met.

3. The annexation will have little impact on locally generated revenues or intergovernmental revenues of the City. By the same token, it will cause little, if any, increase in the expenses of the City. The economy within the proposed boundaries of the City includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard prescribed by 19 AAC 10.110 is met.

4. The City of King Cove is a first class city operating under a manager form of government. The City provides a broad range of services to its 871 residents. Its current operating budget totals more than \$2 million, 73% of which is funded through locally generated revenues. The annexation would add approximately 8 residents to the City's population. The post-annexation population of the City of King Cove would remain large and stable enough to support city government. Thus, the standard set out in 19 AAC 10.120 is met.

5. The boundaries requested by the City of King Cove in its petition of April 12, 1993, include more land and water than is necessary to provide the full development of essential city services on an efficient, cost-effective level. However, the boundary standard set out in 19 AAC 10.130 is satisfied by amending the petition to exclude 7.44 square miles of the area proposed for annexation.

6. The proposed annexation serves the balanced best interests of the City of King Cove, the Aleutians East Borough, the territory proposed for annexation and the State of Alaska. The balanced interests of the various parties involved in this matter warrant the use of the legislative review process to implement the annexation. Thus, the standard set out in 19 AAC 10.140 is satisfied.



LEGAL DESCRIPTION AND MAP

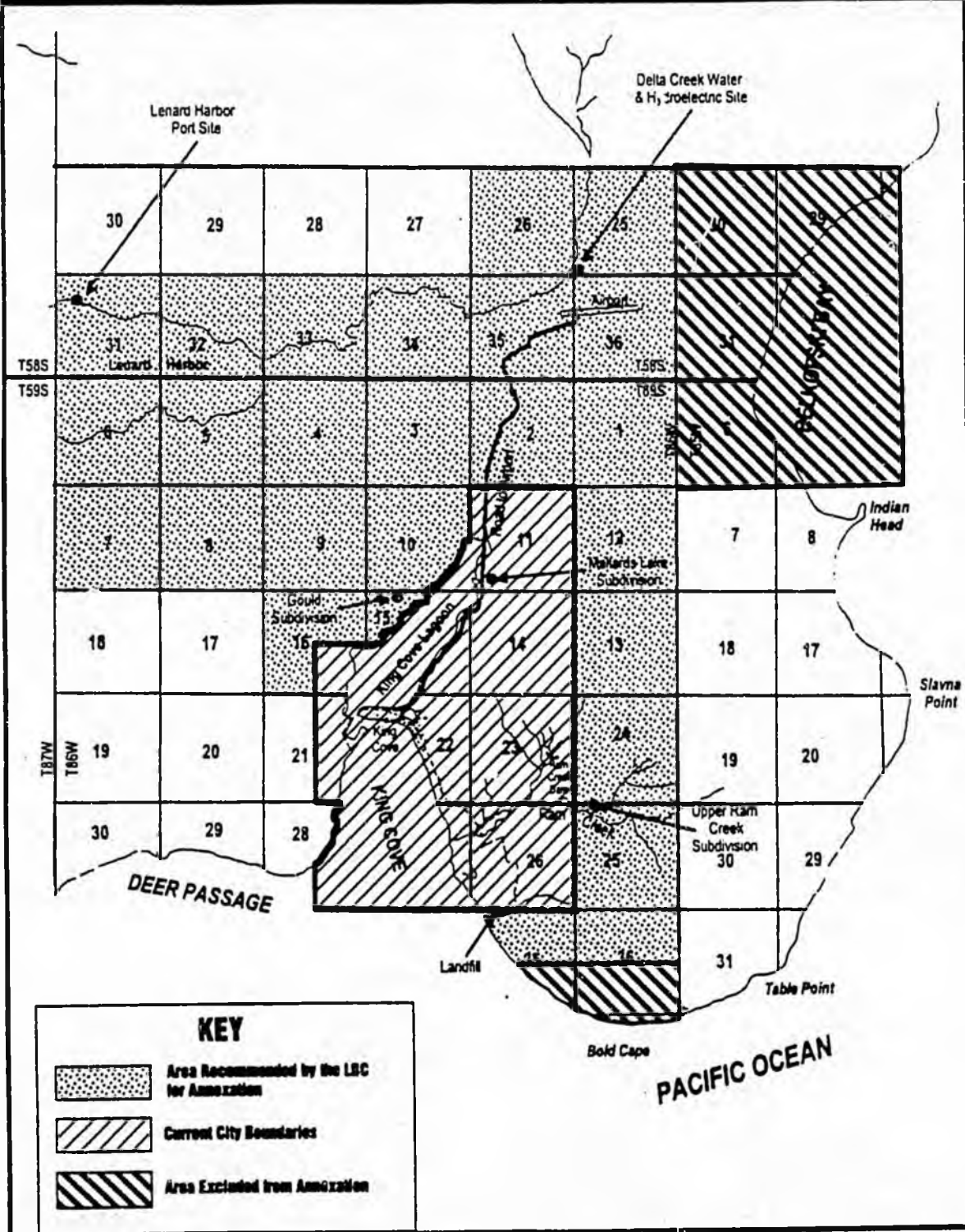
The boundaries of the territory hereby recommended for annexation to the City of King Cove are described as follows:

