

Local  
Boundary  
Commission

2/24/00

**Remarks to the Joint House-Senate Community & Regional Affairs  
Committee of the Second Session of the 21st Alaska Legislature  
Kevin Waring, Chairman, Local Boundary Commission  
February 24, 2000 – 8:00 a.m.  
Capitol Room 124**

**Introduction**

Good morning. I am Kevin Waring, Chairman of the Local Boundary Commission. I appreciate the opportunity to address you in person at your joint meeting today. Other Commission members participating by teleconference are:

- Kathleen Wasserman, Vice-Chairman, of Pelican, appointed from the First Judicial District; and
- Nancy Galstad, of Kotzebue, from the Second Judicial District.

Two members of the Commission were unable to participate by teleconference today. They are:

- Allan Tesche, of Anchorage, from the Third Judicial District; and
- Ardith Lynch, of Fairbanks, from the Fourth Judicial District.

**Annual Report Filed**

The Local Boundary Commission filed its annual report with the Legislature on January 19th of this year. A copy was provided to each member of the House and Senate. The Commission's report addresses four principal topics.

- Chapter 1 provides an overview of the Commission;
- Chapter 2 summarizes the Commission's activities last year along with pending proposals;
- Chapter 3 presents the Commission's recommendations to the Legislature for annexation of territory to the City of Ketchikan and the City of Aleknagik; and
- Chapter 4 discusses important public policy issues concerning local government in Alaska.

I will speak briefly about the first three topics, in order to allow time to address three important public policy issues.

**Overview**

Alaska's Constitution established the Local Boundary Commission to ensure that proposals to create and boroughs or alter their boundaries would be dealt with objectively and from a statewide perspective.

The Commission's responsibilities include judging proposals for:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;

- reclassification of cities;
- dissolution of cities and boroughs; and
- merger and consolidation of cities and boroughs.

The Commission has other powers and duties established in law, including a duty to make studies of local government boundary problems.

The Commission consists of five members who are appointed by and serve at the pleasure of the Governor. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed at-large and serves as chair. Members are appointed for overlapping five-year terms. Commission members donate their time as a public service. They receive no compensation for the time they contribute to Commission activities. The Department of Community and Economic Development provides staff support to the Commission.

### **1999 and Prospective Activities of the Commission**

The Commission met eleven times in 1999. Eight of those meetings were by teleconference. Collectively, the five members of the Commission spent all or part of 85 days conducting the business of the Commission. In all, Commission members volunteered many hundreds of hours reviewing and analyzing documents filed in proceedings and on other Commission business.

Specifically, during 1999 the Commission addressed proposals for:

- annexation of 5,524 square miles to the Ketchikan Gateway Borough;
- annexation of 19.5 square miles to the City of Kodiak;
- annexation of 24.29 square miles to the City of Aleknagik; and
- annexation of 1.2 square miles to the City of Ketchikan.

Several proposals are now pending before the Commission or are expected to be filed shortly. These include petitions for:

- incorporation of the City of Adak as a second-class city;
- incorporation of Talkeetna as a home rule city;
- annexations to the cities of Palmer, Wrangell, Ketchikan, and Homer;
- consolidation of the City of Ketchikan and the Ketchikan Gateway Borough;
- consolidation of the City of Fairbanks and the Fairbanks North Star Borough;
- and
- dissolution of the City of Skagway and concurrent incorporation of a Skagway Borough.

### **Recommendations**

Article 10, Section 12 of Alaska's constitution requires the Local Boundary Commission to present proposed local government boundary changes to the legislature during the first ten days of a regular session. The constitution further provides that the change

shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

This year, the LBC has approved and recommends two boundary changes for legislative review. The background for these recommendations is found on pages 27 through 64 of the Report and in the Commission's addendum of January 19, 2000 to Senate President Pearce and House Speaker Porter.

- On November 29, 1999, the Commission unanimously approved the City of Aleknagik's petition to annex 24.29 square miles.
- On December 4, 1999, the Commission unanimously approved the City of Ketchikan's petition to annex 1.2 square miles. Subsequently, on January 19, 2000, the day it filed its Report to the Legislature, the Commission amended its original decision to defer the effective date of the Ketchikan annexation to January 1, 2001. The Commission took this unusual action at the joint request of the City of Ketchikan, Ketchikan Gateway Borough, and the Shoreline Service Area, the area affected by the annexation, so they could have a window of time to consider city-borough consolidation before annexation was finalized.

The Commission's action in this case warrants an aside. Two years ago, Senator Mackie and Representative Kookesh provided positive leadership to help resolve a controversial annexation in Haines. This year, Representative Bill Williams deserves credit for his peace-making efforts on a divisive annexation proposal involving his Ketchikan constituents. Representative Williams, assisted by City and Borough leaders, helped bridge the divisions and bring about a compromise, so Ketchikan residents could pursue a broad solution—city-borough consolidation—to deliver local government services more equitably and more efficiently. Representative Williams helped keep this controversy from escalating to the legislature and perhaps the courts, and saved both local and state governments a great deal of time and money.

The Commission acted on two other annexation petitions this past year.

- On March 31, 1999, the Commission voted unanimously not to approve the Ketchikan Gateway Borough's petition to annex 5,524 square miles; and
- On August 28, 1999, the Commission determined that the City of Kodiak's annexation petition satisfied all the requirements in law and unanimously approved the petition. Local voters, however, rejected the proposed annexation at local election.

No legislative action is called for on these two failed annexation petitions.

I am pleased to report for the third year in a row that there is no outstanding litigation of any Commission decision.

### Introduction to policy issues

Next, I would like to turn to three public policy issues that the Commission raised in its Report to the Legislature. In raising these issues, the Commission is fulfilling its duty to address local government boundary problems.

These issues concern:

- Several ambiguities in state law that affect boundary changes;
- AHFC's Small Communities Housing Assistance Program; and
- Disincentives to borough incorporation, and an innovative proposal to create an additional process for borough incorporation.

### **Need to Eliminate Certain Ambiguities in the Law Involving Boundary Changes.**

This year, as last year, the Commission is asking for consideration of proposed legislation to clarify several statutory provisions that may affect boundary changes. Here, I would like to take a moment on behalf of the Commission to thank the Committee Chairs, Senator Kelly, Representative Harris, and then Co-Chair Representative Halcro, along with committee members, for their support last session for Senate Bill 156, which was recommended by the Commission and approved by unanimous vote of both houses and signed into law.

This year, the Commission wishes to direct legislative attention to continuing uncertainty over the authority of municipalities to levy property taxes during the initial calendar year in an area that has been incorporated or annexed after January 1. State law is also ambiguous about the effect of incorporations and boundary changes upon service areas of organized boroughs and the unorganized borough. Lastly, the Commission believes that municipal governments should expressly be given limited extraterritorial power to levy taxes in an area that has been detached from a municipality. This would ensure that the detached area could be held accountable for its prorated share of municipal debts and other costs associated with detachment. These issues are addressed in pages 71-74 of the Commission's Report.

These issues concern the Commission because they may cloud implementation of boundary changes. We have drafted conceptual legislation to resolve the issues, as outlined on pages 73-74 of the Report. We recognize, however, that these issues are of even greater interest to municipal governments. Therefore, we asked several parties with a fundamental interest in these matters to review the proposed legislation, and comment to the Legislature. These parties included the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers. The State Assessor reports that the conceptual legislation has the support of the Alaska Association of Assessing Officers. Kevin Ritchie, Executive Director of the Alaska Municipal League, is available this morning to offer his views on the matter. The Commission invites and welcomes legislative attention to this matter.

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### AHFC Rural Housing Loan Program

The Local Boundary Commission has become increasingly aware that certain eligibility provisions in the Alaska Housing Finance Corporation's Small Communities Housing Assistance program have influenced the outcome of important municipal boundary determinations. Briefly, incorporation, annexation, or consolidation may result in local loss of eligibility for reduced-interest home loans. This prospect has generated local opposition to some proposed boundary changes. Details of this issue are addressed on pages 74 and 75 of the Commission's report. The Commission encourages the Legislature to explore ways to maintain this worthwhile program, but eliminate the unintended adverse impacts that it has on legitimate municipal boundary proposals. Coincidentally, this is the same AHFC program that prompted the City of Kenai to adopt a resolution in support of legislation to equalize AHFC mortgage loan rates inside and outside cities, because the current program promoted growth outside city boundaries to the city's detriment.

### Borough Government Incorporation

Finally, we come to the topic of incentives and disincentives to borough government development, and to an innovative concept advanced by the City of Cordova for legislation to create an additional route to borough incorporation and borough annexation.

Incentives for incorporation have always been an element of the State's local governmental policy. Constitutional delegates preferred a voluntary approach to borough formation, coupled with adequate incentives to encourage residents to form boroughs. They intended that organized boroughs exist in every area of Alaska that met appropriate standards. Further, the founders took the position that if citizens failed to form boroughs where needed, the State should intervene and compel the creation of boroughs in those areas.

Over time and with the best of intentions, we have stood the notion of incentives for borough development on its head. For many years, the Commission has stated its concern about the disincentives that inhibit the ongoing development of local government, especially borough government, in Alaska. Most often, these disincentives are good programs with unwelcome, unintended side-effects. State financial support for local education in the unorganized borough is the prime example of a good program that can work at cross-purposes with the constitutional goal of borough self-government. The Small Communities Housing Assistance program I just spoke of is another typical example.

This year, the Commission would like to restate its concern about the inhibiting effect of disincentives. But we would also like to encourage the Legislature to consider a new concept proposed by the City of Cordova, itself a city in the unorganized borough, to

create a new process for borough incorporation. The proposal outlines a case-by-case proactive approach to borough incorporation that side-steps the current impasse.

The proposed concept has three features:

1. Every year, the Local Boundary Commission shall identify areas of the unorganized borough that meet existing standards for second class borough incorporation or for annexation to a borough or unified municipality.
2. The Commission shall prepare a written decision that explains the basis for any proposed borough incorporation or annexation, and sets out an incorporation plan. The decision shall be distributed to all affected communities and local governmental units for comment. Based on comments received, the Commission may reconsider and modify its original decision.
3. The Commission shall submit any proposed incorporation or annexation for legislative review, a requirement that does not now apply to borough incorporations.

To these three features, the Commission would add a fourth—that the Commission also hold public hearings in the affected areas before it prepares its written decision proposing incorporation or annexation.

The appeal of this straight-forward concept is that it takes a proactive approach to borough incorporation in a way that respects established standards and practice, and provides accountability for Commission decisions. In the view of the Commission, the concept:

- Fulfills the intent of Article X of the Constitution to "*provide for maximum local self-government with a minimum of local governmental units*" and to divide the State "*into boroughs, organized or unorganized . . . [each of which] shall embrace an area and population with common interests to the maximum degree possible*";
- Maintains existing substantive standards, and with incorporation of the Commission's suggested public hearing provision, maintains essential procedural standards for borough incorporation or annexation; and
- Provides for legislative review and oversight for any borough incorporations and annexations proposed by the Commission.

The concept is consistent with the Alaska Municipal League's policy statement on borough government. While expressing the same preference for voluntary borough formation held by the Constitutional convention delegates 45 years ago, Governor Knowles has acknowledged that the lack of incentives has stymied borough incorporation prospects. Consequently, Governor Knowles encouraged the City of Cordova to pursue its proposal for reform of current laws relating to this matter.

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In conclusion with respect to this issue, the Commission respectfully urges the Legislature to give thoughtful consideration to any proposed legislation that incorporates the conceptual approach I have outlined.

The Commission has no illusion that effective action to advance borough development in unorganized areas that meet borough incorporations standards will be easy or quick. Commission members have discussed at length the time and effort this proposal would require of them. We would anticipate a time-consuming, painstaking case-by-case process that will prove well worth the effort in the long run.

### **Conclusion**

Thank you. That concludes my prepared remarks. If you have questions on any of these matters, I will do my best to respond.

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# State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-269-4539

January 19, 2000

The Honorable Brian Porter  
Speaker  
State House of Representatives  
State Capitol  
Juneau, Alaska

Dear Speaker Porter:

Enclosed is the report of the Local Boundary Commission to the Second Session of the Twenty-First Alaska State Legislature. The report includes recommendations to the Legislature under Article X, Section 12 of Alaska's Constitution for changes to the corporate boundaries of certain municipal governments, including the City of Ketchikan.

This morning, the Local Boundary Commission met at the request of Representative Bill Williams, City of Ketchikan, Ketchikan Gateway Borough, and Shoreline Service Area to consider amending the effective date of the proposed annexation to the City of Ketchikan presented on pages 42 - 64 of the enclosed report. The amendment was sought to allow local government officials and other citizens in Ketchikan an opportunity to pursue municipal consolidation or alternative improvements to the structure of local government in Ketchikan.

This morning, the Commission unanimously approved the request to amend the effective date of annexation to January 1, 2001 as outlined in the enclosed order of the Commission titled "Amendment Number One to the Commission's Order of December 16, 1999." Given the timing of this development, it is necessary to reflect the action taken by the Commission this morning as an addendum to the Commission's report to the Legislature. That addendum is also enclosed.

The Commission looks forward to favorable consideration by the Legislature of the Commission's recommendations.

Cordially,

A handwritten signature in black ink that reads "Kevin Waring".

Kevin Waring  
Chairperson

cc: Members of the State House of Representatives

enclosures:

- January 19, 2000 LBC report to the Legislature
- Amendment to December 16, 1999 LBC order
- Addendum #1 to LBC report to the Legislature



State of Alaska  
Local Boundary Commission  
**Amendment Number One to the  
Commission's Order of December 16, 1999**

IN THE MATTER OF THE 1999  
AMENDED PETITION OF THE CITY  
OF KETCHIKAN FOR ANNEXATION  
OF APPROXIMATELY 1.2 SQUARE  
MILES

On December 16, 1999, the Local Boundary Commission entered a written order approving annexation of approximately 1.2 square miles to the City of Ketchikan.

The Local Boundary Commission's decision in the matter became final on December 16, 1999 under terms of 3 AAC 110.570(g). A timely request for reconsideration of the Commission's decision was filed by the Shoreline Service Area on January 4, 2000 under the provisions of 3 AAC 110.580. The Commission met on January 7, 2000 to address the request for reconsideration. During the January 7, 2000 meeting, the Commission denied the request for reconsideration by a vote of four to zero. The opportunity for further reconsideration of the matter under 3 AAC 110.570(g) expired.

Subsequently, the Ketchikan City Council, Ketchikan Gateway Borough Assembly, and Shoreline Service Area Board of Supervisors adopted a joint resolution requesting the Local Boundary Commission to defer the effective date of annexation to January 1, 2001.<sup>1</sup> The three parties indicated in the joint resolution that, "deferral of the effective date will allow time for the community, as a whole, to explore consolidation or the change in governments which might also address issues raised in the annexation process." The joint resolution provided, in part, as follows:

**Section 1:** The City of Ketchikan, the Ketchikan Gateway Borough and the Shoreline Service Area request that the Local Boundary Commission, pursuant to 3 AAC 110.660, relax or suspend its regulations and amend its December 16, 1999 decision to the Twenty-First State Legislature – Second Session 2000, to recommend deferral of the effective date of annexation to January 1, 2001.

**Section 2:** The Ketchikan Gateway Borough and the Shoreline Service Area will discontinue all opposition to the City of Ketchikan's petition for annexation of 1.2 square miles to the City and will not oppose or litigate the Local Boundary Commission's decision or Legislature's decision to allow annexation to occur.

**Section 3:** The City of Ketchikan, the Ketchikan Gateway Borough and the Shoreline Service Area will explore the possibility of consolidation or other more efficient forms of local government and the possibility of a petition to the Department of Community and Economic Development

<sup>1</sup> The joint resolution was adopted by the Shoreline Service Area Board of Supervisors as Resolution Number 00-2 on January 17, 2000; by the Ketchikan Gateway Borough Assembly as Resolution Number 1510A on January 17, 2000, and by the Ketchikan City Council as Resolution Number 00-1968 on January 18, 2000.

seeking authorization for a vote on consolidation or approval of another more efficient form of local government

Section 4: This resolution shall become effective immediately upon passage.

3 AAC 110.660 does indeed allow the Commission to relax or suspend certain procedural regulations. Such are limited to those regulations establishing procedures that are not specifically required by the constitution or statutes. Further, to relax or suspend any such regulation, the Commission must determine that its application would work injustice or bring about an uninformed decision.

The joint resolution of the City of Ketchikan, Ketchikan Gateway Borough, and the Shoreline Service Area asserts that injustice to the two local governments and citizens of Ketchikan would result from a strict adherence to 3 AAC 110.570(g) and 3 AAC 110.580. Specifically, the three parties indicate that "the injustice would result, not in the narrow sense of a wrongful act or a violation of rights, but rather in a much broader context of encumbering the community's ability to further consider the options of other forms of more efficient local government."

3 AAC 110.660 emphasizes that the Commission's procedural regulations are intended "to facilitate the business of the commission" and are to be "construed to secure the reasonable . . . determination of every action and proceeding." Clearly, the business of the Commission includes promoting the creation or alteration of local governments in a manner that serves fundamental constitutional principles and the broad public interest.

In its December 16, 1999 written decision concerning this particular matter, the Commission concluded, in part, as follows:

The Commission recognizes that while the pending annexation proposal remedies certain inequities and inefficiencies with respect to the structure of local government in Ketchikan, many others remain. The City will continue to be the entity responsible for a number of services and facilities that are enjoyed by all residents of the Borough. This circumstance apparently resulted from the fact that long before the Borough was formed the City assumed responsibilities that, in contemporary light, appear to be legitimate areawide Borough functions.

A comprehensive restructuring of local government duties and responsibilities in Ketchikan appears warranted. Without such, the door clearly remains open for additional annexations to the City.

Consolidation seems to offer the tools and flexibility needed to address the fundamental deficiencies relating to the structure of local government in Ketchikan. The Commission notes that considerable interest currently exists with respect to the prospect of consolidation of the City and the Borough. Yet, there has been a lengthy history of frustration in Ketchikan with respect to local efforts to achieve consolidation.

The Commission strongly encourages the City and Borough to actively pursue consolidation as a means to improve the structure of local government in the greater Ketchikan area.

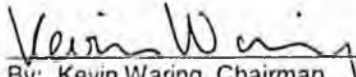
The Commission finds from the foregoing that deferral of annexation until January 1, 2001 would likely facilitate consolidation or other beneficial improvements to the structure of local government in Ketchikan. Since a strict application of 3 AAC 110.570(g) and 3 AAC 110.580 prevents such deferral, the Commission concludes that the application of those two provisions would work injustice on the City of Ketchikan, Ketchikan Gateway Borough, and citizens of the greater Ketchikan community by impeding the community's ability to pursue alternative forms of more efficient local government such as that which could be achieved through consolidation. The

Commission finds further that neither 3 AAC 110.570(g), regarding finality of the Commission's decision, nor 3 AAC 110.580, regarding reconsideration, is strictly provided for in the constitution or statutes.

Based on the foregoing findings and conclusions, the Local Boundary Commission hereby grants the joint request of the City of Ketchikan, Ketchikan Gateway Borough, and Shoreline Service Area to amend the Commission's December 16, 1999 decision to defer the effective date of annexation to January 1, 2001. This action of the Commission takes effect immediately and is not subject to reconsideration.

Approved in writing this 19th day of January 2000.

LOCAL BOUNDARY COMMISSION

  
By: Kevin Waring, Chairman

Attest:

  
Dan Bockhorst, Staff

**Addendum Number 1 to the  
"Report of the Local Boundary Commission to the  
Second Session of the Twenty-first Alaska Legislature"  
dated January 19, 2000**

Modify the second paragraph of Section III of "*Recommendation Number Two of the Local Boundary Commission to the Second Session of the Twenty-First Alaska Legislature*" on page 59 of the above-titled report to read as follows:

The Commission has stipulated in its order approving annexation that the effective date of annexation shall be deferred until January 1, 2001. The deferral will allow officials of the City of Ketchikan and Ketchikan Gateway Borough, as well as other citizens of the greater community of Ketchikan an interim period to explore consolidation of the two local governments and other local government options. [AS PROVIDED BY] In accordance with Article X, Section 12 of Alaska's constitution, if the Legislature does not reject this recommendation within 45 days of the date it was submitted or at the end of the session, which occurs first, it will result in boundaries for the City of Ketchikan on January 1, 2001 as described on the following page and as shown on the map that accompanies this description.

(text that is underlined has been inserted and text within brackets has been deleted)

Tony Knowles, Governor



State of Alaska  
Local Boundary Commission

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-269-4539

February 8, 2000

FEB 15 2000

The Honorable John Harris  
Co-Chairman  
House C&RA Committee  
Capitol Room 110  
Juneau, Alaska 99801-1182  
via facsimile @ 465-3799

The Honorable Carl Morgan  
Co-Chairman  
House C&RA Committee  
Capitol Room 409  
Juneau, Alaska 99801-1182  
via facsimile @ 465-2197

Dear Representatives Harris and Morgan:

This is to request that you schedule an opportunity for the House Community and Regional Affairs Committee to hear from the Local Boundary Commission concerning its January 19, 2000 Report to the Legislature. It is customary that the Commission address the Community and Regional Affairs Committee of each house during the 45-days allowed by Article X, Section 12 of Alaska's Constitution for legislative review of the Commission's municipal boundary recommendations. For the current session, the 45-day review period ends Saturday, March 4.

