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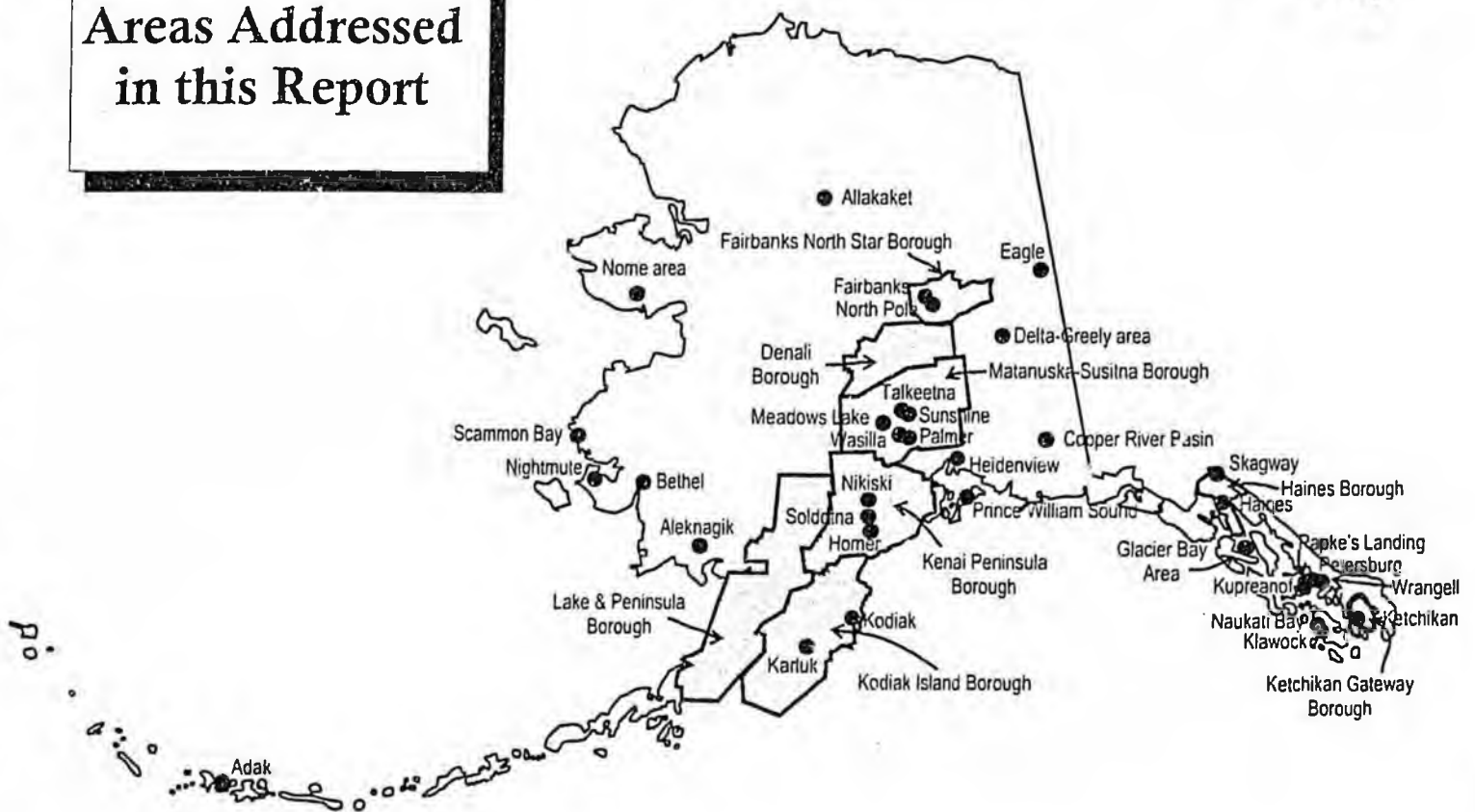
Report of the Local Boundary Commission to the First Session of the Twenty-Second Alaska State Legislature

January 17, 2001

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

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

Local Boundary Commission

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

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Message from the Chairperson

January 17, 2001

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

Chapter 1 provides background information concerning the Local Boundary Commission.

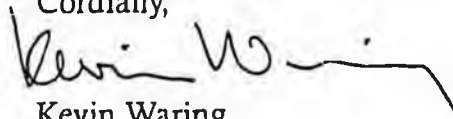
Chapter 2 describes activities of the Commission and its staff during 2000. Chapter 2 also describes a number of proposals currently under consideration by municipalities and voters throughout Alaska.

→ Chapter 3 contains discussion of vital public policy issues of particular interest to the Commission. These include the following.

- Concerns regarding substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Legislature to consider a separately submitted proposal from the Commission to reform State law governing borough incorporation and annexation of areas that are capable of operating boroughs.
- Concerns regarding the need to: (1) eliminate ambiguities in current law concerning the timing of the assessment, levy, and collection of property taxes by cities or organized boroughs 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 eliminate a significant obstacle to otherwise appropriate municipal boundary change.

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,


Kevin Waring
Chairperson

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Chapter 1 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, Section 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 of Judicial Conduct, and Redistricting Board.

This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & 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.¹

The Local Boundary Commission was established under Alaska's Constitution to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal corporations. In the words of the Alaska Supreme Court:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

...lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.²

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

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. More than 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."⁴

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).

Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership."⁵

5 AS 39.05.060

Information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. 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 also serves as the current Mayor of the City of Pelican. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman 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. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. 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.

Staff to the Commission

6 AS 44.33.020(4)



The Alaska Department of Community and Economic Development (DCED), Division of Community and Business Development (DCBD), provides staff to the Commission.⁶

Commission staff provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. Types of assistance include:

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

As required by law, staff analyze formal petitions filed with the Commission and prepares reports conveying DCED's recommendations for action by the Commission.⁷ DCED staff also certify 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 that DCED is required by law to provide to the Commission.

⁷ See AS 29.04, AS 29.05, and AS 29.06.

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. The petitioner and DCED may conduct informational meetings. 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 firsthand 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 them. 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

Year 2000 Developments and Activities

City Incorporation

No cities were incorporated during the year, but two city incorporation petitions are being processed and officials or residents of eight unincorporated communities are developing incorporation petitions or have expressed interest in city incorporation during 2000. Such pending or prospective city incorporation activity occurred in the following communities.

- Adak
- Talkeetna
- Nikiski
- Naukati Bay
- Sunshine
- Meadow Lakes
- Karluk
- Papke's Landing
- Heidenview



Details concerning city incorporation activities follow.

Adak

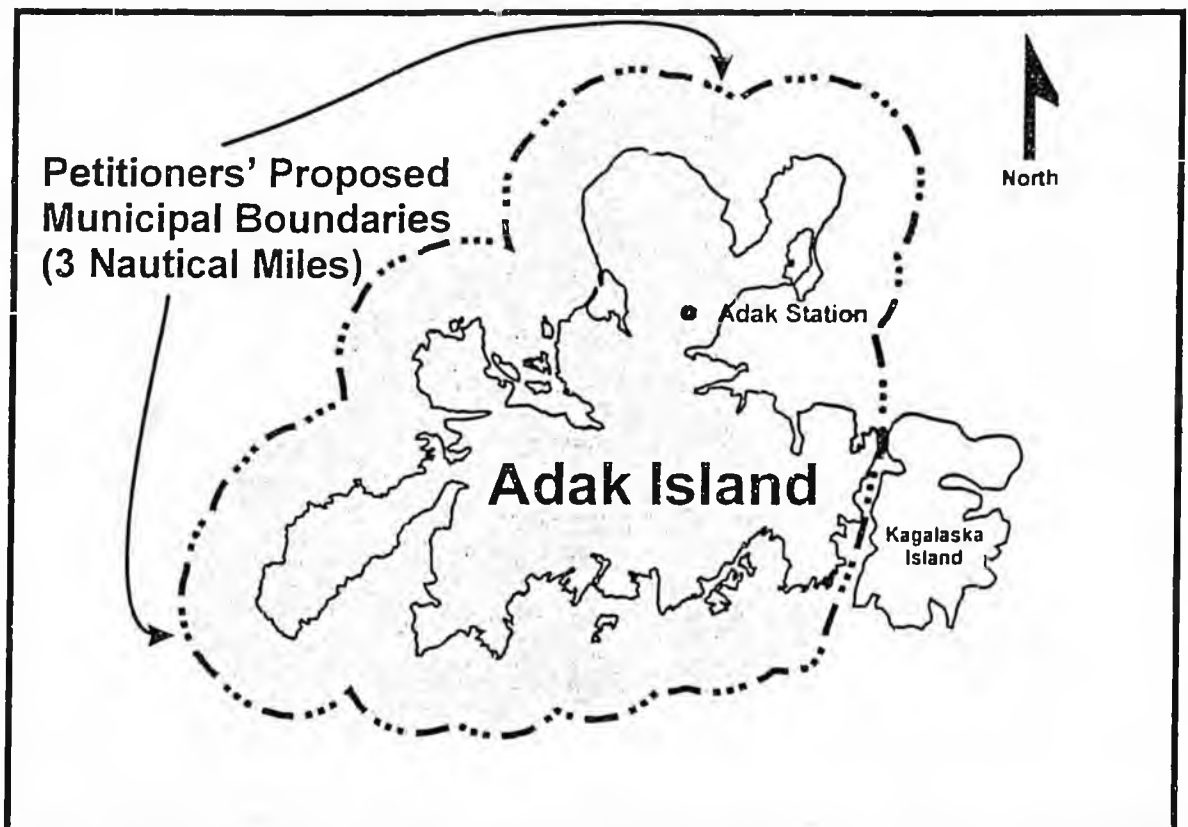
On April 29, 1999, 38 registered voters in Adak, a community of 106 residents, petitioned the Local Boundary Commission to incorporate a second class city. The Petitioners proposed city boundaries encompassing 676.3 square miles, including all of Adak Island and surrounding offshore areas. The petition proposed ballot propositions authorizing the city to levy a 3% sales tax and a 2% fuel transfer tax. The petition also requested that incorporation be contingent upon voter approval of an institutional controls ordinance.

On May 10, 1999, LBC staff completed its technical review of the petition in accordance with AS 29.05.070, and accepted the petition for filing. The LBC

Chairperson established July 20, 1999, as the deadline for filing responsive briefs and comments regarding the petition.

