

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8818 SENATE COMMUNITY & REGIONAL AFFAIRS

CHAPTER I

OVERVIEW OF THE COMMISSION AND ITS PROCEDURES

This chapter provides information concerning the Local Boundary Commission. Included is background about the purpose of the Commission and the supporting role of the Department of Community & Regional Affairs. Details of the procedures used by the Commission are also provided.

Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

- ➔ incorporation of cities and boroughs;
- ➔ annexation to cities and boroughs;
- ➔ detachment from cities and boroughs;
- ➔ dissolution of cities and boroughs;
- ➔ merger and consolidation of cities and boroughs; and
- ➔ reclassification of cities.¹

The Local Boundary Commission was established to serve as an impartial body to review proposals from a statewide perspective. In the words of the Alaska Supreme Court:

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

¹ See AS 29.05; AS 29.06 and AS 44.47

*state level. The advantage of the method proposed, in the words of the committee: "... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."*²



Commission prepares to embark for a hearing

Among the 130 or so State boards and commissions, only the Local Boundary

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

Commission and for others have origins in Alaska's Constitution.³

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues.⁴ More than two decades ago (and again in 1993), the Alaska Supreme Court remarked that:

"...The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."⁵

Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation.

Appointments to the Commission are made, *"...on the basis of interest in public affairs, good judgment, knowledge and ability in the field...and with a view to providing diversity*

³ The Local Boundary Commission was established pursuant to Article X, § 12 of the Alaska Constitution and AS 44.47.565. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct and Reapportionment Board.

⁴ Readers are encouraged to review the discussion of the prospective proposal for detachment of Lake Louise from the Matanuska-Susitna Borough as an example of fundamental statewide policy issues with which the Commission deals.

⁵ Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232 (Alaska 1993)

*of interest and points of view in the membership."*⁶ A biographical sketch of each of the current Commissioners follows.

Darroll Hargraves, Chairperson.



Commissioner Hargraves is a resident of Ketchikan. He joined the Commission in March 1991 and became Chairperson in May 1992. Commissioner Hargraves has been a school superintendent in Ketchikan and Nome and has taught school in Barrow, Kivalina and Gambell. He has also been an administrator at the University of Alaska, Fairbanks. Mr. Hargraves presently works as a communications and management consultant. His current term on the Commission expires January 31, 1997.

Frances Hallgren, 1st Judicial District.



Commissioner Hallgren lives in Sitka. She joined the Commission in May 1992. She works as a legal secretary and operates a home custom sewing business. She holds a degree in music education and has held an Alaska Teaching Certificate. Her current term ends January 31, 1996.

Myrtle Johnson, Vice-Chairperson and member from the 2nd Judicial District.



Commissioner Johnson began her current term on the Commission in March 1991. She served on the Commission

⁶ AS 39.05.060

previously under Governor Miller. Ms. Johnson lives in Nome and works at the Nome Senior Citizens Center. She and her spouse also fish commercially for salmon and herring in Bristol Bay. Additionally, they operate a gold mine near Granite Mountain, 200 miles northeast of Nome. Ms. Johnson was elected Vice-Chairperson of the Commission in August of 1994. Her current term on the Commission expires January 31, 1999.

H. Toni Salmeier, 3rd Judicial District.



Commissioner Salmeier joined the Commission in April 1993. She is a resident of Anchorage. Ms. Salmeier owns and operates a small business serving tourists on remote fishing and hunting trips.

She also manages real estate. Ms. Salmeier has served on a number of community boards, including the Anchorage Zoning Board of Appeals. Her present term on the Commission ends January 31, 1998.

Dr. Hugh Fate, Jr., 4th Judicial District.



Commissioner Fate was appointed to the Commission in March 1994. Dr. Fate is a semi-retired dentist who lives in Fairbanks. He has an extensive record of public service, including some 16 years as a member of the

University of Alaska Board of Regents. His current term on the Commission expires January 31, 1995.

Staff to the Commission

The Alaska Department of Community and Regional Affairs (DCRA), Municipal and Regional Assistance Division (MRAD) provides staff to the Commission. The Commission's staff analyzes petitions to the Commission and prepares reports conveying DCRA's recommendations for action by the Commission. DCRA also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations and reclassifications. DCRA maintains corporate boundary records for the 165 current municipal governments in Alaska.

The Commission and DCRA are independent concerning policy issues. In other words, the Commission is free to act in a manner other than that recommended by DCRA.

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 to the position of interested parties.

The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the

Commission. A summary of the procedures follows.

Preparation and filing of the Petition. DCRA offers technical assistance, sample materials and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of a particular proposal.

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

Public notice and public review. Once a petition is accepted for filing, extensive public notice of the filing of the petition is given. Interested parties are given at least seven weeks to submit responsive briefs and comments in support of or in opposition to a petition. The petitioner is then given at least two weeks to file one brief in reply to all the responsive briefs.

Analysis. Following the public comment period, DCRA analyzes the petition, responsive briefs, written comments, reply brief and other materials as part of its investigation. Informational meetings may be conducted by the petitioner and DCRA.

At the conclusion of its investigation, DCRA issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission for action on the petition.

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

Commission review of materials and public hearing. Members of the



Commission members listen to testimony

Commission review the petition, responsive briefs, written comments, reply brief and DCRA reports. If circumstances permit, Commission members also tour the area in question prior to the hearing in order to gain a better understanding of the proposal.

Following extensive public notice, the Commission conducts at least one hearing on the proposal.

Decision and opportunity for reconsideration. The Commission must act on the petition within 90 days of the hearing. The Commission may take any one of the following actions:

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

The law requires the Commission to reach a decision within 90 days of its hearing. However, typically, the Commission makes its decision within two weeks.

Within 30 days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents and others who request it. At that point, the decision becomes final, subject to reconsideration.

Any party may ask the Commission to reconsider its decision. Such requests must be filed within 20 days of the date that the decision became final. If the Commission does not approve a request for reconsideration within 30 days of the date that the decision became final, the request for reconsideration is automatically denied.



Commissioner Hargraves visits with community residents after a hearing

Implementation. If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission.

The action must also receive favorable review under the Federal Voting Rights Act. DCRA provides assistance with Voting Rights Act reviews.

CHAPTER II

SUMMARY OF 1994 ACTIVITIES

During 1994, varying degrees of interest were expressed in every type of proposal that may come before the Commission. In several instances, formal petitions were filed and actions were taken by the Commission. In some cases petitions for municipal boundary proposals are being prepared. In other instances, local officials or residents are exploring particular proposals.

This chapter summarizes the various activities that occurred during 1994. Also included is a report on the status of Supreme Court and Superior Court appeals stemming from decisions of the Commission.

City Annexation

During 1994, annexations to three cities took effect. Formal annexation petitions were filed by three others. Several other cities are currently developing or contemplating annexation proposals. Cities in which some level of interest in annexation was expressed during 1994 consist of the following:

- ➔ City of Sand Point
- ➔ City of King Cove
- ➔ City of Seldovia
- ➔ City of Kodiak
- ➔ City of Craig
- ➔ City of Kotchikan
- ➔ City of Wasilla
- ➔ City of Fairbanks
- ➔ City of Palmer
- ➔ City of Seward
- ➔ City of Klawock
- ➔ City of Polican
- ➔ City of Kaktovik
- ➔ City of Anaktuvuk Pass
- ➔ City of Bettlec

City of Sand Point. On September 30, 1993, the City of Sand Point petitioned the Local Boundary Commission for the



annexation of approximately 32 square miles. About 99.8% of the area proposed for annexation consisted of the waters of

Popof Strait. The remainder of the territory included three uninhabited islands (Egg Island, Little Egg Island, and Range Island). The territory was uninhabited and was used extensively for commercial fishing and related activities.

The petition was accepted for filing on November 16, 1993. Interested parties were given until February 11, 1994 to file responsive briefs and comments. One responsive brief and four letters were received objecting to the proposed annexation, particularly with respect to the inclusion of the Baralof Bay area.

After consulting with the City of Sand Point, DCRA recommended that the Commission amend the City's petition to exclude the Baralof Bay area. The respondent and four correspondents all reacted favorably to the proposed amendment and withdrew their objections on the condition that the Commission approve the amendment recommended by DCRA.

The Commission conducted a duly-noticed public hearing on the matter by teleconference on July 12. Immediately following the hearing, the Commission amended the petition and approved the annexation of 20.6 square miles. The area approved for annexation excluded the Baralof Bay area.

On October 24, DCRA received documentation that the City of Sand Point was granted requisite preclearance of the annexation by the U.S. Department of Justice. Because the annexation had been approved by all of the property owners (and there were no resident registered voters), approval by the legislature or others was not required [AS 29.06.040(c)(3)]. Thus, the

annexation took effect October 24, 1994. The City of Sand Point's municipal boundaries now encompass approximately 29 square miles.

City of King Cove. The annexation of 21 square miles to the City of King Cove took effect on September 23, 1994, when the City provided DCRA with documentation that the boundary change had been precleared under provisions of the federal Voting Rights Act.

The Commission had approved the annexation of that territory on November 11, 1993. Tacit legislative approval of the annexation was granted March 5, 1994, the 45th day following the submission of the Local Boundary Commission's recommendation for that annexation to the legislature.

City of Seldovia. The annexation of 44.6 acres encompassing 13 enclaves and the remainder of the airport took effect on March 23, 1994. The Commission had approved the annexation on October 1, 1993. Annexation was tacitly approved by the legislature on March 5, 1994. Documentation that the annexation received favorable review under the Federal Voting Rights act was provided to DCRA on March 23, 1994.

City of Kodiak. On April 25, 1994, DCRA received a petition from the City of Kodiak for annexation of Kodiak Island Borough Service Area Number 1 and Spruce Cape, encompassing 1,351.56 acres. The petitioner estimated the population of the area proposed for annexation to be 2,648.

On May 25, the petition was accepted for filing. The Kodiak Island Borough

subsequently expressed concern that the proposed annexation would be complicated by the lack of a comprehensive transition plan for the City's assumption of Borough



Local participants at a Commission Meeting

assets and liabilities located within the territory sought for annexation. Borough staff indicated that the facilities and equipment of the fire service district were developed through major capital investments by the Borough. Such facilities would still be needed to serve the Borough fire service district residents whose property was excluded from the area proposed for annexation. In response to such concerns, on August 25, the Kodiak City Council rescinded authorization for the annexation.

City of Craig. On February 22, the City of Craig filed a petition to annex approximately 127.26 acres of City-owned property. The most prominent feature of the annexation proposal was a 9.15 mile long, 60-foot wide road corridor extending east of the City. DCRA recommended that the

Commission deny the petition because it believed that the proposal failed to meet two requisite annexation standards. In addition, DCRA noted that technical matters involving ownership of the land in question would only allow the annexation of a tiny portion of the territory. DCRA also raised a number of policy concerns relating to the annexation proposal (e.g., the annexation would create an enclave within the City's boundaries that was not under its jurisdiction).

The Local Boundary Commission scheduled a September 1, 1994, public hearing on the petition. When the meeting was convened the City requested that the hearing be postponed for 90 days in order to allow the it to address technical questions concerning ownership of the land. The Commission granted the request. Prior to the expiration of the 90 day postponement, a City of Craig official indicated that the City no longer wanted to proceed with the proposed annexation.

City of Ketchikan. On September 30, 1994, the City of Ketchikan filed a petition for annexation of approximately 14.6 acres of privately owned property connected by a 1.25-mile long segment of the North Tongass Highway. The petition was initiated upon request of all property owners and voters in the territory under the provisions of AS 29.06.040(c)(3). The petition indicates that territory has an assessed value of \$3,138,600. DCRA

reviewed the petition and found it to be incomplete. The petition was returned for correction and completion.

City of Wasilla. Officials of the City of Wasilla have submitted a draft annexation petition for review by DCRA. The area in question is inhabited by an estimated 16 residents and has an assessed value in excess of \$4.25 million. City officials have indicated that they plan to seek authorization to file the petition from the City Council in February. If authorized by the Council, the legislative review annexation petition is expected to be filed by March 1, 1995.

City of Fairbanks. An official of the City indicated that the City may submit two petitions for annexation in 1995. The first concerns a proposal to annex 5.1 square miles, including the Fred Meyer shopping center, the Fairbanks International Airport and adjacent properties.

The second planned petition concerns the annexation of three separate areas. One of the three areas includes 35-acres west of Peger Road, north of Airport Way and bounded by the Chena River. The second area consists of two lots in the Riverside Park Subdivision. The third area is comprised of a separate parcel in the Riverside Park Subdivision.

City officials indicated that they expect to file both petitions by March 1995.

City of Palmer. The City of Palmer expressed interest in annexing 35-acres of industrial park property owned by the City. The Commission rejected a proposal for the annexation of that area in 1992 for technical

reasons. The City plans to overcome those technical obstacles by revising its petition.

City of Seward. Officials of the City of Seward indicated that they are contemplating a proposal to annex some 5,375 acres of uninhabited territory within the Bear Creek Fire Service Area. DCRA staff provided officials of the City of Seward with petition forms and other information needed to file a legislative review annexation petition.

City of Klawock. Commission staff provided an official of the City of Klawock with petition forms and information for annexation by legislative review. City staff indicated that the City may seek the annexation of some 1,500 acres. The territory includes an estimated 34 residences, property conveyed to the City under Sec. 14(c)(3) of ANCSA, Village Corporation holdings, as well as the community's airport, sawmill & fish hatchery. The petition may be filed as early as March of 1995.

City of Pelican. Pelican City officials are considering annexation of the APEX mine development. Interest has been spurred by recent discussions of use of the City's solid waste disposal site by the mine and other potential impacts upon the City. Information on annexation has been provided to the City at the request of City staff.

City of Kaktovik. Officials of the City of Kaktovik have expressed interest in annexing a nearby industrial site to facilitate enforcement of its alcohol prohibition.

City of Anaktuvuk Pass. The existing legal description of the municipal boundaries of

the City of Anaktuvuk Pass, adopted in 1959, is ambiguous. The Arctic Slope Native Association has requested assistance in clarifying the boundaries. In response, a new proposed description of municipal boundaries has been drafted.

City of Bettles. An official of the City of Bettles indicated that the City was contemplating the annexation of territory. DCRA provided information and petition forms for consideration by the City

City Incorporation

During 1994, the Commission approved the incorporation of one city government. Varying degrees of interest in forming city governments in several other communities was expressed during 1994. This section summarizes interest in forming cities in the following communities:

- ⇒ Egegik
- ⇒ Kasilof
- ⇒ Healy
- ⇒ Big Lake
- ⇒ Talkeetna
- ⇒ Cantwell
- ⇒ Cooper Landing
- ⇒ McCarthy
- ⇒ Memory Lake
- ⇒ Elfin Cove
- ⇒ Gustavus
- ⇒ Salcha
- ⇒ Chiniak
- ⇒ Hollis
- ⇒ Whale Pass
- ⇒ Tok
- ⇒ Sterling
- ⇒ Port Protection
- ⇒ Kenny Lake

Egegik. On March 15, 1994, voters of the community of Egegik filed a petition for incorporation of a second class city with

boundaries encompassing approximately 135 square miles. About 104.6 square miles of this area is offshore. The offshore area conforms to the Egegik Fishing District.

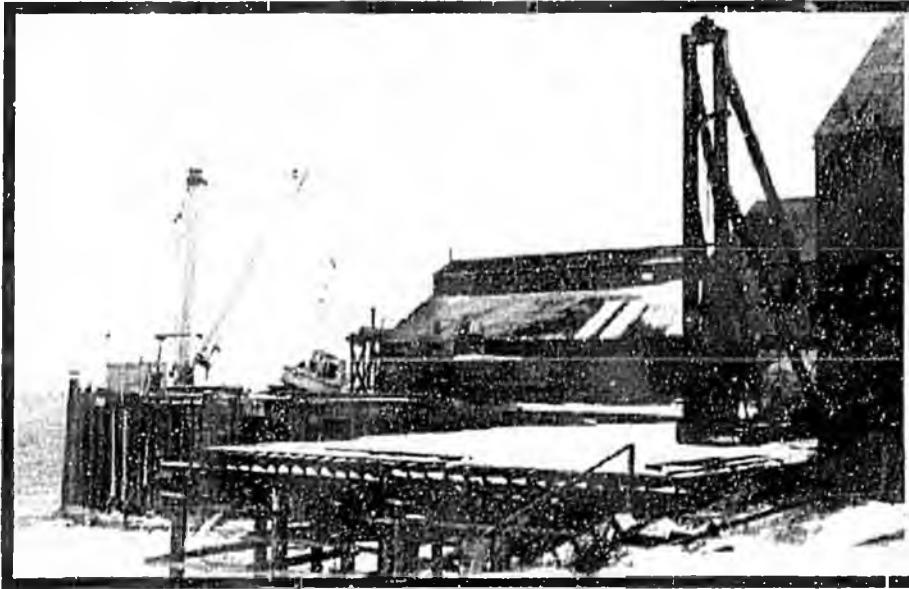
DCRA completed its technical review and accepted the petition for filing on April 25, 1994. One responsive brief was filed in opposition to the proposed incorporation.



Egegik

The Local Boundary Commission scheduled a duly-noticed public hearing on the incorporation proposal for December 13, 1994. The meeting was convened as scheduled (by teleconference), but recessed until December 14 because of a weather-induced travel delay.

At the conclusion of the public hearing, the Commission convened a decisional session regarding the petition for incorporation. At the decisional session, the Commission approved the petition without amendment by a vote of 4 to 0 (one member was absent). Incorporation was made contingent upon voter approval of a 1 percent sales and use tax on raw fish sales within the boundaries of the city. The sales and use tax shall be placed before voters on the incorporation ballot.



Cannery at Egegik

Kasilof. At the request of the Lieutenant Governor's Office, staff provided Kasilof residents with information and forms to petition for incorporation of a second class city.

Healy. Residents of Healy expressed interest in forming a second class city. Information and petition forms were provided.

Big Lake. At the request of the Big Lake Chamber of Commerce, Commission staff delivered a public presentation on forming a city government on July 27. The meeting was attended by 20 individuals, including a member of the Matanuska-Susitna Borough Assembly and other Borough officials. Big Lake has attempted to form a city on two prior occasions (1974 and 1987). It is uncertain whether a third effort to form a city will be undertaken.

Talkeetna. A group of Talkeetna residents has been considering forming a city for some time. However, concerns that the city

would have to assume responsibility for the Borough's water and sewer service area have reportedly prevented the group from moving forward on the proposal.

Cantwell. The President of the non-profit "Community of Cantwell, Incorporated" requested and was provided forms and information concerning formation of a second class city.

Cooper Landing. DCRA participated in a November 2 meeting of the Cooper Landing Community Club regarding city incorporation. Two representatives of the Kenai Peninsula Borough and 24 local residents attended the meeting. City incorporation is being considered as one way to ensure continued or improved ambulance and fire protection services to the community. Establishment of a Borough service area is also under consideration by Cooper Landing residents.

McCarthy. DCRA provided information regarding the city incorporation process and standards to a McCarthy resident interested in encouraging community discussion of the benefits of second class city status.

Memory Lake. DCRA provided the Memory Lake Estates Community Association with extensive information concerning formation of a city. The planning director of the Matanuska-Susitna Borough has reportedly urged the community to consider forming a city. According to Association officials, Memory

Lake has a population of 400 - 500. The community is located north of Wasilla.

Elfin Cove. DCRA provided a resident of Elfin Cove with information concerning formation of a second class city.

Gustavus. Petition forms for incorporating a second class city were forwarded to Gustavus residents.

A community meeting on City incorporation was conducted on September 30.

Salcha.

Commission staff provided a resident of Salcha with information and forms to petition to incorporate a second class city. Salcha is located in the southern part of the Fairbanks North Star Borough. In 1990, the "Census Designated Place" of Salcha had 354 residents.

Chiniak. DCRA staff traveled to Chiniak and met with the community council regarding city incorporation. Chiniak is located on Kodiak Island, 40 road miles south of the City of Kodiak. Residents indicate that the area has a population of 106. It appears likely that a borough fire service area may be established as an alternative to city incorporation.

Hollis. Residents of Hollis have expressed interest in forming a second class city. Hollis is located on Prince of Wales Island, 35 miles west of Ketchikan. The 1990

census reported that Hollis had a population of 111.

Whale Pass. DCRA reported that residents of Whale Pass (1990 population, 75) have expressed interest in forming a city government.

Tok. The Tok Chamber of Commerce expressed interest in the possible incorporation of Tok as a second class city. DCRA provided information and petition forms for review.

Sterling. Newspaper reports indicate that, "people filled the bleachers" at the Sterling School on January 17, 1994, to discuss whether to incorporate a city.

Officials of the Kenai Peninsula Borough Planning Department were reportedly present at the meeting.

Port Protection. Residents of Port Protection have expressed interest in forming a second class city. A meeting is planned for February 1995, to discuss the topic.

Kenny Lake. Staff responded to an inquiry from a Kenny Lake resident who indicated that the "overwhelming majority" of community residents wish to break away from the Copper River Regional Educational Attendance Area. Information was provided about forming a first class or home rule city.