Such meetings afford the Community and Regional Affairs Committees a chance to ask questions about Commission recommendations that must be considered by the Legislature under Article X, Section 12. Further, it provides the opportunity to exchange ideas concerning important public policy issues raised by the Commission in fulfillment of its duty under AS 44.33.812 to address local government boundary problems.

With respect to the latter, I would particularly encourage the Community and Regional Affairs Committee to consider concerns raised by the Commission on pages 71 – 74 of its report. These relate to ambiguities in the law regarding municipal incorporation, boundary changes, dissolution, and reclassification. If you share the Commission's concerns, I encourage you to introduce legislation to resolve the issues. The Commission has provided conceptual legislation on pages 73 and 74 of its report. As noted in the report, the Commission has contacted the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers, encouraging them to express their positions on the proposed legislative revisions.

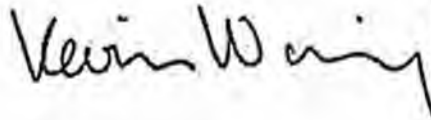
Representative John Harris  
Representative Carl Morgan  
February 8, 2000  
Page Two

Often, the House and Senate Community and Regional Affairs Committees have met jointly to hear from the Commission. If this is not possible this year, I am hopeful that the two Committees will schedule meetings as close to each other as possible.

I will be available to meet personally with each Committee. Unless other Commission members are in Juneau on other business, they will participate by teleconference.

Dan Bockhorst, Local Boundary Commission staff, may be contacted at 269-4559 to arrange for the meeting. I look forward to meeting with the Committee.

Cordially,

A handwritten signature in cursive script that reads "Kevin Waring".

Kevin Waring  
Local Boundary Commission Chairman

cc: Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission  
Nancy Galstad, Local Boundary Commission Member  
Allan Tesche, Local Boundary Commission Member  
Ardith Lynch, Local Boundary Commission Member  
Dan Bockhorst, Local Boundary Commission staff

*Tony Knowles, Governor*



State of Alaska  
**Local Boundary Commission**

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-289-4539

February 8, 2000

The Honorable Tim Kelly  
Chairman  
Senate C&RA Committee  
Capitol Room 101  
Juneau, Alaska 99801-1182  
*via facsimile @ 465-3756*

Dear Senator Kelly:

This is to request that you schedule an opportunity for the Senate Community and Regional Affairs Committee to hear from the Local Boundary Commission concerning its January 19, 2000 Report to the Legislature. It is customary that the Commission address the Community and Regional Affairs Committee of each house during the 45-days allowed by Article X, Section 12 of Alaska's Constitution for legislative review of the Commission's municipal boundary recommendations. For the current session, the 45-day review period ends Saturday, March 4.

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Members: Kevin Waring, Chairperson; Kathleen Wasserman, Vice-Chairperson, First Judicial District; Nancy Galstad, Second Judicial District; Allan Tesche, Third Judicial District; William Walters, Fourth Judicial District

Senator Tim Kelley  
February 8, 2000  
Page Two

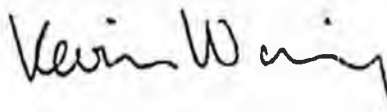
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Kevin Waring  
Local Boundary Commission Chairman

cc: Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission  
Nancy Galstad, Local Boundary Commission Member  
Allan Tesche, Local Boundary Commission Member  
Ardith Lynch, Local Boundary Commission Member  
Dan Bockhorst, Local Boundary Commission staff

Representative  
State Capitol  
Juneau AK 99801



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

January 19, 2000

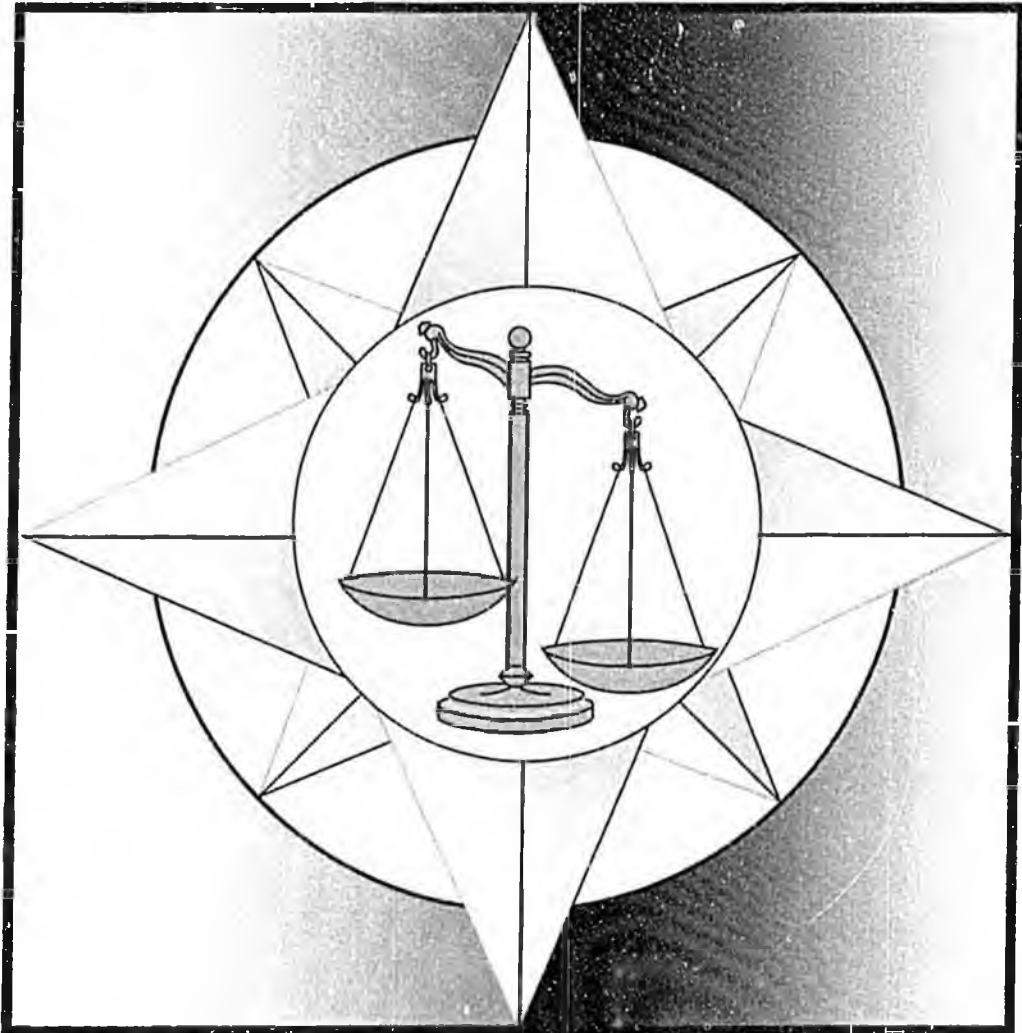
## Communities and Regions Addressed in this Report



Kevin Waring, Chairperson  
Kathleen Wasserman, 1st Judicial District  
Nancy Galstad, 2nd Judicial District  
Allan Tesche, 3rd Judicial District  
Ardith Lynch, 4th Judicial District



Local Boundary Commission  
550 West Seventh Avenue, Suite 1790  
Anchorage, Alaska 99501-3510  
Phone: 907-269-4560  
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The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560.

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

**[http://www.dced.state.ak.us/mra/Mrad\\_lbc.htm](http://www.dced.state.ak.us/mra/Mrad_lbc.htm)**

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

**Local Boundary Commission**

Kevin Waring, Chairperson  
Kathleen Wasserman, Vice-Chairperson  
Nancy Galstad, Member  
Allan Tesche, Member  
Ardith Lynch, Member

**Tony Knowles, Governor**

Report prepared with assistance from:

**Department of Community and Economic Development**

Deborah Sedwick, Commissioner  
Jeff Bush, Deputy Commissioner  
Bernice Joesph, Deputy Commissioner

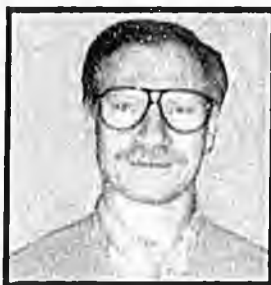
**Municipal and Regional Assistance Division**

Patrick Poland, Director

**For more information contact:**

Local Boundary Commission staff  
550 W. 7th Avenue, Suite 1790  
Anchorage, AK 99501-3510  
Phone: 907-269-4560  
Fax: 907-269-4539  
E-Mail: [Dan\\_Bockhorst@dced.state.ak.us](mailto:Dan_Bockhorst@dced.state.ak.us)

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## **Message from the Chairperson**

January 19, 2000

On behalf of all members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-First Alaska State Legislature.

Chapter 1 provides background information concerning the Local Boundary Commission.

Chapter 2 discusses the Commission's activities during 1999. Chapter 2 also lists a number of proposals currently under consideration by municipalities and voters throughout Alaska.

Chapter 3 presents the Commission's formal recommendations for annexation of 24.29 square miles to the City of Aleknagik and 1.2 square miles to the City of Ketchikan. Those recommendations are submitted in accord with Article X, Section 12 of the Constitution of the State of Alaska.

Chapter 4 discusses important public policy issues of particular interest to the Commission. These include the following.

- Concerns regarding substantial disincentives that hinder borough incorporation and annexation and impede the ongoing development of local government in Alaska. In that context, the Commission urges the Legislature to consider the City of Cordova's conceptual proposal to reform State law governing the incorporation of organized boroughs. The City of Cordova's proposal calls for a new process to establish organized boroughs in unorganized areas that are ready and capable of operating an organized borough.
- The need to: (1) eliminate ambiguities in current law regarding the timing of the assessment, levy, and collection of property taxes by a city or organized borough upon incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification; (2) authorize the extraterritorial levy of municipal taxes in areas detached from municipalities; and (3) recognize that service areas of organized boroughs and the unorganized borough can be altered or abolished as a result of incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification.
- A recommendation that the Alaska Housing Finance Corporation rural housing loan programs be revised to maintain homebuyer program eligibility for a period after municipal boundary changes. This revision would eliminate a significant local objection to appropriate municipal boundary changes.

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".

Kevin Waring  
Chairperson


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# Chapter I

## Background and Procedures

- 1 See AS 29.04, AS 29.05, AS 29.06, and AS 44.33.
- 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 44.33.810. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct, and Redistricting

**T**his 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 & Economic Development (DCED). 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.<sup>1</sup>

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."<sup>2</sup>

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

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. More than twenty-five years 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 decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."<sup>4</sup>

**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."<sup>5</sup> 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 on July 10, 1997. He was reappointed to a new term

as Chairperson effective January 31, 1998. Commissioner Waring was one of the former Department of Community and Regional Affairs' original division directors (1973-1978). Between 1980 and the spring of 1998, 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. She is also a member of the Board of Directors of the Alaska Municipal League. 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



Board.

- 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).

Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.

**Nancy E. Galstad** serves from



the Second Judicial District. She was appointed to the LBC on September 14, 1995 and

reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad 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. Galstad's current term on the LBC expires January 31, 2004.

**Allan Tesche** serves from the



Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10,

1997. A 25-year resident of Anchorage, he was first employed with the legal department of the former Greater Anchorage Area Borough. After unification of local governments in Anchorage, he served as Deputy Municipal

Attorney. Before entering private practice in 1985, Mr. Tesche also served as Director of Property and Facility Management for Anchorage and as Borough Attorney for the Matanuska-Susitna Borough. He is presently a partner in a private firm where he specializes in administrative and municipal law. Mr. Tesche has served in leadership positions on twelve boards and commissions, ranging from the Anchorage Museum Association, the South Addition Community Council, and the Anchorage Police and Fire Retirement Board. He currently serves as a member of the Assembly of the Municipality of Anchorage. Mr. Tesche's term on the Commission expires January 31, 2002.

**Ardith Lynch** serves from the



Fourth Judicial District and lives in the greater Fairbanks area. She was

appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.

The Commission also wishes to acknowledge the contributions during 1999 of William Walters. Mr. Walters resigned from the Commission effective December 21, 1999. His resignation was a consequence of his work-related relocation from Fairbanks to Anchorage which made him ineligible to serve as the appointee from the Fourth Judicial District. Commissioner Walters served with great distinction on the LBC since his appointment in September, 1995. A graduate of the University of Texas School of Law, Mr. Walters is the Chief of Adjudications with the Workers' Compensation Division of the Alaska Department of Labor and Workforce Development. Mr. Walters had previously worked for the Tanana Chiefs Conference on the development of tribal courts from 1992 to 1998. His other public service included a term on the Fairbanks North Star Borough Planning Commission.

- 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, staff analyzes formal petitions filed with the Commission and prepares reports conveying DCED's recommendations for action by the Commission.<sup>7</sup> DCED also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations, and reclassifications. The Commission and DCED are independent of one another with respect to policy matters. For example, the Commission is not bound to follow the recommendations which DCED is required by law to provide to the Commission.

5 AS 39.05.060.  
 6 AS 44.33.020(4)  
 7 See AS 29.04, AS 20.05, and AS 29.06.

.....  
**Staff to the Commission**

The Alaska Department of Community and Economic Development (DCED), Municipal and Regional Assistance Division (MRAD), provides staff to the Commission.<sup>6</sup>

The staff provides technical assistance to municipalities, residents, petitioners, respondents, and others regarding matters under the Commission's jurisdiction. Types of assistance include:

.....  
**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.** DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals.

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

**Public Notice and Public Review.** Once a petition is accepted for filing, extensive public notice 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, DCED 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 DCED. At the conclusion of its investigation, DCED 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, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and also notes any changes to DCED'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 DCED reports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a first-hand picture of the area. 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 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. DCED provides assistance with Voting Rights Act matters.



## Chapter 2

### 1999 Developments & Activities

#### City Incorporation

One petition for city incorporation was filed in 1999. Another pending petition for city incorporation was amended during the year just concluded. Additionally, officials or residents of five other communities expressed interest in city incorporation during the year. Such pending or prospective city incorporation activity occurred in the following communities.

- *Adak*
- *Talkeetna*
- *Anchor Point*
- *Caswell*
- *Igiugig*
- *Lake Louise*
- *Two Rivers*
- *Whale Pass*

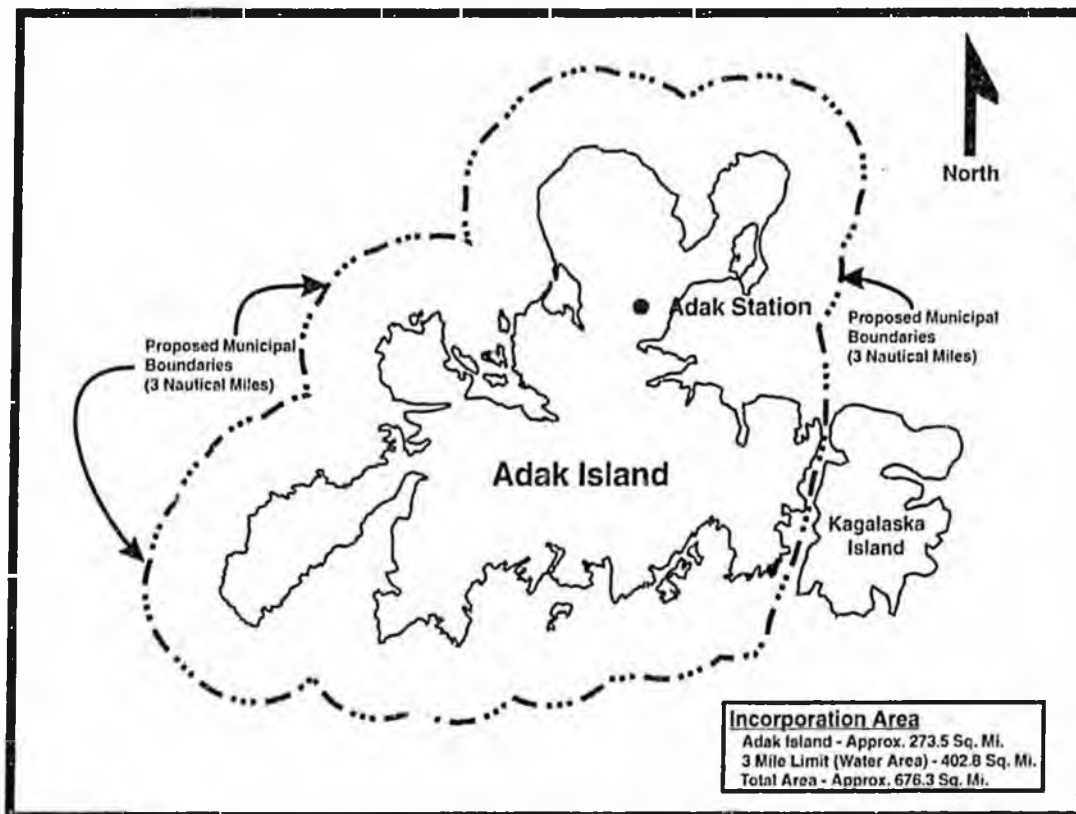


Details concerning these city incorporation activities are provided below.

#### Adak

LBC staff received a petition for incorporation of a second class City of Adak on April 29, 1999. The petition proposes that the City of Adak will levy a 3% sales tax and a 2% fuel transfer tax. The area proposed for incorporation encompasses 676.3 square miles, including the entire 273.5 square mile Adak Island and adjacent waters extending three miles offshore.

On May 10, 1999, the petition was accepted for filing. Notice of the filing of the petition was published, posted, and distributed to 71 parties by mail and e-mail. The Petitioners' Representative served copies of the petition on neighboring municipalities. The deadline for submission of written comments on the petition was July 20, 1999. Timely comments were received from four parties



*Corporate boundaries proposed by the petitioners for the prospective City of Adak.*

and a responsive brief was filed by the U.S. Fish and Wildlife Service.

The preliminary staff report and recommendation is under development and will be issued shortly. The Local Boundary Commission will conduct a public hearing in Adak during April of this year.

### **Talkeetna**

On March 25, 1998, residents of Talkeetna petitioned to incorporate a home rule city with boundaries encompassing twenty-three square miles. On December 7, 1998, a 41-page draft report and recommendation concerning the petition was issued to 134 parties by LBC staff.

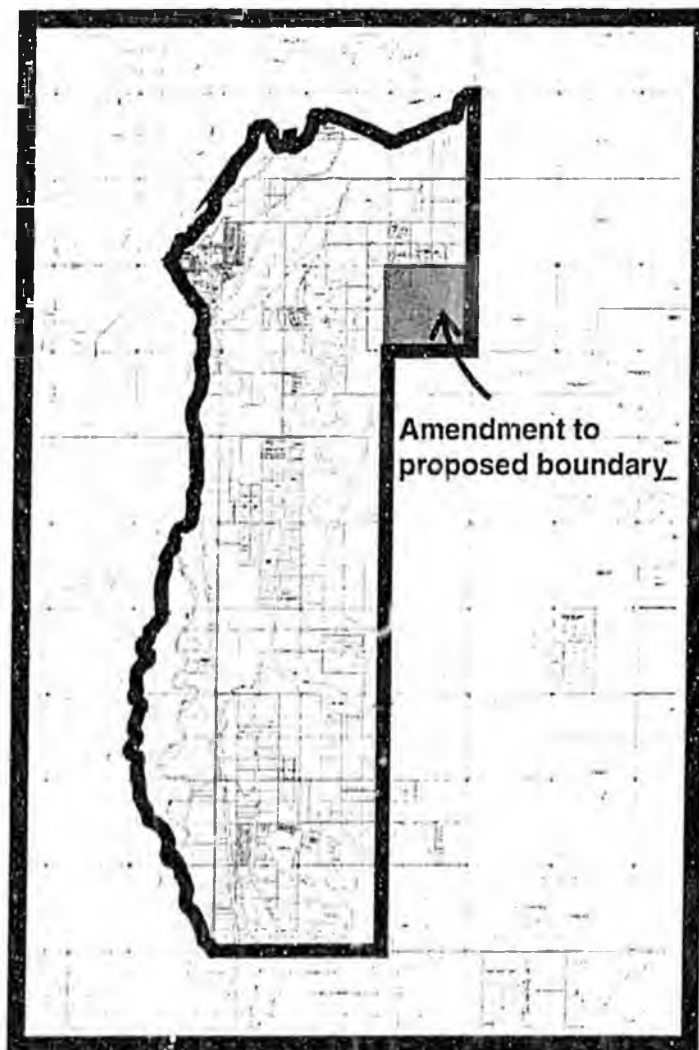
The report recommended that the petition be denied. That recommendation was based upon the following concerns.

- That the petition failed to include all land and water necessary to provide the full development of essential services on an efficient, cost effective level as required by AS 29.05.011(a)(2).
- That the petition did not adequately demonstrate a need for 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 service areas intact and fracture others.

- That incorporation would not result in a significant minimization of the number of local government units as promoted by Article X, Section 1 of the Alaska Constitution. When incorporation of a city government in an organized borough occurs without a reasonably commensurate reduction in the number of service areas, the constitutional principle requiring minimum numbers of local government units is not served.
- That unresolved questions existed with respect to municipal service delivery, both in the area proposed for incorporation and in neighboring areas. Concern existed that implementation of the original incorporation proposal could result in a significant diminution of the number of municipal services provided to residents of the area. Nonarea-wide Matanuska-Susitna Borough services provided to the greater Talkeetna area include solid waste disposal, library service, and animal control. Delivery of such nonareawide services would be disrupted or cease altogether unless provisions are made

for transition of such services upon city incorporation. Since such provisions had not been made, the draft report concluded that the requirement of AS 29.05.021(b) was not satisfied by the original incorporation proposal.