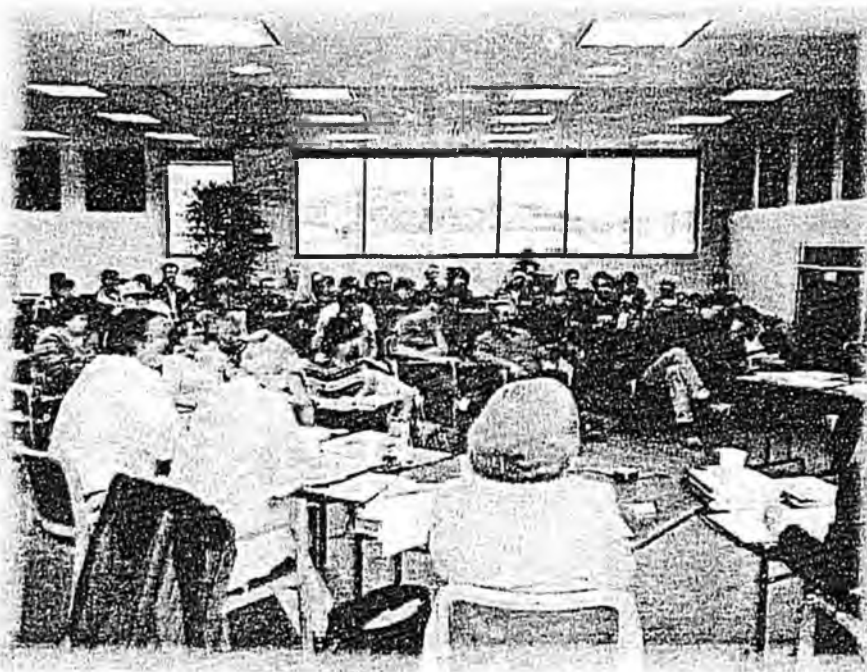
Public notice of the filing of the petition was given in accordance with the requirements of 3 AAC 110.450. On July 20, 1999 the U.S. Fish and Wildlife Service filed a 9-page responsive brief that expressed opposition to the expansive city boundaries proposed by the Petitioners. Thus, pursuant to 3 AAC 110.480, for purposes of this proceeding, the U.S. Fish and Wildlife Service (U.S.F.W.S) was the sole respondent. On August 27, 1999, the Petitioners filed a 30-page reply brief pursuant to 3 AAC 110.490. A copy of the reply brief was served on the U.S.F.W.S. on that date.

AS 29.05.080 and 3 AAC 110.520 require DCED to conduct a public informational meeting in the territory pro-



Area petitioned for incorporation.

posed for incorporation. DCED staff conducted a public informational meeting on the incorporation proposal at the Bob Reeve School in Adak on January 24, 2000. Notice of the meeting was sent to 83 parties, published and posted at Adak. On February 19, 2000, the DCED Preliminary Report and Recommendation was issued to



LBC April 28, 2000 hearing at Adak.

87 interested individuals and organizations. Deadline for comment on that report was March 22, 2000. Timely letters commenting on the DCED Preliminary Report were received from six parties, including a two-page letter submitted jointly from Senator Lyman Hoffman and Representative Carl Moses expressing their strong support for the proposed city incorporation.

DCED's Final Report and recommendation was issued on March 6, 2000. Notice was issued by mail, publication and posting.

At its April 28, 2000 hearing, the Commission heard seven hours of testimony. On April 29, 2000, the Commission deliberated for two hours before concluding that several key issues relating to the transition from a former major Naval base to a smaller civilian settlement were unresolved, and that it was premature to

render a final decision on the incorporation proposal. The Commission cited several actions by federal agencies, Congress, the Aleut Corporation, and others that were pending at that time. The Commission noted that such pending matters would significantly affect Adak's economic development, land and facility ownership, and the viability of the proposed city.

The Commission voted to keep the petition record open until August 29, 2000 with the expectation that sufficient information would be available by that date to render a decision on the city incorporation proposal. Commission members referenced various documents, studies, and actions that were expected to be concluded during that four-month period.

Notice of the extension of the record was published on May 9, 2000. A press release regarding the extension of the

record was sent to eleven media outlets, including statewide, local and regional print and publication media. Individual notice of the extension of the record was mailed to interested parties.

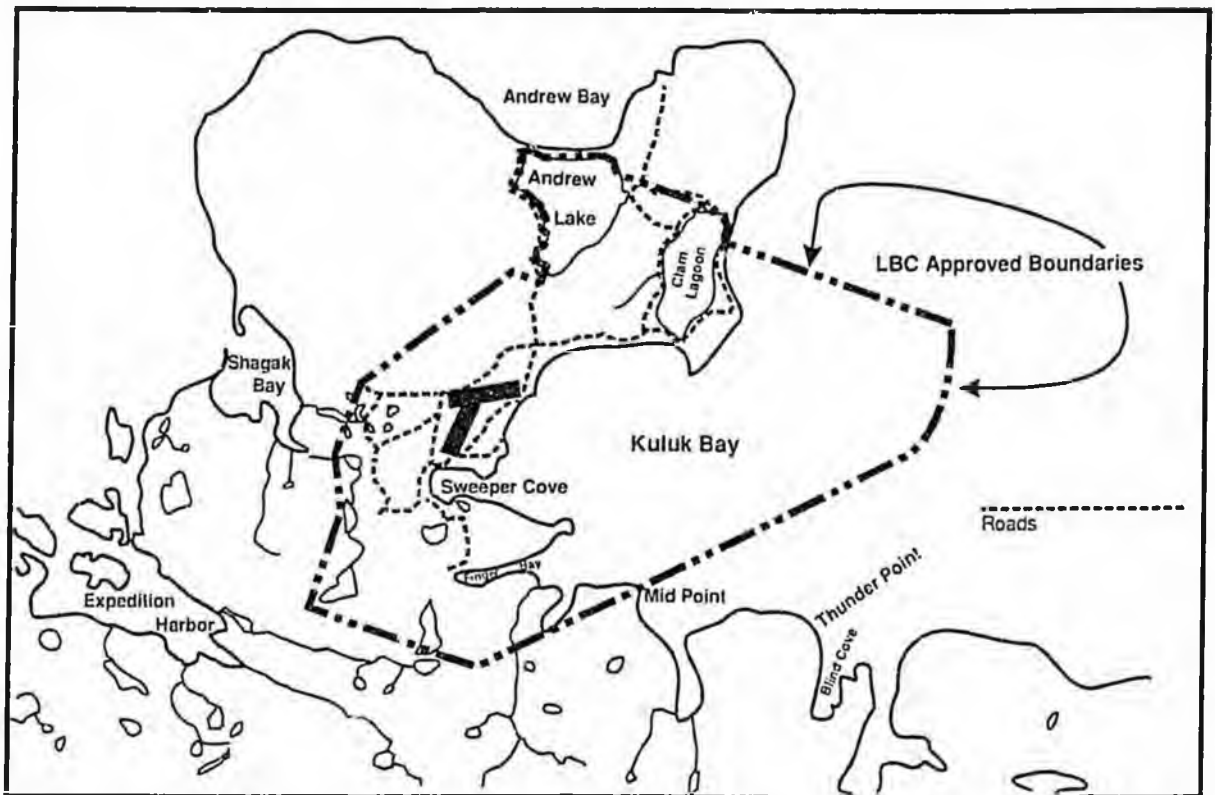
On September 27, 2000, DCED issued a supplementary report that addressed information provided by the Petitioners in an August 29, 2000 submission and other developments relating to Adak city incorporation that had occurred since the Commission's public hearing in Adak. The 27-page report reaffirmed the conclusions and recommendations that the petition be amended and approved as set forth in the Department's final report.

On October 19, 2000, the Commission reconvened the recessed meeting of April 29, 2000. Notice of the meeting was

published, sent to 61 interested parties, and posted in three public and prominent places at Adak.

At the October 19, 2000 meeting, the Commission amended and approved the petition. Amendments to the petition reduced the area encompassed by the boundaries of the proposed city from 676.3 square miles to 71.72 square miles and removed a requirement for adoption of an institutional controls ordinance upon incorporation. The amended petition was approved by unanimous vote of the Commission.

The Division of Elections has scheduled the election on the proposed incorporation of the City of Adak for April 3, 2000.



City of Adak boundaries as approved by the Local Boundary Commission.

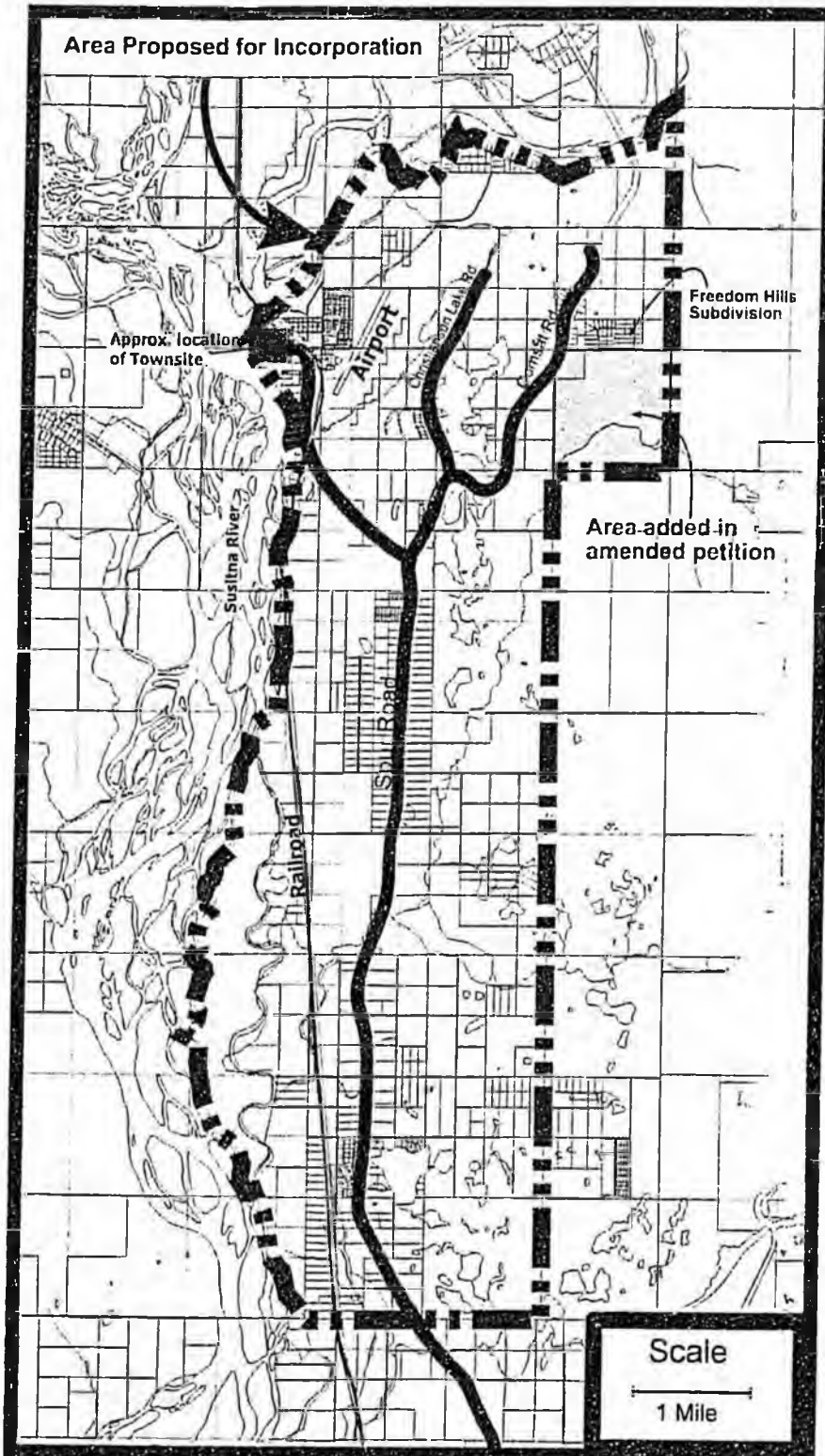
Talkeetna

On March 25, 1998, residents of Talkeetna petitioned to incorporate a home rule city with boundaries encompassing twenty-three square miles. Approximately 38 individuals attended a May 27, 1998 informational meeting conducted in Talkeetna by LBC staff. The meeting was broadcast live on local radio station KTNA and rebroadcast the following week.

