

Local

Boundary

Commission

**HFIN**

**FILE**



# Alaska State Legislature

House of Representatives

State Capitol, Rm 214  
Juneau, AK 99801-1182  
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Official Business

Office of the Chief Clerk

## MEMORANDUM

Date: January 23, 1997

TO: Finance Committee

FROM: Suzi Lowell *SL*  
Chief Clerk

SUBJECT: Local Boundary Commission Report

Speaker Phillips referred the following report to the Finance Committee:

Report of the Local Boundary Commission  
to the First Session of the  
Twentieth Alaska Legislature  
January 22, 1997

The report is attached.

# **Report of the Local Boundary Commission to the First Session of the Twentieth Alaska Legislature**

**January 22, 1997**



**Darroll Hargraves, Chairperson  
Kathleen Wasserman, Vice Chairperson,  
First Judicial District**



**Nancy Cannington, Second Judicial District  
Kevin Waring, Third Judicial District  
William Walters, Fourth Judicial District**

# **Report of the Local Boundary Commission to the First Session of the Twentieth Alaska Legislature**

**January 22, 1997**

## **Local Boundary Commission**

**Darroll Hargraves, Chairperson, at-large**  
**Kathleen S. Wasserman, Vice-Chairperson,**  
**First Judicial District**  
**Nancy E. Cannington, Member,**  
**Second Judicial District**  
**Kevin Waring, Member,**  
**Third Judicial District**  
**William Walters, Member,**  
**Fourth Judicial District**



**Tony Knowles, Governor**  
**Report prepared with assistance from:**  
**Department of Community and Regional Affairs**  
**Mike Irwin, Commissioner**  
**Lamar Cotten, Deputy Commissioner**

**Municipal and Regional Assistance Division**  
**Patrick K. Poland, Director**

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The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at (907)269-4500, or TDD (800)930-4555.



# MESSAGE FROM THE CHAIRPERSON

January 22, 1997

1996 was an eventful year for the Local Boundary Commission. Last year, the Commission met 17 times. During 1996, the Commission addressed the following proposals:

- ★ a petition by the City and Borough of Yakutat for annexation of the Gulf of Alaska coastal region from the 141st meridian to Cape Suckling;
- ★ a petition for detachment of 5,400 square miles from the Fairbanks North Star Borough;
- ★ a petition for incorporation of a 10,000 square mile home rule North Pole Borough;
- ★ a petition by the Fairbanks North Star Borough for detachment of 13 acres from the City of Fairbanks; and
- ★ a petition for dissolution of the City of Akiak.

In addition, proposals currently pending before the Commission include the following:

- ★ a petition for incorporation of the second class City of Lake Louise;
- ★ a petition for incorporation of the second class City of Gustavus;
- ★ a petition by the Denali Borough to annex 992.6 square miles presently located within the Matanuska-Susitna Borough.

Further, the Commission anticipates that, in March of this year, it will reconsider aspects of the incorporation of Pilot Point as ordered by the Alaska Supreme Court.

The Commission's decisions relating to annexation of territory to the City and Borough of Yakutat and detachment of territory from the City of Fairbanks are subject to review by the Legislature. The Commission's formal recommendations to the Legislature are included in Chapter 3 of the attached report. Under Article X, Section 12 of Alaska's Constitution, those recommendations receive automatic approval unless the Legislature adopts resolutions rejecting them. Such resolutions must be adopted by both houses within 45 days of the date that the Commission files its recommendations. In this case, the recommendations will be automatically approved if not rejected by March 8, 1997, or at the end of the regular session, whichever is earlier.

Details concerning the Commission's actions and other developments of interest to the Commission are provided in this report. The report concludes with a discussion of policy issues of concern to the Commission. The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,

A handwritten signature in cursive script that reads "Darroll Hargraves". The signature is written in dark ink and is positioned above the printed name.

Darroll Hargraves,  
Chairperson

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# CHAPTER I OVERVIEW OF THE COMMISSION AND ITS PROCEDURES

This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & Regional Affairs. Details of the procedures used by the Commission are also provided.

## Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

- ⊕ incorporation of cities and boroughs;
- ⊕ annexation to cities and boroughs;
- ⊕ detachment from cities and boroughs;
- ⊕ dissolution of cities and boroughs;
- ⊕ merger and consolidation of cities and boroughs; and
- ⊕ reclassification of cities.<sup>1</sup>

The Local Boundary Commission was established to serve as an impartial body to

review proposals from a statewide perspective. In the words of the Alaska Supreme Court:

*An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee: "... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."<sup>2</sup>*

Among the 130 or so State boards and commissions, only the Local Boundary Commission and four others have origins in Alaska's Constitution.<sup>3</sup>

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. More than two decades ago (and again in 1993), the Alaska Supreme Court remarked that:

*"...The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."<sup>4</sup>*

1 See AS 29.05; AS 29.06 and AS 44.47

2 Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962)

3 The Local Boundary Commission was established pursuant to Article X, § 12 of the Alaska Constitution and AS 44.47.565. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct and Reapportionment Board.

4 Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232 (Alaska 1993)

## Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation.

Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field...and with a view to providing diversity of interest and points of view in the membership."<sup>5</sup> Biographical data about current Commissioners follows.

**Darroll Hargraves** is the current Chairperson. Commissioner Hargraves



is the Superintendent of the Alaska Gateway School District in Tok. He joined the Commission in March 1991 and became Chairperson in May

1992. Commissioner Hargraves has been a school superintendent in Ketchikan and Nome. He has taught school in Barrow, Kivalina and Gambell. He has also been an administrator at the University of Alaska, Fairbanks. His current term on the Commission expires January 31, 1997.

**Kathleen S. Wasserman** is the Vice-

Chairperson for the LBC. She serves from Alaska's First Judicial District. She was appointed to the LBC on September 14, 1995. Ms.



Wasserman is a member of the Assembly of the City and Borough of Sitka and former mayor of the City of Kasaaan. She is also a former president of the Southeast Island Regional

Educational Attendance Area School Board. She currently lives in Sitka where she works as a consultant. Ms. Wasserman's present term expires January 31, 2001.

**Nancy E. Cannington** serves from the Second



Judicial District. She was appointed to the LBC on September 14, 1995. Formerly Special Assistant to the Commissioner of Labor, Ms. Cannington now serves as the Administrator for the City of Unalakleet. Ms. Cannington was a

member of the Alaska Safety Advisory Council for 8 years and currently serves as a Trustee on the Alaska Municipal League Joint Insurance Association. She recently served as a member of the State's Task Force on Education Funding. Ms. Cannington's term expires January 31, 1999.

**Kevin Waring** was appointed to serve from



Alaska's Third Judicial District on July 15, 1996. Mr. Waring was one of the Department of Community and Regional Affairs' original division directors (1973-1978).

Since 1980, he has operated Kevin Waring & Associates, a planning and economics consulting firm in Anchorage. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His term expires January 31, 1998.

**William Walters** serves from the Fourth



Judicial District. He was appointed to the LBC on September 14, 1995. Mr. Walters works for the Tanana Chiefs Conference in Fairbanks. He is a graduate from the University of Texas School of Law. He is a former member of

the Fairbanks North Star Borough Planning Commission. Mr. Walters' term expires January 31, 2000.

**Staff to the Commission.** The Alaska Department of Community and Regional Affairs (DCRA), Municipal and Regional Assistance Division (MRAD) provides staff to the Commission. The Commission's staff analyzes petitions to the Commission and prepares reports conveying DCRA's recommendations for action by the Commission. DCRA also certifies municipal incorporation, dissolution, annexation, detachment, merger, consolidation and reclassification. DCRA maintains corporate boundary records for the 164 municipal governments in Alaska.

The Commission and DCRA are independent concerning policy issues. In other words, the Commission is free to act in a manner other than that recommended by DCRA.

**Procedures of the Commission**

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission

are based on analysis of the facts and the applicable legal standards, with due consideration of the position of interested parties.

The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

**Preparation and Filing of the Petition**

DCRA offers technical assistance, sample materials and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of a particular proposal.

Once a formal petition is prepared, it is submitted to DCRA for technical review. If the petition contains all the information required by law, DCRA accepts the petition for filing.

**Public Notice and Public Review Period**

Once a petition is accepted for filing, extensive public notice of the filing of the petition is given. Interested parties are given at least seven

weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief in reply to responsive briefs.

**Analysis**

Following the public comment period, DCRA analyzes the petition, responsive briefs, written comments, reply brief and other materials as part of its investigation. Informational meetings may be conducted by the petitioner and DCRA.

At the conclusion of its investigation, DCRA issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission for action on the petition.

The preliminary report is circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, DCRA issues its final report. The final report includes a brief discussion of comments made on the preliminary report and also notes any changes to DCRA's recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

**Commission Review of Materials and Public Hearing**

Members of the Commission review the petition, responsive briefs, written comments, reply brief and DCRA reports. If circumstances permit, Commission members also tour the area in question prior to the hearing in order to gain a better understanding of the proposal.

Following extensive public notice, the Commission

- approve the petition as presented;
- amend the petition (e.g., alter the boundaries);
- impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or,
- deny the petition.

The law requires the Commission to reach a decision within 90 days of its hearing. However, typically, the Commission renders its decision within two weeks.

Within 30 days of announcing its decision, the Commission must adopt a

Any party may ask the Commission to reconsider its decision. Such requests must be filed within 20 days of the date that the decision became final. If the Commission does not approve a request for reconsideration within 30 days of the date that the decision became final the request for reconsideration is automatically denied.

**Implementation**

If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must also receive favorable review under the Federal Voting Rights Act. DCRA provides assistance with Voting Rights Act reviews.



**LBC Members deliberating**

conducts at least one hearing on the proposal.

The Commission must act on the petition within 90 days of its final public hearing. The Commission may take any one of the following actions:

written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents and others who request it. At that point, the decision becomes final, subject to reconsideration.



# CHAPTER II 1996 DEVELOPMENTS AND ACTIVITIES

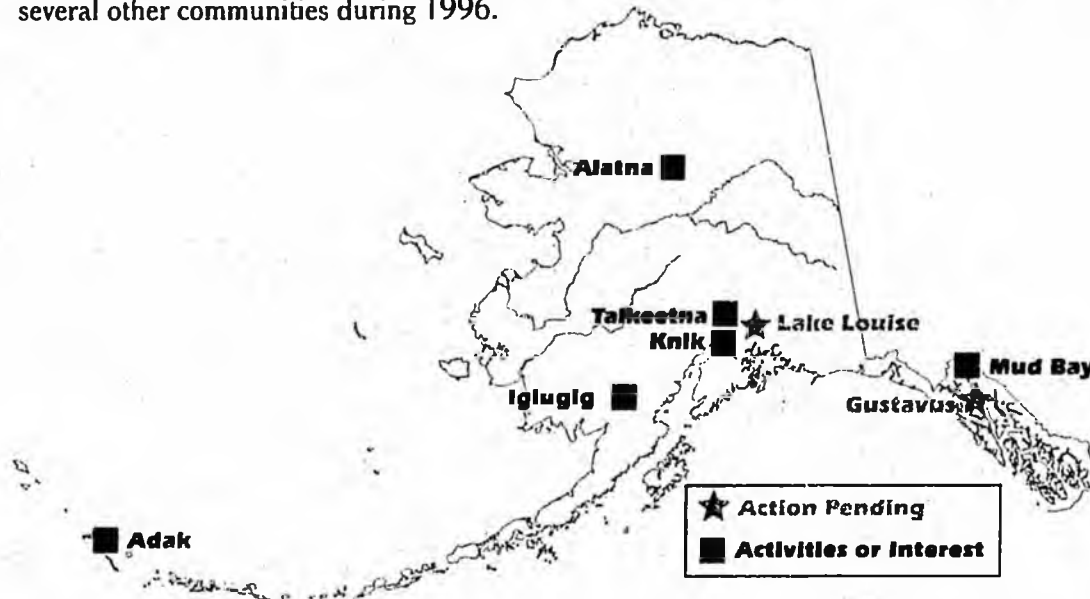
During calendar year 1996, the Commission or its staff responded to a full range of actions under the purview of the LBC.

This chapter summarizes developments regarding:

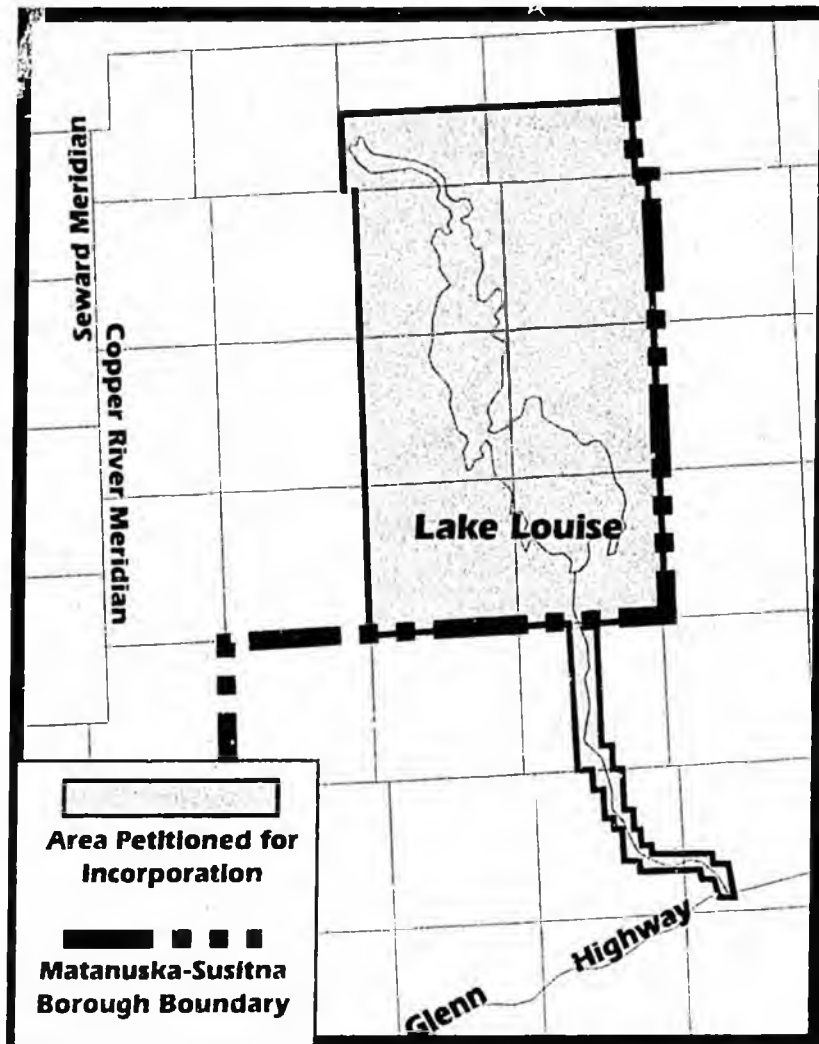
- ★ proposals for and expressions of interest in municipal incorporation, dissolution, boundary changes and reclassification that occurred during 1996;
- ★ Supreme Court and Superior Court appeals stemming from decisions of the Commission;
- ★ a report of the Forum on the Alaska Constitution conducted by the Commission in February, 1996.

