

2/27/07

OVERVIEW:

LOCAL

BOUNDARY

COMMIS-

SION



State of Alaska
Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-269-4539

February 21, 2007

The Honorable Donny Olson
Chair
Community and Regional
Affairs Committee
Alaska State Senate
State Capitol, Room 514
Juneau, Alaska 99801-1182

Dear Senator Olson:

Please accept our appreciation for the opportunity you have granted the Local Boundary Commission to address the Senate Community and Regional Affairs Committee next Tuesday, February 27. The Commission's presentation will focus on five policy issues. Those are: (1) increasing difficulties in rendering borough boundary decisions; (2) the general lack of incentives for borough incorporation; (3) the absence of standards and methods for establishment of unorganized boroughs; (4) funding for borough feasibility studies; and (5) compensation for members of the Local Boundary Commission.

Those topics are addressed in detail in the attached excerpt (pp. 83 – 99) of the Commission's annual report to the 2007 Legislature. I look forward to discussing those issues and any matters that members of the Senate Community and Regional Affairs Committee wish to bring to the attention of the Commission.

Cordially,

A handwritten signature in black ink that reads "Darroll Hargraves".

Darroll Hargraves
Chair

Enclosure:

Chapter 3

Policy Issues and Concerns

Introduction

This chapter addresses contemporary policy issues and concerns of the LBC.¹¹ In sum, these relate to:

- Increasing difficulties in rendering borough boundary determinations following the 1963 Mandatory Borough Act.
- Substantial disincentives and a lack of adequate inducements hinder incorporation of organized boroughs and annexation to existing boroughs.
- Lack of standards and methods for establishment of unorganized boroughs.
- Funding for borough feasibility studies.
- Compensation for members of the LBC.

Section I. Increasing Difficulties in Rendering Borough Boundary Determinations Following the 1963 Mandatory Borough Act

Subsection A. Statement of Issue

With the exception of a period of only eight months or so to implement the 1963 Mandatory Borough Act, the State has employed a laissez-faire policy regarding borough formation. That policy allows residents of the unorganized borough, irrespective of their fiscal and administrative capacity to support borough government, to decide when or even if they wish to incorporate boroughs. That policy has often stymied formation of large regional boroughs and may have contributed to boundary determinations that have been widely criticized and regarded by some as mistakes.

¹¹ Many of the policy matters addressed here are discussed in detail in prior reports of the LBC. Those include, in particular, the *Report of the Local Boundary Commission to the First Session of the Twenty-Fourth Alaska Legislature* (January 2005), *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation* (February 2004), and *Unorganized Areas of Alaska that Meet Borough Incorporation Standards* (February 2003). Those reports are available on the LBC Website at <<http://www.dced.state.ak.us/dca/lbc/lbc.htm>>. A copy of any of those reports can also be obtained by contacting LBC staff.

Subsection B. Background

Article X, Section 3 of the Alaska Constitution requires that "The entire State shall be divided into boroughs, organized or unorganized." It provides further that organized and unorganized boroughs, "shall be established in a manner and according to standards" enacted by the legislature. In 1960, the LBC made the following observations regarding boroughs in its report to the First Alaska State Legislature:

One thing can be agreed upon: the borough is the intermediate unit of local government between the City and the State. . . .

The Commission presently takes the position that a borough was designed to be a form of regional government. . . .

....

Following this concept to the next logical phase, it supports the Commission's present thinking that organized boroughs, particularly in Alaska, were to be large in size – otherwise they would be duplicating the service area's jurisdiction. No opinion is expressed at this time as to just how large the borough should be, for there are other considerations to be weighed: for example, the population density would be an important factor but, it is felt, in view of existing conditions in Alaska, the general rule should be large boroughs, and the exception should be small boroughs.

(State of Alaska Local Boundary Commission, *First Report to the Second Session of the First Alaska State Legislature* (February 2, 1960), pp. I-7 – I-9.)

To assist the legislature in carrying out the constitutional requirement that all of Alaska be divided into organized and unorganized boroughs, with each borough embracing an area and population with common interests to the maximum degree possible, the 1960 LBC formally recommended as follows to the First Alaska State Legislature:

[T]hat the Legislature give the Commission a mandate by Resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature.

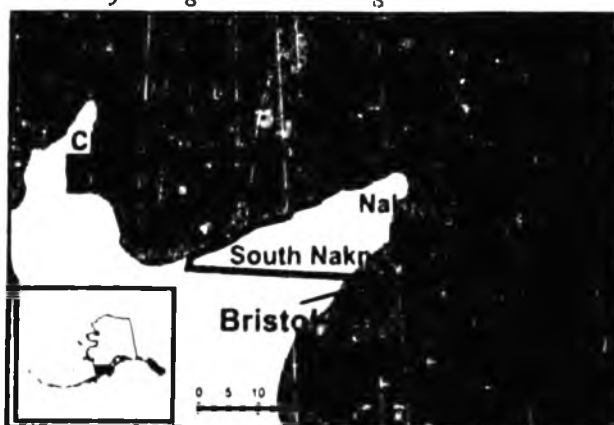
(*Id.* at III-4.)

The Legislature rejected the LBC's recommendation. In 1961, a law was enacted establishing a single unorganized borough encompassing all of Alaska not within organized boroughs (at the

time there were none; so the single unorganized borough initially encompassed the entire state). State laws providing standards and procedures for *voluntary* incorporation of organized boroughs were also enacted in 1961. This created a structure in which borough boundary decisions would be made on a piecemeal basis without an overall plan for the division of all of Alaska into organized and unorganized boroughs.

Some members of the current Commission find it not surprising then that despite expressing a clear predisposition toward large regional boroughs, that the first LBC approved the creation of the 850-square mile Bristol Bay Borough in 1962. Other members of the current Commission take the view that the legislative action in 1961 was then and is now no excuse for establishment of small, nonregional boroughs.

Bristol Bay Borough and Surrounding Communities



Following approval of the Bristol Bay Borough proposal by the LBC in 1962, Alaska's Secretary of State expressed immediate and resounding criticism of the action. (*See Memorandum from Hugh J. Wade to Governor William A. Egan, July 9, 1962.*) Over the ensuing years, the creation of the Bristol Bay Borough has been repeatedly characterized as an extremely poor public policy decision by the LBC. For example, in 1991, former Constitutional Convention delegate Victor Fischer wrote:

The first violation of the regional concept came with establishment of the very first borough. In creating the Bristol Bay Borough, the Local Boundary Commission took a tiny part of a real region and gave it borough status under the constitution. This gross error was not rectified when the Lake and Peninsula Borough was created.

(Letter from Victor Fischer to the LBC, October 11, 1991.)

In 1963, the Legislature made a significant reversal of the 1961 policy by passing the Mandatory Borough Act. That landmark legislation, which was signed into law by Governor Egan (former President of the Alaska Constitutional Convention), mandated formation of boroughs in eight specific regions of Alaska (the greater areas of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks). Today, the eight boroughs formed under the Mandatory Borough Act are inhabited by an estimated 558,059 Alaskans, just over 84 percent of the state's population. The average size of the 8 boroughs formed under the Mandatory Borough Act is just under 10,000 square miles.

It is particularly noteworthy that John Rader, who sponsored the 1963 Mandatory Borough Act, viewed the LBC, in a practical sense, as an institution that was possibly incapable of exercising the political leadership necessary to achieve the vision of the framers of Alaska's Constitution regarding establishment of boroughs. In that regard, Mr. Rader wrote as follows in his recount of the legislative history of the 1963 Mandatory Borough Act:

So far as I am aware, [the Local Boundary Commission] has no broad view nor does it seek broad solutions. As a government tool, it is a small one. I would judge that its usefulness in the future would, therefore, be limited to smaller and more localized issues. The heat generated by annexation or by incorporation, particularly when it is done by executive fiat, is very intense.^[12]

Perhaps the commission could afford to make enemies one by one, bit by bit, but it could never maintain itself in the face of a barrage of criticism which was statewide. The legislature would destroy it.^[13] By the very nature of the political organization, the commission is not in a position to defend itself. The problems of annexation and incorporation of local government are political decisions which should be made in a manner permitting public political debate.



John Rader, sponsor of the 1963 Mandatory Borough Act.

(John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 90.)

After the 1963 Mandatory Borough Act, the State reverted to the 1961 laissez-faire policy of borough formation. Under that policy, the second borough proposal approved by the LBC was that providing for the creation of the Haines Borough in 1968. The boundaries approved by that LBC resulted in three enclaves within the borough, including Klukwan and Skagway.¹⁴

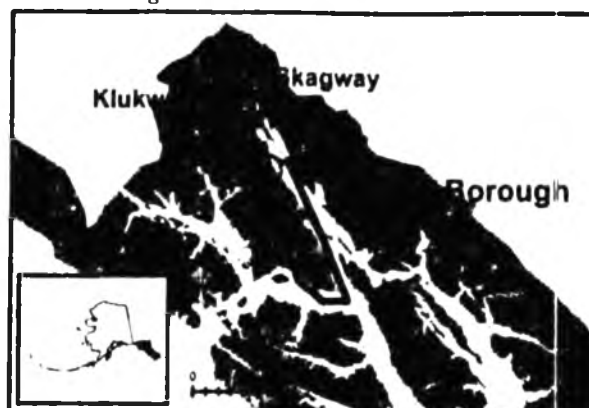
¹² [Footnote 18 in original.] Executives and administrators may find the Boundary Commission to be useful as a buffer between themselves and the public.

¹³ [Footnote 19 in original.] This problem was foreseen by the Constitutional Convention which gave the commission constitutional status (Art. X, sec. 12) to protect it. Despite this, the legislature could effectively limit the commission, e.g., by statutory definitions and by withholding appropriate staff and other necessary support.

¹⁴ Those consisted of (1) the military installation at Lutak Inlet known as the "base proper to the Petroleum Distribution Office, Haines Terminal and Pumping Station"; (2) a 1.4-square mile enclave including Klukwan; and (3) the 443.1 square mile area comprising the proposed Skagway Borough.

Some members of the current LBC have been critical of the boundaries set in 1968 for the Haines Borough. Other Commissioners are reluctant to criticize that prior action. The 1968 Commission approved the locally preferred alternative and, in doing so, resolved serious local and State policy concerns over the delivery of education services to the greater Haines area. It is noteworthy that voters in Haines had rejected three previous borough proposals. It is virtually

Haines Borough



certain that if Klukwan and Skagway had been included in the borough proposal, the collective electorate would have rejected that fourth borough proposal encompassing Haines.

In the context of the laissez-faire policy of borough formation, it is noteworthy that only about 4 percent of Alaskans have voluntarily formed boroughs in 48 years of statehood. Moreover, in the past 16 years, only one borough has been formed. That was the City and Borough of Yakutat, a single-community borough presently inhabited by an estimated 619 people, including just 135 students.

In the 43 years since the 1963 Mandatory Borough Act, the legislature has debated numerous proposals to mandate further borough formation, consolidate school districts, impose taxes on unorganized borough residents, and create incentives for borough incorporation. However, few such proposals have been enacted, and those that have been seem to have had little effect.

Since the 1980s, the LBC, especially the current Commission, has been a strong advocate of reform. (See, in particular, *Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature* (January 19, 2005) pp. 83 – 164.) However, as anticipated by John Rader, the LBC may have become somewhat of a target because of the Commission's advocacy for reform. Further, in the general absence of locally initiated proposals for regional boroughs, the Commission also seems to bear the brunt of criticism and frustration over the lack of borough formation. Such may be evident in the conclusions of the ad hoc Advisory Commission on Local Government created by the Twenty-Fourth Alaska Legislature. That body, which was comprised of six legislators and three municipal officials, reported as follows in 2006:

The [Advisory Commission on Local Government] received testimony that *rigid adherence by the Local Boundary Commission (LBC) to regulations regarding borough boundaries have been a detriment to new borough formation*. The [members of the Advisory Commission on Local Government] therefore state their intent that the

LBC apply flexible rules when reviewing local proposals. Priority should be given to the standards listed in statute. Minor consideration will be given to the model borough boundaries and other administrative boundaries.

(Advisory Commission on Local Government, *Final Report* (January 20, 2006), p. 7. [Emphasis added.])

The Twenty-Fourth Alaska State Legislature (2005 – 2006) considered various legislative proposals to curtail the powers of the LBC. Those included, in particular, House Bill 133 and Senate Bill 128. Excerpts from the Sponsor Statement regarding House Bill 133 follow:

Sponsor Substitute for House Bill 133 makes three changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Following amendment, *CSSSHB 133(JUD) AM* passed the House by a vote of 35 in favor and only 1 opposed (with 3 members excused and 1 absent). The Senate then approved the bill by a vote of 19 to 0 (with 1 member absent). The Governor signed the bill into law and issued a press release stating:

Governor Frank H. Murkowski has signed into law *HB 133*, which makes changes in the way the Local Boundary Commission processes municipal incorporations, annexations, detachments, mergers, consolidations, reclassifications, and dissolutions.

The bill . . . also protects the voters' right to incorporate, outline the boundaries of their municipality, and select the level of service they want. It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

"This bill cleans up the process local citizens use to define their own community," Murkowski said. "It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go."

(Frank H. Murkowski, Governor, *Press Release* (May 27, 2006).)

As noted above, *SB 128* is another example of legislative action to curtail the powers of the LBC. Excerpts from the Sponsor Statement regarding Senate Bill 128, including specific reference to the provisions in Article I, Section 2 of Alaska's Constitution, follow:

[Petitions for borough incorporation] should originate with maximum local involvement. . . .

"The Alaska Constitution states, 'All government is to originate with the people and is founded upon their will only.' I interpret that to include borough governments. The role of the Local Boundary Commission is to review proposed changes, not to create boroughs. If we are to have a government by the people, those proposed changes should emanate from the local level up, not from the top of the government pyramid down."

With amendments, *SB 128 AM* passed the Senate by a vote of 15 votes in favor and only 4 against (with 1 member excused). The House then passed *SB 128 AM* by a vote of 36 to 0 (with 4 members excused). That bill was also signed into law by the Governor.

The most recent and extreme example of the sentiments characterized above is reflected in a resolution adopted by the members of the Alaska Municipal League in November 2006. That resolution urges further legislative action and states as follows:

WHEREAS, the Local Boundary Commission has assigned a disproportionate weight toward their administrative criteria¹⁵ for evaluating petitions for borough incorporation, known as the Model Borough Boundary requirement; and

¹⁵ It is noted that the Commission's "administrative criteria" are the standards set out in the Commission's regulations, adopted under AS 44.62. The adoption of such standards is mandated by AS 44.33.812(a), and the Alaska Supreme Court has overturned a Commission boundary decision when such standards were lacking.

The Alaska Supreme Court in *United States Smelt., R. & M. Co. v. Local Bound. Com'n*, 482 P.2d 140, 142 (Alaska 1975), outlined the overarching need for the Commission to adopt regulatory standards when reviewing boundary changes. The Court observed that the requirement for the Commission to adopt such standards was mandatory not discretionary. The court stated in pertinent part:

Since under AS 44.19.260(a)[] the legislature required the commission to develop standards in order to recommend boundary changes, and the commission had not developed standards prior to the Nome . . . proceedings, we hold that the commission lacked the power to recommend the Nome boundary changes in question. To do otherwise would be to condone the commission's nonobservance of a valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes.

In addition to the mandatory requirements under AS 44.33.812 for the adoption of boundary change standards, including borough incorporation, AS 29.05.100(a) provides in pertinent part:

If the commission determines that the incorporation . . . meets applicable standards under the state constitution *and* commission regulations, meets the standards for incorporation under AS . . . 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition. [Emphasis added.]

WHEREAS, the Local Boundary Commission has been unsuccessful using the Model Borough Boundary criteria to promote new borough incorporations and even inhibits such incorporations through the use of this criteria; and

WHEREAS, the Local Boundary Commission's inflexible approach when considering petitions for borough incorporations that do not conform to the Model Borough Boundaries, unduly limits the ability of political subdivisions of the State to propose other viable borough boundaries;

(Alaska Municipal League, *Resolution 2007-06* (November 17, 2006).)

The Alaska Municipal League's legislative proposal urges amendment of existing laws to impose, among other limitations, provisions that would prohibit the LBC from even considering a borough incorporation proposal that included more than one home-rule or first-class city unless the city councils of the cities involved adopted a resolution to permit such.

The LBC envisions that enactment of such a proposal would lead to the Balkanization of Alaska in terms of borough governments. Presently, there are 18 home-rule or first-class cities in the unorganized borough. Additionally, there are 31 second-class cities in the unorganized borough that meet the minimum population threshold for reclassification as a first-class city. Some of those 31 second-class cities are among the most populous communities in the unorganized borough and have expressed interest in forming a single-community borough. Bethel (population 5,960) is just one example. It can be reasonably assumed that a number of the second-class cities would seek reclassification if such would foster their goal of forming a single-community borough. Moreover, there are 12 unincorporated communities in the unorganized borough that meet the minimum population threshold to incorporate as a home-rule or first-class city. Thus, there are a total of 61 existing or prospective home-rule or first-class cities in the unorganized borough.

Communities in the Unorganized Borough that potentially qualify for borough status under AML Resolution 2007-06.



If home-rule or first-class city status becomes a basis for determining the boundaries of new boroughs, it stands to reason that it may also become a basis for subdivision of existing boroughs. Take the Kenai Peninsula Borough (KPB), for example. In the past, the LBC has rejected proposals for a "Homer-Ninilchik borough" and a "Nikiski borough." The LBC also rejected a proposal to detach Tyonek from the KPB. In 2005, interest was expressed in forming a new borough encompassing just Seward, Moose Pass, Cooper Landing, and Hope. In that Seward is the only home-rule or first-class city among those four communities, such a borough would

conform to the provisions proposed by AML. However, the KPB encompasses five home-rule and first-class cities. It also includes one second-class city with a population in excess of the minimum population required to reclassify as a first-class city. Moreover, there are 15 communities (including Nikiski, which previously proposed borough incorporation) in the KPB that have populations in excess of the minimum required to incorporate a home-rule or first-class city. In all, there are 21 communities in the KPB and 77 communities in all 16 existing boroughs that meet the minimum population threshold for being a home-rule or first-class city.

Subsection C. Recommendations

The circumstances above reflect a climate that often disfavors formation of regional boroughs. Meaningful reform of the current structure will require legislative attention. The LBC continues to offer its assistance and support for legislative efforts to reform the existing policy regarding borough formation.

Section II. Substantial Disincentives and a Lack of Adequate Inducements Hinder Incorporation of Organized Boroughs and Annexation to Existing Boroughs

Subsection A. Statement of Issue

As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives and lack of inducements for borough incorporation and annexation. The legislature and the Commission have complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812(a)(1)).

In 1961, State policy makers opted to make borough formation voluntary. Policy makers 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, disincentives to borough formation and annexation have greatly increased over time. The organized borough concept had then and still has little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for essential 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 (REAs) are not. There proved to be other inequities as well. Thus, contrary to the stated intent of the 1963 Mandatory Borough Act,

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.
- 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.¹⁶
- 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,

¹⁶ 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.

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.

Subsection B. Background

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government.¹⁷ The Framers of our Constitution recognized that the legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach needed adequate inducements to establish boroughs.¹⁸ They anticipated that the Alaska Legislature would provide such incentives. Unfortunately, that vision of the Framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment. While the Framers preferred voluntary incorporation, they recognized that if regions had the capacity to operate boroughs and refused to incorporate, the State could compel borough formation.

Statistics offer compelling evidence that inducements of voluntary borough incorporation have been generally inadequate over the course of 48 years of statehood.

- Fewer than 4 of every 100 Alaskans (3.6 percent) live in boroughs that were formed voluntarily.¹⁹
- In contrast to the above figure, 84 of every 100 Alaskans (84.1 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- Of the sixteen Alaska boroughs, only eight formed voluntarily.

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

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

¹⁹ 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.

Promotion of borough formation is sound public policy. Boroughs:

- promote maximum local self-government with a minimum of local government units;
- provide a formal structure for service delivery;
- offer stable administrative infrastructure to provide services;
- foster local responsibility and decision making;
- promote accountability;
- provide a means to promote private ownership of land;
- have capacity to provide greater financial aid to schools;
- consolidate school districts;
- have capacity for regional control of alcohol and illegal substances;
- promote economic development;
- provide a proper role for State government; and
- promote equity and fairness.

Subsection C. Recommendations

For more than four decades, experts and public policy makers have recognized that Alaska has failed to implement an effective policy regarding borough formation.

The Commission urges the Legislature to consider ways in which inducements for borough incorporation and annexation may be increased and disincentives for such may be decreased. Those include the following.

1. Tax the unorganized borough (e.g. property, sales, employment, or head taxes).
2. Provide financial aid to boroughs.
3. Increase organization grants for new boroughs and extend grants to boroughs that expand their boundaries.
4. Extend municipal land grants for annexations and consider increases in entitlements.
5. Restrict National Forest Receipts and Shared Fisheries Fees and Taxes to boroughs and cities within boroughs.

Section III. Lack of Standards and Methods 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 both organized *and unorganized* boroughs and (2) methods for establishment of both 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, laws providing standards and the manner for establishment of *unorganized boroughs* have never been enacted.

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 established in 1961 act as a significant impediment to achievement of the constitutional goal of maximum local self-government with a minimum of local government units set out in Art. X, sec. 1 of Alaska's Constitution.

This issue is reflected in the following excerpt from comments made in 1981 by Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention, Assistant Director of the National Municipal League, and Professor at the New York University School of Administration:

The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which established boundaries that make sense in terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

(Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, pp. 86 - 88.)

Subsection B. Background

In summary, Alaska's Constitution imposes the following seven duties upon the legislature:

1. Enact standards for establishment of organized boroughs;
2. Enact standards for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and
7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

Five of the seven duties outlined in Article X, Section 3 have been fulfilled. The exceptions are the duty to enact standards for establishment of unorganized boroughs and the duty to enact laws providing for the manner in which unorganized boroughs will be established.

A single, residual unorganized borough does not conform to constitutional requirements. The 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, this action was inconsistent with the mandate of Article X, Section 3 that each borough, organized and unorganized, "embrace an area and population with common interests to the maximum degree possible." Prior legislative proposals, at least six in the last decade, have recognized that the unorganized borough does not conform to the common interest clause of the Alaska Constitution.

Standards for unorganized boroughs should include consideration of the fiscal and administrative capacity of the area. In the LBC's view, the capacity of an area to assume local responsibility is determined by two fundamental factors. One is the specific duties imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g. education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

The failure to follow the constitutional principles concerning unorganized boroughs hinders coordinated delivery of state services. In remarks to the LBC, former Senators Arliss Sturgulewski and Victor Fischer stressed the importance of establishing multiple unorganized

boroughs. Both stressed that the issue was the fundamental concern in a 1979 Local Government Study initiated by the Chairs of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska. The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was twofold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

Subsection C. Recommendation

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created identical to those for organized boroughs found in AS 29.05.031, except with respect to fiscal and administrative capacity.

AS 29.05.031 states:

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC is prepared to lend its expertise and assistance to the Legislature in the development of appropriate standards and procedures for establishment of unorganized boroughs.

Section IV. Funding for Borough Feasibility Studies

Subsection A. Statement of the Issue

Although the 2006 Legislature appropriated funds for borough feasibility studies in three specific areas, there is no continuing source of funding for such studies.

Subsection B. Background

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. However, funding for studies under that program has never been appropriated. The 2006 Legislature did, however, appropriate \$237,500 for borough studies in three specific regions in Alaska (Glacier Bay/Chatham, Middle Kuskokwim, and Eagle River/Chugiak). Additionally, the Department of Commerce, Community, and Economic Development provided a grant (\$30,000) for another borough study (Yukon Flats). Details of those studies are presented in Chapter 2. As further outlined in Chapter 2, a number of regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

Subsection C. Recommendation

The LBC recommends the Legislature appropriate funding for local borough study efforts in the near term; and if inducements for borough incorporation are implemented, to significantly increase funding.

Section V. Compensation for the LBC

Subsection A. Statement of the Issue

Members of the LBC receive no compensation for their service. Demands on members of the LBC have always been considerable. However, those demands have reached a point where current Commission members feel that some token compensation is warranted.

Subsection B. Background

The demands placed on the Commission have grown beyond what can be reasonably expected of unpaid members. In one proceeding before the current LBC, members of the Commission were faced with a formal record comprising approximately 3,000 pages. Members had to devote many hours to review that record. Each Commission member also devoted 5 or 6 days (including travel) to conducting a public hearing in the community. Substantial additional time was devoted to other proceedings in that case. One Commission member reported that he has devoted upwards of 350 hours (equivalent to nearly nine 40-hour weeks) to that one case alone. This was in addition to many other LBC matters in which members of the LBC had to participate.

The Commission formulates fundamental policies that have important statewide political, economic, and social implications. Such responsibilities demand that the Commission exercise prudence and diligence in carrying out its duties. The Commission is expected to exhibit expertise in all matters involving municipal boundary proposals.

It appears that nearly 20 State boards and commissions (excluding full-time boards and commissions) currently receive some form of compensation. The expectations and demands on the LBC seem to be at least equal to those nearly 20 boards and commissions that are presently compensated.

Subsection C. Recommendation

That the Alaska legislature provide compensation, at par with that provided to other unpaid boards and commissions, for service by members of the LBC.

The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560.

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

<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

Graphic Illustration Only

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine the accuracy of the illustration.



Message from the Chairman

February 2007

Dear Members of the Alaska Legislature:

As Chair of the Local Boundary Commission (LBC) and on behalf of the other LBC members, I am pleased to present this report of the LBC to the First Session of the Twenty-Fifth Alaska State Legislature.

Chapter 1 provides background information on the LBC.

Chapter 2 describes activities of the LBC and its staff during 2006.

Chapter 3 discusses public policy issues of particular interest to the LBC including:

- Increasing difficulties in rendering borough boundary determinations following the 1963 Mandatory Borough Act.
- Substantial disincentives and a lack of adequate inducements hinder incorporation of organized boroughs and annexation to existing boroughs.
- Lack of standards and methods for establishment of unorganized boroughs.
- Funding for borough feasibility studies.
- Compensation for members of the LBC.

Many of the issues raised here have been discussed by the Alaska Legislature in the past and even now are being considered during the current legislative session. The LBC looks forward to the opportunity to review and comment on legislation proposed that will influence local government in Alaska. Please contact us or members of our staff if we can be of assistance to you.

Very truly yours,

Darroll Hargraves
Chair

Table of Contents

Chapter 1 - Background	1
Local Boundary Commission	1
Constitutional Foundation of the Commission	1
Nature of the Commission	2
Duties and Functions of the LBC	3
LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly	4
Limitations on Direct Communications with the LBC	4
LBC Membership	5
Staff to the Commission.....	8
Constitutional Origin of the Local Government Agency.....	8
Commerce Serves as Staff to the LBC	9
Procedures of the Commission.....	10
Preparation and Filing of the Petition	11
Public Notice and Public Review	11
Analysis	11
Commission Review of Materials and Public Hearings	12
Implementation	12
Overview of Municipal Government in Alaska.....	13
Chapter 2 - Activities and Developments During 2006	16
Section I. City Incorporation.....	16
Section II. City Annexation.....	24
Section III. City Dissolution	38
Section IV. City Reclassification.....	39
Section V. Borough Incorporation.....	40
Section VI. Borough Annexation.....	63
Section VII. Borough Detachment.....	68
Section VIII. Merger	74
Section IX. Consolidation	77
Section X. Regulations.....	81
Chapter 3 - Policy Issues and Concerns	83
Introduction.....	83
Section I. Increasing Difficulties in Rendering Borough Boundary Determinations Following the 1963 Mandatory Borough Act.....	83
Section II. Substantial Disincentives and a Lack of Adequate Inducements Hinder Incorporation of Organized Boroughs and Annexation to Existing Boroughs	91
Section III. Lack of Standards and Methods for Establishment of Unorganized Boroughs.....	95
Section IV. Funding for Borough Feasibility Studies.....	98
Section V. Compensation for the LBC.....	98

Table of Contents continued from previous page

Appendix A - Fundamental Nature of Boroughs and Cities in Alaska..... A-1
Appendix B - Local Government in Alaska..... B-1
Appendix C - 2006 Overview of Boroughs in Alaska C-1
Appendix D Powers and Duties of Organized Boroughs D-1
**Appendix E - July 9, 1962, Memorandum From Hugh J. Wade to
Governor William A. Egan..... E-1**
Index.....I

Chapter 1 - Background

Local Boundary Commission

Constitutional Foundation of the Commission

The framers of Alaska's Constitution adopted the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution."¹ The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the Local Boundary Commission (LBC or Commission) in Article X, Section 12 of the Constitution.² The LBC is one of only five State boards or commissions established in the Constitution, among a current total of approximately 120 active boards and commissions.³

The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

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

(Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).)

¹ Victor Fischer, *Alaska's Constitutional Convention*, p. 124.

² Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

³ The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

Nature of the Commission

Boards and commissions frequently are classified as quasi-legislative, quasi-executive, or quasi-judicial, based on their functions within the separation-of-powers scheme of the Constitution. The LBC has attributes of all three.

Article X, Section 12 of the Constitution of the State of Alaska provides that the LBC, "shall be established by law in the *executive branch* of the state government." (Emphasis added.) Members of the LBC are appointed by and serve at the pleasure of the Governor. The duty of the LBC under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the quasi-executive nature of the LBC.

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska delegates legislative authority to the LBC to make fundamental public policy

decisions, thus conferring quasi-legislative status upon the LBC. Specifically, the Court stated:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. *Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.* Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

(Mobil Oil Corp. v. Local Boundary Com'n, 518 P.2d 92, 98-99 (Alaska 1974) (Emphasis added). See also Moore v. State, 553 P.2d 8, n. 20 at 36 (Alaska 1976) and Valleys Borough Support Committee v. Local Boundary Com'n, 863 P.2d 232, 234 (Alaska 1993).)

In addition to exercising quasi-legislative powers in making boundary determinations, the LBC carries out a quasi-legislative duty under AS 44.33.812(a)(2), when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution."



Local Boundary Commission during a recent meeting.

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting hearings and ruling on petitions.

The quasi-judicial nature of the LBC requires that there be a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence, even though the quasi-legislative nature of the LBC provides it with considerable discretion in the application of those standards and the weighing of evidence. See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n*, 489 P.2d 140 (Alaska 1971), discussing application of due process requirements in Commission proceedings.

Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes.

These are:

- incorporation of municipalities;⁴
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;
- merger of municipalities; and
- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's Constitution.

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*. That report was prepared in response to the directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*. That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called

⁴ The term "municipalities" includes both city governments and borough governments.

for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (Section 48 Chapter 159 SLA 2004).

LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁵ The LBC must proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

Limitations on Direct Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

⁵ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy, the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at:

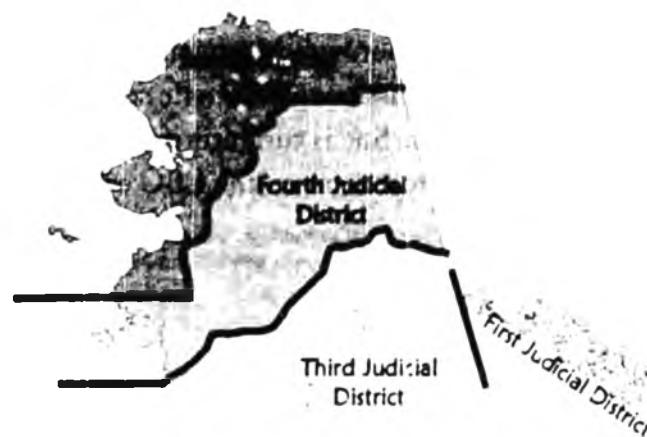
Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559
Fax: (907) 269-4539
Alternate fax: (907) 269-4563
E-mail: LBC@commerce.state.ak.us

LBC Membership

The LBC is an autonomous commission. The Governor appoints members of the LBC for five-year overlapping terms. (AS 44.33.810) Notwithstanding the prescribed length of their terms, however, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d))

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as Chair of the LBC.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)



Alaska Judicial Districts

LBC members receive no pay for their service. However, they are entitled to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.

Darroll Hargraves, Chair, At-Large Appointment.



Governor Murkowski appointed Darroll Hargraves of Wasilla Chair of the LBC in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been school superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and nonprofit organizations.

Commissioner Hargraves previously served as Chair of the LBC from 1992-1997 under Governors Hickel and Knowles. His current term on the LBC ends January 31, 2008.

Georgianna Zimmerle, First Judicial District.



Commissioner Zimmerle is a life-long resident of Ketchikan. She earned an Associate of Arts degree from the University of Alaska in May 1985. Commissioner Zimmerle was appointed to the LBC on March 25, 2003, and was reappointed to her second term in January 2006. An Alaska Native, Commissioner Zimmerle is a Tlingit of the Raven moiety and her Indian name is JEEEX-GA-TEET. She is also Haida from her paternal family. Commissioner Zimmerle worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Commissioner Zimmerle served as the General Manager of Ketchikan

Indian Community for 2½ years. She is currently retired and working part-time for Tongass Federal Credit Union. Her current term on the LBC ends January 31, 2011.

Robert Harcharek, Second Judicial District.