Eight written comments concerning the 1998 petition were submitted prior to the June 19, 1998 deadline for submission of such comments. Timely submissions included two similar informal petitions signed by 253 parties.⁸ On June 19, 1998, the Matanuska-Susitna Borough (MSB) filed a 26-page responsive brief with 19 exhibits. The summary portion of the original MSB brief

stated, in part, that *"the proposed petition for incorporation of the city of Talkeetna requires supplementation as noted in the borough's response and can not be granted as proposed . . ."* and opines *" . . .the petition as*

8 One of the two petitions stated, "We, the undersigned residents of the community of Talkeetna, wish to go on record as opposed to the incorporation of the community of Talkeetna. We do not want to be included." The second petition stated "WE, THE UNDERSIGNED RESIDENTS OF THE AREA SOUTH OF THE RAILROAD CROSSING AT THE ENTRANCE OF THE COMMUNITY OF TALKEETNA, AND CONTINUING SOUTH TO ANSWER CREEK, WISH TO GO ON RECORD AS OPPOSED TO THE INCORPORATION OF THE COMMUNITY OF TALKEETNA. WE DO NOT WANT TO BE INCLUDED." The informal petitions contained 161 signatures of voters inside the proposed City of Talkeetna boundaries and 22 registered to vote in the greater Talkeetna area but outside the proposed City of Talkeetna boundaries.



Amended proposed city boundaries for Talkeetna.

9 MSB June 19, 1998 Responsive Brief, at 26.

presented does not establish how the commission may grant it in light of the constitution, state statute, and the regulatory factors applicable to the incorporation of a home rule city."⁹ The Respondent addressed several deficiencies in the original petition, including:

- issues relating to maximum local self-government with a minimum of local governmental units;
- issues associated with the disruption of existing borough service areas;
- perceived deficiencies in the proposed budget of the city;
- issues relating to whether the MSB is providing services that the city could provide which implicate AS 29.05.021(b) and former 19 AAC 10.010(b).

On August 3, 1998, the Petitioners filed a 4-page brief in reply to the responsive briefs and other written comments. A copy of the reply brief was served on the Respondent on August 3, 1998.

On September 21, 1998, the MSB submitted a five-page supplement to its June 19, 1998 responsive brief, with seven pages of attachments. The LBC extended to the respondent the opportunity to supplement its brief because the Petitioners had been allowed an extended period to submit a reply to the original MSB responsive brief.

On October 3, 1998, the Petitioners filed a two-page reply to the Respondent's September 21, 1998 supplementary submission.

On December 7, 1998, a 41-page draft report and recommendation concerning the petition was issued to 134 parties by LBC staff.

The 1998 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 (MSB) service areas intact and fracture others.

That the petition, if implemented as originally submitted, would not have resulted in a significant minimization of the number of local government units as promoted by Article X, Section 1 of the Alaska Constitution.

- 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. Nonareawide 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.

On December 7, 1998, LBC staff issued a 54-page draft report on the original petition. The deadline for comment upon the draft report was 5:00 p.m., January 7, 1999.

Comments were received from the Talkeetna Community Council, ten individuals, and the Respondent Matanuska-Susitna Borough.

At the request of the Petitioners's Representative, on March 24, 1999, LBC staff conducted a second public informational meeting in Talkeetna to provide information regarding the Petitioners' options to amend or withdraw the incorporation. The meeting was broadcast live on local radio. About 30 people attended the two-hour meeting.

On May 14, 1999, LBC staff received a letter from the Petitioners' Representative requesting until June 30, 1999 to submit an amended petition reflecting actions taken to resolve various concerns about specific aspects of the incorporation petition expressed by the Respondent MSB and the former DCRA. Such issues related to the following:

- transition of assumption of responsibility for delivery of nonareawide borough powers in the area proposed for incorporation;
- the responsibility for maintenance of the Freedom Hills access road after city incorporation;
- the effect upon service area mill rates if that portion of the Talkeetna Road Service area outside of the proposed City of Talkeetna boundaries were consolidated with other road service areas;
- questions relating to water and sewer service in the Talkeetna core area;
- updated assessment of the value of real property within the area proposed for incorporation;
- issues regarding borough collection and rebate of overnight accommodations taxes received from commercial lodging facilities in the area proposed for incorporation.

On October 6, 1999, DCED received an amended petition for incorporation. Specific amendments to the March 25, 1998 petition included the following:

- offering the voters the option of a 4% seasonal sales tax or 2% year round sales tax;
- deletion of the proposed bed tax;
- provision for a part-time city manager, part-time city clerk/treasurer, full-time public works operator, and seasonal recreation director;
- enlargement of the area proposed for incorporation to include one section (Section 28) to ensure that all existing and potential access routes to the Freedom Hills Subdivision are within the proposed city boundaries;

10 That document was titled *Matanuska-Susitna Borough's Comments to Amended Petition to Incorporate the City of Talkeetna.*

- provision for city management of the water and sewer system in the core area within 18 months after incorporation;
- provision for city assumption of solid waste services within 18 months after incorporation; and
- provision of city assumption of library service within 18 months after incorporation.

The amended petition was signed by 53 persons. The Division of Elections confirmed that the amended petition bore sufficient signatures from qualified voters residing in the area proposed for incorporation and sufficient signatures of Talkeetna voters who had signed the original petition.

Public notice of the filing of the amended petition was given in accordance with the requirements of 3 AAC 110.450. Notice was mailed to 136 interested parties. Arrangements were made for publication of the notice for three consecutive weeks, as required by 3 AAC 110.450. However, due to an inadvertent failure on the part of the newspaper to publish the notice of the amended petition three times as required, publication of the notice of the filing of the amended petition was repeated.

On May 10, 2000, notice of the filing of the amended petition was posted at four locations in Talkeetna. On May 11, 2000, notice was mailed by LBC staff to 140 potentially interested agencies and individuals.

On July 21, 2000, the Respondent Matanuska-Susitna Borough filed a 13-page supplement to its reply brief.¹⁰

On September 15, 2000, the Petitioners' Representative filed a six-page reply to

the Matanuska-Susitna Borough's July 21, 2000 submission.

Sixteen sets of timely comments were filed with DCED regarding the amended petition.

On October 11, 2000, LBC staff conducted a third public informational meeting in Talkeetna to provide information regarding the amended petition.

DCED's preliminary report regarding the amended petition will be issued in early 2001.

Nikiski

DCED staff attended a community meeting regarding a prospective proposal for incorporation of a home rule City of Nikiski on November 30 at the Nikiski Senior Citizens' Center, at the request of the local organizer of the incorporation effort. The organizer of the effort indicated that the proposal under current consideration is quite similar to a proposal advanced by Nikiski residents nearly ten years ago but withdrawn prior to the formal filing of a petition. As was the case a decade ago, the boundaries contemplated by the Nikiski incorporation proponents conform to the Kenai Peninsula Borough's Nikiski Fire Service Area, which encompasses more than 1,400 square miles and includes the communities Salamatof and Tyonek. A city conforming to the boundaries of the Nikiski Fire Service Area would have the most expansive boundaries of any city in Alaska. The boundaries contemplated by proponents of the city would exceed or be roughly equivalent to the areas encompassed by boundaries of three existing organized boroughs.

Naukati Bay

At the request of community members, staff from DCED's Juneau office traveled to the community in December 2000 to provide information about municipal incorporation.

Sunshine

In November 2000, a resident of the central Matanuska-Susitna Borough community of Sunshine indicated that development of a petition for incorporation of a second class City of Sunshine is nearing completion.

Meadow Lakes

In April 2000, LBC staff met with a Meadow Lakes resident and responded to questions regarding city incorporation standards and procedures.

Karluk

At the request of an aide to Representative Austerman, LBC staff developed petition forms for incorporation of a second class city within a borough and provided the forms, together with background information on city incorporation standards and procedures, to the President of the Karluk IRA Council.

Papke's Landing

A resident of Mitkof Island living 11 miles south of Petersburg expressed interest in forming a city. The area in question includes the area across from Papke's Landing and south of Papke's Landing on Wrangell Narrows and the area of Falls Creek and across on south Kupreanof on the Lindenberg Peninsula. Staff provided petition forms as requested, but advised the individual that in order to incorporate a city, there must be a bonafide community. Further, the individual was informed that State law prohibits the incorporation of a city if needed services can be provided by annexation to an existing city.

Heidenview

In March, 2000, a resident of an area located about two miles north of the boundaries of the City of Valdez requested and was provided with information regarding the standards and procedures for city incorporation. The individual requesting information indicated that the area is known as Heidenview. In a letter transmitting the information regarding city incorporation, LBC staff advised that the prohibition against incorporation of a city in the unorganized borough if municipal services can be provided by annexation to an existing city.

City Annexation

Fourteen annexations to cities were considered, initiated, or implemented during 2000. Such pending or prospective city annexation activity occurred with respect to the following municipalities.

Details concerning 2000 City annexation activities are provided below.

- City of Ketchikan (Shoreline Service Area)
- City of Ketchikan (Bear Valley)
- City of Homer
- City of North Pole
- City of Kodiak
- City of Klawock
- City of Palmer
- City of Petersburg
- City of Allakaket
- City of Soldotna
- City of Wasilla
- City of Eagle
- City of Aleknagik



City of Ketchikan (Shoreline Service Area)

As allowed by 3 AAC 110.410, the City of Ketchikan 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.

The Borough's letter requested that *"the petition either be amended to include the*

entire Shoreline Service Area or be rejected."

In response, on May 11, 1999, the City amended its petition to encompass 1.2 square miles. The amended petition sought annexation of the entire Shoreline Service Area.

The Commission conducted a duly-noticed public hearing on the annexation proposal on December 4, 1999 in the Ted Ferry Civic Center in Ketchikan.

Following the hearing, the Commission conducted a one-hour decisional session on the proposal, and approved the City's amended petition to annex 1.2 square miles by unanimous vote.

The recent Shoreline Service Area and Bear Valley annexations to the City of Ketchikan.

On January 19, 2000, the Commission met and voted unanimously to amend the effective date of the proposed annexation to January 1, 2000. Support for the amendment was expressed by Representative Bill Williams, the City of Ketchikan, Ketchikan Gateway Borough, and Shoreline Service Area. A recommendation for the boundary change was submitted to the Second Session of the Twenty-First Legislature and received tacit legislative approval.

City of Ketchikan (Bear Valley)

The City of Ketchikan petitioned the Alaska Local Boundary Commission for the annexation of an estimated 27.41 acres in Bear Valley. The territory proposed for annexation is uninhabited and largely undeveloped. Further, the territory is contiguous to the existing corporate boundaries of the City. All of the owners of real property within the territory petitioned the City for annexation of their respective properties. The property is owned by four individuals or entities.