Commissioner Balmeier speaks with a local resident following a hearing

City Dissolution

As reported in prior years by the Commission, interest in dissolution of cities is growing. During 1994, the topic was addressed to some degree with respect to the following city governments:

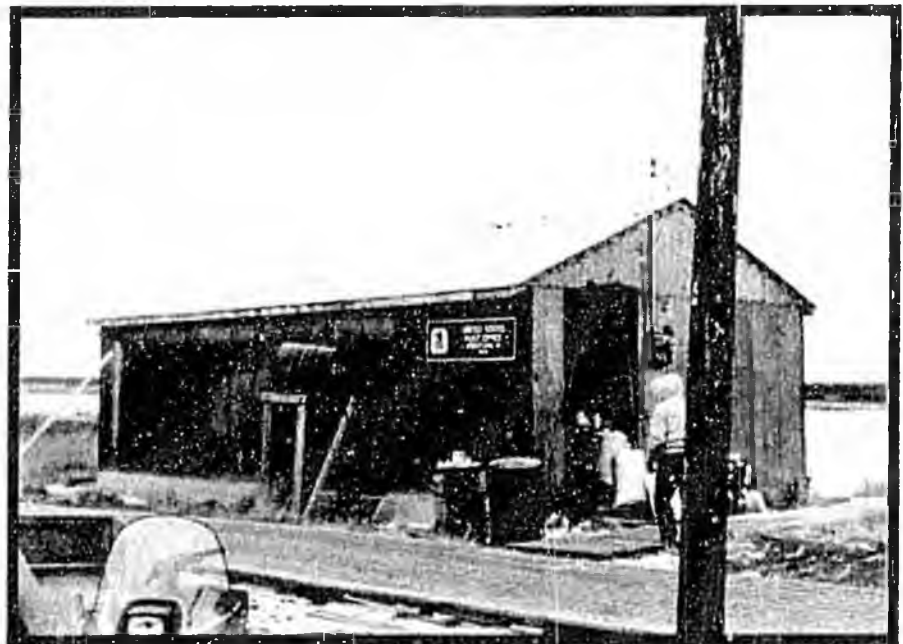
- City of Atmautluak;
- City of Kasigluk;
- City of Newtok;
- City of Tuluksak;
- City of Tununak;
- City of Akiak;
- City of Goodnews Bay;
- City of Mekoryuk;
- City of Manokotak;
- City of Mountain Village;
- City of Quinhagak;
- City of Napaskiak;
- City of Fort Yukon;
- City of St. Paul;
- City of Chefornak; and
- City of Galdovia.

The Local Boundary Commission approved petitions for the dissolution of five cities during 1994. These were the City of Atmautluak, City of Kasigluk, City of Newtok, City of Tuluksak and City of Tununak. All five are second class cities in the Unorganized Borough. The Commission's actions with respect to those five cities are subject to review by the First Regular Session of the Nineteenth Alaska Legislature.

Formal recommendations to the Legislature for the dissolution of each of those cities, with stipulations, are included in Chapter III of this report. Under AS 29.06.450(b) and Article X, Section 12 of Alaska's

Constitution, the Legislature has 45 days from the date that this report was filed to consider the recommendations. If the Legislature takes no action on the recommendations within the 45 day review period, they are automatically approved. However, the Legislature may reject any of the pending dissolutions by adopting a concurrent resolution in both houses within the 45 day review period.

Beyond the five pending dissolution's addressed above, the following is a summary of the interest in dissolution in the



Post office at Amautluak

other cities noted.

Akiak. On July 27, a petition for dissolution of the City of Akiak was submitted to DCRA. The City of Akiak is a second class city in the Unorganized Borough. The dissolution petition was signed by 70 residents. Following a technical review of the petition, DCRA accepted the petition for filing. Interested parties have been given until February 1, 1995, to file responsive briefs and informal written comments

supporting or opposing the proposed dissolution. DCRA will then develop its report and recommendation. The Commission will subsequently hold hearings on the proposal. If the Commission approves the petition, the dissolution will be subject to voter approval under AS 29.06.510.

Goodnews Bay. In December, DCRA received an informal petition to dissolve the City of Goodnews Bay. The City of Goodnews Bay is a second class city in the Unorganized Borough. The informal dissolution petition was signed by 87 individuals. The petition was found to be incomplete and was subsequently returned for completion.

Mekoryuk. Officials of the City of Mekoryuk provided DCRA with a draft petition to dissolve that city. DCRA suggested revisions to the draft in September. However, no formal petition for the dissolution of the City of Mekoryuk has yet been submitted.

Manokotak. Officials of the City of Manokotak met in December to discuss their interest in dissolving their local government. The City of Manokotak is a second class city in the Unorganized Borough.

Mountain Village. A resident of Mountain Village reported to DCRA that "most of the voters of the City of Mountain Village" are disenchanted with the City and want to dissolve it. The City of Mountain Village is a second class city in the Unorganized Borough. No formal dissolution petition has been initiated.

Quinhagak. In October, DCRA reported that residents of Quinhagak were contemplating a proposal to dissolve their city government. The City of Quinhagak is a second class city in the Unorganized Borough. At this point, no formal petition has been filed.

Napaskiak. In December, the Mayor of the City of Napaskiak contacted DCRA seeking information about dissolution. The City of Napaskiak is a second class city in the Unorganized Borough.

Fort Yukon. In April, DCRA provided information to a resident of Fort Yukon who wanted to explore dissolution of the City of Fort Yukon. The City of Fort Yukon is a second class city in the Unorganized Borough. DCRA received no further expression of interest in the matter.

St. Paul. In April, an official of the City of St. Paul asked DCRA to provide information concerning the possible dissolution of that city. The City of St. Paul is a second class city in the Unorganized Borough. No subsequent interest was expressed to DCRA concerning dissolution.

Chefornak. In January 1994, a resident of Chefornak requested from DCRA and was provided forms to petition for the dissolution of the City of Chefornak. The City is a second class city in the Unorganized Borough.

Seldovia. In January 1994, a petition for dissolution of the City of Seldovia was submitted to DCRA. Seldovia is a first class city in the Kenai Peninsula Borough. DCRA rejected the petition because of deficiencies. DCRA staff subsequently met with approximately 50 residents of

Seldovia, officials of the City of Seldovia and officials of the Kenai Peninsula Borough to discuss the proposal. Little further interest in dissolving the City has been shown since that meeting.

City Detachment

During 1994, interest was expressed in detachment of territory from the following two cities:

- ⇒ City of Fairbanks; and
- ⇒ City of Homer.

Fairbanks. Fairbanks North Star Borough officials expressed interest in detaching territory from the City of Fairbanks to facilitate construction of a Borough solid waste disposal facility. The area in question is uninhabited and lies at the edge of the existing corporate limits of the City of Fairbanks. The property is owned by the federal government. Detachment was being considered because the Borough's bond counsel took the position that since construction of the planned dumpsite facility would be financed with bonds to be repaid by non-area-wide property owners, the property should be detached from the City. Ultimately, however, the Borough made other arrangements for the planned solid waste disposal facility.

Homer. A Homer property owner requested and was provided petition forms and other information to seek detachment from the City of Homer. However, no petition has been filed.

City Reclassification

The 1994 legislature enacted provisions to make city reclassification proposals subject to review by the Local Boundary Commission. The new law requires the Commission to enact regulations establishing standards for city reclassifications. The Commission has drafted regulations relating to reclassification of cities and plans to hold a hearing on the proposal during the 1995 legislative session.

During 1994, interest in reclassification of the following cities was expressed to some degree:

- ⇒ Dillingham;
- ⇒ St. Mary's;
- ⇒ Angoon; and
- ⇒ Kwethluk.

A brief summary of the level of interest in reclassification of the four cities is provided below:

Dillingham. The City of Dillingham is a first class city in the Unorganized Borough. There is an ongoing interest in reclassifying the City of Dillingham to a second class city. DCRA's staff to the Commission have provided officials of the City with information about the effects of reclassification, including financial implications.

One of the biggest effects is that reclassification would bring about the consolidation of the Dillingham City School District with the Southwest Region School District. DCRA, working in cooperation

with the Department of Education, projected that reclassification would reduce total education funding for the region (state, federal and local) by more than \$430,000. It would, however, also relieve the City of Dillingham of its requirement to provide funds in support of its own school district (currently approaching one-half million dollars annually).

St. Mary's. The City of St. Mary's is a first class city in the Unorganized Borough. DCRA reported that interest had been expressed in reclassifying the City of St. Mary's to a second class city. As is the case with Dillingham, reclassification of the City of St. Mary's would result in the consolidation of the City School District with the surrounding regional educational attendance area. However, there is no indication that the matter is currently being pursued.

Angoon. The City of Angoon is a second class city in the Unorganized Borough. In the summer of 1994, DCRA staff fielded inquiries from officials of the City concerning the impacts of reclassification to a first class city. In contrast to Dillingham and St. Mary's, the reclassification of the City of Angoon would compel the formation of an Angoon City School District. Angoon is presently part of the Chatham Regional Educational Attendance Area. There is no indication that a proposal to reclassify the City of Angoon is currently being pursued.

Kwethluk. The City of Kwethluk is a second class city in the Unorganized Borough. DCRA responded to an inquiry from City officials concerning the effects of

reclassifying to a first class city. However, unlike Angoon, Kwethluk might be prohibited from forming a city school district for the long-term future if it reclassified. AS 14.12.025 prohibits the formation of a new school if it has less than 250 students, unless the Commissioner of the Department of Education determines that formation of the district would, nonetheless, be in the best interests of the State and the proposed district. Kwethluk has a student population of only 166. In contrast, Angoon's student population is reported to be 393 students.

Borough Incorporation

Officials or residents of the following six areas of the state contemplated borough formation during 1994:

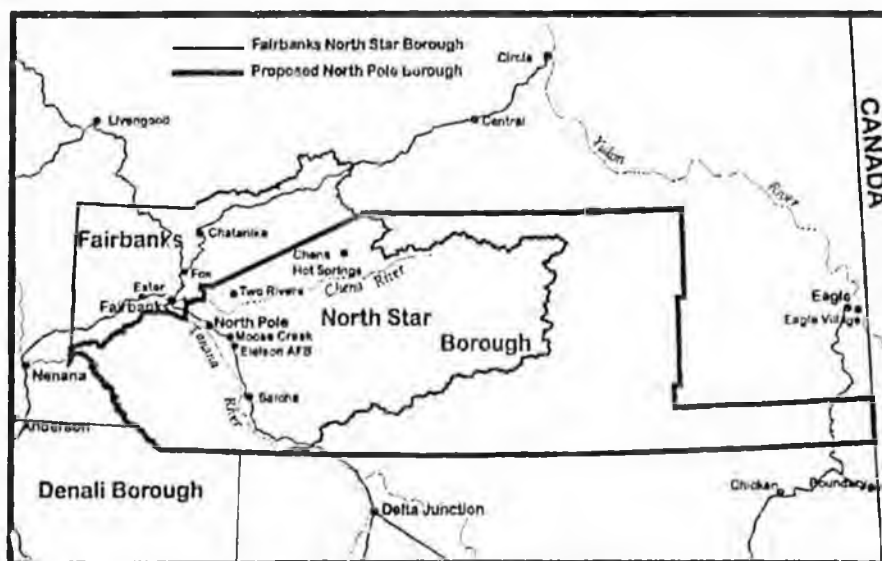
- ➔ North Pole Region;
- ➔ Dillingham Census Area;
- ➔ Prince William Sound Region;
- ➔ Chatham Region;
- ➔ Wrangell; and
- ➔ Port Alexander.

In the case of North Pole, a petition for borough formation was submitted to DCRA. Representatives of some of the other five areas listed have expressed interest in preparing or updating borough studies for their regions.⁷ A summary of the interest in borough government by each of the six regions follows.

North Pole Region. On March 17, 1994, a 672-page proposal to incorporate the North Pole Borough was submitted to DCRA.

⁷ AS 44.47.700 - 44.47.730 provides a program for funding such studies. However, no funds have ever been appropriated for the program.

The proposed borough would encompass more than 10,000 square miles, including 5,400 square miles currently part of the Fairbanks North Star Borough. The area



includes the communities of North Pole, Salcha, Eielson AFB, Two Rivers and Chena Hot Springs.

DCRA's review of the petition disclosed several technical deficiencies. DCRA's staff to the Commission subsequently met with the petitioners to review the deficiencies. The petitioners submitted corrections to the petition on November 28. DCRA subsequently accepted the petition for filing. Responsive briefs and comments in support of and in opposition to the petition are being accepted through July 6, 1995.

Dillingham Census Area. The region encompasses the communities of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, Ekuik, Portage Creek, Ekwok, Koliganek and New Stuyahok.

Although residents of the region have been exploring borough formation off and on

since the mid-1980's, the Commission has been advised that, "... a committee of citizens in Dillingham in conjunction with interested citizens from the Nushagak/Togiak drainage communities intend to submit a petition for formation of a Nushagak/Togiak borough during the 1995 fiscal year."⁸

In April 1994, DCRA's staff to the Commission prepared financial projections of the feasibility of borough formation in the Dillingham Census Area. The projections

indicated that a borough which exercised only the powers mandated by State law (education, planning, platting, land use regulation and tax collection) would be financially viable under five of nine different revenue scenarios examined. A regional work session on borough government was held in Dillingham in May.

Prince William Sound. The region encompasses the communities of Whittier, Chenega, Tatitlek, Valdez and Cordova. Here again, residents of the Prince William Sound region have considered the topic of borough formation off and on for many years. Borough studies were conducted for the region in the 1970's and in 1988. DCRA's staff to the Commission made presentations on borough formation at regional conferences in Whittier in May and in Valdez in November, 1994. DCRA staff also participated in two programs that were

⁸ Affidavit of Alice J. Ruby, September 30, 1994

broadcast on public radio throughout the region.

The Prince William Sound Economic Development Council indicated to DCRA that it plans to request assistance to prepare a contemporary borough feasibility study.

Chatham Region. The region includes the communities of Pelican, Elfin Cove, Gustavus, Hoonah, Tenakee Springs, Angoon and Kake. Several different boundary scenarios are being explored in connection with discussion about a prospective borough. Different factions within the region favor particular boundary configurations. The different scenarios being discussed include: (1) boundaries extending from the southern boundary of the Yakutat Borough to the southern end of Kuiu Island, and (2) one set of boundaries encompassing the communities of Hoonah, Angoon and Kake with another set of boundaries encompassing Gustavus, Pelican, Elfin Cove, and Tenakee Springs. Some in Pelican have also expressed interest in a borough encompassing only that community.

DCRA's staff to the Commission presented information on borough government at meetings in the region during August and November. An ad hoc group of representatives of the communities in the region has indicated a desire to seek funding for a borough study to examine the different boundary scenarios and the feasibility of borough formation.

Wrangell. Staff of the City of Wrangell indicated to DCRA staff in October that City officials were contemplating reviving their interest in forming a single community borough.

Port Alexander. Residents of Port Alexander expressed interest to DCRA in forming a single community borough. With a population of 108, Port Alexander has just over one-fourth of the number of residents required by statute to form a first class city. The statutes lack a minimum population threshold for borough incorporation.

Borough Detachment

During 1994, formal and informal borough detachment proposals surfaced with respect to the following:

- North Pole (detachment from the Fairbanks North Star Borough);
- Lake Louise (detachment from the Matanuska-Susitna Borough);
- Ahtna Regional Corporation lands (detachment from the Matanuska-Susitna Borough);
- Susitna Region (detachment from the Matanuska-Susitna Borough);
- Alexander Creek (detachment from the Matanuska-Susitna Borough); and
- Denali State Park In-Holdings (detachment from the Matanuska-Susitna Borough).

A summary of these matters follows.

North Pole. As noted in the discussion of borough formation, residents of the North Pole area have submitted a petition to detach 5,400 square miles from the Fairbanks North Star Borough. The proposal envisions including that area, plus an additional 4,600 square miles presently in the Unorganized Borough, in a new borough. As noted earlier, responsive briefs and comments in support of and in opposition to that petition are being accepted through July 6, 1995.

Lake Louise. Several residents of Lake Louise have expressed their intention to petition for detachment of that area from the Matanuska-Susitna Borough by March 1995. During 1994, DCRA met three times with residents of Lake Louise concerning that matter.

Ahtna Corporation Lands. An official of the Matanuska-Susitna Borough reported that a representative of Ahtna Incorporated, the Native regional corporation for the Copper River Area, requested information needed to petition for the detachment of certain uninhabited lands owned by the Corporation.

Susitna Region. A group of residents from the northern portion of the Matanuska-Susitna Borough expressed interest in forming a new borough encompassing the area from Willow to the current northern boundary of the Borough (but not extending as far east or west as the current boundaries). This group met in January of 1994, but has not yet initiated any proposal.

Alexander Creek. In January, a representative of residents of Alexander Creek, a settlement of 19 homes on the west side of the Susitna River near Cook Inlet, expressed interest in detaching that area from the Matanuska-Susitna Borough. DCRA provided information and materials needed to initiate a detachment petition, however, none has been submitted to date.

Denali State Park In-Holdings. In October 1994, an attorney from Anchorage indicated to DCRA that he plans to petition to detach 1,400 acres of inholdings in the Denali State

Park in the Matanuska-Susitna Borough. DCRA provided him with information and materials to initiate a petition, however, none has been filed to date.

Borough Dissolution

During 1994, interest was expressed in the dissolution of the Matanuska-Susitna Borough. A group of individuals in Talkeetna was provided with petition forms to seek the dissolution of the Borough. However, at this point, no petition has been filed.

Borough Annexation

City and Borough of Juneau. The annexation of 140 square miles to the City & Borough of Juneau took effect January 1, 1994. The territory includes the Greens Creek Mine. The Commission had approved the annexation on September 8, 1991, but provided for a deferred effective date. The legislature gave tacit approval to the annexation on March 6, 1992.

Ketchikan Gateway Borough. Officials of the Ketchikan Gateway Borough considered a proposal to annex the area lying within the model boundaries established for the Borough by the Commission in 1991 (with the possible exception of Hyder and Meyers Chuck). The area in question encompasses some 5,000 square miles. DCRA's staff to the Commission provided annexation petition forms and related information to the Borough. No petition has yet been filed.

City and Borough Consolidation

City of Ketchikan and the Ketchikan Gateway Borough. During 1994, Ketchikan residents, including local government officials, worked on a petition to consolidate the City of Ketchikan with the Ketchikan Gateway Borough. The action being considered would unite the two largest governments in the Ketchikan area, but would allow the second class City of Saxman to remain in existence. At this point, it is uncertain if or when a petition to consolidate the two governments will be filed.

Litigation

Four cases involving the Local Boundary Commission received attention from the Courts in 1994. These are summarized as follows:

Regarding the Northwest Boundary of the Lake and Peninsula Borough [City of Ekwok, et al., vs. Local Boundary Commission; Supreme Court Opinion No. 4152 - December 2, 1994]

On February 22, 1989, eleven cities, village councils and native corporations from the Nushagak River area filed a complaint for declaratory and injunctive relief, asking that the Court void the Commission's December 28, 1988 decision approving the petition to incorporate the Lake and Peninsula Borough. The former Lake and Peninsula School District was also named as a defendant, and the new Lake & Peninsula

Borough was added as a defendant after incorporation.

The plaintiffs' complaint alleged statutory and constitutional violations in setting boundaries and in providing notice of the incorporation proposal. Plaintiffs then waited nearly two years before taking any further action in the litigation.

In January 1991, the Superior Court gave notice of its intent to dismiss the case because the plaintiffs failed to pursue the matter. Simultaneously, the Borough moved for summary judgment based on laches. The plaintiffs, in turn, moved for summary judgment based on alleged notice deficiencies. In response, the Borough and the Commission sought dismissal based on the de facto incorporation doctrine. The Commission also asserted that the case should proceed as an administrative appeal.



In July of 1991, the Court orally denied the motions for summary judgment, but agreed with the Commission that the case should be handled as an administrative appeal. The Court also found that there were defects relating to notice of the incorporation

proceedings.

In a later written decision, the Superior Court denied the defense of the doctrine of de facto incorporation and the defense of laches. The Court declared the northwest boundary to be voidable and ruled that if the Commission changed the boundary on remand, there would have to be an election "restricted to approval of the new boundary versus retention of the existing boundary."

