



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

*Stan Hubbard*

Signature of Camera Operator

*5-28-2009*

Date

**HJR**

**30**

**(FILE 1)**

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*  
*LABOR & STATE AFFAIRS*

SARAH PALIN, GOVERNOR

P.O. BOX 110300  
123 4<sup>TH</sup> STREET  
DIMOND COURT HOUSE, 6<sup>TH</sup> FLOOR  
JUNEAU ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-2520

February 25, 2008

## Hand Delivered

Representative Gabrielle LeDoux  
Co-Chair House Community & Regional Affairs  
State Capitol, Room 412  
Juneau, Alaska 99801-1182

Re: HJR 30 – Disapproving the Local Boundary Commission recommendation  
regardin\_ the annexation of territory to the Ketchikan Gateway Borough

Dear Representative LeDoux:

This is to follow up on your question asked during the House Community and Regional Affairs Committee work session on HJR 30 held last week. You inquired as to whether the Local Boundary Commission (LBC) has the legal authority to condition approval of an annexation petition by making the effective date of the annexation contingent upon the date that National Forest Receipts (NFR) funding is discontinued by the federal government. I indicated during the work session that I would need to do some research in order to respond and promised to follow up with an answer.

Briefly, it is our opinion that AS 29.06.040 allows for such a condition to be imposed on an annexation petition provided (1) the LBC makes a determination that the condition is reasonably necessary for the petition to meet annexation standards and the condition is in the best interests of the state; and (2) the LBC sets a deadline by which the condition (discontinuance of NFR funding) must occur to avoid the petition from being stale, which would raise constitutional due process concerns. Our analysis follows.

AS 29.06.040(a) provides in relevant part:

- (a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change.

AS 29.06.040(a) allows the LBC to condition the acceptance of an annexation petition if it determines that the petition (as conditioned) meets applicable standards for annexation under the state constitution, the regulations and acceptance is in the best interests of the state. However, rules of statutory construction do not favor an interpretation of AS 29.06.040(a) as authorizing the LBC to condition its approval of a petition on an indeterminate, future event (i.e., discontinuance of NFR funding) without a deadline for that condition to be met. By not setting a deadline for the prescribed condition to occur would essentially leave uncertain the effective date of the approval (or disapproval) of the annexation. This, in turn, would raise concerns of constitutional due process because the information upon which the LBC initially held its public hearings and upon which it imposed the condition on the petition itself -- in order to determine if it could be accepted -- would be stale. The LBC's regulations provide for a period of time by which resubmittals of rejected petitions can be made, indicating that two years is sufficient time to show that conditions could have changed. *See* 3 AAC 110.650.

Similarly, we believe that a petition for annexation in which the effective date is conditioned on a future, unknown event or for which the LBC does not indicate a deadline for the event to occur, may be found to be beyond the scope of its statutory authority. While the LBC is allowed under law to condition a petition under AS 29.06.040(a), the statute assumes that a condition will be for the purpose of furthering the acceptance of the petition -- otherwise there is no reason to impose a condition. Under AS 29.06.040(b), a petition may be conditioned by the LBC "if appropriate" and if it is to "meet[s] the applicable standards" and "is in the best interests of the state." The statute presumes the condition will occur and the LBC has found the condition must be satisfied for its acceptance of the petition to be effective.

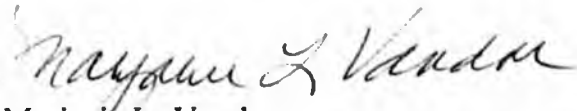
In conclusion, we believe under the proper circumstances the LBC has the legal authority to condition the acceptance of an annexation petition on the discontinuance of National Forest Receipts funding, however, we also believe that this condition must include a deadline date for that event to avoid staleness of the petition and to be in compliance with AS 29.06.040(b).

We hope this addresses your concerns.

Sincerely,

TALIS J. COLBERG  
ATTORNEY GENERAL

By:

  
Marjorie L. Vandor  
Assistant Attorney General

MLV:ajh

cc: Representative Fairclough, Co-Chair, House Community & Regional Affairs  
Representative Dahlstrom, Member, House Community & Regional Affairs  
Representative Neuman, Member, House Community & Regional Affairs  
Representative Olson, Member, House Community & Regional Affairs  
Representative Cissna, Member, House Community & Regional Affairs  
Representative Salmon, Member, House Community & Regional Affairs  
Russell Kelly, Legislative Liaison, Governor's Office  
Sally Saddler, Legislative Liaison -- DCCED  
Jennifer Abbott, LBC Staff Supervisor, DCCED  
Mike Ford, Assistant Attorney General, Department of Law  
Deborah Behr, Chief Assistant Attorney General, Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version:           HJR 30            
 () Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title           Disapproving Ketchikan Annexation           RDU \_\_\_\_\_  
 \_\_\_\_\_ Component \_\_\_\_\_  
 Sponsor           Rep. Bill Thomas            
 Requester           House Community & Regional Affairs Committee           Component Number \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>								
-------------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
100* GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by:           Sonya Hymer, Committee Aide           Phone \_\_\_\_\_  
 Division \_\_\_\_\_ Date/Time \_\_\_\_\_  
 Approved by:           Rep. Gabrielle LeDoux, Co-Chair           Date           2/26/2008            
          House Community & Regional Affairs Committee

**Number of Significant Differences  
KGB Annexation Proceedings**

Page 1 of 3

**1998-99 KGB Annexation Proceeding**

**2006-07 KGB Annexation Proceeding**

<b>Proposed Areas for Annexation</b>	5,524 square miles of land and water, almost entirety of KGB Model Borough Boundaries but excluded 17.9 square miles around Hyder and 3.5 square miles around Meyers Chuck.	4,701 square miles, included 191-square-mile area of Meyers Chuck/Union but excluded 205 square mile area around Hyder (based on natural geography) for the short-term, recognizing the area is a logical part of the KGB but noting that transportation, communication ties are now heavily with Canada not the KGB.
<b>Respondents</b>	None	Three 1) Metlakatla Indian Community 2) City of Wrangell 3) Peter Caffall-Davis
<b>AS 29.06.040(a)</b>	<b>Sec. 29.06.040. Local Boundary Commission.</b> (a) The Local Boundary Commission may consider any proposed municipal boundary change. It may reject the proposed change, accept the proposed change, or alter the boundaries and accept the proposal as altered. A Local Boundary Commission decision under this subsection may be appealed under the Administrative Procedure Act (AS 44.62).	<b>Sec. 29.06.040. Local Boundary Commission.</b> (a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).
<b>Regulations: Annexation Standards and Procedures</b>		<b>Amended in 2002:</b> among the numerous changes were two substantive additions: a new provision establishing best interest of the State relating to borough annexation (3AAC 110.195) and a new procedural requirement for legislative-review annexation proposals (hearing required before petition is submitted (3 AAC 110.425)).
<b>City of Wrangell</b>	Opposed 1998 petition because of loss of National Forest Receipts	Did not oppose 2006 petition but did request area of Meyers Chuck and Union Bay in new Wrangell borough boundaries that was also requested in KGB

**Number of Significant Differences  
KGB Annexation Proceedings**

Page 2 of 3

**1998-99 KGB Annexation Proceeding**

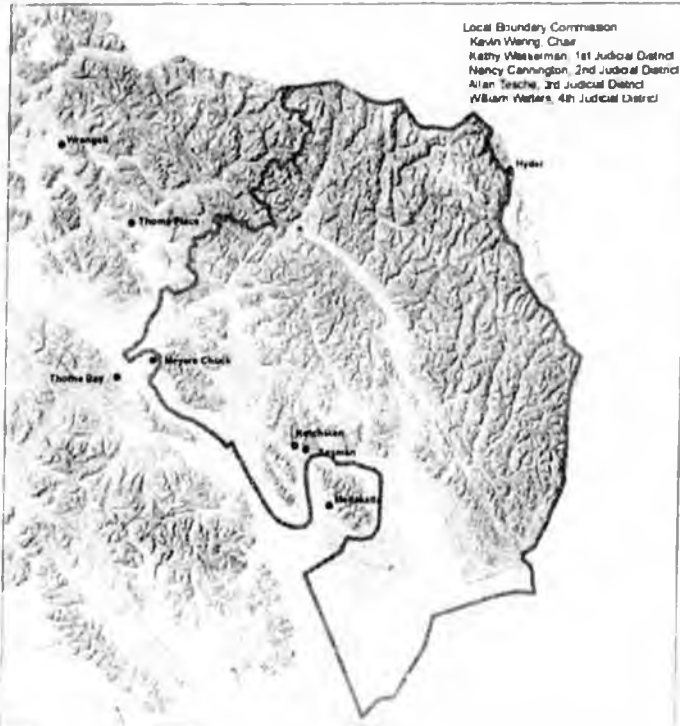
**2006-07 KGB Annexation Proceeding**

		2006 petition.
<b>Department of Education and Early Development</b>	Opposed 1998 petition.	Did not oppose 2006 petition.
<b>Education in Hyder</b>	Students living in Hyder were bussed to Stewart each day. The State of Alaska paid the British Columbia government for the use of their educational facilities.	In 2000 Hyder received its own school. The school is administrated by the Southeast Island School District.
<b>Reliance on Model Borough Boundaries in boundary-change decisions</b>	1999 Commission relied on Model Borough Boundaries as reason for rejecting 1998 annexation; in essence the former Commission elevated the importance of Model Borough Boundaries over the constitutional goal of furthering borough government.	Current Commission has clarified in the Skagway borough decision and in its recent regulation amendment proceedings that Model Borough Boundaries are a reference tool only; they are not deterrents to the formation of or annexation to boroughs; in its 2007 KGB decision, the Commission stated that the 1999 Commission's reliance on Model Borough Boundaries was erroneous. Current Commission amended KGB Model Borough Boundaries by deleting Meyers Chuck/Union Bay and granting that area to new Wrangell borough. In approving that new borough, the current Commission in effect also amended the Model Borough Boundaries of the Wrangell/Petersburg Model Borough.
<b>Commission Members</b>	Kevin Waring, Chair; Kathleen Wasserman; Nancy Cannington; Allan Tesche; William Walters	Kermit Ketchum, Chair; Bob Harcharek; Lynn Chrystal; Lavell Wilson; Georgianna Zimmerle, not participating.
<b>Department's positions</b> [1998-99: Department of Community and Regional Affairs] [2006-07: Department of Commerce, Community, and Economic Development]	The Department's recommendation opposing the annexation was made at the Department level not at the LBC Staff level. Among other things, the Department concluded that "significant adverse financial impacts [i.e., loss of \$245,452 in NFRs] on communities in the unorganized borough are a more important consideration than the constitutional principles in this particular instance." [Department's 1998 <i>Preliminary Report</i> re KGB annexation, p. 77.]	LBC Staff reviewing and recommending approval of KGB annexation was supported at the Department level.  By letter dated February 1, 2008, to the Chairs of the House and Senate Community and Regional Affairs Committees, the Commission noted the Department's referenced 1998 comments and stated: "Those statements are particularly troubling to the current Commission. There is no consideration, adverse financial impact or otherwise, that overrides or is more important than

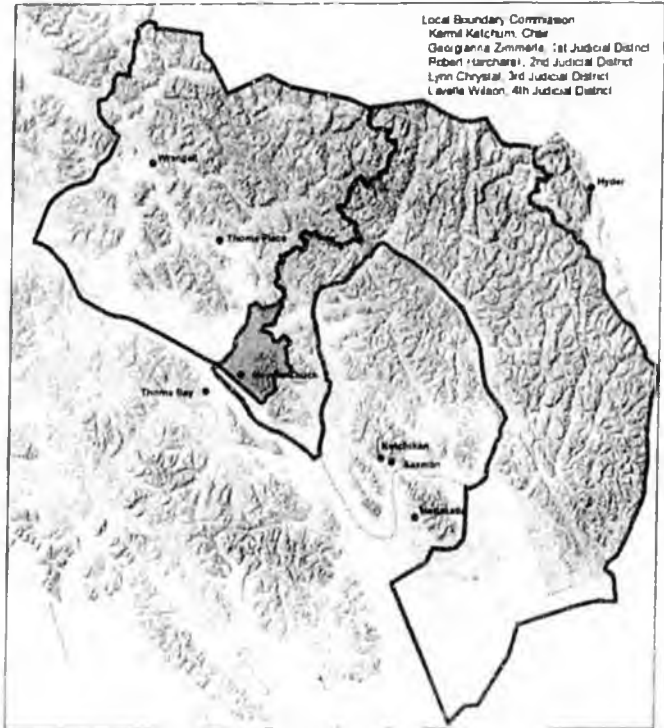


# Ketchikan Gateway Borough (KGB) Proposed Annexation and Proposed Wrangell Borough

**KGB Proposed Annexation Boundary as Rejected by the Local Boundary Commission, 1998**

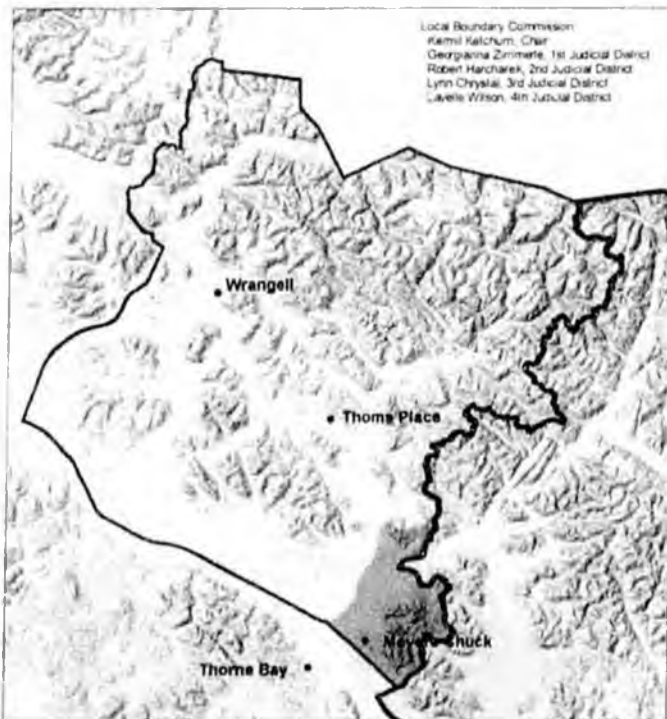


**Wrangell Borough and KGB Annexation Boundaries as Petitioned, 2006**

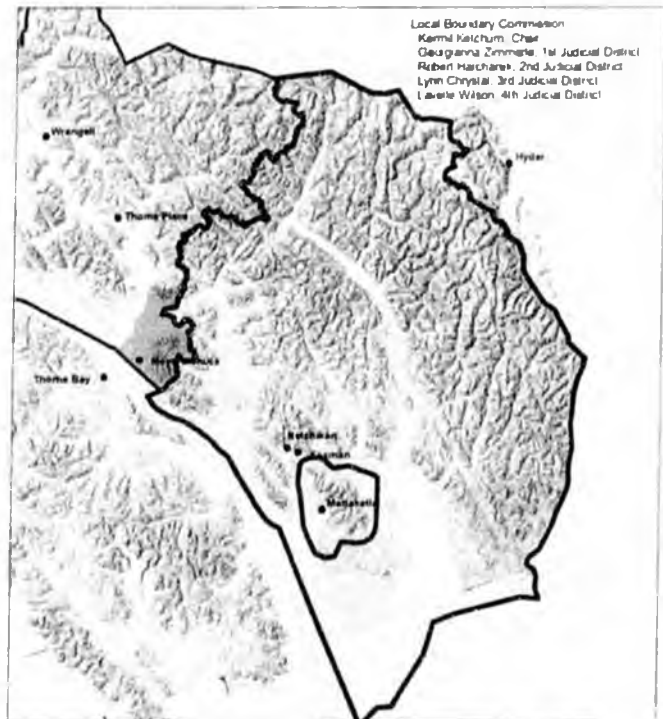


- Legend**
- KGB Annexation as Petitioned, 2007
  - Area Excluded from KGB Proposal and Included with Wrangell Borough Proposal by LBC, 2007
  - Wrangell Borough Boundary as Approved, 2007
  - KGB Annexation as Approved by LBC, 2007
  - KGB Boundary as Rejected by LBC, 1998

**Wrangell Borough Boundary as Approved by the Local Boundary Commission, 2007**



**KGB Boundary as Approved by the Local Boundary Commission, 2007**



**Sonya Hymer**

---

**From:** Sonya Hymer  
**Sent:** Monday, February 18, 2008 10:03 AM  
**To:** 'sonya.hymer@legis.state.ak.us'  
**Subject:** COMPARISON MAPS SHOWING DIFFERENCES KGB  
**Importance:** High  
**Attachments:** wrangell-kgb-annex-1998KGB.pdf

---

**From:** Abbott, Jennifer (CED) [mailto:jennifer.abbott@alaska.gov]  
**Sent:** Friday, February 15, 2008 3:09 PM  
**To:** Saddler, Sally A (CED)  
**Cc:** Renee Limoge; Ginny Austerman  
**Subject:** RATS!! COMPARISON MAPS SHOWING DIFFERENCES KGB  
**Importance:** High

Good afternoon:

Attached please find the comparison maps that show the differences between the 1998 KGB Annexation petition and the 2007 KGB Annexation petition.

- 1) **1998 – KGB Annexation Petition** was denied because it excluded Meyers Chuck and Hyder, depriving these two communities of their rights; and the proposed area did not meet the "model borough boundaries" guidelines developed by the Commission in early 1990s.
- 2) **2006- KGB Annexation Petition** included Meyers Chuck and Hyder,
- 3) **2006 – Wrangell Borough Incorporation Petition** submitted more or less at the same time.
- 4) **2007 - LBC's** evaluation was that residents of Meyers Chuck wanted to be a part of Wrangell rather than KGB.
- 5) **2007 – LBC approved the Wrangell Borough with Meyers Chuck**
- 6) **2007 – LBC approved the KGB Annexation without Meyers Chuck, and directed KGB to annex Hyder within 5 years.**

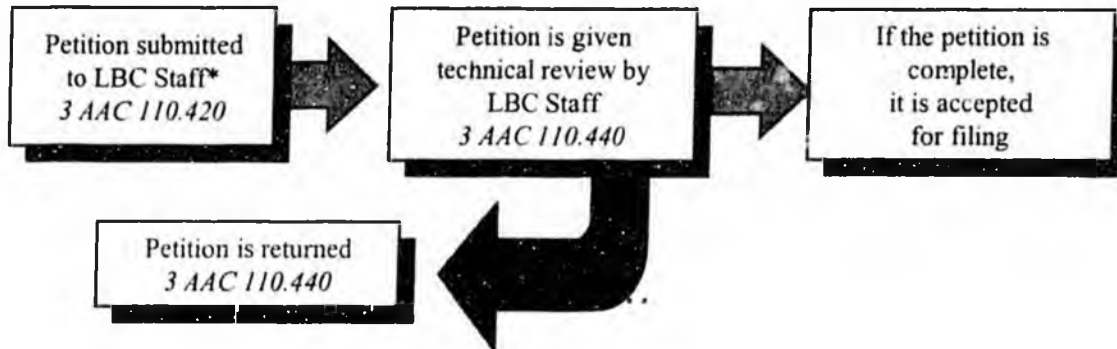
Thank you kindly,  
Jennifer

Jennifer Abbott  
Unit Supervisor  
Local Boundary Commission Staff  
Division of Community and Regional Affairs  
Department of Commerce, Community, and Economic Development  
550 W. 7th Avenue, Suite 1770  
Anchorage, AK 99501  
(907) 269-4559  
FAX 269-4539  
<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

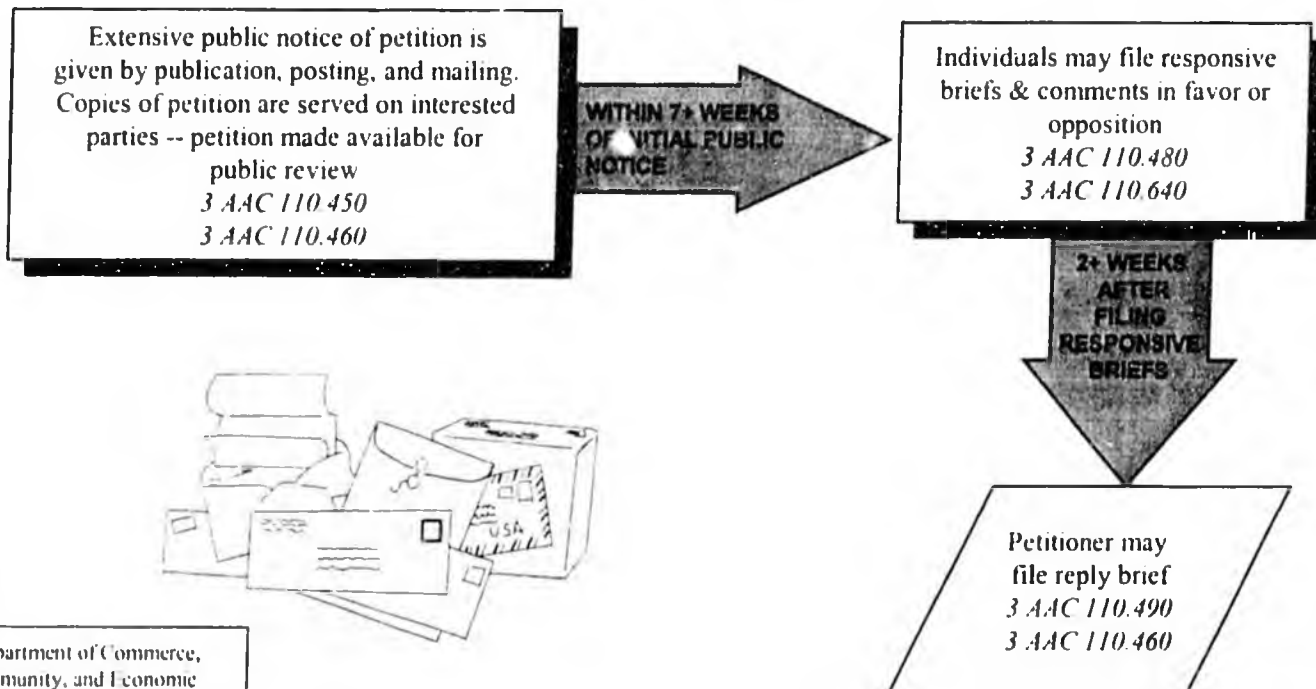
2/18/2008

# PROCEDURES FOR LEGISLATIVE REVIEW ANNEXATION

## STAGE 1 - FILING THE PETITION

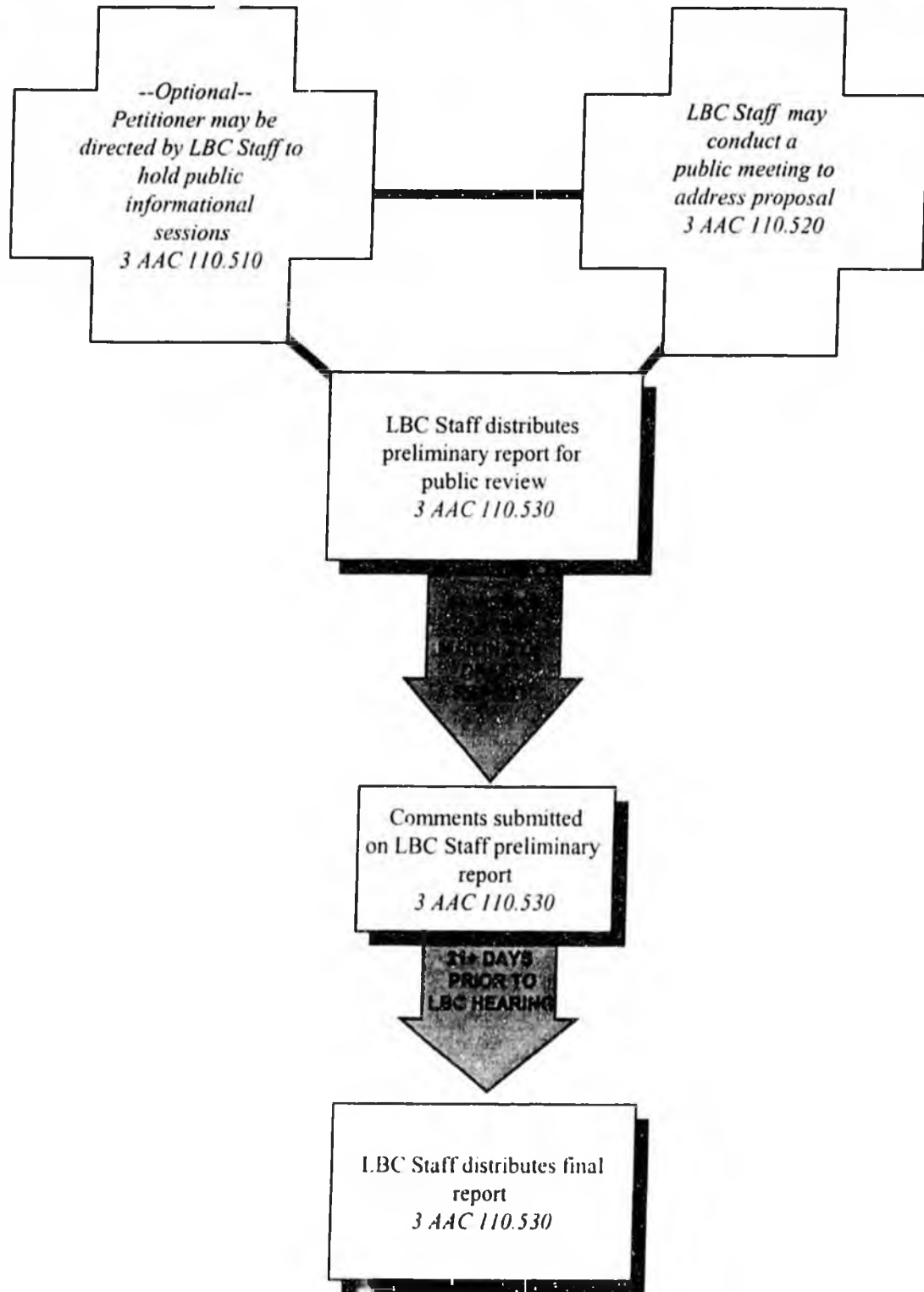


## STAGE 2 - PUBLIC REVIEW & COMMENT



\*Department of Commerce, Community, and Economic Development serves as staff to the LBC. AS 44.47.050(a)(2)

**STAGE 3 - ANALYSIS**



## STAGE 4 - HEARING, DECISION & RECONSIDERATION

LBC conducts public hearing(s)  
following 30 day notice  
*3 AAC 110.550*  
*3 AAC 110.560*

### Hearing Procedures

1. Presentation of LBC Staff Report
2. Opening Statement by Petitioner (10 minutes)
3. Opening Statement by Respondents (10 minutes)
4. Sworn Testimony of Witnesses by Petitioner
5. Sworn Testimony of Witnesses by Respondents
6. Sworn Responsive Testimony by the Petitioner
7. Period of Public Comment (3 minutes per person)
8. Closing Statement by Petitioner (10 minutes)
9. Closing Statement by Respondents (10 minutes)
10. Reply by Petitioner (5 minutes)

LBC decisional meeting  
(verbal decision reached)

Option 1  
Petition Approved

Option 2  
Petition Amended  
and/or Conditionally  
Approved

Option 3  
Petition Denied

Written decision issued  
*3 AAC 110.570*

Opportunity for  
reconsideration  
*3 AAC 110.580*

If petition is  
approved or amended  
and approved, the process  
continues to next stage

If petition is denied,  
process ends

\*Decisions of the LBC  
are subject to judicial  
appeal

**STAGE 5 - IMPLEMENTATION**

**Federal Voting Rights  
Act preclearance requested**  
*42 U.S.C. 1973(c)*



LBC recommendation  
is submitted to legislature  
during first 10 days of next  
regular session  
*3 AAC 110.610*



**Recommendation is  
approved 45 days after  
submission, unless denied  
by concurrent  
legislative resolution**



**If approved by voters, or the legislature,  
or if such approval is not necessary,  
LBC Staff certifies boundary change upon  
preclearance**  
*3 AAC 110.630*



## REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: [Representative.Bill.Thomas@legis.state.ak.us](mailto:Representative.Bill.Thomas@legis.state.ak.us)

webpage: [www.akrepublicans.org/thomas/](http://www.akrepublicans.org/thomas/)

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

### **Sponsor Statement for HJR 30 Disapproving the Local Boundary Commission recommendation regarding the annexation of territory to the Ketchikan Gateway Borough**

The Ketchikan Gateway Borough (KGB) submitted an application for the annexation of 4,731 square miles outside of its current borough boundaries in 2006. That application has been approved by the Local Boundary Commission (LBC) despite the vast outcry from the surrounding unorganized borough and the disparaging impact that the annexation will have on the surrounding areas.

The final report, written by the Local Boundary Commission, glosses over the fact that the current application for annexation is substantially similar to the application submitted by the Ketchikan Gateway Borough in 1997, which was denied. The very findings that prevented annexation in 1997 now appear to only have had a de minimus effect on the 2006 decision.

Also, any annexation by any borough is controversial. Therefore, every effort must be made to have clear, fair, and methodical dealings with those who will be affected. It is the position of the unorganized borough that proper steps were not taken to ensure that suspicions of a possible conflict of interest by LBC staff were laid to rest. The very same LBC staffer who wrote the decisional statement for the 1997 application and reversed his opinion in the preliminary report in 2007, applied for and accepted a job as the borough manager of the Ketchikan Gateway Borough *before* the final decision was written. The unorganized borough requested an independent review of the circumstances surrounding this LBC staffer, but was denied.

Further, during the public comment period, the City of Craig requested that documentation on the perceived conflict of interest by LBC staff as well as other documentation against the annexation be entered into the record. This request was, again, denied resulting in a less than complete record. It is difficult to assume that the "best interests of the state" are being fulfilled when the public does not support the annexation and a prior decision had to be overturned in order for the annexation to be approved.

Due to the lack of public support, the inconsistency in decisions, and other abnormal circumstances surrounding the KGB annexation process, the Ketchikan Gateway Borough annexation should not be allowed to go forward. I strongly urge your support of HJR 30.

25-LS1378E

Cook

2/1/08

**CS FOR HOUSE JOINT RESOLUTION NO. 30( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE THOMAS**

**A RESOLUTION**

1 **Disapproving the Local Boundary Commission recommendation regarding the**  
2 **annexation of territory to the Ketchikan Gateway Borough.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS**, under art. X, sec. 12, Constitution of the State of Alaska, the Local  
5 Boundary Commission has presented to the legislature its recommendation regarding the  
6 annexation of territory to the Ketchikan Gateway Borough; and

7 **WHEREAS** a recommendation of the Local Boundary Commission presented to the  
8 legislature becomes effective 45 days after presentation or at the end of the session, whichever  
9 is earlier, unless disapproved by a resolution concurred in by the majority of the members of  
10 each house; and

11 **WHEREAS** the legislature recognizes the constitutional authority of the Local  
12 Boundary Commission as a disinterested party assigned the task of objectively reviewing  
13 local boundary changes; and

14 **WHEREAS** the Ketchikan Gateway Borough submitted petitions to the Local  
15 Boundary Commission to annex lands outside of the borough boundaries in 1998 and, most  
16 recently, in 2006; and

1           **WHEREAS** the annexation petitions in 1998 and in 2006 were substantially similar;  
2 and

3           **WHEREAS** the Local Boundary Commission refused to approve the 1998 petition;  
4 and

5           **WHEREAS** the Local Boundary Commission approved the 2006 petition despite the  
6 grounds for approval being completely contrary to the decision on the 1998 petition; and

7           **WHEREAS** the Local Boundary Commission in approving the petition also directed  
8 the Ketchikan Gateway Borough to file a petition to annex Hyder within five years, but failed  
9 to include that directive in its Order in the Statement of Decision; and

10           **WHEREAS** approval of the annexation would result in the loss of approximately  
11 \$1,200,000 of federal funding each year to the school districts in the unorganized borough  
12 because this money would be transferred to the Ketchikan Gateway Borough, despite the fact  
13 that the Ketchikan Gateway Borough will not provide any educational services in the area  
14 recommended for annexation; and

15           **WHEREAS** the effect of the annexation on the surrounding unorganized borough was  
16 not properly taken into consideration by the Local Boundary Commission;

17           **BE IT RESOLVED** by the Alaska State Legislature that the recommendation of the  
18 Local Boundary Commission received by the legislature in January 2008 regarding the  
19 annexation of the territory to the Ketchikan Gateway Borough is disapproved.



# Alaska State Legislature

House of Representatives

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

*Official Business*

Office of the Chief Clerk

January 24, 2008

## MEMORANDUM

To: Representative Fairclough, Co-chair  
Representative LeDoux, Co-chair ✓  
Community and Regional Affairs Committee

From: Suzi Lowell   
Chief Clerk

Subject: Local Boundary Commission

The Speaker referred the Local Boundary Commission's recommendation for annexation of land to the Ketchikan Gateway Borough to the Community and Regional Affairs Committee.

Pursuant to Article X, Section 12 of the Alaska Constitution, the changes will take effect on the 45th day after presentation unless disapproved by the Legislature. The document was received by the Chief Clerk's office on January 23 and read into the House Journal on January 24.



# State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, Alaska 99501  
Telephone: 907-269-4501 • Fax 907-269-4539

January 23, 2008

The Honorable John Harris  
Speaker  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

JAN 23 2008  
*Rec'd al*

Subject: Legislative-Review Annexation by the Ketchikan Gateway Borough

Dear Representative Harris:

The Local Boundary Commission hereby presents to the Second Session of the Twenty-fifth Legislature the Commission's recommendation under article X, section 12, Constitution of the State of Alaska for annexation of approximately 4,510 square miles to the Ketchikan Gateway Borough (hereinafter, "Ketchikan"). The Commission's decision approving the annexation is enclosed herewith. Under article X, section 12, the change becomes effective forty-five days after presentation to the Legislature or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

The Framers of Alaska's Constitution expected that local-governmental annexations would often be very controversial. Ketchikan's annexation petition certainly reflects that expectation. Among other things, a local-action petition for incorporation of a Wrangell borough sought 191-square miles of area that was also requested for annexation by Ketchikan. Other issues in the proceeding involved (1) a request by the Metlakatla Indian Community to not approve Ketchikan's southern boundary to include Duke Island because of a proposed federal expansion effort by Metlakatla to extend the Annette Islands Reservation to include waters south to the Canadian border; and (2) National Forest Receipts gains/losses in southeast Alaska. The record of the proceeding is extensive, and the Commission's decision is reflective of its thorough and careful review of that record and the standards and procedures for annexation proposals. I also note that the Department of Education and Early Development (DEED) reviewed Ketchikan's annexation and filed a letter of nonobjection to the proposal. A copy of that letter is enclosed for your reference.

The Honorable John Harris  
Page 2 of 2  
January 23, 2008

In the end, the Commission did not approve Ketchikan's original petition to annex 4,701 square miles. Instead, the Commission amended the petition and approved annexation of 4,510 square miles. The reduction was the contested 191-square-mile area encompassing Meyers Chuck and Union Bay, which the Commission included in the incorporation of the new Wrangell borough. A map of Ketchikan's boundaries following the approved annexation is enclosed for your reference.

The Commission looks forward to reviewing its Ketchikan annexation recommendation with the House Community and Regional Affairs Committee.

Sincerely,

LOCAL BOUNDARY COMMISSION



Kermit L. Ketchum  
Chairman

Enclosures:

- (1) LBC *Statement of Decision*, Ketchikan Gateway Borough Annexation
- (2) Letter of nonobjection from DEED
- (3) Map of Ketchikan Gateway Borough following annexation

cc/enc: The Honorable Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee

The Honorable Gabrielle LeDoux, Co-Chair  
House Community and Regional Affairs Committee

**LBC *Statement of Decision*, Ketchikan Gateway  
Borough Annexation**

Local Boundary Commission  
550 West Seventh Avenue, Suite 1700  
Anchorage, Alaska 99501  
(907) 269-4560 (tel); (907) 269-4539 (fax)

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STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

Before Commissioners:

Kermit L. Ketchum, Chair  
Robert Harcharek, Vice Chair  
Lynn Chrystal  
Lavell Wilson

In the Matter of the Petition by the Ketchikan Gate- )  
way Borough for Legislative-Review Annexation of Ap- )  
proximately 4,701 Square Miles to the Ketchikan )  
Gateway Borough )  
\_\_\_\_\_ )

STATEMENT OF DECISION

I. BACKGROUND AND SUMMARY OF PROCEEDINGS

Before the Commission in this proceeding is a Petition filed by the Ketchikan Gateway Borough (KGB, Borough, or Petitioner) for legislative-review annexation of approximately 4,701 square miles.<sup>1</sup> A detailed history regarding this annexation proposal is contained in the Petition, Petitioner's Reply brief, and the reports issued by the Department of Commerce, Community, and Economic Development (DCCED). Therefore, only a brief summary will be set out here.

The area proposed for annexation lies entirely within Alaska's unorganized borough. The proposal generally extends the southern and eastern boundaries of the Borough to the Canadian border. The Petition also proposes to expand the Borough's

<sup>1</sup>The vast majority (over 90 percent) of the land proposed for annexation is part of the Tongass National Forest and under federal ownership.

1 jurisdictional boundaries northward to include most of the Cleveland Peninsula. On the  
2 west, the Borough's proposed new boundaries would extend to Clarence Strait. The  
3 area proposed for annexation includes the settlement of Meyer's Chuck and the  
4 adjoining area in and around Union Bay but excludes the Annette Islands Reserve  
5 encompassing Metlakatla and a 205-square-mile area in and around Hyder.

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7 As previously noted, the Borough is using the "legislative review  
8 annexation" method. That method, authorized by article X, section 12 of the Alaska  
9 Constitution, provides that the LBC may present proposed municipal boundary changes  
10 to the legislature during the first ten days of any regular session. The proposal  
11 becomes effective forty-five days after presentation by the LBC or at the end of the  
12 session, whichever is earlier, unless disapproved by a resolution concurred in by a  
13 majority of the members of each house.