DCED received the petition on March 13, 2000. On March 30, DCED determined that the form and content of the petition were technically sufficient, at which time the petition was formally accepted for filing.

Public notice of the filing of the petition was given in accordance with the requirements of 3 AAC 110.450. On April 3, 2000, the Petitioner mailed or delivered a copy of the notice of filing of the petition to interested parties.

Petition documents were made available for public review at the Offices of the Ketchikan City Clerk and the Ketchikan Public Library. The petition was served on both the Ketchikan Gateway Borough and the City of Saxman by the City of Ketchikan by April 21, 2000.

In accordance with 3 AAC 110.480 and 3 AAC 110.640, the Chairman of the Local Boundary Commission set the deadline for filing responsive briefs and comments in this matter for June 5, 2000. No responsive briefs or comments regarding the matter were received by the deadline.

On July 27, 2000, DCED issued its Preliminary Report and Recommendation to 23 interested individuals and organizations. Deadline for comment on the report was August 28, 2000. On August 28, 2000, DCED received one comment from the City of Ketchikan expressing agreement with DCED's conclusions and recommendation. On August 29, 2000, DCED issued its final report and recommendation confirming the recommendation of the preliminary report to 21 interested individuals and organizations.

The Local Boundary Commission conducted a duly-noticed public hearing regarding the Bear Valley annexation on October 30, 2000. The City Manager and Assistant City Manager of the City of Ketchikan participated in the hearing via teleconference.

Immediately following the teleconferenced public hearing, the Commission briefly deliberated on the matter and unanimously approved the petition



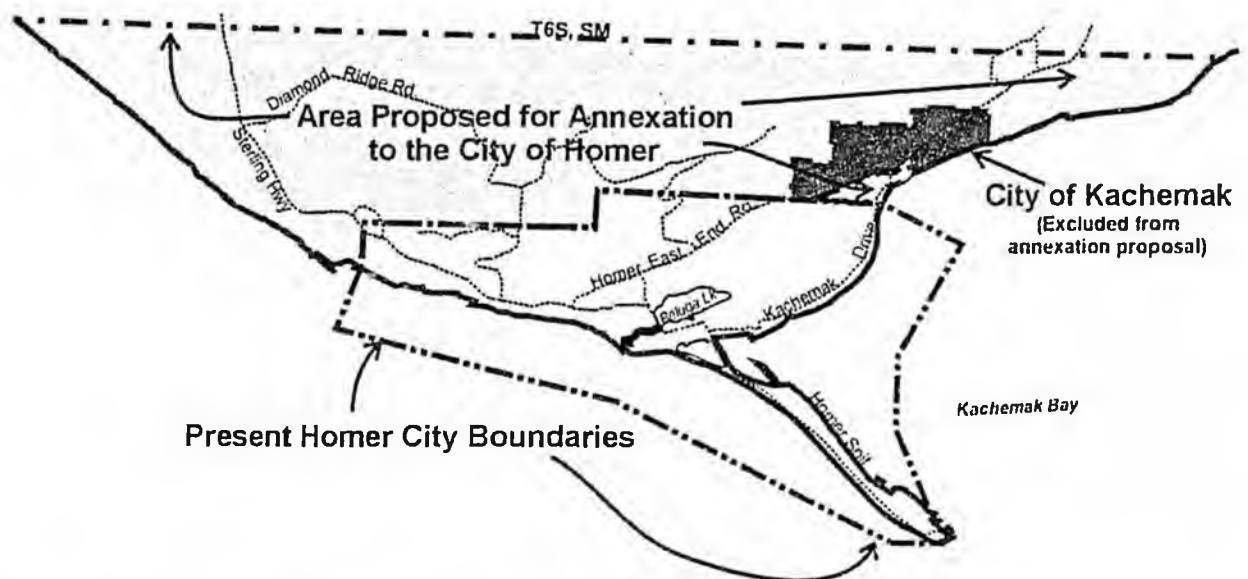
Homer City Hall

without modification or conditions. The Commission issued its decisional statement regarding the annexation on November 17, 2000.

City of Homer

On March 20, 2000, a petition seeking legislative review annexation of 25.58 square miles located west, north and east of current City of Homer boundaries was filed with DCED.

The territory proposed for annexation is inhabited by an estimated 2,687 individu-



Area proposed for annexation to the City of Homer.



Citizens Concerned About Annexation (CCAA) headquarters in Homer.

als. The property tax base of the territory proposed for annexation is estimated to be \$126,575,201.

On March 29, 2000 DCED completed review of the petition's form and content and determined that the documents were substantially complete and proper. Accordingly, the petition was accepted for filing. The Chairman of the Local Boundary Commission established June 5, 2000 as the deadline for the filing of responsive briefs concerning the annexation proposal. LBC staff arranged for notice of the filing of the petition and service of the petition.

Fourteen separate parties submitted timely responsive briefs opposing the annexation petition.

At the request of interested parties, DCED staff attended four separate public meetings in Homer regarding the annexation proposal. On September 7, 2000, the City of Homer filed a brief and extensive exhibits with DCED. A revised version of the reply brief was submitted on September 13, 2000.

On September 15, 2000, the Chairman of the LBC wrote to the Petitioner's Representative and advised that the timing of

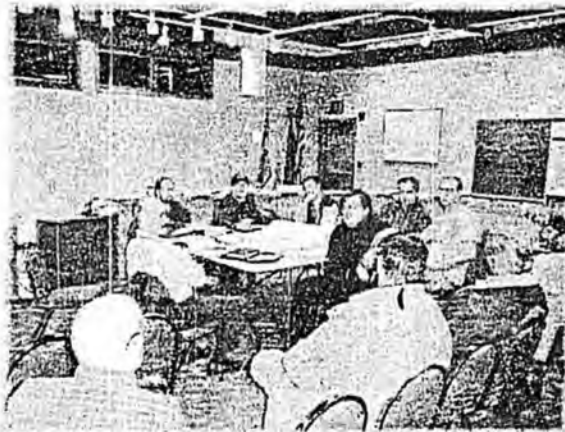
the filing of the reply brief rendered it unrealistic to attempt to complete the remainder of the process involved in a legislative review boundary change in time for possible submission to the legislature in 2001. To have done so at that time would have required the Department of Community and Economic Development to prepare its preliminary report on the matter just three weeks after the date that the City filed its revised reply brief. Moreover, the Commission and staff

would have been required to expedite all other aspects of the proceeding. The Chairman deemed attempts to process the petition on an expedited schedule to be inadvisable given the scope of issues and public concerns associated with the City of Homer's annexation petition. He indicated that it would not be fair to other petitioners who have matters pending before the Commission to defer their proposals while the Commission and staff focused exclusively on the City of Homer's proposal.

Release of DCED's preliminary report on the matter is anticipated in 2001.

City of North Pole

The City of North Pole is in the preliminary stage of exploring the effects, advantages, and drawbacks of expanding the boundaries of the City. Under conceptual review is the prospect of extending the boundaries of the City to encompass all of the area within the boundaries of the North Pole zip code (99705). A map of the zip codes surrounding the North Pole area are shown on the following page. The area being considered encompasses approximately 60 square miles and is inhabited by an estimated 15,000 residents.



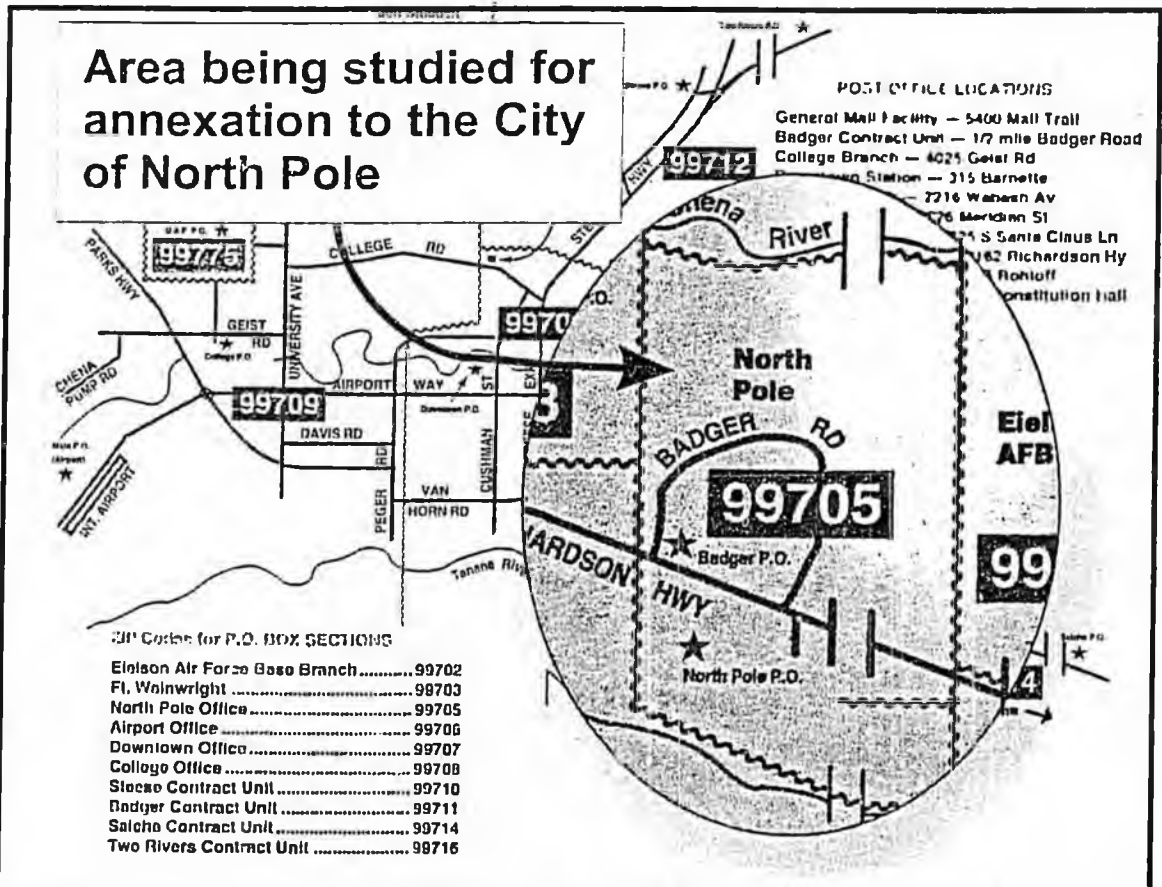
December 2000 meeting regarding a possible annexation to the City of North Pole.

The North Pole City Council has appointed a seven-member ad hoc committee to explore annexation. The committee is comprised of City officials, residents of the City, and residents in the area under consideration for annexation. LBC staff met with the ad hoc annex-

ation committee in December of 2000. The committee has tentatively scheduled four public hearings on the matter in February and March of 2001.

City of Klawock

The City of Klawock has been considering submission of a petition for annexation by local election. In April, 2000, annexation petition forms were provided to the City by LBC staff. The area contemplated for annexation is located south, east and north of the existing City of Klawock boundaries. The City's newsletter indicated that local public meetings concerning annexation were underway in April, 2000. Mayor Williams advised LBC staff that the area considered for annexation contains six households.