## City Incorporation

Although no new cities were incorporated during 1996, petitions for incorporation were lodged by residents of Gustavus and Lake Louise. There are presently 148 city governments in Alaska.<sup>6</sup> Interest in city incorporation was expressed from several other communities during 1996.



<sup>6</sup> Dissolution of the inactive cities of Atmautluak and Kasigluk was finalized during 1996, dissolution of the Cities of Newtok, Tuluksak and Tununak is pending.



The municipal boundaries proposed by the Petitioners encompass approximately 266 square miles. Most of the area proposed for incorporation, (252 square miles or 94.7% of the territory) was included in the area provisionally approved for detachment last year. The area is sparsely populated. The petitioners indicate that only 45 persons reside in the area year-round, although the area contains numerous recreational cabins, which are frequently occupied. The taxable value of real property in the area proposed for incorporation has been assessed at \$10,962,000. The petitioners propose that the city levy a property tax at an initial rate of 13 mills.

A timely responsive brief was submitted by the Matanuska-Susitna Borough opposing the petition and a letter was submitted by Harry and Jean Holt expressing concerns about the ramifications of incorporation.

**Lake Louise.** In January, 1996, the Commission and the Legislature provisionally approved detachment of Lake Louise from the Matanuska-Susitna Borough. However, detachment was made contingent upon inclusion of the area within another organized borough or incorporation of the area as a second class city by March 2, 1998.

In July, 1996, residents of Lake Louise petitioned the Local Boundary Commission (LBC) to incorporate the second class City of Lake Louise.

On November 15, 1996, DCRA issued its provisional report and recommendation to the LBC concerning the petition. Timely comments on the draft report were received from the Matanuska-Susitna Borough. DCRA issued its final report to 149 interested parties on January 10, 1997. DCRA has recommended that the petition be approved.

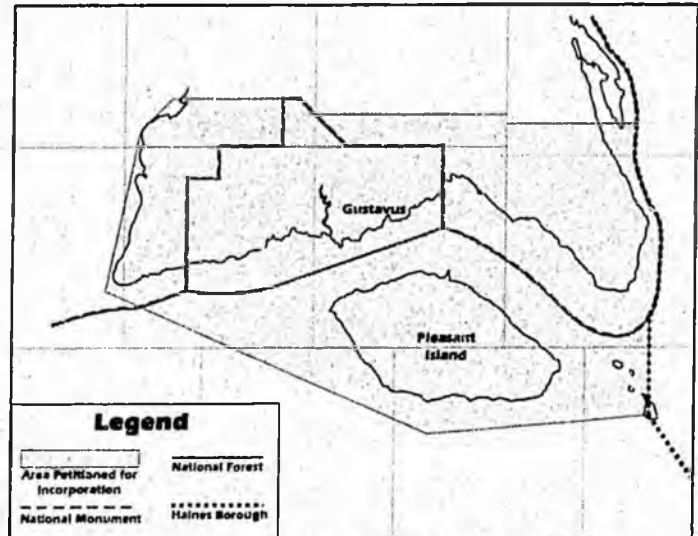
The Commission has three alternatives to choose from in this matter: to approve the petition for incorporation as submitted; to deny the petition; to amend and approve the petition. The Commission will conduct a public hearing

on the petition at Lake Louise on February 1, 1997. If approved by the Local Boundary Commission the incorporation question will be placed before Lake Louise voters.

**Gustavus.** On April 5, a petition for incorporation of the second class City of Gustavus was accepted for filing. The petition seeks to form a second class city encompassing 143.92 square miles comprised of an estimated 76.61 square miles of land and 67.31 square miles of tidelands and submerged territory. The area is inhabited by an estimated 357 people. The petitioners estimate that the area proposed for incorporation has a taxable value of \$71,745,000; however, no property tax is planned. Instead, the petitioners propose that incorporation be conditioned upon voter approval of a proposition authorizing the City to levy a 3% bed tax. It is estimated that a 3% bed tax would provide about \$48,500 annually.

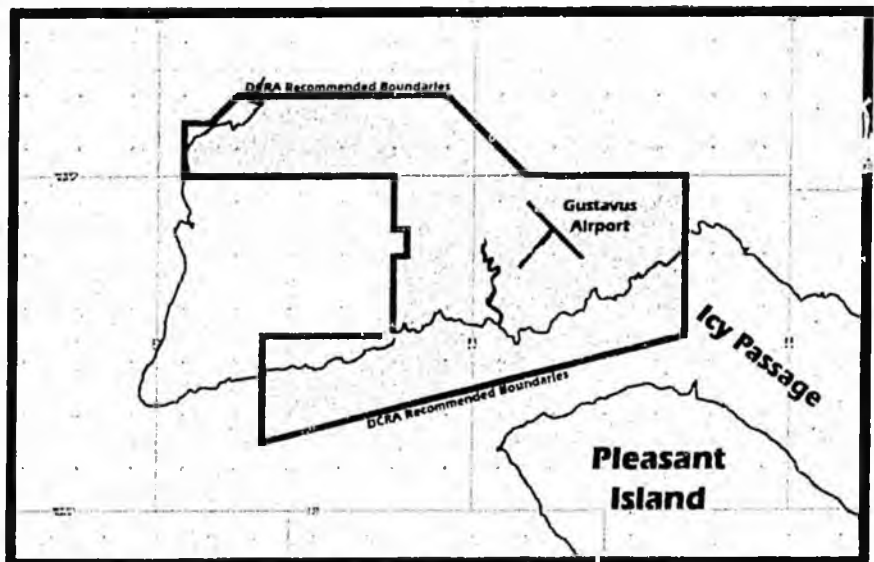
Proposed city powers include planning, platting, land use regulation, road maintenance, solid waste disposal, library and general government. Landfill fees are expected to generate \$11,000 - \$12,000 each year. Receipts from the State and federal government are expected to total about \$58,000 annually. The petition proposes that the City provide planning, road maintenance, fire/rescue and clinic funding, a landfill and a public library.

DCRA issued its preliminary report and recommendation concerning the petition on December 9, 1996. The provisional report concluded that:



**Area proposed for Incorporation by petitioners for the City of Gustavus**

- ✓ the services to be provided by the proposed City of Gustavus cannot be provided through annexation to an existing city;
- ✓ the population of the community is stable enough to support city government;
- ✓ there is a demonstrated need for city government in the community;
- ✓ that the city boundaries proposed by the petitioners were excessive;
- ✓ that the community has the human and financial resources necessary to provide municipal services.



**Boundaries recommended by DCRA for the proposed City of Gustavus**

DCRA recommended that the petition be amended to exclude 111.3 square miles from the proposed city jurisdiction. The boundaries recommended by DCRA encompassed 22.60 square miles of land and 10.02 square miles of tidelands and submerged lands. DCRA also recommended that the Commission make city incorporation conditioned upon voter approval of the proposed 3% bed tax. The deadline for comment on the provisional report was January 8, 1997. Timely responses were received from 10 parties. These were: the Petitioners' Representative, Superintendent of the Glacier Bay National Park and Preserve, TRI Bed & Breakfast of Glacier Bay, Hoonah resident Patrick Mills, Juneau resident Greg Brown, Juneau resident Janie Eldemar, Juneau resident Eleanor Mills Moritz, Lawrence Kansas resident Rosemary Mills Jimboy, Hoonah resident Thomas L. Mills, Sr., and Hoonah resident Wanda Culp. The Petitioners' Representative wrote a two-page letter urging the expansion of the area recommended by DCRA for incorporation to include the Dude Creek Critical Habitat Area and that portion of the Glacier Bay National Park and Preserve lying west and south of the Dude Creek Critical Habitat Area. The letter did not advocate for DCRA to expand its final recommendation to include other areas within the Petitioners' proposal such as Pleasant Island, Porpoise Islands, the Fall Creek area and a large portion of Glacier Bay National Park and Preserve extending to the Haines Borough boundary.

### **Other Interest in City Incorporation**

Interest in city incorporation was expressed from the following communities during 1996:

- \* *Mud Bay*
- \* *Knik*
- \* *Talkeetna*
- \* *Adak*
- \* *Igiugig*
- \* *Alatna*

**Mud Bay.** Residents of the Haines Borough community of Mud Bay established an ad-hoc group named "Citizens for the Legal Incorporation of Mud Bay." Interest in city incorporation stemmed principally from the accurate expectation that the borough service area for planning, platting and land use regulation would be abolished or that its powers will be greatly diminished.

The group sought a preliminary, informal determination from the LBC whether there exists a reasonable possibility that a proposal to form a city government at Mud Bay would satisfy requisite incorporation standards. Public policy issues associated with the matter include the following:

1. Whether incorporation would contravene the constitutional policy of minimizing the number of local government units expressed by Article X, § 1 of Alaska's Constitution.
2. Whether incorporation would be precluded by the statutory limits of AS 29.05.021 (b) in that the services to be provided by the proposed city "can be provided . . . by annexation to an existing city" (i.e., the City of Haines).
3. Whether there is a demonstrated need for city government as required by AS 29.05.011 (a)(5).

The Commission discussed the letter on August 5. At that time, the Commission indicated that any petition would be evaluated on its merits. The LBC neither expressed support for or opposition to the prospect of an incorporation proposal.

On September 12, the Haines Borough Assembly adopted an ordinance removing 97% of the territory within the Mud Bay Land Use Service Area. The Acting Chairman of the Service Area has written to the Governor urging him to "help bring together representatives from

*your office, the legislature, the Attorney General's office, and the DCRA Commissioner's office to clarify state policy regarding planning powers of service areas in a third class borough."*

On October 1, voters in the Haines Borough voted on a referendum that would have abolished service area planning and repeal existing borough laws relating to such.

**Knik.** Approximately 30 Knik area residents met with LBC staff on May 25 to discuss city incorporation. The group was interested in city incorporation as a potential tool to stop development of a gravel quarry in the area. After residents were advised that the Matanuska-Susitna Borough would retain authority for planning, platting and land use regulation in Knik regardless of the existence of a City of Knik, interest in developing a petition for incorporation was dampened. Residents have continued to meet to further discuss City incorporation. On November 13, residents conducted a meeting described as "preliminary to a major community meeting" to discuss city incorporation.

**Talkeetna.** Talkeetna residents are contemplating submission of a petition for incorporation of home rule city. The jurisdictional boundaries under consideration encompass approximately 24 square miles. It is estimated that 789 people live in the area. Tentative powers planned for the proposed city include parks & recreation, historic preservation, plan-

ning, transient accommodations tax, road maintenance, flood control, regulation of snow vehicles & motor vehicles, economic development and regulation of fireworks. Discussions have occurred between the prospective petitioners and the Matanuska-Susitna Borough over the possibility of the city assuming the responsibilities for the local water and sewer service areas. However, there may be opposition to such a proposal because the utilities are the subject of a number of concerns among the community. Incorporation proponents anticipate that the Borough would continue to provide fire protection and erosion control services to Talkeetna through service areas. LBC staff provided information to the group contemplating incorporation.

**Adak.** In November, a draft petition for incorporation of a second class city of Adak was submitted to LBC staff for review and comment.

**Igiugig.** A resident of Igiugig requested and was provided with petition forms and background information regarding standards and procedures for city incorporation.

**Alatna.** Alatna residents have expressed interest in city incorporation. Following the 1994 flooding of the Koyukuk River, Alatna (population 31) has been relocated. Alatna was formerly within the boundaries of the City of Allakaket. New development in the area is almost entirely outside the boundaries of the City of Allakaket.



## City Annexation

No petitions for annexation of territory to cities were filed during 1996. However, officials or residents of seven cities expressed interest in city annexation during the year.

- \* *City of Allakaket*
- \* *City of Haines*
- \* *City of Kaktovik*
- \* *City of Ketchikan*
- \* *City of Homer*
- \* *City of Palmer*
- \* *City of Pelican*
- \* *City of Wasilla*



**City of Allakaket.** On April 11, LBC staff traveled to Allakaket and met with the City Council and the Alatna Traditional Council regarding annexation of territory to the City of Allakaket. As noted in the discussion of city incorporation at Alatna, the boundaries of the City of Allakaket do not conform to the post-flood development in the area. Annexation has been contemplated to remedy the boundary issues.

**City of Haines.** On October 1 Haines Borough voters narrowly expressed support for submission of a petition by the City to annex approximately six square miles inhabited by an estimated 300 people. The advisory proposition passed by a vote of 233 in favor to 220 opposed. It is anticipated that the City will submit a petition in 1997 to annex the area through the legislative review process.

**City of Kaktovik.** In November, an attorney representing the City of Kaktovik indicated that the City is preparing to seek annexation of Barter Island. Petition forms for the annexation of property upon the request of all of the property owners and resident voters of the territory were provided by LBC staff.

**City of Ketchikan.** In May, the Ketchikan Gateway Borough Assembly adopted a resolution supporting annexation of a Borough owned road right-of-way to the City. Annexation would facilitate provision of city utility services to the area. The parcel proposed for annexation is contiguous to the existing city boundaries and has been characterized as approximately one-quarter mile in length and 100 feet wide. Petition forms and information regarding annexation procedures were forwarded to the City of Ketchikan.

**City of Palmer.** City of Palmer officials expressed interest in annexation of the Matanuska Christian School and a city-owned industrial park. Annexation was reportedly desired by administrators of the school to facilitate extension of utility service to the school site. City annexation petition forms and related background information were provided to City of Palmer staff.

**City of Pelican.** The Pelican City Council expressed interest in annexation of areas adjacent to the existing municipal boundaries.

Local interest in annexation has developed in response to existing and prospective development in the greater Pelican area.

**City of Wasilla.** City of Wasilla staff requested and were provided with forms and information regarding annexation of territory by a local election. Residents of an area adjacent to the existing municipal boundaries are reportedly considering the merits of requesting annexation.