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15 Under 3 AAC 110.425(a), before a petition for annexation by the  
16 legislative-review process may be submitted, the prospective petitioner must, among  
17 other things, conduct a public hearing on the annexation proposal. On January 21,  
18 2006, the KGB Assembly held a public hearing on its proposed legislative-review  
19 petition. Detailed information regarding that hearing is included with the Petition.<sup>2</sup> On  
20 February 6, 2006, the KGB Assembly authorized the filing of the Petition to expand the  
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24 <sup>2</sup>See also Appendix C to LBC Staff's June 30, 2007, *Preliminary Report to the Local Boundary  
25 Commission Regarding the Petition for Annexation of Approximately 4, 701 Square Miles to the Ketchikan  
26 Gateway Borough (Preliminary Report)* for more detail regarding the KGB Assembly's January 21, 2006,  
27 hearing and public meeting.

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1 area within the Borough's corporate boundaries by 4,701 square miles. The Petition  
2 was received by DCCED<sup>3</sup> on February 14, 2006.

3 DCCED completed its technical review of the form and content of the  
4 Petition on February 22, 2006, and accepted it for filing on that date. The Chair of the  
5 LBC set April 28, 2006, as the deadline for receipt of responsive briefs and comments  
6 concerning the original Petition. Extensive notice of the filing of the Petition and service  
7 thereof was provided by the Petitioner in accordance with law.  
8

9 Nineteen sets of written comments regarding the Petition were timely filed  
10 with DCCED. A list of those commentors is attached to this Decision as Appendix A.  
11 Responsive briefs were timely filed by Peter Caffall-Davis, the City of Wrangell  
12 (Wrangell), and the Metlakatla Indian Community (Metlakatla).  
13

14 Following receipt of the Responsive Briefs and written comments on the  
15 Petition, the LBC Chair set June 21, 2006, as the deadline for the Petitioner to file its  
16 Reply Brief. The KGB filed its Reply Brief on June 19, 2006, with service on  
17 commentors, Respondents, and others. In its Reply Brief, the KGB summarized and  
18 responded to the comments and Responsive Briefs.  
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25 <sup>3</sup>Under AS 44.33.020(a)(4), DCCED serves as staff to the Local Boundary Commission and is al-  
26 ternatively referred to herein as Staff.

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Statutory procedures for legislative-review annexation are set out in AS 29.06.040 and AS 44.33.812 – 44.33.828. State law (AS 44.33.812(a)(2)) requires the LBC to adopt regulations providing standards governing annexation. The LBC has complied with that requirement by adopting standards for borough annexation in 3 AAC 110.160 - 3 AAC 110.210 and 3 AAC 110.900 - 3 AAC 110.980. Additionally, as required by AS 44.33.812(a)(2), the LBC has adopted procedural regulations for all its boundary-change proceedings, including annexation. Those procedures are set out in 3 AAC 110.400 - 3 AAC 110.660 and 3 AAC 110.900 - 3 AAC 110.990.

AS 29.06.040(a) provides that the LBC may amend and impose conditions on the proposal. That law further provides that the Commission may approve a legislative-review proposal only if the LBC determines that the proposal meets applicable standards under the Alaska Constitution and the Commission's regulations and is in the best interests of the State. Otherwise, the LBC must reject the proposal.

Also of note to this proceeding is the April 6, 2006, petition for incorporation of a 3,465-square-mile City and Borough of Wrangell ("the Wrangell Petition"). That proposal seeks boundaries that overlap a portion of the area proposed for annexation to the KGB. Specifically, both the KGB Petition and the Wrangell Petition include the same 191-square mile area in and around Meyers Chuck and Union Bay. While the Wrangell Petition is considered separately, the decision regarding the 191-square mile overlap affects both proceedings.

DCCED's 161-page *Preliminary Report* was published on July 13, 2007. In its *Preliminary Report*, DCCED concluded that the Petition satisfies all legal standards applicable to the pending annexation proposal and recommended that it be

1 approved.<sup>4</sup> The deadline for filing written comments on the *Preliminary Report* was  
2 September 4, 2007. Written comments were received from Respondents Wrangell and  
3 Metlakatla and from the Meyers Chuck Community Association (Meyers Chuck), City of  
4 Craig, and Dan Eichner.

5 On October 15, 2007, DCCED published its 216-page *Final Report to the*  
6 *Local Boundary Commission on Ketchikan Local Government Consolidation (Final Re-*  
7 *port)*, and included therein the comments submitted in response to DCCED's *Prelimi-*  
8 *nary Report*.<sup>5</sup> In its *Final Report*, DCCED readopted the conclusions and  
9 recommendations reached in the *Preliminary Report*.  
10

11 October 23, 2007, was the deadline for filing lists of witnesses to be called  
12 by the Petitioner or Respondents at the public hearing. The Petitioner timely filed its list  
13 of eight witnesses; Respondent Metlakatla timely filed a list of two witnesses; Respon-  
14 dent Wrangell did not file a witness list; and Respondent Caffall-Davis filed notice that  
15 he did not intend to call witnesses.  
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20 <sup>4</sup>DCCED's *Preliminary Report* was written by Dan Bockhorst. In the weeks following completion  
21 of his review and analysis, the KGB began its recruitment for a borough manager. Upon seeing a re-  
22 cruitment notice for that position on July 31, 2007, Mr. Bockhorst wrote a memorandum on August 1,  
23 2007, to DCCED's Ethics Supervisor disclosing an interest in applying for the KGB manager position. In  
24 his disclosure, Mr. Bockhorst recused himself with respect to any and all future dealings regarding this  
annexation proposal. DCCED's continuing responsibilities for the annexation proposal was immediately  
assigned to Jeanne McPherrren, Local Government Specialist IV, to complete. Commission Chair  
Ketchum was also immediately notified by Mr. Bockhorst of his recusal and the reasons therefor. A time-  
line regarding Mr. Bockhorst's work in this proceeding is attached to this decision as Appendix B.

25 <sup>5</sup>As noted above, DCCED's *Final Report* was written by Jeanne McPherrren. She independently  
26 reviewed all materials in this proceeding, applicable laws, prior decisions of the Commission, and other  
relevant material before making her recommendation and writing the *Final Report*.

1 DCCED provided each member of the Commission with a copy of the  
2 entire record in the proceeding.

3 The public hearing on the annexation proposal was set for 9 a.m., No-  
4 vember 6, 2007, in the Ketchikan City Council Chambers. Extensive public notice of the  
5 hearing was given.

6 Commissioners Ketchum, Harcharek, Chrystal, and Wilson traveled to  
7 Ketchikan to conduct the public hearing. Commissioner Zimmerle is recused from par-  
8 ticipation in this proceeding.

9 The Commission convened the public hearing at 9 a.m. Aside from the  
10 Commission and its Staff, approximately 60 individuals attended the hearing, either in  
11 person or by teleconference.

12 The hearing began with a summary by Commission Staff of its reports and  
13 recommendations to the Commission. In brief, Staff recommended that the Commis-  
14 sion approve the KGB annexation Petition. Following Staff's summary, opening and  
15 closing statements were made by the Petitioner and each Respondent.

16 Testimony and public comment were offered by the list of witnesses and  
17 commentators attached to this decision as Appendix C. The hearing adjourned at ap-  
18 proximately 6 p.m.

19 Statements and testimony by the Petitioner elaborated on the merits of the  
20 annexation Petition and addressed differences between the 1998 annexation proposal  
21 and the current proceeding. Statement by Respondents paralleled their written  
22 comments in this proceeding, except that Metlakatla clarified the reservation expansion  
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1 request it had filed with the Secretary of Interior. That request sought an expansion of  
2 the reserves maritime boundaries; it was not a land acquisition request for Duke Island.

3 The majority of commentors opposed the KGB annexation because of the  
4 loss of National Forest Receipt (NFRs) by school districts on Prince of Wales Island.  
5 Others commentors opposed the inclusion of the Meyers Chuck/Union Bay area in the  
6 KGB annexation, proposing instead that the area be allowed to be an enclave similar to  
7 Hyder<sup>6</sup> or included in the Wrangell borough. A few commentors also endorsed the ex-  
8 clusion of Duke Island from the annexation as requested by Metlakatla.  
9

10 The Commission convened a decisional session, pursuant to 3 AAC  
11 110.570, on November 7, 2007, in Ketchikan. The decisional session regarding the  
12 KGB annexation proposal followed the decisional session regarding the Wrangell bor-  
13 ough incorporation proposal. In the Wrangell decisional session, the Commission de-  
14 termined that the Meyers Chuck/Union Bay area more appropriately belonged in the  
15 Wrangell borough, and, thus, amended the KGB annexation proposal to delete that  
16 area. The Commission deliberated on the amended KGB annexation proposal for ap-  
17 proximately an hour. At the conclusion of the deliberations, the Commission voted  
18 unanimously to approve the Petition, as amended to delete the Meyers Chuck/Union  
19 Bay area. DCCED will work with the KGB and the newly created Wrangell borough to  
20 determine the descriptions of their respective boundaries resulting from the inclusion of  
21 the Meyers Chuck/Union Bay area in the Wrangell borough.  
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24 <sup>6</sup>In proposing the enclave, the commentors contemplated then becoming a part of a Prince of  
25 Wales Island Borough when one is formed. In its decisional session regarding the Wrangell incorporation  
(continued . . . )

1 To explain the basis for the Commission's decision in this proceeding,  
2 the following are Commission's findings and conclusions with respect to the Petition. In  
3 rendering its determination on the KGB annexation proposal, the Commission agreed  
4 with the majority of DCCED's findings, conclusions, and recommendations regarding  
5 the annexation, except with regard to the Meyers Chuck/Union Bay area.  
6

7 **II. FINDINGS AND CONCLUSIONS**

8 State law, AS 29.06.040(a), provides as follows regarding a proposed mu-  
9 nicipal annexation, including one using the legislative review method:  
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11 The Local Boundary Commission may consider any proposed municipal  
12 boundary change. The commission may amend the proposed change and  
13 may impose conditions on the proposed change. If the commission de-  
14 termines that the proposed change, as amended or conditioned if appro-  
15 priate, meets applicable standards under the state constitution and  
16 commission regulations and is in the best interests of the state, it may ac-  
17 cept the proposed change. Otherwise it shall reject the proposed change.  
18 A Local Boundary Commission decision under this subsection may be ap-  
19 pealed under AS 44.62 (Administrative Procedure Act).

17 The Alaska Supreme Court has held that statutory standards for borough incorporation  
18 were intended to be flexibly applied to a wide range of regional conditions. The Court  
19 stated further that the Commission's determinations regarding whether such standards  
20 are satisfied should be affirmed if the Court perceives that the LBC's reading of the  
21 standards and its evaluation of the evidence has a reasonable basis. Specifically, the  
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24 \_\_\_\_\_  
25 (. . . continued)

25 petition, the Commission expressed doubt that such a borough would be proposed in the foreseeable fu-  
26 ture.

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1 Court stated in *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska  
2 1974) (emphasis added):

3 A determination whether an area is cohesive and prosperous enough for  
4 local self-government involves broad judgments of political and social pol-  
5 icy. The standards for incorporation set out in AS 07.10.030 were in-  
6 tended to be flexibly applied to a wide range of regional conditions. This is  
7 evident from such terms as 'large enough', 'stable enough', 'conform gen-  
8 erally', 'all areas necessary and proper', 'necessary or desirable', 'ade-  
9 quate level' and the like. The borough concept was incorporated into our  
10 constitution in the belief that one unit of local government could be suc-  
11 cessfully adapted to both urban and sparsely populated areas of Alaska,<sup>[7]</sup>  
12 and the Local Boundary Commission has been given a broad power to  
13 decide in the unique circumstances presented by each petition whether  
14 borough government is appropriate. Necessarily, this is an exercise of  
15 delegated legislative authority to reach basic policy decisions. Accord-  
16 ingly, acceptance of the incorporation petition should be affirmed if we  
17 perceive in the record a reasonable basis of support for the Commission's  
18 reading of the standards and its evaluation of the evidence.

13 For reasons set out in Part A below, the Commission finds no basis to  
14 distinguish between borough *incorporation* and *annexation* in terms of whether the  
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16 <sup>7</sup>[Footnote 14 in original.] A summary by the local government committee at the constitutional  
17 convention of the principles underlying the borough concept is preserved in T. Morehouse & V. Fischer,  
*Borough Government in Alaska*, at 63-64 (1971). This relates:

18 *Self-government* – The proposed article bridges the gap now existing in many parts of  
19 Alaska. It opens the way to democratic self-government for people now ruled directly from the  
20 capital of the territory or even Washington D.C. The proposed article allows some degree of self-  
21 determination in local affairs whether in urban or sparsely populated areas. . . .

22 *Flexibility* – The proposed article provides a local government framework adaptable to dif-  
23 ferent areas of the state as well as to changes that occur with the passage of time. . . .

24 The authors describe how evolution of the borough has reflected this intended flexibility.

25 (T)wo recognizable types of organized boroughs now exist in Alaska: the *regional*  
26 *borough*, generally covering an extensive area including several widely dispersed small  
27 communities, incorporated and unincorporated, and the *urban borough*, having a population  
28 concentrated primarily in a single urban core area, characteristically overspilling the boundaries of  
29 a central city. It could be anticipated that the local governmental system will evolve in the two  
directions of unification and regionalism associated with these basic physical and socio-economic  
patterns.

1 applicable standards should be flexibly applied and whether the law should be read to  
2 uphold Commission decisions approving borough annexation as well as borough  
3 incorporation whenever the applicable requirements have been met. Moreover, the  
4 Commission concludes that borough incorporation and borough annexation of areas  
5 that meet applicable standards are equally encouraged by the law.

6  
7 Parts A through K below set out the Commission's findings and conclu-  
8 sions regarding each of the standards for borough annexation applicable to the KGB  
9 annexation proposal.

10  
11 **Part A. Annexation to the KGB will promote maximum local self-government in  
12 accordance with article X, section 1 of the Alaska Constitution.**

13 Article X, section 1 of the Alaska Constitution promotes "maximum local  
14 self-government." DCCED addressed this standard on pp. 5 - 18 of its *Preliminary Re-*  
15 *port* and concluded that the proposed annexation will provide for maximum local self-  
16 government. DCCED affirmed that review and analysis in its *Final Report*. Based on its  
17 review of the Alaska Constitution, prior decisions of the Commission, and other relevant  
18 materials, DCCED concluded that maximum local self-government is achieved when-  
19 ever organized borough government is extended to an unorganized area in accordance  
20 with applicable standards, regardless of any particular need for municipal services. The  
21 Commission agrees. In fact, that conclusion is incorporated in the Commission's recent  
22 adoption of new 3 AAC 110.981(2):

23  
24 In determining whether a proposed boundary change promotes  
25 maximum local self-government under art. X, sec. 1, Constitution of the  
26 State of Alaska, the commission will consider . . . for borough annexation,  
whether the proposal would extend local government to portions of the  
unorganized borough.

1 DCCED's analysis and conclusions regarding this standard address the  
2 area proposed for annexation vis-à-vis the KGB 1998 annexation proposal and the  
3 Commission's 1999 decision which rejected the annexation because it excluded the  
4 area of Meyers Chuck and Hyder, which were part of the KGB Model Borough Bounda-  
5 ries. The 1999 Commission stated that the annexation proposal failed to advance the  
6 constitutional principle of maximum local self-government because it excluded Hyder  
7 and Meyers Chuck. DCCED analyzed that prior decision in great detail and determined  
8 that "that restricted conclusion to be an unduly narrow reading of article X, section 1 of  
9 the Alaska Constitution."  
10

11 This Commission agrees and notes that in the 1998 annexation, the KGB  
12 proposed to annex an area nearly identical to its Model Borough Boundaries. The area  
13 proposed for annexation at that time was 5,524 square miles, but it excluded two small  
14 enclaves of 21.4 square miles encompassing Meyers Chuck and Hyder. The effect of  
15 that annexation rejection was to leave over 5,500 square miles in the unorganized bor-  
16 ough for the sake of 21.4 square miles. Not only is that an "unduly narrow reading of  
17 article X, section 1," it strikes this Commission as groundless in view of the Constitu-  
18 tional Framer's intent to provide "local government for regions as well as localities and  
19 encompass lands with no present municipal use."  
20

21 Moreover, this Commission believes that elevating the importance of  
22 Model Borough Boundaries over the intent of the Constitution not only misconstrues the  
23 intent behind their adoption but is also clearly erroneous. In its recent proceeding  
24 considering the formation of the Skagway borough, and again during its proceeding to  
25 revise its regulations, the Commission clarified that the purpose of the Model Borough  
26

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1 Boundaries is for use only as a reference tool. They are not intended to totally constrain  
2 the formation of boroughs or annexation thereto.

3 Further, as noted above and discussed in more detail below, at its  
4 decisional sessions regarding the KGB and Wrangell petitions, this Commission  
5 concluded that the Meyers Chuck/Union Bay area has more in common with Wrangell  
6 than Ketchikan and, thus, included that area in the boundaries of the new Wrangell  
7 borough, a decision that obviously affected the Model Borough Boundaries of both the  
8 KGB and Wrangell.<sup>8</sup>

9  
10 Overall, the Commission concurs with DCCED's analysis and findings re-  
11 garding this standard and adopts them by reference for purposes of this decisional  
12 statement. The Commission finds that the KGB proposal, as amended, satisfies this  
13 standard.

14  
15 **Part B. Annexation to the KGB will promote a minimum number of local govern-  
16 ment units in accordance with article X, section 1 of the Alaska Constitu-  
17 tion.**

18 In addition to promoting maximum local self-government, article X, sec-  
19 tion 1 of Alaska's constitution encourages a minimum number of local government units.  
20 DCCED addressed this standard on pp. 18 - 22 of its *Preliminary Report* and concluded  
21 that the proposed annexation will promote a minimum number of local government  
22 units. DCCED affirmed that review and analysis in its *Final Report*. The Commission  
23

24  
25 <sup>8</sup>The KGB Model Borough Boundaries are diminished as a result of this decision. Wrangell is in  
26 the Wrangell/Petersburg Model Borough Boundaries, and those boundaries are also diminished as a re-  
27 sult of the creation of the new Wrangell borough.

1 concurs with DCCED's analysis of this standard and adopts that analysis by reference  
2 for purposes of this decision statement.

3 Among other things, DCCED stated:

4 The constitutional constraint on the number of local government  
5 units is an important factor in the character of borough government. Prin-  
6 ciples articulated by the Local Government Committee at the Constitu-  
7 tional Convention included that "in the formation of the new areawide  
8 government units [boroughs] . . . should be large enough to prevent too  
9 many subdivisions in Alaska . . . [and] should cover large geographic ar-  
10 eas with common economic, social, and political interests." (Victor Fischer,  
11 *Alaska's Constitutional Convention*, p. 119 (1975).)

12 DCCED *Preliminary Report*, p. 19.

13 The current boundaries of the KGB encompass the third-smallest area of  
14 the seventeen organized boroughs. The Commission's approval of the KGB annexa-  
15 tion, as amended to exclude the 191-square mile area of Meyers Chuck and Union Bay,  
16 increases the geographic size of the KGB from approximately 1,752 square miles to ap-  
17 proximately 6,262 square miles, an increase of 257 percent.

18 The Alaska Constitution promotes boroughs that embrace large and natu-  
19 ral regions. The KGB annexation proposal, as amended and approved by the Commis-  
20 sion, is in keeping with that intent. The standard set out in article X, section 1 of the  
21 Alaska Constitution is satisfied by the KGB annexation, as amended and approved by  
22 the Commission.

1 **Part C. The proposed expanded boundaries of the KGB, as amended, embrace an**  
2 **area and population with common interests to the maximum degree pos-**  
3 **sible and, on a scale suitable for borough government, have a population**  
4 **that is interrelated and integrated with respect to social, cultural, and**  
5 **economic characteristics and activities (article X, section 3, Constitution**  
6 **of the State of Alaska; 3 AAC 110.160(a)).**

7 At pp. 23 - 48 of its *Preliminary Report*, DCCED addressed the issue of  
8 whether the KGB's proposed expanded boundaries are appropriate under this standard.  
9 DCCED noted that article X, section 3 of Alaska's Constitution mandates that each bor-  
10 ough embrace an area and population with common interests to the maximum degree  
11 possible. Further, Staff observed that 3 AAC 110.160(a) allows annexation of an area  
12 if, on a scale suitable for borough government, the post-annexation boundaries of the  
13 borough would embrace a population that is interrelated and integrated with respect to  
14 social, cultural, and economic characteristics and activities. Staff stated that in the con-  
15 text of boroughs embracing large and natural regions, the large area and small popula-  
16 tion proposed for annexation have many interests in common with the area and  
17 population within the existing boundaries of the KGB.

18 Based on its review of the Alaska Constitution, prior decisions of the  
19 Commission, and other relevant materials, DCCED concluded that the KGB annexation  
20 proposal satisfied this standard. DCCED affirmed that review and analysis in its *Final*  
21 *Report*. The Commission concurs with much of DCCED's analysis of this boundary  
22 standard and adopts that analysis by reference for purposes of this decision statement,  
23 except with regard to the Meyers Chuck/Union Bay area.

24 As discussed at the decisional session considering the Wrangell borough  
25 incorporation and the KGB annexation, the Commission concluded that the Meyers  
26

1 Chuck/Union Bay area had more in common with Wrangell than Ketchikan. Among  
2 other things, the Commission noted that although the Mandatory Borough Act adopted  
3 over 40 years ago and the Model Borough Boundaries adopted 16 years ago placed  
4 Meyers Chuck in the KGB Model Borough Boundaries, the Commission must consider  
5 the placement of Meyers Chuck and Union Bay in light of the residents' circumstances  
6 and commonality, transportation and communication between communities that exist  
7 today and into the future. While there could be significant debate regarding the intent  
8 and circumstances that led to the drawing of boundary lines 20 to 40 years ago. What is  
9 more germane is what is important and applicable today and into the future. In addition,  
10 the Commission must consider the optimal benefit to the residents of those communities  
11 through delivery of relevant new services.  
12

13  
14 The Wrangell petition and citizens of Meyers Chuck presented specific  
15 and persuasive testimony and comment to support the inclusion of the 191 square mile  
16 Meyers Chuck/Union Bay area in the proposed Wrangell borough rather than in the  
17 KGB. That support included:

- 18 • Written comments submitted by the residents of Meyers Chuck indi-  
19 cated that they prefer inclusion in a Wrangell borough. The residents believe  
20 they have more in common with Wrangell and that it makes more sense to be  
21 included in the Wrangell borough on a social, economic, geographic and cul-  
22 tural basis. Fifteen residents giving addresses as Meyers Chuck or Union  
23 Bay signed the petition requesting incorporation of a Wrangell borough, feel-  
24 ing their needs more readily met by Wrangell.  
25

- 1           • The residents of Meyers Chuck and Union Bay share common rural
- 2 lifestyles and sensibilities with other residents of the proposed borough
- 3           • The residents of Meyers Check and Union Bay have historically shared
- 4 the same geographic areas as the Wrangell community for hunting and fish-
- 5 ing
- 6           • There are strong economic and social ties between Meyers Chuck and
- 7 Union Bay area and Wrangell. Meyers Chuck and Union Bay residents have
- 8 testified that they shop at the grocery and hardware stores in Wrangell regu-
- 9 larly, and complete boat repair and maintenance in Wrangell.
- 10          • Residents of Meyers Chuck receive radio signal from KSTK in Wran-
- 11 gell. There is a locally published newspaper, the Wrangell Sentinel that is
- 12 available to Meyers Chuck residents should they choose to subscribe. The
- 13 local newspaper is available to residents in the proposed Wrangell borough.
- 14          • Clarence Strait is a major transportation impediment for residents of
- 15 Meyers Chuck and Union Bay. The exposed route along Clarence Strait from
- 16 Meyers Chuck to Ketchikan features rough water with strong tidal currents
- 17 that are frequently at odds with the prevailing southeast winds. There are no
- 18 safe harbors between Lemesurier Point and Tongass Narrows. Caamano
- 19 Point experiences rough weather that compares closely to Southeast Alaska's
- 20 major capes. The out-flowing tides of Clarence Strait and Behm Canal water
- 21 meet at this point and the waves can stack up dangerously. Small boats and
- 22 skiffs more readily access Wrangell for fuel and supplies via the protected
- 23 Ernest Sound and Zimovia Strait route.
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- Maritime connections are more important than overland connections for Meyers Chuck and Union Bay residents.

- Meyers Chuck and Union Bay residents are engaged in self-reliant lifestyles typical of more remote settlements, featuring substantial lifestyles that are more compatible with those of Wrangell residents than with the residents of the more urban Ketchikan area.

- Wrangell community leaders are committed to incurring the expense necessary to establish communication facilities to allow residents of outlying areas such as Thoms Bay and Meyers Chuck and Union Bay to participate in public hearings and other important public proceedings of the proposed new borough. Wrangell community leaders are also committed to working with residents of Meyers Chuck and Union Bay to explore opportunities for working together and assistance for residents compatible with their desired lifestyle.

- The KGB did not formally object to Wrangell's proposal to include a portion of the KGB's Model Borough Boundaries, specifically the Meyers Chuck/Union Bay area, within Wrangell's proposed boundaries

The most compelling factors supporting the inclusion of the 191-square mile area of western Cleveland Peninsula, including Meyers Chuck and Union Bay, in the Wrangell borough rather than the KGB, is the relevant governmental services that would be provided to the area. Areawide powers and services of both the proposed Wrangell borough and the KGB are similar with regard to education, planning, platting,

1 land-use regulation, taxation and assessment, library, economic development, and  
2 parks and recreation. Each area is served by an airport providing jet service.

3  
4 However, additional areawide services that are offered by the KGB are  
5 minimally relevant to the residents of Meyers Chuck and Union Bay. They feature pub-  
6 lic transportation, animal control, and regulation of fireworks. The KGB petition antici-  
7 pates that "[I]t is not intended to extend any public transportation services within the  
8 area proposed for annexation at this time." Moreover, the KGB Petition also anticipates  
9 that animal control services "will likely be continued on an ad-hoc, unofficial basis con-  
10 sistent with current practice." Finally, the KGB petition states "it is expected that resi-  
11 dents of Meyers Chuck will at some time in the future form a service area to provide  
12 services such as dock maintenance, solid waste disposal, wastewater treatment and  
13 disposal, or water treatment and distribution, depending upon when residents wish to  
14 organize and pay for provision of these services."  
15

16  
17 There are significant differences in relevant additional services offered by  
18 the Wrangell borough that would immediately benefit the Meyers Chuck/Union Bay resi-  
19 dents. Those services include search and rescue services, police, city hospital, boat  
20 harbor, and incarceration facilities. The leaders in Wrangell made a persistent and en-  
21 thusiastic effort to contact residents of Meyers Chuck and Union Bay to assure and con-  
22 firm the services that would benefit the residents of the area. To their credit, the people  
23 of Wrangell obviously showed energetic enthusiasm to be friendly, welcoming and help-  
24 ful to the people of the outlying areas of their proposed borough as they developed their  
25 petition.

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1 In addition, the Commission also addresses recent comments by residents  
2 of the Meyers Chuck/Union Bay communities withdrawing from their previous testimony  
3 supporting inclusion in the Wrangell borough. Some individuals made statements favor-  
4 ing the creation of an enclave and inclusion, at some future time, in a Prince of Wales  
5 Island borough. The Commission believes that such an enclave would violate the mini-  
6 mum number of local government units clause of article X, section 1 of the Alaska Con-  
7 stitution. If such an enclave were authorized, it would have impacted the Wrangell  
8 petition because of the constitutional mandate to embrace an area with common inter-  
9 ests to the maximum degree possible.<sup>9</sup> The common interests and interrelationships of  
10 Wrangell, Meyers Chuck and Union Bay is well documented in these proceedings and  
11 especially emphasized in initial written comments received from Meyers Chuck and Un-  
12 ion Bay residents. The Commission believes that the preferences of the local residents  
13 of Meyers Chuck and Union Bay were, at a minimum, ambiguous.  
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16 The Commission noted that including the Meyers Chuck/Union Bay area  
17 in the Wrangell borough rather than in the KGB differs from the recommendations by  
18 DCCED. However, the Commission found that the records contain a specific and per-  
19 suasive argument that a sufficient level of interrelationship exists between that  
20 191-square mile area and the Wrangell borough. That decision requires an amendment  
21 to the KGB Petition to exclude that area from the proposed annexation and the KGB  
22 Model Borough Boundaries. The Commission does not support the proposal of leaving  
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25 <sup>9</sup>That same conclusion would be applicable to this proceeding if the area had not been included  
26 in the Wrangell borough.

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1 the Meyers Chuck/Union Bay area in the unorganized borough, thereby creating an un-  
2 justified enclave.

3 Even with that 191-square mile deletion from the proposed KGB annexa-  
4 tion boundaries and the sparse population of the remaining area, the Commission finds  
5 that the KGB annexation proposal satisfies this standard.  
6

7 **Part D. The communications media and transportation facilities allow for the**  
8 **level of communications and exchange necessary to develop an inte-**  
9 **grated borough government (3 AAC 110.160(b)).**

10 At pp. 48 - 55 of its *Preliminary Report*, DCCED addressed the issue of  
11 whether the KGB proposal satisfied this standard. DCCED observed that in the context  
12 of large and natural regions, the communications media and transportation facilities in  
13 the proposed expanded boundaries of the KGB allow for the level of communications  
14 and exchange necessary to develop an integrated borough government.

15 Based on its review of the Alaska Constitution, prior decisions of the  
16 Commission, and other relevant materials, DCCED concluded that the KGB annexation  
17 proposal satisfied this standard. DCCED affirmed that review, analysis, and conclusion  
18 in its *Final Report*.

19 The Commission concurs with DCCED's analysis of this boundary  
20 standard and adopts that analysis by reference for purposes of this decision statement.

21 The Commission observes that in southern southeast Alaska, Ketchikan is the regional  
22

1 center for transportation, retail, business, medical, and other services.<sup>10</sup> The  
2 Commission agrees that the KGB proposal satisfies this standard.

3  
4 **Part E. The population within the proposed expanded KGB boundaries, as  
5 amended, is sufficiently large and stable to support the resulting bor-  
6 ough (3 AAC 110.170).**

6 This standard is addressed on pp. 55 - 59 of its *Preliminary Report*.  
7 Among other things, DCCED noted that the KGB's population is 63 percent greater than  
8 the median population of all organized boroughs in Alaska. DCCED also noted that the  
9 minimal population and federal ownership of much of the land in the area proposed for  
10 annexation will place little demand on borough services. Thus, DCCED found it rea-  
11 sonable to conclude that the size and stability of population within the proposed new  
12 KGB boundaries are sufficient to support the expanded borough. DCCED concluded  
13 that the KGB proposal satisfies this standard. DCCED affirmed that review, analysis,  
14 and conclusion in its *Final Report*.

15  
16 The Commission concurs with DCCED's analysis of this standard and  
17 adopts that analysis by reference for purposes of this decision statement. The deletion  
18 of the Meyers Chuck/Union Bay area from the KGB's proposed boundaries has minimal  
19 or no effect on this conclusion. The Commission finds that the KGB proposal satisfies  
20 this standard.  
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25 <sup>10</sup>DCCED *Final Report*, Appendix H.

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1 **Part F. The economy within the proposed borough boundaries, as amended, in-**  
2 **cludes the human and financial resources necessary to provide essential**  
3 **borough services on an efficient, cost-effective level (3 AAC 110.180).**

4 DCCED addressed this standard on pp. 59 - 82 of its *Preliminary Report*.  
5 DCCED found that given the reasonably anticipated functions, expenses, and income of  
6 the KGB in the area proposed for annexation; the ability of the KGB to generate and col-  
7 lect local revenue; and the feasibility and plausibility of the KGB's anticipated operating  
8 and capital budgets, the KGB annexation proposal is fiscally sound. DCCED further  
9 stated that the economic base, property valuations, land use, existing and reasonably  
10 anticipated development, and personal income in the KGB's proposed expanded  
11 boundaries demonstrate that the economy in the greater Ketchikan region is capable of  
12 supporting the proposed expanded borough government. Moreover, DCCED noted that  
13 there are sufficient employable persons to serve the needs of the proposed expanded  
14 borough. DCCED concluded that the KGB proposal satisfies this standard. DCCED  
15 affirmed that review, analysis, and conclusion in its *Final Report*.  
16

17 The Commission concurs with DCCED's analysis of this standard and  
18 adopts that analysis by reference for purposes of this decision statement. The deletion  
19 of the Meyers Chuck/Union Bay area from the KGB's proposed boundaries has minimal  
20 or no effect on this conclusion. The Commission finds that the KGB proposal satisfies  
21 this standard.  
22

1 **Part G. The proposed new boundaries of the borough, as amended, conform gen-**  
2 **erally to natural geography; include all land and water necessary to pro-**  
3 **vide the full development of essential borough services on an efficient,**  
4 **cost-effective level; and are otherwise proper (3 AAC 110.190).**

5 This standard is addressed on pp. 82 - 91 of DCCED's *Preliminary Report*.

6 DCCED examined land-use and ownership patterns, population density patterns, exist-  
7 ing and reasonably anticipated transportation patterns and facilities, natural geographi-  
8 cal features and environmental factors, model borough boundaries, and other factors.  
9 DCCED found it is evident that the proposed new boundaries of the KGB conform gen-  
10 erally to natural geography, include all land and water necessary to provide the full de-  
11 velopment of essential borough services on an efficient and cost-effective level, and are  
12 otherwise proper.

13 DCCED recognized that the KGB annexation proposal creates a  
14 205-square mile enclave in and around Hyder, albeit for the short term. However,  
15 DCCED found that such an enclave would not result in inefficient, cost-ineffective ser-  
16 vice delivery in the near-term. DCCED noted that if a Prince of Wales Island Borough  
17 were formed, the enclave would become a small remnant of the former Southeast Is-  
18 land Regional Educational Attendance Area, which currently provides education to stu-  
19 dents in Hyder. DCCED recommend that the Hyder enclave should be annexed to the  
20 KGB at that time. In its *Final Report*, DCCED also observed that concerns by the De-  
21 partment of Education and Early Development (DEED) regarding the proposed exclu-  
22 sion of Hyder at this time had been resolved after DEED's review of the Petition in this  
23 regard and that it DEED did not oppose the KGB's annexation proposal.  
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DCCED also noted that the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough. DCCED found that the KGB proposal satisfies this boundary standard and affirmed that review, analysis, and conclusion in its *Final Report*.

With the exception of conclusions regarding the Meyers Chuck/Union Bay area, the Commission concurs with DCCED's analysis of this standard and adopts that analysis by reference for purposes of this decision statement. As discussed above, the Commission concluded that the Meyers Chuck/Union Bay area has more in common with the new Wrangell borough than it does with the KGB, and thus deleted that area from the annexation boundaries proposed by the KGB. The deletion of the Meyers Chuck/Union Bay area from the KGB's proposed boundaries has minimal or no effect on the Commission's analysis regarding this standard.

As noted above, this standard is also relevant to concerns expressed by Respondent Metlakatla, both in writing and at hearing, regarding the southern boundaries of the KGB proposal that includes Duke Island and surrounding waters. The Commission notes Metlakatla's clarification that its reservation expansion request to the Secretary of Interior is only a maritime expansion, not a land expansion for Duke Island. Nonetheless, as noted at its decisional session, the Commission cannot find that Metlakatla's request to the Secretary would be impacted by granting KGB's annexation proposal. The reservation boundary request to the Secretary is a process totally separate from the Commission's boundary-change jurisdiction. If Metlakatla's request is granted

1 and its reservation waters are expanded, primary jurisdiction over those waters would  
2 shift. That fact would not change by approval of the KGB expansion.<sup>11</sup>

3 In its comments, Metlakatla also raised other issues with regard to the  
4 KGB's proposed annexation, including an assertion that it creates Annette Island as an  
5 enclave. The KGB's Reply Brief,<sup>12</sup> on pp. 26- 27, addresses these issues. The Com-  
6 mission concurs with those analyses and conclusions.

7  
8 The Commission agrees with DCCED that this standard is satisfied.  
9 However, at its decisional meeting on the KGB annexation, the Commission expressed  
10 concern with Hyder's status as an enclave. In approving the KGB annexation, as  
11 amended, the Commission directed the KGB to file a petition within five years to annex  
12 the Hyder area. In that regard, the Commission encourages the KGB to work toward  
13 developing communication, transportation, and economic ties between Hyder and the  
14 Borough, including working with the State to help develop these ties. The Commission  
15 noted that this was particularly appropriate in view of the federal revenues the Borough  
16 will be receiving from the newly annexed area. If such a petition is not filed, the Com-  
17 mission committed to directing DCCED to file such a petition.<sup>13</sup> In that event, DCCED  
18 should develop a petition in coordination with the DEED and KGB staff.

19  
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23 <sup>11</sup>DCCED addressed Metlakatla's expansion in its *Final Report*, at pp.17 - 19. The Petitioner also  
24 addressed this issue in its Reply Brief at pp. 28 -30. The Commission concurs with those analyses.

25 <sup>12</sup>In its *Final Report*, DCCED stated that it believed KGB's Reply brief cogently responded to all  
26 comments and briefs (p 4).

27 <sup>13</sup>If DCCED is directed to file such a petition, the staff persons working on such would, of course,  
28 not include employees assigned to serve as staff to the Commission.

1 **Part H. Annexation is in the best interests of the State (AS 29.06.040 and 3 AAC**  
2 **110.195).**

3 DCCED addressed this standard on pp. 91 - 98 of its *Preliminary Report*.

4 An annexation proposal may only be approved if the Commission finds that it serves the  
5 best interests of the State. DCCED's review of that standard included consideration of  
6 the constitutional principles of maximum local self-government and minimum numbers  
7 of local government units. DCCED also addressed the manner in which annexation will  
8 relieve the State of Alaska of the responsibility of providing local services and how an-  
9 nexation will result in broad policy benefit to the public statewide.

10 DCCED observed that the KGB annexation would have some adverse fis-  
11 cal impacts on communities in the unorganized borough, specifically through the loss of  
12 NFRs. However, DCCED noted that the Commission has repeatedly indicated that  
13 such circumstances are not relevant in terms of the applicable standards and are no  
14 basis to deny the proposal.