City of Palmer

On February 8, 1999, the home rule City of Palmer petitioned to annex four parcels collectively comprising 64.9 acres. The petition was accepted for filing on April 2, 1999. Annexation was sought under provisions of 3 AAC 110.150(2). That regulation permits annexation of contiguous territory to a city "by ordinance and a petition signed by all of the voters and property owners of the territory." The City owned, or held power of attorney, over three of the parcels. The proposal for annexation of those three parcels was from the City. The remaining parcels are owned by private residents, who requested annexation.

When the petition was filed, the Petitioner requested relaxation of certain of the Commission's procedural regulations as permitted by 3 AAC 110.660.

On April 5, 1999, notice of filing of the petition was mailed to 44 parties by

DCED staff. The notice of filing invited written public comment concerning the proposed annexation and the proposed relaxation of procedural regulations by June 4, 1999. Notice of the annexation petition filing and the request for relaxation of procedural regulations was posted, published and served upon the Matanuska-Susitna Borough and neighboring cities.

No comments were received concerning relaxation of procedural regulations by the June 4, 1999 deadline. However, the Matanuska-Susitna Borough expressed support for the proposed annexation.

On September 2, 1999, the Commission granted the City of Palmer's request to suspend or relax certain procedural regulations.¹¹

The deadline for receipt of written comments concerning the DCED report and recommendation by LBC staff was April 21, 2000. The sole comment received on the petition was from the Matanuska-Susitna Borough, which submitted a

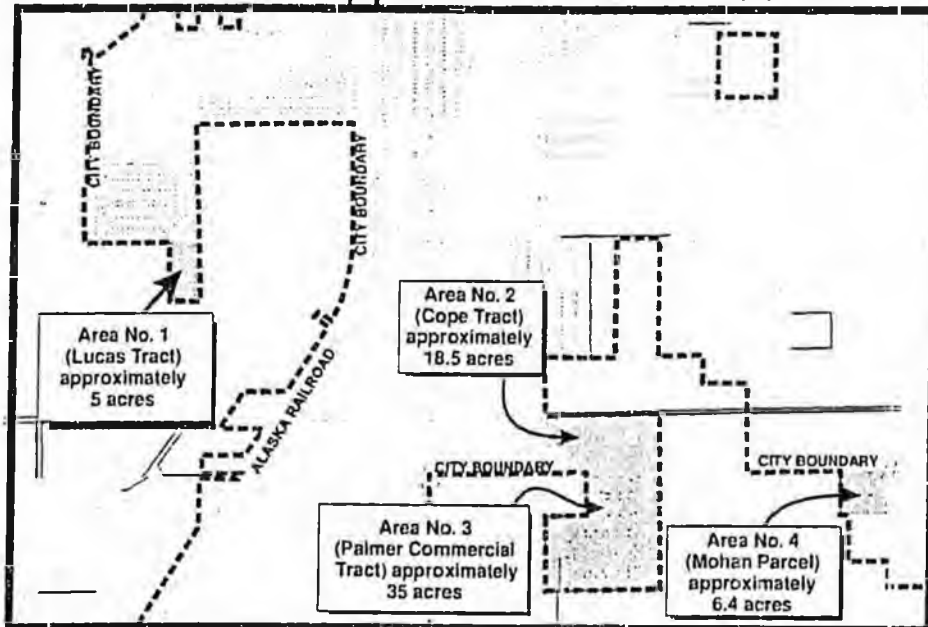
letter expressing support for the annexation proposal.

The Local Boundary Commission conducted a duly-noticed public hearing on the petition by teleconference at 10:00 a.m., April 28, 2000. At the conclusion of the public hearing, the

11 Specifically, the Commission directed that:

- notice of the public hearing 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 on the petition;
- written comments on the consolidated report could be submitted until at least one week prior to the public hearing. DCED will respond to any comments on the consolidated report at the public hearing;
- the Commission's public hearing on the petition would be conducted by teleconference

Parcels Approved for Annexation



12 In April, the City of Palmer issued a request for proposals for planning services to assist the City to plan options for annexation. In August, DCED was advised that a consultant had been retained by the City to:

- 1) provide the City of Palmer with information on the affects of annexing areas outside the present city limits;
- 2) develop annexation plans in conformance with the City's comprehensive plan;
- 3) analyze the most effective and efficient way to provide municipal services in areas surrounding the City of Palmer;
- 4) determine if annexation proposals reasonably meet the legal standards; and
- 5) provide public information on the annexation plan. (Five and ten year annexation scenarios are to be provided.)

13 If such a petition is submitted, it will be the 46th annexation petition filed by the City of Palmer since its incorporation in 1951.

Commission initiated a decisional session regarding the annexation petition. After considering the standards for annexation, the Commission unanimously approved the petition without amendment or conditions.

In its decisional statement the Local Boundary Commission reiterated its long-standing encouragement to the City of Palmer to approach annexation in a more comprehensive manner rather than the pursuing boundary changes piecemeal, in small increments. The Commission noted that the City of Palmer has issued a request for proposals for the development of a comprehensive annexation plan.¹² The Commission expressed hope that the City of Palmer approaches annexation in a more proactive manner in the future, rather than repeatedly reacting to requests for utility extension to areas that are so modest in scope.

On May 8, an official of the City of Palmer informed DCED staff that a developer of a 66-unit senior citizen housing development adjacent to the existing City of Palmer boundaries desired annexation of that development site to the City.¹³

City of Wasilla

In December 2000, City of Wasilla staff forwarded a preliminary draft of a petition for annexation of 312.85 acres at the request of all voters and property owners in the subject territory. It is anticipated that the petition will be filed in early 2001.

City of Kodiak

In March, a City of Kodiak official indicated that the City had been considering pursuing annexation of the City's watersheds by the legislative review process. The watersheds were included in a local action petition proposal that was approved by the Local Boundary Commission in 1999, but rejected by the voters.

City of Petersburg

In November 2000, the Director of Community Development for the City of Petersburg indicated that City staff are drafting a legislative review annexation proposal for much of Mitkof Island. It is intended that the draft will be considered by the City Council before a determination is made whether to pursue annexation. LBC staff met with the Petersburg City Council and others at a public work session on annexation in September. More recently, LBC staff provided city staff with the LBC's proposed additional procedural requirements for legislative review annexations (proposed 3 AAC 110.425).

City of Soldotna

In November, the manager of the City of Soldotna indicated that the City has been considering filing a local action annexation proposal of property owned by the Kenai Peninsula and the local ANSCA village corporation. On a longer-term basis, the City also reportedly anticipates submission of a legislative review annexation petition.

City of Allakaket

On April 21, 2000, the Allakaket City Clerk requested and was provided with forms for petitioning for annexation by legislative review. The post-flood relocation of homes and certain facilities has skewed the boundaries of the City of Allakaket relative to recent community growth and development. A preliminary draft petition for annexation of seven square miles to the City was submitted to DCED for informal review and comment.

City of Eagle

In December, 2000, Fairbanks DCED staff reported that the City of Eagle has expressed interest in annexing areas outside the existing city boundaries, due to increasing development adjacent to the existing boundaries of that City.

City of Aleknagik

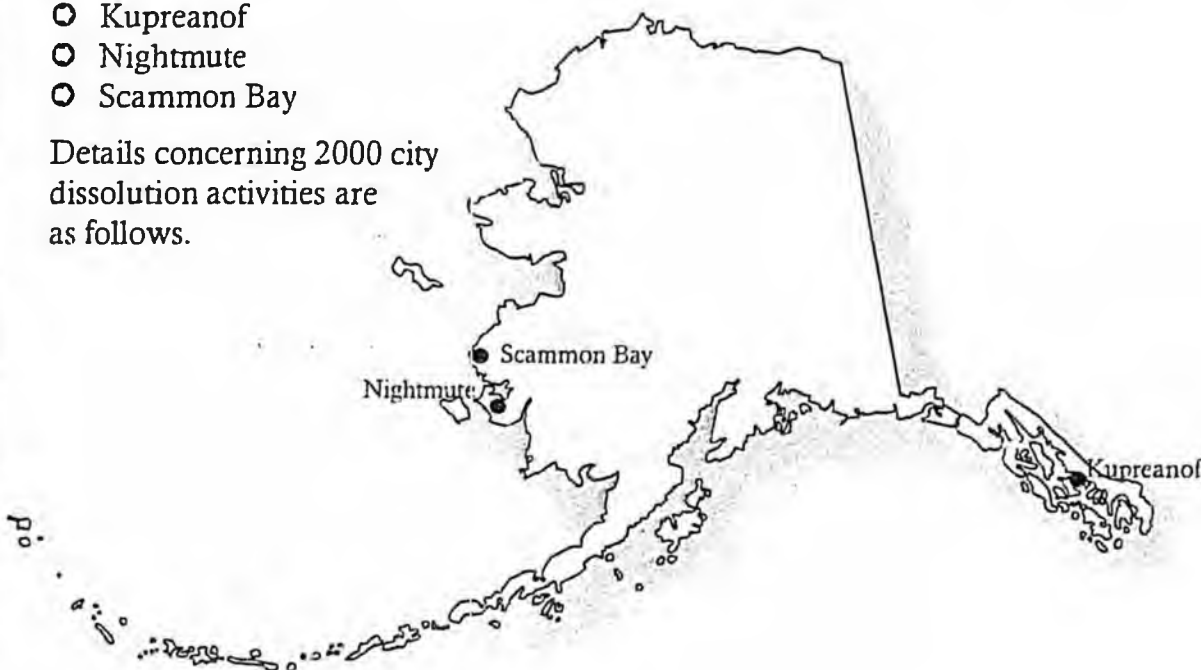
Annexation of 24.29 square miles to the City of Aleknagik, approved by the Commission in November 1999 and approved by the legislature in 2000, was finalized. The annexation became effective on April 14, 2000.

City Dissolution

Inquiries concerning city dissolution occurred regarding the following three cities during 2000.

- Kupreanof
- Nightmute
- Scammon Bay

Details concerning 2000 city dissolution activities are as follows.



City of Kupreanof

Residents and local officials in Kupreanof have experienced some degree of difficulty in sustaining a second class city government. The governing body of a second class city is comprised of 7 members, which is equivalent to nearly 30% of the current population (24) of Kupreanof. Some have been exploring the prospect of dissolving the City. However, there is concern that such would lead to annexation of the community by the adjoining City of Petersburg.

procedures for city dissolution. He indicated that some members of the community have proposed that the City dissolve. Others reportedly have proposed that the City remain technically active, but contract for the delivery of municipal services with the Nightmute Traditional Council.

City of Scammon Bay

In February, 2000, a legislative aide indicated that a petition for dissolution of the City of Scammon Bay was being circulated in that community. LBC staff provided information about the standards and procedures for city dissolution.