Commissioner Harcharek was appointed to the LBC on July 18, 2002 by then-Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. Commissioner Harcharek has lived and worked on the North Slope for more than 25 years. He has been a member of the Barrow City Council since 1993. He is currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public Works. Commissioner Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Sociocultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He has served on numerous boards of directors, including the Alaska Association of School Boards, the Alaska School Activities Association, the National American Indian/Alaska Native Caucus of School Board Members of the National School Boards Association, and the Arctic Development Council, a State of Alaska DCCED Regional Development Organization. His current term on the LBC ends January 31, 2009.

Bob Hicks, Vice-Chair, Third Judicial District.

Commissioner Hicks, a resident of Seward, was appointed to the LBC from the Third Judicial District in March 2003. His fellow commissioners elected him as Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the fields in which he specialized as an attorney was the field of local government, including LBC matters. Since 2001, Commissioner Hicks has worked at the Alaska SeaLife Center in Seward, where he serves as the Dive Officer and Vessel Safety Officer. His current term on the LBC ends January 31, 2007.

Dr. Anthony Nakazawa, Fourth Judicial District.



Anthony "Tony" Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in fifteen communities throughout Alaska. He previously served as the Director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981. He worked for the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971 and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the LBC ends January 31, 2010.

Staff to the Commission



The Alaska Department of Commerce, Community, and Economic Development (Commerce or DCCED), Division of Community Advocacy (DCA) provides staff to the Commission.

Constitutional Origin of the Local Government Agency

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed." In addition to the five boards and commissions named in the Constitution previously noted, the framers provided for only one State agency or department – the local government agency mandated by Article X, Section 14 to advise and assist local governments.⁶ It is worth noting that of the five boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with

⁶ Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The constitutional standing granted to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in large part, upon those two entities.

The duty to serve as the constitutional local government agency is presently delegated to the Department of Commerce, Community, and Economic Development.

The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

Commerce Serves as Staff to the LBC

Within DCCED, the Division of Community Advocacy carries out the duty to advise and assist local governments. Commerce also serves as staff to the LBC pursuant to AS 44.47.050(a)(2). The LBC Staff component is part of the Division of Community Advocacy.

Commerce is required by AS 29.05.080 and 3 AAC 110.530 to investigate each municipal incorporation proposal and to make recommendations regarding such to the LBC. LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, Commerce adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC Staff is committed to developing its recommendations to the LBC, based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC Staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

Commerce's Commissioner, Deputy Commissioners, and the Director of DCA provide policy direction concerning recommendations to the LBC.



Local Government Committee meeting during the February 1956 Alaska State Constitutional Convention.

The recommendations of the LBC Staff are not binding on the LBC. As noted previously, the LBC is an autonomous commission. While the Commission is not obligated to follow the recommendations of the LBC staff, it has, nonetheless, historically considered Commerce's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC Staff also delivers technical assistance to: municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by the LBC Staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during Commission hearings and other meetings;
- drafting decisional statements of the LBC;
- implementing decisions of the LBC;
- certifying municipal boundary changes;
- maintaining incorporation and boundary records for each of Alaska's 162 municipal governments;
- coordinating, scheduling, and overseeing public meetings and hearings for the LBC;
- developing orientation materials and providing training for new LBC members;
- maintaining and preserving LBC records in accordance with the public records laws of the State; and
- developing and updating forms and related materials for use in municipal incorporation or alteration.



LBC staff are conducting audience interviews during a public informational meeting in Delta Junction.

Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public

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

Preparation and Filing of the Petition

The LBC Staff offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. LBC Staff routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulation of the petition for voter signatures or formal adoption by a municipal government sponsor.

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

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

Analysis

Following the public comment period, the LBC Staff analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and the LBC Staff may conduct informational meetings. At the conclusion of its investigation, the LBC Staff issues a preliminary report for public review and comment. The report includes a formal recommendation to the LBC for action on the petition.

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

Commission Review of Materials and Public Hearings

Members of the LBC review the petition, responsive briefs, written comments, reply brief, and the LBC Staff reports. If circumstances permit, LBC members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the LBC conducts at least one hearing in or near the affected territory. The Commission must act on the petition within ninety days of its final public hearing.

The LBC may take any one of the following actions:

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



The LBC listening to testimony during the Skagway Remand hearing in Skagway.

While the law allows the Commission ninety days following its last hearing on a petition to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the LBC must adopt a written statement setting out the basis for its decision. Copies of the decisional statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the LBC to reconsider its decision. Such requests must be filed within eighteen days of the date that the decision becomes final. If the LBC does not approve a request for reconsideration within twenty days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation

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

Overview of Municipal Government in Alaska

State law provides for two types of municipalities: city governments and organized boroughs. City governments are community-level municipalities and organized boroughs are regional-level municipalities. Further information about this topic is available in Appendix A: *Fundamental Nature of Boroughs and Cities in Alaska*. Regions of Alaska not located within an organized borough constitute a single unorganized borough.

There are three classifications of city governments:

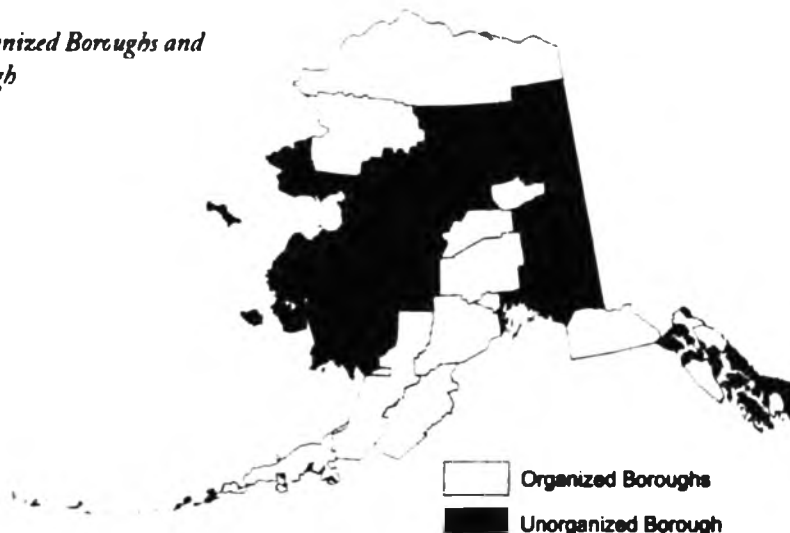
- home-rule;
- first-class; and
- second-class.

The powers and duties of a city government vary both with its particular classification and whether it is located within an organized borough. The most fundamental distinction among city governments relates to the requirement that home-rule and first-class city governments in the unorganized borough must provide for education, planning, platting, and land use regulation. Other city governments are not permitted to exercise education powers. Second-class cities in the unorganized borough are permitted, but not required, to exercise planning, platting, and land use regulation. Any city within an organized borough may, upon delegation of authority by the organized borough in which it is located, exercise planning, platting, and land use regulation. For more information, see Appendix B: *Local Government in Alaska*.

Alaska law provides the following four classes of organized boroughs:

- home-rule;
- first-class;
- second-class; and
- third-class (State law prohibits the creation of new third class boroughs).

Alaska Divided by Organized Boroughs and the Unorganized Borough



By law, every organized borough must exercise the following two powers areawide:

- public education; and
- tax assessment and collection where municipal taxes are levied.

Further, state law requires that every organized borough, except third class boroughs, provide the following three additional areawide powers:

- planning;
- platting; and
- land use regulation.

Home rule boroughs have charters (constitutions). Article X, Section 11, of the Alaska Constitution provides that home rule boroughs, "may exercise all legislative powers not prohibited by law or by charter." In other words, the assembly of a home rule borough has any power that is constitutionally available to the state legislature, provided the power is not prohibited by state law or by the borough charter. AS 29.10.200

lists 53 specific limitations on home rule municipalities found in Title 29 of the Alaska Statutes.

Home rule boroughs are the most popular form of organized borough in Alaska, followed closely by second class boroughs.

General law boroughs (1st, 2nd, and 3rd class) derive their powers exclusively from State statutes. Still, state statutes grant general law boroughs the ability to assume a very broad array of powers.

A summary on the current status of boroughs in Alaska is provided in Appendix C: *2006 Overview of Boroughs in Alaska*.

Existing Classification of Organized Boroughs in Alaska

Name	Type	Date Incorporated
Municipality of Anchorage	Home-rule	09/15/75 ^a
Bristol Bay Borough	Second-class	10/02/63
Denali Borough	Home-rule	12/07/90
Fairbanks North Star Borough	Second-class	01/01/64
Haines Borough	Home-rule	10/17/02 ^b
City and Borough of Juneau	Home-rule	07/01/70 ^c
Kenai Peninsula Borough	Second-class	01/01/64
Ketchikan Gateway Borough	Second-class	09/24/63
Kodiak Island Borough	Second-class	09/30/63
Lake and Peninsula Borough	Home-rule	04/24/89
Matanuska-Susitna Borough	Second-class	01/01/64
North Slope Borough	Home-rule	07/01/72
Northwest Arctic	Home-rule	06/02/86
City and Borough of Sitka	Home-rule	12/02/71 ^d
City and Borough of Yakutat	Home-rule	09/22/92

^a Region was first incorporated as Greater Anchorage Area Borough on January 1, 1964.

^b Region was first incorporated as third class borough on August 29, 1968; formed home rule borough October 17, 2002.

^c Region was first incorporated as Greater Juneau Borough on September 24, 1963.

^d Region was first incorporated as Greater Sitka Borough on September 24, 1963.

Alaska also has unified municipalities.⁷ Simply stated, a unified municipality is a home rule borough that can have no city governments within it. At the time a unified municipality is formed, all city governments within the unified municipality are automatically dissolved and none can ever form again.

There are three unified municipalities in Alaska:

- City and Borough of Juneau;
- City and Borough of Sitka; and
- Municipality of Anchorage.

There are three other organized boroughs in Alaska that also have no city governments within them. They are the Bristol Bay Borough, the Haines Borough, and the City and Borough of Yakutat. As such, city governments could legally be formed in those boroughs.

⁷ A unified municipality is defined as a borough by 3 AAC 110.990(1). Further, the legislature consistently characterizes unified municipalities as boroughs. For example, the statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Another example is found in the fact that newly formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190;29.05.210), whereas newly formed cities are entitled to different levels of organization grants and transitional assistance. Additionally, all three of the existing unified municipalities recognize themselves as boroughs in that each is governed by an assembly. Art. X, Sec. 4 of Alaska's constitution reserves the term "assembly" for the governing body of a borough, whereas Art. X, Sec. 8 of Alaska's constitution reserves the term "council" for the governing body of a city.

Chapter 2

Activities and Developments During 2006

Section I. City Incorporation

City incorporation activities and inquiries occurred to various degrees with respect to six communities. The six communities are:

- Big Lake;
- Horseshoe Lake;
- Healy;
- Igiugig;
- Levelock; and
- Naukati.

Big Lake

Location:	Big Lake is a community located on the shore of Big Lake, 13 miles southwest of Wasilla, in the Chugach Mountains. It lies adjacent to Houston and Knik-Fairview. The area encompasses 131.9 sq. miles of land and 12.9 sq. miles of water.
Population:	2,982 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Matanuska-Susitna Borough
School District:	Matanuska-Susitna Schools



At their request, LBC Staff made a presentation to 25 individuals at the Big Lake Chamber of Commerce's meeting on August 15. Staff discussed city incorporation procedures, characteristics of Alaska's boroughs and compared the "strong mayor" to the "manager" forms of borough government. In the "manager" form, the elected assembly members hire a manager who is usually a professional administrator; the borough mayor serves as the presiding officer of the borough assembly. In the "strong mayor" form of government, the person elected as mayor is not required

to be a professional administrator. A "strong mayor" usually hires a professional manager or administrator. In the "strong mayor" form of government, an assembly member elected by and from the assembly serves as presiding officer of the borough assembly. The Matanuska-Susitna Borough is a second-class borough that has the "manager" form of borough government. The Municipality of Anchorage is a home-rule borough with the "strong mayor" form. See Appendix D - Chart on Powers and Duties Home-Rule, First-class and Second-class Boroughs.

LBC Staff pointed out that Alaska's Constitution promotes a minimum number of governmental units. Statutory law would prohibit residents of Big Lake from creating a new city government when the services that are needed may be supplied by an existing government, such as the City of Houston or the Mat-Su Borough.

Horseshoe Lake

LBC Staff also responded to an inquiry about city incorporation from a resident of the Horseshoe Lake area, which is located near Houston and Big Lake. The individual indicated that substantial growth in the vicinity has created an environment in which some property owners and residents see a greater need for municipal services such as police protection. LBC Staff provided background information concerning the standards and procedures for city incorporation.

Healy

Location:	Healy lies at the mouth of Healy Creek on the Nenana River, 78 miles southwest of Fairbanks. It is located on a 2.5 mile spur road, just north of the entrance to the Denali National Park and Preserve on the Parks Highway. The area encompasses 669.0 sq. miles of land and 0.4 sq. miles of water.
Population:	1,012 (2005 State Demographer estimate).
City Classification:	Unincorporated
Borough:	Denali Borough
School District:	Denali Borough Schools



In February, LBC staff was contacted by a resident in an unincorporated area north of Healy who is interested in forming some sort of municipality. The individual was calling on behalf of several people in her area that believe they should get organized in order to have representation as local

government expands in their area. They have concerns about local government decisions being made that affect them without having the chance to be heard.

Since the individual and neighbors were just getting started, LBC staff prepared a packet of general information on local government and city incorporation and sent it to them.

Igiugig

Location:	Igiugig is located on the south shore of the Kvichak River, which flows from Iliamna Lake, on the Alaska Peninsula. It is 50 air miles northeast of King Salmon and 48 miles southwest of Iliamna. The area encompasses 19.8 sq. miles of land and 1.3 sq. miles of water.
Population:	50 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Lake & Peninsula Borough
School District:	Lake & Peninsula Schools



In April, LBC Staff responded to a request for information about city incorporation from the Administrator of the Igiugig Village Council. Interest in incorporation appears to be motivated, in part, by financial considerations (e.g., potential for new State revenue sharing programs proposed by HB 371 and SB 234, and the prospect of property taxes levied on property including seven lodges that serve sports fishermen and hunters). Interest in forming a city also seems to be motivated in part by the opportunity to transfer certain responsibilities for public services and facilities (e.g., landfill) from the Village Council in order to shield the Village Council from liabilities.

LBC Staff provided background materials on city incorporation (e.g., State laws establishing standards and procedures for incorporation, incorporation petition forms and instructions, a copy of the Naukati city incorporation decisional statement, and the publication "Local Government in Alaska"). Information about municipal taxation (e.g., Alaska Taxable 2005) was also provided.

Levelock

Location:	Levelock is located on the west bank of the Kvichak River, 10 miles inland from Kvichak Bay. It lies 40 miles north of Pitmeck and 278 air miles southwest of Anchorage. It is located near the Alagnak Wild and Scenic River Corridor. The area encompasses 14.5 sq. miles of land and 0.0 sq. miles of water.
Population:	54 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Lake & Peninsula Borough
School District:	Lake & Peninsula Schools



LBC Staff received an inquiry from an official of the Lake and Peninsula Borough about forming a city government in Levelock. The Borough official indicated that local interest in city government stems from the prospect of generating revenues through a city tax on commercial fishing operations.

In May, LBC Staff responded to a request from the President of the Levelock Tribal Village Council for information about incorporating a second-class city.

The Village Council President expressed particular interest in incorporating the nearby "Alagnak river and getting fishing revenue from that river."

LBC Staff encouraged the Village Council President to also consider the prospect of seeking the creation of a borough service area as an alternative to city incorporation.

LBC Staff provided information regarding standards and procedures for incorporation. Other general materials regarding city incorporation along with sample materials pertaining to the recent Naukati city incorporation attempt were also made available.

Naukati

Location:	
Population:	108 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Unorganized
School District:	Southeast Island Schools



Pre-2006 Background

In 2004, voters in Naukati submitted a petition to incorporate as a second class city. The technical review of the petition revealed several aspects that required correction. By April 2004, the corrected petition was reviewed, but the conflicting interests and views of several of the parties that were involved necessitated further investigation.

Commerce's 196-page preliminary report and recommendations on the Naukati proposal were published and distributed in August 2005. LBC Staff conducted a public informational meeting in Naukati the following October to discuss matters relating to the proposed city incorporation. LBC staff toured portions of the 44 square miles within the proposed City of Naukati.

Eighteen individuals, groups and organizations submitted comments on Commerce's preliminary report. LBC Staff studied those comments and published a final report on the Naukati proposal in November.

The LBC conducted a public hearing in Naukati on December 12, 2005. Following the hearing, the LBC approved the petition with amended boundaries. In order to ensure fiscal viability of the proposed city, promote the State's best interest, and measure the personal commitment of local residents regarding the proposed city, the LBC imposed two conditions on incorporation. The conditions require voter approval of a proposition authorizing the city to levy a 5-percent sales tax and 3.5-mill property tax.

2006

On January 4, 2006 the LBC formally adopted a 40-page decisional statement setting out the basis for its December 12, 2005 action to amend and approve, with conditions, the petition to incorporate Naukati as a second-class city. The amendment reduced the boundaries of the

territory proposed for incorporation from 44 square miles to 11.7 square miles, and imposed the taxing authority specified above.

On January 9, after conferring with the LBC Chair on final editorial changes to the LBC's decisional statement regarding the Naukati city incorporation proposal, LBC Staff served the statement on the Petitioner and Respondent.

The Division of Elections was notified on January 31 of the need to conduct an election on city incorporation. Qualified voters would have the chance to vote on the incorporation of Naukati as a second class city. Incorporation would not occur unless local voters voted in favor of incorporation and approved authorization for the City to levy a 5 percent sales tax and a 3.5 mill property tax. They would also vote to elect the initial seven-member City Council to take office if the incorporation propositions passed.



Naukati Public Hearing

The election was held under the general administration and supervision of the Director of Elections, and conducted as prescribed by the Alaska Election Code. The election was conducted by mail pursuant to Alaska law. An absentee voting official, appointed from among Naukati residents, was available from March 27 through April 11 to accept absentee ballots.

In the April election, voters of Naukati rejected the proposal to form a city government. On April 26, the State Division of Elections certified the following election results in the Naukati city incorporation election.

BALLOT MEASURE number 1: Shall Naukati be incorporated as a second class city? yes: 37 (44.6 %) no: 46 (55.4%)

BALLOT MEASURE number 2: Shall the City of Naukati be authorized to levy a 5 percent sales tax? (Approval of this proposition is a condition for incorporation; i.e., voters must authorize the City of Naukati to levy a 5 percent sales tax in order for incorporation to occur.) yes: 35 (42.2%) no: 48 (57.8%)

BALLOT MEASURE number 3: Shall the City of Naukati be authorized to levy a 3.5 mill property tax? (Approval of this proposition is a condition for

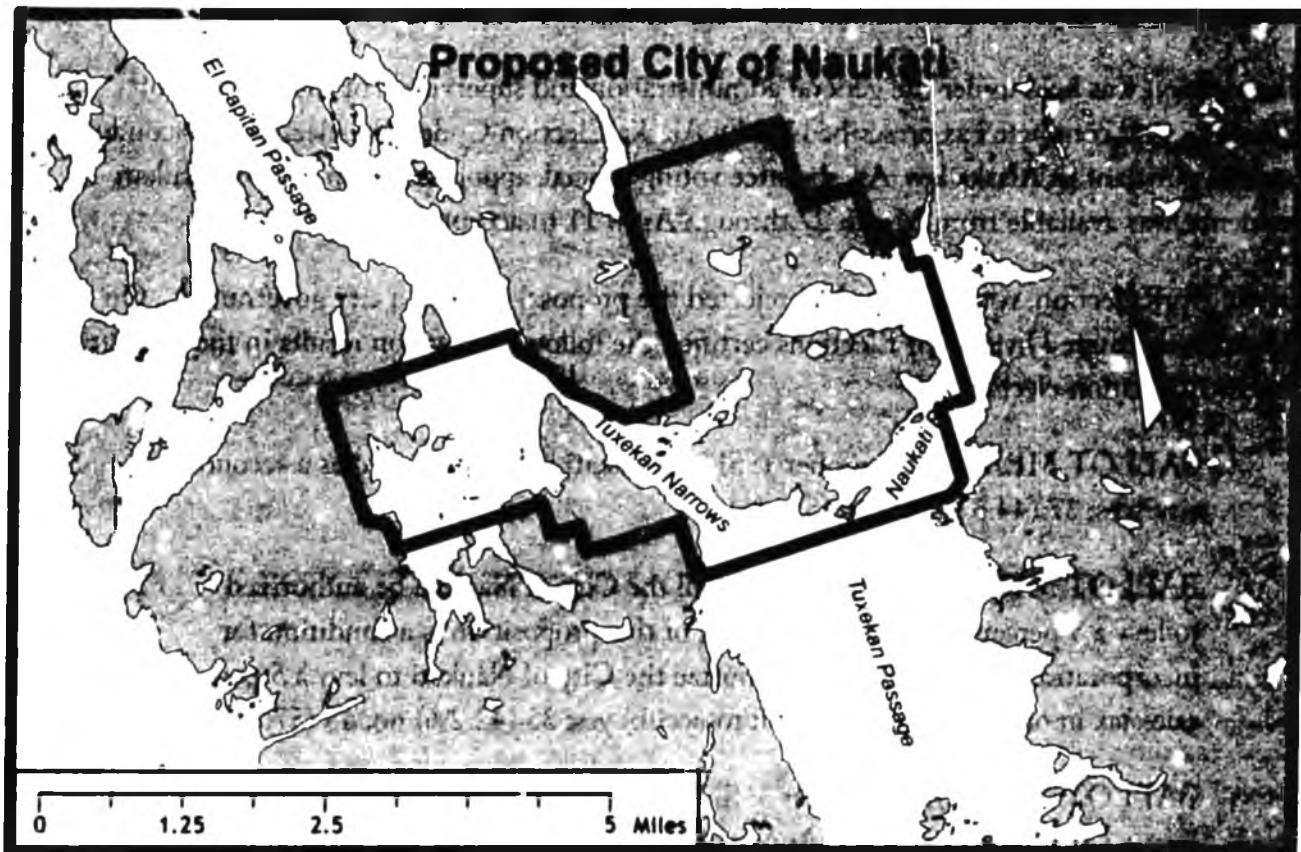
incorporation; i.e., voters must authorize the City of Naukati to levy a 3.5 mill property tax in order for incorporation to occur.) yes: 34 (41.0%) no: 49 (59.0%)

On June 13, LBC Staff received an inquiry about limitations on the submission of a new petition for incorporation of Naukati as a second-class city. The inquiry was from Art King, the representative of the Petitioners in the recently concluded proceedings for incorporation of the City of Naukati.

Mr. King inquired about 3 AAC 110.650, which provides "[e]xcept upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that is substantially similar to a petition & rejected by the voters during the immediately preceding 24 months." Mr. King asked whether a significant change in the proposed city boundaries and a significant change in the proposition to grant taxing powers to the proposed city would constitute a petition that was substantially dissimilar to the one rejected by the voters the previous April, or whether such changes would constitute "significantly changed conditions."

Mr. King noted that local residents were considering a new proposal that excluded Naukati Industrial Subdivision from the prospective proposal. That subdivision had been included in

Naukati City Boundaries as Approved by the Local Boundary Commission



the boundaries proposed in the original petition as well as those approved by the LBC. Mr. King indicated that there is strong sentiment against city government among the estimated 17 residents of Naukati Industrial Subdivision. Mr. King speculated that a new city incorporation proposal that excluded that subdivision would stand a better chance for voter approval. Mr. King also indicated that a proposition to authorize the proposed city to levy a sales tax would not likely be resisted by the voters; however, a proposition to levy a property tax would be. He also expressed the perception that despite efforts to inform the voters in the recently concluded incorporation proceedings, a number of voters did not understand that the sales and property tax propositions on the ballots would have empowered the city to levy taxes, but would not have compelled it to do so.

After conferring with the LBC Chair about the inquiry, the issue was added to the agenda for the LBC's June 26 meeting in Ketchikan. At that meeting, Mr. King assured the Commission that any new petition would be substantially dissimilar in terms of the proposed city boundaries, the proposed budget, and changes in the proposition to taxing powers. The LBC voted (3-2) to allow voters of Naukati to file a new petition for incorporation prior to April 2008 that is significantly revised from the petition rejected by voters in April 2006.



Naukati

LBC staff responded to numerous inquiries regarding the LBC's June 26 action from Art King and Van Huffman, current President of the Naukati West community association. Mr. Huffman called to inquire about changing the articles of incorporation for Naukati West community association. Mr. Huffman stated that during the formation of the community association there was some waterfront property that was not included in the community boundaries. LBC Staff discussed the process for amending the articles of incorporation with Mr. Huffman, and sent him a copy of the non-profit community association handbook.

On July 20, Naukati residents met to discuss the prospect of filing a new petition to incorporate as a second class city.

A new petition has not yet been filed with the LBC.

Section II. City Annexation

Although no city annexation petitions are pending before the LBC, annexation was explored to various degrees with respect to 10 city governments during 2006.

City annexation activities occurred in the following localities during 2006:

- City of Homer (conclusion of litigation);
- City of King Cove;
- City of Klawock;
- City of Kodiak;
- City of Palmer;
- City of Petersburg;
- City of North Pole;
- City of Seldovia;
- City of Soldotna; and
- City of Wasilla.

Homer

Location:

Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. It is 227 road miles south of Anchorage, at the southern-most point of the Sterling Highway. The area encompasses 10.6 sq. miles of land and 14.9 sq. miles of water.

Population:

5,435 (2005 State Demographer estimate)

City Classification:

First Class City

Borough:

Kenai Peninsula Borough

School District:

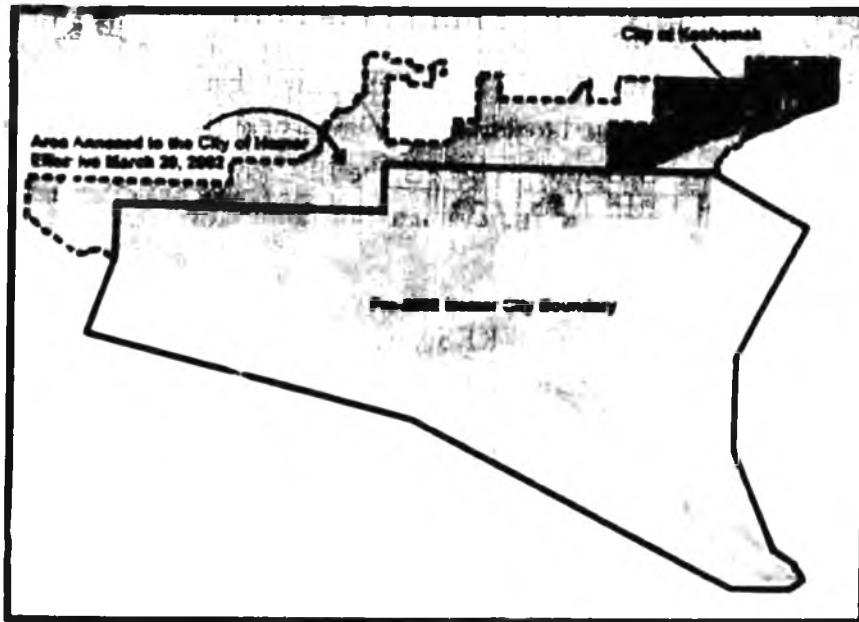
Kenai Peninsula Schools



Pre-2006 Background

On December 26, 2001, the LBC approved an annexation of 4.58 square miles to the City of Homer. Following tacit approval by the 2002 Alaska State Legislature, the annexation took effect on March 20, 2002.

The annexation was appealed to superior court. On December 4, 2003, the superior court ordered a remand to the LBC to discuss the effect of the annexation on the Kachemak Emergency Service Area (KESA) created by the Kenai Peninsula Borough.

Homer Annexation

On January 5, 2005, following an opportunity for written comments by the public, analysis by staff, and a public hearing before the Commission in Homer, the LBC affirmed the December 26, 2001 decision granting annexation of 4.58 square miles to the City of Homer. A decisional statement setting out the basis for the January 5 ruling was adopted by the LBC on February

4 and distributed to all interested parties. This action was followed by a formal request for reconsideration of the Homer annexation remand decision, which the LBC denied for failure to meet the criteria for reconsideration set out in the law. Appeals by Abigail Fuller and the Kachemak Area Coalition, Inc., d/b/a Citizens Concerned About Annexation (CCAA) of the LBC's February 4, 2005 decision followed and are currently pending.

2006

Superior Court Judge Rindner heard oral arguments on the latest appeal of the Homer annexation in Anchorage on June 29. This appeal involved the LBC's affirmation of its December 26, 2001 decision granting annexation of 4.58 square miles to the City of Homer. This latest appeal was initiated by Abigail Fuller and the Kachemak Area Coalition, Inc., d/b/a CCAA. Attorneys representing Kachemak Area Coalition, the LBC (Assistant Attorney General Marjorie Vandor), and the City of Homer made oral arguments in person, while appellant Abigail Fuller appeared telephonically. The gist of the appellant's argument was that the Commission failed to adequately consider and give proper weight in their decision of the impact of the annexation on the KESA in that it took 25 percent of its tax base away, and this failure denied them due process of law. The Judge questioned all the participating attorneys and said he would take their comments and arguments under advisement and issue a written decision.

On August 22, Judge Rindner issued an 11-page decision affirming all aspects of the LBC's January 2005 decision upon remand of the 2001 annexation of 4.53 square miles to the City of Homer. Judge Rindner had remanded the case back to the Commission to discuss the impact of annexation on the Kachemak Emergency Service Area (KESA), a service area of the Kenai Peninsula Borough created after the City of Homer annexation petition had been filed.

In his August 22 decision, Judge Rindner noted with respect to the LBC's 2005 decision that:

The LBC determined that in its original decision, it gave proper consideration to the impact that the annexation would have on KESA. It also stated that it believed that the Commission was not required to address the impacts of the annexation on the service area. However, despite its beliefs, the LBC complied with the Court's order and specifically discussed and evaluated the annexation's impact on KESA.

The LBC found that the effect of the annexation of KESA was *de minimis* and that the annexation was not inappropriate in terms of the best interest of the state.

Judge Rindner also dismissed the appellants' claim that the LBC erred when it recused one of the Commission members due to a conflict of interest.

King Cove

Location:	King Cove is located on the south side of the Aleutian Peninsula, on a sand spit fronting Deer Passage and Deer Island. It is 18 miles southeast of Cold Bay and 625 miles southwest of Anchorage. The area encompasses 25.3 sq. miles of land and 4.5 sq. miles of water.
Population:	723 (2000 State Demographer estimate)
City Classification:	First Class City
Borough:	Aleutians East Borough
School District:	Aleutians East School District



On April 25, LBC Staff met with a consultant retained by the City of King Cove to prepare a petition for annexation of an estimated 22 square miles of offshore territory. The territory in question is reportedly used by commercial fishing operations and is not currently subject to city taxation. Earlier in the month, LBC Staff met with this consultant to give information on city annexation procedures and standards in general.

The City began the annexation process in 2003, and submitted a draft petition to LBC at that time. LBC Staff reviewed the draft petition and returned it with comments. Discussion in April of this year centered on determining where the petition process left off in 2003, what documents and correspondence are on file at LBC, and what the City needs to do to resume its efforts to submit an annexation proposal.

Klawock

Location:	Klawock is located on the west coast of Kodiak Island, Alaska. It is 7 road miles north of Craig, 24 road miles from Hollis, and 56 air miles west of Ketchikan. The area encompasses 0.6 sq. miles of land and 0.3 sq. miles of water.
Population:	780 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Unorganized
School District:	Klawock City Schools



On February 28, a representative of the City of Klawock advised LBC Staff that local officials were contemplating a proposal to expand the boundaries of the City of Klawock. LBC Staff provided information about prior Klawock annexation proposals. Information was also provided about annexation standards and procedures.

Kodiak

Location:	Kodiak is located near the northeast tip of Kodiak Island in the gulf of Alaska. It is 252 air miles southwest of Anchorage, a 45-minute flight. The area encompasses 3.5 sq. miles of land and 1.4 sq. miles of water.
Population:	6,088 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Kodiak Island Borough
School District:	Kodiak Island Borough School District



On July 17 LBC staff received an inquiry from a reporter with the *Kodiak Daily Mirror*. He indicated that there is a renewed interest in city annexation among some Kodiak residents. The reporter wanted information about Kodiak's failed annexation attempt in 1999, as well as information on city annexation in Alaska. Staff answered questions over the phone and then followed up with materials from the 1999 Kodiak annexation and general information about the city annexation process.

Palmer

Location:	Palmer is located in the center of the Matanuska Valley, 43 miles south of Anchorage on the Glenn Highway. The city encompasses 3.8 sq. miles of land and 0.0 sq. miles of water.
Population:	5,382 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Matanuska-Susitna Borough
School District:	Matanuska-Susitna Schools



Pre-2006 Background

There were inquiries about two separate city annexation proposals in Palmer. In July 2005 the City of Palmer's Community Development Director advised LBC Staff that Palmer City officials were exploring the possibility of a substantial annexation. LBC Staff provided information about standards and procedures for annexation. No particular territory had yet been identified in terms of the prospective annexation proposal. Once City officials define the proposed annexation boundaries, the City intends to use a consultant to examine the fiscal viability of annexation. Initially, the City of Palmer anticipated that a petition might be filed early in 2006. However, City officials informed LBC staff in October 2005 that they extended their timeline by one year. The City plans to use the extra time to complete its comprehensive plan update, conduct an economic analysis of annexation options, and to revise its land use code.