Beginning at the protracted NW corner of the SE 1/4 of Section 16, T59S, R86W, Seward Meridian; thence north to the protracted NE corner of the NW 1/4 of Section 16; thence west to the protracted NW corner of Section 16; thence north to the protracted NW corner of Section 9, T59S, R86W, Seward Meridian; thence west to the protracted SW corner of Section 6, T59S, R86W, Seward Meridian; thence north to the protracted NW corner of Section 31, T58S, R86W, Seward Meridian; thence east to the protracted SW corner of Section 26, T58S, R86W, Seward Meridian; thence north to the protracted NW corner of Section 26; thence east to the protracted NE corner of Section 25, T58S, R86W, Seward Meridian; thence south to the protracted SE corner of the NE 1/4 of Section 36, T59S, R86W, Seward Meridian; thence west to the mean high water line of Deer Passage; thence meandering northwesterly along the line of mean high water of Deer Passage to the point of intersection with the south boundary of Section 26, T59S, R86W, Seward Meridian; thence east to the protracted SE corner of Section 26, T59S, R86W, Seward Meridian; thence north to the protracted NE corner of Section 11, T59S, R86W, Seward Meridian; thence west to the protracted NW corner of Section 11; thence south to the line of mean high water of King Cove Lagoon; thence meandering southwesterly along the mean high water line of King Cove Lagoon to the point of intersection with the south boundary of the NW 1/4 of Section 15, T59S, R86W, Seward Meridian; thence west to the protracted NW corner of the SE 1/4 of Section 16, T59S, R86W, Seward Meridian, the point of beginning; containing 21 square miles, more or less, situated in the Third Judicial District, State of Alaska.

A map showing this area is shown on the next page.



TERRITORY RECOMMENDED FOR ANNEXATION TO THE CITY OF KING COVE



KEY

- Area Recommended by the LBC for Annexation
- Current City Boundaries
- Area Excluded from Annexation



*Darroll Hurvaves, Chairperson
Shelley Dugan, Vice-Chairperson
4th Judicial District*



*Frances Hallgren, 1st Judicial District
Myrtle Johnson, 2nd Judicial District
H. Toni Salmeter, 3rd Judicial District*

Local Boundary Commission

RECOMMENDATION NUMBER TWO TO THE SECOND SESSION OF THE EIGHTEENTH ALASKA LEGISLATURE

A recommendation for the annexation of approximately 42.8 acres to the City of Seldovia.

INTRODUCTION AND DESCRIPTION OF THE AREA

On March 16, 1993, the City of Seldovia petitioned the Local Boundary Commission to annex approximately 42.8 acres. The territory petitioned for annexation consisted of the two distinct groups of property noted below.

1. Remainder of airport. The City petitioned to annex that portion of the State airport not already within its boundaries. The City estimated that the area encompassed approximately 36.6 acres.

During the annexation proceedings, it was discovered that the City's petition had inadvertently excluded a 1985 extension of the north end of the airport runway. The runway extension encompassed approximately 1.8 acres.

2. Enclaves. The City also petitioned to annex what it identified as thirteen enclaves within its corporate boundaries. Collectively, the enclaves comprised approximately 6.2 acres. The thirteen enclaves included all or portions of 36 privately owned lots and segments of public rights-of-way along the waterfront. According to the City, the enclaves were inhabited by 3 persons.

PROCEEDINGS

The major steps in the formal annexation proceedings are summarized below.

03/10/93 - Seldovia City Council adopted Resolution 93-5 authorizing the petition.



- 03/16/93 - Seldovia City Manager completed preparation of the petition.
- 03/17/93 - Petition was lodged with the Department of Community & Regional Affairs (DCRA).
- 04/06/93 - DCRA completed its technical review of petition and accepted the petition for filing.
- 04/08/93 - Public notice of the filing of the petition was published in the *Homer News*, a newspaper of general circulation in Seldovia.
- 04/12/93 - Notice of the petition was published in the *Alaska Administrative Journal*.
- 04/14/93 - Notice of the petition was posted at the Seldovia Post Office, Seldovia Mart, Seldovia City Office and Seldovia Public Library.
- 04/15/93 - Notice of the filing was published for the second time in the *Homer News*. Notice was also posted at the Seldovia Airport, William C. Lethin property, Carl & Helen Hille property and the Deepak Kumar Stokes Cannery.
- 04/19/93 - Notice of the petition was published in the *Alaska Administrative Journal*.
- 04/20/93 - Notice of the filing was mailed to more than 30 parties, including all owners of real property in the areas proposed for annexation, the news media serving the area, officials of the Kenai Peninsula Borough and other government officials.
- 04/22/93 - Notice of the filing was published for the third time in the *Homer News*.
- 04/26/93 - Notice of the petition was published in the *Alaska Administrative Journal*.
- 04/28/93 - A copy of the petition was served on the Kenai Peninsula Borough, the City of Homer and the City of Kachemak.
- 04/29/93 - Copies of the petition were made available for public review at the Seldovia Library and the Seldovia City Office.
- 05/03/93 - Notice of the petition was published in the *Alaska Administrative Journal*.
- 06/04/93 - The deadline was reached for filing responsive briefs and written comments regarding the petition. No briefs were filed, however, written comments were submitted by four parties by this date.
- 06/07/93 - The City of Seldovia responded to the comments from the four parties.



- 06/21/93 - DCRA issued its draft report concerning the annexation proposal. Copies were distributed to more than 50 parties, including all owners of real property within the area proposed for annexation, news media serving the area and various state and local government officials.
- 07/15/93 - Notice of the August 26 public hearing was mailed to 65 parties. Arrangements were made for publication of the notice in the *Alaska Administrative Journal*.
- 07/22/93 - Notice of the hearing was published in the *Homer News*.
- 07/23/93 - The deadline was reached for filing comments on DCRA's draft report. Comments were submitted by four parties by this date.
- 07/26/93 - Notice of the hearing was posted at the Seldovia Airport, Lethin property, Hille property, Stokes property, Seldovia City Office, Seldovia Post Office, Seldovia Library and Seldovia Mart.
- 08/03/93 - DCRA issued its final report on the proposed annexation. Copies were provided to 66 parties.
- 08/05/93 - Notice of the hearing was published for the second time in the *Homer News*.
- 08/15/93 - DCRA requested that KBBI-AM, a radio station serving Seldovia, broadcast public service announcements of the hearing.
- 08/19/93 - Notice of the hearing was published for the third time in the *Homer News*.
- 08/26/93 - Commissioners Hargraves, Hallgren, Salmeier and Johnson traveled to Seldovia. All four Commission members toured the community, including the areas proposed for annexation, before the hearing.
- The Commission conducted a public hearing on the annexation proposal at the Seldovia Public Library. The hearing began at 7:30 p.m. and ended at approximately 11:00 p.m. Fourteen individuals provided testimony or comments to the Commission. Following the hearing, the Commission asked DCRA for information concerning the possible inclusion of the 1985 airport runway extension.
- 08/27/93 - Notice of the September 10 decisional session was mailed to 66 parties. Notice was also posted at the Seldovia Airport, Lethin property, Hille property, Stokes property, Seldovia City Office, Seldovia Post Office, Seldovia

Library and Seldovia Mart. Additionally, KBBI-AM was requested to broadcast public service announcements of the decisional session.

