

HJR

17

Alaska State Legislature



Committees

Labor & Commerce
Legislative Council
World Trade
Trade & Tourism
Special Committee
on Fisheries

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182

During Interim:
P.O. Box 2463
Valdez, Alaska 99686

Representative Eugene Kubina
House Minority Leader

SPONSOR STATEMENT - HJR 17

HJR 17 disapproves the Local Boundary Commissions recommendation to annex an additional 2,878 square miles of territory to the existing 4,898 square miles that is already in the City and Borough of Yakutat. The LBC presented this recommendation to the Legislature on January 22, 1997. Under Article X, Section 12, of the Constitution of the State of Alaska, a recommendation of the LBC presented to the Legislature becomes effective 45 days after presentation, unless disapproved by a resolution concurred in by the majority of the members of each house. The 45th day is March 8, 1997.

Following are the reasons for disapproving this recommendation:

- 1) The Prince William Sound Communities are looking into the possibility of forming their own borough and to successfully do this, they need the proposed area of annexation for their own municipal land entitlement.
- 2) The area west of the 141st meridian is historically and economically tied to the Prince William Sound region.
- 3) The Shareholders of Chugach Alaska Corporation own land in the proposed area to be annexed. The Yakutat based Corporation, Yak-tat-Kwann owns no land within the proposed annexation.
- 4) Chugach Shareholders want the taxes they pay to a Borough to go to the benefit of their shareholders. Under the proposed annexation, taxes paid by the Chugach Corporation in the region would go for the benefit of non-shareholders in the Yakutat Borough.
- 5) Yakutat does not have the resources necessary to provide services to such a large area. Cordova has the manpower, supplies, trans-shipment and business support services.
- 6) The LBC's recommendation is significantly larger than what the Community & Regional Affairs staff recommended.

For these reasons, I ask that you disapprove the LBC recommendation.

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P.O. Box 2463
Valdez, Alaska 99686

MEMORANDUM

TO: Representative Ivan Ivan, Chair
House Community & Regional Affairs Committee

FROM: Representative Gene Kubina *Gene*

DATE: January 30, 1997

RE: Scheduling of HJR 17

I would respectfully request that you hold a hearing on HJR 17 "Disapproving Local Boundary Commission recommendation number two regarding the annexation of the territory to the City and Borough of Yakutat".

Since we only have a short time to act on this recommendation, I urge you to schedule it as soon as possible.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HIR 17

Revision Date: February 12, 1997 Dept. Affected: Legislature
 Title: Disapprove Yakutat Boundary Changes BRU: _____
 Component: _____
 Sponsor: Representative Kubina
 Requester: House C&RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by Thomas W. Wright, Staff
 Division House Community & Regional Affairs Committee

Phone: 465-3882
 Date: February 12, 1997

Approved by Commissioner [Signature]
 Agency: House Community and Regional Affairs Committee

Date: February 12, 1997

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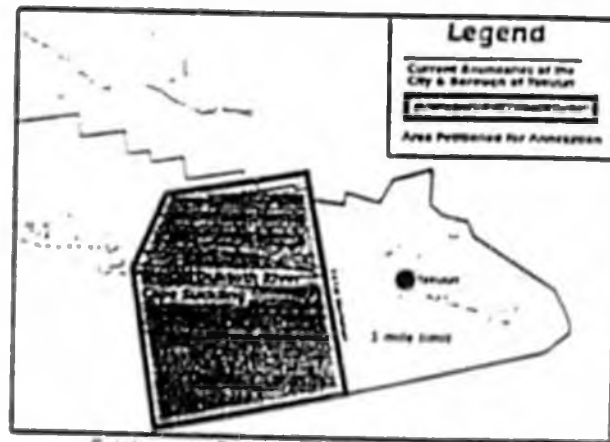
Statement of Decision

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

Section I - Introduction and Background

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

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



Existing and Proposed Boundaries of the CBY

The LBC held hearings on the CBY incorporation proposal on January 17, 1992, in Cordova, Valdez, Whittier, Juneau, Hoonah, Gustavus and Pelican. Members of the LBC and staff were in the various communities for the January 17 hearings. On January 19 and 20, 1992, the LBC held a hearing on the matter in Yakutat.

The annexation petition states that the estimate of the tidelands and submerged lands is based on a survey conducted by the Alaska Department of Natural Resources in 1988. The survey was conducted by the Alaska Department of Natural Resources and the Alaska Department of Fish and Game. The survey was conducted by the Alaska Department of Natural Resources and the Alaska Department of Fish and Game.

There was an interval of some 12 months between the submission of the petition and the conduct of hearings on the matter. This was due to several factors, including the rejection of the initial petition on technical grounds and

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

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

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

On June 7, 1993, the Superior Court affirmed the action of the LBC. The CBY appealed the decision to the Alaska Supreme Court. On April 28, 1995, the Supreme Court affirmed the decision of the Superior Court. The CBY then petitioned the Supreme Court for a rehearing. The petition for the rehearing was denied on September 14, 1995.

Section II - Current Annexation Proceedings

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

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

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

- 02/13/96 - Notice was mailed by DCRA to 39 potentially interested agencies and individuals (8 5-inch by 11-inch format)
- 02/16/96 - Notice was mailed or hand delivered by the CBY to 56 potentially interested individuals and organizations designated by DCRA (8 5-inch by 11-inch format)
- 02/19/96 - Notice was published for the first time in the *Alaska Administrative Journal*
- 02/20/96 or before - Notice was prominently posted in 8 5-inch by 11-inch format at the following locations in the CBY: CBY offices, Watson's General Store, Yakutat Court House, Yakutat Post Office, Yakutat branch of Key Bank, Yakutat Hardware, Monty's Bar, Foods, Yakutat Arden, and Lighthouse Cafe. The notice remained posted at those locations for at least 14 consecutive days from the date of posting.
- 02/26/96 - Notice was published for the first time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long. Notice was published for the second time in the *Alaska Administrative Journal*.

need to modify the LBC's regulations providing thorough incorporation standards, and other factors. DCRA's Provisional Report on the CBY annexation proposal provides a detailed account of the incorporation proceedings.

- 02/28/96 - Notice was published for the first time in the *Juneau Empire* as a display advertisement 2-columns wide and six-inches long.
- 03/01/96 - Notice was prominently posted at Yakataga, Wasser & Winters' office at West Icy Bay and the Ben Thomas, Inc., dockhouse at East Icy Bay. The notice remained posted at those locations for at least 14 consecutive days from the date of posting.
- 03/04/96 - Notice was published for the second time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long. Notice was published for the third time in the *Alaska Administrative Journal*.
- 03/06/96 - Notice was published for the second time in the *Juneau Empire* as a display advertisement 2-columns wide and six-inches long.
- 03/11/96 - Notice was published for the third time in the *Anchorage Daily News* as a display advertisement 2-columns wide and six-inches long. Notice was published for the fourth time in the *Alaska Administrative Journal*.
- 03/13/96 - Notice was published for the third time in the *Juneau Empire* as a display advertisement 2-columns wide and six-inches long.
- 03/18/96 - Notice was published for the fifth time in the *Alaska Administrative Journal*.
- 03/25/96 - Notice was published for the sixth time in the *Alaska Administrative Journal*.
- 04/08/96 - Notice was published for the seventh time in the *Alaska Administrative Journal*.
- 04/15/96 - Notice was published for the eighth time in the *Alaska Administrative Journal*.
- 04/22/96 - Notice was published for the ninth time in the *Alaska Administrative Journal*.
- 04/29/96 - Notice was published for the tenth time in the *Alaska Administrative Journal*.
- 05/06/96 - Notice was published for the eleventh time in the *Alaska Administrative Journal*.

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

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

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

1. City of Cordova, a home-rule municipal corporation with boundaries extending within approximately 75 miles of the territory proposed for annexation (the submission consisted of a 17-page brief and 6 attachments comprising 37 pages); and
2. CAC, a regional corporation established under the Alaska Native Claims Settlement Act (ANCSA) with boundaries extending from the 141st meridian to the tip of the Kenai Peninsula (the submission consisted of a 27-page brief and 7 attachments comprising 42 pages).

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

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

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

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

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

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

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

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

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

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

The executive summary invited readers to request DCRA's complete Provisional Report. Fourteen organizations and individuals subsequently requested and received a copy of the Provisional Report.³

During the period from October 31 to November 8, 1996, eleven organizations and individuals requested that the LBC extend the deadline for comment on DCRA's Provisional Report.⁴ The requests sought various extensions of the comment deadline ranging from December 13, 1996 to the first week of February 1997.

³ These were Mark Widby (10/21/96), Steve Panchon (10/22/96), Bob Hennrich (11/5/96), Cooper River-Prince William Sound Native Fishermen's Association (11/5/96), Native Village of Eyak (11/5/96), Chenequa Bay RA Council (11/8/96), Prince William Sound Economic Development Council (11/8/96), Lisa Sharp of Preston Sales and Eits (11/8/96), John Hoyer of the Chenequa Corporation (11/8/96), Gary P. Kuchler (11/22/96), John E. Wiles (11/22/96), James Egan (11/22/96), the Schomer of Browning Timber, which received a purchase interest in the logging camp operation from J. Russell Schomer (11/23/96), and Dale Myers of the City of Anchor (11/23/96).

⁴ Nine of the eleven requests were submitted prior to the meeting of the LBC on November 7, 1996. The nine requests submitted prior to the meeting were from the City of Cordova, Chenequa Bay RA Council, CAC, Prince William Sound Economic Development Council, Chugach Regional Resources Commission, Chenequa Corporation, Native Village of Eyak, Cooper River-Prince William Sound Native Fishermen's Association, and Robert J. Hennrich. The City of Anchor and the City of Valdez submitted requests after the November 7 meeting.

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

Thirty written comments regarding DCRA's Provisional Report were received by the extended deadline.¹ In addition, LBC member Kevin Wang verbally requested that DCRA address certain issues in its final report.

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

1. Carl Gianvile, resident of Anchor Point (one-page letter dated October 28).
2. Bob Hennrichs, resident of Cordova (two-page letter dated November 1).
3. Bob Hennrichs, President of the Copper River Prince William Sound Native Fishermen's Association (two-page letter dated November 1).
4. Donald P. Kompkoff, Sr., President, Chenega Bay IRA Council (one-page undated letter received on November 8).
5. Stephen C. Planchon, Executive Director, Mental Health Trust Land Office, Alaska Department of Natural Resources (one-page letter dated November 6, 1996).
6. Mark H. Wittow, Attorney for Alaska Gulf Coast Adventures, Inc. (two-page letter dated November 8).
7. James T. Brennan, Attorney for the CBY (eighteen-page letter dated November 8 with 3 attachments comprising 17 pages).
8. Eanna Mae Hughey, member of the Board of Directors of CAC, Corporate Secretary of CAC, Acting Office Manager of the Valdez Native Tribe and IHS Health Program Director for the Valdez Native Tribe (one-page letter dated November 12).
9. Rick Nelson, member of the Board of Directors of CAC (one-page letter dated November 12).
10. Guben Olesstad, member of the Board of Directors of CAC, CAC shareholder, retired commercial fisherman and longshoreman (one-page letter dated November 12).
11. John E. Walls, Camp Manager of the East Ivy Bay logging camp operated by Ben A. Thomas, Inc. (one-page letter dated November 8).
12. Shane Stephenson, charter pilot who resides in Yakutat (two-page letter dated November 4).
13. David Dengel, Assistant City Manager of the City of Valdez (one-page letter dated November 1 with attachments comprising two pages).
14. Carol Kompkoff, President, The Tasek Corporation (two-page letter dated November 12).
15. D. J. Burnham, resident of Cape Yakataga (three-page undated letter received November 12).
16. Gary P. Kompkoff, Chief, Native Village of Tasek (two-page letter dated November 9).
17. W. Scott Jarke, City Manager of the City of Cordova (two-page letter dated November 12 with attachments consisting of four pages).
18. Jeremy Tabbs, Executive Director, Chugachmut (four-page undated letter received November 12).
19. James Smet, Planning Director, Chugach Heritage Foundation (one-page undated letter received November 12).
20. Georganna Lindor, Alaska State Senator (one-page letter dated November 7).
21. Steven C. Planchon, Executive Director, Mental Health Trust Land Office, Alaska Department of Natural Resources (two-page letter dated November 12).
22. Mark Stahl, Manager, Lands and Resources Department for Chugach (two-page letter dated November 12).
23. Charles W. Totemoff, President & CEO of Chenega Corporation (two-page letter dated November 12).
24. Ralph J. Swannout, holder of mining leases in the Cape Yakataga area (two-page letter dated November 12).
25. David Morgan, Acting City Manager of the City of Whittier (two-page letter dated November 11 with 9 exhibits comprising 27 pages).
26. John Christensen, Chairman of the Board, CAC (two-page letter dated November 12).
27. John F. C. Johnson, member of the Board of Directors of CAC (one-page letter dated November 12).
28. Bob Hennrichs, President, Native Village of Eyak (one-page letter dated November 1).

¹ These comments were submitted to the LBC as requests to extend the original November 7, 1996 deadline for comment on DCRA's Provisional Report. These consisted of the letter from Bob Hennrichs (written as a resident of Cordova), the letter from Bob Hennrichs (written as President of the Copper River Prince William Sound Native Fishermen's Association) and the letter from Donald P. Kompkoff, Sr., IRA Council. These three letters were included in the context of comments on DCRA's Provisional Report (see item 1). They were sent either by mail or by hand to the LBC. Comments received by November 12 from the Chenega Bay IRA Council or Mr. Hennrichs, either as an individual or as President of the Copper River Prince William Sound Native Fishermen's Association (although Mr. Hennrichs is a resident of Cordova), were not included in the final report of the LBC.

29. Patty Brown-Schwalenberg, Executive Director, Chugach Regional Resources Commission (three-page letter dated November 8, 1996).
30. Philip Blumstein, attorney for CAC (two-page letter dated November 12, transmitting 57 pages of comments accompanied by 19 exhibits comprising 131 pages; also incorporated by reference was the administrative record of the proceedings before the LBC on the CBY's petition to incorporate the CBY which consists of 4 685 pages and 6 video tapes).

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

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

- 11/12/96 - Notice was mailed by DCRA to 139 individuals and organizations (8.5-inch by 14-inch format).
- 11/12/96 - Notice was published for the first time in the Anchorage Daily News (2-column by 6-inch format).
- 11/14/96 - Notice was posted (8.5-inch by 14-inch format) at the Browning Timber - West Icy Bay logging camp at the following locations: cookhouse bulletin board, office, Homeguard mail boxes and above the timecard box. Additionally, requests that public service announcements concerning the hearings be broadcast from November 22 - December 15, 1996, were mailed to the following radio stations serving the Prince William Sound and Yakutat areas: KCAW-FM, KCHU-AM, KJFP-FM and KLAM-AM.
- 11/15/96 - Notice was posted (8.5-inch by 14-inch format) at the following locations in Yakutat: Mallon's General Store, Mont Bay Foods, KJFP Radio Station, Yakutat Hardware, U.S. Forest Service offices, City/Borough Hall, ANB Hall, Yakutat Lodge, Glacier Bear Lodge, U.S. Post Office and Key Bank of Alaska. Additionally, a request to broadcast public service announcements concerning the hearings from November 22 - December 15, 1996 was mailed to KVAK-AM in Valdez.
- 11/18/96 - Notice was posted (8.5-inch by 14-inch format) at the following locations in Cordova: City Hall bulletin board, Post Office bulletin board, and Library bulletin board.
- 11/20/96 - Notice was posted (8.5-inch by 14-inch format) at the following locations at the Ben Thomas Inc. Icy Bay East logging camp: office, cookhouse, commissary, and bunkhouse.
- 11/21/96 - Notice was published for the second time in the Anchorage Daily News (2-column by 6-inch format).
- 11/25/96 - Notice was published for the first time in the Alaska Administrative Journal.
- 11/26/96 - Notice was published for the third time in the Anchorage Daily News (2-column by 6-inch format).
- 12/02/96 - Notice was published for the second time in the Alaska Administrative Journal.
- 12/09/96 - Notice was published for the third time in the Alaska Administrative Journal.

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

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

They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

Mobil Oil Corporation v. Local Boundary Commission 518 P.2d 92, 69-131 (Alaska 1974)

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

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

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

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

Statement of Decision in the Matter of the Petition for Detachment from the Matanuska-Susitna Borough of the Lake Louise Area Encompassing an Estimated 548 Square Miles, page 4 January 12, 1996

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

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

In the present proceedings, the LBC regards its decision as a choice among three alternative structures for local governance of the unincorporated area proposed for annexation by the CBY: approval of annexation of all or part of the area included in the CBY's petition; rejection of the CBY's annexation petition in favor of the status quo; or

rejection of the CBY's annexation petition in anticipation of the area's incorporation into a future Prince William Sound borough, most likely based in or dominated by Valdez.