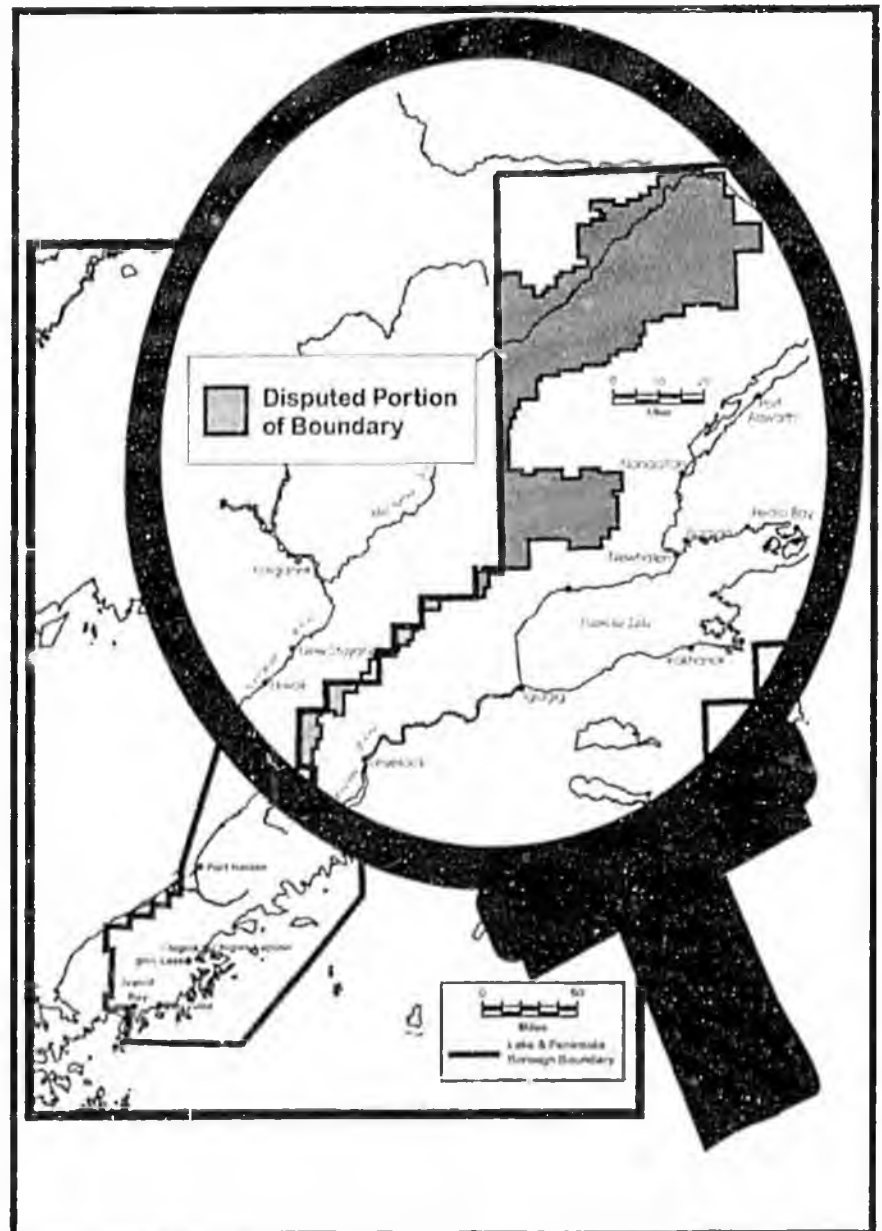
The Lake and Peninsula Borough appealed the Court's ruling regarding notice and laches. The Nushagak Villages appealed the remedy determined by the Court.

On July 22, 1994, the Supreme Court affirmed the Superior Court's ruling concerning notice and laches. However, the high Court ruled that the Superior Court had erred with respect to the remedy. The Supreme Court ordered the Local Boundary Commission to reconsider the northwest boundary of the Lake and Peninsula Borough. The Court provided further that if the Commission determines that the Borough's boundary should be changed, a borough incorporation election must be conducted in accordance with 29.05.110(a).

Proceedings for reconsideration of the Borough's boundary by the Local Boundary Commission began immediately. In early August, DCRA provided extensive notice of reconsideration of the northwest boundary of the Lake and Peninsula Borough. Initial briefs and written comments on the matter were required to be submitted to DCRA by September 30. Reply briefs and written comments were required to be filed with DCRA by October 28.

DCRA published a 114-page provisional report regarding the boundary dispute on

November 30. Approximately 100 copies were provided for public review and comment. The report recommended that the Commission affirm the existing boundaries of the Lake and Peninsula Borough.



On December 6, 1994, DCRA conducted an informational meeting on the boundary dispute. The meeting was held in King

Salmon, with teleconference sites established in Dillingham and Nondalton.

Five parties submitted comments on the provisional report by the December 30 deadline. DCRA released its final report in the matter on January 6, 1995. The fifteen-page final report responded to the comments of the five parties. The final report maintained the findings, conclusions and recommendations set out in the provisional report.

The Commission is scheduled to hold hearings regarding the disputed boundary on January 29, 1995. Hearings are scheduled for New Stuyahok and Newhalen. Other communities in the Lake and Peninsula Borough and the Nushagak region have been invited to participate at either hearing by teleconference.

Regarding Incorporation of the City of Pilot Point [Jack Keane and Concerned Citizens of Bristol Bay; Supreme Court Opinion No. 4145 - November 18, 1994.]

On December 13, 1991, a group describing itself as an unincorporated association of Pilot Point area residents, property owners and fishermen filed an appeal of the Commission's decision to approve the petition to incorporate Pilot Point as a second class city.

The appellants claimed lack of proper notice and abuse of discretion by the Commission. The appellants filed a motion to stay certification of the incorporation election results. The petitioners filed a motion to intervene in the appeal and opposed the

motion to stay the certification of the election. The Commission supported the motion for intervention and opposed the motion to stay. The appellants opposed the motion to intervene.

The Superior Court granted the motion to intervene, denied the motion for a stay and allowed certification of the election results.

The appellants then sought review of the Superior Court's order by filing an emergency motion for stay with the Alaska Supreme Court. The motion was denied (No. S-4922 Order, January 21, 1992).

The Superior Court affirmed the Commission's decision approving the petition for incorporation. The incorporators and the Commission then filed motions for attorney's fees. The appellants opposed both motions, claiming public interest litigant status. The Court denied the appellants' request and awarded partial attorney's fees to the Commission and the incorporators in the amount of \$1,500 and \$11,350 respectively.

The appellants subsequently appealed the matter to the Alaska Supreme Court. In November 1994, the Supreme Court affirmed the decisions of the Superior Court denying the appellants motion to stay the proceedings and allowing the incorporators to intervene. The Supreme Court also concluded that the \$1,500 per capita tax limitation provided by AS 29.45.090(b)(1) is inapplicable to sales taxes. Further, the Court concluded that the City of Pilot Point's sales tax does have a public purpose, and as long as city services are available the issue of the lack of usage of those services by the fishermen taxpayers does not violate due process.



However, the Supreme Court concluded that the Commission erred in its incorporation determination by failing to address whether the Lake and Peninsula Borough could reasonably and practicably provide the services desired by the residents of Pilot Point. The Supreme Court remanded the matter to the Commission to make such an inquiry. The Supreme Court also concluded that the appellants were a public interest litigant and, therefore, reversed the Superior Court's awards of attorney's fees.

On November 28, 1994, the appellants filed a petition for rehearing with the Supreme Court. The petition for rehearing contends that the Court overlooked, misconceived or failed to consider key provisions of the law. As a consequence, the appellants suggest that the Court's decision could lead to unnecessary duplication of tax levying jurisdictions, while the interpretation favored by the appellants would avoid both duplication of tax levying jurisdictions and proliferation of service areas.

Regarding Annexation to the City of Cordova [Russell and Mary Babic, et al., vs. DCRA and the Local Boundary Commission, Superior Court Case No. 3AN-93-01163 CI consolidated with Case No. 3AN-93-01996 CI]

On February 5, 1993, Russell Babic, et al., appealed the decision of the Commission to approve the annexation of 68.23 square miles to the City of Cordova. The appellants alleged that the decision of the Commission was not supported by the evidence in the record and that the decision was therefore both unreasonable and without a reasonable basis. The appellants also alleged several procedural errors,

including the use of improper regulations, allowing the introduction of evidence after the record was closed, and prematurely filing the recommendation for annexation with the legislature. The Commission subsequently filed its brief refuting the allegations.

On October 11, the Superior Court ruled that the Commission had submitted its final decision to the legislature, "*in accordance with AS 44.47.567, but before the time allowed for filing of motions for reconsideration had expired pursuant to AS 44.62.540. By so doing it effectively and impermissively denied the use of that forum to those opposed, inconsistent with the process afforded and due them.*" (sic) Consequently, the Court ordered that the annexation be voided and provided further that "*consideration of the cause is remanded to the Local Boundary Commission for reconsideration.*" (sic)

On October 19, the State filed a petition for rehearing. Among other contentions, the petition notes that, "*[I]n finding that the LBC did not comply with AS 44.62.540, the Court has overlooked directly controlling statutes and a decision of the Alaska Supreme Court which provide that proceedings before the LBC are not governed by the administrative adjudication sections of the Administrative Procedures Act (AS 44.62.330 - .630).*"

The State also filed an emergency motion for stay on October 19. On the same date, the City of Cordova filed emergency motions to intervene and to stay the Court's order. It also filed a petition for rehearing. The State filed a statement of nonopposition to the City of Cordova's motion to intervene. The appellant filed pleadings

opposing the City's motion to intervene and the emergency motions for a stay.

The Superior Court held a hearing on the issues of the City's intervention and the two motions to stay the order on October 19. The Judge granted the stay and then scheduled a hearing on the motions for the City's intervention, consideration of the doctrine of de facto incorporation and the rehearing. The Court also expressed its strong desire to see the parties reach an out-of-Court settlement. At this point, it appears that such a settlement will be reached.

Regarding Incorporation of the City and Borough of Yakutat [Petitioners for the Incorporation of the City and Borough of Yakutat vs. Local Boundary Commission; Supreme Court Case No. 85760]

On June 4, 1992, the petitioners for the incorporation of the City and Borough of Yakutat filed an appeal with Superior Court over the amendment of their petition to exclude territory west of 141st meridian. The appeal centered on allegations that:

- 1) The Commission abused its discretion and acted beyond its statutory authority when it amended the western boundary of the petition to exclude the territory from the 141st meridian to Cape Suckling.
- 2) The Commission lacks authority to adopt regulations concerning standards for borough incorporation, and the Commission erred in relying upon such regulations in the amendment of the western boundary.

- 3) The amendment of the western boundary violated Article X, Section 3 of the Constitution of the State of Alaska which provides that each borough shall embrace an area and population with common interests to the maximum degree possible.

- 4) The amendment of the western boundary operated to deprive the petitioners of their rights to due process of law under Article X and Article XIV of the Amendments to the U.S. Constitution, and under Article I, Section 7 of the Constitution of the State of Alaska.

On August 10, 1992, Chugach Alaska Corporation filed an appeal with Superior Court over the Commission's decision to approve the petition, with or without the boundary amendment. This appeal alleged that:

- 1) The Commission erred in granting the petition because the proposal failed to meet population standards concerning size, stability, interrelationship and integration; and that it also failed to meet standards regarding the human and financial resources needed to operate a borough.
- 2) The Commission erred in applying regulations which were not in effect when the petition was filed.
- 3) The Commission committed procedural errors in the consideration of the petition.
- 4) Approval of the petition violated Article X, Section 1 of the Constitution of the State of Alaska which mandates a minimum number of local governmental units.

The two appeals were consolidated into one case on October 6, 1992.

On June 7, 1993, Superior Court Judge Michael Thompson affirmed the decision of the Commission regarding the incorporation of the Yakutat Borough. In doing so, the Court concluded: 1) the procedures used by the Commission to act on the petition were proper; 2) there was a reasonable basis for the Commission's decision to amend the western boundary; 3) the Commission lacks legislative rulemaking authority for incorporation proceedings, however, it does have authority to adopt interpretive regulations governing incorporation and its incorporation regulations were viewed as such; 4) it may have been a violation of law to use regulations adopted after the petition was filed, however, that potential defect was overcome by de facto incorporation of the borough; and 5) there is a reasonable basis

for the Commission's conclusion that the incorporation proposal (with amended boundaries) satisfied the borough incorporation standards.

Concerning the Commission's authority to adopt regulations, the Court acknowledged that the Commission does have legislative rulemaking authority for matters involving annexation, detachment, merger and consolidation (the Court did not mention dissolution, but the Commission also has express legislative rulemaking authority for such under AS 29.06.450)⁹. Judge Thompson noted that interpretive regulations are given less deference by the Court than legislative regulations.

The ruling has been appealed to the Supreme Court. At this point, briefs have been filed with the Supreme Court by the appellants and the State. The Alaska Supreme Court heard oral arguments in the case on March 29. The Court's decision is expected shortly.

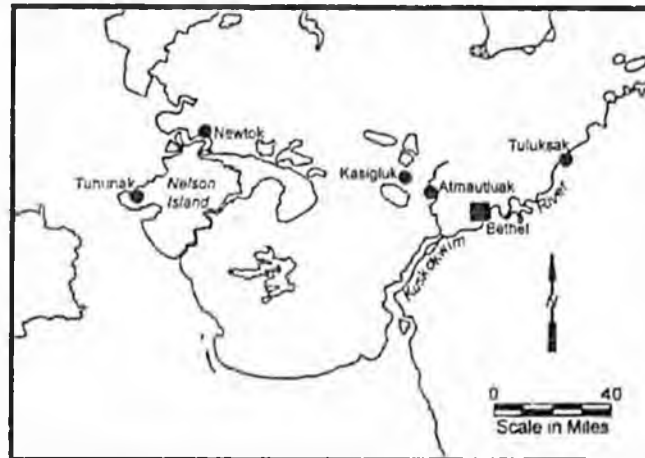
⁹ Chapter 58, SLA 1994 provided the Commission with authority to adopt legislative regulations concerning incorporation and reclassification of cities.

CHAPTER III

ACTIONS REQUIRING LEGISLATIVE REVIEW

This chapter presents five formal recommendations to the First Session of the Nineteenth Alaska Legislature for dissolution of inactive cities pursuant to AS 29.06.450(b) and Article X, Section 12 of Alaska's Constitution. The five cities are the:

- City of Atmautluak;
- City of Kasigluk;
- City of Newtok;
- City of Tununak; and
- City of Tuluksak.



Under the law, each of these recommendations receives automatic legislative approval, unless rejected by a concurrent resolution adopted by the House and Senate within 45 days of the date that the recommendation was filed (or at the end of the session, whichever is earlier). Each dissolution will take effect only upon tacit legislative approval, satisfaction of the conditions imposed by the Commission, and demonstration of compliance with the federal Voting Rights Act.

Background information and a summary of the procedures involved in the dissolutions follow.

Mandate to Investigate Inactive Cities

AS 29.06.450(b) provides that DCRA shall investigate municipalities that it considers to be inactive and report to the Local Boundary Commission on the status of the municipalities. DCRA initiated its

investigation of the status of the five cities in question in October 1993.

Public Notice of Investigation

On October 14, 1993, DCRA issued a public notice of its investigation of the five cities to 196 potentially interested parties.

The notice invited parties having claims against any of the five cities or other interests in the potential dissolution of the cities to notify DCRA by March 1, 1994. The notice was published as a display advertisement as follows:

<u>Newspaper</u>	<u>Dates Published</u>
<i>Anchorage Daily News</i>	November 1, 8 and 15, 1993.
<i>Tundra Times</i>	October 20, 27 and November 4, 1993
<i>Tundra Drums</i>	October 28, November 4, 11 and 18, 1993
<i>Alaska Journal of Commerce</i>	November 1, 8, 15 and 22, 1993

The notice was also submitted for publication in the *Alaska Administrative Journal*. Further, a press release was issued notifying statewide print and broadcast media about the investigation into the possible dissolution of the five cities.

Public Informational Meetings

DCRA conducted public informational meetings concerning the possible dissolution of the five cities as follows:

- Kasigluk Recreation Hall at 2:00 p.m.,
October 20, 1993
- Atmautluak Recreation Hall at 8:30 p.m.,
October 20, 1993
- Tuluksak Recreation Hall at 1:00 p.m.,
October 21, 1993
- Tununak Recreation Hall at 2:30 p.m.,
October 25, 1993
- Newtok Recreation Hall at 8:00 p.m.,
October 25, 1993

Those present at each of the meetings were advised of the investigation of inactive cities. The process for dissolution of inactive cities was also described.

Questions from the public were entertained and comments were solicited.

Response to Notice of Investigation

On November 17, 1993, DCRA received a letter from the Tununak IRA Council, regarding Tununak local politics. Attachments included Tununak IRA Resolution 93-03-10 "clarifying the authorized federally recognized tribal government of the Native Village of Tununak."

On November 29, 1993, DCRA received a letter from the Tununak Traditional Elders Council asserting that it, not the IRA Council, controlled public services and facilities in the community. The Tununak Traditional Elders Council contended that it should become the legal successor to the inactive city.

On February 14, 1994, DCRA received a copy of Tununak Traditional Elders Council Resolution 94-01, asserting that:

The Tununak Traditional Tribal Elders Council has assumed the responsibility of both the internal and external governmental affairs; and for the operational and maintenance including but are not limited to the following: Village Built Clinic, Washeteria, Public Safety Building, Carl Flynn Memorial Head Start Building, Community Hall Building, Four (4) Street Lights, Power Plant (contract with AVEC), Ten (10) Storage Vans (connex's), Heavy Equipments, Cold Storage Freezer, and Water and Sewer Services.

The Tununak Traditional Tribal Elders Council has assumed the local government

functions, replacing the municipal government, and requests the Local Boundary Commission, Department of Community and Regional Affairs, to revert the municipal land and all real and personal property of the Village back to the Tununak Traditional Elders Council.

On February 25, 1994, DCRA received a letter from the Association of Village Council Presidents Regional Housing Authority (AVCPRHA) indicating that it has "Cooperation Agreements" and "Memorandums of Agreement" with each of the inactive cities. AVCPRHA expressed concerns over the transition of responsibilities of the inactive cities to a successor. The concerns of the housing authority related to easements, site control leases, quitclaim deeds, road maintenance and operation of the Mutual Help Housing Units in the five communities.

On March 22, 1994, DCRA received a letter from the Atmautluak Traditional Council indicating that residents of the community informally voted 87-33 against "going back to the city government again" at a local public meeting conducted by the Traditional Council on February 3, 1994.

Filing of the Petitions

On April 14, 1994, DCRA filed separate petitions for the dissolution of the five cities in question.

DCRA arranged for publication, posting and distribution of public notice of the filing of the petitions. Such notice was published as a two-column by six-inch display advertisement in the *Tundra Drums* on April 21, April 28 and May 5, 1994. Notice was also published as a display advertisement in the *Anchorage Daily News*

on April 23, 1994. In addition, DCRA arranged for publication of the notice in the *Alaska Administrative Journal*.

Individual notice of the filing of the petitions was mailed to 352 potentially interested parties. These included local tribal officials, all known media regularly serving the area and parties such as adjacent municipalities and state and federal officials likely to be interested in the proceedings.

Notice of the filing of the petitions was also posted in the following locations.

- Atmautluak High School
- Atmautluak Post Office
- Atmautluak Limited Store
- Ayaprun High School (Newtok)
- Newtok Traditional Council Office
- Newtok Post Office
- Tununak Post Office
- Tununmiut Rinit Corporation Office (Tununak)
- Tununak Native Store
- Kasigluk Post Office
- Kasigluk Tribal Office
- Kasigluk Store
- Tuluksak IRA Office
- Tuluksak Post Office
- Tuluksak Clinic
- Tuluksak High School

DCRA arranged for the respective petitions and supporting documents to be made available for public review at the following locations during regular business hours.

- DCRA's Bethel Office
- DCRA's Anchorage Office
- JoAnn Alexie Memorial School (Atmautluak)
- Tuluksak High School
- Kasigluk Traditional Council Office
- Tununak IRA Council Office
- Tununak Traditional Elders Council Office
- Newtok Ayaprun School

Responsive Briefs and Comments on the Petitions

On May 4, 1994, DCRA received a letter from the U.S. Environmental Protection Agency alleging that three of the five communities were in violation of the Safe Drinking Water Act. The three communities were Atmautluak, Tununak and Newtok.

Atmautluak was in violation of the Safe Drinking Water Act because of its failure to:

- sample for inorganic chemicals
- conduct initial monitoring for volatile organic chemicals
- sample for radioactivity.

Tununak was in violation of the Safe Drinking Water Act because of its failure to:

- sample for coliform bacteria
- sample for turbidity
- sample for inorganic chemicals
- sample for organic chemicals
- sample for radioactivity
- report the turbidity violations
- notify persons served by the system of violations of 40 CFR Part 141

Newtok was in violation of the Safe Drinking Water Act because of its failure to:

- sample for turbidity on a daily basis.
- sample for total coliform bacteria at least once each month.
- sample for inorganic chemicals.
- test for pesticides.

- sample for volatile organic chemicals.
- conduct initial and repeat sampling for radioactivity.

EPA advised DCRA that Administrative Orders concerning the violations had been issued to Tununak and Atmautluak. Newtok was characterized as a "significant non-complier [that would] soon be eligible for enforcement action by EPA."

EPA indicated further that once an enforcement action was initiated, it ". . . is attached to the facility and will not change or be altered due to ownership changes." That provision is particularly significant because AS 29.06.520 provides that unless another municipality succeeds to a dissolved city, the state succeeds to all of the dissolved city's liabilities.

On June 10, 1994, a responsive brief was received from the Alaska Village Electric Cooperative (AVEC). AVEC claimed to have operating and labor agreements with the City of Kasigluk and the City of Tununak regarding the community's electrical utility service. AVEC insisted that upon dissolution, the State must assume the duties of those two former cities with respect to the operating and labor agreements. AVEC indicated that it has no objection to the State entering into a subcontract with the village council or other entity for the performance of the terms of the agreements. Among other duties, the agreements require that the City, *"assume the responsibility of installing the electric distribution facilities in the village, . . . hold [AVEC] harmless from all claims, if any, arising as a result of the construction and installation of [electrical] facilities, . . . operate the system of AVEC, . . . [and] hold AVEC harmless from all claims, if any,*

arising as a result of the operation of the system of AVEC."

On June 10, 1994, DCRA received a responsive brief from the Tununak IRA Council describing the local political background behind the abandonment of the municipal government. The brief stated:

[The Tununak Traditional Elders Council] was responsible in dismantling the city and its municipal affairs. During that year, other communities were experiencing the same dilemma. These factions felt all forms of government cause harm to their social well-being, and provided misleading information to retaliate against agencies of the state, the City of Tununak, including the federally recognized Native Village of Tununak and the village corporation. Approximately 40% of the community were thwarted to believe the 'Genocide Act,' the 'Compact of Free Association' and the 'Suzerain Act' gave them autonomy. The net impact of anyone having philosophical differences from their circle of friends was alienated. We believe these federal actions do not in any way relate to Alaska.