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



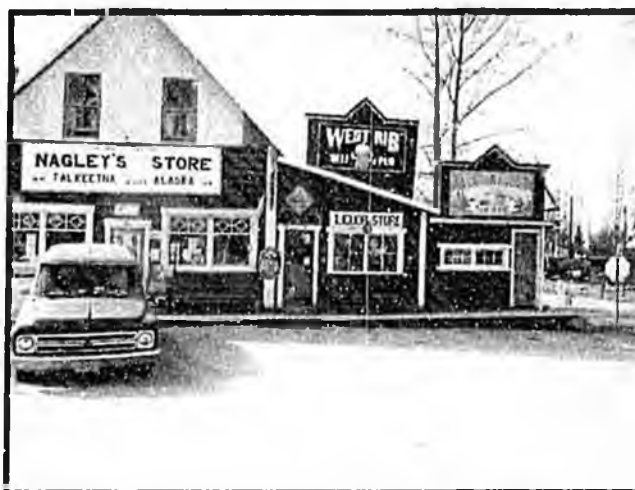
*Proposed City of Talkeetna boundaries.*

In January, the Petitioners' Representative requested LBC staff to secure additional information about budgets and services of other Alaska cities of similar size to assist Talkeetna residents in determining whether to amend the incorporation petition or withdraw it. Accordingly, a duly noticed public informational meeting was conducted by LBC staff in Talkeetna on March 24, 1999. About thirty persons attended the meeting, which was also broadcast on local radio.

On May 14, 1999, LBC staff received a letter from the Petitioners' Representative indicating that an amended petition would be submitted by June 30, 1999.

On October 6, 1999, LBC staff received the amended petition. Changes to the original petition include:

- offering voters the option of a 4% seasonal sales tax or 2% year-round sales tax;
- deletion of the proposed 15% bed tax on facilities with more than 50 beds;
- provision for a part-time city manager, part-time city clerk/treasurer, full-time public works operator, and seasonal recreation director;
- enlargement of the proposed boundaries to include one



*Retail businesses in Talkeetna core area.*

section (Section 28) to ensure that known existing and potential access routes to the Freedom Hills Subdivision are included within the proposed boundaries;

- provision for assumption of solid waste services within 18 months after incorporation;
- provision for assumption of library services within 18 months after incorporation.

The amended petition is under technical review by LBC staff.

### **Anchor Point**

On April 30, 1999, MRAD regional office staff participated in a community meeting of Anchor Point residents to discuss city incorporation standards, city incorporation procedures, and incorporation options. About thirty area residents attended the meeting.

## Caswell

On August 24, a resident of Caswell, located north of Willow on the Parks Highway, requested and was provided information regarding second class city incorporation. The individual indicated that community residents are exploring the merits of forming a city or, alternatively, a community council recognized by the Matanuska-Susitna Borough. The individual indicated that the community has 250 homes in an area approximately 22 miles by 14 miles in size.

## Igiugig

In August, Igiugig village officials requested and were provided with information regarding second class city incorporation. Dillingham regional office staff met with community members in December to discuss city incorporation.

## Lake Louise

On June 7, 1999, a resident of Lake Louise contacted LBC staff to discuss petitioning for incorporation of a second class city in concert with an effort to detach the territory from the Matanuska-Susitna Borough. Lake Louise residents unsuccessfully sought such a change in 1996.

## Two Rivers

In January 1999, a Two Rivers resident indicated that a petition for city incorporation of that community was being circulated. However, it appears that interest in city incorporation diminished and was supplanted by interest in detachment of Two Rivers from the Fairbanks North Star Borough.



*Two Rivers Post Office.*

## Whale Pass

In March, a Whale Pass resident requested and was provided with information regarding incorporation of a second class city. Estimates of municipal entitlement land that could accrue to a City of Whale Pass were also provided.

## City Annexation

Seventeen city annexations were considered, initiated, or implemented during 1999. Such pending or prospective city annexation activity occurred with respect to the following municipalities.

- *City of Aleknagik*
- *City of Ketchikan (2)*
- *City of Kodiak*
- *City of Ekwok*
- *City of Fairbanks (2)*
- *City of Haines*
- *City of Homer*
- *City of Klawock*
- *City of Newhalen*
- *City of Nondalton*
- *City of Palmer*
- *City of Petersburg*
- *City of Sand Point*
- *City of Toksook Bay*
- *Wrangell*



Details concerning 1999 City annexation activities are provided below.

### Aleknagik

In March of last year, the City of Aleknagik petitioned for annexation of approximately 24.29 square miles.

The Commission conducted a two-hour public hearing on the annexation proposal on November 20, 1999 in the Aleknagik School. Following the hearing, the Commission recessed the meeting until November 29, 1999. At that

time it unanimously approved the petition. In accordance with the final written decision rendered by the Commission on December 16, 1999, a recommendation for annexation of 24.29 square miles is submitted with this report to the 2000 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.

## City of Ketchikan

In February of last year, the City of Ketchikan petitioned for annexation of approximately 0.48 square miles. After considering a responsive brief from the Shoreline Service Area and written comments from the Ketchikan Gateway Borough and others in response to the petition, the City amended its petition to encompass 1.2 square miles including the entire Shoreline Service Area. The amended petition was accepted for filing on May 13, 1999.

The Commission conducted a public hearing on the annexation proposal on December 4, 1999 in the Ted Ferry Civic Center in Ketchikan. Following the hearing, the Commission unanimously approved the petition. In accordance with the final written decision rendered by the Commission on December 16, 1999, a recommendation for annexation of 1.2 square miles is submitted to the 2000 Legislature under the terms of Article X,

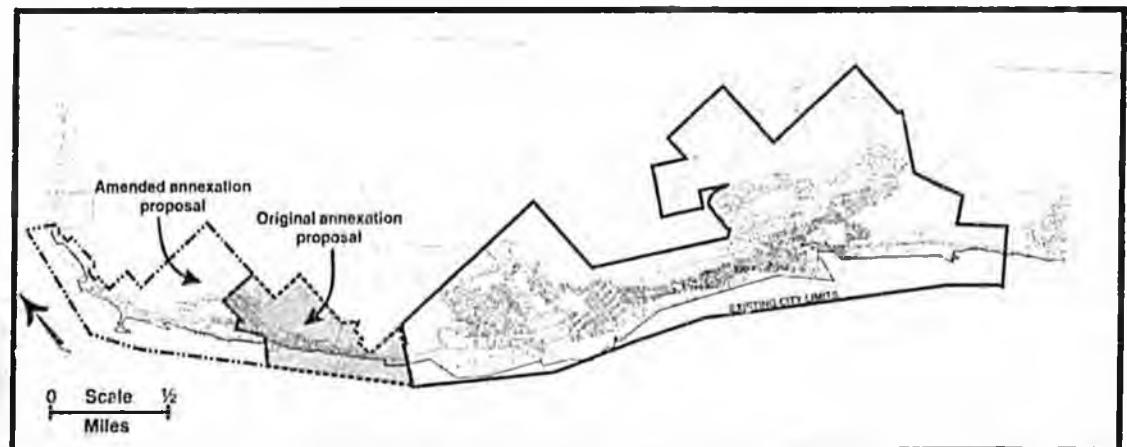
Section 12 of the Constitution of the State of Alaska. The formal recommendation for annexation is included in Chapter 3 of this report.

## City of Kodiak

On March 19, 1999, the City of Kodiak filed a petition for annexation of approximately 19.5 square miles containing 3,500 residents and taxable property valued at nearly \$165 million. On August 28, 1999, the Commission convened a public hearing on the petition in Kodiak at the North Star Elementary School.

Twenty-four individuals provided oral comments on the annexation proposal during the public comment phase of the hearing.

The hearing lasted approximately four hours. Following the hearing, the Commission deliberated for approximately 1.5 hours. Following its deliberations, the Commission determined that the



*Ketchikan annexation proposal*



*A portion of the area proposed for annexation to the City of Kodiak.*

petition satisfied all requirements established in law and unanimously approved the petition. The annexation issue was placed before voters in the area proposed for annexation on October 5, 1999. At the election, area voters overwhelmingly rejected the proposed boundary change by a vote of 820 (88%) to 112 (12%). City officials indicated that the fact that the residents of the territory would have lost eligibility for new AHFC rural loans if it were annexed likely contributed to the heavy opposition to annexation. Concerns that the AHFC loan program is having adverse effects on some important municipal boundary proposals are noted in Chapter 4 of this report.

### **City of Ketchikan**

A petition for local action annexation of about 12 acres is currently under development by the City of Ketchikan.

### **City of Ekwok**

In April, Dillingham MRAD regional office staff indicated that officials of the City of Ekwok were contemplating annexation.

### **City of Fairbanks**

On January 21, 1999, notification

of Federal Voting Rights Act preclearance of the City of Fairbanks' annexation of 42.46 acres was received by LBC staff, rendering the boundary change effective on that date. Notice of the annexation was issued to interested parties and a new certificate of boundaries was issued.

### **City of Fairbanks**

In November of last year, staff of the City of Fairbanks requested forms for local action annexation initiated by all property owners and registered voters in the territory sought for annexation. The owner of a residential parcel adjacent to the Chena River in west Fairbanks has requested annexation.

### **City of Haines**

In accordance with Article X, Section 12 of the Constitution of the State of Alaska, annexation of 6.5 square miles to the City of

Haines was tacitly approved by the legislature on March 14, 1999, forty-five days after submission of the LBC recommendation. In January 1998, the LBC had deferred submission of formal recommendation for the annexation to the Second Session of the Twentieth Alaska State Legislature. The deferral was made at the request of the City of Haines, the Haines Borough, and Haines Borough Citizens Against Annexation. The deferral was intended to allow local government officials and citizens the opportunity to first consider consolidation of the City of Haines and the Haines Borough. In November 1998, voters rejected the consolidation proposal by a vote of 542 to 545. Accordingly, the LBC submitted its formal recommendation for annexation of the territory to the First Session of the Twenty-First Alaska State Legislature on January 28, 1999.

parcels with a taxable value of about \$12,190,000. The areas considered for annexation are provided with City water and sewer service on an extraterritorial basis. The City solicited comments whether the area contemplated for annexation was large enough to be appropriately considered for annexation. Petition forms and information regarding the standards and procedures for annexation were provided to the City.

### **City of Klawock**

A City of Klawock official advised LBC staff that a public meeting was conducted in Klawock on March 17, 1999 dealing, in part, with a prospective proposal for annexation to the City of Klawock.

### **City of Newhalen**

A voter initiated petition for annexation of 351.5 square miles to the City of Newhalen under



*Haines airport, part of the territory annexed to the City of Haines in 1999.*

### **City of Homer**

In January, the City of Homer planning director wrote to LBC staff advising that the City was considering annexation of 207

provisions of the legislative review annexation process was accepted for filing on April 14, 1999. The area proposed for annexation included the unincorporated

community of Iliamna. On June 7, LBC staff participated in a Lake and Peninsula Borough Planning Commission meeting in Newhalen regarding the petition. About 40 persons attended the meeting. Extensive public comment was given and discussion of annexation lasted nearly three hours.

A petition to withdraw the annexation petition was subsequently received by LBC staff. Since the requirements of 3 AAC 110.540(a)(2) were satisfied by the withdrawal petition, the Petitioners' Representative was formally advised on September 1, 1999 that the petition was withdrawn.

## City of Nondalton

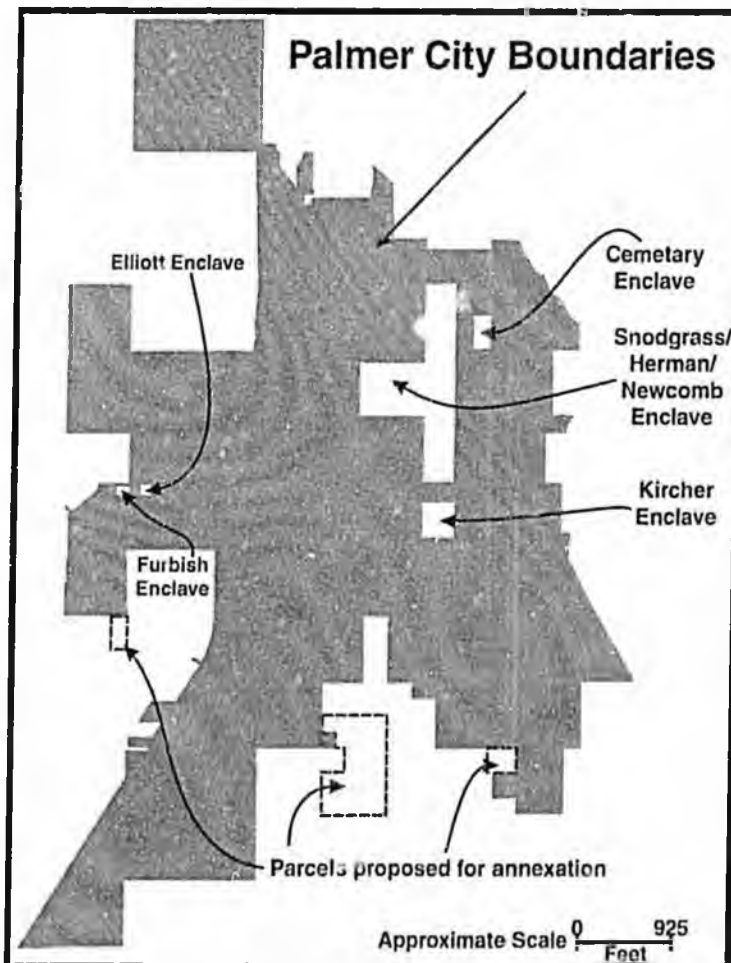
In June, the Mayor of Nondalton informed LBC staff that the City was contemplating annexation.

## City of Palmer

On February 8, 1999, the City of Palmer filed a petition for annexation of four parcels, collectively comprising 64.9 acres. The annexation is sought under provisions of 3 AAC 110.150(2), that permit annexation of contiguous territory to a city "by ordinance and a petition signed by all of the voters and property owners of the territory." One of the parcels proposed for annexation is the ten-

acre site of the Mat-Su juvenile detention facility. No public opposition was been expressed regarding the proposed annexation. The only comment submitted by the June 4 deadline for public in response to the filing of the petition was a letter of support for the annexation from the Matanuska-Susitna Borough.

On September 2, 1999, the Commission approved a request by the City of Palmer to relax certain of the procedural regulations regarding the petition pursuant to 3 AAC 110.590(c). Specifically, the



**Enclaves within the City of Palmer.**

Commission directed that:

- Notice of the public hearing would be published one time instead of three times.
- One abbreviated DCED staff report would be issued three weeks prior to the date of a teleconferenced public hearing.
- Written comments on the consolidated report may be submitted until at least one week prior to the public hearing. DCED will respond to any comments on the consolidated report at that public hearing.
- The Commission's public hearing on the petition will be conducted by teleconference.

In November, the Palmer City Manager indicated that additional property owners adjacent to the existing City of Palmer boundaries were also seeking annexation.

### **City of Petersburg**

City officials requested and were provided with information concerning annexation standards and procedures.

### **City of Sand Point**

In March, information was provided to the City of Sand Point concerning the City's previous attempt to annex Baralof Bay (Squaw Harbor). City staff indicated that another proposal to annex that

area was being contemplated by officials of that City.

### **City of Toksook Bay**

In September, the Toksook Bay City Clerk requested and was provided information regarding the standards and procedures for annexation by legislative review and petition forms for annexation.

### **City of Wrangell**

In October, the Wrangell City Manager requested and was provided petition forms and related materials to develop a petition for legislative review annexation of the area referred to locally as "Wrangell West". The City delivers education, school bus transportation, electrical power, police service, fire protection, and garbage service to that area. Other City facilities and services also benefit the area in question. The area is inhabited by an estimated 45 individuals. It is anticipated that a petition for legislative review annexation will be filed by March, 2000.



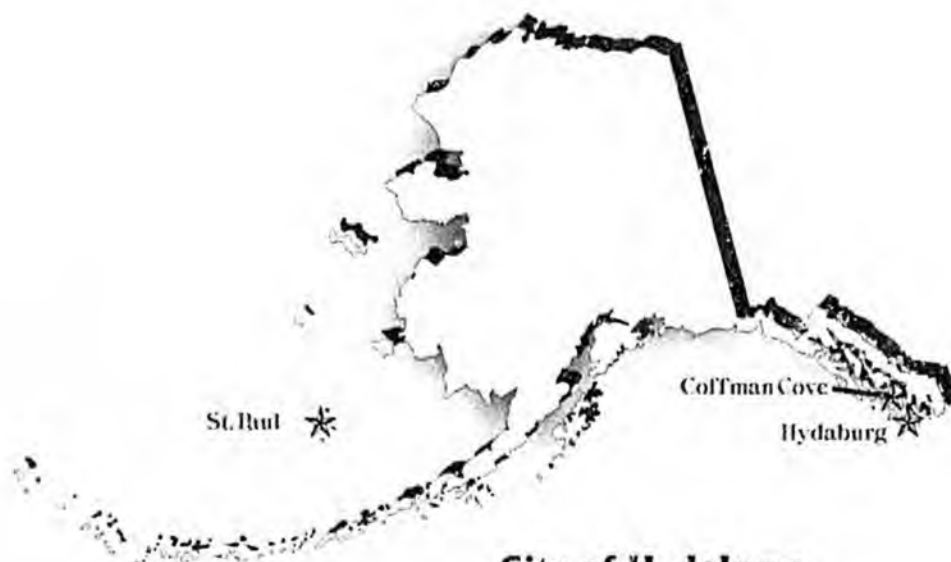
*Sand Point*

## City Dissolution

Inquiries concerning city dissolution occurred regarding the following Cities during 1999.

- *Coffman Cove*
- *Hydaburg*
- *St. Paul*

Details concerning 1999 city dissolution activities are provided below.



### City of Coffman Cove

In April, a City of Coffman Cove official requested and was provided with information on standards and procedures for dissolution. The official stressed, however, that the request should not be construed as a signal that the City of Coffman Cove anticipates development of a petition for dissolution.

### City of Hydaburg

In April, LBC staff drafted a summary of the effects that dissolution would have upon Hydaburg. The analysis was prepared at the request of the City of Hydaburg's Mayor.

### City of St. Paul

In January, officials of the City of St. Paul requested and were provided with information regarding procedures and standards for city dissolution and general considerations relevant to such an action.

.....  
**City Merger**

During 1999, no petitions for merger of cities were filed or processed.

.....  
**City Reclassification**

Interest was expressed in exploring the merits of reclassification of the City of Pelican from first class to second class city status. LBC staff participated in a public informational meeting conducted on the topic in Pelican. City officials subsequently indicated that it is unlikely that a petition for such reclassification will be filed.

.....  
**City Detachment**

**City of Nenana**

In December, residents of the Nenana South Subdivision expressed interest in detaching from the City of Nenana. The area in question is inhabited by an estimated 35 individuals. LBC staff provided written information to the group concerning standards and procedures for detachment.



## Borough Incorporation

No petitions for borough incorporation were filed in 1999. However, officials or residents of six areas expressed interest in borough incorporation during the year. Such pending or prospective borough incorporation activity occurred in the following communities.

- *Delta-Greely*
- *Prince William Sound*
- *Skagway*
- *Wrangell*
- *Central Southeast Alaska*
- *Nome*



Details concerning borough incorporation activities during 1999 are provided below.

### Delta-Greely

On April 7, LBC staff participated in a teleconference with the ad hoc Chairperson of the Delta-Greely Borough Steering Committee to discuss formation of a non-unified home rule borough. Representatives of other interested agencies participated in the teleconference, including the Executive Director of the Alaska Council of School Administrators, the Delta-Greely School District Superintendent, City of Delta Junction officials, representatives of the Delta-Greely School Board and Dellana Community Corporation.

During April, LBC staff reviewed a draft borough charter prepared by local citizens. At the request of the steering committee, LBC staff traveled to Delta Junction on May 11 and participated at a public meeting attended by about thirty persons.

Staff also advised the steering committee of concern about the proposed borough's conceptual boundaries. As a consequence of the concerns expressed by Paxson residents, Dry Creek residents, and LBC staff, the proposed borough boundaries in later drafts of the petition were revised to conform to the boundaries of the Delta-Greely

School District. Thus, the current draft of the petition proposes boundaries encompassing 6,227 square miles and a population of about 4,200.

### **Prince William Sound**

In response to a request from the City of Cordova, LBC staff addressed a "town meeting" in Cordova on April 26. One of the principal topics of the meeting was a discussion of "borough options". Staff presented information about the concept of borough government, the history of borough government, prospects of mandatory borough legislation, prospect of annexation of Whittier to the Municipality of Anchorage, and region-specific difficulties inherent in forming a borough in Prince William Sound.

Approximately 75 individuals, including the Mayor, City Manager, City Planning Director, several City Council members and several City School Board members attended the meeting. Following the meeting, staff met with key City officials, who requested and were provided with additional analysis of projected ramifications of borough incorporation upon funding for education in the region and other questions concerning borough formation.

### **Skagway**

In December 1999 LBC staff reviewed and commented on a draft petition for incorporation of a first class Skagway borough at the request of the City of Skagway.