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## City Merger

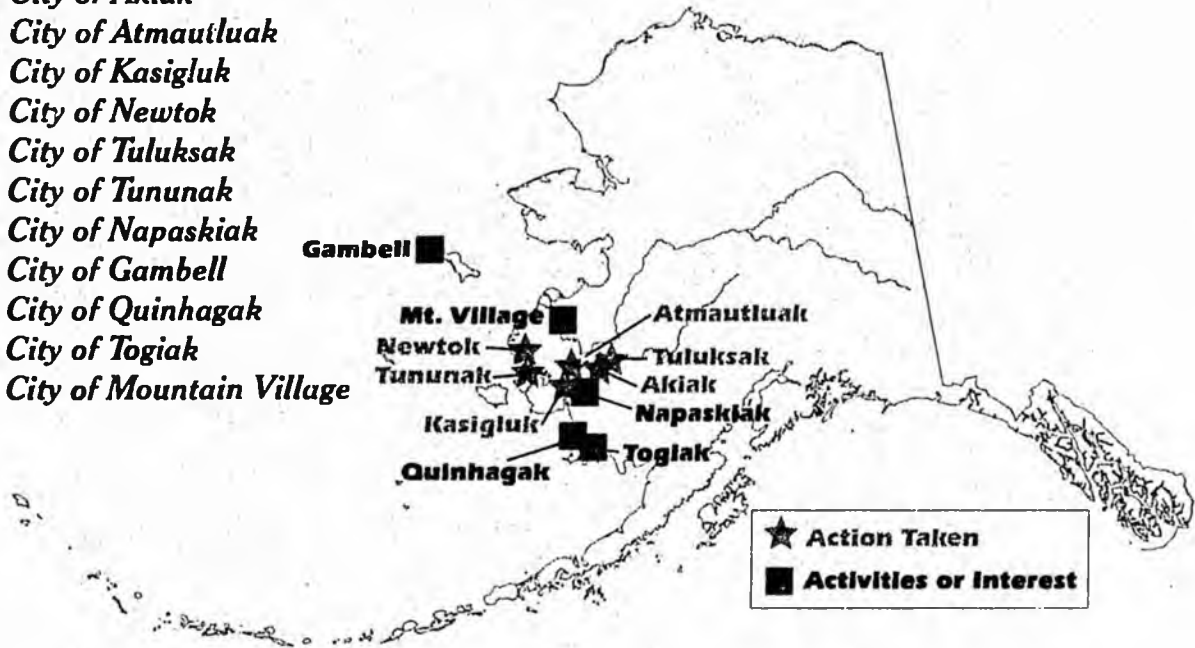
**City of Homer.** In September, an official of the City of Homer advised LBC staff that the Homer City Council had expressed its intention to appropriate funds to conduct a cost/benefit study for the merger of the City of Kachemak (population 404) into the City of Homer and the annexation of additional territory. Information was provided concerning similar studies conducted by other municipalities.



## City Dissolution

During 1996, expressions of interest or activities involving city dissolution took place with respect to the following city governments:

- \* *City of Akiak*
- \* *City of Atmautluak*
- \* *City of Kasigluk*
- \* *City of Newtok*
- \* *City of Tuluksak*
- \* *City of Tununak*
- \* *City of Napaskiak*
- \* *City of Gambell*
- \* *City of Quinhagak*
- \* *City of Togiak*
- \* *City of Mountain Village*



**City of Akiak.** On March 1, 1996 the petition for dissolution of the second-class City of Akiak was filed with the Department of Community and Regional Affairs (DCRA). The petition sought dissolution of the City through the local option method specified in AS 29.06.460 - 29.06.510.

On June 13, 1996, DCRA released a 40-page provisional report regarding the petition for dissolution of the City of Akiak to 45 parties. The provisional report identified known assets as well as known and potential liabilities of the City. The provisional report concluded that the petition met all applicable standards for dissolution except that all creditors of the City had not agreed to specific debt payment plans. The Department's provisional recommendation was that, contingent upon resolution of City debt issues, the dissolution petition be approved by the Local Boundary Commission.

On July 12, 1996, the Department of Community and Regional Affairs issued a final report on the Akiak dissolution proposal. The final report described unsatisfied debts of the City of Akiak and the arrangements made to satisfy all such debts.

On August 6, 1996, the Local Boundary Commission conducted a public hearing concerning the petition for dissolution of the City of Akiak at the Akiak Community Meeting Hall. Commissioners Hargraves, Cannington, Walters, Waring and Wasserman were present in Akiak. The hearing was attended by 12 local residents. Testimony was received from 5 individuals. All testimony received supported approval of the petition for dissolution.

Immediately upon the conclusion of the Commission's hearing, the Commission rendered its decision to approve petition for dissolu-

<b>Final Election Results</b> <b>City of Akiak Dissolution</b> <b>Dissolution Proposal</b>						
<b>"Yes" Votes</b>			<b>"No" Votes</b>			<b>Successor</b>
<i># of votes</i>	<i>% of votes cast</i>	<i>% of total registered voters</i>	<i># of votes</i>	<i>% of votes cast</i>	<i>% of total registered voters</i>	
41	43.2%	33.9%	54	56.8%	44.6%	IRA Council: 46 yes 48 no

tion of the City of Akiak subject to the conditions recommended by DCRA in its report dated July 12, 1996.

Federal Voting Rights Act preclearance was granted by the U.S. Department of Justice. The issue of dissolution of the City of Akiak was placed before the voters of the City at the November 5, 1996 general election. The final tally of the Akiak city dissolution election was reported to DCRA on November 21, 1996. At the time of the election, there were 121 voters registered in the City of Akiak. A total of 95 votes were cast. Of these, 41 supported dissolution. Since AS 29.05.510(c) requires an affirmative vote for dissolution by a majority of the registered voters in the city proposed for dissolution, the dissolution proposition failed.

**Dissolution of Inactive Cities**

On March 10, 1995, the Legislature provided tacit approval for the dissolution of the five inactive cities (Atmautluak, Kasigluk, Newtok, Tuluksak and Tununak) under provisions of AS 29.06.450(b) and Art. X, Sec. 12 of the Alaska Constitution.

The dissolution of the five inactive cities will take effect upon satisfaction of conditions stipulated by the LBC and approved by the Legislature. The stipulations include provisions to ensure that the cities' debts are paid, that the cities' assets and liabilities are transferred to local successors and that other appropriate transition measures are carried out.

**Atmautluak.** The inactive city of Atmautluak was the first of the five inactive cities approved for dissolution by the Legislature in 1995.

In February, 1996, an agreement between the State of Alaska and the Atmautluak Traditional Council to convey and accept assets, liabilities and obligations of the dissolving City of Atmautluak was executed by the Atmautluak Traditional Council, the State Attorney General and the Commissioner of DCRA. The signed agreement took effect when it was recorded in the Bethel Recording District. At that time, dissolution of the City of Atmautluak became effective and the Atmautluak Traditional Council became the City's successor. A certificate of city dissolution was issued to the Atmautluak Traditional Council.

**Kasigluk.** LBC staff received documentation that the agreement between the State and the Kasigluk Traditional Council to convey and accept assets, liabilities and obligations of the City of Kasigluk was recorded October 21, 1996. Consequently, the City of Kasigluk was formally dissolved on that date. A certificate of dissolution of the City was executed by DCRA Commissioner Irwin and issued to the Kasigluk Traditional Council.

**Newtok.** On November 8, 1996, a proposed memorandum of agreement to convey assets, liabilities and obligations of the inactive City of Newtok to the Newtok Traditional Council was sent to the Newtok Traditional Council for approval. The agreement will take effect after it has been signed by all parties and recorded.

**Tuluksak.** Voters in the City designated the Tuluksak IRA Council as the successor to the assets, liabilities and obligations of the inactive City of Tuluksak. Agreements governing the transfer of municipal assets, liabilities and other obligations were subsequently developed. Negotiations are currently underway between the State and the Village Council concerning the proposed agreement.

**Tununak.** Dissolution of the City of Tununak has been complicated by substantial issues. For instance, the City of Tununak's delinquent federal tax liability had earlier been calculated by the IRS at \$154,177.98, largely based upon estimates of the Alaska Department of Labor for the first quarter of 1989. At DCRA's request the Internal Revenue Service agreed to conduct a review of City of Tununak payroll records from that period. An accurate determination resulted in a reduction of the City of Tununak's tax liability to \$10,973.21. At the request of Commissioner Irwin, the Superior Court approved a disbursement of trust funds to the

Internal Revenue Service for the inactive City of Tununak. Disbursement of the funds to the IRS satisfied the only known creditor of the inactive City of Tununak. The Court was also requested to return the residual amount in the trust fund, totaling \$38,962.79, to the State General Fund. Dissolution of the City of Tununak requires action by the Alaska Village Electric Cooperative (AVEC) to formally acknowledge the Tununak Traditional Council as the successor to operating and labor agreements between the City of Tununak and AVEC.

### Other Interest In City Dissolution

**City of Napaskiak.** LBC staff met with city officials and residents in August in response to local interest and requests for information relating to the standards in city dissolution.

**City of Mountain Village.** In November, a resident of Mountain Village requested and was provided with information and petition forms for city dissolution.

**City of Gambell.** On August 27, DCRA staff participated in a public meeting in Gambell to address local questions concerning dissolution of the City of Gambell.

**City of Quinhagak.** In April, the Quinhagak City Council and the "Native Village of Kwinhagak" (IRA Council) approved 7-page agreement requiring the City to "contract with the Native Village of Kwinhagak for the operation, maintenance, and use of all remaining services and functions the city operates and performs and all property and equipment. . . ." This arrangement has been described as an interim step leading to dissolution of the City.

Residents of other cities including Napaskiak, Gambell, Togiak and Nondalton have expressed interest in arrangements similar to those recently instituted in Quinhagak.

**Togiak.** On September 26, LBC staff met with the Togiak City Council, the Togiak Traditional Council and residents regarding the standards and process for city dissolution.

Residents of Togiak have indicated that they will continue to examine the general question of city dissolution. However, the loss of fisheries revenues which would be suffered by the community as a consequence of city dissolution constitutes an enormous disincentive to city dissolution in Togiak.



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## City Detachment

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During 1996, one petition for detachment from a city was filed and processed.



**City of Fairbanks.** On February 29, 1996, the Fairbanks North Star Borough (FNSB) petitioned the Local Boundary Commission to detach a tract contiguous to the existing City of Fairbanks. The tract is the planned location for the Badger Road solid waste transfer station.

The tract, which is comprised of approximately 13 uninhabited, undeveloped acres, is not used for military purposes. Detachment has been proposed because conditions on the use of bond proposition to funds development of the

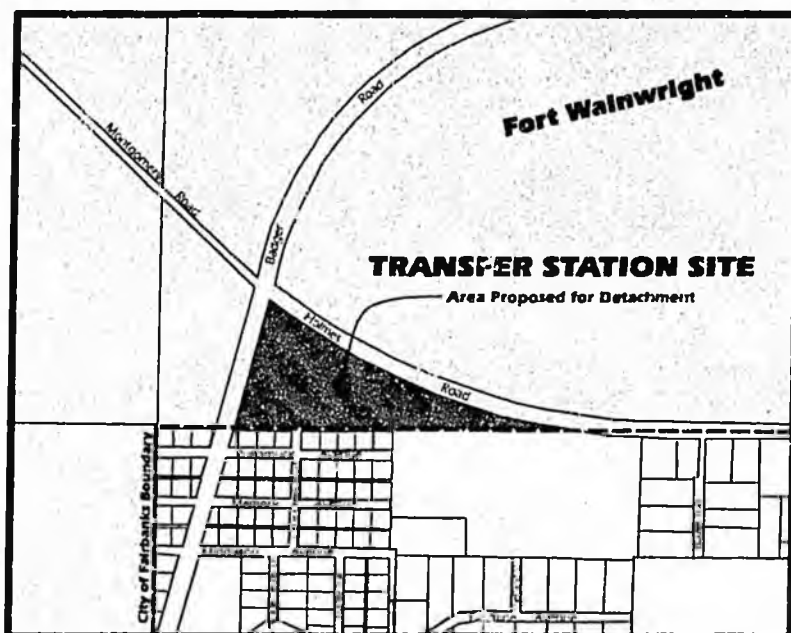
The Borough is working closely with the City, Department of the Army and the Bureau of Land Management to obtain a lease, license or permit to allow the development of the site for a solid waste transfer station.<sup>7</sup> The Fairbanks City Council supports the proposed detachment.

No responsive briefs or letters were filed in opposition to the detachment proposal. The Commission met in Fairbanks on December 6, 1996. At that time, the petition for detachment was approved by a unanimous vote of the members participating in the hearing. (For

additional information regarding the detachment of territory from the City of Fairbanks, see Recommendation Number One to the First Session of the Twentieth Alaska Legislature in Chapter III of this report.)

**Alatna (City of Allakaket).** Following the 1994 flooding of the Koyukuk River, the community of Alatna (population 31) was relocated. The community was formerly within the boundaries of the City of Allakaket. It now rests immediately outside the City's boundaries. The Department has been asked to determine whether the

community is now eligible for State Revenue Sharing funding and State Capital Matching grants for unincorporated communities.



solid waste transfer station require that the property be outside the boundaries of city governments. Detachment of the property will not change the military interest in the property.

7 Petition for detachment, page 2.

## Borough Incorporation

Activities or interest relating to borough incorporation occurred in the following areas during 1996.

- \* *North Pole*
- \* *Kuspuk*
- \* *Nome Area*
- \* *Glacier Bay*
- \* *Chatham*
- \* *Aleutians West*
- \* *Delta Greely*
- \* *Dillingham Census Area*
- \* *Prince William Sound*
- \* *Wrangell*



**North Pole Area.** The petition for incorporation of a home-rule North Pole Borough (NPB) was considered by the Commission in conjunction with the related petition to detach 5,400 square miles from the Fairbanks North Star Borough. (See related discussion in that portion of this chapter concerning borough detachment activities.) The incorporation petition was signed by more than 1,600 individuals.

The proposed NPB boundaries encompassed an estimated 9,350 square miles. The 3,950 square miles of the proposed NPB that were outside the FNSB are part of Alaska's unorganized borough.

The area proposed for incorporation is inhabited by an estimated 23,713 residents. It was reported that all but 30 - 35 of those individuals resided in the FNSB. A map of the proposal is shown on the next page.

On March 29, 1996, DCRA issued a 60-page provisional report concerning the detachment and borough incorporation proposal. The provisional report recommended that the proposal be denied because, in DCRA's view, it failed to meet requisite standards. More than 200 copies of the report were distributed to individuals for review and comment. May 31, 1996 was established as the deadline for the receipt of comments on the provisional report. Sixteen organizations and individuals submitted timely comments on the report.

On May 29, 1996, DCRA conducted its requisite public informational meeting concerning the NPB proposal at the North Pole High School. An estimated 50-60 individuals were in attendance. DCRA reported that the meeting began with a 20-minute presentation by DCRA outlining its provisional report. Details were provided concerning the criteria and procedures

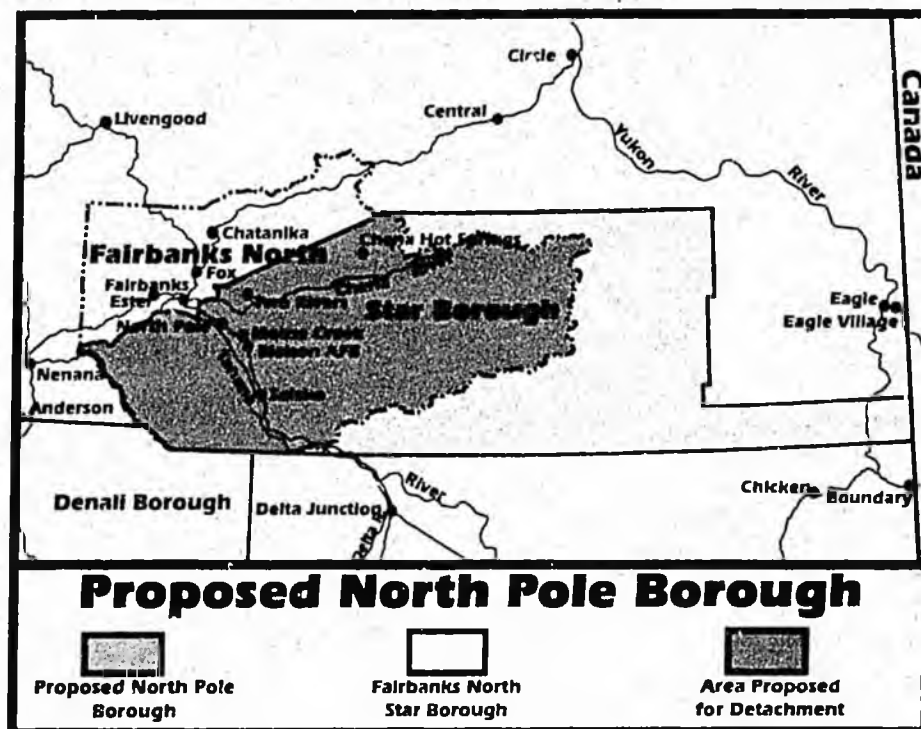
that would be used by the Commission to judge the NPB proposal. DCRA then summarized its assessment of the NPB proposal and its recommendation to the Commission that the proposal be denied. Following the presentation, the audience was afforded an opportunity to ask questions and to make comments concerning the NPB proposal. That part of the informational meeting reportedly lasted approximately one hour and forty-five minutes.