The June 10, 1994 brief from the Tununak IRA Council also provided a local perspective on the reasons behind abandonment of the City of Tununak, and advocated for an advisory election prior to approval of a petition for dissolution of the City of Tununak by the Commission and legislature.

The brief also indicates that the IRA Council had attempted to work with the

Internal Revenue Service to resolve an alleged tax liability of the inactive city, but was unsuccessful.

The Tununak Traditional Elders Council responded by writing to President Clinton on July 27, 1994, asserting that the community is not bound by directives of the U.S. Environmental Protection Agency (EPA) or State of Alaska Department of Environment Conservation (DEC) regarding compliance with the federal Safe Drinking Water Act or State of Alaska Drinking Water regulations. The letter stated that:

we fully reject enforcement that would violate our Sovereign jurisdiction in this matter, and create an incident that would result in action against the United States concerning genocidal interference by third parties into our mutual sovereign rights of Contract.

Claims of Debt

DCRA received claims of debt concerning four of the five cities in question. Details of the claims of debt are addressed in the five recommendations for dissolution.

Establishment of Trusts

On August 4, 1994, the Superior Court in Bethel granted the State's request to appoint the Commissioner of DCRA as Trustee for the Cities of Tununak, Kasigluk, Newtok and Atmautluak. The Judge granted trusteeship for the City of Tuluksak on August 9. The trusteeships are for a period of one year. They were established to administer FY '93 and FY '94 municipal

assistance funds to pay outstanding debts of the inactive cities. Approval from the Court must be obtained before the funds may be used. Any funds remaining after the debts have been paid will be returned to the State general fund.

DCRA Reports

On August 26, 1994, DCRA issued a draft report with recommendations to the Commission regarding the proposed dissolution of the five cities. The report recommended that the inactive cities be dissolved so long as certain stipulations were met within two years of tacit legislative approval of the Commission's formal recommendations for dissolution.

Copies of the draft report were distributed to 136 parties. Parties were given until September 26, 1994, to review and comment upon the draft report. Only one party, the Alaska Department of Environmental Conservation (DEC), submitted comments on the draft report. DEC's comments reflected concern that there is a high likelihood that the State of Alaska, as successor to the inactive City of Atmautluak, would assume considerable environmental liability.

DCRA issued its final report on the proposed dissolutions on October 15, 1994. Copies were provided to interested parties.

Commission Public Hearings

The Commission scheduled public hearings on the dissolution proposals to be held October 24, 25 and 26. Notice of the hearings was posted in at least three public

and prominent places in each of the five communities. DCRA also mailed notice of the hearing to 132 parties.

DCRA arranged for publication of the hearing notice as a 2 column by 6-inch display ad in the *Tundra Drums* on September 15, 22 and 29, 1994. Notice was also published in the *Tundra Times* on September 9, September 21 and October 5, 1994.

In addition, arrangements were made to publish the hearing notice in the *Alaska Administrative Journal*. Further, DCRA requested that broadcast media serving the communities announce the hearing notice as a public service from September 16 to October 25, 1994.

Hearings were conducted by the Commission as follows:

- ◊ Newtok: 10:30 a.m., October 24, 1994
- ◊ Tununak: 1:30 p.m., October 24, 1994
- ◊ Tuluksak: 10:30 a.m., October 25, 1994
- ◊ Kasigluk: 1:30 p.m., October 25, 1994
- ◊ Atmautluak: 10:30 a.m., October 26, 1994

Commission's Findings, Conclusions and Decisions

Immediately following each hearing, the Commission unanimously approved the dissolution of the respective city. The approval was granted subject to the stipulations recommended by DCRA.

The Commission adopted decisional statements for each action on December 13, 1994. The Commission's findings and conclusions concerning dissolution of the five cities are summarized as follows.

1. Findings Regarding Debts of the Cities.

Atmautluak. On February 16, 1994, the Internal Revenue Service alleged that the City of Atmautluak had unsatisfied federal tax liabilities totaling \$5,413. The Alaska Department of Labor had indicated that the City of Atmautluak owes it \$139.12. On May 9, 1994, Unicom advised DCRA that the City of Atmautluak had unpaid telephone bills totaling \$360.03. Those figures are exclusive of additional penalties and interest charges which may have accrued since then. No one from Atmautluak disputed the allegations of debt.

DCRA holds \$29,128 in trust for the City of Atmautluak. That figure is exclusive of earned interest and fees which may have since accrued. The trust funds may only be used to pay the debts of the City. The funds held in trust for the City of Atmautluak exceed its alleged debts by \$23,215.85.

Kasigluk. No creditors of the inactive City of Kasigluk were identified during the dissolution proceedings.

DCRA holds \$49,362 in trust for the City of Kasigluk. That figure is exclusive of earned interest and fees which may have accrued.

Newtok. The Alaska Department of Labor advised DCRA that the City of Newtok owes it \$338.52. That figure is exclusive of additional penalties and interest charges which may have accrued against the debt. No other creditors of the inactive city were identified during the dissolution proceedings.

DCRA holds \$23,374 in trust for the City of Newtok. That figure is exclusive of earned

interest and fees which may have accrued. The trust funds may only be used to pay the debts of the City. The funds held in trust for the City of Newtok exceed its alleged debts by \$23,035.48.

Tuluksak. The Internal Revenue Service has indicated that the City of Tuluksak has unsatisfied federal tax liabilities totaling \$2,720.63. That figure is exclusive of additional penalties and interest charges which may have accrued against the debt. Testimony was given at the Commission's October 25, 1994, public hearing that the City had satisfied all outstanding debts to the Internal Revenue Service.

DCRA holds \$40,524 in trust for the City of Tuluksak. That figure is exclusive of earned interest and fees which may have accrued. The trust funds may only be used to pay the debts of the City. The funds held in trust for the City of Tuluksak exceed its alleged debts by \$37,803.37.

Tununak. The Internal Revenue Service has indicated that the City of Tununak has unsatisfied federal tax liabilities totaling \$110,794.96. DCRA reported that most of this liability is based upon the Alaska Department of Labor's payroll estimates for the first two quarters of 1989. DCRA indicated further that the figures for these two quarters are many times higher than one might expect in a community the size of Tununak, particularly since the period in question was subsequent to declarations that the City had ceased to function. Village officials also contest the alleged debt.

DCRA holds \$36,185 in trust for the City of Tununak. That figure is exclusive of earned interest and fees which may have accrued.

The trust funds may only be used to pay the debts of the City.

In addition to the trust funds, the following funds are on deposit in the name of the City of Tununak at a financial institution in Bethel:

Water & Sewer Transaction Account: \$5,668.55
 Water & Sewer Investment Account: \$1,791.88
 General Fund Transaction Account: \$66,531.80

The funds on deposit, coupled with the funds held in trust equal \$110,177.23. It has yet to be determined whether the funds on deposit may be used to satisfy debts of the City. If they can, the alleged debts of the City of Tununak exceed the balance of funds on deposit and held in trust by only \$617.73. However, it should be possible to increase the balance in the trust account by an additional \$13,751 based on the inactive City's entitlement to FY 95 municipal assistance funds.

Conclusion. The City of Atmautluak is not free of debt, however, if the City's entitlement to FY 95 Municipal Assistance funds is added to its trust account and if the funds on deposit may be used to satisfy its debts, it appears that there will be sufficient funds to satisfy its creditors.

The City of Kasigluk is free of debt.

The City of Newtok is not free of debt, however, it appears that there are ample funds held in trust to satisfy its creditors.

The City of Tuluksak may not be free of debt, but its creditors can be satisfied with a method of repayment.

The City of Tununak is not free of debt, but its creditors can be satisfied with a method of repayment.

2. Findings Regarding the Extent to Which the Cities Continue to Meet Standards for City Incorporation.

Findings. Abandonment of the city governments by their officials and employees indicates that a reasonably predictable level of commitment and interest in sustaining the city governments is absent in the five communities in question. Further, no demonstrated need for city government exists in the five communities.

Conclusion. The five communities in question no longer meet the standards for incorporation of a city. Ideally, voters of the five cities in question will have the opportunity to further demonstrate their lack of support for city government at an advisory election.

3. Findings Regarding Whether the five Cities at Issue have Ceased to use Their Mandatory Powers.

The term 'mandatory powers' is defined by 19 AAC 10.950 (a)(9) as, "*an authorized act, duty or obligation required by law to be performed or fulfilled by a municipality in the course of fiduciary obligations to citizens and taxpayers. . .*"

Atmautluak. Since 1986, the City of Atmautluak has not conducted city council meetings or municipal elections, neither has it received or expended funds for public purposes or levied or collected sales taxes.

Kasigluk. The City of Kasigluk has not conducted city council meetings or municipal elections since 1986. Further, it has not received or expended funds for public purposes or levied or collected sales taxes in more than 8 years.

Newtok. Since 1989, the City of Newtok has not conducted municipal elections or city council meetings, neither has it received or expended funds for public purposes or levied or collected sales taxes.

Tuluksak. The City of Tuluksak has not conducted city council meetings or municipal elections for more than 8 years. Since 1986, it has not received or expended funds for public purposes or levied or collected sales taxes.

Tununak. During the past five years, the City of Tununak has not conducted city council meetings or municipal elections. Neither has it received or expended funds for public purposes or levied or collected sales taxes since 1989.

Conclusion. All five cities at issue have ceased to use their mandatory powers.

4. Findings Regarding Whether Dissolution of the Cities is in the Best Interests of the State Of Alaska.

Findings. Provisions for incorporation of city governments in Alaska were intended to facilitate maximum local self-government for the residents of communities throughout the state. Second class cities are municipal corporations enjoying taxing authority, clearly defined boundaries and the power to provide basic public services.

Dissolution of a municipal corporation takes away all its rights, liberties, privileges and franchises. The best interests of the State of Alaska are most fully served when its municipal framework is viable and functioning in accordance with the Alaska Constitution and other laws.

The long-term existence of inactive municipalities is detrimental to the State's ability to efficiently and fairly execute its programs and policies. For example, state revenue sharing and grants for capital projects may be impeded. Further, attempts by the State of Alaska to promote municipal government in these communities would prove futile without local support.

Two of the communities in question have not had functioning municipal governments since 1989. The remaining three have not had functioning cities since 1986. Hence, in practical terms, elimination of the inactive cities will not diminish local self-government. In the absence of a municipal government, the local village councils have assumed the burden of delivering local services to their respective communities without any taxing authority sanctioned by the State of Alaska. In their present status, the communities are not entitled to State Revenue Sharing funds which are available to unincorporated communities in the Unorganized Borough.

Since dissolving the inactive cities would permit the village councils to apply for and receive State Revenue Sharing to unincorporated communities, dissolution might serve to enhance relations between the State and residents of the five communities.

Although residents of the communities appear to favor city dissolution, this is

difficult to determine informally. Placing the question of dissolution of the inactive cities before local voters in an election would allow residents to directly express their positions on the future of their local government and to demonstrate the level of community support for keeping or relinquishing municipal status.

Dissolution of the five cities will not result in significant savings to the State of Alaska. However, there is potential for exposure to significant liabilities. As noted previously, in the absence of a municipal successor, AS 29.06.520 provides that the State of Alaska will succeed to all the rights, powers, duties, assets and liabilities of inactive cities. The State of Alaska could be exposed to substantial liabilities if it retained ownership of the lands and other properties. Existing contracts with the cities pose the risk of adding to the liabilities incurred by the successor to the dissolved cities. Such exposure to the State could be reduced if arrangements were made for the State to transfer the assets and liabilities of each dissolved city to a local successor. While perhaps liabilities cannot be avoided altogether, it would seem that they could be minimized if the assets and liabilities of the inactive cities were transferred by the State immediately upon dissolution.

Protection of the best interests of the State of Alaska will require execution of formal binding agreements between the State and the designated local successor to the inactive cities regarding the transfer of assets and liabilities.

The Alaska Department of Law has advised the Commission that real property may be conveyed to village councils organized as federal corporations under the Indian

Reorganization Act (IRA Councils).¹⁰ However, the Department of Law has also expressed the opinion that current state law does not allow the conveyance of real property to traditional village councils because they lack corporate status.

Of the five communities at issue, only Tuluksa and Tununak have IRA Councils. The remaining three have traditional village councils. The Regional Solicitor's Office of the U.S. Department of Interior has advised DCRA that federal law requires the Department of Interior to hold an election on adopting an IRA Charter within 6 months of receiving a petition requesting such from the community. Further, the Regional Solicitor's Office indicated that there are no policy impediments at the federal level to forming new IRA Councils. Thus, the three villages that lack IRA Councils may form them in a timely manner if they choose to do so.

Conclusion. The five cities in question have all been inactive for extended periods of time. It does not appear that any will be reactivated by local residents. The continued legal existence of the inactive cities complicates dealings with the communities and impedes efforts to fund delivery of basic community services. The communities have not received State Revenue Sharing or Municipal Assistance funding for several years. The existing ambiguous status of the city governments in the five communities creates administrative problems for the State of Alaska and confusion on the part of others in dealings with the communities.

¹⁰ Informal Opinion of Assistant Attorneys General Sarah J. Felix and Marjorie L. Vandor, file number 663-94-0237 (August 19, 1994)

Thus, dissolution of the five cities at issue would be in the best interests of the State, so long as the State avoids significant exposure to liabilities and burdens stemming from the requirement that, in this case, the State succeed to “. . . all rights, powers, duties, assets, and liabilities of the dissolved [cities]” as provided by AS 29.06.520.

Opportunity for Reconsideration

The actions of the Commission with respect to the City of Atmautluak, City of Newtok and City of Tuluksak became final, subject to reconsideration on December 19, 1994. The decisions of the Commission with

respect to the City of Kasigluk and City of Tununak became final, subject to reconsideration on December 23. No timely requests for reconsideration were filed.

Presentation of Recommendations

Following are the Commission's individual recommendations concerning dissolution of each of the five cities in question.



Local Boundary Commission

Darroll Hargraves, Chairperson

Myrtle Johnson, Vice-Chairperson, Second Judicial District

Frances Hallgren, Member, First Judicial District

H. Tom Salmeier, Member, Third Judicial District

Dr. Hugh B. Fate, Member, Fourth Judicial District

Recommendation Number One To The First Session Of The Nineteenth Alaska Legislature

A recommendation for the dissolution of the inactive City of Atmautluak.

The Local Boundary Commission hereby formally recommends dissolution of the City of Atmautluak, contingent and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation pursuant to AS 29.06.450(b).

1. Approval of dissolution of the city by voters of the City of Atmautluak at an advisory election to be administered by the Division of Elections. Except, however, that the requirement for the election will be waived if the U.S. Department of Justice interposes an objection to the election under the terms of the federal Voting Rights Act.
2. Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.
3. Establishment of an Atmautluak IRA Council to be designated as the successor to the inactive City, or alternatively, designation by the Commission of another qualified successor. Another entity might qualify as a suitable successor if, for example, State law were amended to permit the Atmautluak Traditional Council to succeed to the inactive City. Provided that Governor Knowles' administration supports such a change, DCRA is encouraged to promote the enactment of a law which would allow traditional councils, such as the Atmautluak Traditional Council, to become the successor to the dissolved city.
4. Assurance that the State will not be held liable for any failure on the part of the community to comply with State and federal water quality laws.

5. Execution of appropriate agreements between DCRA, the local village successor, the AVCP regional housing authority and other applicable organizations and agencies assuring that the State of Alaska, as the immediate successor to the dissolved city, will not be obligated by known contractual agreements involving the city. In the matter of the dissolution of the City of Atmautluak, these would include the "Cooperation Agreement" and "Memorandum of Agreement" between the City of Atmautluak and the Association of Village Council Presidents Regional Housing Authority.
6. Execution of an agreement between DCRA and a qualified local successor conveying assets and liabilities of the inactive City of Atmautluak (through the State) to the qualified successor. The agreement shall be prepared by the Department of Law and shall contain the following provisions:
 - A. The properties to be conveyed may be used only for public purposes and will be available to the public without restriction as to race, color, national origin or sex.
 - B. Ownership of the properties shall be transferred, without consideration, to a city or organized borough, upon request by the city or organized borough within five years of the date that the property was first included within the corporate boundaries of the city or organized borough.
 - C. The State reserves the right of prior approval of any conveyance, lease, easement, or other obligation concerning the property.
 - D. If the land is located within the boundaries of a municipal government that exercises authority for planning, platting or land use regulation, the property is subject to the planning, platting and/or land use regulations and ordinances of that municipality.
 - E. In the event that the village successor fails to comply with any of the stipulations governing the property, ownership of the property shall be transferred, without consideration, to the State of Alaska upon request by the State.
 - F. The deeds conveying the property are subject to other reservations, exceptions, restrictions, and easements of record.
 - G. An express waiver of sovereign immunity, including consent to suit in a convenient state forum, must be granted by the village successor to ensure the enforceability of the stipulations of the conveyance.
 - H. That the agreement must recognize that it does not constitute recognition of tribal status or of "Indian Country."
 - I. That the terms and conditions of the agreement shall be enforceable by the parties. A failure to enforce or a waiver of enforcement rights as to any one section or provision shall not be a waiver or bar to the enforcement of any other section or provision.



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Recommendation Number Two

To The First Session Of The Nineteenth Alaska Legislature

A recommendation for the dissolution of the inactive City of Kasigluk.

The Local Boundary Commission hereby formally recommends dissolution of the City of Kasigluk, contingent and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation pursuant to AS 29.06.450(b).

1. Approval of dissolution of the city by voters of the City of Kasigluk at an advisory election to be administered by the Division of Elections. Except, however, that the requirement for the election will be waived if the U.S. Department of Justice interposes an objection to the election under the terms of the federal Voting Rights Act.
2. Satisfaction of all debts, if any, of the inactive city through the DCRA Trusteeship or other means.
3. Establishment of a Kasigluk IRA Council to be designated as the successor to the inactive City, or alternatively, designation by the Commission of another qualified successor. Another entity might qualify as a suitable successor if, for example, State law were amended to permit the Kasigluk Traditional Council to succeed to the inactive City. Provided that Governor Knowles' administration supports such a change, DCRA is encouraged to promote the enactment of a law which would allow traditional councils, such as the Kasigluk Traditional Council, to become the successor to the dissolved city.

4. Execution of appropriate agreements between DCRA, the local village successor, the AVCP regional housing authority, the Alaska Village Electrical Cooperative (AVEC) and other applicable organizations and agencies assuring that the State of Alaska, as the immediate successor to the dissolved city, will not be obligated by known contractual agreements involving the city. In the matter of the dissolution of the City of Kasigluk, these would include the "Cooperation Agreement" and "Memorandum of Agreement" between the City of Kasigluk and the Association of Village Council Presidents Regional Housing Authority. They may also include the operating and labor agreements with AVEC.¹¹
5. Assurance that the State will not be held liable for the failure, if any, on the part of the community to comply with State and federal water quality laws.
6. Execution of an agreement between DCRA and the Kasigluk IRA Council or other qualified local successor conveying assets and liabilities of the inactive City of Kasigluk (through the State) to the qualified successor. The agreement shall be prepared by the Department of Law and shall contain the following provisions:
 - A. The properties to be conveyed may be used only for public purposes and will be available to the public without restriction as to race, color, national origin or sex.
 - B. Ownership of the properties shall be transferred, without consideration, to a city or organized borough, upon request by the city or organized borough within five years of the date that the property was first included within the corporate boundaries of the city or organized borough.
 - C. The State reserves the right of prior approval of any conveyance, lease, easement, or other obligation concerning the property.
 - D. If the land is located within the boundaries of a municipal government that exercises authority for planning, platting or land use regulation, the property is subject to the planning, platting and/or land use regulations and ordinances of that municipality.
 - E. In the event that the village successor fails to comply with any of the stipulations governing the property, ownership of the property shall be transferred, without consideration, to the State of Alaska upon request by the State.
 - F. The deeds conveying the property are subject to other reservations, exceptions, restrictions, and easements of record.

¹¹ During the Commission's hearing, residents disputed AVEC's claim that the agreements in question were binding upon the City of Kasigluk. They noted, for example, that the operating agreement was not signed by an AVEC official. They also contended that the agreement is between the City of Nunapitchuk and AVEC, not the City of Kasigluk and AVEC.

- G. An express waiver of sovereign immunity, including consent to suit in a convenient state forum, must be granted by the village successor to ensure the enforceability of the stipulations of the conveyance.
- H. That the agreement must recognize that it does not constitute recognition of tribal status or of "Indian Country."
- I. That the terms and conditions of the agreement shall be enforceable by the parties. A failure to enforce or a waiver of enforcement rights as to any one section or provision shall not be a waiver or bar to the enforcement of any other section or provision.



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Dr. Hugh B. Fate, Member, Fourth Judicial District

Recommendation Number Threca To The First Session Of The Nineteenth Alaska Legislature

A recommendation for the dissolution of the inactive City of Newtok.

The Local Boundary Commission hereby formally recommends dissolution of the City of Newtok, contingent and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation pursuant to AS 29.06.450(b).