In an unrelated matter, City of Palmer officials advised LBC Staff in October that the Matanuska-Susitna Borough recently obtained a 159 acre uninhabited parcel contiguous to the City's boundary. The property is subject to a lease between the City and the property owner (formerly State, now Borough) for public use of the property. City officials want to annex the parcel. They indicate that the property owner consents to the annexation. LBC staff provided information about the standards and procedures for the annexation.

2006

An August 16 article in the *Anchorage Daily News* stated that the City of Palmer was considering a proposal to annex almost six square miles to the City's boundaries, doubling the size of the city. According to City Manager Tom Healy, the City was also developing a rural residential zoning district that could apply to property that might be annexed.

The news article reported that the City Council would meet to discuss the annexation on August 22. Even if the Council agreed to move forward with the annexation plan, it might be mid-2008 before new lots are added to the city.

According to the *Anchorage Daily News* article:

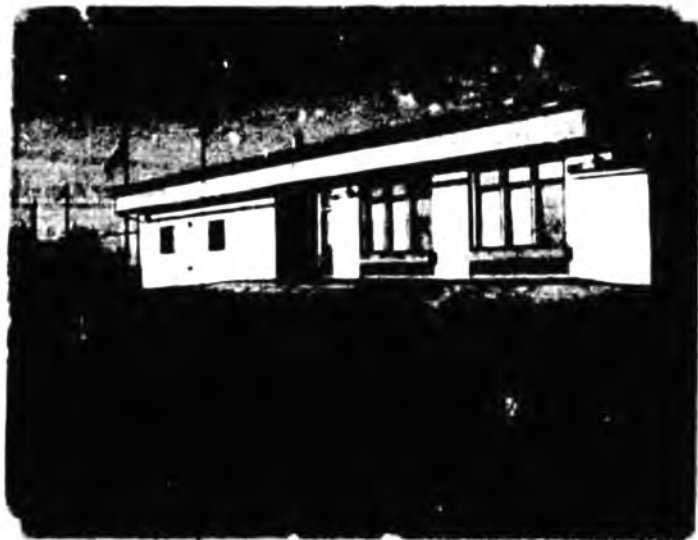
“Northern Economics, an Anchorage consulting group the city hired to study costs associated with annexation, estimated that bumping the city boundaries out north of Scott Road, south of Inner Springer Loop and Crimsonview subdivision and east of Equestrian Acres subdivision would add about 1,400 residents to the city. It’d also cost the city another \$90,000 to provide services like police protection and road maintenance to all the new homes....[T]he proposal now on the table is just one phase of a four-phase plan.

If all four phases are adopted, city boundaries will be a loop from Palmer-Fishhook Road to the Glenn and Parks highways interchange, bordered on the east by the Matanuska River, and will extend past Trunk Road on the west. Palmer’s population would double, according to Northern Economics.

In about 10 years, the city would collect \$1.3 million less in tax revenue than the cost of providing services.

Taxes in the city are set at 3 mills. Property owners outside the city pay 2.5 to 3 mills but don’t get city police protection and some other services....

The Northern Economics study shows that a 1-mill increase in city property taxes could recoup the additional \$1.3 million economists expect it would take to serve a larger city....



Palmer City Hall

City Council approved a plan Aug. 8 to begin preparing an annexation petition. Public hearings will likely begin later this year. Healy said he hopes to present an annexation petition to the Boundary Commission in February. If the commission approves the request, it will go before the Legislature in 2008.”

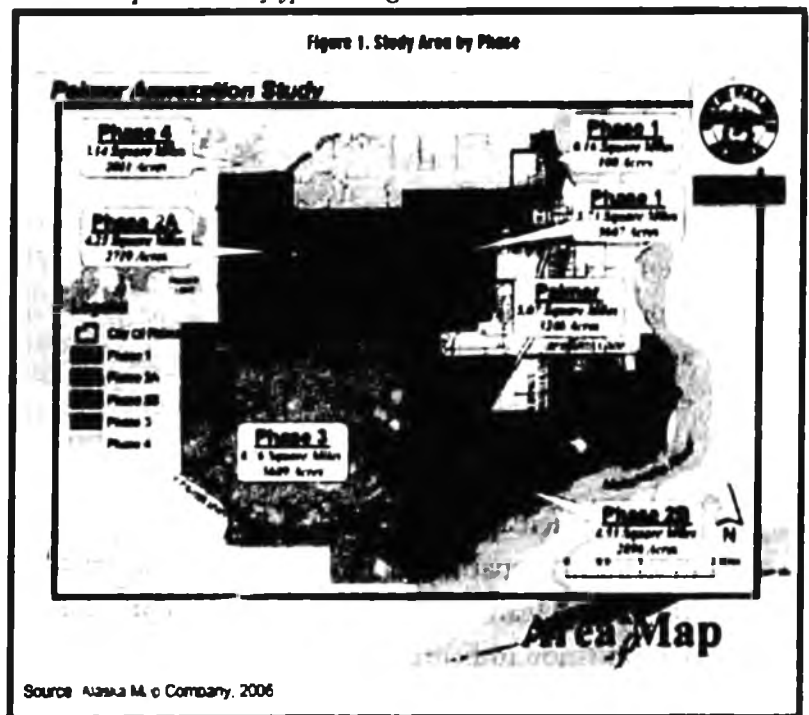
Mr. Healy said there were a number of ways to cover the new costs for a larger city, for instance, a slight increase in property taxes or more retail development.

Annexation and rural residential zoning would address concerns about unbridled strip development along the Glenn or Palmer-Wasilla highways. The Palmer Comprehensive Plan calls for appropriate development in keeping with Palmer.

In August, LBC Staff responded to inquiries from some Palmer area residents concerning the prospect of annexation to the City of Palmer. Concern was expressed, in particular, that annexation might occur without voter approval.

In September, LBC Staff responded to inquiries from the Palmer City Manager and others regarding a prospective legislative review proposal for annexation to the City of Palmer. Under consideration is a prospective proposal to annex 14.75 square miles inhabited by an estimated 3,520 residents. If implemented, the prospective annexation would represent a nearly 300 percent increase in the jurisdictional territory of the City of Palmer and a 65 percent increase in its population. It would also result in a 90 percent increase in the extent of roads for which the City would have maintenance responsibility. The City estimates that annexation of the 14.75 square mile territory would require an additional 20 employees to serve the expanded territory. The matter was brought before the Palmer City Council at its September 26 meeting in the form of motions to approve the draft annexation boundaries, and award a contract for preparation of an annexation petition. Some City Council members expressed concern over rushing through the process before fully understanding the issues involved. There was concern over financial issues such as the need to further analyze annexation costs, and a desire not to alienate any of those who would be annexed. The motions failed. City Council members wanted to study the 2007 budget and take a closer look at the future unfunded liability (i.e. PERS) before proceeding.

Map of the Palmer Annexation Study Area. Map Credit: City of Palmer website <http://www.cityofpalmer.org>



LBC Staff responded to separate inquiries from the President of the Crimson View Homeowners Association and the President of the Equestrian Acres Homeowners Association regarding plans by the City of Palmer for annexation of those subdivisions and other territory. Information was provided about standards and procedures for annexation.

Some residents spoke against the plan at the Palmer City Council meeting on September 12. One property owners' association member said that in a survey distributed to the 46 homes in his subdivision, 24 out of 31 survey respondents were opposed to becoming part of the City of Palmer. Another property owner in the Crimson View subdivision said she was opposed to the annexation because it would significantly increase her taxes, including her utility taxes.

On September 26, the Palmer City Council voted to delay plans for a prospective annexation proposal. In doing so, the City Council cited the need to first carefully assess the impact on existing City services of increased costs associated with the Public Employees Retirement System. City officials also want to examine how those increased costs might affect future annexations.

At its meeting of October 24, the Palmer City Council voted to authorize the preparation of a petition for legislative review annexation of an estimated 5.73 square miles. With current boundaries encompassing 5.07 square miles, annexation of the area in question would more than double the size of the area within the City's jurisdiction. With an estimated \$150,040,000 in taxable property, annexation of the 5.73 square miles would increase the \$286,650,000 property tax base of the City of Palmer by 52.3 percent. It is estimated that the territory is inhabited by 1,382 residents. Annexation would increase the population of the City of Palmer by 25.7 percent. Although the Palmer City Council voted to authorize development of the annexation petition, it was stressed to LBC Staff that the City Council could later elect not to file the petition with the LBC.

On December 20, LBC Staff met with a consultant for the City of Palmer regarding the prospective petition for annexation to the City of Palmer. City of Palmer officials contemplate the filing of a petition by early March, 2007.

Petersburg

Location:	Petersburg is located on the northern coast of Alaska, midway between Juneau and Ketchikan, about 120 miles from either community. The area encompasses 43.9 sq. miles of land and 2.2 sq. miles of water.
Population:	3,155 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Unincorporated
School District:	Petersburg City Schools



Pre-2006 Background

In 2004, the City of Petersburg submitted a petition for annexation of approximately 34.2 square miles on Mitkof Island. LBC staff completed the technical review of the petition in December 2004, and the content was determined to be substantially complete. The Petition was accepted for filing and the deadline for receipt of responsive briefs and written comments was set for April 18, 2005.

In March of 2005, LBC Staff met with a resident of the area proposed for annexation to the City of Petersburg. The territory in question encompasses an estimated 162 residents and \$14,575,000 in taxable property. Procedures and advantages of filing responsive briefs were addressed during the meeting. Other residents also inquired about filing responsive briefs regarding the City's pending annexation petition. By the deadline of April 18, one responsive brief and sixteen written comments were timely filed. Additionally, one set of informational materials was submitted. After conferring with officials of the City of Petersburg, the LBC Chair set July 15 as the deadline for receipt of the reply brief from the City of Petersburg.

On June 8, the LBC Chair granted a request by the City of Petersburg to extend the deadline for filing its reply brief in the pending annexation proceedings. The new deadline was set for August 15, 2005. LBC Staff provided representatives of the City of Petersburg with materials to facilitate efforts to complete and submit the City's reply brief. The City of Petersburg met the August 15 deadline for filing the reply brief.

2006

LBC Staff worked on the preliminary report for the proposed annexation to the City of Petersburg during the first months of 2006. However by May 1, the Petersburg City Manager recommended to the City Council that the City's pending petition for annexation of 34.2 square miles be withdrawn. The Manager expressed the view that withdrawal of the annexation petition would

City of Petersburg Proposed Annexation



be warranted given the planned submission of a petition to incorporate a Petersburg borough. The City Council expressed no opposition to the Manager's recommendation. In view of the preceding, LBC Staff ceased to work on its preliminary report regarding the matter on April 28.

In discussions with the City Manager, LBC Staff noted that no public notice had been given by the City of Petersburg that the matter would be addressed by the City Council at the May 1 meeting. LBC Staff advised the City Manager that formal action to withdraw the petition must be taken by the Council at a properly-noticed meeting. On May 15, the Council of the City of Petersburg adopted Resolution Number 1795, "A Resolution Withdrawing the City's Petition to the Local Boundary Commission to Annex Approximately 34.2 Square Miles on Mitkof Island and Informing of the Intent to Seek Borough Formation." The resolution stated, in part:

... the City has been investigating and comparing the benefits of borough formation to its existing annexation petition and it has been determined borough formation would best benefit the whole of the Petersburg area.

... in order to preserve the surrounding area's cultural, educational and economic identification, the City hereby withdraws its annexation petition, submitted to the Local Boundary Commission on January 10, 2005;

... the City Council for the City of Petersburg intends to pursue Home Rule Borough formation.

A consultant preparing a petition for incorporation of a home-rule Petersburg borough advised LBC Staff that the intent is to have a petition and charter ready to submit to the Local Boundary Commission in late summer or early fall 2006. The consultant submitted a list of twenty questions concerning a broad range of issues. LBC Staff drafted a ten-page response to the questions.

The prospective borough proposal would encompass the City of Petersburg, about 170 residents living near Petersburg just outside the city boundary, the second-class city of Kupreanof with about 40 residents, and another 25 or so residents living in remote areas.⁹ Thus, some 98 percent of the residents of the prospective proposed Petersburg borough live in or immediately adjacent to the City of Petersburg. The prospective proposal will seek to simultaneously dissolve the City of Petersburg, retain the City of Kupreanof, and form a home-rule borough.

In September, a member of the Petersburg Borough Charter Commission met twice with LBC Staff. Staff was advised that the Charter Commission was meeting on a weekly basis and that its work would likely be concluded by the end of October. LBC Staff addressed technical questions concerning home-rule charters and borough government.

In October, LBC Staff responded to a number of inquiries from the Petersburg City Clerk and the consultant hired by the City of Petersburg to develop a Petersburg borough proposal. Topics addressed included provisions in the proposed charter and other parts of the prospective petition relating to service areas, sales taxes, and property taxes. For example, AS 29.05.140(e), provides that "Unless the incorporation takes effect on January 1, the newly incorporated municipality may not levy property taxes before January 1 of the year immediately following the year in which the incorporation takes effect." To address the need to permit the prospective new borough to levy property taxes without delay, it was noted that the LBC could defer the effective date of incorporation under 3 AAC 110.630(c).

LBC Staff urged the consultant to arrange for a thorough review of technical aspects of the proposed charter, as well as the style and drafting of the charter. The LBC Staff report on the review of the Ketchikan consolidation charter was provided to the consultant as an example.

⁹ Ch. 8, FSSLA 2005 is relevant in terms of the Wrangell borough proposal and the prospective Petersburg borough proposal. In relevant part, Section 3 of that law provides:

Notwithstanding (a) of this section, the state land identified in this subsection and described in the document entitled 'University of Alaska Land Grant List 2005,' dated January 12, 2005, may not be conveyed to the University of Alaska under this section if the land is included in a borough formed before July 1, 2009, that includes Wrangell or Petersburg. If a borough is not formed before July 1, 2009, land described in this subsection shall be conveyed to the University of Alaska on July 1, 2009. If a borough is formed before July 1, 2009, and the borough does not select land described in this subsection before January 1, 2013, the land not selected by the borough shall be conveyed to the University of Alaska on June 30, 2013. The following land is subject to this subsection: (1) Parcel Number SD.1001, Beecher Pass; (2) Parcel Number SD.1001, Favor Peak; (3) Parcel Number CS.TL.1001, Three Lake Road; (4) Parcel Number SD.1001, Read Island; (5) Parcel Number SD.1001, Whitney Island; (6) Parcel Number CS.EW.1001, Earl West Cove; (7) Parcel Number CS.OV.1001, Olive Cove; and (8) Parcel Number SD.1001, Thoms Place.

North Pole

Location:	North Pole is located 30 miles southeast of Fairbanks on the Richardson Highway. It is 300 miles north of Anchorage. The area encompasses 4.2 sq. miles of land and 0.1 sq. miles of water.
Population:	1,595 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Fairbanks North Star Borough
School District:	Fairbanks North Star Schools



In May, LBC Staff provided a North Pole city council member with petition forms and other information regarding annexation of territory using the local action method initiated by all property owners and registered voters in the territory proposed for annexation. At issue is a prospective proposal for annexation of 12 acres to the City of North Pole.

Seldovia

Location:	Seldovia is on the Kenai Peninsula across from Homer on the south shore of Kachemak Bay. It is a 45 minute flight to Anchorage. The area encompasses 0.4 sq. miles of land and 0.2 sq. miles of water.
Population:	287 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Kenai Peninsula Borough
School District:	Kenai Peninsula Schools



In October, the Seldovia City Clerk advised LBC Staff that the City of Seldovia was planning to petition for annexation of four uninhabited and undeveloped parcels. The four parcels encompass about 100 acres adjoining the existing boundaries of the City of Seldovia. Three of the parcels are owned by a group of private investors who plan to subdivide and sell the property. That group has requested annexation to provide for the extension of utilities and other City services. The fourth parcel is owned by the Kenai Peninsula Borough.

LBC Staff provided the City Clerk with background information and forms to petition for annexation using what is commonly referred to as the "100-percent-of-owners-and-voters method of annexation."

Soldotna

Location:	Soldotna is on the Kenai Peninsula, 150 highway miles south of Anchorage, at the junction of the Sterling and Kenai Spur Highways. It lies 10 miles inland from Cook Inlet, and borders the Kenai River. The area encompasses 6.9 sq. miles of land and 0.5 sq. miles of water.
Population:	3,869 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Kenai Peninsula Borough
School District:	Kenai Peninsula Schools



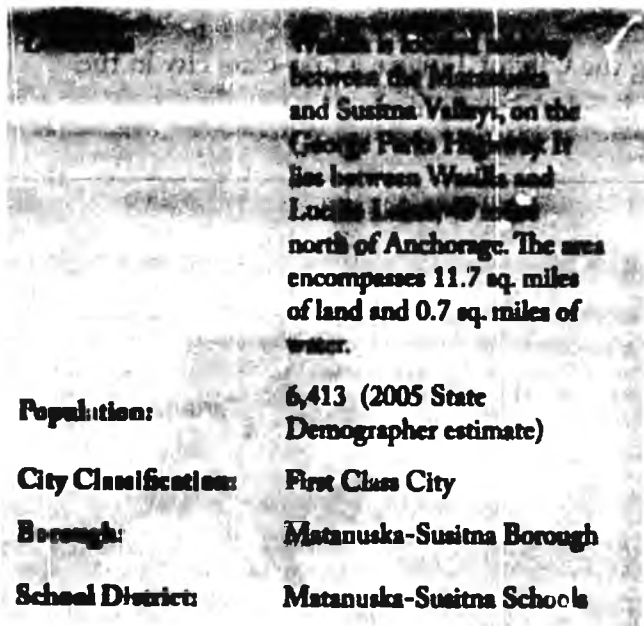
Staff from the Soldotna City Manager's Office contacted LBC Staff about a prospective legislative review annexation proposal. Soldotna City officials are contemplating annexation of four areas. Those consist of the "Funny River Road area" (estimated population: 130); Kalifornsky Beach Road area (estimated population: 530); Ridgeway area (estimated population: 476); and Skyview High School area (uninhabited).

At the request of the City of Soldotna, LBC Staff provided forms to petition for legislative review annexation, background information about annexation, a copy of the laws establishing standards and procedures for annexation, and other related information.

Although city officials initially contemplated using the legislative review method of annexation, the City has now expanded its consideration to include the local option annexation method.

In December, LBC Staff responded to technical questions concerning the local action methods for annexation. The City of Soldotna plans to petition for annexation of a parcel of land using the local action method that requires the consent of all owners and resident registered voters. Additionally, the City of Soldotna continues to explore the prospect of annexation of the other properties.

Wasilla



City of Wasilla officials are contemplating a proposal for annexation using what is commonly referred to as the "100-percent-of-owners-and-voters method of annexation." LBC Staff provided the Wasilla City Planner with petition forms and background information about the standards and procedures for annexation.

In November, officials of the City of Wasilla advised LBC Staff that the City had received requests for annexation from all property owners and resident registered voters in three separate territories contiguous to the City of Wasilla. The three territories comprised a total of approximately 130 acres. The City plans to confer with owners of six other properties in the vicinity to determine whether the owners are inclined to also seek annexation.

On November 17, LBC Staff met with Wasilla's Deputy Administrator and a City Planner to discuss the requirements and procedures regarding the City's proposed annexation of 131.5 acres to the City of Wasilla. Subject to LBC approval of a city government's petition, AS 29.06.040(c)(3) allows a city to annex adjoining territory, if all owners of the property proposed for annexation and all registered voters residing on that property first petition that city for annexation. All the owners and all the registered voters residing on the property proposed for annexation to the City of Wasilla have signed a petition.

Section III. City Dissolution

During 2006, interest was expressed in dissolving the City of Tanana, a first-class city in the unorganized borough. However, no petition for dissolution was filed.

Tanana

Location:	Tanana is located in Interior Alaska about two miles west of the junction of the Tanana and Yukon Rivers, 130 air miles west of Fairbanks. The area encompasses 11.6 sq. miles of land and 4.0 sq. miles of water.
Population:	281 (2005 State Demographic estimate)
City Classification:	First Class City
Borough:	Unorganized
School District:	Tanana City Schools



On June 10, LBC Staff responded to an inquiry from a resident of Tanana regarding the consequences of dissolution of the City of Tanana. The caller indicated that prevalent conflicts between the Tanana city government and the Tanana Tribal Council motivated the inquiry.

Staff provided general information about the consequences of dissolution, noting for example, that the City of Tanana School District (FY 2006 enrollment 67) would be merged into the Yukon Koyukuk REAA (FY 2006 enrollment 1,612). In FY 2006, the local contribution for schools required under AS 14.17.410(b)(2) from the City of Tanana was \$22,692. LBC Staff noted that the education funding cost differentials for the City of Tanana School District (1.496) and the Yukon Koyukuk REAA (1.502) were substantially the same.

In addition to addressing the effects of dissolution, LBC Staff provided information about standards and procedures for dissolution.

Section IV. City Reclassification

Houston

Description:	Houston is located north of Anchorage in the Matanuska-Susitna Borough, 57 road miles north of Anchorage. It lies on the Parks Highway, along the Little Susitna River. The area encompasses 22.4 sq. miles of land and 1.2 sq. miles of water.
Population:	1,447 (2005 State Demographer estimate)
City Classification:	Second Class City,
Borough:	Matanuska-Susitna Borough
School District:	Matanuska-Susitna Schools



There was interest in 2006 in reclassifying Houston, currently a second-class city.

On August 29, LBC Staff responded to an inquiry regarding city reclassification from the City Clerk of the City of Houston. The City of Houston was incorporated as a second-class city within the Matanuska-Susitna Borough in 1966. The 1970 population of the City of Houston was 66. The State Demographer estimated the 2005 population of the City of Houston to be 1,447. The 2005 figure is 3.6 times greater than the 400-person requirement for reclassification of a second-class city to a first-class city. The City of Houston is the third most populous second-class city in Alaska.

LBC Staff provided the Houston City Clerk with a copy of the statutes and LBC regulations relating to city reclassification. A sample city reclassification petition and background on local government in Alaska was also provided.

Section V. Borough Incorporation

Activities regarding borough incorporation occurred to varying degrees in 16 areas of the state during 2006. Three formal proposals to the Commission were pending during 2006 (Delta-Greely, Skagway and Wrangell). Four other areas were the subject of formal studies: Eagle River-Chugiak; Glacier Bay-Chatham; Middle Kuskokwim; and Yukon Flats). The 15 areas are:

- Copper River Basin;
- Delta-Greely region;
- Ekwok;
- Eagle River-Chugiak territory;
- Greater Nenana territory;
- Glacier Bay-Chatham region (Angoon, Elfin Cove, Kake, Hoonah, Pelican, Gustavus, and Tenakee Springs);
- Kake;
- Middle Kuskokwim region;
- Petersburg;
- Prince William Sound;
- Skagway;
- Valdez;
- Yukon Flats;
- Yukon-Koyukuk;
- Yukon-Kuskokwim Delta; and
- Wrangell.

Copper River Basin

Pre-2006 Background

Initial interest in 2004 for borough formation was followed up in 2005 with an invitation for LBC Staff to attend a meeting in the Copper River Region to discuss the pertinent issues. A public forum was held in Glennallen on March 8. LBC Staff made a presentation on borough government at the meeting, which was organized by the Greater Copper River Valley Chamber of Commerce. An estimated 300 people were in attendance. Also in attendance at the meeting was a representative of the City of Valdez, who addressed various issues relating to a prospective proposal for incorporation of a borough in the Prince William Sound region.

Following the March 8, 2005 meeting, a small number of local residents formed an ad hoc study group regarding boroughs. The group requested informational materials from the LBC. This was followed by a meeting between the Superintendent of the Copper River REAA and LBC Staff on April 1 to discuss matters



pertaining to borough formation. During the meeting one area of particular interest was the potentially large mineral deposit in the Tangle Lakes area near Paxson, which prompted concern on the part of some over the prospect of annexation proposals from existing boroughs. The Tangle Lakes mineral deposit overlaps the southern portion of the Delta Greely REAA and the northern portion of the Copper River REAA.

There was also some interest in borough formation shown by the officials at Ahtna Incorporated. They indicated that the prospect for oil and gas development, the gas pipeline, and further tourism development made the Basin an attractive candidate for annexation to an existing borough. At the request of Ahtna, Inc., LBC Staff made a presentation on the formalities of borough government for villages in the Copper River Basin. This presentation was made on June 30, 2005, at a joint meeting of Ahtna Inc., and the Successor Village Organizations in Copper Center. The meeting lasted more than two hours and around 50 individuals attended. Those present expressed interest in an examination of more specific aspects of a prospective borough. LBC staff pledged to offer support but not at that time, regrettably, there is no State funding available for a borough feasibility analysis. During each of the last several years, the LBC has recommended that the Legislature appropriate funding for this purpose.

2006

The Division Director and LBC staff met with Brenda Rebne, Ahtna Vice-President of Corporate Affairs on February 2 to discuss options for borough formation. Ms. Rebne is interested in learning more about administrative boroughs and exploring other options for the Copper River Valley region.

Ms. Rebne expressed interest in talking to representatives of the Copper Valley Economic Development Corporation. She wants to talk to them about borough development and get their sentiments on conducting a feasibility study on borough options. Ms. Rebne is interested in getting funding for the feasibility study. The Director and LBC staff suggested the possibility of a legislative appropriation.

On February 17, officials of the Ahtna Corporation met with Commerce Commissioner Bill Noll and LBC Staff. Continued interest was expressed in exploring borough government issues that might potentially affect the Copper River Basin. Concern was expressed about the prospect that the Copper River Basin might be annexed into an existing borough (e.g., Matanuska-Susitna or Fairbanks North Star) or that it could be included in a future borough that includes territory beyond the Copper River Basin (e.g., Deltana or Prince William Sound). Ahtna Corporation officials also noted concern over legislative proposals such as SB 112 – the head tax on certain residents of the unorganized borough. The tax would also apply to certain individuals employed within the unorganized borough. Ahtna officials expressed continued interest in legislative funding for analysis of the options facing the region (e.g., annexation, status quo, borough formation, etc.).

Delta-Greely Region

On January 3, a petition signed by 259 individuals was submitted to the LBC for incorporation of the Deltana Borough which encompasses approximately 5,892 square miles. The area includes the Pogo Mine, Fort Greely, Healy Lake, Whitestone, Big Delta, and Deltana. The petition sought to incorporate a unified home-rule borough with boundaries identical to those of the Delta-Greely REAA. (The proposed borough includes only a portion of the Upper Tanana Basin model borough; the Alaska Gateway REAA portion is excluded). Upon incorporation of the Deltana Borough, the second-class City of Delta Junction – the only city government in the area proposed for incorporation – will be dissolved. Following the determination by LBC Staff that the form and content of the Deltana Borough incorporation proposal

was proper and the petition was acceptable for filing, the LBC Chair set March 31, 2006 as the deadline for receipt of responsive briefs and written comments concerning the petition for incorporation. One of the 41 written public comments received by the deadline was a petition, signed by 239 individuals claiming to be local registered voters, which said the Deltana Charter was “flawed in concept.”

The Delta-Greely School District currently operates three schools at a cost of \$6.1 million a year. The State pays nearly all the costs of the school. Some funding is provided by the federal government. The district’s 4,148 residents currently pay nothing to help operate those schools because they live in the unorganized borough outside home rule and first class cities. Under the current Deltana Borough proposal, the new borough government would contribute about \$800,000 to local education. The Borough’s proponents plan to raise the bulk of the money from the developers of the Pogo Mine through a contractual payment in lieu of taxes (PILT). The Red Dog lead and zinc mine has a similar funding arrangement with the Northwest Arctic Borough in the Kotzebue region.

Under the 10-year PILT agreement signed with the City of Delta Junction on November 15, 2005, Teck-Pogo’s payments to the new borough would ramp up to \$2 million a year by 2008, or



more if the value of the gold mine goes up. Teck-Pogo also agreed to pay up to \$350,000 a year toward bonding costs for new schools and other construction if the borough provides a matching share. Until a borough is created, PILT payments go to the City of Delta Junction. If the Deltana residents vote to incorporate as a borough and the second class City of Delta Junction is dissolved, the PILT agreement will be automatically assumed by the Deltana Borough. Unless a new borough is formed by December 31, 2008, the PILT agreement will terminate.

In July 2004, the City of Delta Junction received a \$1.2 million, no-interest loan from the State of Alaska to pay off a lawsuit settlement regarding the establishment of a private prison at Fort Greely, under a bill signed into law by Governor Frank Murkowski. The City is required to make yearly \$50,000 payments to the State. Should the City of Delta Junction be incorporated into a borough, the balance of the City of Delta Junction's no-interest prison debt loan will be forgiven by the State; as of November 2006, the loan balance was \$1.1 million.

On May 10, LBC Staff completed a preliminary review of the April 25 draft of the proposed Delta Greely Borough Charter. Given the significance of the draft Charter (i.e. the proposed organic law or municipal Constitution of the prospective Deltana Borough), Staff made a particular effort to provide critical analysis and thorough comments. The review addressed form and style, potential ambiguities, provisions that might be subject to misinterpretation, missing elements required by State law, and other issues.

On December 4, LBC Staff conducted a 2 ½ hour public informational meeting in Delta Junction, before an audience of approximately 115 people. LBC Staff made a brief presentation on future proceedings and outlined the Staff's recommendations in the Preliminary Report, published in November. LBC Staff answered over 30 questions that members of the public wrote on blank index cards, and another 20 or so extemporaneous questions from the audience. After the Question/Answer Session, 16 members of the public took the opportunity to comment for



3 minutes each. All written and oral comments will be addressed in the Final Report which is expected to be published in January 2007.

The LBC plans to hold a public hearing in Delta Junction on March 16, 2007. If the LBC decides at its decisional meeting to approve the Deltana Borough proposal, an election will be held. Incorporation is conditioned upon voter approval of propositions providing for:

- A 3 percent home heating fuel and vehicle gas sales tax;
- A 10 percent energy tax on the sale of electrical power; and
- The PILT Agreement with Teck-Pogo, Inc.

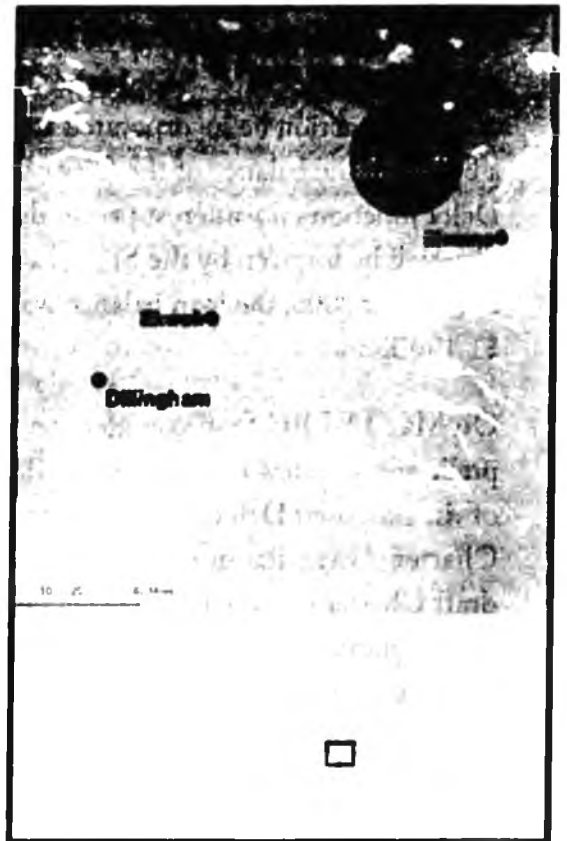
Ekwok

Pre-2006 Background

In January 2004, Northern Dynasty Mines, Inc. announced the results of mineral exploration tests that had been carried out in the Pebble gold-copper-molybdenum prospect over the previous two years. The announcement indicated that the 1,440 acre (2.25 square miles) Pebble prospect is one of the largest gold and copper deposits in North America. It is projected to contain at least 26.5 million ounces of gold, 16.5 billion pounds of copper, and 900 million pounds of molybdenum. The deposit reportedly has an estimated value of approximately \$28 billion.

The Pebble prospect is located approximately 17 miles northwest of Iliamna. The claims adjoining the Pebble prospect extend to within approximately five miles of the boundary dividing the Lake and Peninsula Borough and the Dillingham Census Area portion of the unorganized borough.

In 1997 a petition was filed to annex the 20,271 square mile Dillingham Census Area to the Lake and Peninsula Borough. The petition was later abandoned.



In February of 2005, Commerce staff was contacted by residents of Ekwok to present information regarding borough formation and the powers and duties of a borough. Ekwok is a second class city in the unorganized borough. It is located on the Nushagak River, about 43 miles northeast of Dillingham and 285 miles southwest of Anchorage. Because of the City's proximity to the Pebble Mine project, the residents of Ekwok are interested in the planning, platting, and land-use regulation duties of a borough.