- 09/02/93 - Notice of the September 10 meeting was published in *Homer News*.
- 09/03/93 - DCRA provided information requested by the Commission at its August 26 hearing concerning the possible inclusion of the 1985 airport runway extension.
- 09/10/93 - Commissioners Hargraves, Salmeier, Hallgren and Johnson met by teleconference to act on the petition. The Seldovia City Office was included among the teleconference sites. During the meeting, the Commission amended and approved the petition. The amendment expanded the area to be annexed to include the 1.8 acre 1985 extension of the Seldovia airport runway. The decision of the Commission was unanimous among the four members who participated.
- 10/01/93 - The LBC adopted a 19-page written statement outlining the major considerations leading to its decision in this matter.
- 10/07/93 - Copies of the LBC's decisional statement were provided to the parties required by law. The decision of the LBC became final at this point. Parties had the opportunity to seek reconsideration of the decision.
- 10/27/93 - Deadline to request reconsideration of the LBC's decision. No requests were filed.



CONCLUSIONS

Based upon the record, the LBC reached the conclusions outlined below concerning the Seldovia annexation proposal. More detailed information concerning the conclusions of the LBC is provided in the LBC's 19-page decisional document relating to this matter. A copy of the decisional statement is available upon request.

1. Two circumstances particular to this case indicate that the enclaves are probably already under the jurisdiction of the City of Seldovia. The first is that when tidelands and submerged lands (which marked the original city boundaries) were extended in the 1960's, the boundaries of the city were automatically extended (see McQuillin Mun Corp § 7.06, 3rd Ed). The second circumstance is that there has been acquiescence over a very long period of time to the exercise of jurisdiction by the City over the area in question (see McQuillin Mun Corp § 7.09, 3rd Ed). Further, there is a need for city services within the enclaves. City services are also needed at the Seldovia airport. The latter extends to all developed portions of the airport, including the 1.8 acre extension of



the runway inadvertently excluded from the City's petition. The City of Seldovia is most capable of efficiently and effectively providing essential city services to the areas proposed for annexation. The areas proposed for annexation contain extensive development and are in close proximity to the City of Seldovia. Thus, there is a reasonable need for city government in the 42.8 acres petitioned for annexation, plus the 1.8 acre runway extension. The standard set out in 19 AAC 10.090 is satisfied concerning this area.

2. The enclaves and the airport (including the 1.8 acre runway extension) are compatible in character with the territory presently within the City of Seldovia. Thus, the standard set out in 19 AAC 10.100 is satisfied.

3. The City has the capacity, using its existing staff and other resources, to serve the airport and the enclaves on an efficient, cost effective level without any significant increase in expense to the City. Thus, the standard set out in 19 AAC 10.110 is satisfied.

4. The population of the City is large and stable enough to support the extension of the City's boundaries to the area in question. Thus, the standard set out in 19 AAC 10.120 is met.

5. The annexation of the 44.6 acres in question will promote greater efficiency and cost-effectiveness in the delivery of services by the City. Thus, the standard set out in 19 AAC 10.130 is met.

6. The interests of the City of Seldovia, the Kenai Peninsula Borough, the territory proposed for annexation and the State of Alaska will be well served by annexation of the territory in question. The balanced interests of the various parties involved in this matter warrant the use of the legislative review process. Thus, the standard set out in 19 AAC 10.140 is satisfied.

LEGAL DESCRIPTION AND MAP

The territory hereby recommended for annexation to the City of Seldovia consists of the area described in the City of Seldovia's March 16, 1993 annexation petition. This area is further described as:

All properties which are enclaves within the perimeter corporate boundaries of the City of Seldovia (i.e. territory that is not under the jurisdiction of the City of Seldovia, but is surrounded by property within its jurisdiction. These include all or portions of the following properties:

- Tideland Lots: T-25, T-27, T-28, T-29, T-31, T-34 and T-35;
- Block T-4, Lots: T-4, T-5, T-6 and T-7;

- Block T-5, Lots: T-5, T-6, T-7, T-8 and T-9;
- Block 4, Waterfront Resubdivision #1, Lots: 2, 3, 4, 5, 6, 7, 8, and 9;
- Block 5, Waterfront Resubdivision #1, Lots 5, 6, 7, 8, and 9;
- Block 6, Waterfront Resubdivision #2, Lots 6, 7, 8 and 12;
- Block 13, Waterfront Resubdivision #1, Lots 2 and 4;
- Dock Street right-of-way between Lot 10, Block 5, Waterfront Resubdivision #1 and Lot 1, Block 6, Waterfront Resubdivision #1;
- Right-of-way between Lot 12, Block 6, Waterfront Resubdivision #2 and Lot 1, Block 10 Waterfront Resubdivision #2;
- Right-of-way between Lots 3 and 4, Block 10, Waterfront Resubdivision #2;
- Peninsula Street between Lot 12, Block 10, Waterfront Resubdivision and Lot 4, Block 13, Waterfront Resubdivision #1;
- Bay Street right-of-way adjacent to Lot T-25; and
- Right-of-way, part of and adjacent to Peninsula Street, adjacent to Lot T-33 and part of Lot 1, Block 31, Seldovia Townsite.

