

Local
Boundary
Commission

2/18/99



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

PRESS RELEASE
February 9, 1999

LEGISLATORS WILL NOT OPPOSE BOUNDARY COMMISSION DECISION

Senator Jerry Mackie and Representative Albert Kookesh announced that they would not oppose the Local Boundary Commission's approval of the City of Haines annexation proposal. In order to deny the annexation, it would require the Legislature to pass a resolution overturning the Commission's decision within the first 56 days of the session. Without such an action, the annexation decision will stand.

Mackie and Kookesh said they based their decision on a careful review of the Local Boundary Commission's record and other events that have brought the issue to this final stage. In the first instance, they noted that the Local Boundary Commission is constitutionally charged with resolving issues of municipal jurisdiction and boundary disputes. They believe that the framers of the State Constitution wisely reserved this authority to the quasi-independent commission so that matters of this nature, which tend to be very divisive, would be based on findings of fact. It is also for this reason, they believe, that the legislature's involvement was restricted to a veto review only.

In this regard, they could not fault the process or the evaluations that led the Commission to reach its decision. The City of Haines had legitimate reasons to seek expansion of its boundaries. The Commission properly took public testimony, gathered evidence, evaluated the annexation proposal and rendered a considered decision. In the legislators' view, there is no fatal flaw in the procedures or actions of the Commission that merit a legislative veto.

Mackie and Kookesh feel that the annexation issue and other Haines' local government issues stem from the inadequacies of the 3rd class borough form of government. Indeed, at this time last year, this opinion was also the view of Haines City and Borough officials and the Haines Citizens Against Annexation leaders. All three organizations expressed the need for changes in the Haines local government structures and services. All three acknowledged that the annexation issue was only a small part of a larger question on the Haines local governments' suitability for its current size and growth. To this end, annexation was postponed and all three

passed resolutions, attesting to a cooperative, good faith effort to achieve a new, unified local government. In this way, then, it was hoped that the Haines citizens themselves could determine a resolution to this issue, as well as others, through the local government consolidation process. Furthermore, they all resolved not to contest the annexation should that effort fail.

The legislators believe that there was a commitment to give the best effort possible toward a local solution in exchange for the annexation delay. Subsequently, a tremendous amount of time and effort was expended to achieve the local solution. In the aftermath of the narrow election defeat then, the annexation should go forward.

Mackie and Kookesh fully recognized that whatever decision they made on this issue would be criticized by substantial numbers of Haines residents. However, they feel it must be emphasized that the annexation was not a decision of the legislature. It was the City of Haines decision to seek the annexation. The decision to grant the annexation was made by the Local Boundary Commission which is their constitutionally mandated responsibility. The legislators feel that in the absence of clear and convincing evidence that the Commission failed to responsibly exercise its authority, it would be an abuse of the Legislative veto to overturn this decision. It would only prolong the growth pains of Haines and the limitations of the 3rd class borough.

**A RESOLUTION OF THE HAINES BOROUGH
CITIZENS AGAINST ANNEXATION SUPPORTING THE
CONSOLIDATION OF THE EXISTING CITY AND BOROUGH
GOVERNMENTS INTO A SINGLE HOME RULE ENTITY**

WHEREAS, the Haines Borough Citizens Against Annexation (HBCAA) opposes the present petition to annex submitted by the City of Haines, (City) and approved by the Local Boundary Commission (LBC), and

WHEREAS, HBCAA supports the concept of a single consolidated home rule form of government as adopted by the voters of all of the Haines Borough, and

WHEREAS, HBCAA requests the LBC to withdraw the Petition to Annex from submittal to the Alaska State Legislature this year and and if the voters do not approve the change of government HBCAA will not oppose the annexation further, and

WHEREAS, HBCAA will actively support the efforts to change the form of government during the period from the time in which the Petition to Consolidate is submitted, through the LBC process to the vote of the people upon the question, and

WHEREAS, a Charter Commission of eleven persons will be appointed by the Mayors of the City and Borough, which will include two representatives as recommended by HBCAA, and

WHEREAS, the Charter Commission will be tasked to develop the model Charter for inclusion with the Petition to Consolidate, to conduct all appropriate data gathering and research on the subject, develop an information campaign and to advise the City, Borough and LBC on changes to the intitial Charter as it progresses through the process up to the election, and

WHEREAS, the City and Borough will offer staff assistance to the Commission and will seek State funding and other assistance, along with local contributions, to ensure proper financing of the duties assigned to accomplish the tasks over the next nine months.

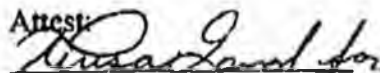
NOW THEREFORE BE IT RESOLVED that the HBCAA requests the LBC withdraw the current Petition to Annex by the City of Haines from submittal to the Alaska State Legislature.

Passed this 19th day of January, 1998 by the following vote:

30 Ayes

1 Nays

0 Abstain

Attest:

James Alborough, Secretary

By: 
Louis Nelson, President

HAINES BOROUGH
RESOLUTION # 437

A RESOLUTION OF THE HAINES BOROUGH REQUESTING THAT THE LOCAL BOUNDARY COMMISSION DEFER SUBMITTAL OF ITS RECOMMENDATION REGARDING THE CITY'S ANNEXATION PETITION AND STATING THE BOROUGH'S SUPPORT FOR A CHANGE IN LOCAL GOVERNMENT.

WHEREAS, the City of Haines submitted a petition to the Local Boundary Commission on March 10, 1996 for the annexation of 6.5 square miles and requested that the annexation be approved by legislative action; and

WHEREAS, in its Statement of Decision dated November 26, 1997, the Local Boundary Commission recommended approval of the annexation petition; and

WHEREAS, the Local Boundary Commission's recommendation is scheduled to be submitted to the Alaska Legislature on January 21, 1998; and

WHEREAS, the Haines Borough supports immediate action to consolidate the City and Borough; and

WHEREAS, the deferral of the Local Boundary Commission's recommendation to the Legislature for one year will assist the City and Borough in their efforts to consolidate.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Haines Borough Assembly requests the Local Boundary Commission to defer the submission of its recommendation the Legislature for the annexation of 6.5 square miles by the City of Haines, as recommended in the November 26, 1997 decision to approve the annexation.
2. The Haines Borough Assembly pledges its resources and support to assist in a diligent effort by the City of Haines and the Haines Borough to pursue the consolidation of the local governments.
3. The Haines Borough Assembly supports the deferral of the Local Boundary Commission recommendation. If the voters of the City of Haines and the Haines Borough do not approve the consolidation of the City of Haines and the Haines Borough, the Haines Borough will not oppose the City of Haines annexation petition to the Alaska Legislature by the Local Boundary Commission in January 1999.

ADOPTED: 1/20/98

Jerry Lapp
Jerry Lapp, Mayor

ATTEST:
Jacki Martin
Jacki Martin, Clerk/Treasurer



Subject: DCRA Meeting February 18--8am

Date: Wed, 17 Feb 1999 13:27 -0900

From: "Nancy Barnes" <Nancy_Barnes@legis.state.ak.us>

To: "lhscjhl@laa_mail.legis.state.ak.us" <Jonathon_Lack@legis.state.ak.us>

Hi, the folks from Haines would like to get hooked up and testify from the Borough Offices.

Phone number to call: 766-2711

Mayor Jerry Lapp (will listen/no testimony)

Mr. Louie Nelson -- citizen to testify

Ms. Carol Knight -- teacher/citizen to testify

Ms. Betty Holgate--citizen to testify.

1-800-368-8772



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.

This report is also available at the Local Boundary Commission's website:

http://www.comregaf.state.ak.us/MRAD_LBC.htm

Report of the Local Boundary Commission to the First Session of the Twenty-First Alaska State Legislature

January 28, 1999

Local Boundary Commission

Kevin Waring, Chairperson
Kathleen Wasserman, Vice-Chairperson
Nancy Cannington, Member
Allan Tesche, Member
William Walters, Member

Tony Knowles, Governor

Report prepared with assistance from:

Department of Community & Regional Affairs

Mike Irwin, Commissioner
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Municipal & Regional Assistance Division

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Message from the Chairperson

January 28, 1999

On behalf of all members of the Local Boundary Commission, I am pleased to present the report of the Commission to the First Session of the Twenty-First Alaska State Legislature. During the year just ended, the Local Boundary Commission met thirteen times. During those meetings the Commission addressed issues relating to proposals for:

- ★ annexation of 5,524 square miles to the Ketchikan Gateway Borough;
- ★ annexation of 6.5 square miles to the City of Haines;
- ★ annexation of 960 acres to the City of Thorne Bay;
- ★ consolidation of the Haines Borough and the City of Haines;
- ★ annexation of 42.46 acres to the City of Fairbanks;
- ★ annexation of five acres to the City of Palmer;
- ★ annexation of 22.39 acres (involving two petitions) to the City of Wasilla.

In addition, the Commission spent considerable time during the past year in the ongoing effort to refine the Commission's regulations.

Chapter 1 of this report provides background information concerning the Local Boundary Commission. Chapter 2 discusses the Commission's activities during 1998. Chapter 2 also lists a number of proposals currently under consideration by municipalities and voters throughout Alaska. The number and nature of the prospective proposals suggests that 1999 will be another active and interesting year for the Commission. Chapter 3 presents the Commission's formal recommendation for annexation of 6.5 square miles to the City of Haines in accordance with Article X, Section 12 of the Constitution of the State of Alaska. The report concludes with Chapter 4, a discussion of public policy issues of particular interest 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 black ink that reads "Kevin Waring". The signature is written in a cursive style with a long horizontal stroke at the end.

Kevin Waring
Chairperson

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Chapter 1

Overview of Commission & 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 (DCRA). 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 of cities and boroughs;
- ➔ consolidation of cities and boroughs; and
- ➔ reclassification of cities.¹

The Local Boundary Commission was established under Alaska's constitution to serve as an impartial body to review proposals relating to the establishment and alteration of municipal corporations 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."²

Among the 150 or so State boards and commissions, only the Local Boundary Commission and four others have origins in Alaska's Constitution.³

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:

"A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy . . . The Local Boundary Commission has been given a broad power to

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, 543 (Alaska 1962).

³ The Local Boundary Commission was established pursuant to Article X, §12 of the Constitution of the State of Alaska 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 Redistricting Board.

*decide in the unique circumstance presented by each petition . . . Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."*⁴

Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. 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."⁵ Biographical information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed as Chairperson of the LBC on July 10, 1997. He was reappointed to a

new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the Department of Community and Regional Affairs' original division directors (1973-1978). Between 1980 and the spring of last year, he operated a planning/economics consulting firm in Anchorage. Commissioner Waring is now manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the

Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman currently serves as Mayor of the City of Pelican. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman works as the Southeast Alaska Projects Director for Ecotrust. Her present term on the Commission 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 the

Alaska Department of Labor, Ms. Cannington now serves as the Manager of the City of Kotzebue. She is currently Second Vice President of the Alaska Municipal Managers Association. Ms. Cannington was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Cannington's current term on the LBC expires January 31, 1999.

⁴ Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232, 234 (Alaska 1993).

⁵ AS 39.05.060.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS Title 29). Mr. Tesche's term on the Commission expires January 31, 2002.



William Walters serves from the Fourth Judicial District and lives in the greater Fairbanks area. He was appointed to the LBC on September 14, 1995. Mr. Walters works for the Alaska Department of Labor as a hearing officer in Fairbanks. He is a graduate of the University of Texas School of Law. He worked for the Tanana Chiefs Conference on the development of tribal courts from 1992 to 1998. He is a former member of the Fairbanks North Star Borough Planning Commission. Mr. Walters' current term on the LBC 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 staff provides technical assistance to municipalities, residents, petitioners, respondents, and others regarding matters under the Commission's jurisdiction. The type of assistance may include:

- ➔ conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;

- ➔ conducting informational meetings;
- ➔ providing technical support during Commission hearings;
- ➔ drafting decisional statements;
- ➔ implementing decisions of the Commission;
- ➔ certifying actions; and
- ➔ maintaining incorporation and boundary records for each of Alaska's 161 existing municipal governments.

As required by law, the staff analyzes formal petitions filed with the Commission and prepares reports conveying DCRA's recommendations for action by the Commission. DCRA also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations and reclassifications.

The Commission and DCRA are independent of one another with respect to policy matters. In other words, the Commission is not bound to follow the recommendations which DCRA is required by law to provide to the Commission.

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 positions 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. Once a petition is accepted for filing, extensive public notice of the filing of the petition is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically 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 typically 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 discussion of comments received 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 complete understanding of the proposal. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

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

- ⇒ approve the petition as presented;
- ⇒ amend the petition (e.g., expand or contract the proposed 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 LBC holding a recent hearing

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing.

Within thirty days of announcing its decision, the Commission must adopt a 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, but is subject to reconsideration.

Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Commission does not approve a request for reconsideration within thirty 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 matters.

Chapter 2

1998 Developments & Activities



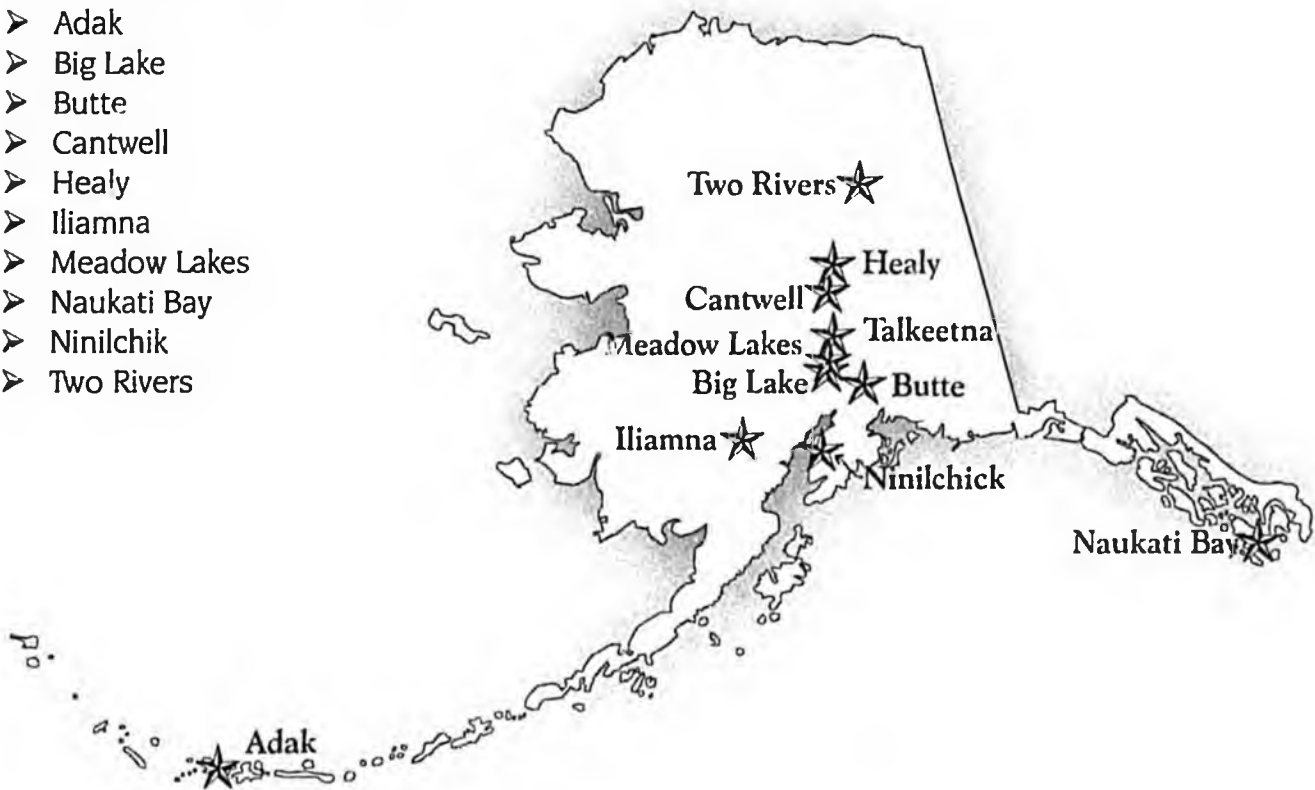
During calendar year 1998, the Commission or its staff responded to a broad range of actions under the purview of the Commission.

This chapter summarizes developments regarding proposals for and expressions of interest in municipal incorporation, dissolution, boundary changes, and reclassification that occurred during 1998.

City Incorporation

One petition for city incorporation was filed in 1998. Further, officials or residents of ten other communities expressed interest in city incorporation during the year. Such pending or prospective city incorporation activity occurred in the following communities.

- Talkeetna
- Adak
- Big Lake
- Butte
- Cantwell
- Healy
- Iliamna
- Meadow Lakes
- Naukati Bay
- Ninilchik
- Two Rivers

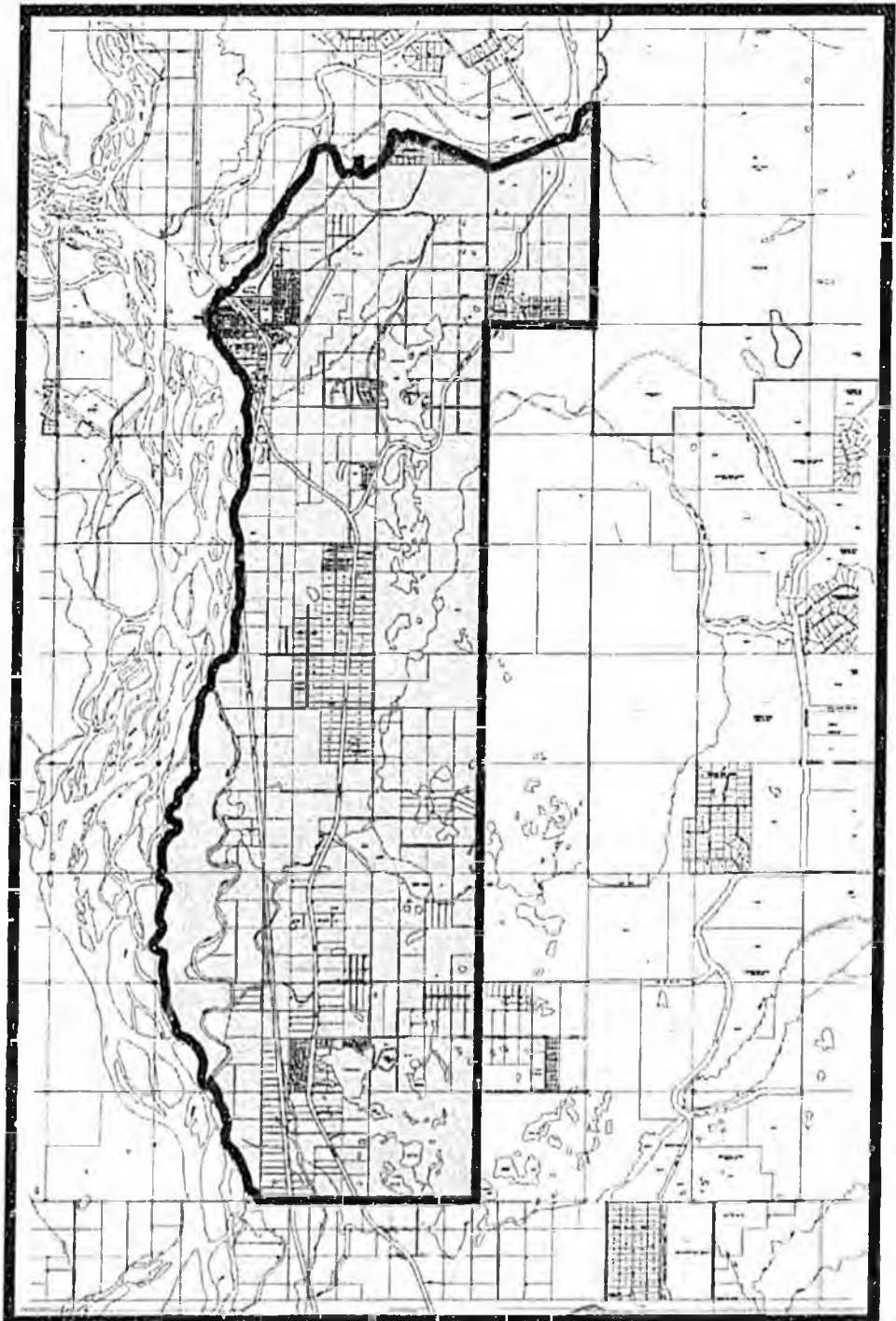


Talkeetna

On March 25, 1998, residents of Talkeetna petitioned to incorporate a home rule city with boundaries encompassing twenty three square miles. On June 19, the Matanuska-Susitna Borough filed a twenty-six page responsive brief contending that ". . .the petition as presented does not establish how the commission may grant it in light of the constitution, state statute, and the regulatory factors applicable to the incorporation of a home rule city."

On December 7, the 41-page DCRA draft report and recommendation regarding the petition to incorporate a home rule City of Talkeetna was issued to 134 parties. The DCRA draft report recommended that the petition be denied. The DCRA recommendation was based upon the following findings by agency staff.

- That the current incorporation proposal fails to include all land and water necessary to provide the full development of essential city services on an efficient, cost effective level as required by AS 29.05.011(a)(2).
- That the current petition does not adequately demonstrate a need for city government as required by AS 29.05.011(a)(5). The City of Talkeetna, as proposed by the current petition, would leave certain Matanuska-Susitna Borough (MSB) service areas intact and fracture others.
- That incorporation would not result in a significant minimization in the number of local government units as promoted by Article X, Section 1 of the Alaska constitution. When incorporation of a city occurs in an organized borough



Talkeetna's proposed city boundaries

without a reasonably commensurate reduction in the number of service areas, the constitutional principle requiring minimum numbers of local government units is not served. For example, in this case the MSB has separate service areas for flood control, fire protection, roads, sewer, and water serving the area proposed for incorporation. The petitioners propose that the city assume the flood control service area functions. Road service powers would be assumed by the city in only part of the area within the existing road service area. The MSB fire service area would continue unchanged and the petitioners have not clearly committed to city assumption of the water and sewer service area.

DCRA's draft report indicated that questions exist regarding municipal service delivery. The Department has indicated that such issues relate to both the area proposed for incorporation and neighboring areas. Incorporation as proposed could initially result in a significant diminution of the number of municipal services provided to residents



Talkeetna

of the area. For example, nonarea-wide MSB services provided to the area, such as solid waste disposal, library service, and animal control, could be seriously disrupted or cease altogether. DCRA's draft conclusion was that the requirement of AS 20.05.021(b) would not be satisfied by the incorporation petition since municipal services required by the area proposed for city incorporation are presently more reasonably and practically provided by the Matanuska-Susitna Borough.

The deadline for submission of written comments regarding the draft report was January 7, 1999. Comments were received from 10 individuals, the Talkeetna Community Council, and the Matanuska-Susitna Borough.