Approval of the annexation would enhance the ability of the CBY to exercise self-government over an area where its residents have demonstrated important personal interests affecting their lives. Additionally, the individuals who reside in the area proposed for annexation would realize greater ability to exercise local self-government. Residents of the area would be participants in the CBY's municipal government structure. They would also assume obligations as citizens to support local governmental services.

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

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

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

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

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

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

Further, the pending annexation proposal is a more immediate fulfillment of Article X, § 1 when compared to a hypothetical Prince William Sound borough. If approved by the LBC and legislature, annexation could take effect as early as March 1997*. In contrast, if a petition for incorporation of a Prince William Sound borough were filed, incorporation would probably not occur until at least June 1998.

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

B. Regarding Common Interests.

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

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

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

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

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

* Such approval by the legislature under the provisions of Article X, § 12 of Alaska's constitution would be forthcoming no later than March 9, 1997. Assuming legislative approval is granted, annexation would take effect under the provisions of 19 AAC 10.630 after the CBY provided documentation to DORA that it has complied with 42 U.S.C. 1973c (Voting Rights Act of 1965). Upon adoption of this decisional statement, the annexation proposal would be ripe for submission of a federal Voting Rights Act preclearance request by the CBY to the U.S. Justice Department. The Justice Department typically takes about 60 days to act on such requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 AAC 10.180 requires that the economy within the proposed post-annexation borough boundaries include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. "Essential borough services" are those *mandatory and discretionary activities and facilities that are determined by the commission to be reasonably necessary to the territory and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state* (19 AAC 10.990(7)).

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

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

Notwithstanding, the CBY clearly has the human and financial resources needed to serve the area in question on an efficient and cost-effective basis. Since its incorporation, the CBY has demonstrated that it has the financial ability to provide

services and the willingness to tax its residents. Thus the LBC concludes that the standard set out in 19 AAC 10.180 is satisfied.

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

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

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

State law provides that absent a specific and persuasive showing to the contrary, the LBC may not approve a borough annexation beyond the model borough boundaries adopted by the LBC and identified in the 1992 Interim Report on Model Borough Boundaries. (19 AAC 10.190(c)) The western model borough boundary of the CBY was set at the 141st meridian following action taken by the LBC in 1992 concerning the petition for incorporation of the CBY.

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

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

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

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

to be sufficiently specific and persuasive to allow the extension of the CBY's corporate boundaries to Cape Suckling.

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

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

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

In summary, the LBC has determined that CBY boundaries extending to Cape Suckling would conform generally to natural geography. Such boundaries would also include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. Further, a specific and persuasive showing has been made to allow the CBY to extend its corporate boundaries to Cape Suckling on the west, exclusive of approximately 184 square miles lying within the model borough boundaries of the Copper River region. The LBC has consulted adequately with the Department of Education in the process of balancing all standards for annexation to a borough. Thus, the LBC concludes that the standards set out in 19 AAC 10.190 are satisfied with the exclusion of territory lying within the model borough boundaries of the Copper River region.

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

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

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

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

The LBC considered the effects of annexation on the interests of the CAC and others opposed to annexation. The LBC has found no prospect of substantial harm to those interests. If the CBY continues to function as it has, it will promote a balanced use of fisheries, timber, and other resources. It is unlikely that such would be any different if CAC were dealing with a Prince William Sound borough.

Section IV - Order

During its deliberations, the LBC considered the alternative of approving the annexation to the CBY *only* if the territory were not included within a Prince William Sound organized borough within two years. However, that option was rejected by the LBC.¹⁰

As a result of the conclusions reached in this case, on December 16, 1996, the LBC inherently amended the CBY's petition for annexation to exclude the estimated 184 square miles petitioned for annexation that lie within the model borough boundaries of the Copper River region. The LBC approved the petition for annexation with the amended boundaries by a unanimous vote among the five members present. Barring a reversal of this decision through reconsideration, the LBC will submit a formal recommendation to the First Session of the Twentieth Alaska Legislature pursuant to Article X, § 12 of Alaska's constitution for the annexation of the territory in question to the CBY.

The territory approved for annexation is described as follows:

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

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

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

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

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

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

¹⁰ A motion to conditionally approve annexation as described was made by Commissioner William Walters. However, the motion failed to be seconded by another member of the LBC. Commissioner Walters argued that the economic development of the area proposed for annexation will be more closely tied to the Prince William Sound region than to the City and Borough of Yakutat. Nevertheless, in the absence of a specific time line for a Prince William Sound borough to provide this area the local government services required by Article X, § 12 of the Alaska constitution, Commissioner Walters joins in the decision of the other Commissioners.

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

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

Thence due south along the 141st Meridian to its point of intersection with North 58° 48' 30" Latitude in the Gulf of Alaska;

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

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

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

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

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

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

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

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

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

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

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

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

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

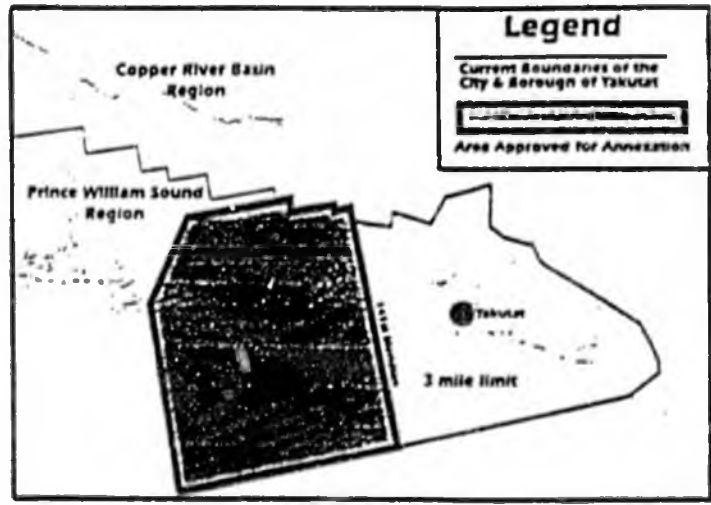
Thence southwesterly in a straight line to Cape Fairweather, at North 58° 48' 30" Latitude West: 137° 56' 45" Longitude in T. 33 S., R. 47 E., Copper River Meridian;

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

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

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

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



APPROVED IN WRITING THIS 19th DAY OF DECEMBER, 1996

LOCAL BOUNDARY COMMISSION

BY: Darroll Hargraves
Darroll Hargraves, Chairperson

ATTEST: Dan Bockhorst
Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under provisions of 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analysis that support the request for reconsideration. If the Commission has taken no action on a request for reconsideration within 30 days after the decision becomes final under provisions of 19 AAC 10.570(g), the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioners or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

Judicial Appeal. A decision of the Commission may be appealed to Superior Court. The appeal must be made in accordance with Alaska Rules of Appellate Procedure, Rule 601(a)(1)(A). An appeal to the Superior Court must be made within thirty days after the 30th day on which reconsideration can be ordered.

While the residents of Prince William Sound may take no initiative to form a borough in the foreseeable future, the legislature may. During the thirty-three years that have passed since the 1963 Mandatory Borough Act, the legislature has taken a *laissez faire* attitude with respect to the formation of boroughs.^{A-3} Nearly all incentives to form boroughs have disappeared.

Beginning in the early 1980's bills have been introduced to mandate formation of additional boroughs in nearly every session of the legislature. The bills went nowhere — except in the 1996 legislative session. In the most recently concluded regular session of the legislature, Senator John Torgerson, Chairman of the Senate Community & Regional Affairs Committee, introduced legislation that required regions of the unorganized borough to vote on borough formation. If the voters of a region rejected borough government, the legislation provided that the State would levy a 6-mill tax on property in that region. The bill passed the Senate by a vote of 13 - 7, but failed to gain approval in the House. Senator Torgerson has indicated that he intends to pursue some form of borough legislation in the upcoming session of the legislature.

With regard to the issue of municipal entitlement lands for a prospective Prince William Sound borough, the Department of Natural Resources made a "very rough calculation" in July of this year that a Prince William Sound borough would be entitled to 40,000 - 60,000 acres of land as a grant from the State under AS 29.65.030. In its estimate, DNR noted that:

Most of the VUU land within the PWS Borough is found in the mountains and glaciers that [are] around Valdez, in the Lake George Area (which is not in the Mat-Su Borough) and in the Cape Yakataga area. Although these remote lands are the basis for determining

most of the entitlement, there are potential settlement lands in Prince William Sound that a borough could select. Because the titles of Cordova, Valdez and Whittier all received municipal land entitlements, most of the land suitable for community expansion is already conveyed to or selected by these titles. Most land around Talitelle and Chenega is owned by the Native Corporations. (memorandum from Dick Mylius, DNR, July 8, 1996)

The "settlement lands" referred to by DNR are included in the VUU classification. They are considered by DNR to be high value lands. Lands classified for "public recreation" are also considered to be relatively high value lands. DNR estimates roughly that there are about 20,000 - 24,000 acres of such lands in the Prince William Sound region west of Cape Suckling. (personal communication, Dick Mylius, September 10, 1996)

As noted in DCRA's report on the Yakutat annexation, the boundaries of the territory proposed for annexation encompass over 87,000 acres of VUU land. Thus, if the Yakutat annexation is granted with the boundaries proposed by the Petitioner, a future Prince William Sound borough's municipal land entitlement under the statutory formula would be reduced by some 8,700 acres to an estimated range of 31,300 - 51,300 acres. As much as 40% to 75% of those prospective municipal entitlement lands are considered by DNR to be of relatively high value.

DNR roughly calculated that about two thirds of the VUU land in the area proposed for annexation lie east of the Duktoth River. Thus, if Yakutat's boundaries were extended only to the Duktoth River as recommended by DCRA, a future Prince William Sound borough's municipal land entitlement would be reduced by about 5,800 acres to a range of 34,200 - 54,200 acres.

A-3 Chapter 52, SLA 1963 mandated the formation of boroughs in eight regions by January 1, 1964. If voters in those regions failed to "voluntarily" form boroughs prior to that time, the regions were incorporated by legislative fiat. The eight regions were Sitka Election District #3; Juneau Election District #4; Palmer-Wasilla-Talkeetna Election District #7; Anchorage Election District #8, combined Seward Election District #9 and Kenai-Cook Inlet Election District #10; Kodiak Election District #11; Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 31, 1961, 26 Stat. 1101; and Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution. Boroughs were formed "voluntarily" in Ketchikan, Sitka, Juneau and Kodiak prior to the January 1, 1964 deadline.

It is evident that the Prince William Sound region enjoys adequate financial resources to support a borough. For example, the 1994 full and true value of taxable property in the Prince William Sound region was estimated to be \$1,272,675,200. The population of the region was reported to be 7,613. Thus, the 1994 *per capita* value of taxable property in the region was \$167,171. (Senate Bill 280 Fact Sheet, Senator John Torgerson, undated but received by DCRA on April 2, 1996).

North Slope Borough	\$1,387,738
Prince William Sound region	\$167,171
Bristol Bay Borough	\$112,178
Kenai Peninsula Borough	\$79,727
Ketchikan Gateway Borough	\$63,042
City and Borough of Juneau	\$60,733
City and Borough of Sitka	\$58,360
Kodiak Island Borough	\$55,143
Haines Borough	\$52,517
Anchorage	\$50,078
Northwest Arctic Borough	\$44,066
City and Borough of Yakutat	\$40,233
Matanuska-Susitna Borough	\$42,964
Fairbanks North Star Borough	\$41,890
Lake & Peninsula Borough	\$36,831
Denali Borough	\$36,339
Aleutians East Borough	\$31,722

As is shown in the box above, if the Prince William Sound region were a borough, its estimated per capita full and true value of taxable property would rank second only to the North Slope Borough. Its per capita value would be nearly 50% greater than the Bristol Bay Borough, currently the borough with the second highest per capita taxable property value. A Prince William Sound borough's per capita taxable property value would be more than 3.3 times greater than that of the Municipality of Anchorage. (data extrapolated from Alaska Taxable 1994, DCRA, January 1995)

It is also abundantly evident that the Prince William Sound region has the human resources

needed to operate a borough. Its population would rank 10th among the 17 boroughs that would exist if it incorporated. Further evidence of the local government capabilities of the region are illustrated by the fact that Cordova and Valdez each operate "mini-boroughs" (home rule cities in the unorganized borough). In other words, each city government functions in the manner required for boroughs. For example, each operates its own school district. Both cities administer separate coastal management districts. The City of Valdez and the City of Cordova perform totally separate planning, platting and land use functions. Each performs its own property assessment and taxing functions. Valdez and Cordova also deliver a host of other municipal services independently.

The remainder of the Prince William Sound region encompasses a separate school district (Chugach REAA). The City of Whittier also exists as a separate coastal management district. The City of Whittier also independently assesses and levies taxes. Whittier also provides platting, planning, land use functions and other municipal services independently of the other communities in the region.

While the Prince William Sound region has the resources to form a borough, it — like many other regions in Alaska, both past and present — lacks the will to do so. The fact is, no region in Alaska has ever volunteered to form an organized borough unless it was able to gain some significant self-interest (e.g., taxation of abundant natural resources, preemption of alternative borough boundaries, etc.). It appears that Valdez and other communities in Prince William Sound do not currently find it in their self interest to form an organized borough encompassing other communities.

However, if Cordova or Valdez were each given the same opportunity as Yakutat to form a borough encompassing only one community, those communities might quickly find the will to organize.

MEMORANDUM

STATE OF ALASKA Community and Regional Affairs

TO: Pat Poland
Director
Municipal & Regional Assistance
Division

DATE: February 10, 1997

FILE: S \ LBC \ Travel \ DB Trip

PHONE: 269-4559

FROM: Dan Bockhorst, Supervisor, LBC Staff

SUBJECT: Trip report - Valdez
January 17, 1997

Travel: I left home at 5:20 a.m., caught the 7:30 a.m. flight to Valdez where I arrived at 8:10 a.m. The meeting began shortly after 10 a.m. The meeting ended around 3:00 p.m. I caught the 6:10 p.m. return flight to Anchorage arriving just before 7:00 p.m. I returned home at 9:25 p.m.

The following issues were addressed at the meeting.

Yakutat Annexation - All the communities in the Sound are opposed to the Yakutat annexation proposal. Representatives from the City of Cordova and Chugach Alaska Corporation indicated that they were planning to travel to Juneau on January 29 to lobby the legislature for the rejection of the LBC's recommendation for annexation.

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Mandatory borough formation - Senate Bill 30 was discussed. Topics included the tax implications associated with the legislation, the influence legislation may have on the REAA, and how a vote based on mandatory formation may impact the region.

Factors influencing the communities interest in borough formation - The following were identified as factors that are motivating the communities to consider borough formation. Opposition to the Yakutat annexation, the Whittier road and harbor projects; the threat of annexation of Whittier to Anchorage, a DOT/PF, PWS transportation study

that is scheduled to begin this coming summer; Chugach Corp. opening lands in the Copper River area; the prospect of relocation of the Anchorage port to Whittier; increased activity in the Sound, McCarthy, and the Wrangell St. Elias area, consideration of a bike trail from Cordova to Thompson Pass; and, oil, gas, and mineral development in the region.

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The group discussed the merit of considering a borough with boundaries that excluded Cordova, however, that alternative was readily dismissed

During this discussion I pointed out that DCRA's preliminary policy position, as expressed by Lamar Cotten and you, was that all the PWS communities should be included in one borough. It was also pointed out that if Valdez and Talitlok are not included in the borough boundaries and that if they do not form a separate borough they may be subject to future annexation.

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Patrick K. Poland
February 10, 1997
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Revenue - Possible sources of revenue included real, personal, sales, and severance taxes, user fees, and the sale and leasing of land. State sources included the organizational grant, revenue sharing and municipal assistance, coastal management grants, contributions to education, and Dept. of Revenue funds. Municipal entitlement lands were also discussed under this topic. Federal sources include education funds, PII.T, and Nat. Forest receipts.

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February 14, 1997

RE: HOUSE JOINT RESOLUTION NO. 17 - Disapproving Local Boundary Commission recommendation number two regarding the annexation of the territory to the City and Borough of Yakutat.

Testimony by Phil Hubbard, City Manager of Valdez, Alaska before the House Community and Regional Affairs Committee:

THE VALDEZ CITY COUNCIL HAS TWICE GONE ON RECORD OPPOSING THE PETITION OF THE CITY AND BOROUGH OF YAKUTAT, TO EXTEND ITS BOUNDARIES BEYOND THE 141ST MERIDIAN.

THE 141ST MERIDIAN HAS SERVED AS A BOUNDARY FOR MANY THINGS. IT IS THE BOUNDARY BETWEEN LEGISLATIVE DISTRICTS, THE BOUNDARY BETWEEN RURAL EDUCATION ATTENDANCE AREAS AND THE BOUNDARY BETWEEN REGIONAL NATIVE CORPORATIONS.