15 In its *Preliminary Report*, DCCED determined that the standard regarding  
16 the best interests of the State is satisfied. DCCED affirmed that review, analysis, and  
17 conclusion in its *Final Report*.

18 The Commission concurs with DCCED's analysis of this standard and  
19 adopts that analysis by reference for purposes of this decision statement. As set out  
20 above, the loss of NFRs to other communities in southeast Alaska was the focus of the  
21 majority of written and oral comment in this proceeding. As observed at the decisional  
22 session, the Commission is very sympathetic to that loss. However, it is not a bar to the  
23 development of boroughs or their extension. It is a factor that is considered in  
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1 consultation with the DEED and when considering the best interests of the State; and  
2 DEED does not oppose this annexation proposal.

3 Further, the Commission observes that commentors focused only on the  
4 loss of NFRs by the KGB annexation. No comments were filed in the Wrangell incorpo-  
5 ration proceeding regarding the identical NFR loss resulting from such incorporation.  
6 The Commission finds this inconsistent view troubling.  
7

8 Most specifically, the Commission endorses the prior Commission deci-  
9 sion rejecting the relevance of ephemeral financial considerations such as NFRs when  
10 considering the standards for borough formation or extension. As asserted by the 1999  
11 Commission, these programs may, over time, operate in a significantly different manner  
12 or even no longer exist. "In contrast," the Commission stated, "the formation of a bor-  
13 ough or the extension of a borough over a large area is a much more permanent ac-  
14 tion."<sup>14</sup>  
15

16 The Commission finds that the KGB proposal satisfies this standard.

17  
18 **Part I. The proposed annexation meets the legislative-review annexation stan-  
19 dard (3 AAC 110.200).**

20 This standard is addressed on pp. 98 - 104 of DCCED's *Preliminary Re-*  
21 *port*. The standard allows a legislative-review annexation if any one of certain condi-  
22 tions are present. DCCED found that several of those conditions evident in the KGB  
23 proposal. Among those, are that the area proposed for annexation manifests a reason-  
24 able need for borough government that can be met most efficiently and effectively by  
25

26 <sup>14</sup>KGB 1998 annexation proceeding: LBC 1999 *Statement of Decision*, p. 12.

1 the KGB. Additionally, in a general sense, residents and property owners within the area  
2 proposed for annexation receive, or may be reasonably expected to receive, directly or  
3 indirectly, the benefit of borough government without commensurate tax contributions.  
4 Annexation of the area will also enable the KGB to plan and control reasonably antici-  
5 pated growth or development in the area that otherwise may adversely affect the area  
6 and population within the KGB.

7  
8 DCCED further found that annexation of the area will promote maximum  
9 local self-government with a minimum number of government units. Annexation of the  
10 area will also enhance the extent to which the KGB meets the legal standards for bor-  
11 ough incorporation. Finally, DCCED observed that specific policies set out in Alaska's  
12 Constitution are best served through annexation of the area by the legislative-review  
13 process.

14  
15 In its *Preliminary Report*, DCCED concluded that this standard is satisfied  
16 and affirmed its review, analysis and conclusion in its *Final Report*. The Commission  
17 concurs with DCCED's analysis of this standard and adopts that analysis by reference  
18 for purposes of this decision statement. The Commission agrees that the KGB proposal  
19 satisfies this standard.

20  
21 **Part J. A proper plan for the orderly transition to borough government has been  
22 provided (3 AAC 110.900).**

23 DCCED addressed this standard on pp. 104 - 108 of its *Preliminary Re-*  
24 *port*. DCCED found that the KGB's transition plan demonstrates the Borough's capacity  
25 to extend borough services into the area proposed for annexation in the shortest practi-  
26 cable time after annexation. DCCED also found that the document includes a practical

1 plan for the assumption of all relevant and appropriate powers, duties, rights, and func-  
2 tions presently exercised by Southeast Island REAA and the State of Alaska in that  
3 area. DCCED concluded that KGB's transition plan satisfies this standard.

4 DCCED concluded that this standard is satisfied and affirmed its review,  
5 analysis and conclusion in its *Final Report*. The Commission concurs with DCCED's  
6 analysis of this standard and adopts that analysis by reference for purposes of this de-  
7 cision statement. The Commission finds that the KGB proposal satisfies this standard.  
8

9 **Part K. Whether the proposed annexation will have the effect of denying any per-  
10 son the enjoyment of any civil or political right, including voting rights,  
11 because of race, color, creed, sex, or national origin (3 AAC 110.910).**

12 This standard is addressed on pp. 108 - 114 of DCCED's *Preliminary Re-  
13 port*. DCCED found no evidence to indicate that the KGB annexation proposal will have  
14 the purpose or effect of discriminating based on race, color, creed, sex, or national ori-  
15 gin. DCCED stated that nothing suggests that the proposed annexation will have a ret-  
16 rogressive purpose or effect with regard to any civil or political right, including voting  
17 rights, because of race, color, creed, sex, or national origin. No minority-language  
18 groups covered by the federal Voting Rights Act exist in the area proposed for annexa-  
19 tion. Even if such groups existed in the area, DCCED found that there is no evidence to  
20 indicate that annexation will have the purpose or effect of discriminating against a lan-  
21 guage minority group.  
22

23 DCCED concluded that this standard is satisfied and that the proposed  
24 annexation does not violate any provision of the federal voting rights. Act. DCCED af-  
25 firmed its review, analysis and conclusion in its *Final Report*.  
26

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1 The Commission concurs with DCCED's analysis of this standard and  
2 adopts that analysis by reference for purposes of this decision statement. The Com-  
3 mission finds that the KGB proposal satisfies this standard.

4 As a final matter, the Commission will address the allegations regarding  
5 DCCED Staff in this proceeding, specifically Dan Bockhorst. The Commission finds no  
6 basis to support the ethical violations levied against Staff by the City of Craig and oth-  
7 ers. Mr. Bockhorst and Ms. McPherran have consistently performed their duties as  
8 Commission Staff in the most ethical and professional manner possible, including in this  
9 proceeding. The Commission holds them both in the highest regard.

11  
12 **III. ORDER OF THE COMMISSION**

13 On the basis set out in Section II of this decision statement, the Commis-  
14 sion determines that the Petition, as amended to delete the approximately 191-square  
15 mile area of Meyers Chuck and Union Bay, meets all applicable Constitutional, statu-  
16 tory, and regulatory standards for borough annexation and is in the best interest of the  
17 State. Accordingly, the Petition as amended, is approved.

18 Unless reconsideration is requested timely under 3 AAC 110.580 or the  
19 Commission, on its own motion, orders reconsideration under 3 AAC 110.580, the  
20 Commission will submit a recommendation for the KGB annexation proposal approved  
21 by this decision to the Second Session of the Twenty-fifth Alaska Legislature under arti-  
22 cle X, section 12 of the Constitution of the State of Alaska.

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1 Approved in writing this 5th day of December, 2007 (Commissioner Geor-  
2 gianna Zimmerle, not participating).

3 LOCAL BOUNDARY COMMISSION

4  
5 *Kermit L. Ketchum*  
6 By: Kermit L. Ketchum, Chair

7  
8 Attest:

9 *Jeanne McPherran*  
10 Jeanne McPherran, Staff

11  
12  
13 RECONSIDERATION BY THE COMMISSION

14 Within eighteen days after this decision becomes final under 3 AAC  
15 110.570(g), a person may file a request for reconsideration of the decision. The request  
16 must describe in detail the facts and analyses that support the request for reconsidera-  
17 tion under 3 AAC 110.180(e).<sup>15</sup> If the Commission has taken no action on a request for  
18 reconsideration within twenty days after the decision became final under  
19 3 AAC 110.570(g), the request is automatically denied.

20  
21 \_\_\_\_\_  
22 <sup>15</sup>The provisions of 3 AAC 110.580(e) set out the grounds on which reconsideration will be  
granted by the Commission:

- 23 (1) a substantial procedural error occurred in the original proceeding;  
24 (2) the original vote was based on fraud or misrepresentation;  
25 (3) the commission failed to address a material issue of fact or a control-  
ling principle of law; or

(continued . . . )

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If the Commission grants a request for reconsideration, a party opposing the reconsideration will be allotted ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

**JUDICIAL APPEAL**

A judicial appeal of this decision may also be made under the Alaska Rules of Appellate Procedure, Rule 601, *et seq.* An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

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( . . . continued )  
(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

**List of Persons Filing Comments  
Following Notice of KGB Annexation Petition**

1. Ed Stahl
2. Susan Millay
3. Debbie Johnson, et.al.
4. Jerry and Terry Gucker
5. Steve and Catherine Peavey
6. Tim and Donna Collins
7. Herbert J. and Shirley Lee
8. Dan and Janice Lang
9. Dan Higgins and Carol Brown
10. Brent and Debra Stucki
11. Carol Denton, Hyder Community Association
12. Shawn McAllister
13. Sheila Spores
14. City of Craig
15. Prince of Wales Community Advisory Council
16. Sandy Powers
17. Rebecca Welti and Glen Rice
18. Peter Rice
19. Bill Rotecki

### **Timeline of Events for Participation of DCCED Staff in KGB Annexation Proceeding**

- March 26, 2007:** Mr. Bockhorst begins his analysis of the Ketchikan annexation proposal, at which point he discussed policy aspects of the proposal with the former Director of the Division of Community and Regional Affairs (DCRA),<sup>1</sup> Mike Black.
- June 26, 2007:** Mr. Bockhorst's work on the 2007 preliminary report was complete and forwarded to the DCRA publications technician for formatting and publication.
- July 13, 2007:** The KGB preliminary report was published by DCCED.
- July 29, 2007:** Just over one month after Mr. Bockhorst completed his work on the annexation proposal for DCCED's 2007 preliminary report, the KGB first announced that it was recruiting for a Borough Manager.
- August 1, 2007:** In accordance with the Executive Branch Ethics Act, Mr. Bockhorst wrote a memorandum to the DCCED Ethics Supervisor disclosing an interest in applying for the KGB manager position. Mr. Bockhorst stated in his memorandum that he first became aware of the recruitment for the position on July 31. In his memorandum, he recused himself with respect to any and all future dealings regarding the Ketchikan annexation proposal. Mr. Bockhorst's work regarding the KGB annexation proceeding was immediately reassigned to Jeanne McPherren.
- October 15, 2007:** Ms. McPherren independently prepared the 2007 final report regarding the KGB annexation proposal.

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<sup>1</sup>Formerly known as the Division of Community Advocacy. DCRA is the component of DCCED that provides staff to the Commission.

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1 KETCHIKAN GATEWAY BOROUGH ANNEXATION  
2 OPENING STATEMENTS  
3 JOHN HILL KETCHIKAN GATEWAY BOROUGH  
4 JIM BRENNEN CITY OF WRANGELL  
5 LEROY WILDER METLAKATLA  
6 PETER CAFFALL-DAVIS HYDER  
7 TESTIMONY FOR KETCHIKAN GATEWAY BOROUGH  
8 DAVID LANDIS  
9 JOHN SHAY  
10 ROY ECKERT  
11 DICK COOSE (READ INTO RECORD BY JIM HILL)  
12 JOHN HILL  
13 MICHAEL HOUTS  
14 ROBERT BOYLE  
15 BRETT HYATT  
16 SCOTT BRANDT-ERICKSEN  
17 TESTIMONY FOR METLAKATLA  
18 BILL WILSON  
19 JEFF MORAN  
20 TESTIMONY FOR CITY OF WRANGELL  
21 CAROL RUSHMORE  
22 PUBLIC COMMENTS  
23 ELAINE PRICE COFFMAN COVE  
24 CAROLYN DUNCAN  
25 ANDREW RICHTER NAUKATI

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2	JOCELYN EDENSHAW	HYDABURG
3	RICH CARLSON	KLAWOCK
4	TERESA BROWN	
5	ROBERT BLASCO	ATTORNEY FOR CRAIG
6	BRETT AGENBROAD	METLAKATLA
7	MS. LEISHOLMN	METLAKATLA
8	SHERRY HAYWARD	METLAKATLA
9	JEFF PEREZ	KETCHIKAN
10	DEBBIE JOHNSON	UNION BAY
11	JIM VANALTVORST	CRAIG
12	JOHN BOLLING	CRAIG
13	JAMES STANLEY	KETCHIKAN
14	TERRAL WANZER	KETCHIKAN
15	CAROL BROWN	MEYERS CHUCK
16	DAN HIGGINS	MEYERS CHUCK
17	GLEN RICE	MEYERS CHUCK
18	KATHERINE PEAVEY	MEYERS CHUCK
19	JONI KUNTZ	CRAIG (VIA PHONE)
20	DENNIS WATSON	CRAIG (VIA PHONE)
21	RONALD ERICKSON	CRAIG (VIA PHONE)
22	VALERIE STEWARD	KLAWOCK (VIA PHONE)
23	JANICE BUSH	KLAWOCK (VIA PHONE)
24	NEVA ROBERTSON	KLAWOCK (VIA PHONE)
25	MS. ANDERSON	CRAIG (VIA PHONE)

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1	ELLEN CLARK	KLAWOCK (VIA PHONE)
2	KELLY LARSON	KLAWOCK (VIA PHONE)
3	HOMER MILLS	KLAWOCK (VIA PHONE)
4	DON MARVIN	KLAWOCK (VIA PHONE)
5	WEBSTER DEMMERT	KLAWOCK (VIA PHONE)
6	SABRINA DEMMERT	KLAWOCK (VIA PHONE)
7	DEBY REED	THORNE BAY (VIA PHONE)
8	WILLIAM UNKEL	GUSTAVUS (VIA PHONE/FAX)
9	CLOSING STATEMENTS	
10	SCOTT BRANDT-ERICKSEN	KETCHIKAN GATEWAY BOROUGH
11	JIM BRENNEN	CITY OF WRANGELL
12	LEROY WILDER	METLAKATLA
13	PETER CAFFALL-DAVIS	HYDER
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**Letter of Nonobjection from  
Department of Education and Early Development**

# STATE OF ALASKA

Department of Education & Early Development

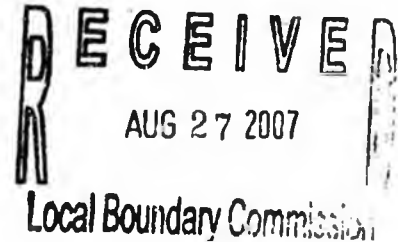
*Division of School Finance*

SARAH PALIN, GOVERNOR

Goldbelt Place  
801 West 10<sup>th</sup> Street, Suite 200  
P.O. Box 110500  
Juneau, Alaska 99811-0500  
Telephone: (907) 465-8679  
Fax: (907) 463-5279  
E-mail: eddyjeans@alaska.gov

August 22, 2007

Jeanne McPherran  
Department of Commerce Community and Economic Development  
550 West Seventh Ave., Suite 1770  
Anchorage, AK 99501-3510



Dear Ms. McPherran:

The Department of Education & Early Development (EED) has reviewed your August 2 letter regarding the petition for annexation to the Ketchikan Gateway Borough.

EED had a particular concern over the exclusion of the 205 mile Hyder enclave might remain indefinitely. The department requested more information regarding that section of land and what the Ketchikan Gateway Borough's position was regarding the future of it. After reviewing Exhibit K, the justification for excluding the Hyder enclave, it appears the Ketchikan Gateway Borough has addressed the department's concerns. EED is not opposed to the proposed annexation of the Ketchikan Gateway Borough.

Thank you,

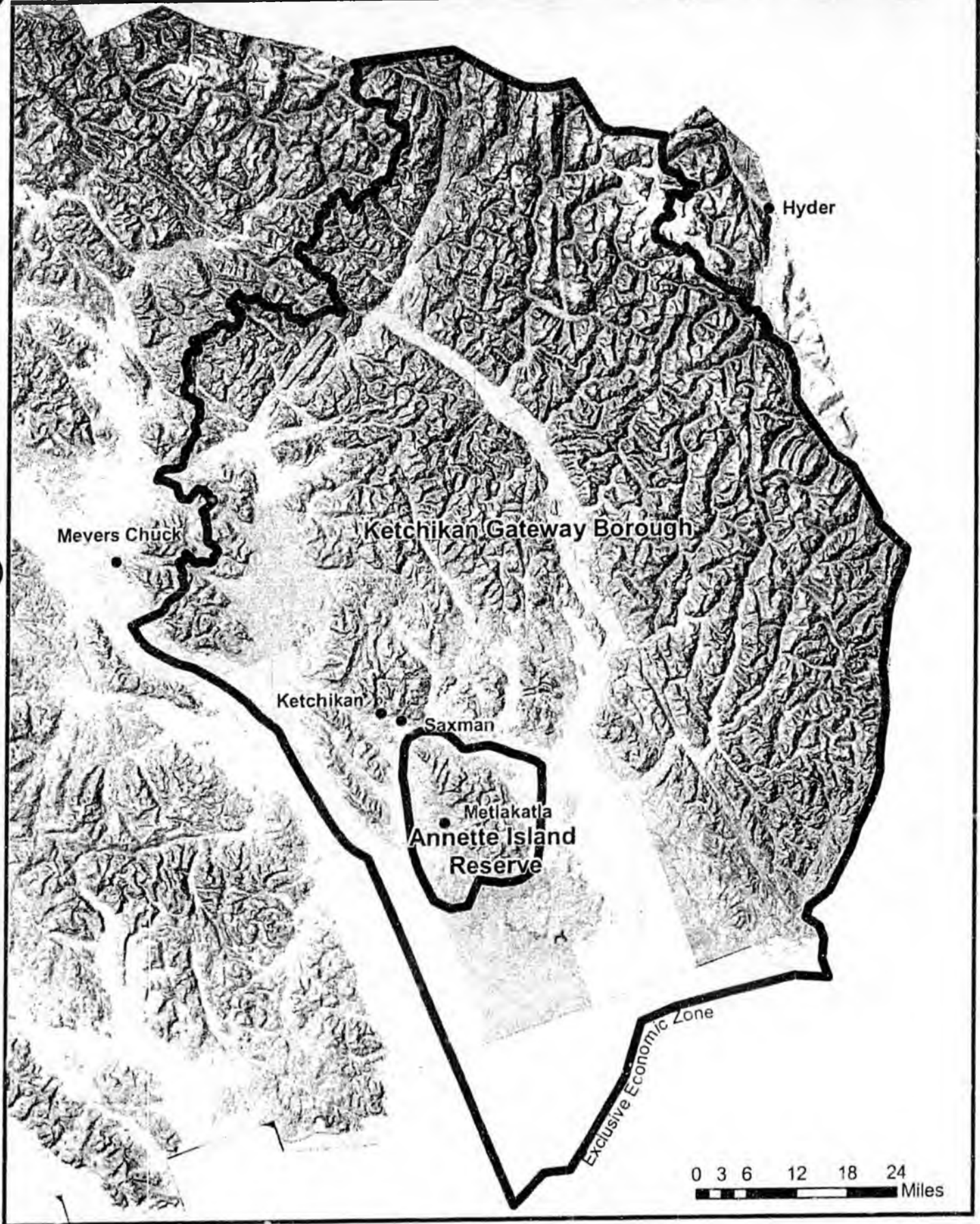
A handwritten signature in black ink, appearing to read "Eddy Jeans".

Eddy Jeans  
School Finance Director

cc: Lance Mertz  
Business Manager, KGBSD

**Map of Ketchikan Gateway Borough  
Following Annexation**

# Ketchikan Gateway Borough Boundary



0 3 6 12 18 24  
Miles



# State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, Alaska 99501  
Telephone: 907-269-4501 • Fax 907-269-4539

February 1, 2008

The Honorable Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

The Honorable Gabrielle LeDoux, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

The Honorable Donny Olson, Chair  
Senate Community and Regional Affairs Committee  
State Senate  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Subject: House Joint Resolution 30 and Senate Joint Resolution 15 re Disapproval of  
Local Boundary Commission Recommendation Regarding Annexation by the  
Ketchikan Gateway Borough

Dear Representatives Fairclough and LeDoux and Senator Olson:

The Local Boundary Commission has reviewed the above-referenced Resolutions, which have been referred to your respective Committees. Because the Resolutions are similar, the Commission is addressing its concerns by this joint letter to both Committees. The Commission opposes the Resolutions for numerous reasons, including our concern as to several misstatements of fact set out in the Resolutions.

The Commission's recommendation to annex approximately 4,510 square miles to Ketchikan is supported by the agency record and the procedures and standards for borough annexation. The Commission's recommendation complies with applicable constitutional, statutory, and regulation standards and procedures. In addition, the Department of Education and Early Development (DEED) filed a statement of nonobjection to the annexation.

The record in the current annexation proceeding<sup>1</sup> is lengthy and informative. Every member of the Commission who participated in the annexation proceeding<sup>2</sup> received and studied all documents in the case and heard the testimony of all parties and interested members of the public before making a decision.<sup>3</sup> The Commission encourages a review of that record before any endorsement is made of the Resolutions.

The following comments address the claims made in the Resolutions. First, there is a major error in the assertion that the Commission failed to include a directive in its Statement of Decision directing Ketchikan to file a petition to annex Hyder within five years. The Decision specifically states as follows regarding this issue:

In approving the KGB annexation, as amended, the Commission directed the KGB to file a petition within five years to annex the Hyder area. In that regard, the Commission encourages the KGB to work toward developing communication, transportation, and economic ties between Hyder and the Borough, including working with the State to help develop these ties. The Commission noted that this was particularly appropriate in view of the federal revenues the Borough will be receiving from the newly annexed area. If such a petition is not filed, the Commission committed to directing DCCED to file such a petition. In that event, DCCED should develop a petition in coordination with the DEED and KGB staff.<sup>4</sup>

With regard to the statements that the 1999 and 2007 applications are substantially similar, the Commission concurs only to the extent that the petitions were filed by the same petitioner and both sought annexation of a large area. Otherwise, the cases are dissimilar in many respects.

Both the controlling statutes and regulations dealing with annexation have been amended since the Commission's April 16, 1999, decision.

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<sup>1</sup>Although the annexation at issue in the Commission's recommendation and the Resolution was filed in early 2006, for ease of reference it will be referred to herein as the 2007 proceeding as that is when the Commission made its decision.

<sup>2</sup>Commissioner Georgianna Zimmerle did not participate as she had a conflict with respect to the Ketchikan annexation petition.

<sup>3</sup>This Commission is not a full-time agency, and its members are from each of Alaska's four judicial districts. Further, the members of the Commission, like many of the other State boards and commissions, serve on a volunteer basis, with no pay, and put their regular jobs and lives on hold while attending to an agency's business.

<sup>4</sup>LBC *Statement of Decision in Re Petition by the Ketchikan Gateway Borough for Legislative-Review Annexation of Approximately 4,701 Square Miles*, December 5, 2007 (p. 25) (footnote omitted) (hereinafter, "the 2007 Decision"). "KGB" is the acronym for the Ketchikan Gateway Borough; "DCCED" is the acronym for the Department of Commerce, Community, and Economic Development.

AS 29.06.040(a) was amended on June 30, 1999, by §3, ch. 86 SLA 1999, with an effective date of September 28, 1999. The amendment in legislative-drafting style<sup>5</sup> reads:

a) The Local Boundary Commission may consider any proposed municipal boundary change. **The commission may amend** [IT MAY REJECT] the proposed change **and may impose conditions on** [, ACCEPT] the proposed change. **If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change** [, OR AMEND AND ACCEPT THE PROPOSAL]. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

As noted above, in reaching its decision, the Commission complied with every directive of that statute, the Constitution, and the Commission's regulations. With regard to the latter, the Commission's regulations were modified in 2002 to address the 1999 statutory changes and other issues.

The composition of the current Commission is completely different from the 1999 Commission. A former Commission's rationale and conclusions are not binding on a subsequent Commission, particularly where the law and facts are different or distinguishable. Moreover, the Alaska Supreme Court has stated that the Commission has been given broad power to decide in the unique circumstances presented by "each" petition. (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974).

One of the reasons given by the 1999 Commission when it denied Ketchikan's 1999 petition was that Ketchikan failed to include the entirety of the area proposed in the Ketchikan Gateway Borough Model Borough Boundaries. The 1999 Commission believed it was important to follow the Model Borough Boundaries. However, the current Commission disagrees with the reliance that had been previously placed on the Model Borough Boundaries and discusses this very issue in depth in the 2007 Decision. (See, pp. 10-12 of the 2007 Decision.) In specific, this Commission states in pertinent part:

This Commission . . . notes that in the 1998 annexation, the KGB proposed to annex an area nearly identical to its Model Borough Boundaries. The area proposed for annexation at that time was 5,524 square miles, but it excluded two small enclaves of 21.4 square miles encompassing Meyers Chuck and Hyder. The effect of that annexation rejection was to leave over 5,500 square miles in the unorganized borough for the sake of 21.4 square miles. Not only is that an "unduly narrow reading of article X, section 1," it strikes this Commission as groundless in view of the Constitutional Framer's intent to provide "local

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<sup>5</sup>i.e., material underlined and in bold font is added; material capitalized and in brackets is deleted.

government for regions as well as localities and encompass lands with no present municipal use."

Moreover, this Commission believes that elevating the importance of Model Borough Boundaries over the intent of the Constitution not only misconstrues the intent behind their adoption but is also clearly erroneous. In its recent proceeding considering the formation of the Skagway borough, and again during its proceeding to revise its regulations, the Commission clarified that the purpose of the Model Borough Boundaries is for use only as a reference tool. They are not intended to totally constrain the formation of boroughs or annexation thereto.

In the 2007 proceeding, Ketchikan sought to annex the Meyers Chuck/Union Bay area, which was in the Borough's Model Borough Boundaries. Ketchikan's exclusion of Meyers Chuck/Union Bay in its 1998 petition was a noted reason for the 1999 Commission's rejection of the petition. An important factual change from 1998 to 2007 concerns the filing of a competing petition that included the Meyers Chuck/Union Bay area. At the same time the KGB was seeking annexation, a petition for a proposed Wrangell Borough was also under consideration by the LBC. Both petitions sought the Meyers Chuck/Union Bay area. In the end, the Commission approved inclusion of that Meyers Chuck/Union Bay area as part of the new Wrangell borough. In effect, the 2007 Decision modified Ketchikan's Model Borough Boundaries and those of the Wrangell/Petersburg Model Borough Boundaries as well.

While the Hyder area was excluded from both Ketchikan annexation petitions, the current Commission conditioned its approval of the 2007 petition by imposing a duty on Ketchikan to file a petition to annex Hyder within five years. It is clear from the Commission's decision that the exclusion of Hyder was a specific concern, and the Commission provided a remedy. See p. 25 of the 2007 Decision, as referenced and set out above. DEED also reviewed the rationale underlying that short-term exclusion and did not object.

The Commission's 2007 Decision is founded in the law and based on the facts in the record. The 2007 Decision distinguishes the pertinent facts upon which its decisions and conclusions vary from those made by the 1999 Commission. There are, however, issues in which the current Commission concurred with the 1999 Commission's decision; more specifically with respect to the consideration given to the impact and distribution of National Forest Receipts.

In the 1999 Decision, the Commission stated:

The Commission rejects the notion that State policy positions concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA<sup>6</sup> in this proceeding.

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<sup>6</sup>DCRA [Department of Community and Regional Affairs] is the predecessor agency of DCCED.

National Forest Receipt and Payments in Lieu of Taxes programs are ephemeral – in a few years those programs may operate in a significantly different manner or may no longer exist. In contrast, the formation of a borough or the extension of a borough over a large area is a much more permanent action.

Further, it is poor public policy to suggest that each annexation or incorporation proposal should be weighed to ensure that revenues and costs are somehow balanced. Many areas within existing organized boroughs do not receive services commensurate with revenues generated by those areas. Conversely, many areas of organized boroughs receive services well beyond the level of revenues generated by those areas.

The Commission is guided by Alaska's constitution and standards established in law. These make little or no provision for consideration of the fiscal effects on which DCRA placed so much emphasis.<sup>7</sup>

This Commission adopted those findings and conclusions in its 2007 Decision at pp. 26-27. Among other things, the Commission stated:

As set out above, the loss of NFRs<sup>8</sup> to other communities in southeast Alaska was the focus of the majority of written and oral comment in this proceeding. As observed at the decisional session, the Commission is very sympathetic to that loss. However, it is not a bar to the development of boroughs or their extension. It is a factor that is considered in consultation with the DEED and when considering the best interests of the State; and DEED does not oppose this annexation proposal.

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<sup>7</sup>With regard to that emphasis, DCRA policy makers stated:

In the view of DCRA policy makers, significant adverse financial impact on communities in the unorganized borough are a **more important consideration than the constitutional principles** in this particular instance. Those adverse financial impacts are viewed by DCRA policy makers as an overriding consideration . . . ." (DCRA *Preliminary Report to the Local Boundary Commission Regarding the Ketchikan Gateway Borough's Petition to Annex Approximately 5,524 Square Miles*, October 1998, p. 77 (emphasis added)).

Those statements are particularly troubling to the current Commission. There is no consideration, adverse financial impact or otherwise, that overrides or is more important than constitutional principles. We each take an oath of office to uphold the Constitution and laws of the State of Alaska. They cannot be cast aside by policy makers or other public servants. In the 2007 proceeding, LBC Staff was not ordered to follow a political agenda by policy makers as was the case in the 1999 proceeding as discussed above.

<sup>8</sup>Acronym for National Forest Receipts.

The assertion in the Resolutions that the effect of the Ketchikan annexation on the surrounding unorganized borough was not properly taken into consideration by the Commission is simply not true.

With regard to the issue of the loss of NFRs as alleged in the Resolutions, we note that the NFR Program that underlies the amount of loss referenced in the Resolutions has sunset. Its reauthorization and funding is a matter before the U.S. Congress. The Alaska Legislature has been made aware of this matter. The *Joint Legislative Education Funding Task Force [(JLETF)] Report to the Governor and Legislature*, dated September 1, 2007, notes and recommends:

The National Forest Receipts Program was originally authorized under a 1908 federal law that required 25% of the annual income generated from activities within a national forest to be shared with the state and distributed to local governments located within the national forest. The decline of commercial timber harvests in the Tongass National Forest has resulted in a substantial decline in the revenue that numerous Alaska communities relied upon to fund their schools. **The federal government took temporary action to subsidize increased payments to the local communities through 2008. That funding may not continue.**

**The JLETF recommends that the Standing Committees on Education monitor federal actions regarding the National Forest Receipts Program and determine what state response may be appropriate as a result of those actions.** (JLETF Report, p. 10 (emphasis added)).

To date, that funding has not been reauthorized by Congress. The "temporary action" referred to above is the funding under the NFR Program, also known as the Secure Rural Schools Act. The NFR payments recently made by DCCED to eligible entities stem from the "seventh and final year of payments as authorized under the Secure Rural Schools Act and Community Self Determination Act of 2000, as extended by PL. 110-28 for one year." (*News Release*, United States Department of Agriculture, December 21, 2007, p. 1.) It is because of the ephemeral, uncertain nature of such funding that it is not a standard on which the Commission bases a boundary-change decision. Moreover, even if that funding is reauthorized, the earliest that Ketchikan could receive NFR payments for the annexed area is FY 2010.<sup>9</sup>

Further, when viewed in the context of total educational expenditures, the average impact from the Ketchikan annexation and Wrangell incorporation is approximately a 1.15 percent budget reduction in funding available for education in the city school districts and Regional Educational Attendances areas in Southeast Alaska.

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<sup>9</sup>The distribution of NFR monies under the Secure Rural Schools Act is based upon the area in a borough on September 30 of the prior year. Thus, for FY 09 (beginning July 2008), and assuming the Secure School funding is reauthorized in its prior form, the distributions would be based upon the area in the Ketchikan Gateway Borough on September 30, 2007.

In conclusion, the Commission is very troubled by the inaccuracies contained in the Resolutions and feels compelled to present its position as to those inaccuracies. If the Commission can provide further information or is needed in Committee hearings, please let us know.

Sincerely,

LOCAL BOUNDARY COMMISSION



Kermit L. Ketchum  
Chairman

cc: The Honorable Kyle Johansen  
The Honorable Bert Stedman  
The Honorable Bill Thomas  
The Honorable Al Kookesh  
The Honorable Lyda Green  
The Honorable John Harris  
The Honorable Sarah Palin  
DCCED Commissioner Emil Notti  
DCRA Director Tara Jollie  
LBC Staff Supervisor Jennifer Abbott



# KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET • KETCHIKAN, ALASKA 99901

• 907/228-6635 • Fax 907/228-6683

E-MAIL: BORO\_LAW@BOROUGH.KETCHIKAN.AK.US

OFFICE OF THE BOROUGH ATTORNEY

SCOTT A. BRANDT-ERICHSEN

BOROUGH ATTORNEY

January 31, 2008

Representative Kyle Johansen  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Subject: House Joint Resolution 30

Dear Representative Johansen,

As you know, a number of communities in the unorganized Borough in Southeast Alaska have appealed the Local Boundary Commission decision granting the Ketchikan Gateway Borough's petition for expansion of its boundaries. These entities have also convinced their legislator, Rep. Bill Thomas, to submit HJR 30 to the legislature seeking to block the annexation by obtaining approval of a majority of both houses for a legislative veto. The legislature should take no action on HJR 30.

HJR 30 itself contains inaccurate information. Among other things, the assertion that the LBC decision failed to provide direction regarding a future petition to annex Hyder is incorrect. Page 25 of the LBC decision is appended to this letter. Clearly the LBC gave direction on this issue. Additionally, the asserted loss of funds is speculative and inaccurate.

The opposition arises primarily from the desire of the communities on Prince of Wales Island and the Annette Island School district, who oppose the petition, to continue to receive a disproportionately high amount per student in federal National Forest funds for schools. The National Forest funds are divided into three types, funds for roads, funds for schools, and funds for other projects. The split is a percentage of the total. Road and education funds are transferred to a jurisdiction for their use. The unorganized Borough communities currently receive an inequitable portion of these funds. For example, in FY 2006 Craig received \$503.95 per capita in National Forest funds for education and roads, while Ketchikan received only \$27.45 per capita for these purposes.<sup>1</sup>

In terms of education funds, the unorganized Borough areas

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<sup>1</sup>Based upon 2006 figures provided by DCCED.

in Southeast Alaska received \$1,485.00 per student, while students in Ketchikan received only \$157.00 per student.<sup>2</sup> If the same level of National Forest funds distributions were maintained, and if both the Ketchikan annexation and the Wrangell incorporation are approved, the post annexation revenues for the education component of National Forest Receipts paid to the Prince of Wales communities would be \$1,256.00 per student, and in Ketchikan they would be \$548.00 per student based upon 2006 revenue and student enrollment data.

Any reduction in National Forest Receipts funds amounts to a small figure in comparison to other changes in educational funding. The changes from institution of the ISER formula involve a greater impact. For example, as a percentage of total educational expenditures the changes from the Ketchikan annexation and Wrangell incorporation would represent about a 1.1% budget reduction in the funding available for education in the Craig School District.<sup>3</sup> However, by comparison, the increases from HB 273 would raise the funding for the Craig School District 5% in 2010 and a total of almost 10% over a 4 year period ending in 2013. As a percent of total educational expenses, the Annette Island School District would lose approximately 1.3% of their budget from the annexation, but would gain over 16% from HB 273. Against this background it is clear that the impacts of the Ketchikan boundary expansion are minor in relation to other pending changes in education funding, and as a percentage of the total educational expenses in each district.

Additionally, the continuation of high levels of National Forest funding are speculative. The program has not yet been re-authorized for next year. If it is not re-authorized, the drop in the funds available from this source, even without the annexation, would be 85% or more. The LBC has consistently ruled over the years that the redistribution of National Forest Receipts is not relevant to the legitimate expansion of local government services in the State. The speculative nature of the amounts and reliability of the funds underscores the rationale for this position.

Even if National Forest funds should be considered, as discussed above, when set in context, the Ketchikan annexation has only a minor effect on the funding picture for the Prince of Wales communities and other areas in the unorganized Borough in Southeast Alaska. Further, even with the expected impacts, Prince of Wales communities would still receive more than twice as much in National Forest Funds per student than the Ketchikan Gateway Borough.

It is also significant to note that the exclusion of Hyder

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<sup>2</sup>Based upon 2006 figures provided by DCCED.

<sup>3</sup>Based on 2006 revenue and expense numbers reported by DCCED.

is a red herring when it comes to funding. The Southeast Island School District receives more in revenues from the funding generated by the students in Hyder than it takes to fund services to those students<sup>4</sup>. Thus, a potential annexation of Hyder by the Ketchikan Gateway Borough would pose a greater fiscal impact to the SISD than the relatively minor reorganization of forest receipts.

Stepping back and looking at the big picture regarding Municipal boundaries statewide, there are many reasons that annexation of areas into Boroughs is in the State's best interests. For example, it would help the Ketchikan Gateway Borough better provide emergency rescue services in the Misty Fjords areas where those services were sorely needed last season due to a plane crash involving tourists. It will provide a basis for planning and land use regulation if U.S. Borax opens up their Molybdenum mine at Bokan Mountain, or if mining activity increases on the Cleveland Peninsula or on Duke Island. It will allow the people most affected by these and other activities to have a voice in the planning of development. It also reduces the area in which the State must be the primary service provider. All of these advantages and improvements in delivery of public services flow from the annexation.

Another significant point is that, of the alleged loss in National Forest funds, the cities of Petersburg and Wrangell are the two cities which in 2007 received the largest single distributions in the unorganized Borough areas of Southeast Alaska.<sup>5</sup> Neither Petersburg nor Wrangell opposed the Ketchikan annexation petition. Neither have they objected to the shift in National Forest funds.

Interestingly, if Wrangell's petition is successful, that action will shift about \$250,000 from the unorganized Borough to the new Wrangell Borough. Yet the aggrieved communities on Prince of Wales did not object to the Wrangell petition. Petersburg is reportedly beginning the process for their own Borough incorporation petition. Whether that effort is opposed based upon impacts

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<sup>4</sup>According to the 2006 SEISD budget, it cost \$93,864 to provide services in Hyder. Based on calculations by the Ketchikan School District finance office, the students in Hyder would generate \$254,379 in revenues from the State Foundation formula under the current formula.  $(1.194 \text{ (district cost factor-old formula)} \times 39.6 \text{ base student multiplier for between 10 and 20 students (14.17.450 School size factor)} \times \$5,380 \text{ (base student allocation)})$ . With the district cost factor under the ISER adjustments, the amount of foundation funding only increases.