City of Nightmute

In March, the Nightmute city administrator requested and was provided with information relating to standards and

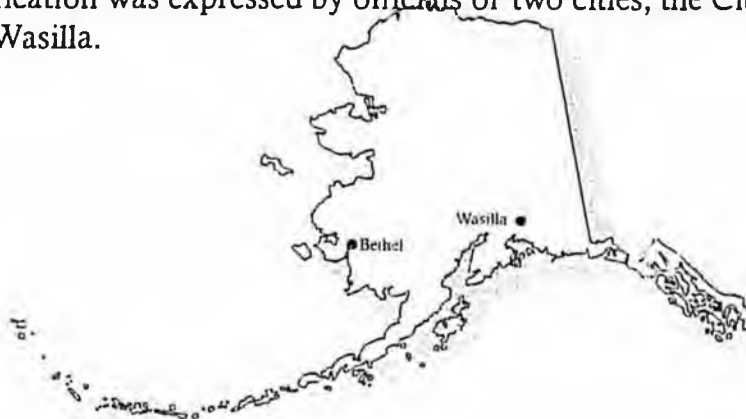
City Merger

During 2000, no petitions for merger of cities were filed or processed.

City Reclassification

During 2000, no petitions for reclassification of cities were filed or processed. However, interest in reclassification was expressed by officials of two cities, the City of Bethel and the City of Wasilla.

- City of Bethel
- City of Wasilla



City of Bethel

In February, the Bethel City Clerk indicated that the Bethel City Council has expressed interest in reclassifying the city government from second class to first class status. At the request of the City, LBC staff provided City staff with information concerning the standards and procedures for city reclassification.

City of Wasilla

On February 28, 2000, LBC staff made a presentation to the Wasilla City Council concerning procedures and related aspects of adopting a home rule charter for the City. At the meeting, LBC staff distributed a 9-page booklet with 85 pages of appendices describing home rule government in Alaska. The Mayor and several members of the Council expressed interest in continuing to consider the option of home rule status.

If the City of Wasilla successfully pursues home rule status, it will be the first city to adopt a home rule charter in the past 19 years.

City Detachment

No formal petitions for detachment of territory from cities were filed during 2000. However, interest has been expressed in detachment of territory from two cities.

- City of Haines
- City of Allakaket



City of Haines

On July 5, 2000, it was reported that a group of eight property owners in the western portion of the City of Haines (the area between Comstock Road and Mennaker Road) desired detachment of their neighborhood from the City. The properties in question were part of a much larger (6.5 square mile) annexation to the City of Haines that became effective in March, 1999. The property owners were reportedly concerned about (1) the increase in taxes that resulted from annexation, (2) what they perceived to be a lack of services from the City of Haines, and (3) the alleged incompatibility of the character of their neighborhood with other parts of the City of Haines (population density, subdivision characteristics, land use, etc.). Represent-

tatives of the group were advised that 3 AAC 110.650 provides that, 'Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that . . . requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.'

City of Allakaket

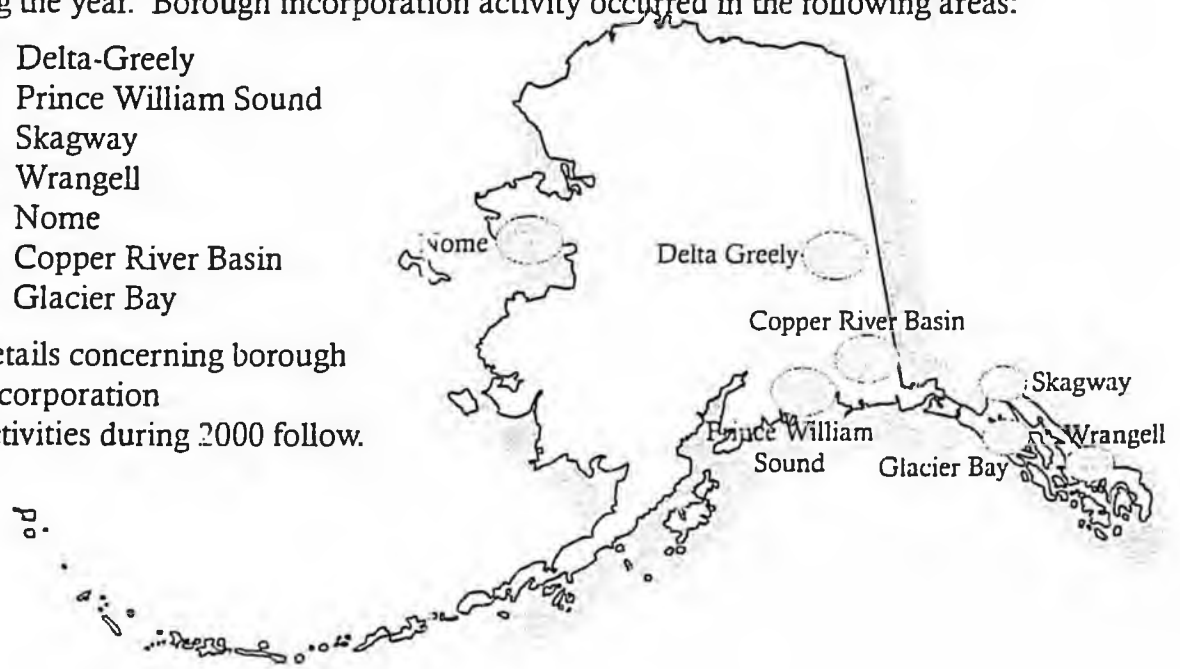
The City of Allakaket is developing a petition for detachment of about 1.5 square miles in conjunction with its petition for annexation of about seven square miles. The area proposed for detachment is comprised of the community of Alatna.

Borough Incorporation

One petition for borough incorporation was submitted in 2000. Additionally, officials or residents of six other areas expressed interest in borough incorporation during the year. Borough incorporation activity occurred in the following areas:

- Delta-Greely
- Prince William Sound
- Skagway
- Wrangell
- Nome
- Copper River Basin
- Glacier Bay

Details concerning borough incorporation activities during 2000 follow.



Delta-Greely

On March 20, 2000, the "Deltana Borough Petition for Incorporation of a Home Rule Borough" was received by LBC staff. The territory proposed for incorporation of a non-unified home rule borough encompassing an estimated 7,892 square miles including the entire Delta-Greely REAA plus an uninhabited portion of the adjacent Alaska Gateway REAA. The population of the territory in question is estimated to be 4,108.

On April 13, 2000, LBC staff attended a public informational meeting in Delta Junction regarding the petition.

On April 21, 2000, DCED wrote to the Petitioners' Representative and informed her that DCED had completed technical review of the form and content of the petition. She was advised that the petition was not accepted for filing because it was significantly lacking in aspects of form and content, and that such a determination had been made after conferring with the Chairman of the Local Boundary Commission and the State Attorney General's Office.

Substantive deficiencies in the petition included the following.

1. Section 14.11 of the proposed charter stated, "Unfunded Mandates. In no manner will the Borough accept responsibility of any mandates that do not carry funding to implement such mandates." The State of Alaska currently mandates that each organized borough provide education, planning, platting, land use regulation, tax assessment, and tax collection on an areawide basis. Further, if a borough levies a property tax (as is proposed in the Deltana Borough petition), State law provides that certain properties must be exempt from taxation (e.g., primary residences of senior citizens and disabled veterans). Additionally, there are many other provisions in State law that could reasonably be construed to be mandates. These include requirements for annual elections, financial audits, and regular assembly meetings.
2. Section 15.08 of the proposed home rule charter indicated that the borough assembly would have the power to exempt \$150,000 of the value of a primary residence of a homeowner who lives in that residence on a year-round basis and who is eligible for a \$10,000 "homestead exemption."¹⁴

14 Section 15.08: Tax Credit. The Assembly shall hold the authority to authorize a blanket tax credit to the homeowner who: resides in his primary dwelling within the Deltana Borough on a year-round basis; is eligible for the \$10,000.00 homestead exemption; and who made proper application to the Borough clerk. This tax credit cannot exceed the individual tax exemption allowed to seniors and/or disabled citizens of the Borough under Section 15.03.

All of the mandates noted above apply to every organized borough in Alaska, including home rule boroughs (see AS 29.10.200; AS 29.35.160 – 29.35.180). None of those mandates is fully funded by the State. Consequently, the proposed Deltana Borough charter and state law were in serious conflict. A home rule charter cannot prescribe a power that is prohibited by State law (Article X, Section 11, Alaska Constitution).

This same deficiency was present in the draft charter reviewed by the agency in 1999. Even though that concern had been conveyed to the incorporation proponents in the context of the 1999 review of the draft charter, DCED's concerns in that context were evidently not heeded.

Such a provision is clearly impermissible under State law. On May 6, 1999, the petitioners were advised that such a provision was illegal. On that date, agency staff advised,

The nature of the "blanket tax credit" in Section 15.08 is vague and ambiguous. What is a "tax credit" and how is it different than a "tax exemption"? Section 15.08 appears to infer that the assembly may grant a

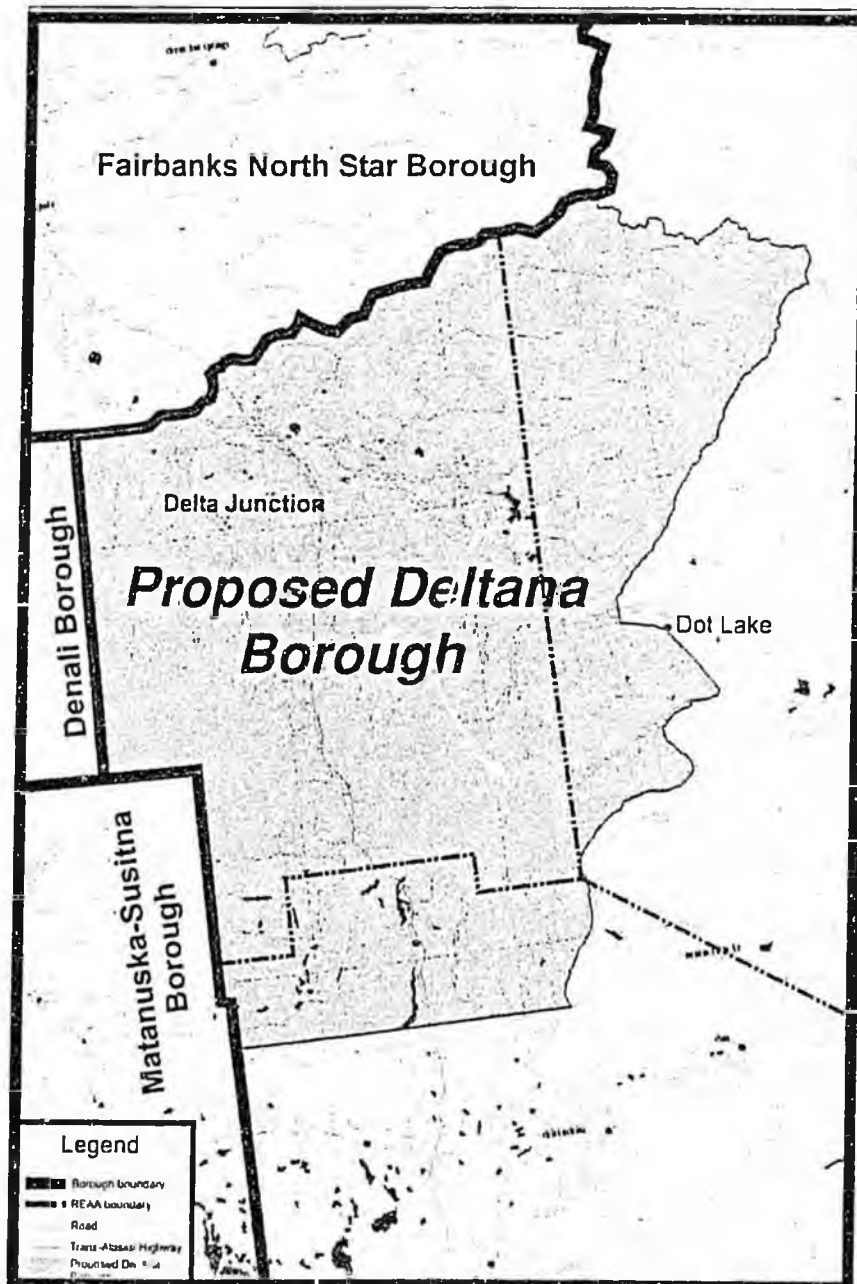
"tax credit" up to \$150,000. There is no authority for such provisions.