IN JUNE 1992, THE LOCAL BOUNDARY COMMISSION ADOPTED THE MODEL BOROUGH BOUNDARIES, DRAWING THE EASTERN BOUNDARY FOR THE PRINCE WILLIAM SOUND BOROUGH AT THE 141ST MERIDIAN.

THE REPORT OF THE LOCAL BOUNDARY COMMISSION TO THE LEGISLATURE MAKES REFERENCE THAT THE CITY OF VALDEZ DOES NOT PRESENTLY SUPPORT THE FORMATION OF A PRINCE WILLIAM SOUND BOROUGH. THE POSITION OF THE CITY COUNCIL IS NOW ONE OF NEEDING MORE INFORMATION BEFORE AN INFORMED DECISION CAN BE MADE.

THE VALDEZ CITY COUNCIL HAS RECENTLY MET WITH OTHER ELECTED AND CORPORATE LEADERS IN PRINCE WILLIAM SOUND TO DISCUSS REGIONAL GOVERNMENT ISSUES. THE CITY OF VALDEZ IS PARTNERING WITH THESE

OTHER COMMUNITIES AND CORPORATIONS TO INVESTIGATE THE FEASIBILITY AND ECONOMIC VIABILITY OF FORMING A PRINCE WILLIAM SOUND BOROUGH.

ONCE THIS STUDY IS COMPLETED, THE VALDEZ CITY COUNCIL WILL BE ABLE TO MAKE A DECISION AS TO WHETHER THE FORMATION OF A BOROUGH IS IN THE BEST INTERESTS OF THE CITIZENS OF VALDEZ.

THERE ARE APPROXIMATELY 8,000 PEOPLE LIVING IN 3 COMMUNITIES AND 2 VILLAGES AND NUMEROUS ISLANDS IN PRINCE WILLIAM SOUND. WE ARE DIVERSE IN OUR CULTURE AND LOCAL ECONOMIES. IT TAKES TIME TO GATHER RELEVANT INFORMATION AND TO INFORM ALL STAKEHOLDERS ON THE ADVANTAGES AND DISADVANTAGES OF REGIONAL GOVERNMENT. YAKUTAT WAS ABLE TO MOVE MUCH QUICKER BECAUSE THEY ARE A SMALLER, COHESIVE COMMUNITY -- BUT THAT SHOULD NOT INURE TO THEIR BENEFIT AND TO THE DETRIMENT OF PRINCE WILLIAM SOUND RESIDENTS.

THERE ARE OVER 87,000 ACRES OF STATE OWNED, VACANT, UNRESERVED AND UNCLASSIFIED LAND IN THE AREA BETWEEN THE 141ST MERIDIAN AND CAPE SUCKLING. IF THIS LAND WERE DELETED FROM A POTENTIAL PRINCE WILLIAM SOUND BOROUGH, THE FUTURE ECONOMIC VIABILITY OF A REGIONAL GOVERNMENT MAY BE JEOPARDIZED.

WE ASK THAT THE STATE LEGISLATURE PROVIDE THE COMMUNITIES AND ORGANIZATIONS OF PRINCE WILLIAM SOUND, THE TIME AND OPPORTUNITY TO FULLY ANALYZE THE VARIOUS ASPECTS OF A BOROUGH AND TO PRESENT THOSE FINDINGS TO THE REGION'S CITIZENRY.

WE RESPECTFULLY REQUEST THE LEGISLATURE'S DISAPPROVAL OF THE LOCAL BOUNDARY COMMISSION'S RECOMMENDATION.

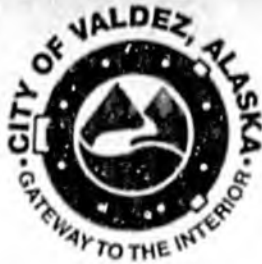


ALASKA TERRITORY

ALASKA

GULF OF

ALEXANDER ARCHIPELAGO



February 14, 1997

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WE RESPECTFULLY REQUEST THE LEGISLATURE'S DISAPPROVAL OF THE LOCAL BOUNDARY COMMISSION'S RECOMMENDATION.

While the residents of Prince William Sound may take no initiative to form a borough in the foreseeable future, the legislature may. During the thirty-three years that have passed since the 1963 Mandatory Borough Act, the legislature has taken a *laissez faire* attitude with respect to the formation of boroughs.^{A-3} Nearly all incentives to form boroughs have disappeared.

Beginning in the early 1980's bills have been introduced to mandate formation of additional boroughs in nearly every session of the legislature. The bills went nowhere — except in the 1996 legislative session. In the most recently concluded regular session of the legislature, Senator John Torgerson, Chairman of the Senate Community & Regional Affairs Committee, introduced legislation that required regions of the unorganized borough to vote on borough formation. If the voters of a region rejected borough government, the legislation provided that the State would levy a 6-mill tax on property in that region. The bill passed the Senate by a vote of 13 - 7, but failed to gain approval in the House. Senator Torgerson has indicated that he intends to pursue some form of borough legislation in the upcoming session of the legislature.

With regard to the issue of municipal entitlement lands for a prospective Prince William Sound borough, the Department of Natural Resources made a "very rough calculation" in July of this year that a Prince William Sound borough would be entitled to 40,000 - 60,000 acres of land as a grant from the State under AS 29.65.030. In its estimate, DNR noted that:

Most of the VUU land within the PWS Borough is found in the mountains and glaciers that [are] around Valdez, in the Lake George Area (which is not in the Mat-Su Borough) and in the Cape Yakataga area. Although the remote lands are the basis for determining

most of the entitlement, there are potential settlement lands in Prince William Sound that a borough could select. Because the cities of Cordova, Valdez and Whittier all received municipal land entitlements, most of the land suitable for community expansion is already conveyed to or selected by these cities. Most land around Tatitlek and Chenega is owned by the Native Corporations. (memorandum from Dick Mylius, DNR, July 8, 1996)

The "settlement lands" referred to by DNR are included in the VUU classification. They are considered by DNR to be high value lands. Lands classified for "public recreation" are also considered to be relatively high value lands. DNR estimates roughly that there are about 20,000 - 24,000 acres of such lands in the Prince William Sound region west of Cape Suckling. (personal communication, Dick Mylius, September 10, 1996)

As noted in DCRA's report on the Yakutat annexation, the boundaries of the territory proposed for annexation encompass over 87,000 acres of VUU land. Thus, if the Yakutat annexation is granted with the boundaries proposed by the Petitioner, a future Prince William Sound borough's municipal land entitlement under the statutory formula would be reduced by some 8,700 acres to an estimated range of 31,300 - 51,300 acres. As much as 40% to 75% of those prospective municipal entitlement lands are considered by DNR to be of relatively high value.

DNR roughly calculated that about two thirds of the VUU land in the area proposed for annexation lie east of the Duktoth River. Thus, if Yakutat's boundaries were extended only to the Duktoth River as recommended by DCRA, a future Prince William Sound borough's municipal land entitlement would be reduced by about 5,800 acres to a range of 34,200 - 54,200 acres.

A-3 Chapter 52, SLA 1963 mandated the formation of boroughs in eight regions by January 1, 1964. If voters in those regions failed to "voluntarily" form boroughs prior to that time, the regions were incorporated by legislative fiat. The eight regions were Sitka Election District #3; Juneau Election District #4; Palmer-Wasilla-Talkeetna Election District #7; Anchorage Election District #8; combined Seward Election District #9 and Kenai-Cook Inlet Election District #10; Kodiak Election District #11; Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 31, 1961, 26 Stat. 1101; and Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution. Boroughs were formed "voluntarily" in Ketchikan, Sitka, Juneau and Kodiak prior to the January 1, 1964 deadline.

It is evident that the Prince William Sound region enjoys adequate financial resources to support a borough. For example, the 1994 full and true value of taxable property in the Prince William Sound region was estimated to be \$1,272,675,200. The population of the region was reported to be 7,613. Thus, the 1994 *per capita* value of taxable property in the region was \$167,171. (Senate Bill 280 Fact Sheet, Senator John Torgerson, undated but received by DCRA on April 2, 1996).

North Slope Borough	\$1,387,738
Prince William Sound region	\$167,171
Bristol Bay Borough	\$112,178
Kenai Peninsula Borough	\$79,727
Ketchikan Gateway Borough	\$66,042
City and Borough of Juneau	\$60,733
City and Borough of Sitka	\$58,360
Kodiak Island Borough	\$55,143
Haines Borough	\$52,517
Anchorage	\$50,078
Northwest Arctic Borough	\$44,066
City and Borough of Yakutat	\$40,233
Matanuska-Susitna Borough	\$42,964
Fairbanks North Star Borough	\$41,890
Lake & Peninsula Borough	\$36,831
Denali Borough	\$36,339
Aleutians East Borough	\$31,722

As is shown in the box above, if the Prince William Sound region were a borough, its estimated per capita full and true value of taxable property would rank second only to the North Slope Borough. Its per capita value would be nearly 50% greater than the Bristol Bay Borough, currently the borough with the second highest per capita taxable property value. A Prince William Sound borough's per capita taxable property value would be more than 3.3 times greater than that of the Municipality of Anchorage. (data extrapolated from Alaska Taxable 1994, DCRA, January 1995)

It is also abundantly evident that the Prince William Sound region has the human resources

needed to operate a borough. Its population would rank 10th among the 17 boroughs that would exist if it incorporated. Further evidence of the local government capabilities of the region are illustrated by the fact that Cordova and Valdez each operate "mini-boroughs" (home rule cities in the unorganized borough). In other words, each city government functions in the manner required for boroughs. For example, each operates its own school district. Both cities administer separate coastal management districts. The City of Valdez and the City of Cordova perform totally separate planning, platting and land use functions. Each performs its own property assessment and taxing functions. Valdez and Cordova also deliver a host of other municipal services independently.

The remainder of the Prince William Sound region encompasses a separate school district (Chugach REAA). The City of Whittier also exists as a separate coastal management district. The City of Whittier also independently assesses and levies taxes. Whittier also provides platting, planning, land use functions and other municipal services independently of the other communities in the region.

While the Prince William Sound region has the resources to form a borough, it — like many other regions in Alaska, both past and present — lacks the will to do so. The fact is, no region in Alaska has ever volunteered to form an organized borough unless it was able to gain some significant self-interest (e.g., taxation of abundant natural resources, preemption of alternative borough boundaries, etc.). It appears that Valdez and other communities in Prince William Sound do not currently find it in their self interest to form an organized borough encompassing other communities.

However, if Cordova or Valdez were each given the same opportunity as Yakutat to form a borough encompassing only one community, those communities might quickly find the will to organize.

MEMORANDUM

STATE OF ALASKA
Community and Regional Affairs

TO: Pat Poland
Director
Municipal & Regional Assistance
Division

DATE: February 10, 1997

FILE: S \ LBC \ Travel \ DB Trip

PHONE: 269-4559

FROM: Dan Bockhorst, Supervisor, LBC Staff
SUBJECT: Trip report - Valdez
January 17, 1997

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STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

STATEMENT OF DECISION

IN THE MATTER OF THE PETITION)
TO DISSOLVE THE CITY OF)
YAKUTAT AND INCORPORATE THE)
CITY AND BOROUGH OF YAKUTAT -)

SUMMARY OF ACTION

The Petition

On October 2, 1990, the Department of Community and Regional Affairs (DCRA) received a petition seeking the incorporation of the City and Borough of Yakutat (and the dissolution of the present first class city). After review, DCRA rejected the petition because of a number of deficiencies, including a flawed boundary description, errors with property valuations and projected revenues, and the improper form of the petition itself. On December 7, 1990, the petitioners gave their draft revised petition to DCRA for review. The actual petition to dissolve the existing first-class City of Yakutat and incorporate the City & Borough of Yakutat was formally presented to DCRA on December 26, 1990, with supplementary signatures submitted on January 11, 1991. DCRA found the form and content of this petition to be in substantial compliance with the applicable laws.

Notice of the Yakutat petition was published in Anchorage and Juneau newspapers in January and February of 1991. Notice was also mailed directly to 150 individuals and organizations which might have an interest in the matter. In addition, the notice was posted in several places in the area proposed for incorporation.

At the time the Yakutat petitioners presented their incorporation petition, the Local Boundary Commission's regulations, which went into effect in 1982, provided that two or more communities and at least 1000 people were required for an area to qualify for borough incorporation.¹ The petitioners challenged the LBC regulations on several grounds, including arguments that they had been improperly adopted and that the Commission has no authority to adopt regulations on borough incorporation standards. In a February 15, 1991 opinion, the Department of Law confirmed the validity of the LBC's regulations.

During the first half of 1991, the LBC worked on a substantial revision of all their regulations. The revised regulations, adopted on June 29, 1991, changed the absolute requirement for at least two communities and 1000 people in a proposed borough to presumptions in favor of those

¹ Although the petition had not yet been formally investigated, DCRA staff believed, on the basis of generally available information, that Yakutat probably could not meet the two community or 1000 people standards. At the decisional meeting held on March 17, 1992, the LBC specifically found that the area proposed for incorporation as the City and Borough of Yakutat did not have two communities or 1000 permanent residents.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 2

factors. Each presumption could be overcome with a specific and persuasive showing that the statutory standards were met despite the absence of two communities and/or 1000 permanent residents. Petitioners requested that the Yakutat proposal be considered under the new regulations, which became effective on November 12, 1991.

Following its investigation and analysis of the petition, DCRA distributed its draft report on the petition on August 30, 1991. DCRA sent the full report to 70+ groups and individuals, and mailed the sixteen-page summary to an additional 120+ parties. DCRA recommended that the Yakutat petition be rejected. At the request of petitioners and other interested parties, DCRA extended the public comment period on the report to October 11, 1991.

On October 4, 1991, the Department held the required informational meeting in Yakutat. At the request of Mayor Powell, DCRA staff members were available to meet informally with officials and the general public from 1:00 to 5:00 in the afternoon, with the formal meeting starting at 7:00 p.m. DCRA staff met with the Mayor, City Manager, City Planner, two City Council members and school officials. Approximately 10 area residents, in addition to the Mayor and City Planner, attended the evening meeting.

DCRA's final report was delayed while the LBC and Department waited for a legal opinion from the Attorney General's Office on petitioners' renewed attack on the LBC regulations. It was further delayed so that Bob Walsh, the new Director of the Municipal and Regional Assistance Division of DCRA, could visit Yakutat and the petitioners as promised by Deputy Commissioner Marty Rutherford, who had since left the Department.

On December 24, 1992, DCRA distributed more than 80 copies of its final report, as well as an additional 55 copies of the summary. The Department's report recommended that the LBC reject the petition. In a section dealing with model borough boundaries for the territory stretching from Prince William Sound to the Cross Sound/Icy Straits area, the Department recommended that Yakutat be included with Hoonah and the Cross Sound/Icy Straits communities.² This recommendation changed DCRA's earlier recommendation that Yakutat be included within the same model borough boundaries as the Prince William Sound area.

Throughout the investigation period, petitioners and the City of Yakutat continued to provide additional information on the petition, as well as formally responding to DCRA's draft and final reports.

²In 1989, as a long-term planning tool, the LBC and its DCRA staff began studying the unorganized borough in order to propose model boundaries. Model boundaries adopted by the Commission serve as guidelines for evaluating petitions for borough incorporation or annexation, but they are not intended to force or promote the incorporation of any area. The model boundaries are adopted only after public hearings and extensive opportunities for public comment. The entire area from Prince William Sound through Yakutat to Cross Sound/Icy Straits was part of the unorganized borough during the time of the investigation and consideration of the Yakutat petition. The LBC generally prefers to adopt model boundaries for an area before considering borough incorporation or annexation petitions.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 3

Public Comment

Prior to the hearings on the petition, the Department and the Commission received substantial public comment on the Yakutat borough proposal and the related proposals on model boundaries for the area. The public comment included:

- Written comments on DCRA's 1990 draft reports on model boundaries
- Public hearings in November, 1990 on the proposed model boundaries
- Written and oral comments provided to the Commission during the process of revising the regulations
- Written comments on the Notice of Petition
- Written comments on DCRA's draft report on the petition
- Written comments on DCRA's final report on the petition

The written comments were included with DCRA's reports. Because of the number and length of the comments, most were included in a separate volume labeled Appendix A to the DCRA Report to the Alaska Local Boundary Commission. DCRA's report also summarized the testimony from the 1990 hearings.

The LBC held hearings on the Yakutat petition and the proposed model boundaries in Prince William Sound and in Cross Sound/Icy Straits communities on January 17, 1992. Vice-Chair Shelley Dugan in Cordova, Commissioner Lamar Cotten in Valdez and Commissioner Myrtle Johnson in Whittier participated via teleconference for one set of hearings.³ Chairman Charles Bettisworth in Juneau and Commissioner Darroll Hargraves in Hoonah were linked by teleconference with staff members in Gustavus and Pelican for the second set of hearings. The Yakutat petitioners participated in the teleconference for both sets of hearings.