The boundaries of the territory proposed for incorporation conform to the existing boundaries of the City of Skagway, which encompass a total of 466 square miles, and a population of 814 year-round residents.

### **Wrangell**

In April, a draft petition for incorporation of a Wrangell Borough was submitted to LBC staff for review and comment. The draft petition proposed incorporation of a home rule borough with boundaries encompassing the existing City of Wrangell and an additional 2,384 square miles. The conceptual boundaries would have added an additional 89 residents to the City's population. Other MRAD staff, as well as staff of the Department of Natural Resources, the Department of Education and Early Development, and the Department of Labor and Workforce Development reviewed specific elements of the draft proposal.

On June 29, the Director of MRAD wrote to the City of Wrangell identifying technical flaws and policy concerns relating to the draft proposal. Policy issues and concerns identified included the following:

- The proposal appeared to be contrary to the provision of 3 AAC 110.045(b) that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.
- The proposed Wrangell borough failed to "promote

maximum local self government . . . in accordance with Article X, § 1 of the Constitution of the State of Alaska."

- Approval of the proposal would not be consistent with good public policy, in part because incorporation of the borough, as proposed, would result in significant expense to the State of Alaska. Such expenses would include increased education costs to the State, organizational grants, and up to 2,542 acres of State land.
- Approval of the proposal would come at the expense of others in the unorganized borough currently receiving National Forest Receipts funding.

Concern was also expressed about the feasibility of the proposed borough budget and the proposed borough tax structure.

On October 26, 1999, the Wrangell City Council decided to postpone further efforts to develop a proposal for incorporation of a unified borough government. The decision followed consideration of discussions between the City Manager and LBC staff concerning policy issues relating to the prospective proposal. The City Manager indicated, however, that efforts to form a Wrangell borough might be renewed if any of three circumstances occurred. Such hypothetical circumstances are:

- (1) a threat to the perceived interests of the community regarding a borough incorporation proposal involving Petersburg;
- (2) a threat to the perceived interests of the community regarding a proposal to annex territory to the Ketchikan Gateway Borough; or
- (3) significant timber harvesting or mining activities in the Bradford Canal area.

### Central Southeast Alaska

Officials of the City of Kake and the City of Petersburg met to discuss the merits of establishing a borough encompassing those communities. A resident of the neighboring community of Thom's Place advised LBC staff that the Thom's Place Community Association was opposed to incorporation of a Wrangell borough, favoring instead a Wrangell/Petersburg borough.

### Nome

Nome officials have expressed continued interest in establishment of a borough encompassing the City of Nome and limited surrounding territory. LBC staff has previously advised the Nome City Council and citizens about the standards and procedures for borough formation. Concern that the potential borough boundaries favored by Nome officials may be unnaturally constrained has been expressed to Nome officials by LBC staff.

## Borough Annexation

Activities relating to borough annexation occurred in the following areas during 1999.

- *Ketchikan Gateway Borough*
- *Lake and Peninsula Borough*

Details concerning those borough annexation activities are provided below.



### Ketchikan Gateway Borough

In 1998, the Ketchikan Gateway Borough petitioned for annexation of 5,524 square miles. After holding a hearing in December 1998, the Commission voted unanimously to give the Borough 90 days to amend its petition for annexation to include the communities of Hyder and Meyers Chuck. The deadline for receipt of an amended petition was March 12, 1999. The Borough chose not to amend its petition. Thereafter, the Commission determined that the original petition did not satisfy the requirements in law and the Commission denied the annexation proposal by unanimous vote.

### Lake and Peninsula Borough

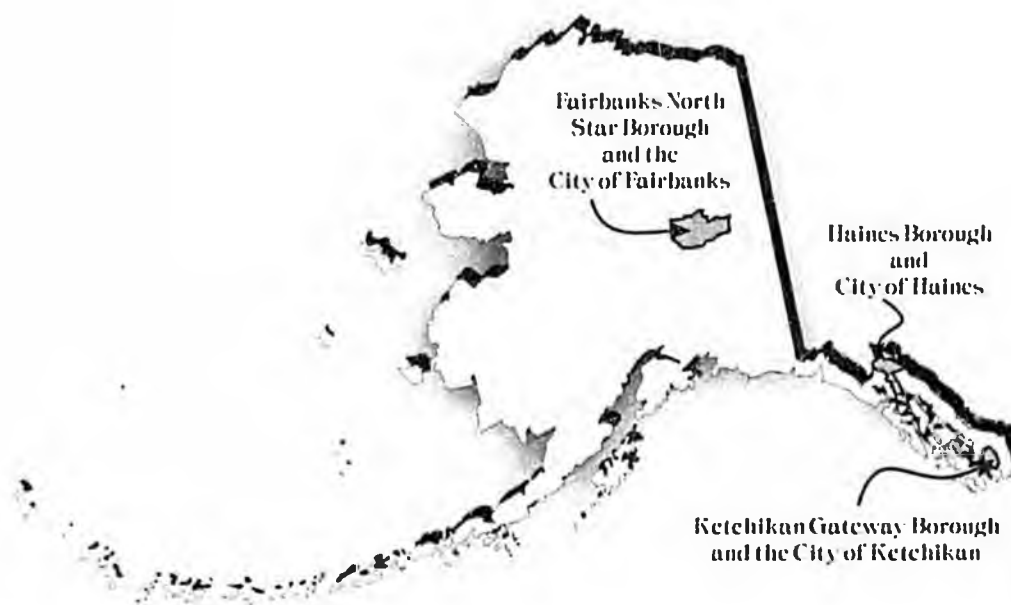
A petition for annexation of the Nushagak-Dillingham area to the Lake and Peninsula Borough was submitted in 1997. By mutual agreement, the petition was not accepted for filing in order to provide an opportunity for meetings between officials of the Lake and Peninsula Borough and local officials in the greater Bristol Bay region to discuss annexation. Subsequently, it was agreed that LBC staff would update the feasibility study of the viability of an expanded Lake and Peninsula Borough.

## City and Borough Consolidation

Activities relating to consolidation of cities and borough occurred in the following areas during 1999.

- *City of Fairbanks and Fairbanks North Star Borough*
- *City of Haines and Haines Borough*
- *City of Ketchikan and Ketchikan Gateway Borough*

Activities relating to city and borough consolidation activities are provided below.



### Fairbanks

In April 1998, a group of Fairbanks citizens formed a committee to explore options for streamlining local government in Fairbanks. Representatives of the group made several inquiries to LBC staff as the petition was being drafted. The petition began circulating in the Fairbanks area in 1998. The petition seeks the consolidation of the home rule City of Fairbanks and the second class Fairbanks North Star Borough

as a second class borough. The representative for the petitioners advised LBC staff that the formal petition will likely be filed in January of this year.

### Haines

The Haines Borough Assembly and the Haines City Council conducted a joint meeting on November 23, 1999. Local officials reportedly agreed that consolidation or unification of the two municipalities should occur. A

series of community meetings have been proposed to facilitate public discussion of the issue.

### **Ketchikan**

The City of Ketchikan has continued its previously reported efforts to develop a petition for consolidation of the City of Ketchikan with the Ketchikan Gateway Borough. The prospective petition proposes to establish a home rule "Municipality of Ketchikan" from the two consolidated municipalities.

On October 8, 1999, the City of Ketchikan submitted a draft consolidation petition to LBC staff for technical review. LBC staff

reviewed and provided extensive comments to officials of the City of Ketchikan regarding the draft petition. After considering the changes, City officials planned to release the draft for public review and comment. The City further planned to arrange a joint meeting of the Ketchikan City Council and Assembly of the Ketchikan Gateway Borough to discuss the proposal.

An official of the City recently indicated that the formal consolidation petition may be filed in February or March.

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### **Borough Detachment**

No petitions for detachment of territory from organized boroughs were filed during 1999. However, interest in detachment from organized boroughs was noted in three areas.

- *Municipality of Anchorage*
- *Lake and Peninsula Borough*
- *Fairbanks North Star Borough*

Details concerning borough detachment activities are provided on the following page.



**Municipality of Anchorage**

On two occasions during the year, LBC staff met with residents of Girdwood who were exploring the ramifications of detachment of Girdwood from the Municipality of Anchorage. They envisioned that, subsequent to detachment, a borough government encompassing Girdwood, Whittier, and Hope would be incorporated.

**Lake and Peninsula Borough**

On December 21, 1999 LBC staff was contacted by a resident of Port Heiden who indicated that he was initiating an effort to detach seven communities and surrounding territory from the Lake and Peninsula Borough. The area includes the City of Port Heiden, the City of Chignik, Chignik Bay, Chignik Lagoon, Ivanoff Bay, Perryville, and Pilot Point. He indicated that he would be attending a meeting of the Aleutians East Borough Assembly scheduled for January 18, 2000 to discuss the potential annexation of the referenced communities to the Aleutians East Borough.

**Fairbanks North Star Borough**

In April, a Fairbanks attorney indicated that he was working with Two Rivers residents regarding detachment of the Two Rivers Voting Precinct from the Fairbanks North Star Borough. The area reportedly includes 300 students, a total population of about 1,500, and an assessed value of \$46 million. The proponents of detachment are reportedly motivated by the alleged lack of school facilities to serve students in the Two Rivers area. At last report, the petition was under development.

.....  
**Litigation Involving the Local Boundary Commission**

During 1999, there were no new or existing court challenges concerning actions taken by the Local Boundary Commission.





## **Chapter 3**

### **Recommendations to the Legislature**

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

#### **A Recommendation for Annexation of 24.29 Square Miles to the City of Aleknagik**

##### **Section I Introduction**

As allowed by 3 AAC 110.410, the City of Aleknagik petitioned the Local Boundary Commission on March 5, 1999 to annex 24.29 square miles within the unorganized borough. The petitioner estimated that the area proposed for annexation had eight year round residents and fifty seasonal residents. The City's current jurisdictional boundaries encompass about 19.46 square miles and 259 residents.

##### **Section II Proceedings**

Upon a staff determination that the form and content of the City's annexation petition were sufficient, notice of filing of the petition was published and posted in accordance with 3 AAC 110.450. Notice was also mailed to 52 potentially interested individuals and organizations and June 4, 1999 was established as the deadline for filing of comments and responsive briefs. Copies of the petition were served on potentially interested parties as required by 3 AAC 110.460.

No responsive briefs were filed under 3 AAC 110.480. Thirteen parties submitted timely written comments in response to the notice of the filing of the petition.

The City of Aleknagik submitted a reply brief under 3 AAC 110.490. Preliminary and final staff reports together with written comments were made a part of the record.

Notice of the Commission's November 20, 1999 hearing in the territory proposed for annexation was published in the *Bristol Bay Times* on October 13, October 20, and October 27 in accordance with 3 AAC 110.550. Copies of the notice along with the November 20 hearing agenda and guidelines for testimony were made available to the public through the offices of the Aleknagik City Administrator on October 12, 1999. Further, the notice, agenda, and testimony guidelines were distributed to 60 individuals and organizations by DCED on October 12, 1999. The City of Aleknagik posted notice of the hearing in three locations within the existing boundaries of the City and four locations in the area proposed for annexation. DCED also requested that radio station KDLG serving Aleknagik broadcast public service announcements concerning the hearing from October 29 through November 20. No objections to notice of the hearing were raised to staff or the Commission in this proceeding.

On Saturday, November 20, 1999, the Commission convened a formal hearing on the petition. The hearing began at 2:25 p.m. in the gymnasium of the Aleknagik School.

During the hearing, the Commission received comments from City Attorney Brooks Chandler, Fred Nishimura, Business Manager of Aleknagik Natives Ltd. (ANL), Bobby Andrew, President of Aleknagik Natives Limited and a member of the City of Aleknagik Advisory Planning Committee, Pavilla Chukuk, Allan Ilutsik delivered comments on behalf of local resident Roland Moody, Berna Mae Andrew and Kay Gorman.

The hearing lasted about two hours. Following the hearing, the Commission recessed the meeting until 10:00 a.m., November 29, 1999. At that time, the Commission reconvened. Commissioners Waring and Tesche were present in the Anchorage teleconference site at 333 West 4<sup>th</sup> Avenue. Commissioners Galstad, Walters and Wasserman participated via teleconference. Following its deliberations on November 29, the Commission approved the petition by unanimous vote.

### **Section III**

## **Findings and Conclusions**

The record in this proceeding includes; the City of Aleknagik's annexation petition, written comments on the petition submitted directly to DCED by thirteen parties, the City of Aleknagik's reply brief, DCED's September 20, 1999 preliminary report, written comments on DCED's preliminary report from five individuals, DCED's October 29, 1999 final report, and testimony received at the Commission's November 20, 1999

public hearing. Based on the evidence in that record, the Commission reaches the findings and conclusions set out in this section of the recommendation.

### **A. Need for city government in 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 that area. [3 AAC 110.090(a)]

Commissioner Wasserman noted that the area proposed for annexation is distant from any municipal government, other than the City of Aleknagik, that could provide it with municipal services. She suggested that the area proposed for annexation would require municipal services in the future but questioned whether the City of Aleknagik has the financial and administrative capacity to deliver such services.

Commissioner Tesche stated that he believed that a reasonable need for city government was evident with respect to the entire area proposed for annexation although it was obvious that the areas proposed for annexation located closest to the existing city boundaries exhibit a more compelling rationale for annexation. He considered Lake Aleknagik to be an integrated system of transportation, recreation, and subsistence. Consequently, extension of city jurisdiction over those areas would assist the local residents and businesses to effectively manage local resources for the overall public benefit. His conclusions were based upon his personal observations, testimony of area residents and particularly the City's desire to regulate or manage reasonably foreseeable growth in the area.

Commissioner Waring stated that standard was clearly satisfied by the two areas north and south of the existing boundaries, collectively comprising six square miles because City-owned solid waste disposal facilities and access to those facilities were located on those areas. He considered the 18 square mile area located west of the existing city boundaries as exhibiting development and potential for further development. The area served as a base for access to Wood River and Tikchik Lakes and for recreational activity based in and around Aleknagik. Further, the record suggested that potential exists for faster growth of a type and scale inconsistent with the community's preferences. He stated that he considered the issue in the context of the lifestyle and economic needs of the Aleknagik community. He considered the area's potential for growth to suggest that there is a need for land use planning to ensure that development is compatible

with the needs of the community. He observed that the areas closer to existing boundaries more fully satisfied the standard, but the standard is generally satisfied for the entire area sought for annexation.

Based on the foregoing, the Commission concludes that there is a reasonable need for city government in the entire 24.29 square miles proposed for annexation. Thus, the standard set forth in 3 AAC 110.090(a) is satisfied.

### **B. Comparative Ability of the City of Aleknagik and Others to Provide Essential City Services**

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 3 AAC 110.990(8) to the area more efficiently and effectively than another existing municipality [3 AAC 110.090(b)]. The determinations of the Commission on this point are summarized below.

Commissioner Galstad stated that although the existing services provided by the City of Aleknagik are minimal, the proposal for adding some City services upon annexation is a good one. She indicated that she harbored some concern regarding the ability of the City of Aleknagik to generate sufficient revenue to budget for delivery of services to the complete territory. However, she expressed understanding of the need for planning for growth and development that potentially could occur in the entire Lake Aleknagik area. She concluded that the standard was met because of the proximity of Aleknagik to the area proposed for annexation, in contrast to Dillingham, which is relatively far removed.

Commissioner Walters considered it to be clear that, in the context of the Aleknagik annexation proposal, the only other current option for extending municipal jurisdiction to the area would be annexation of the area to another existing city. However, it is unclear whether application of the standard would allow consideration an existing borough or potential borough. Nevertheless, it was evident that this standard was met, since Dillingham, the only other city within any proximity to the area proposed for annexation, could not better provide the needed services to the area proposed for annexation than could the City of Aleknagik.

Normally services like land use planning for large, sparsely populated areas would be better administered by an organized borough. However, in this case, the areas located to the north and south of the existing boundaries of the City are the locations of City-

owned solid waste disposal sites. Consequently, annexation of those areas that is something that is primarily in the interest of the community of Aleknagik. He noted that the City of Aleknagik owns two recreational campground areas that are being developed on 14(c)(3) lands transferred to the City by Aleknagik Natives, Ltd. The City has a compelling interest, a regulatory interest, in that land. Therefore it is evident that the amended western boundaries of the City should extend at least as far out as those recreational sites at Huppy Creek and Bear Bay. The City's interest and ability to provide those services was a primary consideration in this context. Although the land use planning needed might be better dealt with by a potential borough, the standard is clearly satisfied by the annexation proposal.

Commissioner Galstad expressed concern that certain services, such as septic waste disposal were provided to the Aleknagik area from service deliverers located in Dillingham.

The Commission concludes from its analysis and findings that the proposed annexation fully satisfies the standard set out in 3 AAC 110.090(b). That is, the City can provide essential city services to the territory proposed for annexation more efficiently and more effectively than another existing local government.

### **C. Compatibility of the Territory Proposed for Annexation with the Area Inside the Current City Boundaries**

Under 3 AAC 110.100, an area may be annexed to a city if the Commission determines the two areas are compatible in character.

Commissioner Tesche considered the standard to be met by all of the area sought for annexation. Although he noted an obvious difference in population density and development between the area proposed for annexation and the area within the existing boundaries of the City he found there to be little difference in the manner in the land is actually set up for prospective and current subdivisions. For instance, numerous Native allotments are poised for sale in the area to be annexed and development activities in the area proposed for annexation are similar to and compatible with land uses existing or proposed within current city boundaries. Therefore he did not anticipate difficulties in City of Aleknagik land use and subdivision planning for both areas. The topography of the area suggested to him that the area within the existing boundaries of the City of Aleknagik was compatible with that of the area proposed for annexation.

Major differences between the areas were evident in terms of population density. However, he did not consider the distinction

between population densities to be a fatal flaw in the proposal since there is reasonably anticipated future growth in the area proposed for annexation and it is just as important for us to look at future growth patterns as it is at current population densities. He viewed the record as suggesting that there will be future development on both the north and south shores of Lake Aleknagik, in terms of recreational lodges and whatever is done with the existing Native allotments that may be offered for sale.

Commissioner Tesche indicated that the territory proposed for annexation exhibited no features that distinguished it from the territory within the existing boundaries of the City. Therefore, he found that the standard was met for the entire area proposed for annexation.

Based on the preceding findings, the Commission concludes that the 24.29 square mile territory proposed for annexation is compatible in character with the area inside the current boundaries of the City. As such, the standard set out in 3 AAC 110.100 is fully satisfied.

#### **D. Adequacy of the Resources Needed to Provide City Services**

3 AAC 110.110 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.

Commissioner Walters indicated the record and public comments submitted at the public hearing led him to conclude that the two primary city functions needed by the entire area proposed for annexation are municipal planning and solid waste disposal functions. He suggested that since the western portion of the area proposed for annexation has only eight year round residents, the City has the current capability to deliver services to the area. Such ability would be contingent upon the assumption that the initial efforts taken by the city for its planning function would be brought to fruition. If the City continues with its planning efforts, the need for planning in the area proposed for annexation will be satisfied. It is evident that the City can provide some level of solid waste disposal services. If there is larger scale lodge development in the western area, the City's capacity for solid waste disposal will have to be increased. Annexation would provide the City with the option of assessing fees for that development, just as they are assessing fees at present. The City would have the flexibility to expand the waste disposal services in accordance with the economic development in the western portion of the area proposed for

annexation. Commissioner Walters concluded that he considered the standard to be satisfied by the petition.

Commissioner Waring expressed concurrence with Commissioner Walters' analysis that the principal services the City appears eager to provide to the area proposed for annexation are land use planning and solid waste disposal. The City appeared to desire to keep growth restrained to a pace that is compatible with the City's broad needs and also to tend to the issue of solid waste management. He indicated that he had some concern about the existing and future human and financial resources available to the City. Like many small cities, the resources of the City of Aleknagik available to defray the cost of municipal functions are limited. The land use planning functions of the City are operating at a limited level. Such suggested that it might be wiser, given the limitations upon the City's resources, to focus on a more limited annexation. Such would allow the City to focus its resources on a limited area and reserve a more expansive annexation to a future date when the City has acquired more experience and shown capability to actively exercise a municipal land use planning function.

Based on the foregoing, the Local Boundary Commission concluded that 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. As such, the standard set out in 3 AAC 110.110 is reasonably satisfied.

### **E. Size and Stability of the Population to Support the Extension of City Government**

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. (3 AAC 110.120)

Commissioner Waring commented that although the proposed annexation would not result in a significant increase in population to the City of Aleknagik, the City itself is a permanent and growing community. Potential exists for the Aleknagik area's population to further increase, particularly its seasonal recreational population. On this basis, he concluded that the population in the proposed post-annexation boundaries would satisfy the requirements of this standard.

The Commission finds from the foregoing that the population within the proposed expanded City is large and stable enough to support the extension of city government. Thus, the standard set out in 3 AAC 110.120 is satisfied.

### **F. Inclusion of all areas necessary to Provide City Services**

3 AAC 110.130(a) 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.

Commissioner Wasserman noted that the area proposed for annexation is heavily used both for recreation and also for traditional subsistence use. Enhancement of the City's ability to provide City service to the area proposed for annexation would be beneficial. As the area's population increases the demand for City services will also increase. She observed that Lake Aleknagik serves as the transportation corridor for the community. Since transportation over the lake would be required to deliver City services, inclusion of an additional portion of the lake within the City's boundaries is consistent with the standard.