Following its informational meeting and consideration of the written comments on its draft report, DCRA issued its final report and recommendation on the NPB proposal on July 8, 1996. Copies of the report were distributed to 163 individuals and organizations.

The Commission conducted hearings on the proposal for August 6, 1996 in North Pole and August 7, 1996 in Fairbanks.

Notice of the public hearings was:

- ☉ mailed to 163 interested individuals and organizations on June 27, 1996;
- ☉ published as a 2 column x 9-inch display ad in the *Fairbanks Daily News-Miner* on July 1, July 8 and July 15, 1996;
- ☉ published three times in the *Alaska Administrative Journal*;
- ☉ posted in public and prominent locations in the area proposed for incorporation;



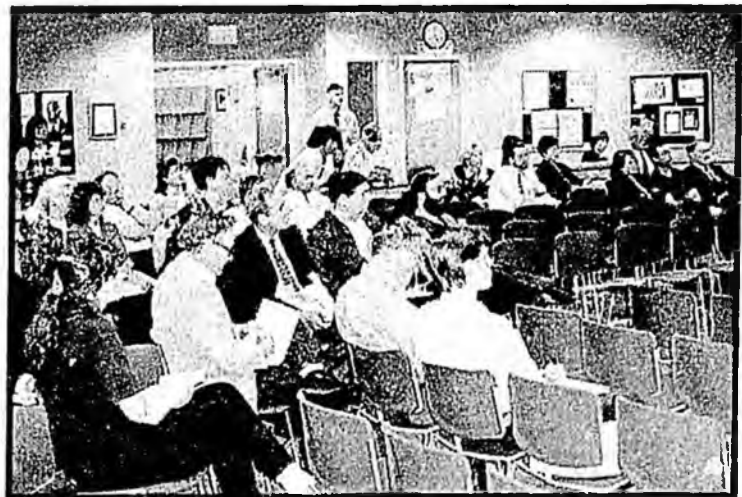
- ☉ sent to the North Pole City Clerk, FNSB Clerk, and Fairbanks City Clerk, who were asked to post the notice in places where the respective local governments customarily post their notices;
- ☉ posted by DCRA staff in Fairbanks;
- ☉ sent to 14 radio and television stations serving the North Pole and Fairbanks along with a public service announcement which they were asked to broadcast; and
- ☉ sent to the North Pole City Clerk, FNSB Clerk, and Fairbanks City Clerk, who were each asked to make copies of the notice available to the public.

On August 6, 1996, Commissioners Wasserman, Cannington, Walters, and Waring conducted a public hearing regarding the petition at North Pole. The hearing lasted from approximately 7:00 p.m. to 10:45 p.m. On August 7, 1996, Commissioners Wasserman, Cannington, Walters, and Waring conducted a public hearing at Fairbanks. That hearing lasted from approximately 3:00 p.m. to midnight.

Following the August 7 hearing, the Commission deliberated for approximately one and one-half hours. Following the deliberations, the Commission denied both the NPB detachment and incorporation petitions by a unanimous vote of the four members participating in the proceedings.

The Local Boundary Commission made the following finding and conclusions:

- The health, safety and general welfare of the residents of the territory proposed for detachment and the proposed remnant FNSB would be adversely affected to a significant degree by the NPB proposal.
- The ability of both the remnant FNSB and the proposed NPB to efficiently and effectively provide reasonably necessary facilities and services would be less than that of the current FNSB. This is due principally to the significant reduction in economies of scale that would result from detachment. Additionally, legal constraints on the ability of both the remnant FNSB and the proposed NPB to levy taxes would diminish the ability of both governments to effectively deliver the same level of essential services now enjoyed by residents of the FNSB.
- There is a reasonably anticipated potential for and impact of future population growth or economic development that will require integrated areawide local government regulation in the territory proposed for detachment and that detachment would diminish the degree to which such necessary regulation could be efficiently and effectively accomplished.
- The services being provided by the FNSB to the residents of the territory proposed for detachment are adequate and reasonably commensurate with the levels of taxation.
- Residents who live in more remote areas of a municipal government do not typically enjoy the same convenient access to many municipal services that residents in the populous area do. While there may be room for improvement in every government in that context, on the whole it appears that the FNSB has provided services fairly, effectively and efficiently.
- The fragmentation of service provision between the two governments that would result from the creation of the NPB would bring about more costly and less efficient service delivery. It is an assumption of the petition for detachment and incorporation that some of the services now provided on an areawide basis would not be provided.
- Clear and convincing evidence exists that a strong pattern of cooperation and shared commitment are present among residents of the area proposed for detachment and the remainder of the FNSB.
- The proposed detachment would preclude the remnant FNSB from meeting the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060.
- The proposed detachment would have adverse effects on the long-term stability of the finances of the remnant FNSB and the State of Alaska.



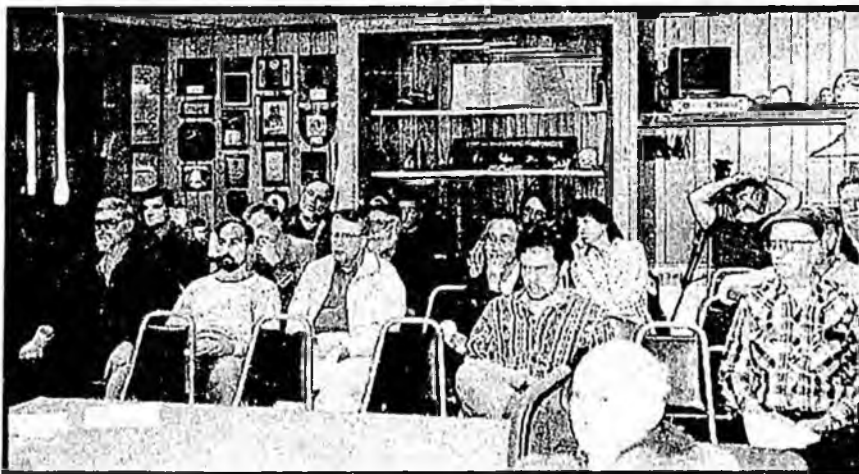
**Public attendance at the North Pole Borough hearing**

- The NPB proposal neither promoted maximum local self-government nor minimized the number of local government units.
- The requirements for local government services in the territory proposed for detachment will not be met if detachment occurs.

As a result of the conclusions reached in this case, on August 8, 1996, the four members of the Commission participating in the decision voted unanimously to deny the petition for detachment of an estimated 5,400 square miles from the FNSB. The Commission also denied the petition to incorporate the North Pole Borough.

**Kuspuk.** Local officials in the Kuspuk region have expressed interest in forming an organized borough. The Director of MRAD will be present at a meeting to be held on the topic in Aniak in January, 1997.

**Nome Area.** On August 15, LBC staff met, in Nome, with a committee comprised of representatives of the Nome City Council, Planning Commission, Chamber of Commerce, Bering Straits Native Corporation and other



Public attendance at the meeting held in Nome on August 15 with LBC staff

organizations. The committee is examining local government options for the area. Topics discussed at the meeting included interest in establishing a unified municipality encompassing

only Nome and the surrounding areas linked by road.

**Glacier Bay Region.** Borough formation was generally addressed by LBC staff at a public meeting in Hoonah on July 30, 1996. The City of Hoonah has retained the services of a consultant to prepare a report analyzing the consequences of borough formation. On December 5, DCRA was advised that the area being examined in the context of borough incorporation contains the area encompassed by the Glacier Bay Region model borough boundaries. The area includes the communities of Pelican, Gustavus, Elfin Cove, Hoonah and Tenakee Springs.

**Aleutians West Region.** In September, LBC staff and the Deputy Commissioner of DCRA met with the Unalaska City Manager and a consultant for the City to discuss various regional government options for the western Aleutian region.

**Delta Greely Area.** Incorporation of a borough encompassing the Delta Greely REAA was considered as a possible alternative way to gain use of Fort Greely facilities for economic development.

**Prince William Sound Region.** Representatives of Prince William Sound communities discussed Prince William Sound borough incorporation at a meeting in November, 1996, and are scheduled to meet again in January, 1997. A borough feasibility study is planned.

**Dillingham Area.** A report issued by consultants to the ad hoc "Options for the Future Committee" concluded that a Dilling-

ham-Nushagak-Togiak Borough would be only marginally viable. (See related discussion in the following section on borough annexation.)

**Unified Municipality of Wrangell.** In July, LBC staff met with the Wrangell City Manager concerning plans for the proposed incorporation of a unified municipality encompassing Wrangell. The City Manager indicated that the City has retained the services of an

attorney to prepare the petition. It was estimated that the petition will be filed within seven months.

In August, forms and related materials to petition for incorporation of a unified municipality were provided to an Anchorage attorney retained by the City of Wrangell to develop a petition.

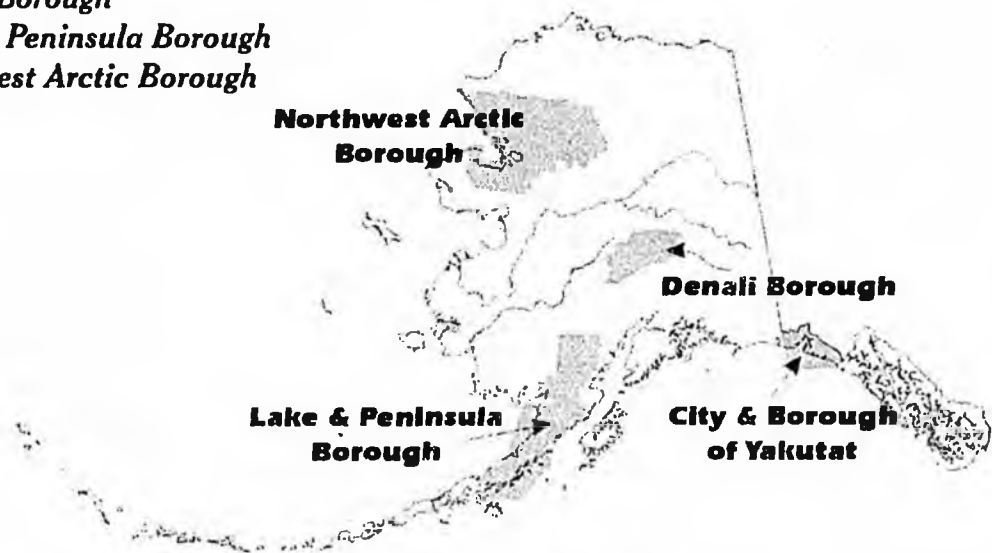
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## Borough Annexation

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Officials or residents of four areas examined potential annexation of territory to organized boroughs during 1996. The prospective boundary changes involved:

- \* *Yakutat*
- \* *Denali Borough*
- \* *Lake & Peninsula Borough*
- \* *Northwest Arctic Borough*



**Yakutat.** In February 1996, the City and Borough of Yakutat (Yakutat) petitioned the LBC for the extension of its western boundary along the Gulf Coast from the 141st meridian to Cape Suckling. The area proposed for annexation was included in Yakutat's original borough incorporation proposal. In 1992, by a vote of 3-2, the LBC amended Yakutat's original borough incorporation proposal to exclude territory west of the 141st meridian. The two LBC members that voted in the minority in the 1992 decision favored the proposed Cape Suckling boundary.

The area encompasses an estimated 2,878 square miles of land and 8,492 square miles of tidelands and submerged lands. Only 321 square miles of the tidelands and submerged lands lie within the State's present 3-mile jurisdictional limits. Yakutat's offshore jurisdiction would be limited to the same extent.

The area is sparsely populated — Yakutat indicates that year-round residents consist of 35 individuals at the west Icy Bay logging camp, 6 individuals at the east Icy Bay logging site and 4

individuals at Cape Yakataga. The population at the west Icy Bay camp may have increased somewhat judging from the fact that the student population at the Icy Bay school is presently 75% greater than that reported by Yakutat.



**Employee housing at the East Icy Bay logging camp**

Most of the land in the area is owned by the federal government and the State of Alaska. The Chugach Alaska Corporation (Chugach) owns 57,137 acres at Icy Bay and 1,086 acres at Cape Yakataga. Chugach has also selected other lands for conveyance in the area including 13,813 additional acres at Icy Bay, 5,660 acres at Robinson Mountain, 6,850 acres near the Kaliakh River and 5,756 acres at Suckling Hills. Yakutat reports that 13 Native allotments totaling 1,358.5 acres have been conveyed or are pending in the area. Eleven of the allotments are for Yakutat residents. There are mining claims along the beach in the Cape Yakataga area. There is also a small FAA station at Cape Yakataga. Yakutat reports that 20 families living in the Yakutat area have cabins in the territory proposed for annexation.

Five hunting and fishing guides operate in the area. Commercial set net fishing in the area has declined dramatically since the late 1980's and early 1990's. The decline resulted from the collapse of salmon prices, coupled with the high cost of transporting fish from the area because of its remote location.

Yakutat estimates that taxable real property in the area petitioned for annexation has a value of \$4,100,000.

Twenty organizations and individuals submitted timely briefs or letters in opposition to the Yakutat proposal.

In addition to Yakutat, three organizations expressed written support for the annexation proposal.

If approved, Yakutat's annexation would likely take effect on March 8, 1997, following legislative review of the proposal. Yakutat would immediately extend platting, planning, land use regulation, police protection and emergency medical services to the area. Except as noted below, all ordinances, rules, resolutions, procedures, and orders of the borough in place at the time of annexation would apply immediately to the annexed area.

Yakutat anticipates that it will establish a polling place at west Icy Bay prior to the first regular municipal election following annexation. Yakutat is also committed to a prompt revision of its Comprehensive Development Plan and its Coastal Management Plan to address the annexed area. Yakutat would assume responsibility for the Icy Bay school at the conclusion of the 1996-1997 school year.