On January 18 and 19, 1992, the entire Commission was present in Yakutat and conducted 11 hours of public hearings on the petition and model boundaries. Petitioners submitted numerous documents, exhibits and maps to the Commission during the hearing. The community of Tatitlek also made a brief comment by teleconference at the Yakutat hearing.

The Commission kept the record open for two weeks following the hearings, until February 3, 1992, and received approximately 30 more letters and briefs. Because petitioners and others continued to provide materials directly to Commission members following the close of the record, the Commission decided on February 26 to briefly reopen the record to give everyone one last opportunity to comment. Written comments were accepted until 4:00 p.m. on March 13, 1992. Notice of the reopening of the record was published in Anchorage and Juneau newspapers, as well as mailed directly to more than 160 groups and individuals. Approximately 30 more documents were added to the record by the March 13 deadline.

³The community of Chenega also participated in the teleconference.

Decisional Meetings

The Commission met on February 5, 1992 in Anchorage to begin its decisional process on the Yakutat petition and model boundaries. At the request of the Department, the LBC was assisted in its deliberations by contract counsel Jerry Wertzbaugher of Condon, Partnow & Sharrock. During more than 5 hours of discussion and reviewing the record, the Commission began its consideration of the standards and factors for borough incorporation, and discussed the factors relevant to the Yakutat petition in terms of the record. The Commission scheduled the continuation of the meeting for February 26 in Anchorage.

The LBC met but did not deliberate at the February 26 meeting. Because of potential problems resulting from the petitioners and the University of Alaska having submitted materials directly to the LBC Commissioners following the close of the record, the Commission decided to postpone all deliberations until March 17, 1992, several days after the new close of record.⁴

Also at the February 26 meeting, Chairman Bettisworth and Commissioner Johnson both raised the possibility of conflicts of interest which might bar them from participating in the decision.⁵ The potential conflicts were referred to legal counsel.

The Commission met again on March 17, 1992 in Anchorage. The Attorney General had advised both Chairman Bettisworth and Commissioner Johnson that they did not have a conflict of interest under the state's Ethics Act. Because the ethics provisions of the LBC's Bylaws are somewhat different from the state act, the Commission voted on whether to exempt the two Commissioners, as allowed in Article IX of the bylaws, so that they could participate. The vote was 3 to 1 (Chairman Bettisworth not voting) to allow the Chairman to participate and 4 to 0 (Commissioner Johnson not voting) to allow Commissioner Johnson to participate.

During several hours of deliberations, the LBC separately considered each statutory standard on borough incorporation and the factors set out in the LBC's regulations. The Commission eventually voted 4-1 (Commissioner Dugan opposing) to approve the petition to dissolve the City of Yakutat and incorporate the City and Borough of Yakutat, with

⁴At the end of the meeting, the LBC also discussed allegations made by petitioners of unethical or biased actions on the part of the DCRA Commissioner and staff. The Commissioners found no basis for these allegations and unanimously expressed confidence in staff. Because petitioners and others had not remained for this part of the meeting, the LBC again expressed their support for the staff at the March 17 meeting.

⁵Chairman Bettisworth cited the fact that his company has substantial contracts with the University of Alaska. The University was on the record as opposing the proposed boundaries, and during the period between February 5 and February 26, the University strongly voiced its opposition. Mrs. Johnson feared her daughter's job with the North Pacific Rim might give Mrs. Johnson a conflict.

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boundaries extending from the 141st meridian in the west to Cape Fairweather in the east.⁶

Before the LBC voted on the motion to approve the petition, the Commissioners amended the motion to include specific findings that Yakutat had neither two communities nor 1000 people, but that because of its geographically unique circumstances, Yakutat had successfully made a persuasive showing that its population was interrelated and integrated, and large and stable enough to support borough government. The basis of the decision to approve the petition and the manner of voting is set out below in the section on Findings and Conclusions.

DESCRIPTION OF YAKUTAT

The first class City of Yakutat is situated by Monti Bay, in the southeastern part of Yakutat Bay. Monti Bay is the only sheltered deep water port in the Gulf of Alaska. The City occupies approximately 8 square miles of land and water. There are roads in the immediate environs of the City, but none leading to the rest of the proposed borough. The 1990 federal census indicated the city proper has a total population of 534, approximately 54% Native, 42% white and 4% other races. Yakutat's Native Alaskan residents are generally considered to be the northernmost group of the Tlingit Indians, but other Native settlers included Eyak Indians and Chugach Eskimo, as well as Ahtna from Chitina.⁷ There was substantial intermarriage and mixing of all of these groups.

From the information provided by petitioners and Yakutat officials, it appears that, except for the logging camp at Icy Bay and perhaps another 10 to 15 people scattered in small groups, all of the permanent residents of the proposed borough live within five miles of the current Yakutat city limits, and are connected to the city by road. State and federal figures indicate the total area served by the City's school district includes slightly over 700 people. This area includes people who live outside the city limits and are therefore in the Chatham REAA. The State pays the Yakutat school district a subsidy to teach non-city students in the Yakutat schools.

The number of students attending the Yakutat schools in the 91/92 school year is approximately 131, including 8 from outside the city limits. Although for the past few years there had been a small Chugach REAA school⁸ operated at Icy Bay, petitioners advised at the February 5

⁶The first vote on the motion was 3 to 2 against the petition, with Commissioners Dugan, Hargraves and Johnson in the majority. Commissioners Hargraves and Johnson's "no" votes were based upon their opposition to the amendment to establish the western boundary at the 141st meridian, and they asked to change their vote on the main motion, creating a 4 to 1 majority in favor of approval.

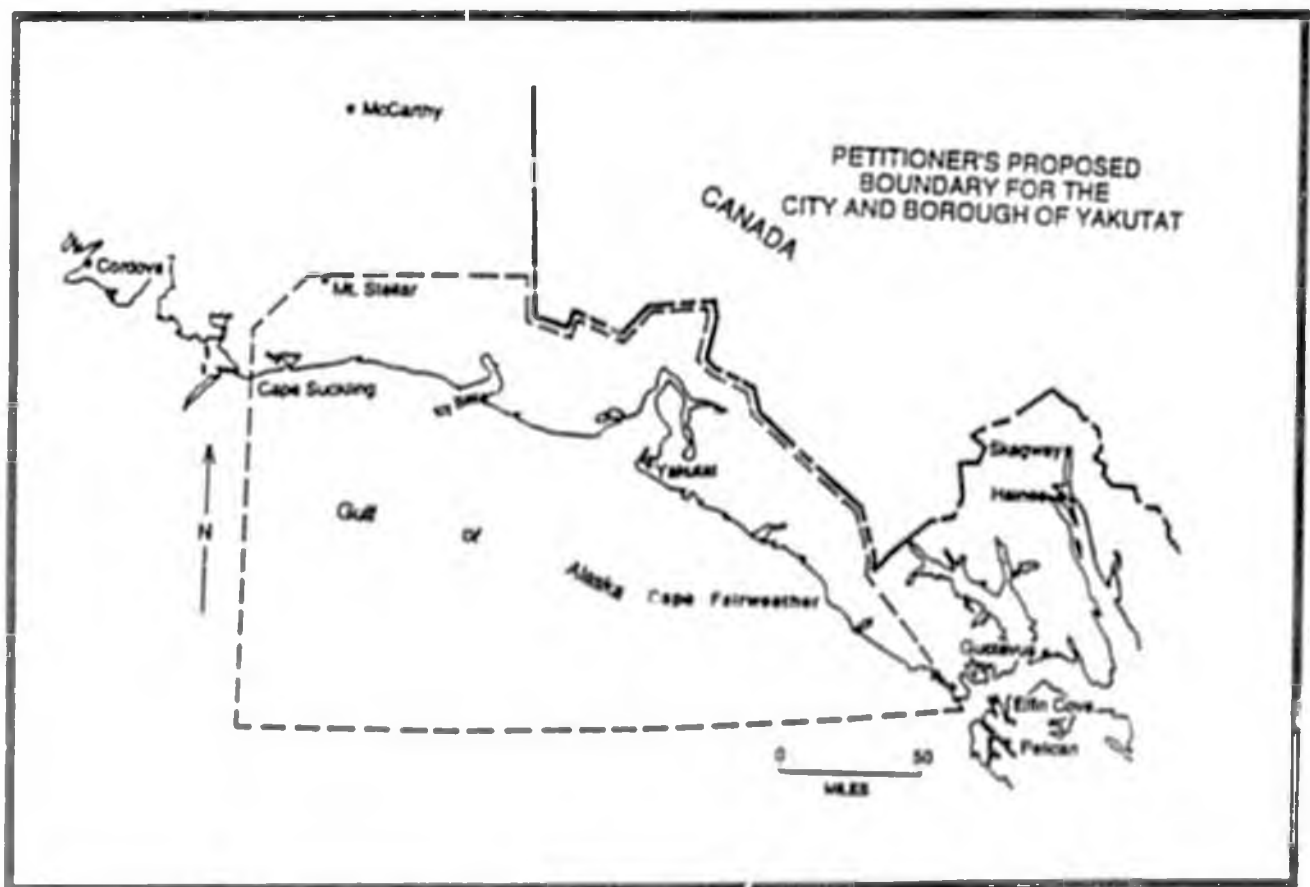
⁷Information from Chugach Alaska Corporation, in response to the model boundaries studies, advised that there were also Aleut in the area, and that the Chugach Eskimos and the Aleuts were often mistakenly considered to be part of the same group.

⁸For the last year and a half of its operation, the school generally had 3 students.

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decisional meeting that the school had been at least temporarily closed down.

Yakutat residents engage in a substantial amount of subsistence fishing, and to a lesser degree, hunting. Commercial fishing is the major industry. There are ongoing logging operations in the proposed borough area, although petitioners question in their brief whether timber harvesting represents "a long-term economy" in the region. The major source of full-time employment is government/school district. Other sources of employment and income include mining, tourism (including guiding, outfitting and lodges connected with sport fishing and hunting), and the airport. The area from Dry Bay to Cape Suckling is also being considered by the federal Minerals Management Service as part of a proposed Gulf of Alaska OCS lease sale.⁹



The assessed valuation of real property within the city limits for 1990 was \$10,959,269. The State Assessor estimated that the total assessed value of taxable real property in the proposed borough was \$17,110,589 as of January 1, 1990. The Assessor also estimated that the total full value of real property throughout petitioners' proposed boundaries was approximately \$20,500,000 as of January 1, 1990.¹⁰

Petitioners propose that the borough would extend, to the areas connected by road to the City, all of the services currently provided by the

⁹Yakutat has been the focus of oil exploration off and on since the early 1900's, with lease sales from the 1950's through the 1980's, but significant amounts of oil have not yet been found.

¹⁰The State Assessor estimated that the full value of all real and personal property within the proposed borough boundaries was \$29,499,500 as of January 1, 1990.

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City. The City owns the water & sewer and electric utilities, as well as a small boat harbor and seaplane float. The services it provides include police, fire, planning, taxation, health, parks and recreation, road maintenance, solid waste, a cold storage dock, and education.

To the rest of the area within the proposed boundaries, the petitioners indicate the borough would provide education, tax assessment and land use regulation, as well as emergency medical services. In a proposed amendment to the petition made shortly before the January 18 hearing, petitioners also stated that, with cooperation from the state troopers, the borough would provide police service throughout the borough. However, since that time, petitioners have advised that the troopers intend to withdraw the trooper stationed in Yakutat. It is unclear what effect this will have on petitioners' proposed extension of police service beyond the roaded area.

THE LAW APPLICABLE TO BOROUGH INCORPORATION

The Alaska Constitution, state statutes and the LBC's regulations all contain provisions on the standards to be applied by the LBC in evaluating petitions for borough incorporation.

Alaska Constitution:

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

Article X, Section 1

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. . . .

Article X, Section 3

AS 29.05.031

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough.

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(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

LBC Regulations - Borough Incorporation Standards

19 AAC 10.045. COMMUNITY OF INTERESTS.

(a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) the compatibility of urban and rural areas within the proposed borough;

(2) the compatibility of economic lifestyles, and industrial or commercial activities;

(3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and

(4) the extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) public electronic media.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

19 AAC 10.050. POPULATION.

(a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) total census enumerations;

(2) durations of residency;

(3) historical population patterns;

(4) seasonal population changes; and

(5) age distributions.

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(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

19 AAC 10.055. RESOURCES.

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) the reasonably anticipated functions of the proposed borough;
- (2) the reasonably anticipated expenses of the proposed borough;
- (3) the reasonably anticipated income of the proposed borough and its ability to collect revenue;
- (4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation;
- (5) the economic base of the proposed borough;
- (6) property valuations;
- (7) land use;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents;
- (10) the need for and availability of employable skilled and unskilled people; and
- (11) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

19 AAC 10.060. BOUNDARIES.

(a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond the model borough boundaries adopted by the commission.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough or unified municipality, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough or unified municipality. The commission will consider and treat such an incorporation petition as also being a detachment petition.

FINDINGS AND CONCLUSIONS

In analyzing the Yakutat petition, the Commission considered the arguments and evidence as they related to six general standards on borough incorporation and the dissolution of the City of Yakutat.¹¹ Petitioners must meet each of the standards for the petition to be approved. The evidence considered by the LBC included the petitioners' briefs and exhibits, the reports by the Department of Community and Regional Affairs, the written comments submitted by the public and interested parties, and the testimony at the hearings conducted by the Commission on this matter.

Guided by the advice from the Department of Law and the LBC's contract counsel, and based upon the evidence before the Commission, the Commission makes the following findings and conclusions:

CONCLUSION #1: ALTHOUGH THERE IS ONLY ONE COMMUNITY WITHIN THE PROPOSED YAKUTAT BOROUGH, DUE TO FACTORS WHICH INCLUDE YAKUTAT'S UNIQUE GEOGRAPHIC CIRCUMSTANCES, THE POPULATION OF THE AREA IS INTERRELATED AND INTEGRATED AS TO ITS SOCIAL, CULTURAL, AND ECONOMIC ACTIVITIES.

To determine whether the population of a proposed borough is interrelated and integrated as to its social, cultural and economic activities, the LBC looks at factors such as the compatibility of urban and rural areas, compatibility of economic lifestyles, compatibility of industrial and commercial activities, and transportation and communication patterns. Although there is a presumption that, without two communities, an area cannot meet the standard for interrelation, that presumption may be overcome by a specific and persuasive showing to the contrary. In the present case, the LBC finds that the Yakutat petitioners have overcome the presumption, and have shown that the population of the proposed borough is integrated and interrelated. The Commission's conclusion was based upon the following findings:

¹¹ Although AS 29.05.031(a) contains only four subsections, the LBC considered the two requirements of (a) (1) as separate standards, one on the interrelation and integration of the population and one on the size and stability of the population. Therefore, the LBC considered five standards on incorporation: the sixth standard considered was on city dissolution.

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- ◊ There is only one community - the Yakutat community - in the proposed borough. Neither the Icy Bay logging camp nor the area around the Yakutat airport, nor any other settlement or group qualifies as a community for the purposes of the borough incorporation provisions.
- ◊ Through their written submissions and oral testimony, petitioners persuasively showed the integration of the population's activities, and their interconnection with the unpopulated parts of the borough. The interconnection includes activities such as current and historical subsistence hunting and fishing, commercial fishing, and the efforts of the city to protect the habitat and resources in outlying areas through litigation.
- ◊ The Yakutat community is unique in the state of Alaska in terms of a single community's relationship to an isolated geographic area. Given its distance from any other established community, it would be difficult in the foreseeable future to join Yakutat with any other communities to form a multiple-community borough.
- ◊ Although communications and transportation may be limited and sometimes difficult in the large unpopulated area, adequate communication is possible through radio and marine radio, and transportation to usable parts of the proposed borough is possible through commercial and private flights, and by boat.

CONCLUSION #2: ALTHOUGH THE POPULATION IS RELATIVELY SMALL, IT IS LARGE AND STABLE ENOUGH TO SUPPORT BOROUGH GOVERNMENT.

To determine whether the population is large and stable enough to support borough government, the LBC looks at factors such as total population, duration of residency, and historical and seasonal population patterns. There is a presumption that there should be at least 1000 permanent residents for the population to be large enough to support borough government. However, this presumption may be overcome with a specific and persuasive showing to the contrary. In the present case, the majority of the LBC believes that the presumption has been overcome, and that Yakutat's population is large enough and stable enough to support borough government. This conclusion is based upon the following findings:

- ◊ Yakutat's total population (permanent residents) is between 720 and 780 people.
- ◊ Yakutat has grown at a slow but steady rate, and could meet the 1000 population minimum in another decade.
- ◊ Yakutat has already shown its ability to operate as a regional government, with a regional rather than city perspective. In such areas as emergency services, coastal zone management and

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planning. Yakutat has also shown it can successfully carry out the education function of a borough.