3. State law (3 AAC 110.900) requires that a borough incorporation petition include a detailed transition plan. Further, the law provides that the transition plan must be developed in consultation with representatives of entities holding current jurisdiction over the area proposed for incorporation.

The transition plan presented in the petition consists of a single sentence, in part, referring to general transition provisions in Article XIX of the proposed charter. Even when the provisions of Article XIX of the proposed charter were considered, the petition clearly lacked the detail required by law.

Further, the plan was not developed in consultation with others as required. For example, the Alaska Gateway School District was never consulted even though the Deltana Borough proposal includes a sizable portion of the Alaska Gateway School District within the proposed borough boundaries.

Proposed Deltana Borough.



4. The petition presented only a single sentence outlining information intended to address the matters relating to the Federal Voting Rights Act and 3 AAC 110.910. It stated simply, "The proposed Deltana Borough incorporates precincts 10 and 40 which were Federally approved as of 1990." This failed to adequately address all of the points required by law.
5. State law provides that the petition must include a supporting brief. The law specifically requires that the "brief must address relevant constitutional, statutory and regulatory standards applicable to the proposed action and include a detailed explanation of how the standards apply to the proposed action." [3 AAC 110.420(c)] The brief provided with the Deltana Borough petition consisted of only twenty-eight sentences. Those sentences were largely conclusory statements that lacked the level of detail required by law.

For example, the boundaries of the proposed Deltana Borough conformed to neither the existing regional educational attendance area nor the model borough boundaries adopted by the Local Boundary Commission. State law provides that,

"The proposed borough boundaries *must* conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough." (emphasis added)
[3 AAC 110.060(c)]

Further, the law favors model borough boundaries adopted by the Local Boundary Commission. The Petitioners' brief addressed the boundary standards in a mere four sentences. The brief included no explanation of or justification for the deviation from the REAA boundaries and model borough boundaries.

6. The petition lacked a legal description of the territory proposed for incorporation. At the request of the Petitioners' Representative, DCED developed a metes and bounds description of the territory after the petition was submitted. However, because the description involved a certain amount of interpretation, it should have been included in the petition before signatures were gathered.
7. The total anticipated expenditures listed in the budget understated reasonably anticipated expenditures by \$767,500. Additionally, the projected expenditures for the local contribution in support of schools for the second and third fiscal years were incorrect.
8. Beyond the errors noted above, the petition lacked sufficient detail to allow DCED, the Local Boundary Commission, and prospective borough voters to determine whether the budget is feasible. The budget listed only 11 expenditure items. DCED observed that "*One cannot reasonably determine from the broadly stated categories whether the budget is plausible.*"

Additionally, elements of the budget were ambiguous. For example, it projected that funds would be spent for "safe communities" and "revenue sharing." Those are sources of

15 In June 1999, LBC staff reviewed a draft proposal to form a Wrangell unified municipality. At that time, an eight-page letter from DCED expressed a number of fundamental policy concerns regarding the proposal. DCED concluded that "while the proposal does little to promote local self-government, it would result in significant expense to the State of Alaska." Concerns were also raised about long-standing policy issues relating to formation of single-community boroughs.

revenue. It was unclear how those funds would be spent.

9. The petition indicated in that the borough would exercise only the following six powers (all of which would be exercised on an areawide basis):

- Education
- Planning
- Platting
- Land Use Regulation
- Taxation
- Search and Rescue

However, other parts of the petition indicated that the borough would expend funds for libraries, "safe communities," and "revenue sharing." The City of Delta Junction currently exercises library powers. Thus, it was unclear whether the petition proposed that the Borough exercise such powers on a nonareawide basis or that the City of Delta Junction transfer its library powers to the borough.

10. References to the expenditure of funds for "safe communities" and "revenue sharing" were ambiguous since a municipality can expend funds only for a purpose for which it has assumed formal authority. [AS 29.35.010(9)]

DCED noted that it had offered to conduct a technical review of the current petition before it was circulated for signature (even more in depth than the review conducted in May of last year). However, that offer was declined.

DCED expressed particular concern that the agency had no way to determine whether the individuals who signed the

petition did so with reliance on one or more of the previously noted unenforceable provisions of the proposed charter and other significant deficiencies in the petition.

Such concerns were reinforced by comments from individuals in the area proposed for incorporation. For example, the President of the Deltana Community Corporation was quoted in the April 6, 2000 edition of the *Delta Wind* as stating,

"We are very concerned at the misrepresentation that took place in obtaining signatures for filing the charter by the Borough Steering Committee."

One person wrote to DCED asking that his name be removed from the petition because he signed the petition,

"under the verbal misrepresentation that this was to stop our area from being annexed by Fairbanks-North Star Borough and did not fully read the text of the petition."

It was noted that a number of individuals at the April 13, 2000 meeting of the Deltana Community Corporation expressed similar concerns.

Wrangell

An attorney retained by the City of Wrangell indicated that on May 9 the Wrangell City Council voted 4-1 to sponsor a petition for incorporation of a unified municipality. The attorney predicted at that time that filing of the petition was impending.¹⁵



Cordova Harbor

Prince William Sound

Cordova officials have expressed continued interest in consideration of establishing a Prince William Sound borough. On October 17, 2000, LBC staff met in Anchorage with the City of Cordova Planning Director to discuss the status of the City's efforts to consider borough government for the Prince William Sound region. The City considers a borough encompassing Prince William Sound and the Copper River Basin extending just north of Paxson to comprise an ideal territory. The City has expressed continued interest in promoting legislative reform of procedures for borough annexation and incorporation.

Skagway

At the request of the City of Skagway, in December 1999, LBC staff reviewed and commented on a draft petition for incorporation of a first class Skagway borough

and dissolution 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 825 year-round residents.

At that time, staff raised policy issues and provided extensive comments on

technical matters. Policy issues centered on concerns that the proposal to convert the City of Skagway to a borough government ignored the distinctions between a city government and a borough government. It was also indicated that the proposal would do nothing to further local government, yet it would diminish flexibility with respect to borough boundaries in that region and also cause the State to incur considerable expense.

DCED policy concerns notwithstanding, the Skagway City Clerk reported in April that signatures were being gathered on the petition. Since Alaska Statutes require that the petition be signed by a number of voters equal to 15% of the number who voted in the last State general election in the territory proposed for incorporation (separately inside and outside home rule and first class cities). In this case, the City Clerk indicated that 44 signatures would be required.

On November 13, 2000, the Skagway City Manager indicated that the petition would be filed soon.

Nome area

In August, a city official advised LBC staff that the Nome City Council had renewed interest in forming a unified municipality encompassing the City of Nome and limited surrounding territory. DCED has advised the City of Nome and others interested in the proposal about the agency's concern that the borough boundaries favored by Nome officials may be too constrained. In November 2000, the Nome City Manager indicated that officials of the City of Nome continue to have interest in forming a unified municipality. At his request, staff provided information about standards and procedures for incorporation of a unified municipality form of borough government.

Copper River Basin

In December 2000, residents of the Copper River Basin informed LBC staff of their interest in pursuing borough incorporation of the area served by the Copper River School District. At their request, they were provided with incorporation petition forms and information regarding borough incorporation procedures.

Glacier Bay Area

In October, 2000, staff from DCED's Southeast office conferred with officials of the City of Hoonah about their interest in forming a Glacier Bay Borough.

Borough Annexation

No petitions for annexation of territory to organized boroughs were filed during 2000. However, interest in annexation of territory to organized boroughs was expressed by residents or elected officials of two areas.

- Dillingham area to the Lake and Peninsula Borough
- Northern Matanuska-Susitna Borough to the Denali Borough



Dillingham area to the Lake and Peninsula Borough

In 1997, the City of Dillingham submitted a petition for annexation of an estimated 25,000 square miles of land and additional offshore waters to the Lake and Peninsula Borough. The area proposed for annexation generally conformed to the boundaries of the Southwest Region School District. The 1997 petition was never accepted for filing by the State for a number of reasons. These included interest by State policy makers in exploring alternatives to the particular annexation proposal. They also included an expressed intent by the City of Dillingham to confirm that other communities in the Southwest Region REAA supported the annexation proposal.

Accordingly, on March 10, 2000, DCED released a 40-page document titled *Chronicle of Developments Concerning Borough Government in the Bristol Bay Region and Update of Revenue Projections Concerning Prospect of Annexation of the Dillingham-Nushagak-Togiak Bay Region to the Lake and Peninsula Borough*. That document:

- chronicled the history of borough evolution in the Bristol Bay region, including the 1997 annexation proposal from the City of Dillingham;
- examined revenue projections in the City of Dillingham's 1997 petition and also examined revenue projections made in a 1993 study of the feasibility of forming a Southwest Region borough;

- compared revenue projections in the 1997 petition with more contemporary figures. The 1997 petition estimated revenues of \$2,967,882 for six particular components. The more contemporary estimates for those same six components total \$2,004,082. The latter figure is \$963,800 (32.5%) less than the projections in the 1997 petition; and
- compared revenue projections in the 1993 Southwest Region borough study with more contemporary figures. For the six specific components listed, the 1993 study estimated revenues of \$677,287 (based on a low-price scenario for commercial fisheries). Contemporary estimates for the same six components totaled \$1,067,487. The latter figure is \$390,200 (57.6%) more than the projections in the 1993 study.

In October, 2000, the City of Dillingham conducted an advisory vote at which voters withdrew the annexation petition by a 4-3 margin. At the November 2, 2000, Dillingham City Council meeting, the Council adopted a resolution withdrawing the petition.