2006

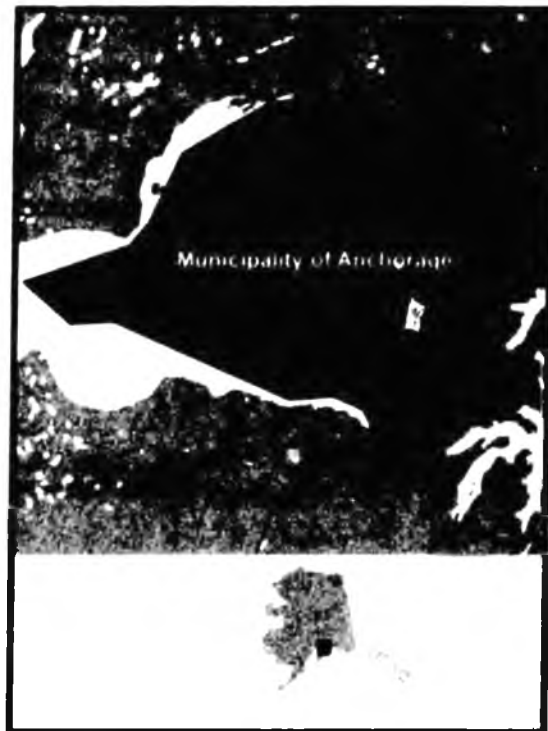
The Ekwok City Clerk has been directed by the City Council to explore formation of an Ekwok-only borough. The City Clerk indicated that City Council did not wish for Ekwok to be in the same borough as Dillingham. Ekwok, a second-class city inhabited by 118 people, lies along the Nushagak River 43 miles northeast of Dillingham.

On November 14, LBC Staff responded to the Ekwok City Clerk's inquiry regarding borough incorporation. LBC Staff provided the City Clerk with a copy of the constitutional, statutory, and regulatory standards for borough incorporation. In doing so, LBC Staff emphasized that those standards require, absent a compelling reason otherwise, that a borough encompassing Ekwok include the entire Southwest Region REAA school district and the City of Dillingham. LBC Staff also provided the City Clerk with a copy of the procedures for borough incorporation and other materials (e.g., *Local Government in Alaska*).

Eagle River-Chugiak Territory

In 2006 the legislature appropriated \$87,500 for "a study to determine the economic feasibility and financial impact of separating the greater Eagle River - Chugiak region from the Municipality of Anchorage and incorporating that region into a separate borough government." (Chapter 33 SLA 06) On October 30, a contract was entered with Northern Economics Inc. to perform the Eagle River - Chugiak Detachment and Borough Feasibility Study. The contractor has begun work on GIS mapping and data gathering from the Municipality of Anchorage and is progressing on meeting the contract timeline. Components of the final report will be submitted in phases. Due dates and information to be submitted are:

- December 15, 2006 - existing service by location, fiscal effects on existing services, and revenue by source;



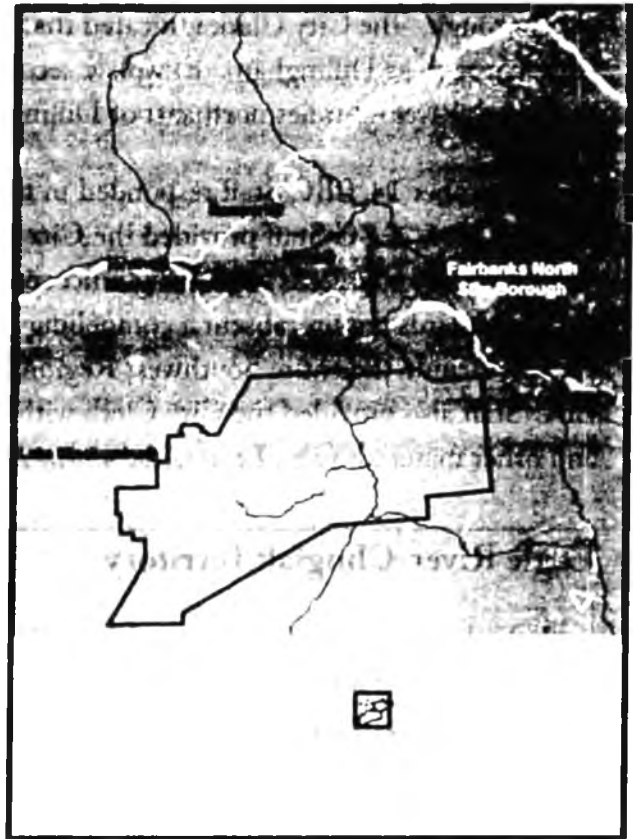
- January 15, 2007 - effects on revenue, taxable property assessed value, contribution in support of schools;
- March 15, 2007 - 95 percent complete draft;
- March 30, 2007 - final study and printed materials.

In addition to the feasibility study, the contractor will make one presentation up to four hours in length to agencies and other invited individuals by no later than April 16, 2007.

Greater Nenana Territory

On January 18, LBC Staff conducted a public informational meeting regarding borough government. The meeting was held in Nenana, with teleconference sites established in Minto, Rampart, Manley, Tanana, and Minchumina. Approximately 120 individuals were present at the site in Nenana. The meeting lasted from 7 p.m. until 10 p.m.

On February 15, LBC Staff met briefly with an attorney representing a Nenana client who has expressed interest in exploring the prospect of a borough limited to the greater Nenana area. As envisioned by the attorney, the prospective borough would encompass only the "communities" of "Nenana (proper)", "North Nenana," and "South Nenana." LBC Staff noted the provisions of law (3 AAC 110.920) under which community determinations are made. Discussion also ensued about prior proposals to form small boroughs. Opportunities for funding of borough feasibility studies were also addressed.



Glacier Bay-Chatham Region (Angoon, Elfin Cove, Hoonah, Pelican, Gustavus, and Tenakee Springs)

At the request of Haines Representative Bill Thomas, Commerce assisted in organizing a borough informational meeting in Juneau on March 30, 2006. Mayors and community leaders from Angoon, Hoonah, Gustavus, Kake, Pelican, and Tenakee Springs gathered in Juneau to discuss the prospect of forming a borough extending from the southern boundary of the Yakutat Borough to Kuiu Island in the south. That area includes Icy Straits, Chatham Straits, and Frederick Sound.

DCA Director Mike Black and Juneau Commerce staff made informational presentations. Community officials from the six communities shared ideas and information regarding borough government and the potential benefits a borough government would bring to the communities and residents within the region. Topics of discussion included a comparison of the unorganized borough and organized boroughs; pros and cons of borough formation; organized borough powers; and the borough formation process.

During the 2006 session, the Legislature appropriated \$90,000 for the economic feasibility study of a borough comprising the area within the Glacier Bay and Chatham model borough boundaries. In the fall, an RFP for this work was completed and a contractor was hired to complete the study by the end of May 2007. The contract calls for two community visits per affected community, public hearings, education and communication. Prior to the final report being issued, a meeting will be held in Juneau with community leaders to review the findings of the investigative effort.



On June 1, the City of Hoonah, in a concurrent but unrelated effort, published the "Glacier Bay - Chatham Borough Initial Borough Feasibility Study." The report leads off with the statement that "[t]he City of Hoonah is planning to prepare a petition to form a borough in late 2006." The report cites the following eight principles regarding a prospective borough: (1) "High quality education"; (2) "Keep our communities independent and unique"; (3) "Use our strong regional voice to advocate for both borough and each community's priority capital needs and projects"; (4) "Use borough resources to foster and support our communities and our regional needs"; (5) "Continued ability of residents to engage in subsistence harvesting and gathering activities"; (6) "Regional emphasis on reducing electrical rates, high quality docks and harbors, and a strong, sustainable marine highway ferry system"; (7) "Install and maintain high speed video-conferencing capability in all communities to support and enhance Assembly, School Board and citizen communication"; and (8) "No borough property tax."

The region in question encompasses the communities of Hoonah (a first-class city with a population of 861), Kake (a first-class city with 598 residents), Angoon (a second-class city with 497 residents), Gustavus (a second-class city with 459 residents), Pelican (a first-class city with a population of 115); Tenakee Springs (a second-class city with 98 inhabitants), and Elfin Cove, an unincorporated settlement of 29 residents. The study estimates that 57 individuals live in other parts of the prospective borough, bringing the total population to 2,714.

The "initial feasibility study" comprises 28 pages and addresses the following 10 fundamental topics:

- (1) "Questions for Review and Consideration";
- (2) "Introduction and Background";
- (3) "Organizing Principles for Our Borough";
- (4) "Why a Glacier Bay-Chatham Borough?";
- (5) "Overview: Glacier Bay-Chatham Proposed Borough";
- (6) "Election Districts & Voting: Glacier Bay-Chatham Borough";
- (7) "State and Federal Revenue to Glacier Bay-Chatham Borough";
- (8) "Glacier Bay-Chatham Borough Budget" (\$2.5 million and \$1.9 million scenarios are provided);
- (9) "Schools and Education: Glacier Bay-Chatham Borough"; and
- (10) "Land: Glacier Bay-Chatham Borough."

Kake

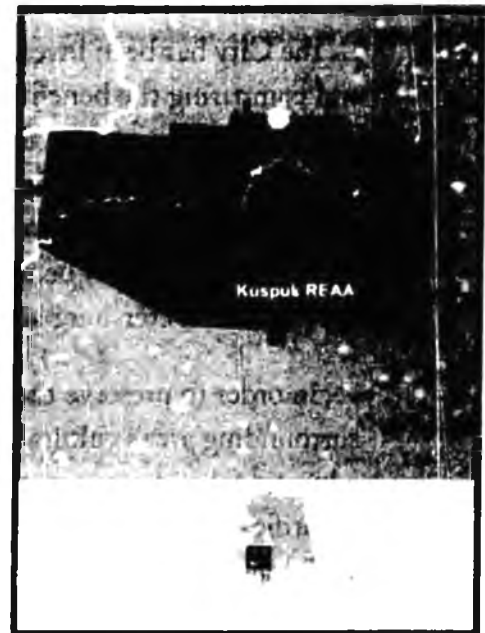
On November 22, LBC Staff responded to an inquiry by the City Clerk regarding borough incorporation. The Kake City Clerk inquired on behalf of the Kake City Council about formation of a Kake-only borough. The City of Kake is a first-class city inhabited by 598 people. Kake is located on the northwest coast of Kupreanof Island along Keku Strait, 38 air miles northwest of Petersburg.

LBC Staff provided the City Clerk with a copy of the constitutional, statutory, and regulatory standards for borough incorporation and the forms to petition for a home-rule borough. LBC Staff also provided the City Clerk with a copy of the procedures for borough incorporation and other materials (e.g., Local Government in Alaska).



Middle Kuskokwim region

At the invitation of The Kuskokwim Corporation, Commerce staff attended a conference to discuss borough formation in the middle Kuskokwim region in Aniak on April 6. Representatives from every village in the Kuspuk Regional Education Attendance Area, Calista Corporation, Scammon Bay Tribe, and Barrick Gold Corporation met in Aniak to discuss regional issues regarding the prospective development of the largest gold mine in Alaska. DCA staff presented a general information session on the process of borough formation, the pros and cons of boroughs, and the projected finances of a borough. The meeting was lively with many questions asked about what a borough might mean to residents. James Fueg of Barrick Gold Corporation stated that the mine needed certainty from a legitimate local taxing authority before investors can finalize a financial picture. The general interest in borough formation is very high. The arguments against a borough were heard and some were dispelled. Concerns still remain in some peoples' minds, but a borough petition may surface in the near future.



In October 2006, a contract in the amount of \$60,000 was awarded for the preparation of an economic feasibility study for the formation of a borough in the middle Kuskokwim region. The area to be studied follows the boundaries of the Kuspuk REAA, and also conforms to the model borough boundaries. A draft report is due to be submitted by February 15, 2007. It will be presented to local residents at a regional meeting to be held in Aniak in March 2007, and the final report is due June 30, 2007. Subcontractors to Lamar Cotten for this contract are *Information Insights* and *Jade North*. The study will include consideration of the feasibility of borough formation both with and without the development of a mine at Donlin Creek.

Petersburg

On May 15, the Petersburg City Council adopted "Resolution Number 1795, A Resolution Withdrawing the City's Petition to the Local Boundary Commission to Annex Approximately 34.2 Square Miles on Mitkof Island and Informing of the Intent to Seek Borough Formation." The resolution states, in part:

... the City has been investigating and comparing the benefits of borough formation to its existing annexation petition and it has been determined borough formation would best benefit the whole of the Petersburg area.

... in order to preserve the surrounding area's cultural, educational and economic identification, the City hereby withdraws its annexation petition, submitted to the Local Boundary Commission on January 10, 2005;



... the City Council for the City of Petersburg intends to pursue Home Rule Borough formation.

The prospective borough proposal would encompass the City of Petersburg, about 170 residents living near Petersburg just outside the city boundary, the 2nd class city of Kupreanof with about 40 residents, and another 25 or so residents living in remote areas. Thus, some 98 percent of the residents of the prospective proposed Petersburg borough live in or immediately adjacent to the City of Petersburg. The prospective Petersburg proposal will seek to simultaneously dissolve the City of Petersburg, retain the City of Kupreanof, and form a home rule borough.¹⁰

In September, a member of the Petersburg Borough Charter Commission met twice with LBC Staff. Staff was advised that the Charter Commission was meeting on a weekly basis and that its work would soon be concluded. LBC Staff addressed technical questions concerning home rule charters and borough government. Staff also responded to an inquiry from Petersburg's planning consultant about the form and content of a borough incorporation petition.

In October, LBC Staff responded to a number of inquiries from the Petersburg City Clerk and the consultant hired by the City of Petersburg to develop a Petersburg borough proposal. Topics addressed included provisions in the proposed charter and other parts of the prospective petition relating to service areas, sales taxes, and property taxes. For example, AS 29.05.140(e), provides that "Unless the incorporation takes effect on January 1, the newly incorporated municipality may not levy property taxes before January 1 of the year immediately following the year in which the incorporation takes effect." To address the need to permit the prospective new borough to levy property taxes without delay, it was noted that the LBC could defer the effective date of incorporation under 3 AAC 110.630(c). LBC Staff urged the consultant to arrange for a thorough review of technical aspects of the proposed charter, as well as the style and drafting of the charter. The LBC Staff report on the review of the Ketchikan consolidation charter was provided to the consultant as an example.

¹⁰ Ch. 8, FSSLA 2005 is relevant in terms of the Wrangell borough proposal and the prospective Petersburg borough proposal. In relevant part, Section 3 of that law provides:

Notwithstanding (a) of this section, the state land identified in this subsection and described in the document entitled 'University of Alaska Land Grant List 2005,' dated January 12, 2005, may not be conveyed to the University of Alaska under this section if the land is included in a borough formed before July 1, 2009, that includes Wrangell or Petersburg. If a borough is not formed before July 1, 2009, land described in this subsection shall be conveyed to the University of Alaska on July 1, 2009. If a borough is formed before July 1, 2009, and the borough does not select land described in this subsection before January 1, 2013, the land not selected by the borough shall be conveyed to the University of Alaska on June 30, 2013. The following land is subject to this subsection: (1) Parcel Number SD.1001, Beecher Pass; (2) Parcel Number SD.1001, Favor Peak; (3) Parcel Number CS.TL.1001, Three Lake Road; (4) Parcel Number SD.1001, Read Island; (5) Parcel Number SD.1001, Whitney Island; (6) Parcel Number CS.EW.1001, Earl West Cove; (7) Parcel Number CS.OV.1001, Olive Cove; and (8) Parcel Number SD.1001, Thoms Place

Prince William Sound

Pre-2006 Background

In 2002, the Legislature enacted House CS for CS for Senate Bill No. 359(FIN). Then-Governor Knowles signed the legislation into law as Chapter 53 SLA 2002. Section 3 of the law required the LBC to review conditions in the unorganized borough and to report to the Legislature the areas the LBC identified as meeting the standards for borough incorporation.

The LBC fulfilled its duty under the legislative directive in February 2003. The LBC concluded that seven areas of the unorganized borough, including the Prince William Sound region, met the standards for borough incorporation.

In 2003, the Cordova City Council renewed a previous endorsement for the incorporation of a Prince William Sound borough. The Council adopted a resolution stating, "The City Council of the City of Cordova, Alaska, supports the formation of a Prince William Sound Borough and directs staff to work with the Local Boundary Commission to consider the borough formation." Resolution 01-03-05, Council of the City of Cordova (January 8, 2003).

On August 2, 2004, the Whittier City Council adopted Resolution 745-04, requesting the LBC to formally consider incorporation of a Prince William Sound Borough. However, public sentiment soon shifted and on May 10, 2005 voters of the City of Whittier repealed that measure.

On March 8, 2005, the Council of the City of Cordova adopted, by a unanimous vote, a resolution substantially the same as the August 2, 2004 resolution of the City of Whittier which urged the LBC to consider incorporation of a Prince William Sound Borough.



2006

On January 31, staff from Commerce's central office in Anchorage advised LBC Staff that the Cordova City Clerk had inquired about aspects of a petition for incorporation of a Prince William Sound Borough. No indication was given that the filing of a petition for incorporation of a Prince William Sound Borough by the City of Cordova or others is imminent.

Skagway

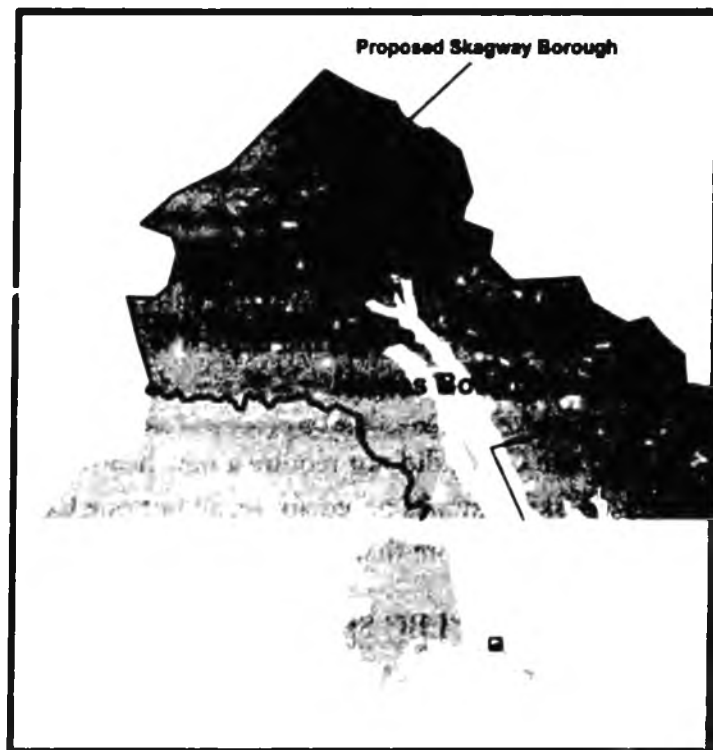
Pre-2006 Background

In January 2001, fifty-eight voters in Skagway petitioned the LBC for dissolution of the City of Skagway and concurrent incorporation of a Skagway borough. The boundaries, duties, powers, population, and other fundamental characteristics of the proposed borough were identical to those of the existing city government.

In June 2002, the LBC Staff published its Preliminary Report on the proposal. The report expressed the Staff's preliminary findings and conclusions that the Petition did not meet the applicable standards for borough incorporation. On August 9, 2002, Staff published its Final Report. The Final Report affirmed the preliminary conclusions that the Petition did not meet all of the requisite standards. Therefore, the Final Report recommended that the LBC deny the Petition.

On August 31, 2002, all five members of the LBC as it was then constituted held a public hearing in Skagway and toured the area proposed for incorporation. On September 1, 2002, the LBC denied the Petition by unanimous vote. On September 27, 2002, in a 3 to 2 vote, the LBC adopted its Statement of Decision rejecting the Petition.

The Petitioner asked the LBC to reconsider its decision. The LBC denied the request. The Petitioner then appealed to the Superior Court.



In March 2003, four new members of the LBC were appointed. Only one of the five Commissioners who rendered the September 2002 decision remained on the LBC.

On September 20, 2005, the Superior Court, Judge Patricia Collins presiding, issued a 22-page Order on Appeal ("Court Order"). In a discussion of the background, the Court addressed the prior LBC's consideration and application of ten fundamental principles regarding boroughs. The Court focused on the prior LBC's formulation and application of the principle that "geographically boroughs were envisioned as relatively large regional units while cities are intended to be relatively small units."

The Court found that "that portion of the 'fundamental principles' for borough formation set forth in the Statement of Decision that requires that boroughs encompass 'relatively large' geographic areas that are larger than the Skagway borough's proposed size is the equivalent of a new regulation." *Id.* at 13. The Court then held that "the Commission did not promulgate the 'relatively large/larger than Skagway geographic size requirement' in accordance with the Administrative Procedures Act."

The Court remanded the matter to the current LBC for reconsideration. The LBC asked the Court to reconsider; however, the request was denied. The LBC did not appeal that ruling to the Supreme Court.

Although the Court did not require a new hearing, the current LBC decided to hold a new hearing in Skagway. As noted above, all but one Commissioner was new to the matter on remand. Further, more than four years had passed since the Petition had been filed.

In November 2005, LBC Staff provided each member of the LBC with a printed copy of the 1,326-page Record in the original proceedings. The LBC invited the Petitioner, public, and Department to submit supplemental materials. The Petitioner, public, and Department availed themselves of the opportunity to bring additional facts into the record by filing supplemental materials.

2006

In August 2006, LBC Staff filed its Supplemental Report regarding the Skagway borough proposal. That report presented the agency's supplemental findings and conclusions that the Skagway borough proposal did not meet all of the requisite borough incorporation standards. The LBC allowed the Petitioner to reply to the Supplemental Report in a brief dated November 17, 2006.

The Petitioner, on February 13, 2006, requested that the public hearing be held during the summer months of 2006. The LBC Chair granted that request and invited the Petitioner to propose a two-week period of its choice. From February 21, 2006, the date of that invitation,

until August 7, 2006, the Petitioner failed to propose any dates for the hearing. On August 7, 2006, the Petitioner proposed that the hearing be postponed until the summer of 2007. The full LBC decided that such an additional delay was unwarranted. The Petitioner was informed on September 6 that the hearing was scheduled to begin November 27, 2006.

Four members of the LBC traveled to Skagway on Sunday, November 26, 2006. One member was unable to do so because of scheduling conflicts. Commissioners toured portions of the area proposed for incorporation.

In formal sessions lasting some 24 hours from Monday afternoon, November 27 through the evening of Wednesday, November 29, 2006, the LBC addressed procedural issues relating to the Skagway proposal, heard the Petitioner's opening and closing statements, and heard testimony in favor of the Petition from 22 witnesses presented by the Petitioner. Additionally, the LBC, pursuant to its authority in 3 AAC 110.560(d), called Victor Fischer to provide sworn testimony.



LBC Hearing on the Skagway Remand Proceedings

The LBC convened a decisional session in Anchorage on December 13, 2006. At the December 13 decisional session, the Commission deliberated for approximately five hours. At the end of those deliberations, the Commission approved the Skagway Petition by a vote of three to two. Commissioners Hargraves, Harcharek, and Zimmerle ("the Commission majority") voted in favor of the Petition. Commissioners Hicks and Nakazawa ("the Commission minority") voted to deny the Petition.

On January 11, 2007, over a period of approximately three hours, the Commission engaged in further substantive discussions regarding the Skagway borough proposal, including discussions relating to the findings and conclusions of the Commission in this matter.

The LBC's Statement of Decision in this matter includes findings and conclusions from the three-member majority and a dissenting statement from the two-member minority.

Valdez

Following the December 13 approval by the LBC of the Skagway borough proposal, LBC Staff was advised that the City of Valdez officials were seeking professional consulting services for the development of a Valdez borough incorporation.

Yukon Flats

Pre-2006 Background

In early 2005, interest had been shown by residents of Fort Yukon regarding the formation of a Yukon Flats borough. The topic was prompted by the prospect for development of oil and gas facilities in the Yukon Flats region, coupled with the potential for a proposal by the Fairbanks North Star Borough to propose annexation of a portion of the Yukon Flats region. LBC Staff provided extensive materials regarding borough formation and borough government in Alaska.

LBC Staff received several more inquiries about the topic from the Council of Athabascan Tribal Governments (CATG). CATG officials advised LBC Staff that the leadership of the Yukon Flats region had scheduled a meeting in February 2005 during which the topic of

borough government was expected to be a prominent issue. CATG officials also voiced objections to the prospective proposal from the Fairbanks North Star borough to extend its boundaries to the Yukon River.

On February 3, 2005 LBC Staff made a presentation in Fort Yukon regarding a prospective Yukon Flats borough government. The meeting was sponsored by the Gwichyaa Zhee Gwich'in Tribal Council (formerly known as the Native Village of Fort Yukon, IRA). The two and one-half hour long meeting was attended by approximately 20 individuals in Fort Yukon. It was broadcast



live over KZPA 900-AM to all Yukon Flats villages. The Yukon Flats villages of Beaver, Venetie, and Birch Creek participated in the meeting by teleconference, as did the offices of Senator Kookesh and Representative Salmon. Organizations represented at the meeting included CATG, Tanana Chiefs Conference, and the City of Fort Yukon.

Also of note is the Yukon Flats Borough Study, a borough feasibility study undertaken by five graduate students in the University of Alaska Fairbanks Engineering Science Management and Civil Engineering Departments. The Study was substantially completed on April 25.

The report consisted of more than 110 pages. The report estimates that the value of taxable property in the Yukon Flats REAA is \$340 million. (The boundaries of the Yukon Flats REAA and those of the Yukon Flats model borough differ somewhat.) The Trans-Alaska Pipeline System (TAPS) accounts for \$316 million of the value of property in the REAA. The estimate of the value of the TAPS property was based on information provided by the Alaska Department of Revenue.

The estimated \$24 million figure for other taxable property was developed by adjusting the figure used in a 1979 Yukon Flats borough study. Examination of the accuracy of the estimate of the non-TAPS property was beyond the scope of the study. It is noted, however, that in 2002 the State Assessor roughly estimated that the value of taxable property in the Yukon Flats REAA (excluding TAPS) was about \$29 million. With 1,496 residents, a \$340 million tax base is equivalent to \$227,273 per capita. That figure is more than two and one-quarter times greater than the \$99,948 per capita average for all sixteen organized boroughs in Alaska.



Trans-Alaska Pipeline

The Study indicated that TAPS accounts for 93 percent of the value of the estimated taxable property in the region. Thus, based on the estimates provided, TAPS would pay 93 percent of any property taxes levied by a borough encompassing the Yukon Flats REAA. According to the Department of Labor and Workforce Development, the region had average monthly employment of 539 jobs that generated \$18,480,964 in wages during 2004. The study notes the prospect for significant deposits of oil and gas in the region. It states, for example, that "a 1 in 20 or 30 chances exists for oil revenues of 200 to 800 million barrels."

Another noteworthy aspect of the report was an innovative effort by the graduate students to analytically evaluate and rank various subjective factors that would likely encourage or discourage formation of a Yukon Flats borough. Not surprisingly, that effort indicated that the threat of being annexed to the Fairbanks North Star Borough represented the greatest motivation for forming a Yukon Flats borough. Factors such as the general opportunity to achieve "maximum local self-government" through borough formation and the ability to exercise platting and land use regulation powers provided almost no influence on the decision. After examining four options (i.e. remain unorganized or incorporate as a home rule, first class, or second class borough), the report concluded that the best option is for the region to form a home rule borough. The report also recognized that further study of the matter was warranted.

LBC Staff, the State Assessor, and staff from Commerce's Fairbanks office reviewed and commented on a draft of the report. On April 26, LBC Staff participated on a five-member review panel at the UAF Campus. Other members of the panel were Jim Whitaker, Fairbanks North Star Borough Mayor; Jim Mery, Doyon Senior Vice-Presidents for Lands and Natural Resources; Pete Hallgren, former Sitka Mayor, Assembly Member, Attorney, and current Delta Junction City Administrator; and Bruce Thomas, CATG member. After considering the comments by the panel, the students finalized the report.

In late 2005, Commerce granted CATG \$30,000 in funding to conduct a borough feasibility study.

2006

In November, LBC Staff conferred briefly with the consultant preparing the Yukon Flats Borough feasibility study. Information was provided about the requirements for integration of REAA functions into a borough government. The Yukon Flats Regional Government Study can be viewed online at:

ftp://ftp.dcbd.dced.state.ak.us/DCBD/Borough_Feasibility_Studies/YukonFlatsFinal11.20.06.pdf

Yukon-Koyukok

On January 18, LBC Staff conducted a public informational meeting regarding borough government. The meeting was held in Nenana, with teleconference sites established in Minto, Rampart, Manley, Tanana, and Minchumina. Approximately 120 individuals were present at the site in Nenana. The meeting lasted from 7 p.m. until 10 p.m.

Yukon-Kuskokwim Delta

Pre-2006 Background

In 2004, a steering committee to address the prospects of incorporating a borough encompassing the Association of Village Council Presidents (AVCP)-Calista region was established at a regional economic summit held in Bethel. The AVCP-Calista region encompasses roughly 58,000 square miles and more than 23,000 residents.

A 1981 study concluded that a borough encompassing the 58,000 square mile Calista region was feasible. *See AVCP Regional Government Study*, Darbyshire and Associates, Inc. (December 1981).

Interest in borough formation was prompted, in part, by the prospective development of the Donlin Creek mineral deposit. The deposit lies approximately 12 miles north of Crooked Creek and about 150 miles northeast of Bethel. The Donlin Creek site is estimated to hold 27.8 million ounces of gold, making it one of the world's largest undeveloped deposits of gold.

Less than one percent of the region is currently within the jurisdictional boundaries of a city government. About 2 percent of the residents of the region live within the boundaries of a municipal school district. That particular characteristic is nearly the exact opposite of the remainder of Alaska. More than 95 percent of the residents of Alaska outside the AVCP region live within municipal school districts that are operated by organized boroughs, home rule or first class cities.

LBC Staff addressed the topic of borough formation at a Bethel Chamber of Commerce meeting in May 2005. Interest in borough formation in the AVCP-Calista region appears to have waned as a result of the development of a preference for a regional port authority. However, as reflected below, interest in forming a borough in the Middle Kuskokwim portion of the AVCP-Calista region remains strong. The Middle Kuskokwim region encompasses an estimated 11,441 square miles and approximately 1,600 residents.



2006

According to a March 21 letter from the head of the AVCP, the group held a "special convention" on March 6-7 in Bethel. The AVCP region encompasses some 56 communities and six school districts (City of St. Mary's, Lower Kuskokwim REAA, Yupiit Federal Transfer REAA, Lower Yukon REAA, Kashunamiut Federal Transfer REAA, and Kuspuk REAA).

Among the topics at the convention was the Donlin Creek mineral deposit and the possibility of forming a borough encompassing Donlin Creek.

In a related matter, the Kuskokwim Corporation held a meeting on April 6 in Aniak to discuss the prospect of forming a borough, the boundaries of which might be limited to those of the Kuspuk REAA.

Wrangell

Pre-2006 Background

LBC Staff was advised in March 2005 by an attorney representing the City of Wrangell that a petition for incorporation of a Wrangell Borough was being developed. This proposal will apparently include Meyers Chuck and, perhaps, Hyder. Meyers Chuck is within the area proposed for annexation by the Ketchikan Gateway Borough. Some residents of Meyers Chuck and Hyder have expressed a preference to be included within a Wrangell Borough rather than the Ketchikan Gateway Borough.

2006

In January, City of Wrangell officials reported that they were developing a petition to form a borough. They indicated that the petition will include Meyers Chuck and Union Bay, areas that are currently within the model borough boundaries for the Ketchikan Gateway Borough.

In March, Sara Heideman of the Anchorage law firm of Hedland, Brennan & Heideman contacted LBC Staff on behalf of the City of Wrangell. Ms. Heideman advised LBC Staff that a petition to incorporate a Wrangell borough as a unified home-rule borough would be filed with the LBC before the end of April 2006. According to Ms. Heideman, the boundaries of the proposed borough would include only a portion of the area within the Petersburg-Wrangell



model borough boundaries, and would also include the Meyers Chuck/Union Bay portion of the area within the Ketchikan Gateway Borough model boundaries. A petition for annexation of a 4,701 square mile portion of the area within the model boundaries of the Ketchikan Gateway Borough (including Meyers Chuck and Union Bay) was filed by the Ketchikan Gateway Borough in February.

Although prior news reports indicated that Wrangell and Petersburg officials had not ruled out a borough proposal that encompasses both communities (located 31 miles from each other), the Wrangell City Council decided to move ahead with its own proposal.¹¹

On April 26, LBC Staff received a Petition to the Local Boundary Commission for Incorporation of the City and Borough of Wrangell, a Unified Home Rule Municipality. The area proposed for incorporation encompasses approximately 3,465 square miles inhabited by an estimated 2,445 residents. According to the Petitioner's figures, nearly 95 percent of that population currently resides within the corporate boundaries of the City of Wrangell. All of the students enrolled in public schools within the proposed borough are served by the Wrangell City School District. A portion of the area proposed for incorporation overlaps the area proposed for annexation by the Ketchikan Gateway Borough. In this case, State law requires that the Petition be signed by 166 qualified voters of the City of Wrangell and 30 qualified voters in the remainder of the proposed borough. The Petition bears the signatures of 287 individuals claiming to be residents of the City of Wrangell and 32 individuals claiming to reside within the remnant. As part of its pending technical review, LBC Staff has requested the State Division of Elections to provide a current list of registered voters in the area proposed for incorporation.