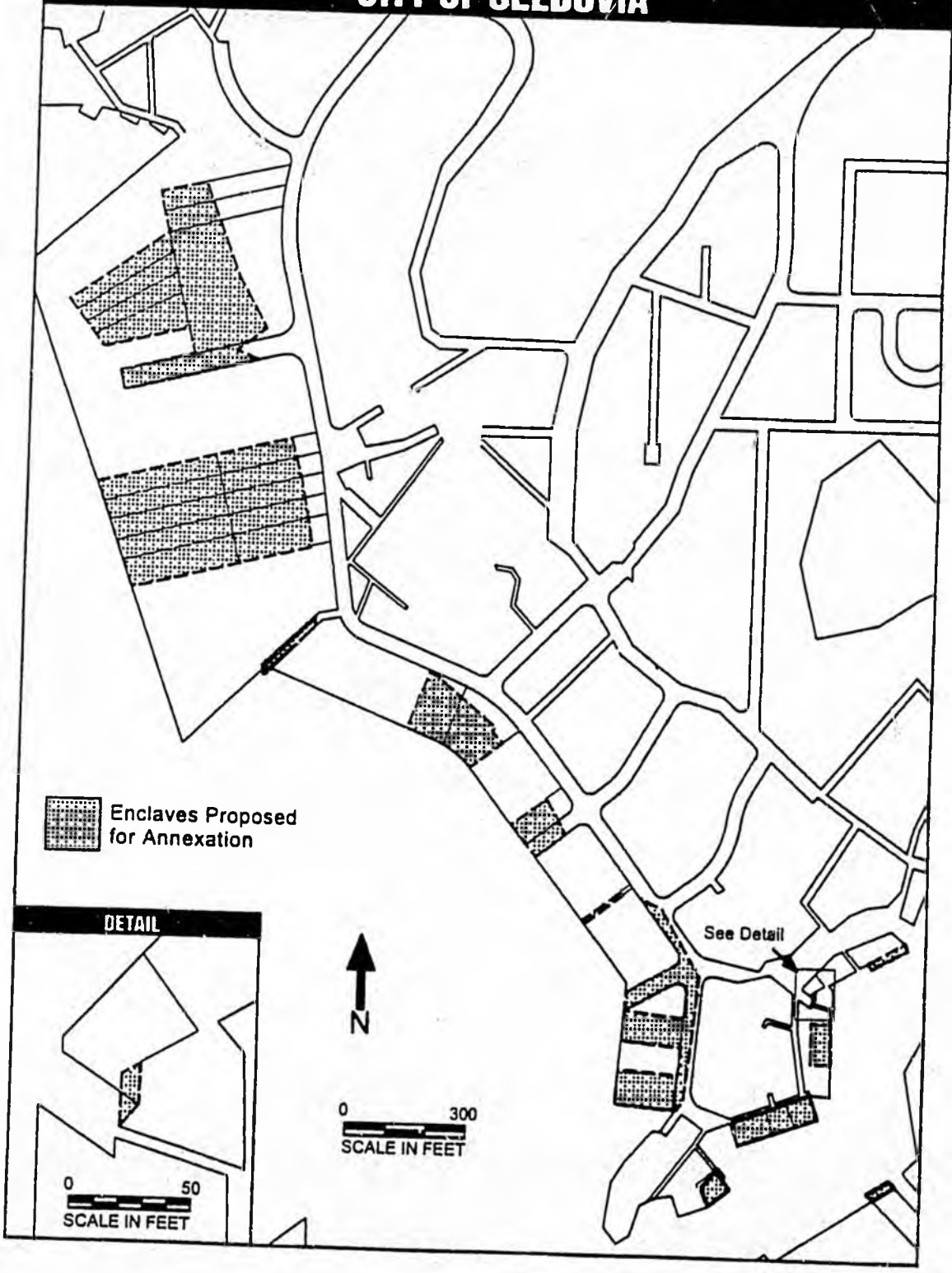
And, within Section 32, T8S, R14W, Seward Meridian, portions of the Seldovia Airport Property not within the current boundaries of the City of Seldovia. This includes Government Lot 1, except Lagoon Acres Subdivision, Plat No. 86-1, Seldovia Recording District; that portion of Government Lot 4 lying east of U.S. Survey 1770 and that portion of the E 1/2 NE 1/4 SW 1/4 lying north-westerly of Airport Road.