Based on the foregoing discussion, the Commission concludes that 3 AAC 110.130(a) is satisfied by the City of Aleknagik's annexation proposal.

### **G. Contiguous Nature of Territory Proposed for Annexation**

3 AAC 110.130(b) 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.

Commissioner Galstad observed that the territory proposed for annexation is clearly contiguous to the existing boundaries of the City of Aleknagik since it adjoins the city on southern, western and northern areas of the current City boundaries.

The territory adjoins the current boundaries of the City. Thus, the Commission finds that the standard set out in 3 AAC 110.130(b) is satisfied.

### **H. Annexation Limited to Existing Community Plus Reasonably Predictable Growth**

3 AAC 110.130(c) 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 10 years following the effective date of annexation of that city.

Commissioner Tesche expressed the belief that the territory as a whole satisfied the standard, but observed that areas close to the City's existing boundaries satisfy the standard in more compelling manner than those portions of the area proposed for annexation that are farther from the existing City boundaries. Although the area to the west of the existing City boundaries is sparsely populated, he was convinced that the entire area proposed for annexation should be annexed. Construction of a bridge linking the north and south shores of Lake Aleknagik, although delayed, is now apparently scheduled to enter the design phase in FY 2005. Assuming no further delay, the bridge should be constructed within the next decade. The bridge project will bring additional vehicle traffic into the Aleknagik area and such will have a considerable impact upon the community and the area.

Commissioner Tesche also indicated that he was convinced that inclusion of a portion of Aleknagik Lake was key to the annexation proposal since the lake ties the community together with various lodges that are on the lake. There was no testimony to suggest any difference among the natural features or resources in any portions of the area proposed for annexation and the area within the existing City boundaries. Development is anticipated to occur first in the most populated areas within the existing boundaries of the City. As those areas fill up and as more land becomes available as a consequence of the sale of Native allotments, development pressure will increase throughout the area proposed for annexation.

A very serious potential public safety problem could be associated with the introduction of an alcohol package liquor store in the area proposed for annexation. Establishment of a package liquor store adjacent to a City campground provides a compelling reason for annexation of all of the territory sought by the annexation since all of the areas are connected by the lake, a common waterway. If the City were opposed to the sale of alcoholic beverages in proximity to the Bear Bay campground, there would be little to prevent the entrepreneur from simply establishing a proposed liquor store just outside the City boundaries. Commissioner Tesche indicated that such considerations led him to support approval of the petition without amendment, since the annexation proposal includes areas of reasonably predictable growth development and addresses public safety needs.

Commissioner Waring expressed agreement with Commissioner Tesche's views relating to the standard. He stated that the City's solid waste disposal facilities are located in the area proposed for annexation located to the immediate north and south of the existing City boundaries. Consequently, he considered those

portions of the area proposed for annexation that include the solid waste sites to clearly satisfy the standard. Further, the area where the City-owned camp sites and the south shore area with its new lodges and subdivision development clearly satisfied the standard. He expressed reservations about the extensive City resources required to deliver services to the entire area proposed for annexation. He suggested that annexation of the western most part of the territory proposed for annexation was a stretch in the context of the standard. He noted that there was evidence of recent growth and evidence of interest on the part of land holders, particularly, owners of Native allotments, in subdividing parcels and making land available for recreational uses. He suggested that such was more evident with respect to the western portion of the territory proposed for annexation located close to the existing boundaries than to the areas located farther from the existing boundaries. He stated that amending the petition to reduce the size of the area proposed for annexation would better fulfill this standard than the full annexation originally proposed by the city.

He noted that, the predominant private ownership of lands in the area proposed for annexation suggested to him that the area may be subject to increased development during the next ten years.

Based on the foregoing, the Commission concludes that the territory and the area within the corporate boundaries of the City are one in the same community. As such, the standard set out in 3 AAC 110.130(c) is met.

## **I. Exclusion of Large Unpopulated Area**

3 AAC 110.130(d) 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.

The terms "entire geographical regions" and "large unpopulated areas" are subjective and should be considered in the context of other city governments in Alaska. Although Aleknagik is one of the less populous city governments in the state, it is larger than the average size of the cities in Alaska. The average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. If annexation occurs, the City's new boundaries would encompass 44.19 square miles, 63% greater than the average of all cities.

Of course, the Commission recognizes that the jurisdictional needs of each city in Alaska are unique and must be considered on a case by case basis. Nonetheless, the statistical comparisons are helpful in

applying the terms "entire geographical regions" and "large unpopulated areas."

The Commission noted that much of the territory in the current proposal is uninhabited. According to the Petitioner, only eight persons reside in the 24.29 square miles proposed for annexation on a year-round basis. Commissioner Walters noted that the Commission's regulations permit the Commission to approve annexation of expansive, sparsely inhabited areas in spite of these considerations if the Commission finds that annexation is still appropriate if the large, unpopulated areas should be annexed on the basis of other annexation standards. Those standards are satisfied since the area proposed for annexation includes City-owned lands and facilities that are essential to the community, require city services, or are otherwise properly included within the jurisdiction of the City. Examples noted by the Commission include the following:

- City owned campsites at Bear Bay and Happy Creek;
- City-owned dumpsites.

Commissioner Walters stated that he had concluded that the standard was satisfied by the Commission.

Commissioner Waring noted that when the Commission addressed the petition for incorporation of the City of Gustavus, consideration was given to amending the area proposed for incorporation to include an area immediately west of the area originally proposed area for incorporation. Such would have included a resort hotel development and wildlife habitat within the City's boundaries. Ultimately, the Commission voted to amend the incorporation petition to include the additional area.

He indicated that he had concluded that the standard was satisfied by the areas to the north and south of the existing boundaries, but that the more remote areas to the west of the boundaries did not satisfy the standard. He suggested that consistent application of the standards would favor a relatively strict interpretation of the standard.

Several Commission members stressed that while much of the area proposed for annexation is uninhabited, there was significant privately owned property in the area, rendering the area particularly subject to residential or commercial development.

In sum, the Commission concludes that while much of the territory is unpopulated, other annexation standards justify annexation. Therefore, the Commission concludes that the standard set out in 3 AAC 110.130(d) is met.

## **J. Protection of Civil and Political Rights**

3 AAC 110.910 provides that 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.

No evidence exists that the proposed annexation would deny or affect any civil right or political right of any resident in the area proposed for annexation. If granted, annexation would extend voting rights to persons who are now disenfranchised with respect to City voting rights. Thus, the standard set out in 3 AAC 110.910 is satisfied.

## **K. Adequacy of Annexation Transition Plan**

3 AAC 10.900 provides that the annexing city must demonstrate its intent and capability to extend essential city services into the territory proposed for annexation. In this case, the City of Aleknagik must provide a plan for the extension of services to the territory after annexation on an orderly, efficient, and economical basis within the shortest practicable time, not to exceed two years after annexation.

Commissioner Wasserman stated that the City of Aleknagik had collaborated with the Aleknagik Village Corporation, the major landowner in the area proposed for annexation concerning the transition of the area to City jurisdiction. She expressed concern about the City's ability to finance the delivery of services to the area after annexation. She harbored doubts about the efficacy of the caretaker process described by the petition. Such concerns were based upon the liability exposure of the City in its capacity as caretakers of private property. She indicated that she also had unresolved questions regarding the proposed City environmental monitoring functions, refuse collection service and the ability to hire and retain personnel to perform all of those functions.

Concerns about the financial capacity of the City to deliver services to the area led her to favor of amending the petition to include only part of the area located to the west of the existing City boundaries. She felt that the area stretching from Happy Creek to Bear Bay should be annexed but did not support annexation of areas farther west because such would extend City service delivery over too great an expanse. She indicated that she was comfortable with the areas located to the north and south of the existing boundaries.

She concluded that, on balance, the standard is met.

Commissioner Tesche expressed some concern that the transition plan proposed by the Petitioner does not address in any thorough systematic way exactly what types of land use planning measures will be utilized to address local concerns. He observed that there will be problems and opportunities associated with future development in the area along the Lake. He considered the Petitioner to have made a convincing argument that unbridled development in that area will have an effect on the local subsistence life style. However, he was unconvinced that the Petitioner has identified sufficiently sophisticated tools that will be used to regulate that anticipated future development in a manner that would actually be effective.

Commissioner Galstad expressed agreement with Commissioner Tesche's that the alcohol control issue facing the community had not been addressed adequately to support expansion of City jurisdiction into the area proposed for annexation. The City of Aleknagik has never adopted any local alcohol option under Title 4. Nevertheless, she expressed agreement with Commissioner Tesche that Lake Aleknagik is more like a road system linking the territory within the existing City and the area proposed for annexation. She concluded that, on balance, the standard had not been met.

#### **L. Balanced Best Interests**

State law provides that the LBC 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 3 AAC 110.090 - 3 AAC 110.130. Additionally, the LBC must determine that annexation will serve the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions. Specifically, the law provides as follows.

Two constitutional principles are particularly relevant in terms of this standard. The first is Article X, Section 1 of the Constitution of the State of Alaska which promotes maximum local self-government with minimum numbers of local governments. The second is Article X, Section 5 which expresses a preference for annexation to a city over the creation of new service areas.

Commissioner Galstad stated that the general welfare of the city residents certainly was a major concern to her, as was the very minimal transition plan for annexing this entire territory. She noted that the area proposed for annexation is likely to be subject to future growth and development. Therefore proper planning for delivery of City services, such as planning and solid waste disposal issues is critical.

She noted that while annexation would probably enhance City finances over the long term, in the short term the gain will be negligible. She suggested that annexation would provide minimal benefit to the year-round residents of the eighteen square miles to the west of the existing boundaries because it would be difficult for the City to extend an adequate level of service within its existing budget. She considered annexation to be in the best interests of the State, because the State prefers to have solid waste disposal and planning delivered by local governments. Therefore, annexation would be satisfy the balanced best interests requirement.

Commissioner Waring stated that he also considered the balanced best interests standard satisfied by the proposal. His conclusion was based upon the recognition of ongoing development in the area proposed for annexation and the potential for alcohol sales in the territory proposed for annexation and the relevance of such to the health and general safety and general welfare of City residents. He noted that annexation of the territory would enable the City to plan for and reasonably control anticipated growth, which he considered to be very pertinent in this case. He suggested that amending the annexation petition would be warranted. He stated that he had no reservations about the propriety of the City's annexation of the solid waste disposal sites located north and south of the existing boundaries.

Thus, the Commission finds that the annexation proposal serves the balanced best interests of the State, the affected local governments, and the territory proposed for annexation.

## **Section IV Recommendation**

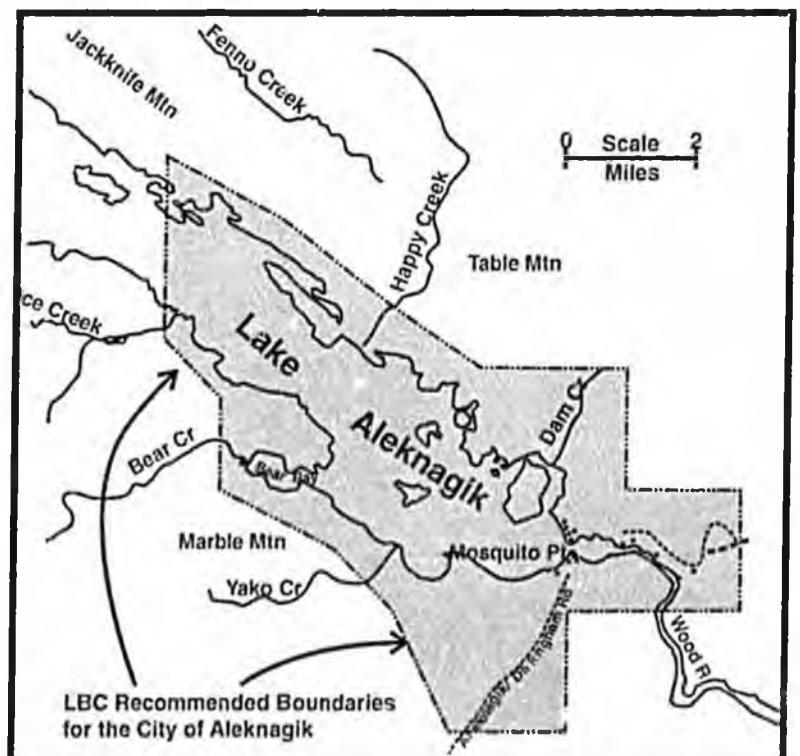
The Local Boundary Commission concludes that all of the relevant standards and requirements for annexation are satisfied by the City of Aleknagik's petition for annexation. Therefore, pursuant to Article X, §12 of the Constitution of the State of Alaska, the Commission hereby presents to the Second Session of the Twenty-First Alaska Legislature the proposed annexation of approximately 24.29 square miles to the City of Aleknagik.

If the Legislature does not reject this recommendation within 45 days of the date it was submitted or at the end of the session, which occurs first, it will result in boundaries for the City of Aleknagik as described below and as shown on the map that accompanies the description.

Beginning at the NE corner of Section 28, unsurveyed T10S R55W, Seward Meridian, Alaska, the TRUE POINT OF BEGINNING for this description; thence the following courses;

- west to the SE corner of Section 19, T10S, R55W; thence
- north to the NE corner of Section 18, T10S, R55W; thence
- west to the SW corner of the SE quarter of Section 11, T10S, R56W; thence
- northwesterly to the SW corner of the NW quarter of Section 32, T9S, R56W; thence
- northwesterly to the SW corner of Section 30, T9S, R56W; thence
- northwesterly to the SW corner of the NW quarter of Section 25, T9S, R57W; thence
- south to the SE corner of the NE quarter of Section 11, T10S, R57W; thence
- southeasterly to the SE corner of the NE quarter of Section 13, T10S, R57W; thence
- south to the SE corner of Section 24, T10S, R57W; thence
- southeasterly to the SE corner of Section 29, T10S, R56W; thence
- southeasterly to the SE corner of Section 33, T10S, R56W; thence
- southeasterly to the SE corner of Section 10, T11S, R56W; thence
- east to the SE corner of Section 12, T11S, R56W; thence
- north to the NE corner of Section 1, T11S, R56W; thence
- east to the SE corner of Section 33, T10S, R55W; thence
- north to the NE corner of Section 28, T10S, R55W, the TRUE POINT OF BEGINNING hereof.

Containing 43.75 square miles more or less.



## **Recommendation Number Two of the Local Boundary Commission to the Second Session of the Twenty-First Alaska Legislature**

### **A Recommendation for Annexation of 1.2 Square Miles to the City of Ketchikan**

#### **Section I Summary of Proceedings**

As allowed by 3 AAC 110.410, the City of Ketchikan (hereinafter "City") formally initiated efforts to annex approximately 0.48 square miles by a petition to the Local Boundary Commission dated February 5, 1999. The petition was received by the Commission's staff on February 25, 1999 and accepted for filing on March 17, 1999.

Public notice of the filing of the petition was given in accordance with 3 AAC 110.450. Service of the petition was performed as required by 3 AAC 110.460.

The deadline for filing responsive briefs and written comments in support of or in opposition to the annexation proposal was set by the Commission Chairman for May 14, 1999. The Shoreline Service Area (hereinafter "Shoreline") filed a timely responsive brief opposing annexation. In addition, timely written comments were received from the Ketchikan Gateway Borough (hereinafter "Borough") and fourteen others.

Shoreline's responsive brief and the Borough's written comments were critical of the petition, in part, because it encompassed only a portion of the area within Shoreline's defined boundaries. The Borough's letter requested that, "the petition either be amended to include the entire Shoreline Service Area or be rejected." In response, the City amended its petition on May 11, 1999 to encompass 1.2 square miles, including the entire service area.

On May 13, 1999, the amended petition was accepted for filing. By order of the Commission Chairman, public notice of the filing of the petition was given in the manner required for the original petition. In addition, service of the amended petition was performed as required by 3 AAC 110.460 for the original petition.

<sup>8</sup> In its lower case form, the word "city" refers to city governments in general.

The deadline for filing responsive briefs and written comments in support of or in opposition to the amended annexation proposal was set by the Commission Chairman for July 7, 1999. Shoreline filed a timely responsive brief concerning the amended petition. In addition, 31 individuals submitted timely letters commenting on the amended petition.

The Commission Chairman set July 21, 1999 as the deadline for the City to file a reply brief. The City filed a timely reply brief in accordance with 3 AAC 110.490.

The Commission's staff prepared a 102-page preliminary report regarding the annexation proposal in accordance with 3 AAC 110.530. A 14-page summary of the preliminary report was also prepared. The report and summary were mailed to the City, Shoreline, Borough, and 39 others. In addition, the summary alone was mailed to 65 individuals and organizations. Further, multiple copies of the report and summary were provided for public review through the Ketchikan Public Library, City Clerk, and Borough Clerk. The report and summary were also available on the Internet.

The Commission Chairman set the deadline for comment on the staff's preliminary report for November 1, 1999. Timely comments were received from the City and four others.

Exercising the discretion allowed by 3 AAC 110.500(a), the Commission Chairman accepted into the record thirteen documents relating to a proposal for the expansion of the Borough's service area powers and taxes within Shoreline. Those documents had been considered by the governing bodies of the Borough or City in early November.

After giving due consideration to the comments on its preliminary report and the materials relating to the proposed expansion of the Borough's service area powers and taxes in Shoreline, staff prepared a 25-page final report on the City's annexation proposal. The final report was distributed on November 12, 1999 to 109 organizations and individuals. Again, multiple copies were made available to the public through the library, City Clerk, Borough Clerk, and Internet.

The Commission ordered a public hearing on the annexation proposal for December 4, 1999 in the Ted Ferry Civic Center in Ketchikan. Notice of the hearing was given in accordance with 3 AAC 110 550.

Prior to the hearing, written requests were received from the Borough and Shoreline for the postponement of the hearing. Shoreline also requested in writing that the Commission dismiss the City's petition. The City objected in writing to the requests for postponement of the hearing

and dismissal of its petition. Again, exercising the discretion allowed by 3 AAC 110.500(a), the Commission Chairman accepted twelve documents into the record relating to the requests for postponement of the hearing and dismissal of the petition.

On December 4, 1999, prior to the hearing, four members of the Commission inspected the territory proposed for annexation by automobile.<sup>9</sup> The Commission convened its public meeting concerning the City's annexation proposal at the Ted Ferry Civic Center in Ketchikan at 11:00 a.m. All five members of the Commission were present at the hearing.

<sup>9</sup> Commissioners Waring, Wasserman, Tesche, and Walters inspected the territory. As a consequence of her delayed arrival from Kotzebue, Commissioner Galstad was unable to inspect the territory.

The first substantive order of business taken up by the Commission at the meeting was Shoreline's request to dismiss the City's annexation petition. A motion was made and seconded by Commission members to amend the agenda to allow consideration of the request from Shoreline to dismiss the City's annexation proposal. In a discussion of the merits of the motion, the Commission noted that there is no provision in the law governing action by the Commission that expressly allows dismissal of a petition in the manner requested by Shoreline. Commission members stressed that, in fact, the Commission has a duty under AS 44.33.812(a)(3) to "consider a local government boundary change requested of it by . . . a political subdivision of the state." Consequently, the Commission rejected the motion to dismiss the petition by a unanimous vote.

Next, the Commission took up the request by Shoreline to postpone the hearing on the petition. A motion was made and seconded by Commission members to amend the agenda to allow consideration of the request from Shoreline to postpone the December 4 hearing.

In a discussion of the merits of the motion, the Commission concurred with the staff's November 23, 1999 written interpretation of 3 AAC 110.640(c). As applied to this case, 3 AAC 110.640(c) would have allowed the Commission to postpone consideration of the City's annexation petition for the purpose of allowing concurrent consideration of the prospective proposal for consolidation of the City and the Borough only if the consolidation petition had been filed within 90 days of the date of first posting of the notice of the filing of the City's amended annexation petition.

The Commission noted that 3 AAC 110.660 allows it to suspend or relax procedural regulations such as 3 AAC 110.640(c) if strict adherence to a regulation would work injustice or result in a substantially uninformed decision. The Commission stressed, however, that there was no reasonable factual basis to grant Shoreline's request to postpone the hearing. Although Shoreline claimed that it lacked the

expertise and time to present an adequate response to the annexation petition, the Commission noted that it had filed timely and comprehensive responsive briefs for both the original and amended petitions. Shoreline's responsive briefs were prepared by a former long-time manager of the City who had extensive experience in annexation. Further, the Borough attorney, who also has experience with annexation, assisted Shoreline.

The Commission had noted in the discussion of the prior motion that not only did AS 44.33.812 impose a duty on the Commission to consider a boundary change requested of it, but that the Alaska Supreme Court held that the statute implies that the Commission will act in a timely manner.<sup>10</sup> Postponement of the hearing would work significant injustice to the City by delaying annexation proceedings for one year. At the conclusion of the debate on the merits of the motion, the Commission voted unanimously to deny the motion.

<sup>10</sup> U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n, 489 P.2d 140, 142 (Alaska 1971). The statute cited by the Court in that case, AS 44.19.260(a)(3), has since been renumbered twice but remains substantially unaltered otherwise.