LBC Staff completed its technical review of the form and content of the Petition to incorporate the City and Borough of Wrangell, a unified home-rule borough in early May. It was determined that the Petition was signed by 279 qualified voters within the City of Wrangell (166 were required) and 25 qualified voters within the remainder of the proposed borough

¹¹ 2005 University Lands Bill Contains Provisions Regarding Wrangell Borough Proposal and Prospective Petersburg Proposals - Ch. 8, FSSLA 2005 is relevant in terms of the Wrangell borough proposal and the prospective Petersburg borough proposal. In relevant part, Section 3 of that law provides:

Notwithstanding (a) of this section, the state land identified in this subsection and described in the document entitled 'University of Alaska Land Grant List 2005,' dated January 12, 2005, may not be conveyed to the University of Alaska under this section if the land is included in a borough formed before July 1, 2009, that includes Wrangell or Petersburg. If a borough is not formed before July 1, 2009, land described in this subsection shall be conveyed to the University of Alaska on July 1, 2009. If a borough is formed before July 1, 2009, and the borough does not select land described in this subsection before January 1, 2013, the land not selected by the borough shall be conveyed to the University of Alaska on June 30, 2013. The following land is subject to this subsection: (1) Parcel Number SD.1001, Beecher Pass; (2) Parcel Number SD.1001, Favor Peak; (3) Parcel Number CS.TL.1001, Three Lake Road; (4) Parcel Number SD.1001, Read Island; (5) Parcel Number SD.1001, Whitney Island; (6) Parcel Number CS.EW.1001, Earl West Cove; (7) Parcel Number CS.OV.1001, Olive Cove; and (8) Parcel Number SD.1001, Thoms Place

(eight were required). Other elements of the Petition were determined to be in compliance with the requirements of State law.

Following the determination by LBC Staff that the form and content of the City and Borough of Wrangell proposal were proper and that the Petition had been accepted for filing, the Chair of the LBC set July 14, 2006, as the deadline for receipt of responsive briefs and written comments on the petition. As required by law, LBC Staff prepared notice of the filing of the petition, public service announcements, a form for an affidavit to be completed by the petitioner, and directions to the petitioner for publication, posting, and mailing of the notice; service of the petition, and other requirements at this stage in the proceeding.

The Petitioner's representative for the Wrangell borough proposal expressed a desire that concurrent consideration be given to the Wrangell proposal and the Ketchikan borough annexation proposal. The two proposals contain overlapping areas.



Wrangell

According to the Petition, slightly more than 95 percent of the population of the proposed borough resides within the corporate boundaries of the City of Wrangell (2,308 of 2,445 residents or 95.2 percent). Of the remaining 137 residents, an estimated 40 live in what the Petitioner refers to as 'Wrangell West,' which is immediately outside the existing corporate boundaries of the City of Wrangell. Additionally, Thoms Place (on the south side of Wrangell Island) is estimated to have 22 residents; Olive Cove (on Etolin Island) is estimated to have 2 residents; Meyers Chuck and Union Bay (which are the subject of a competing petition for annexation filed by the Ketchikan Gateway Borough) are estimated to have a population of 25; Farm Island is inhabited by 2 residents; and the Tyee Hydroelectric facility houses three individuals. The Petitioner estimates that approximately 90 percent of the taxable real and personal property in the proposed borough lies within the existing boundaries of the City of Wrangell (\$139.2 million of \$154.6 million).

Thirty-five individuals filed written comments regarding the Wrangell borough incorporation proposal by the July 14 deadline. Additionally, one set of written comments was received on July 17. The LBC Chair advised LBC Staff that, barring objection from the Petitioner or the

Alaska Department of Law, he was inclined to accept the late-filed comments because they had been postmarked on July 11, well before the deadline. The Petitioner expressed no objection to accepting the comments. No formal responsive briefs were filed during the comment period. The next step in the proceedings is to allow the Petitioner to reply to the comments.

On July 26, the LBC Chair set August 25, 2006 as the deadline for filing a responsive brief from the Wrangell borough petitioner. The responsive brief would address public comments filed by the interested individuals and organizations. Thirty-five sets of such comments were filed by the July 14 deadline. Additionally, with no objection from the petitioner or the Alaska Department of Law, the LBC Chair accepted one set of written comments received on July 17. The late-filed comments were accepted because they had been postmarked on July 11, well before the deadline.

On August 25, 2006, the Petitioner for incorporation of a Wrangell borough filed a 19-page reply brief in response to comments that had been filed regarding the Wrangell borough proposal.

Section VI. Borough Annexation

Interest in annexation was exhibited in the following three boroughs during 2006. A petition for annexation to the Ketchikan Gateway Borough was filed. The three boroughs are:

- Haines Borough (Klukwan);
- Ketchikan Gateway Borough; and
- City and Borough of Juneau.

Haines Borough

Location: Haines Borough is located on the shores of the Lynn Canal, between the Chilkoot and Chilkat Rivers, 80 air miles northwest of Juneau. By road, the Haines Borough is 775 miles from Anchorage. The area encompasses 2,343.7 sq. miles of land and 382.1 sq. miles of water.

Population: 2,297 (2005 State Demographer estimate)

Borough Classification: Home Rule Borough



On April 25, LBC Staff responded to an inquiry from the Haines Borough School Superintendent about the prospect of annexation of Klukwan. Klukwan is an 892.2 acre (1.4 square mile) enclave surrounded by the 2,357 square mile Haines Borough. Education services in Klukwan are currently provided by the Chatham REAA.

LBC Staff provided the Superintendent with information concerning standards and procedures for annexation. Information was also provided concerning the effects of annexation on education funding. Among the materials provided was a copy of the April 25, 2005 AG's opinion on the "50 percent discount rule" under AS 14.17.510(c) regarding local contributions for schools.

Ketchikan Gateway Borough

Location	The Ketchikan Gateway Borough is located near the southernmost boundary of Alaska, in the Kodiak Peninsula. It is situated south of the cities of Ketchikan and Saxum. The area encompasses 1,231.2 square miles of land and 520.8 square miles of water.
Population	13,125 (2005 State Department estimate)
Borough Classification	Second Class Borough



Pre-2006 Background

Beginning in 1998, the Ketchikan Gateway Borough (KGB) petitioned the LBC to annex an estimated 5,524 square miles, which encompassed all of the area within the borough's model boundaries with two exceptions.

The proposal omitted 17.9 square miles in and around Hyder and 3.5 square miles in and around Meyers Chuck. The petition was denied by the LBC at that time, in part, due to the fact that the annexation would have created two enclaves within the proposed expanded boundaries of the borough.

In 2003 and 2004, the Ketchikan Gateway Assembly continued to consider various proposals for annexation. In December of 2005, the Borough Assembly scheduled a hearing on a proposal to annex all unorganized territory within its model boundaries with the exception of approximately 205 square miles of public and private lands surrounding and including the community of Hyder. The territory proposed for annexation includes the community of Meyers Chuck, an unincorporated settlement containing approximately 0.6 square miles of land and 0.2 square miles of water. The hearing was scheduled to be held early in the new year.

2006

On January 21, the Assembly of the Ketchikan Gateway Borough held a hearing on a prospective annexation proposal encompassing an estimated 4,701 square miles. The hearing was held to

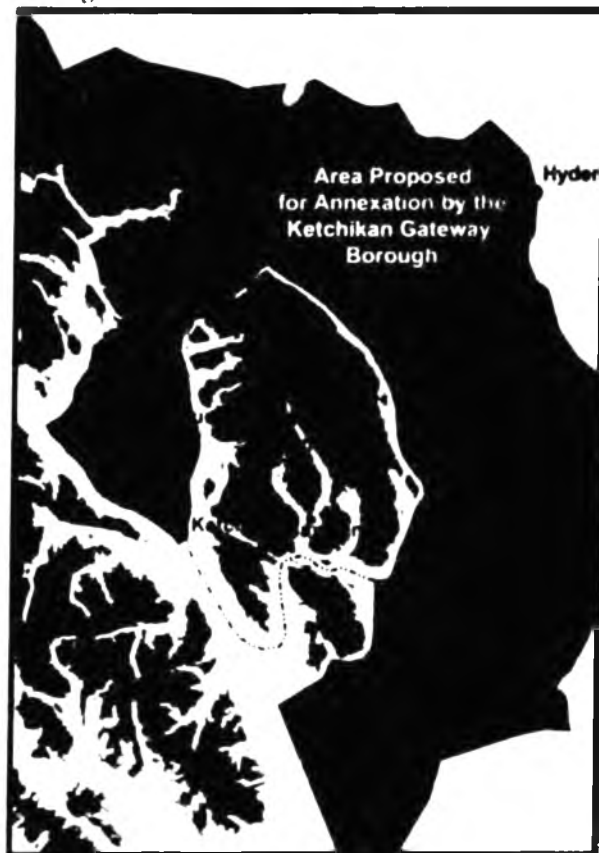
comply with a requirement imposed by the LBC (3 AAC 110.425) for legislative review of annexation petitions. It was reported that nearly 30 residents showed up for three hours of public testimony.

The Ketchikan Gateway Borough Assembly met on February 6 and decided to reconsider its January 21 decision to hold a special advisory election in April on the proposal for annexation of 4,701 square miles. Instead, the Assembly authorized the filing of its annexation petition "as prepared."

LBC staff was contacted by the Chair of the Meyers Chuck Community Association requesting information on how to deal with the two proposed borough formations in Southeast that are impinging on the town's borders. He expressed concern that petitions for the Ketchikan Gateway Borough annexation and proposed Wrangell Borough incorporation would be submitted to LBC without Meyers Chuck residents having the opportunity to be heard. The Chair asked to be kept informed of developments involving either proposed borough. He wants to know about every opportunity Meyers Chuck residents will have to participate in public comment. Staff suggested ways for keeping informed and involved in the petition process as things move along with both the Ketchikan Gateway Borough annexation proposal and the Wrangell Borough incorporation proposal. LBC Staff prepared informational materials on the borough petition standards and procedures and sent them to the Meyers Chuck Community Association.

On February 14, LBC received the Ketchikan Gateway Borough Petition for annexation of 4,701 square miles. Following the determination by LBC staff that the form and content of the Petition were proper and that the Petition had been accepted for filing, the Chair of the LBC set 4:30 p.m. on April 28, 2006, as the deadline for receipt of responsive briefs and written comments on the petition. As required by law, LBC Staff prepared notice of the filing of the petition; and directions to the petitioner for publication, posting, and mailing of the notice, service of the petition, and other requirements at this stage in the proceeding.

Proposed Annexation to the Ketchikan Gateway Borough



On February 22, LBC Staff notified the Ketchikan Gateway Borough that the Borough's Petition for annexation of 4,701 square miles had been accepted for filing. As required by law, LBC Staff prepared the Notice of Filing and provided directions to the Petitioner for its publication and proper service, posting at designated sites, and public service announcement. Individuals and organizations had until April 28 to submit written comments or responsive briefs on the matter.

LBC Staff responded to several requests for information about the Petition for annexation during the comment period. By the April 28 deadline, responsive briefs were filed by the City of Wrangell, the Metlakatla Indian Community, and Hyder resident Peter Caffall-Davis. In addition, 19 sets of timely written comments were received.

In May, LBC Staff responded to numerous inquiries for information concerning the pending proposal for annexation of 4,701 square miles to the Ketchikan Gateway Borough. In particular, extensive materials were provided to the Ketchikan Gateway Borough for preparation of its reply brief. The LBC Chair set 5 p.m., June 21, 2006, as the deadline for receipt of a reply brief from the Ketchikan Gateway Borough in the proceedings for the proposed annexation of 4,701 square miles. LBC Staff notified the Petitioner's Representative of the deadline.

On June 16, 2006, the KGB filed a 34-page brief in reply to written comments and responsive briefs regarding its legislative review petition to annex approximately 4,701 square miles. LBC Staff responded to several inquiries regarding the timeliness of the filing and whether respondents should have been notified of the date set by the Chair.

City and Borough of Juneau

Location:	Located on the mainland of Southeast Alaska, opposite Douglas Island, Juneau was built at the heart of the Inside Passage along the Gastineau Channel. It lies 900 air miles northwest of Seattle and 577 air miles southeast of Anchorage. The area encompasses 2,716.7 sq. miles of land and 538.3 sq. miles of water.
Population:	31,193 (2005 State Demographer estimate)
Borough Classification:	Unified Home Rule Municipality



Pre-2006 Background

In November 2005, an official of the City and Borough of Juneau advised LBC staff that the Juneau Mayor and Assembly were considering a possible annexation proposal. Juneau's Mayor

appointed a committee of former assembly members and planning commissioners to hold public hearings, gather input and report to the Assembly on a recommended action in 2006.

2006

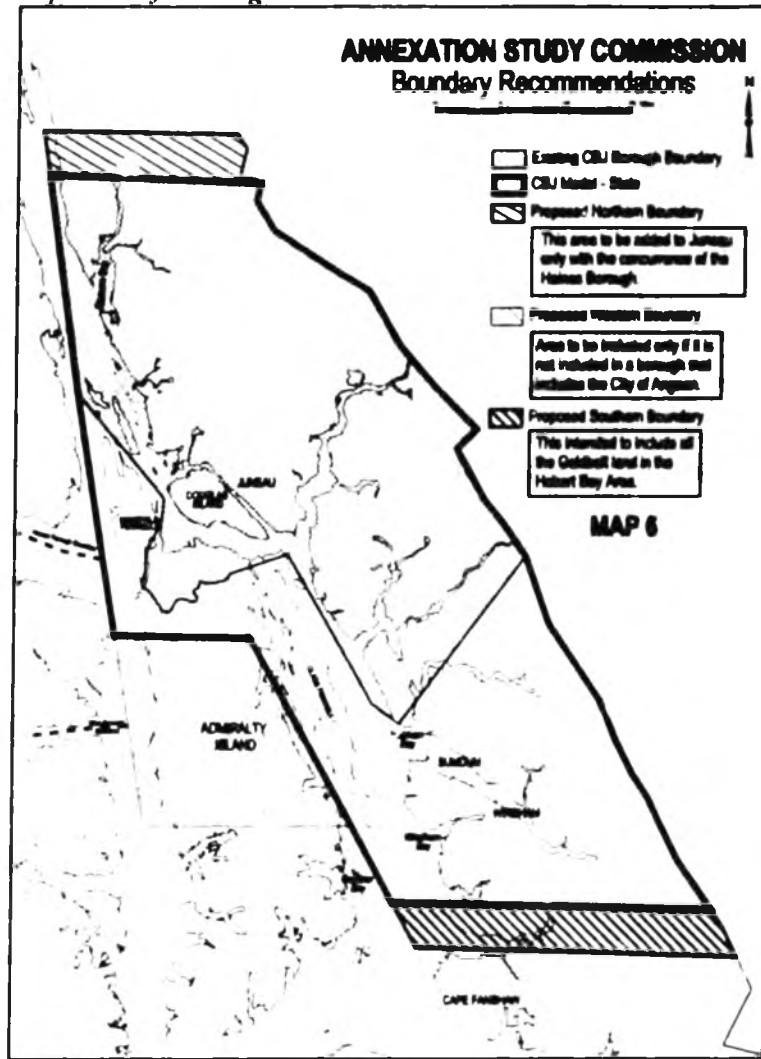
On January 5, LBC Staff traveled to Juneau to meet with the five-member Juneau Annexation Study Commission (JASC). The JASC was formed by the City and Borough of Juneau in December 2005 to explore the prospect of annexation. The Commission was given one-year to complete its work.

In addition to the five JASC members, and two staff from the City and Borough of Juneau, approximately 40 members of the public attended the two hour meeting. Discussion occurred with respect to the historical development of boroughs, methods of annexation, procedures for annexation, annexation standards, and legislative proposals.

On March 1, the JASC held its fourth meeting. The CBJ Director of Finance gave a presentation on property taxation, including prospective taxation within areas that are under review for potential annexation. Earlier in the week, LBC staff responded to inquiries from the Chair and JASC staff regarding borough annexation standards.

The CBJ has posted information online about the JASC. The information includes materials regarding the purpose of the study commission, borough annexation standards, model borough boundaries, the effect of annexation on subsistence rights, the proposal to allow creation of

Annexation Study Commission's Boundary Recommendations for the City and Borough of Juneau. Map Credit: City and Borough of Juneau website: <http://www.juneau.org>.



administrative boroughs, public comment, and minutes of prior JASC meetings. The information is available online at:

http://www.juneau.org/clerk/boards/Annexation_Study_Commission/CBJ_Annexation_Study_Commission.php

Section VII. Borough Detachment

Interest in borough detachment occurred in the following boroughs during 2006. However, no petitions were filed.

- Kenai Peninsula Borough (Hope);
- Haines Borough (Swanson Harbor);
- Matanuska-Susitna Borough (Ahtna, Inc. lands);
- Matanuska-Susitna Borough (Little Nelchina area);
- Municipality of Anchorage (Eagle River-Chugiak area); and
- City and Borough of Juneau (Greens Creek Mine).

Kenai Peninsula Borough

Location: The Kenai Peninsula Borough is comprised of the Kenai Peninsula, Cook Inlet and a large unpopulated area northeast of the Alaska Peninsula. The Borough includes portions of the Chugach National Forest, the Kenai National Wildlife Refuge, the Kenai Fjords National Park, and portions of the Lake Clark and Katmai National Park. The twin cities of Kenai and Soldotna are the population centers of the Borough and are located approximately 65 air miles south of Anchorage. The area encompasses 16,013.3 sq. miles of land and 8,741.3 sq. miles of water.

Population: 51,268 (2005 State Demographer estimate)

Borough Classification: Second Class Borough



LBC Staff responded to an inquiry from a citizen of Hope regarding standards and procedures for detachment from a borough. The citizen indicated that a community meeting was scheduled to be held at 7 p.m. on June 1 at the Hope Community Hall to discuss the detachment of Hope from the Kenai Peninsula Borough.

It is unclear whether current interest in the topic is related to a detachment proposal contemplated in November, 2005, involving Hope, Cooper Landing, Moose Pass and Seward. At that time, factors prompting the interest in detachment included the perception that: (1) the current form of representation for the Kenai Peninsula Borough Assembly is inadequate; (2) borough taxes are disproportionately high vis-à-vis local services; and (3) the prospect that schools at Hope and Cooper Landing will be closed due to low enrollment.

Kenai Peninsula Borough



At the request of Kenai Peninsula Borough residents in December 2005, LBC Staff drafted a 56-page set of forms for a petition to concurrently detach from an organized borough and incorporate a new borough using the local action process for two concurrent changes. LBC Staff provided the petition forms and a copy of relevant background publications previously prepared by LBC Staff including: (1) Local Government in Alaska; (2) Required Contents of a Petition to the Local Boundary Commission for Borough Detachment and/or Incorporation; (3) Review of Standards for Detachment from an Organized Borough and Incorporation of a New Borough; (4) Review of 1974 – 1977 Efforts to Form the Chugiak-Eagle River Borough; and (5) Overview – Process to Petition to Detach from the Municipality of Anchorage and Incorporate an Eagle River Borough.

No formal petition for borough detachment has yet been filed with the LBC.

Haines Borough

Location: Haines Borough is located on the shores of the Lynn Canal, between the Chilkoot and Chilkat Rivers, 80 air miles northwest of Juneau. By road, it is 775 miles from Anchorage. The area encompasses 2,343.7 sq. miles of land and 382.1 sq. miles of water.

Population: 2,207 (2005 State Demographer estimate)

Borough Classification: Home Rule Borough



In November, LBC Staff responded to an inquiry from a Swanson Harbor resident regarding the prospect of detachment of Swanson Harbor at the tip of the Chilkat Peninsula from the Haines Borough. The inquiry was prompted by his perception that he bore a substantial (and increasing)

burden from property taxes levied by the Haines Borough, but received relatively little or nothing in the way of Borough services.

LBC Staff discussed the areawide property tax levy by the Haines Borough which funds, in part, the Borough's "required local contribution" in support of schools. Staff explained that detachment from an organized borough was a complex process subject to legal standards established in Alaska's Constitution, statutes, and administrative regulations of the Local Boundary Commission. Copies of relevant materials on borough detachment and background on the required local contribution were prepared and sent as a follow up to the inquiry.

Matanuska-Susitna Borough (Ahtna, Inc. lands)

Location:	The Borough is comprised of the lush farmlands of the Matanuska and Susitna Valleys, approximately 42 miles northeast of Anchorage. The Borough encompasses 24,681.5 sq. miles of land and 578.3 sq. miles of water.
Population:	74,041 (2005 State Demographer estimate)
Borough Classification:	Second Class Borough



Pre-2006 Background

On April 7, 2005 LBC Staff met with the Vice-President of Corporate Affairs and the Vice-President of Subsidiary Operations for Ahtna Incorporated. The principal purpose of the meeting was to discuss borough incorporation. However, in passing, the officials indicated that the Corporation intended to petition in the not-too-distant future for detachment of the northernmost portion of the area within the Matanuska-Susitna Borough. That area encompasses substantial lands owned by Ahtna Incorporated. Ahtna officials indicated that the prospective proposal would concurrently seek annexation of the same territory to the Denali Borough. The LBC denied a similar proposal in 1997.

2006

In January and February, the Ahtna Vice-President for corporate affairs advised LBC staff of continued interest in detachment of Ahtna lands from the northern portion of the Matanuska-Susitna Borough and the simultaneous annexation of those lands to the Denali Borough. Ahtna is reportedly contemplating development of the lands and does not believe that the Matanuska-Susitna Borough has the capacity to effectively and efficiently serve that portion of the borough.

Ahtna officials reported that they had discussed the matter with officials of the Denali Borough. It was indicated that Denali Borough officials have pledged to follow up in terms of a formal proposal for the proposed boundary change.

Matanuska-Susitna Borough (Little Nelchina area)

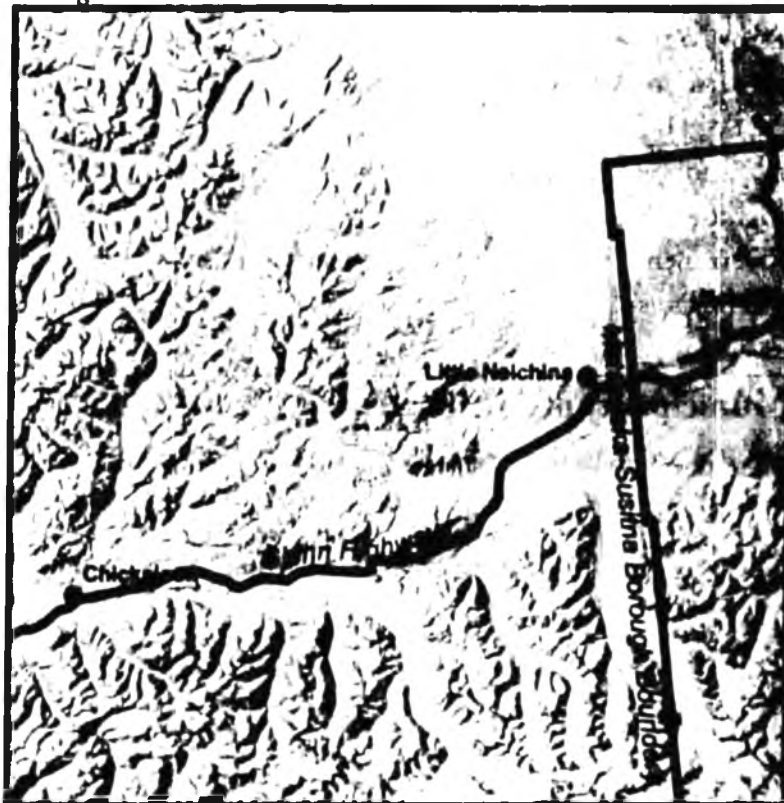
On June 10, LBC Staff responded to an inquiry about borough detachment from a resident of the Little Nelchina area in the eastern portion of the Matanuska-Susitna Borough. The inquirer, a long-time resident of the Matanuska-Susitna Borough, was concerned about the failure on the part of the State to promote boroughs in all areas of Alaska that have the capacity to operate boroughs. The inquirer indicated that a point had been reached where escalating property taxes and other circumstances compel him to pursue detachment of territory from the eastern portion of the Matanuska-Susitna Borough.

LBC Staff provided background information about the public policy issues involved in borough formation, standards for borough incorporation, procedures for borough incorporation, and sample detachment petition materials.

LBC Staff responded to further inquiries about borough detachment from another resident of the Little Nelchina area in the eastern portion of the Matanuska-Susitna Borough. The inquirer took the position that the Little Nelchina area was included by an "administrative glitch" during the 1960s. He estimated that some 75 individuals live in the area in question.

According to a resident of the Little Nelchina area, a public meeting was held in July regarding the issue of detachment of the Little Nelchina area from the Matanuska-Susitna Borough. A representative of the Borough was reportedly present. Local residents plan to invite a representative from the LBC Staff to a public meeting on the topic later this year.

Little Nelchina located on the eastern boundary of the Matanuska-Susitna Borough.



Local residents maintain that the Little Nelchina area was inappropriately included in the Matanuska-Susitna Borough. The Matanuska-Borough was incorporated by legislative fiat in 1964. Its boundaries were defined by the Legislature to consist of the "Palmer-Wasilla-Talkeetna Election District #7." That boundary allegedly excluded any area that drained into the Copper River basin. According to the local resident, the Little Nelchina drains into the Copper River Basin, even though the Alaska Department of Natural Resources claims that it drains into the Matanuska River basin.

LBC Staff has advised local residents that regardless of whether the area was improperly included in the Matanuska-Susitna Borough nearly 43 years ago, formal detachment proceedings would be necessary to remove the territory. On several occasions, the Alaska Supreme Court has applied the doctrine of *de facto* municipal incorporation to the formation of local governments and to the alteration of their boundaries. The doctrine provides that regardless of errors in the formation or alteration of municipal boundaries, if the error was not challenged in a timely manner and if the government, in good faith, exercised powers in the area, the incorporation or boundary change will be considered to be proper.

Municipality of Anchorage

Location:	Anchorage, the most populated municipality in Alaska, is located in southcentral Alaska at the head of Cook Inlet. It is 3 hours by air from Seattle. The area encompasses 1,697.2 sq. miles of land and 263.9 sq. miles of water.
Population:	278,241 (2005 State Demographer estimate)
Borough Classification:	Unified Home Rule Municipality



Pre-2006 Background

In 1974, the Alaska Legislature authorized voters in the Eagle River – Chugiak area to detach from what was then the Greater Anchorage Area Borough and create a separate borough. Eagle River – Chugiak area voters approved the proposition; however, the Act by the Legislature was later determined to be unconstitutional. Consequently, the Eagle River – Chugiak area was "reincorporated" into the Anchorage borough (which, by that time, had become a unified home-rule borough). Immediately after the Supreme Court decision, voters of the Eagle River – Chugiak area petitioned the LBC for the creation of a new borough. The LBC rejected the proposal in 1975. The LBC's decision was upheld following an appeal to the Superior Court.

If the LBC were to approve a future Eagle River – Chugiak detachment proposal, it would be subject to approval by the voters or the Alaska Legislature. Details about the applicable detachment standards and procedures, attempts in the mid-1970s to detach the Eagle River – Chugiak area, and related information is available on the LBC Website at:

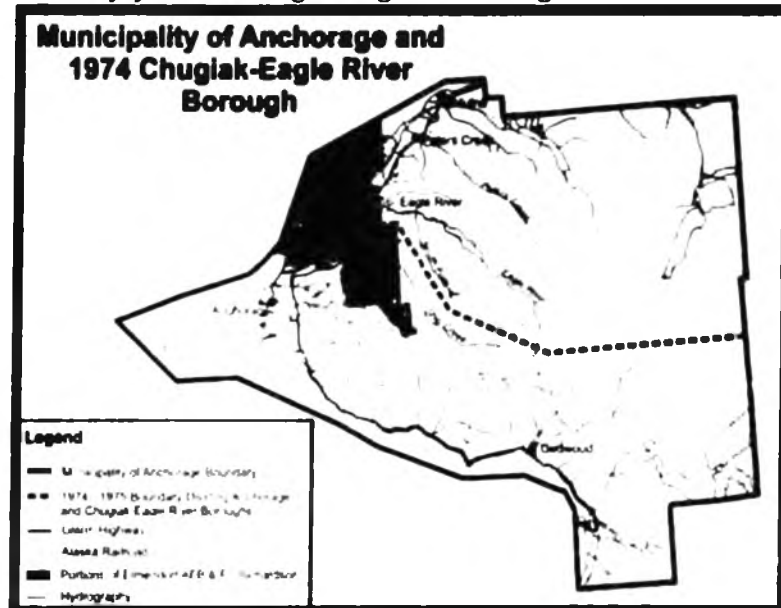
<http://www.dced.state.ak.us/dca/lbc/eagleriver.htm>

2006

In May, a member of the Anchorage Assembly expressed interest in exploring a proposal for detachment of the Eagle River – Chugiak area from the Municipality of Anchorage. Assemblyman Dick Traini indicated he might initiate consideration among Assembly members of the proposal in June. The Assembly of the Municipality of Anchorage has authority under State law to initiate a formal petition to the Local Boundary Commission for detachment of the area in question.

On June 6, by an 8 to 2 vote, the Assembly of the Municipality of Anchorage adopted “AR No. 2006-152, A Resolution of the Anchorage Municipal Assembly Supporting Studies to Determine the Economic Feasibility and Financial Impact of Separating the Greater Chugiak-Eagle River Area from the Municipality of Anchorage.” To obtain a copy of the resolution, contact LBC Staff.

Boundary of the 1974 Chugiak-Eagle River Borough



The resolution pledges the Municipality's cooperation in working with the Division of Community Advocacy in the planned study to determine the economic feasibility and fiscal impact of detachment. To maintain the independence and integrity of the LBC and its staff, neither is involved in the administration of the \$87,500 appropriated by the legislature for the project.

The resolution also conditionally provides that the “Anchorage Assembly will pass a resolution in support of detachment of Chugiak-Eagle River.” The conditions are “[s]ubject to delineation of appropriate boundary changes, budget and transition plan sufficient for review, determination of

the economic feasibility and financial impact, legislative and voter approvals determined by the Local Boundary Commission and further subject to any final judicial resolution.”

In a related matter, the 2006 Legislature appropriated \$87,500 for “. . . no other purpose than a study to determine the economic feasibility and financial impact of separating the greater Eagle River - Chugiak region from the Municipality of Anchorage and incorporating that region into a separate borough government.” To maintain the independence and integrity of the LBC and its staff with respect to the prospective proposal for detachment of the Eagle River – Chugiak area, LBC Staff will not administer the funding. The funds are being administered by other staff in the Department of Commerce.

City and Borough of Juneau

Location:	Located on the mainland of Southeast Alaska, opposite Douglas Island, Juneau was built at the heart of the Inside Passage along Chatham Strait Channel. The area encompasses 2,716.7 sq. miles of land and 538.3 sq. miles of water.
Population:	31,193 (2005 State Demographer estimate)
Borough Classification:	Unified Home Rule Municipality



At the March 30 meeting of mayors and community leaders from six southeast communities, those attending discussed detaching Greens Creek Mine from the City and Borough of Juneau. The Greens Creek Mine was part of a 140-square mile annexation in 1994 to the City and Borough of Juneau.

Section VIII. Merger

Although no petition was filed, interest in merger occurred with respect to the following cities in 2006,

- City of Kachemak; and
- City of Homer.

Kachemak

Location:	Kachemak is on the East Road, adjacent to Homer, on the Kenai Peninsula. It is on the northern shore of Kachemak Bay. The area encompasses 1.6 sq. miles of land and 0.0 sq. miles of water.
Population:	457 (2005 Commerce Certified Population)
City Classification:	Second Class City
Borough:	Kenai Peninsula Borough
School District:	Kenai Peninsula Schools



Homer

Location:	Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. It is 227 road miles south of Anchorage, at the southern-most point of the Sterling Highway. The area encompasses 10.6 sq. miles of land and 14.9 sq. miles of water.
Population:	5,435 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Kenai Peninsula Borough
School District:	Kenai Peninsula Schools



At the request of a member of the Homer City Council, LBC Staff prepared forms at the end of January for a local action petition to merge the City of Kachemak and the City of Homer. LBC staff prepared petition forms for the merger of a first class city and second class city. The forms provide for initiation of the petition by registered voters from each city government. The petition forms comprised 39 pages. The petition forms and supplemental materials were provided to the individual on January 30.

Local news reports in late March indicated that the petition might be circulating for signature.

According to a report in the March 29 edition of the Homer News, the petition "drew fire" from Kachemak's Mayor and "could start a controversy rivaling Homer's battle with annexation."

The news report indicated that Phil Morris, the Mayor of the City of Kachemak, sent a letter to the roughly 475 residents of Kachemak urging them to "learn the facts" before signing a petition rumored to be

circulating within the city. The Mayor of the City of Kachemak was quoted as saying the city was incorporated in 1961 as a "tax dodge," for area residents who didn't want to be included in the City of Homer. The newspaper reports that there is no city sales tax in Kachemak City and only a 2.0 mill property tax. In comparison, the adjoining City of Homer levies a 3.5 percent city sales tax and a 5.0-mill property tax. Morris commented, "It's like a big lion eating a little kitty cat. And Homer residents should realize it's bad for them too."

The newspaper quoted Kachemak's Mayor as stating that Homer benefits greatly from having a smaller, separate city entity as a neighbor. According to the report, the Mayor claimed from 1986 to 2005, Kachemak City contributed \$1.895 million in state and federal money for large Homer projects, including \$1.29 million for a new sewer system, \$350,000 for two fire truck projects and \$125,000 in grants and other funds to the Homer Public Library, the Homer Animal Shelter and Homer Hockey Association. Morris said that Kachemak City can get this money because it is small and separate from Homer.