<sup>5</sup>According to the arguments offered by the City of Craig to the LBC, \$417,802.00, or about 1/3, of the reduction in funds to communities in the unorganized Borough in Southeast Alaska would come from Petersburg and Wrangell.

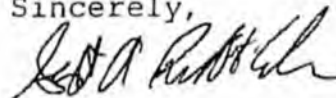
shifting National Forest funds remains to be seen.

Additionally, the City of Craig remains silent about the over \$250,000 or more in educational funding which it is taking from the Ketchikan School district through the City's illegal<sup>6</sup> operation of a correspondence school providing public education to students who are within the Ketchikan Gateway Borough's boundaries without permission from the Ketchikan Gateway Borough. This activity improperly deprives the Ketchikan Gateway Borough School District of funds in an amount more than twice the amount Craig is claiming to lose in Forest receipts. Craig is happy to take funding from the schools in Ketchikan for 51 students who reside in the Ketchikan Gateway Borough, but are enrolled in the Craig School district correspondence program. When the issues are fully examined, it is apparent that it is the City of Craig which is improperly taking education funding from Ketchikan students, not the other way around.

With respect to HJR 30, the legislature should take no action. Despite the noise and hoopla generated by the City of Craig and other Prince of Wales Island communities, the facts show that the only concerns are financial, they are based solely on National Forest Receipts, the future of which is very uncertain, and that the magnitude of any adverse financial impacts on those opposing the annexation are minor. The LBC, and the DEED, have fully and fairly considered the issues. When a long term view of the best interests of the State is examined, it is clear that the Legislature should let the LBC decision stand.

If I can provide any further information concerning this issue please contact me at your convenience.

Sincerely,



Scott A. Brandt-Erichsen  
Borough Attorney

CC: Mayor Williams  
Ray Matiashowski  
Mike Houts

\\Mainsvr\kgbdocs\Law\Letters\1.HJR 30.johansen.wpd

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"The Ketchikan Gateway Borough is the only entity other than the State of Alaska with the legal authority to exercise public education powers within the boundaries of the Ketchikan Gateway Borough.

Local Boundary Commission  
550 West Seventh Avenue, Suite 1700  
Anchorage, Alaska 99501  
(907) 269-4560 (tel); (907) 269-4539 (fax)

1 and its reservation waters are expanded, primary jurisdiction over those waters would  
2 shift. That fact would not change by approval of the KGB expansion.<sup>11</sup>

3 In its comments, Metlakatla also raised other issues with regard to the  
4 KGB's proposed annexation, including an assertion that it creates Annette Island as an  
5 enclave. The KGB's Reply Brief,<sup>12</sup> on pp. 26- 27, addresses these issues. The Com-  
6 mission concurs with those analyses and conclusions.  
7

8 The Commission agrees with DCCED that this standard is satisfied.  
9 However, at its decisional meeting on the KGB annexation, the Commission expressed  
10 concern with Hyder's status as an enclave. In approving the KGB annexation, as  
11 amended, the Commission directed the KGB to file a petition within five years to annex  
12 the Hyder area. In that regard, the Commission encourages the KGB to work toward  
13 developing communication, transportation, and economic ties between Hyder and the  
14 Borough, including working with the State to help develop these ties. The Commission  
15 noted that this was particularly appropriate in view of the federal revenues the Borough  
16 will be receiving from the newly annexed area. If such a petition is not filed, the Com-  
17 mission committed to directing DCCED to file such a petition.<sup>13</sup> In that event, DCCED  
18 should develop a petition in coordination with the DEED and KGB staff.  
19  
20  
21  
22

23 <sup>11</sup>DCCED addressed Metlakatla's expansion in its *Final Report*, at pp.17 - 19. The Petitioner also  
addressed this issue in its Reply Brief at pp. 28 -30. The Commission concurs with those analyses.

24 <sup>12</sup>In its *Final Report*, DCCED stated that it believed KGB's Reply brief cogently responded to all  
comments and briefs (p. 4).

25 <sup>13</sup>If DCCED is directed to file such a petition, the staff persons working on such would, of course,  
not include employees assigned to serve as staff to the Commission.  
26

**Impact of Wrangell Incorporation and Ketchikan Annexation Upon Distribution of National Forest Receipt Revenues  
in Southeast Alaska upon the Proportion of Receipts per Student  
Boroughs and Communities In Southeast Alaska based on FY '06 Data <sup>1</sup>**

*Now*

*with wrangell + ketchikan*

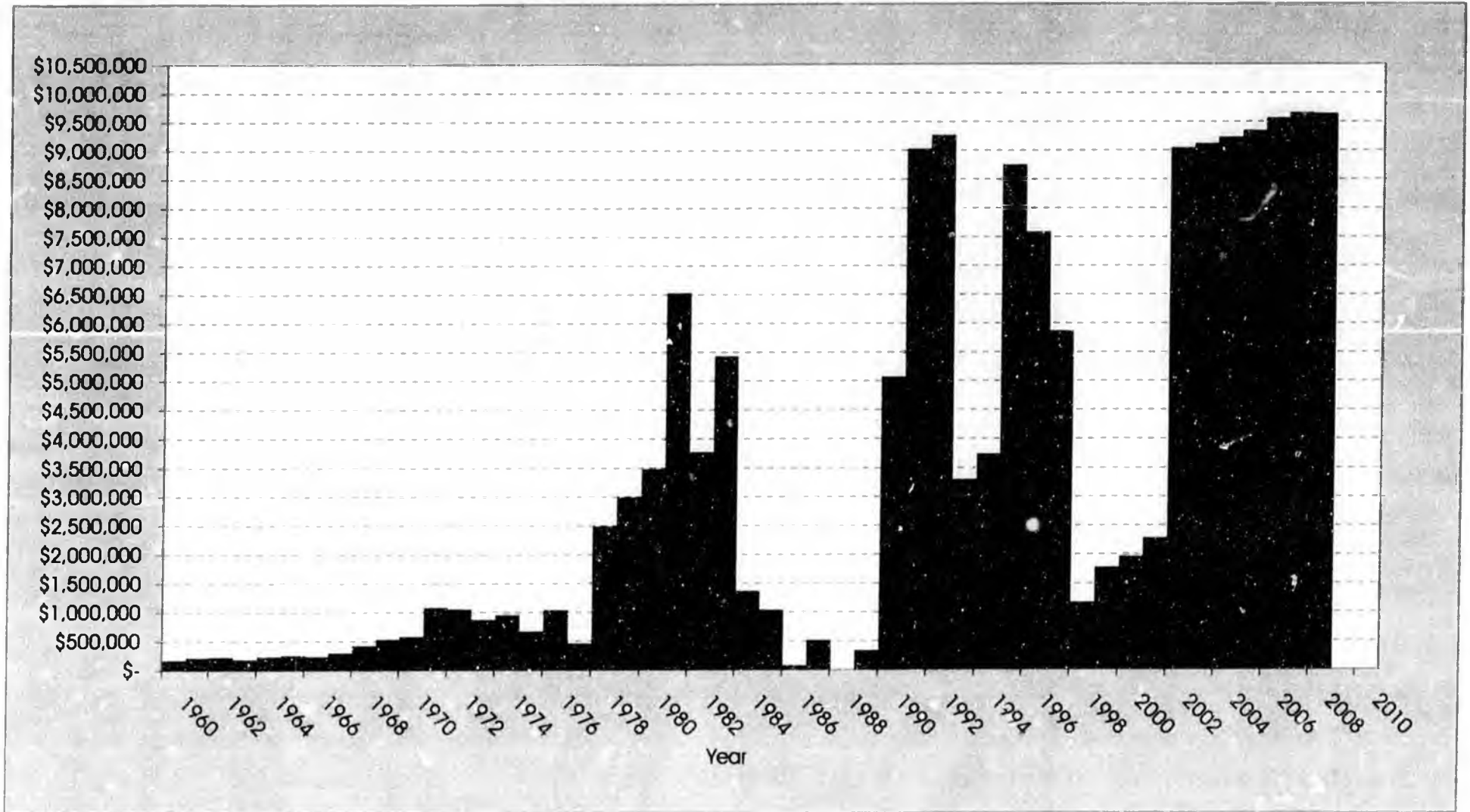
Boroughs	School Enrollment <sup>2</sup>	FY '06 Forest Receipts Available for Education	FY '06 Forest Receipts per Student	Projected Change in Forest Receipts from Annexation/ Incorporation	Amended Receipts per Student
<b>Boroughs</b>					
Haines	296.57	447,936	1,510	447,936	1,510
Juneau	5,306.28	836,450	158	836,450	158
<b>Ketchikan</b>	2,306.35	361,556	157	1,263,112	548
Sitka	1,478.31	878,324	594	878,324	594
Yakutat	133.50	599,607	4,491	599,607	4,491
<b>Home Rule</b>					
Petersburg	629.60	934,775	1,485	790,877	1,256
<b>Wrangell</b>	375.30	557,212	1,485	711,743	1,896
<b>First Class</b>					
Craig	355.80	528,261	1,485	446,941	1,256
Hoonah	171.70	254,925	1,485	215,682	1,256
Hydaburg	74.50	110,611	1,485	93,584	1,256
Kake	141.75	210,458	1,485	178,060	1,256
Klawock	159.60	236,960	1,485	200,483	1,256
Pelican	11.20	19,838	1,771	16,784	1,499
Skagway	108.75	161,462	1,485	136,607	1,256
<b>Second Class</b>					
Angoon (Chatham)	N/A	N/A	N/A	N/A	N/A
Coffman Cove (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Gustavus (Chatham)	N/A	N/A	N/A	N/A	N/A
Kasaan (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Port Alexander (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Tenakee Springs (Chatham)	N/A	N/A	N/A	N/A	N/A
Thorne Bay (Southeast Island)	N/A	N/A	N/A	N/A	N/A
<b>Federal Law</b>					
Metlakatla (Annette Island)	N/A	N/A	N/A	N/A	N/A
<b>REAA's</b>					
Annette Island	298.35	442,964	1,485	374,775	1,256
Chatham	195.10	289,667	1,485	245,076	1,256
Southeast Island	212.00	314,759	1,485	266,305	1,256

<sup>1</sup> Source: DCCED

<sup>2</sup> Note that school FY '05 enrollment figures are used for FY '06 forest receipt calculations.

# Tongass National Forest Receipts

## Payments Forest-Wide 1960 - 2008



**Sonya Hymer**

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**From:** Saddler, Sally A (CED) [sally.saddler@alaska.gov]  
**Sent:** Monday, February 11, 2008 3:29 PM  
**To:** Sonya Hymer; Renee Limoge  
**Cc:** Kaci Schroeder; Rowland, Mindy B (GOV); Michael Black; Jollie, Tara L (CED); Abbott, Jennifer (CED); McPherran, Lorna J (CED); Davis, Mark R (CED); Rolfzen, Bill J (CED); Witty, Rachel L (LAW); Behr, Deborah E (LAW); Vandor, Marjorie L (LAW); Ted Leonard; Bockmon, Julia B (LAW)  
**Subject:** DCCED Talking Points on HJR30 Ketchikan Gateway Borough Annexation Petition  
**Attachments:** KGB Annex Talking Points 020808.pdf

Hi Renee and Sonya:

Attached are the talking points the department has pulled together regarding HJR30 to overturn the Local Boundary Decision on the Ketchikan Gateway Borough Annexation Petition. The points provide information in the following areas:

- Background of the Ketchikan Gateway Borough (KGB)
- The Local Boundary Commission (LBC) Response to the Resolutions
- Issue: Alleged Conflict of Interest Regarding LBC Staff
- Action Re: Ethics Issue Created when Mr Bockhorst Decided to Apply for the KGB Manager Position
- Background/timeline : Dan Bockhorst's Manager Application and the KGB Petition

The department does not have a position on the resolution which takes issue with the Local Boundary Commission's determination. For your information, the LBC is a quasi-judicial commission established in the constitution. The department provides technical and administrative staff to support the LBC, but the decision on the KGB petition belongs to the LBC.

The following LBC/DCCED/Law folks will be available for the hearing:

- Mr Lynn Chrystal, LBC Chair (expecting to fly to Juneau, planes and weather willing; but will be available off-net if he doesn't make it in)
- Bob Harcharek, LBC Vice-Chair (off-net)
- Jennifer Abbott, LBC Staff supervisor (replaced Dan Bockhorst) (Will be here in Juneau planes/weather willing)
- Lorna (Jeannie) McPherran, LBC Staff Person (off-net)
- Bill Rolfzen, Local Government Specialist (here in Juneau)
- Mark Davis, DCCED Ethics Supervisor (off-net)
- Rachael Witty, Backup AAG to Margie Vandor, LBC AAG (off-net)

Let me know if you have question and/or need additional information.

See you in the morning.

Sally

**Talking Points**  
**HJR 30/ SJR 15 Disapproving Ketchikan Annexation**  
Department of Commerce, Community, and Economic Development  
*8 February 2008*

These resolutions would disapprove the recommendation of the Local Boundary Commission received by the legislature in January 2008 regarding the annexation of territory to the Ketchikan Gateway Borough (KGB).

**Background on KGB Annexation**

- On January 23 the Local Boundary Commission (LBC) presented its approval of the KGB annexation petition to the Legislature for review under article X, section 12 of the Constitution of the State of Alaska.
- The Commission's decision approves the annexation of 4,510 square miles to the KGB.
- Unless the Legislature disapproves the LBC decision by passing HJR 30, sponsored by Rep. Thomas, or SJR 15, sponsored by Sen. Al Kookesh, the Commission's decision will go into effect 45 days from the date the Commission presented it to the Legislature (i.e., on March 9, 2008).
- The Department of Education and Early Development (DEED) filed a letter of non-objection to the KGB annexation.
  
- Impacts of the LBC decision regarding National Forest Receipts (NFR):
  - The KGB would acquire 4,510 square miles of unorganized borough land and, in FY 2010, the possible addition of \$1.27 million in NFR payments, if the Secure Rural Schools Act portion of the NFR Program is reauthorized by Congress in its current form and at the 2002-2007 funding levels.
  - If the annexation becomes effective, Southeast Alaska communities in the unorganized borough could lose a combined \$1.27 million in NFR payments if the NFR Program is reauthorized in its current form and at its 2002-2007 levels.
  - The portion of the NFR program, which has included funds for the Secure Rural Schools Act since 2002, is sunset; unless reauthorized by Congress, the amount of NFR funding will drop significantly for **all** schools districts in Southeast, not just those on Prince of Wales Island.
  - DEED did not oppose the annexation.
  - The Legislature's Joint Legislative Education Task Force has addressed the sunset provisions of the Secure Rural Schools Act provisions in the NFR Program and is monitoring the issue.

## The LBC's Response to Resolutions

- The LBC has written to both the House and Senate Community and Regional Affairs Committees regarding the Resolutions and errors contained therein.
- The Commission explained differences between the 1998 KGB annexation proceeding and the 2006 annexation proceeding. Primary points are:
  - The members of the LBC who considered the 1998 petition are different from the LBC members who considered the current petition.
  - The rationale and conclusions of a former LCB are not binding on a subsequent LBC.
  - The LBC's regulations and controlling statutes have changed since 1999.
  - In 1974 the Alaska Supreme Court stated the LBC has been given broad power to decide in the unique circumstances presented by "each" petition.
  - The current LBC disagrees with the reliance that had been previously placed on the Model Borough Boundaries.
  - The KGB's 2006 petition differs in that it includes the Meyers Chuck/Union Bay area.
  - The Commission's decision amends the Model Borough Boundaries of the KGB and of the Wrangell/Petersburg Model Borough Boundaries.
  - The LBC conditioned its approval regarding the 2006 petition by imposing a duty on the KGB to file a petition to annex Hyder within five years.
- The current LBC also responded to the concern for loss of NFR Payment, agreeing with the 1999 decision which stated:
  - *The commission rejects the notion that state policy position concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA in this proceeding. NFR and Payments in Lieu of Taxes programs are ephemeral-in a few years those programs may operate in a significantly different manner or may no longer exist. In contrast, the formation of a borough or the extension of a borough over a large area is a much more permanent action.*

*Further, it is poor public policy to suggest that each annexation or incorporation proposal should be weighed to ensure that revenues and costs are somehow balanced. Many areas within existing organized boroughs do not receive services commensurate with revenues generated by those areas. Conversely, many areas of organized boroughs receive services well beyond the level of revenues generated by those areas.*

*The commission is guided by Alaska's constitution and standards established in law. These make little or no provision for consideration of the fiscal effects on which DCRA placed so much emphasis.*

- The LBC also stated with regard to the loss of NFR Payment:
  - *...The Commission is very sympathetic to that loss. However, it is not a bar to the development of boroughs or their extension. It is a factor that is considered in consultation with the DEED and when considering the best interests of the state; and DEED does not oppose this annexation proposal.*

**Issue: Alleged Conflict of Interest Regarding LBC Staff**

- The City of Craig City Administrator, Jon Bolling, has expressed concern about a possible conflict of interest regarding former LBC staff member Dan Bockhorst.
- On June 28, 2007, the LBC staff completed its preliminary report regarding the proposal. This report was principally authored by Mr. Bockhorst. It was released for public review and comment in mid-July.
- In late July, Mr. Bockhorst became aware that the KGB was recruiting for the position of Borough manager. He determined to apply for, and was offered and accepted, the position in October.
- Mr. Bolling called for an investigation into the circumstances and/or timeline of Mr. Bockhorst receiving the manager position and his recommendations to the LBC regarding the annexation.
- One of Mr. Bolling's arguments is what he alleges to be a reversal of position by Mr. Bockhorst and the LBC from a similar petition submitted by KGB in 1998.
- The City of Craig is pressing its legislators to pass resolutions disapproving the LBC Board's decision.

**Action re: Ethics Issue Created When Mr. Bockhorst Decided to Apply for KGB Manager Position**

- When Mr. Bockhorst learned of the job opening, he sought advice from his ethics supervisor and the state ethics attorney, disclosed the matter and advised that he would refrain from further action on the petition as required by the Ethics Act.
- The Department, in consultation with the State Ethics Attorney, advised Mr. Bockhorst that he must continue to refrain from any work on the annexation until his job application was rejected or he left state service.
- The Department ethics supervisor confirmed that the annexation matter had been reassigned.
- The state ethics attorney informed Mr. Bolling by letter that Mr. Bockhorst took the steps required by the Ethics Act when he learned of the vacancy, and based on the information provided by DCCED, there would be no basis to initiate an ethics investigation.
- The state ethics attorney also advised Mr. Bolling how to file an ethics complaint if he still felt there were facts showing a violation of the Ethics Act.
- Mr. Bolling later advised that the City was not complaining about an Ethics Act violation. Rather, its concern was an appearance of conflict.

### **Background/timeline: Dan Bockhorst's Manager Application and the KGB Petition**

- March 26, 2007 Mr. Bockhorst began preparing the required preliminary report on the proposed KGB annexation.
- June 28, 2007 Mr. Bockhorst finished preparing the preliminary report.
- July 29, 2007 The KGB announced it was recruiting for a Borough Manager.
- July 31, 2007 Mr. Bockhorst became aware of the recruitment for the position.
- July 31, 2007 Mr. Davis, the Department's Ethics Supervisor, was advised by Mr. Bockhorst that he had seen a public posting for the position of manager for the KGB and was considering applying.
- Mr. Davis advised Mr. Bockhorst to talk to the state ethics attorney regarding the Ethics Act requirements, which he did, also on the same day...
- Mr. Bockhorst was advised by the State's Ethics Attorney, Judy Bockmon, how to conduct himself in regard to his interest in the Ketchikan borough job.
- As required, on August 1, 2007, Mr. Bockhorst submitted an ethics disclosure to Mark Davis indicating his intent to apply for the job.
- In that disclosure, Mr. Bockhorst stated that he had recused himself from any further action regarding the KGB annexation petition during the KGB application process, as required by the Ethics Act.
- Mr. Davis confirmed with Mr. Bockhorst that he must continue to refrain from participation on the annexation petition.
- Work relating to Ketchikan matters was reassigned to other LBC staff; specifically Jeanne McPherrin, who independently reviewed all materials in the proceeding and prepared the Department's final report to the Commission in mid-October.
- October 13, 2007, Mr. Bockhorst was offered and accepted the KGB Manager position, leaving State service on October 31, 2007.
- In November, the LBC held a hearing on the KGB annexation petition, including public comments from the City of Craig and its attorney. The Commission made its decision regarding the annexation at a public meeting in Ketchikan on November 7, 2007, and published its written decision on December 5, 2007. In its decision, the Commission agreed with some of the staff recommendations and disapproved of others.

### **Department of Law's Notes re: Department Staff and Independence of the LBC**

- Allegation that the LBC decision was flawed because it concurred with the DCCED reports and recommendations is without merit.
- Preliminary and final reports and recommendations prepared by DCCED staff are required as part of the petition process under 3 AAC 110.530 [also by statute in case of incorporation - AS 29.05.080.]
- DCCED's report and recommendation on the annexation petition undisputedly was not the only evidence considered and discussed by the LBC in its proceedings. There was a full day of public hearings before the LBC. There were

briefs and public comments submitted by interested parties and persons, including the City of Craig, and other opponents of the annexation petition.

- Notwithstanding the LBC's concurrence with DCCED's recommendation on the KGB annexation petition, DCCED is **not** the entity delegated authority by the legislature to determine if an annexation meets standards and is in the best interests of the state. That authority has been delegated exclusively to the LBC. *See, Port Valdez Co. v. City of Valdez*, 522 P.2d 1147, 1155 (Alaska 1974); *Mobile Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974).
- A recommendation from DCCED on a petition to the LBC is simply that; a recommendation. It serves as evidence along with other evidence presented to the LBC in public testimony and briefs submitted regarding a petition.
- There is no legal basis upon which to find error simply because the LBC agreed with DCCED's report and recommendation in whole or in part.
- The record shows that the LBC considered the impacts on education funding and NFR distribution, based not only upon DCCED reports, but on all the evidence submitted by opponents and interested parties (written and oral testimony presented at the hearings and decisional meetings), and evidence that conflicted was addressed in its decisional document.
- The evidence submitted to the LBC, its discussions thereof, and the decisional document, constitutes a record that sufficiently reflects the basis for the decision of the LBC so as to enable meaningful judicial review. *See Alvarez v. Ketchikan Gateway Borough*, 28 P.3d 935, 940 (Alaska 2001) (threshold question on appeal is whether the record sufficiently reflects the basis for the board's decision so as to facilitate meaningful judicial review).

**Sonya Hymer**

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**From:** Saddler, Sally A (CED) [sally.saddler@alaska.gov]  
**Sent:** Monday, February 25, 2008 3:32 PM  
**To:** Sonya Hymer; Renee Limoge  
**Cc:** Abbott, Jennifer (CED); McPherran, Lorna J (CED); Jollie, Tara L (CED); Vandor, Marjorie L (LAW); Rolfzen, Bill J (CED); Kaci Schroeder; Nancy Barnes  
**Subject:** National Forest Receipts Information and Tomorrow's H CRA Hearing  
**Attachments:** LBC's NFR Conclusions 022508.pdf; NFR Overview 022508.pdf

Hi Ladies:

Attached are two documents that our LBC staff requested I forward to you regarding HJR 30/SJR 15:

- The first is an overview of National Forest Receipts, which we use when we get questions regarding the program.
- The second is a document that Commissioner Chrystal was going to address at the hearings on Feb. 12, which he was unable to attend. It is a compilation of the Commission work to bring the NFR issue to the Legislature over the last nine years in its annual reports and the *School Consolidation Report*. Jeannie McPherran referenced these efforts during the H CRA work session last week.

Thank you. If you have any questions, please let us know.

For tomorrow's hearing we will have the following folks available off-net for any questions:

- Lynn Chrystal, LBC Member
- Jennifer Abbott, DCCED LBC Supervisor
- Jeannie McPherran, Local Government Specialist for the LBC
- Bill Rolfzen, Local Government Specialist, Revenue Sharing Programs
- Margie Vandor, Law (may have a conflict that would cause her to be a bit late)

See you in the morning!

Sally

*National Forest Receipts*

*Overview since Statehood*

## National Forest Receipts

### Overview since Statehood

**Funding source:** Federal government

**How level of federal aid has been, is now, and will be determined:**

*FY 1960 – 2001:* 25 percent of the annual income earned from activities within a national forest was paid to the state. Alaska has two national forests, the Tongass and Chugach. The Tongass is much larger and has historically generated much more income than the Chugach. This is because Tongass income was derived principally from "stumpage" fees charged for commercial logging, while income in the Chugach was earned primarily from campground fees, recreation fees and mineral lease permits.

*FY 2002 – 2007:* Because of drastically declining national forest receipts, congress passed a law in 2000 altering the way in which funding was to be determined for FY 2002 - 2007. Under the revised law, the annual payment to the State is based on the average of the three highest payments during the "eligibility period" of fiscal years 1987-2000. Alaska's receives an annual payment of approximately \$9.3 million (annually adjusted for inflation). The State allocates 98.43 percent of the payment to the Tongass and 1.57 percent to the Chugach (the average proportion of the payments received for each national forest during the same eligibility period of 1987-2000).

*FY 2008 and beyond:* It is unknown how funding will be determined after FY 2007. Some believe that the federal government may revert to the 25 percent formula used prior to FY 2002.

**How national forest receipts funding has been and is now distributed by the State of Alaska:**

*1959 – 1963:* Because no organized boroughs existed within either national forest until 1963, all funds were retained by the State of Alaska.

*1964 – 1991:* Funds were allocated on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs and the State retained the share for the unorganized borough. Because the federal law required that national forest receipts be spent on schools and roads in the area where the payment was generated, the State held the view that the legal requirement was met because the State spent at least an amount equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

**1992 – Present:** The allocation of funds to organized boroughs remained unchanged. However, under the revised law, the State allocates the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, regional educational attendance areas in or near the portion of the national forest in the unorganized borough, and the community of Metlakatla. While payments to boroughs are based strictly on the amount of national forest within their respective boundaries, payments to cities and REAAs within the unorganized borough depend on student enrollment (for REAAs and city school districts) and amount of roads maintained (for cities and Metlakatla). Additionally, the State retains a portion of the road maintenance funding based on the miles of road it maintains outside of cities within the portion of the unorganized borough in the national forest.

The State and federal governments pay 100 percent of basic need for Regional Educational Attendance Areas (REAAs). Despite such, the State also pays significant amounts of National Forest Receipts to REAAs within the national forests (particularly the Tongass). Those REAAs receive funds not available to other REAAs outside the national forests.

#### **LBC Conclusions regarding National Forest Receipts**

Since 1999, the Commission has rejected the notion that State policy positions concerning borough incorporation and annexation should be driven by financial considerations such as the National Forest Receipts programs. The Commission notes that such programs are ephemeral and may operate in a significantly different manner or may no longer exist in a few years. In contrast, the Commission believes that the formation of a borough or the extension of a borough over a large area is a much more permanent action. Moreover, the Commission has asserted that it is poor public policy to suggest that each annexation or incorporation proposal should be weighed to ensure that revenues and costs are somehow balanced. The Commission is guided by Alaska's constitution and standards established in law. These make little or no provision for consideration of the fiscal effects on programs such as National Forest Receipts. However, the Commission has also noted that even if financial impacts were a relevant consideration, the adverse financial impacts on numerous local service providers in Ketchikan Gateway Borough annexation would have been de minimis in terms of the percentage of the operating budgets of each of the affected entities. (1999 Statement of Decision, Ketchikan Gateway Borough Annexation, p. 12; 2007 Statement of Decision, Ketchikan Gateway Borough Annexation, pp. 26-27.)

The LBC believes that the current methodology for allocating National Forest Receipts (and other revenue programs) is an impediment to borough formation and annexation. The Commission has repeatedly brought this issue to the attention of the Legislature. The following excerpt from the LBC's 2005 Annual Report to the Legislature is illustrative of the Commission's concern:

## **6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.**

As noted above, the 1991 Task Force on Governmental Roles concluded that ". . . recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the few remaining incentives to organize boroughs." Those issues are addressed below.

### **(A) National Forest Receipts**

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the revised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of \$62.60 per capita. In contrast, nineteen entities (three REAAs, nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of \$333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received \$1,027,546 in National Forest receipts. That amounted to \$1,423 for each student in those districts (a total of 722.3 ADM [average daily membership] for those three districts, including correspondence students).

In addition to being a disincentive to borough formation, the existing system creates broad opposition to certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift \$1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

*2005 Report of the Alaska Local Boundary Commission to the First Session of the Twenty-fourth Alaska State Legislature, pp. 129 -131. See also, 2004, 2006, and 2007 LBC annual reports to the Legislature and the LBC's 2004 School Consolidation Report.*

*Local Boundary Commission Conclusions Regarding  
National Forest Receipts in Southeast Alaska  
Between 1999 Ketchikan Gateway Borough  
Annexation Decision and 2007 Decision*

*LBC Annual Report*                      1999

“    2000

“    2001

“    2002

“    2004

“    2005

“    2006

“    2007

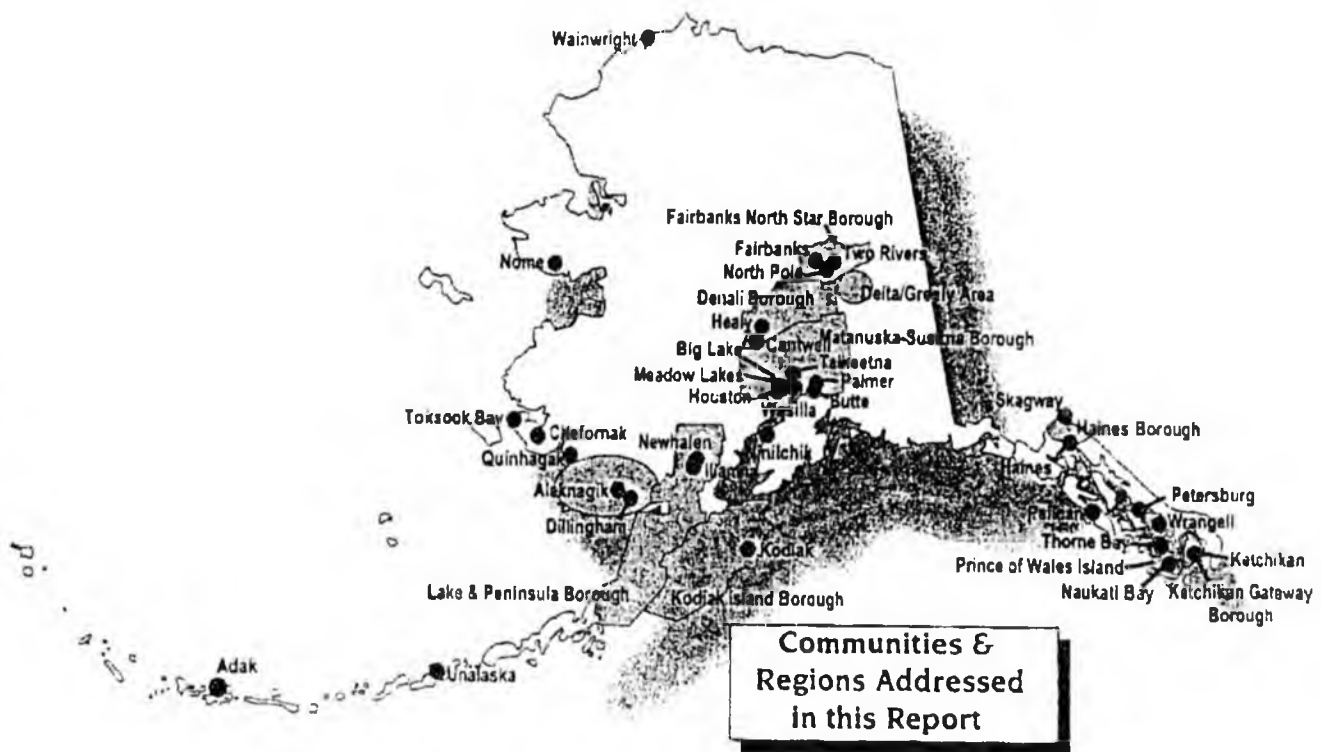
*School Consolidation Report*              2004

*(Excerpts attached.)*



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

January 28, 1999



Kevin Waring, Chairperson  
Kathleen Wasserman, First Judicial District  
Nancy Cannington, Second Judicial District  
Allan Tesche, Third Judicial District  
William Walters, Fourth Judicial District



Local Boundary Commission  
333 West Fourth Avenue, Suite 220  
Anchorage, Alaska 99501  
Phone 907-269-4500  
Fax 907-269-4539

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

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

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

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





## Chapter 4

### Policy Issues and Concerns

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

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

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

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

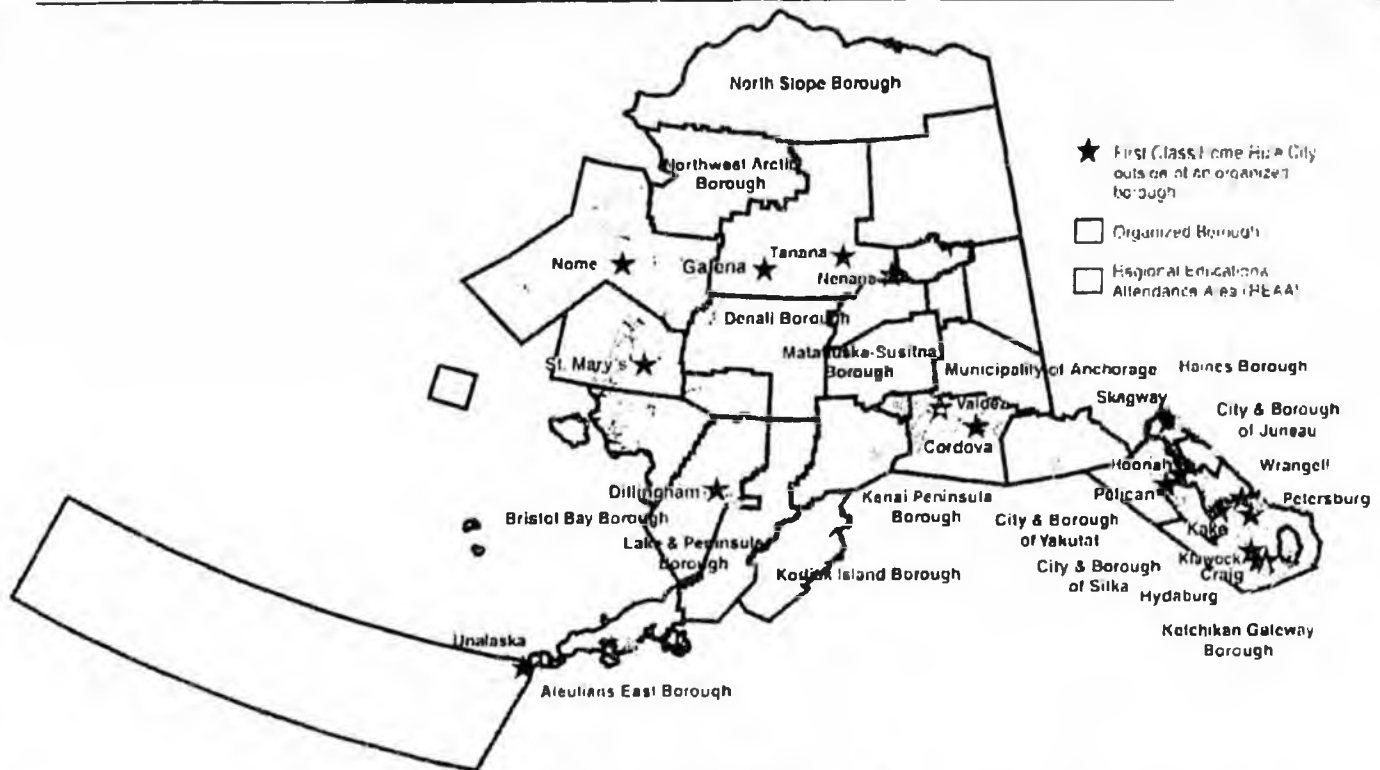
<sup>15</sup> The Commission stresses that its concern over the lack of incentives to form boroughs does not apply to the same degree to communities interested in forming single community borough governments. Concerns on the part of the Commission regarding prospective single community borough incorporation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

.....

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

\*  
sec  
pp. 69  
for list

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



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

<sup>27</sup> ibid., 406

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

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

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



- ❖ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ❖ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is

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

❖ In some cases, borough formation carries the prospect of *substantial* education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.

❖ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.

\*  
NFR

❖ 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).

\*  
PILT

❖ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.

❖ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.

❖ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.

❖ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those



 Boroughs Formed Voluntarily

- North Slope Borough
- Northwest Arctic Borough
- Aristol Bay Borough
- Lake and Peninsula Borough
- Aleutians East Borough
- Denali Borough
- City and Borough of Yakutat
- Haines Borough

 Legislatively Mandated Boroughs

- Fairbanks North Star Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- Kodiak Peninsula Borough
- Kodiak Island Borough
- City and Borough of Juneau
- City and Borough of Sitka
- Ketchikan Gateway Borough





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.

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

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.

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

For example, in the current fiscal year alone, organized boroughs are required by AS 14.17.410 to contribute more than \$135 million to support education.<sup>26</sup> Attempts by local governments to achieve a judicial remedy of perceived tax inequities inherent in AS 14.17.410 have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.<sup>27</sup> In that same case, Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

28 *Ibid.*, 406.

... the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>28</sup>

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

- ✕ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ✕ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.
- ✕ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.

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.

- ✗ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.
- ✗ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- ✗ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ✗ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ✗ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ✗ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ✗ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

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Perhaps no statistic is more illustrative of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.<sup>29</sup> 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.