Next, the Commission proceeded with its hearing on the City's annexation petition. Staff began by summarizing its preliminary and final reports and recommendations to the Commission. Next, the City and Shoreline each made opening statements. The City of Ketchikan then provided sworn testimony from five witnesses. Shoreline followed with sworn testimony from two witnesses. The City then provided sworn responsive testimony from one witness. Next, twenty-four individuals in attendance offered public comment. This was followed by closing statements from the City of Ketchikan and Shoreline. Last, the City offered its reply to the respondent's closing statement. The hearing lasted approximately six and one-half hours.

Following the hearing, the Commission recessed for approximately one and one-half hours. When the meeting was reconvened, the Commission began its decisional session on the proposal. The decisional session lasted approximately one hour. Following its deliberations, the Commission unanimously approved the City's amended petition to annex 1.2 square miles on the basis of the findings and conclusions outlined in Section II of this recommendation.

On January 4, 2000, Shoreline filed a timely request for reconsideration. On January 6, the City submitted a letter in opposition to Shoreline's request for reconsideration. The Commission met on January 7 during which it substantively considered Shoreline's request. Ultimately, the Commission denied Shoreline's request for reconsideration by unanimous vote among the four members present.

## Section II

### Findings and Conclusions

Based on the evidence in the record of this proceeding, the Commission reached the findings and conclusions set out in this section of the recommendation.

#### **A. The 1.2 Square Mile Area Proposed for Annexation Exhibits a Reasonable Need for City Government.**

The issue of the need for city government in the territory warrants consideration of local government service needs that are presently being met, not simply those that are unmet. The City currently provides extensive services and facilities that benefit the territory in question either directly or indirectly. These include the Ketchikan General Hospital, emergency medical services, emergency dispatch services, mental health and substance abuse treatment, port facilities, harbors, library, museum, civic center, solid waste disposal, cemetery, telephone utility service, and electrical utility service. The Commission finds that a reasonable need exists for those thirteen services to be provided, directly or indirectly, to residents and property owners in the territory.

According to the staff reports, officials of the Alaska Department of Public Safety anticipate that commercial development in the territory will generate additional demand for police service. Based on the planned Wal-Mart store alone, Troopers projected that the number of calls for service in the territory will likely increase by four or five per week (208 to 260 per year). Nationwide, cities with populations under 10,000 averaged 3.1 police officers per 1,000 residents. The City of Ketchikan plans to employ 2.9 officers per 1,000 residents following annexation. In comparison, there are twelve authorized Trooper positions in A Detachment serving all of southern Southeast Alaska (two of the positions are currently vacant). The 1998 population of the area served by A Detachment is estimated to be 28,320. Thus, there are 0.42 authorized Trooper positions per 1,000 residents in the area served by A Detachment. Testimony was provided at the hearing that the State Troopers in Ketchikan do not provide round-the-clock patrol and that a significant portion of the calls for City police occur during the time when the Troopers are not patrolling. The Commission finds that there is a reasonable need for City police service in the territory presently and that the imminent significant commercial development in the territory (i.e., a 64,000 square foot Wal-Mart store) will increase the need for such.

The City asserted that once the Ketchikan Wal-Mart store is constructed in the territory, National Fire Protection Association (NFPA) standards will require fire protection capabilities exceeding those of

Shoreline. Specifically, the City indicates that the standards will require at least 3 pumpers, 1 ladder truck (or combination apparatus with equivalent capabilities), other specialized apparatus, 16 fire fighters, 1 chief officer, and two "rehab" personnel. The City stressed that its assessment was based on NFPA minimum requirements that are, at least in some instances, substantially less than the NFPA recommended levels of fire protection. The City offered evidence that it currently has the capability to meet the NFPA standards. Shoreline provided no testimony at the hearing to refute the City's claims concerning the capabilities demanded by the NFPA standards. Thus, the Commission finds that the imminent significant commercial development in the territory creates a reasonable need for City fire protection service in the territory.

There are an estimated 2.5 miles of roads in the territory that receive no maintenance from the State or Borough. Further, safety concerns exist with regard to Rex Alien Drive within the territory. As the Commission observed in its inspection of the territory, Rex Allen Drive is located along a steep embankment, yet it lacks a guardrail. In addition to the 2.5 miles of secondary roads, the territory includes Shoreline Drive, a 0.9-mile long roadway that is presently maintained by the State on a low-priority basis. Recent cutbacks in its highway maintenance staff in Ketchikan will certainly make it more difficult for the State to provide adequate maintenance of Shoreline Drive. State transportation officials advised the Commission's staff that they would welcome the transfer of responsibility for the maintenance of that road to the City. Further, the City has expressed its willingness to accept responsibility for Shoreline Drive as well as the 2.5 miles of roads in the territory that presently lack maintenance. The Commission finds that there is a reasonable need for City road maintenance in the territory.

Shoreline conceded in its responsive brief, and the Alaska Department of Environmental Conservation (DEC) agreed, that future development in the territory is constrained by the lack of public water and sewer utilities. Shoreline and DEC also share the view that significant public health risks often arise in areas of concentrated development that lack sewer and water utilities. Further, several correspondents, including the Borough, criticized the City because it lacked specific plans for the extension of water and sewer utility service into the territory. DEC expressed its support for the City's annexation proposal in the hope that it would lead to the extension of City sewer and water utilities into the territory. The Commission finds from these circumstances that there is a need for water and sewer utility service in the territory proposed for annexation.

On November 15, 1999, the Borough Assembly adopted Ordinance No. 1123 adding to the Borough's service area powers in Shoreline. The ordinance was subject to ratification by Shoreline's voters at an election held December 14, 1999. The proposed additional powers consist of the construction, maintenance, and operation of roads; "general property security services"; and "hospital and other public works services". Ordinance No. 1123 would also impose a two and one-half percent "fire, roads and security sales tax" and a one percent "hospital and other public works sales tax" on a service area basis in Shoreline. As noted above, the Commission has already found that a reasonable need exists for road maintenance, police service, hospital, and a multitude of other services offered by the City. The Commission does not ascribe any significance to the adoption of Ordinance No. 1123 with respect to the need for city government in the territory proposed for annexation.

Based on the findings outlined above, the Commission concludes that the 1.2 square mile territory proposed for annexation clearly exhibits a reasonable need for city government. Therefore, the standard set out in 3 AAC 110.090(a) is fully satisfied.

### **B. The City of Ketchikan is Best Able to Serve the Territory's Need for Essential City Government Services Identified with Respect to 3 AAC 110.090(a).**

The fact that the City is currently providing the previously noted thirteen services and facilities that directly or indirectly benefit the territory proposed for annexation is prima facie evidence of the City's superior capability to provide those services to the territory. Neither Shoreline nor any other organization or individual has effectively rebutted that evidence. Thus, the Commission finds that the City is able to provide those thirteen services more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that those thirteen services are "essential city services" as defined in 3 AAC 110.990(8).

According to the staff reports on this matter, the Alaska Department of Environmental Conservation favors, as a matter of public policy, the extension of water and sewer services to the territory by the City as compared to the establishment of an independent water and/or sewer utility operated by Shoreline. That policy recognizes that the expansion of *existing* utilities generally promotes greater economies of scale and greater rates of success in serving public needs. The City has the infrastructure to extend water and sewer utility service to the territory. The City is currently preparing an engineering plan to extend its water

" The Commission recognizes that the extension of City water and sewer utilities into the territory will require substantial capital funding through, perhaps, some combination of State grants, local improvement district assessments, and other sources.

utility system to a portion of the territory.<sup>11</sup> The Commission finds from the evidence that the City is able to provide water and sewer utility services more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that water and sewer utility services are essential city services.

The City has demonstrated its capability to extend street maintenance to the territory proposed for annexation. The City plans to spend an average of \$120,000 annually to maintain streets in the territory. The City is also prepared to spend more than three-quarters of a million dollars over three years to upgrade the streets in the territory, including efforts to remedy the previously noted safety problems along Rex Allen Drive. In contrast, the Borough currently provides no road maintenance in the territory. The Commission finds, therefore, the City is able to provide street maintenance to the territory more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that street maintenance services are essential city services.

Although the State Fire Marshal did not take a position concerning the annexation proposal, he agreed with the City that it would be inefficient to maintain two fire departments within two miles of one another in Ketchikan, particularly if each met the standards which the City asserts are necessary to provide adequate fire protection in this case under NFPA standards. The City has greater capacity than the Borough (through Shoreline) to provide enhanced fire protection to the territory. The City currently exceeds standards that it claims are required by NFPA, Shoreline does not. Further, the City plans to hire two additional firefighters to allow full-time staffing of its "west-end fire station" located approximately 2 miles from the center of the territory proposed for annexation. The City plans to spend an average of nearly \$186,000 annually to extend enhanced fire protection to the territory, coupled with an initial expenditure of \$37,400 for related capital improvements. The Commission finds from the evidence that City is able to provide enhanced fire protection to the territory more efficiently and more effectively than another existing city government or organized borough (e.g., the Borough through Shoreline). The Commission finds further that enhanced fire protection is an essential city service.

The City has a substantial police department currently in operation. Upon annexation, the City plans to hire three additional officers incrementally over three years to maintain the current level of service within its expanded boundaries. With its larger contingent of police officers, the City would provide 2.9 officers per 1,000 residents. In contrast to the City, the Borough has little experience and existing

foundation to provide police service.<sup>12</sup> The Commission finds from the evidence that City is able to provide police service to the territory more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that police service is an essential city service.

Here again, the Commission does not give any significance to the adoption of Borough Ordinance No. 1123 with respect to the City's ability to provide services more efficiently or effectively than another existing local government.

Based on the foregoing findings, the Commission concludes that the City can provide essential city services more efficiently and more effectively to the territory proposed for annexation than any other existing city or any organized borough. Consequently, the standard set out in 3 AAC 110.090(b) is satisfied.

### **C. The Territory Proposed for Annexation and the Area Within the Existing Boundaries of the City are Compatible in Character.**

Commissioners noted that an aerial photograph showing the area within the City and Shoreline on display in the hearing room provided compelling visual evidence of the compatibility of the territory proposed for annexation and the area currently within the City's boundaries.<sup>13</sup> In particular, the photograph demonstrated that the two areas share similar patterns with respect to residential and commercial development, subdivision platting, and geographic features. Further evidence of such similarities was garnered during the inspection of the territory by four Commissioners prior to the hearing. Still more evidence of similarities was noted in the written record in this proceeding. For example, staff reported that the territory proposed for annexation has a taxable value of \$116,230 per capita – twice the \$58,284 per capita figure for the City.<sup>14</sup> Despite the relative differences in per capita values, the figures demonstrate that each area is developed. The Commission finds from the evidence that the 1.2 square mile territory proposed for annexation and 3.8 square mile area within the City have similar characteristics with respect to land use development, subdivision platting, and geography.

The two areas in question are contiguous and compact. The territory proposed for annexation comprises only 1.2 square miles, more than one-third of which is water. The territory is nearly 90% smaller than the average city legislative review annexation approved by the Commission in this decade. The territory proposed for annexation adjoins the 3.8 square miles within the existing boundaries of the City of

<sup>12</sup> The Borough's experience in the field is limited to providing airport security at the Ketchikan International Airport.

<sup>13</sup> The photograph was taken July 2, 1999 by AeroMap US, Inc., 2014 Merrill Field Drive, Anchorage, Alaska.

<sup>14</sup> If projections for development in the territory proposed for annexation are realized, the assessed value of the territory proposed for annexation will climb by nearly 24% to \$143,957 per capita within five years.

Ketchikan. Although the City of Ketchikan is the second most populous city government in Alaska, the area within its current boundaries is smaller than that of 80% of the other city governments in Alaska. The Commission finds that the compact and contiguous nature of the two areas offers further compelling evidence of compatibility with respect to the two areas.

There are significant relative differences in the population density of the City and the territory proposed for annexation. However, as was the case with respect to per capita values, the relative population differences are without distinction. Both areas are densely populated. The City is the most densely populated city government in Alaska while the territory proposed for annexation is more densely populated than 93% of the existing city governments in the state. The population density of the territory exceeds that of the city governments serving Wrangell, Petersburg, Craig, Cordova, Wasilla, Homer, Kenai, Nome, and 127 other communities that have incorporated city governments. The Commission finds that the two areas are compatible with respect to population density characteristics.

As the greater community of Ketchikan continues to develop, much of the development is likely to occur in the territory proposed for annexation. The Commission noted that it was imminent significant commercial development in the territory that led to the filing of the petition. The Commission finds that population growth and commercial development will occur in the territory proposed for annexation thereby rendering the territory suitable for reasonably anticipated community purposes of all sorts.

Annexation critics asserted that the two areas are incompatible, in part, because the territory proposed for annexation allegedly lacks certain services that are available to City residents. Specifically cited were the absence of water and sewer utilities, bus service, street maintenance, and municipal garbage collection. However, many areas within the City of Ketchikan lack Borough bus service and some even lack City service with respect to garbage collection, water, and sewer. The Commission finds that current differences in the level of services noted are not a basis to conclude incompatibility. The boundaries for the delivery of such services are flexible. City street maintenance would be extended upon annexation, bus service could be readily extended (the Borough Assembly approved a plan for such on September 20, 1999), and water and sewer utilities could be extended upon funding for capital improvements. The boundaries for City solid waste collection are under the control of the Regulatory Commission of Alaska.

The Commission concludes from the preceding findings that the two areas in question are part of a single community divided by political boundaries. The Commission concludes further that the 1.2 square mile territory proposed for annexation and 3.8 square mile area within the City's current boundaries are clearly compatible in character. Thus, the standard set out in 3 AAC 110.100 is satisfied.

**D. The Five Square Mile Area Within the City's Proposed Post-Annexation Boundaries Includes the Human and Financial Resources Necessary to Provide Essential Services on an Efficient, Cost-Effective Level.**

The City is the second most populous city government in Alaska. The citizens of the City have successfully operated a local government for the past 99 years. The City is one of Alaska's oldest home rule local governments in Alaska, having attained that status in 1960. The City currently provides an impressive range of services, far more than most cities in Alaska. The Commission finds from this evidence that the human resources represented by the 8,460 people currently within the City and 541 people in the territory are clearly sufficient to allow the extension of essential city services into the territory proposed for annexation on an efficient and cost-effective level.

The City has proposed specific plans to extend enhanced fire protection, road maintenance, engineering, and police services into the territory. Although estimates vary somewhat, it is reasonably projected that the added responsibility of serving the territory proposed for annexation will increase the City's operating budgets for the police department, fire department, street maintenance division, and engineering division collectively by an average of \$546,118 annually (third year expenditures for police were used rather than the average). In addition to the operating costs, the City plans to spend an average of \$279,633 annually for capital projects in the territory during the first three years following annexation. Together, the average projected operating and capital expenditures equal \$825,751 per year. That figure is equivalent to 1.6 percent of the total current operating and capital budget of the City. The Commission finds from the evidence that the proposed expanded City will have adequate resources to provide services throughout its enlarged area.

Based on the findings set out above, the Commission concludes that the economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard at 3 AAC 110.110 is met.

**E. The Population within the Proposed Expanded City Boundaries is Clearly Both Large and Stable Enough to Support the Extension of City Services.**

As noted previously, the City is the second most populous city government in the state. Additionally, the 541 residents of the territory exceed the statutory population threshold for incorporation of first class and home rule cities in Alaska by more than 35%. The combined population of the territory and the City exceeds 9,000. Annexation will increase the population of the City by approximately 6.4 percent. While the City's population and the Borough's population declined slightly due to the recent closure of the Ketchikan Pulp Corporation's operation at Ward Cove, the population of each has increased overall since 1990. The population within the proposed expanded City boundaries is stable in the sense that it is not subject to erratic seasonal population fluctuations. The Commission finds from this evidence that the proposed expanded boundaries of the City encompasses a mature community with a substantial population.

The Commission concludes from the above finding that the population within the proposed post-annexation boundaries of the City is sufficiently large and stable to support the extension of city government. As such, the standard set out in 3 AAC 110.120 is met.

**F. The Proposed Boundaries are Inclusive of all Areas Needed to Provide Essential City Services on an Efficient, Cost-Effective Level.**

The standard at issue concerns whether areas outside the five square miles encompassed by the proposed post-annexation boundaries of the City are *crucial* to the City's ability to provide essential city services efficiently and cost-effectively. Although Shoreline criticized the City's annexation proposal as failing to address the long-term jurisdictional needs of the City, the Commission finds that Shoreline has not demonstrated that areas outside the five square miles in question are essential to the capacity of the City to operate efficiently and effectively.

Cursory evidence suggests that in addition to Shoreline, other areas outside the City might also meet the standards for annexation to the City. These include the Ward Cove area, Ketchikan International Airport, and other areas. While the City's proposed post-annexation boundaries may not be perfect, the Commission finds the boundaries proposed by the City are logical and reasonable in light of the imminent significant commercial development in the territory.

The Commission concludes from the findings above that the proposed boundaries of the City include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. This satisfies the standard set out in 3 AAC 110.130(a).

### **G. The 1.2 Square Miles Proposed for Annexation is Contiguous to the Existing Boundaries of the City.**

Maps included in the record clearly indicate that the territory proposed for annexation adjoins the boundaries of the City. The Commission finds from this evidence, and concludes from that finding, that the territory and the City are contiguous. As such, the standard established in 3 AAC 110.130(b) is met.

### **H. The Five Square Miles within the City's Proposed Post-Annexation Boundaries do not Extend Beyond the Existing Community Plus Reasonably Predictable Growth, Development, and Public Safety Needs Over the Next Decade.**

The Commission observed, again, that cursory evidence suggests that the City's proposed new boundaries may be under-inclusive. However, the Commission finds that conformance, on land, with the Shoreline boundaries is a logical and appropriate approach at this particular time.

The Commission finds further that the same evidence that led to its conclusion that the territory and City are compatible in character (3 AAC 110.100) supports the satisfaction of this particular standard.

The Commission concludes from the findings above that the proposed boundaries of the City include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. Thus, the standard set out in 3 AAC 110.130(c) is satisfied.

### **I. The Proposed Post-Annexation Boundaries of the City do not Include Entire Geographical Regions or Large Unpopulated Areas.**

Although the City's annexation proposal would expand its jurisdictional territory by 31.6%, the City's expanded boundaries would remain small in comparison to most other city governments in Alaska.

As previously noted, the City's new boundaries would encompass only five square miles. That figure is 82% smaller than the average of the jurisdictional territory of all 145 city governments in Alaska. Perhaps even more relevant is the fact that the City's expanded boundaries would encompass an area that is 93% smaller than the average of the other ten most populous cities in Alaska (all but one of which have substantially smaller populations than the City). Thirty-nine other cities in Alaska have boundaries encompassing five square miles or less. Of these, only North Pole and Palmer have populations in excess of 900. However, neither of those two cities have populations or development approaching that of Ketchikan. Even after annexation, the City of Ketchikan would remain the most densely populated city government in Alaska, far exceeding the second most populous city in the state. Lastly, the Commission observed from its inspection of the territory prior to the hearing and from its review of the maps in the record that the territory is developed. The Commission finds from the evidence that the territory proposed for annexation is compact, densely populated, and developed.

The Commission concludes from the finding that the territory proposed for annexation does not include entire geographical regions or large unpopulated areas. This satisfies the standard established at 3 AAC 110.130(d).

**J. Annexation will not Deny Civil or Political Rights to Anyone Because of Race, Color, Creed, Sex, or National Origin.**

The Commission found no evidence in the record or testimony that would support a conclusion that annexation will breach civil or political rights in a discriminatory manner. The Commission concludes, therefore, that annexation will not infringe on the enjoyment of any civil or political rights because of race, color, creed, sex, or national origin. Thus, the standard established by 3 AAC 110.910 is met.

**K. The City has Provided a Proper Transition Plan.**

The City's annexation petition includes a six-page transition plan that outlines its proposal for the assumption of appropriate powers, duties, rights, functions, assets, and liabilities relating to annexation. The plan was prepared in consultation with appropriate Borough officials, including those affiliated with Shoreline. Ideally, there would have been greater consensus on the annexation proposal among Borough officials, including representatives of Shoreline. However, the Commission finds that the City attempted to be reasonably accommodating concerning its transition plan.

The Commission would also have preferred that the City's plans for the extension of water and sewer utilities to the territory offered greater assurance that the utilities would, in fact, be extended. Nevertheless, the Commission recognizes that the extension of water and sewer utilities are often funded, in part, by assessments on the area that benefits from the improvements. The Commission also recognizes that the City is presently developing engineering plans for the extension of its water utility to a portion of the territory proposed for annexation.

The Commission concludes that the City has provided an adequate transition plan that meets the requirements of 3 AAC 110.900.

### **L. The City's Annexation Proposal Serves the Balanced Best Interests of the State, the Territory, and Affected Political Subdivisions.**

Annexation is a fundamental tool that allows local governments to address a classic urban problem where a local government, with fixed boundaries, finds growth and development occurring outside its jurisdiction. Unless it expands, there is significant potential that the economic health of the established local government will be impaired over time. Deterioration of the local government's financial health, in turn, leads to a decline in its ability to provide services and facilities. Eventually, the vitality of the community decays. Annexation is a way to prevent the dynamism of central communities from being eroded by development occurring immediately outside the boundaries of local government. It is for this very reason that Alaska's constitution provides flexibility with respect to the jurisdictional boundaries of cities and boroughs through Article X, Section 12. The Commission takes seriously the concerns expressed by Shoreline and the residents of the territory. However, the Commission must weigh those concerns against other public issues and concerns. Absent annexation, the City faces the prospect of significant revenue reductions that threaten its ability to fund the current level of services. The Commission finds that the long-term capability of the City (or any successor it might have) to meet the service needs of its residents is an overriding State and local government interest.