City Boundaries for Kachemak and Homer.



Section IX. Consolidation

Interest in consolidation occurred with respect to the following cities in 2006:

- City of Fairbanks;
- City of Ketchikan; and
- Ketchikan Gateway Borough.

Fairbanks

Location: Fairbanks is located in the heart of Alaska's Interior, on the banks of the Chena River in the Tanana Valley. By air, Fairbanks is 45 minutes from Anchorage and 3 hours from Seattle. It lies 358 road miles north of Anchorage. The area encompasses 31.9 sq. miles of land and 0.8 sq. miles of water.

Population: 31,182 (Commerce 2005 Cert. Population)

City Classification: Home-Rule City

Borough: Fairbanks North Star Borough

School District: Fairbanks North Star Schools



LBC Staff responded to an inquiry from a resident of the City of Fairbanks and the Fairbanks North Star Borough regarding consolidation of those two local governments. LBC Staff provided extensive materials relating to the unsuccessful effort in 2000 to consolidate the City of Fairbanks and the Fairbanks North Star Borough. Additionally, LBC Staff provided materials relating to the most recent unsuccessful effort to consolidate the City of Ketchikan and the Ketchikan Gateway Borough.

Ketchikan Gateway Borough

Location:	The Ketchikan Gateway Borough is located on the southeastern coast of Alaska. It is comprised of the City of Ketchikan and Saxman. The area encompasses 1,233.2 sq. miles of land and 520.8 sq. miles of water.
Population:	13,129 (2005 State Demographer estimate)
Borough Classification:	Second Class Borough



Pre-2006 Background

In 2003, voters in the Ketchikan Gateway Borough ("KGB") approved an initiative to establish a seven-member elected commission ("Ketchikan Charter Commission" or "KCC") to draft a proposal to consolidate the City of Ketchikan ("City") and the KGB. Three members of the KCC were elected from the City, three from the portion of the KGB outside the City, and one at-large.

The KCC prepared and filed a petition for consolidation in September 2004. The City filed a responsive brief that opposed the Consolidation Petition. The KGB Manager and the Mayor of the City also filed comments regarding the proposal.

The KCC met in January and February 2005 to plan its reply to the City's response brief and the other comments. LBC Staff, the City Manager, City Finance Director, KGB Manager, KGB Attorney, and KGB Clerk all attended the February meeting.

The City, KGB, and KCC officials worked cooperatively over the next several months in a good faith effort to address all concerns. In October 2005, the KCC submitted an amended petition and its reply brief. The LBC Chair set December 30, 2005 as the deadline for receipt of written comments on amendments to the pending petition for consolidation. No comments were received by the deadline.

2006

In January, LBC Staff provided members of the LBC with the (1) original petition and supporting documents (budgets of the City of Ketchikan, Borough School District, and Borough); (2) responsive brief from the City of Ketchikan; (3) written comments from the Ketchikan Gateway Borough and Mayor of the City of Ketchikan; and (4) the amended petition for consolidation.

In April, LBC Staff published its *Preliminary Report of the Local Boundary Commission on Ketchikan Local Government Consolidation*. The Preliminary Report, consisting of 172 pages, endorsed the proposal, but encouraged a thorough technical review of the 51-page proposed home rule charter.

The KCC met on May 3, 2006. By a unanimous vote, it approved a motion to request that LBC Staff undertake a technical review of the proposed Charter. The KCC encouraged LBC Staff to consult with officials of the City and the KGB in the course of the technical review.

May 18 was the deadline for receipt of comments on the Preliminary Report. Comments were received only from the City Manager. LBC Staff completed its technical review of the Charter by May 23 and provided those review materials to the Petitioner, the City, and the KGB. On May 31, the KCC voted unanimously to accept the "style, grammar, and word usage" edits suggested by LBC Staff as well as the "technical" modifications suggested by the LBC Staff. Further, the KCC separately addressed questions raised by LBC Staff regarding provisions of the Charter relating to initiatives and referenda in only a portion of the borough. Lastly, the KCC clarified its intent regarding a matter involving a municipal bond election.



Ketchikan, Alaska

By the end of May, LBC Staff completed its Final Report on the consolidation proposal. The report comprised 42 pages. The Final Report recommended that the LBC modify the Charter included in the Amended Petition to reflect the recommended changes detailed in the report. With Charter amendments, the Final Report recommended that the LBC approve the Amended Petition in order that the proposal would be presented to the voters for their consideration.

Following the public hearing on June 26 in Ketchikan, the LBC approved the petition by a four to zero vote. (One member of the Commission had been recused from the LBC's proceedings regarding the Ketchikan local government consolidation and future hearings on the KGB annexation due to residency and ownership of real property in the City of Ketchikan.)

At its meeting of July 7, the LBC adopted a 49-page decisional statement explaining all major considerations leading to its June 26 decision to amend and approve the petition for

consolidation. Following the meeting, a copy of the decisional statement was served on the Petitioner and Respondent. A copy was also provided to two Ketchikan residents who had requested the document.

July 25 was the deadline for filing requests for reconsideration of the LBC's July 7 decision. No timely requests were filed by the parties or public. The LBC had authority to order reconsideration on its own motion through July 27.

Following the expiration of the opportunity for reconsideration, the LBC Chair, on July 28, notified the Director of State Elections that the LBC had approved the Ketchikan consolidation proposal.

On August 25, the Director of Elections issued the order for the Ketchikan local government consolidation election. The order provided that the election would be conducted by mail in accordance with AS 15.20.800 and 6 AAC 25.590. November 21, 2006, was considered to be the date of the election – the deadline for voters to postmark ballots.

On August 31, LBC Staff prepared and filed a requisite Federal Voting Rights Act preclearance request for the election. The request comprised 12 pages.

On September 6, the Division of Elections issued an *Amended Order and Notice of Consolidation Election*. The amended order changed the deadline to register to vote in the November 21 consolidation election from October 20 to October 22. Revised elections planning calendar was also prepared by the Division of Elections. LBC Staff filed the *Amended Order* and the revised planning calendar with the U.S. Justice Department as an amendment to the August 29 federal Voting Rights Act preclearance submission.

The election was conducted as scheduled. On December 7, the final results of the by-mail election on the proposal to consolidate the City and the KGB were certified by the State Division of Elections. The outcome of the proposition, which was determined by the areawide tally, reflected nearly two-to-one opposition to the proposal. Only 1,170 of the 3,301 (35.4 percent) votes were cast in favor of consolidation, while 2,131 (64.6 percent) votes were cast in opposition. A total of 3,301 ballots were cast among the 10,162 registered voters. That represents a 32.5 percent voter turnout.

Votes cast inside the City reflected narrow approval of the consolidation proposal. Specifically, 791 (52.6 percent) such votes favored consolidation, while 712 (47.4 percent) opposed it. However, votes cast outside the City reflected strong opposition. Only 379 (21.1 percent) of the votes cast outside the City endorsed the proposal, while 1,419 (78.9 percent) of those votes opposed the proposal.

Despite fewer registered voters, the number of votes cast outside the City was higher than the number within the City. A total of 1,798 votes were cast outside the City. Based on the 4,169 registered voters in that area at the time of the general election (the number was slightly different than the figure for the consolidation election), voter turnout in that part of the Borough amounted to 43.1 percent. Inside the City of Ketchikan, only 1,503 votes were cast. Based on the 5,958 registered voters in that part of the Borough at the time of the 2006 State general election, voter turnout inside the City was just 25.2 percent.

This was the fifth time that voters in Ketchikan had rejected unification or consolidation.

Section X. Regulations

In 2006, the LBC proceeded with the in-depth review of prospective changes to its regulations. Two subcommittees reviewed the issues underlying the suggested changes. One subcommittee considered issues relating to procedures. That subcommittee was comprised of Commissioners Georgiana Zimmerle and Tony Nakazawa. The other subcommittee analyzed substantive issues relating to standards for boundary changes. Commissioners Bob Harcharek and Bob Hicks comprised that subcommittee. Ultimately, the subcommittees determined that the majority of issues on the list warranted proposed changes to the Commission's regulations. Several issues were deferred for development in an in-house procedures manual or further review by individual Commissioners and Staff.

At its public meeting of April 1, 2006, the Commission directed Staff to draft regulations that addressed all issues identified by the two subcommittees. Staff was also authorized and directed to draft regulations for issues that arose during the course of business, including changes necessitated by revisions to statutes. Staff was directed to have an initial draft of regulations prepared by June 30, 2006. At its April 1 meeting, the Commission also adopted the budget proposed by Chair Hargraves for FY 2007 in response to a request for such from the director of Commerce's Division of Community Advocacy.

Staff timely completed the initial draft, which was considered in work session when the Commission convened in Ketchikan in late June 2006. The initial draft was over 140 pages (double-spaced) in length. At that lengthy work session, the Commission made several policy decisions regarding the draft regulations and directed Staff to further refine the proposed changes in accordance with those new directives. Commissioners who had specific proposed minor editorial changes to the draft were directed to meet with Staff individually. The Assistant Attorney General (AAG) assigned to the Commission also attended and participated in the work session.

Staff completed a revised conceptual draft of regulations in late August 2006. The draft was reviewed at a lengthy Commission work session on September 22, 2006. At the work session, the Commission endorsed the vast majority of the conceptual draft regulations for purposes of public notice, comment, and hearing. The Commission made minor revisions to the draft and reserved consideration of several provisions pending their review by the Department of Law Regulations Attorney. The Commission noted its intent to hold hearings on the proposed regulations throughout the state and in conjunction with other Commission hearings when feasible. The Commission also determined that an additional work session was needed to consider the changes directed at that time and to review conclusions reached by the Regulations Attorney. The Commission's AAG participated in the work session by teleconference. The Director of the Division of Community Advocacy also briefly attended to relay the commitment of funding the regulations project through June 30, 2007.

In November 2006, Staff completed revising the conceptual draft regulations to address policy issues raised by Commission members at the work session of September 22; to add new provisions addressing issues that arose during the intervening period; to address issues that had been referred to the Department of Law for review; to make minor changes to respond to recent issues; and complete initial editing to comply with form and formatting requirements of the Department of Law Drafting Manual for Administrative Regulations. The draft was 184 pages in length (double-spaced).

At its December 13 public meeting, the Commission approved for notice and hearing the November revised conceptual draft regulations. Individual Commission members were authorized to work with Staff with other suggested editorial changes.

The draft regulations were forwarded to the Regulations Attorney in the Department of Law with a request to open a file for the project. The Regulations Attorney assigned the project File No. 993-07-0095. AAG Marjorie Vandor was assigned as agency counsel for the project. A draft public notice of the proposed regulations has been prepared and furnished to the Commission and AAG Marjorie Vandor for review. The Commission will also determine the time and locations for public hearings around the state in 2007.

Chapter 3

Policy Issues and Concerns

Introduction

This chapter addresses contemporary policy issues and concerns of the LBC.¹¹ In sum, these relate to:

- Increasing difficulties in rendering borough boundary determinations following the 1963 Mandatory Borough Act.
- Substantial disincentives and a lack of adequate inducements hinder incorporation of organized boroughs and annexation to existing boroughs.
- Lack of standards and methods for establishment of unorganized boroughs.
- Funding for borough feasibility studies.
- Compensation for members of the LBC.

Section I. Increasing Difficulties in Rendering Borough Boundary Determinations Following the 1963 Mandatory Borough Act

Subsection A. Statement of Issue

With the exception of a period of only eight months or so to implement the 1963 Mandatory Borough Act, the State has employed a *laissez faire* policy regarding borough formation. That policy allows residents of the unorganized borough, irrespective of their fiscal and administrative capacity to support borough government, to decide when or even if they wish to incorporate boroughs. That policy has often stymied formation of large regional boroughs and may have contributed to boundary determinations that have been widely criticized and regarded by some as mistakes.

¹¹ Many of the policy matters addressed here are discussed in detail in prior reports of the LBC. Those include, in particular, the *Report of the Local Boundary Commission to the First Session of the Twenty-Fourth Alaska Legislature* (January 2005), *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation* (February 2004), and *Unorganized Areas of Alaska that Meet Borough Incorporation Standards* (February 2003). Those reports are available on the LBC Website at <<http://www.dced.state.ak.us/dca/lbc/lbc.htm>>. A copy of any of those reports can also be obtained by contacting LBC staff.

Subsection B. Background

Article X, Section 3 of the Alaska Constitution requires that "The entire State shall be divided into boroughs, organized or unorganized." It provides further that organized and unorganized boroughs, "shall be established in a manner and according to standards" enacted by the legislature. In 1960, the LBC made the following observations regarding boroughs in its report to the First Alaska State Legislature:

One thing can be agreed upon: the borough is the intermediate unit of local government between the City and the State. . . .

The Commission presently takes the position that a borough was designed to be a form of regional government. . . .

....

Following this concept to the next logical phase, it supports the Commission's present thinking that organized boroughs, particularly in Alaska, were to be large in size – otherwise they would be duplicating the service area's jurisdiction. No opinion is expressed at this time as to just how large the borough should be, for there are other considerations to be weighed: for example, the population density would be an important factor but, it is felt, in view of existing conditions in Alaska, the general rule should be large boroughs, and the exception should be small boroughs.

(State of Alaska Local Boundary Commission, *First Report to the Second Session of the First Alaska State Legislature* (February 2, 1960), pp. I-7 – I-9.)

To assist the legislature in carrying out the constitutional requirement that all of Alaska be divided into organized and unorganized boroughs, with each borough embracing an area and population with common interests to the maximum degree possible, the 1960 LBC formally recommended as follows to the First Alaska State Legislature:

[T]hat the Legislature give the Commission a mandate by Resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature.

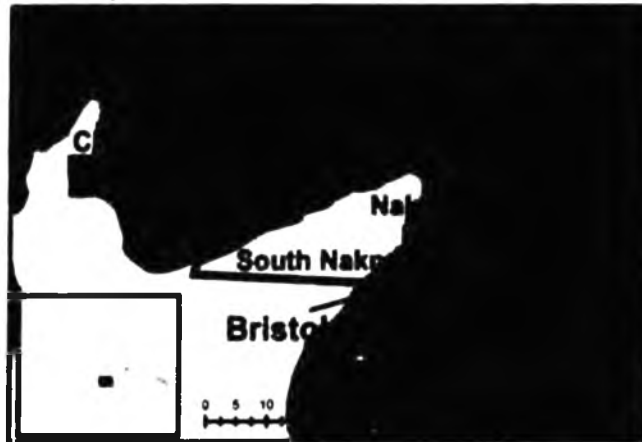
(*Id.* at III-4.)

The Legislature rejected the LBC's recommendation. In 1961, a law was enacted establishing a single unorganized borough encompassing all of Alaska not within organized boroughs (at the

time there were none; so the single unorganized borough initially encompassed the entire state). State laws providing standards and procedures for *voluntary* incorporation of organized boroughs were also enacted in 1961. This created a structure in which borough boundary decisions would be made on a piecemeal basis without an overall plan for the division of all of Alaska into organized and unorganized boroughs.

Some members of the current Commission find it not surprising then that despite expressing a clear predisposition toward large regional boroughs, that the first LBC approved the creation of the 850-square mile Bristol Bay Borough in 1962. Other members of the current Commission take the view that the legislative action in 1961 was then and is now no excuse for establishment of small, nonregional boroughs.

Bristol Bay Borough and Surrounding Communities



Following approval of the Bristol Bay Borough proposal by the LBC in 1962, Alaska's Secretary of State expressed immediate and resounding criticism of the action. (See Appendix E Memorandum from Hugh J. Wade to Governor William A. Egan, July 9, 1962.) Over the ensuing years, the creation of the Bristol Bay Borough has been repeatedly characterized as an extremely poor public policy decision by the LBC. For example, in 1991, former Constitutional Convention delegate Victor Fischer wrote:

The first violation of the regional concept came with establishment of the very first borough. In creating the Bristol Bay Borough, the Local Boundary Commission took a tiny part of a real region and gave it borough status under the constitution. This gross error was not rectified when the Lake and Peninsula Borough was created.

(Letter from Victor Fischer to the LBC, October 11, 1991.)

In 1963, the Legislature made a significant reversal of the 1961 policy by passing the Mandatory Borough Act. That landmark legislation, which was signed into law by Governor Egan (former President of the Alaska Constitutional Convention), mandated formation of boroughs in eight specific regions of Alaska (the greater areas of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks). Today, the eight boroughs formed under the Mandatory Borough Act are inhabited by an estimated 558,059 Alaskans, just over 84 percent of the state's population. The average size of the 8 boroughs formed under the Mandatory Borough Act is just under 10,000 square miles.

It is particularly noteworthy that John Rader, who sponsored the 1963 Mandatory Borough Act, viewed the LBC, in a practical sense, as an institution that was possibly incapable of exercising the political leadership necessary to achieve the vision of the framers of Alaska's Constitution regarding establishment of boroughs. In that regard, Mr. Rader wrote as follows in his recount of the legislative history of the 1963 Mandatory Borough Act:

So far as I am aware, [the Local Boundary Commission] has no broad view nor does it seek broad solutions. As a government tool, it is a small one. I would judge that its usefulness in the future would, therefore, be limited to smaller and more localized issues. The heat generated by annexation or by incorporation, particularly when it is done by executive fiat, is very intense.^[12]

Perhaps the commission could afford to make enemies one by one, bit by bit, but it could never maintain itself in the face of a barrage of criticism which was statewide. The legislature would destroy it.^[13] By the very nature of the political organization, the commission is not in a position to defend itself. The problems of annexation and incorporation of local government are political decisions which should be made in a manner permitting public political debate.



John Rader, sponsor of the 1963 Mandatory Borough Act.

(John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 90.)

After the 1963 Mandatory Borough Act, the State reverted to the 1961 laissez-faire policy of borough formation. Under that policy, the second borough proposal approved by the LBC was that providing for the creation of the Haines Borough in 1968. The boundaries approved by that LBC resulted in three enclaves within the borough, including Klukwan and Skagway.¹⁴

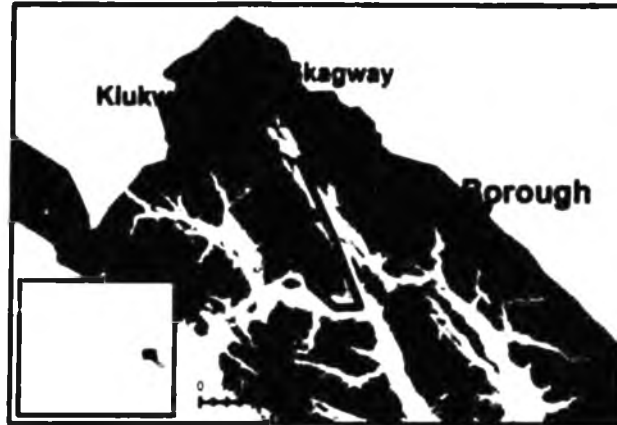
¹² [Footnote 18 in original.] Executives and administrators may find the Boundary Commission to be useful as a buffer between themselves and the public.

¹³ [Footnote 19 in original.] This problem was foreseen by the Constitutional Convention which gave the commission constitutional status (Art. X, sec. 12) to protect it. Despite this, the legislature could effectively limit the commission, e.g., by statutory definitions and by withholding appropriate staff and other necessary support.

¹⁴ Those consisted of (1) the military installation at Lutak Inlet known as the "base proper to the Petroleum Distribution Office, Haines Terminal and Pumping Station"; (2) a 1.4-square mile enclave including Klukwan; and (3) the 443.1 square mile area comprising the proposed Skagway Borough.

Some members of the current LBC have been critical of the boundaries set in 1968 for the Haines Borough. Other Commissioners are reluctant to criticize that prior action. The 1968 Commission approved the locally preferred alternative and, in doing so, resolved serious local and State policy concerns over the delivery of education services to the greater Haines area. It is noteworthy that voters in Haines had rejected three previous borough proposals. It is virtually certain that if Klukwan and Skagway had been included in the borough proposal, the collective electorate would have rejected that fourth borough proposal encompassing Haines.

Haines Borough



In the context of the laissez-faire policy of borough formation, it is noteworthy that only about 4 percent of Alaskans have voluntarily formed boroughs in 48 years of statehood. Moreover, in the past 16 years, only one borough has been formed. That was the City and Borough of Yakutat, a single-community borough presently inhabited by an estimated 619 people, including just 135 students.

In the 43 years since the 1963 Mandatory Borough Act, the legislature has debated numerous proposals to mandate further borough formation, consolidate school districts, impose taxes on unorganized borough residents, and create incentives for borough incorporation. However, few such proposals have been enacted, and those that have been seem to have had little effect.

Since the 1980s, the LBC, especially the current Commission, has been a strong advocate of reform. (See, in particular, *Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature* (January 19, 2005) pp. 83 – 164.) However, as anticipated by John Rader, the LBC may have become somewhat of a target because of the Commission's advocacy for reform. Further, in the general absence of locally initiated proposals for regional boroughs, the Commission also seems to bear the brunt of criticism and frustration over the lack of borough formation. Such may be evident in the conclusions of the ad hoc Advisory Commission on Local Government created by the Twenty-Fourth Alaska Legislature. That body, which was comprised of six legislators and three municipal officials, reported as follows in 2006:

The [Advisory Commission on Local Government] received testimony that *rigid adherence by the Local Boundary Commission (LBC) to regulations regarding borough boundaries have been a detriment to new borough formation*. The [members of the Advisory Commission on Local Government] therefore state their intent that the

LBC apply flexible rules when reviewing local proposals. Priority should be given to the standards listed in statute. Minor consideration will be given to the model borough boundaries and other administrative boundaries.

(Advisory Commission on Local Government, *Final Report* (January 20, 2006), p. 7. [Emphasis added.]

The Twenty-Fourth Alaska State Legislature (2005 – 2006) considered various legislative proposals to curtail the powers of the LBC. Those included, in particular, House Bill 133 and Senate Bill 128. Excerpts from the Sponsor Statement regarding House Bill 133 follow:

Sponsor Substitute for House Bill 133 makes three changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Following amendment, *CSSSHB 133(JUD) AM* passed the House by a vote of 35 in favor and only 1 opposed (with 3 members excused and 1 absent). The Senate then approved the bill by a vote of 19 to 0 (with 1 member absent). The Governor signed the bill into law and issued a press release stating:

Governor Frank H. Murkowski has signed into law *HB 133*, which makes changes in the way the Local Boundary Commission processes municipal incorporations, annexations, detachments, mergers, consolidations, reclassifications, and dissolutions.

The bill . . . also protects the voters' right to incorporate, outline the boundaries of their municipality, and select the level of service they want. It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

"This bill cleans up the process local citizens use to define their own community," Murkowski said. "It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go."

(Frank H. Murkowski, Governor, *Press Release* (May 27, 2006).)

As noted above, *SB 128* is another example of legislative action to curtail the powers of the LBC. Excerpts from the Sponsor Statement regarding Senate Bill 128, including specific reference to the provisions in Article I, Section 2 of Alaska's Constitution, follow:

[Petitions for borough incorporation] should originate with maximum local involvement. . . .

"The Alaska Constitution states, 'All government is to originate with the people and is founded upon their will only.' I interpret that to include borough governments. The role of the Local Boundary Commission is to review proposed changes, not to create boroughs. If we are to have a government by the people, those proposed changes should emanate from the local level up, not from the top of the government pyramid down."

With amendments, *SB 128 AM* passed the Senate by a vote of 15 votes in favor and only 4 against (with 1 member excused). The House then passed *SB 128 AM* by a vote of 36 to 0 (with 4 members excused). That bill was also signed into law by the Governor.

The most recent and extreme example of the sentiments characterized above is reflected in a resolution adopted by the members of the Alaska Municipal League in November 2006. That resolution urges further legislative action and states as follows:

WHEREAS, the Local Boundary Commission has assigned a disproportionate weight toward their administrative criteria¹⁵ for evaluating petitions for borough incorporation, known as the Model Borough Boundary requirement; and

¹⁵ It is noted that the Commission's "administrative criteria" are the standards set out in the Commission's regulations, adopted under AS 44.62. The adoption of such standards is mandated by AS 44.33.812(a), and the Alaska Supreme Court has overturned a Commission boundary decision when such standards were lacking.

The Alaska Supreme Court in *United States Smelt., R. & M. Co. v. Local Bound. Com'n*, 482 P.2d 140, 142 (Alaska 1975), outlined the overarching need for the Commission to adopt regulatory standards when reviewing boundary changes. The Court observed that the requirement for the Commission to adopt such standards was mandatory not discretionary. The court stated in pertinent part:

Since under AS 44.19.260(a) [] the legislature required the commission to develop standards in order to recommend boundary changes, and the commission had not developed standards prior to the Nome . . . proceedings, we hold that the commission lacked the power to recommend the Nome boundary changes in question. To do otherwise would be to condone the commission's nonobservance of a valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes.

In addition to the mandatory requirements under AS 44.33.812 for the adoption of boundary change standards, including borough incorporation, AS 29.05.100(a) provides in pertinent part:

If the commission determines that the incorporation . . . meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS . . . 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition. [Emphasis added.]

WHEREAS, the Local Boundary Commission has been unsuccessful using the Model Borough Boundary criteria to promote new borough incorporations and even inhibits such incorporations through the use of this criteria; and

WHEREAS, the Local Boundary Commission's inflexible approach when considering petitions for borough incorporations that do not conform to the Model Borough Boundaries, unduly limits the ability of political subdivisions of the State to propose other viable borough boundaries;

(Alaska Municipal League, *Resolution 2007-06* (November 17, 2006).)

The Alaska Municipal League's legislative proposal urges amendment of existing laws to impose, among other limitations, provisions that would prohibit the LBC from even considering a borough incorporation proposal that included more than one home-rule or first-class city unless the city councils of the cities involved adopted a resolution to permit such.

The LBC envisions that enactment of such a proposal would lead to the Balkanization of Alaska in terms of borough governments. Presently, there are 18 home-rule or first-class cities in the unorganized borough. Additionally, there are 31 second-class cities in the unorganized borough that meet the minimum population threshold for reclassification as a first-class city. Some of those 31 second-class cities are among the most populous communities in the unorganized borough and have expressed interest in forming a single-community borough. Bethel (population 5,960) is just one example. It can be reasonably assumed that a number of the second-class cities would seek reclassification if such would foster their goal of forming a single-community borough. Moreover, there are 12 unincorporated communities in the unorganized borough that meet the minimum population threshold to incorporate as a home-rule or first-class city. Thus, there are a total of 61 existing or prospective home-rule or first-class cities in the unorganized borough.

Communities in the Unorganized Borough that potentially qualify for borough status under AML Resolution 2007-06.



If home-rule or first-class city status becomes a basis for determining the boundaries of new boroughs, it stands to reason that it may also become a basis for subdivision of existing boroughs. Take the Kenai Peninsula Borough (KPB), for example. In the past, the LBC has rejected proposals for a "Homer-Ninilchik borough" and a "Nikiski borough." The LBC also rejected a proposal to detach Tyonek from the KBP. In 2005, interest was expressed in forming a new borough encompassing just Seward, Moose Pass, Cooper Landing, and Hope. In that Seward is the only home-rule or first-class city among those four communities, such a borough would

conform to the provisions proposed by AML. However, the KPB encompasses five home-rule and first-class cities. It also includes one second-class city with a population in excess of the minimum population required to reclassify as a first-class city. Moreover, there are 15 communities (including Nikiski, which previously proposed borough incorporation) in the KPB that have populations in excess of the minimum required to incorporate a home-rule or first-class city. In all, there are 21 communities in the KPB and 77 communities in all 16 existing boroughs that meet the minimum population threshold for being a home-rule or first-class city.

Subsection C. Recommendations

The circumstances above reflect a climate that often disfavors formation of regional boroughs. Meaningful reform of the current structure will require legislative attention. The LBC continues to offer its assistance and support for legislative efforts to reform the existing policy regarding borough formation.

Section II. Substantial Disincentives and a Lack of Adequate Inducements Hinder Incorporation of Organized Boroughs and Annexation to Existing Boroughs

Subsection A. Statement of Issue

As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives and lack of inducements for borough incorporation and annexation. The legislature and the Commission have complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812(a)(1)).

In 1961, State policy makers opted to make borough formation voluntary. Policy makers 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, disincentives to borough formation and annexation have greatly increased over time. The organized borough concept had then and still has little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for essential 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 (REAs) are not. There proved to be other inequities as well. Thus, contrary to the stated intent of the 1963 Mandatory Borough Act,

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.
- 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.¹⁶
- 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,

¹⁶ 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.

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.

Subsection B. Background

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government.¹⁷ The Framers of our Constitution recognized that the legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach needed adequate inducements to establish boroughs.¹⁸ They anticipated that the Alaska Legislature would provide such incentives. Unfortunately, that vision of the Framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment. While the Framers preferred voluntary incorporation, they recognized that if regions had the capacity to operate boroughs and refused to incorporate, the State could compel borough formation.

Statistics offer compelling evidence that inducements of voluntary borough incorporation have been generally inadequate over the course of 48 years of statehood.

- Fewer than 4 of every 100 Alaskans (3.6 percent) live in boroughs that were formed voluntarily.¹⁹
- In contrast to the above figure, 84 of every 100 Alaskans (84.1 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- Of the sixteen Alaska boroughs, only eight formed voluntarily.

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

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

¹⁹ 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.

Promotion of borough formation is sound public policy. Boroughs:

- promote maximum local self-government with a minimum of local government units;
- provide a formal structure for service delivery;
- offer stable administrative infrastructure to provide services;
- foster local responsibility and decision making;
- promote accountability;
- provide a means to promote private ownership of land;
- have capacity to provide greater financial aid to schools;
- consolidate school districts;
- have capacity for regional control of alcohol and illegal substances;
- promote economic development;
- provide a proper role for State government; and
- promote equity and fairness.

Subsection C. Recommendations

For more than four decades, experts and public policy makers have recognized that Alaska has failed to implement an effective policy regarding borough formation.

The Commission urges the Legislature to consider ways in which inducements for borough incorporation and annexation may be increased and disincentives for such may be decreased. Those include the following.

1. Tax the unorganized borough (e.g. property, sales, employment, or head taxes).
2. Provide financial aid to boroughs.
3. Increase organization grants for new boroughs and extend grants to boroughs that expand their boundaries.
4. Extend municipal land grants for annexations and consider increases in entitlements.
5. Restrict National Forest Receipts and Shared Fisheries Fees and Taxes to boroughs and cities within boroughs.

Section III. Lack of Standards and Methods 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 both organized *and unorganized* boroughs and (2) methods for establishment of both 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, laws providing standards and the manner for establishment of *unorganized boroughs* have never been enacted.

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 established in 1961 act as a significant impediment to achievement of the constitutional goal of maximum local self-government with a minimum of local government units set out in Art. X, sec. 1 of Alaska's Constitution.

This issue is reflected in the following excerpt from comments made in 1981 by Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention, Assistant Director of the National Municipal League, and Professor at the New York University School of Administration:

The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which established boundaries that make sense in terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

(Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, pp. 86 - 88.)

Subsection B. Background

In summary, Alaska's Constitution imposes the following seven duties upon the legislature:

1. Enact standards for establishment of organized boroughs;
2. Enact standards for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and
7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

Five of the seven duties outlined in Article X, Section 3 have been fulfilled. The exceptions are the duty to enact standards for establishment of unorganized boroughs and the duty to enact laws providing for the manner in which unorganized boroughs will be established.

A single, residual unorganized borough does not conform to constitutional requirements. The 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, this action was inconsistent with the mandate of Article X, Section 3 that each borough, organized and unorganized, "embrace an area and population with common interests to the maximum degree possible." Prior legislative proposals, at least six in the last decade, have recognized that the unorganized borough does not conform to the common interest clause of the Alaska Constitution.

Standards for unorganized boroughs should include consideration of the fiscal and administrative capacity of the area. In the LBC's view, the capacity of an area to assume local responsibility is determined by two fundamental factors. One is the specific duties imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g. education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

The failure to follow the constitutional principles concerning unorganized boroughs hinders coordinated delivery of state services. In remarks to the LBC, former Senators Arliss Sturgulewski and Victor Fischer stressed the importance of establishing multiple unorganized

boroughs. Both stressed that the issue was the fundamental concern in a 1979 Local Government Study initiated by the Chairs of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska. The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was twofold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

Subsection C. Recommendation

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created identical to those for organized boroughs found in AS 29.05.031, except with respect to fiscal and administrative capacity.

AS 29.05.031 states:

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC is prepared to lend its expertise and assistance to the Legislature in the development of appropriate standards and procedures for establishment of unorganized boroughs.

Section IV. Funding for Borough Feasibility Studies

Subsection A. Statement of the Issue

Although the 2006 Legislature appropriated funds for borough feasibility studies in three specific areas, there is no continuing source of funding for such studies.

Subsection B. Background

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. However, funding for studies under that program has never been appropriated. The 2006 Legislature did, however, appropriate \$237,500 for borough studies in three specific regions in Alaska (Glacier Bay/Chatham, Middle Kuskokwim, and Eagle River/Chugiak). Additionally, the Department of Commerce, Community, and Economic Development provided a grant (\$30,000) for another borough study (Yukon Flats). Details of those studies are presented in Chapter 2. As further outlined in Chapter 2, a number of regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

Subsection C. Recommendation

The LBC recommends the Legislature appropriate funding for local borough study efforts in the near term; and if inducements for borough incorporation are implemented, to significantly increase funding.