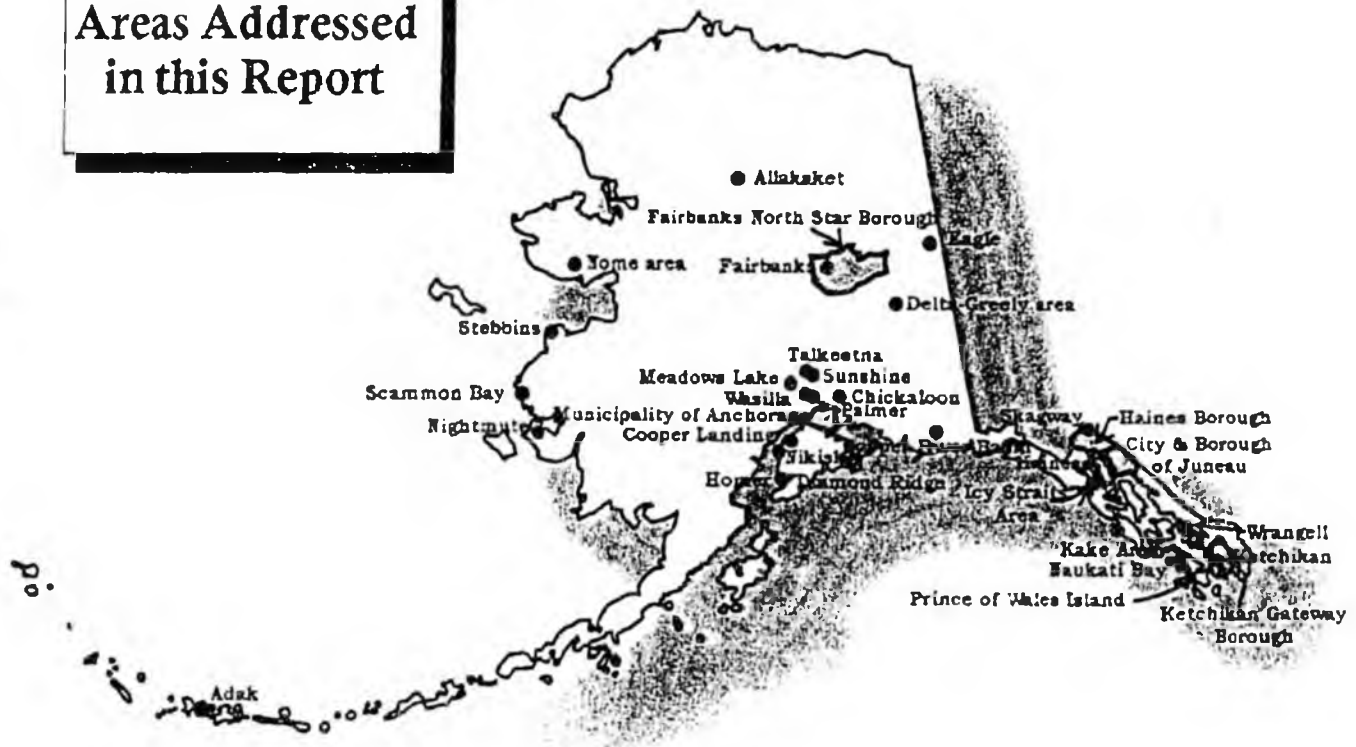
The Local Boundary Commission has developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature.



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

January 23, 2002

## Areas Addressed in this Report



Kevin Waring, Chairperson  
Vacant, 1st Judicial District  
Vacant, 2nd Judicial District  
Allan Tesche, 3rd Judicial District  
Ardith Lynch, 4th Judicial District



Local Boundary Commission  
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<sup>21</sup> Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. However, the remainder of the unorganized borough, made up of regional educational attendance areas which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, regional educational attendance areas (REAs) suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAs in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

<sup>22</sup> Matanuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

foundation aid than they would have received had they not been organized as boroughs.<sup>21</sup> Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$143 million in required "local contributions", the sixteen organized boroughs made "voluntary local contributions" of \$159,401,604 or \$1,508 per student last year. The total contributions in support of schools by organized boroughs last year amounted to \$302,866,353 or \$2,866 per student.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula 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.<sup>22</sup> Justices Matthews and Rabinowitz stated that any remedy of the per-

ceived inequities must be pursued through the legislature rather than the courts.

... the legislature can decide whether and how much to tax property in REAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>23</sup>

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

- ♦ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ♦ Borough formation would bring about consolidation of school districts in the unorganized borough,

an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13% of the state's population, the unorganized borough encompasses 70% of Alaska's school districts.

- ♦ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ♦ Borough formation or annexation would mean the loss of eligibility on the part of REAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ♦ The extension of borough government would result in the loss of eligibility on the part of cities for federal

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payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.

- ◆ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ◆ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ◆ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ◆ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ◆ In some cases, borough formation carries with it the prospect of significant

funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were formed voluntarily.<sup>24</sup> 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 Alaska Municipal League shares the Commission's concerns. The 2002 Policy Statement adopted by the Alaska Municipal League States:

**Encouragement of Municipal Government in the Unorganized Borough.** The League supports state policies that remove disincentives and encour-

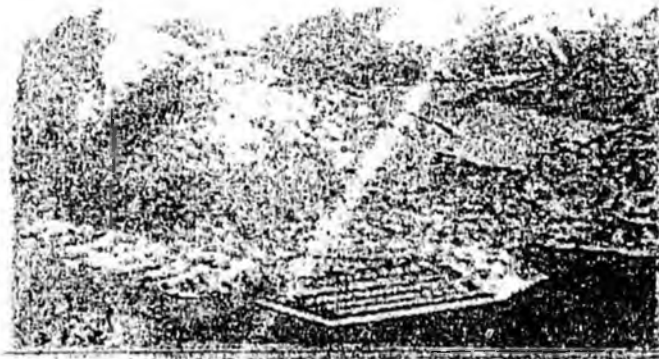
age the formation and annexation to boroughs in the unorganized areas of the state . . .

**Call for a Review of the Role of Government.** The League calls for a review of municipal government . . . to determine if state policies are consistent with the Intent of the Alaska Constitution mandating "maximum local self-government with a minimum of local government units. . . ." According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments

It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for the type of reform provided by Senate Bill 48. 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."

<sup>23</sup> Ibid., 406

<sup>24</sup> 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.



Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48.

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

January 21, 2004

## Areas Addressed in this Report



Darroll Hargreaves, Chair  
Georgianna Zimmerman, 1st Judicial District  
Robert Harcharak, 2nd Judicial District  
Robert Hicks, Vice-Chair, 3rd Judicial District  
Anthony Nakazawa, 4th Judicial District



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organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$152.5 million in required "local contributions" for FY 2003, the 16 organized boroughs made "voluntary local contributions" of \$127,172,543 or \$1,201 per student last year.<sup>24</sup> The total contributions in support of schools by organized boroughs last year amounted to \$279,703,457 or \$2,642 per student. The data in Table 3-1 on the following page sets out school districts, by type, and the required and voluntary local contribution of each under the education foundation program in AS 14.17.410.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula 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.<sup>25</sup> Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions. If its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>26</sup>

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

- ➔ Areas of the unorganized borough outside of home rule and first class cities have no obligation to

financially support operation of 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 percent of basic need, whichever is less).

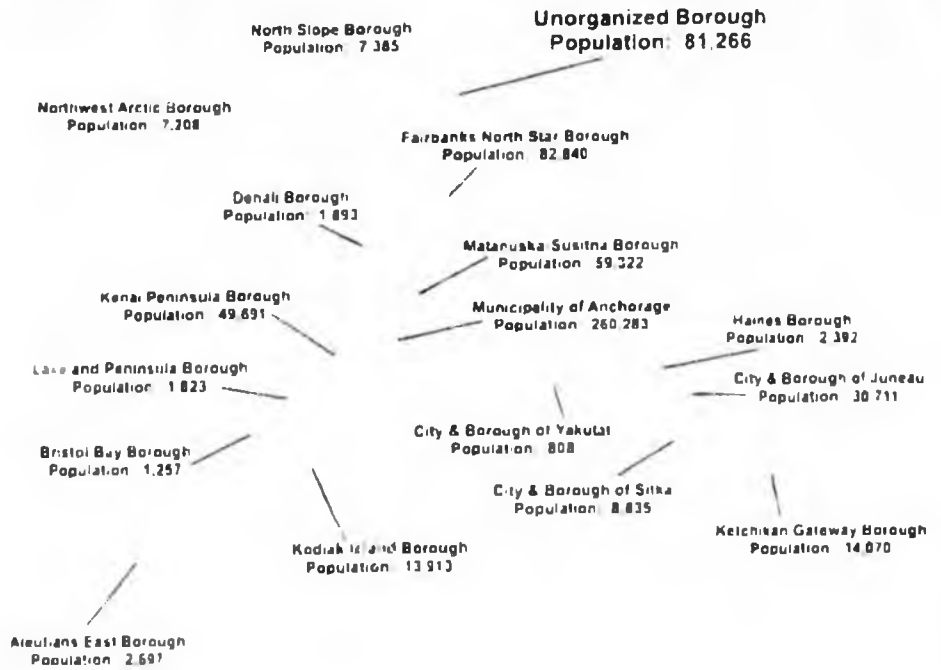
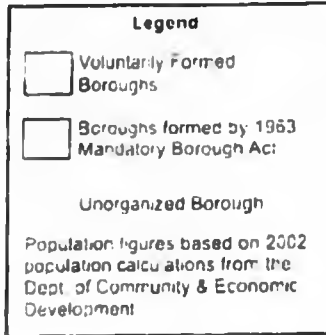
- ➔ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13 percent of the state's population, the unorganized borough encompasses 70 percent of Alaska's school districts.
- ➔ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ➔ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.

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NFR

<sup>24</sup> Using a borough FY 2003 average daily membership of 105,884.5.

<sup>25</sup> *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 398 (Alaska 1997)

<sup>26</sup> *Ibid.*, 406.



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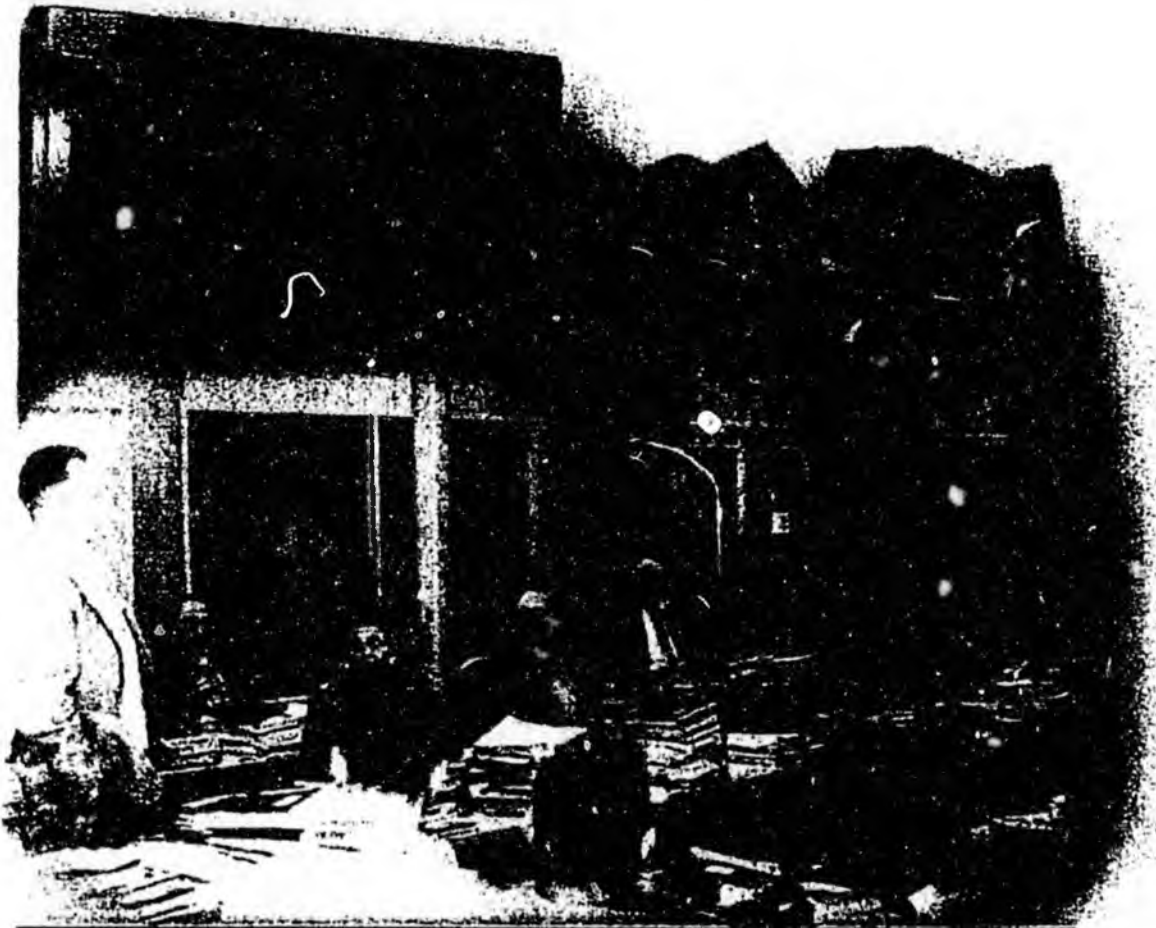
- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 91-565, as amended by PL 101-333). Funds would be paid to the borough.
- Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- The extension of borough government requires areawide planning, platting, and land use regulation. 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).

- 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 effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.<sup>27</sup> In contrast, 83 percent of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13 percent of Alaskans live in the unorganized borough.

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.

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



**Commemorating the 50th Anniversary of the  
Convening of the Alaska Constitutional Convention**

**1956 - 2006**

**"We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska."**

Further in this regard, the LBC notes that land entitlements for boroughs have not always been transferred as quickly as borough officials would prefer. See, Table 3-12 for details regarding this issue as of February 2003. The LBC understands that additional funds have been appropriated for the State agency dealing with municipal land transfers and anticipates that the remaining entitlements will be conveyed expeditiously and that any future municipal entitlement transfers will be a priority of the State.

**Borough Land Entitlements - AS 29.65**

Municipality	Original Entitlement	Acreage Remaining to Convey
Aleutians East Borough	7,633	5,713
Municipality of Anchorage	44,893	272
Bristol Bay Borough	2,998	349
Denali Borough	49,789	29,303
Fairbanks North Star Borough	112,000	177
Haines Borough	2,800	25
City and Borough of Juneau	19,584	160
Kenai Peninsula Borough	155,780	20,892
Ketchikan Gateway Borough	11,593	0
Kodiak Island Borough	56,500	0
Lake and Peninsula Borough	125,000	92,865
Matanuska-Susitna Borough	355,210	8,489
North Slope Borough	89,850	89,486
Northwest Arctic Borough	285,438	285,434
City and Borough of Sitka	10,500	0
City and Borough of Yakutat	21,500	20,088

Source: Table attached to February 28, 2003, Letter from Dick Mylius, Chief, DNR Resource Assessment and Development Section, Division of Mining, Land, and Water, Department of Natural Resources, to Senator Thomas Wagner, Chair, Senate Community and Regional Affairs Committee, Alaska Senate.

**6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.**

As noted above, the 1991 Task Force on Governmental Roles concluded that "... recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the

few remaining incentives to organize boroughs." Those issues are addressed below.

**(a) National Forest Receipts.**

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where

the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the re-

vised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of \$62.60 per capita. In contrast, nineteen entities (three REAAs,



nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of \$333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received \$1,027,546 in National Forest receipts. That amounted to \$1,423 for each student in those districts (a total of 722.3 ADM for those three districts, including correspondence students).

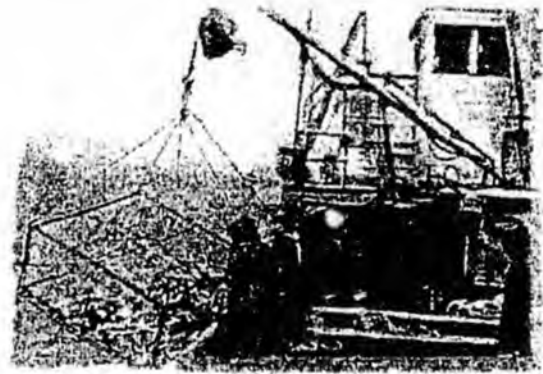
In addition to being a disincentive to borough formation, the existing system creates broad opposition to

certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift \$1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

(b) Shared Fisheries Fees and Taxes.

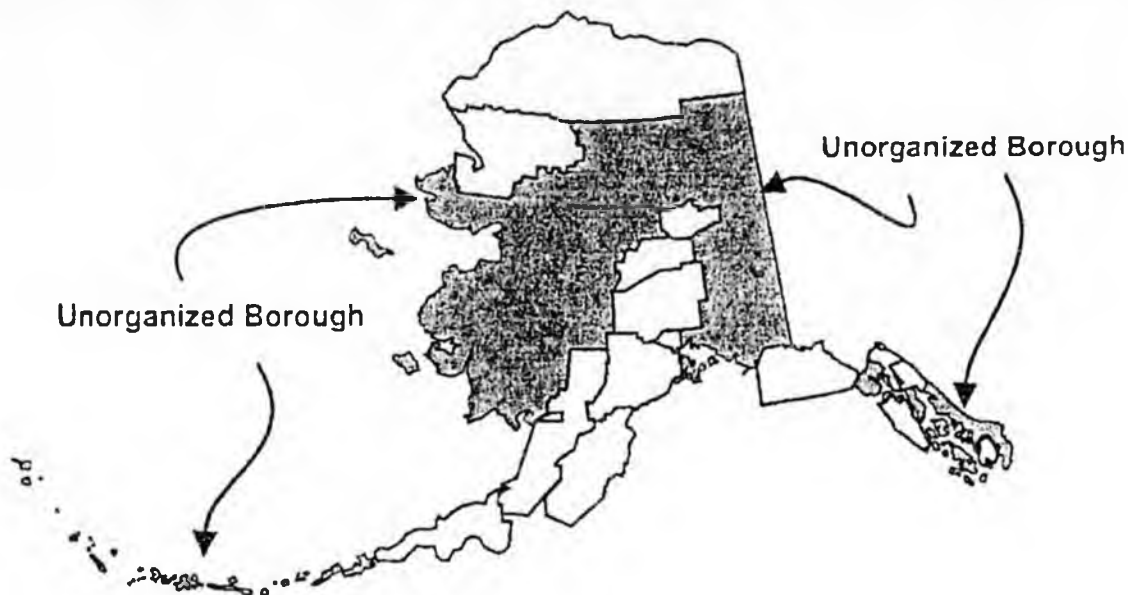
DOR collects fisheries business license fees and taxes under the provisions of AS 43.75.011 - 43.75.290. A portion of the fees and taxes are distributed



by DOR to eligible municipalities under the formula set out in AS 43.75.130.

Fifty percent of any revenue not transferred to eligible municipalities is allocated to the Department for distribution to eligible municipalities that demonstrate significant effects from fisheries business under the provisions of AS 29.60.450.

Under the Fisheries Resource Landing Tax statutes (AS 43.77.010-200), DOR collects a landing tax on floating fisheries businesses and distributes it directly to eligible municipalities according to the formula spelled out in AS 43.77.060. Once this allocation is made, 50 percent of the funds not distributed by DOR to eligible municipalities are also transferred to Commerce for distribution to eligible municipalities.



As is the case with National Forest receipts, restricting shared fisheries fees and taxes to organized boroughs would create further incentives for borough incorporation.

## Section II. Lack of Standards and Law Providing the Manner for Establishment of Unorganized Boroughs

### Subsection A. Statement of the Issue:

Article X, section 3 of Alaska's Constitution requires the Alaska Legislature to enact laws providing for (1) standards for establishment of organized and unorganized boroughs and (2) methods for establishment of organized and unorganized boroughs. In 1961, the Legislature enacted standards for establishment of *organized*

*boroughs*. Laws providing the manner for establishment of *organized boroughs* have also been enacted. However, in 46 years, the Legislature of the State of Alaska has yet to enact laws providing standards and the manner for establishment of *unorganized boroughs*.

The absence of standards for establishment of unorganized boroughs and the lack of compliance with the common-interest principle on the part of the single unorganized borough act as a significant impediment to achievement of the constitutional goals of maximum local self-government with a minimum of local government units set out in Article X, section 1 of Alaska's Constitution.

Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention,



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

January 2006



Darroll Hargraves, Chairman  
Georgianna Zimmerle, 1st Judicial District  
Robert Harcharek, 2nd Judicial District  
Robert Hicks, 3rd Judicial District  
Anthony Nakazawa, 4th Judicial District

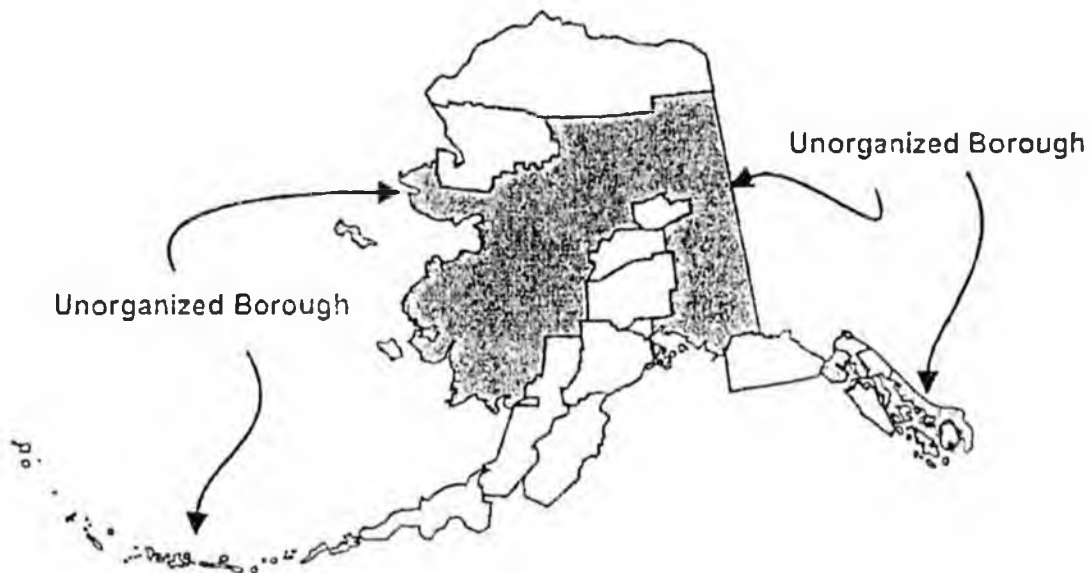
Local Boundary Commission  
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Commission have complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the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

In 1961, the founders of Alaska local government opted to make borough formation voluntary. Legislators recognized from the very beginning that there were inadequate incentives to encourage people to form boroughs. Unfortunately, the inducements to organize that were lacking failed to evolve over time. In fact, there were substantial disincentives to borough formation and annexation. The organized borough concept had little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for the majority of services, especially education. Under Alaska law, boroughs that organize 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. There proved to be other inequities as well. 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.

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

- Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).



- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.
- In some cases, borough formation carries the prospect of *substantial* education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. \* NFR
- 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). \* PILT
- Borough formation or annexation would cause the loss of eligibility for State Revenue sharing by unincorporated communities and volunteer fire departments in the unorganized communities and volunteer fire departments in the unorganized borough.
- 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).

Circumstances such as the above, have contributed to a growing interest in forming single-community borough governments. In addition to the disincentives and the lack of inducements to form boroughs, it appears that local officials are concerned about being compelled into larger, legislatively-mandated boroughs. Local officials from Wrangell, Nome, Petersburg, Hoonah, Unalaska, Valdez, and other communities have recently expressed interest in forming single-community or relatively small boroughs. Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Nenana, Tanana, Cordova, and Pelican. The Commission is concerned that if this trend continues, it will lead to a proliferation of single-community boroughs created in a piecemeal fashion across 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.



organized boroughs have long been deprived of significant State services, revenues, or assistance and heavily penalized because of incorporation.

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

- Areas of the unorganized borough outside of home-rule and first-class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).
- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under present circumstance, the delivery of education services in the unorganized borough is carried out in a fractured manner. Although the unorganized borough accounts for about 12 percent of the state's population, 70 percent of Alaska's school districts exist in the unorganized borough.
- In some cases, borough formation carries the prospect of education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- NFR \* ▪ 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.<sup>16</sup>
- XPICT ▪ 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).
- 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).

Circumstances such as the above have contributed to a growing interest in forming single-community borough governments. In addition to the disincentives and the lack of inducements to form boroughs, it appears that local officials are concerned about being compelled into larger, legislatively-mandated boroughs. Local officials from Wrangell, Nome, Petersburg, Hoonah,

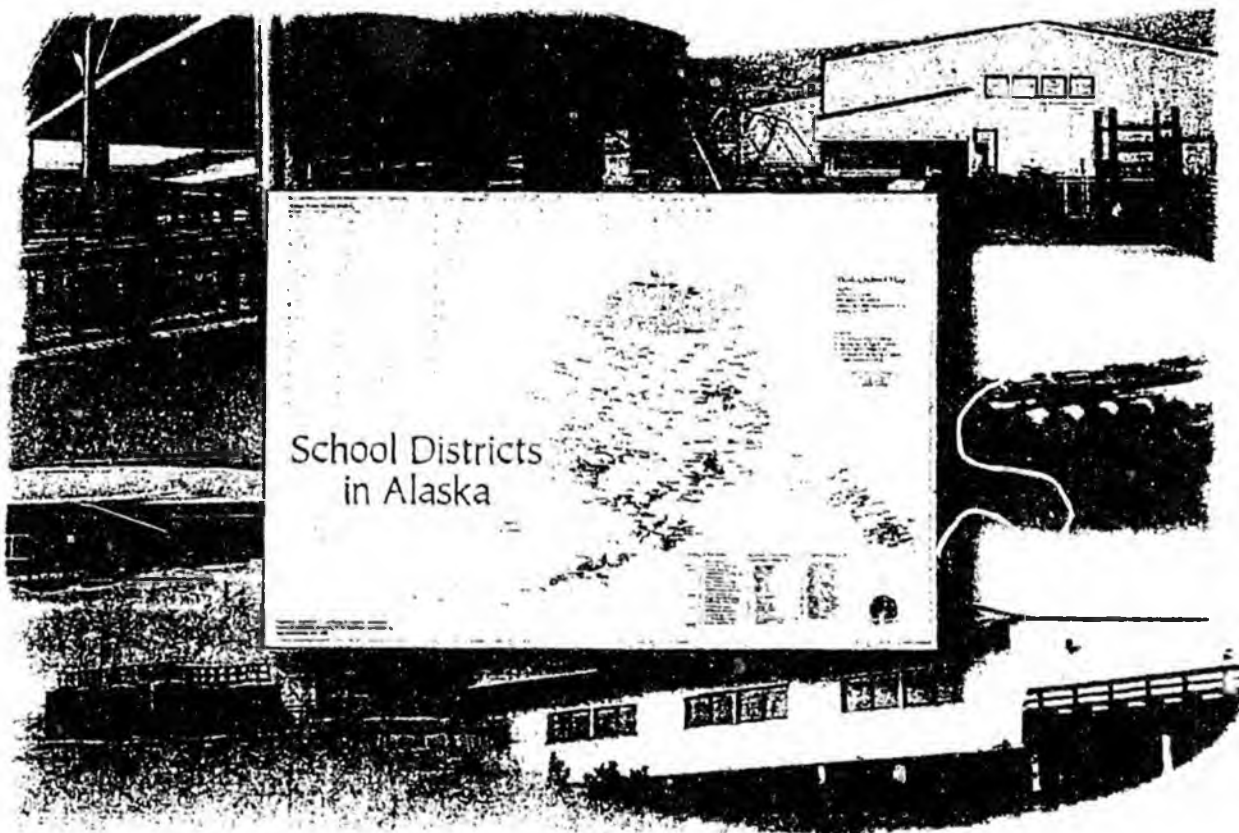
<sup>16</sup> The 109th Congress failed to reauthorize the Secure Rural Schools and Community Self-Determination Act. Without such reauthorization, National Forest Receipts funding in FY 08 will revert back to the original distribution formula which will likely result in payments to municipalities and school districts in southeast Alaska decreasing by roughly 85 percent. An effort was made to include the reauthorization legislation in the Continuing Resolution or tax extender package. There is a possibility that the program will be reauthorized in February with the Omnibus Spending Bill, which would provide money for the FY 08 distribution. However, the program has a substantial cost and is viewed by a number of representatives and senators as an "earmark" - a large expenditure that benefits some areas much more than others.

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# School Consolidation:

Public Policy Considerations and a  
Review of Opportunities for Consolidation

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LOCAL BOUNDARY  
COMMISSION

550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Phone: (907) 269-4560  
Fax: (907) 269-4539

A Joint Report to the 2004 Alaska Legislature by the  
Local Boundary Commission and  
Department of Education and Early Development



ALASKA DEPARTMENT OF  
EDUCATION  
& EARLY DEVELOPMENT

801 West Tenth Street, Suite 200  
Juneau, Alaska 99801-1894  
Phone: (907) 465-2800  
Fax: (907) 465-4156

---

February 2004

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>74</sup>

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

- ⊖ Areas of the unorganized borough outside of home-rule and first-class cities have no obligation to financially support operation of 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 percent of basic need, whichever is less). A significant levy of taxes by the Legislature in areas outside municipal school districts would address, at least in part, this disincentive.
- ⊖ 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 approximately 13 percent of the state's population, the unorganized borough encompasses 70 percent of Alaska's school districts.
- ⊖ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ⊖ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ⊖ 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). Funds would be paid to the borough.
- ⊖ Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ⊖ The extension of borough government requires areawide planning, platting, and land use regulation. 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).
- ⊖ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

In their 1971 critique of borough government, Victor Fischer and Thomas Morehouse asserted that, "The State has never had a sound policy . . . it has been unable to cope effectively with the problems of borough formation."<sup>75</sup>

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.<sup>76</sup> In contrast,

<sup>74</sup> *Ibid.*, p. 406.

<sup>75</sup> *Borough Government in Alaska*, p. 138.

<sup>76</sup> 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.

\*  
PILT

NFR \*

**Impact of Wrangell Incorporation and Ketchikan Annexation Upon Distribution of National Forest Receipt Revenues  
In Southeast Alaska as a Percent of Total Education Expenses  
Boroughs and Communities in Southeast Alaska based on FY '06 Data <sup>1</sup>**

	Existing Pop.	Amended Land (acres) <sup>4</sup>	Amended National Forest Receipt Revenues <sup>5</sup>				Education Expenses <sup>2</sup>	New Forest Receipt Education Payments as Percent of Total Education Expenses <sup>3</sup>	Existing Proportion (FY'06)	Percent Change
			Road Payment	Education Payment	Project Payment	Total Forest Receipts				
<b>Boroughs</b>										
Haines	2,241	916,193	447,936	79,047	528,983	5,811,207	7.7%	7.7%	0.0%	
Juneau	30,650	1,710,847	836,450	147,808	984,059	67,172,497	1.2%	1.2%	0.0%	
Ketchikan	13,174	2,928,955	1,263,112	421,037	1,684,149	31,937,764	4.0%	1.1%	2.9%	
Sitka	8,833	1,796,494	878,324	154,998	1,033,322	15,546,815	5.6%	5.6%	0.0%	
Yakutat	634	1,226,418	599,607	105,813	705,420	2,827,481	21.2%	21.2%	0.0%	
Wrangell	1,911	1,650,419	711,743	40,956	948,991	5,756,654	12.4%	9.7%	2.7%	
<b>Home Rule</b>										
Petersburg	3,129	28,096	57,818	790,877	163,823	1,012,517	7,917,147	10.0%	11.8%	-1.8%
<b>First Class</b>										
Craig	1,105	4,288	24,208	446,941	90,946	562,096	7,566,274	5.9%	7.0%	-1.1%
Hoonah	829	4,224	23,561	215,682	46,181	285,425	4,180,475	5.2%	6.1%	-0.9%
Hydaburg	352	192	16,052	93,584	21,163	130,799	1,205,015	7.8%	9.2%	-1.4%
Kake	536	5,248	36,300	178,060	41,377	255,739	3,376,278	5.3%	6.2%	-0.9%
Klawock	776	384	26,669	200,483	43,846	270,999	2,928,295	6.8%	8.1%	-1.3%
Pelican	106	384	3,398	16,784	0	20,182	594,072	2.8%	3.3%	-0.5%
Skagway	854	289,536	31,199	136,607	32,391	200,198	3,268,131	4.2%	4.9%	-0.7%
<b>Second Class</b>										
Angoon (Chatham)	482	14,400	23,754	N/A	0	23,754	0	0	0	0.0%
Coffman Cove (Southeast Island)	162	6,656	48,002	N/A	0	48,002	0	0	0	0.0%
Gustavus (Chatham)	441	18,688	82,621	N/A	15,948	98,570	0	0	0	0.0%
Kasaan (Southeast Island)	59	3,392	26,164	N/A	0	26,164	0	0	0	0.0%
Pelican Alexander (Southeast Island)	64	2,432	3,861	N/A	0	3,861	0	0	0	0.0%
Pelee Springs (Chatham)	109	8,832	7,722	N/A	0	7,722	0	0	0	0.0%
Thorne Bay (Southeast Island)	482	16,320	88,033	N/A	16,992	105,025	0	0	0	0.0%
<b>Federal Law</b>										
Metlakatla	1,404	83,328	89,845	N/A	17,343	107,188	0	0	0	
<b>REAA's</b>										
Annette Island				374,775	72,342	447,117	5,326,229	7.0%	8.3%	-1.3%
Chatham				245,076	47,307	292,384	2,760,891	8.9%	10.5%	-1.6%
Southeast Island				266,305	51,404	317,710	4,178,202	6.4%	7.5%	-1.1%

<sup>1</sup> Source: DCCED website and published reports

<sup>2</sup> Figure includes all moneys expended on education from local, state, and federal sources per DCCED staff.

<sup>3</sup> Note that for Boroughs Road and Education payments are combined. For all others, only the education payment is used.

<sup>4</sup> Note that acreage figures for Boroughs, Home Rule Communities are National Forest acreage figures. All other figures are area figures for the political subdivisions.

<sup>5</sup> Based on a projected 25.61% decrease in total payments to the unorganized borough resulting from Ketchikan's annexation and Wrangell's incorporation and a value of 57.5 cents an acre for organized boroughs and the unorganized borough.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT KETCHIKAN

CITY OF CRAIG, ANNETTE ISLAND )  
SCHOOL DISTRICT, )  
ORGANIZED VILLAGE OF KASAAN, )  
CRAIG CITY SCHOOL DISTRICT, )  
CITY OF KASAAN, )  
KLA WOCK CITY SCHOOL )  
DISTRICT, NAUKATI WEST, INC., )  
SOUTHEAST ISLAND )  
SCHOOL DISTRICT, CITY OF )  
THORNE BAY, PRINCE OF WALES )  
COMMUNITY ADVISORY COUNCIL, )  
HOLLIS COMMUNITY COUNCIL )  
CITY OF KLA WOCK, HYDABURG CITY )  
SCHOOL DISTRICT, CITY OF HYDABURG )  
HYDABURG COOPERATIVE ASSOC. )  
Appellants, )  
vs. )  
LOCAL BOUNDARY COMMISSION, )  
Appellee. )

Case No. IKE-08-004 CI

AFFIDAVIT OF BILL ROLFZEN

STATE OF ALASKA )  
 ) s.s.  
FIRST JUDICIAL DISTRICT )

Bill Rolfzen, being first duly sworn, deposes and says:

I. I am a Local Government Specialist for the Department of Commerce,  
Community & Economic Development (DCCED), Division of Community and

ATTORNEY GENERAL, STATE OF ALASKA  
DIAMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

ATTORNEY GENERAL, STATE OF ALASKA  
DIAMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

1  
2  
3 Regional Affairs in Juneau, Alaska. I have held this position for 20 years. In my  
4 capacity as a Local Government Specialist for DCCED, my responsibilities include  
5 administering community financial assistance programs including state revenue sharing,  
6 shared fisheries business tax, fishery resource landing tax, payment in lieu of taxes, and  
7 national forest receipts. As the national forest receipts program administrator, I am  
8 responsible for the calculations regarding the effect on the money distribution in  
9 S.E. Alaska as to forest receipts, school funding, etc. that were included in the  
10 preliminary and final reports to the Local Boundary Commission regarding the petition  
11 to annex land that is the subject of the above-captioned appeal.  
12

13 2. Up until 2000, the National Forest Receipts Program annual payment to  
14 the State for distribution to boroughs (organized and unorganized) was based on 25% of  
15 the annual revenue generated by the National Forest. The majority of the annual  
16 revenue generated within the Tongass National Forest was derived through "timber  
17 stumpage fees" charged to commercial timber companies for harvesting trees from the  
18 National Forest. Historically in Southeast Alaska, the majority of the timber harvesting  
19 occurred within the Unorganized Borough on places like Prince of Wales Island,  
20 Etolin Island, Zarembo Island, Kupreanof Island, Kuiu Island, Chichagof Island, and  
21 Wrangell Island. The current distribution of funds under the Secure Rural Schools  
22 Program is based on the average three highest years of annual National Forest Receipts  
23 payments to the State during the period 1986-1999.  
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AFFIDAVIT OF BILL ROLFZEN  
*City of Craig, et al v LBC*

Page 2 of 4  
Case No. 1KF-08-004 CI

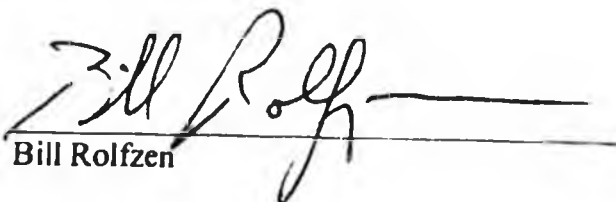
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3 3. Although it is part of the Tongass National Forest, to my knowledge, no  
4 trees were cut and no timber stumpage revenues were derived from within the  
5 Misty Fiords National Monument. This means that the geographic area being annexed  
6 by the Ketchikan Gateway Borough (KGB) contributed little to the past income from  
7 which National Forest Receipts payments are based but could result in forest receipts  
8 going to the KGB by annexing the National Monument acres from the unorganized  
9 borough.