- ◊ Yakutat is, to a unique degree, self-contained geographically, anthropologically, culturally and economically, with limited ties to any other community.
- ◊ Because of the lack of strong transportation links with other communities to the east and the west, it would be difficult to operate an efficient government in a region which included Yakutat with other established communities.
- ◊ Because of the small population and thin layer of leadership, the Yakutat community might, in the future, encounter problems in operating a multiple-service regional government. However, the successful operation of the City of Yakutat gives evidence that the borough could, at the least, carry out mandatory borough powers in the small roaded area of the borough.

CONCLUSION #3: THE MOST APPROPRIATE BOUNDARIES FOR THE CITY AND BOROUGH OF YAKUTAT EXTEND FROM THE 141ST MERIDIAN IN THE WEST TO THE SOUTHERN BOUNDARY LAST PROPOSED BY PETITIONERS, A LINE DRAWN FROM THE TOP OF MOUNT FAIRWEATHER TO CAPE FAIRWEATHER.

The statutory standard requires that boundaries of a proposed borough conform generally to natural geography and include all areas necessary for full development of municipal services. The LBC regulation looks at the development of borough services on an efficient, cost-effective level, and includes factors such as land use and ownership patterns, ethnicity and cultures, population density, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, and extraterritorial powers of boroughs. The Commission also considers the model boundaries, if any have been adopted, and existing REAA boundaries. 19 AAC 10.060.

The boundaries initially proposed by petitioners started at Cape Suckling, near the 144th meridian, and extended south and east to Cape Spencer. The seaward boundary line extended south approximately 75 miles from Cape Spencer and then turned at a 90° angle and went in a straight line east to Cape Spencer. In much of the eastern half of the proposed borough, the northern boundary followed the international border between the U.S. and Canada. (See map on page 6.)

The Commission carefully considered the arguments and evidence submitted for and against placing the western boundary at Cape Suckling or at the 141st meridian. The LBC found it was not a black and white issue with a clear-cut answer. As the Commission's legal counsel advised, the LBC may look at not only what the petitioners want, but also at the effect the proposal would have on other areas and on the state as a whole. Balancing the opposing evidence and policy arguments, the Commission exercised its discretion and determined that the 141st meridian would be the most appropriate western boundary for the Yakutat borough. The LBC

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accepted the northern and seaward boundaries (east of the 141st meridian) proposed by Yakutat, as well as the Cape Fairweather boundary requested by petitioners shortly before the January 18 hearing. The LBC's conclusion on the boundaries was based upon the following findings:

- ◊ In response to strong protests from many Southeastern communities, the petitioners twice proposed alterations to the southern boundary. The final southern boundary requested by petitioners was formed by a line drawn from the top of Mount Fairweather to Cape Fairweather.
- ◊ Petitioners' proposed western boundary¹² was strongly opposed by a number of groups, including the Mental Health Trust, Chugach Alaska Corporation, Chugach REAA, the City of Cordova, Eyak Corporation, the Tatitlek Village IRA Council, the City of Whittier and approximately 100 individual Whittier residents who signed a petition opposing both the proposed boundaries and the borough itself, Ben A. Thomas Inc., Wasser & Winters Company, and Two Moon Bay Logging Camp School.¹³ All of the opposition to the western boundary centered on allowing the proposed Yakutat borough to extend west of the 141st meridian.
- ◊ The area west of the 141st meridian is not necessary for Yakutat to be able to fully develop municipal services throughout the borough.
- ◊ The 141st has long served as a dividing line for a number of jurisdictions, including Regional Educational Attendance Areas (REAA's), judicial districts,¹⁴ election districts, recording districts and census districts. The meridian also serves as the boundary between Alaska Native Claim Settlement Act regions.
- ◊ Sealaska Corporation, the Regional Native Corporation east of the line, strongly supports Yakutat's proposed boundary. Chugach Alaska Corporation, the Regional Native Corporation west of the line, strongly opposes it. The line between those two corporations' regions was established by the federal government at the 141st meridian.
- ◊ There are no known residents in the area west of the 141st meridian, other than the small number of people connected with the Icy Bay logging camp.

¹²Petitioners requested a northwestern boundary slightly altered from the proposal in the petition. Although their second proposed western boundary would begin at Cape Suckling, after going due north for two miles, the boundary line would veer northeast to exclude the Controller Bay drainages.

¹³The University of Alaska strongly opposed the boundary until after the February 26 decisional meeting; at that point the University and Yakutat were able to reach some agreements involving their on-going litigation and disputes over logging and regulation. During the reopening of the record, the University withdrew its opposition to Yakutat's proposed western boundary.

¹⁴The four judicial district boundaries are used as the basis for selecting 4 of the 5 LBC Commissioners. The Chair is chosen to serve at large.

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- ◊ Land ownership by Yakutat residents in the area west of the 141st meridian is minimal compared to the size of the area.
- ◊ There is no single, clear cut line which most "conforms generally to natural geography." (This is evidenced in the southern boundary by the three different locations suggested by petitioners during the petition process.) Although petitioners presented evidence of regional similarities, including weather, along the coast from Cape Suckling to Cape Fairweather, other sources place the dividing line between regions at or near the 141st meridian. For example, Alaska Natives and the Land, a study influential in the drafting of the ANCSA legislation, includes the area west of the Malaspina Glacier, near the 141st meridian in the Gulf of Alaska Region and the area from the glacier east, including Yakutat, in the Southeast Region.
- ◊ The Emergency Air Service contract for the Icy Bay logging camp is held by a Yakutat air company; however, major landowners in the disputed territory believe that activity in the area, and the development of its resources, will look to Prince William Sound rather than Yakutat.
- ◊ The transportation links to the area west of the 141st meridian, limited to boat and unscheduled flights, are somewhat more attenuated than in the other parts of the borough.
- ◊ The petitioners established use of the western area by Yakutat residents; however, it is used to a much lesser extent than the area to the east of the 141st. For example, information in the petition indicated only 2% to 26% of households used various areas west of the 141st for subsistence purposes.
- ◊ Mayor Powell testified that up to 33% of the commercially caught fish from within the petitioners' proposed boundaries come from the area west of the 141st. However, he and other Yakutat witnesses also testified that more than 95% of those fish are transported to Yakutat for processing.
- ◊ Neither petitioners' subsistence nor commercial usage rights will be altered by the setting of a municipal boundary.
- ◊ A Yakutat borough with the boundaries approved by the LBC will be able to exert influence over the area west of the 141st meridian. Petitioners' objective of protecting fishing habitat can be met through coastal plans and the Yakataga Area Plan.
- ◊ The Yakutat borough, with the boundaries approved by the LBC, will have enviable financial resources. The exclusion of the area west of the 141st meridian will not significantly affect the borough's future revenues from National Forest Receipts. As compared to the City of Yakutat, the borough will receive substantially increased National Forest Receipts, at least in the short term, as well as have a substantially increased tax base.

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without needing to provide many additional services to many additional people.

- ◊ It would not be in the best interests of the state for the LBC to approve the extremely large territory requested by petitioners (approximately 7000 square miles within their last proposed boundaries), for a borough containing only 720 to 780 permanent residents, virtually all concentrated in one very small area.
- ◊ Because of the very small population, and concomitant thin leadership, the community's ability to handle regional government for the entire area over the long run is subject to question.
- ◊ The LBC did not consider model borough boundaries in reaching its decision on the Yakutat borough petition as model boundaries for the area have not yet been adopted. However, the LBC did consider the impact of the Yakutat proposal on the adjacent regions.
- ◊ The LBC advised the Department of Education of the Yakutat petition because the proposed boundaries did not conform to REAA boundaries and because the borough school district would have fewer than 250 students. The Commissioner of Education found the formation of the new district to be in the best interests of the state (a determination required under AS 14.17.139 for the formation of new school districts with fewer than 250 students).

CONCLUSION 4: ALTHOUGH YAKUTAT'S POPULATION IS SMALL, THE BOROUGH AREA, AS AMENDED BY THE COMMISSION, INCLUDES THE HUMAN AND FINANCIAL RESOURCES TO PROVIDE MUNICIPAL SERVICES.

To determine whether a proposed borough has sufficient human and financial resources to provide essential services on an efficient, cost-effective level, the Commission looks at factors such as the expected functions of the proposed borough, the expected expenses and income, the feasibility of the proposed budget, the area's economic base and property valuations, land use, anticipated development, personal income, the availability of employable people and commitment of the residents to sustaining a municipal corporation.

The Commission concludes that petitioners have established that Yakutat has the human and financial resources to provide borough services. This conclusion was based upon the following findings:

- ◊ Education is one of the predominant powers and services of any Alaska borough. The City of Yakutat has demonstrated that it is capable of running a good, though small, school district which already includes virtually all of the students within the proposed borough area.

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- ◊ According to petitioners' figures, 80% of the assessed valuation outside of the current city boundaries is within the roaded area which would be taxed at a 12 mill rate. The remainder of the borough would be taxed at a 9 mill rate. With the other reasonably projected revenues, the tax base and tax rate should be sufficient to continue funding an effective school system.
- ◊ Petitioners estimate that if Yakutat had been a borough during the last ten years, its share of National Forest receipts would have averaged at least \$250,000 per year. These funds are earmarked for schools or roads.
- ◊ Based upon reasonably projected expenses and revenues, the borough would have surplus revenues of several hundred thousand dollars during the first few years of borough operations.
- ◊ The projected borough budget appears realistic and reasonable, particularly in light of the community's long-term successful operation of a first class city carrying out many of the functions of a borough.
- ◊ Although the per capita expenses of the borough are relatively high, the borough appears to have sufficient revenues and resources to carry out at least essential borough services.
- ◊ Petitioners could not provide statistics on unemployment or personal incomes of the residents, and many personal incomes vary greatly from year to year because of annual variations in the commercial fishery. However, there are only about 12 Yakutat families receiving either AFDC or general assistance.
- ◊ The City of Yakutat already carries out many of the functions of a borough government. Whether it remains a city or becomes a borough, Yakutat will have the same group of people handling the challenges of municipal government.
- ◊ As a borough, Yakutat would have substantially more revenue and resources per capita than several organized boroughs. These resources should be sufficient to compensate for disadvantages caused by the small size and thin leadership of the population.

CONCLUSION #5: THE LAND, WATER AND AIR TRANSPORTATION FACILITIES ARE SUFFICIENT TO ALLOW THE COMMUNICATION AND EXCHANGE NECESSARY FOR THE DEVELOPMENT OF INTEGRATED BOROUGH GOVERNMENT.

To determine whether the borough would have the land, water and air transportation facilities to allow for the communication and exchange necessary for the development of integrated borough government, the Commission looks at factors such as transportation facilities, communications media, teleconferencing facilities, transportation costs and schedules, and geographical or climatic impediments. The Commission

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concludes that the Yakutat borough would have the necessary transportation facilities to allow the communication necessary to develop integrated government. This conclusion was based upon the following findings:

- ◊ Because virtually all of the borough population lives in the roaded area within five miles of the current city limits, transportation and communications among the population is well-developed.
- ◊ The Yakutat airport, scheduled flights and charter airlines, along with the residents' boats, would allow the population both to travel easily out of the borough and to reach other parts of the borough where economic activities take place.
- ◊ The marine radio system appears to be sufficient to enable communications in the more remote parts of the borough.

CONCLUSION #6: UPON THE INCORPORATION OF THE BOROUGH, THE POWERS OF THE CITY WOULD BECOME AREA WIDE BOROUGH POWERS, THUS MEETING THE STANDARD FOR THE DISSOLUTION OF THE CITY OF YAKUTAT.

AS 29.06.450(c) provides that a city is dissolved when all its powers become areawide borough powers. The LBC's regulations provide that the Commission, in its discretion, will approve a petition for city dissolution if the borough has consented to assume the city powers and the Commission finds the dissolution is in the best interests of the state.

To determine whether the dissolution would be in the best interests of the state, the LBC looks at factors such as the ability of an organization other than the state to take over city services and facilities; potential health or safety dangers to the community or nearby residents if the city were to dissolve; the potential effect of dissolution on harmonious relations; the extent of support and opposition to dissolution; potential impacts on other cities; fiscal impact on the state; whether dissolution would diminish or promote local self-government and whether it meets the constitutional and statutory principles that guide LBC action.

The Commission concludes that, upon a majority vote by residents in favor of borough incorporation, the city would meet the standards for dissolution and dissolution would be in the best interests of the state. The Commission's conclusion was based upon the following findings:

- ◊ The borough's incorporation and the city's dissolution would be linked on the ballot, so that either both actions, or neither, would take effect following the election.
- ◊ Petitioners have demonstrated that only one level of local government is necessary or advisable for the small population.
- ◊ The best interest factors of the regulations were not drafted with this particular situation in mind, and may not all be applicable to this petition. However, if the borough incorporation proposal is

approved by the voters, city dissolution would be in the best interests of the state, as the burden and cost of providing services to the population would not fall upon the state, there is no evidence that dissolution would create disharmony among the residents or between the residents and other groups, the dissolution would have little or no impact on other cities, and dissolution would promote local self-government as it would allow one layer of local government to provide services to all of the Yakutat area residents, many of whom are currently disenfranchised.

STATEMENT OF COMMISSION MINORITY ON THE YAKUTAT PETITION

Commissioner Dugan found that the Yakutat petition did not meet all of the standards for borough incorporation, and in particular found that its population was not large enough to support borough government. Her conclusion was based upon the following:

The LBC's Perspective

Petitioners will always come to the LBC with parochial views - as they should, because they are representing only their own local area. The Local Boundary Commission, however, cannot take the same viewpoint. The Commissioners must keep in mind that they represent the state on an areawide basis. Much as Commission members might empathize with local residents, they must look at issues which are bigger than what might be best solely for Yakutat or any other petitioning community. The LBC must look at what is in the state's best interests, and it is not in the state's best interests to start promoting the formation of boroughs with less than a reasonable number of people.

Borough Government

The Commission must determine what it perceives a borough to be. Yakutat has certainly shown it can function as a city government, and if there were no difference between a city and borough, then perhaps borough status would be appropriate. However, study of government in Alaska indicates that cities and boroughs were not intended to be completely interchangeable.

Sources such as legislative and constitutional history, the PAS studies,¹⁵ Metropolitan Experiment in Alaska, and Vic Fischer's work

¹⁵Public Administration Service - PAS - was hired by the Alaska Statehood Committee to prepare analyses on several topics, including local government, for use at the 1955-56 Alaska Constitutional Convention. PAS also prepared a report on "Local Government under the Alaska Constitution" which was distributed in January, 1959. Many of the suggestions in the report were carried out by the new Alaska legislature.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 19

indicate that although the constitutional convention delegates and early legislatures deliberately left terms broad and general enough to allow local government in Alaska to evolve, they also had some basic concepts in mind:

- ◊ Boundaries should be established at the state level to reflect state-wide considerations as well as regional criteria and local interests.
- ◊ Boroughs should cover relatively large areas with common economic, social and political interests.
- ◊ Boroughs should be large enough to prevent too many subdivisions in Alaska, in order to avoid the problems of many older states which had many small units and too much overlap of power.
- ◊ Boroughs should generally include more than one community and should be able to provide services efficiently and effectively.
- ◊ Borough government should not be established until a region was truly ready for borough incorporation.
- ◊ It would be better to exercise constraint in the creation of boroughs than to be faced with the difficult task of later abolishing or consolidating incorporated boroughs which were unneeded or too small for efficient operation.
- ◊ Boroughs should not be prematurely formed when the expansion of an existing city or the incorporation of a new city could meet the local government needs of the area.
- ◊ The LBC was mandated by the Alaska Constitution so that vested local interests and prejudices would not control the drawing of boundaries.
- ◊ The creation of local government units should be limited, not to a specific total number, but by the principle that only the minimum number of governments necessary to provide effective and efficient local self-government should be approved for incorporation.

The LBC minority believes there is a difference between a city and a borough. Allowing a small-population city to become a single-community borough prevents the sharing of resources by other communities and inappropriately fixes boundaries which may be very difficult to change later. Allowing cities to transform themselves into single-community boroughs also increases costs to the state, through the various minimum entitlements that "new boroughs" (as opposed to expanding cities) receive, including start-up grants of \$600,000 and 10 % of the state VUU land¹⁶ within its boundaries. Borough boundaries which extend beyond the area the city might reasonably annex also give the single community increased revenue sharing and shared fish-taxes.¹⁷ In Yakutat's case, it will also receive a greatly increased share of the National Forest receipts, money which would otherwise go to the state-funded REAA's and to other city school districts.

¹⁶Vacant, unappropriated, unreserved land.

¹⁷The increase in revenue sharing results from the increased tax base and the expected increase in locally generated revenues.