Yakutat would impose its 1% raw fish tax in the area immediately upon annexation. Its 3% sales tax would be imposed 90 days after annexation took effect. Yakutat's areawide tax on real property - currently 6 mills or six-tenths of 1% of the value of taxable real property - would be imposed in 1998.

On October 11, DCRA issued its 80-page provisional report concerning the petition. The

report supported the annexation of the area extending to the Duktoth River, roughly midway between the 141st meridian and Cape Suckling. Copies of the report were provided to the petitioner, respondents and the LBC. A six-page executive summary of the report was provided to 124 others. The deadline for the receipt of comments on the report was November 8.

Three members of the Local Boundary Commission met on November 7 to review requests from interested parties for an extension of the deadline for submission of written comment on the DCRA draft report concerning the proposed annexation. The Chairman invited and received comments from DCRA staff, the petitioner's attorney, the respondents' attorney, LBC members and other interested parties. After considering the matter, the Chairman agreed to extend the deadline for receipt of written comments on the draft report until 5:00 p.m., November 12, 1996.

Thirty sets of written comments comprising 307 pages relating to DCRA's provisional report on Yakutat's annexation proposal were submitted by individuals and organizations prior to the November 12 deadline. One of the parties incorporated by reference, the entire record of the 1992 Yakutat Borough proceeding.



School at Icy Bay

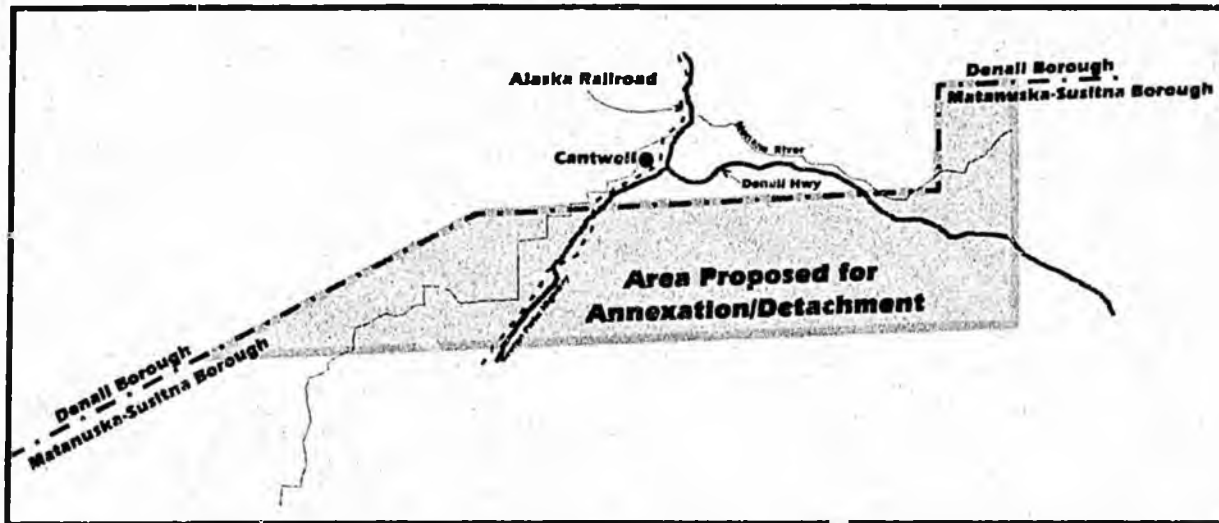
That record comprises 4,685 pages and 6 video tapes.

The Commission conducted public hearings in Yakutat on Saturday, December 14 and in Cordova on Sunday, December 15, at 10:30 a.m. Additionally, a separate teleconference hearing was held involving East Icy Bay and West Icy Bay on Sunday, December 15, at 6:00 p.m. Twelve teleconference sites were provided for the various hearings. At the hearings, the LBC received some 15.5 hours of testimony concerning the petition.

The Commission conducted a decisional meeting on the matter on December 16. Following two hours of deliberations on December 16, the LBC amended the Yakutat annexation petition to exclude approximately 184 square miles lying within the model borough boundaries of the Copper River region. The LBC then unanimously approved the amended petition.

Four parties filed timely requests that the LBC reconsider its December 19, 1996 decision to approve the extension of the western municipal boundary of the City and Borough of Yakutat to Cape Suckling. The four parties were: Chugach Alaska Corporation; Alaska Gulf Coast Adventures, Inc., Ralph Swarthout and Renate Riffe. The LBC met by teleconference on January 14 at 10 a.m. to address the requests for reconsideration. Arrangements were made to publish, broadcast and mail notice of the meeting. The LBC denied the requests for reconsideration.

**Denali Borough.** On March 8, 1996, the petition of the Denali Borough to annex 992.6 square miles presently located within the Matanuska-Susitna Borough was accepted for filing. On September 10, the Denali Borough Assembly directed the Mayor to proceed with a petition for the boundary change.



**Area proposed by the Denali Borough for Annexation and detachment from the Matanuska-Susitna Borough**

Matanuska Susitna Borough officials were notified of the filing of the petition. The petitioner's representative was given instructions for publication, posting and service of the petition. Interested parties were given until May 17 to submit responsive briefs and written comments supporting or opposing the proposed boundary change.

The Matanuska-Susitna Borough filed a 44-page responsive brief accompanied by 37 exhibits containing 232 pages. The Igloo City Resort sent a letter supporting the Denali Borough's request.

A copy of the materials was forwarded to the petitioner's representative. The petitioner's representative was asked to contact DCRA to set the deadline for filing the petitioner's reply brief.

Pursuant to 19 AAC 10.640, the vice-chairperson of the Local Boundary Commission set the deadline for submission of a reply brief in answer to the Matanuska-Susitna Borough responsive brief opposing the Denali Borough's petition to annex an estimated 992.6 square miles currently within the boundaries of the Matanuska-Susitna Borough. The deadline for receipt of the reply brief is 5:00 p.m., June 17,

1996. Notification of the deadline was sent to the Denali Borough, the Matanuska-Susitna Borough and the owner of Igloo City Resort.

On June 17, the Denali Borough filed a reply brief in rebuttal to the Matanuska-Susitna Borough's brief opposing Denali's petition to annex nearly 1,000 square miles presently within the Matanuska-Susitna Borough. Denali's reply brief consists of 35 pages, including exhibits.

The DCRA provisional report to the LBC will be issued in 1997. If the petition is approved by the Commission, it will be submitted to the Second Session of the Twentieth Legislature in 1998.

**Lake & Peninsula Borough.** Consultants to the Dillingham-based "Options for the Future Committee" provided a report to the Bristol Bay Native Corporation Board of Directors on February 16. The consultants reported that annexation of most of REAA 6, (excluding Goodnews Bay and Platinum) to the Lake and Peninsula Borough was one option considered by the Committee to reach its six objectives. The Committee's stated objectives were to:

1. influence management of resources;
2. address financial crisis;

3. enhance political strength;
4. prevent future land grabs;
5. maintain a balance of power; and
6. take a proactive role.

The report concluded that:

- ✓ it is financially viable to annex the Dillingham-Nushagak-Togiak area to the Lake and Peninsula Borough;
- ✓ a Dillingham-Nushagak-Togiak Borough would be only marginally viable.

In September, DCRA staff reported that the Options for the Future Committee was preparing its petition for annexation of the Dillingham Census area to the Lake and Peninsula Borough. Upon request, LBC staff

provided the Options for the Future Committee with copies of the LBC's North Pole decisional statement. LBC staff also addressed questions from the Committee's consultant concerning matters relating to the prospective proposal.

**Northwest Arctic Borough.** In February, LBC staff provided information to the Shishmaref City Administrator/Clerk concerning standards and procedures for a annexation to boroughs. The City is exploring the possibility of being annexed to the Northwest Arctic Borough. At that time, City officials had not yet contacted Borough officials concerning the matter.

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## Borough Detachment

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During 1996, borough detachment proposals or interest in proposing such detachments was indicated with respect to the following:

- \* *Lake Louise area from the Matanuska-Susitna Borough*
- \* *North Pole Area from the Fairbanks North Star Borough*
- \* *Eklutna from the Municipality of Anchorage*
- \* *Ahtna Lands from the Matanuska-Susitna Borough*
- \* *Alexander Creek from the Matanuska-Susitna Borough*





Residences at Lake Louise

**Lake Louise.** In January, 1996, the LBC provisionally approved detachment of Lake Louise. However, the LBC made detachment contingent upon inclusion of the area within another organized borough or incorporation of the area as a second class city by March 2, 1998. The legislature later extended tacit endorsement of the LBC decision regarding the conditional detachment. In July, 1996, residents of Lake Louise petitioned the LBC to incorporate the second class City of Lake Louise.

The Petitioners have proposed municipal boundaries encompassing approximately 266 square miles. Most of the area proposed for incorporation, (252 square miles or 94.7% of the territory) was included in the area provisionally approved for detachment. The area is sparsely populated. The petitioners indicate that only 45 persons reside in the area year-round, although the area contains numerous recreational cabins, which are frequently occupied.

Like most of Alaska, the vast majority of the land in the area is owned by the federal government and the State of Alaska. Less than one percent of the land in the proposed city is privately owned. There are six commercial business sites on Lake Louise, including four lodges, a guide and hunting service and one

service station-storage facility. The taxable value of real property in the area proposed for incorporation has been assessed at \$10,962,000.

A timely brief opposing the proposed incorporation was submitted by the Matanuska-Susitna Borough. A letter was submitted by Harry and Jean Holt expressing concerns about the ramifications of incorporation.

If incorporation is approved by the Local Boundary Commission and Lake Louise voters, responsibility for the Lake Louise sewage management site, solid waste collection & disposal, platting, planning, land use regulation and emergency medical services would become the responsibility of the new city. All services are to be assumed by the newly incorporated city from the Matanuska-Susitna Borough with minimal or no interruption in service after incorporation. The petitioners propose the levy of a real property tax at an initial rate of 13 mills.

The proposed City of Lake Louise would be eligible for a municipal entitlement of approximately 1,590 acres from the State of Alaska.

The future City of Lake Louise or future Copper River Borough must pay \$160,000 to the Matanuska-Susitna Borough within two years of incorporation. The payment would be

dedicated to offset impacts to the Matanuska-Susitna Borough regarding debt service and local contributions for education.

DCRA issued a provisional report and recommendation regarding the Lake Louise incorporation petition on November 15, 1996. The LBC will conduct a public hearing concerning the petition at Lake Louise on February 1, 1997.

**North Pole Area/Fairbanks North Star Borough.** A petition for detachment of approximately 5,400 square miles from the 7,350 square mile Fairbanks North Star Borough was considered and denied by the Commission in conjunction with the Commission's denial of the petition for incorporation of the related North Pole Borough (NPB) incorporation petition. (See discussion of the NPB incorporation petition in the section of this chapter concerning borough incorporation.)

**Ahtna Lands (Matanuska-Susitna Borough).** Approval of the Denali Borough petition for annexation of 992.6 square miles located within the boundaries of the Matanuska-Susitna Borough would require detachment of that area from the Matanuska-Susitna Borough. (For details, see the earlier discussion of the Denali Borough annexation.)

The petition will be considered by the Commission during 1997. If the petition is approved by the Commission, it will be presented to the Second Session of the Twentieth Legislature in 1998.

**Eklutna/Municipality of Anchorage.** Staff of the Native Village of Eklutna requested information concerning the criteria and procedures for detachment of territory from a unified municipality and detachment petition forms. Local interest in detachment has been generated by the local controversy over the Municipality of Anchorage's response to Eklutna residents' concerns about development of a quarry near the village.

**Alexander Creek/Matanuska-Susitna Borough.** On February 9, the Director of MRAD and LBC staff met with three Alexander Creek residents regarding their interest in detaching Alexander Creek from the Matanuska-Susitna Borough. Information was provided concerning standards and procedures for borough detachment and borough incorporation. The group expressed particular interest in proposing a new borough by carving out territory presently in the southwest portion of the Matanuska-Susitna Borough and the northwest portion of the Kenai Peninsula Borough. Those areas include the communities of Tyonek, Beluga, Susitna, Alexander Creek and Skwentna.

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## City and Borough Consolidation

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Recent or ongoing interest in consolidation exists in two areas. These were:

- \* *Haines*
- \* *Ketchikan*



**Haines.** The Haines City Clerk requested information and materials about options for improving the efficiency and effectiveness of the structure of local government in Haines. Options under consideration included annexation of territory to the City of Haines; as well as merger, consolidation or unification of the City of Haines and the Haines Borough. The Borough Assembly and the Haines City Council met to discuss the topic on October 25.

**Ketchikan.** The Ketchikan City Attorney advised LBC staff that efforts of the ad hoc committee to develop a petition for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough was continuing. The Committee has just completed its draft of a charter for the consolidated government. In July, the Ketchikan City Attorney reported that no progress had been made on the petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough. He indicated,

however, that the City and Borough are contemplating other steps to alter the character of local government in Ketchikan. These include the possible assumption of areawide solid waste disposal powers by the Borough, the sale of the City's telephone utility and the reduction or elimination of "human services" by the City. In September, the Ketchikan City Attorney forwarded to LBC staff a draft charter for a consolidated City and Borough of Ketchikan. The draft charter was prepared at the end of August. LBC staff reviewed the draft and submitted comments to the City of Ketchikan.

The City of Ketchikan solicited proposals for the development of a petition to consolidate the home rule City of Ketchikan with the general law Ketchikan Gateway Borough to form a home rule borough. The deadline for the receipt of proposals was December 20, 1996. Only one individual reportedly filed a timely response to the City of Ketchikan's request for proposals.

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## Reclassification of Cities

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At its February 14 meeting, the Commission determined to proceed with consideration of proposed regulations establishing standards for reclassification of cities.

On June 28, notice of the Commission's intention to adopt regulations providing standards for the reclassification of cities was provided to 335 individuals and organizations. Arrangements were also made to publish notice of the proposed action in four newspapers in addition to the Alaska Administrative Journal.

On August 5, the LBC conducted a public hearing on the proposed regulatory standards for reclassification of cities. No testimony was offered at the hearing. Neither were any written comments filed concerning the proposed regulations during the comment period that had began June 28. At the conclusion of the hearing, the LBC adopted the regulations as proposed. The adoption order, regulations and related documents were forwarded to the Department of Law.

The Department of Law reviewed and approved the procedures used by DCRA and the LBC in the adoption of the regulations prior to the filing of the regulations with the Lt. Governor.

The LBC's regulations establishing standards for reclassification of cities were filed by the Lieutenant Governor on October 28. The regulations had an effective date of November 27, 1996. The regulations will be published in the January 1997 supplement to the Alaska Administrative Code (Register 140).

During 1996, interest in city reclassification was expressed by the residents or officials of:

- \* *Bethel*
- \* *Pelican*
- \* *St. Mary's*



**Bethel.** A Bethel City Council member requested and was provided with information concerning the differences between first class, home rule and general law municipalities. He indicated that local interest in reclassification of Bethel to first class or home rule status persists.

**Pelican.** The announcement by Pelican Seafoods of its plan to close at the end of February prompted interest on the part of officials of the first class City of Pelican (population 209) in reclassification of the City of

Pelican as a second class city. The matter was reportedly addressed at a local meeting on conducted on March 16.