1. Approval of dissolution of the city by voters of the City of Newtok at an advisory election to be administered by the Division of Elections. Except, however, that the requirement for the election will be waived if the U.S. Department of Justice interposes an objection to the election under the terms of the federal Voting Rights Act.
2. Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.
3. Establishment of a Newtok IRA Council to be designated as the successor to the inactive City, or alternatively, designation by the Commission of another qualified successor. Another entity might qualify as a suitable successor if, for example, State law were amended to permit the Newtok Traditional Council to succeed to the inactive City. Provided that Governor Knowles' administration supports such a change, DCRA is encouraged to promote the enactment of a law which would allow traditional councils, such as the Newtok Traditional Council, to become the successor to the dissolved city.
4. Assurance that the State will not be held liable for any failure on the part of the community to comply with State and federal water quality laws.

5. Execution of appropriate agreements between DCRA, the local village successor, the AVCP regional housing authority and other applicable organizations and agencies assuring that the State of Alaska, as the immediate successor to the dissolved city, will not be obligated by known contractual agreements involving the city. In the matter of the dissolution of the City of Newtok, these would include the "Cooperation Agreement" and "Memorandum of Agreement" between the City of Newtok and the Association of Village Council Presidents Regional Housing Authority.
6. Execution of an agreement between DCRA and an IRA Council or other qualified local successor conveying assets and liabilities of the inactive City of Newtok (through the State) to the qualified successor. The agreement shall be prepared by the Department of Law and shall contain the following provisions:
 - A. The properties to be conveyed may be used only for public purposes and will be available to the public without restriction as to race, color, national origin or sex.
 - B. Ownership of the properties shall be transferred, without consideration, to a city or organized borough, upon request by the city or organized borough within five years of the date that the property was first included within the corporate boundaries of the city or organized borough.
 - C. The State reserves the right of prior approval of any conveyance, lease, easement, or other obligation concerning the property.
 - D. If the land is located within the boundaries of a municipal government that exercises authority for planning, platting or land use regulation, the property is subject to the planning, platting and/or land use regulations and ordinances of that municipality.
 - E. In the event that the village successor fails to comply with any of the stipulations governing the property, ownership of the property shall be transferred, without consideration, to the State of Alaska upon request by the State.
 - F. The deeds conveying the property are subject to other reservations, exceptions, restrictions, and easements of record.
 - G. An express waiver of sovereign immunity, including consent to suit in a convenient state forum, must be granted by the village successor to ensure the enforceability of the stipulations of the conveyance.
 - H. That the agreement must recognize that it does not constitute recognition of tribal status or of "Indian Country."
 - I. That the terms and conditions of the agreement shall be enforceable by the parties. A failure to enforce or a waiver of enforcement rights as to any one section or provision shall not be a waiver or bar to the enforcement of any other section or provision.



Local Boundary Commission

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Dr. Hugh B. Fate, Member, Fourth Judicial District

Recommendation Number Four To The First Session Of The Nineteenth Alaska Legislature

A recommendation for the dissolution of the inactive City of Tuluksak.

The Local Boundary Commission hereby formally recommends dissolution of the City of Tuluksak, contingent and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation pursuant to AS 29.06.450(b).

1. Approval of dissolution of the city by voters of the City of Tuluksak at an advisory election to be administered by the Division of Elections. Except, however, that the requirement for the election will be waived if the U.S. Department of Justice interposes an objection to the election under the terms of the federal Voting Rights Act.
2. Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.
3. Designation of the Tuluksak IRA Council as the successor to the inactive City or alternatively, designation by the Commission of another qualified successor.
4. Assurance that the State will not be held liable for the failure, if any, on the part of the community to comply with State and federal water quality laws.
5. Execution of appropriate agreements between DCRA, the local village successor, the AVCI regional housing authority and other applicable organizations and agencies assuring that the State of Alaska, as the immediate successor to the dissolved city, will not be obligated by known contractual agreements involving the city. In the matter of the dissolution of the City of

Tuluksak, these would include the "Cooperation Agreement" and "Memorandum of Agreement" between the City of Tuluksak and the Association of Village Council Presidents Regional Housing Authority.

6. Execution of an agreement between DCRA and the qualified local successor conveying assets and liabilities of the inactive City of Tuluksak (through the State) to the qualified successor. The agreement shall be prepared by the Department of Law and shall contain the following provisions:
 - A. The properties to be conveyed may be used only for public purposes and will be available to the public without restriction as to race, color, national origin or sex.
 - B. Ownership of the properties shall be transferred, without consideration, to a city or organized borough, upon request by the city or organized borough within five years of the date that the property was first included within the corporate boundaries of the city or organized borough.
 - C. The State reserves the right of prior approval of any conveyance, lease, easement, or other obligation concerning the property.
 - D. If the land is located within the boundaries of a municipal government that exercises authority for planning, platting or land use regulation, the property is subject to the planning, platting and/or land use regulations and ordinances of that municipality.
 - E. In the event that the village successor fails to comply with any of the stipulations governing the property, ownership of the property shall be transferred, without consideration, to the State of Alaska upon request by the State.
 - F. The deeds conveying the property are subject to other reservations, exceptions, restrictions, and easements of record.
 - G. An express waiver of sovereign immunity, including consent to suit in a convenient state forum, must be granted by the village successor to ensure the enforceability of the stipulations of the conveyance.
 - H. That the agreement must recognize that it does not constitute recognition of tribal status or of "Indian Country."
 - I. That the terms and conditions of the agreement shall be enforceable by the parties. A failure to enforce or a waiver of enforcement rights as to any one section or provision shall not be a waiver or bar to the enforcement of any other section or provision.



Local Boundary Commission

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Recommendation Number Five To The First Session Of The Nineteenth Alaska Legislature

A recommendation for the dissolution of the inactive City of Tununak.

The Local Boundary Commission hereby formally recommends dissolution of the City of Tununak, contingent and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation pursuant to AS 29.06.450(b).

1. Approval of dissolution of the city by voters of the City of Tununak at an advisory election to be administered by the Division of Elections. Except, however, that the requirement for the election will be waived if the U.S. Department of Justice interposes an objection to the election under the terms of the federal Voting Rights Act.
2. Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.
3. Designation of the Tununak IRA Council as the successor to the inactive City, or alternatively, designation of another qualified successor by the Commission. Another entity might qualify as a suitable successor if, for example, State law were amended to permit the Tununak Traditional Tribal Elders Council to succeed to the inactive city. Provided that Governor Knowles' administration supports such a change, DCRA is encouraged promote the enactment of a law which would allow traditional councils, such as the Tununak Traditional Tribal Elders Council, to become the successors to the dissolved city.
4. Assurance that the State will not be held liable for the failure on the part of the community to comply with State and federal water quality laws.

5. Execution of appropriate agreements between DCRA, the local village successor, the AVCP regional housing authority, the Alaska Village Electric Cooperative (AVEC) and other organizations and agencies assuring that the State of Alaska, as successor to the dissolved city, will not be obligated by known contractual agreements involving the city. In the matter of the dissolution of the City of Tununak, this would include the previously referenced "Cooperation Agreement" and "Memorandum of Agreement" with the Association of Village Council Presidents Regional Housing Authority; as well as the Alaska Village Electric Cooperative "Operating and Labor Agreements."
6. Execution of an agreement between DCRA and the qualified local successor conveying assets and liabilities of the inactive City of Tununak (through the State) to the qualified successor. The agreement shall be prepared by the Department of Law and shall contain the following provisions:
 - A. The properties to be conveyed may be used only for public purposes and will be available to the public without restriction as to race, color, national origin or sex.
 - B. Ownership of the properties shall be transferred, without consideration, to a city or organized borough, upon request by the city or organized borough within five years of the date that the property was first included within the corporate boundaries of the city or organized borough.
 - C. The State reserves the right of prior approval of any conveyance, lease, easement, or other obligation concerning the property.
 - D. If the land is located within the boundaries of a municipal government that exercises authority for planning, platting or land use regulation, the property is subject to the planning, platting and/or land use regulations and ordinances of that municipality.
 - E. In the event that the village successor fails to comply with any of the stipulations governing the property, ownership of the property shall be transferred, without consideration, to the State of Alaska upon request by the State.
 - F. The deeds conveying the property are subject to other reservations, exceptions, restrictions, and easements of record.
 - G. An express waiver of sovereign immunity, including consent to suit in a convenient state forum, must be granted by the village successor to ensure the enforceability of the stipulations of the conveyance.
 - H. That the agreement must recognize that it does not constitute recognition of tribal status or of "Indian Country."

- I. That the terms and conditions of the agreement shall be enforceable by the parties. A failure to enforce or a waiver of enforcement rights as to any one section or provision shall not be a waiver or bar to the enforcement of any other section or provision.

CHAPTER IV

POLICY ISSUES AND CONCERNS

This chapter presents policy issues and concerns which the Commission wishes to raise. These relate to:

- ⇒ growing interest in detachment of territory from existing organized boroughs;
- ⇒ growing interest in dissolution of cities;
- ⇒ the lack of limitations on the authority of municipalities to levy certain taxes;
- ⇒ compensation for the Commission.

Growing Interest in Detachment of Territory from Existing Organized Boroughs.

As noted in Chapter II, residents of the Fairbanks North Star Borough have petitioned to detach approximately 5,400 square miles of that 7,350 square mile borough (as part of a proposal to form the 10,000 square mile North Pole Borough).

In addition, residents and property owners of several areas of the Matanuska-Susitna Borough have expressed interest in detachment. These include residents of Lake Louise who have expressed intention to petition for detachment of that area from the Matanuska-Susitna Borough by March 1995.

The Lake Louise proposal serves as an excellent example of how a seemingly parochial issue can have profound

fundamental statewide policy implications. The territory being considered for detachment comprises a small area of land at the eastern edge of the Matanuska-Susitna Borough.

Interest in detachment of the Lake Louise area appears to stem from relatively high taxes, coupled the lack of commensurate services and the disenfranchisement of voters with respect to school issues.¹² Considered in isolation, those circumstances

¹² The tax rate at Lake Louise is presently 16.7 mills. With respect to services, many residents of Lake Louise indicate that the only service provided by the Borough is a "dumpster" (even so, it can be argued that the Borough should be charging fees for the use of the dumpster as it does at nearly all of its other dump sites). The disenfranchisement of voters with respect to school issues exists because students from Lake Louise attend school in the adjacent Copper River Regional Educational Attendance Area.

might warrant the detachment of the area in question.

However, the policy implications reach far beyond those three issues. First, it must be recognized that the Matanuska-Susitna Borough's taxes are high largely because the Borough has a poor tax base.¹³ The biggest expenditures of the Borough are for services mandated by the State, particularly education. These consist not only of operating costs, but include capital projects that are needed to serve a fast growing and far flung population.

The Borough has argued in the past that it has been treated inequitably with respect to State funding programs, particularly those relating to education. Additionally, the Borough does not enjoy the benefit of certain state aid programs to the extent that some other regions enjoy them (e.g., National Forest Receipts and Business Fisheries Tax refunds).

The circumstances are complicated by the fact that the legislature - not the voters - created the Matanuska-Susitna Borough.¹⁴ In doing so, the legislature stated that the formation of the Matanuska-Susitna Borough, ". . . does not necessarily relieve the state of present service burdens. [It] shall [not] be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."¹⁵ Yet, when compared to

¹³ The highest property tax levied by the Borough is 26 mills.

¹⁴ The Matanuska-Susitna Borough, Greater Anchorage Area Borough, Kenai Peninsula Borough and the Fairbanks North Star Borough were established without voter approval under the Mandatory Borough Act (Chapter 52, SLA 1963).

¹⁵ Section 1, Chapter 52, Session Laws of Alaska 1963.

unorganized areas of the State, the Borough has clearly been "penalized" because of incorporation. Anticipated continued reductions in state aid to local governments will only exacerbate the problem.¹⁶

If Lake Louise is detached, it will have significant and direct adverse financial consequences to both the Matanuska-Susitna Borough and the State of Alaska. The net annual loss would probably amount to more than \$100,000 for the Borough and about \$40,000 for the State.¹⁷

As an alternative to detachment, it might be argued that the Matanuska-Susitna Borough should establish a service area at Lake Louise to provide a more equitable tax levy. Doing so would avoid the financial loss to the State. However, in preliminary discussions, the Borough has understandably been reluctant to embrace this alternative. Up to this point at least, the Borough disputes that the law allows it to establish a service area that results in lower areawide and nonareawide taxes than are levied in other portions of the Borough.¹⁸ Further, it is likely that if such tax relief

¹⁶ Municipal Assistance and Revenue Sharing programs have been cut more than 55% since FY '85.

¹⁷ The Borough receives about \$165,000 from the area in property taxes and taxes on overnight accommodations. However, it pays about \$20,000 annually for refuse collection in the community. Additionally, its education foundation funding is reduced by the equivalent of 4 mills of the full and true value of taxable property. In the case of Lake Louise, the reduction is estimated to be about \$40,000 annually. The detachment would increase the State's education funding costs by about \$40,000.

¹⁸ AS 29.35.450 authorizes a borough to establish a service area to provide ". . . a higher or different level of service than that provided on an areawide or nonareawide basis."

were granted for Lake Louise, other areas of the Borough would seek similar treatment.

In the same vein, if Lake Louise detaches, other areas of the Borough could also be expected to seek detachment. Indeed, as noted in Chapter II of this report, residents and property owners of several other areas of the Borough are already contemplating detachment proposals. Beyond the several listed in Chapter II as having expressed interest in 1994, the City of Wasilla and the City of Palmer initiated discussions a few years ago to consider detachment of the urban core of the Borough. Residents of Skwentna have also historically expressed interest in detachment.

Although not reflected in terms of 1994 activities, interest in detachment from organized boroughs extends well beyond the Fairbanks North Star Borough and the Matanuska-Susitna Borough. In recent years, interest has also been expressed concerning detachment from the City and Borough of Sitka, the City and Borough of Juneau, the Haines Borough, the Municipality of Anchorage, the Kenai Peninsula Borough, the Kodiak Island Borough, the Lake & Peninsula Borough and the Aleutians East Borough.

While any detachment proposal is likely to raise policy concerns unique to that proposal, many policy issues will be uniformly present in every detachment proposal. Among the more important issues is the importance of having stable and predictable municipal boundaries.

There is no easy answer to the issue of Lake Louise or any other prospective detachment proposal. It should be equally evident that decisions reached with respect to Lake

Louise have the potential to affect other regions of the State.

Many of the policy issues inherent in detachment proposals and other proposals that come before the Commission are beyond the scope of the Local Boundary Commission. However, as it has done for the past 15 years or so, the Commission continues to urge the legislature to address fundamental issues concerning equity in the delivery of services. In the view of the Commission there is clearly a rapidly growing need to examine certain existing State policies and laws.

For example, there are inequities in the manner in which regional service delivery in Alaska is structured. In 1963, the Legislature mandated the formation of eight boroughs. Today, those eight boroughs encompass about 80% of Alaska's population. The residents and property owners in the mandatory boroughs typically pay substantial local taxes for basic services. In contrast, areas of the state that lie outside any local government pay no taxes. Some of those areas enjoy services comparable to the services in the mandatory boroughs. Further, some of these areas have resources at least comparable to areas within the mandatorily formed boroughs.

Typically, education is the biggest expenditure of any organized borough. Provision of that service by organized boroughs is mandated by State law. There are disparities in funding for education between municipal school districts and regional educational attendance areas.

While the legislature more than 30 years ago mandated that the major populated areas of the state form boroughs, it has since over time eliminated most of the incentives to

form boroughs. Consequently Alaskans have two strikingly different forms of regional service delivery. These systems result in major inequities.

For example, because of requirements for local contributions, some municipal school districts receive State and federal aid amounting to only about two-thirds of their defined level of "basic need" for education.¹⁹ Regional educational attendance areas receive more State funding, in part, because they are not required to contribute in support of education. Further, some regional educational attendance areas receive funding not available to other districts due to geographic location (e.g., National Forest Receipts). The result is that some regional educational attendance areas receive substantially more State and federal aid for education -- upwards of twice the level of basic need -- than some borough school districts.

By raising this issue again, the Commission is not advocating mandatory organization of the rest of the state. However, given the certainty of further reductions in State revenues, attention to these issues must be given. There are a host of options which might address some of these inequities. Two examples are provided below:

- ❖ Levy a State school tax in REAAs. It is projected that organized boroughs and city school districts will contribute \$217,510,874 in support of operation of their schools during the current school year. That figure does not include support for capital projects. The estimated contribution amounts to \$1,987.50

¹⁹ The level of basic need is determined under AS 14.17.021.

for each of the 109,459 students in municipal school districts. A tax of an equivalent amount within REAAs would generate more than \$22 million annually.

- ❖ In the event that a State income tax is reinstated, provide a full credit for municipal taxes. For example, if a resident of a borough owed \$4,000 in State income taxes, but had paid \$1,500 in borough taxes, that person's income tax would be reduced to \$2,500. However, a resident who earned the same level of income but paid no municipal taxes would pay \$4,000 in income taxes.

Again, the Commission is not advocating any particular action, but wishes to raise these issues to keep the legislature informed of the nature of concerns brought to the attention of the Commission.

Growing Interest in Dissolution of Cities

Interest in dissolving city governments is on the rise, particularly among predominantly Native communities in the lower Kuskokwim region. This appears to be the result of a desire to return to more traditional ways of governance. However, the potential exists for interest in dissolution throughout the state.

Many of the policy issues noted in the previous discussion concerning detachment from organized boroughs are relevant to this issue as well. Just as there are incentives to detach from boroughs (or to remain part of the Unorganized Borough), there are

incentives to dissolve cities (or to remain unincorporated).

For example, communities can often enjoy a substantial level of services without the civic and financial responsibilities of city government. Unincorporated communities in the Unorganized Borough may receive state revenue sharing (AS 29.60.130 - .140), capital project matching grants (AS 37.06.020) and education that is fully funded by the state (AS 14).

Unincorporated communities may also receive police protection through the State Troopers or the Village Public Safety Officer program. Additionally, state agencies and the legislature may fund projects such as water and sewer facilities without requiring local contributions. If communities can enjoy these privileges without assuming the responsibility for local government, it is reasonable to expect that the number of cities in Alaska will shrink in the future.

Beyond these somewhat abstract policy issues, the Commission wishes to raise two specific matters relating to dissolution of cities. The first concerns obstacles to the dissolution of predominantly Native communities that lack village councils formed under the Indian Reorganization Act (i.e., IRA Councils).

Under current law, the State succeeds to the assets, liabilities, duties, powers and rights of the cities if they dissolve (unless another municipal government becomes the successor). The Commission takes the position that the State should not assume responsibility for local services and other liabilities and that these should be transferred to a local successor.

However, according to the Attorney General's Office, State law will not permit the transfer of real property to traditional councils. DCRA's experience with forming nonprofit corporations in rural Alaska in the 1980's suggests that such is not a viable alternative in this instance. Thus, the law creates obstacles to dissolution in predomi-

nantly Native communities in the Unorganized Borough that lack IRA Councils.

The Commission suggests that the legislature consider amending State law to permit traditional councils to hold title to real property. The legislature has

previously enacted provisions to allow entities that lack corporate status to hold land (see AS 10.30.060 which allows an unincorporated group - in that case, a cemetery association - to acquire land).

The second concern also relates to the succession to assets and liabilities of dissolved municipal governments. Although the Commission unanimously approved the dissolution of the five cities addressed in Chapter III, it did so with



Residents prepare for hearing before the Commission

reservations, particularly relating to the liability that may be placed on the State as a result. The Commission and DCRA, working in cooperation with the Department of Law, attempted to safeguard the State's interest in that respect. However, given the current law, no one can be entirely certain that the State is fully isolated from liability.

As the successor under the law, the State assumes the liabilities of the dissolved cities. Of course, liabilities are not limited to debts and contracts. As successor, the State may find itself legally exposed to risks related to the improper operation and construction of water and sewer systems, bulk fuel storage tanks, landfills, and other public facilities. With respect to the five pending dissolutions, the Commission has minimized the risk to the State by stipulating that the assets and liabilities of the dissolved cities will be immediately transferred to a local successor as a condition of dissolution. However, the Commission believes that it would be even better to avoid having the state assume liabilities altogether. Consideration should be given to amending the law to provide for direct assumption of the liabilities and duties by a local successor.

However, such an approach may not be acceptable to some interested parties. For example, the Alaska Village Electrical Cooperative, Inc., has refused to transfer contracts with the Cities of Kasigluk and Tununak to local successors. It refuses to do so because of concerns that claims of sovereign immunity may in effect render the contracts unenforceable, despite a waiver of sovereign immunity. The Commission could, of course, take such circumstances into consideration during its review of dissolution proposals.

Lack of Limitations on Municipal Authority to Levy Certain Taxes

In the two previous years, the Commission reported to the Legislature that concerns have been expressed over the lack of reasonable limits on the authority of municipalities to levy taxes. Such concerns continued to be expressed during the year just ended. While the prospective City of Egegik and the recently formed City of Pilot Point were most often cited as examples of the need for reasonable limitations, the Commission is aware of several other local governments that also levy substantial taxes on natural resources. These resources are not limited to fisheries, but include oil and gas properties, mining properties, timber and other natural resources.

Because Pilot Point is cited so frequently in arguments regarding this issue, the Commission offers details below concerning the tax levy of that particular government. In doing so, however, the Commission stresses that it does not intend to single out the City of Pilot Point for judgment as to the reasonableness of its taxes. There are other municipal governments in Alaska that levy even more taxes on a per capita basis than the City of Pilot Point.

In 1992, the City of Pilot Point reportedly collected some \$590,000 from its 3% sales tax on commercially-caught fish.²⁰ With a population of 97 residents, the tax revenue in this case amounted to more than \$6,000 for each man, woman and child in the community. This compares to a per capita average of all taxes levied by the remaining

²⁰ More recent figures have not been reported to DCRA.