Maps showing these areas appear on the following pages



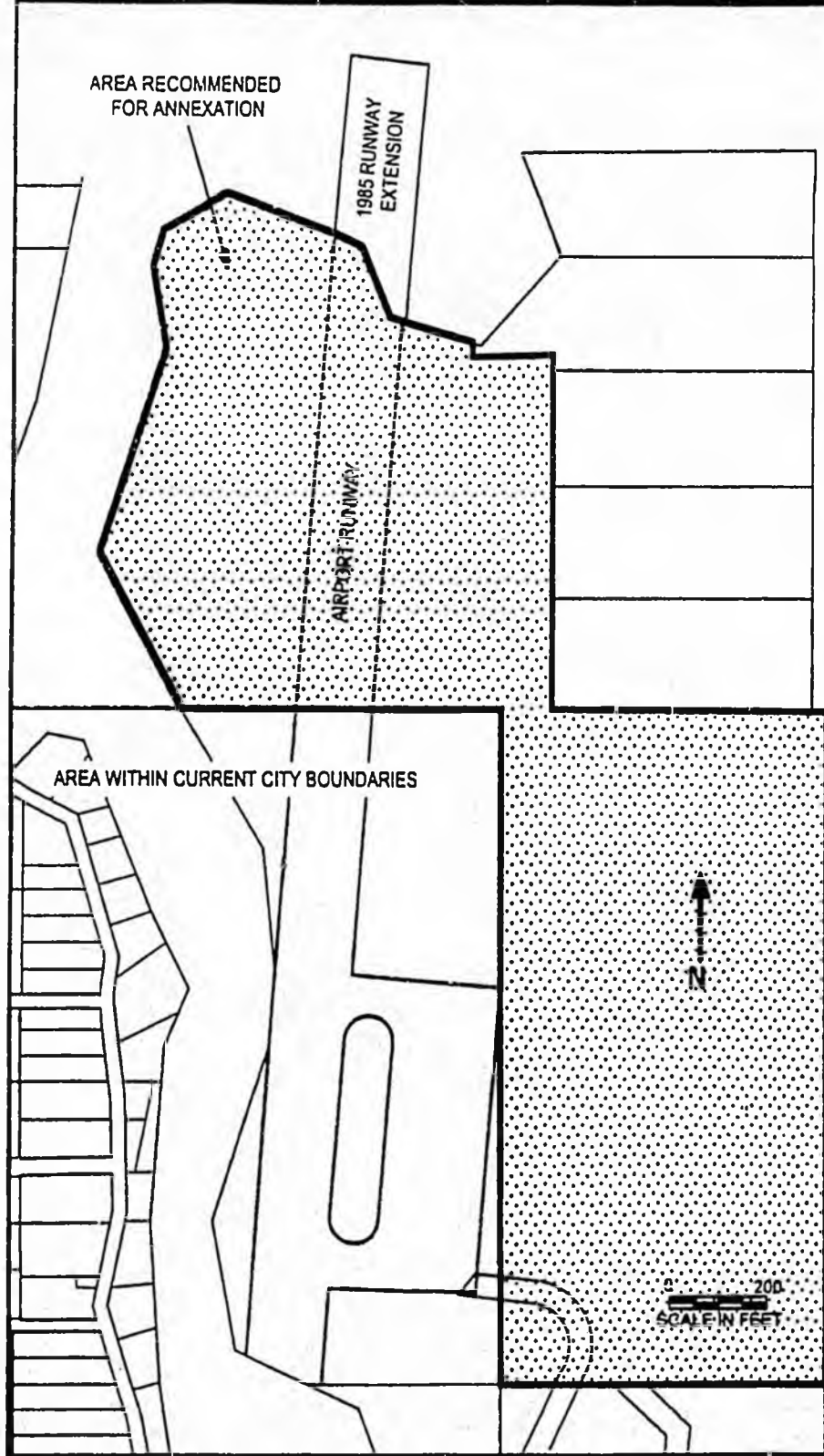


ENCLAVES RECOMMENDED FOR ANNEXATION TO THE CITY OF SELDOVIA





AIRPORT PROPERTY RECOMMENDED FOR ANNEXATION TO THE CITY OF SELDOVIA





Darrill Hargraves, Chairperson
Shelley Ducean, Vice-Chairperson
4th Judicial District

Frances Hallgren, 1st Judicial District
Myrtle Johnson, 2nd Judicial District
H. Toni Salmeier, 3rd Judicial District

Local Boundary Commission

RECOMMENDATION NUMBER THREE TO THE SECOND SESSION OF THE EIGHTEENTH ALASKA LEGISLATURE

A recommendation for the annexation of approximately 1.8 acres to the City of Seldovia.

As noted in the preceding recommendation for the annexation of 42.8 acres to the City of Seldovia, the City inadvertently omitted the 1985 extension of the Seldovia Airport runway from its March 16, 1993 annexation proposal. As further noted in the preceding recommendation, the LBC concluded that the airport runway extension meets the standards for annexation. Consequently, the LBC also approved that property for annexation.

In acting on the City of Seldovia's annexation petition, the LBC stipulated that a legislative recommendation for the annexation of the airport property extension be filed separately from the recommendation for the annexation of the 42.8 acres. This approach is consistently taken by the LBC in situations involving an amendment of a petition to expand the area approved for annexation beyond the original proposal. This is done to fully insulate the original proposal from any claims of wrongdoing arising out of the amendment of the petition.

However, the Commission also exercises every reasonable precaution in such cases to ensure that affected parties' rights to due process are upheld. In this particular case, the owner of the property in question and other interested parties provided written expressions of non-objection to the annexation of the property.