The Local Boundary Commission will conduct a public hearing in Talkeetna later this year.

Adak

Parties involved in the transition of Adak from a military facility to a civilian facility have been developing a petition for city incorporation. Part of the motivation for city incorporation is based upon concerns on the part of the Navy over "institutional controls enforcement" on Adak. The Navy wishes to ensure that there is some recognized agent to assume responsibility for enforcement of land use restrictions and land use activities on Adak (e.g., requirement for permits to dig, inspection of signage established by the Navy, etc.).

In April, the Adak Community Council provided DCRA with a draft petition for incorporation of a second class City of Adak with boundaries encompassing about 266 square miles. LBC staff reviewed the draft, identified elements of the petition that

required completion, revision, or clarification and provided oral and written comments to the prospective petitioners' representative and an official of the Adak Reuse Corporation. Proponents of city incorporation have indicated that a revised draft of a city incorporation petition is under development. It is anticipated that a petition for incorporation of the City of Adak will be filed early this year.

Big Lake

In June, LBC staff met with the Big Lake Chamber of Commerce board of directors regarding city incorporation. Interest in establishing a Big Lake city government was revived as a result of two developments. The first was local concerns regarding rumors that the nearby City of Houston planned to expand its boundaries. The second was the expression of interest in city incorporation on the part of residents of the nearby community of Meadow Lakes. Those concerns appear to have moderated following the meeting since the Commission is unaware of any continued interest in forming a city government at Big Lake.

Butte

In February, LBC staff met with the Butte Community Council and Butte residents in response to local interest in city incorporation. Informa-

tion and materials concerning city incorporation were shared with community residents. The Commission is unaware of continued interest on the part of Butte residents in forming a city government.

Cantwell

A representative of the Cantwell Community Council requested and was provided information regarding incorporation of a second class city. LBC staff was advised that city incorporation was under discussion as a possible vehicle for promoting economic growth and employment in the community and as a means to secure additional funds for local service delivery. A community meeting regarding city incorporation was reportedly held in February.

Healy

Staff from DCRA's Fairbanks regional office met in July with residents of Healy to discuss alternative ways of improving local services. Among the alternatives discussed was the option of city incorporation.

Iliamna

In April, an Iliamna resident requested and was provided information regarding standards and procedures for city incorporation. Petition forms for incorporation of a second class city were also provided.

Meadow Lakes

LBC staff participated in a meeting of the ad hoc Meadow Lakes "city incorporation special committee" in January of last year. The committee had been considering second class city incorporation with boundaries encompassing much of the area between the City of Wasilla and the City of Houston. Approximately twenty-four Meadow Lakes area residents attended the meeting. In December of last year, residents of the community expressed continued interest in examining the merits of city government.

Naukati Bay

In May, staff from DCRA's Southeast regional office provided a representative of the Naukati Bay Community Council with information concerning standards and procedures for city incorporation. In July, regional office staff met with residents of Naukati Bay on Prince of Wales Island regarding city incorporation.

Ninilchik

In May, a Kenai Peninsula Borough official indicated that residents of Ninilchik were considering second class city incorporation. Accordingly, LBC staff provided information regarding city incorporation standards and procedures to facilitate discussion between

the Borough and Ninilchik residents. Ninilchik residents reportedly desire enhanced fire and emergency medical services but do not wish to establish borough service areas that are funded by property taxes. A second class city supported by a sales tax was reportedly being considered as a possible alternative vehicle for delivery of addi-

tional local municipal services desired by community residents.

Two Rivers

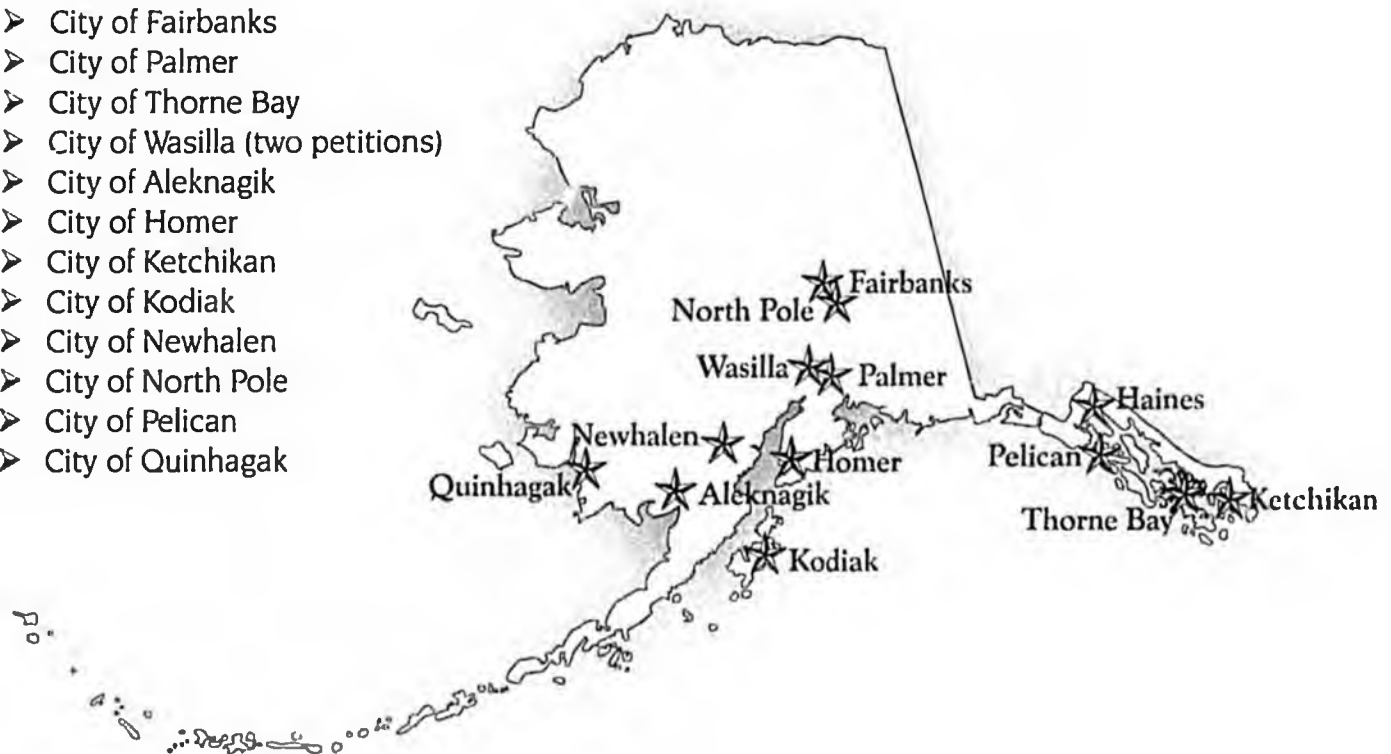
A Two Rivers resident indicated that a petition for home rule city incorporation of Two Rivers is circulating at this time. He was concerned that the petition for consolidation

of the Fairbanks North Star Borough might be an impediment to the proposal for city incorporation. He also inquired about Alaska Statutes and Fairbanks North Star Borough Code provisions relating to apportionment.

City Annexation

Six petitions for annexation of territory to cities were addressed by the Commission during 1998. In addition, activities relating to potential future annexations occurred in nine cities. Annexation petitions or expressions of interest involved the following cities.

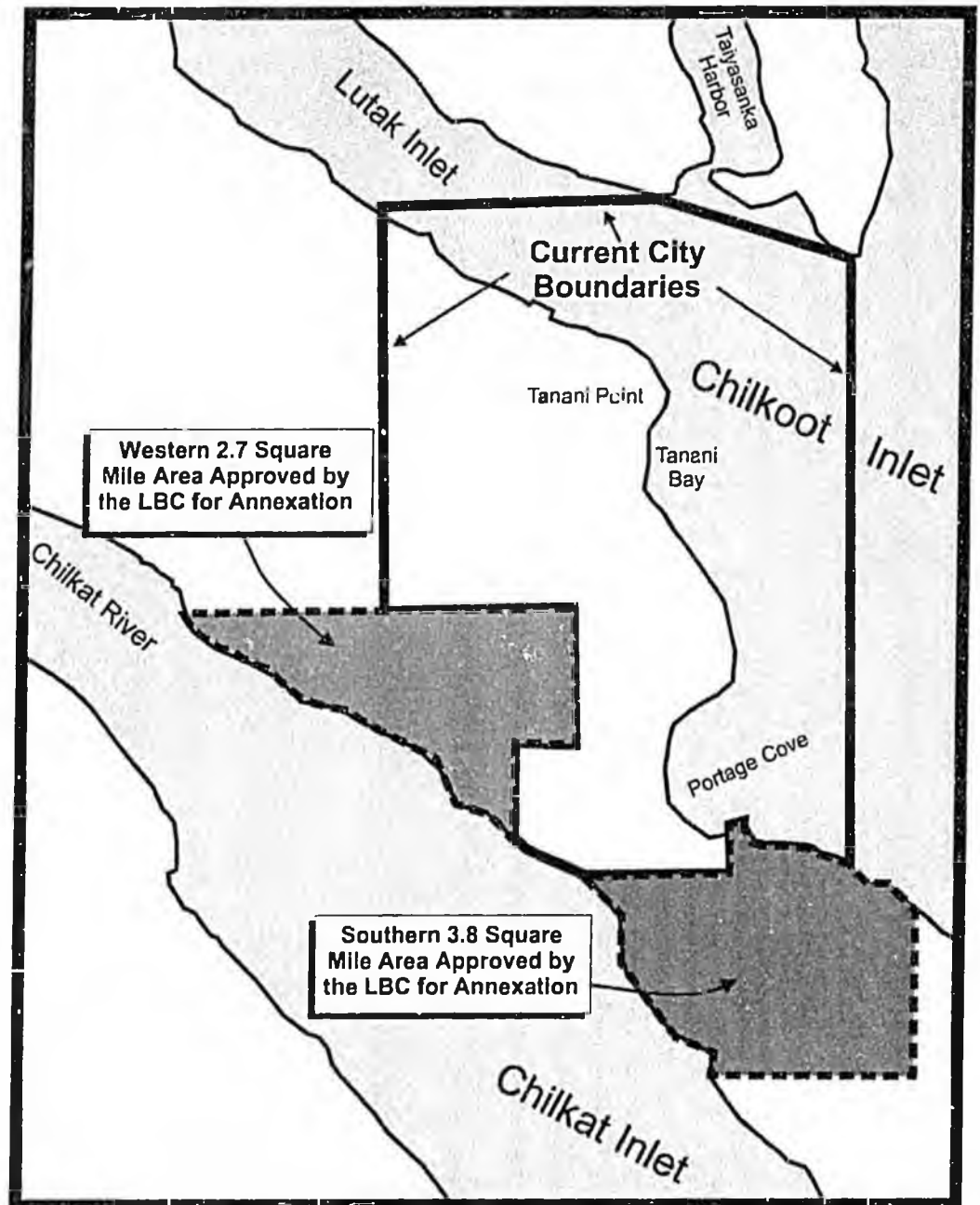
- City of Haines
- City of Fairbanks
- City of Palmer
- City of Thorne Bay
- City of Wasilla (two petitions)
- City of Aleknagik
- City of Homer
- City of Ketchikan
- City of Kodiak
- City of Newhalen
- City of North Pole
- City of Pelican
- City of Quinhagak



City of Haines

In March of 1997, the City of Haines petitioned for annexation of approximately 6.5 square miles. Following extensive opportunity for public review and comment on the proposal, coupled with a lengthy public hearing before the Local Boundary Commission in Haines, the Commission approved the annexation petition.

A recommendation for the annexation was scheduled to be submitted to the 1998 Legislature in accordance with Article X, Section 12 of Alaska's constitution. However, the Commission was asked by the City of Haines, the Haines Borough, and the Haines Borough Citizens Against Annexation to defer the filing of the Commission's recommendation. The purpose of the requested deferral was to allow the local governments and citizens of Haines the opportunity to consolidate the first class City of Haines with the third class Haines Borough. The request for deferral was supported by Haines area legislators, Senator Mackie and Representative Kookesh.



Areas approved for annexation to the City of Haines

After addressing the request on January 21, 1998, the Commission voted unanimously among the four members present to grant the deferral for a one-year period. The Commission stipulated, however, that if the voters rejected consolidation, the Commission's recommendation for annexation would be

filed with the legislature in 1999. The Haines Borough Assembly and the Haines Borough Citizens Against Annexation agreed not to further oppose annexation if the consolidation effort failed.

As noted in greater detail under the discussion of consolidation issues, a petition for consolidation of the two local

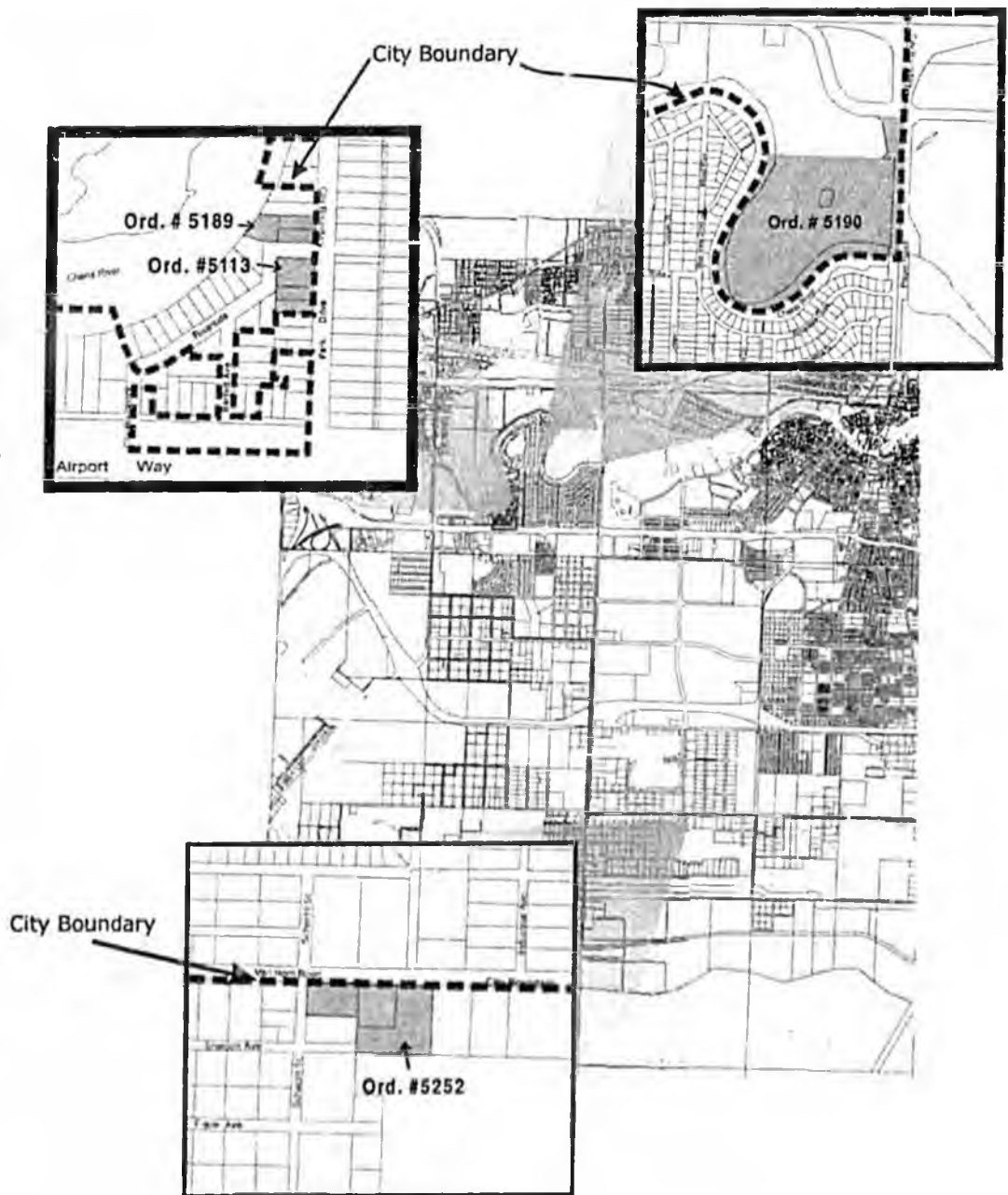
governments in Haines was filed in March of last year. The Commission approved the petition in August. A proposition to consolidate was subsequently rejected by the voters in Haines by a margin of 545 (50.1%) to 542 (49.9%). In accordance with the decision rendered by the Commission on January 21, 1998, a recommendation for annexation of 6.5 square miles to the City of Haines is submitted to the 1999 Legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. The formal recommendation for annexation is included in Chapter 3 of this report.

City of Fairbanks

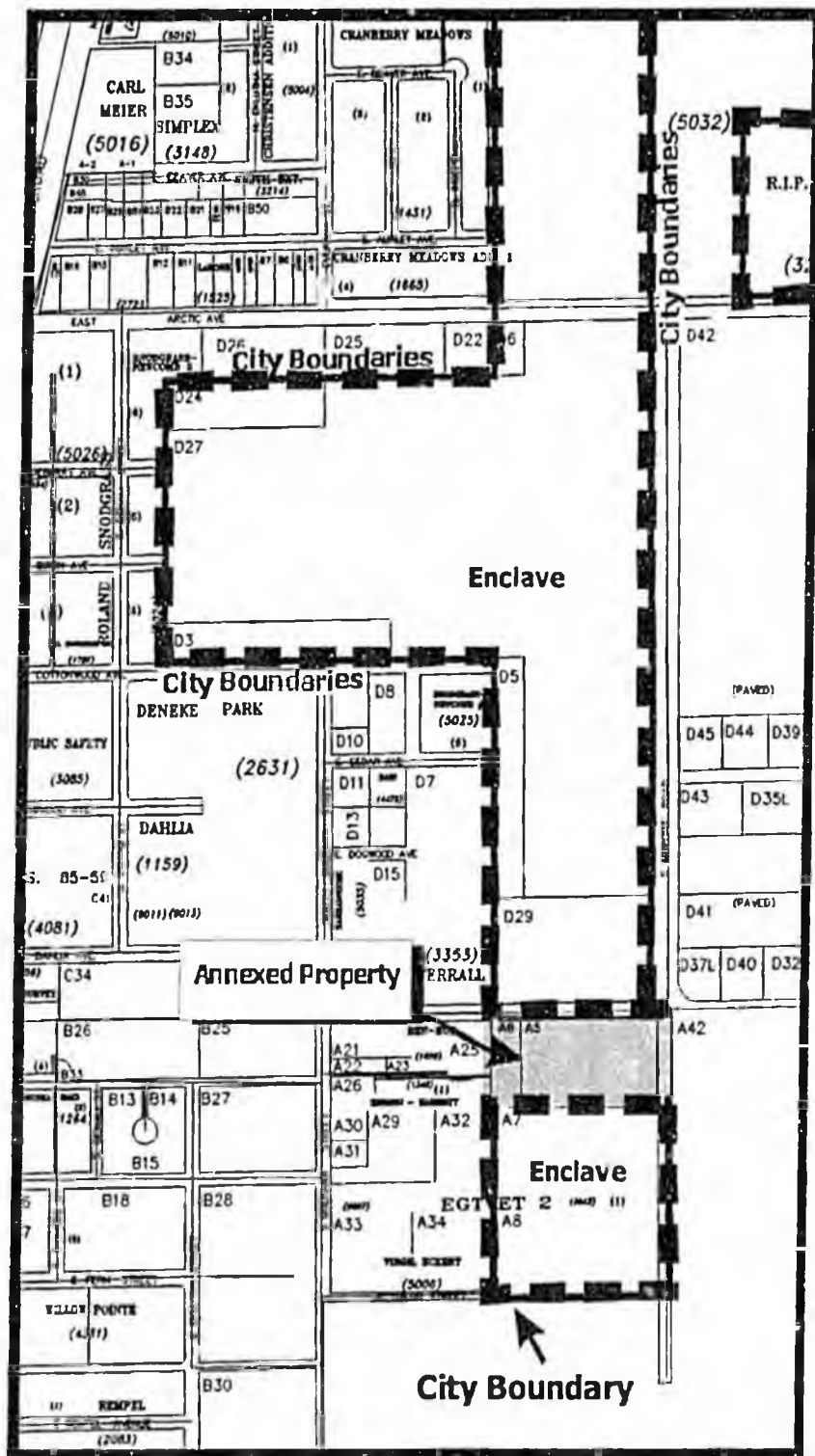
On February 17, 1998, the City of Fairbanks filed a petition for annexation of four separate parcels collectively comprising 42.46 acres. Annexation was sought under the process that requires formal requests for annexation by all property owners and registered voters within the area proposed for annexation.

On March 3, the petition was accepted for filing by DCRA. The deadline for initial public comments was June 12, 1998. DCRA issued its report and recommendation on the proposal in July of last year.

The Local Boundary Commission conducted a duly noticed public hearing on the Fairbanks annexation petition on October 2. At the conclusion of the hearing, the Commission unanimously approved the petition.



Areas approved for annexation to the City of Fairbanks



Area annexed to the City of Palmer

endorsement of annexation by all property owners and registered voters within the area proposed for annexation. The annexation was initiated at the request of the sole property owner in the area, Irby Construction.

The Local Boundary Commission conducted a public hearing regarding the annexation petition on July 17, 1998.

At the conclusion of the hearing, the Commission convened a decisional session. The four members of the Commission participating in the decisional session concluded that all of the relevant standards and requirements for annexation were satisfied by the City of Palmer's petition.

When the Commission approved the petition, the Commission encouraged the City of Palmer to approach future annexation efforts in a more comprehensive manner, rather than pursuing boundary changes piecemeal, in small increments.