Section V. Compensation for the LBC

Subsection A. Statement of the Issue

Members of the LBC receive no compensation for their service. Demands on members of the LBC have always been considerable. However, those demands have reached a point where current Commission members feel that some token compensation is warranted.

Subsection B. Background

The demands placed on the Commission have grown beyond what can be reasonably expected of unpaid members. In one proceeding before the current LBC, members of the Commission were faced with a formal record comprising approximately 3,000 pages. Members had to devote many hours to review that record. Each Commission member also devoted 5 or 6 days (including travel) to conducting a public hearing in the community. Substantial additional time was devoted to other proceedings in that case. One Commission member reported that he has devoted upwards of 350 hours (equivalent to nearly nine 40-hour weeks) to that one case alone. This was in addition to many other LBC matters in which members of the LBC had to participate.

The Commission formulates fundamental policies that have important statewide political, economic, and social implications. Such responsibilities demand that the Commission exercise prudence and diligence in carrying out its duties. The Commission is expected to exhibit expertise in all matters involving municipal boundary proposals.

It appears that nearly 20 State boards and commissions (excluding full-time boards and commissions) currently receive some form of compensation. The expectations and demands on the LBC seem to be at least equal to those nearly 20 boards and commissions that are presently compensated.

Subsection C. Recommendation

That the Alaska legislature provide compensation, at par with that provided to other unpaid boards and commissions, for service by members of the LBC.

Appendix A

Fundamental Nature of Boroughs and Cities in Alaska

The Commission recognizes several fundamental principles about borough governments and city governments in Alaska. These principles are grounded in the constitutional and decisional law of the State of Alaska as well as earlier decisions of the Commission.

1. Each Borough and Each City is Both a Municipality and Political Subdivision.

Boroughs and cities are municipal corporations and political subdivisions of the State of Alaska. AS 29.04.010 – 29.04.020. They are the only types of municipalities in Alaska.¹ *Id.*; Art. X, sec 2, Ak Const.

2. The Function of Boroughs is Comparable to that of Home Rule and First Class Cities in the Unorganized Borough.

Generally, the powers and duties of home rule and first class cities in the unorganized borough are comparable to those of boroughs. There are, of course, subtle distinctions between the powers and duties of particular classes of boroughs. The same is true for home rule and first class cities in the unorganized borough."

¹ In addition to "city" and "borough", AS 29.04.010 refers to "a unified municipality." A unified municipality is a borough as defined in 3 AAC 110.990(1). More specifically, a unified municipality is a home rule borough in which city governments are precluded. AS 29.71.800(24). See also Department of Community and Economic Development, *Local Government in Alaska* at 4 (2001).

² Consider, for example, the following comparison between a first class borough and a first class city in the unorganized borough. A first class borough has three mandatory areawide responsibilities. Those are education, assessment and collection of taxes, and land use regulation. AS 29.35.150 – AS 29.35.180. In comparison, a first class city in the unorganized borough has the duty to "establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs." AS 29.35.260(b). Further, the law stipulates that a "first class city outside a borough shall . . . provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs." AS 29.35.260(c). Additionally, a first class city in the unorganized borough may assess, levy, and collect a property tax in the manner provided by law for boroughs. AS 29.45.550. Lastly, a first class city in the unorganized borough "may levy and collect sales and use taxes in the manner provided for boroughs." AS 29.45.700(c).

Beyond its three mandatory functions, a first class borough has broad discretionary powers. The law provides that a "first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law." AS 29.35.200(a). Similar language exists with respect to the powers of cities in the unorganized borough. Specifically, the law provides that "[a] city outside a borough may exercise a power not otherwise prohibited by law." AS 29.35.260(a).

Footnote continued on next page

3. A Borough is a Regional Municipality whereas a City is a Community-Based Municipality.

As noted in subparts A-1 and A-2, cities and boroughs are identical in certain fundamental respects. Both are municipal corporations and political subdivisions. Moreover, the powers and duties of boroughs are comparable to those of home rule and first class cities in the unorganized borough.

However, major distinctions exist between boroughs and cities with respect to form. Boroughs are governments that serve relatively large natural regions. In contrast, city governments are relatively small community-based governments. Thus, home rule and first class cities may exercise borough-like powers, but only within city-like jurisdictions. Additional specifics about the distinctions between boroughs and cities are noted in subparts A-3-a and A-3-b below.

a. The "Limitations of Communities" Doctrine does not apply to Boroughs but does to Cities.

Cities are subject to the "limitation of community" doctrine while boroughs are not. The Alaska Supreme Court held as follows concerning that distinction:¹¹¹

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitution what has

Footnote continued from previous page

Prohibitions and limitations on the powers of second class cities in the unorganized borough are significantly greater than is the case for first class cities. For example, a second class city in the unorganized borough is prohibited from operating a school district, while a first class city outside a borough is required to operate a school district. AS 29.35.260(b). Further, a second class city in the unorganized borough is permitted, but not required, to exercise land use regulation. AS 29.35.260(c). Another example is the limited taxing property authority for a second class city. AS 29.45.590. In contrast, limitations on the powers of a first class city in the unorganized borough are similar to those of a first class borough.

¹¹¹ In the *Mobil Oil* case (involving incorporation of the North Slope Borough) the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed "municipalities" (e.g., "boroughs are not restricted to the form and function of municipalities"). Clearly, in the view of the Commission, the Court was referring in the *Mobil Oil* case to "cities" (or derivatives thereof such as "city", or "city government") when it used the term "municipalities", (or derivatives thereof such as "municipality", or "municipal"). It is significant in that regard that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in "Alaska Statutes - Title 7 - Boroughs." In contrast, statutes relating to cities were codified in "Alaska Statutes - Title 29 - Municipal Corporations." The Court made reference to borough standards and other provisions in AS 07 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as "Alaska Statutes - Title 29 - Municipal Government". Today, AS 29 refers to both cities and boroughs as municipalities. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., "boroughs" and "municipalities") was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

been called a 'limitation of community' which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .

The limitation has been found implicit in words like 'city' or 'town' in statutes and constitutions or inferred from a general public policy of encouraging mining or agriculture. In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses. The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

(Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 100 (Alaska 1974) (footnotes omitted).)

The Commission finds that the limitation of communities doctrine is, indeed, implicit in the Alaska statutes concerning incorporation of cities. In particular, AS 29.05.011 provides as follows (emphasis added):

Incorporation of a city.

(a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial

development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support city government;

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

Moreover, the limitation of communities doctrine is explicit in terms of the Commission's regulations governing city incorporation and annexation.^{iv} For example, 3 AAC 110.040(b) provides:

The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

Further, 3 AAC 110.040(c) provides:

The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042.

b. Geographically, Boroughs were Envisioned as Relatively Large Regional Units while Cities are Intended to be Relatively Small Units.

The Local Government Committee at the Alaska Constitutional Convention envisioned boroughs as units of government that would cover large areas. According to Vic Fischer:

^{iv} The Commission has a duty under AS 44.33.812(a)(2) to adopt regulations providing standards and procedures for incorporation of cities and boroughs. Further, AS 29.05.100(a) conditions approval of a city incorporation petition upon a determination by the Commission that the standards it has adopted in regulation are satisfied.

^v Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995). The Court has relied on his work in the *Keane* case (1242, 1243) and in the *Mobil Oil* case (98). Mr. Fischer is well known to most members of the Commission. He has addressed the majority of the current Commission in the past on a number of occasions concerning matters relating to local government in Alaska. Most recently, he addressed all current members of the Commission on August 10, 2002. Mr. Fischer received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. He also received the Littauer Fellowship in public administration from Harvard University (1961-1962). Mr. Fischer has held several planning related positions in Alaska. He was

As the committee was evolving [borough] principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis.

... the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines: ...

- Units should cover large geographic areas with common economic, social, and political interests. ...

(Victor Fischer, *Alaska's Constitutional Convention*, p. 118 – 119, (1975).)

This fundamental characteristic of boroughs is reflected in Article X, Section 3 of the Constitution.

SECTION 3. BOROUGHES. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The fourth sentence of Article X, Section 3, which provides that “[e]ach borough shall embrace an area and population with common interests to the maximum degree possible”, is particularly significant with regard to the fundamental characteristic at issue. This sentence, by itself, does not indicate the territorial or socioeconomic scale at which the commonality of interests ought to be evaluated. The minutes of the Alaska Constitutional Convention, however, provide compelling evidence as to the framers’ intent with respect to the character and scope of boroughs. In the following exchange, delegate John Rosswog, Chairman of the Committee on Local Government, responded to a query from delegate John Coghill on January 19, 1956 about the Committee’s

Footnote continued from previous page

a delegate to the Alaska Constitution Convention in 1955-1956. During the convention he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska’s Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research, where he was director for ten years. His current work includes studying Alaska Native and regional governance issues.

intent with respect to the language that each borough shall embrace an area and population with common interests to the maximum degree possible.

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, "Each borough shall embrace, to the maximum extent possible, an area and population with common interests." My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic factors in it -- would they come under one borough?

ROSSWOG: We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the states, the very small units, and they get beyond, or they must be combined or extended.

(Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council p. 2620 - 2621 (1963).)

A nearly identical question arose on the floor of the Convention later that same day. Delegate Barrie White inquired about the Local Government Committee's intent with respect to the term "maximum extent possible." Committee member James Doogan and Committee Chairman John Rosswog responded:

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

(*Id.* p. 2638.)

The following day, January 20, 1956, delegate Katherine Nordale raised the virtually identical question. Vic Fischer, Local Government Committee Secretary responded.

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, "Each borough shall embrace to the maximum extent possible an area and population with common interests." Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area -- I mean the square mile?

V. FISHER: What it means is that wherever possible, "Each borough shall embrace an area and population with common interests.

(*Id.* p. 2711.)

In summary, the constitutional, statutory, and regulatory standards for local governmental boundaries indicate that cities are meant to be local community governments, and boroughs are meant to be regional governments. Indeed, it is difficult to suppose that a city government's boundaries could be consistent with both 3 AAC 110.040(b) and the constitutional and statutory standards for borough boundaries.

4. Both Cities and Boroughs Must Embrace Areas with Common Social, Cultural, and Economic Interests, but the Requisite Degree for Such is Significantly Greater for Cities than Boroughs.

As noted with respect to subpart A-3-a of this section of the decisional statement, each city government must embrace a community. For purposes of the Local Boundary Commission, the term "community" is defined in law. A community is comprised of a discrete area and population with significant common interests concerning social, cultural, economic, and other characteristics."

" A "community" is defined by 3 AAC 110.990(5) to mean a social unit of 25 or more permanent residents as determined by 3 AAC 110.920. A community exists where individuals reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living. Factors such as school enrollment, number of sources of employment,

As noted in subpart A-3-b of this decisional statement, the fourth sentence of Article X, Section 3 of the constitution stipulates that each borough must maximize the area and population, but with the condition that the maximum area and population also have common interests. However, the requirement for maximum area and population necessarily presumes an acceptable level of common interests less than that found at the community level.

The following discussion on the floor of the Constitutional Convention on January 19, 1956 between delegate James Hurley, Local Government Committee Chairman John Rosswog, Local Government Committee member Eldor Lee and delegate John Hellenthal is important in several respects in terms of defining the nature of a borough. It demonstrates that the Local Government Committee had no precise upper or lower limits in mind regarding the geographic size of boroughs. It also stresses the importance of flexibility in setting borough boundaries. Further, the dialogue provides additional evidence that the delegates foresaw, in general terms, relatively large boroughs. Perhaps most importantly, however, the exchange provides insights with respect to the framers' vision concerning the requisite degree of common interests within boroughs.

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socio-economic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

PRESIDENT EGAN: Mr. Lee.

Footnote continued from previous page

voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers are evidence of a community. Further, the law presumes that a population does not constitute a community if public access to or the right to reside at the settlement is restricted, if the population is adjacent to a community and is dependent upon that community for its existence, or if the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Did any of you think that they might ever be greater than the election districts in size?

LEE: If that question is directed to me, we did not give it any consideration because actually we have not made any statement about the size. But in our thinking we didn't consider that thought, but it is certainly very possible.

HELLENTHAL: In other words, that the boundaries of the election districts could possibly be maximums governing the size of the boroughs?

LEE: It is possible. It is up to the legislature to decide.

HELLENTHAL: Would it be desirable to make them minimums?

LEE: That would take away the flexible portion which we wish to keep here.

HELLENTHAL: I gather then you would not desire to make them minimums but probably would have little objection to making them maximum.

LEE: I can't speak for the Committee. I would have no objection, personally.

The framers envisioned that the initial State election districts would be, in many cases, models for future boroughs. As originally adopted, Article VI, Section 6 of Alaska's constitution established the following standards for drawing State House election districts (emphasis added by underlining):¹¹¹

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall

¹¹¹ Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined, deleted text struck through): "Each shall contain a population as near as practicable ~~at least equal~~ to the quotient obtained by dividing the total-civilian population of the state by forty."

contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term "relatively integrated socio-economic area" with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising "relatively integrated" areas. . . "Relatively" means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient. "Relatively" does not mean "minimally," and it does not weaken the constitutional requirement of integration.

The framers' vision that the initial State election districts were, in many cases, models for future boroughs is reinforced by the fact that election district boundaries were used to define prospective boroughs in the 1963 Mandatory Borough Act. As introduced by Representative John L. Rader, the mandatory borough legislation called for the compulsory incorporation of the nine State election districts in Alaska that encompassed independent school districts.¹⁰⁰

The mandatory borough legislation was introduced just four years after Alaska's constitution took effect. The short interval between those two seminal events, in the view of the Commission, is further evidence of the suitability of the early election districts for borough boundaries. Six of the twenty members (30%) of the 1963 Senate had been delegates to the Constitutional Convention.¹⁰¹ Additionally, two members of the 1963 House of Representatives had been Constitutional Convention delegates.¹⁰²

¹⁰⁰ House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs before January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal - Icy Straits Election District;
- (3) Ketchikan - Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer - Wasilla - Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks - Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai - Cook Inlet Election District.

¹⁰¹ The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.

¹⁰² The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.

Moreover, the Commission considers it noteworthy that the use of election districts to define borough boundaries in the 1963 mandatory borough legislation occurred just two years after the Alaska Legislature first adopted statutory standards for incorporation of boroughs. That fact becomes even more significant when it is recognized that 11 of the 20 Senators (55%) and 23 of the 40 Representatives (57.5%) in the 1963 Legislature had held the same elected offices during the 1961 Legislature.^{x1}

While the early State election districts were viewed by the framers to be, in many cases, suitable borough models, the Commission does not take the position that the same is necessarily true today. Social and economic integration remains a fundamental characteristic of election districts for the State of Alaska, however, there have been numerous social, political, and legal developments which have had great influence over the size and configuration of election districts in Alaska. Social changes include a significantly greater concentration of Alaska's population in southcentral Alaska. Political changes include the uniform use of single-member election districts throughout Alaska.^{xii} They also include the enactment of legislation such as the Federal Voting Rights Act which have significantly influenced the configuration of election districts in Alaska. Lastly, judicial rulings have shaped election districts. For example, in *Hickel v. Southeast Conference, id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts:^{xiii}

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority inter se in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

^{x1} The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Biggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor.

^{xii} The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

^{xiii} The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

5. Boroughs Should Generally Include Multiple Communities and Should be Able to Provide Services Efficiently and Effectively.

As noted in subparts A-3 and A-4, city governments are intended to be small governmental units with intense common interests, while boroughs are envisioned as large governmental units with moderate common interests.

Other indications of the intended difference in scale between cities and boroughs also exist. For example, Article X, Section 5 of the constitution allows boroughs to establish service areas. There is no comparable constitutional provision for city governments.^{xiv} In the Commission's view, such reflects the vision that, as relatively large units of government, boroughs require the flexibility to establish service areas to meet the varying needs of particular communities within boroughs.

Another indicator of the framers' vision regarding the relative scale of city and borough governments is found in Article X, Section 7 of Alaska's constitution. That provision reinforces the perspective that boroughs are large units and cities are small units by stating that cities, "shall be part of the borough in which they are located."

On January 20, 1956, delegate Vic Fischer expressed the view that it is 'unimaginable' that a city would be the same size as a borough as reflected in the following exchange.^{xv}

GRAY: Mr. Chairman, I would like to ask the Committee a question. Is it possible under Section 5 that the city council complete would also be complete in the assembly? Is it quite possible?

V. FISCHER: I think that would be possible only if the borough was the same size as the city, or if the legislature provided that the people outside of the city shall have no representation.

GRAY: It could be so?

V. FISCHER: I could not imagine it happening.

^{xiv} The Commission recognizes that AS 29.45.580 authorizes city governments to establish differential property tax zones. In some respects, those are the city equivalent to a borough service area. However, the Commission still considers Article X, Section 5 to be evidence of the intended large scale of boroughs.

^{xv} The dialog was also relevant in terms of original Article X, Section 4 of Alaska's constitution which provided in relevant part that:

Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

The provision was repealed in 1972.

Finally, Article X, Section 13 authorizes cities to transfer, and revoke transfer of city power and functions to the borough in which it is located. There is no similar constitutional provision for transfer of borough powers and duties to cities. This asymmetry is consistent with the notion that boroughs would have broader jurisdiction than cities.

6. The Constitution Encourages a Minimum Number of Boroughs.

Article X, Section 1 of the Constitution of the State of Alaska provides, in part, that “[t]he purpose of this article is to provide for maximum local self-government with a minimum of local government units. . . .”

Vic Fischer indicates that one of the fundamental principles concerning borough formation set forth by the Local Government Committee was that, “units should be large enough to prevent too many subdivisions in Alaska . . .” Victor Fischer, *supra*, p. 119.

The Commission concludes that the creation of boroughs should be limited, not to a specific total number, but by the principle that only the minimum number of governments necessary to provide effective and efficient local self-government should be created.

7. Borough Boundaries Should be Established at the State Level to Reflect State-Wide Considerations as well as Regional Criteria and Local Interests.

Article X, Section 12 of Alaska’s constitution provides for the establishment of the Local Boundary Commission. Of the 116 active State boards and commissions, only the Local Boundary Commission and four others have origins in the constitution.^{xv}

The Alaska Supreme Court observed that the Commission was created to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. Specifically, the Court stated:

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

... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this

^{xv} The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

third party, arguments for and against boundary change can be analyzed objectively.

(Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).)

8. Alaska's Constitution Encourages the Extension of Borough Government; However, All Standards Must be Met and the Commission is not Obligated to Approve Proposals that Only Minimally Meet the Standards.

Article X, Section 1 of Alaska's constitution promotes maximum local self-government which encourages the extension of borough government in areas that satisfy the standards for borough incorporation and annexation. In this regard, the Alaska Supreme Court held as follows:

Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

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

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

(Mobil Oil, supra, at 99.)

However, the Commission stresses that it is prohibited from approving any borough proposal if the application does not meet each applicable standard established in the Constitution of the State of Alaska, Alaska Statutes, and the Alaska Administrative Code. Specifically, Alaska Statute 29.05.100(a) provides as follows:

The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under ... 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

The use of the term "shall" in the third sentence of AS 29.05.100(a) clearly indicates that the Commission must reject any proposal if it does not meet each of the applicable standards, with or without amendments and/or conditions.

While the Supreme Court held in the *Mobil Oil* case that Article X, Section 1 of the constitution should be read to favor upholding of an LBC-approved incorporation whenever the requirements for incorporation have been minimally met, the Court also held in a subsequent case that the Commission is not obligated to approve any minimally acceptable petition. Specifically, the Court stated:

Petitioners' arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt "the most desirable" borough boundaries.

It is difficult to conjecture circumstances under which the Commission would reject a borough proposal if it met each of the applicable standards; however, the Commission clearly has that prerogative. The use of the term "may" in the second sentence of AS 29.05.100(a) leaves no doubt that the Commission has discretion to approve any borough incorporation petition, even if it meets all requisite standards.

9. Boroughs Should not be Prematurely Formed when Local Government Needs Can be met by City Annexation or Incorporation.

Occasionally, communities in the unorganized borough express interest in borough formation, particularly, single-community boroughs, when the expansion of boundaries of an existing city or the incorporation of a new city would be more fitting and would serve the needs of the territory in question.

Appendix B

LOCAL GOVERNMENT IN ALASKA

prepared by Local Boundary Commission Staff
Alaska Department of Community and Economic Development
updated March 2004

Section 1 – Alaska has just two types of municipal government – cities and organized boroughs.

Unlike most other states that typically have local government structures consisting of many overlapping local government service providers, Alaska's system of local government is simple, efficient, and effective. It consists of just two types of municipal government as described below.

A. Cities.

Federal law did not allow the incorporation of city governments in Alaska until 1900. The City of Skagway was the first city government incorporated in Alaska.

A city government is a municipal corporation and political subdivision of the State of Alaska. City governments are subject to the "limitation of community" doctrine. (See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974).) The doctrine requires the area taken into the boundaries of a city to be urban or semi-urban in character.

On average, the corporate boundaries of cities in Alaska encompass just over 27 square miles. However, there are wide variations in the size of individual cities. The City of Skagway encompasses the largest area (466 square miles), while the City of Kiana encompasses the smallest area (0.3 square miles).

Current State law restricts the inclusion of large geographical regions or large unpopulated areas in cities. [3 AAC 110.040(b) - (c); 3 AAC 110.130(c) - (d)]. A city is part of the borough in which it is located. [Art. X, § 7, Ak. Const.]

Presently, there are 145 city governments in Alaska. In 2003, those cities were inhabited by 159,255 individuals or 24.5 percent of Alaska's total population of 648,818.

The 2003 population of cities ranged from a high of 29,486 (City of Fairbanks) to a low of 30 (City of Kupreanof).

B. Organized Boroughs.

Prior to statehood, federal law prohibited the creation of counties in Alaska

Like a city, an organized borough in Alaska is a municipal corporation and political subdivision of the State of Alaska. However, organized boroughs are regional governments – much larger than cities.

Article X, Section 3 of Alaska's Constitution requires that the entire state be divided into boroughs, organized or unorganized. It also requires that each borough embrace a maximum area and population with common interests.

Article X, § 1 of Alaska's Constitution calls for minimum numbers of local governments. Together, Sections 1 and 3 of Article X promote large boroughs embracing natural regions.

Presently, there are 16 organized boroughs in Alaska. On average, organized boroughs encompass just over 17,400 square miles (644 times the average size of cities). Like cities, the size of individual organized boroughs varies considerably. The largest organized borough is the North Slope Borough (94,770 square miles), while the Bristol Bay Borough is the smallest (850 square miles)



In 2003, Alaska's 16 organized boroughs were inhabited by 567,343 individuals, or 87.4 percent of the total population of the state. Of the 567,343 residents of organized boroughs in Alaska, 97,044 (17.1 percent) also lived within a city government during 2003.

Organized boroughs encompass about 43 percent of the geographic area of Alaska. State law provides that the part of Alaska outside organized boroughs comprises a single unorganized borough. As it is presently configured, the unorganized borough encompasses 374,843 square miles. The unorganized borough was inhabited by 81,475 residents in 2003. Additional information about the unorganized borough is provided later in this publication.

Section 2 – Classification of Cities and Boroughs.

A. Cities.

There are three different classifications of city governments in Alaska – home-rule, first-class, and second-class cities. A community must have at least 400 permanent residents to form a home-rule or first-class city.

First and second-class cities are general law cities – State law defines their powers, duties, and functions. General law is distinct from home-rule. Home-rule cities have all legislative powers not prohibited by law or charter. Details about the differences between the two types of government are provided in Section 3.

Table 1 lists the number of cities of each classification and indicates whether those cities are inside or outside an organized borough. The classification and location of cities are significant in terms of the powers and duties of city governments in Alaska as addressed in Section 3.

Table 1
City Governments in Alaska

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	Number of Cities	2003 Population	Number of Cities	2003 Population	Number of Cities	2003 Population
Home-rule Cities	7	60,604	5	12,124	12	72,728
First-class Cities	7	22,068	13	16,733	20	38,801
Second-class Cities	34	14,372	79	33,354	113	47,726
Total	48	97,044	97	62,211	145	159,255

B. Organized Boroughs.

The word "borough" has its origins in 5th century Europe. It means "place organized for local government purposes." A number of countries and a number of states in the US have boroughs; however, they are unlike boroughs in Alaska.

There are five different classifications or types of organized boroughs in Alaska. These are unified home-rule, non-unified home-rule, first-class, second-class, and third-class.¹ First, second, and third-class boroughs are general law governments.

Table 2 lists the number of boroughs according to classification. Details about the distinctions among the different classifications of boroughs are provided in Section 3.

Unified Home-rule	3	314,177
Non-unified Home-rule	6	21,095
First-class	0	0
Second-class	7	232,071
Third-class	0	0
Total	16	567,343

¹ A "unified municipality" is an organized borough (unified home rule borough). A unified municipality is defined as such by the Local Boundary Commission in 3 AAC 110.990(1). Alaska's Constitution recognizes only two types of municipalities, cities and boroughs (Art. X, Sec. 2). The legislature consistently treats unified municipalities as boroughs. For example, State statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Newly formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190; 29.05.210), whereas newly formed cities are entitled to substantially lower levels of organization grants and different transitional assistance. AS 29.06.410 describes the powers of a unified municipality to include all powers granted to a home-rule borough. Additionally, all of the existing unified municipalities in Alaska recognize themselves as boroughs in that each is governed by an assembly. Art. X, Sec. 4 of Alaska's Constitution reserves the term "assembly" for the governing body of a borough, whereas Art. X, Sec. 8 of Alaska's Constitution reserves the term "council" for the governing body of a city. Lastly, none of the unified municipalities exhibits characteristics that are exclusive to city governments.

While the third-class borough classification remains in law, there are no third-class boroughs. Moreover, State law expressly prohibits the formation of new third-class boroughs. Therefore, this publication does not address the powers of a third class borough or other aspects of a third class borough.

Section 3 – Alaska's Cities and Organized Boroughs – both General Law and Home-rule – Enjoy Broad Powers.

A. Provisions Applicable to all Local Governments in Alaska.

Article X of Alaska's Constitution establishes the framework for local government in Alaska. Section 1 of the local government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. *A liberal construction shall be given to the powers of local government units.* (emphasis added)

All local governments in Alaska – general law cities, home-rule cities, general law boroughs, and home-rule boroughs – enjoy broad powers. The Alaska Supreme Court has noted with respect to the constitution provision for a liberal construction of the powers of local government as follows:

The constitutional rule of liberal construction was intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.²

² The rule, called Dillon's rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merriam v. Moody's Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home-rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Helleenthal and Victor Fischer is illustrative:

HELLEENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called "Dillon's Rule", or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the

(Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 [Alaska 1978])

B. General Law Cities and Boroughs.

As noted in Section 2, general law local governments derive their powers from laws enacted by the State legislature. The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature granting powers to general law governments. Among the statutes are the following provisions:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In 1983, the Alaska Supreme Court addressed Article X, Section 1 along with the similar version of the two statutes noted above that was in effect at the time. The Court concluded that a second-class (general law) borough had powers beyond those expressly stated in law. Specifically, the Court concluded that even though State statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was "fairly implied." (*Gilman v. Martin*, 662 P.2d 120, 124 [Alaska 1983])

In reaching its conclusion that a general law government had implied powers, the court cited the irreconcilable conflict rule that it utilized in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974). The court made no distinction as to the deference due to an enactment by a home-rule municipality as compared to an enactment by a general law municipality.

maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

.....

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 - 96.

The application of the irreconcilable conflict rule in *Gilman v. Martin* clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature eliminated the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general law municipalities; i.e., "...any power not otherwise prohibited by law." [AS 29.35.200(a) & (c); 210(c) & (d); 220(d); 250(a); 260(a)]

The statutory grant of powers to general law municipalities has no general limitations such as '...any municipal power' or ...'any local government power' which would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, § 1, *Liberati v. Bristol Bay Borough*, *Gilman v. Martin*, and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of Article X, § 1 reads "A liberal construction shall be given to the powers of local government units" instead of, "A liberal construction shall be given to local government powers." The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a "local government power" as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska's Constitution does not lend itself as easily to such an interpretation and, coupled with the language of the Title 29 grants ("any power not otherwise prohibited by law"), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home-rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general law municipalities.

C. Distinctions Among General Law Boroughs.

A principal distinction between a first-class borough and a second-class borough relates to the authority to assume powers. A first-class borough may exercise any power not prohibited by law on a non-areawide basis (i.e., in the area of the borough outside cities) by adopting an ordinance. In contrast, a second-class borough must gain voter approval for the authority to exercise many non-areawide powers.

D. Home-Rule Cities and Boroughs.

While general law local governments in Alaska have broad powers, home-rule local governments have even greater powers. Article X, Section 11 of Alaska's Constitution provides that:

A home-rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Adoption of a home-rule charter promotes maximum local self-government to the greatest extent possible. Tom Morehouse and Vic Fischer, recognized experts in Alaska local government, wrote the following account of the views of the constitutional convention delegates with regard to this matter:



Committee on Local Government meeting during the Alaska Constitutional Convention,

An oft-repeated theme of the [Alaska Constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. . . . Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political

conditions.

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were

felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, particularly in the case of home rule units. Moreover, a "strong state role" also meant that the state would support local governments with financial aid and technical assistance.

Before Alaska became a state, there was little self-determination either at territorial or local levels. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government that could be established and restricting the powers that could be exercised by incorporated cities. Throughout its deliberations, therefore, the Local Government Committee emphasized the need for effective constitutional provisions for home rule.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, p. 56 [1971].)

In 1963, the Alaska Supreme Court ruled as follows:

By constitutional provision cities have "the powers and functions conferred by law or charter." (footnote omitted) The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provisions stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" and then to say that the power of a home rule city is measured by a legislative act."

(*Lien v. City of Ketchikan*, 383 P.2d 721, 723 [Alaska 1963])

In 1974, the Alaska Supreme Court ruled that the prohibitions referred to in Article X, Section 11 can be either in express or implied terms. Specifically, the Court stated:

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded with weight of law.

(Jefferson v. State, 527 P.2d 37, 43 [Alaska, 1974])

There are 138 sections of the current Alaska Statutes that specifically refer to home-rule local governments. Most of those (106) are found in Title 29 of the Alaska Statutes dealing with municipal government. The remaining 32 are scattered in 20 other titles of the Alaska Statutes.

Section 4. The Duties of Cities and Boroughs Depend Upon Classification. City Duties also vary in terms of Location Within or Outside of Organized Boroughs.

All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond this, the duties of municipalities in Alaska vary considerably.

All organized boroughs as well as home-rule and first-class cities in the unorganized borough must operate municipal school districts. Second-class cities in the unorganized borough and cities in organized boroughs are not authorized to do so.

All organized boroughs, along with home-rule and first-class cities in the unorganized borough must also exercise planning, platting, and land use regulation. Second-class cities in the unorganized borough are permitted, but not required, to exercise those powers. Home-rule, first-class, and second-class cities in organized boroughs may exercise planning, platting, and land use regulation powers only if those powers have been delegated to them by the borough.

Organized boroughs also have the duty to collect municipal property, sales, and use taxes levied within their boundaries.

Otherwise, municipal powers are exercised at the discretion of local governments. Second-class cities are not obligated by law to provide any particular service.

Organized boroughs may provide services on three jurisdictional levels. These are (1) areawide (i.e., throughout the entire borough); (2) nonareawide (i.e., in that part of the borough outside of cities); and (3) service area (the size and configuration of service areas may vary, they may even include territory within the boundaries of city governments under certain circumstances).³

3

"Service area" means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided. Borough service areas are not local governments, service area boards lack legislative and executive powers.

Alaska's Constitution (Article X, § 5) and Alaska Statutes (AS 29.35.450) prohibit the creation of new service areas if services can be provided by an existing service area, annexation to a city, or incorporation of a new city.

Tables 3 and 4 provide additional information concerning the powers and duties of the various types of cities and boroughs.

Section 5 – The Unorganized Borough is Unlike an Organized Borough.

Unlike cities and organized boroughs, the unorganized borough is not a municipal corporation or political subdivision of the State of Alaska.

Unorganized boroughs were intended to serve as a means to decentralize State services and to foster local participation in the administration of state programs within regions not ready or suited for organized borough status.

Art. X, § 6 of Alaska's Constitution stipulates that, "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough."