10  
11 4. The state's current National Forest Receipt Program regulations,  
12 3 AAC 132.060, require DCCED to calculate a borough's payment "based upon the  
13 area of the national forest located within its boundaries as of September 30 of the state  
14 fiscal year immediately preceding the application year". For example, the FY 08  
15 payments DCCED is currently distributing are based upon the September 30, 2006  
16 borough acreage figures. If the KGB annexation becomes effective March 15, 2008,  
17 the first year the KGB would see the annexation affect its National Forest Receipts  
18 payment would be in FY 10. And, FY 09 distribution will be based on the acreage  
19 within the KGB as of September 30, 2007. If the current program is not reauthorized  
20 by Congress and the program reverts back to the 25% formula, DCCED would no  
21 longer need to use prior year acreage and the KGB annexation could impact the FY 09  
22 distribution.

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25 5. The National Forest Receipts Program was established in 1908. If the  
26 Secure Rural Schools Program is allowed to sunset this year, the program will revert

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3 back to the 25% formula. In my opinion, it is highly likely that this program will  
4 continue in some form for as long as there are National Forest lands.  
5

6 Further your affiant sayeth naught.

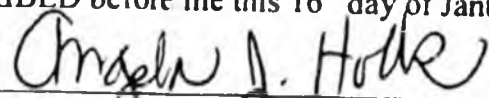
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Bill Rolfzen

15 SWORN TO AND SUBSCRIBED before me this 16<sup>th</sup> day of January, 2008.

16 **STATE OF ALASKA**  
17 **Angela J. Hobbs**  
18 **Notary Public**  
19 **My Commission Expires With Office.**



20   
21 Notary public in and for Alaska  
22 My Commission Expires: With Office  
23  
24  
25  
26

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
PO BOX 110300 JUNEAU, ALASKA 99811  
PHONE: 465-3600

AFFIDAVIT OF BILL ROLFZEN  
City of Craig, et al v. LBC

Page 4 of 4  
Case No. 1KE-08-004 CI

STATE OF ALASKA  
 FY 08 NATIONAL FOREST RECEIPTS - FINAL PAYMENTS  
 TONGASS NATIONAL FOREST - UNORGANIZED BOROUGH  
 \*DOT/PF FUNDED AT \$170,000 AND PROJECTS @ 15%\*  
 \*\*PROJECTS \$ DISTRIBUTION BASED UPON SCHOOL & ROAD PAYMENTS\*\*  
 \*\*\*ENTITIES < \$100,000 EXEMPT FROM PROJECTS EXPENDITURES\*\*\*

Municipality	Road Miles	Road Mile \$	ADM	School \$	First Stage Total School & Road \$	State Redistribution > \$170 K	Preliminary Total School & Road \$	Preliminary Projects \$	Final Total National Forest Receipt Payment	Final Road Payment	Final School Payment	Final Projects Payment
<b>Home Rule</b>												
Petersburg	24.90	\$75,717.71	588.55	\$892,826.73	\$968,544.44	\$87,957.42	\$1,056,501.87	\$193,035.62	\$1,249,537.48	\$81,820.67	\$964,789.88	\$202,926.94
Wrangell	11.67	\$35,486.97	354.74	\$538,138.40	\$573,625.37	\$52,093.23	\$625,718.61	\$114,326.33	\$740,044.93	\$38,347.28	\$581,513.14	\$120,184.51
<b>First Class</b>												
Craig	9.35	\$28,432.15	361.55	\$548,469.13	\$576,901.28	\$52,390.73	\$629,292.01	\$114,979.23	\$744,271.24	\$30,723.82	\$592,676.54	\$120,870.87
Hoonah	9.10	\$27,671.93	152.95	\$232,024.21	\$259,696.14	\$23,584.05	\$283,280.20	\$51,758.70	\$335,038.90	\$29,902.33	\$250,725.70	\$54,410.87
Hydaburg	6.20	\$18,853.41	79.60	\$120,752.71	\$139,606.12	\$12,678.19	\$152,284.31	\$27,824.18	\$180,108.49	\$20,373.02	\$130,485.56	\$29,249.91
Kake	14.02	\$42,633.02	103.55	\$157,084.71	\$199,717.74	\$18,137.17	\$217,854.91	\$39,804.72	\$257,659.62	\$46,069.31	\$169,745.97	\$41,844.35
Klawock	10.30	\$31,320.98	140.45	\$213,061.79	\$244,382.77	\$22,193.38	\$266,576.15	\$48,706.67	\$315,282.82	\$33,845.50	\$230,234.88	\$51,202.45
Pelican	1.10	\$3,344.96	14.95	\$22,674.06	\$26,024.02	\$2,363.35	\$28,387.36	\$5,186.71	\$33,574.08	\$4,315.39	\$29,258.68	\$0.00
<b>Second Class</b>												
Angoon	7.69	\$23,384.30	N/A	N/A	\$23,384.30	\$2,123.62	\$25,507.93	\$4,660.61	\$30,168.53	\$30,168.53	N/A	\$0.00
Coffman Cove	15.54	\$47,255.15	N/A	N/A	\$47,255.15	\$4,291.43	\$51,546.58	\$9,418.18	\$60,964.76	\$60,964.76	N/A	\$0.00
Gustavus	30.01	\$91,256.56	N/A	N/A	\$91,256.56	\$8,287.38	\$99,543.94	\$18,187.88	\$117,731.81	\$98,611.97	N/A	\$19,119.84
Kasaan	8.47	\$25,756.18	N/A	N/A	\$25,756.18	\$2,339.02	\$28,095.21	\$5,133.33	\$33,228.54	\$33,228.54	N/A	\$0.00
Port Alexander	1.25	\$3,801.09	N/A	N/A	\$3,801.09	\$345.19	\$4,146.28	\$757.58	\$4,903.86	\$4,903.86	N/A	\$0.00
Tenakee Springs	2.50	\$7,602.18	N/A	N/A	\$7,602.18	\$690.38	\$8,292.56	\$1,515.15	\$9,807.72	\$9,807.72	N/A	\$0.00
Thorne Bay	34.64	\$105,335.80	N/A	N/A	\$105,335.80	\$9,565.97	\$114,901.77	\$20,993.94	\$135,895.70	\$113,826.02	N/A	\$22,069.69
<b>Federal Law</b>												
Metlakatla	34.90	\$106,126.43	N/A	N/A	\$106,126.43	\$9,637.77	\$115,764.19	\$21,151.51	\$136,915.71	\$114,680.37	N/A	\$22,235.34
<b>REAA'S</b>												
Annette Island	N/A	N/A	282.35	\$428,323.21	\$428,323.21	\$38,897.76	\$467,220.97	\$85,366.90	\$552,587.87	N/A	\$462,846.69	\$89,741.18
Chatham	N/A	N/A	194.82	\$295,540.74	\$295,540.74	\$26,839.25	\$322,379.99	\$58,902.71	\$381,282.70	N/A	\$319,361.76	\$61,920.94
Southeast Island	N/A	N/A	186.90	\$283,526.15	\$283,526.15	\$25,748.15	\$309,274.30	\$56,508.14	\$365,782.44	N/A	\$306,378.77	\$59,403.67
<b>TOTAL LOCAL</b>	<b>221.64</b>	<b>\$673,978.82</b>	<b>2,460.41</b>	<b>\$3,732,426.85</b>	<b>\$4,406,405.67</b>	<b>\$400,163.46</b>	<b>\$4,806,569.13</b>	<b>\$878,218.08</b>	<b>\$5,684,787.21</b>	<b>\$751,589.08</b>	<b>\$4,038,017.58</b>	<b>\$895,180.55</b>
<b>STATE</b>	<b>187.50</b>	<b>\$570,163.46</b>	<b>N/A</b>	<b>N/A</b>	<b>\$570,163.46</b>	<b>\$170,000.00</b>	<b>\$170,000.00</b>	<b>\$0.00</b>	<b>\$170,000.00</b>	<b>\$170,000.00</b>	<b>N/A</b>	<b>\$0.00</b>
<b>GRAND TOTAL</b>	<b>409.14</b>	<b>\$1,244,142.28</b>	<b>2,460.41</b>	<b>\$3,732,426.85</b>	<b>\$4,976,569.13</b>	<b>\$570,163.46</b>	<b>\$4,976,569.13</b>	<b>\$878,218.08</b>	<b>\$5,854,787.21</b>	<b>\$921,589.08</b>	<b>\$4,038,017.58</b>	<b>\$895,180.55</b>



**SENATOR ALBERT M. KOOKESH**  
**ALASKA STATE LEGISLATURE SENATE DISTRICT C**

State Capitol, Room 11  
Juneau AK, 99801-1182  
907-465-3473  
888-288-3473  
FAX 907-465-2827

**For Immediate Release: February 20, 2008**

## **Senator Cries Foul Over Borough Land Grab**

(JUNEAU) – Sen. Albert Kookesh, D-Angoon, is fighting the proposed annexation by the Ketchikan Gateway Borough (KGB) of more than four thousand square miles of uninhabited land lying outside its boundaries. Senator Kookesh is sponsoring Senate Joint Resolution 15, which calls for the annexation to be stopped.

“Annexation of land is a serious issue with long term consequences that can permanently affect a community,” said Kookesh. “This proposed annexation was defeated more than ten years ago and I still don’t see any good reason for it to go forward.”

The annexation plan is deeply opposed by people living in the unorganized borough because it will take away \$1.2 million in education funding and other state revenues while not delivering any level of public services in return. Senator Kookesh is also concerned about inconsistencies in the Local Boundary Commission’s decision in favor of the annexation and the lack of public support on this matter.

SJR 15 moved out of the Senate Community & Regional Affairs Committee and Senator Kookesh has requested a hearing in the Senate Finance Committee

SJR 15 has a companion resolution in the House, HJR 30, sponsored by Representative Bill Thomas.

For more information, contact Senator Kookesh at (907) 465-3473.

###

Superintendent's Office  
(907) 886-6332  
FAX: (907) 886-5130

Business Office  
(907) 886-6009  
FAX: (907) 886-5130

Special Education  
(907) 886-6020  
FAX: (907) 886-4122



**ANNETTE ISLANDS SCHOOL DISTRICT**  
P.O. Box 7 • Metlakatla, AK 99926  
Accredited by Northwest Accreditation Association

Metlakatla High School  
(907) 886-6000  
FAX: (907) 886-5120

C.R. Leask Sr. Middle  
School  
(907) 886-6003  
FAX: (907) 886-6019

R.J. Elementary School  
(907) 886-4121  
FAX: (907) 886-4120

Honorable Representative Thomas,

Please find enclosed some Newspaper articles and information you may find informative as it relates to Ketchikan's Annexation of the unorganized borough in Southeast Alaska.

As a District representative I would like you to know that in talking top members of the Metlakatla Indian Communities Tribal council, the community like the School District is strongly opposed to the annexation of 4,700 square miles of the unorganized Borough here in Southeast.

At the very least the Local Boundary Commission (LBC) should hold us harmless for educational Federal Forest Receipt revenues for a period of no less than five years; Especially since the Ketchikan Gateway Borough and the LBC commissioners repeated state that the annexation "is not about Forest Receipts" but is about providing additional Borough services. This is difficult rhetoric to understand when the Ketchikan petition excludes Hyder from the annexation proposal. And Myers Chuck has organized with Wrangell, against their will.

In corresponding with Senator Kookesh he states that you, like himself, are opposed to Ketchikan's \$1,600,000 revenue and land grab.

Honorable Representative your assistance in drafting and sponsoring legislation will be greatly needed early in the next session if the LBC's approval decision is to be stopped at the state legislative level.

Respectfully,

Mr. Agenbroad  
Superintendent ASID  
11/29/2007

1991 Alaska Daily News  
606-308  
KETCHIKAN



48°/42°

# DAILY NEWS

KETCHIKAN, ALASKA

VOL. 79 NO. 254 (USPS 293-940)

14 PAGES

## Craig, CCA seek probe

Suggest Bockhorst had conflict in KGB's annexation petition

By ANDREW DAMSTEDT  
Daily News Staff Writer

The City of Craig and Craig Community Association have asked the governor's office to investigate a possible conflict of interest of the incoming Ketchikan Gateway Borough manager regarding his involvement in the borough's annexation petition.

An Oct. 19 letter to Gov. Sarah Palin, signed by Craig city administrator Jon Bolling and Craig Community Association tribal president Millie Stevens, asks that the Nov. 6 Local Boundary Commission public hearing be canceled until an investigation by the Attorney General's office.

"We truly cannot believe that you will allow the LBC to go forward on

this petition without conducting a full investigation into these circumstances," the letter states.

"We request that you consider the devastating impact on the school children in the unorganized borough of the loss of \$1,200,000 per year in school funding, which cannot be allowed constitutionally or under the unquestionable appearance of a direct and serious conflict of interest."

Sharon Leighow, the governor's deputy press secretary, said the letter has been forwarded to the Attorney General's office and the Department of Commerce, Community and Economic Development for review. The LBC operates under the state commerce department.

Bolling was traveling Monday and

could not be reached for comment.

The letter alleges that shortly after Dan Bockhorst, a state local government specialist, wrote the preliminary report recommending that the Local Boundary Commission approve Ketchikan's annexation petition, he applied for the vacant borough manager position.

Borough Manager Roy Eckert resigned in June, effective Oct. 31. The borough did not begin advertising the position until July 29, according to Deputy Borough Clerk Kacie Paxton. The Ketchikan Gateway Borough Assembly hired Bockhorst Oct. 13, and his first day is Thursday.

The preliminary report was published June 30, and Bockhorst told the Daily News that he completed the

See 'Craig letter,' page 3

## Cordovans disappointed

Upset Supreme Court accepted oil-spill appeal

By JEANNETTE J. LEE  
AP Business Writer

ANCHORAGE — For most of the year, thick rain clouds lend a somber air to the once-thriving fishing town of Cordova, whose economy has never quite recovered from the Exxon Valdez oil spill in 1989.

On Monday the town was downright glum as news spread that Exxon Mobil Corp. had convinced the U.S. Supreme Court to step in on the battle over additional compensation for about 33,000 spill victims.

The supertanker accident sent 11 million gallons of thick, black crude pouring into Prince William Sound, killing thousands of fish, seabirds, otters and other marine animals. It was the worst oil spill in U.S. history.

prices down. It's a really dark day."

The news reached the town of 2,200 by 6 a.m. Monday, setting the streets, coffee shops and grocery store abuzz with the news by breakfast.

By mid-morning, Patience Anderson Faulkner, a volunteer at the Exxon Valdez Oil Spill Information Center, had discussed the pending review with about 20 people.

"The decision feels so negative," Faulkner said. "People have said, 'You know, this is what I expected, it's the giant stepping on the little ant.'"

Faulkner, 60, has worked with plaintiffs' attorneys for nine years, gathering personal information from the thousands of people claiming damages. Because she is Alaska

major analysis for the report by June 11. He said he did not learn of the vacant manager position until the weekend of July 28 and that he did not apply for the position until Aug. 11.

Bockhorst said when he first thought of applying for the job, he told the department's ethics supervisor Aug. 1 that he was considering the job and excused himself from any future proceedings. Another staff member, Jeanne McPherrin, wrote the final report that was published earlier this month, and she also recommended approval of the annexation petition.

Kathy Atkinson, LBC local government specialist, said the department did not believe that Bockhorst has a conflict of interest. She said it would be unlikely that the hearing would be postponed because the letter was sent too late for that to be considered.

The letter refers to the 1999 LBC decision which rejected Ketchikan's annexation proposal because Hyder and Meyers Chuck were excluded.

The letter states that Bockhorst submitted the 2007 preliminary report "completely reversing his recommendation of 1998. Although nothing had changed, he now stated to the LBC that the Constitution had sufficient 'flexibility' to allow KGB to annex the uninhabited land and exclude Hyder. Shortly after submitting that report, he

applied for the KGB borough manager position." Bockhorst recommended in 1998 that the LBC reject the annexation petition and said that recommendation reflected former Gov. Tony Knowles' administration policy direction. Bockhorst said he had encouraged the borough to apply for annexation in 1998 in a letter because borough expansion is a constitutional goal of the state.

He said he doesn't believe that he has been inconsistent in his position in regard to Ketchikan borough annexation.

Lamar Cotten, former deputy commissioner of Department of Community and Regional Affairs, said he made the 1998 decision to not recommend approval of Ketchikan's petition even though he knew Bockhorst supported the petition.

Cotten said he made that decision because Meyers Chuck and Hyder weren't included as well as how timber receipts would be distributed that the administration.

The Ketchikan borough submitted the petition again in 2006, excluding Hyder and including Meyers Chuck. Bockhorst recommended approval in his June 30 preliminary report.

Bolling and Stevens' letter also outlines the effect annexation could have on surrounding unorganized boroughs, which could lose \$1.2 million each year in forest receipts.

In Sept. 4 written comments responding to the preliminary report, Bolling had also brought up the alleged conflict-of-interest issue. He requested then that the LBC reject the petition because the annexation petition does not include Hyder.

The LBC is expected to hold a public hearing Saturday in Wrangell on the Wrangell borough petition. The City of Wrangell submitted a petition to incorporate a Wrangell borough, which also includes 191-square miles are that the Ketchikan Gateway Borough seeks to annex. That area includes Meyers Chuck.

A public hearing on the Ketchikan petition is scheduled for Nov. 6 at 9 a.m. in the Ketchikan City Council chambers. A decisional meeting on both petitions will be Nov. 7, also in City Council chambers, beginning at 10 a.m.

If the LBC recommends approval of the Ketchikan annexation, the commission will present the boundary changes during the first 10 days of the regular session of the Alaska Legislature in January.

The proposed boundary changes would become effective either 45 days after the presentation or at the session's end, whichever comes first, unless the Legislature disapproves the petition by a resolution.

*andrew@ketchikandailynews.com*

## WEATHER

### KETCHIKAN AND METLAKATLA

Tuesday will be rainy, heavy at times. The highs will be around 46. Winds will be from the southeast at 30 mph with gusts to 40 mph. Chance of rain 90 percent.

Tuesday night will be rainy, heavy at times in the evening. The lows will be around 36 to 42. Winds will be from the southeast at 20 to 30 mph with gusts up to 40 mph in

the evening. Chance of rain 100 percent.

Wednesday will be rainy and breezy. The highs will be around 46. Winds will be from the south at 25 mph. Chance of showers 70 percent.

Wednesday night will be rainy. The lows will be around 38. Chance of showers 100 percent.



### LOCAL TIDES

	Tuesday		Wednesday	
High	4:27 a.m./14.4'	4:07 p.m./16.5'	High	5:27 a.m./13.3' 5:06 p.m./14.9'
Low	9:55 a.m./4.2'	10:53 p.m./-0.8'	Low	10:56 a.m./5.3' 11:58 p.m./0.7'

### ALASKA

### U.S. TEMPERATURES

# KETCHIKAN DAILY NEWS

45°/40°

NTS

FRIDAY, NOV. 2, 2007

KETCHIKAN, ALASKA

VOL. 79 NO. 257 (USPS 293-940)

14 PAGES

## No conflict for new manager

### LBC Tuesday hearing will go on as planned, division director says

By ANDREW DAMSTEDT  
*Daily News Staff Writer*

The director of the Division of Community and Regional Affairs found no reason for a conflict of interest investigation into the new Ketchikan Gateway Borough manager's involvement in the borough's annexation petition.

Tara Jollie, division director, concluded there was no reason to support a conflict of interest claim against Dan Bockhorst, former state local government specialist, or request an investigation.

She also wrote that Tuesday's Local Boundary Commission hearings will not be canceled. The division provides staff support to the Local

Boundary Commission.

Craig City Administrator Jon Bolling and Craig Community Association Tribal President Millie Stevens sent a letter, dated Oct. 19, to Gov. Sarah Palin asking that the LBC hearing on Tuesday be canceled until a conflict of interest investigation by the Attorney General's office could be completed. Jollie's letter Wednesday was addressed to Bolling and Stevens and released to the Daily News by the governor's office.

Sharon Leighow, the governor's deputy press secretary, said Jollie's letter was the official response from the governor's office, but said the Alaska Department of Law had yet to

See 'No conflict claim,' page 2

## No conflict claim ————— Continued from page 1

review the original complaint.

Neither Bolling nor Jollie returned phone calls by the Daily News requesting comment.

Bockhorst said Thursday he had no comment on Jollie's decision.

The letter from Bolling and Stevens alleged that shortly after Bockhorst wrote the preliminary report recommending the LBC approve Ketchikan's annexation petition, he applied for the vacant borough manager position. The letter also alleged that Bockhorst reversed his position on annexation from his recommendation to deny of 1998.

Jollie noted in her response that Bockhorst does not set policy direction and the 1998 decision was based upon a prior administration's policy direction.

Jollie wrote that she carefully reviewed official division records, going over the timeline of events. She wrote that Bockhorst began his analysis of the Ketchikan annexation proposal on March 26 and concluded his analysis on June 28, with the preliminary report being published June 30. In that report, Bockhorst recommended the LBC approve Ketchikan's petition.

Former Borough Manager Roy Eckert resigned in June, but his last day was not until Wednesday. The borough began advertising for a new manager July 29. Bockhorst applied for the job Aug. 11 and was chosen for the job Oct. 13. He started Thursday.

Jollie wrote that Bockhorst told his ethics supervisor Aug. 1 that he had interest in applying for the borough manager job. The final analysis on the Ketchikan annexation petition was given to Jeanne McPherran, who completed the report Oct. 15. McPherran also recommended approval of the petition.

The LBC will conduct a public hearing Saturday in Wrangell on the Wrangell borough petition. The City of Wrangell submitted a petition to incorporate a Wrangell borough, which also would include a 191-square mile area around Meyers Chuck that the Ketchikan Gateway Borough seeks to annex.

A public hearing on the Ketchikan annexation is scheduled for Tuesday at 9 a.m. in the Ketchikan City Council Chambers. A decisional meeting on both petitions is Wednesday, also in the City Council Chambers, beginning at 10 a.m.

[andrew@ketchikandailynews.com](mailto:andrew@ketchikandailynews.com)



*Grand Camp  
Alaska Native Brotherhood*

*Rep LeDoux*

February 11, 2008

To: Senator Donny Olsen, Chair, Senate Community and Regional Affairs  
Representative Anna Fairclough, Chair, House Community and Regional Affairs

From: Dewey Skan Jr., President, Alaska Native Brotherhood Grand Camp

Re: HJR 30 and SJR 15, Opposing the Ketchikan Borough Annexation

Dear Senator Olsen and Representative Fairclough:

On behalf of the Alaska Native Brotherhood Grand Camp, I am writing to support the Ketchikan Alaska Native Brotherhood Camp Number 14's opposition to the decision of the Local Boundary Commission to allow the Ketchikan Gateway Borough to annex 4,510 miles of uninhabitant lands. If this annexation is allowed to go forth, the scenario would be disastrous to our southeast school districts that would loose the forest receipt funds. These funds are crucial for the survival of our small rural schools.

The intent of the legislation is to correct a course of action by the Ketchikan Borough to annex lands and capture funds which were never intended for their borough to the detriment of other communities in Southeast Alaska. Clearly, this is not the intention of the Local Boundary Commission or the intention of our State Constitution to burden smaller communities for the benefit of a larger borough or community. This unconstitutional act will cause communities to bring a court action against Ketchikan and that would only cause a rift between communities which may never be settled without the court system intervention.

We also question whether the Ketchikan Borough manager has a conflict of interest since he was part of the decision making process at the Local Boundary Commission level.



**SEALASKA** Corporation  
One Sealaska Plaza, Suite 400, Juneau, Alaska 99801

February 22, 2008

Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801

Re: Support of HJR 30 and SJR 15 and disapproval of the annexation of territory to the Ketchikan Gateway Borough

Dear Representative Fairclough:

Sealaska Corporation writes to express its concern regarding the annexation of territory to the Ketchikan Gateway Borough (Borough) and supporting both HJR 30 and SJR 15. Sealaska Corporation is licensed by the State of Alaska as a for profit corporation. Sealaska is the Southeast Alaska regional corporation formed under the Alaska Native Claims Settlement Act and is owned by approximately 19,000 Alaska Native shareholders with its corporate headquarters located in Juneau, Alaska.

Sealaska owns over 7,000 acres of land plus the right to over 1,400 additional acres currently located within the exterior boundaries of the unorganized borough. Sealaska is opposed to the proposed annexation by the Borough because no increased benefits or services would result from this annexation for the annexed landholders e.g. fire department services, law enforcement, infrastructure investment and maintenance, to name a few. Moreover, the annexation will disrupt the rural community schools that rely on the current land holdings for their funding.

The annexation should be prohibited to prevent the negative impacts that will occur to the schools in the unorganized borough of Southeast Alaska. At issue is more than 1.2 million dollars for community schools including Craig, Hoonah, Hydaburg, Kake, Kasaan, and Klawock. Should the annexation be approved, the Borough receives a substantial windfall to the detriment of the rural community schools. To approve the annexation would unjustly enrich the Borough at the expense of the current K-12 education system, and the school children in our rural communities.

---

Letter to Representative Anna Fairclough  
Co-Chair, House Community and Regional Affairs Committee  
February 22, 2008  
Page 1 of 2

We request you reject the Borough's application submitted to the Local Boundary Commission to annex land outside the current borough boundaries by supporting both HJR 20 and SJR 15. Sealaska respectfully request that you please distribute this letter to your committee and colleagues. Should you have any questions please contact me and know that Sealaska is available for additional comments and/or testimony on this issue. Thank you for your time and consideration and I look forward to hearing your response.

Sincerely,



Rick Harris  
Executive Vice President

c: Senator Bert Stedman, Co-Chair, Finance Committee  
Senator Albert Kookesh  
Representative Bill Thomas  
Senator Kim Elton  
Representative Beth Kerttula  
Representative Andrea Doll  
Governor Sarah Palin

**Sonya Hymer**

---

**From:** Bob Blasco [rpblasco@hsgblaw.com]  
**Sent:** Tuesday, February 19, 2008 4:46 PM  
**To:** Rep. Anna Fairclough; Rep. Gabrielle LeDoux  
**Cc:** Kaci Schroeder; lgc@hsgblaw.com  
**Subject:** Comments Related to CRA Committee Work Session of February 19, 2008  
**Attachments:** commentstoCRA2-19-08signed.pdf

Dear Representative Fairclough and Representative LeDoux,

We have accepted your invitation to forward comments to you electronically related to the CRA work session this morning. We represent the communities of Craig, Thorne Bay, Coffman Cove, Hydaburg, Kake, Kasaan, Klawock; the school districts of Annette Island, Craig, Kake, Klawock, Hydaburg, and the Southeast Island School District; and the Organized Village of Kasaan, the Hydaburg Cooperative Association, the Prince of Wales Community Advisory Council, the Hollis Community Council, and Naukati West, Inc.

We appreciate the opportunity to provide comments on behalf of these communities, school districts, and organizations. Attached is our letter with our comments. On behalf of our clients, we thank you for your consideration of their concerns and interests, and continue to urge the adoption of House Joint Resolution 30.

Respectfully,

Bob Blasco

Robert P. Blasco

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February 19, 2008

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BLAINE D. GILMAN

ADMITTED IN WASHINGTON, D.C. \*  
AND ALASKA

ADMITTED IN VIRGINIA \*  
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ALL OTHERS ADMITTED  
IN ALASKA

NEW LAWYER PROFESSIONAL

On Behalf of: ANNETTE ISLAND SCHOOL DISTRICT,  
ORGANIZED VILLAGE OF KASAAN, CITY OF CRAIG,  
CRAIG CITY SCHOOL DISTRICT,  
CITY OF KASAAN, CITY OF KAKE, KAKE SCHOOL DISTRICT,  
KLAWOCK CITY SCHOOL  
DISTRICT, NAUKATI WEST, INC., SOUTHEAST ISLAND  
SCHOOL DISTRICT, CITY OF THORNE BAY, PRINCE OF WALES COMMUNITY ADVISORY  
COUNCIL, HOLLIS COMMUNITY COUNCIL,  
CITY OF KLAWOCK, HYDABURG CITY  
SCHOOL DISTRICT, CITY OF HYDABURG,  
HYDABURG COOPERATIVE ASSOCIATION

The Honorable Anna Fairelough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, AK 99801-1182

The Honorable Gabrielle LeDoux, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, AK 99801-1182

Subject: House Joint Resolution 30

Dear Representative Fairelough and Representative LeDoux:

On behalf of the above communities, school districts, and tribal entities, I listened to the Committee work session on February 19, 2008 with the Local Boundary Commission and DCCED staff. At the conclusion of the work session, you invited electronic comments. We respectfully request that you consider the following comments, which are primarily directed at answering questions posed by each of you and other Committee members. We will use a numbered format for ease of organization.

1. Many questions were raised about the national forest receipts program. Commissioner Chrystal stressed several times that the receipts are "transitory" and the Local Boundary Commission does not "put stock in something that is transitory."

**Response:** As Mr. Rolfzen stated, the national forest receipts program has existed since 1908 and will continue to exist, regardless of whether the Secure Rural Schools Act is extended. Although the exact amount of the forest receipts for the unorganized borough communities is not known, the annexation by the KGB will decrease those funds to the above communities by 22%. All of the above communities and school districts will lose this federal funding if the annexation is not disapproved, even if the Congress does not extend the Secure Rural Schools Act.

Additionally, Commissioner Chrystal failed to advise the Committee of the loss of the Payment in Lieu of Taxes federal funding. The communities in the Prince of Wales/Outer Ketchikan Census district, which include the communities listed above, will lose 50% of their federal PILT funds, which is unrelated to the national forest receipts. In fiscal year 2008, the PILT funds for these communities totaled approximately \$598,000. If the legislature does not disapprove this annexation, this federal funding will be lost to these communities. As one Representative commented in the meeting today, these amounts will have a significant adverse impact on these communities, regardless of what the technical percentage is of the amount to an overall budget analysis.

2. Commissioner Chrystal was asked whether the Local Boundary Commission considered the impact of the loss of the forest receipts funding on the above communities. He answered yes.

**Response:** At the hearing before the Local Boundary Commission on November 6, 2007, Commissioner Ketchum, Chair of the Commission stated: "I just want to make that mention to you, because we hear a lot about the National Forest Receipts. It has nothing to do with borough formation. It's basically out of the picture on the borough formation on the National Forest Receipts." (Tr., p. 90) The LBC did not consider the impact of the loss of the national forest receipts on the educational services in the above communities. The impacted communities, school districts, and tribal organizations listed above believe the LBC had an obligation under A.S. 29.06.040 to consider the impact under that statutory "bests interests of the state" standard.

Additionally, Commissioner Ketchum's remark about "borough formation" demonstrated a fundamental misunderstanding by the Commission of the differences between borough formation and the annexation of additional uninhabited land by an existing borough. Commissioner Chrystal made a similar statement in the work session today when he said the Constitution "encourages borough formation." The KGB petition proposes annexation to an existing borough, not borough formation.

3. Ms. Vandor stated the Constitution requires the entire state to "eventually" be divided into boroughs, and therefore, the framers of the Constitution anticipated annexation.

**Response:** We have a fundamental disagreement as to the plain words of the Constitution. Article X, Section 3 of the Alaska Constitution states: "The entire state shall be divided into boroughs, organized or unorganized." (emphasis added) The unorganized borough, of which the above communities and tribal organizations are a part, have the same Constitutional status as the organized boroughs. Importantly, the Constitutional framers considered a draft of Article X, Section 3 that would have deleted the words "or

unorganized," but they rejected that draft. The framers considered, and rejected, the concept that the entire state must be divided into organized boroughs.

4. Commissioner Chrystal stated that the Commission listened to testimony from "both sides" of the KGB petition, for and against. A Representative also asked whether there was any objection from anyone in Ketchikan to the petition.

**Response:** No private citizen or resident of the Ketchikan Gateway Borough spoke in favor of the petition at the hearing. All of the testimony for the petition came from KGB Assembly members, former assembly members, its attorney, other employees, and its paid consultant. We believe that the reason the KGB Assembly directed that the petition be filed as a "legislative option" rather than a "voter option" was to avoid a public vote in the Ketchikan. We do not believe this petition would have received a favorable vote from the people of Ketchikan.

5. Ms. McPherran stated that the reason KGB did not include Hyder in its petition was because of the lack of a "community of interest."

**Response:** The reason KGB did not include Hyder is because KGB would have been required to provide all services to Hyder that are presently being provided to Hyder by the State. KGB did not want any of those financial obligations, although it clearly wants the potential multi-million dollar windfall every year from the forest receipts. The LBC is required by regulation to determine whether a petition is in the "best interests of the state." The regulation requires the LBC to ask whether the petition relieves the state of any of the State's present responsibilities in the area. The answer as to the KGB petition is that it does not relieve the State of any responsibilities because the State must still provide all services to Hyder.

6. A Representative asked Mr. Brandt-Erichsen if the KGB would have gone through with the petition if Hyder had to be included. He responded that he did not know.

**Response:** KGB knew that the LBC had denied this petition in 1999 because the LBC said that without Hyder the petition "violated" the Alaska Constitution. KGB made a conscious decision in 2006 to make another run at the LBC without Hyder, knowing that the LBC had already decided the petition was unconstitutional without Hyder included. As KGB's attorney, Mr. Brandt-Erichsen would likely have been involved in the decision of the Assembly to direct the preparation of this petition without Hyder. The simple answer is that KGB did not and would not go through with the petition if Hyder were included because it does not want the expense of providing services to the people of Hyder.

7. Questions were asked as to whether the LBC could have required that Hyder be included in the petition now. One Representative accurately stated that the LBC decision simply puts Hyder "back on the table again" in five years.

**Response:** The LBC did have the authority to require KGB to annex Hyder now, which would have been consistent with its 1999 decision, consistent with the Alaska Constitution, and consistent with the best interests of the State. The LBC did exactly that in 1999—and KGB refused to amend its petition to include Hyder in 1999. Additionally, the LBC had the authority in deciding on the 2006 petition to amend the petition to include Hyder, allowing a five year period to accomplish the transition of services from the State to KGB for Hyder. Instead, the LBC approved the annexation recognizing that KGB cannot be forced to file

a petition to annex Hyder, once it has achieved the annexation allowed by the LBC decision, and that KGB is not likely to file a petition in five years to annex Hyder and KGB has made no commitment to do so.

8. Questions were asked as to whether the annexation could be approved as to the land, with the provision that the national forest receipts distribution would remain unchanged. Ms. Vandor responded that the LBC could do that with federal approval.

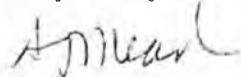
**Response:** The LBC did have the authority to approve the annexation of the land without a change in the recipients of the national forest receipts by simply saying so. If federal approval would be required, it would and should be up to KGB to obtain that approval, or forego the annexation. It is not clear that federal approval would be necessary because, as Mr. Rolfzen stated, the national forest receipts distribution is actually administered by the State.

Additionally, KGB could simply agree to forego the national forest receipts. This is an easy solution that meets the needs of KGB, all of the above communities, school districts, and tribal organizations, and the State. KGB would get all of its land; the communities and school districts would not lose the millions of dollars annually in educational funding. The fact that KGB will not agree to this solution seems a clear acknowledgment by KGB that the annexation is a "money grab."

There is precedent for KGB agreeing to forego the national forest receipts. The Municipality of Skagway passed a resolution to forego the \$600,000 in borough formation grant funds if the LBC approved the petition by the Skagway Petitioners to form a borough in the Skagway region. The LBC did approve the petition to create the Skagway borough. The people who petitioned to form the Skagway borough made it plain that it was not about what money the borough could get, and backed that up by obtaining the resolution. KGB could have done the same. If this proposed annexation were not about getting the \$1,200,000 per year in forest receipts, then KGB could have agreed to forego those funds so the children in the above communities, schools, and tribal organizations do not suffer such a tremendous loss of educational services. Rather, KGB chose to request annexation of the essentially uninhabited land to obtain the national forest receipts, and without providing any educational services in the area proposed to be annexed, leaving that financial responsibility to the State with substantially less funding.

On behalf of the communities, school districts, and tribal organizations listed above, we appreciate the opportunity to provide these comments. We are available to answer questions or provide other information upon the request of the Committee.

Respectfully,

  
Robert P. Blasco

cc: The Honorable Bill Thomas  
The Honorable Al Kookesh  
Jon Bolling, Craig City Administrator  
Richard Carlson, Klawock Superintendent of Schools  
Brett Agenbroad, Annette Island School District  
Marjorie Vandor, Assistant Attorney General

**PETER CAFFALL-DAVIS**

Willow Street Box 77  
Hyder, Alaska 99923  
(250) 636-2594  
pcaffalldavis@starband.net

February 20, 2008

Alaska House of Representatives  
Community and Regional Affairs Committee

Reference HJR 30

Dear Representative Co-Chair Fairclough and other Committee Representatives:

In an effort to provide you with the information you requested regarding the Forestry Timber receipts, detailing how the KGB annexation will reduce the revenues to the affected school districts and municipalities throughout the Unorganized Borough, both in actual dollar amounts and as percentages of both school and municipal budgets, I have put together some information I believe will be informative.

First I must say that the person most aware of the individual numbers for each of the 18 school districts who could best answer your questions in the form of a complete list itemizing the amounts and percentages for every school and municipal district is away on vacation until next week.

Like you I have endeavored to understand these various numbers and percentages we have all been hearing. In my inquiries on your behalf today I came up with two good examples. One which I have been informed is representative of nearly all the affected communities and school districts located within municipalities having taxing authorities. The Superintendents of the Craig School District and Southeast Island School Districts helped me understand their positions and provided the numbers. I found this information quite helpful. It is my hope and belief that it might also help you better understand the various percentages being reported in testimony.

First, there are two ways that funding for schools in the Unorganized Borough are handled.

For school districts located within a municipality (where there is a taxing authority) there is a formula used to calculate the amount of school funding each municipality is required to provide. I am told this amount is derived from a formula that uses the value of all taxable property located within the municipality. In our example, the Municipality of Craig on Prince of Wales Island, that figure is \$400,000 - \$440,000.

This annexation will reduce the Federal Timber receipts going to the municipality of Craig by \$130,000.

To further flesh out the numbers in our example the Craig School District budget is about \$6.8 million. This includes all State & Federal funding, grants and monies from all revenue sources used for education. The City of Craig municipal budget however is only about \$2 million. We can see the school budget is more than three times the municipal budget.