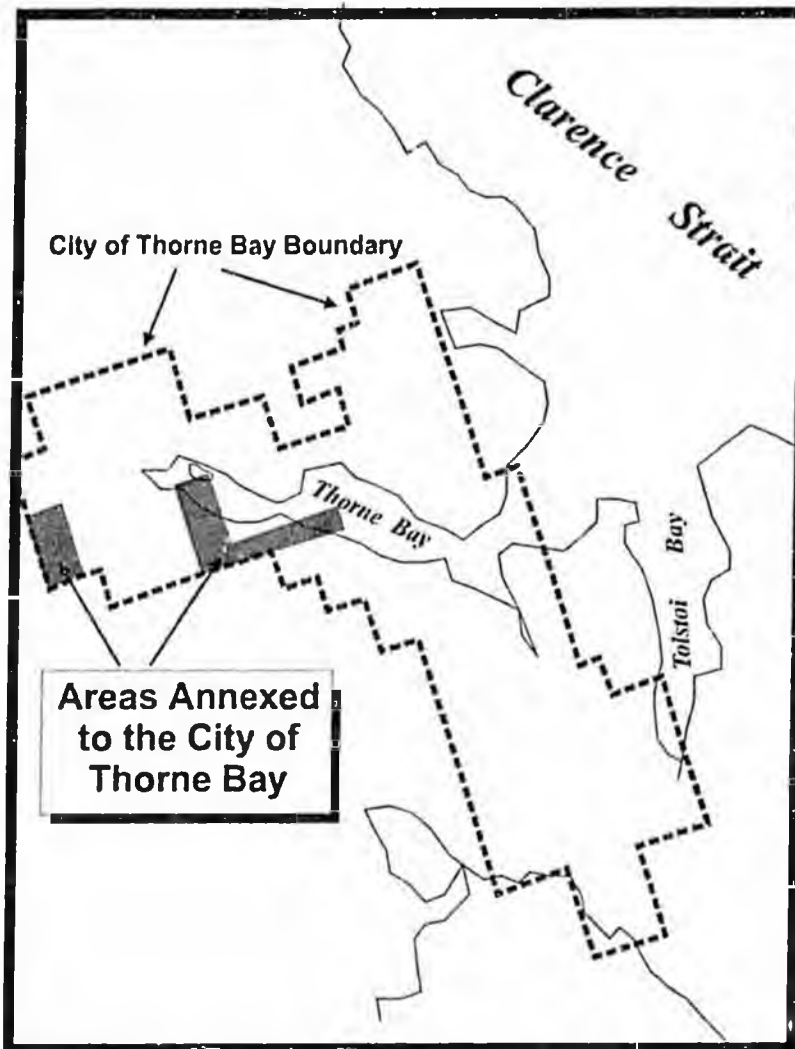
The annexation became effective on December 16, 1998, upon receipt of documentation from the City of Palmer that the U.S. Justice Department had reviewed the annexation under the terms of federal voting rights act.

City of Palmer

On October 31, 1997, the City of Palmer submitted a petition for annexation of five acres located within an enclave inside the City's corporate boundaries. Annexation was sought under the process that requires formal

City of Thorne Bay

On December 1, 1997, the second class City of Thorne Bay petitioned the Local Boundary Commission to annex 960 uninhabited acres contiguous to the existing bound-



Area annexed to the City of Thorne Bay

aries of the City. Annexation was sought by the City to bring a portion of the Thorne Bay Road, which the City maintains, within the jurisdiction of the City. Annexation rendered the City eligible to receive National Forest Receipts road maintenance funding for that portion of the road sought for annexation. Annexation was sought under the process that requires formal requests for annexation by all property owners and registered voters within the area proposed for annexation.

On May 29, 1998, the Local Boundary Commission conducted a public hearing regarding the City of Thorne Bay's annexation petition. Following the hearing, the Commission conducted a decisional session, and approved the petition by unanimous vote.

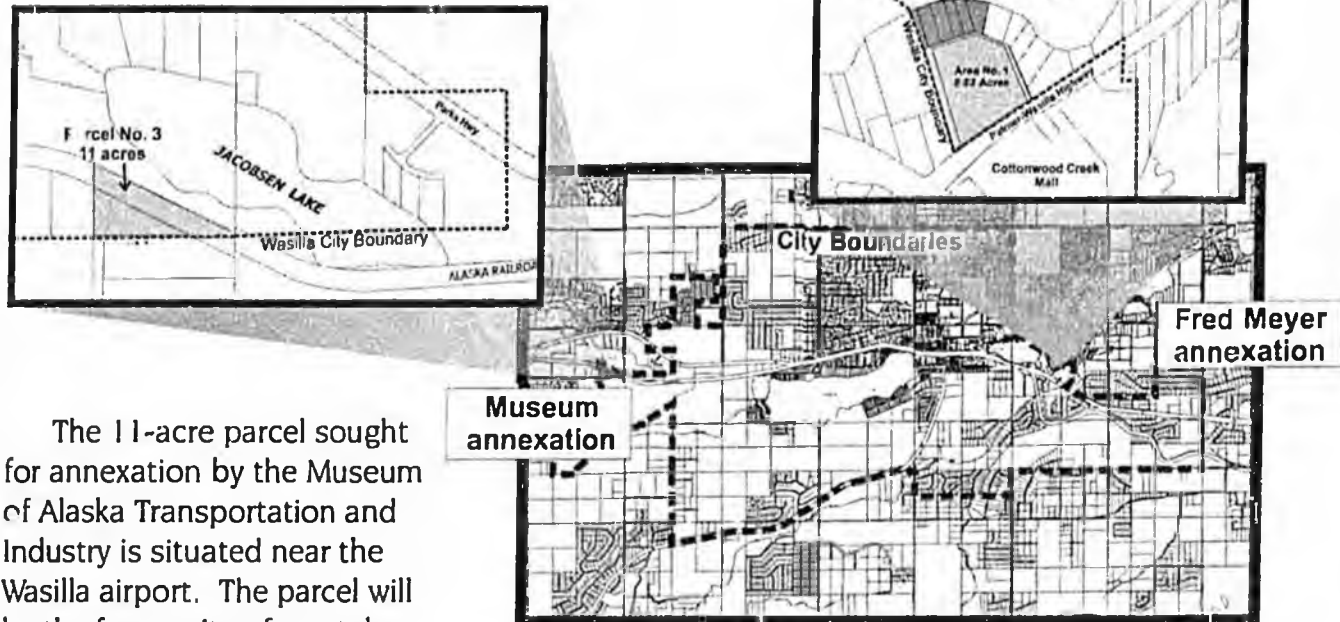
The annexation took effect on August 25, 1998, upon receipt of documentation that the boundary change had been reviewed by the U.S. Justice Department under the terms of the Federal Voting Rights Act.

City of Wasilla

By petitions dated April 7 and May 27, 1998, the City of Wasilla proposed the annexation of some 22.39 acres of uninhabited territory adjacent to the City. The parcel sought for annexation by the April 7, 1998 petition consisted of 8.62 acres adjacent to the Cottonwood Creek Mall. The parcels sought for annexation by the May 27, 1998 petition consisted of an additional 2.77 acres adjacent to the area proposed for annexation in the April 7, 1998 petition and eleven acres located near the Wasilla Airport adjacent to the Museum of Alaska Transportation and Industry.

Both petitions sought local action annexation as set forth in AS 29.06.040(c)(3) and 19 AAC 10.150(2), which provide that contiguous territory may be annexed to a city by ordinance and a petition signed by all of the voters and property owners of the territory.

Two of the three areas proposed for annexation, totaling 11.39 acres, are located at a site being developed as a 171,540 square foot Fred Meyer shopping center. Plans also call for future construction of seven tenant shops requiring an additional 42,200 square feet. The development will include 856 parking spaces. The 22.6-acre Fred Meyer project site includes 11.21 acres within the existing boundaries of the City.



Areas approved for annexation to the City of Wasilla

The 11-acre parcel sought for annexation by the Museum of Alaska Transportation and Industry is situated near the Wasilla airport. The parcel will be the future site of caretaker housing, additional parking, and campground facilities. The main museum facilities are to be developed adjacent to the area proposed for annexation but within the pre-annexation City of Wasilla municipal boundaries.

Since all of the April 7 petition and part of the May 27 petition involved the Fred Meyer shopping center site, the Commission addressed the petitions concurrently. On September 16, the Local Boundary Commission conducted a public hearing on both petitions. At the conclusion of the public hearing, the Commission voted unanimously to approve both annexation petitions.

The annexations took effect January 14, 1999.

City of Aleknagik

The Aleknagik City administrator requested and was provided information concerning standards and procedures for annexation. LBC staff met with the Aleknagik City Council and other interested parties regarding annexation in November 1998. Annexation under the legislative review process is under discussion among City officials, local residents, and property owners. The City Council authorized the formation of an advisory planning committee to facilitate preparation of an annexation proposal, as well as other local planning issues. City officials were provided petition forms for legislative review annexation.

City of Homer

The City of Homer examined the merits of expanding its corporate boundaries. The City's study process included a work session in mid-May to examine the merits of annexing a substantial area adjacent to the current city boundaries. The population of the area considered for annexation was estimated to be roughly equal to the current population of the City of Homer (4,126). The area under consideration included the City of Kachemak and substantial other territory. LBC staff responded to a number of inquiries from residents of the territory under consideration for annexation.

City of Ketchikan

Officials of the City of Ketchikan are considering two separate annexation proposals. The first involves an area contiguous to the City of Ketchikan that is being developed as a residential subdivision. The owner and developer of the subdivision is seeking annexation of his property. Additional territory adjacent to the subdivision is also being considered for annexation. The additional property is owned by the Ketchikan Gateway Borough. City officials anticipated that this particular petition for annexation would likely be filed with the Commission in the early part of this year.

In a separate matter, the Ketchikan City Council has authorized a petition for annexation of a prospective substantial commercial complex and adjacent properties north of the current city boundaries. LBC staff provided information and techni-

cal assistance to officials of the City of Ketchikan concerning the matter. City officials are expected to petition for annexation of the territory by March 1, 1999.

City of Kodiak

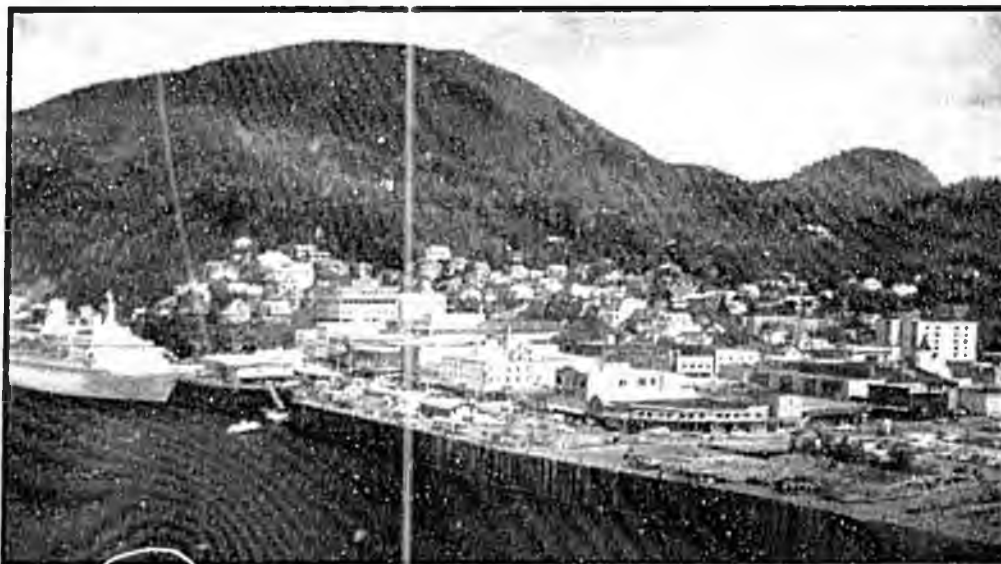
In May 1998, the Kodiak City Council held a public hearing on an ordinance authorizing a petition for annexation of Kodiak Island Borough Fire Protection Area Number One. City of Kodiak officials anticipated that the prospective annexation proposal would be subject to approval by the voters of the territory proposed for annexation.

In August, the Kodiak City Manager contacted LBC staff regarding additional petition materials for the proposed annexation. Annexation of the area in question would increase the population of the City of Kodiak by an estimated 3,508 residents.

Analysis by the City of Kodiak indicates that annexation of the area in question would lead to lower services and/or higher taxes for residents of the existing City because the Borough levies a higher service area property tax to support fewer services than those which would be provided by the City after annexation. Further, retail businesses in the greater Kodiak area are concentrated within the City's existing boundaries. Because of the concentration of businesses within the existing city limits and the population of the territory proposed for annexation, the City estimates that per capita post-annexation city sales tax revenues would decline from \$889 per resident to \$607 per resident.

To address the detrimental financial effects of annexation, the City Council has asked the Kodiak Island Borough to provide transitional funding. City officials indicated that the petition will be filed in early 1999.

The Kodiak city manager indicated that a separate petition may be filed for the extension of the City's boundaries to include the Kodiak airport and the developed area between the airport and the current boundaries of the City.



City of Ketchikan

City of Newhalen

In April, the Newhalen City Administrator informed LBC staff that he was drafting a petition for annexation of the Iliamna airport to the City of Newhalen. Information and technical assistance regarding the standards and procedures for annexation were provided to the City of Newhalen by LBC staff. In December, the Mayor requested that LBC staff meet with the Newhalen City Council and Lake and Peninsula Borough officials in early 1999 regarding annexation.

City of North Pole

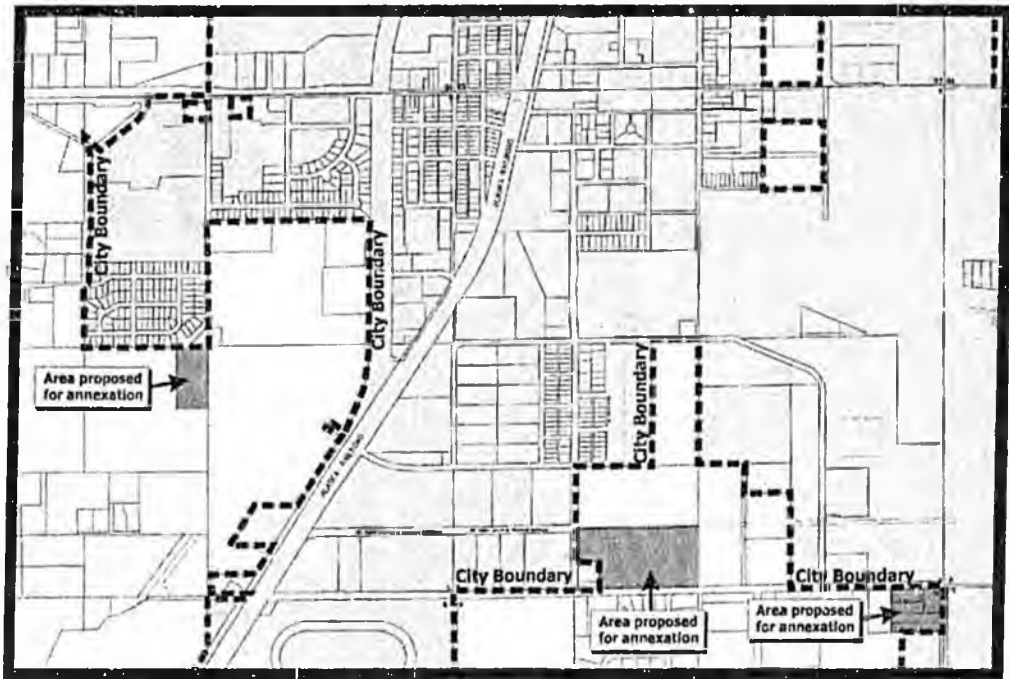
In December, a City of North Pole official requested and was provided with information relating to standards and procedures for annexation. Residents and property owners in the vicinity of the City have expressed interest in annexation to the City of North Pole in order to receive water, sewer, and police services.

City of Pelican

Information regarding standards and procedures for annexation was provided to City staff. Annexation of Sunnyside and Phonograph to the City of Pelican is being contemplated.

City of Palmer

In November 1998, the Palmer City Council authorized a petition for annexation of sixty-two acres in four separate areas. City of



Annexation proposal being developed by the City of Palmer

Palmer Ordinance #541 indicates that there are twenty-four parcels, thirty-six property owners and two registered voters in the aggregate area proposed for annexation. The area proposed for annexation has an assessed value of \$1,520,500. In November, the city manager indicated that the draft petition is nearing completion. The City of Palmer has reportedly received numerous requests for annexation from owners of scattered parcels adjoining the City and desiring annexation to receive City of Palmer water and sewer service.

City of Quinhagak

In January of 1998, a City of Quinhagak official advised LBC staff that the City was considering annexation of Kanetok River recreational areas adjacent to the existing municipal boundaries. She requested and was provided information relating to the standards and procedures for city annexation. Interest in annexation was reportedly viewed as a means to facilitate local efforts to enforce prohibitions against importation of alcohol to the community.

City Dissolution

During 1998, interest relating to city dissolution was expressed by residents of the following two second class cities.

- City of Chefnak
- City of Toksook Bay

City of Chefnak

In September, a Chefnak resident requested and was provided information regarding standards and procedures for city dissolution. Forms for

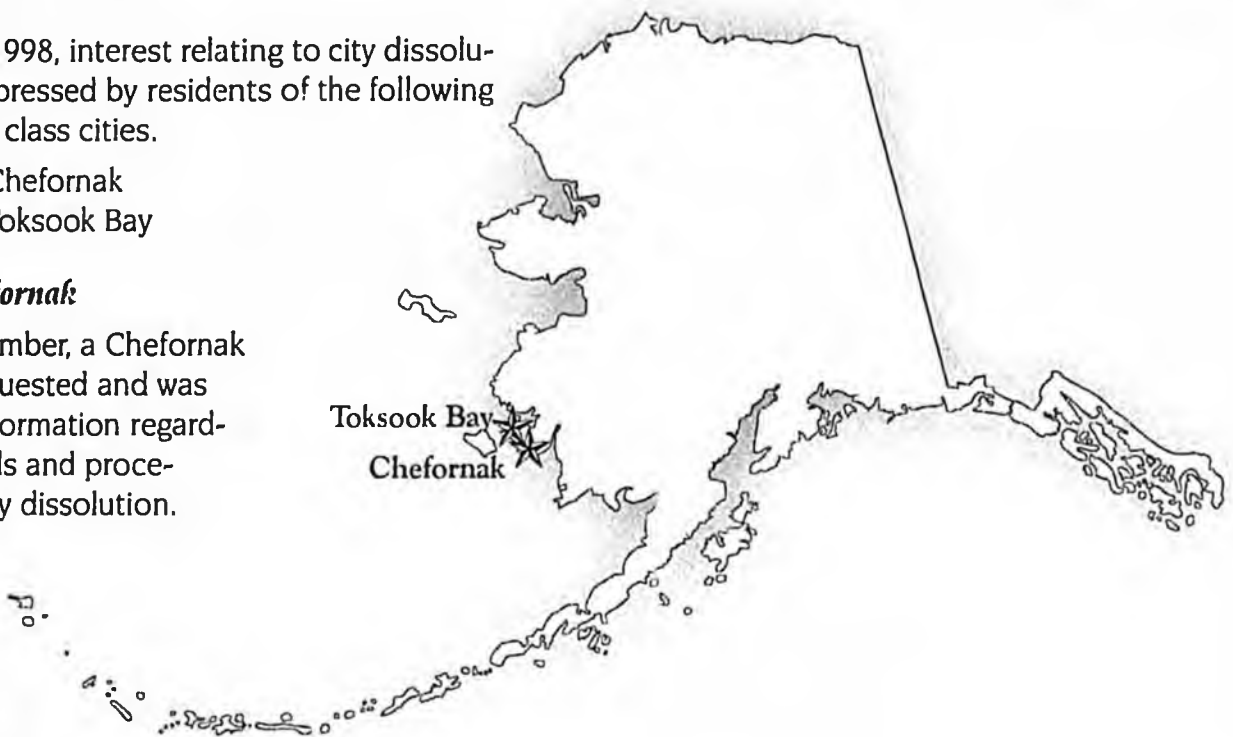
petitioning for city dissolution were also

provided. The individual indicated

that residents had expressed support for city dissolution at an informal local advisory election by a vote of 62-50. However, neither the Commission nor its staff is aware that development of a petition for dissolution of the City of Chefnak is underway.

City of Toksook Bay

Staff from DCRA's Bethel regional office reported interest on the part of Toksook Bay residents in dissolution of the City of Toksook Bay. The Mayor reported that interest in city dissolution stemmed from the preference by some residents for the local Traditional Council to serve as the sole local government for the community. Other residents reportedly consider retaining municipal government as beneficial for the community.



Toksook Bay
Chefnak

City Merger

During 1998, no petitions for merger of cities were filed or processed.

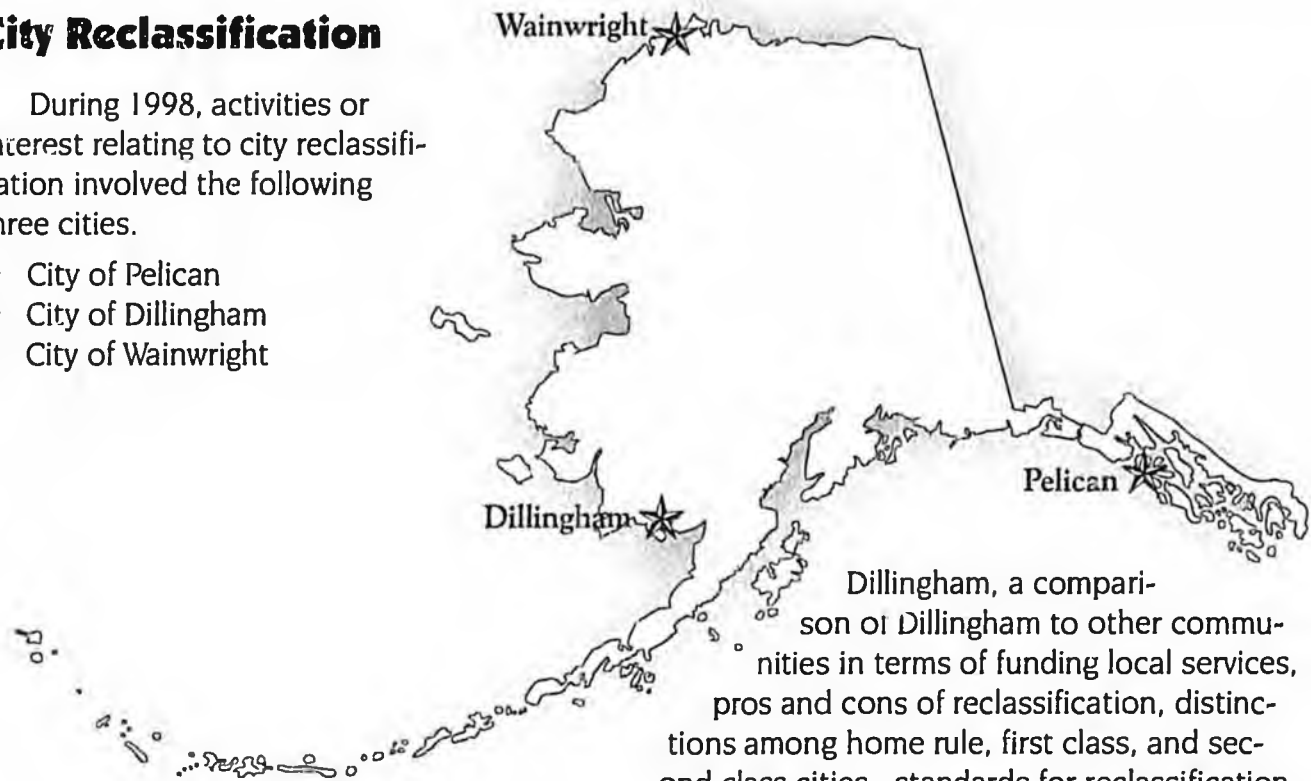
City Detachment

During 1998, no petitions for detachment of territory from cities were filed or processed.