164 municipal governments in Alaska amounting to \$1,242.²¹ If municipal taxes on oil and gas properties were excluded from the equation (87% of which are collected by a single municipal government), the average per capita municipal tax would be only \$777 – about one-eighth of the per capita revenue of the City of Pilot Point.

Presently, the law imposes no limitation on the rate at which a municipal government may levy a sales tax.²² Additionally, as noted in the summary provided in this report concerning the Supreme Court's ruling on the incorporation of the City of Pilot Point, the limitations imposed by AS 29.45.090(b) do not apply to the levy of sales taxes.²³ Thus, there are no statutory limitations whatsoever on a municipality's authority to

²¹ Tables published in Alaska Taxable, (DCRA, January 1993) on pages 14 - 17 indicate that during 1992, municipalities in Alaska collected a total of \$685,930,878 in taxes. [\$110,287,693 in sales taxes and "special taxes" such as alcohol, tobacco, overnight accommodations, and commercially caught fish; \$319,181,020 in ad valorem taxes on property other than oil & gas related (AS 43.56); and \$256,462,165 in ad valorem taxes on oil and gas related properties (AS 43.56).] According to the State Revenue Sharing and Municipal Assistance - FY 92 Final Report (DCRA, March 1992), the population of all municipal governments in Alaska equaled 552,484. Thus, the statewide average per capita municipal tax collected from the sources described equaled \$1,241.54.

²² Chapter 159, Session Laws of Alaska 1990, repealed a 6% limitation on sales taxes.

²³ AS 29.45.090(b) states that, "A municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may not levy taxes (1) that will result in tax revenues from all sources exceeding \$1,500 a year for each person residing within the municipal boundaries; or (2) upon value that, when combined with the value of property otherwise taxable by the municipality, exceeds the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality."

levy sales taxes (subject to voter ratification of rate increases).

The Commission is keenly aware that as State funding for local services continues to decline, the ability of Alaska's 165 municipal governments to raise revenues will become more critical. Therefore, any attempt to address this issue fairly will no doubt prove to be as difficult as it will be controversial. The Commission raises this issue again only to ensure that the legislature is aware of sentiments concerning this matter.

Compensation for the Commission

The Local Boundary Commission urges the Legislature to enact a law providing some measure of compensation for the Commission. While the current economic climate is clearly less than ideal for this proposal, the demands placed on the Commission have grown beyond what can be reasonably expected of unpaid members. Given the role that the Commission plays in the formation and alteration of municipal government boundaries and the reclassification of cities, this compensation proposal is a wise investment in the future of Alaska. Please consider the following:

- ❖ The Alaska Supreme Court has consistently acknowledged the expertise of the Commission in all matters involving municipal boundary proposals. In doing so, the state's highest Court has placed lofty expectations and demands on the Commission. These expectations and demands compel members to dedicate substantial time evaluating complex and controversial proposals. Often, the record before the Commission on a single issue will exceed 1,000 pages.

- ❖ The Commission formulates fundamental policies that have important statewide political, economic and social implications. Again, such responsibilities dictate that the Commission be both prudent and diligent in carrying out its duties.
- ❖ The Commission is one of only five boards with origins in the State Constitution. The others are the Judicial Council, Commission on Judicial Qualifications, Reapportionment Board and the University Board of Regents. The Board of Regents and the Reapportionment Board are compensated in some fashion. Further, the two judicial boards include at least some members who are salaried state judges. The work of the Commission is most similar to the Reapportionment Board which is compensated at the rate of \$150 per day.
- ❖ The demands and expectations placed on the Commission appear to be at least comparable to the twenty or so state boards and commissions that are presently compensated (except for the three full-time salaried commissions).
- ❖ There are 165 municipal governments in Alaska today. That number is more than quadruple the number that existed at statehood. Even then, the Public Administration Service – which played a consulting role in setting the framework for State government – recommended to the First Session of the First Alaska Legislature that members of the Commission be compensated.
- ❖ Beside the fourfold increase in the number of municipalities since statehood, the scope of the Commission's responsibilities has grown substantially since its creation. Initially, the

Commission was responsible only for municipal annexations and detachments. The Courts handled other municipal boundary matters. Over the years, responsibility for municipal incorporations, dissolutions, mergers and consolidations has been shifted from the Courts to the Commission. Not only has this relieved the Courts of a substantial burden, but all municipal boundary issues are now placed before a single expert body. Last year, the Commission's responsibilities and authorities were extended to include consideration of proposals to reclassify cities.

- ❖ The Commission typically meets about 20 - 25 times each year. Travel and participation at meetings of the Commission take members away from their livelihoods, often requiring substantial financial sacrifice on the part of each Commission member.
- ❖ Meetings are often held in remote locations. This involves extended travel, sometimes under arduous conditions.
- ❖ The fiscal impact to the State would be relatively inconsequential. Using an estimate of 25 one-day meetings per year and compensation of \$150 per day per member, the total cost of compensation would be \$18,750 per year if all members were present at each meeting.
- ❖ Without compensation, it is likely to become increasingly difficult for the State to find qualified Alaskans who are willing to stay on the Commission long enough to give it the needed continuity and expertise.



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January 3, 1995

QUESTIONS
1) ON SPANISH STREET AMBS
2) WHAT HAPPENS TO UNEXPANDED MUNICIPAL ASST FUNDS

Ms. Sandy Perry-Provost
Staff to the House C&RA Committee
Representatives Austerman and Kohring, Co-Chair
Pouch V
Juneau, AK 99801

Dear Ms. Perry Provost:

Enclosed per your request is a copy of the draft 1994 annual report of the Local Boundary Commission to the State Legislature.

For administrative purposes, the Commission is part of the Department of Community & Regional Affairs. However, the Commission has Constitutional origins and is autonomous with respect to policy matters.

Chapter III of the draft contains five recommendations to be presented to the Legislature for formal review. These relate to the proposed dissolution of five inactive cities.

Chapter IV carries forward policy issues which have been raised by the Commission since the early 1980's. These include inequities in the structure for regional service delivery and compensation for the Commission. It also raises new issues such as the need to address laws relating to dissolution of municipal governments.

The draft was prepared by DCRA based upon its best understanding of the views of the Commission. However, until the Commission reviews and approves the report, it cannot be assured that particular aspects of the draft accurately represent the views of the Commission.

I anticipate that the draft will undergo additional editing. Maps and other graphics will also be added to the report.

The report is scheduled to be filed with the Legislature no later than January 25, 1995. The Commission is scheduled to review the report on January 11.

Cordially,

Robert K. Walsh
Director

Report of the Local Boundary Commission
to the First Session of the
Nineteenth Alaska Legislature

January 25, 1995

Draft



Darroll Hargraves, Chairperson, at-large
Myrtle Johnson, Vice-Chairperson
Second Judicial District



Frances Hallgren, First Judicial District
H. Toni Galmeier, Third Judicial District
Dr. Hugh Fate, Fourth Judicial District

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CHAPTER I

OVERVIEW OF THE COMMISSION AND ITS PROCEDURES

This chapter provides background information concerning the Local Boundary Commission. Discussion includes the role of the Commission, current members of the Commission, the role of the Department of Community & Regional Affairs as staff to the Commission and the Commission's procedures.

Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;
- dissolution of cities and boroughs;
- merger and consolidation of cities and boroughs; and
- reclassification of cities.¹

The Local Boundary Commission was established to serve as an impartial body to review municipal proposals from a statewide perspective. In the words of the Alaska Supreme Court:

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

¹ See AS 29.05; AS 29.06 and AS 44.47

state level. The advantage of the method proposed, in the words of the committee: "

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

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

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

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

The Local Boundary Commission was established pursuant to Article X, § 12 of the Alaska Constitution and AS 44.47.565. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct and Reapportionment Board.

Readers are encouraged to review the discussion of the prospective detachment of Lake Louise from the Matanuska-Susitna Borough as an example of fundamental statewide policy issues which can stem from seemingly insignificant parochial matters.

than two decades ago (and again in 1993), the Alaska Supreme Court remarked that:

*"...The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition .. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."*⁵

Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation.

Appointments to the Commission are made, *"...on the basis of interest in public affairs, good judgment, knowledge and ability in the field...and with a view to providing diversity of interest and points of view in the membership."*⁶ A biographical sketch of the individuals presently on the Commission follows.

Darroll Hargraves, Chairperson.

Commissioner Hargraves is a resident of Ketchikan. He joined the Commission in March 1991 and became Chairperson in May 1992. Commissioner Hargraves has been a school superintendent in Ketchikan and Nome and has taught school in Barrow, Kivalina and Gambell. He has also been an administrator at the University of Alaska.

Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974); *reaffirmed*. *Valleys Borough Support Committee v. Local Boundary Commission*, 363 P.2d 232 (Alaska 1993)

Fairbanks. Mr. Hargraves presently works as a communications and management consultant. His current term on the Commission expires January 31, 1997.

Frances Hallgren, 1st Judicial District.

Commissioner Hallgren lives in Sitka. She joined the Commission in May 1992. She works as a legal secretary and operates a home custom sewing business. She holds a degree in music education and has held an Alaska Teaching Certificate. Her current term ends January 31, 1996.

Myrtle Johnson, Vice-Chairperson and member from the 2nd Judicial District.

Commissioner Johnson began her current term on the Commission in March 1991. She served on the Commission previously under Governor Miller. Ms. Johnson lives in Nome and works at the Nome Senior Citizens Center. She and her spouse also fish commercially for salmon and herring in Bristol Bay. Additionally, they operate a gold mine near Granite Mountain, 200 miles northeast of Nome. Ms. Johnson was elected Vice-Chairperson of the Commission in August of 1994. Her current term on the Commission expires January 31, 1999.

H. Toni Salmeier, 3rd Judicial District.

Commissioner Salmeier joined the Commission in April 1993. She is a resident of Anchorage. Ms. Salmeier owns and operates a small business serving tourists on remote fishing and hunting trips. She also manages real estate. Ms. Salmeier has served on a number of community boards, including the Anchorage Zoning Board of Appeals. Her present term on the Commission ends January 31, 1998.

Dr. Hugh Fate, Jr., 4th Judicial District. Commissioner Fate was appointed to the LBC in March 1994. Dr. Fate is a semi-retired dentist who lives in Fairbanks. He has an extensive record of public service, including some 16 years as a member of the University of Alaska Board of Regents. His current term on the Commission expires January 31, 1995.

Staff to the Commission

The Alaska Department of Community and Regional Affairs (DCRA), Municipal and Regional Assistance Division (MRAD) provides staff to the Commission. The Commission's staff examines proposals to the Commission and prepares reports conveying DCRA's recommendations to the LBC. DCRA also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations and reclassifications. DCRA also maintains corporate boundary records for the 165 current municipal governments in Alaska.

The LBC and DCRA are independent concerning policy issues. In other words, the Commission is free to act in a manner other than that recommended by DCRA in its reports.

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 it. The procedures are also intended to ensure that decisions of the Commission are based analysis of the facts and the applicable legal

standards, with due consideration to the position 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 LBC, and opportunity for reconsideration by the LBC. A summary of the procedures is presented below.

Preparation and filing of the Petition. DCRA offers technical assistance and materials, including petition forms, to prospective petitioners. The technical assistance may include feasibility and policy analysis of a particular proposal.

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

Public notice and public review. Once a petition is accepted for filing, extensive public notice of the petition is given. Individuals and organizations are given at least seven weeks to submit responsive briefs and comments in support of or in opposition to a petition. The petitioner is given at least two weeks to file one brief in reply to all the responsive briefs.

Analysis. Following the public comment period, DCRA analyzes the petition, responsive briefs, written comments, reply brief and other materials as part of its investigation. Informational meetings may be conducted by the petitioner and DCRA.

At the conclusion of its investigation, DCRA issues a provisional report for public review and comment. The provisional

report includes a formal recommendation to the Local Boundary Commission for action on the petition.

The provisional report is circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its provisional report, DCRA announces any changes to the report and recommendation. The announcement must be made at least three weeks prior to the hearing on the proposal.

Commission review of materials and public hearing. Members of the Commission review the petition, responsive briefs, written comments, reply brief and DCRA report. If circumstances permit, Commission members also tour the area in question just prior to the hearing in order to gain a better understanding of the proposal.

Following extensive public notice, the LBC conducts at least one hearing on the proposal.

Decision and opportunity for reconsideration. The Commission must act on the petition within 90 days of the hearing. The Commission may take any one of the following actions:

- approve the petition as presented;
- amend the petition (e.g., alter the 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.

Typically, the Commission makes its decision within two weeks of the hearing. Within 30 days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the statement are then

provided to the petitioner, respondents and others who request it. At that point, the decision becomes final, subject to reconsideration.

Any party may ask the Commission to reconsider its decision. Such requests must be filed within 20 days of the date that the decision became final. If the Commission does not approve a request for reconsideration within 30 days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation. If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. An action proposed by a petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. Before it takes effect, the action must also receive favorable review under the Federal Voting Rights Act. DCRA provides assistance with Voting Rights Act reviews.

CHAPTER II

SUMMARY OF 1994 ACTIVITIES

During 1994, varying degrees of interest were expressed in every type of proposal that may come before the LBC. In several instances, formal petitions were filed and action taken by the LBC. In some cases petitions for municipal boundary proposals are being prepared. In other instances, local officials or residents are exploring particular proposals.

This chapter summarizes the various activities that occurred during 1994. Also included is a report of the status of Supreme Court and Superior Court appeals stemming from decisions of the LBC.

City Annexation

During 1994, annexations to three cities took effect. Formal annexation petitions were filed by three others. Several other cities are currently developing or contemplating annexation proposals.

- City of Sand Point
- City of King Cove
- City of Seldovia
- City of Kodiak
- City of Craig
- City of Ketchikan
- City of Wasilla
- City of Fairbanks
- City of Palmer
- City of Seward
- City of Klawock
- City of Pelican
- City of Kaktovik
- City of Anaktuvuk Pass
- City of Bettles

City of Sand Point. On September 30, 1993, the City of Sand Point petitioned the

Local Boundary Commission for the annexation of approximately 32 square miles. About 99.8% of the area proposed for annexation consisted of the waters of Popof Strait. The remainder of the territory included three uninhabited islands. These are Egg Island (approximately 35 acres in size), Little Egg Island, (approximately 3.5 acres) and Range Island, (approximately 10 acres). The territory is uninhabited and is used extensively for commercial fishing and related activities.

The petition was accepted for filing on November 16, 1993. Interested parties were given until February 11, 1994 to file responsive briefs and comments. One responsive brief and four letters were received objecting to the proposed annexation, particularly with respect to the inclusion of the Baralof Bay area.

After consulting with the City of Sand Point, DCRA recommended that the Commission amend the City's petition to

exclude the Baralof Bay area. The respondent and four correspondents all reacted favorably to the proposal and withdrew their objection on the condition that the Commission approved the recommended amendment.

The Commission conducted a duly-noticed public hearing on the matter by teleconference on July 12. Immediately following the hearing, the Commission approved the annexation of 20.6 square miles. The smaller area reflected the amendment of the petition to exclude the Baralof Bay area.

On October 24, DCRA received documentation that the City of Sand Point's was granted requisite preclearance of the annexation by the U.S. Department of Justice. Because the annexation had been approved by all of the property owners (and there were no resident registered voters), approval by the legislature or others was not required [AS 29.06.040(c)(3)]. Thus, the annexation took effect on October 24, 1994. The City of Sand Point's municipal boundaries now encompass approximately 29 square miles.

City of King Cove. The annexation of 21 square miles to the City of King Cove took effect on September 23, 1994, when the City provided DCRA with documentation that the boundary change had been precleared under provisions of the federal Voting Rights Act.

The Commission had approved the annexation petition on November 11, 1993. Tacit legislative approval of the annexation was granted March 5, 1994, the 45th day following the submission of the Local

Boundary Commission's recommendation for that annexation to the legislature.

City of Seldovia. The annexation of 44.6 acres encompassing 13 enclaves and a portion of the airport took effect upon the receipt of federal Voting Rights Act preclearance documentation on March 23, 1994. The Commission had approved the annexation on October 1, 1993.

Annexation had been tacitly approved by the legislature on March 5, 1994, the 45th day following the submission of the Local Boundary Commission's recommendation for that annexation to the legislature.

City of Kodiak. On April 25, 1994, DCRA received a petition from the City of Kodiak for annexation of Kodiak Island Borough Service Area Number 1 and Spruce Cape, encompassing 1,351.56 acres. The petitioner estimated the population of the area proposed for annexation at 2,648.

Technical review by staff determined that the petition was incomplete. The deficiencies were subsequently corrected by the City of Kodiak. On May 25, the petition was accepted for filing.

The Kodiak Island Borough expressed concern that the proposed annexation would be complicated by the lack of a comprehensive transition plan for the City's assumption of Borough assets and liabilities located within the territory sought for annexation. Borough staff indicated that the facilities and equipment of the Fire Service District were developed through major capital investments by the Borough. Such facilities would still be needed to serve Borough fire service district residents whose property was excluded from the area proposed for annexation. In response to

such concerns, on August 25, the Kodiak City Council adopted Ordinance 1001 rescinding authorization for the annexation.

City of Craig. On February 22, the City of Craig filed a petition to annex approximately 127.26 acres of City-owned property. The most prominent feature of the annexation proposal was a 9.15 mile long, 60-foot wide road corridor extending east of the current boundaries of the City. DCRA recommended that the Commission deny the petition because the proposal failed to meet two requisite annexation standards. First, there was no reasonable need for city government in the territory. Second, the proposal failed to include all areas necessary to provide the full development of essential city services on an efficient, cost effective level.

In addition, DCRA noted that the proposal was subject to technical impediments relating to ownership of the land in question that blocked the annexation of all but 660 square feet of the 5,543,446 square feet proposed for annexation.

The report also noted five policy concerns relating to the annexation proposal. First, the proposal was largely – if not exclusively – an effort to increase city revenues. DCRA noted that the Commission has consistently denied other city annexation proposals whose principal or exclusive purpose was to generate revenues. Second, approval of the annexation proposal would set a poor precedent that may result in proposals from other cities in Southeast Alaska to annex some 135 miles of roads to generate more revenues. Third, the boundary change would create a jurisdictional enclave. The Commission has historically opposed the creation of enclaves. Fourth, the proposed

boundaries would be extremely unconventional. Fifth and last, the annexation proposal excluded the adjacent Port St. Nicholas subdivision, which encompasses some 200 residents. That subdivision is adjacent to the City and receives essential City services.

The Local Boundary Commission scheduled a September 1, 1994, public hearing on the petition. At the September 1 public hearing, the Commission granted a request by the petitioner that action on the petition be postponed for 90 days. The City requested the action to allow it to settle questions about the ownership status of the land proposed for annexation. Prior to the expiration of the 90 day postponement, a City of Craig official indicated that the City did not wish to proceed with the proposed boundary change at this time.

City of Ketchikan. On September 30, 1994, the City of Ketchikan filed a petition for annexation of approximately 14.6 acres of privately owned property connected by a 1.25 mile long segment of the North Tongass Highway. The petition was initiated upon request of all property owners and voters in the territory under the provisions of AS 29.06.040(c)(3). The petition indicates that territory has an assessed value of \$3,138,600. DCRA reviewed the petition and found it to be incomplete. The petition has been returned for correction and completion.

City of Wasilla. Officials of the City of Wasilla have submitted a draft annexation petition for review by DCRA. The area in question encompasses approximately 40 acres. It is inhabited by an estimated 16 residents and has an assessed value in excess of \$4.25 million. City officials have

indicated that they plan to seek authorization to file the petition from the City Council in February. If authorized by the Council, the legislative review annexation petition will be filed by March 1.

City of Fairbanks. The City plans to submit two petitions for annexation. The first petition will seek the annexation of 5.1 square miles, including Fred Meyers, the Fairbanks International Airport and adjacent properties.

The second petition will seek the annexation of three separate areas under AS 29.06.040(c)(3), which requires unanimous approval by the affected residents and property owners. These three areas include 35-acres west of Peger Road, north of Airport Way and bounded by the Chena River. The second property consists of two lots in the Riverside Park Subdivision. The third area also consists of property in the Riverside Park Subdivision.

City officials indicated that they would file both petitions by March 1995.

City of Palmer. The City of Palmer expressed interest in annexing a 35-acre city-owned industrial park. The Commission rejected a proposal for the annexation of that area in 1992 for technical reasons. The City plans to overcome those technical obstacles by revising its petition.

City of Seward. Officials of the City of Seward indicated that they are contemplating a proposal to annex some 5,375 acres of uninhabited territory currently lying within the Bear Creek Fire Service Area of the Kenai Peninsula Borough. DCRA staff provided officials of

the City of Seward with petition forms and other information needed to file a legislative review annexation petition.

City of Klawock. LBC staff provided a Klawock City official with petition forms and information for annexation by legislative review. The City Administrator indicated that the City plans to seek the annexation of some 1,500 acres. The territory includes an estimated 34 residences, ANCSA 14(c)(3) property conveyed to the City, Village Corporation holdings, as well as the community's airport, sawmill & fish hatchery. The City Administrator indicated that a petition for annexation would be filed by March of 1995.

City of Pelican. Pelican City officials are considering annexation of the APEX mine development. Interest has been spurred by recent discussions of use of the City of Pelican's solid waste disposal by the mine and other potential impacts upon the City as a result of mine development. Information on annexation has been provided to the City at the request of City staff.