As we learned above, Craig's municipality requirement to fund their school district is approximately \$400,000. For years, the municipality of Craig has been using Federal Timber receipts to pay for ALL of its required contribution toward school funding and education (\$400,000). And rightly so, as education and roads are the only two uses for which Timber Receipts may be used.

This reduction of \$130,000 is about 1.9% of Craig's School Budget. However, the \$130,000 reduction in timber receipts represents about 32% of Craig's requirement to fund their school district (\$130,000 of \$400,000 is 32%).

We know Craig's municipal budget is less than 1/3 that of their school district budget, or only about \$2 million. That \$130,000 reduction in timber receipts will have to be made up entirely from the municipal budget. We can see \$130,000 is about 6.5% of Craig's annual municipal budget of \$2 million. This large reduction in Craig's municipal budget is extreme, both as the dollar figure of \$130,000, and as 6.5% of their total municipal budget. True, the \$130,000 may only be about 2% of Craig's total school budget, but the impact on the community is more than three times that percentage or 6.5%.

Similar percentages I'm told will be found for virtually every school district that is located within a taxing municipal authority within the Unorganized Borough. So we can see that the 1%-2% of school budget figure often used is somewhat misleading with regard to the impact these reductions would have on communities as a whole.

Now for those school districts located in the Unorganized Borough but not within any taxing authority or municipality; they are governed by Rural Education Administrative Area (REAA) guidelines. The situation for these schools is a bit different. There are no minimum requirements for funding by a local or regional taxing authority because there is no local or regional taxing authority.

All responsibility to fund schools in the REAA category falls upon the State and the Federal government. For school districts governed by REAA, any reductions in funding cannot be made up from another source as they can be for school districts located within taxing municipalities. For these rural schools any reduction in funding translates into a corresponding reduction in programs and services. It must be so as there is no other contributing entity to help fund the REAA school districts.

I'm told in the example of Southeast Island School District (SISD) which operates eight schools in SE Alaska, all under the REAA guidelines in remote towns and villages (none of which are within taxing authorities) the reduction in Timber Receipts would be

\$80,000 if the annexation becomes law. The SISD total budget for these eight schools is about \$6 million. So we can see in this case the impact is about 1.4% of the total school budget. This may be more in line with the percentages we are hearing from the KGB in their petition, subsequent briefs, and testimony. But we perhaps need to realize that while that may be a small amount in percentages, in these cases there are no other funds available for the REAA school districts to tap into to help offset these funding reductions.

I hope this information helps you, our Representatives, understand the different percentages we have all been hearing about how Federal Timber receipts impact our schools and small rural southeast communities.

When you asked me as a citizen to help obtain this information for you yesterday I agreed to do my best and to do it as quickly as possible. I am not in any way an expert in these matters. I spent the entire day speaking with school district superintendents, listening, learning and trying to get the simple truth about the issues to which I believe you were seeking answers.

A more detailed list for each of the 18 school districts outlining their proposed reductions in Forestry Receipt amounts, those amounts as a percentage of their respective school budgets, and also as a percentage of their respective municipal budgets when applicable, does not seem to be available through any sources I'm aware of for at least another week. Certainly not before you hearing tomorrow morning. If you would like me to continue working on obtaining this list for you into next week please let me know. Jon Bolling, the man I'm told would be best able to prepare such a list should return from his vacation by then.

If there is any way I can be of further help please don't hesitate to ask. I remain your willing servant, dutiful resident of the Unorganized Borough, and proud citizen of our Great State and Country.

I thank each and every one of you for ongoing efforts.

Sincerely,

Peter Caffall-Davis

**Southeast Alaska Native Economic Futures Coalition**

One Seminary Place, Suite 400, Juneau, Alaska 99801 (907) 586-9111

AFN  
Southeast  
Alaska  
Villages

ANB Grand  
Camp

ANS Grand  
Camp

City of Kake

Douglas  
Indian  
Association

Goldbelt  
Incorporated

Haida  
Corporation

Huna Totem  
Corporation

Hydaburg  
Cooperative  
Association

Inside  
Passage  
Electric  
Cooperative  
Inc.

Kake Tribal  
Corporation

Kootznoodoot  
Incorporated

Organized  
Village of  
Kasaan

Sealaska  
Corporation

Sealaska  
Heritage  
Institute

Southeast  
Alaska  
Regional  
Health  
Consortium

Tlingit &  
Haida  
Central  
Council

Tlingit - Haida  
Regional  
Housing  
Authority

February 22, 2008

Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, Alaska 99801

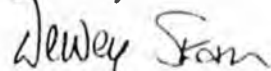
Re: Support of HJR 30 and SJR 15 – Objecting to the annexation of territory to the Ketchikan Gateway Borough

Dear Representative Fairclough:

The Southeast Alaska Native Economic Futures Coalition (Coalition) writes in opposition to the annexation of the territory to the Ketchikan Gateway Borough and in support of both HJR 30 and SJR 15. The Coalition's objection to the annexation is due to the negative impacts that will occur to the schools in the unorganized borough of Southeast Alaska. Specifically, at stake is over 1.2 million dollars for community schools including Craig, Hoonah, Hydaburg, Kake, Kasaan, and Klawock. If the annexation is approved, the Ketchikan Gateway Borough stands to receive a substantial windfall to the detriment of these community schools. It is unconscionable to approve the annexation as it would unjustly enrich Ketchikan Gateway Borough at the price of the current K-12 education system, and ultimately the school children in Craig, Hydaburg, Kasaan, and Klawock.

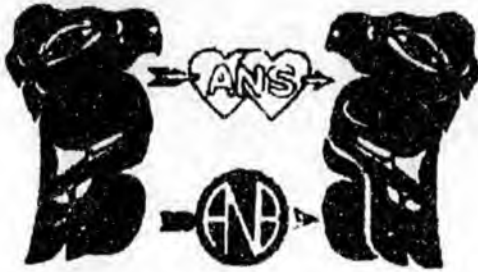
We request you disapprove the Ketchikan Gateway Borough's application submitted to the Local Boundary Commission to annex land outside the current borough boundaries by supporting HJR 30 and SJR 15. In addition, I request that you please distribute this letter to your committee and colleagues. Should you have any questions please contact us and know that we are available for additional comments and/or testimony. Thank you for your time and consideration and I look forward to hearing your response.

Sincerely,



Dewey Skan  
Chair

c: Senator Bert Stedman, Co-Chair, Finance Committee  
Senator Albert Kookesh  
Representative Bill Thomas  
Senator Kim Elton  
Representative Beth Kerttula  
Representative Andrea Dell  
Governor Sarah Palin



**ALASKA NATIVE BROTHERHOOD  
AND  
ALASKA NATIVE SISTERHOOD**  
Ketchikan Camp #14  
P.O. Box 6704  
429 Deermount  
Ketchikan, Alaska 99901  
Phone: (907) 617-9848

February 11, 2008

Dear Sir:

RE: HJR30 and SJR15

The Alaska Native Brotherhood/Alaska Native Sisterhood (ANB/ANS), Camp #14, Ketchikan strongly OBJECTS to the Annexation of land the Ketchikan Gateway Borough (KGB) is proposing.

Our Objection focuses mainly on the detrimental impact this Annexation Plan will have on the Alaska Native Subsistence rights of our local native citizens. Rights KGB and other Governmental entities seems to be ignorant about. Traditional native subsistence areas within KGB has been basically shutdown since our Community natives have been re-categorized as "Urban Indians" once again. Currently, our traditional subsistence usage areas within KGB are inaccessible because of this "Urban" label. Local Alaska natives have been pushed out to the furthest boundaries of their traditional land and sea food gathering sites trying to eek out scarce native foods. The Governmental entities do not seem to understand why Alaska Natives are continuing to seek traditional subsistence foods when there is so much to be had at the local Safeway and A&P Grocery Stores. They do not understand that it is in our Cultural, thousands and thousands of years of Cultural beating through our blood. This Annexation proposal will foster governmental attempts to further cut off Alaska natives from traditional food gathering sites in our local area. It will further efforts to "assimilate" Alaska natives to the white cultural only. If this Annexation is approved by the Alaska Legislature, traditional food gatherers living within KGB will once again be pushed farther and farther out into geographical areas that may very well be "inaccessible" to the majority of local Alaska natives without great expense.

Therefore, on behalf of all the local "urban" Alaska natives living in KGB, we OBJECT to KGB's proposed Annexation and urge a "No" vote on its approval. Send it back to them with a clear message that if the rights of its native citizens will not be protected by them, than the Alaska Legislature will do it for them.

Gunaalheesh, Howaa, Docykshin! Thank you!

Sincerely,

Joseph Reeves, President  
ANB Camp #14 Ketchikan

WHERE STUDENTS LIVE AND LEARN IN THEIR GREAT OUTDOORS

SOUTHEAST ISLAND SCHOOL DISTRICT



P.O. Box 19569, Thorne Bay Alaska 99919 Phone: 907-828-8254 Fax: 907-828-8257  
[www.sisd.org](http://www.sisd.org)

Port Protection, Goffman Cove, Naukati, Hollis, Hyder, Kasaaq, Port Alexander, Thorne Bay

SOUTHEAST ISLAND SCHOOL DISTRICT  
PROFILE:

Southeast Island School District (SISD), is a Regional Education Attendance Area, currently operating eight remote schools on Prince of Wales Island, Baranof Island, and the mainland. Our district encompasses 2 million geographical acres of marine waters and islands. The region is temperate rain forest; densely forested islands give way to marine waterways of Alaska's Inside Passage. Our children are our priority and we are committed to providing them with the best education possible.

- FY 08 enrollment is 140 students.
- Six sites are single teacher, K-12 and correspondence study program.
- Five member school board.
- Eight active Advisory School Councils.
- All stakeholders have the opportunity to engage in collaborative planning, problem solving, and decision making.
- Quality education for all students in a safe learning environment.
- Kayaks, bikes, snowshoes, shooting and archery programs.
- SISD is comprised of small communities that support their youth, contributing to youth sense of belonging to community and district.

LEGISLATIVE PRIORITIES:

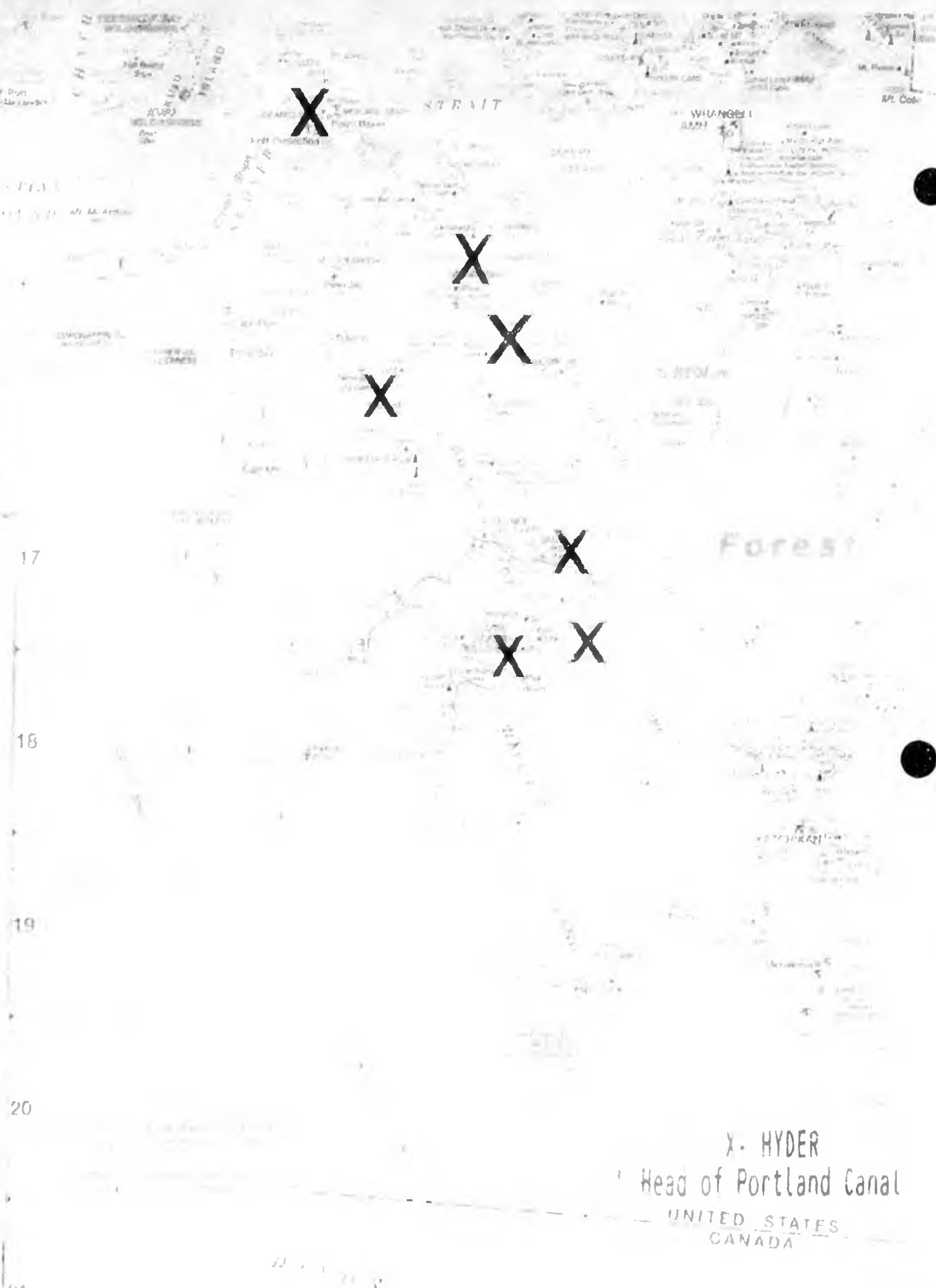
- Vocational Education
- CIP list projects: Hyder new construction, Port Protection gym and generator, Thorne Bay repairs.
- Continued implementation of ISER \$.
- Forward fund education.
- Include pre-K early education in BSA.
- Prevent suicide and drug/alcohol abuse.
- Financial support to help students meet and go beyond standards.
- Relief for high energy costs.

HOW ARE THE CHILDREN?

- All sites meet and exceed AYP.
- Two of the top ten schools in the state.
- Use of VTC to provide highly qualified and special education instruction.
- Student voice valued.
- Strategic Plan in place.
- COHO classroom aides working with high impact students.
- Enhance student opportunities through funds provided by grants
- Utilize community volunteers to provide a wider range of educational opportunities for students.
- School breakfast, lunch and snack program.
- Individual attention given each student; helping them achieve their life goals.

**THANK YOU FOR YOUR COMMITMENT TO EDUCATION!**

# SOUTHEAST ISLAND SCHOOL DISTRICT



17  
18  
19  
20  
21

**Sonya Hymer**

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**From:** Sonya Hymer  
**Sent:** Monday, February 11, 2008 3:22 PM  
**To:** Sonya Hymer  
**Subject:** FW: Hyder CIP

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**From:** Carol Denton [mailto:rustyfish@missouristreet.com]  
**Sent:** Monday, February 11, 2008 2:31 PM  
**To:** Kaci Schroeder  
**Cc:** Pete Caffall-Davis; Pablo Larkin  
**Subject:** Re: Hyder CIP

Kaci,

I did see that there is a committee hearing for HJR 30 tomorrow. Thanks for asking about our relationship with Ketchikan Borough: It is non-existent. I have lived here 5 years, and the only KGB representative in town flew in and had the plane stand by while he zipped up to the community building to post a notice about a hearing on annexation. I believe that none of the current KGB Assembly members have ever spent any time here, they have no idea what our life is like here. We certainly were not consulted about being included in the Borough, and get the impression that we are the necessary evil connected with their being able to annex all that Forest Service land with its lovely timber receipts. I am not optimistic that they will try to build a relationship with us.

I will pass this to Pete Caffall-Davis, who has been handling the annexation battle for Hyder, and also to Paul Larkin, the former town Administrator. Perhaps they will send comments also.

Carol

On Feb 11, 2008, at 1:34 PM, Kaci Schroeder wrote:

Carol,

Just wanted to confirm with you that I did receive your CIP request with the color photos in the mail today  
Thanks!

Also, we have HJR 30 Opposing the KGB Annexation up tomorrow. I was just wondering if anyone consulted Hyder before the directive was made to include you guys in the Ketchikan Borough within 5 years. I understand that they are supposed to begin building a relationship with you guys. Are you optimistic that that will happen?

Just curious about Hyder's perspective.

Thanks,

Kaci Schroeder Holch  
Legislative Aide to Rep. Thomas  
1-888-461-3732

2/11/2008

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

CITY OF CRAIG, ANNETTE ISLAND )  
 SCHOOL DISTRICT, )  
 ORGANIZED VILLAGE OF KASAAN, )  
 CRAIG CITY SCHOOL DISTRICT, )  
 CITY OF KASAAN, )  
 KLAWOCK CITY SCHOOL )  
 DISTRICT, NAUKATI WEST, INC., )  
 SOUTHEAST ISLAND )  
 SCHOOL DISTRICT, CITY OF )  
 THORNE BAY, PRINCE OF WALES )  
 COMMUNITY ADVISORY COUNCIL, )  
 HOLLIS COMMUNITY COUNCIL )  
 CITY OF KLAWOCK, HYDABURG CITY )  
 SCHOOL DISTRICT, CITY OF HYDABURG, )  
 HYDABURG COOPERATIVE ASSOC. )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 LOCAL BOUNDARY COMMISSION, )  
 )  
 Appellee. )  
 ) Case No. 1KE-08-004

**AFFIDAVIT OF JON BOLLING IN SUPPORT OF APPELLANTS' MOTION TO STAY**

Jon Bolling, being first duly sworn, states as follows:

1. I am the City Administrator for the City of Craig and have been the City Administrator for five years.
2. I am familiar with some of the issues relevant to the appeal of the Local Boundary Commission's decision regarding the Ketchikan Gateway Borough's annexation petition.
3. The fact that the National Forest Receipts (NFR) payments will change in 2009 if Congress does not reauthorize the Secure Rural Schools Program (see LBC Opposition to

Appellants' Motion for Stay, p. 10) constitutes an immediate change and impact to the Appellants because it impacts the next scheduled payment the Appellants would receive. From that standpoint, the impact to NFR is immediate if the KGB petition is submitted to the legislature and not disapproved by the legislature. For example, municipal school districts in the Unorganized Borough have a statutory requirement (AS 14.20.140) to notify tenured teachers by March 15 if the district cannot afford to maintain staffing levels. The School District representatives among these Appellants have expressed this serious and immediate concern to me and the Superintendent for the Klawock School District testified about this impact at the LBC hearing. Municipal school districts may find it necessary to notify teachers of non-retention. This causes needless anxiety among school staffs, and needlessly affects school services because of staff uncertainties.

4. The impact to Appellants from the loss of funding is significant and well beyond the 2% estimate alleged by the KGB. A more meaningful comparison of the impact of losing National Forest Receipts is to compare the NFR payment to a community's local contribution to its school district, in part because the NFR, under state law, may be counted toward a community's required contribution under state law. First class and home rule cities in the Unorganized Borough, just like organized boroughs, must support their school districts somewhere between the required local effort (four mills of a community's real and personal property value – AS 14.17.410.b.2) and the funding cap (equivalent to an additional two mills of a city's real and personal property tax base, or 23% of a district's basic need – AS 14.17.410.c.1 & 2). In Appellant City of Craig's case, the required local effort is approximately \$430,000, and its cap approximately \$1.2 million. Craig's 2007 NFR payment of \$594,437 is 138% of the community's required local effort, and about 50% of its cap.

5. Regarding the differences in per pupil allocation of National Forest Receipts between KGB and Craig and Klawock referenced on p.15 of KGB's Opposition to Appellants' Motion for Stay, four important points must be considered:

- A. The NFR program is not designed to be distributed solely on a per-pupil basis.
- B. Cities in the Unorganized Borough did not receive NFR payments from the State of Alaska until 1991, despite a prior forty years of high volume commercial timber harvest from within the boundaries of the Unorganized Borough that yielded exactly zero dollars in NFR payments to cities and their municipal school districts in the Unorganized Borough.
- C. Many, many millions more board feet were logged from the Unorganized Borough than from within either the existing or proposed KGB borough boundaries (see affidavit from Bill Rolfzen in LBC's Opposition to Appellants' Motion for Stay).
- D. The State of Alaska's own statutes (AS 14.70.160) and research (Alaska School District Cost Study Update January 31, 2005, prepared for Alaska Legislative Budget and Audit Committee) show that the cost to educate preK-12 students in the unorganized borough is significantly higher than in the KGB.

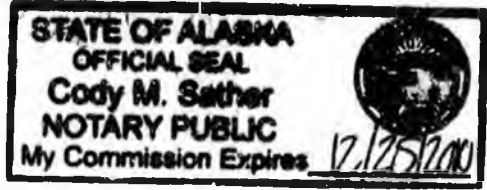
6. Given the complexities of the funding formula for the Payment in Lieu of Taxes Program, the annexation may result in a loss of funding to appellants within the Prince of Wales/Outer Ketchikan Census Area without a commensurate gain for the KGB, leaving appellant communities with significant financial losses wholly independent of the NFR program. These important federal funding contributions to our communities may be lost forever if the stay is not extended to final resolution of this Appeal.

DATED: 1/18/08

*[Signature]*  
Jon Bolling, Craig City Administrator

SUBSCRIBED AND SWORN TO before me this 18 day of January, 2008.

*[Signature]*  
Notary Public in and for Alaska  
My Commission Expires: 12/25/2010



Certificate of Service

On \_\_\_\_\_ a true and correct copy of the foregoing document was served on the following attorney(s) of record via:

- U.S. First Class Mail, postage pre-paid
- fax
- court box

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 Box 110300  
 Juneau, AK 99811

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 Attorney For The Metlakatla Indian Community  
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 Fax: 907-269-4539

Peter Caffall-Davis  
 P.O. Box 77  
 Hyder, AK 99923

Laurie Gyles-Chemut

On Behalf of: ANNETTE ISLAND SCHOOL DISTRICT, CITY OF COFFMAN COVE, CITY OF CRAIG, CITY OF HYDABURG, CITY OF KAKE, CITY OF KASAAN, CITY OF KLAWOCK, CITY OF THORNE BAY, CRAIG CITY SCHOOL DISTRICT, CRAIG COMMUNITY ASSOCIATION, HOLLIS COMMUNITY COUNCIL, HYDABURG CITY SCHOOL DISTRICT, HYDABURG COOPERATIVE ASSOC., KAKE CITY SCHOOL DISTRICT, KLAWOCK CITY SCHOOL DISTRICT, KLAWOCK COOPERATIVE ASSOCIATION, NAUKATI WEST INC., ORGANIZED VILLAGE OF KASAAN, PRINCE OF WALES COMMUNITY ADVISORY COUNCIL, SOUTHEAST ISLAND SCHOOL DISTRICT

February 7, 2008

The Honorable Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, Alaska 99801-1182

The Honorable Gabrielle LeDoux, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, Alaska 99801-1182

The Honorable Donny Olson, Chair  
Senate Community and Regional Affairs Committee  
State Senate  
Alaska State Capital  
Juneau, Alaska 99801-1182

Subject: House Joint Resolution 30 and Senate Joint Resolution 15: Disapproval of Local Boundary Commission Recommendation Regarding Annexation by the Ketchikan Gateway Borough

Dear Senator Olson, Representative Fairclough, and Representative LeDoux:

We are a subcommittee of representatives of the Tribal Organizations, Municipalities, and School Districts, who urge the adoption of House Joint Resolution 30 and Senate Joint Resolution 15. Our Tribal entities, communities and school districts have appealed the decision of the Local Boundary Commission to approve the Ketchikan Gateway Borough annexation of 4,510 acres of essentially uninhabited land to the Alaska Superior Court. We write in response to the letter sent to you by the Chair of the Local Boundary Commission, dated February 1, 2008.

For convenience, we will set out our response by each point in the letter of LBC.

1. We firmly believe the LBC decision did not comply with the Alaska Constitution and the applicable statutes and regulations. Our Statement of Points on Appeal to the Superior Court outlines numerous constitutional violations in the decision, as well as statutory and regulatory violations. Of particular importance are the violations of Article X, Sections 1 and 3 of the Alaska Constitution, and violations of due process as to our Tribal entities and community associations.
2. We encourage the Committees to review the transcript from the LBC hearing on the KGB Annexation petition. We have provided the transcript to Representative Thomas and hope it will be distributed. The transcript demonstrates the immense harm to our children because of the loss of not only the national forest receipts funds, but the Payment in Lieu of Taxes federal funding on which our communities rely.
3. The Order of the LBC did not "direct" Ketchikan to file a petition to annex Hyder within five years. Although the decision discussed whether KGB or LBC or "staff" might file a petition to annex Hyder within five years, the Order actually entered by the LBC did not do so. The entire Order states:

"On the basis set out in Section II of this decision statement, the Commission determines that the Petition, as amended to delete the approximately 191 square mile area of Myers Chuck and Union Bay, meets all the applicable Constitutional, statutory, and regulatory standards for borough annexation and is in the best interest of the State. According, the Petition, as amended, is approved."

There is no "Order" directing the KGB to file a petition to annex Hyder. We do not believe the omission of that directive from the Order was an accident or a mistake. As written, KGB is not compelled to do anything. What if KGB does not file a petition to annex Hyder in five years? Will the LBC "dismantle" the Borough? We seriously doubt it. The LBC carefully constructed its decision and Order in a manner that does not require KGB to annex Hyder, and when they fail to do so, as they surely will, we will have no recourse.

4. There are only two differences between the 1997 petition and the 2006 petition. In 1997, KGB did not include Meyers Chuck/Union Bay. In 2006, it did, but the LBC amended the petition to delete Meyers Chuck/Union Bay. The second difference is the boundary line creating the Hyder enclave. The boundary line encircling Hyder followed the flow of the river in the 2006 petition; it followed a slightly different route in the 1997 petition. That boundary line change had no significant or practical impact as to the amount of uninhabited land to be annexed in either petition.

5. We understand that the LBC "adopted" the position of the LBC in 1999 that the loss of the national forest receipts by our school districts and communities "is not a bar to the development of boroughs or their extension." Although we disagree with that position by both LBC bodies, what is important is that the current LBC ignored the Constitutional findings of the LBC in 1999, without any constitutional change in the interim. In 1999, the LBC stated unequivocally: "...the constitution calls for boundaries to embrace an area of common interests to the maximum degree possible. Without Myers Chuck and Hyder, this standard cannot be met." (Statement of Decision, 1999, p. 11) The LBC also stated unequivocally in 1999: "Further, the proposal fails to serve all relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14).

The LBC cannot change the Constitution or interpret it differently to the same area and petition simply by saying it's a different commission. The Constitution is not a "policy" that changes with the LBC, or its staff. The LBC cannot pick and choose from its 1999 decision. It cannot adopt one portion—which it knows will directly harm all our children and communities—and reject the Constitutional portion. The Constitution does not change with the "policy makers" as suggested by Commissioner Ketchum's letter. We believe the action of the LBC with respect to the KGB's 2006 petition was arbitrary and capricious.

6. Although the Secure Rural Schools Act funding has not yet been extended, if it is, the loss to our schools will be \$1,200,000. The windfall to KGB will be \$1,200,000 even though it will provide no educational services in the annexed area, and no children will be added to the KGB schools. Even if the Secure Rural School Act funding is not extended, the annexation would mean a loss of 22% of the regular forest receipts funding.
7. The LBC Chair failed to address at all the loss of the Payment in Lieu of Taxes funding to the communities of Prince of Wales. This federal funding amounted to \$543,913 in FY 2008. What possible equity is there in taking this federal funding away from the Prince of Wales communities so that KGB can annex essentially uninhabited land and provide no services to this area? When an agency like the LBC acts with this disregard of the Constitution and insensitivity to the best interests of the State, we can only come before our legislators as provided for in Statute and appeal to you to do what is right. How can this annexation possibly benefit the State when our communities may lose over \$1,500,000 in federal funding, and KGB will offer nothing of benefit to the State because it has deliberately removed Hyder from the annexation?
8. The LBC Chair notes several times that DEED "filed a statement of non-objection to the [KGB] annexation." This is perplexing; we do not understand how DEED could reach that conclusion given that the governing statute and regulations call

Letter to Sen. Olson, Rep. Fairclough, Rep. LeDoux  
February 7, 2008  
Page 4 of 5

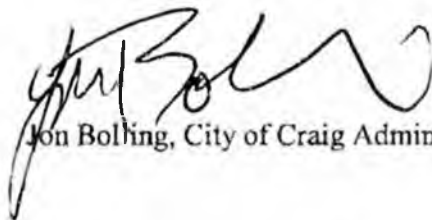
for "balancing all standards for annexation to a borough." By excluding Hyder, the proposed KGB annexation effectively shifts to the KGB the funds otherwise available to fund the education of Hyder students through Southeast Island School District, without imposing upon the KGB the requirement of providing that education. How does that meet the standard of "balancing all standards for annexation to a borough?" We do not believe, in all fairness, that it can or does meet that standard.

The letter from the LBC Chair indicated he was "troubled by the inaccuracies contained in the Resolutions." The Resolutions are accurate. We are troubled by the continued "inaccuracies" published by the LBC. We are troubled by the LBC's attempt to divert your attention from the Constitutional problems with its decision. We are troubled by the LBC's attempt to divert your attention away from the direct harm to our children and their educational opportunities.

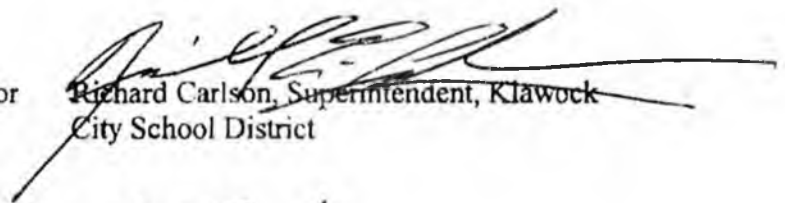
Finally, we are troubled by the fact that the LBC Chairman's seven page letter to the committee chairs is seven pages longer than the response that the LBC provided those who submitted timely written comments on the LBC's preliminary report on the proposed annexation. The LBC chose not to respond in the final report to the many concerns raised in writing, choosing instead to state that it was too busy to reply to the written concerns of the commenters. Had the LBC chosen to respond to these concerns, timely raised during the LBC's annexation petition review process, the legislature may not have these troubling questions before it today.

Our Tribal organizations, Communities and School Districts appreciate your careful consideration of the House Joint Resolution 30 and Senate Joint Resolution 15. We stand willing to provide any additional information that the Committees may feel helpful.

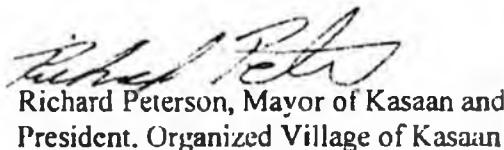
Sincerely,



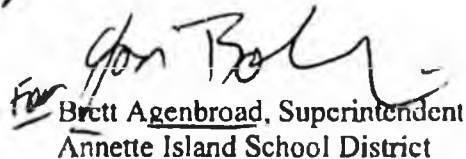
Jon Bolting, City of Craig Administrator



Richard Carlson, Superintendent, Klawock City School District



Richard Peterson, Mayor of Kasaan and President, Organized Village of Kasaan



Brett Agenbroad, Superintendent Annette Island School District

cc: The Honorable Kyle Johansen  
The Honorable Bert Stedman

Letter to Sen. Olson, Rep. Fairclough, Rep. LeDoux  
February 7, 2008  
Page 5 of 5

The Honorable Bill Thomas  
The Honorable Al Kookesh  
cc: The Honorable Lyda Green  
The Honorable John Harris  
The Honorable Sarah Palin  
DCCED Commissioner Emil Notti  
DCRA Director Tara Jollie  
LBC Staff Supervisor Jennifer Abbot  
Robert P. Blasco, Attorney for Appellants



September 4, 2007

Local Boundary Commission  
Department of Commerce, Community, and Economic Development  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

Dear Local Boundary Commission Members:

Attached you will find comments regarding the LBC preliminary report in the matter of the petition of the Ketchikan Gateway Borough for legislative review annexation of approximately 4,701 square miles to the Ketchikan Gateway Borough.

The comments detail the city's concerns regarding the proposed annexation. There are a number of problematic areas in the preliminary report that the LBC must address prior to the issuance of a final report and the holding of a public meeting where comments and testimony can be offered. These problematic areas will require careful consideration by the LBC before the annexation petition is again the subject to Commission action.

Among the many issues that the LBC must address regarding this proposed annexation is the equity of requiring many small communities to collectively forfeit some \$1.3 million in education and other funding every year to the Ketchikan Gateway Borough, which in turn will face no proportional requirement to deliver public services to the area subject to annexation.

Please note that the attached comments are also those of the Prince of Wales Community Advisory Council.

Thank you for considering our comments.


Sincerely,

Jon Bolling  
City Administrator

- Cc Governor Sarah Palin
- Senator Albert Kookesh
- Representative Bill Thomas
- Ketchikan Gateway Borough
- City of Wrangell
- Annette Island Indian Community
- Meyers Chuck Community Association
- Prince of Wales Community Advisory Council

IN THE MATTER OF THE PETITION OF THE KETCHIKAN  
GATEWAY BOROUGH FOR LEGISLATIVE REVIEW ANNEXATION  
OF APPROXIMATELY 4.701 SQUARE MILES TO THE KETCHIKAN  
GATEWAY BOROUGH

COMMENTS ON BEHALF OF THE CITY OF CRAIG AND THE PRINCE  
OF WALES COMMUNITY ADVISORY COUNCIL, IN RESPONSE TO  
THE PRELIMINARY REPORT OF THE STAFF OF THE DEPARTMENT  
OF COMMUNITY, COMMERCE AND ECONOMIC DEVELOPMENT

  
Jon Bolling, Craig City Administrator, and  
Prince of Wales Community Advisory Council Chairman

9/4/07  
Date

## I. INTRODUCTION

On April 16, 1999, the Local Boundary Commission (hereafter LBC) denied the Annexation Proposal of the Ketchikan Gateway Borough because "the proposal fails to serve all the relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14) The 1998 Annexation Proposal petitioned to annex essentially the same uninhabited area as the present proposal and it excluded the communities of Hyder and Myers Chuck. The current petition excludes the community of Hyder.

To accept KGB's petition, the LBC must find that it meets "the relevant principles established in the Constitution." The 1998 Proposal did not do so because Hyder was excluded.<sup>1</sup> Thus, the LBC's proper course in order to be consistent with the principles established in the Alaska Constitution is to deny this petition because, again, Hyder is excluded.

The City of Craig does not advocate that the LBC should require KGB to amend the Petition to include Hyder. KGB has been emphatic in its refusal to include Hyder. Equally as emphatic have been the residents of Hyder against being annexed by the KGB. The proper constitutional decision is to deny the Petition for the same constitutional reasons the LBC denied the 1998 Proposal. The Alaska Constitution has not changed. The Alaska Supreme Court has not entered any decision since 1999 upon which the LBC could rely to reverse its 1999 decision. Therefore, the City of Craig respectfully requests that the LBC reject the recommendation of the Preliminary Report, and deny the Petition.

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<sup>1</sup> Myers Chuck was also excluded. However, the LBC left no doubt in its Statement of Decision that the reason that the 1998 Proposal did not meet constitutional standards was the exclusion of Hyder. There is no suggestion that the Proposal would have been accepted, and thus found constitutional, by the LBC, if the Proposal had included Myers Chuck, but not Hyder.

**II. LBC STAFF'S RECOMMENDATION TO "APPROVE THE KGB PETITION WITHOUT CONDITION OR AMENDMENT IS CONTRARY TO THE LBC'S DECISION IN 1999 AND CANNOT BE RECONCILED WITH THAT DECISION OR STAFF'S RECOMMENDATION IN 1998**

The 1998 Petition by the KGB is functionally identical to this Petition except as follows:

1. Myers Chuck would be annexed under this Petition;
2. The boundaries creating the Hyder "enclave" would not divide a natural drainage.

Of significance, none of the factual basis for the LBC's denial of the 1998 Petition has changed. The LBC noted in denying the 1998 Petition:

1. KGB refused the invitation of the LBC to amend its Petition to include Hyder and Myers Chuck (Statement of Decision, 1999, p. 3);
2. "Residents of Meyers Chuck and Hyder have expressed strong opposition to being included in a borough and the Borough has expressed little interest in annexing those communities. **Such an arrangement would poorly serve the State's long-term interests.**" (Statement of Decision, 1999, p. 8, emphasis added);
3. "If the Borough's annexation proposal were approved, the Borough would have little or no incentive to further extend its boundaries to include Hyder and Myers Chuck." (Statement of Decision, 1999, p. 8);
4. "...the constitution calls for boundaries to embrace an area of common interests to the maximum degree possible. Without Myers Chuck and Hyder, this standard cannot be met." (Statement of Decision, 1999, p. 11);

5. "...the Borough's annexation proposal significantly undercuts its own ability to effectively address planning needs by excluding Myers Chuck and Hyder."  
(Statement of Decision, 1999, p. 12);
6. "The State would be left with the responsibility for the education of students in those communities. The State currently contracts directly with the school district in Stewart, British Columbia for the education of Hyder students." (Statement of Decision, 1999, p. 12);
7. "Because the annexation petition excludes Hyder and Meyers Chuck, the Commission considers the proposal to fail in terms of promoting maximum local self-government." (Statement of Decision, 1999, p. 13);
8. "Further, the proposal fails to serve all relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14).

None of these circumstances have changed since 1999. KGB again deliberately excludes Hyder. Without addressing a single significant changed fact or circumstance, the Preliminary Report now recommends that the Petition be approved.

1. KGB has again refused to include Hyder in the area proposed to be annexed.

It is apparent that the LBC found it significant that the 1998 annexation proposal did not include Hyder. The LBC gave the KGB the opportunity to amend the petition to include Hyder. It refused. Seven years later it files another petition deliberately excluding Hyder. The reality is that the KGB will never voluntarily annex Hyder. Given the expense that would be involved, meaning it would have to provide schools and other mandatory borough services, why would it if it can annex the uninhabited lands, receive

approximately an additional \$1,200,000 in National forest receipts revenue, and not have to provide services?