To ostensibly carry out the constitutional mandate that the entire state be divided into boroughs, organized or unorganized, the 1961 Legislature enacted a law providing that all areas not within the boundaries of an organized borough constitute a single unorganized borough. (AS 29.03.010)

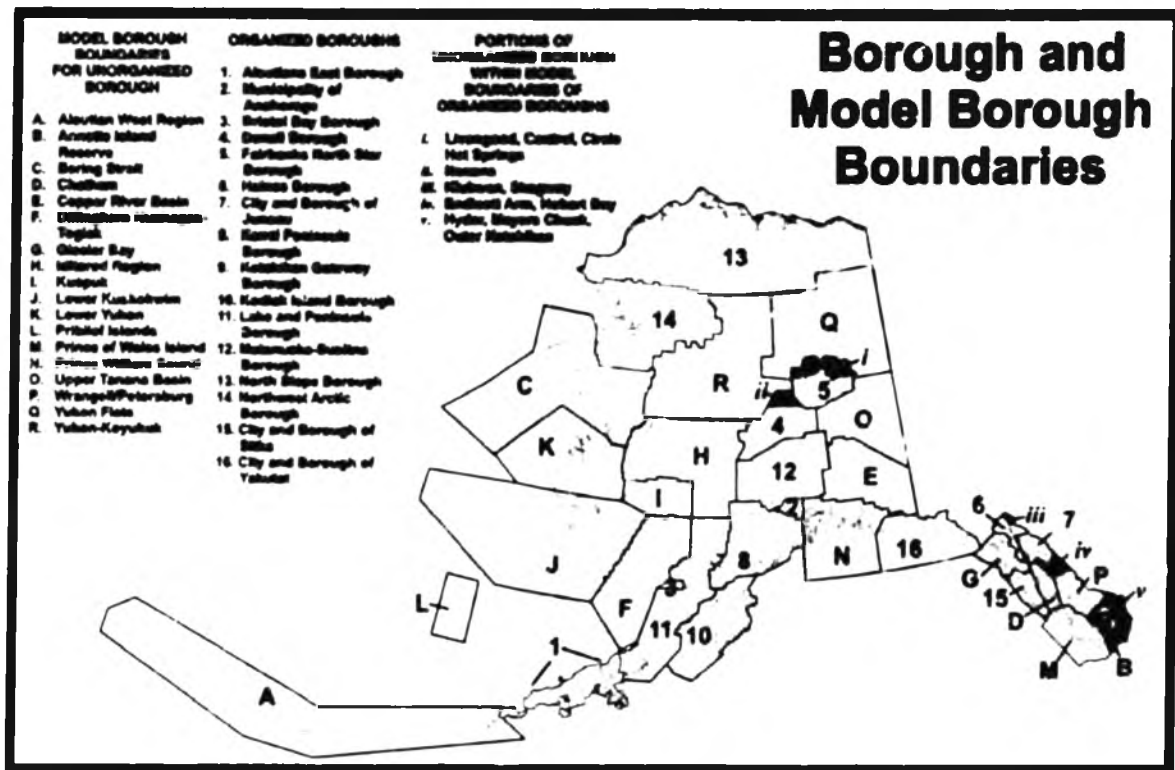
The Local Boundary Commission has stressed repeatedly over many years that, given the size and diversity of unorganized areas of Alaska, a single, residual unorganized borough falls far short of the constitutional intent regarding borough boundaries.⁴ In 1990, the Commission initiated an effort to define the unorganized borough in terms of model boundaries based on constitutional, statutory, and regulatory boundary standards for borough incorporation. The Commission's work was completed at the end of 1992.

⁴ Most recently, the LBC recently expressed the view that the 1961 law creating the single residual unorganized borough, "disregarded the constitutional requirement that each borough must embrace an area of common interests." , Local Boundary Commission and Department of Education and Early Development, *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, February 2004, p. 30.

Funding for the project was provided by the Legislature. In the course of the effort, the LBC held hearings involving 88 communities. Since 1992, the model borough boundaries have been modified twice.⁵

Currently, 18 different model boroughs are defined in the unorganized borough. In addition, the Commission identified five parts of the unorganized borough that have greater social, cultural, economic, geographic, transportation, and other relevant ties to existing organized boroughs vis-à-vis any of the 18 model boroughs in the unorganized borough.

A map showing the 16 organized boroughs, 18 model boroughs, and 5 parts of the unorganized borough with ties to organized boroughs is provided below.



The legislature has enacted two key provisions to allow for local participation and responsibility in the delivery of State services in the unorganized borough. These are described below.

5

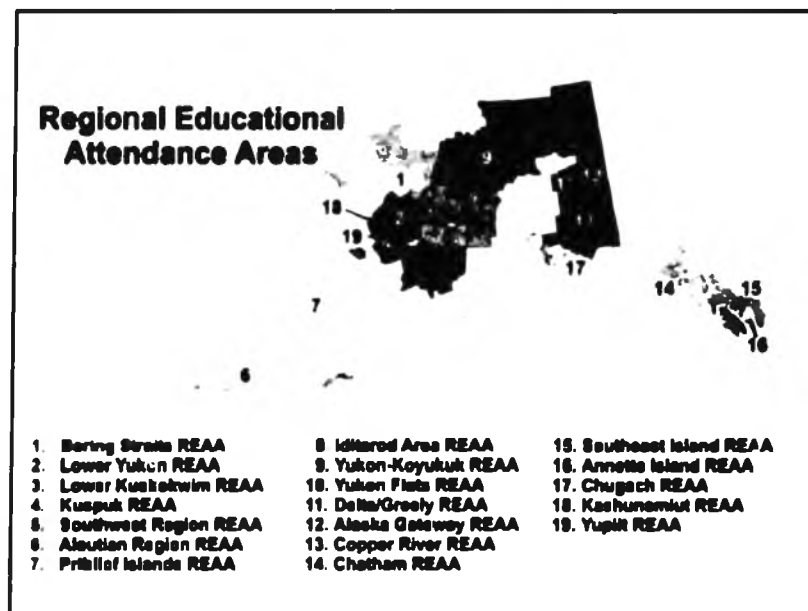
The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former "Aleutian-Military Model Borough" into the "Aleutians West Region Model Borough" in December 2002, during the course of a study of the unorganized borough. (See: Local Boundary Commission, Unorganized Areas of Alaska that Meet Borough Incorporation Standards, February 2003, p. 69.)

Regional educational attendance areas (REAs) are state service areas to provide public education to the unorganized borough, except within home-rule and first-class cities. The 1975 legislature required the then Department of Community and Regional Affairs, in consultation with the then Department of Education and local communities, to divide the unorganized borough into educational service areas. The criteria used to establish the boundaries of REAs are similar in many respects to the criteria for setting boundaries of organized boroughs. [AS 14.08.031] In a number of instances, the model borough boundaries set by the Local Boundary Commission in 1990-1992 follow the boundaries of REAs.

Initially, 21 REAs were established. These were: Adak, Alaska Gateway (headquartered in Tok), Aleutian Region, Annette Island, Bering Straits, Chatham (headquartered in Angoon), Chugach (serving Prince William Sound), Copper River, Delta/Greely, Iditarod Area, Kuspuuk, Lake and Peninsula, Lower Kuskokwim, Lower Yukon, Northwest Arctic, Pribilof Islands, Railbelt, Southeast Island, Southwest Region, Yukon Flats, and Yukon-Koyukuk.

In 1985, Bureau of Indian Affairs stopped funding schools in Akiachak, Akiak, Tuluksak, Chevak and Cheformak. The 1985 Legislature passed a law allowing the formation of two "federal transfer regional educational attendance areas" to assume the operation of those schools, subject to voter approval.

Voters in Chevak approved the proposition to form the Kashunamiut Federal Transfer REAA. Voters in the other communities, except Cheformak, also approved the proposition to form the Yupiit Federal Transfer REAA.



Since the mid-1970s, five organized boroughs have formed. The formation of the Northwest Arctic Borough, Lake and Peninsula Borough and Denali Borough, resulted in the dissolution of the REAAs in those areas.

In the case of the other two new boroughs, the Aleutians East Borough and the City and Borough of Yakutat took in only portions of the REAAs in those regions. Thus, in those two instances, the REAAs remained in existence.

On July 1, 1997, the Adak REAA was merged into the Aleutian Region REAA.

Coastal resource service areas (CRSAs) are unorganized borough service areas that were created to perform certain duties under the Alaska Coastal Management Program (AS 46.40.110 - 46.40.180). In 2003, AS 46.40.110 was enacted to prohibit the formation of new CRSAs. A CRSA develops a coastal management plan for the area within its boundaries. A CRSA gives a region the opportunity to influence the management of coastal resources by recommending conditions on consistency determinations based on a CRSA's coastal management plan. The State may implement the plan through the State permitting process.

There are four CRSAs in the unorganized borough. They are the Bristol Bay CRSA, the Aleutians West CRSA, the Cenaliulriit CRSA and the Bering Straits CRSA.

The Bristol Bay CRSA conforms to the boundaries of the Southwest Region REAA and includes the first-class City of Dillingham.

The Aleutians West CRSA generally has the same boundaries as the Aleutian Region REAA and includes the first-class City of Unalaska. However, Adak, which was merged into the Aleutian Region REAA on July 1, 1997, has not yet been incorporated into the Aleutians West CRSA.

The Cenaliulriit CRSA generally encompasses two REAAs (Lower Yukon and Lower Kuskokwim) and two Federal Transfer REAAs (Kashunamiut and Yupiit) REAAs. The Cenaliulriit CRSA excludes the second-class City of Bethel.

The Bering Straits CRSA conforms to the boundaries of the Bering Straits REAA. The first-class City of Nome is excluded from that CRSA.

Salmon Production Regional Associations.

AS 16.10.380 provides that a qualified salmon production regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area

in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

Other Service Areas in the Unorganized Borough.

AS 29.03.020 provides that the legislature may establish, eliminate, or change service areas of the unorganized borough. Specifically, it provides that:

Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, that may include but are not limited to schools, utilities, land use regulations, and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

Other Entities

Other entities may be established under State or federal law to provide public or quasi-public services to residents of Alaska. They include; tribal governments, port authorities, local emergency planning committees, soil and water conservation districts, regional housing authorities, civil defense districts, consolidated health districts, telephone and electrical cooperatives, historical districts, grazing districts, public utility districts, registration districts and local improvement districts. It is beyond the scope of this discussion to provide details about these other entities other than to recognize their existence.

TABLE 1
POWERS AND DUTIES OF CITY

Public Education	If the city is in the unorganized borough it must provide the service in accordance with AS 14. A home-rule city is not permitted to do so within organized boroughs.	Same as for a home-rule city.	The city is not allowed to provide the service under any circumstance.	AS 29.35.260(b) AS 14.12.010 AS 14.12.025
Planning, Platting & Land Use Regulation	If the city is in the unorganized borough, it must exercise the powers. If it is in an organized borough, it may be permitted by borough to exercise the powers.	Same as for a home-rule city, except the power must be exercised in accordance with AS 29.40.	The city is not required to exercise the powers in any circumstance, but may be permitted in all cases in the manner described for first-class cities.	AS 29.35.250(c) AS 29.35.260(c)
Property Tax	The city may tax up to 30 mills, except where a higher levy is necessary to avoid default on debt. Some home-rule charters require voter approval to authorize the levy property taxes.	The city may tax up to 30 mills except where a higher levy is necessary to avoid default on debt. Voter approval is not required under State law, however, some general law municipal governments have more restrictive limitations imposed at the local level.	The city may tax up to 20 mills, except where a higher levy is required to avoid default. Voter approval is required.	AS 29.45.550- AS 29.45.590;
Sales Tax	The rate of levy may be limited by charter. Requirements for voter approval may also be set by charter	There is no limit on the rate of levy of sales taxes; however, voter approval is required.	Same as for a first-class city.	AS 29.45.700
Other Powers	Possess all legislative powers not prohibited by law or charter	May exercise other powers not prohibited by law	May exercise other powers not prohibited by law	Art. X, § 11 Ak. Const., AS 29.35.250
City Council composition and apportionment	Determined by charter or ordinance.	6 members elected at-large, except the council may provide for election other than at-large.	7 members elected at-large, except the council may provide for election other than at-large.	AS 29.20.130
Election and Term of Mayor	Determined by charter or ordinance.	Elected at large for a 3-year term, unless a different term not to exceed 4 years is provided by ordinance.	Elected from the city council for a 1-year term, unless a longer term is provided by ordinance. Mayor is selected by council (or by voters upon adoption of ordinance)	AS 29.20.230 AS 29.20.240

Table continued on next page

Vote by Mayor	Determined by charter or ordinance.	May vote to break a tie vote on the city council.	Votes on all matters.	AS 29.20.250
Veto Power of the Mayor	Determined by charter or ordinance, except veto is not permitted of ordinance prohibiting possession of alcohol.	Has veto power with the same exception noted for home-rule cities.	Has no veto power.	AS 29.20.270
Power of Eminent Domain	Permitted by statute.	Permitted by statute.	Permitted, but requires voter approval.	AS 29.35.030
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	May not adopt home-rule charter without first reclassifying to a first-class city.	AS 29.10.010

Public Education	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home-rule borough.	Same as for a home-rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries.	Same as for a first-class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance.	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval.
Hazardous Substance Control	Determined by charter or ordinance.	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance.	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval.

Table continued on next page

TABLE 4 - Continued
 POWERS AND DUTIES OF ORGANIZED BOROUGHES

	Home-Rule Borough	First-Class Borough	Second-Class Borough
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters	Same as home-rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first-class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first-class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home-rule borough.	Same as for a home-rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first-class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first-class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first-class borough.
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	Same as for a first-class borough.

POPULATION CHARACTERISTICS OF MUNICIPAL GOVERNMENTS IN ALASKA

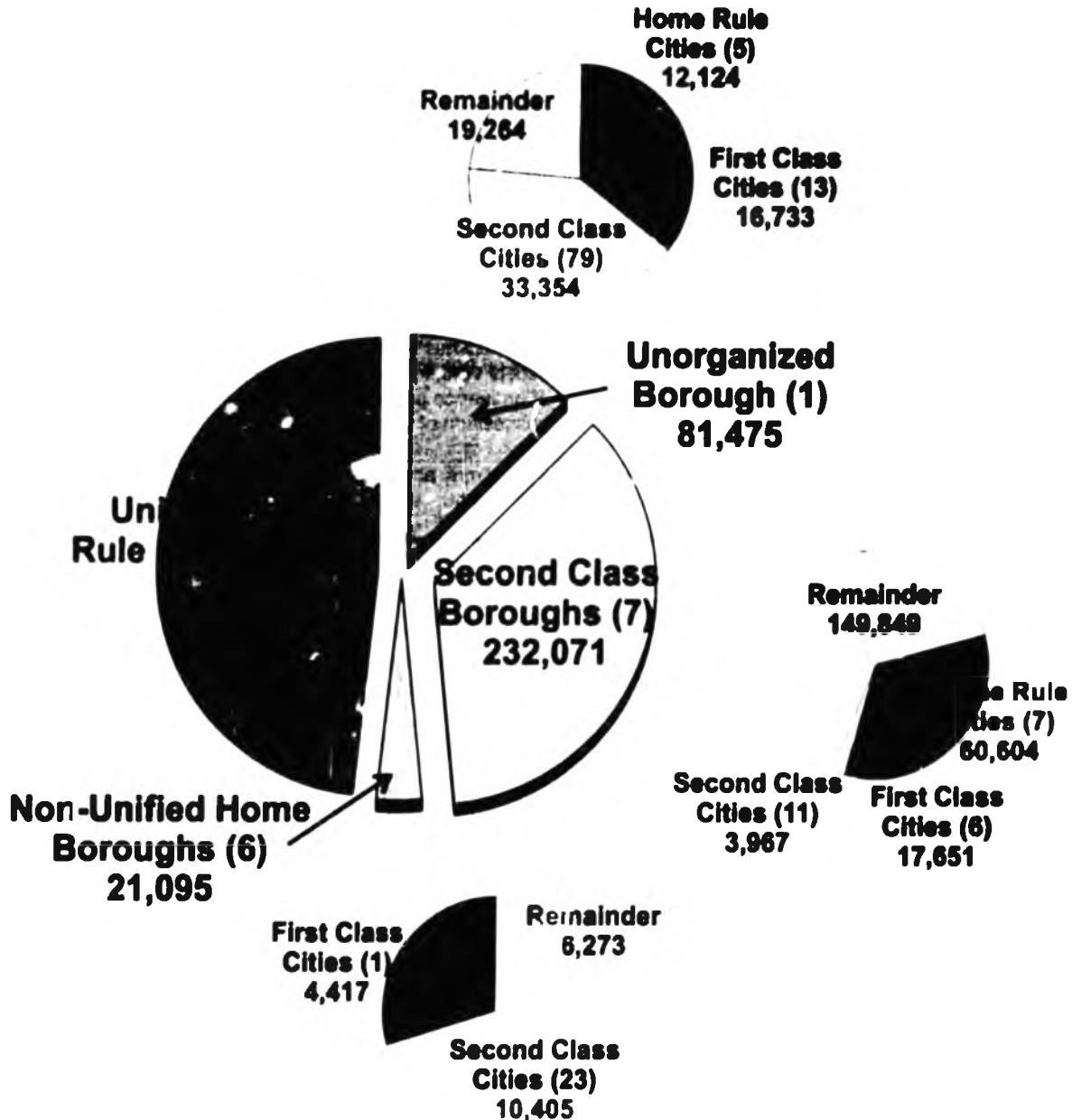
(based on July 1, 2003 population figures)

97.0 percent of Alaskans live in at least one municipal government; the remaining 3.0 percent live outside a municipal government

87.4 percent of Alaskans live within organized boroughs; the remaining 12.6 percent live in the unorganized borough

82.9 percent of organized borough residents receive municipal services exclusively from their borough; the remaining 17.1 percent receive municipal services from their city government and their borough.

91.9 percent of Alaskans live in municipal school districts (organized boroughs and home rule and first class cities in the unorganized borough); the remaining 8.1 percent of Alaskans live in regional educational attendance areas



Appendix C

2006 Overview of Boroughs in Alaska

I. History of Borough Formation

Year	Action Comments	2005 Population	Area (land & water)
1962	Bristol Bay Borough (BBB) incorporated. Many, beginning with Alaska Secretary of State Hugh Wade in 1962, have been highly critical of BBB's incorporation because it fails to embrace a large natural region. Vic Fischer called it a "gross error."	1,073	707 square miles
1963	Ketchikan Gateway Borough incorporated under 1963 mandate from Legislature.	13,125	1,749 sq. mi.
1963	Greater Juneau Borough incorporated under 1963 mandate from Legislature.	31,193	3,231 sq. mi.
1963	Greater Sitka Area Borough incorporated under 1963 mandate from Legislature.	8,947	4,200 sq. mi.
1963	Kodiak Island Borough incorporated under 1963 mandate from Legislature.	13,638	11,470 sq. mi.
1964	Greater Anchorage Area Borough incorporated under 1963 mandate from Legislature.	278,241	1,942 sq. mi.
1964	Matanuska-Susitna Borough incorporated under 1963 mandate from Legislature.	74,041	25,196 sq. mi.
1964	Kenai Peninsula Borough incorporated under 1963 mandate from Legislature.	51,224	19,819 sq. mi.
1964	Fairbanks North Star Borough incorporated under 1963 mandate from Legislature.	87,650	7,469 sq. mi.
1968	Haines Borough incorporated. History of incorporation is complex; State cut off school funding; voters rejected borough formation 3 times; voters approved 4 th proposal after legislature created new class of borough; legislature repealed that class of borough in 1985.	2,207	2,733 sq. mi.
1972	North Slope Borough incorporated	6,894	94,383 sq. mi.
1986	Northwest Arctic Borough incorporated after Red Dog mine site was detached from North Slope Borough	7,323	38,621 sq. mi.
1987	Aleutians East Borough incorporated.	2,659	13,530 sq. mi.

Table continued on next page

Table continued from previous page

Year	Action Comments	2005 Population	Area (land & water)
1989	Lake and Peninsula Borough. Incorporation was initiated after Aleutians East Borough and Kodiak Island Borough annexed parts of the region. The L&P Borough surrounds the BBB on three sides and has its borough seat in the BBB.	1,620	28,832 sq. mi.
1990	Denali Borough. Incorporation was initiated to thwart annexation by the Matanuska-Susitna Borough.	1,823	12,687 sq. mi.
1992	City and Borough of Yakutat. This borough was formed against the recommendation of the Department; not all members of the LBC voted in favor of it.	619	9,044 sq. mi.

II. Borough Actions Currently Pending

Action Comments	2005 Population	Area (land & water)
Deltana Borough incorporation petition is currently pending. The Department's November 2006 preliminary report recommends that the LBC approve incorporation.	4,148	5,892 square miles
Skagway Borough incorporation proposal is pending. In 2002, the LBC unanimously rejected this proposal. The matter was remanded to the LBC. The proposal would convert an existing city government into a borough government, with no increase in population, area served, or powers and duties. Although Skagway operates a city school district, borough formation would convert it into a borough school district. AS 14.12.025 prohibits new schools districts with fewer than 250 students unless best interests of State and district are served. Skagway has approximately 100 students and faces declining enrollment.	834	443 sq. miles
Wrangell Borough incorporation petition is currently pending. Virtually all of the students of the proposed borough currently attend school in the City of Wrangell School District. The Wrangell proposal partially overlaps the pending Ketchikan Borough annexation proposal	2,445	3,465
The Ketchikan Gateway Borough has filed a petition for annexation.	25	4,701 square miles
Petersburg city officials and other residents are currently drafting a petition to incorporate a borough. Virtually all of the students of the proposed borough currently attend school in the City of Petersburg School District.	3,200	NA

Table continued on next page

Table continued from previous page

Action Comments	2005 Population	Area (land & water)
Angoon, Kake, Pelican, Elfin Cove, Tenakee Springs, and Gustavus are conducting a feasibility study regarding borough incorporation.	2,700 (est.)	
Middle Kuskokwim area residents (Aniak and neighboring communities) are conducting a borough feasibility study. This area encompasses the Donlin Creek mine site.	1,500 (est.)	11,440 sq. mi
Prince William Sound residents in Cordova and Whittier have expressed interest in a Prince William Sound borough; but Valdez has expressed opposition to being included in such a borough.	6,300 (est.)	17,100 sq. mi
Eagle River – Chugiak is being examined in terms of fiscal viability of detachment from the Municipality of Anchorage and formation of an Eagle River – Chugiak Borough	30,000 (est.)	750 sq. mi. (est.)
Yukon Flats is the subject of a just-completed feasibility study. The study concludes that a borough is feasible.	1,300 (est.)	50,000 sq. mi
Ekwook officials have recently expressed interest in forming an Ekwook-only Borough.	118	NA
Kake officials have recently expressed interest in forming a Kake only borough.	598	NA

III. General Information

Less than half the state lies within organized boroughs. Alaska has sixteen organized boroughs, which encompass 43% of the geographic area of the state and 88% of all Alaskans.

Our Constitution requires the entire state to be divided into boroughs. Boroughs may be organized or unorganized. The framers of our Constitution envisioned that those areas with the fiscal and administrative capacity to operate boroughs would form organized boroughs.

96% of Residents of Organized Boroughs Live in Boroughs Mandated by 1963 Legislature and Signed into Law by Governor Egan. The framers of our Constitution hoped that boroughs would be formed voluntarily. They recognized, however, that if areas with the capacity to operate boroughs did not incorporate voluntarily, the State could compel areas to incorporate. The vast majority (96%) of organized borough residents in Alaska live in boroughs that were mandated to be formed by an act passed by the 1963 Legislature and signed into law by Governor Egan.

Obstacles impede borough development in Alaska. Chief among the impediments are anti-borough sentiments reflecting:

- perceived loss of autonomy under borough formation;
- perception that boroughs are a new layer of government and taxation;
- desire among unorganized borough residents outside of home-rule and first-class cities to preserve their freedom from obligation to support schools;
- feeling of entitlement by younger voters who grew up in unorganized borough.

A number of areas in the unorganized borough have the capacity to operate boroughs, but choose not to organize. Today, an estimated 374,843 square miles, 57 percent of the total area of Alaska, lie outside organized boroughs. Many of those regions have been found to have the capacity to operate boroughs, but incentives for voluntary borough formation are lacking.

Interest in small or single-community boroughs abounds among the more prosperous communities in the unorganized borough. The Constitution calls for minimum numbers of boroughs (Article X, Section 1) and boroughs that embrace natural regions (Article X, Section 3). The framers of our Constitution clearly envisioned that boroughs would be intermediate-sized governments – smaller than the state but larger than a city. A number of communities in the unorganized borough are promoting single community borough governments. The situation is reminiscent of the scenario under which Secretary Wade and Vic Fischer objected to the formation of the first borough, the Bristol Bay Borough, forty-four years ago.

While establishment of regional boroughs is a difficult challenge, the potential benefits of such are substantial.

Governor Egan, in remarks to the Legislature on January 26, 1960, stated

“It has been said that the local government provisions of our constitution are based on ideals that may be difficult to achieve. This may be true. But there is nothing wrong in reaching high and working hard for something that will be better than what we have today. Given the real desire to create workable boroughs, and given the necessary time and effort, I am sure that we will achieve that better form of local government that is possible through the Constitution.”

The benefits of borough government include the following:

- economic development (every borough engages successfully in economic development activities; boroughs have the capacity to issue bonds, thereby leveraging State and federal funding; boroughs can promote economic development through better decisions regarding infrastructure, land use, and job-training initiatives than what is currently offered through State and federal agencies far removed from the problems of the region;
- transfer lands from the State ownership to local ownership (through municipal land grant entitlements);
- local responsibility and accountability (as Governor Egan stated in his 1963 State-of-the-State Address, "Local government problems continue to be the subject of deep and understandable concern. Many areas need improved school systems, sanitation, fire protection, planning and zoning, water and flood control, community water and sewer systems. Organized boroughs can provide these services.");
- stable administrative capacity (there are approximately 180 communities in the unorganized borough. Sixty percent of them have fewer than 300 residents. Only 7 percent have more than 1,000 residents. It is extremely difficult for the smaller communities to maintain a stable and capable administrative capacity);
- capacity to supplement State aid for schools;
- consolidation of small school districts;
- regional control of alcohol and other substances;
- a proper role for State government (rather than a provider of local services);
- promotion of equity and fairness to 88 percent of Alaskans who currently live in organized boroughs.

Appendix D

Powers and Duties of Organized Boroughs

Power	Unified Municipality and Home Rule Borough	First Class Borough	Second Class Borough
Public Education (education powers have been broadly interpreted by the Ak Dept of Law)	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home rule borough.	Same as for a home rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval

Table continued on next page

Table continued from previous page

	Unified Municipality and Home Rule Borough	First Class Borough	Second Class Borough
	Limited to 30 mills except to levy property taxes is required by some charters	Same as home rule except authority established by local action.	
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home rule borough.	Same as for a home rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first class borough.
Ability to Attain Home Rule Status	Already has home rule status	Voters may adopt home rule charter.	Same as for a first class borough.

Appendix E

July 9, 1962, Memorandum From Hugh J. Wade to William A. Egan

MEMORANDUM State of Alaska

TO: Governor William A. Egan

DATE : July 9, 1962

FROM: Hugh J. Wade, Secretary of State SUBJECT: Incorporation of Bristol Bay
borough

This is a matter which I had intended to call to your attention before I left on my trip with the Task Force. The attached notice, copy of which may have been made available to you, reached me while I was away. I have been following the proceedings in connection with the hearings on this proposed borough and have discussed from time to time the proposed action with the Local Affairs Agency. The proposed borough just doesn't make sense to me. In fact, its defects were so obvious to me that I felt that the Boundary Commission would never approve it. I was mistaken, and apparently after hearings in Dillingham, Naknek, and King Salmon the Boundary Commission followed the recommendation of the Local Affairs Agency and reduced the area of the borough even smaller than it was originally proposed, and now we are confronted with holding an election in the area embraced within the proposed boundaries for this borough and undoubtedly it will be favorably voted upon.

My objection to the proposed borough, of course, is that it takes the principal tax resources in the area and makes that tax resource available only to a limited number of people--less than 600 I believe--to the exclusion of all other people in the Bay area. They even excluded from the area the Village of Levelock which is only a few miles north of the boundary line. Carl Nunn of Dillingham, when he was in Juneau a few months ago, was protesting the proposed borough and then when the hearing was held in Dillingham he apparently appeared on behalf of the Chamber of Commerce and objected to the establishment of the borough, but I notice from the findings of fact report of the Local Affairs Agency that his testimony was disregarded and the protest of that community passed over very lightly. When I was in Dillingham with the Task Force, Mr. Nunn again questioned me about the proposed borough, and when I asked him if he had received a copy of the Local Affairs Agency's report and recommendation to the Boundary Commission, he said he had not. In fact he expressed great surprise to learn that the report had already been made to approve the borough. Just yesterday I asked Mr. Pegues if it were true that the attached report was not sent to Dillingham, and he confirmed the fact, but stated that he would mail them a copy right away.

-2-

I know the Local Affairs Agency is very anxious to establish a borough and I, too, am anxious to get a start in establishing them throughout the State, but I just can't help but feel that this will get us off to a poor start. It is bound to be met with great resistance in the Bristol Bay area, and in my opinion it is fundamentally wrong to allow this relatively small area to grab this rich tax resource and set up a borough government which will be financed entirely by the tax revenue from the raw fish packed by the canneries at Naknek. Local people will not be required to contribute in any way to a local government, and when the other areas in Bristol Bay start looking for some sort of a tax base to establish local government, they are going to find that this relatively small area has taken all of the rich tax resource for the benefit of a relatively few people.

I am required under Chapter 146 of SLA 1961 to order an election to be held in the area of the proposed borough, and according to this law I have 30 days to call the election and it must be held within 90 days after the date I issue the order of election. The notice was received in my office on June 18, and it would appear, therefore, that the election would have to be held sometime before the 18th of October. It is my understanding that the Local Affairs Agency is urging that the election be held early in September. Personally, I am disposed to take the full time allowed me under the law for fixing the date of the election, because I think that the people in that area should be given all time possible to take whatever action they may now take at this late date to enjoin creation of this borough.

It is difficult for me to conceive of a borough established in the Bristol Bay area that did not include the community of Dillingham and the other villages in that area that are now excluded from this proposed borough.

HJW/w

Index

A

Ahtna 70
Ahtna, Inc. 41
Angoon 47
Aniak 49
Article X, Section 11 14
Article X, Section 12 1, 3
Article X, Section 14 8
Association of Village Council
Presidents 59
AVCP 59
AVCP-Calista 59

B

Barrick Gold Corporation 49
Beaver 57
Bethel 59
Big Delta 42
Big Lake 16
Birch Creek 57

C

Calista 59
Calista Corporation 49
Chatham REAA 63
City and Borough of Juneau 66, 74
Cooper Landing 69
Copper River Basin 40
Copper River REAA 41
Copper Valley Economic Development
Corporation 41
Cordova 52
Council of Athabascan Tribal Governments
56
Crooked Creek 59

D

Delta-Greely REAA 42
Delta-Greely Region 42
Delta Greely REAA 41
Deltana 42
Deltana Borough 42
Denali Borough 70
Department of Education and Early
Development 3
Dillingham Census Area 44
Donlin Creek 50, 59

E

Eagle River - Chugiak 45
Ekwok 44

F

Fairbanks 4, 77
Fairbanks North Star Borough 4, 56
Fairview Public Utility District No. 1 v.
City of Anchorage 1
Fort Greely 42
Fort Yukon 56

G

Glacier Bay 47
Glacier Bay-Chatham region 47
Glennallen 40
Greater Nenana territory 46
Greens Creek Mine 74
Gustavus 47
Gwichyaa Zhee Gwich'in Tribal
Council 56

H

Haines Borough 63, 69
 Healy 17
 Healy Lake 42
 Homer 24, 75
 Hoonah 47
 Hope 68
 Horseshoe Lake 17
 Houston 39
 Hyder 60, 64

I

Igiugig 18
 Iliamna 44

J**K**

Kachemak 75
 Kachemak Emergency Service Area 24
 Kake 47, 49
 Keane v. Local Boundary
 Commission 4
 Kenai Peninsula Borough 68
 KESA 24
 Ketchikan 78
 Ketchikan Charter Commission 78
 Ketchikan Gateway
 Borough 60, 64, 78
 King Cove 26
 Klawock 27
 Klukwan 63
 Kupreanof 51
 Kuspuk REAA 60
 Kuspuk Regional Education
 Attendance Area 49

L

Lake and Peninsula Borough v. Local
 Boundary Commission 4
 Levelock 19
 Little Nelchina 71
 Lower Kuskokwim REAA 60
 Lower Yukon REAA, Kashunamiut
 Federal Transfer REAA 60

M

Manley 46, 58
 Matanuska-Susitna Borough 4, 70, 71
 Matanuska-Susitna Borough v. Hammond
 4
 Meyers Chuck 60, 64
 Middle Kuskokwim 59
 Middle Kuskokwim region 49
 Minchumina 46, 58
 Minto 46, 58
 Mobil Oil Corp. v. Local Boundary
 Commission 4
 Municipality of Anchorage 4, 45, 72

N

Naukati 20
 Nenana 46, 58
 Northern Dynasty Mines, Inc 44
 North Pole 35

O**P**

Palmer 28
 Pebble 44
 Pelican 47
 Petersburg 32, 50, 61
 Pogo Mine 42
 Prince William Sound 40, 52

Q**R**

Rampart 46, 58
 Regulations 81
 Rose v. Commercial Fisheries Entry
 Comm'n 4

S

Scammon Bay 49
Seldovia 35
Skagway 53, 56
Soldotna 36
St. Mary's 60
Stosh's I/M v. Fairbanks North Star
Borough 4
Stosh's I/M v. Fairbanks North Star
Borough 4
Swanson Harbor 69

T

Tanana 38, 46, 58
Tenakee Springs 47
The Kuskokwim Corporation 49

U

Union Ba 61

V

Valdez 40, 56
Venetie 57

W

Wasilla 37
Whitestone 42
Whittier 52
Wrangell 60

X

Y

Yukon Koyukok 58

Yukon-Kuskokwim Delta 59

Yukon Flats 56

Yupit Federal Transfer REAA 60

Z