City Reclassification

During 1998, activities or interest relating to city reclassification involved the following three cities.

- City of Pelican
- City of Dillingham
- City of Wainwright



Dillingham, a comparison of Dillingham to other communities in terms of funding local services, pros and cons of reclassification, distinctions among home rule, first class, and second class cities, standards for reclassification, and procedures for reclassification.

City of Pelican

In April, an official of the City of Pelican requested and was provided with information regarding standards and procedures for city reclassification. The Pelican City Council met on May 19 and formalized a request that LBC staff assist the City's efforts to analyze ramifications of reclassification of the City of Pelican to second class city status. Materials analyzing the impacts of reclassification were subsequently prepared and provided to local officials. Plans for a public forum on the issue were initially scheduled for the fall of last year. However, the forum has been rescheduled to February 1999.

City of Dillingham

In February of 1998, LBC staff met with the Dillingham City Council regarding reclassification of the City of Dillingham. LBC staff provided materials concerning funding implications for reclassification of the City of

Analysis of the impacts of reclassification of the City of Dillingham indicated that, based on FY 1997 data, the City of Dillingham would save \$957,500 annually relating to the operation of Dillingham schools if the City were reclassified. The schools in the expanded district would receive \$728,119 less annually than is currently the case. Reclassification would result in a projected increase of \$229,381 annually in the State of Alaska's costs for education funding.

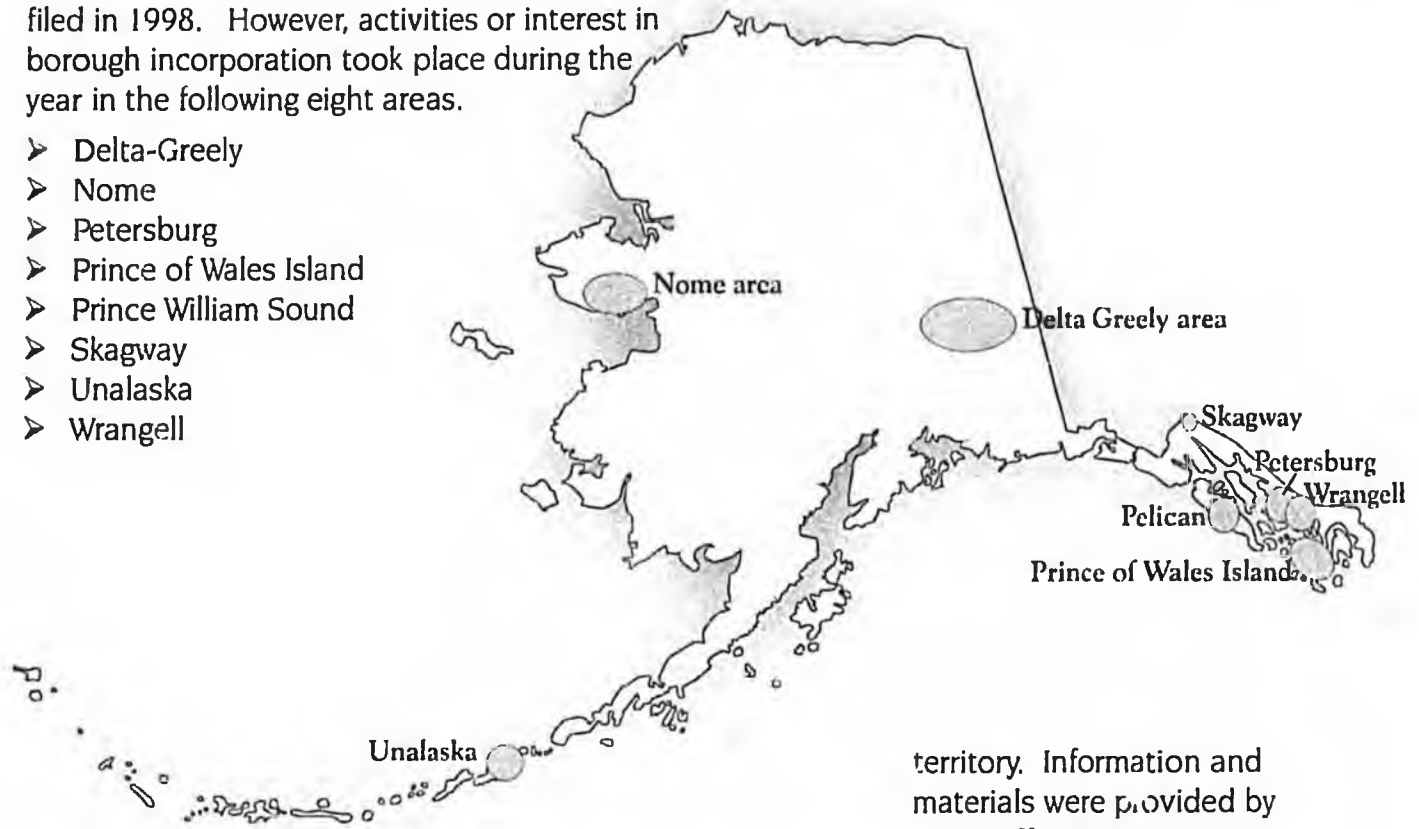
City of Wainwright

The Wainwright City Clerk requested and was provided with information relating to reclassification to first class city status and forms for petitioning for reclassification. She indicated that certain council members had the impression that first class cities were entitled to revenues unavailable to second class cities. She was advised that since Wainwright is in an organized borough, there would be no significant financial incentive for reclassification of the City to first class status.

Borough Incorporation

No borough incorporation petitions were filed in 1998. However, activities or interest in borough incorporation took place during the year in the following eight areas.

- Delta-Greely
- Nome
- Petersburg
- Prince of Wales Island
- Prince William Sound
- Skagway
- Unalaska
- Wrangell



Delta Greely

In May, LBC staff and other DCRA personnel met with officials of the City of Delta Junction, the Delta-Greely School Board, the Deltana Community Corporation, and the Delta Borough Steering Committee in Delta Junction to address issues relating to borough incorporation. Discussion centered on the advantages and disadvantages of dissolving the City of Delta Junction concurrent with borough formation. Procedures and options for such were also addressed. Other points of discussion included taxation, the prospect of annexation by the Fairbanks

North Star Borough, and the prospect of a legislative mandate for borough formation.

The "Deltana Borough Steering Committee" met again in September to discuss development of a borough incorporation petition. The Chairman of the group indicated that she hoped a petition for incorporation of a borough in the Delta-Greely region would be filed by the spring of 1999.

Nome

Local government officials in Nome have expressed renewed interest in forming a unified municipality to include Nome and limited surrounding

territory. Information and materials were provided by LBC staff concerning standards and procedures for borough formation. DCRA policy concerns that had been expressed in 1997 regarding what may be unnaturally constrained boundaries were repeated last year. The Nome City Council addressed borough formation at a meeting in April of last year. LBC staff discussed standards, procedures, and the history of borough incorporation at a public meeting with the Nome City Council, other local officials, and citizens held in Nome in July of last year.

The City of Nome has retained an attorney to develop a borough incorporation petition.



Downtown Petersburg

Petersburg

In March of last year, the Petersburg City Council held a work session regarding borough formation. During the work session, LBC staff delivered a presentation regarding the standards and procedures for borough formation and responded to questions from the City Council and residents of the greater Petersburg area. The meeting was attended by twenty-four individuals and was also broadcast over local radio.

LBC staff responded to multiple subsequent inquiries from Petersburg media concerning borough formation in the Petersburg area. In September of last year the Petersburg City Council adopted a motion to proceed with a proposal to form a borough.

Prince of Wales Island

In April, DCRA regional office staff attended a meet-

ing sponsored by the Prince of Wales Chamber of Commerce to discuss borough formation.

Prince William Sound

In December of last year, an official of the City of Cordova indicated that there is renewed interest in examining the prospects of a Prince William Sound Borough. Given preferences of officials of the City of Valdez, the preliminary boundaries being considered exclude Valdez. Tentative plans are underway to conduct a work session on borough government in Cordova in February of this year.

Skagway

The City of Skagway has reportedly retained a consultant to prepare a petition for incorporation of Skagway as an

organized borough. It is understood that the boundaries of the proposed borough would conform to the boundaries of the existing City of Skagway (which extend to the current boundaries of the Haines Borough on the west and south, and Canada on the north and east). It is anticipated that the prospective petition will include a proposal for dissolution of the City of Skagway. The prospective proposal is reportedly motivated by fears on the part of local officials that the legislature will mandate the inclusion of Skagway in the Haines Borough.

Unalaska

In July, the Unalaska City Clerk advised LBC staff that Unalaska City Council examined the feasibility of incorporating a unified municipality comprised only of Unalaska Island, which encompasses approximately 1,050 square miles. The City of Unalaska, with a population of 4,251, is the sole community on Unalaska Island.



Skagway City Hall

Interest in the matter reportedly stems from concern on the part of local officials that expansive boundaries for an organized borough in the region may ultimately be mandated by the legislature. LBC staff provided the City Clerk with information about establishing a unified municipality and advised City officials about policy issues inherent in

formation of a single-community borough encompassing a relatively limited area.

Wrangell

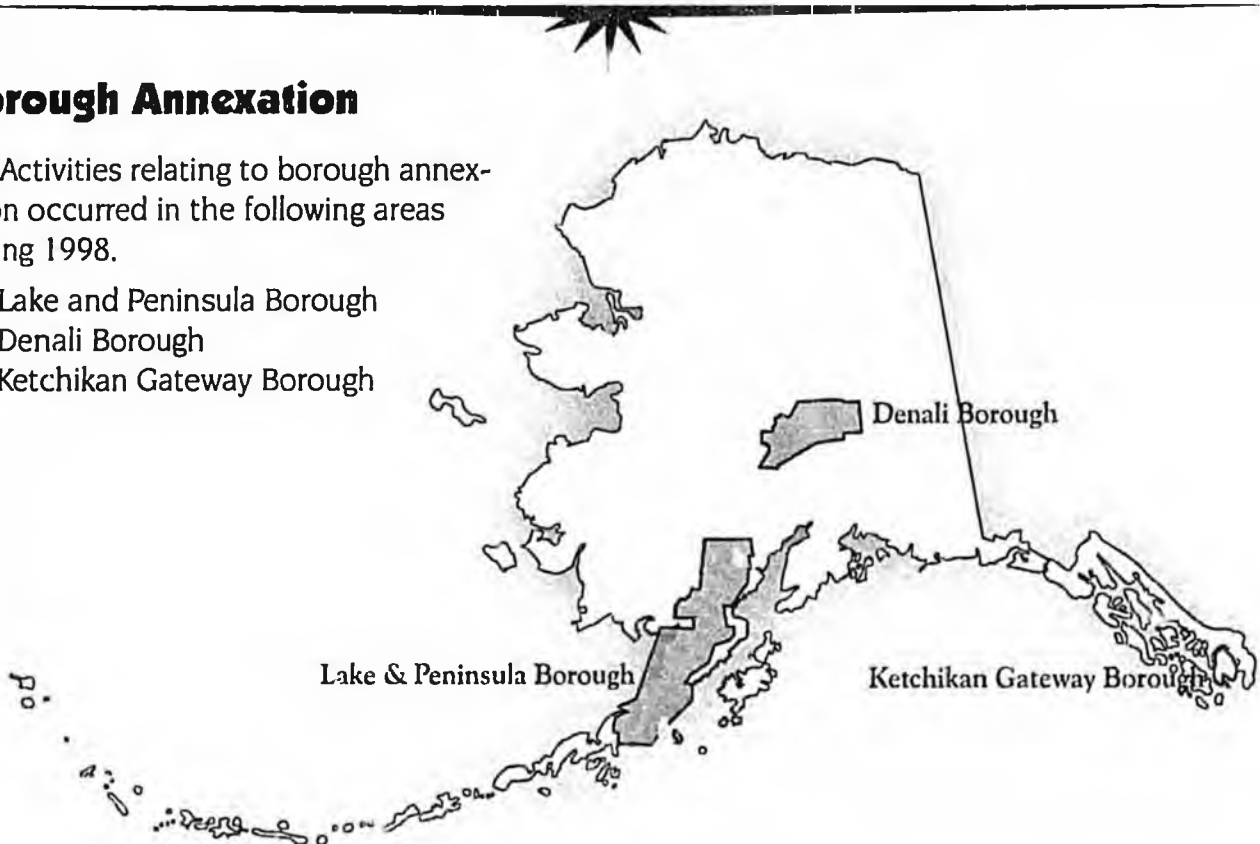
An Anchorage attorney is preparing a petition on behalf of the City of Wrangell to incorporate an organized borough encompassing the greater Wrangell area. Like the

prospective Skagway borough proposal, it is understood that the proposed borough would replace the existing city government. LBC and DCRA technical assistance has been provided to the City's contract attorney in terms of development of the petition.

Borough Annexation

Activities relating to borough annexation occurred in the following areas during 1998.

- Lake and Peninsula Borough
- Denali Borough
- Ketchikan Gateway Borough



Lake and Peninsula Borough

In June 1997, the City of Dillingham initiated a petition for annexation of the "Nushagak - Togiak region" to the Lake and Peninsula Borough. The area proposed for annexation is roughly equivalent to the Dillingham Census Area and encompasses more than 20,700 square miles.

After the petition was submitted, DCRA raised certain policy issues relating to the proposal. Among the policy issues were concerns that the proposal would expand the Lake and Peninsula Borough such that it would totally surround the tiny Bristol Bay Borough. Further, DCRA noted that the Lake and Peninsula

Borough was strongly opposed to the annexation proposal. DCRA expressed concern that the annexation proposal would generate intense conflict which would drain precious resources from the communities and local governments in the Bristol Bay region.

In November of 1997, DCRA met with the Mayor and City Manager of the City of

Dillingham concerning the petition. The two Dillingham officials expressed interest in affirming support for the proposal among residents in the Nushagak-Togiak region before proceeding further with the petition. In February of last year, DCRA met with the entire Dillingham City Council concerning the annexation proposal and other issues. At that time, interest was expressed by some Dillingham City Council members in reconsidering the annexation proposal.

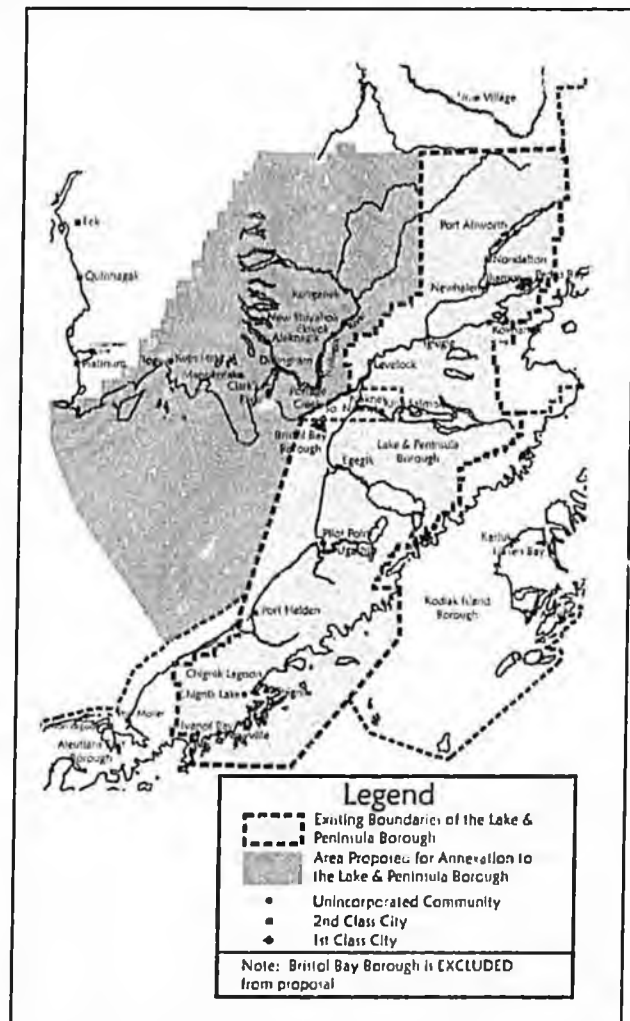
DCRA recently wrote to officials of the City of Dillingham asking that the petition be withdrawn by March 1, 1999 if the City no longer wishes to pursue the annexation proposal.

Denali Borough

On January 20 of last year, staff received the Denali Borough's request for reconsideration of the Commission's decision to reject the petition by the Denali Borough for annexation of 992.5 square miles. The Local Boundary Commission met on January 29, 1998, to consider the reconsideration request. The LBC heard comments from residents, Denali Borough officials, and officials of the Matanuska-Susitna Borough. The Commission voted 3-2 to deny the reconsideration request.

Ketchikan Gateway Borough

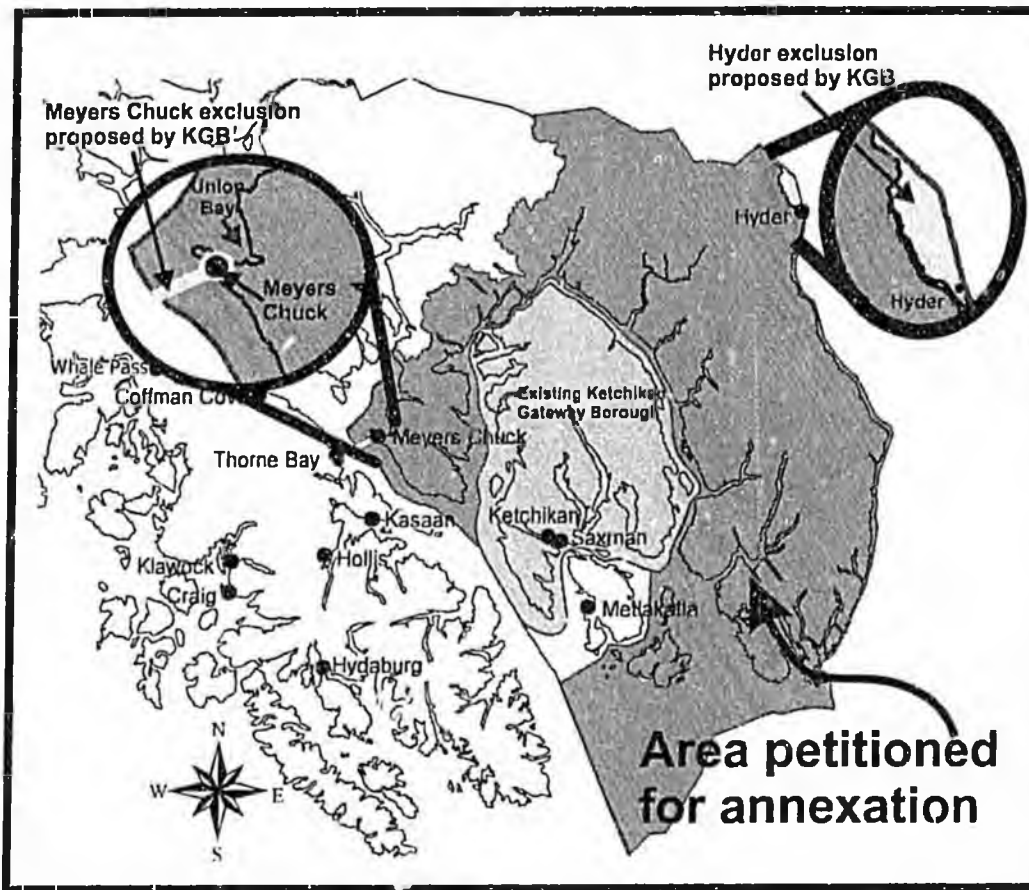
On February 28, 1998, the Ketchikan Gateway Borough (KGB) petitioned to annex approximately 5,524 square miles. The Borough's proposed new boundaries generally



Area proposed for annexation to the Lake & Peninsula Borough

conform to its "model boundaries" defined by the Local Boundary Commission in 1991.⁶ However, the boundaries proposed by the Borough excluded an estimated 17.9 square miles in and around Hyder and approximately 3.5 square miles in and around Meyers Chuck, whereas the model boundaries included those two unincorporated settlements.

⁶ The proposed post-annexation boundaries of the KGB would encompass 99.7% of the territory within its model boundaries. Model borough boundaries were defined throughout the state (with emphasis on unorganized territory) by the LBC from 1989 through 1992. In undertaking the project, the LBC recognized that the unorganized borough does not embrace an area and population with common interests to the maximum degree possible as required by Art. X, § 3 of Alaska's constitution. The effort to define model borough boundaries was undertaken in response to increasing conflicts relating to incorporation and annexation of parts of the unorganized borough. During the course of the project, the LBC held hearings in eighty-eight communities either in person or by teleconference. The model boundaries provide for nineteen prospective new boroughs and also provide for prospective annexation of territory to five existing organized boroughs, including the Ketchikan Gateway Borough. See Model Borough Boundaries, DCRA, updated 1997.



Ketchikan Gateway Borough annexation proposal

The Borough estimated that 25 individuals live in the territory proposed for annexation. DCRA estimated that the populations of the adjacent unincorporated settlements of Hyder and Meyers Chuck is 133 and 31, respectively.

In December of last year, the Commission held a public hearing in Ketchikan on the Borough's annexation petition. Although other communities throughout Southeast Alaska were invited to participate by teleconference, none did. After the hearing, during the Commission's deliberations on the petition, several Commissioners voiced concerns that the petition failed to meet certain standards for borough annexations. These concerns related to the omission of the communities of Hyder and Meyers Chuck from the territory proposed for annexation. Rather

than deny the Borough's petition outright, the Commission voted unanimously to allow the Borough ninety days to amend its petition. The deadline for receipt of an amended petition is March 12, 1999. Thereafter, the Commission will decide finally on the original or amended petition.

If the Borough amends its petition to add Hyder and Meyers Chuck to the territory proposed for annexation, the amended petition must

include a revised transition plan (19 AAC 10.900). The transition plan would address the administrative and fiscal arrangements for delivery of borough services to Hyder and Meyers Chuck.

In developing a revised transition plan, the Commission urged the Borough to consult with the residents of Hyder and Meyers Chuck. The Commission also urged the Borough to work closely with organizations and agencies such as the Hyder Community Association, the Southeast Island REAA, and the Alaska Department of Education. Further, the Commission noted that DCRA is available to assist in the development of a suitable transition plan.

Borough Detachment

Interest in borough detachment occurred with respect to the following areas during 1998.