The minority also believes that the Commission's presumption in favor of a minimum of 1000 permanent residents to qualify for borough incorporation should not be lightly overturned. The LBC has had to define the factors it considers in borough incorporation, through its regulations and its deliberations, because the constitutional and statutory standards are broad and give only general guidance in analyzing specific petitions. Applying the LBC's definitions and interpretations of the language of the standards, along with the historical sources cited above, it is apparent that Yakutat's 700+ people are not enough to support borough, rather than city government. Yakutat's population is less than 75% of the presumed minimum, and it is all highly concentrated in a tiny portion of the approved borough boundaries. As members of the majority noted, the leadership layer of such a small population is thin, and there is a serious possibility that the small population will have difficulties providing effective and efficient borough services throughout the borough. The minority concludes that Yakutat does not have the population to function as a true borough government.

Yakutat's Interests Can Be Protected without Immediate Incorporation

If, as petitioners argue, Yakutat does not appear to fit with communities to the northwest or the southeast, that does not automatically lead to the conclusion that it should therefore immediately be approved for borough incorporation. If, as the minority believes, Yakutat lacks the population to incorporate as a borough and effectively and efficiently provide services throughout the proposed territory, there is another alternative to consider. The LBC can adopt model boundaries which would allow Yakutat to incorporate without other communities in the future, if it later meets borough incorporation standards.

To say, as members of the majority have, that letting this small-population, single-community area incorporate now would do no harm ignores the precedent the LBC will be setting. It also ignores the difficult--deliberative and quasi-judicial bodies have in rejecting petitions once a precedent is set, particularly petitions on such an emotional and political issue as local government.

Although Yakutat may have some claim to a unique geographical situation, geography is only one of several borough standards, and Yakutat's situation is only one type of geographical difference. Other small communities will now have every reason to expect that a small, concentrated population will be no impediment to borough incorporation as long as some "unique" quality can be argued, whether it be location, transportation difficulties, cultural differences or any other distinguishing factor.¹⁸ The majority's decision also sends the signal that failure to meet the borough incorporation standards at the time of the petition may be overlooked as long as the LBC thinks the community might meet the standards in the future - or if the LBC just plain doesn't know how to align the city in the present.

¹⁸Even if the Commission has the political courage to reject other small-community borough petitions, this signal to go ahead and file such petitions is going to increase the LBC's and staff's workload and expenses. Since each petition must be investigated, more legitimate petitions will be delayed by the increased number of petitions filed.

LBC Consistency

The majority's decision is inconsistent with several current and past LBC actions and decisions:

- ◊ The majority decision to approve the Yakutat petition is strongly at odds with the LBC's determination that DCRA should investigate and report on the possibility of combining the Bristol Bay Borough - a borough with a 30 year history and twice the population of Yakutat - with the Lake & Peninsula Borough and possibly the Dillingham area.
- ◊ At least one member of the majority, during the LBC's decisional meetings, argued that should the small population encounter a lack of financial or human resources to provide extensive borough government, Yakutat could just eliminate most services, and provide the remaining services to the roaded area. That claim underlines one of the arguments made by the Department in its recommendation against the petition. If the "borough" limits its services to the roaded area, how is this "borough" incorporation different from a city which expanded through annexation? If the "borough" is likely to provide only the "services" of regulation and taxation to a large territory, while using that territory's tax base to provide services to a small number of people in a tiny area, is that not the same as allowing a huge land grab that really should be called a city annexation?
- ◊ In 1988, the Fairbanks North Star Borough petitioned for the annexation of approximately 216 square miles of land, including Pump Station 7 of the Alaska pipeline. The majority of the LBC approved the petition, finding annexation represented sound public policy and would increase the FNSB's relatively weak tax base. At the time of the petition, the value of the FNSB's taxable property, measured as value per student, was almost 15% less than the average borough value in the state, even excluding the North Slope Borough's disproportionately high value; the annexation would have raised FNSB's value per student to 12% below the borough average. The annexation was expected to increase FNSB revenues by \$1,350,000 (a \$2,000,000 increase in revenues offset by a \$650,000 decrease in state contributions under the education foundation formula), which represented a per capita net revenue increase of only \$17.85.

In addition to the FNSB's justified need to increase its tax base, the LBC found the FNSB had social, cultural and economic ties to the areas sought for annexation. Although the area was uninhabited, the majority of the 36 employees at the industrial facility were residents of the FNSB, as were the miners with claims in the area, and the borough expected to provide services to the annexed territory. This 1988 petition was considered by the LBC before it began studying model boundaries, but the Commission found the annexation would help perfect the FNSB boundaries under at least two incorporation standards.

In the minority statement on the 1988 Fairbanks decision, the LBC was strongly criticized for having voted in favor of the FNSB annexation, calling it a "money grab" without precedent, allowing increased revenues without the borough offering increased services. Because the legislature

rejected the LBC's recommendation on the petition in 1989, the FNSB presented a second petition later that year. This time a 3 to 2 majority rejected the annexation petition, although the territory all lies within the model boundaries which had been adopted by the time of the second decision.

Even with the territory sought to be annexed to the FNSB, the total area of the borough would have been smaller than the area originally requested by the Yakutat petitioners. FNSB's population, however, is more than 100 times that of the proposed Yakutat borough. On a per capita basis, the expected increase in revenues if the Yakutat borough is incorporated completely dwarfs the projected increase in revenues from the alleged "money grab" in the rejected Fairbanks annexation. Incorporation would vastly increase - by hundreds of thousands of dollars - Yakutat's share of the National Forest receipts and state shared fish tax, as well as almost doubling its assessed property value and greatly increasing the amount of sales and fish sales tax - all for a population of 720 people. Yet, except for the roaded area within five miles of the current city limits, virtually all of the territory which will be added to Yakutat through this incorporation is uninhabited and will be provided no services - except planning, regulation and taxation. In addition, the increase of Forest receipts to Yakutat is matched by an equal decrease in Forest receipts to the REAA's and city school districts in the rest of the Tongass National Forest area; the state will presumably have to find other revenue sources to make up the loss of money for the REAA's, or cause the budgets to be substantially reduced.

In analyzing the Yakutat borough proposal, a member of the majority stated there is no similarity between Yakutat and the FNSB petitions, in part because one is an incorporation and the other an annexation. Whether a borough reaches its size through initial incorporation or through annexation is not a valid distinguishing factor. The end result of any approved borough petition should be the same - a borough which meets the incorporation standards and either follows or is expanding towards its model boundaries. By ignoring the similarity between the two situations, and reaching contradictory results, the Commission is sending a very confused signal to future petitioners, giving them no clear guideline for understanding what the LBC considers acceptable. It may, however, send the message that an expensive, political, high-pressure presentation (unlike the less organized FNSB presentation) is more important and more likely to be persuasive than the substance of a petition.

Conclusion

The Yakutat petitioners put on a strong, comprehensive argument and demonstrated strong community support for a borough. The minority believes, however, that they did not demonstrate that Yakutat meets the standards for borough incorporation. By approving the petition, the LBC has set a precedent which will have a negative impact on the State of Alaska and is not good public policy.

ORDER

Based upon the foregoing findings and conclusions, the Local Boundary Commission hereby orders that:

1. The boundaries of the proposed City and Borough of Yakutat are amended to exclude all territory west of the 141st meridian and all territory south of a line drawn from Cape Fairweather to the top of Mount Fairweather. The description of the territory approved for borough incorporation is set out below and shown on the map following the description:

Beginning at the peak of Mount Fairweather at the International Boundary of the United States and Canada, in T35S, R47E, Copper River Meridian, the TRUE POINT OF BEGINNING;

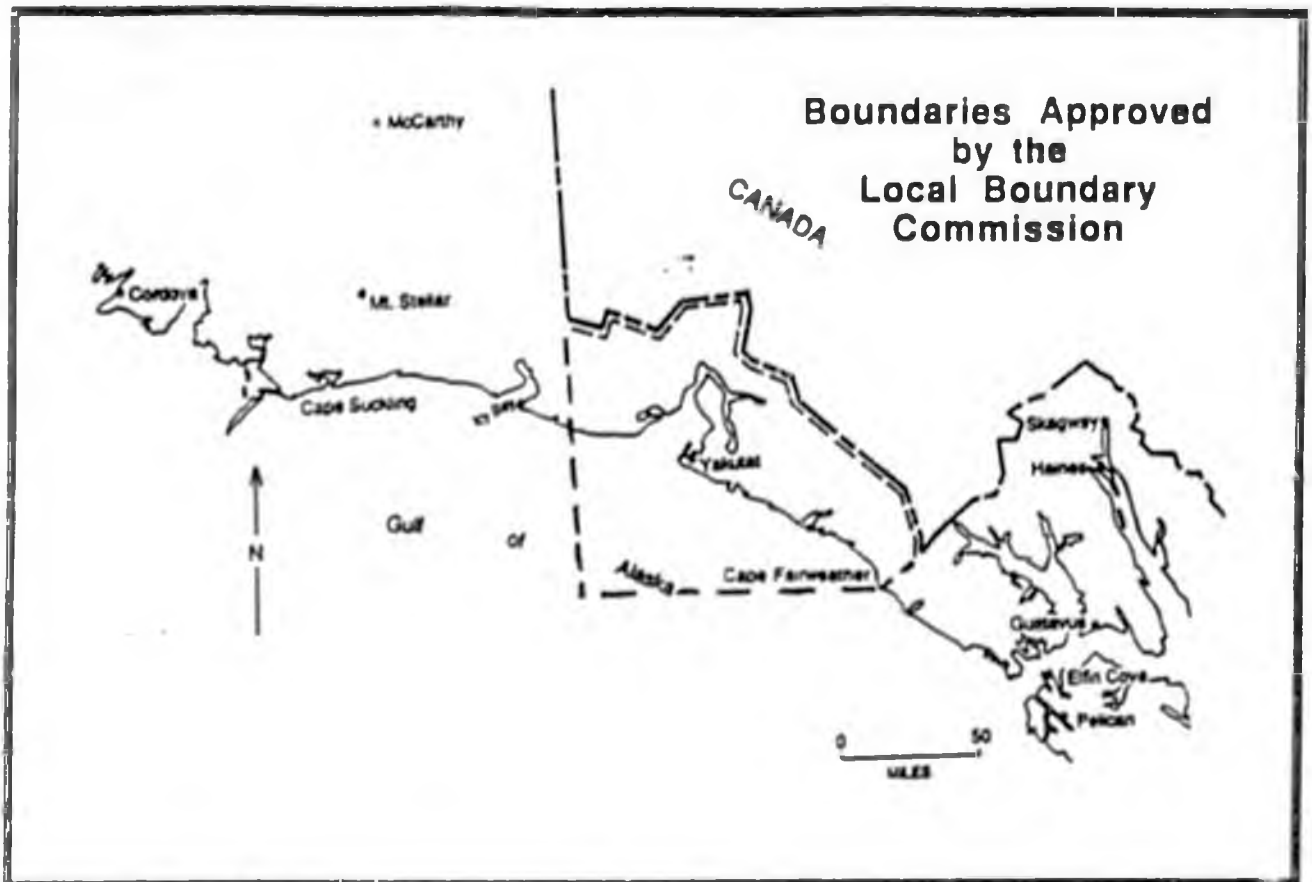
thence southwesterly in a straight line to Cape Fairweather, at North 58° 48' 30" Latitude, West 137° 56' 45" Longitude, in T36S, R45E, Copper River Meridian;

thence due west along a straight line to the point of intersection in the Gulf of Alaska with the 141st meridian;

thence north along the 141st meridian to the point of intersection with the International Boundary of the United States and Canada, on the northern boundary of T19S, Copper River Meridian;

thence following, in a generally southeasterly direction, the International Boundary of the United States and Canada, to the TRUE POINT OF BEGINNING.

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



2. The petition as amended is approved.

3. The issues of the incorporation of the borough, the adoption of the proposed charter and the dissolution of the City of Yakutat are all contingent upon one another. The Division of Elections shall be asked to ensure that the wording of the ballot proposition links the three issues so that a "yes" vote approves the incorporation of a borough, the dissolution of the City and adoption of the charter, and a "no" vote disapproves all three actions.

3. To avoid any confusion caused by the name "City and Borough of Yakutat," all written documents issued by the Commission or its DCRA staff shall make it clear that the proposed municipality would be a borough and not a unified municipality.

APPROVED IN WRITING THIS 15th DAY OF April 1992

LOCAL BOUNDARY COMMISSION:

By: Charles Bettisworth, Chair

Attest:

Dan Bockhorst, Staff

RECONSIDERATION AND JUDICIAL APPEAL

Any individual may request that the Commission reconsider the decision outlined above within twenty days of the date of this order, under 19 AAC 10.870. A copy of the regulations governing reconsideration is available from the Commission's staff at the Department of Community and Regional Affairs, 333 West 4th Avenue, Suite 220, Anchorage, Alaska 99501; 269-4500.

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedure, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days from the date this order is mailed or delivered.

ISSUES IN THE YAKUTAT ANNEXATION CASE

PREPARED BY THE CITY AND BOROUGH
OF YAKUTAT

On December 16, 1997 the Alaska Local Boundary Commission (LBC) voted unanimously (5-0) to recognize annexation of additional lands to the City and Borough of Yakutat.

The map below shows the effect of their decision. The area petitioned for by Yakutat was the area they petitioned for originally when they formed the Borough. That area was originally denied by the LBC by a vote of 3-2 in 1991. The LBC then set model borough boundaries and included the annexation area in the Prince William Sound Borough model boundary area so as not to orphan the area.

The area finally adopted for annexation by the LBC was more than the area recommended by DCRA staff, but less than the petitioned for area, in that 184 square miles which extended north into the Copper River model borough boundaries were deleted.



The Commission found that the area was more closely tied to Yakutat historically and economically and that Yakutat would be able to more effectively provide municipal services to the area. The Commission held extensive hearings throughout the area and a reading of their decision shows that they carefully weighed all the issues that were raised.

Yakutat is voluntarily fulfilling the Alaska Legislature's policy initiative to bring more of the state into municipal boundaries. By bringing the small school at the logging camp at Icy Bay into the Yakutat School District, State funding will be reduced by \$180,000.

Chugach Alaska Corporation and some of the communities in the Prince William Sound region are now asking the Alaska Legislature to overrule the Commission's decision. The main argument Chugach makes is that they claim that Yakutat is anti-development and wants the land so that they can shut down Chugach's resource development plans in the area. The Prince William Sound communities argue that this land is necessary for a hypothetical Prince William Sound Borough. Neither of these arguments are true.

Is Yakutat anti-development?

This argument has no basis. As the attached letter from Yakutat Mayor Daryl James indicates, they have been trying to meet with Chugach for several years to reach an understanding, but Chugach will not even meet with them. The attached resolution passed by the Yakutat Assembly in 1994 indicates support for economic diversification in the annexation area, noting that it is the only land near Yakutat that is not controlled by federal parks or wilderness, and that the Borough welcomes diversification of the local economy beyond the current fishery based activities.

The University of Alaska had similar questions regarding the Borough's intentions toward their logging operations in the annexation area. Following meetings with the Borough, they were satisfied that the Borough would not interfere with their operations and wrote a letter supporting the annexation.

The DCRA staff report to the LBC on the annexation petition indicates that the dispute between Native groups concerning the annexation come from "feelings rooted in centuries-old rivalries among competing parochial factions." Involvement of the Legislature in this tribal dispute is unlikely to resolve the issue.

Is this area necessary for formation of a Prince William Sound Borough?

The following chart shows that a Prince William Sound Borough would have the highest assessed valuation in Alaska, only behind the North Slope Borough. Prince William Sound could have petitioned to form a borough at any time but they have not. Valdez has filed a formal letter against formation of a borough with the LBC.

Comparison of Per Capita Taxable Property Values in Existing Boroughs and PWS Region	
North Slope Borough	\$1,387,738
Prince William Sound region	\$167,171
Bristol Bay Borough	\$112,178
Kenai Peninsula Borough	\$79,727
Ketchikan Gateway Borough	\$68,042
City and Borough of Juneau	\$60,733
City and Borough of Sitka	\$58,380
Kodiak Island Borough	\$55,143
Haines Borough	\$52,517
Anchorage	\$50,078
Northwest Arctic Borough	\$44,068
City and Borough of Yakutat	\$40,233
Matanuska-Susitna Borough	\$42,964
Fairbanks North Star Borough	\$41,890
Lake & Peninsula Borough	\$36,831
Denali Borough	\$38,339
Alutians East Borough	\$21,722

Now it is reported that the PWS communities are seeking state funding for another Borough feasibility study. A 1988 study by Darbyshire Associates has already shown that a Borough is feasible. A new study is unlikely to bring a different conclusion.

By comparison, Yakutat formed its own Borough without any state funding for a feasibility study and is willing to annex additional lands into the Borough, meeting the Legislature's intentions for maximum local self government.