DESCRIPTION AND MAP

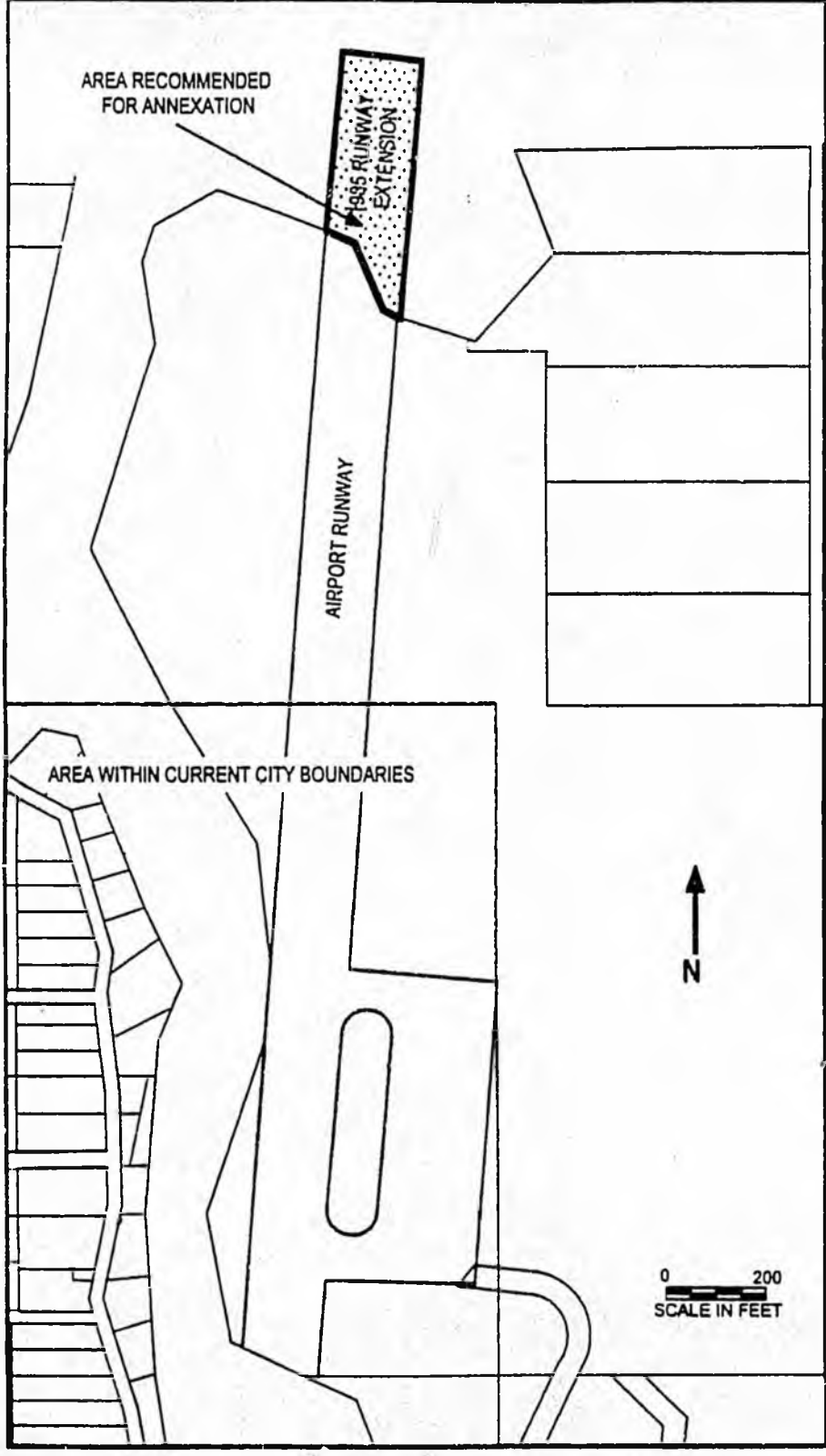
The territory hereby recommended for annexation to the City of Seldovia is described as:

The filled area lying above the mean high water line in Seldovia Slough containing the extension of the Seldovia airport runway adjoining the northerly line of Government Lot 1; containing 1.8 acres, more or less.

A map of this area appears following page.



AIRPORT RUNWAY EXTENSION RECOMMENDED FOR ANNEXATION TO THE CITY OF SELDOVIA





If the two recommendations for the collective annexation of 44.6 acres to the City of Seldovia are approved, the boundaries of the City of Seldovia will be described as follows:

Beginning at the Standard Corner common to Sections 31 and 32 on the Second Standard Parallel South, T8S, R14W, Seward Meridian, Alaska, identical with Corner No. 11, U.S. Survey No. 1771 (U.S.S. 1771);

thence west along the south line of said Section 31, identical with line 11-12 of U.S.S. 1771, to Corner No. 12, a meander corner, U.S.S. 1771, identical with Corner No. 104, Alaska Tidelands Survey No. 219 (A.T.S. 219);

thence continue west along line 104-105 of A.T.S. 219 to Corner No. 105, A.T.S. 219, in Seldovia Bay;

thence northwesterly along line 105-106 of A.T.S. 219 to Corner No. 106, A.T.S. 219, in Seldovia Bay;

thence north along line 106-107 of A.T.S. 219 to Corner No. 107, A.T.S. 219, in Seldovia Bay;

thence east along line 107-1 of A.T.S. 219 to Corner No. 1, A.T.S. 219, identical with Corner No. 13, a meander corner, U.S.S. 1771;

thence northeasterly along the meanders of the eastern shores of Seldovia Bay, identical with the western boundary of Lot 5, George Cook Subdivision, Plat No. D-145, Seldovia Recording District, to the northwest corner of said Lot 5;

thence east along the north line of said Lot 5 to the northeast corner of said Lot 5 on the line common to Sections 31 and 32, T8S, R14W, S.M.;

thence south along the east line of Said Lot 5, identical with the said common line to Sections 31 and 32, to the southeast corner of said Lot 5, identical with Corner No. 14, U.S.S. 1771, identical with the N 1/16 corner to said Sections 31 and 32;

thence east along the north 1/16 line of said Section 32 to Corner No. 63, A.T.S. 219, on the western shore of Seldovia Slough;

thence continue east to Corner No. 64, A.T.S. 219, on the eastern shore of Seldovia Slough, identical with the westerly corner common to Government Lots 1 and 4 in said Section 32;

thence northerly and easterly along the meanders of the eastern shores of Seldovia Slough, thereby including the filled area in Seldovia Slough containing the northerly extension of the Seldovia Airport Runway, to the point of intersection with the western boundary of Lagoon Acres Subdivision, Plat No. 86-1, Seldovia Recording District;

thence easterly and southerly along the western boundary of said Lagoon Acres Subdivision to the southwest corner of said Lagoon Acres Subdivision, identical with a point on the line common to Government Lots 1 and 4 in said Section 32;

thence east along the south boundary of said Lagoon Acres Subdivision, identical with the said line common to Government Lots 1 and 4, to the southeast corner of said Lagoon Acres Subdivision, identical with the eastern corner common to said Government Lots 1 and 4, identical with a point on the north-south centerline of said Section 32;

thence south along the north-south centerline of said Section 32, identical to the east line of said Government Lot 4, to the southeast corner of said Government Lot 4, identical with the center 1/4 corner of said Section 32;

thence west along the south line of said Government Lot 4, identical with the east-west centerline of said Section 32, to the easterly right-of-way line of Airport Avenue;

thence southwesterly along the easterly right-of-way line of said Airport Avenue to the point of intersection with line 7-8, U.S.S. 1771;

thence south along line 7-8 of U.S.S. 1771 to Corner No. 8, U.S.S. 1771;





thence west along line 8-9 of U.S.S. 1771 to Corner No. 9, U.S.S. 1771;

thence south along line 9-10 of U.S.S. 1771 to Corner No. 10, U.S.S. 1771, identical with the west 1/16 corner on the south line of said Section 32;

thence west along line 10-11 of U.S.S. 1771, identical with the south line of said Section 32, to Corner No. 11, U.S.S. 1771, identical with the Standard Corner common to Sections 31 and 32 and the Point of Beginning.