- Northern Matanuska-Susitna Borough
- Girdwood

No petitions for detachment of territory from organized boroughs were filed during 1998. However, in January, the Commission rejected a request by the Denali Borough to reconsider the rejection of its 1997 petition for detachment of 992.5 square miles from the Matanuska-Susitna Borough.

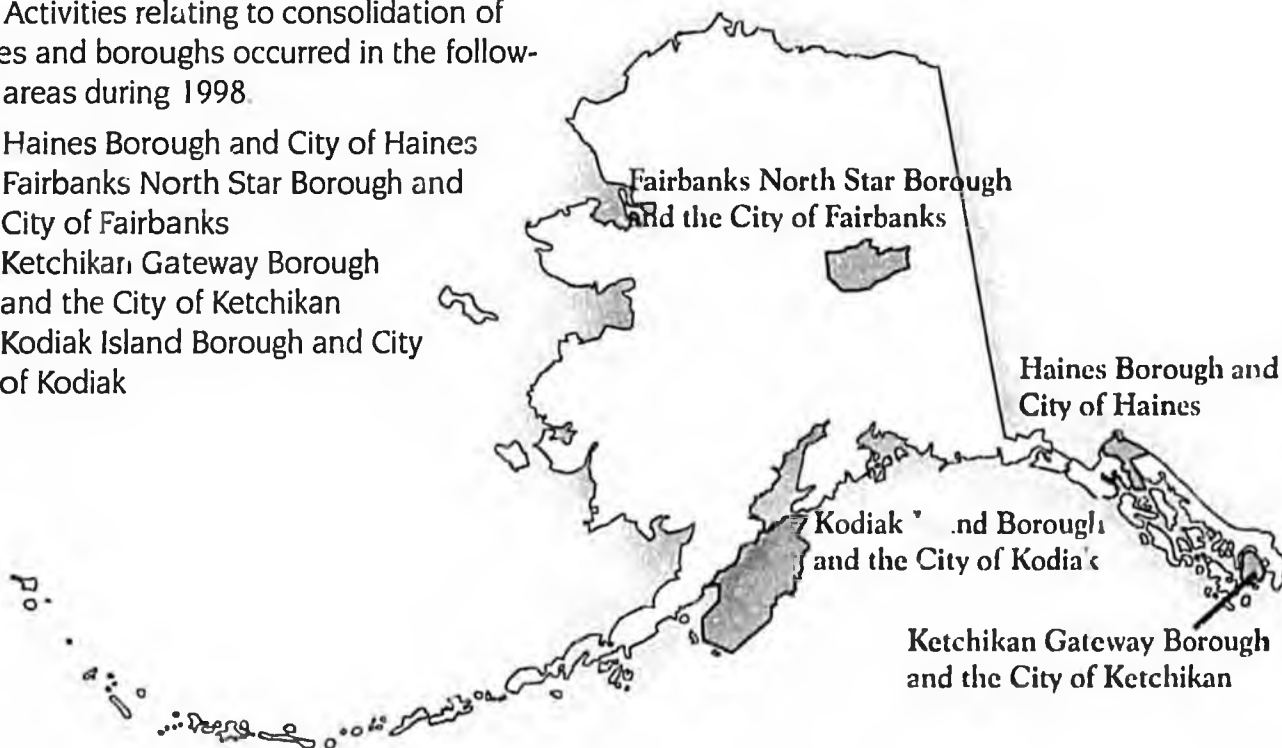
In addition, LBC staff received an inquiry concerning the prospect of the detachment of Girdwood from the Municipality of Anchorage. Information concerning standards and procedures for detachment was provided.



City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in the following areas during 1998.

- Haines Borough and City of Haines
- Fairbanks North Star Borough and City of Fairbanks
- Ketchikan Gateway Borough and the City of Ketchikan
- Kodiak Island Borough and City of Kodiak



Haines Borough and City of Haines

As noted previously, the Local Boundary Commission approved a proposal for annexation of approximately 6.5 square miles to the City of Haines in 1997. However, community leaders, including the governing bodies of both the City of Haines and the Haines Borough, asked the Commission to defer the filing of a recommendation for the annexation with the legislature to allow local residents to consider consolidation of the two local governments in Haines as an alternative. The request was supported by Haines area legislators, Senator Mackie and Representative Kookesh.

The Commission agreed to the requested deferral on January 21, 1998. The Commission stipulated that if the voters rejected consolidation, the Commission's recommendation for annexation would be filed with the legislature in 1999. The Haines Borough Assembly and the Haines Borough Citizens Against Annexation agreed not to further oppose annexation if the consolidation effort failed.

Soon after the Commission agreed to the deferral, the mayors of the City of Haines and the Haines Borough appointed a twelve-member borough commission to develop the proposed home rule charter and guide the petition effort. The borough commission and staff of the two local governments in Haines completed the consolidation

petition and home rule charter on March 31, 1998. Their efforts are worthy of recognition and commendation. Members of the group donated many hundreds of hours in an effort to bring better local government to Haines. Their outreach to the public in developing the charter and petition was exemplary. Technical advice and support were provided by the LBC's staff and other staff at the Department of Community and Regional Affairs.

The formal petition for consolidation was filed by the City of Haines and the Haines Borough on March 31. Following a lengthy opportunity for public comment and analysis, the Commission held a public hearing on the matter in Haines in August. Following the public hearing, the petition was approved.

An election on the consolidation proposal was conducted November 3, 1998. Nearly sixty-eight percent of all registered voters in Haines participated in the election. The proposition to consolidate was rejected by the voters by a margin of 545 (50.1%) to 542 (49.9%).

Fairbanks North Star Borough and City of Fairbanks

In April of 1998, a group of Fairbanks citizens formed a committee to explore options for streamlining local government in Fairbanks. Options considered by the committee included:

- merger of the City of Fairbanks with the Fairbanks North Star Borough (FNSB);
- consolidation of the City of Fairbanks and the FNSB;
- unification of the City of North Pole, the City of Fairbanks, and the FNSB; and
- dissolution of the City of Fairbanks.

In April, LBC staff met with the group to explore the options. At the meeting, the group concluded that consolidation represented the most attractive option because it would allow integration of the City of Fairbanks government into the FNSB government in what they perceived to be the "least disruptive fashion."

LBC staff subsequently provided petition forms, sample materials, and other information concerning consolidation to the group. During the course of drafting the petition, LBC staff reviewed and provided comments on multiple drafts of the petition. Further, LBC staff worked to ensure that vitally interested parties such as the Fairbanks North Star Borough had adequate opportunity to review and comment on the draft petition.

Consolidation proponents began circulating the petition to secure voters' signatures in November of last year. The petitioners' representative has indicated that he anticipates that the petition will be filed with the Local Boundary Commission early in 1999.

Ketchikan Gateway Borough and City of Ketchikan


The City of Ketchikan continued to refine its prospective petition to consolidate the home rule City of Ketchikan with the second class Ketchikan Gateway Borough. The prospective petition proposes to create a home rule borough from the two consolidated governments. No petition has yet been filed by the City of Ketchikan.

Kodiak Island Borough and City of Kodiak

In December of last year, a citizen of the Kodiak Island Borough expressed interest in developing a formal petition for consolidation of the City of Kodiak and the Kodiak Island Borough. DCRA staff provided the individual with information and materials concerning consolidation of city and borough governments.

**Litigation Involving the Local Boundary Commission**

During 1998, there were no new or existing court challenges concerning actions taken by the Local Boundary Commission.



Chapter 3

Recommended Boundary Change



Recommendation Number One of the Local Boundary Commission to the First Session of the Twenty-First Alaska Legislature

A Recommendation for Annexation of Approximately 6.5 Square Miles to the City of Haines

Section I - Introduction

As allowed by 19 AAC 10.420, the City of Haines on March 12, 1997, petitioned the Local Boundary Commission to annex 6.5 square miles within the Haines Borough. The territory proposed for annexation consists of two areas: one encompasses 2.7 square miles adjoining the western boundary of the City. The second area contains 3.8 square miles located immediately south of the City. The City's jurisdiction presently covers 14.4 square miles. According to the Department of Community and Regional Affairs (DCRA), the City of Haines had a population of 1,400 at the time the petition was filed. DCRA estimated that the two areas proposed for annexation were inhabited by 278 people at the time of the petition.

Section II — Proceedings

Upon a staff determination that the form and content of the City's annexation petition were sufficient, notice of its filing was published and posted in accordance with 19 AAC

10.450. Notice was also mailed to fifty-four individuals and organizations. Under Commission regulations, responsive briefs were filed by the Haines Borough and by a group of local residents known as the Haines Borough Citizens Against Annexation (HBCAA). Preliminary and final staff reports, responsive briefs and other timely written comments were made a part of the record. As required by law, notice of the Commission's November 15, 1997 hearing was published in several newspapers and posted throughout the Haines community. Notice of the hearing was also mailed to ninety-five individuals and organizations, including local media. No objections to notice or the date and place of the Commission's hearing were raised to staff or to the Commission in this proceeding.

After an inspection of the Haines area by air and automobile, the Commission convened the hearing in Haines as scheduled on November 15, 1997. Approximately seventy-five individuals attended the hearing. At the hearing, the Commission received both sworn and unsworn testimony from the City of

Haines, the Haines Borough, HBCAA, and approximately twenty-six individuals. The hearing lasted approximately four and one-half hours. Following the hearing, the Commission deliberated for approximately two hours before approving the petition by a vote of four to one. Commissioners Waring, Cannington, Tesche, and Walters voted to approve the petition. Commissioner Wasserman cast a dissenting vote. The Commission issued a 21-page decisional statement in the matter on November 26, 1997.

On December 15, 1997, a two-page request for reconsideration was submitted by HBCAA. The Commission met by teleconference on December 18, 1997 to address the request for reconsideration. Four members of the Commission participated. Commissioners Waring, Wasserman, and Walters voted to deny the request for reconsideration (Commissioner Cannington was disconnected from the teleconference due to technical difficulties on the part of the telephone utility).

The City of Haines, the Haines Borough, and HBCAA subsequently asked the Commission to defer the filing of its recommendation for annexation with the Second Session of the Twentieth State Legislature.⁷ The deferral was endorsed by Senator Jerry Mackie and Representative Albert Kookesh in a joint letter dated January 20, 1998.⁸ The deferral was

sought to provide the three parties and local citizens a reasonable opportunity to consolidate the first class City of Haines with the third class Haines Borough. Consolidation would have dissolved the two existing Haines municipal governments and created a single consolidated borough.⁹

The Commission found the prospect of consolidation of the City of Haines and the Haines Borough to be attractive from the standpoint of political and social policy. Article VII, §1 of Alaska's constitution calls for the minimization of the number of local government units. Consolidation would reduce by half the number of municipal corporations providing local services to the citizens of the greater Haines area. Further opportunity to streamline local government in Haines exists in the context of the possible reconfiguration of the multitude of local service areas. Such reconfiguration could occur concurrent with or subsequent to consolidation.

Consolidation would also eliminate the State's only third class borough. The legislature authorized that class of borough government in 1968. However, the legislature amended the law in 1985 to prohibit the incorporation of new third class boroughs. The Haines Borough was the only third class borough to have formed during the seventeen-year period allowed for the incorporation of third class boroughs. That particular

⁷ The City of Haines was the party that filed the petition for annexation of the 6.5 square miles in question. The City of Haines' request to defer the submission of the recommendation for annexation was presented in the form of Haines Resolution No. 97/98-27, adopted January 19, 1998. The Haines Borough and the Haines Borough Citizens Against Annexation were the only parties who filed responsive briefs in opposition to the annexation proposal under 19 AAC 10.480. Their requests to defer the submission of the annexation recommendation were presented, respectively, in the form of Haines Borough Resolution # 437, adopted January 20, 1998 and the January 19 resolution of the Haines Borough Citizens Against Annexation.

⁸ Senator Mackie and Representative Kookesh are, respectively, the State Senator and State House Representative serving the area encompassing the City of Haines and the Haines Borough.

⁹ Third class boroughs may not be formed through consolidation. (AS 29.06.090)

class of borough has been widely recognized to be lacking in terms of its ability to provide essential areawide and nonareawide services and to execute duties assigned by the legislature to other classes of organized boroughs.¹⁰

Consequently, on January 21, 1998, the Commission agreed to defer its recommendation for annexation. By doing so, the Commission extended an opportunity for the local governments and citizens of Haines to focus on the issue of consolidation. If the voters approved consolidation at an election conducted pursuant to AS 29.06.140(a), the Commission's November 26, 1997 decision concerning annexation to the City of Haines would have become moot since there would no longer be a City of Haines. However, the Commission stated that if such voter approval were not obtained prior to the deadline for filing municipal boundary change recommendations with the First Session of the Twenty-First Alaska State Legislature, the public interest dictated that the annexation to the City of Haines should proceed.

A petition for consolidation of the two local governments in Haines was filed on March 31, 1998. The Commission approved the petition on August 21, 1998. A proposition to consolidate was submitted to the voters in Haines on November 3, 1998. By a margin of 545 (50.1%) to 542 (49.9%), Haines Borough voters rejected the consolidation proposal. In accordance with the decision rendered by the Commission on January 21, 1998, this recommendation for annexation of 6.5 square miles to the City of Haines is submitted to the 1999 Legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. Section III of this recommendation sets out the findings and

conclusions of the four members of the Commission that voted in favor of the petition. Section IV sets out the basis for the dissenting vote by Commissioner Wasserman.

Section III — Findings and Conclusions

The record in this proceeding includes the City of Haines' annexation petition, the responsive brief of the Haines Borough, the responsive brief of HBCAA, written comments on the petition submitted directly to DCRA by nineteen individuals, DCRA's draft report, written comments on DCRA's draft report from five individuals, DCRA's final report, records relating to a similar annexation proposal rejected by the 1984 Legislature, and testimony and comments at the Commission's November 15, 1997 hearing on this matter. Based on the evidence in that record, the Commission reached the findings and conclusions set out in this section of the decisional statement.

A. Needs of the Territory Proposed for Annexation.

An area may be annexed to a city provided, in part, that the Commission determines there is a reasonable need for city government in the area. [19 AAC 10.090(a)] Section III A 1-8 of this decisional statement examines specific governmental needs of the territory proposed for annexation.

State law requires the Local Boundary Commission to apply the specific standards for annexation to cities provided by 19 AAC 10.090 - .140. Those standards are addressed in this section.

¹⁰ All other organized boroughs are required by state statute to exercise areawide planning, platting, and land use regulations. The third class borough has no such responsibility. In fact, it expressly lacks authority to exercise such powers on an areawide basis. The third class borough is permitted to exercise only two areawide powers: education and tax assessment/collection. It is permitted to exercise only one nonareawide power: hazardous substance control. All other powers of a third class borough may be exercised only on a service area basis.

1. Regarding Police Protection.

The City's annexation petition indicates that the City of Haines police department annually responds to the approximate equivalent of one call from every seven households in the territory proposed for annexation. Some who provided unsworn public comment at the November 15 hearing contested that claim. The City's claim was supported by a sworn affidavit from the City Administrator indicating that the information in the City's petition is factual to the best of his knowledge. Additionally, strong gratitude for the City's willingness to provide extraterritorial police service was expressed in the July 15, 1997 letter from Alaska State Trooper Captain Bachman. That demonstrated that the City is indeed providing such service.

Further, based on the territory's estimated population of 278, it seems reasonable that there is a need for more comprehensive police protection than can be provided by a lone State Trooper assigned to a vast area extending far beyond the community of Haines. Regarding the need for police in relatively heavily populated areas, Captain Bachman noted in his July 15 letter that, *"As the population increases and we see more and more of the criminal justice infrastructure migrate into areas where they have not previously been, it may well fall to the local communities to provide their own police services where they haven't before."*

The record also shows that a need exists for greater police protection at the Haines airport, which is located in the western territory proposed for annexation. The owner of the Haines Airport terminal indicated that the terminal building had been broken into three times between August 1996 and July 1997. The airport contains considerable development and is reasonably expected to undergo further development. Criminal activity at the airport such as breaking and entering or vandalism threatens the health and safety of community residents and others. Such safety threats are exacerbated whenever aircraft are the target of such criminal activity.

The Commission finds from the foregoing that there is a need for comprehensive police coverage in the territory proposed for annexation and that this need exceeds the capabilities of the lone State Trooper assigned to the Haines area.

2. Regarding Planning, Platting, and Land Use Regulation.

Planning, platting, and land use regulation have been generally recognized as essential municipal services by the Alaska legislature since 1961. At that time, the legislature prescribed that each organized borough must provide those services on an areawide basis. The legislature made an exception to the requirement for areawide planning, platting, and land use regulation by organized boroughs in 1968 when it authorized the incorporation of third class boroughs. However, in 1985, the legislature repealed the law allowing the incorporation of new third class boroughs. The Haines Borough is the only third class borough to have incorporated.

In addition to requiring that most organized boroughs exercise planning, platting, and land use regulation, the legislature also mandated that home rule and first class cities in both the unorganized borough and third class boroughs provide planning, platting, and land use regulation. Today, thirty-four cities and boroughs, including the City of Haines, are required by state law to provide planning, platting, and land use regulation. Those municipalities serve more than ninety-one percent of all Alaskans.

The general need for municipal planning, platting, and land use regulation has also been recognized by other Legislative branches of state government. As the record reflects, officials of the Alaska Department of Environmental Conservation, the executive branch agency charged with protecting the health and environment of Alaskans, consider municipal platting to be an important function as well.

The need for planning, platting, and land use regulation is also reflected by the growth and development of the territory proposed for annexation. The record indicates that the area has grown very substantially since 1982. This growth is evidenced by the increase in assessed value in the area from \$6,726,150 in 1982 to \$21,348,214 in 1996. That represents an increase of more than 217% (123.8% adjusted for inflation). The record indicates further that the area proposed for annexation has been subject to significant ongoing development and that there is a reasonable likelihood of continued substantial development in the foreseeable future. The Commission had the opportunity to view recent and ongoing development during its extensive tour of the territory prior to the hearing. Existing, ongoing, and potential development is clearly an integral part of the community of Haines.

The record indicates that the territory proposed for annexation currently receives no municipal planning, platting, and land use regulation from the third class Haines Borough. The Commission noted that the effects of the lack of such services were evident with regard to the University of Alaska's just-completed Letnikof Estates subdivision, which is located a short distance from the southern territory proposed for annexation. Having toured the area, the Commission found the streets in that subdivision to be extremely narrow and the cul-de-sacs to be inadequately sized. Such circumstances make it more difficult and expensive to maintain the streets in the subdivision (e.g., road graders and snow plows will have greater difficulty passing oncoming traffic and will also have difficulty turning around in the small cul-de-sacs).

The Commission recognizes that the time to provide proper land use planning is prior to development. Now is the appropriate time to extend those services to the territory proposed for annexation.

Thus, the Commission finds that there is a clear need for planning, platting, and land use regulation in the territory proposed for annexation.

3. Regarding Road Maintenance.

Public roads in the area proposed for annexation are maintained either by the Alaska Department of Transportation and Public Facilities (DOT&PF) or by the Haines Borough. The Borough provides road maintenance on a service area basis.

The record reflects that officials of DOT&PF indicate that there is an increasingly greater need for improved maintenance of the State's category 3 roads in the area proposed for annexation. Those roads have the lowest priority for maintenance by DOT&PF. The level of maintenance, particularly snow removal, provided for those roads is often inadequate.

Category 3 roads in the area proposed for annexation include Comstock Road, Beach Road, FAA Road, Menaker Road, Piedad Road, Sawmill Road, and Small Tract Road. It is the policy of DOT&PF to only encourage local governments to assume responsibility for the maintenance of such roads.

In 1997, DOT&PF and the City of Haines engaged in negotiations for the transfer of maintenance responsibility for certain category 3 roads in the area proposed for annexation. However, those negotiations stalled because of uncertainty over the outcome of the City's annexation proposal. State and federal officials insisted on a long-term commitment for the maintenance, by the City of the roads in question. However, the City was unwilling to make that commitment without assurance that the roads and adjoining property will be included within its corporate boundaries.

Concerns were expressed at the November 15 hearing regarding the City's ability to provide adequate road maintenance within its current boundaries. However, during the Commission's extensive tour of the community, the roads maintained by the City appeared to be in good repair.

The Commission finds from the facts outlined above that there is a need for greater road maintenance in the territory proposed for annexation.

4. Regarding Water and Sewer Utilities.

The City of Haines provides water utility service to approximately 38% of the households in the territory proposed for annexation. The City also provides sewer utility service to approximately 5% of those households. Otherwise, the territory lacks public water and sewer utilities.

The Commission finds from the foregoing that there is need for the water and sewer utilities in parts of the territory proposed for annexation. The need is greatest with respect to future development. Additionally, some parts of the Piedad Road and Comstock Road areas have a history of failed septic systems due to poor drainage.¹¹

5. Regarding Access to Services of the City of Haines.

Residents of the territory proposed for annexation already have access to and benefit from a variety of local governmental services provided by the City of Haines. These include fire protection, emergency medical services, and emergency dispatch services provided by the City on a contractual basis within the adjoining Borough service areas.

Residents of the territory proposed for annexation also have access to or benefit from a number of non-site specific services and facilities provided by the City of Haines. For example, the City commits very substantial resources to promote economic development, including tourism. This creates employment and economic opportunities that are available to residents throughout the community of Haines, including the area proposed for annexation.

Additionally, certain facilities and services provided by or supported by the City of Haines are of direct or indirect benefit to the residents of the territory proposed for annexation. These include police and dispatch services, canine control, household hazardous waste disposal, grants to community organizations, the NOAA weather radio facility, emergency operations center, Senior Center, Human Resources Building (containing mental health program, Alcoholics Anonymous, preschool, and Head Start), public restrooms, and port facilities which handle all of the community's freight.

The Commission finds from the foregoing that residents of the territory proposed for annexation have access to substantial services and facilities provided by or supported by the City of Haines.

6. Regarding Existing or Reasonably Anticipated Economic Development

The Alaskan and Proud Market, one of two relatively large grocery stores in Haines, has announced plans to relocate its operations from downtown Haines to the territory proposed for annexation. Other businesses, including a licensed liquor package store, have relocated or are planning to relocate to the territory proposed for annexation.

¹¹ The Commission was aware at the time of its hearing that the Alaska Public Utilities Commission was considering competing proposals from the City of Haines and a private developer for the right to provide water and sewer utilities to a portion of the western territory proposed for annexation.

The record reflects that the owner of the Alaskan and Proud Market emphasized that his business is in need of services provided specifically by the City of Haines. These include, in particular, police protection, water utility service, and sewer utility service.

The owner of the Alaskan and Proud Market also recognized that the relocation of his business operations would have significant adverse impacts on the City of Haines' sales and property tax revenues if the property were not annexed. The business owner indicated that he wants the Alaskan and Proud Market to continue to be a "good corporate citizen" in Haines. He emphasized that being a good corporate citizen, in part, means paying a "fair share" for the services provided.