As noted previously, the City currently provides thirteen fundamental services and facilities that benefit, directly or indirectly, the residents and property owners of the territory. The Borough provides financial support to the City on behalf of the territory and other areas of the Borough for two of those services (landfill and library). Certain other services and facilities are funded in whole or in part by user fees. However, the Commission finds from the evidence that a number of the

thirteen services and facilities that benefit the territory are provided without commensurate tax support from the territory.

Ordinance No. 1123 appears to be an attempt on the part of the Borough, in part, to offer an alternative to annexation as a remedy of inequities through the assumption of additional responsibilities by the Borough on a service area basis within the territory proposed for annexation. As noted previously, the additional powers in question consist of construction, maintenance, and operation of roads; general property security services, hospital, and other public works services. The assumption of hospital powers on a service area basis (presumably with a payment to the City for the City-owned Ketchikan General Hospital) would remedy some of the inequities, but certainly not all. More importantly, even if the Borough's plan addressed all of the inequities, it is flawed for fundamental reasons. Article X, Section 5 of Alaska's constitution clearly disfavors service areas adjoining city boundaries where those service areas mimic the powers of the adjoining city and exist as a barrier to the legitimate expansion of the city government. The Commission finds from these circumstances that no practical or equitable alternative to annexation is available to offset the cost of providing the benefits enjoyed by the territory.

In contrast to the Borough's proposal, annexation of the territory to the City will integrate the Shoreline Service Area into the City so that Shoreline will no longer exist as a unit of government. This approach is favored by Article X, Section 1 of Alaska's constitution which promotes "a minimum of local government units." The Alaska Supreme Court has interpreted that provision to be a "constitutional policy of minimizing the number of local government units." (emphasis added). City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1044 (Alaska 1971). The Commission believes that the integration of Shoreline into the City will promote greater equity and will allow the City to deliver services more efficiently and effectively. Such will benefit the City, Borough, citizens of Shoreline, and property owners in the territory.

Annexation will also shift responsibility for certain local services in the territory from the State to local government. These consist of police service and maintenance of certain roads. Annexation may also foster the extension of water and sewer utilities to the territory. The Commission finds that, as a matter of public policy, where communities have the resources to assume responsibility for local services, the State should transfer those responsibilities to the local government.

The express purpose of the local government article of Alaska's constitution is, in part, to "provide for maximum local self-government." (Article X, Section 1) Alaska's constitutional convention delegates

considered home rule local governments to be the epitome of maximum local self-government. As noted by Thomas A. Morehouse and Victor Fischer, recognized experts in local government in Alaska:

An oft-repeated theme of the [Alaska constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. As envisioned, the self-government concept would apply not only to formal home rule cities and boroughs, but extend also to general law units and even to unorganized areas, where it could take the form of local participation in state policy making and provision of state services. *Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political conditions.* (emphasis added)

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, *particularly in the case of home rule units.* (emphasis added) Moreover, a "strong state role" also meant that the state would support local governments with financial aid and technical assistance. (Borough Government in Alaska, by Thomas A. Morehouse and Victor Fischer, page 56)

Alaskans have demonstrated their preference for home rule cities and boroughs over general law cities and boroughs. Overall, 63.1% of Alaskans live in home rule cities and boroughs. The four most populous cities in Alaska are home rule cities. Ketchikan attained home rule city status in 1960 and has maintained it successfully for the past thirty-nine years. The Commission finds that annexation of the territory to the City will promote maximum local self-government.

Residents of the territory proposed for annexation will be enfranchised with respect to the City of Ketchikan as a result of annexation. Currently, City officials make many decisions that affect residents and property owners in the territory proposed for annexation. Yet, those residents have no formal voice in the operation of the City. If they are annexed, they will be enfranchised. The Commission finds that the enfranchisement of citizens of the territory serves the best interest of the affected local governments and the territory.

The Commission concludes from the findings noted above that the annexation proposal serves the balanced best interests of the State, the affected local governments, and the territory proposed for annexation. Thus, the standard set out in 3 AAC 110.140 is satisfied.

### **M. The Commission Encourages the City and Borough to Actively Pursue Consolidation in the Near Future.**

The Commission recognizes that while the pending annexation proposal remedies certain inequities and inefficiencies with respect to the structure of local government in Ketchikan, many others remain. The City will continue to be the entity responsible for a number of services and facilities that are enjoyed by all residents of the Borough. This circumstance apparently resulted from the fact that long before the Borough was formed the City assumed responsibilities that, in contemporary light, appear to be legitimate areawide Borough functions.

A comprehensive restructuring of local government duties and responsibilities in Ketchikan appears warranted. Without such, the door clearly remains open for additional annexations to the City.

Consolidation seems to offer the tools and flexibility needed to address the fundamental deficiencies relating to the structure of local government in Ketchikan. The Commission notes that considerable interest currently exists with respect to the prospect of consolidation of the City and the Borough. Yet, there has been a lengthy history of frustration in Ketchikan with respect to local efforts to achieve consolidation.

The Commission strongly encourages the City and Borough to actively pursue consolidation as a means to improve the structure of local government in the greater Ketchikan area.

### **Section III Recommendation**

Based on the findings and conclusions set out in Section II of this recommendation, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied by the annexation proposal filed by the City of Ketchikan. Therefore, pursuant to Article X, §12 of the Constitution of the State of Alaska, the Commission hereby presents to the Second Session of the Twenty-First Alaska Legislature the proposed annexation of approximately 1.2 square miles to the City of Ketchikan.

As provided by Article X, Section 12 of Alaska's constitution, if the Legislature does not reject this recommendation within 45 days of the date it was submitted or at the end of the session, which occurs first, it will result in boundaries for the City of Ketchikan as described on the following page and as shown on the map that accompanies this description.

The corporate limits of the City of Ketchikan, Alaska, a parcel of real property located in Ketchikan Gateway Borough, First Judicial District, Alaska, more particularly bound and described as follows:

Commencing at the northeast corner of the Homer Lode, U. S. Mineral Survey 769, this also being the west corner of U.S.S. 1261;

thence N 29° 36' E a distance of 404.58 feet along the northwest boundary of U.S.S. 1261 to the north corner of U.S.S. 1261;

thence S 59° 34' E a distance of 255.40 feet along the northeast boundary of U.S.S. 1261 to the south corner of Tract A U.S.S. 2635;

thence N 23° 00' E a distance of 140.89 feet along the east boundary of Tract A to its intersection with the north boundary of U.S.S. 2635;

thence a bearing of East a distance of 1773.30 feet along the north boundary of U.S.S. 2635 to Corner 3 of U.S.S. 2635;

thence a bearing of South a distance of 147.18 feet to Corner 4 of U.S.S. 2635;

thence a bearing of East a distance of 460.35 feet to Corner 5 of U.S.S. 2635;

thence a bearing of South a distance of 1623.60 feet along the east boundary of U.S.S. 2635 to Corner 6 of U.S.S. 2635 this being the true point of beginning;

thence S 26° 23' 03" E a distance of 1632.09 feet;

thence S 51° 57' W a distance of 816.38 feet to a point on the northeast boundary of U.S.S. 1667;

thence S 43° 58' E a distance of 1702.52 feet along the northeast boundary of U.S.S. 1667;

thence S 46° 06' W a distance of 1986.44 feet along the northwest boundary of U.S.S. 1584 and A.T.S. 118 to a point in Tongass Narrows;

thence N 48° 28' W a distance of 1927.73 feet to a point in Tongass Narrows;

thence N 54° 53' 54" W a distance of 8487.96 feet to a point in Tongass Narrows;

thence N 65° 35' 45" W a distance of 2633.28 feet to a point in Tongass Narrows;

thence N 67° 10' 56" W a distance of 3111.05 feet to a point in Tongass Narrows;

thence N 49° 25' 17" W a distance of 4796.14 feet to a point in Tongass Narrows;

thence N 40° 05' 33" W a distance of 5170.26 feet to a point in Tongass Narrows;

thence N 39° 23' 44" W a distance of 9853.56 feet to a point in Tongass Narrows, this point also being S 59° 6' W a distance of 1000 feet from Corner MC-1 of AIS 503;

thence N 29° 56' 46" W a distance of 1812.83 feet to a point in Tongass Narrows, this point also being West a distance of 1000 feet from the northwest corner of AIS 700;

thence N 08° 41' 10" E a distance of 2858.59 feet to a point in Tongass

Narrows, this point also being West a distance of 1000 feet from corner 1 of ATS 1201;

thence N 11° 43' 32" E a distance of 1498.43 feet to a point in Tongass Narrows;

thence S 58° 08' E a distance of 1000 feet to the northeast corner of ATS 464 this point being on the west right of way boundary of North Tongass Highway;

thence S 39° 24' W a distance of 32.10 feet along said right of way boundary;

thence S 37° 55' W a distance of 20.38 feet along said right of way boundary;

thence S 52° 48' E a distance of 57.59 feet along said right of way boundary to a point on the north boundary line of U.S.S. 1732;

thence N 65° 30' E a distance of 13.05 feet along said north boundary line to Corner MC-1 of U.S.S. 1732;

thence South a distance of 210.54 feet along the east boundary of U.S.S. 1732 to Corner 2 of U.S.S. 1732;

thence West a distance of 55.44 feet along the south boundary of U.S.S. 1732 to its point of intersect with the east boundary of U.S.S. 1271, this point also being Corner 1 of U.S.S. 1271;

thence South a distance of 561.00 feet along said east boundary of U.S.S. 1271 to Corner 4 of U.S.S. 1271, this point being on the north boundary of U.S.S. 1952;

thence East a distance of 198.66 feet along the north boundary of U.S.S. 1952 to Corner 2 of said survey;

thence South a distance of 1289.64 feet along the east boundary of U.S.S. 1952 to Corner 3 of said survey;

thence West a distance of 339.67 feet along the south boundary of U.S.S. 1952 to its point of intersection with the east right of way boundary of North Tongass Highway, this point being on a curve;

thence along a curve, concave to the southeast, radius of 1350.54 feet, arc distance of 99.06 feet, along the east right of way boundary of North Tongass Highway to its point of intersection with east boundary of U.S.S. 1665;

thence South a distance of 228.26 feet along the east boundary of U.S.S. 1665 to Corner 3 of said survey, this point being on the north boundary of U.S.S. 1417;

thence East a distance of 114.64 feet along the north boundary of U.S.S. 1417 to Corner 3 of said survey;

thence South a distance of 622.03' along the east boundary of U.S.S. 1417 to its point of intersection with the north boundary line of U.S.S. 2277, also being Corner 2 of U.S.S. 2277;

thence East a distance of 894.85' along the north boundary of U.S.S. 2277 to Corner 3 of said survey;

thence South a distance of 704.80 feet along the east boundary of U.S.S. 2277 to its point of intersection with the north boundary line of U.S.S. 1744, this point also being Corner 4 of U.S.S. 2277;

thence East a distance of 3249.18 feet along the north boundary of U.S.S.

1744 and U.S.S. 2270 to Corner 5 of U.S.S. 2270;

thence South a distance of 3550.81 feet along the east boundary of U.S.S. 2270 to Corner 6 of said survey;

thence East a distance of 1202.52 feet along the north boundary of U.S.S. 1833 to Corner 4 of said survey;

thence South a distance of 2283.60 feet along the east boundary of U.S.S. 1833 to Corner 5 of U.S.S. 1833, also being Corner 2 of U.S.M.S. 1413;

thence S 46° 59' 00" E a distance of 549.78 feet along the northeast boundary of U.S.M.S. 1413 to Corner 3 of said survey;

thence S 59° 58' 00" W a distance of 298.32 feet along the southeast boundary of U.S.M.S. 1413 to Corner 2 of U.S.S. 2796;

thence South a distance of 388.41 feet along the east boundary of U.S.S. 2796 to Corner 3 of said survey;

thence West a distance of 190.27 feet along the south boundary of U.S.S. 2796 to corner 3 of U.S.S. 1404;

thence South a distance of 489.43 feet along the east boundary of U.S.S. 1404 to its point of intersection with the North Tongass Highway right-of-way;

thence S 38° 40' 00" E a distance of 42.65 feet along the right-of-way to its point of intersection with the north boundary of U.S.S. 1587;

thence East a distance of 1535.09 feet along the north boundary of U.S.S. 1587 to the Corner of Block 1, Tract 1001, U.S.S. 1587;

thence S 89° 59' 30" E a distance of 176.42 feet along the north boundary of U.S.S. 1587;

thence N 89° 59' 45" E a distance of 1478.11 feet along the north boundary of U.S.S. 1587;

thence a bearing of East a distance of 4601.93 feet along the north boundary of U.S.S. 1587, U.S.S. 1781, and U.S.S. 1229 to Corner 2 of U.S.S. 1229;

thence a bearing of South a distance of 3180.91 feet along the east boundary of U.S.S. 1229 to Corner 3 of U.S.S. 1378;

thence S 59° 38' E a distance of 4953.69 feet along the northeast boundary of U.S.S. 1378 and the northeast boundary of the Kentucky Lode Claim, U.S.M.S. 769 to a point on the Schoenbar Road right-of-way boundary;

thence N 37° 52' E a distance of 14.20 feet along the Schoenbar Road right-of-way boundary;

thence N 59° 26' E a distance of 163.16 feet along the Schoenbar Road right-of-way boundary;

thence N 58° 35' E a distance of 108.98 feet along the Schoenbar Road right-of-way boundary to the south corner of Lot 28, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence N 31° 25' W a distance of 124.93 feet to a point on the westerly boundary of Lot 27, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence N 3° 30' E a distance of 999.50 feet to a point on the westerly boundary of Lot 15, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence N 39° 25' E a distance of 170 feet to a point on the northwest boundary of Lot 13, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence N 70° 51' 48" E a distance of 343.48 feet to a point on the north boundary of Lot 9, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence S 73° 40' E a distance of 550 feet to the northeast corner of Lot 3, Block 4, U.S.M.S. 769, Bear Valley Addition;

thence N 16° 20' E a distance of 20 feet to the north corner of Lot 2, Block 4, U.S.M.S. 769, Bear Valley Addition, this point being on the northeast boundary of Utica Lode Claim, U.S.M.S. 769;

thence northwesterly along the northeast boundary of the Utica Lode Claim to the northwest corner of said claim as shown on the plat of the Claim of James A. Davis, Mineral Survey 769, recorded May 7, 1904, Juneau Land District;

thence southwesterly to the northeast corner of the Columbia Lode Claim;

thence northwesterly to the northwest corner of the Columbia Lode Claim, this point being in common with the western boundary of U.S.M.S. 769;

thence northeasterly along said boundary to the northwest corner of U.S.M.S. 769, this point being in common with the northwest corner of the Cosmos Lode Claim;

thence southeasterly along the north boundary of U.S.M.S. 769 to its point of intersection with the western boundary of the east 1/2 of the northwest 1/4 of protracted Section 19, T75S, R91E, Copper River Meridian (C.R.M.);

thence north to the northwest corner of the east 1/2 of the northwest 1/4 of protracted Section 19, T75S, R91E, C.R.M.

thence east to the northeast corner of the west 1/2 of the northeast 1/4 of protracted Section 19, T75S, R91E, C.R.M.;

thence south to the northern boundary line of U.S.M.S. 769;

thence southeasterly along said boundary line to its intersection with the north boundary of the northeast 1/4 of the southeast 1/4 of protracted Section 19, T75S, R91E, C.R.M.;

thence east to the northeast corner of the southwest 1/4 of protracted Section 20, T75S, R91E, C.R.M.;

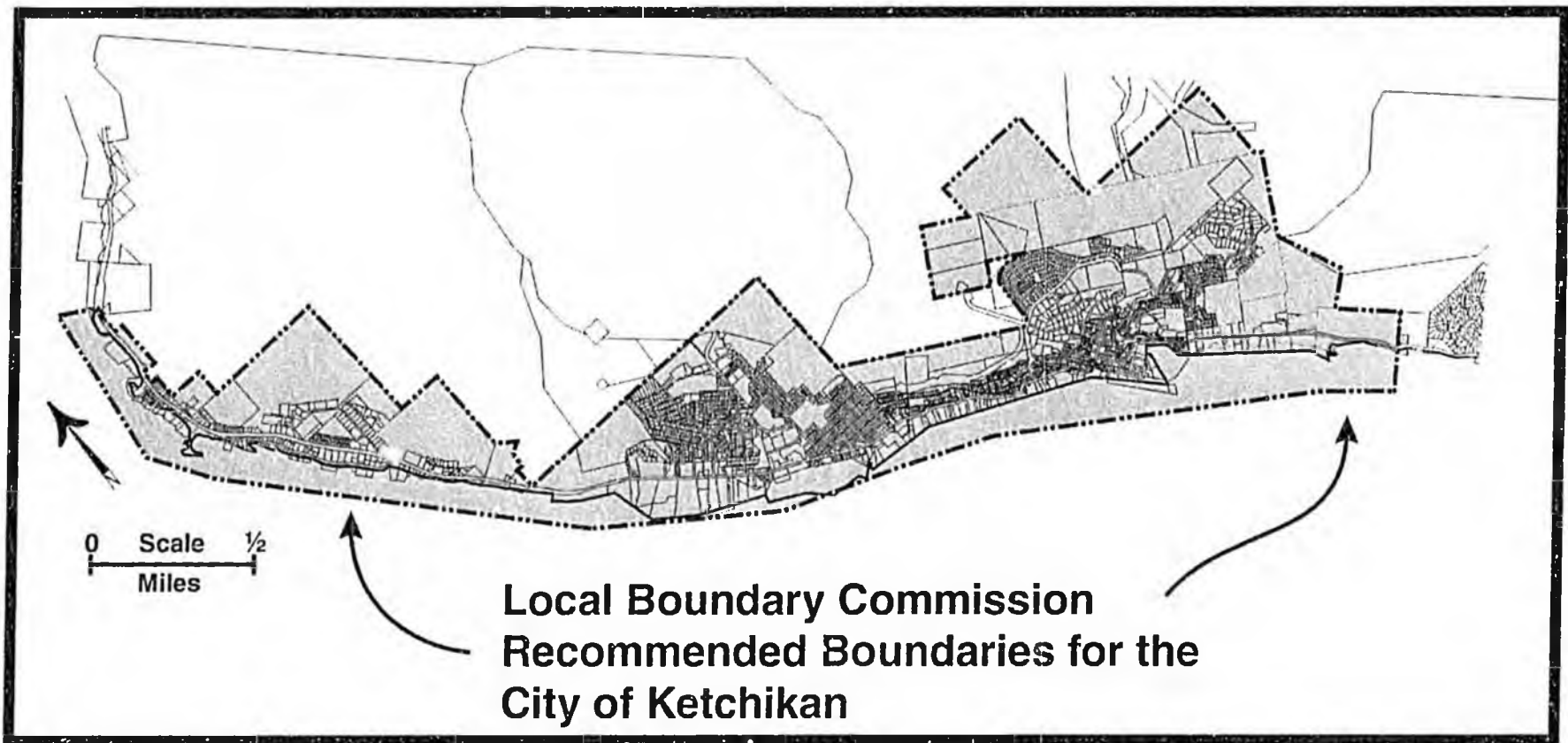
thence south to the northerly boundary of U.S.M.S. 769;

thence southeasterly along said boundary to the northeast corner of U.S.M.S. 769, this corner being in common with the northeast corner of the Sterling Lode Claim;

thence southwesterly along the eastern boundary of U.S.M.S. 769 to its point of intersection with the east boundary of U.S.S. 2635;

thence a bearing of south to the true point of beginning, containing approximately 3539 acres or 5.5 square miles, more or less.

The map of the territory recommended for annexation is presented on the following page.





# Chapter 4

## Policy Issues and Concerns

The Local Boundary Commission wishes to bring the following policy issues and concerns to the attention of the legislature:

- ❖ Substantial disincentives for borough incorporation and annexation are impeding the development of local government in Alaska. The City of Cordova has drafted a conceptual proposal to promote borough formation in unorganized areas that have the capacity to assume the responsibility for local government. The Commission urges the legislature to give thoughtful consideration to the City of Cordova's proposal in order to bring about formation of new boroughs in Alaska.
- ❖ There is growing ambiguity over the authority of newly formed or altered municipal governments to levy property taxes during the initial assessment year after the change. There is also a need to provide municipalities with extraterritorial authority to levy taxes in areas detached from those municipalities to pay costs associated with detachment. Further, State law should be amended to recognize that actions that come before the Local

Boundary Commission may result in changes to service areas of organized boroughs and the unorganized borough.

- ❖ The Small Community Housing Mortgage Loan program is having adverse impacts on some municipal boundary proposals. Ideally, the program could be revised to maintain homebuyer program eligibility for a period after municipal boundary changes.
- ❖ Disincentives for borough incorporation and annexation are promoting interest in single-community boroughs.
- ❖ Despite a constitutional requirement for such, there is a lack of common interests within the unorganized borough.

<sup>15</sup> The Commission stresses that its concern over the lack of incentives to form boroughs does not apply to the same degree to communities interested in forming single community borough governments. Concerns on the part of the Commission regarding prospective single community borough incorporation proposals are addressed separately in this chapter.

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### **Substantial Disincentives Hindering Beneficial Borough Incorporation and Annexation are Impeding the Development of Local Government in Alaska**

As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives for borough incorporation and annexation.<sup>15</sup> The legislature and the Commission have



*Alaska Constitutional Convention delegates during a floor session.*

complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812[a][1]).