Containing 344 acres, more or less.

CHAPTER IV SPECIAL ISSUES



SUGGESTED CHANGES TO AS 29

For the past several years, the LBC has advocated changes to state laws concerning municipal incorporation, boundary changes and reclassification. Last year, the Senate Community and Regional Affairs Committee introduced a bill to implement the recommended changes. The LBC urges the Legislature to pass CSSB 164 (CRA) in its present form. The major effects of the bill are summarized below.

- ❖ **Establishes mechanism for first class and home rule cities to reclassify to second class cities.** Under current law, such reclassification can only be done in an indirect and complex fashion (i.e., dissolve the first class or home rule city and incorporate a second class city). Some first class and home rule cities in the Unorganized Borough have expressed interest in reclassifying to second class cities (e.g., **Galena**). Doing so would consolidate the city school district with the regional educational attendance area school district.
- ❖ **Provides State oversight concerning all municipal reclassifications.** The State has legitimate interests in any city reclassification. In particular, reclassification of second class cities in the Unorganized Borough has major consequences for the State. Such reclassifications result in the creation of new municipal school districts. However, under current law the State has no means to regulate municipal reclassification. Some second class cities in the Unorganized Borough are presently considering reclassification (e.g., **Fort Yukon**). There are a total of 27 second class cities in the Unorganized Borough that could become first class or home rule cities without any oversight by the State.¹⁰ There are also eleven unincorporated communities in the Unorganized Borough that could incorporate as second class cities and subsequently reclassify to first class or home rule cities.¹¹ The bill would assign responsibility to the Local Boundary Commission to oversee reclassifications.
- ❖ **Creates opportunity for unincorporated community to incorporate directly as a home rule city.** Currently, a city must incorporate as a general law city and then undergo an extensive process to adopt a home rule charter. State law currently allows direct incorporation of a home rule borough — this would extend the same privilege to cities. Some communities (e.g., **Nikiski**) have shown strong interest in such an option.

¹⁰ Community/Borough Map - 1993, Department of Community and Regional Affairs.

¹¹ Alaska Population Overview - 1990 Census & Estimates, Department of Labor.



- ❖ **Permits a region to incorporate as a unified municipality.** To form a unified municipality under current law, there must be both an organized borough and one or more cities. Interest in such an option has been expressed by many regions throughout the state.
- ❖ **Clarifies the authority of the Local Boundary Commission to amend petitions that come before it and to adopt regulations concerning matters that come before it.** As noted in the summary of the status of the appeal involving Petitioners for the Incorporation of the City and Borough of Yakutat vs. Local Boundary Commission, the Superior Court ruled that the LBC lacks legislative rulemaking authority for incorporation proceedings. It does, however, have such authority for matters involving annexation, detachment, merger and consolidation and dissolution. CSSB 164 (CRA) would eliminate questions over the authority of the LBC to adopt legislative regulations concerning incorporation. The bill would also eliminate any question over the LBC's authority to amend any petition to come before it.
- ❖ **Removes any question that a home rule government may be formed through merger or consolidation.** DCRA and the LBC believe that such can be accomplished under current law, however, others have expressed differing views. The City of Ketchikan is presently developing a petition for consolidation of the City and the Ketchikan Gateway Borough as a home rule borough.

COMPENSATION

The Local Boundary Commission urges the Legislature to enact a law providing compensation for the LBC members at the rate of \$150 for each day that the Commission meets. While the current economic climate is clearly less than ideal for this proposal, the demands placed on the LBC have grown beyond what can be reasonably expected of unpaid members. Given the exclusive role that the Commission plays in the formation and alteration of municipal government boundaries, this compensation proposal is a wise investment in the future of this state. Please consider the following:

- ❖ The Alaska Supreme Court has consistently acknowledged the expertise of the LBC in all matters involving municipal boundary proposals. In doing so, the state's highest court has placed lofty expectations and demands on the LBC. These compel members to dedicate substantial time evaluating complex and controversial proposals. Often, the record before the Commission on a single issue will exceed 1,000 pages.
- ❖ The Alaska Constitution gives the LBC exclusive authority to determine all municipal boundary proposals. These include petitions for city and borough incorporation, annexation, detachment, dissolution, merger and consolidation.