The record also shows that Haines Airport Terminal and Services plans to construct a 9,600 square foot building to expand its existing operations at the Haines airport. The planned facility would provide space for the agents of all air carriers serving Haines. In addition, a small gift shop, restaurant, lounge, and rental car service would be housed in the expanded airport terminal facility.

In addition to the prospective developments noted, Waldo Enterprises is relocating its concrete mixing plant from the City to the territory proposed for annexation.

The Commission finds from the foregoing that economic development in the territory proposed for annexation is ongoing.

7. Regarding Existing or Reasonably Anticipated Health, Safety, and General Welfare Problems

The record reflects that officials of the Alaska Department of Environmental Conservation (DEC) indicate that problems relating to failed septic systems in the Piedad Road and Comstock Road area noted in the City's annexation petition have been corrected. However, those same officials indicate that,

"The Piedad Road and Comstock Road area has a history of failed systems. . ." As such, it is anticipated that there may be additional future problems relating to failed septic systems in the area.

Although DEC has responded to problems relating to improperly operating septic systems in the territory proposed for annexation, officials of that agency indicate that, *"The State's long-term goal is to have communities take over management of wastewater and drinking water."*

Considering the foregoing, the Commission finds that the history of public health threats relating to fecal coliform contamination in the Comstock Road and Piedad Road area demonstrates a need for city government in that area. This is consistent with the State's long-term goal to promote local responsibility for such matters.

8. Regarding State Policies Relating to Local Responsibility

In Fiscal Year 1996, the State Long Range Financial Planning Commission (SLRFPC) announced that, *"The State is spending \$524 million more than it will take in during the current fiscal year. The gap will grow to \$1.3 billion per year in today's dollars by 2005 if we make no changes to the State's spending and revenues policies."* The SLRFPC recommended that state spending be cut by \$100 million over three years. One of the "key elements" of the plan prepared by the SLRFPC was to *" . . . shift revenues and responsibilities to local governments."* The Alaska legislature announced plans in 1997 to trim state spending by \$250 million over five years.

The City of Haines takes the position that continued reductions in state funding require local areas to take on a greater share of the responsibility for services such as police, road maintenance, and land use regulation. The City's views regarding state policy in this matter conform closely to the views expressed in the SLRFPC Report.

Based on the foregoing, the Commission finds that it is consistent with policies expressed by the State Long Range Financial Planning Commission for the City of Haines to assume responsibilities for maintenance of state category 3 roads and to provide planning, platting, land use regulation, police protection, and other relevant services in the territory proposed for annexation.

Based on the foregoing findings, the Commission concludes that there is a reasonable need for city government in the territory proposed for annexation and that the city annexation standard set out in 19 AAC 10.090(a) is satisfied.

B. Comparative Ability of the City of Haines and the Haines Borough to Deliver Essential Services to the Area.

An area may be annexed to a city provided, in part, that the Commission determines that the annexing city can provide essential city services as defined by 19 AAC 10.990(f) to the area more efficiently and effectively than another existing municipality [19 AAC 10.090(b)]. The determinations of the Commission on this point are summarized below.

1. Powers of the City of Haines.

A city within a borough is authorized to "exercise any power not otherwise prohibited by law." (AS 29.35.250) Additionally, as a first class city within a third class borough, the City of Haines is mandated by state law to provide planning, platting, and land use regulation throughout its jurisdiction. (id.) The Commission finds from this that the City of Haines enjoys the authority to provide any municipal service except for education, tax assessment, and tax collection, which are mandatory areawide duties of the Haines Borough.

2. Powers and duties of the Third Class Haines Borough

As a third class borough, the Haines Borough is authorized by law to provide only two services on an areawide basis -- education and taxation. (AS 29.35.160 - 29.35.170) Additionally, it is authorized by law to provide one service on a non-areawide basis (the area outside cities). The single authorized non-areawide service is the power to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance; including the ability to address oil pollution control under AS 46.04, hazardous substance releases under AS 46.08, and hazardous substance release control under AS 46.09. [AS 29.35.220(e)]

Other than the three services noted above, all services by a third class borough may be provided only on a service area basis. [AS 29.35.220(d)] A third class borough may exercise in a service area any power not otherwise prohibited by law, if the exercise of the power is approved by a majority of the voters residing within the service area. [AS 29.35.490(b)]

However, borough service areas may only be established within the provisions of Article X, § 5 of Alaska's constitution and AS 29.35.450. Those provisions stipulate that a service area may not be created if services can be provided through annexation to an existing city. The Commission finds that, in contrast to the City of Haines, the Haines Borough has significant legal constraints on its ability to provide services to the area in question (other than education, tax assessment, tax collection, and control of hazardous materials).

3. Service Area Issues

Given the limitations of the Haines Borough to provide services on a service area basis, issues concerning constitutional and statutory aspects of borough service areas are

fundamental to the question of whether needed services can be provided most efficiently and effectively by the City of Haines or the Haines Borough.

The intent of the constitutional convention delegates regarding the constitutional provisions relating to service areas is addressed in *Borough Government in Alaska* (at 42), a leading treatise on Alaska's unique form of regional government:¹²

The stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for the constitutional provision that "A new service area shall not be established if...the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city."¹³ The committee's objective was to avoid having "a lot of separate little districts set up...handling only one problem..."; instead, services were to be provided wherever possible by other jurisdictions capable of doing so.¹⁴ Moreover, an amendment to eliminate the preference given to city incorporation or annexation over establishment of new service areas was defeated by the convention. (Emphasis added)

In 1983, the Commission determined that the City of Haines was capable of serving nearly the same territory presently proposed for annexation. Notwithstanding, the Haines Borough continued to operate a fire service area immediately adjoining the City of Haines

that had been established in 1977. Further, the Haines Borough has since added *seven new service areas* in the territory proposed for annexation. Four of the seven new service areas are located wholly within the territory proposed for annexation. The other three new service areas encompass all of the territory proposed for annexation and more.

The Haines Borough indicates that it is prepared to create still more service areas to provide needed services in the territory proposed for annexation. For example, the Borough states in its responsive brief that, "If the residents of the area to be annexed come to the decision that they need to exercise planning, platting, and zoning powers, they are already able to do so through the current service area system used by the Borough of Haines."

Victor Fischer, preeminent expert on borough government and related constitutional principles, commented on the current annexation proposal of the City of Haines. In the context of the issue of service areas, Mr. Fischer indicated that,

In the Haines case, I would go further than the City's argument that creation of service areas is "inconsistent" with Section 5 of the constitution - I believe it violates both the intent and specific language of this section. (emphasis original)

The position that establishment of new service areas is the constitutionally preferred alternative to city annexation or on par with cities

¹² *Borough Government in Alaska*, University of Alaska, March 1971, was written by Thomas Morehouse and Victor Fischer. Mr. Morehouse and Mr. Fischer are regarded as experts relating to borough government in Alaska. Both individuals have published a number of works dealing with the topic. Further, Victor Fischer was not only a delegate to the Alaska Constitutional Convention, but was secretary to the Convention's Committee on Local Government. Additionally, the Alaska Supreme Court relied on *Borough Government in Alaska* in *Mobil Oil Corporation v. Local Boundary Commission*, 518 P2d 92 (Alaska 1974) and *Keane v. Local Boundary Commission*, 893 P2d 1239 (Alaska 1995).

¹³ Constitution of the State of Alaska, Article X, Section 5.

¹⁴ *Alaska Constitutional Convention Proceedings*, November 1955 to February 1956, Alaska Legislative Council at 2715.

is completely wrong, it's nonsense. There is no basis whatsoever to support that view. All provisions of Article X make it totally obvious that there are two preferred types of local government units under Alaska's constitution: cities and boroughs. Service areas are subsidiary units of boroughs. Section 5 unequivocally establishes that annexation is a preferred alternative to creation of a new service area.

The Commission finds that the area proposed for annexation has developed as the antithesis of the model envisioned by Alaska's constitutional convention delegates more than forty years ago. What the delegates wanted to avoid is precisely what now exists outside the corporate boundaries of the City of Haines — "a lot of separate little districts set up . . . handling only one problem . . ." Given the Borough's assurance that it is prepared to create yet more service areas in the territory proposed for annexation, the problem is only likely to worsen without annexation.

Based on the above findings, the Commission concludes that the City of Haines' capability to provide essential services to the area (exclusive of education, taxation, and control of hazardous materials) is superior to that of the Haines Borough.

C. Compatibility of the Territory Proposed for Annexation and the Area Within the City of Haines.

Under 19 AAC 10.100, an area may be annexed to a city if the Commission determines the area to be compatible in character with the annexing city.

The Commission recognized that there are differences with respect to land use in parts of the territory proposed for annexation and the area within the City of Haines. However, there are also differences regarding land use *within* the territory proposed for annexation itself. For example, there are 141 homes in the territory proposed for annexation. There are also thirty-four businesses in the territory.

Some of the businesses are home-based, while others are located in separate commercial or industrial facilities. These differences do not mean that the areas in question are incompatible.

The Commission notes that the City of Haines' Code accommodates differences in land use. Specifically, Section 18.70.100 of the City's Code makes the following accommodations for newly annexed territory:

[A] Multiple Use district will be established in . . . areas upon the effective date of their annexation. Recognizing the previous lack of land use planning in areas outside the City and the need to provide a reasonable transition toward land use regulation, the Multiple Use district is intended to allow as broad a range of land uses as possible. The Multiple Use district is intended to be temporary, however, in order to allow present land use patterns to continue until more specific land use regulations are adopted. The City shall conduct public hearings following the annexation, and within two years of the effective date of the annexation, the City may rezone this district according to the results of the public hearing process. The process may result in a rezoning of Multiple Use district areas to more restrictive land use classifications.

The Commission recognizes that the population density of the territory proposed for annexation is less than that within the existing boundaries of the City of Haines. However, it is also greater than the average of all 145 cities in Alaska. The patterns of housing development in the area proposed for annexation are compatible with those in adjacent areas inside the corporate boundaries of the City of Haines. If the annexation occurs, the population density of the expanded City of Haines will be at least twice the average of all 145 cities in Alaska.

The area within the City and the territory proposed for annexation are a mixture of relatively small lots, larger lots, and large undivided parcels. The record indicates that

there is a strong market for property in the area proposed for annexation and within the City of Haines. The Commission finds that the subdivision characteristics and characteristics relating to the salability of property in the territory proposed for annexation are compatible in character with the territory inside the current boundaries of the City of Haines.

The territory proposed for annexation and the area within the current boundaries of the City of Haines are one in the same community. The two areas are closely interconnected and interdependent. Thus, the Commission finds that land use within the territory proposed for annexation and the suitability of the territory for reasonably anticipated community purposes are compatible with such characteristics of the area within the boundaries of the City of Haines.

Considering the above findings, the Commission concludes that the territory proposed for annexation is compatible in character with the territory inside the current boundaries of the City of Haines. Thus, the standard set out in 19 AAC 10.100 is fully satisfied.

D. Adequacy of the Human and Financial Resources.

State law allows an area to be annexed to a city provided, in part, that the Commission determines the area within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. (19 AAC 10.110)

The Commission found that all of the functions of the City of Haines, with the exception of its water and sewer utilities, were reasonably anticipated to be extended to the area proposed for annexation by the beginning of the next fiscal year following annexation.

The Commission also finds that the City of Haines is projected to realize an increase in revenue as a result of annexation equal to

approximately \$113,500 annually (based on current property values, projected taxable sales, and a projected City property tax rate that is 80% of the current level). The City of Haines has projected that its operating expenditures will increase by \$79,300 annually as a result of annexation.

The Commission inquired whether the City's projected expenditures were unrealistically low. In that regard, it was noted that the City could increase its level of expenditures in the area proposed for annexation from \$79,300 to \$113,500 annually without incurring any adverse fiscal impact as a result of annexation. Still, that would represent an increase of only 3.7% in the level of funding appropriated by the City Council in the prior fiscal year (\$3,099,297) compared to a population increase of 20% as a result of annexation.

In its examination of the issue, DCRA characterized approximately two-thirds of the City's expenditures (\$2,081,271) as "fixed costs" in the context of annexation. Based on that characterization, the \$113,500 increase in spending would represent an 11% increase in funding for variable costs of the City (\$1,018,026). Still, that figure is little more than half of the relative increase in population that the City will experience.

However, DCRA also noted that certain efficiencies could be reasonably expected due to increased economies of scale. For example, it was noted that the City of Haines spent \$305 per resident to provide police services in 1995. That figure was 42% higher than the average of all municipalities in Alaska that spent at least \$50,000 annually on police and police dispatch services. By expanding the population served by the City without increasing the number of police officers, the per capita cost of providing that service would decline.

The Commission recognized that any remaining concerns over the City's projected expenditures for the territory proposed for

annexation did not detract from the ability of the area in question to satisfy the annexation standard at hand. In other words, either through the expenditure of more funds than originally projected by the City or by achieving greater efficiencies such as those anticipated with respect to the extension of police services, the Commission finds that city services can be efficiently and effectively delivered to the territory.

Property values in the territory proposed for annexation will enhance the ability of the City of Haines to provide essential city services. The per capita taxable value of property in the area proposed for annexation is fifty-one percent higher than it is within the current boundaries of the City. If annexation occurs, the per capita assessed value of the City of Haines would be greater than twenty-three of the thirty-eight municipalities in Alaska that levy property taxes.

The Commission notes that the area within the proposed post-annexation boundaries of the City of Haines enjoys a vibrant economy: On a per capita basis, taxable sales in the proposed new boundaries of the City of Haines are greater than they are in the City and Borough of Juneau. Per capita values of taxable property are 21% higher in the proposed post-annexation boundaries of the City compared to the average of the thirty-eight municipalities in Alaska that levy property taxes.

The 1990 personal income of residents of the territory proposed for annexation and the City of Haines was more than 9% above the average of all 145 cities in Alaska.

The record reflects that the City of Haines had substantial fund balances on June 30, 1996, the most recent date for which audited figures are available. In aggregate, the City's fiscal year end balance was equivalent to 76.1% of expenditures for the year. That figure is 4.7 times greater than the national average.

The City's general obligation debt totaled \$1,911,200 as of June 30, 1996. However, the City of Haines has substantial assets as well. On June 30, 1996, the City's *net* equity and other credits amounted to \$28,275,313, or \$20,197 per resident.

Considering the preceding findings, the Commission concludes that the economy within the proposed new boundaries of the City of Haines includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

Thus, the standard set out in 19 AAC 10.110 is fully satisfied.

E. Size and Stability of the Population of the Proposed Expanded City.

State law allows an area to be annexed to a city provided, in part, that the Commission determines the population within the proposed post-annexation boundaries of the city is large and stable enough to support the extension of city government. (19 AAC 10.120)

The Commission finds that the 1,678 residents within the proposed new City boundaries represent a population numerous enough to support the extension of city government. Annexation would increase the City's population by 20%. The expanded City of Haines would rank 21st in terms of population among Alaska's 145 city governments.

The Commission finds that the duration of residency, historical population patterns, and seasonal population changes in the City of Haines and the area proposed for annexation reflect a stable population.

Annexation is projected to increase the number of citizens in the age group most likely to be involved in operating and governing the City of Haines by 194 (20%).

Considering the above findings, the Commission concludes that the area within the proposed *post-annexation* boundaries of the City of Haines is sufficiently large and stable to support the extension of city government. Thus, the standard set out in 19 AAC 10.120 is fully satisfied.

F. Inclusion of all Land and Water Necessary to Provide the Full Development of Essential City Services on an Efficient, Cost-Effective Level.

State law specifies that an area may be annexed to a city provided, in part, that the Commission determines that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. (19 AAC 10.130(a))

The Commission views this particular standard as a threshold criterion. In other words, the Commission does not consider the standard to require a determination that the proposed new boundaries are ideal. Instead, the standard is satisfied if the proposed new boundaries of a city include territory needed to provide the full development of essential city services efficiently and effectively.

In that context, the Commission recognizes that there *may* be additional territory outside the proposed new boundaries of the City of Haines that need essential city services. Such *may* include the area extending to Letnikof Cove adjoining the southern area proposed for annexation, as well as the property of Southeast Road Builders, Incorporated, adjoining the western territory proposed for annexation. However, the Commission makes no judgment concerning the merits of expanding the boundaries beyond the City's proposal since there has been no opportunity for the Commission to formally consider that matter.

The Commission finds that the territory proposed for annexation includes a number of facilities owned or operated by the City of

Haines on an extraterritorial basis. These consist of water utility service to fifty-three of the estimated 141 homes in the territory, sewer utility service to seven of the estimated 141 homes, Lily Lake, the City's water treatment facility, and the City's cemetery. Additionally, the City provides emergency police protection to the territory on an extraterritorial basis.

Further, the City proposed in July of 1997 to assume responsibility for maintenance of FAA Road from the Alaska Department of Transportation and Public Facilities. That road extends 1,800 feet beyond the current boundaries of the City of Haines. An agreement to transfer maintenance of the road stalled because state and federal officials stipulated that the City must commit to maintain the road on a long-term basis. The City was unwilling to do so given the uncertainty of the outcome of its annexation proposal.

Further, the City provides fire protection services and ambulance services, including dispatch for both, outside its corporate boundaries. Those functions are performed as a contractor to the Haines Borough under the Borough's jurisdictional authority.

Annexation would eliminate the extraterritorial nature of all of the services and facilities noted above. The Commission concludes that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. Thus, the standard set out in 19 AAC 10.130(a) is satisfied.

G. Contiguous Nature of the Territory Proposed for Annexation.

State law specifies that an area may be annexed to a city provided, in part, that it is contiguous to the annexing city (unless a compelling reason exists for annexation of non-contiguous territory). (19 AAC 10.130(b))

The Commission finds that the western and southern areas proposed for annexation adjoin the current boundaries of the City of Haines. Thus, the Commission concludes that the standard set out in 19 AAC 10.130(b) is fully satisfied.

H. Inclusion of the Community, Plus Areas Reasonably Predicted to Grow Over the Next Ten Years.

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following the effective date of annexation of that city. [19 AAC 10.130(c)]

The Commission finds that the territory proposed for annexation and the area within the current boundaries of the City of Haines are the same community. This is readily apparent when Haines is viewed from the air, as the Commission did prior to the November 15 hearing. It is equally apparent as one traverses the community from the ground, as the Commission also did extensively prior to the hearing. The area proposed for annexation is clearly an interdependent part of the community of Haines.

The Commission also finds that the territory proposed for annexation is contiguous to the City of Haines and is relatively compact. The estimated 278 residents of the territory reasonably appear to make extensive use of the area within the corporate boundaries of the City for their social, economic, educational, medical, governmental, and other service needs. Similarly, the 1,400 residents of the City seem to rely on public and private facilities in the area proposed for annexation to meet certain of their needs (e.g., water supply, landfill, airport, commercial facilities, and industrial facilities).

The Commission notes that it is difficult to accurately predict what growth will occur over the next ten years. However, the area proposed for annexation has undergone very significant growth over the past fourteen years. Evidence of ongoing growth and development is also present. Further, as noted previously, plans have also been announced for the construction of a new shopping center west of the current boundaries of the City. A proposal to construct a much larger terminal at the Haines Airport is also under consideration. Testimony was also provided to the Alaska Public Utilities Commission by a private developer with substantial holdings in the territory proposed for annexation that the area in question is expected to undergo significant development. Therefore, the Commission finds that it is reasonable to assume that the area proposed for annexation will continue to grow over the next ten years.

Considering the above findings, the Commission concludes that the proposed boundaries of the City of Haines include only that area comprising the community of Haines, plus reasonably predictable growth, development, and public safety needs during the next ten years. Thus, the standard set out in 19 AAC 10.130(c) is fully satisfied.

I. Exclusion of Geographical Regions and Large Unpopulated Areas.

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. [19 AAC 10.130(d)]

The terms "entire geographical regions" and "large unpopulated areas" are broad and should be considered in the context of other cities in Alaska. While the Commission recognizes that the jurisdictional needs of each city are unique, a general comparison to other

cities in Alaska is useful. In that regard, it is noted that although the City of Haines is presently the 22nd most populous city among the 145 cities in Alaska, it ranks 60th in terms of the size of territory within its corporate boundaries. In other words, the City of Haines' ranking in terms of its jurisdictional boundaries is not commensurate with its ranking in terms of population. Even if annexation occurs, the City would rank 21st in population and only 47th in terms of the size of its jurisdictional area among the 145 cities in Alaska.

The average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. The average size of the jurisdictional area of the twenty-two cities in Alaska with a population of 1,400 or more is 44.7 square miles. If the annexation occurs, the new boundaries of the City of Haines would encompass 20.9 square miles, 22.8% less than the average of all cities and 53.2% less than the average of cities with a population of 1,400 or more.

As noted previously, there are an estimated 278 individuals living in 141 homes in the area proposed for annexation. Most of the residents live along Beach Road, Mud Bay Road, Small Tract Road, FAA Road, Comstock Road, Piedad Road, and that portion of the Haines Highway immediately outside the current western boundary of the City of Haines.

Although parts of the territory are uninhabited and undeveloped, residential and commercial growth in the areas proposed for annexation appear to be reasonably likely. John Floreske, Jr., (developer of the Meadowland Subdivision in the area proposed for annexation and owner of the Chrystal Cathedral Water and Sewer System, Inc., which, at the time of the Commission's hearing, was seeking APUC authority to provide utility service to a portion of the area) testified before the APUC on June 12, 1997, that he envisions nearly eighty homes and "several

commercial customers" in the area proposed for annexation, *in addition* to those presently served by the City's Piedad utility system.

The Haines airport, located in the westernmost portion of the territory proposed for annexation, is the fifth busiest airport in Southeast Alaska in terms of numbers of commercial passengers who boarded flights at those airports in 1995 (the most recent year for which data are available). The five commercial air carriers that used the Haines airport on a regular basis in 1995 reported to FAA that 29,812 commercial passengers boarded at the Haines airport that year. That is the equivalent of more than 12.5 boardings for each resident of the Haines Borough.

The Haines airport is undergoing growth and development. The number of passenger boardings at the Haines airport in 1995 represented an increase of 7,710 (34.8%) over the prior year. Additionally, as noted previously, Haines Airport Terminal and Services has announced plans to build a 9,600 square foot facility at the airport.

The airport is used extensively to support commercial tourism in the Haines area. The petition indicates that, "*Most of the [estimated \$1,007,125] in taxable sales volume [in the territory proposed for annexation] results from summer tour excursion services using the Haines Airport.*" Given the level of development and activity at the airport, coupled with the fact that the City of Haines spends considerable resources to promote tourism (\$289,871 had been appropriated for that purpose in the fiscal year current at the time of the Commission's hearing), it seems particularly fitting that the airport should be included in the boundaries of the City of Haines.