City of Kaktovik. Officials of the City of Kaktovik have expressed interest in annexing a nearby industrial site to facilitate enforcement of its alcohol prohibition.

City of Anaktuvuk Pass. The existing legal description of the municipal boundaries of the City of Anaktuvuk Pass, adopted in 1959, are ambiguous. The Arctic Slope Native Association has requested assistance in clarifying the boundaries. In response, a new proposed description of municipal boundaries has been drafted.

City of Bettles. An official of the City of Bettles indicated that the City was contemplating the annexation of territory. DCRA provided information and petition forms for consideration by the City

City Incorporation

During 1994, the Commission approved the incorporation of one city government. Varying degrees of interest in forming city governments in several other communities has been expressed during 1994. This section summarizes interest in forming cities in the following communities:

- Egegik
- Kasilof
- Healy
- Big Lake
- Talkøetna
- Cantwell
- Cooper Landing
- McCarthy
- Memory Lake
- Elfin Cove
- Gustavus
- Galcha
- Chiniak
- Hollic
- Whale Pass
- Tok
- Sterling
- Port Protection
- Kenny Lake

Egegik. On March 15, 1994, voters of the community of Egegik filed a petition for incorporation of a second class city with boundaries encompassing approximately 135 square miles. About 104.6 square miles of this area is offshore. The offshore area conforms to the Egegik Fishing District.

DCRA completed its technical review and the petition for filing on April 25, 1994.

One responsive brief (from Terry L. Cummings) was received by the June 30, 1994 deadline for initial comments. Ms. Cummings expressed opposition to the proposed incorporation.

The Local Boundary Commission scheduled a duly-noticed public hearing on the incorporation proposal for December 13, 1994. The meeting was convened as scheduled (by teleconference), but recessed until December 14 because of a weather-induced travel delay.

At the conclusion of the public hearing, the Commission initiated a decisional session regarding the petition for incorporation. At the decisional session, the Commission approved the petition without amendment by a vote of 4 to 0 (one member was absent). Incorporation was made contingent upon voter approval of a 1 percent sales and use tax on raw fish sales within the boundaries of the city. The sales and use tax shall be placed before voters on the incorporation ballot.

Kasilof. At the request of the Lieutenant Governor's Office, staff provided Kasilof residents with information and petition forms for second class city incorporation.

Healy. Residents of Healy expressed interest in forming a second class city. Information and petition forms were provided.

Big Lake. On July 19, DCRA met with planners from the Matanuska-Susitna Borough to discuss interest by Big Lake residents in forming a city. The Borough staff tentatively agreed to assist the community in deliberations on the issue. The matter is addressed to a limited extent

in the comprehensive plan for Big Lake that has been under development from more than two years. At the request of the Big Lake Chamber of Commerce, LBC staff delivered a public presentation on forming a city government on July 27. The meeting was attended by 20 individuals, including a member of the Matanuska-Susitna Borough Assembly and other Borough officials. Big Lake has attempted to form a city on two prior occasions (1974 and 1987). It is uncertain whether a third effort to form a city will be undertaken.

Talkeetna. A group of Talkeetna residents has been considering forming a city for several months. However, concerns that the city would have to assume responsibility for the Borough's water and sewer service area have reportedly prevented the group from moving forward on the proposal.

Cantwell. The President of the non-profit "Community of Cantwell, Incorporated" requested and was provided forms and information concerning formation of a second class city.

Cooper Landing. DCRA participated in a November 2 meeting of the Cooper Landing Community Club regarding city incorporation. Two representatives of the Kenai Peninsula Borough and 24 local residents attended the meeting. City incorporation is being considered as one way to ensure continued or improved ambulance and fire protection services to the community. Establishment of a Borough service area is also under consideration by Cooper Landing residents.

McCarthy. DCRA provided information regarding the city incorporation process and standards to a McCarthy resident interested

in encouraging community discussion of the benefits of second class city status.

Memory Lake. DCRA provided the Memory Lake Estates Community Association with extensive information concerning formation of a city. The planning director of the Matanuska-Susitna Borough has reportedly urged the community to consider forming a city. According to Association officials, Memory Lake has a population of 400 - 500. The community is located north of Wasilla.

Elfin Cove. DCRA provided a resident of Elfin Cove with information concerning formation of a second class city.

Gustavus. Petition forms for incorporating a second class city were forwarded to Gustavus residents. A community meeting on City incorporation was conducted on September 30.

Salcha. LBC staff provided a resident of Salcha with information and forms to petition to incorporate a second class city. Salcha is located in the southern end of the Fairbanks North Star Borough. In 1990, the "Census Designated Place" of Salcha had 354 residents.

Chiniak. DCRA staff traveled to Chiniak and met with the community council regarding city incorporation. Chiniak is located on Kodiak Island, 40 road miles south of the City of Kodiak. Residents indicate that the area has a population of 106. It appears likely that a borough fire service area may be established as an alternative to city incorporation.

Hollis. Residents of Hollis have expressed interest in forming a second class city.

Hollis is located on Prince of Wales Island, 35 miles west of Ketchikan. The 1990 census reported that Hollis had a population of 111.

Whale Pass. DCRA reported that residents of Whale Pass (1990 population, 75) have expressed interest in forming a city government.

Tok. The Tok Chamber of Commerce considered incorporation of Tok as a second class city. DCRA provided information and petition forms for review.

Sterling. Newspaper reports indicate that "people filled the bleachers" at the Sterling School on January 17 to discuss whether to incorporate a city. Officials of the Kenai Peninsula Borough Planning Department were reportedly present at the meeting.

Port Protection. Residents of Port Protection have expressed interest in forming a second class city. A meeting is planned for February to discuss the topic.

Kenny Lake. Staff responded to an inquiry from a Kenny Lake resident who indicated that the "overwhelming majority" of community residents wish to break away from the Copper River Regional Educational Attendance Area. Information was provided about forming a first class or home rule city.

City Dissolution

As reported previously by the Commission, interest in dissolution of cities is growing. During 1994, the topic was addressed to some degree with respect to the following city governments:

- City of Atmautluak;
- City of Kasigluk;
- City of Newtok;
- City of Tuluksak;
- City of Tununak;
- City of Akiak;
- City of Goodnews Bay;
- City of Mekoryuk;
- City of Manokotak;
- City of Mountain Village;
- City of Quinhagak;
- City of Napaskiak;
- City of Fort Yukon;
- City of St. Paul;
- City of Chefornek; and
- City of Seldovia.

The Local Boundary Commission approved petitions for the dissolution of five cities during 1994. The five were the City of Atmautluak, City of Kasigluk, City of Newtok, City of Tuluksak and City of Tununak. All five are second class cities in the Unorganized Borough. The Commission's actions with respect to those five cities are subject to review by the First Regular Session of the Nineteenth Alaska Legislature.

A formal recommendation to the Legislature for the dissolution of each of those cities, with certain stipulations, is included in Chapter III of this report. Under AS 29.06.450(b) and Article X, Section 12 of Alaska's Constitution, the Legislature has 45 days from the date that this report was filed to consider the recommendations. If the Legislature takes no action on the recommendations within the 45 day review, they are automatically approved. However, the Legislature may void any of the pending dissolutions by adopting a concurrent resolution in both houses within the 45 day review period.

Beyond the five pending dissolution's addressed above, the following is a summary of the interest in dissolution in the other cities noted.

Akiak. On July 27, a petition for dissolution of the City of Akiak was submitted to DCRA. The City of Akiak is a second class city in the Unorganized Borough. The dissolution petition was signed by 70 residents. Following a technical review of the petition, DCRA accepted the petition for filing. Interested parties have been given until February 1, 1995 to file responsive briefs and informal written comments supporting or opposing the proposed dissolution. DCRA will then develop its report and recommendation. The Commission will subsequently hold hearings on the proposal. If the Commission approves the petition, the dissolution will be subject to voter approval under AS 29.06.510.

Goodnews Bay. In December, DCRA received an informal petition to dissolve the City of Goodnews Bay. The City of Goodnews Bay is a second class city in the Unorganized Borough. The informal dissolution petition was signed by 87 individuals. The petition was found to be incomplete and was subsequently returned for correction.

Mekoryuk. Officials of the City of Mekoryuk provided DCRA with a draft petition to dissolve that city. DCRA suggested revisions to the draft in September. However, no formal petition for the dissolution of the City of Mekoryuk has not yet been submitted.

Manokotak. DCRA staff met with residents of Manokotak in December to discuss their

interest in dissolving their city. The City of Manokotak is a second class city in the Unorganized Borough.

Mountain Village. A resident of Mountain Village reported to DCRA that "most of the voters of the City of Mountain Village" are disenchanting with the City and want to dissolve it. The City of Mountain Village is a second class city in the Unorganized Borough. No formal dissolution petition has been initiated.

Quinhagak. In October, DCRA reported that residents of Quinhagak were contemplating a proposal to dissolve their city government. The City of Quinhagak is a second class city in the Unorganized Borough. At this point, no formal petition has been filed.

Napaskiak. In December, the Mayor of the City of Napaskiak contacted DCRA seeking information about dissolution. The City of Napaskiak is a second class city in the Unorganized Borough.

Fort Yukon. In April, DCRA provided information to a resident of Fort Yukon who wanted to explore dissolution of the City of Fort Yukon. The City of Fort Yukon is a second class city in the Unorganized Borough. DCRA received no further expression of interest in the matter.

St. Paul. In April, an official of the City of St. Paul asked DCRA to provide information concerning the possible dissolution of that city. The City of St. Paul is a second class city in the Unorganized Borough. No subsequent interest was expressed to DCRA concerning dissolution.

Chefornak. In January of 1994, a resident of Chefornak requested from DCRA and was provided forms to petition for the dissolution of the City of Chefornak. The City is a second class city in the Unorganized Borough.

Seldovia. In January, a petition for dissolution of the City of Seldovia was circulated. Seldovia is a first class city in the Kenai Peninsula Borough. DCRA rejected the petition because of deficiencies. DCRA staff subsequently met with approximately 50 residents of Seldovia and officials of the City of Seldovia and the Kenai Peninsula Borough to discuss the proposal. Little further interest in dissolving the City has been shown since that meeting.

City Detachment

During 1994, interest was expressed in several city detachment proposals. These included proposals for the detachment of territory from the following:

- City of Fairbanks; and
- City of Homer.

Fairbanks. Fairbanks North Star Borough officials indicated interest in detaching territory from the City of Fairbanks in order to facilitate construction of a Borough solid waste dumpsite. The area in question is uninhabited lies at the edge of the existing corporate limits of the City of Fairbanks. The property is owned by the federal government. Detachment was being considered because the Borough's bond counsel took the position that because construction of the planned dumpsite facility will be financed with bonds to be repaid by non-area-wide property owners.

the property should be detached from the City. Ultimately, however, the Borough made other arrangements for the planned dumpsite.

Homer. A Homer property owner requested and was provided petition forms and other information to seek detachment from the City of Homer. However, no petition was filed.

City Reclassification

At the end of the 1994 regular session of the legislature, provisions were enacted to subject city reclassification proposals to the approval of the Local Boundary Commission. The new law also requires the Commission to enact regulations establishing standards for city reclassifications. The Commission has drafted regulations relating to reclassification of cities and will hold a hearing on the proposal during the 1995 legislative session.

During 1994, interest in reclassification of the following cities was expressed to some degree:

- Dillingham;
- St. Mary's;
- Angoon; and
- Kwethluk.

A brief summary of the level of interest in the four cities is provided below:

Dillingham. The City of Dillingham is a first class city in the Unorganized Borough. There is an ongoing interest in reclassifying the City of Dillingham to a second class city. DCRA's staff to the Commission have provided officials of the City with

information about the effects and financial implications of such reclassification.

One of the biggest effects is that reclassification would force the consolidation of the Dillingham City School District with the Southwest Region Regional Educational Attendance Area. DCRA, working in cooperation with the Department of Education, projected that reclassification would reduce total education funding for the region (state, federal and local) by more than \$430,000. It would, however, also relieve the City of Dillingham of its requirement to provide funds in support of its own school district (currently approaching one-half million dollars annually).

St. Mary's. The City of St. Mary's is a first class city in the Unorganized Borough. DCRA reported that interest had been expressed in reclassifying the City of St. Mary's to a second class city. As is the case with Dillingham, reclassification of the City of St. Mary's would result in the consolidation of the City School District with the surrounding regional educational attendance area. However, there is no indication that the matter is currently being pursued.

Angoon. The City of Angoon is a second class city in the Unorganized Borough. In the summer of 1994, DCRA staff fielded inquiries from officials of the City concerning the impacts of reclassification to a first class city. In contrast to Dillingham and St. Mary's, the reclassification of the City of Angoon would compel the formation of a Angoon City School District separate from the Chatham Regional Educational Attendance Area. There is no

indication that a proposal to reclassify the City of Angoon is currently being pursued.

Kwethluk. The City of Kwethluk is a second class city in the Unorganized Borough. DCRA responded to an inquiry from City officials concerning the effects of reclassifying to a first class city. Unlike Angoon, Kwethluk might be prohibited from forming a city school district for the long-term future if it reclassified. AS 14.12.025 prohibits the formation of a new school if it has less than 250 students, unless the Commissioner of the Department of Education determines that formation of the district would, nonetheless, be in the best interests of the State and the proposed district. Kwethluk has a student population of only 166. In contrast, Angoon's student population is reported to be 393 students.

Borough Incorporation

Officials or residents of the following six areas of the state contemplated borough formation during 1994:

- North Pole Region;
- Dillingham Census Area;
- Prince William Sound Region;
- Chatham Region;
- Wrangell; and
- Port Alexander.

In the case of North Pole, a petition for borough formation was submitted to DCRA. Representatives of some of the other five areas have expressed interest in conducting or updating borough studies. AS 44.47.700 - 44.47.730 provides a program for funding such studies. However, no funds have been appropriated for the program. A summary of the interest in borough government by each of the six regions follows.

North Pole Region. On March 17, a 672-page proposal to incorporate the North Pole Borough was submitted to DCRA. The proposed borough would encompass more than 10,000 square miles, including 5,400 square miles currently part of the Fairbanks North Star Borough. A map of the territory in question is provided below.

Although residents of the region have been exploring borough formation off and on since the mid-1980's, the LBC has been advised that, "... a committee of citizens in Dillingham in conjunction with interested citizens from the Nushagak/Togiak drainage communities intend to submit a petition for formation of a Nushagak/Togiak borough during the 1995 fiscal year."⁷

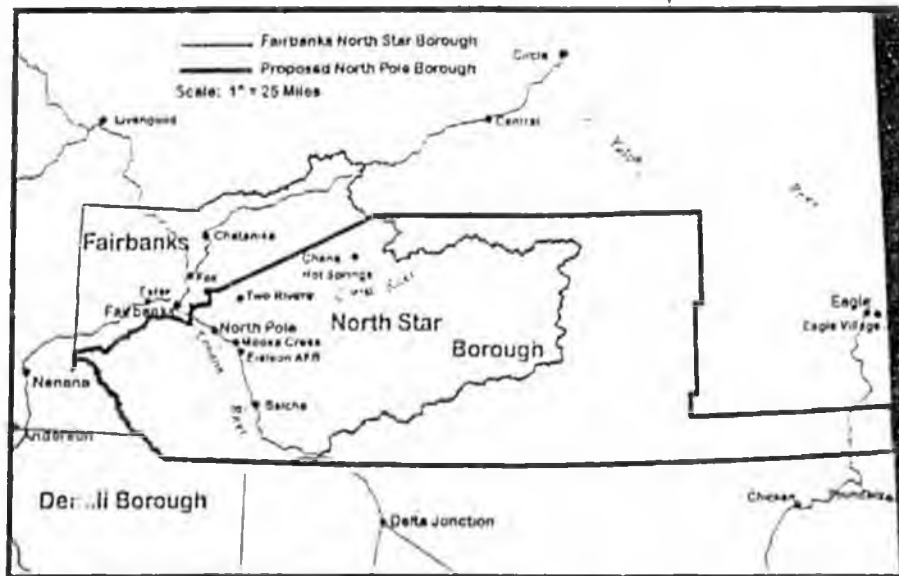


Figure 1 - Boundaries of the Proposed North Pole Borough

In April of 1994, DCRA's staff to the Commission prepared financial projections of the feasibility of borough formation in the Dillingham Census Area. The projections indicated that a borough which exercised only the powers mandated by State law (education, planning, platting, land use regulation and tax collection) would be financially viable under five of nine different revenue scenarios examined. A regional work session on

DCRA's review of the petition disclosed several technical deficiencies. DCRA's staff to the Commission met with the petitioners to review the deficiencies. The petitioners submitted corrections to the petition on November 28. DCRA's subsequent review of these materials ... [to be written upon completion of review of the revised petition materials]

borough government was held in Dillingham in May. DCRA staff made several presentations at the work session.

Dillingham Census Area. The region encompasses the communities of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, Ekuk, Portage Creek, Ekwok, Koliganek and New Stuyahok.

Prince William Sound. The region encompasses the communities of Whittier, Chenega, Tatitlek, Valdez and Cordova. Here again, residents of the Prince William Sound region have considered the topic of borough formation off and on for many years. Borough studies were conducted for the region in the 1970's and in 1988.

DCRA's staff to the Commission made presentations on borough formation at

⁷ Affidavit of Alice J. Ruby, September 30, 1994

regional conferences in Whittier in May and in Valdez in November, 1994. DCRA staff also participated in two regional programs broadcast on public radio throughout the region.

The Prince William Sound Economic Development Council indicated to DCRA that it plans to request assistance to prepare a contemporary borough feasibility study.

Chatham Region. The region includes the communities of Pelican, Elfin Cove, Gustavus, Hoonah, Tenakee Springs, Angoon and Kake. Several different boundary scenarios are being explored. Different factions within the region favor particular boundary configurations. The different scenarios being discussed include: (1) boundaries extending from the southern boundary of the Yakutat Borough to the southern end of Kuiu Island, and (2) one set of boundaries encompassing the communities of Hoonah, Angoon and Kake with another set of boundaries encompassing Gustavus, Pelican, Elfin Cove, and Tenakee Springs. Some in Pelican have expressed interest in a borough encompassing only that community.

DCRA's staff to the Commission presented information on borough government at meetings in the region during August and November. An ad hoc group of representatives of the communities in the region has indicated a desire to seek funding for a borough study to examine the different boundary scenarios and the feasibility of borough formation.

Wrangell. Staff of the City of Wrangell indicated to DCRA staff in October that City officials were contemplating reviving

their interest in forming a single community borough.

Port Alexander. Residents of Port Alexander expressed interest to DCRA in forming a single community borough. With a population of 108, Port Alexander has just over one-fourth of the number of residents required by statute to form a first class city. However, the statutes lack a minimum population threshold for borough incorporation.

Borough Detachment

During 1994, formal and informal borough detachment proposals surfaced with respect to:

- Lake Louise (detachment from the Matanuska-Susitna Borough);
- North Pole (detachment from the Fairbanks North Star Borough);
- Ahlma Regional Corporation lands (detachment from the Matanuska-Susitna Borough);
- Susitna Region (detachment from the Matanuska-Susitna Borough);
- Alexander Creek (detachment from the Matanuska-Susitna Borough); and
- Denali State Park In-Holdings (detachment from the Matanuska-Susitna Borough).

A summary of the detachment proposals follows.

North Pole. As noted in the discussion of borough formation, residents of the North Pole area have submitted a petition to detach 5,400 square miles from the Fairbanks North Star Borough. The proposal envisions including that area, plus an additional 4,600 square miles presently in the unorganized borough, in a new

borough. As noted earlier, that petition
[to be completed]

Lake Louise. Several residents of Lake Louise have expressed their intention to petition for detachment of that area from the Matanuska-Susitna Borough by March of 1995. During 1994, DCRA met three times with residents of Lake Louise concerning that matter.

Ahtna Corporation Lands. An official of the Matanuska-Susitna Borough reported that a representative of Ahtna Incorporated, the ANCSA Native regional corporation for the Copper River Area, has requested information needed to petition for the detachment of certain uninhabited lands owned by the Corporation.

Susitna Region. A group of residents from the northern portion of the Matanuska-Susitna Borough expressed interest in forming a new borough encompassing the area from Willow to the current northern boundary of the Borough (but not extending as far east or west as the current boundaries). This group met in January of 1994, but has not initiated any proposal.

Alexander Creek. In January, a representative of residents of Alexander Creek, a settlement of 19 homes on the west side of the Susitna River near Cook Inlet, expressed interest in detaching that area from the Matanuska-Susitna Borough. DCRA provided information and materials needed to initiate a detachment petition, however, none has been submitted to date.

Denali State Park In-Holdings. In October, an Anchorage attorney indicated that he plans to petition to detach 1,400 acres of inholdings in the Denali State Park in the

Matanuska-Susitna Borough. DCRA provided him with information and materials to initiate a petition, however, none has been filed to date.

Borough Dissolution

During 1994, interest was expressed in the dissolution of the Matanuska-Susitna Borough. A group of individuals in Talkeetna requested from DCRA and was provided with petition forms to seek the dissolution of the Borough. However, at this point, no completed petition has been filed.

Borough Annexation

City and Borough of Juneau. The annexation of 140 square miles to the City & Borough of Juneau's took effect January 1, 1994. The territory includes the Greens Creek Mine. The Commission had approved the annexation on September 8, 1991, but provided for a deferred effective date.