CONCLUSION:

If you read the LBC Findings and Conclusions, you will see that they have made a well reasoned decision after allowing full participation and considering all the issues raised by entities and individuals in the Annexation area. They are an independent Commission with no axe to grind or bias toward any of the parties in this matter. (see attached description of the members of the Commission.)

There is no reason for the Legislature to get involved in this issue by overruling the decision of the Local Boundary Commission.

**CITY & BOROUGH of YAKUTAT**

P.O. Box 160
Yakutat, Alaska 99689
Phone (907) 784-3323
Fax (907) 784-3281

SENT VIA FAX
(907) 563-8402

January 22, 1997

Mr. Mike Brown, President
Chugach Corporation
560 East 34th Avenue, Suite 200
Anchorage, Alaska 99503-4196

Dear Mr. Brown:

I am writing to you as Mayor of the City and Borough of Yakutat concerning the recent decision of the Alaska Local Boundary Commission to annex additional lands to the Yakutat Borough. Some of these lands are owned by Chugach Alaska Corporation or are Federal lands which may be conveyed to Chugach in the future.

Since the Alaska State Legislature exercises oversight on Local Boundary Commission decisions, this issue has been raised by Chugach and others, requesting that the Legislature overturn the unanimous decision of the Local Boundary Commission. While it is certainly your right to request legislative involvement in this case, I am dismayed that legislators have reported to us that your primary stated objection to the annexation is that "Yakutat wants our land so they can shut down our resource development there."

As a third term Mayor of the Borough, I do not know where you are getting this impression. The Borough understands the need for environmentally responsible development. If we are not productive, how will we create the wealth that our service industries depend on and where will our people find jobs?

In 1991 when we filed our original petition for recognition as a borough, our Mayor requested that your president, Jim Labelle set up a meeting with Chugach Alaska Corporation and the Borough to openly discuss your development plans for the area to the mutual benefit of your shareholders and the Citizens of Yakutat. I understand that your Board of Directors rejected our request for a meeting. In any case, we did not receive a response to our request for a meeting.

Mr. Mike Brown
January 22, 1997
Page 2

Immediately following the Local Boundary Commission decision on December 19, 1996, I spoke with Mr. John Christensen, and urged that Chugach and myself and/or the City and Borough of Yakutat get together to discuss the whole matter and work out the concerns that had been expressed. Unfortunately, we have so far not had any response to that invitation. Again, following the Local Boundary Commission decision in 1996, we extended an invitation to Mark Stahl, Resources Manager for Chugach, to set up a meeting between the Borough and Chugach Alaska Corporation. We still have not received a response to our request, and we would continue to welcome a meeting with you to discuss our mutual concerns.

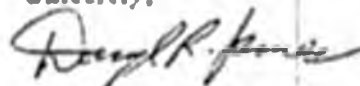
I don't understand how you can characterize our Borough as being anti-development before you have even sat down to discuss the issues with us. In fact, we faced a similar situation with the University of Alaska who owns timber rights in the annexation area and had similar concerns. After meeting with University officials, and passage of Borough Resolution 96-11, the University was satisfied that it was not our intent to shut down their timber operations, and they subsequently wrote a letter to the Local Boundary Commission supporting our annexation petition.

We remain open to a meeting with you on your development plans for your lands within the proposed annexation area. I honestly believe that if we could just talk to each other we would realize that development activities can take place to the mutual benefit of your shareholders and the citizens of the City and Borough of Yakutat.

A copy of resolution 94-04 passed and approved in 1994, is enclosed. It clearly shows that we in the City and Borough of Yakutat do support well planned resource development in the annexation area.

Please call me anytime at the number listed above.

Sincerely,



Daryl R. James
Mayor

encl.

INTRODUCED BY: Daryl James

CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 94-04

A RESOLUTION SUPPORTING WELL PLANNED RESOURCE DEVELOPMENT IN THE ICY BAY TO CAPE SUCKLING AREA.

WHEREAS, there is a need for economic development in the Yakutat region; and,

WHEREAS, the Icy Bay to Cape Suckling area, in the Yakutat region, is the only area not controlled by federal parks or wilderness areas; and,

WHEREAS, Yakutat's only major economic base, at present, is the fishery.

NOW, THEREFORE, BE IT RESOLVED by the Borough Assembly of the City and Borough of Yakutat, that the Assembly hereby supports wise and well planned Resource Development in the Icy Bay to Cape Suckling Area; and,

BE IT FURTHER RESOLVED that the City and Borough of Yakutat be included in all future planning for the Dry Bay to Cape Suckling Area.

PASSED AND APPROVED THIS 15th DAY OF March, 1994.

March 15th 1994

Daryl R. James
DARYL R. JAMES
Mayor



Mona Swanson
MONA SWANSON
Borough Clerk

YAKUTAT ANNEXATION

- In 1990, a petition was filed with the Local Boundary Commission ("LBC") to dissolve the City of Yakutat, a [home rule] City, and to incorporate the City and Borough of Yakutat as a unified home rule borough.
 - The borders of the proposed borough would have stretched from Cape Suckling in the northwest to Cape Fairweather in the southeast, encompassing an area of 7,776 square miles of land.
 - The population of the proposed borough consisted of 782 residents, virtually all of whom resided in or directly outside the City of Yakutat, the only community in the borough.
 - At the time, the LBC regulations required that a borough include at least one thousand residents and at least two communities.
 - The LBC changes its regulations in 1991, to allow incorporation of boroughs with fewer than one thousand residents and ~~less than~~ one community.
 - On March 17, 1992, the Local Boundary Commission granted the petition to incorporate the City and Borough of Yakutat, but amended the boundaries, including drawing the northwestern boundary at the 141st meridian.
 - The LBC found that the area west of the 141st meridian was more closely tied to the Prince William Sound region.
 - In June, 1992, the LBC adopted the Model Borough Boundaries for the entire state, drawing the eastern boundary for the Prince William Sound Borough at the 141st meridian.
 - On April 28, 1995, the Alaska Supreme Court affirmed LBC's decision to amend the boundary at the 141st meridian. Yakutat v. Local Boundary Commission, 966 P.2d 721 (1995). Yakutat's request for a rehearing was denied on September 14, 1995.
- In 1996, five months after the Alaska Supreme Court decision affirming the LBC's boundary decision became final, the City and Borough of Yakutat petitioned to annex the same area between Cape Suckling and 141st meridian.
 - The current population of the City and Borough of Yakutat is approximately 800 persons, virtually all of whom live in and around former City of Yakutat.

- On October 18th, the DCRA issued a preliminary report recommending annexation of the area between the Duktouh River and 141st meridian.
- The recommendation represented a 180 degree change in the DCRA's prior positions on Yakutat's ties to the area west of the 141st meridian.
- In 1989, DCRA recommended against formation of the Yakutat coastal resource service extending west of the 141st meridian.
- In 1990 and 1991, DCRA recommended against the incorporation of the Yakutat Borough, and recommended in the alternative that the 141st meridian be the boundary between a Yakutat Borough and a Prince William Sound Borough.
- Despite the change in its position, since issuing the preliminary report on October 18th, DCRA and the LBC have "fast tracked" the annexation process so a decision can get to the legislature within the first ten days of the session.
 - DCRA scheduled the minimum amount of public time for public comment on the Provisional Report.
 - On November 5, 1996, despite receiving the request for additional time to comment on the Provisional Report from the City of Cordova, the City of Valdez, Chugach Alaska Corporation, the Native Village of Eyak, the Eyak Corporation, The Tatitlek Corporation, the Chenega Bay IRA Council, Chenega Corporation, Chugachmuit, Chugach Regional Resources Council, and other interested parties, the LBC extended the comment period only four more days, three of which included the Veteran's Day holiday weekend.
- DCRA has refused to request formal advice from the Department of Law regarding the LBC's legal authority to depart from its past boundary decision and the Alaska Supreme Court's decision on the City and Borough of Yakutat's western boundary.
- Despite a legal requirement to give a "due consideration" to comments received on the Provisional Report, DCRA prescheduled the minimum amount of time to issue its final report.

- The LBC scheduled public hearings in the minimum time period allowed by law, over a weekend during the holiday season and after closure of logging camps at Icy Bay, where the vast majority of the residents of the area it seeks to annex reside. The LBC was aware that these camps would be closed and that most of the residents would have left for the holidays prior to the hearing scheduled.
- The LBC scheduled a decisional meeting at the end of the public hearing, rendering consideration of hearing testimony and written comments impossible.
- Public testimony and comments have overwhelmingly opposed the annexation. Comments opposing the annexation have been filed by:
 - Alaska Gulf Coast Adventures, Inc.
 - Bruce Schneuer
 - Ben A. Thomas, Inc.
 - Ralph Swarthout
 - John Willis of Ben A. Thomas, Inc.
 - Chugach School District
 - D.J. Burnham
 - Ed E. Bilderback
 - Carl Glanville
 - Eyak Corporation
 - The Tatitlek Corporation
 - The Eyak Tribal Council
 - City of Valdez
 - City of Whittier
 - Stephen Henson
 - Jim H. Keeline
 - See Alaska
 - Chugach Alaska Corporation
 - Chenega Bay IRA Council
 - Chugach Regional Resources Commission
 - Senator Georgianna Lincoln
 - Tatitlek Village IRA Council
 - James LaBelle
 - Gilbert Ollestad
 - Rick Nelson
 - Chugachmiut
 - Benna Mae Hughey
 - John Johnson

- With the sole exception of a commentor from Yakutat, all of the member residents commenting at the public hearings in the area to be annexed opposed the annexation, stating that they had greater ties to Prince William Sound.
- Apart from residences and businesses in Yakutat, only the University of Alaska supports the annexation, but that support is artificial and tainted.
 - Initially the University of Alaska opposed the incorporation of this area into the City and Borough of Yakutat. At that time, the City of Yakutat had sued and obtained an injunction to prevent the logging of university timber in the area.
 - Yakutat agreed to release University timber from litigation and if, in return, the University would support the incorporation, and subsequently, the annexation of this area into the City and Borough of Yakutat.
 - Yakutat also agreed to not tax or regulate the University timber operations as a quid pro quo for support before the LBC.
- The communities in Prince William Sound have met several times in efforts to form a Prince William Sound Borough extending to the 141st meridian.
 - Prince William includes two home rule city, one second class city, and two villages, with the total population of approximately 7,500.
 - There are over 87,000 acres of state owned, vacant, unreserved, and unclassified (VUU) in the area Yakutat seeks to annex, which the Prince William Sound Borough could select its entitlement from. The City and Borough of Yakutat would not be entitled to any additional municipal entitlement through annexing these lands.
 - The Prince William Sound communities have had three meetings this year in efforts to form a borough, and have requested DCRA's assistance in funding a borough feasibility study.
 - The economic viability of the Prince William Sound Borough will be jeopardized by deletion of these lands from the Borough.

- The LBC did not hold any hearings in the area to be annexed, but allowed persons residing in the area to be connected by teleconference. All of the residents of the area to be annexed testified that they did not want to be included in the Yakutat borough, with the sole exception of a logging worker from Yakutat.
- The long-time residents of the area testified that they had greater ties with Prince William Sound, and would prefer to be in a Prince William Sound borough.
- The LBC never heard any testimony from the largest logging camp in West Icy Bay, although that camp had requested an opportunity to testify. There was a problem at Icy Bay setting up the teleconference from Corlova. Then, in Yakutat, the Commission could not hear telephonic testimony, because a problem with the Yakutat telephone facilities prevented telephone contact with any communities outside Yakutat during the two days the Commission held hearings there.
- If the legislature fails to act on this annexation, 2,694 square miles of resource-rich land, including 90,000 acres of valuable Chugach Alaska Corporation land, will be locked up in the City and Borough of Yakutat, which has historically opposed logging and resource development in the area.



**ECONOMIC
DEVELOPMENT
COUNCIL**

November 22, 1996

Lamar Cotton, Deputy Commissioner
P.O. Box 112100
Juneau, Alaska 99811

Dear Deputy Commissioner Cotton:

On November 18, 1996 the Prince William Sound Economic Development Council (PWSEDC) sponsored a meeting of all Prince William Sound Communities to continue discussions associated with the formation of a borough. I am happy to report that as a result of this meeting, a unanimous position was selected to move forward with an economic feasibility study for a Prince William Sound Borough. We would appreciate your department's assistance with this study.

The major focus of the villages and cities of Prince William Sound is the formation of a borough with as limited powers as allowed by law. All of the participants wish to look at a minimal level of new government. It is our preliminary position that a borough with powers limited to taxation, education, and regional planning is the most appropriate for Prince William Sound. All of the Prince William Sound communities have as a common priority the protection, improvement, and funding of education. The Prince William Sound Economic Feasibility Study, and other borough related matters. All communities, including tribal councils and the Chugach School District, are represented on the PWSEDC.

The communities of Prince William Sound have agreed to meet independently to develop parameters for the Economic Feasibility Study. On or about January 17, 1997 a meeting will be held in Valdez to review all study parameters submitted, and a final study guideline will be developed. We hope to then select a contractor to conduct the study under the administration of PWSEDC. At this point I believe all work could be completed in four to six months, and a formal petition for Borough formation could be submitted by next summer. Please send any forms and information regarding requirements for borough formation to us, and we will distribute them to our member organizations.

As Prince William Sound continues to move toward borough formation, it is important to remember the current petition by the Yakutat Borough. Should the Yakutat Borough annexation be approved, significant, eligible entitlement lands for a Prince William Sound Borough will be forever lost. As I am sure you are aware, there are very few

eligible entitlement lands available in the Prince William Sound region, especially lands with value that might help to protect the long term financial health of a Borough. Please give this serious consideration.

I have also been asked by the PWSEDC Board of Directors to request a \$100,000 grant to fund the Economic Feasibility Study. We will need financial assistance from the State if we are to be successful in this endeavor.

If you have any questions please contact me at (907) 424-6200 (Cordova City Hall), or (907) 835-3775 (Valdez EDC). Thank you for your assistance and participation.

Sincerely,

Leslie Lewis for
Scott Janke
President PWSEDC

cc: James Winchester, PWSEDC Executive Director

CITY OF VALDEZ, ALASKA

RESOLUTION 96-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA OPPOSING THE CITY AND BOROUGH OF YAKUTAT'S PROPOSED ANNEXATION OF THE COASTAL AREA BETWEEN THE 141ST MERIDIAN AND CAPE SUCKLING

WHEREAS, the City and Borough of Yakutat has petitioned the Local Boundary Commission to annex additional coastal area between the 141st Meridian and Cape Suckling; and

WHEREAS, the 141st Meridian serves as a boundary between regional Native corporations and rural education attendance areas; and

WHEREAS, many of the residents of the areas living in the area between the 141st Meridian and Cape suckling are served by Cordova; and,

WHEREAS, the Model Borough Boundaries as established by the Local Boundary Commission does have the common boundary between a Yakutat Borough and a Prince William Sound borough, if formed, as being the 141st Meridian; and,

WHEREAS, the Valdez City Council supported the proposed model borough boundaries in 1990.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Valdez, Alaska opposes the petition of the City and Borough of Yakutat to extend its boundanes to Cape Suckling.

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF VALDEZ, ALASKA this 6th day of May, 1996.

CITY OF VALDEZ, ALASKA

John Harris

John Harris, Mayor

ATTEST:

Sheri L. Caples

Sheri Caples, City Clerk



CITY OF CORDOVA, ALASKA

RESOLUTION 4-96-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,
OPPOSING THE CITY AND BOROUGH OF YAKUTAT'S PROPOSED ANNEXATION
OF THE COASTAL AREA BETWEEN THE 141ST MERIDIAN AND CAPE SUCKLING

WHEREAS, the Cordova Planning and Zoning Commission opposes the City and Borough of Yakutat's proposed annexation of the coastal area between the 141st meridian and Cape Suckling; and

WHEREAS, the citizens of Cordova have always used this area as an economic base, through tourism and fishing; and

WHEREAS, the Copper River Delta and surrounding area has historically been attached to the City of Cordova; and

WHEREAS, landowners in the area are more closely tied to Prince William Sound, and we believe history would document that Yakutat has significantly lesser ties to the area; and

WHEREAS, historically, from time immemorial, the inhabitants of the Cordova area have used this area; and

WHEREAS, the coastal area between the 141st meridian and Cape Suckling is an area more contiguous to socio-economic patterns of Prince William Sound and the Copper River Delta; and

WHEREAS, proposed transportation routes will tie Cordova even more closely to the coastal area between the 141st meridian and Cape Suckling; and


WHEREAS, the only development in that area to date, the Icy Bay logging camp, is served by local telephone from Cordova and many fishermen living in Cordova, fish in the waters east of Cape Suckling.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cordova, Alaska, is against the City and Borough of Yakutat extending their boundaries to include the coastal area between the 141st meridian and Cape Suckling;

BE IT FURTHER RESOLVED that the City Council of the City of Cordova and other Prince William Sound communities are currently in the process of investigating borough/CRSA formations and the timing of the Yakutat petition would be very detrimental to this process.