**St. Mary's.** In May, LBC staff provided the St. Mary's City Manager with information regarding the standards and process for reclassification from first class to second class city status. An informal petition for reclassification of the City of St. Mary's was reportedly circulated in the community.

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## Status of Litigation

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Two cases involving the Local Boundary Commission received attention from the Courts or required action by the Commission in 1996. These are summarized as follows:

**Regarding Incorporation of the City of Egegik [Terry Cummings and Concerned Citizens of Bristol Bay; Case No. 3AN 95-1313 CI - June 26, 1995.]**

On June 26, 1995, Terry Cummings and Concerned Citizens of Bristol Bay filed an appeal in Superior Court of the Commission's decision to approve the petition to incorporate Egegik as a second class city. Ms. Cummings fishes commercially in Bristol Bay. Concerned Citizens of Bristol Bay is an unincorporated association of area residents, property owners and fishermen.

The appellants claimed that:

- ☉ adequate study was not made of alternatives to incorporation;
- ☉ the Department did not comply with applicable law regarding public review of its report;

- ☉ the Department and the Commission failed to consider all the significant factors relevant to the decision;
- ☉ the LBC abused its discretion;
- ☉ the Department and the LBC improperly deferred to the judgment of the Lake and Peninsula Borough when considering whether service delivery in Egegik by the Borough was preferable to service delivery by a city.

On March 13, Anchorage Superior Court Judge Larry Card affirmed the decision of the LBC to allow incorporation of the City of Egegik. In a 16-page ruling, the Court concluded that, ". . . the decision of the LBC approving the incorporation petition for the City of Egegik has a reasonable basis, and meets the constitutional (and) statutory standards. There is a rational basis of support in the record for the LBC to have determined that the Lake and Peninsula borough could not have more efficiently or more effectively on an areawide or nonarea-

*wide or service (area) basis provided the services cited in the petition by Egegik. Therefore, the decision of the LBC is affirmed."*

On April 19, "Terry Cummings and Concerned Citizens of Bristol Bay" appealed the ruling to the Alaska Supreme Court. However, that appeal was subsequently withdrawn.

**Regarding Incorporation of the City of Pilot Point [Jack Keane and Concerned Citizens of Bristol Bay: Supreme Court Opinion No. 4145 - November 18, 1994.]**

On April 14, 1995, the Alaska Supreme Court has directed that the Commission reconsider incorporation of the City of Pilot Point. The Court concluded that during the original incorporation proceedings, the Commission had not adequately inquired into whether municipal services sought by Pilot Point residents might not be more reasonably and practicably provided by the Lake and Peninsula Borough [AS 29.05.021 (b)].

Notice of reconsideration of the incorporation was published and posted in the City of Pilot Point. The notice was also mailed to 87 potentially interested parties and news media. Interested parties were given until July 14, 1995, to file responsive briefs and informal comments regarding the reasonability and practicability of the Lake and Peninsula Borough providing services in lieu of the City of Pilot Point.

Responsive briefs supporting city incorporation were filed by the Lake and Peninsula Borough and the City of Pilot Point. A responsive brief opposing incorporation was filed by "Jack Keane and Concerned Citizens of Bristol Bay." Seven letters were also filed in support of the city. Copies of the briefs and letters were

provided to the three respondents. The materials were made available for public review at the Pilot Point City Hall, Lake & Peninsula Borough Offices and DCRA's office in Dillingham. The deadline for submission of reply briefs and comments was August 18, 1995.

On August 10, 1995, the Lake and Peninsula Borough filed a seven-page reply brief regarding the reconsideration. The Borough's brief is directed at a responsive brief opposing incorporation filed by Andrew Hemenway on behalf of "Jack Keane and Concerned Citizens of Bristol Bay." Reply briefs were also submitted by Jack Keane and Concerned Citizens of Bristol Bay; the City of Pilot Point and the Lake and Peninsula Borough. In addition, letters were received from Jack Keane, Douglas A. Stokes, Elaine Holmes and Scott Stevenson.

On June 27, 1996, LBC staff provided a provisional report analyzing whether the Lake and Peninsula Borough could reasonably practicably provide the services desired by the residents of Pilot Point. The DCRA provisional report recommended that the Commission reaffirm the approval of the petition for incorporation of the City of Pilot Point. The report was provided to 66 interested individuals and organizations. August 30 was announced as the deadline for comment on DCRA's provisional report.

Timely comments were received from the Lake & Peninsula Borough, Bristol Bay Housing Authority, Andrew Hemenway (attorney for the Concerned Citizens of Bristol Bay) and City of Pilot Point. DCRA will issue its final report and recommendation concerning reconsideration of the Pilot Point decision in early 1997. The Local Boundary Commission will conduct a public hearing or hearings on the matter in early 1997.

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## Forum on Local Government Article of Constitution

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On February 13 and 14, the Commission participated in a forum to discuss select provisions of Article X of Alaska's Constitution (with emphasis on §§ 1-3). Panelists included members of the LBC and respected municipal attorney R. Eldridge Hicks. Other panelists included Victor Fischer (delegate to the Constitutional Convention, former legislator, ISERG director, author on local government in Alaska, etc.); Judge Thomas B. Stewart (Convention Secretary, former legislator, retired Superior Court Judge); Dr. George Rogers (substantive consultant to the Convention's Committee on Local Government) — all of whom were prominent at the Constitutional Convention, particularly with regard to development of the principles of local government.

The forum was a particularly valuable opportunity for the Commission to glean insight into:

- ✓ the specific intent of the framers of the Constitution relating to the proper framework of Alaska municipal government;
- ✓ the role of the LBC in fulfilling the intent of the Alaska Constitution; and
- ✓ the views of the panelists regarding the extent to which the expectations regarding local government of the framers of the Alaska Constitution have been met.

The Commission expressed appreciation for the willingness of the panelists to share their individual and collective wisdom and insights. A transcript of the forum has been made and is available from LBC staff.



**Left to right: Judge Thomas B. Stewart, Victor Fisher, Dr. George Rogers and R. Eldridge Hicks, panelists at the February 13 & 14, 1996 forum**



## **CHAPTER III - ACTIONS REQUIRING LEGISLATIVE REVIEW**

**T**his chapter presents a formal recommendation of the Commission to the First Session of the Twentieth Alaska Legislature for boundary changes pursuant to Article X, Section 12 of Alaska's constitution. The first recommendation is for the detachment of 13 acres from the City of Fairbanks. The second recommendation is for the annexation of territory to the City and Borough of Yakutat.

Under the constitution and statutes, these recommendations receive automatic legislative approval, unless rejected by resolutions adopted by the House and Senate within 45 days of the date that the recommendations are filed (or at the end of the session, whichever is earlier). Forty-five days from the date of filing of these recommendations is March 8, 1997.

The recommended boundary changes will take effect only upon tacit legislative approval, satisfaction of any conditions imposed by the Commission, and demonstration of compliance with the federal Voting Rights Act.





## Local Boundary Commission

*Darroll Hargraves, Chairperson*

*Kathleen S. Wasserman, Vice-Chairperson, First Judicial District*

*Nancy E. Cannington, Member, Second Judicial District*

*Kevin Waring, Member, Third Judicial District*

*William Walters, Member, Fourth Judicial District*

### **RECOMMENDATION NUMBER ONE OF THE LOCAL BOUNDARY COMMISSION TO THE FIRST SESSION OF THE TWENTIETH ALASKA LEGISLATURE**

#### **A recommendation for detachment of 13 acres from the City of Fairbanks**

##### **SECTION I**

##### **BACKGROUND AND DESCRIPTION OF AREA**

On February 29, 1996, the Fairbanks North Star Borough (FNSB) petitioned the Local Boundary Commission (LBC) to detach a tract from the jurisdiction of the City of Fairbanks. The tract is the location of the Badger Road solid waste transfer station.

The area proposed for detachment is an uninhabited and unimproved thirteen acre parcel on the eastern edge of Fort Wainwright. Fort Wainwright was annexed to the City in 1973. The land is not used for military purposes. The site is level, covered with black spruce and shrub vegetation. The property is located south of Holmes Road-Badger Road intersection. The thirteen acre parcel has recently been bisected from a larger tract of the military property by the construction of Holmes Road. The road centerline establishes the northern boundary of the thirteen acre parcel. The parcel is located in the south half of section 16, T1S, R1E, F.B. & M.

Detachment has been proposed because conditions upon the bonds to fund development of the solid waste transfer station require that the property be outside the boundaries of city governments. Detachment of the property will not change the military interest in the property. The Borough has secured ownership of part of the tract proposed for detachment, and is working with the City, Department of the Army and the Bureau of Land Management to secure ownership of the entire 13 acres.

No responsive briefs or letters were filed in opposition to the detachment proposal.

The proposed detachment has been non-controversial and is supported by the City of Fairbanks.

### **Summary of Proceedings**

**Filing of Petition.** The petition for detachment was filed with the Department of Community and Regional Affairs (DCRA) on February 29, 1996. On March 8, 1996, DCRA notified the petitioner and interested parties that the petition had been accepted for filing.

**Deadline for Responsive Briefs & Comments.** Interested parties were advised that May 17, 1996 was the deadline for briefs and comments on the detachment proposal.

**Responsive Briefs and Comments Filed.** No responsive briefs or written comments were filed.

**DCRA Provisional Report.** A 17-page provisional report and recommendation concerning the proposed detachment was issued to 29 interested parties on September 13, 1996. The provisional report recommended that the petition be approved, without amendment. October 11, 1996 was established as the deadline for comments on the provisional report.

**Review of Provisional Report.** Timely comments endorsing DCRA's report were received from only the City of Fairbanks. The City endorsed the recommendation contained in the DCRA provisional report.

**Final Report.** On October 30, DCRA issued its final report and recommendation regarding the petition. The detachment proposal was initiated by the FNSB to allow it to construct a solid waste transfer station using nonareawide funds. The final DCRA recommendation was that the detachment be approved, as submitted.

**Notice of LBC Public Hearing.** On November 1, DCRA issued notice of the December 6 hearing on the petition. The notice was posted, published for three consecutive weeks in the *Fairbanks News-Miner* and broadcast media were requested to announce the hearing time and place as a public service announcement. Notice of the hearing was sent to 35 parties by DCRA.

**LBC Public Hearing.** The Local Boundary Commission's public hearing regarding the petition for detachment of approximately 13 acres from the City of Fairbanks began at 7:30 p.m. at the FNSB Assembly Chambers. Commissioners Hargraves and Walters were present at the hearing site. Commissioners Waring and Wasserman participated via teleconference.

**LBC Decisional Meeting.** The LBC rendered its decision immediately upon conclusion of the December 6 public hearing. All four members of the Commission participating in the hearing voted to approve the petition, as submitted.

## **SECTION 21**

### **FINDINGS REGARDING CITY DETACHMENT STANDARDS**

State law (19 AAC 10.260) provides that a detachment petition may be granted only if the LBC determines that such will "serve the balanced best interest of the state, the territory to be detached, and the political subdivisions affected by the detachment." In making its determination, the LBC is free to examine any factor that it considers to be relevant. The following ten factors set forth in 19 AAC 10.260 were considered by the Commission in the evaluation of the proposed detachment. The Commission's finding regarding the factors are as follows:

**1. Health, safety and general welfare of the city and the territory after detachment.**

The record clearly suggests that there will be no [negative] impact upon the City of Fairbanks "since this is an insignificant piece of land which receives no City services and is uninhabited."<sup>8</sup> The territory proposed for detachment will be used to provide a basic public facility for residents in the vicinity. The tract was declared surplus by the U.S. Army. The U.S. Army has transferred ownership of part of the parcel to the Borough, and efforts are underway to secure transfer of the remainder of the parcel.

**2. Ability of the city or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment.**

As an undeveloped, uninhabited parcel owned by the military, the area proposed for detachment currently neither receives nor requires services from the City of Fairbanks. The Fairbanks North Star Borough has committed to developing, maintaining and operating the solid waste transfer site in the territory proposed for detachment.

**3. Reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment.**

There is no reasonable likelihood that the area proposed for detachment will be subject to population growth or significant economic development, other than the solid waste transfer site and associated facilities and functions.

**4. Historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory.**

Since the area has remained undeveloped and unpopulated, there is no historical pattern of provision of municipal services to the area.

8 Petitioner's Brief, Exhibit F, Petition for Detachment, pg. 21.

**5. Historical pattern of cooperation and shared commitment between the people of the city and the people of the territory.**

The area proposed for detachment is uninhabited and undeveloped, hence the factor is not relevant to the proposed boundary change.

**6. Extent to which detachment might enhance or diminish the ability of the remaining city to meet the standards for incorporation required under AS 29.05 and 19 AAC 10.010 - 19 AAC 10.040.**

The proposed detachment would have no bearing upon the ability of the City of Fairbanks to meet the standards for city incorporation.

**7. Extent to which a transition plan of a previous annexation has been implemented and is effective.**

The area is not subject to any transition plan of a previous annexation.

**8. Effect of the proposed detachment on the long-term stability of the finances of the remaining city, other municipalities, and the state.**

Since the property proposed for detachment is owned by the U.S. Army and the FNSB, it is tax exempt. Thus, detachment would have no measurable effect on the finances of the City of Fairbanks. The effect of detachment upon the finances of the Fairbanks North Star Borough would be negligible. There would be no measurable effect upon the finances of the State of Alaska as a consequence of approval of the detachment petition.

**9. Whether the proposed detachment will promote local self-government with a minimum number of governmental units**

Detachment would not increase the number of local government units. It would not diminish local self-government. Since the area is uninhabited, no individual would lose voting rights. Since the area proposed for detachment is tax exempt, it produces no revenue to the City of Fairbanks, the City would not experience diminished resources to serve its residents. The number of government units would not be increased.

**10. Whether the territory's requirements for local government services will be adequately met following detachment.**

A portion of the thirteen-acres proposed for detachment is developed as a solid waste transfer site, operated and maintained by the Fairbanks North Star Borough. Most of the 13-acre parcel will remain undeveloped, and serve as a buffer between the solid waste transfer site and residential development adjacent to the area proposed for detachment.

Based on the foregoing findings, the Local Boundary Commission concluded that the proposed detachment will serve the balanced best interests of the State of Alaska, the territory proposed for detachment, the Fairbanks North Star Borough and the City of Fairbanks.