- ❖ The LBC formulates fundamental policies that have important state-wide political, economic and social implications. Again, such responsibilities dictate that the Commission be both prudent and diligent in carrying out its duties.
- ❖ The LBC is one of only five boards with origins in the State Constitution. The others are the Judicial Council, Commission on Judicial Qualifications, Reapportionment Board and the University Board of Regents. The Board of Regents and the Reapportionment Board are compensated in some fashion. Further, the two judicial boards include at least some members who are salaried state judges. The work of the LBC is most similar to the Reapportionment Board which is compensated at the rate of \$150 per day.
- ❖ With few exceptions, the demands and expectations placed on the LBC appear to be at least comparable to the twenty or so state boards and commissions that are presently compensated. Exceptions are limited to the three full-time salaried commissions.
- ❖ There are 165 municipal governments in Alaska today. That number is more than quadruple the number that existed at statehood. Even then, the Public Administration Service – which played a critical role in setting the framework for State government – recommended to the First Session of the First Alaska Legislature that members of the LBC be compensated.
- ❖ Beside the fourfold increase in the number of municipalities since statehood, the scope of the Commission's responsibilities has grown substantially since its creation. Initially, the LBC was responsible only for municipal annexations and detachments. The courts handled other municipal boundary matters. Over the years, responsibility for municipal incorporations, dissolutions, mergers and consolidations has been shifted from the courts to the Commission. Not only has this relieved the courts of a substantial burden, but all municipal boundary issues are now placed before a single expert body. CSSB 164(CRA) would add to the duties of the LBC.
- ❖ The Commission typically meets about 20 - 25 times each year. Travel and participation at meetings of the LBC take members away from their paying professions, often requiring substantial financial sacrifice on the part of each Commission member.
- ❖ Meetings are often held in remote locations. This involves extended travel, sometimes under arduous conditions.
- ❖ The fiscal impact of such compensation would be minimal. Using an estimate of 25 one-day meetings per year and compensation of \$150 per day per member, the total cost of compensation would be \$18,750



- ¹² Tables published in Alaska Taxable, (DCRA, January 1993) on pages 14 - 17 indicate that during 1992, municipalities in Alaska collected \$110,287,693 in sales taxes and "special taxes" such as alcohol, tobacco, and commercially caught fish; \$319,181,020 in non-oil & gas property taxes and \$256,462,165 oil and gas property taxes. This totals \$685,930,878. According to the State Revenue Sharing and Municipal Assistance - FY 92 Final Report (DCRA March 1992) the populations of all municipal governments in Alaska total 552,484. Thus, the statewide average per capita municipal tax collected from the sources described equals \$1,242.
- ¹³ Chapter 159, Session Laws of Alaska 1990, repealed a 6% limitation on sales taxes.
- ¹⁴ AS 29.45.090(b) states that, "A municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may not levy taxes (1) that will result in tax revenues from all sources exceeding \$1,500 a year for

per year if all members were present at each meeting. Without such compensation, it is likely to become increasingly difficult for the State to find qualified Alaskans who are willing to stay on the Commission long enough to give it the needed continuity and experience.

MUNICIPAL TAX ISSUES

In 1992, the LBC reported to the Legislature that concerns had been expressed over the lack of reasonable limits on the authority of municipalities to levy taxes. Such concerns continued to be expressed during the year just ended. While the recently formed City of Pilot Point was most often cited as an example of the need for reasonable limitations, the Commission is aware of several other local governments that also levy substantial taxes on natural resources. These resources are not limited to fisheries, but include oil and gas properties, mining properties, timber and other natural resources.

Because Pilot Point is cited so frequently in arguments regarding this issue, the Commission offers details below concerning the tax levy of that particular government. In doing so, however, the Commission stresses that it does not intend to single out the City of Pilot Point for judgment as to the reasonableness of its taxes. There are other municipal governments in Alaska that levy even more taxes on a per capita basis than the City of Pilot Point.

In 1992, the City of Pilot Point reportedly collected some \$590,000 from its 3% sales tax on commercially-caught fish. With a population of 97 residents, the tax revenue in this case amounts to more than \$6,000 for each man, woman and child of the community. This compares to a per capita average of all taxes levied by the remaining 164 municipal governments in Alaska amounting to \$1,242.¹² If municipal taxes on oil and gas properties were excluded from the equation (87% of which are collected by a single municipal government), the average per capita municipal tax would be only \$777 – about one-eighth of the per capita revenue of the City of Pilot Point.

Presently, the law imposes no limitation on the rate at which a municipal government may levy a sales tax.¹³ Additionally, according to the State Attorney General's Office, the limitations imposed by AS 29.45.090(b) do not apply to the levy of sales taxes.¹⁴ Thus, there appear to be no legal limitations whatsoever on a municipality's authority to levy sales taxes (subject to voter ratification of rate increases).

The LBC is keenly aware that as State funding for local services continues to decline, the ability of Alaska's 165 municipal governments to raise revenues will become more critical. Therefore, any attempt to address this issue fairly will no doubt prove to be very difficult and controversial. The Commission raises this issue only to ensure that the legislature is aware of the sentiments concerning this matter.

OTHER ISSUES

Occasionally, concerns beyond those noted previously are brought to the LBC. Typically, such concerns deal directly or indirectly with State laws and policies on municipal incorporations and boundary changes. Examples of such include the following.

- ❖ There are inequities in the manner in which the borough concept has been implemented. In 1963, the Legislature mandated the formation of eight boroughs. Today, those eight mandatorily formed boroughs encompass about 80% of Alaska's population. The residents and property owners in the mandatory boroughs typically pay substantial local taxes for basic services. In contrast, there are other areas of the state that lie outside any local government. Some of those areas enjoy services comparable to the services in the mandatory boroughs. Further, some of these areas have resources at least comparable to areas within the mandatorily formed boroughs. Notwithstanding, the areas outside local government pay no taxes to support the services.
- ❖ There are disparities in funding for education. Because of requirements for local contributions, some areas of Alaska receive State and federal aid amounting to only about two-thirds of their defined level of "basic need" for education. Other districts receive more State funding because they are required to contribute little or nothing in support of education. Further, some districts receive funding not available to other districts (e.g., National Forest Receipts). The result is that some districts receive substantially more State and federal aid for education – upwards of twice the level of basic need – than other districts.

Here again, the Commission raises these issues simply in order to keep the legislature informed of the nature of concerns brought to the attention of the LBC.



FOOTNOTE 14 CONTINUED FROM PREVIOUS PAGE:

each person residing within the municipal boundaries; or (2) upon value that, when combined with the value of property otherwise taxable by the municipality, exceeds the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality." The Attorney General's Office takes the position that this law applies only to property taxes.