PASSED AND APPROVED THIS 3RD DAY OF APRIL, 1996.


Attest: Lynda Plant, City Clerk


Margy K. Johnson, Mayor

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8872

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, OBJECTING TO THE INCLUSION OF CERTAIN LANDS WITHIN THE PETITIONED YAKUTAT CRSA BOUNDARY.

WHEREAS, the City of Yakutat has petitioned the Commissioner of the State Department of Community and Regional Affairs to form a Coastal Resource Service Area extending from Cape Spencer to Cape Suckling and projecting inland to the crest of the Chugach and St. Elias Mountain Ranges; and

WHEREAS, the lands lying west of the 141st meridian within the petitioned CRSA boundary, as proposed, are of economic importance to the residents and businesses within the Prince William Sound, Copper River Delta and Icy Bay regions; and

WHEREAS, the lands lying west of the 141st meridian within the petitioned CRSA boundary, as proposed, have strong cultural, historical, and geographic ties to the residents of Prince William Sound, Copper River Delta and Icy Bay, including shareholders of Chugach Alaska Corporation; and

WHEREAS, the lands lying west of the 141st meridian within the CRSA boundary, as proposed, are within our Regional Educational Attendance Area, Chugach REAA 21; and

WHEREAS, the lands lying west of the 141st meridian within the petitioned CRSA boundary, as proposed, are within the Prince William Sound Borough Feasibility Study area conducted by the Cities of Valdez, Cordova and Whittier, funded by a grant from the Department of Community and Regional Affairs; and

WHEREAS, the inclusion of lands lying west of the 141st meridian within the petitioned CRSA boundary, as proposed, would not provide Prince William Sound and Icy Bay residents, businesses and major land owners within these lands representation on the CRSA board.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

Section 1. The City of Valdez adamantly objects to the inclusion of lands lying west of the 141st meridian within Yakutat's CRSA boundary; and

Section 2. The Commissioner of the Department of Community and Regional Affairs is respectfully urged to remove any and all lands within the Chugach REAA 21 from further consideration for inclusion within

RESOLUTION

Page 1

Yakutat's CRSA boundary

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA,
this 21st day of November, 1988.

CITY OF VALDEZ, ALASKA

John Devens
John Devens, Mayor

ATTEST:

Jeanne D. Donald
Jeanne D. Donald, City Clerk

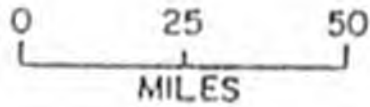
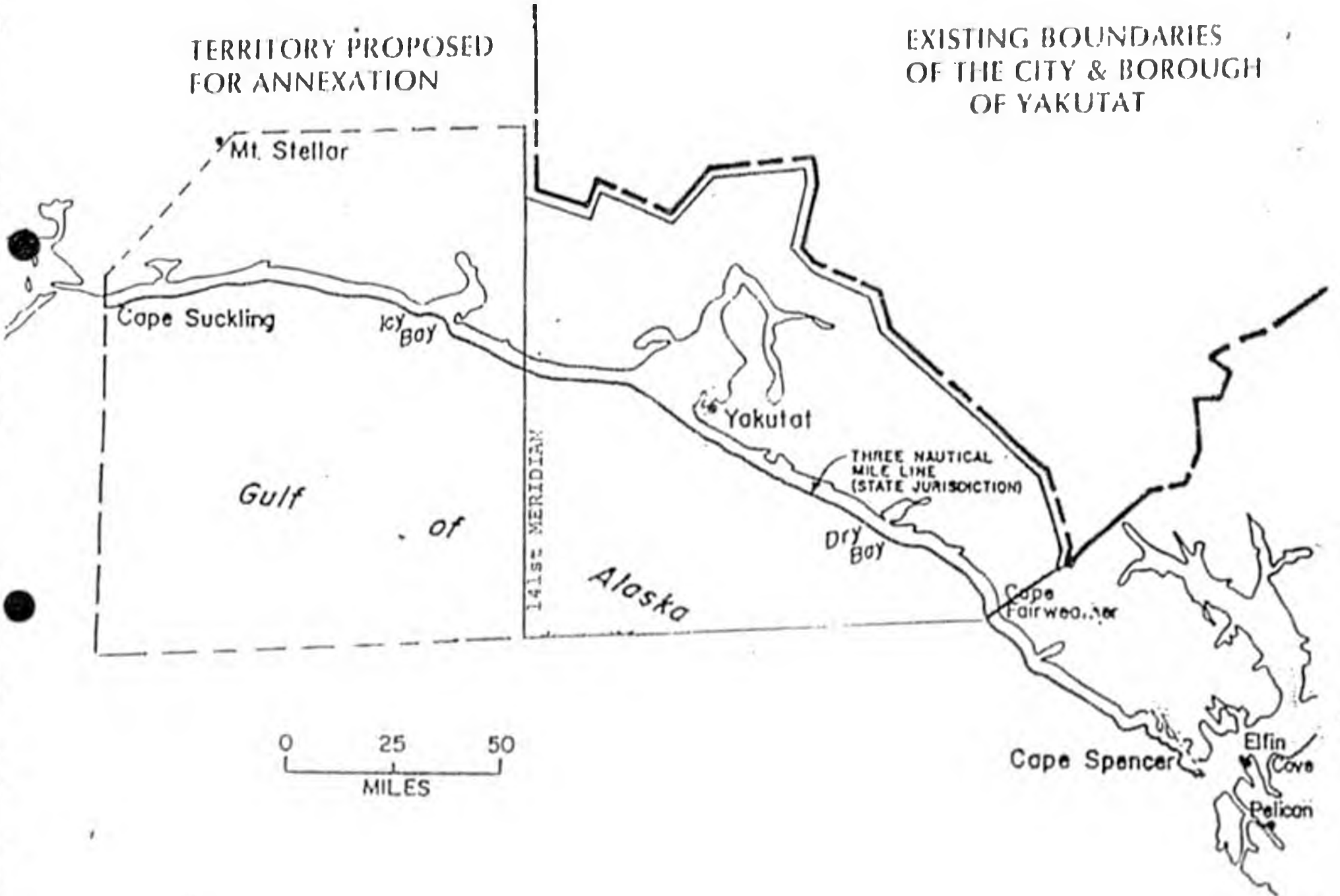
RESOLUTION

Page 2

District II
MAP OF EXISTING AND PROPOSED BOUNDARIES

TERRITORY PROPOSED
FOR ANNEXATION

EXISTING BOUNDARIES
OF THE CITY & BOROUGH
OF YAKUTAT



2005/005

H F B & C
YAKUTAT

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YAKUTAT ANNEXATION

The City and Borough of Yakutat, a community of approximately 800 people, has petitioned to annex 2878 square miles of land and 321 miles of tidelands and submerged lands between the 141st Meridian and Cape Suckling. See attached map. Yakutat tried to include this area in its original borough incorporation, but the Local Boundary Commission (LBC) found this area would be more appropriate in a Prince William Sound borough. The Alaska Supreme Court upheld this determination last year, just months before Yakutat filed the current petition for annexation.

Although the LBC has included this area in the model borough boundaries for Prince William Sound, an area with over 7,500 permanent residents, the Department of Community and Regional Affairs has recommended that the area between the 141st meridian and the Duktoth River be included in the Yakutat Borough. This latest recommendation is not only a drastic departure from past DCRA recommendations, but would, if accepted by the LBC, deliver a heavy blow to the future Prince William Sound borough. The Prince William Sound communities would lose the opportunity to participate in planning for this region. In addition, the annexation would deprive Prince William Sound of the vast majority of valuable lands available to it under the municipal entitlement program. That depletion, will, in turn, leave the regional government with less resources available for governmental functions, including land use and coastal management planning.

The 141st meridian is the current western boundary of the City and Borough of Yakutat, and that boundary is used to define the Prince William Sound region of operation for oil spill contingency planning under the Alaska Department of Environmental Conservation regulations, 18 AAC 75.495(2). The current boundary is also the: ANCSA boundary between Chugach Alaska Corporation and Sealaska Corporation, model borough boundary between Yakutat and Prince William Sound, international boundary between Canada and the United States, Chugach REAA School District boundary, Alaska legislative district boundary, boundary between the Alaska Superior Court Second and Third Judicial Districts, and the boundary between land recording districts.

The LBC has scheduled hearings on the petition for annexation during the weekend of December 14-15 in Cordova and Yakutat. The LBC has already scheduled its decisional meeting for December 16, to allow time to submit the petition to the legislature within the first ten days of the session. The legislature must disapprove it by joint resolution within forty-five days of submittal, or it will be considered approved.

The cities of Cordova, Whittier, and Valdez oppose Yakutat's petition, as does Chugach Alaska Corporation, the Tatitlek Corporation, the Tatitlek IRA Council, the Chenega Bay IRA council, and the Native Village of Eyak. If this petition is successful, it will hamper the efforts of Prince William Sound to form a borough which can effectively implement planning for the entire region.

November 22, 1996

Lamar Cotton, Deputy Commissioner
P.O. Box 112100
Juneau, Alaska 99811

Dear Deputy Commissioner Cotton:

On November 18, 1996 the Prince William Sound Economic Development Council (PWSEDC) sponsored a meeting of all Prince William Sound Communities to continue discussions associated with the formation of a borough. I am happy to report that as a result of this meeting, a unanimous position was selected to move forward with an economic feasibility study for a Prince William Sound Borough. We would appreciate your department's assistance with this study.

The major focus of the villages and cities of Prince William Sound is the formation of a borough with as limited powers as allowed by law. All of the participants wish to look at a minimal level of new government. It is our preliminary position that a borough with powers limited to taxation, education, and regional planning is the most appropriate for Prince William Sound. All of the Prince William Sound communities have as a common priority the protection, improvement and funding of education. The Prince William Sound Economic Feasibility Study, and other borough related matters. All communities, including tribal councils and the Chugach School District, are represented on the PWSEDC.

The communities of Prince William Sound have agreed to meet independently to develop parameters for the Economic Feasibility Study. On or about January 17, 1997 a meeting will be held in Valdez to review all study parameters submitted, and a final study guideline will be developed. We hope to then select a contractor to conduct the study under the administration of PWSEDC. At this point I believe all work could be completed in four to six months, and a formal petition for Borough formation could be submitted by next summer. Please send any forms and information regarding requirements for borough formation to us, and we will distribute them to our member organizations.

As Prince William Sound continues to move toward borough formation, it is important to remember the current petition by the Yakutat Borough. Should the Yakutat Borough annexation be approved, significant, eligible entitlement lands for a Prince William Sound Borough will be forever lost. As I am sure you are aware, there are very few eligible entitlement lands available in the Prince William Sound region, especially lands with value that might help to protect the long term financial health of a Borough. Please give this serious consideration.

I have also been asked by the PWSEDC Board of Directors to request a \$100,000 grant to fund the Economic Feasibility Study. We will need financial assistance from the State if we are to be successful in this endeavor.

If you have any questions please contact me at (907) 424-6200 (Cordova City Hall), or (907) 835-3775 (Valdez EDC). Thank you for your assistance and participation.

Sincerely,

Leslie Lewis for
Scott Janke
President PWSEDC

cc: James Winchester, PWSEDC Executive Director

NATIVE VILLAGE OF EYAK

P.O. BOX 1388-CORDOVA, ALASKA 99574

TEL 907-424-7738-FAX 907-424-7739

November 1, 1996

Local Boundary Commission
 c/o Dept. of Community & Regional Affairs
 333 West 4th Ave., Suite 220
 Anchorage, AK 99501-2341

Commissioners,

The Native Village of Eyak Traditional Council objects to DCRA's proposal to annex lands and waters west of the 141st Meridian into the City and Borough of Yakutat.

We also formally request an extension of the deadline for comments on the Draft Report. The following comments are based solely on the Executive Summary, because by the time we will get a copy of the full proposal, the November 8th deadline will have come and gone. We are requesting an extension so that we may review the full proposal which we have not yet even received. Without an extension, we will not have had a chance to fully participate in the public review process. Although we had send a letter opposing the annexation, we were not sent a copy of the decision. What's going on here.

The Native Village of Eyak is located at Eyak/Cordova, Alaska, on the Eastern edge of Prince William Sound (PWS). Our Tribe has five hundred (500) members. We are recognized as a Tribe by the United States. As an Alaska Native Village, we are striving to be more involved in the management of the natural resources we depend upon. This is why we support the formation of a borough for the entire PWS as it is currently recognized in the Commission's Model Borough Boundary Report. If the Yakutat Borough is successful in it's attempts to annex the lands and water we use for subsistence, and economic activity, our efforts to participate in the management of those areas will be severely hampered.

The November 8, 1996 deadline does not allow meaningful participation by the Native Villages in Prince William Sound. Since the report was issued, we have been, and will continue to be, involved in fall subsistence activities, AFN, Thanksgiving, Christmas and Russian Orthodox Christmas. We respectfully request that the deadline be extended until after Russian Orthodox Christmas in January, 1997.

In addition, the time frame required by the November 8 deadline is unfair because it effectively precludes our participation in the public process. The Local Boundary Commission received

the petition from Yakutat for annexation in February of 1996. DCRA then issued their Draft Report in October of 1996 with a comment deadline only one month later. We don't understand the sudden rush that forces us to respond to this critical issue in such a short time frame, especially since DCRA has had months to issue this report. Why the sudden rush.

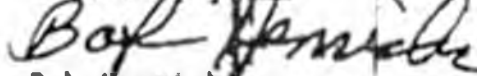
We also request more time because of DCRA's sudden departure from their past policies. For the last six years, DCRA has supported the current model borough boundary, and we are somewhat shocked by this shift. I am informed that the last time DCRA looked at this issue, in Yakutat's incorporation petition, it sent out its full draft report to over seventy groups and individuals, and allowed them six weeks to comment after they had received the full report. This time, most of those groups and individuals have not received the full report, although the DCRA has done a complete "about face" from its prior position. This drastic shift in policy requires an extension of the comment period to allow the affected organizations and persons in Price William Sound an opportunity to fully review the entire report, in order to understand the DCRA's reasoning and to respond appropriately.

The lands proposed for annexation have always been an important part of the Chugach Region. Annexation would seriously disrupt regional management of our natural resources, and The NVE's participation in that management. The negative impact on our regions resources affects our livelihoods and our culture, and threatens the future of our region.

We strenuously object to the proposal to annex these lands, and we request that the comment period be extended until February 1, 1997 to give us a chance to participate in this public process, and that we be provided with a copy of DCRA's report.

We look forward to your response.

Sincerely yours



Bob Henrichs
President, Traditional Council
Native Village of Eyak

cc: Senator Georgianna Lincoln
Representative Gene Kubina

INTRODUCED BY: Daryl James

CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 94-04

A RESOLUTION SUPPORTING WELL PLANNED RESOURCE DEVELOPMENT IN THE ICY BAY TO CAPE SUCKLING AREA.

WHEREAS, there is a need for economic development in the Yakutat region; and,

WHEREAS, the Icy Bay to Cape Suckling area, in the Yakutat region, is the only area not controlled by federal parks or wilderness areas; and,

WHEREAS, Yakutat's only major economic base, at present, is the fishery.

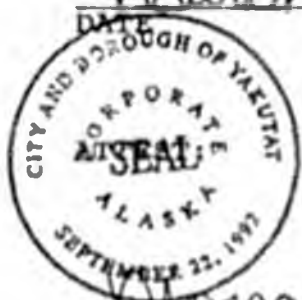
NOW, THEREFORE, BE IT RESOLVED by the Borough Assembly of the City and Borough of Yakutat, that the Assembly hereby supports wise and well planned Resource Development in the Icy Bay to Cape Suckling Area; and,

BE IT FURTHER RESOLVED that the City and Borough of Yakutat be included in all future planning for the Dry Bay to Cape Suckling Area.

PASSED AND APPROVED THIS 15th DAY OF March, 1994.

March 15th 1994

Daryl R. James
DARYL R. JAMES
Mayor



Mona Swanson
MONA SWANSON
Borough Clerk

EXHIBIT B
MAP OF EXISTING AND PROPOSED BOUNDARIES

0005/005

YAKUTAT

H F F B & C

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15:53

01-04/98

TERRITORY PROPOSED
FOR ANNEXATION

EXISTING BOUNDARIES
OF THE CITY & BOROUGH
OF YAKUTAT

Mt. Stellar

Cape Suckling

Icy Bay

Yakutat

Gulf of

141st MERIDIAN

Alaska

THREE NAUTICAL
MILE LINE
(STATE JURISDICTION)

Dry Bay

Cape Fairweather

Cape Spencer

Elfin Cove

Pelican