**Conclusion**

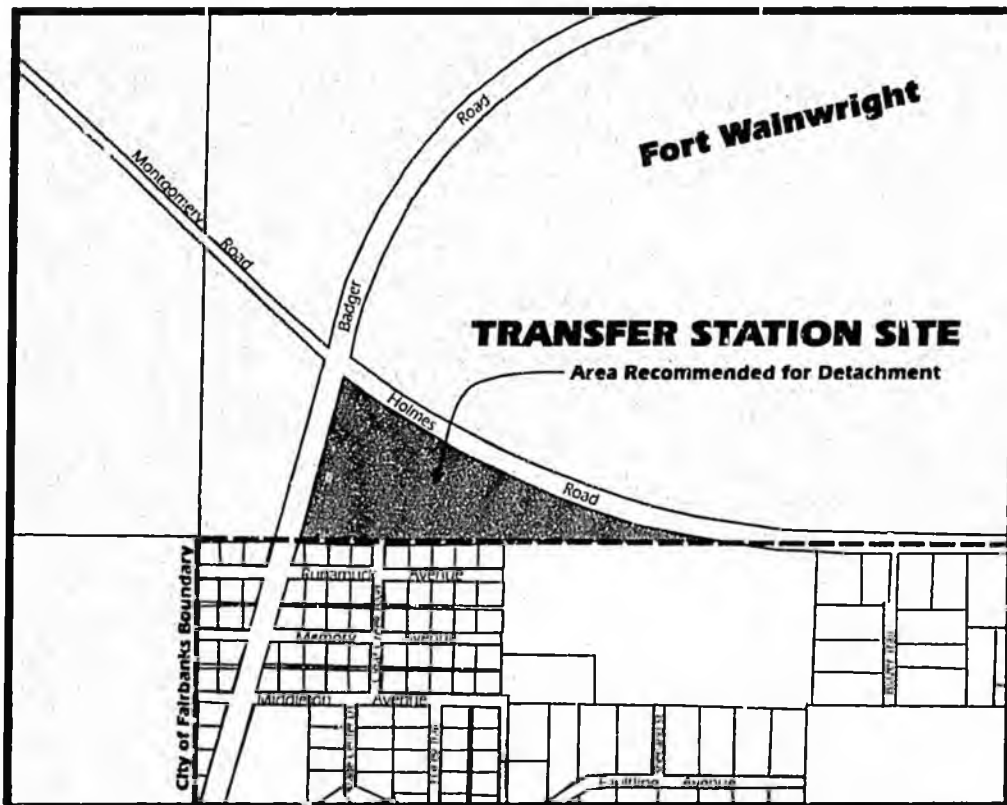
The Local Boundary Commission concludes that the proposed will serve the balanced best interests of the State of Alaska, the territory proposed for detachment, the Fairbanks North Star Borough and the City of Fairbanks.

**SECTION III  
RECOMMENDATION**

The Local Boundary Commission hereby recommends to the First Session of the Twentieth Alaska Legislature the detachment, from the City of Fairbanks, of the territory described below. This recommendation is offered in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

The area recommended for detachment encompasses an estimated 13 acres described as follows.

Beginning at the W 1/16 corner on the section line Common to Sections 16 and 21, T1S, R1E, F.B. & M.; thence, S89°55'43"E 377.92 feet to the true point of beginning on the centerline of Badger Road, State of Alaska, Department of Transportation and Public Facilities Project No. RS-0622(6); thence, N14°58'36"E 759.31 feet to the point of intersection with the centerline of Holmes Road, Project No. RS-0622(1)/63872; thence S61°08'52"E 540.00 feet to a P. C. at station 5+40.00; thence along a curve to the left whose radius is 3,819.72 feet and chord is 980.54 feet to a P. T. at Station 24+59.63; thence S02°32'10"W 17.00 feet to the Section Line common to Sections 16 and 21, T1S, R1E, F.B. & M.; thence N89°55'43" W 943.75 feet to the true point of beginning.







## Local Boundary Commission

*Darroll Hargraves, Chairperson*  
*Kathleen S. Wasserman, Vice-Chairperson, First Judicial District*  
*Nancy E. Cannington, Member, Second Judicial District*  
*Kevin Waring, Member, Third Judicial District*  
*William Walters, Member, Fourth Judicial District*

### **RECOMMENDATION NUMBER TWO OF THE LOCAL BOUNDARY COMMISSION TO THE FIRST SESSION OF THE TWENTIETH ALASKA LEGISLATURE**

### **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**

##### **Existing and Proposed Boundaries of the CBY**

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.<sup>9</sup>

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.

<sup>9</sup> The annexation petition states that the estimate of the tidelands and submerged lands "assumes that the State's and therefore the Borough's territorial jurisdiction extends beyond the 3-mile limit, an issue which is in dispute. If the State's jurisdiction is limited to 3 miles, then the area proposed for annexation to the Borough would encompass only 321 square miles of submerged lands and tidelands."

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.<sup>10</sup> On January 18 and 19, 1992, the LBC held a hearing on the matter in Yakutat.

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).

<sup>10</sup> There was an interval of some 15 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, the need to modify the LBC's regulations providing borough incorporation standards, and other factors. DCRA's Provisional Report on the CBY annexation proposal provides a detailed account of the incorporation proceedings.

**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, Mallott's General Store, Yakutat Court House, Yakutat Post Office, Yakutat branch of Key Bank, Yakutat Hardware, Monti Bay Foods, Yakutat Airport, 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.
- 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 or before Notice was prominently posted at Yakataga, Wasser & Winters' office at West Icy Bay and the Ben Thomas, Inc., cookhouse 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 Glanville (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 Schneuer (1-page letter opposing annexation);
14. Ralph J. Swarhout (1-page letter opposing annexation);
15. John E. Willis, Supervisor, Ben Thomas' Icy Bay logging camp (2-page letter opposing annexation);
16. Ed. E. Bilderback (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. Winner & 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, comprised 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.<sup>11</sup>

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.<sup>12</sup> The requests sought various extensions of the comment deadline ranging from December 13, 1996, to the first week of February 1997.

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.

11 These were Mark Wittow (10/21/96), Steve Planchon (10/22/96), Bob Henrichs (11/5/96), Copper River Prince William Sound Native Fishermen's Association (11/5/96), Native Village of Eyak (11/5/96), Chenega Bay IRA Council (11/5/96), Prince William Sound Economic Development Council (11/5/96), Lee Sharp of Preston Gates and Ellis (11/6/96), John Hoffer of the Chenega Corporation (11/8/96), Gary P. Kompkoff (11/12/96), John E. Willis (11/12/96), James Sinnett (11/12/96), John Schmidt of Browning Timber, which reportedly purchased the West Icy Bay logging camp operation from Wasser & Winters (11/13/96), and Dave Morgan of the City of Whittier (11/25/96).

12 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, Chenega Bay IRA Council, CAC, Prince William Sound Economic Development Council, Chugach Regional Resources Commission, Chenega Corporation, Native Village of Eyak, Copper River Prince William Sound Native Fishermen's Association, and Robert J. Henrichs. The City of Whittier and the City of Valdez submitted requests after the November 7 meeting.

Thirty written comments regarding DCRA's Provisional Report were received by the extended deadline.<sup>13</sup> In addition, LBC member Kevin Waring verbally requested that DCRA address certain issues in its final report.

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

1. Carl Glanville, resident of Anchor Point (one-page letter dated October 28);
2. Bob Henrichs, resident of Cordova (two-page letter dated November 1);
3. Bob Henrichs, 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 5);
7. James T. Brennan, Attorney for the CBY (eighteen-page letter dated November 8, with 3 attachments comprising 17 pages);
8. Benna 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. Gilbert Ollestad, member of the Board of Directors of CAC, CAC shareholder, retired commercial fisherman and longshoreman (one-page letter dated November 12);
11. John E. Willis, Camp Manager of the East Icy 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. Carroll Kompkoff, President, The Tatitlek 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 Tatitlek (two-page letter dated November 9);
17. W. Scott Janke, City Manager of the City of Cordova (two-page letter dated November 12 with attachments consisting of four pages);
18. Derenty Tabios, Executive Director, Chugachmiut (four-page undated letter received November 12);
19. James Sinnett, Planning Director, Chugach Heritage Foundation (one-page undated letter received November 12);
20. Georgianna Lincoln, Alaska State Senator (one-page letter dated November 7);

<sup>13</sup> Three of the letters among those listed were submitted as requests to extend the original November 8 deadline for comment on DCRA's Provisional Report. Those consisted of the letter from Bob Henrichs (written as a resident of Cordova), the letter from Bob Henrichs (written as President of the Copper River Prince William Sound Native Fishermen's Association) and the letter from the Chenega Bay IRA Council. Those three letters were included in the context of comments on DCRA's Provisional Report because: (a) they offered general views against extending Yakutat's boundary beyond the 141st meridian; and (b) subsequent comments were not received by November 12 from the Chenega Bay IRA Council or Mr. Henrichs, either as an individual or as President of the Copper River Prince William Sound Native Fishermen's Association (although Mr. Henrichs did submit subsequent comments on behalf of the Native Village of Eyak Tribal Council).

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 (three-page letter dated November 12);
23. Charles W. Totemoff, President & CEO of Chenega Corporation (two-page letter dated November 12);
24. Ralph J. Swarthout, 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 Henrichs, President, Native Village of Eyak (one-page letter dated November 1);
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 <i>Anchorage Daily News</i> (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: Mallott's General Store, Monti 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.                |
| 11/19/96 | 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 Valdez City Hall, the Valdez 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 Terrel 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.

The LBC conducted its second hearing in Cordova on Sunday morning, December 15, 1996. Participation at the hearing was allowed by teleconference from sites at the FAA building at Cape Yakataga, the CBY offices in Yakutat, the Ben Thomas, Inc., logging camp at East Icy Bay, the Anchorage residence of Joe Burnham and at Ben Thomas' residence in Woodland, Washington.<sup>14</sup> The hearing lasted approximately 2 hours.<sup>15</sup>

The LBC conducted its third hearing in Yakutat on Sunday, December 15, 1996. The hearing. The hearing was recessed at 12:45 a.m. on Monday and reconvened at approximately 8:10 a.m. that day. The third hearing lasted approximately 7.5 hours.

Immediately following the conclusion of the third hearing, the LBC convened a decisional session to act on the petition. The LBC deliberated for approximately two hours during which it reached the findings and conclusions set out in Section III.

14 Arrangements had been made to allow participation from the Browning Timber Camp at West Icy Bay. However, John Schmidt, who was to serve as the site coordinator, was unavailable. Additionally, arrangements had also been made to allow Jim Keeline, a resident of Icy Bay who was in Minnesota on business, to participate. However, Mr. Keeline failed to initiate the teleconference link.

15 Due to the failure of long-distance telephone service with Yakutat, the hearing ended when the Petitioner's Representative, participating by teleconference from the CBY offices, was approximately 1 minute and 30 seconds into his closing statement. The LBC recessed the meeting to be continued with the closing statements by the Petitioner and Respondents, and the reply by the Petitioners beginning at 6:00 p.m. that day at Yakutat.

### SECTION III - FINDINGS AND CONCLUSIONS

Based on the evidence in the record of this proceeding, the LBC hereby makes the findings and conclusions set out in this section.

#### A. Regarding Maximum Local Self-Government with a Minimum of Local Governmental Units.

Article X, § 1 of Alaska's constitution promotes maximum local self-government with a minimum of local governmental units. More than two decades ago, the Alaska Supreme Court ruled that Article X, § 1 favors upholding borough formation whenever the requirements for such were minimally met. Further, the Court concluded that Article X, § 1 encourages borough incorporation. With respect to these points, the Court stated:

*The appellants argue that neither the geography nor the transportation standard is satisfied by the record evidence. Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:*

*The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. . .*

*We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.*

\*\*\*\*

*Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. Art. X, § 1. And boroughs are not restricted to the form and function of municipalities. 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, 99, 101 (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 648 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 IRA 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.<sup>16</sup> 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.*

16 Tacit approval by the legislature under the provisions of Article X, § 12 of Alaska's constitution would be forthcoming no later than March 8, 1997. Assuming legislative approval is granted, annexation would take effect under the provisions of 19 AAC 10.630 after the CBY provided documentation to DCRA that it has complied with 42 U.S.C. 1973c (Voting Rights Act of 1965). Upon adoption of the decisional statement, the annexation proposal became 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 65 days to act on such requests.

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 is limited.

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 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."<sup>17</sup>

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.

17 CBY incorporation record at 2896.

## SECTION IV RECOMMENDATION

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.<sup>18</sup>

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.

The Local Boundary Commission hereby recommends to the First Session of the Twentieth Alaska Legislature, the annexation, to the City and Borough of Yakutat, of the territory described below. This recommendation is offered in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

The territory recommended 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.;

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.;

18 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 found 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, § 1 of the Alaska constitution, Commissioner Walters joins in the decision of the other Commissioners.

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;

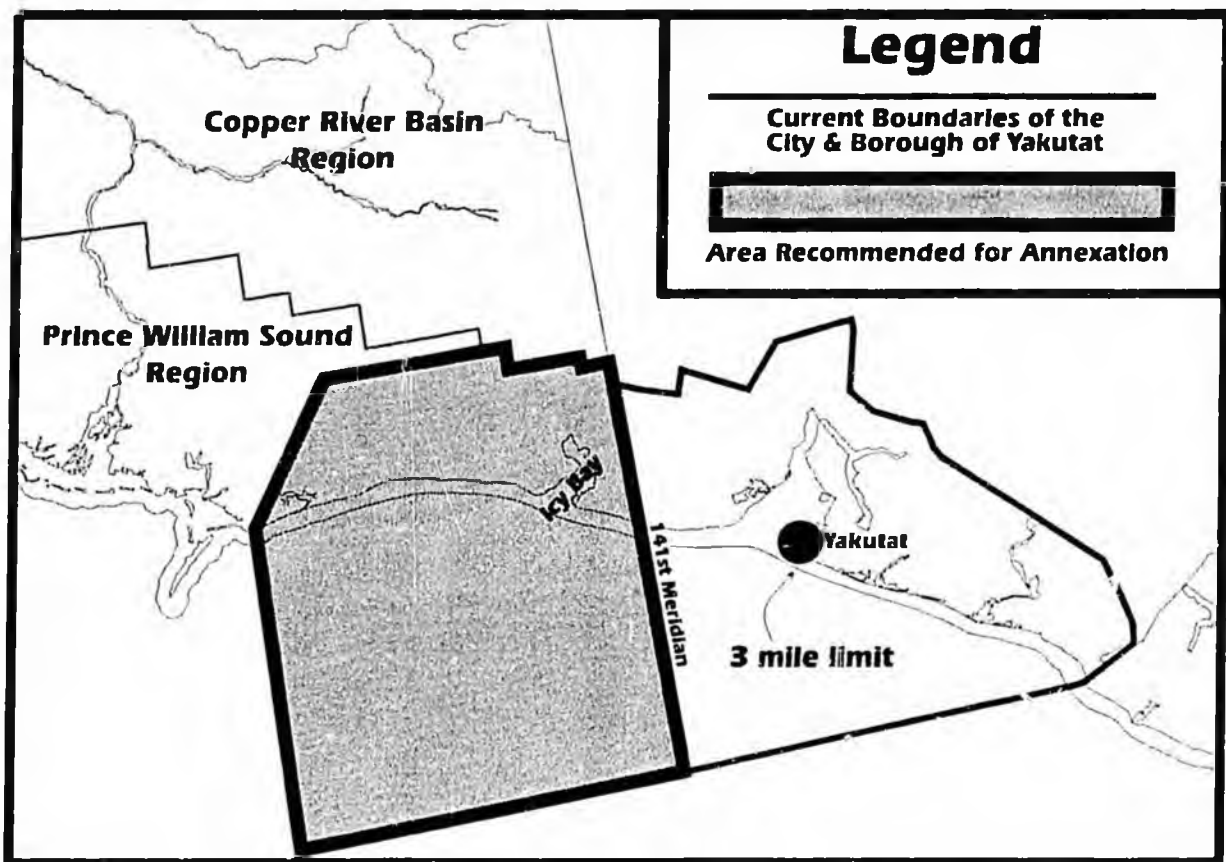
Thence southwesterly in a straight line to Cape Fairweather, at North 58° 48' 30" Latitude, West 137° 56' 45" Longitude in T. 36 S., R. 45 E., Copper River Meridian;

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.