Lily Lake serves as the principal source of water for the City of Haines water utility. The Lake is within a portion of the Chilkat State Park in the southern area proposed for annexation. The legislature has formally preserved the rights of the City of Haines to regulate

water use and City facilities within the Chilkat State Park under AS 41.21.112. However, as long as Lily Lake remains outside the City limits, the City of Haines may exercise the specific rights preserved for it under AS 41.21.112 only on an extraterritorial basis. Unlike other extraterritorial powers (e.g., water utility, sewer utility, road maintenance, and cemetery), AS 29.35.020(b) authorizes the exercise of extraterritorial powers needed to protect water supplies and watersheds only on the condition that the municipality in which the water supply and watershed is located grants its approval. In other words, the City of Haines cannot exercise extraterritorial powers to protect the Lily Lake water supply and watershed unless the Haines Borough grants its approval by ordinance.

In response to a question from the Commission, the Mayor of the Haines Borough expressed the belief that the Borough Assembly would be willing to adopt an ordinance authorizing the City of Haines to exercise extraterritorial land use regulation over its watershed and water supply at Lily Lake. The Borough Mayor expressed that belief despite the contrary position taken in the Borough's responsive brief submitted to the Commission. The Borough's brief stated that there is "absolutely no need for city government" in the area, *particularly* with respect to City regulation of the watershed and water supply. However, even if the Borough authorized the City to exercise the extraterritorial powers in question, there is still sufficient need to exercise general land use planning power in that area to determine that the standard has been met.

In consideration of the foregoing, the Commission finds that the inclusion of the large uninhabited portions of the territory proposed for annexation, such as the Lily Lake area, Haines airport, and developable privately owned lands is justified through satisfaction of other annexation standards.

Considering the preceding findings, the Commission concludes that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. Thus, the standard set out in 19 AAC 10.130(d) is fully satisfied.

J. Overlapping Boundaries.

State law specifies that if a city annexation proposal overlaps the boundaries of a borough, unified municipality, or another city, the city annexation proposal must also address standards for detachment from the borough, unified municipality, or other city; or annexation of the city to the borough or unified municipality. [19 AAC 10.130(e)]

The City of Haines and the territory proposed for annexation are both within the Haines Borough. The City's annexation proposal does not overlap the boundaries of another existing municipality. Therefore, the Commission concludes that the standard set out in 19 AAC 10.130(e) is fully satisfied.

K. Balanced Best Interests of the State, the Territory Proposed for Annexation, and Affected Political Subdivisions.

State law provides that the Commission may recommend a municipal boundary change to the state legislature pursuant to Article X, § 12 of Alaska's Constitution as long as the proposal satisfies the annexation standards set out in 19 AAC 10.090 - 19 AAC 10.130. Additionally, the Commission must determine that annexation will serve the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions. "Balanced best interests" means that when the interests of all are considered, the proposal must serve the best interests of the whole. Because the proposal may not serve the particular interests of some does not preclude a finding that the standard is satisfied. (19 AAC 10.140)

19 AAC 10.140 lists six factors which the Commission may consider in judging the balanced best interests of those affected by annexation. The first factor is whether the territory is an enclave surrounded by an annexing city. This factor is not specifically relevant to this petition. Nevertheless, although the territory proposed for annexation is not surrounded by the annexing city, it is adjacent to and is integrally tied to the City of Haines. There is too much interplay between the two areas to conclude otherwise. The area proposed for annexation contains key facilities for the community of Haines including the airport, the source of water supply, the landfill, a substantial part of the community's growing residential subdivisions, and a growing number of commercial facilities.

The second factor relates to whether the health, safety, and general welfare of City residents will be or is endangered by conditions as they currently exist. Unregulated land use activities taking place in the area sought for annexation demonstrate that this factor applies in this case. The second factor also supports a finding that annexation serves the balanced best interests of the whole.

The third factor concerns whether the extension of city services or facilities to the territory is necessary to enable the city to provide adequate services to city residents. The record shows that there may be a flight of businesses from the area within the current boundaries of the City of Haines to the area proposed for annexation. This will endanger the tax base of the City. The Commission must consider the economic viability of the existing municipality when it makes an annexation decision. Thus, the third factor supports a determination that annexation is in the balanced interests of all.

The fourth consideration is whether residents or property owners within the territory proposed for annexation receive direct or indirect benefits of city government without

commensurate tax contributions. Given the proximity of the territory proposed for annexation to the City of Haines, the availability of public services to residents and non-residents alike within the City, the lack of other nearby urban centers, and the benefits provided to non-residents on an extraterritorial basis, the Commission finds that residents within the territory proposed for annexation derive substantial direct and indirect benefits from the city government. Although residents of the territory proposed for annexation contribute to the cost of city services through payment of sales taxes and through service with the volunteer fire department, those contributions are not commensurate with the direct and indirect benefits of city government they receive.

In this case, the record indicates that this factor supports annexation since the status quo enables residents of the area proposed for annexation to receive an increasing level of the benefits from the City of Haines without paying a commensurate share. And at the same time businesses have incentives to leave the area within the unnaturally constrained existing corporate boundaries of the City of Haines, making matters worse. Thus, the fourth factor supports a finding by the Commission that annexation is in the balanced best interests of all.

The fifth factor is whether the annexation of the territory will enable the city to plan and control reasonably anticipated growth or development. Previous findings and conclusions of the Commission regarding the current annexation proposal have indicated this to be the case.

The sixth and last factor specifically listed in 19 AAC 10.140 is whether the territory is so sparsely inhabited or so extensively uninhabited by persons who are not landowners that a local election would not adequately represent the interest of the majority of the landowners. Although there is a history of the community

not being able to address issues through unification, the area is not uninhabited or sparsely inhabited. The area's inability to resolve its governance dilemmas does not appear to be related to the sixth factor.

The Commission is not limited to considering just the six factors listed in 19 AAC 10.140, but may consider any other relevant factor as well. In that regard, the Commission notes that the effect of the proposed annexation would be to localize the cost and administrative responsibility for providing some services now funded and provided by state government. The State Long Range Fiscal Planning Commission's goal of closing the state fiscal gap, in part, by promoting greater local responsibility for local services would be supported by annexation. Annexation would facilitate the transfer of maintenance responsibility for so-called category 3 roads from DOT&PF to the City of Haines. Annexation will extend city police services to an area in need of such services thereby relieving the State Trooper assigned to the Haines area of some demands. Annexation will also extend platting authority into the territory, thereby avoiding the assumption of platting responsibilities in the area by the Alaska Department of Natural Resources under the provisions of CSHB 17(RES). Similarly, extension of municipal planning, land use regulation, and platting authority to the area proposed for annexation would enable the City of Haines to assume greater responsibility for proper wastewater disposal, a long-term goal expressed by the Alaska Department of Environmental Conservation. Moreover, several state agencies positively supported the proposed annexation; none opposed annexation. In light of the state's ongoing fiscal condition and policies, the proposed annexation would be advantageous to the state. Lastly, Article X, §§ 1 and 5 of Alaska's constitution encourage annexation in that it would reduce the number of service areas adjacent to the City of Haines.

For the City itself, it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation also has some advantages for the area proposed to be annexed. It would extend the right to participate in the political process of the City. Annexation would also bring improved police service, better road maintenance, and other services of the City of Haines such as planning, platting, and land use regulation. There is some evidence in the record that there are inequities in that many services of the City of Haines are available to residents of the area proposed for annexation, but those residents do not pay a commensurate level of support for those services. When such circumstances arise, it is natural for those residents to oppose annexation. Nonetheless, however controversial the issue is now, in light of the development that is inevitable in the areas adjoining the City, annexation now will prevent more costly and belated remedies in the future. That is, it is much more difficult to address or prevent pollution problems, water supply problems, sanitation problems, and similar issues that may arise in the absence of land planning services.

Lastly, as far as the Haines Borough is concerned, the effects of annexation are negligible. Annexation does not alter its powers or functions. It does not change the population of the Borough, and it does not change the Borough's tax base.

Given the foregoing findings, the Commission concludes that annexation is in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. Thus, the standard set out in 19 AAC 10.140 is satisfied.

L. Effect of Annexation on Civil and Political Rights.

An annexation proposal may not be approved by the Commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. [19 AAC 10.910]

The Commission examined this issue regarding two aspects of the annexation proposal. The first related to the effect that annexation would have on the apportionment of the Haines Borough Assembly. The second concerned the impacts on voting rights of minorities.

1. Regarding Apportionment of the Haines Borough Assembly

The Commission notes that arguments have been advanced that the annexation proposal should be rejected because the boundary change would alter the balance on the Haines Borough Assembly between seats held by residents of the City of Haines and seats held by Assembly members residing outside the City.

Nothing in the law requires borough election districts to be based upon city boundaries. (AS 29.20.060 - 29.20.120) Indeed, doing so is a vestige of a constitutional provision abandoned by the State of Alaska twenty-five years ago.

Originally, Article X, § 4 of Alaska's constitution required that, "Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities." The purpose of the provision was to promote greater communication and coordination between a borough and cities within the borough.

However, the constitutional provision at issue was repealed in 1972 because the constraint brought about disproportional representation of borough voters. Although the Haines Borough Assembly is fairly apportioned under its current election district scenario, continuing the practice of dividing the Assembly into "city" and "non-city" districts may eventually bring about disproportional representation or will require a change in the composition and apportionment of the Assembly of the Haines Borough.

In fact, the current election districts of the Haines Borough are *not* based on the current boundaries of the City of Haines. There was no change to the Haines Borough Assembly election district boundaries following the 1993 annexation of 11.75 square miles to the City of Haines. Although that annexation involved a small population, the fact that the Borough left its election district boundaries intact following the 1993 annexation demonstrates that the Borough is not committed to the apportionment of the Assembly strictly in the manner suggested in its responsive brief. In addition to creating difficulties in achieving fair apportionment, basing the Borough's election districts on the boundaries of the City may promote a sense of separatism between the City of Haines and the rest of the Haines Borough on the part of the Assembly and voters.

The Commission finds from the foregoing that the issue of apportionment of the Haines Borough Assembly is unrelated to the pending issue of annexation to the City of Haines.

2. Regarding Conformance with the Federal Voting Rights Act

Assertions were made that a violation of the Federal Voting Rights Act would occur as a consequence of the annexation since the percentage of minority voters within the City would be reduced. Although the annexation would decrease the minority population in percentage terms of the total population, such reduction in percentage terms would be marginal – 2.06 percentage points (from 19.93% to 17.87%). However, annexation would increase the minority population of the City of Haines by allowing minority voters in the area proposed for annexation a vote in City affairs for the first time. Further, reductions, per se, in the voting strength of minorities are not prohibited by the federal Voting Rights Act

There is no indication that the proposed annexation involves any purposeful effort or intent to withdraw or diminish the civil or voting rights of any minority individual or group. The proposed annexation would add new voters to the city electorate, including minority voters.

The Commission finds assertions that the annexation proposal violates the provisions of the federal Voting Rights Act to be unfounded. There is no evidence to suggest that implementation of the City's annexation proposal will result in any violation of the federal Voting Rights Act. The annexation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives. The provisions of law relating to this issue were never intended to thwart legitimate annexation proposals.

The Commission concludes that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

M. Adequacy of Transition Plan.

A petition for annexation must include:

- ➔ a practical plan demonstrating the intent and capability of the annexing city to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation;
- ➔ a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed;
- ➔ a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation. [19 AAC 10.900]

Plans for assumption of powers and functions and transfer of assets and liabilities must be developed in consultation with the officials of the affected borough or service area. The record shows that the City of Haines developed its transition plan with at least minimal consultation with staff of the Haines Borough.

The Commission considers the proposed transition plan to be elementary or uncomplicated with respect to provisions for extension of essential city services into the territory proposed for annexation in the shortest practicable time after annexation. The petition and transition plan state that all of the City's services, except for water and sewer utilities, will be extended to the area proposed for annexation on July 1, 1998. That date anticipated that the annexation would take effect in March of 1998. The date for the planned extension of services was less than four months from the date that annexation was expected to take effect. It also coincides with the date on which the City expected to begin to levy ad valorem taxes and sales taxes in the area proposed for annexation.

The Commission finds that the transition will be relatively simple since the City of Haines is already delivering municipal services such as fire protection, emergency medical services, and emergency dispatch services to the area proposed for annexation under terms of contractual agreements with the Haines Borough. Further, the City of Haines is providing other services on an extraterritorial basis. Extension of the City's boundaries will simply eliminate the extraterritorial nature of those services.

The Commission finds that the City of Haines exhibits both the capability and intent to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation.

Regarding a plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by the Haines Borough will be assumed by the City of Haines

The City's transition plan provides that the City will assume the powers, duties, rights, and functions presently exercised within the area proposed for annexation by the Borough on a service area basis. AS 29.05.130 - 29.05.140 provides guidance for the integration of service areas and related transitional measures.

The Commission notes the request from HBCAA that the Commission approve a "prezoning plan . . . conditioned as to time, [to] protect residents from changes for the first ten years." Elsewhere, HBCAA states that, "Protections must be afforded the areas proposed for annexation to continue their rural lifestyle and subsistence uses. Existing City Code does not allow for continuation of animal husbandry, keeping of horses, rabbits, goats, provide agricultural taxation differentials or allow dogs to run free, etc. . . if the annexation is recommended to proceed by the LBC to the Legislature without prezoning, that a transitional period of application of

City regulations regarding planning and zoning and permit regulations be required in order to allow the residents time to participate in the City's suggested planned hearings for said purpose. The period of this transition should be from 1 to 3 years after the effect of the annexation as determined appropriate to the LBC."

It is beyond the purpose and powers of the Commission to dictate to the City of Haines and residents of the area proposed for annexation what particular land use regulations will be imposed upon annexation, let alone for the next ten years. The Commission noted, that the multiple use districts provided by the City of Haines Code §18.70.100 as detailed previously provides for much of what HBCAA asks regarding this issue.

HBCAA also requested that the Commission require differential tax zones to be "implemented for a minimum of ten years and to freeze taxation values on properties to avoid revenue creep without millage increases." HBCAA also expresses the view that, "The areas that should be considered for even further tax reductions, than the 80% proposed by the City, should include the large uninhabited areas of Small Tract, Piedad and from One to Four mile along the Haines Highway." (sic)

Here again, it is beyond the role and authority of the Commission to dictate to the City of Haines that it must impose differential property taxes in the area proposed for annexation. The City is authorized by state law to levy lower taxes in an area of the city *only* if it provides a commensurate lower level of services to that area. Further, neither the Commission, the City of Haines, nor any other party has the authority to "freeze" assessed values of taxable property in the area proposed for annexation. AS 29.45.110 provides that property shall be assessed, "at its full and true value as of January 1 of the assessment year . . ."

The Commission finds that the City has provided a practical plan demonstrating the manner in which all relevant and appropriate

powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed.

Regarding a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation.

The proposed annexation involves negligible, if any, transfer of liabilities or assets of the Borough to the City. As such, there is no substantial issue in this context. Thus the Commission finds that the requirement of 19 AAC 10.900(c) is satisfied.

In summary, the Commission concludes that, the City's petition, existing municipal code, and State statutes provide transition measures sufficient to satisfy the requirements of 19 AAC 10.900.

N. Rejection of Similar Annexation Proposal by 1984 Legislature.

Opponents of the proposed boundary change have contended that the current petition inappropriately seeks to revive a similar annexation proposal that was rejected by the legislature in 1984.

In rejecting the similar annexation in 1984 and by enacting standards governing exercise of the Commission's power to approve or disapprove proposed annexations, the Alaska legislature has never required the Commission to defer to previous legislative action on a similar annexation. Instead, by state law the Commission must apply the same legal standards to the pending annexation as it would to all others considered by the Commission.

There are some significant distinguishing differences between events and conditions relating to the 1984 annexation proposal and the current annexation petition. For instance, a February 6, 1984 letter from the legislator who sponsored the resolution rejecting the

1984 annexation expressed concern that the 1984 annexation came largely at the request of the Local Boundary Commission. In the context of the current petition, the impetus for the annexation petition came *exclusively* from the City of Haines. Another major distinction is that in 1984 the Commission approved that annexation with the proviso that it would not take effect if within two years the City of Haines and the Haines Borough unified. That condition was also of significant concern to the sponsor of the legislative resolution to reject the 1984 annexation proposal.

In the current proceedings, the Commission is simply acting on a petition presented to it by the City of Haines. No aspect of the annexation proposal is tied to unification. Thus, the policy issues which concerned the 1984 Legislature do not exist in the context of the current proposal.

Additionally, current conditions in the area proposed for annexation are significantly different than those which existed in 1984. For instance, there has been a proliferation of new Haines Borough service areas. The Commission finds that such proliferation of service areas raises serious legal questions as prominently mentioned in the record of the current proceedings. Additionally, since 1984, major changes have occurred in the types of growth and the consequent demand for municipal services exhibited by the area proposed for annexation. The Commission finds that such changes suggest that the need for annexation of the area has grown significantly since 1984.

Further, state revenues have declined significantly since 1984 and state funding of local services has declined even further. Therefore, the Commission finds that enhanced financial efficiency in the context of municipal service delivery which would be realized as a consequence of the City of Haines' annexation proposal is to be encouraged.

The Commission concludes that legislative rejection of the 1984 annexation petition does not establish a binding precedent for the current proceeding.

O. Constitutional Principles of Maximum Local Self-Government with a Minimum of Local Government Units.

The Alaska Constitution requires maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local governments. [Article X, § 1]

The Commission finds that the proposed annexation would result in minimizing the number of local governmental entities since it would eliminate certain service areas. The Commission also finds that annexation would maximize local self-government since the City of Haines is a general government with comprehensive powers.

Therefore, the Commission concludes that the annexation petition is consistent with the principles set out in Article X, § 1 of Alaska's constitution.

P. Constitutional Principles Regarding Service Areas.

The Alaska Constitution provides for establishment of borough service areas to deliver special services. Borough service areas may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if the new service can be provided by an existing service area, by incorporation as a city or by annexation to a city. [Article X, § 5]

The issue now before the Commission does not directly relate to establishment of any new service area. The formation, however, of seven new service areas within the area proposed for annexation after 1984 together with the expected population growth and

commercial and residential development in the area support the finding that even more service areas are likely to be created in that area in future years if the annexation is not approved. The Commission finds that the effect of the proposed annexation would be to bring the status quo into harmony with Article X, § 5. Further, the Commission finds that annexation would eliminate the need for formation of any additional service area in the area proposed for annexation that might violate Article X, § 5 of the Alaska constitution.

Section IV — Dissenting Views of Commissioner Wasserman

As noted previously, Commissioner Wasserman concluded that the City of Haines' annexation proposal did not meet certain of the standards governing annexation. In particular, she expressed uncertainty whether the City of Haines was capable of providing essential city service more efficiently and more effectively to the 6.5 square mile area proposed for annexation than the Haines Borough. In that context, she raised particular reservations regarding the City's ability to provide police service and road maintenance to the area.

Commissioner Wasserman also indicated that she was unconvinced that the area within the proposed new boundaries of the City of Haines has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Further, Commissioner Wasserman concluded that annexation was not in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. In that context she recognized that annexation was in the best interests of the State of Alaska. She also recognized that there is a need for city government to some extent in the territory proposed for annexation. However, the intense opposition to annexation on the part of

residents of the territory proposed for annexation was a formidable concern to Commissioner Wasserman. She expressed reservations that annexation would be so divisive that it would drive a wedge between the residents of the territory proposed for annexation and residents of the existing City of Haines.

Lastly, Commissioner Wasserman expressed disappointment over the City of Haines' transition plan. In that context she indicated that greater details should have been provided concerning plans for the proposed differential tax zones. Additionally, she expressed the view that the City should have provided details concerning its municipal code allowing for multiple use zoning in newly annexed areas.

Section V — Recommendation

The Local Boundary Commission hereby recommends to the First Session of the Twenty-First Alaska Legislature the annexation to the City of Haines of the territory described in the City of Haines' March 1997 petition. This recommendation is offered in accordance with the provisions of Article X, §12 of the Constitution of the State of Alaska.

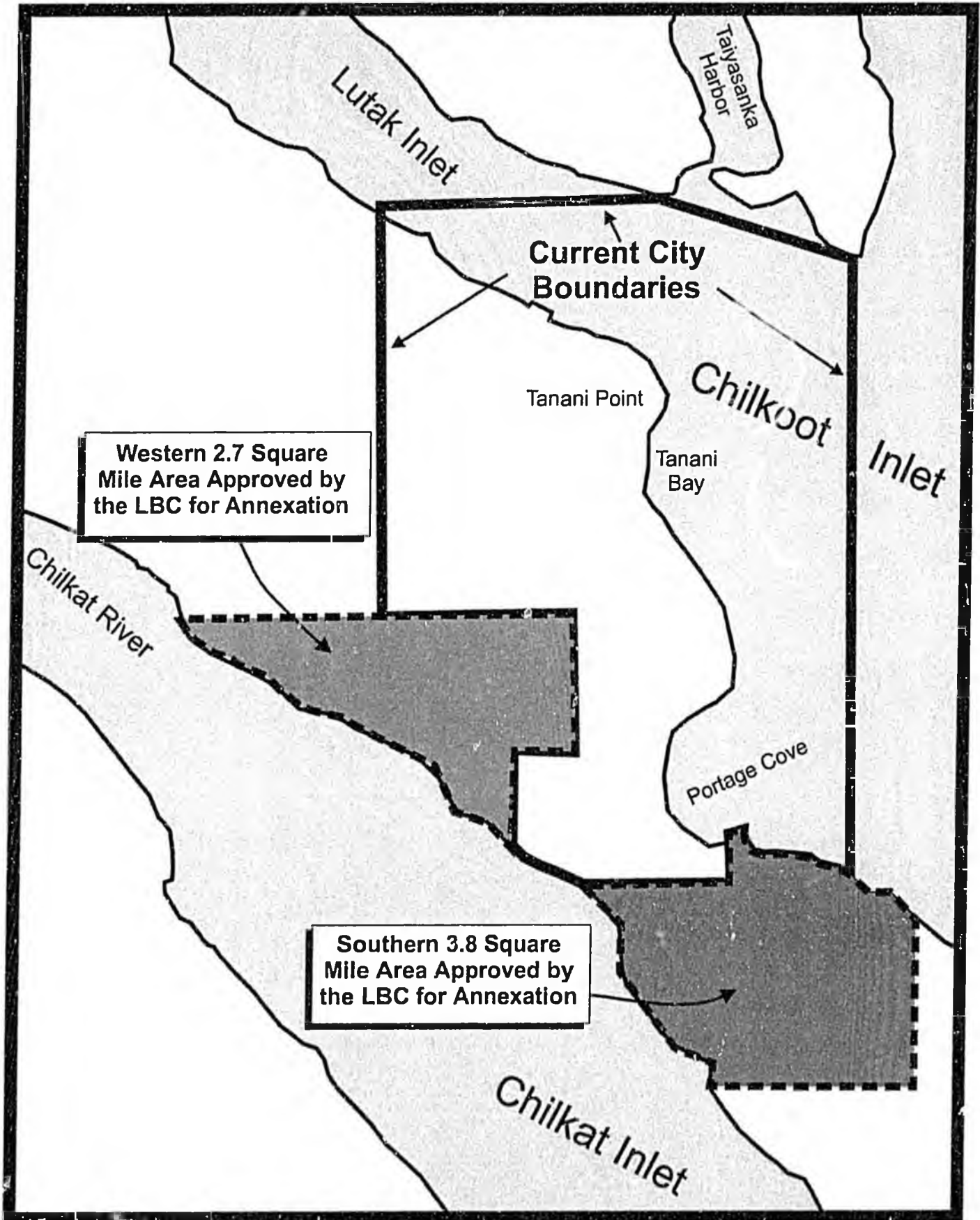
The area recommended for annexation encompasses an estimated 6.5 square miles. Tacit approval of this recommendation by the legislature will result in jurisdictional boundaries for the City of Haines described as follows and shown on the map that accompanies the description.