The 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 government.<sup>16</sup> The founders recognized that the legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach must be

coupled with adequate inducements to establish boroughs.<sup>17</sup> The views of the delegates are represented in the following statement on the point by Delegate Maynard D. Londborg:

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 method that Mr. Rivers brought out would be the more 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.<sup>18</sup>

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs.

<sup>16</sup> Borough Government in Alaska, Thomas A. Morehouse and Victor Fischer, page 39 (1971).

<sup>17</sup> Ibid., page 61; also, Alaska's Constitutional Convention, Victor Fischer, page 120 (1975).

<sup>18</sup> Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council, page 2651

With minor exceptions, those laws remain in place today. The option chosen by the 1961 Legislature was to adopt the voluntary approach to borough formation.

While the constitutional convention delegates understood that a voluntary approach to borough formation would be successful only if it were coupled with adequate incentives, sufficient inducements were not forthcoming. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage 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:<sup>19</sup>

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:<sup>20</sup>

... the 1961 Borough Act was predicated on the assumption that local desire to estab-

lish 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.

By 1963, only one tiny organized borough had formed (Bristol Bay Borough). When the 1963 Legislature convened, Representative John Rader considered the issue of borough government to be the "greatest unresolved political problem of the State."<sup>21</sup>

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 falling 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 the pressing issue, Representative Rader introduced

<sup>19</sup> Tales of Alaska's Bush Rat Governor, Jay Hammond, page 149 (1994).

<sup>20</sup> Borough Government in Alaska, page 73

<sup>21</sup> Metropolitan Experiment in Alaska, page 93.



*Constitutional convention delegate Victor Fischer*

a bill that mandated incorporation of boroughs encompassing Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Haines-Skagway, and Fairbanks.<sup>22</sup> In promoting his bill, Representative Rader stressed:<sup>23</sup>

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 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.<sup>24</sup>

While the 1963 Mandatory Borough Act did not provide much in the way of incentives to form boroughs voluntarily, it did promise 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.

Organized boroughs are mandated to carry out the State's constitutional duty for public education within their boundaries. They are also required to pay a significant portion of the State's cost of education, while regional educational attendance areas are not. Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being deprived of State services, revenues, or assistance and are being penalized because of incorporation.

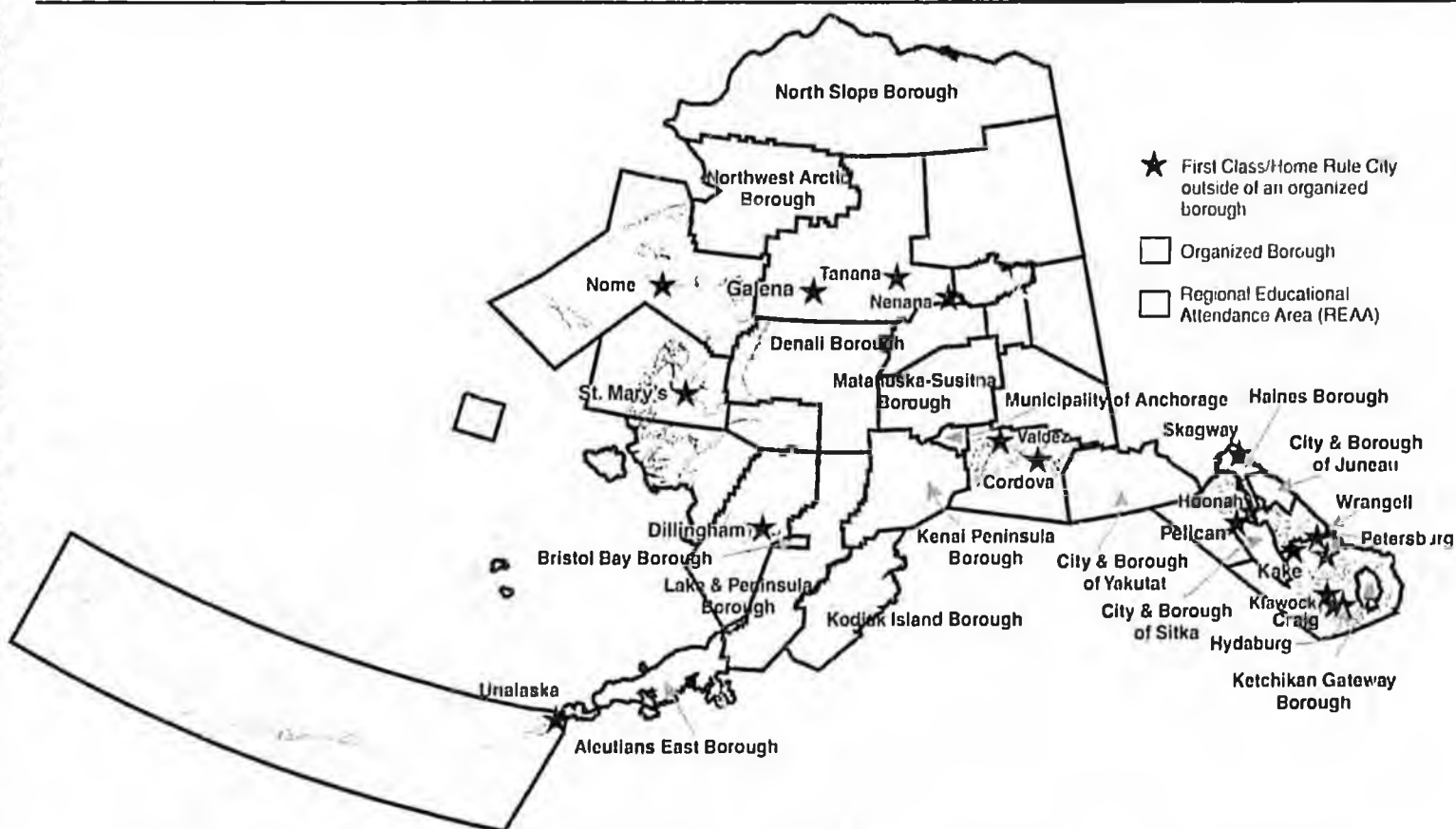
For example, in the current fiscal year alone, organized boroughs are required by AS 14.17.410 to contribute more than \$135 million to support education.<sup>25</sup> Attempts by local governments to achieve a judicial remedy of perceived tax inequities inherent in AS 14.17.410 have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the

<sup>22</sup> Before the bill was passed, it was amended to exclude the Haines-Skagway area from the mandate to incorporate.

<sup>23</sup> Areawide Local Government in the State of Alaska, Ronald Cease, pages 71-72 (1964)

<sup>24</sup> Ibid., page 47

<sup>25</sup> In addition to required local contributions, organized boroughs have budgeted more than \$100 million in discretionary contributions for their schools.



<sup>26</sup> *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 398 (Alaska 1997)

<sup>27</sup> *Ibid.*, 406

continuum of interests protected by the equal protection clause.<sup>26</sup> In that same case, Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts. Specifically, they stated:

...the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>27</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ❖ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially 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).
- ❖ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is

fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.

- ❖ 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.
- ❖ 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 for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ❖ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ❖ Borough formation or annexation would mean a 50% 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. Such is commonly perceived by cities currently exercising those



<sup>28</sup> 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 estimated 1999 population of those eight boroughs is 24,561, or 3.94% of the 622,000 Alaskans.

powers 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.

Perhaps no statistic is more illustrative of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.<sup>28</sup> In contrast, 82.7% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the legislature. The remaining 13.3% of Alaskans live in the unorganized borough.

It is noteworthy that the Commission's concerns are shared by at least one of the larger and more sophisticated local governments in the unorganized borough. In December 1999, the Council of the City of Cordova adopted Resolution Number 12-99-83 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process." Cordova City officials have drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government. Thoughtful consideration should be given by the legislature to enactment of new legislation such as that proposed by the City of

Cordova in order to bring about formation of new boroughs in Alaska.

Given the likelihood that further reductions in State revenues, and the persistent interest in mandatory organization of the remainder of the State, serious attention to the issues outlined above is warranted.

.....

### **Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification**

State statutes are ambiguous with respect to certain fundamental issues common to the broad range of matters that come before the Local Boundary Commission. These concern:

- ❖ municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification; and
- ❖ the effects of incorporation, boundary change, and dissolution on service areas in organized boroughs and the unorganized borough.

Regarding the issue of property taxes, there is ambiguity whether a municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.110(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This issue, as it relates to annexation, was addressed by the State Attorney General's office at the request of the Senate Finance Committee eleven years ago.<sup>29</sup> The Attorney General's office concluded that as long as the local government in question had time to add the property in question to its tax rolls, it had the authority (and probably the duty) to levy and collect the tax.

However, the question of whether AS 29.45.110(a) and AS 29.45.120(a) prohibit the levy of taxes during the initial year if jurisdiction is not established by January 1, appears to have become more uncertain as a result of a recent opinion of the Alaska Supreme Court. In the case at issue, the Court interpreted AS 29.45.110(a), AS 29.45.120(a), AS 29.45.240(a), and AS 29.45.300 collectively to mean that "The tax 'accrues' in full each year on January 1."<sup>30</sup>

Another issue that warrants clarification concerns the authority of a municipality to levy taxes in an area that has been detached from the municipality. Although a municipal detachment rarely occurs, when it does happen it can require complex provisions to mitigate adverse financial impacts on the municipality from which the territory was detached. To ensure that those provisions can be properly implemented, clear statutory authority is warranted for the municipality to levy taxes extraterritorially on the detached area.

Regarding the last issue, the Commission notes that the law is also unclear concerning effects of incorporation, boundary change, and dissolution on service areas in organized boroughs and the unorganized borough. For example, a challenge was made in a recent proceeding regarding the assumption that territory detached from an organized borough would be automatically "annexed" to the adjoining existing regional educational service area of the unorganized borough.

The Commission urges the legislature to eliminate the ambiguities noted above to avoid needless litigation and unintended adverse consequences for affected municipalities. Elimination of the ambiguities in current law serves the public interest by promoting taxpayer equity, financially sound local governments, and unambiguous boundaries of political subdivisions and instrumentalities of the State.

The Commission's authority to approve incorporations, boundary changes, and city reclassifications implies a general authority to empower local governments to levy taxes. The legislature has already granted specific authority for the Commission to deal with the property taxation issue relating to step annexations to cities (see AS 44.33.812[a][4]).<sup>31</sup> As a matter of policy, there is no reason why similar specific authority should not be expressly extended to all actions that come before the

<sup>29</sup> Memorandum from Assistant Attorney General Marjorie L. Odland, March 1, 1989, file number 663-89-0387

<sup>30</sup> Kenai Peninsula Borough v Arndt, 958 P.2d 1101, 1104 (Alaska 1998)

<sup>31</sup> AS 44.33.812(a)(4) states that the "Local Boundary Commission shall develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services."

Commission. The same is true for the issue of service areas.

The Commission stresses that every proposal that comes before it is unique and demands flexibility. Although the Commission is not committed to any particular language, one way to resolve the issues raised here is to enact a clear grant of authority for the Commission to make determinations concerning property taxation and service areas in the course of its proceedings. This could be done by a statutory requirement for petitioners to present transition plans as a part of their petitions. Transition plans should be prepared in consultation with affected local governments and State instrumentalities (e.g., regional educational attendance areas). As provided under current law for other elements of a petition, the transition plans should be subject to amendment by the Commission following a public hearing on the proposal.<sup>32</sup>

The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Actions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, or (3) subject to tacit approval by the legislature.

The Commission offers the following draft language for consideration as a means to

implement the proposed change. The Commission has invited others with a fundamental interest in this matter to review and comment on this issue. These include the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers.

The draft language offered by the Commission would provide for the enactment of a new section as AS 44.33.830 to read as follows:

**AS 44.33.830. Transition Plan.** (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may:

(1) provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a);

(2) provide for the assessment, levy, and collection of property taxes and other taxes on an extraterritorial basis in an area detached from a city or organized borough to pay a prorated share of municipal

<sup>32</sup> The Commission has adopted regulations (3 AAC 110.900) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.

debts and other costs apportioned to the area in question as a condition for detachment;

(3) provide for the alteration or abolition of service areas of organized boroughs or the unorganized borough as a consequence of the transfer of powers, notwithstanding AS 14.08.031, AS 16.10.380, AS 29.03.020, AS 29.35.450, and AS 46.40.120;

(4) provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of all affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law.

## Small Community Housing Mortgage Loan Program Adversely Impacts Some Municipal Boundary Proposals

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 affecting the outcome of some important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating:

... 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 3<sup>rd</sup>.

The proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is likely that consolidation would have been approved if the impacts on the housing loan program had been neutralized.



*One of the subdivisions in Kodiak that would have lost eligibility under the Small Communities Housing Assistance program if the annexation had been approved by voters.*

More recently, voters overwhelmingly rejected a proposal to annex 19.5 square miles to the City of Kodiak in October of 1999. City officials expressed the belief that restrictions in the Small Communities Housing Assistance program contributed to the heavy opposition to annexation. Had the area in question been annexed, it would have forfeited its eligibility to receive new loans under the Small Communities Housing Assistance program.

The Small Communities Housing Assistance program may also affect the prospective proposal for consolidation of local governments in Ketchikan. Officials of the City of Ketchikan have drafted a proposal for consolidation of the City of

Ketchikan and the Ketchikan Gateway Borough. It is expected that the petition will be filed in February or March. As was the case in Haines, consolidation of local governments in Ketchikan will result in the loss of eligibility for new Small Communities Housing Assistance program loans throughout the consolidated borough.

The Commission encourages the legislature to explore ways to maintain the Small Communities Housing Assistance program, but eliminate the unintended adverse impacts on legitimate municipal boundary changes. This revision would eliminate a significant local objection to appropriate municipal boundary changes.

### Interest in Single-Community Boroughs

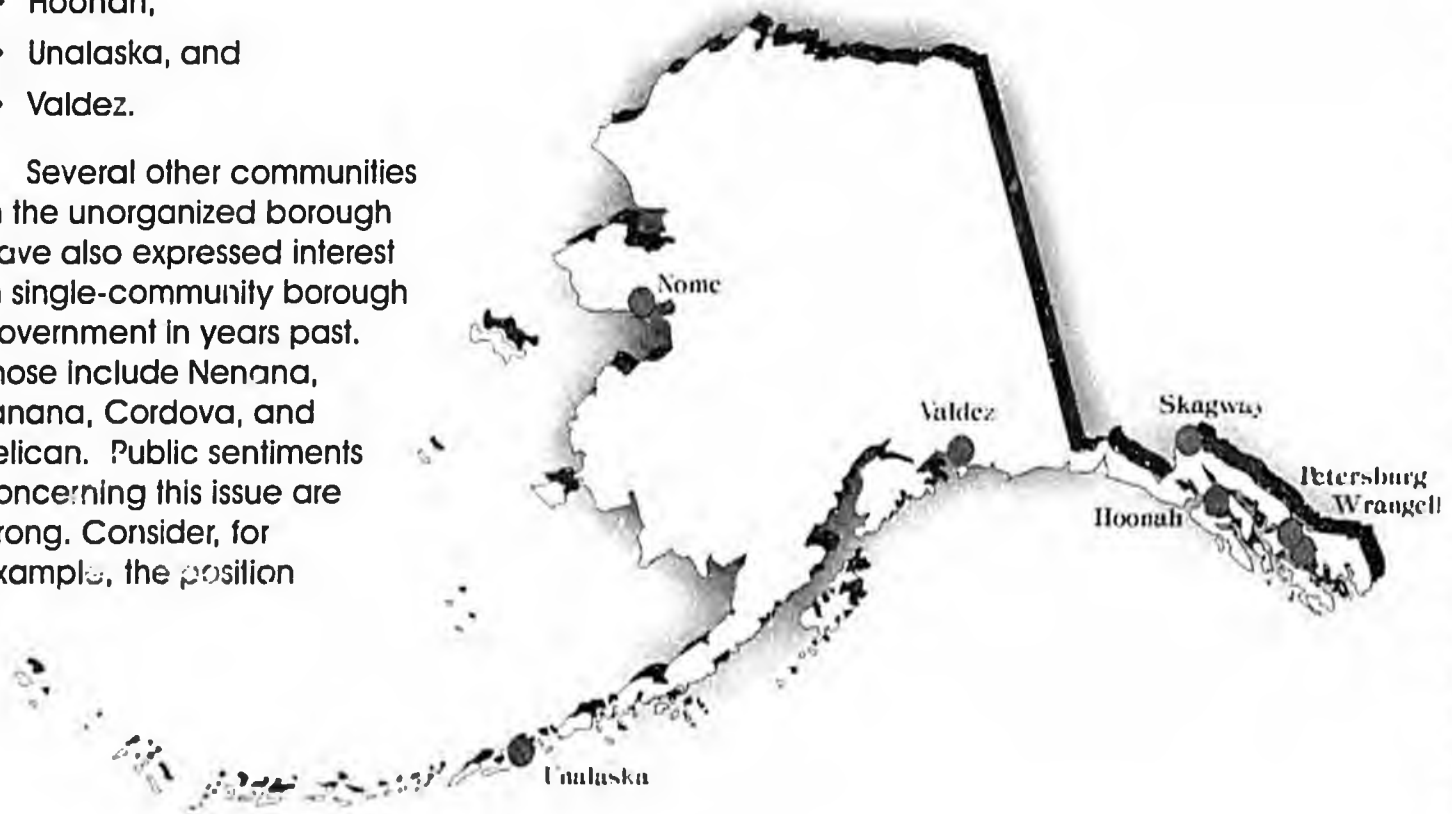
Interest in forming single-community borough governments remains strong. It appears that two circumstances may be the principal basis for such interest. The first is the lack of incentives to form boroughs encompassing natural regions as outlined in the preceding section. The second is concern by local 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. 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 shoulder the responsibility of borough government in an effective and efficient manner.

.....  
**Promotion of Maximum Common Interests within Boroughs**

As it has done previously, the Commission brings to the attention of the legislature that the unorganized borough is configured in a manner that does not conform to the requirements of

Alaska's constitution. Specifically, 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, transportation, 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. However, that recommendation was rejected. Instead, the 1961, the legislature implemented Article X, Section 3 by dividing all of Alaska into a *single* unorganized borough. For the past thirty-nine years, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

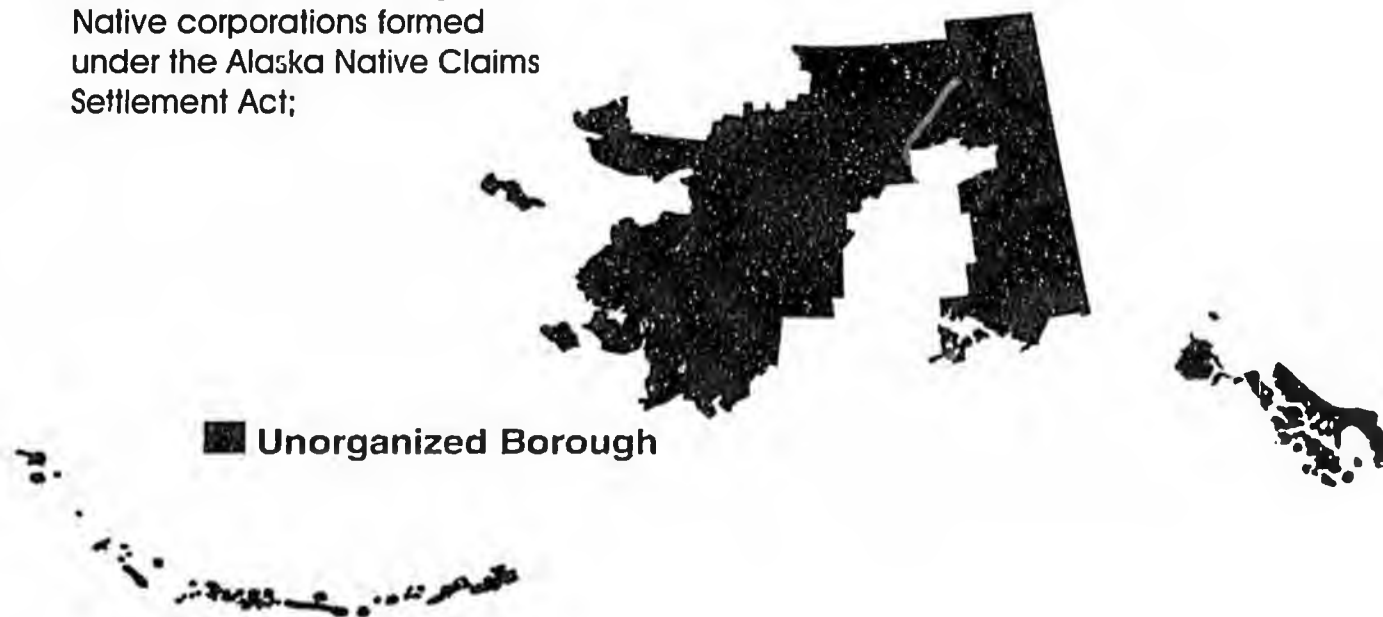
From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various

parts of 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 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 areas;
- ❖ 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 interests rather than maximum 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 boroughs, 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 formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. 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 borough boundaries must also remain flexible. It has been eleven 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 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 unorganized borough portion of the Aleutian region, those boundaries would encompass all of the territory west of the Aleutians East Borough.



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