## CHAPTER IV POLICY ISSUES AND CONCERNS

Current policy issues and concerns that the Commission wishes to bring to the attention of the Legislature include:

- mandatory borough formation;
- matters relating to detachment of territory from existing organized boroughs;
- continued interest in dissolution of cities; and
- the lack of limitations on the authority of municipalities to levy certain taxes.

### **Mandatory Borough Formation**

A need exists to develop a coherent, uniform public policy regarding establishment of organized boroughs throughout Alaska. The haphazard evolution of Alaska local self government has contributed to inconsistencies and disparities in local taxation and provision of local services. As noted in Chapter II, the Commission discussed this broad issue in a forum conducted in February to discuss select provisions of Article X of Alaska's Constitution.<sup>19</sup>

The LBC is aware that Senator John Torgerson has prefiled a bill with the First Session of the Twentieth Legislature to promote borough formation (SB 30). If enacted, SB 30 would:

- ✓ allow the incorporation of additional third class boroughs;
- ✓ require DCRA to prepare third class borough incorporation petitions for each area defined by model borough boundaries; in doing so, DCRA

would be required to conduct at least one public hearing in every community with a population of 500 or more;

- ✓ require DCRA to estimate the value of taxable property in the areas defined by model borough boundaries on or before January 1, 1998;
- ✓ require filing of petitions with the LBC for the incorporation of boroughs in areas with taxable property of:
  - ☑ \$550 million or more by July 1, 1998;
  - ☑ \$350 million to \$549,999,999.99 by July 1, 1999;
  - ☑ \$75 million to \$349,999,999.99 by July 1, 2000;
  - ☑ \$74,999,999.99 or less by July 1, 2001.
- ✓ provides that the LBC may ask DCRA to alter a borough incorporation petition within 6 months of the filing of a petition;
- ✓ requires the LBC to accept a petition when it determines that the proposal meets the incorporation standards;
- ✓ requires the Division of Elections to conduct a borough incorporation election 31 to 120 days after being notified that the LBC accepted a petition;

<sup>19</sup> See the discussion on the Commission's February, 1996, Forum on Local Government Article of Constitution.

- ✓ provides that if voters reject borough incorporation, the area becomes a separate unorganized borough; property in the new unorganized boroughs that lies outside of home rule and first class cities would be subject to a 6-mill State property tax beginning January 1 of the year following certification of the election;
- ✓ requires DCRA to develop alternative tax structures for the unorganized boroughs and to submit draft legislation concerning such by January 1, 1999.

LBC has taken no position on this bill at this time.

### **Issues Relating to Detachment from Organized Boroughs**

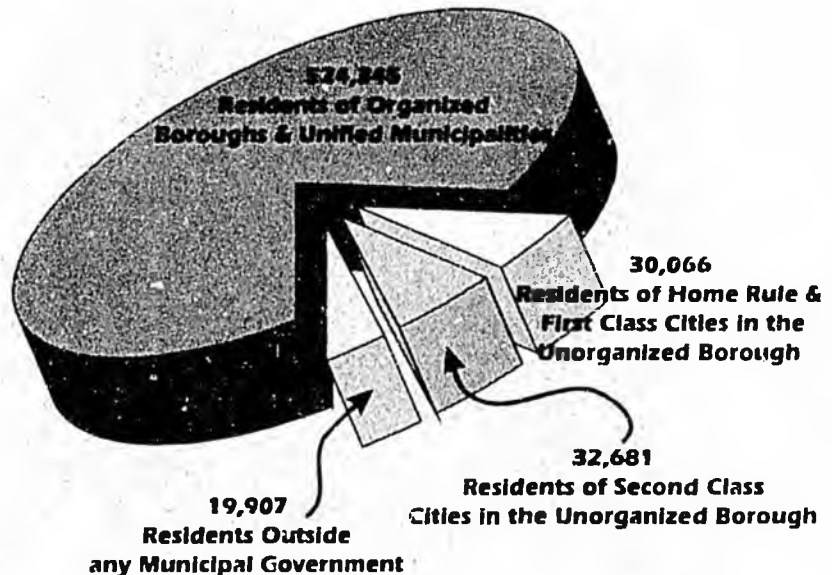
During 1996, the merits of the petitions for detachment of Lake Louise from the Matanuska-Susitna Borough and North Pole from the Fairbanks North Star Borough were both extensively debated before the Commission. The fact that the North Pole detachment was rejected and the Lake Louise petition approved by the Commission serves to underscore the basic premise of the Commission that each petition is unique and is examined on its specific merits.

Lake Louise's small population and relatively insignificant tax base belie the fundamental issues of statewide importance involved in its proposed detachment from the Matanuska-Susitna Bor-

ough.<sup>20</sup> Some of those issues were beyond the scope of the Commission while others were not. This section discusses some of the key policy issues relating to the detachment proposals.

### **Promotion of Maximum Local Self-Government**

Alaska's Constitution (Article X, Section 1) promotes maximum local self-government. By definition, detachment from an organized borough to the unorganized borough — as would be the case with Lake Louise — was viewed by the Commission as an abdication of local self-government. To address that issue, the Commission initially approved detachment, but only on the condition that Lake Louise first be included within another organized borough. The LBC also considered the option of forming a second class city to serve the local government needs of the community.



20 The area has a population of 57 residents and encompasses less than one-half of one percent of the total property tax base of the Matanuska-Susitna Borough.

Statewide, just over 96.5% of all Alaskans (587,092 of 607,800) live within at least one municipal government. Approximately 86% (524,345) reside within Alaska's 13 organized boroughs and 3 unified municipalities. About 5% (30,066) live in the 5 home rule cities and 13 first class cities in Alaska's unorganized borough. Just under 5.4% (32,681) live in Alaska's 81 active second class cities in the unorganized borough. The remaining 3.3% (19,907) live without any functioning municipal government.

Nearly sixteen percent of Alaskans (96,443) live within both a city government and an organized borough. Of those, 83,107 live in 7 home rule cities and 8 first class cities within organized boroughs. The remaining 13,336 live in 34 second class cities within organized boroughs.

**Promotion of Maximum Common Interests Within Boroughs**

Alaska's Constitution (Article X, Section 3) requires that each borough embrace an area and population with common interests to the maximum degree possible. The Commission concluded that this principle applied to the unorganized borough, not just organized boroughs.

The Commission found that Lake Louise had more in common with Glennallen and the remainder of the Copper River Basin than it did with the rest of the Matanuska-Susitna Borough. However, because the Copper River Basin is but a small part of Alaska's huge residual unorganized borough "established" under AS 29.03.010, the Commission had difficulty applying this principle in the Lake Louise case. Similar difficulties would arise in any detachment from an organized borough to the unorganized borough. The difficulty stems from the fact that the area and population in the unorganized borough — which stretches intermittently

northward from Metlakatla to Arctic Village, westward to Nome and southwesterly to the tip of the Aleutian Islands — have limited common interests.

It appears that greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs — each embracing an area and population with common interests to the maximum degree possible. The foundation for such an effort already exists in the form of model borough boundaries established by the Commission a few years ago. Additionally, boundaries of regional educational attendance areas — which have largely been in place for two decades — might also serve as a guide in the formal subdivision of the unorganized borough.

**Requirement for "Local Contributions" Under AS 14.17.025 After Detachment**

AS 14.17.025 requires boroughs (as well as home rule and first class cities in the unorganized borough) to make a "local contribution" in support of their schools. In the case of the Matanuska-Susitna Borough, the required local contribution amounts to "the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Regional Affairs under AS 14.17.140 and AS 29.45.110."

The Department of Education interprets that provision to require municipalities to include taxable property that has been detached from a municipality in the calculation for the local contribution for a period of two years after detachment has occurred. Thus, if Lake Louise detaches, the Department of Education main-



**Glennallen High School**

tains that Matanuska-Susitna Borough's contribution for the following two years would be based on calculations which include the value of taxable property at Lake Louise. Yet, the Borough would apparently be unable to levy taxes on the property in question once it detaches. The amount in question with respect to Lake Louise is estimated to be approximately \$93,000 over the two years. It is a relatively insignificant amount in comparison to the Borough's total annual contribution of more than \$8 million. However, the Commission viewed the circumstances as unfair to the Matanuska-Susitna Borough unless the Borough were reimbursed by the newly incorporated city. The Commission was also concerned with precedent, since the issue could be much more significant in the context of other detachments.

### **Equity Issues**

As it has done for the past several years, the Commission continues to encourage the legislature to address fundamental issues concerning equity in the delivery of services. In the view of the Commission there is clearly a growing need to examine certain existing State laws and policies.

For example, there are inequities in the manner in which regional service delivery in Alaska is structured. In 1963, the Legislature mandated the formation of eight boroughs. Today, those eight boroughs encompass about 80% of Alaska's population. The residents and property owners in the mandatory boroughs typically pay substantial local taxes for basic services. In contrast, areas of the state that lie outside any local government pay no taxes. Some of those areas enjoy services comparable to the services in the mandatory boroughs. Further, some of these areas have resources at least comparable to boroughs formed under the 1963 Mandatory Borough Act.

Education typically constitutes the greatest financial expenditure by organized boroughs. Provision of that service by organized boroughs is mandated by State law. Disparities exist in funding for education between municipal school districts and regional educational attendance areas. For example, because of requirements for local contributions, some municipal school districts receive State and federal aid amounting to only about two-thirds of their defined level of "basic need" for education.<sup>21</sup> Regional educational attendance areas receive a higher level of State funding, in part, because they are not required to contribute financial support for

<sup>21</sup> The level of basic need is determined under AS 14.17.021.

education. Further, some regional educational attendance areas receive funding not available to other districts due to geographic location (e.g., National Forest Receipts).

While the legislature more than 30 years ago mandated that the major populated areas of the state form boroughs, it has since gradually eliminated most of the incentives to form boroughs. Consequently Alaskans have two strikingly different forms of regional service delivery.

By raising these equity issues, the Commission is not advocating mandatory organization of the rest of the state. However, given the certainty of further reductions in State revenues, attention to these issues is warranted.

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## **Continued Interest in City Dissolution**

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Interest in dissolving city governments continues. As described in Chapter II, LBC staff responded to active or potential city dissolution proposals relating to eleven second class cities.

Generally this interest appears to reflect a desire to return to more traditional ways of governance. However, the potential exists for interest in dissolution of municipal governments throughout the state.

Many of the policy issues noted in the previous discussion concerning detachment from organized boroughs are relevant to this issue as well. Just as there are incentives to detach from boroughs (or to remain part of the unorganized borough), there are incentives to dissolve cities (or to remain unincorporated).

For example, communities can often enjoy a substantial level of services without the civic and financial responsibilities of city government. Unincorporated communities in the unorganized

borough may receive state revenue sharing (AS 29.60.130 - .140), capital project matching grants (AS 37.06.020) and education that is fully funded by the state (AS 14).

Unincorporated communities may also receive police protection through the State Troopers or the Village Public Safety Officer program. Additionally, State agencies and the legislature may fund projects such as water and sewer facilities without requiring local contributions. The number of cities in Alaska may decline if communities can enjoy such privileges without assuming the responsibility for local government.

Beyond these somewhat abstract policy issues, the Commission wishes to raise a specific concern relating to dissolution of cities. Under current law (AS 29.06.520), the State succeeds to the assets, liabilities, duties, powers and rights of the cities if they dissolve (unless another municipal government becomes the successor). The Commission takes the position that the State should not assume responsibility for local services and other liabilities and that these should be transferred to a local successor.

As the successor under the law, the State assumes liabilities of the dissolved cities. Of course, liabilities are not necessarily limited to debts and contracts. As the successor, the State may find itself legally exposed to risks related to the improper operation and construction of water and sewer systems, bulk fuel storage tanks, landfills, and other public facilities. The risks may be minimized by conveying properties back to the local communities. However, because the State is necessarily included in the chain of title for properties of dissolved municipalities, it appears that the State may not be able to escape all exposure to liabilities. The Commission believes that it would be even better to avoid having the state assume liabilities altogether.

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## **Lack of Limitations on Authority of Municipalities to Levy Certain Taxes**

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For the past four years, the Commission reported to the legislature that concerns have been expressed over the lack of reasonable limits on the authority of municipalities to levy taxes. Such concerns continued to be expressed during the year just ended. While the recently-incorporated Cities of Pilot Point and Egegik were most often cited as examples of the need for reasonable limitations, the Commission is aware of several other local governments that also levy substantial taxes on natural resources. These resources are not limited to fisheries, but include oil and gas properties, mining properties, timber and other natural resources.

Because Pilot Point is cited so frequently in arguments regarding this issue, the Commission offers details below concerning the tax levy of that particular government. In doing so, however, the Commission stresses that it does not intend to single out the City of Pilot Point for judgment as to the reasonableness of its taxes.

The City of Pilot Point levies a 3% sales and use tax on commercial fish harvests within its municipal boundaries. In FY '95, the City of Pilot Point collected \$690,721 from its sales tax on commercially harvested fish. (Alaska Taxable 1995, page 16) Thus, the tax generated about \$7,348 for each person in Pilot Point. This per capita tax revenue is in stark contrast to the \$503 per capita average of all taxes collected by the other municipal governments in Alaska which do not have education powers. General law cities may exercise whatever powers are not

prohibited by state law. However, in practice, fiscal constraints effectively serve to limit the number of services provided by most cities. However, since the City of Pilot Point encompasses a significant tax base the City is not subject to the financial constraints typically faced by remote second class cities.

As directed by the Alaska Supreme Court, the Commission is reconsidering its decision to approve incorporation of the City of Pilot Point. On June 27, 1996 the Commission's staff issued a provisional report regarding the reconsideration of the incorporation of Pilot Point. During the course of the reconsideration proceedings, the City of Pilot Point submitted a brief describing public services which would be provided by the City with the revenue generated by its tax. Those services included "upgrading of airport facilities". (July 12, 1995 Brief, City of Pilot Point, at 5) However, when the community's runway deteriorated during the final months of 1996, the City requested that the State of Alaska fund repairs to the facility on an emergency basis. It is troubling to the Commission when municipalities justify extremely high tax revenues by pledging to enhance local services and facilities, but claim poverty and seek additional funding from the State of Alaska to restore local infrastructure.

The Commission is keenly aware that as state funding for local services continues to decline, the ability of Alaska's 164 municipal governments to raise revenues will become more critical. Therefore, any attempt to address this issue fairly will no doubt prove to be as difficult as it will be controversial. The Commission raises this issue again only to ensure that the legislature is aware of sentiments concerning this matter. ■

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