LEGAL DESCRIPTION OF RECOMMENDED CORPORATE BOUNDARIES OF THE CITY OF HAINES

Beginning at the point of intersection of the West line of Section 9, T.30S., R.59E., Copper River Meridian (C.R.M.) and the line of mean high tide of Lutak Inlet; thence North-easterly, across Lutak Inlet to USGS Station "SANKA"; thence Southeasterly to USGS

Station "TAIYA PT."; thence Southeasterly to "Indian Rock Light", navigation aid; thence Southerly, across Chilkoot Inlet to the point of intersection of the South line of Section 36, T.30S., R.59E., C.R.M., and the line of mean high tide of Chilkoot Inlet; thence southeasterly along the line of mean high tide of Chilkoot Inlet to the point of intersection with the East line of Section 1, T.31S., R.59E., C.R.M.; thence South along the East line of Sections 1 and 12, T.31S., R.59E., C.R.M. to the East ¼ corner of said Section 12; thence West along the East - West ¼ corner line of Section 12 and 11, to a point of intersection with the line of mean high tide at the Easterly bank of Chilkat Inlet; thence Northwesterly, meandering along the said line of mean high tide of Chilkat Inlet into the confluence along the East bank of the Chilkat River thence continuing along the ordinary high water mark of the East bank of said River to a point of intersection with the South line of Section 19, T.30S., R.59E., C.R.M.; thence East along the South line of Sections 19 and 20, T.30S., R.59E., C.R.M. to the Southeast corner of said Section 20, T.30S., R.59E., C.R.M.; thence North along the West line of Sections 21, 16, and 9, T.30S., R.59E., C.R.M. to said line's intersection with the line of mean high tide of Lutak Inlet; the point of beginning; containing 20.9 square miles, more or less, within the Haines and Skagway Recording Districts, First Judicial District, State of Alaska.

Section line locations based upon U.S.G.S. 1:63360 Skagway (A2 & B2), Alaska, dated 1954 with minor revisions in 1963.





Chapter 4

Policy Issues & Concerns



Current policy issues that the Commission wishes to bring to the attention of the legislature relate to:

- the need to amend statutory provisions governing decisions of the Commission;
- disincentives for borough incorporation and annexation;
- promotion of maximum common interests within boroughs;
- interest in single-community boroughs;
- the need for a more comprehensive approach to city annexations;
- review of Commission's regulations;
- laws governing the small community housing mortgage loans programs.

Proposed Amendments to Statutory Provisions Governing Decisions of the Commission

Proposed Amendments to State Law

Current statutory provisions concerning actions by the Commission relating to reclassification, incorporation, annexation, detachment, merger, consolidation, and dissolution are inconsistent and ambiguous. In almost every case, the statutes provide that the Commission *shall* deny a petition if it does not meet the applicable standards and that the Commission *may* accept a petition *if it does meet the applicable standards*. Such provisions could be construed to compel the Commission to deny a petition *even though the petition could be made to satisfy the applicable standards and constitutional principles through amendments or conditions*.

The Commission's concern is more than hypothetical. Experience has shown that

advocates and opponents of matters that come before the Local Boundary Commission sometimes urge a particular interpretation of the law which may not have been intended. In one recent case, litigants asserted that the Commission lacked the authority to alter the boundaries of a proposed borough unless the Commission initially determined that the borough, as proposed, would fail to meet applicable standards for incorporation. Alaska's Supreme Court agreed that the law, since amended, provided for such, but determined that the Commission had implicitly acted in compliance with the law.¹⁵

The Commission has drafted language which it believes would eliminate the inconsistencies and ambiguities. The legislature is encouraged to consider the following proposed amendments to existing law to address the concerns of the Commission.

¹⁵ Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Com'n, 900 P.2d 721, (Alaska 1995)

Reclassification of Cities

Sec. 29.04.040(a) is amended to read as follows:

(a) A second class city may be reclassified as a first class city. A first class or home rule city may be reclassified as a second class city. Reclassification is proposed by filing a petition with the department. The department shall investigate the proposal and report its findings to the Local Boundary Commission with its recommendations. The commission shall hold at least one public hearing in the city on the proposal. **To reclassify, a city must satisfy [IF THE COMMISSION DETERMINES THAT THE CITY MEETS] the standards for incorporation under AS 29.05.011 for the class of city proposed in the reclassification petition and [THAT] reclassification must be [IS] in the best interests of the state. The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.** |, IT MAY ACCEPT OR AMEND AND ACCEPT THE PETITION. IF THE COMMISSION DETERMINES THAT THE CITY DOES NOT MEET THE STANDARDS OR THAT RECLASSIFICATION IS NOT IN THE BEST INTERESTS OF THE STATE, IT SHALL REJECT THE PETITION.| The commission shall notify the city of its decision. The decision may be appealed under AS 44.62 (Administrative Procedure Act).

Incorporation of Cities and Boroughs

Sec. 29.05.100(a) is repealed and reenacted to read:¹⁶

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Annexation to and Detachment from Cities and Boroughs

Sec. 29.06.040(a) is amended to read as follows:

(a) The Local Boundary Commission may consider any proposed municipal boundary change. **The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.** |IT MAY REJECT THE PROPOSED CHANGE, ACCEPT THE PROPOSED CHANGE, OR AMEND AND ACCEPT THE PROPOSAL.| A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

¹⁶ AS 29.05.100(a) currently reads: "If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it may accept the petition or amend and accept the petition."

Merger and Consolidation of Cities and Boroughs

Sec. 29.06.130(a) is repealed and reenacted to read:¹⁷

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Dissolution of Cities and Boroughs

Sec. 29.06.500(a) is repealed and reenacted to read:¹⁸

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. The commission may accept the petition only if it determines that dissolution of the municipality is in the best interests of the state. Before the commission accepts or rejects a petition, it may amend the petition and impose condi-

tions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Issues Relating to Disincentives for Borough Incorporation and Annexation

As it has done for the past many years, the Local Boundary Commission continues to urge the legislature to examine and address existing disincentives for borough formation and expansion. Perhaps no statistic is more telling of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.¹⁹ In contrast, 82.6% of Alaskans live in organized boroughs that were formed under a mandate from the legislature. The remaining 13.4% of Alaskans live in the unorganized borough.

Article X, Section 3 of Alaska's constitution provides that the legislature shall prescribe procedures and standards for borough formation. Authors of the local government article of Alaska's constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local

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- 17 AS 29.06.130(a) currently reads, "If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the merger or consolidation petition. If the commission determines that the proposed municipality meets these standards, it may accept the petition or amend and accept the petition."
- 18 AS 29.06.500(a) currently reads, "If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the petition meets the standards under AS 29.06.470 (a)(1), (2), or (3) and that dissolution of the municipality is in the best interest of the state, it shall accept the petition. The commission may amend the proposal and accept the petition."
- 19 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes which make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough. The population of those eight boroughs is 24,723, or 3.98% of the 621,400 Alaskans.

government.²⁰ As noted below, while the founders preferred voluntary borough incorporation, they recognized the prospect that the State may mandate the establishment of boroughs where necessary:²¹

The authority to organize a borough was also vested in the state, and there was initial discussion of whether boroughs should be established on a voluntary or compulsory basis.²² It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state action was that the borough:

*. . . is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.*²³

*It was anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum.*²⁴



Constitutional Convention's Local Government Committee, January 1956

Photo provided by Anchorage Museum of History & Art, Steve McCutcheon, Photographer

While compulsory establishment of organized boroughs was authorized, it was also expected that the state would offer adequate inducement to local people to accept organized borough status or even to initiate incorporation:

. . . we [the Local Government Committee] thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them [boroughs] to organize . . . [To] the extent that the benefits that the legislature sets up will offset the added cost to the people . . . it was our thought that there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated

20 Thomas A. Morehouse and Victor Fischer, Borough Government in Alaska, page 39 (1971).

21 Ibid., pages 61 - 62

22 Alaska Constitutional Convention, Minutes of the Committee on Local Government, 1955-1956, 8th Meeting

23 Alaska Constitutional Convention Proceedings, (Juneau: Alaska Legislative Council, March 1965) pages 2673-2674

24 Ibid., pages 2674-2676

boroughs. . . . The thought was that inducements to organize would be offered on the basis of the granting of home rule powers plus certain other inducements that would make it advantageous to them to be boroughs, as we now have the same program of inducement to organized communities.²⁵

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the [inducement] method . . . would be the most desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government. If we do it the other way and force it upon the people, I think you're going to have it taken with resentment and probably a lack of good local government. Now, as far as wanting home rule, I think that you will find that this is a common interest. I think people, most citizens, most cities, villages, be they ever so small, really want home rule. They like to feel that they are governing themselves, and by making

it possible to share responsibility, to share in the work of local government, even though they be not organized, then as they see the financial picture where they will be able to do it, I think they will take the step.²⁶

In 1961, the legislature adopted the initial laws implementing the borough concept. It was recognized from the very beginning that the legislature had not provided adequate inducement for people to form boroughs. Jay Hammond, who was a member of the State House of Representatives at the time of the adoption of the Borough Act of 1961 stated subsequently:²⁷

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis? Understandably, during the early years of statehood there were no organized boroughs in Alaska.

Thomas Morehouse and Victor Fischer wrote of the Borough Act of 1961:²⁸

. . . the 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

25 *Ibid.*, Page 2650

26 *Ibid.*, page 2651

27 Jay Hammond, *Tales of Alaska's Bush Rat Governor*, page 149 (1994).

28 *Borough Government In Alaska*, page 73

In 1963, former State Attorney General John Rader, who was a member of the State House of Representatives at the time, considered the issue of borough government to be the "greatest unresolved political problem of the State."²⁹

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

To address that pressing issue, Representative Rader introduced a bill that mandated incorporation of boroughs in Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks. In promoting his bill, Representative Rader stressed:³⁰

We must make local government and, in this instance, boroughs, financially desirable and generally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to

cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that [sic] they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.

While the 1963 Mandatory Borough Act did not provide major incentives to form boroughs voluntarily, it at least promised that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of the Act provided:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. . . . Session Laws of Alaska, 1963, Chapter 52.³¹

However, since organized boroughs are mandated to carry out the State's constitutional duty for public education within their bound-

²⁹ Metropolitan Experiment in Alaska, page 93 (1968).

³⁰ Ronald Cease, Areawide Local Government in the State of Alaska, page 47 (1964)

³¹ Ironically, while the Mandatory Borough Act promised that boroughs would not be deprived of State revenues or penalized because of incorporation, the fact that many areas were allowed to remain unorganized precluded the fulfillment of that promise from the very beginning. More than thirty-five years after the Mandatory Borough Act was passed, organized boroughs received \$121,360,429 less in State education foundation aid for Fiscal Year 1998 alone as compared to the level of State aid had those areas remained unorganized.

aries and are also *mandated* to pay a significant portion of the State's cost of education, it can hardly be said that organized boroughs have not been "deprived of State services, revenues, or assistance" or that they have not been "penalized because of incorporation" when compared to regional educational attendance areas. In the current fiscal year alone, organized boroughs are required to contribute approximately \$130 million to support education. Those are funds that the State of Alaska would otherwise have to pay for education if the sixteen organized boroughs did not exist. The eight boroughs formed under the 1963 Mandatory Borough Act will contribute nearly \$120 million of the \$130 million in required local contributions.³²

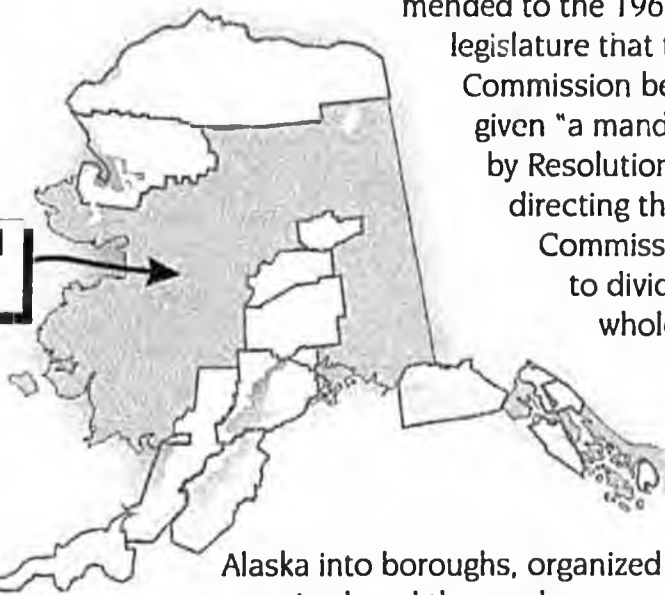
Education funding is just one example of many disincentives that have incrementally crept into law over the years. Other specific issues include the following.

- ➔ Areas of the unorganized borough outside of home rule and first class cities have no obligation to support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ➔ The delivery of education services in the unorganized borough is fractionalized. Even though the unorganized borough accounts for less than fourteen percent of the state's population, seventy percent of Alaska's school districts are in the unorganized borough. Borough formation would bring about consolidation of school districts, an effect which is commonly perceived as a loss of local control regarding schools.
- ➔ In some cases, borough formation carries the prospect of *substantial* education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors. There is at least one instance in which funding per student would be cut in half if a particular city school district were included within an organized borough.
- ➔ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.
- ➔ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- ➔ Borough formation or annexation would cause the loss of eligibility by unincorporated communities and volunteer fire departments in the unorganized borough for State Revenue Sharing.
- ➔ Extension of borough government would bring about the loss of eligibility by unincorporated communities in the unorganized borough for State capital matching grants.

32 In addition to required local contributions, organized boroughs have budgeted more than \$100 million in discretionary contributions for their schools, bringing the total level of support to more than \$230 million in the current fiscal year.

- ➔ Borough formation or annexation would mean a fifty percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ➔ The extension of borough government requires areawide planning, platting, and land use regulation, an act that is commonly perceived as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ➔ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Unorganized Borough



portation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. . . .

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given "a mandate by Resolution, directing the Commission to divide the whole of

Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature."³³ However, that recommendation was rejected. Instead, in 1961, the legislature implemented Article X, Section 3 by "dividing" Alaska into a single unorganized borough. For the past thirty-eight years, state law has stipulated that the unorganized borough comprises that portion of the state not within organized boroughs.

By raising the foregoing issues, the Commission is not advocating any specific solution. However, given the certainty of further reductions in State revenues, and the persistent interest in mandatory organization of the remainder of the State, serious attention to these issues is warranted.

Promotion of Maximum Common Interests Within Boroughs

Article X, Section 3 of Alaska's constitution provides that:

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, trans-

From its inception, the unorganized borough has embraced an area and population with *highly diverse* interests rather than *maximum common interests* as the constitution requires. The contemporary contrasting interests within the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles – 57% of total area of Alaska. It ranges in a *non-contiguous* fashion from the southernmost tip of Alaska to an area approximately 150 miles above the Arctic

33 Local Boundary Commission, First Report to the Second Session of the First Alaska State Legislature, III - 4 (February 2, 1960)

Circle. The unorganized borough also extends in a *non-contiguous* manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough:

- ➔ encompasses portions of each of Alaska's four judicial districts;
- ➔ wholly encompasses eleven census districts;
- ➔ encompasses all or portions of nine state house election districts;
- ➔ wholly encompasses nineteen regional education attendance areas;
- ➔ encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- ➔ wholly encompasses nineteen model borough areas for unorganized regions; and
- ➔ partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely *diverse* rather than common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model borough boundaries, each of which is

to some extent comprised of an area with common social, cultural, and other characteristics.

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 between 1989 - 1992.³⁴ However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model boundaries must also remain flexible. It has been ten years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educational attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak

34 Increasing conflicts over existing and prospective borough boundaries compelled the LBC to undertake the model borough boundaries study beginning in 1989. After holding hearings in person or by teleconference in eighty-eight communities, the study was completed in 1992. Essentially, the Commission undertook an effort similar to that which was envisioned by the first Local Boundary Commission thirty years earlier. However, when the model borough boundaries project was initiated in 1989, much of the flexibility that existed thirty years earlier had been lost.

The Local Boundary Commission went through a great deal of effort to develop the model borough boundaries. The Commission has adopted regulations at 19 AAC 10.060 and 19 AAC 10.190 which require *consideration of* model borough boundaries during borough incorporation and annexation proceedings.

closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if the Commission were defining model borough boundaries for the Aleutian region, it would encompass all of the territory west of the Aleutians East Borough. The Commission is currently contemplating modifying its regulations to facilitate modification of the model borough boundaries.

Interest in Single-Community Boroughs

Interest in forming single-community borough governments is increasing. It appears that two circumstances may be the principal basis for such interest. The first is the lack of incentives to form more expansive boroughs (see prior discussion on this topic in this chapter). The second is concern by local officials of being included in larger, legislatively mandated boroughs. Local officials from the following cities have recently expressed interest in forming single-community or relatively small boroughs:

- Wrangell,
- Skagway,
- Nome,
- Petersburg,
- Hoonah,
- Unalaska, and
- Valdez.

Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Nenana, Tanana, Cordova, and Pelican.

Public sentiments concerning this issue are strong. Consider, for example, the position taken by officials in Kupreanof regarding a prospective Petersburg Borough. The City of Kupreanof has a population of 24 residents. The corporate boundaries of the City of Kupreanof are contiguous to the corporate boundaries of the City of Petersburg. Students who live in Kupreanof attend public schools within the City of Petersburg. Notwithstanding such close links between the two communities, consideration of boundaries for a prospective Petersburg Borough elicited the following response in the form of Resolution 98-7 adopted by the Kupreanof City Council on September 13, 1998.

Whereas, The City of Kupreanof was established to maintain autonomy over local planning, taxation, and municipal development decisions, and

Whereas, The City of Petersburg intends to include the City of Kupreanof within the Borough of Petersburg boundaries, and;



Whereas, The determination of borough planning authority, taxation, and administration of boroughs schools will reside outside the City of Kupreanof by virtue of the large voting population of Petersburg;

Therefore, be it resolved, The City of Kupreanof wishes to remain an autonomous municipal authority exclusive of the Borough of Petersburg.

The Commission recognizes that boroughs were intended to be an intermediate form of government – smaller than the state, but larger than a city.³⁵ The Commission is concerned that single community boroughs will lead to the “Balkanization” of Alaska. The prospect of single-community boroughs also raises serious questions whether such would undermine the ability of surrounding communities to ever take on the responsibility of borough government in an effective and efficient manner.

LBC Encourages Comprehensive Approach to City Annexations

The LBC has encouraged certain city governments to take a more comprehensive approach to annexation. In July of last year, the LBC asked the City of Palmer to pursue future annexation proposals in a broader fashion. Since 1970, there have been forty-two separate annexations to the City of Palmer. In September, the Commission expressed similar concerns to the City of Wasilla (since 1976 there have been eleven annexations to the City of Wasilla). In October, the same concern was raised both by the LBC and the Mayor of the Fairbanks North Star Borough concerning the City of Fairbanks. The City of Fairbanks has undertaken more than twenty annexations since 1970.

The Commission’s concern recognizes that while voluntary, piecemeal annexations may be locally favored politically, they do not necessarily serve optimum public policy. In particular, efficiency and effectiveness in the delivery of city services such as planning, utilities, road maintenance, and public safety are likely to diminish as a consequence of unnaturally constrained corporate boundaries. Further, the Commission noted that multiple annexations are an inefficient use of limited resources of the general public, DCRA, LBC, borough governments, and numerous other agencies, such as the Division of Elections and the U.S. Justice Department, which are also burdened by excessive numbers of city annexations.

Review of Commission’s Regulations

In December of 1997, the Local Boundary Commission initiated a comprehensive review its administrative regulations, 19 AAC 10.010 - 19 AAC 10.990. The purpose of the review is to eliminate unduly burdensome provisions, resolve ambiguities, and make other improvements.

For example, current regulations oblige the Commission to follow the lengthy process outlined in 19 AAC 10.400 - 19 AAC 10.660 for a properly submitted petition, even if the petition is apt to be rejected as a matter of law, regardless of the facts of the case. Some municipal representatives have suggested that this obligation may needlessly impose a heavy burden on petitioners, respondents, the Commission, and the general public.

During 1998, the Commission solicited comments on possible regulatory revisions from individuals and organizations with par-

35 See Borough Government in Alaska, by Thomas A. Morehouse and Victor Fischer, pages 37 – 41 (1971)

tical interest or expertise in municipal government in Alaska and in the Commission's duties. The Commission hopes to substantially complete its review of the regulations in 1999.

Laws Governing the Small Community Housing Mortgage Loans Programs

The Local Boundary Commission is increasingly aware that provisions in the law concerning the Small Communities Housing Assistance program (AS 18.56.400 – 18.56.600) are potentially affecting the outcome of important municipal boundary determinations. During 1998, concerns were raised in three important instances that pending or prospective municipal boundary proposals would adversely affect the eligibility of individuals to participate in the housing assistance program. These three instances were:

- a prospective proposal for annexation to the City of Kodiak;
- a prospective proposal for consolidation of the Ketchikan Gateway Borough and the City of Ketchikan;
- a formal proposal for consolidation of the City of Haines and the Haines Borough.

In the case of the latter, opponents of consolidation of the City of Haines and the Haines Borough published an advertisement stating, in part:³⁶

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

If only two of the 545 people who voted against consolidation were influenced to vote in that fashion by the circumstance described above, then that was enough to cause the defeat of the Haines consolidation proposal.

³⁶ Paid commentary by Dan Turner. Mr. Turner is the Haines Borough Assessor and Land Manager. However, Mr. Turner's advertisement emphasized that he did "not speak for the Mayor or the Assembly or as the Borough Assessor/Land Manager."

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