LBC staff's conclusion that the LBC's interpretation of Article X, Section 1 of the Alaska Constitution is "unduly restrictive" is wrong, biased, and indefensible.

(Preliminary Report, p. 17) In the absence of changed facts, which there are none, and none were identified in the 117 page Preliminary Report, the LBC should not change its interpretation of the Constitution solely because of an unsupported new legal opinion offered by LBC staff.<sup>2</sup>

2. The residents of Myers Chuck and Hyder remain unanimously opposed to annexation.

The Preliminary Report acknowledges that the residents of Myers Chuck and Hyder remain adamantly and unanimously opposed to annexation by KGB. In conjunction with KGB's adamant opposition to annexing Hyder, the long-term state's best interests again would be "poorly served" by allowing the annexation without Hyder. These facts are the same as used by the LBC to deny the Petition in 1998, and no basis is shown in the Preliminary Report that changes the importance of these facts to the LBC. They were important in the denial of the petition in 1999; they should be equally important in denying this petition.

3. If the petition is approved, KGB will have no incentive to annex Hyder in the future.

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<sup>2</sup> The LBC has access to the Department of Law for legal opinions regarding the interpretation of the Alaska Constitution. If there has been an opinion from the Department of Law that the LBC has been interpreting the Constitution in an "unduly restrictive" manner, the LBC should make that opinion part of the record.

The LBC was correct in 1999. Why would KGB annex Hyder and have to provide schools and all mandated borough services if it could obtain all of the additional National Forest receipts revenues through this annexation and avoid the expense of providing services? The Preliminary Report has no answer. Indeed, the Report essentially acknowledges that KGB will never annex Hyder. In order to justify the fact that KGB is never going to annex Hyder, LBC staff came up with the new concept of creating official enclaves within boroughs, completely contrary to the historical position of the LBC. What is particularly disconcerting about LBC staff's new position is that the \$1,200,000 that would go to KGB upon annexation, with no corresponding obligation to provide services, will result in a direct loss of school funding dollars to the other Southeast Communities who do have the obligation to provide schools, such as the City of Craig. The LBC was honest in its assessment in 1999—KGB has no incentive to annex Hyder. The LBC should be honest again in 2007—KGB still has no incentive to annex Hyder if this petition is approved.

4. The Constitution has not changed—the KGB petition cannot meet the constitutional standard to embrace an area of common interests to the maximum degree possible without the annexation of Hyder.

Despite 25 pages of discussion, primarily related to snippets of the Constitutional Convention, and LBC staff's disagreement with the decision of the Superior Court in *Petitioners for the Dissolution of the City of Skagway and the Incorporation of the Skagway Borough v. Local Boundary Commission*,<sup>3</sup> the Report fails to cite to a single fact or changed circumstance such that this constitutional standard can now be met without the annexation of Hyder.

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<sup>3</sup> 1JU-02-0124 CI, September 20, 2005)

The Preliminary Report goes so far as to recommend that the LBC change the words of the Constitution. The Preliminary Report states that this constitutional standard is satisfied if "the post annexation boundaries of the borough would embrace a population that is interrelated and integrated with respect to social, cultural, an economic characteristics and activities." (Preliminary Report, p. 115) That is not what the Constitution says or mandates. As applied to this petition, the statement is meaningless. This Petition would "embrace" a population of no more than 25 people, probably only 14. Article X, Section 2 cannot be so lightly disregarded. The LBC stated clearly in 1999 that, without Hyder, the Constitutional standard could not be met. The LBC's application and interpretation of the Constitution was correct. The LBC did not say that without "Hyder or Myers Chuck, one or the other" the Constitutional standard could not be met. The LBC should not reinterpret such an important Constitutional mandate without any new facts or new circumstances that would justify such a significant shift in the historical interpretation of this provision of the Constitution by the LBC.

5. The exclusion of Hyder continues to undercut the ability of the KGB to meet its own planning needs.

In "considering the best interests of the State of Alaska," in its 1999 decision, the LBC stated clearly that the planning needs of the proposed borough, as annexed, must include Hyder. As the only community in the area of the KGB model boundaries with roads, schools, land use issues (commercial, industrial, and residential development), and tourism growth, the planning needs in the nine years since that decision have increased, not decreased. Thus, the planning needs have increased. These are the facts. In considering these facts in 1999, the LBC rejected the proposed annexation without Hyder. In order to reverse its 1999 decision, without being totally arbitrary and

capricious, the LBC must cite to new facts that warrant approval of the petition, in the "best interests of the state," without the inclusion of Hyder.

The Preliminary Report does not provide any new facts upon which the LBC could rely to reverse its 1999 decision. The preliminary report makes the remarkable statement that "creating the 205-square mile Hyder enclave would not initially impede 'the full development of essential borough services on an efficient, cost-effective level.'" (Preliminary Report, p. 88) The annexation proposal does not include any land or community that needs "services." By excluding Hyder, it goes without saying that the services presently provided by the State in Hyder "would not be impeded." The Preliminary Report is saying that since the annexed area has no need for services, the exclusion of Hyder would not "impede" the "full development" of no services! As a constitutionally created body, with a mandate to act in the best interests of the State, how can the LBC act in a constitutional manner and reverse its 1999 decision on such a basis? A reversal of its 1999 decision would be arbitrary and capricious if the LBC adopts the double-speak of the preliminary report.

6. The state will continue to be left with the responsibility for providing education services to Hyder students.

It is a simple fact that this proposal does not relieve the State of any of its current responsibilities and obligations in the area proposed to be annexed. The important obligation is the provision of school services. It cost money to provide school services in Hyder. KGB wants the additional \$1,200,000 in yearly revenues, and does not want to have to spend any of it on providing any services in the area to be annexed, in particular it wants no part of providing school services in Hyder. This was a significant factor in the LBC's recommendation against the proposal in 1998. It was a significant factor in

the LBC's denial of the petition in 1999. Nothing has changed. Hyder needs a school system. The state provides the school system.<sup>4</sup> KGB does not want to have the obligation of providing the school system. The proposal excludes Hyder so that KGB does not have to provide educational services in Hyder. What facts are the LBC going to rely on to reverse the 1999 decision and now say it is in the best interests of the State to continue to require the State to provide the educational services in Hyder and yet allow KGB to annex all the uninhabited land and collect the additional \$1,200,000 annually? None are advanced in the Preliminary Report.

The people of the State have to rely on the Commissioners to maintain constitutional and policy consistency, that is, to again deny this Petition based on the same best interests of the state and constitutional principles as resulted in the 1999 Decision.

7. The exclusion of Hyder continues to mean that the petition does not promote maximum local self-government.

Promoting maximum local self-government is a constitutional mandate for consideration of a borough proposal. (Article X, Section 1) As the LBC stated in its 1999 Decision, "the annexation proposal seeks to add 99.6 percent of the area within the Borough's model boundaries not already within its corporate boundaries, but excludes 87.7 percent of the residents of that area." The current petition, which includes Myers Chuck, but still not Hyder, continues to essentially grab all the land, but take no responsibility for the people. As the Preliminary Report states, the population of Myers

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<sup>4</sup> The school system in Hyder is provided by the Southeast Island School District at state expense.

Chuck is reported at 14, but is probably less. Therefore, the same factual scenario is presented to the LBC as the one rejected by the LBC in 1999.<sup>5</sup>

The LBC upheld the Article X, Section 1 mandate in 1999 by properly denying the annexation proposal because it excluded Hyder. The LBC has no basis to conclude that the mandate of Article X, Section 1 can now be satisfied by granting a petition for nearly the same area that still excludes Hyder.

8. With the exclusion of Hyder, the petition again fails to serve all relevant principles established by the Alaska Constitution.

We continue to stress that nothing has changed since the LBC concluded that KGB's annexation of this area, without including Hyder, fails to serve all the relevant principles established by the Alaska Constitution. (Statement of Decision, 1999, p. 14) The Constitutional principles have not changed. The best interests of the state standard has not changed. The LBC's constitutional obligations to all the people and the communities in the state—including the people and communities in the unorganized borough—has not changed. Hyder remains the only community in the area that needs essential services. Hyder remains the only community in the area where the State is presently providing all the essential services that would be provided by a borough. And, KGB continues to exclude Hyder from the proposed annexed area. Based on the facts and the Constitution, the LBC's decision must remain the same, and deny the Petition. There is no conceivable Constitutional basis, and no benefit to the State, for the LBC to reverse its 1999 Decision.

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<sup>5</sup> The Preliminary Report remarks that the inclusion of Myers Chuck in this petition is a "notable" difference from the 1998 proposal. We assume the LBC staff used the word "notable" only to signify a technical difference, not that the inclusion of Myers Chuck while excluding Hyder is meaningful in any sense.

### III. LBC STAFF'S STATEMENT THAT THE ALASKA CONSTITUTION MANDATES ANNEXATION HAS NO BASIS IN THE CONSTITUTION OR ALASKA CASE LAW

Article X, Section 3 of the Alaska Constitution states: "The entire State shall be divided into boroughs, **organized and unorganized.**" (emphasis added) The Constitution does not say that the State must be divided into only "boroughs." The Constitution is silent as to annexation of lands in the unorganized borough. The Constitutional article further states: "Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law." Again, the Constitution does not mention annexation. By its plain language, Article X, Section 3 does not equate the formation of a borough with annexation of land from the existing unorganized borough by an already formed borough. The Constitution does encourage the formation of boroughs, as stated by the Alaska Supreme Court in *Mobil Oil Corp. v. Local Boundary Commission*.<sup>6</sup> The Alaska Supreme Court did not say that the Constitution encourages the formation of boroughs or the annexation of land in the unorganized borough by an already formed borough. The new Constitutional interpretation offered in the Preliminary Report would rewrite the Constitution, and deny important Constitutional protection to the people in the unorganized borough.

The Preliminary Report does not cite to any Alaska Supreme Court case that interprets the Constitution as mandating or encouraging the annexation of lands in the unorganized borough by an existing borough. We are not aware of any. Both under the Constitution and the "balanced best interests of the state" standard (19 AAC 10.200), annexation is not the same as the formation or incorporation of a borough.

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<sup>6</sup> 518 P. 2d 92 (Alaska 1974)

In *Port of Valdez Co., Inc. v. City of Valdez*, the Alaska Supreme Court noted that the LBC had a statutory duty to develop standards for "borough annexation."<sup>7</sup> If the formation of boroughs and the annexation of land in the unorganized borough were the functionally the same acts under Article X, Section 3 of the Alaska Constitution, there would be no need for mandated annexation standards. The Alaska Supreme Court would not specifically point out that there are "three purposes underlying the statutory requirement of annexation standards."<sup>8</sup> Principles related to constitutional interpretation and statutory interpretation require that provisions and statutes not be read as superfluous. By imposing a separate legislative requirement related to annexation standards, and with the Alaska Supreme Court specifically noting the distinction of annexation, the formation of boroughs and the annexation of land in the unorganized borough by an existing borough, are not constitutionally the same.

Despite lengthy quotes from the Alaska Constitutional Convention, the preliminary report fails to quote anything that equates borough formation under the Constitution with the annexation of land in the unorganized borough by an existing borough. Importantly, the Preliminary Report quotes a draft version of Article X, Section 3 of the Constitution, which was not adopted. (Preliminary Report, p. 25) The draft version of Article X, Section 3 would have divided the state into boroughs—there is no mention of unorganized boroughs. By rejecting that draft version, the delegates made a clear choice to provide constitutional status to the unorganized borough (s).

The Preliminary Report fails to address the constitutional issues of Article X, Section 3 as to the annexation of land in the unorganized borough by an existing borough.

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<sup>7</sup> Preliminary Report of DCRA, October 1998, p. 25, quoting 522 P. 2d 1147, 1155 (Alaska 1974)  
<sup>8</sup> 522 P. 2d at 1155

In the Preliminary Report prepared by the same LBC staff person in 1998, the Report concluded that the KGB proposal, without Hyder, "would seriously diminish the significance of this principle" [referencing Article X, Section 3]. (Preliminary Report, 1998, p. 80-81) The "principle" embodied in Article X, Section 3 has not changed. The only thing that has changed is that the same LBC staff person recommends ignoring the Constitutional principle of Article X, Section 3 for reasons not explained anywhere in the report. The LBC staff went on record in 1998 stating unequivocally that annexation of this area without Hyder violated the principles of Article X, Section 3. The LBC agreed in its 1999 decision. The LBC has the obligation to the State to maintain its consistency in the interpretation and application of constitutional principles, and as such, must again deny this Petition because it excludes Hyder.

Rather than be consistent in the interpretation of Article X, Section 3 advanced and followed by the LBC staff in 1998, the Preliminary Report ignores Article X, Section 3, and argues that Article X, Section 1 makes "no distinction" between borough formation and the annexation of land from the unorganized borough by an existing borough. (Preliminary Report, p. 16) The Report cites to two Alaska Supreme Court cases involving the interpretation of Article X, Section 1. (Preliminary Report, p. 14). Neither of those cases involved the issue of whether the standards for annexation of land from the unorganized borough by an existing borough is encouraged or mandated by the Constitution in the same manner as the formation of boroughs. Indeed, the Report highlights that section of the *Mobil Oil* case that specifically says "Our constitution encourages their creation." (Preliminary Report, p. 15, underlining in Report, bold emphasis added) Without citation to any other case, or even to anything from the

constitutional convention, the Preliminary Report states: "borough incorporation and borough annexation are equally encouraged by article X, section 1, whenever the applicable standards are satisfied." This interpretation of the Constitution offered in the Preliminary Report is not supported by the language of the Constitution, existing Alaska case law, and the applicable statutes and regulations.

Because the people and communities of the unorganized borough are afforded specific constitutional status and protection, the LBC cannot constitutionally equate borough formation with the annexation of land from the unorganized borough by an existing borough. In particular, the LBC cannot accept a tortured interpretation of Article X, Section 1, such that annexation can be used as a vehicle to increase its National Forest Receipts revenues without in fact minimizing local government units.

The KGB petition neither maximizes "local self-government" nor minimizes "local government units." It is undisputed that none of the area to be annexed has any need for "local self-government." It is also undisputed that the area to be annexed does not "minimize" the local government units because Hyder, which does need borough services, is excluded and may incorporate as a city—thus increasing the local government units. Nothing from the Constitutional convention would be supportive of the interpretation of the Constitution offered by the LBC staff, that is, the Constitution encourages borough formation and the annexation of land in the unorganized borough equally, regardless of the detrimental impact on the people and communities in the unorganized borough, and particularly the devastating loss of school funding in those communities.

The Constitutional significance of creating boroughs is specifically to provide necessary services that are currently being provided by the State. Thus, when an area seeks to form a borough, it must provide necessary services, such as schools. That is why the formation of boroughs is encouraged by Article X, Section 1 and Section 3. The Constitution cannot be similarly interpreted to encourage the annexation of land from the unorganized borough by an existing borough which does not provide any necessary service, particularly schools, in the proposed annexed area, and will in fact seriously impair the provision of school services by the communities in the unorganized borough directly as a result of the annexation. The KGB petition will not provide any necessary services in the area to be annexed, and thus, cannot satisfy the purpose and intent of Article X, Section 1 and 3 of the Alaska Constitution.

**IV. LBC STAFF'S STATEMENT THAT THE LBC HAS A POLICY  
ALLOWING THE CREATION OF ENCLAVES IS CONTRARY TO  
THE LBC'S 1999 STATEMENT OF DECISION**

In its Statement of Decision denying the KGB annexation proposal in 1999, the LBC stated: "The annexation proposed by the Borough create [sic] enclaves. The Commission has a formal policy to avoid enclaves within boroughs as reflected in 19 AAC 10.200(2)." (Statement of Decision, 1999, p. 13) The present Petition creates a Hyder enclave. (Preliminary Report, p. 86) LBC staff admit that the Haines Borough is the only borough in the state with an enclave—Klukwan. (Preliminary Report, p. 87) LBC staff admit that the creation of the Klukwan enclave was a "public policy" issue that "would not exist with respect to the proposed Hyder enclave." (Preliminary Report, p. 88) Thus, there is no "public policy" impediment to the inclusion of Hyder in the KGB. Therefore, the approval of this Petition with a Hyder enclave would be the first enclave

ever created by the LBC where it is admitted that no reason exists at all for the enclave except that KGB does not want the obligation of providing services to Hyder. Rather than evidencing a historical "policy" of creating enclaves, approval of this Petition would contravene the Constitution, applicable statutes, the regulations, and every prior decision of the LBC with respect to the analysis of enclaves proposed as part of a borough formation or annexation. The preliminary report offers no reasonable or persuasive reason for such a dramatic reversal of LBC policy and precedent.<sup>9</sup>

LBC staff's "conclusion" that the Hyder enclave "should be annexed to the KGB" if "a Prince of Wales Island Borough were formed," fundamentally ignores the regulation precluding enclaves and makes the condition of annexation of Hyder unrelated to any Constitutional, statute or regulation related to borough formation or annexation. Hyder is in the KGB borough boundaries, constitutionally, statutorily, and in accordance with LBC regulations. It is under those standards that this Petition must be reviewed. There is no constitutional provision, statute or regulation that allows an existing borough to annex land in the unorganized borough, specifically excluding the only populated area, under the novel hypothetical concept that if some other area is later formed as a borough, then the enclave "should" be annexed. By what mechanism? The LBC staff does not explain how the LBC can force or order or direct that Hyder be annexed by the KGB if a Prince of Wales Borough is formed. Equally as important, there is no standard in the

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<sup>9</sup> As addressed below, the Preliminary Report was written by LBC staff person, Dan Bockhorst. Mr. Bockhorst has applied for the position of Ketchikan Gateway Borough Manager. Without question, he has a substantial conflict of interest. It cannot escape the scrutiny of the LBC, nor will it escape the scrutiny of the Alaska courts, that the Preliminary Report authored by Mr. Bockhorst recommends that the LBC reverse its historical policy on enclaves, which will benefit the KGB directly by allowing it to receive an additional \$1,200,000 annually without the provision of any services at all in the annexed area because of the creation of the Hyder enclave. As a minimum, the LBC should, in fairness to the people of the State as whole, and the people in the Southeast communities in the unorganized borough, hire an independent staff person, who has never worked for DCCED or Mr. Bockhorst, to prepare a new Preliminary Report.

Constitution, statutes, or regulations which allows the KGB the benefit of excluding Hyder from its borough until other communities form a different borough—which would not include Hyder. The impact of the LBC's staff recommendation is clear—if the LBC approves this Petition, Hyder will never be annexed into the KGB. The Preliminary Report misrepresents the historical policy of the LBC against creating enclaves, and then creates a fictional “possibility” of later annexation of Hyder that the LBC staff, and the LBC, knows will never happen. Therefore, the LBC should continue to maintain its historical policy against enclaves, clearly stated in the 1999 decision, and deny this Petition.

**V. THE LBC MUST TAKE INTO ACCOUNT THE CONFLICT OF INTEREST OF THE LBC STAFF PERSON WHO PREPARED THE PRELIMINARY REPORT IN ASSESSING WHY LBC STAFF HAS CHANGED ITS POSITION AS TO THE KGB PETITION**

The LBC is a “quasi-judicial” body, according to the Preliminary Report. (Preliminary Report, p. B-4) The LBC must provide a fair hearing and review of petitions, according to the Preliminary Report. (Preliminary Report, p. B-4) The Preliminary Report acknowledges that Alaska courts will review decisions of the LBC “to determine whether a fact finder has shown bias such as prejudgment of the facts or issues or a personal bias for or against an issue or a participant in the proceeding.” (Preliminary Report, p. B-4)

A judge is required not only to avoid bias and avoid any impropriety, a judge must avoid the appearance of bias and the appearance of impropriety. For example, it would be an unquestionable appearance of impropriety if a judge's law clerk prepared a memorandum for the judge with a recommended decision in favor of one party in a case

where the law clerk was seeking employment with that party. The LBC is in no different situation.

The author of the Preliminary Report wants to be employed by the KGB as its Borough Manager. The Preliminary Report was completed as of June 30, 2007. The Borough position became open in June of 2007, when the KGB Borough manager resigned.

It cannot be disputed that this Preliminary Report represents a complete reversal of the recommendation of the same LBC staff in its Preliminary Report in 1998. It also cannot be disputed that nothing has changed except this petition includes Myers Chuck—a totally inconsequential change under the Alaska Constitution, applicable statutes, applicable regulations, and the best interests of the state standard. The Preliminary Report fails to offer any distinguishing Constitutional or factual reason for the reversal of the LBC staff position. If the LBC considers this Preliminary Report and approves the Petition, the appearance of bias and impropriety will undoubtedly result in judicial review of the decision.

The LBC has two choices. It can reject the recommendation of the LBC staff, and deny the Petition because that would be the factually and legally correct decision. The denial of the Petition would be consistent with the Constitutional principles the LBC is obligated to uphold and apply. The denial of the Petition will be consistent with the 1999 Decision.

The second choice is for the LBC to remove the Preliminary Report from the record and to retain an independent consultant to prepare a report not tainted with the appearance of bias and conflict of interest enveloping this Preliminary Report.

We urge the LBC to carefully scrutinize this problem. The people of this State are entitled to not only a fair decision that is in the best interests of the state, the people of the State are entitled to a decision that all can feel is free from any potential bias or conflict. Under the circumstances presented by the author of the Preliminary Report having applied to be the KGB borough manager, and having recommended the approval of this Petition—a complete reversal from the same author's position in 1998 on annexation of this area without Hyder—the people of this State cannot have any confidence in a decision being free of bias if the LBC relies on the Preliminary Report and approves the Petition.

**VI. THE PETITION CANNOT MEET THE BEST INTERESTS STANDARDS WHEN THE PRELIMINARY REPORT ADMITS THAT THE STATE WILL BE REQUIRED TO CONTINUE TO PROVIDE ALL NECESSARY SERVICES TO HYDER AND THE ANNEXATION WILL NOT RELIEVE THE STATE OF ANY RESPONSIBILITIES**

The Preliminary Report acknowledges that the best interests of the standard applies to the proposed annexation of land from the unorganized borough to the existing KGB, including by legislative review, pursuant to 3 AAC 110.195. (Preliminary Report, p. 100) In order to be in the best interests of the State, the petition must demonstrate that the proposed annexation “will relieve the state government of the responsibility of providing local services. (3 AAC 110.195(3)) LBC staff identifies two “areas” “in which the KGB would relieve the State of responsibility of providing local services...Those are education and platting.” (Preliminary Report, p. 92)

After admitting that the proposed annexation will not in fact result in the provision of education services in the area proposed to be annexed, the LBC staff notes that in 2011 the KGB required local contribution to its existing school system, may increase by

\$15,197. (Preliminary Report, p. 93) LBC staff then acknowledges this potential increase is "not particularly significant." (Preliminary Report, p. 94) Unexplainably, the next sentence reads: "Thus, KGB provides a significant financial relief to the State in terms of responsibility for delivery of education services. (Preliminary Report, p. 94) The alleged "financial relief" to the state of \$15,197 cannot be both "not particularly significant" and "a significant financial relief."

The Preliminary Report fails to discuss the burden that remains on the State by KGB not annexing Hyder. That burden on the State is currently approximately \$174,000 to provide education services in Hyder, and can only be projected to go up. In essence, without any discussion, rationale, or reasoning, LBC calls the \$15,000 increase in KGB's school contribution "significant relief" to the State, and makes no characterization of the \$174,000 State must expend because KGB does not want the responsibility of providing the school system in Hyder. Similarly, LBC makes no comparison of the \$15,000 increase in 2011 in KGB's school contribution with the more than \$1,000,000 additional revenues KGB will get annually. The \$15,000 contribution is less than 10% of what the State will continue to pay to serve Hyder. The \$15,000 contribution is approximately 1% of the additional National Forest receipts KGB will receive, and KGB would receive nearly four additional years of the dramatically higher receipts before even paying the additional \$15,000 school funding contribution. The Preliminary Report fails to offer any actual analysis of the best interests of the state standard under A.S. 29.06.040(a) and 3 AAC 110.195(3).

The Preliminary Report devotes all of three sentences to how the petition will supposedly relieve the state of "plating" responsibility and this aspect of the application

of 3 AAC 110.195(3). Without identifying any potential planning, platting, or land use regulation necessary within the proposed annexed area, LBC staff concludes that “the power and duties for platting within the area proposes for annexation would shift from the State to the KGB.” (Preliminary Report, p. 94) That the “powers and duties” would shift is a given—what is important under the best interests standard is how this proposed annexation in fact relieves the state of “the responsibility of providing local services.” (3 AAC 110.195(3). The state does not provide any local services in the proposed annexed area, including platting. No local services would be provided by the state in the foreseeable future. KGB does not propose to provide any local services in the area to be annexed, nor does it anticipate providing any local services in the foreseeable future. 3 AAC 110.195(3) cannot be met by KGB agreeing to provide nothing in the area where nothing is currently provided and nothing is needed. 3 AAC 110.195(3) is stated in the affirmative and with mandatory language—“will.” “Will” this petition “relieve the state government of the responsibility of providing local services?” The answer is factually and legally easy—the record is undisputed—the answer is a resounding no.<sup>10</sup>

**VII. THE PETITION CANNOT BE CONSTITUTIONALLY IN THE BEST INTEREST OF THE STATE WHEN THE ONLY REASON FOR THE ANNEXATION IS TO GARNER OVER \$1,000,000 ANNUALLY IN FEDERAL FUNDS THAT PRESENTLY IS DISTRIBUTED THROUGHOUT THE COMMUNITIES OF SOUTHEAST ALASKA AND NO SERVICES WILL BE PROVIDED BY KGB IN THE ANNEXED AREA WITH THOSE FUNDS**

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<sup>10</sup> The proportion of private land in the area proposed to be annexed is so small that if a private land owner sought some platting service in the future, it would be such minimal relief to the State that it could not properly be characterized as the State being relieved of the burden of providing local services. If the cost savings would be a benefit to the State, the Preliminary Report would have quantified the benefit.

The City of Craig is very concerned about the impacts on the school children of Craig and all the Southeast communities in the unorganized borough if the LBC approves the petition request submitted by the Ketchikan Gateway Borough.

1. National Forest Receipts Revenues

We believe the LBC is well aware of the financial impacts to the communities and school districts of the unorganized borough that will result from the proposed annexation. The proposed annexation will remove up to \$1.2 million annually from the budgets of regional school districts and transfer that funding to the KGB, whose proposed annexation would add exactly zero students to the KGB School District.<sup>11</sup> This impact was not anticipated when the model borough boundaries were adopted because communities like Craig, which have precisely the same legal obligation to support local schools as do boroughs, did not receive NFR payments until 1993. The entire model borough boundary issue should be revisited and revised to account not just for the NFR impacts, but for other relevant issues that may have changed since 1992.

2. Best Interest Finding

The Best Interest Findings section of the preliminary report fails to properly apply the provisions of 3 AAC 110.980. The report does not reasonably weigh the impacts of the proposed annexation on affected local governments nor does it relieve the state of significant financial obligations that could otherwise be assumed by the KGB. In addition, the report fails to note that proposed annexation also reduces state revenues.

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<sup>11</sup> LBC staff's discussion of the amount of national forest receipts that will be transferred to the KGB as a result of this petition is identical to the its discussion of the amounts in 1998. LBC staff ignores what has actually been received by the communities during the intervening nine years. The loss to the communities, and corresponding windfall to the KGB is in fact closer to the \$1,200,000 than LBC staff's "projection" of "roughly \$286,000 annually." To use that substantially lower figure is not justified, misleading, inaccurate, unreasonable, and unfair.

**A) Provision of Local Services – 3 AAC 110.195(3)**

The preliminary report fails to recognize the financial detriment to the State of Alaska should the annexation be approved. The proposed annexation does not relieve the State of Alaska of the cost to deliver state services in proportion to the area subject to annexation. The petition seeks the financial benefits that the annexation will bring but rejects including in the annexation the four percent of the model borough boundary that would bring with it the responsibility typically required of local government: education funding. The petition proposes to annex 4,701 square miles of the area within the KGB model borough boundaries, but exclude the 205 square miles of the model borough boundaries that would require the actual delivery of local government services. The result of this is that the State of Alaska, through the Southeast Island School District REAA, will continue to be responsible for the full \$174,000 cost of educating the 16 students in Hyder. Were this area included in the annexation petition, the state's obligation would be reduced by the borough's four mill equivalent requirement.

While the petition proposes to avoid the cost of providing education to Hyder, the petition would also reduce revenue to the State of Alaska to provide those same education services. Currently the state receives national forest receipts funding that provide education funding to the three REAAs in Southeast Alaska. The Preliminary Report fails to account for this loss of state funding, which would have totaled more than \$280,000 in the current fiscal year. Ironically, this funding loss occurs because the approval of the petition increases the KGB's national forest receipts funding at the expense of the State of Alaska.

**B) Affected Local Governments – 3 AAC 110.980(2)(B) and (C)**

The preliminary report fails to account for the losses suffered by affected local governments as called for in 3 AAC 110.980(2)(B) and (C). The reduction in education and other funding that will result from the proposed annexation is substantial, as shown below.

Home Rule	FY 2007	Income Loss	Income Loss	Income Loss
	Ed. Receipts	Ed. Funding	Road Funding	Project Funding
Petersburg	\$ 914,381	\$ 201,164	\$ 15,236	\$ 41,806
Wrangell	\$ 571,788	\$ 125,793	\$ 7,963	\$ 25,840
<b>First Class</b>				
Craig	\$ 594,437	\$ 130,776	\$ 6,380	\$ 26,497
Hoonah	\$ 257,409	\$ 56,630	\$ 6,209	\$ 12,140
Hydaburg	\$ 112,085	\$ 24,659	\$ 4,230	\$ 5,581
Kake	\$ 179,336	\$ 39,454	\$ 9,566	\$ 9,470
Klawock	\$ 209,638	\$ 46,120	\$ 7,028	\$ 10,268
Pelican	\$ 25,087	\$ 5,519	\$ 896	\$ -
Skagway	\$ 168,900	\$ 37,158	\$ 8,222	\$ 8,767
<b>Second Class</b>				
Angoon	-	-	\$ 5,294	-
Coffman Cove	-	-	\$ 10,698	-
Gustavus	-	-	\$ 20,659	\$ 3,956
Kasaan	-	-	\$ 5,831	-
Port Alexander	-	-	\$ 861	-
Tenakee Springs	-	-	\$ 1,721	-
Thorne Bay	-	-	\$ 23,847	\$ 4,566
<b>REAA'S</b>				
Annette Island	\$ 537,333	\$ 118,213	\$ 23,677	\$ 19,140
Chatham	\$ 368,934	\$ 81,165	-	\$ 13,141
Southeast Island	\$ 373,545	\$ 82,180	-	\$ 13,306
<b>Total Annual Loss</b>		<b>\$ 948,832</b>	<b>\$ 158,317</b>	<b>\$ 194,477</b>
<b>Aggregate loss of funding</b>				<b>\$ 1,301,626</b>

Every affected local government that has commented to date on this proposed annexation has gone on record in opposition, due to severe impacts to education funding. These comments demonstrate that there is broad agreement among the affected local governments that public interests are not served by the proposed annexation. For its part, the preliminary report fails to address how the losses detailed above, losses that negatively impact twelve school districts, sixteen cities, and 2,700 K-12 public school

students, are in the best interests of the State. When weighing the claims of the preliminary report against the multiple community statements against the proposed annexation, it is not reasonable or fair for the LBC to ignore the specific academic harm identified by the communities of the region.

LBC staff offers no justification at all for recommending the transfer of nearly \$1,200,000 per year in academic funding presently shared by sixteen cities and twelve school districts in Southeast Alaska to the Ketchikan Gateway Borough with absolutely no increase in either the number of students to serve or education services in the Ketchikan Gateway Borough. LBC staff offers no justification at all for not only recommending that the KGB be the recipient of this additional \$1,200,000, at the expense of all the other Southeast Communities in the unorganized borough, but in addition, recommending the exclusion of Hyder from the annexation even though Hyder is within the model borough boundaries and Hyder does have education services presently provided and paid for by the State. The LBC must carefully scrutinize why LBC staff has so dramatically changed its recommendation from 1998, even though the annexation petition is essentially identical, and neither the facts supporting the denial nor the reasons supporting the denial by the LBC in 1999 have changed.

#### **VIII. CONCLUSION**

The people of the State of Alaska should expect, and receive, fairness and consistency from the LBC. The Constitution is the Constitution—it cannot be manipulated to achieve a desired result. The best interests of the State standard for annexation of land from the unorganized borough is also a constant—it should not be manipulated to achieve a desired result.

What possible constitutional, statutory, regulatory, or best interest of the State reason can the LBC rely on to approve this Petition, with Hyder excluded, after having rejected the nearly identical petition as not justifiable under the Alaska Constitution because Hyder was excluded in the 1998 annexation proposal? The LBC will not find an answer to that question in the Preliminary Report.

Despite a 117 page report, with attachments, the LBC staff is not able to cite to a single comment from any person or community in this State in support of this Petition. All comments we are aware of to date in response to the Petition oppose the Petition. The LBC has a Constitutional obligation to consider the voice of a unanimous people against this Petition.

We request that the LBC reject the recommendation of the LBC staff and deny the annexation petition of the KGB.

Sonya  
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**Sonya Hymer**

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**From:** Rep. Gabrielle LeDoux  
**Sent:** Wednesday, February 13, 2008 11:17 AM  
**To:** Peter Caffall-Davis  
**Subject:** RE: HJR 30 - Please Disapprove the LBC recommendation regarding annexation of territory to the KGB

Dear Mr. Caffall-Davis,

Thank you for calling in yesterday. Your participation will also be valuable to the Committee in next Tuesday's meeting. Here is the telephone number to call to participate: 1 888 295 4546. A member of my staff or else staff in Representative Anna Fairclough's office will be in touch with further details in advance of Tuesday's meeting.

Best regards,

Gabrielle

Representative Gabrielle LeDoux  
State Capitol  
District 36  
phone: (907) 465-2487  
fax: (907) 465-4956

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**From:** Peter Caffall-Davis [pcaffalldavis@starband.net]  
**Sent:** Wednesday, February 13, 2008 9:12 AM  
**To:** Rep. Gabrielle LeDoux  
**Subject:** Re: HJR 30 - Please Disapprove the LBC recommendation regarding annexation of territory to the KGB

**Dear Representative LeDoux,**

**Thank you for allowing me the opportunity to participate in yesterday's HJR 30 hearing. When you learn the time for the proposed workshop on this bill I'd appreciate your letting me know how to dial in and attend for that one as well.**

**The Hyder Community Association supports me as the point man for Hyder regarding this annexation issue. The majority of Hyder citizens have also granted tacit approval allowing me to speak on their behalf in the absence of other citizens.**

**I would welcome the opportunity to listen in and possibly participate in the upcoming workshop. It seems that questions regarding Hyder always crop up as part of this annexation and I welcome the opportunity to speak to those questions.**

**I believe my input might be helpful and important. A good bit of the**

2/13/2008

**published official Alaska State information referenced in the KGB annexation proposal on Hyder was incorrect. The LBC Commissioners note some of the mistakes. Items like land area, population, per capita income, and household income are all grossly incorrect. In addition I'd be able to answer questions about the communications and relationship between KGB and Hyder throughout the annexation process over the past seven years.**

**Thank you so much for taking the time to listen to Representative Bill Thomas' resolution and the public input yesterday.**

**Cordially,**

**Peter Caffall-Davis  
Hyder, Alaska 99923  
250 636-2594**

We're all here 'cause we're not all there!

55°54'58.36"N 130° 1'45.27"W

Paste into Google Earth, turn on Terrain, and tip her back to see the mountains. That's home! Elevation 6', better than 6' under!

----- Original Message -----

**From:** Rep. Gabrielle LeDoux

**To:** Peter Caffall-Davis

**Sent:** Monday, February 04, 2008 10:47 AM

**Subject:** RE: HJR 30 - Please Disapprove the LBC recommendation regarding annexation of territory to the KGB

Dear Peter,

Thank you very much for your comments. As you may know, we expect to hold a hearing and take public testimony on HJR 30 on Tuesday, February 12, at 8 a.m.

Best regards,  
Gabrielle

Representative Gabrielle LeDoux  
State Capitol  
District 36  
phone: (907) 465-2487  
fax: (907) 465-4956

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**From:** Peter Caffall-Davis [pcaffalldavis@starband.net]

**Sent:** Saturday, February 02, 2008 10:21 AM

**To:** Rep. Gabrielle LeDoux

**Subject:** HJF 30 - Please Disapprove the LBC recommendation regarding annexation of territory to the KGB

**Dear Representative LeDoux,  
Co-Chair - Community and Regional Affairs Committee**

**I urge you to please support HJR 30, send the resolution from committee for a vote, and Disapprove the LBC recommendation regarding the annexation of territory to the Ketchikan Gateway Borough (KGB). Not even one of the parties involved has been in favor of this annexation from the beginning (other than the KGB).**

**None of the affected parties have had an opportunity to vote in this matter, nor under the Legislative Review Method of annexation will they ever. It is our only hope that you as our other elected representatives take this matter into your hands and call for a vote on our behalf.**

**Should the legislature fail to act and bring this to a vote, the annexation will automatically become law after 45 days of inaction by the legislature. I believe the 45 days will expire on March 5<sup>th</sup>. Passage through inaction by the Legislature will result in negative financial impact to several rural Southeast Alaska communities and school districts. For Hyder it will result in the closure of our school.**

**There are more things wrong with this annexation that can be spell out here but I urge you to please send HJR 30 out of committee for a vote and please support it by voting to Disapprove the LBC recommendation regarding the annexation of territory to the Ketchikan Gateway Borough.**

**If you have any questions please don't hesitate to contact me.**

**Thank you,**

**Peter Caffall-Davis of Hyder**

**We're all here 'cause we're not all there!**

**55°54'58.36"N 130° 1'45.27"W**

**Paste into Google Earth, turn on Terrain, and tip her back to see the mountains. That's home! Elevation 6', better than 6' under!**