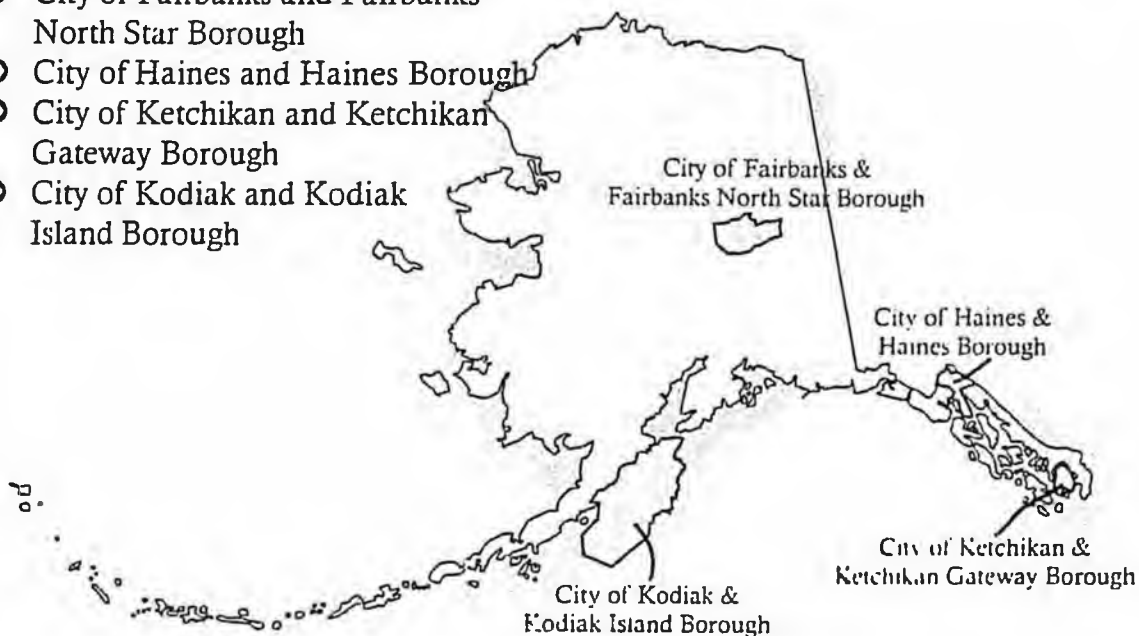
Denali Borough

In November 2000, the Mayor of the Denali Borough indicated that the Borough anticipates that it will file a petition for annexation of certain territory presently within the northern part of the adjoining Matanuska-Susitna Borough. On December 31, 1997, the Local Boundary Commission rejected a similar petition by the Denali Borough on a 3-2 vote.

City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in the following areas during 2000:

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



City of Fairbanks and the Fairbanks North Star Borough

On May 17, 2000, DCED accepted the petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough (FNSB) for filing. The petition was initiated by 1,416 voters of the City of Fairbanks and 2,626 voters of the remainder of the Fairbanks North Star Borough.

LBC staff conferred with the Chairman of the Commission and the Attorney General's Office prior to the acceptance of the petition for filing.

The Chairman of the Commission set August 1, 2000 as the deadline for receipt of responsive briefs in the matter. LBC staff made arrangements for notice of filing of the petition and for service of

the petition. On June 6, the Mayor of the Fairbanks North Star Borough submitted a request for the extension of the deadline for filing responsive briefs and written comments regarding the proposal to consolidate the City and the Borough. The request sought to extend the August 1 deadline to December 15, 2000. The Borough maintained that informed comment on the consolidation proposal could not be made until voters acted on the initiative to limit the property taxing powers of municipalities to 10 mills.

In response, the Petitioners' Representative wrote a two-page letter to the LBC Chairman objecting to the proposed delay in the deadline for filing responsive briefs.

The FNSB, City, and the Interior Taxpayers Association, Inc. (ITA), filed responsive briefs in opposition to the proposal prior to the August 1, 2000

deadline. Letters in opposition to the proposal were also received prior to the deadline from Bonnie Williams and James Moody.

In December, 2000, DCED issued its preliminary report and recommendation regarding the petition.

City of Haines and the Haines Borough

In November 1998, voters in Haines rejected a proposal to consolidate the two governments as a home rule borough by three votes.

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. Community meetings were conducted to facilitate public discussion of the issue.

In January 2000, the Mayor of the City of Haines requested and was provided materials relating to the standards and procedures for consolidation. He indicated that he requested the materials in response to growing support for a renewed effort to consolidate local governments in Haines.

On July 20, 2000, officials of the City of Haines and the Haines Borough met to discuss consolidation. According to the *Chilkat Valley News*, officials of both municipalities hoped that a new consolidation proposal would be filed soon enough to permit placing the question of consolidation before Haines voters in October 2001.

In November 2000, LBC staff provided the Haines City Administrator with consolidation petition forms. The City submitted its petition in December 2000.

City of Ketchikan and the Ketchikan Gateway Borough

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.

On May 8, 2000, LBC staff received a petition from the City of Ketchikan for the consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. On May 31, DCED accepted the petition for filing. The petition proposes:

- dissolution of the existing City of Ketchikan, a home rule city;
- dissolution of the existing Ketchikan Gateway Borough, a second class borough;
- incorporation of a new home rule borough named the 'Municipality of Ketchikan';
- creation of the 4.4 square mile Ketchikan Service Area;
- creation of a new 0.41 square mile Shoreline Service Area (the existing Shoreline Service Area will be abolished following its annexation into the City of Ketchikan on January 1, 2001); and
- creation of the Greater Ketchikan EMS Service Area encompassing the Ketchikan Service Area; the Shoreline Service Area; South Tongass Volunteer Fire Department Service Area; the City of Saxman; and adjoining areas.

Chairman Waring set September 1, 2000 as the deadline for filing responsive briefs and comments regarding the petition. LBC staff arranged for notice of the filing of the petition and service of the petition.

City of Kodiak and the Kodiak Island Borough

Officials of the Kodiak Island Borough advised him that certain residents of that Borough had expressed renewed interest in consolidating the City of Kodiak and the Kodiak Island Borough. The City and Borough governments explored consolidation in the 1980s, but never pursued the matter by submission of a petition.

Borough Detachment

No petitions for detachment of territory from organized boroughs were filed during 2000. However, interest has been expressed in petitioning for detachment of territory from three organized boroughs.

- Fairbanks North Star Borough
- Matanuska-Susitna Borough
- Kenai Peninsula Borough



Fairbanks North Star Borough

In 1999, 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 about \$46 million.

In January, 2000, forms for detachment of territory from an organized borough were provided to the Petitioners' Representative. In February 2000, efforts to draft the detachment petition were reportedly underway.

Matanuska-Susitna Borough

As noted in the discussion of annexation to organized boroughs, in November 2000, the Mayor of the Denali Borough indicated that the Denali Borough anticipated filing a petition for annexation of certain territory presently within the northern part of the adjoining Matanuska-Susitna Borough.

Kenai Peninsula Borough

In March 2000, a Cooper Landing resident inquired about the standards and procedures governing detachment of that community from the Kenai Peninsula Borough and formation of a separate borough.

Litigation Involving the Local Boundary Commission

During 2000, there were no new or on-going court challenges concerning actions taken by the Local Boundary Commission.

Chapter 3

Policy Issues and Concerns

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

- Substantial disincentives for borough incorporation and annexation are impeding the development of local government in Alaska. The Commission will submit a separate proposal to address impediments to development of borough government.
- 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. 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.
- During the past year, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The Commission will conduct one or more public hearings on the proposed changes to the regulations during 2001.

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.¹⁶ The Legislature and the Commission have 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.¹⁷ 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.¹⁸ 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.¹⁹

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

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:²⁰

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities.

¹⁶ 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.

¹⁷ Borough Government in Alaska, Thomas A. Morehouse and Victor Fischer, page 39 (1971).

¹⁸ Ibid; page 61; also, Alaska's Constitutional Convention, Victor Fischer, page 120 (1975)

¹⁹ Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council, page 2651.

²⁰ Tales of Alaska's Bush Rat Governor, Jay Hammond, page 149 (1994).

21 Borough Government in Alaska, page 73.

After all, why should they tax themselves to pay for services received from the state, gratis?

22 Metropolitan Experiment in Alaska, page 93.

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 1961:²¹

23 Before the bill was passed, it was amended to exclude the Haines-Skagway area from the mandate to incorporate.

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

24 Areawide Local Government in the State of Alaska, Ronald Cease, pages 71-72 (1964).

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":²²

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

25 *Ibid.*, page 47.

To address the pressing issue, Representative Rader introduced a bill that mandated incorporation of boroughs encompassing Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Haines-Skagway, and Fairbanks.²³ In promoting his bill, Representative Rader stressed:²⁴

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.²⁵

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.²⁶ 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 continuum of interests protected by the equal protection clause.²⁷ 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.

... 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.²⁸

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

- X 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).
- X 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.
- X 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.

26 In addition to required local contributions, organized boroughs have budgeted more than \$100 million in discretionary contributions for their schools.

27 Alaska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

28 *Ibid.*, 406.

29 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that 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.

- X 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.
- X 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).
- X 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.
- X Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- X 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.
- X The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- X 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.²⁹ In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% 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 1299-83 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.

The Local Boundary Commission has developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature.

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 changes, 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.³⁰ 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.

30 Memorandum from Assistant Attorney General Marjorie L. Odland, March 1, 1989, file number 663-89-0387.

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."³¹

31 Kenai Peninsula Borough v Arndt, 958 P.2d 1101, 1104 (Alaska 1998).

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 changes, 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.

32 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."*

33 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.

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 issues relating to step annexations to cities (see AS 44.33.812[a][4]).³² 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 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.³³

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 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 Certain Municipal Boundary Proposals

The Local Boundary Commission is increasingly aware that provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) are affecting the outcome of certain 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, in part:

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

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

The 1998 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 reasonable to conclude that the Haines consolidation would have been approved if the impacts on the housing loan program had been neutralized.

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

A proposal is presently pending before the Commission for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. As was the case in Haines, consolidation of local governments in Ketchikan would result in the loss of eligibility for new Small Communities Housing Assistance program loans throughout the consolidated borough. If the Commission approves the Ketchikan consolidation proposal, the disparity created by the AHFC Small Communities Housing Assistance program may once again play a role in determining the outcome of that proposal.

Moreover, officials of the City of Haines have just filed a new petition for consolidation of the City of Haines and the Haines Borough.

As it has done in prior years, 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.

The Commission met in a work session with AHFC staff on June 27, 2000 regarding possible changes to AHFC Rural Mortgage Program to address concerns of the LBC regarding effects of that program on proposals for 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 or private citizens from the following cities have recently expressed interest in forming single-community or relatively small boroughs:

- Wrangell
- Skagway
- Nome

Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Petersburg, Hoonah, Unalaska, Valdez, 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 only 24 residents and corporate boundaries contiguous to the corporate boundaries of the City of Petersburg. Students residing in Kupreanof attend public schools within the City of Petersburg. Such close links between the two communities notwithstanding, 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 borough 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. Article X, Section 3 of the 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, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, 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 the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to 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;
- 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 educa-

tional 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.

Proposed Changes to the Regulations of Local Boundary Commission

During 2000, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The revisions were required since the last comprehensive review of the Commission's regulations occurred ten years ago. Since then, there have been numerous changes in State statutes concerning matters involving the LBC. The changes approved by the Commission also addressed ambiguities in current regulations and streamlined procedures for non-controversial proposals.

Work sessions to address the proposed changes were conducted on April 28, April 30, May 24, and June 27, 2000. On October 30, 2000, the Local Boundary Commission approved the proposed regulation changes.

During 2001, the Commission will publish notice of the proposed revisions to the regulations and will conduct one or more public hearings to solicit public comment regarding the revisions.

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