Ketchikan Gateway Borough. Officials of the Ketchikan Gateway Borough are considering a proposal to annex the area lying within the model boundaries established for the Borough by the Commission in 1991 (with the possible exception of Hyder and Meyers Chuck). The area in question encompasses more than 5,000 square miles. DCRA's staff to the Commission provided annexation petition forms and related information to the Borough. No petition has yet been filed.

City and Borough Consolidation.

City of Ketchikan and the Ketchikan Gateway Borough. Residents of the Ketchikan area, including local government officials, began drafting a petition to consolidate the City of Ketchikan with the Ketchikan Gateway Borough. The concept being considered would unite the two largest governments in the Ketchikan area, but would allow the second class City of Saxman to remain in existence. At this point, it is uncertain if or when a petition to consolidate the two governments will be filed.

Litigation

Four cases involving the Local Boundary Commission received attention from the courts in 1994. These are summarized below.

Regarding the Northwest Boundary of the Lake and Peninsula Borough [City of Ekwok, et al., vs. Local Boundary Commission; Supreme Court Opinion No. 4152 - December 2, 1994]

On February 22, 1989, eleven cities, village councils and native corporations from the Nushagak River area filed a complaint for declaratory and injunctive relief, asking that the court void the Commission's December 28, 1988 decision approving the petition to incorporate the Lake and Peninsula Borough. The former Lake and Peninsula School District was also named as a defendant, and the new Lake & Peninsula Borough was added as a defendant after incorporation.

The plaintiffs' complaint alleged statutory and constitutional violations in setting boundaries and in providing notice of the incorporation process. Plaintiffs then waited nearly two years before taking any further action in the litigation.

In January 1991, the Superior Court gave notice of its intent to dismiss the case because the plaintiffs failed to pursue the matter. Simultaneously, the Borough moved for summary judgment based on laches. The plaintiffs, in turn, moved for summary judgment based on alleged notice deficiencies. In response, the Borough and the Commission sought dismissal based on the de facto incorporation doctrine. The Commission asserted that the case should proceed as an administrative appeal.

In July of 1991, the court orally denied the motions for summary judgment, but agreed with the Commission that the case should be handled as an administrative appeal. The court also found that there were defects relating to notice of the incorporation proceedings.

In a later written decision, the Superior Court denied the defense of the doctrine of de facto incorporation and laches. The court declared the northwest boundary to be voidable and ruled that if the Commission changed the boundary on remand, then there would have to be an election "restricted to approval of the new boundary versus retention of the existing boundary."

The Lake and Peninsula Borough appealed the court's ruling regarding notice and laches. The Nushagak Villages appealed the remedy determined by the court.

On July 22, 1994, the Supreme Court affirmed the Superior Court's ruling

concerning notice and laches. However, the high court ruled that the Superior Court had erred with respect to the remedy. The Supreme Court ordered the Local Boundary Commission to reconsider the northwest boundary of the Lake and Peninsula Borough. The Court provided further that if the Commission determines that the Borough's boundary should be changed, a borough incorporation election will be conducted in accordance with 29.05.110(a).

Reconsideration proceedings under the court order began immediately. In early August, DCRA provided extensive notice of reconsideration of the northwest boundary of the Lake and Peninsula Borough. Initial briefs and written comments on the matter were submitted to DCRA by September 30. Reply briefs and written comments were filed with DCRA by October 28.

DCRA published a 114-page provisional report regarding the boundary dispute on November 30. Approximately 100 copies were provided for public review and comment. The report recommended that the Commission affirm the existing boundaries of the Lake and Peninsula Borough.

On December 6, 1994, DCRA conducted an informational meeting on the boundary dispute. The meeting was held in King Salmon, with teleconference sites established in Dillingham and Nondalton.

After considering public comments on the provisional report, DCRA released its final report during the first week in January of this year. The one-page final report affirmed the findings, conclusions and recommendations set out in the provisional report.

The Commission is scheduled to hold hearings on the disputed boundary on January 29. Hearings are scheduled for New Stuyahok and Newhalen.

Regarding Incorporation of the City of Pilot Point [Jack Keane and Concerned Citizens of Bristol Bay: Supreme Court Opinion No. 4145 - November 18, 1994.]

On December 13, 1991, a group describing themselves as an unincorporated association of Pilot Point area residents, property owners and fishermen filed an appeal of the Commission's decision to accept the petition to incorporate Pilot Point as a second class city.

The appellants claimed lack of proper notice and abuse of discretion by the Commission. The appellants filed a motion to stay certification of the incorporation election results. The petitioners filed a motion to intervene in the appeal and opposed the motion to stay the certification of the election. The Commission supported the motion for intervention and opposition to the motion to stay. The appellants opposed the motion to intervene.

The Superior Court granted the motion to intervene, denied the motion for a stay and allowed certification of the election results.

The appellants then sought review of the Superior Court's order by filing an emergency motion for stay with the Alaska Supreme Court. The motion was denied (No. S-4922 Order, January 21, 1992).

The Superior Court affirmed the Commission's decision approving the petition for incorporation. The

incorporators and the Commission then filed motions for attorney's fees. The appellants opposed both motions, claiming public interest litigant status. The court denied the appellants' request and awarded partial attorney's fees to the Commission and the incorporators in the amount of \$1,500 and \$11,350 respectively.

The appellants subsequently appealed the matter to the Alaska Supreme Court. In November 1994, the Supreme Court affirmed the decisions of the Superior Court denying the appellants motion to stay the proceedings and allowing the incorporators to intervene. The Supreme Court also concluded that the \$1,500 per capita tax limitation provided by AS 29.45.090(b)(1) is inapplicable to sales taxes. Further, the Court concluded that the City of Pilot Point's sales tax does have a public purpose, and as long as City services are available the issue of the lack of usage of those services by the fishermen taxpayers does not violate due process.

However, the Supreme Court concluded that the Commission erred in its incorporation determination by failing to address whether the Lake and Peninsula Borough could reasonably and practicably provide the services desired by the residents of Pilot Point. The Supreme Court remanded the matter to the Commission to make such an inquiry. The Supreme Court also concluded that the appellants were a public interest litigant and, therefore, reversed the Superior Court's awards of attorney's fees.

On November 28, 1994, the appellants filed a petition for rehearing with the Supreme Court. The petition for rehearing contends that the court overlooked, misconceived or failed to consider key provisions of the law. As a consequence, the appellants suggest

that the Court's decision could lead to unnecessary duplication of tax levying jurisdictions, while the interpretation favored by the appellants would avoid both duplication of tax levying jurisdictions and proliferation of service areas.

Regarding Annexation to the City of Cordova [Russell and Mary Babic, et al., vs. DCRA and the Local Boundary Commission, Superior Court Case No. 3AN-93-01163 CI consolidated with Case No. 3AN-93-01996 CI]

On February 5, 1993, Russell Babic, et al., appealed the decision of the Commission to approve the annexation of 68.23 square miles to the City of Cordova. The appellants alleged that the decision of the Commission was not supported by the evidence in the record and that the decision was therefore both unreasonable and without a reasonable basis. The appellants also alleged several procedural errors, including the use of improper regulations, allowing the introduction of evidence after the record was closed, and prematurely filing the legislative review recommendation for the annexation. The Commission subsequently filed its brief refuting the allegations.

On October 11, the Superior Court ruled that the Commission had submitted its final decision to the legislature. "*in accordance with AS 44.47.567, but before the time allowed for filing of motions for reconsideration had expired pursuant to AS 44.62.540. By so doing it effectively and impermissively denied the use of that forum to those opposed, inconsistent with the process afforded and due them.*" (sic) Consequently, the court ordered that the

annexation be voided and provided further that "*consideration of the cause is remanded to the Local Boundary Commission for reconsideration.*" (sic)

On October 19, the State filed a petition for rehearing. Among other contentions, the petition notes that, "*[I]n finding that the LBC did not comply with AS 44.62.540, the court has overlooked directly controlling statutes and a decision of the Alaska Supreme Court which provide that proceedings before the LBC are not governed by the administrative adjudication sections of the Administrative Procedures Act (AS 44.62.330 - 630).*"

The State also filed an emergency motion for stay on October 19. On the same date, the City of Cordova filed emergency motions to intervene and to stay the court's order. It also filed a petition for rehearing. The State filed a statement of nonopposition to the City of Cordova's motion to intervene. The appellant filed pleadings opposing the City's motion to intervene and the emergency motions for a stay.

The Superior Court held a hearing on the issues of the City's intervention and the two motions to stay the order on October 19. The Judge granted the stay and then scheduled a hearing on the motions for the City's intervention, the doctrine of de facto incorporation and the rehearing. The court also expressed its strong desire to see the parties reach an out-of-court settlement. At this point, it appears that such a settlement will be reached.

Regarding Incorporation of the City and Borough of Yakutat [Petitioners for the Incorporation of the City and Borough of Yakutat vs. Local Boundary Commission; Supreme Court Case No. S5760]

On June 4, 1992, the petitioners for the incorporation of the City and Borough of Yakutat filed an appeal with Superior Court over the amendment of their petition to exclude territory west of 141st meridian. The appeal centered on allegations that:

- 1) The Commission abused its discretion and acted beyond its statutory authority when it amended the western boundary of the petition to exclude the territory from the 141st meridian to Cape Suckling.
- 2) The Commission lacks authority to adopt regulations concerning standards for borough incorporation, and the Commission erred in relying upon such regulations in the amendment of the western boundary.
- 3) The amendment of the western boundary violated Article X, Section 3 of the Constitution of the State of Alaska which provides that each borough shall embrace an area and population with common interests to the maximum degree possible.
- 4) The amendment of the western boundary operated to deprive the petitioners of their rights to due process of law under Article X and Article XIV of the Amendments to the U.S. Constitution, and under Article I, Section 7 of the Constitution of the State of Alaska.

On August 10, 1992, Chugach Alaska Corporation filed an appeal with Superior Court over the Commission's decision to approve the petition, with or without the boundary amendment. This appeal alleged that:

- 1) The Commission erred in granting the petition because the proposal failed to meet population standards concerning size, stability, interrelationship and integration; and that it also failed to meet standards regarding the human and financial resources needed to operate a borough.
- 2) The Commission erred in applying regulations which were not in effect when the petition was filed.
- 3) The Commission committed procedural errors in the consideration of the petition.
- 4) Approval of the petition violates Article X, Section 1 of the Constitution of the State of Alaska which mandates a minimum number of local governmental units.

The two appeals were consolidated into one case on October 6, 1992.

On June 7, 1993, Superior Court Judge Michael Thompson affirmed the decision of the LBC regarding the incorporation of the Yakutat Borough. In doing so, the court concluded: 1) the procedures used by the LBC to act on the petition were proper; 2) there was a reasonable basis for the LBC's decision to amend the western boundary; 3) the LBC lacks legislative rulemaking authority for incorporation proceedings, however, it does have authority to adopt interpretive regulations governing incorporation and its incorporation

regulations were viewed as such; 4) it may have been a violation of law to use regulations adopted after the petition was filed, however, that potential defect was overcome by de facto incorporation of the borough; and 5) there is a reasonable basis for the LBC's conclusion that the incorporation proposal (with amended boundaries) satisfied the borough incorporation standards.

Concerning the LBC's authority to adopt regulations, the court acknowledged that the LBC does have legislative rulemaking authority for matters involving annexation, detachment, merger and consolidation (the court did not mention dissolution, but the LBC also has express legislative rulemaking authority for such under AS 29.06.450). CSSB 164, which is pending before the Legislature, would give the LBC the authority to adopt legislative regulations concerning incorporation. Judge Thompson noted that interpretive regulations are given less deference by the court than legislative regulations.

The ruling has been appealed to the Supreme Court. At this point, briefs have been filed with the Supreme Court by the appellants and the State.

The Alaska Supreme Court heard oral arguments in the case on March 29. The Court's decision is expected shortly.

CHAPTER III

ACTIONS REQUIRING LEGISLATIVE REVIEW

This chapter presents five formal recommendations to the First Session of the Nineteenth Alaska Legislature for dissolution of inactive cities pursuant to AS 29.06.450(b) and Article X, Section 12 of Alaska's Constitution. The five cities are the:

- City of Atmautluak;
- City of Kasigluk;
- City of Newtok;
- City of Tununak; and
- City of Tuluksak.

Under the law, the recommendations receive automatic legislative approval 45 days after presentation to the legislature (or at the end of the session, whichever is earlier) unless disapproved by a concurrent resolution of the legislature. The dissolution will take effect only upon tacit legislative approval, satisfaction of the conditions imposed by the Commission, and demonstration of compliance with the federal Voting Rights Act.

Background information and a summary of the procedures involved in the Commission's actions follow.

Mandate to Investigate Inactive Cities

AS 29.06.450(b) provides that DCRA shall investigate municipalities that it considers to be inactive and report to the Local Boundary Commission on the status of the municipalities. DCRA initiated its

investigation of the status of the five cities in question in October of 1993.

Public Notice of Investigation

On October 14, 1993, DCRA issued a public notice of its investigation of the five cities to 196 potential creditors and other interested parties. The notice invited parties having claims against any of the five cities

or other interests in the potential dissolution of the cities to notify DCRA by March 1, 1994. The notice was published as a display advertisement as follows:

Response to Notice of Investigation.

On November 17, 1993, DCRA received a letter from the Tununak IRA Council, regarding Tununak local politics. Attachments included Tununak IRA Resolution 93-03-10 "clarifying the authorized federally recognized tribal government of the Native Village of Tununak."

On November 29, 1993, DCRA received a letter from the Tununak Traditional Elders Council asserting that it, not the IRA Council, controlled community services and facilities. The Tununak Traditional Elders Council contended that it should become the legal successor to the inactive city.

On February 14, 1994, DCRA received a copy of Tununak Traditional Elders Council Resolution 94-01, asserting that:

The Tununak Traditional Tribal Elders Council has assumed the responsibility of both the internal and external governmental affairs; and for the operational and maintenance including but are not limited to the following; Village Built Clinic, Washeteria, Public Safety Building, Carl Flynn Memorial Head Start Building, Community Hall Building, Four (4) Street Lights, Power Plant (contract with AVEC), Ten (10) Storage Vans (connex's), Heavy Equipments, Cold Storage Freezer, and Water and Sewer Services.

<u>Newspaper</u>	<u>Dates Published</u>
<i>Anchorage Daily News</i>	November 1, 8 and 15, 1993.
<i>Tundra Times</i>	October 20, 27 and November 4, 1993
<i>Tundra Drums</i>	October 28, November 4, 11 and 18, 1993
<i>Alaska Journal of Commerce</i>	November 1, 8, 15 and 22, 1993

The notice was also submitted for publication in the *Alaska Administrative Journal*. Further, a press release was issued notifying statewide print and broadcast media about the investigation into the possible dissolution of the five cities.

Public Informational Meetings

DCRA conducted public informational meetings concerning the possible dissolution of the five cities as follows:

Kasigluk Recreation Hall at 2:00 p.m., October 20, 1993
Atmautluak Recreation Hall at 8:30 p.m., October 20, 1993
Tuluksak Recreation Hall at 1:00 p.m., October 21, 1993
Tununak Recreation Hall at 2:30 p.m., October 25, 1993
Newtok Recreation Hall at 8:00 p.m., October 25, 1993

Those present at each of the meetings were advised of the investigation of inactive cities. The process for dissolution of inactive cities was also described. Questions from the public were entertained and comments were solicited.

The Tununak Traditional Tribal Elders Council has assumed the local government functions, replacing the municipal government, and requests the Local Boundary Commission, Department of Community and Regional Affairs, to revert the municipal land and all real and personal property of the Village back to the Tununak Traditional Elders Council.

On February 25, 1994, DCRA received a letter from the Association of Village Council Presidents Regional Housing Authority (AVCPRHA) indicating that it has "Cooperation Agreements" and "Memorandums of Agreement" with each of the inactive cities. AVCPRHA expressed concerns over the transition of responsibilities of the inactive cities to a successor. The concerns of the housing authority related to easements, site control leases, quitclaim deeds, road maintenance and operation of the Mutual Help Housing Units in the five communities.

On March 22, 1994, DCRA received a letter from the Atmautluak Traditional Council indicating that residents of the community informally voted 87-33 against "going back to the city government again" at a local public meeting conducted by the Traditional Council on February 3, 1994.

Filing of the Petitions

On April 14, 1994, DCRA filed separate petitions for the dissolution of the five cities in question.

DCRA arranged for publication, posting and distribution of public notice of the filing of the petitions. Such notice was published as a two-column by six-inch display advertisement in the *Tundra Drums* on

April 21, April 28 and May 5, 1994. Notice was also published as a display advertisement in the *Anchorage Daily News* on April 23, 1994. In addition, DCRA arranged for publication of the notice in the *Alaska Administrative Journal*.

Individual notice of the filing of the petitions was mailed to 352 potentially interested parties. These included local tribal officials, all known media regularly serving the area and parties such as adjacent municipalities and state and federal officials likely to be interested in the proceedings.

Notice of the filing of the petitions was also posted in the following locations.

- Atmautluak High School
- Atmautluak Post Office
- Atmautluak Limited Store
- Ayaprun High School (Newtok)
- Newtok Traditional Council Office
- Newtok Post Office
- Tununak Post Office
- Tununmiut Rinit Corporation Office (Tununak)
- Tununak Native Store
- Kasigluk Post Office
- Kasigluk Tribal Office
- Kasigluk Store
- Tuluksak IRA Office
- Tuluksak Post Office
- Tuluksak Clinic
- Tuluksak High School

DCRA arranged for the respective petitions and supporting documents to be made available for public review at the following locations during regular business hours.

- DCRA's Bethel Office
- DCRA's Anchorage Office
- JoAnn Alexie Memorial School (Atmautluak)
- Tuluksak High School
- Kasigluk Traditional Council Office
- Tununak IRA Council Office
- Tununak Traditional Elders Council Office
- Newtok Ayaprun School

Responsive Briefs and Comments on the Petitions

On May 4, 1994, DCRA received a letter from the U.S. Environmental Protection Agency alleging that three of the five communities were in violation of the Safe Drinking Water Act. The three communities were Atmautluak, Tununak and Newtok.

The letter noted that Atmautluak was in violation of the Safe Drinking Water Act because of its failure to:

- sample for inorganic chemicals;
- conduct initial monitoring for volatile organic chemicals;
- initiate sampling for radioactivity.

The letter noted that Tununak was in violation of the Safe Drinking Water Act because of its failure to:

- sample for coliform bacteria
- sample for turbidity
- sample for inorganic chemicals
- sample for organic chemicals
- sample for radioactivity
- report the turbidity violations
- notify persons served by the system of violations of 40 CFR Part 141

The letter noted that Newtok was in violation of the Safe Drinking Water Act because of its failure to:

- sample for turbidity on a daily basis.
- sample for total coliform bacteria at least once each month.
- sample for inorganic chemicals.
- test for pesticides.
- sample for volatile organic chemicals.
- conduct initial and repeat sampling for radioactivity.

EPA advised DCRA that Administrative Orders concerning the violations had been issued to Tununak and Atmautluak. Newtok was characterized as a "significant non-complier [that would] soon be eligible for enforcement action by EPA."

EPA indicated further that once an enforcement action was initiated, it "... is attached to the facility and will not change or be altered due to ownership changes." That provision is particularly significant because AS 29.06.520 provides that unless another municipality succeeds to a dissolved city, "the state succeeds to "all [of the dissolved city's] rights, powers, duties, assets, and liabilities."

On June 10, 1994, a responsive brief was received from the Alaska Village Electric Cooperative (AVEC). AVEC claimed to have operating and labor agreements with the City of Kasigluk and the City of Tununak regarding the community's electrical utility service. AVEC insisted that upon dissolution, the State must assume the duties of those two former cities with respect to the operating and labor agreements. AVEC indicated that it has no objection to the State entering into a subcontract with the village council or other entity for the performance of the terms of the agreements. Among other duties, the agreements require that the City "assume the responsibility of installing the electric distribution facilities in the village, . . . hold [AVEC] harmless from all claims, if any, arising as a result of the construction and installation of [electrical] facilities. . . . operate the system of AVEC. . . . [and] hold AVEC harmless from all claims, if any, arising as a result of the operation of the system of AVEC."

On June 10, 1994, DCRA received a responsive brief from the Tununak IRA Council describing the local political background behind the abandonment of the municipal government. The brief stated

[The Tununak Traditional Elders Council] was responsible in dismantling the city and its municipal affairs. During that year, other communities were experiencing the same dilemma. These factions felt all forms of government cause harm to their social well-being, and provided misleading information to retaliate against agencies of the state, the City of Tununak, including the federally recognized Native Village of Tununak and the village corporation. Approximately 40% of the community were thwarted to believe the 'Genocide Act,' the 'Compact of Free Association' and the 'Suzerain Act' gave them autonomy. The net impact of anyone having philosophical differences from their circle of friends was alienated. We believe these federal actions do not in any way relate to Alaska.

The June 10, 1994 brief from the Tununak IRA Council also provided a local perspective on the reasons behind abandonment of the City of Tununak, and advocated for an advisory election prior to approval of a petition for dissolution of the City of Tununak by the LBC and legislature.

The brief also indicates that the IRA Council had attempted to work with the Internal Revenue Service to resolve the alleged tax liability of the inactive city, but without success.

The Tununak Traditional Elders Council responded by writing to President Clinton on July 27, 1994, asserting that the community is not bound by U.S. Environmental Protection Agency (EPA) or State of Alaska Department of Environment Conservation (DEC) directives for compliance with the federal Safe Drinking Water Act or State of Alaska Drinking Water regulations. The letter stated that:

we fully reject enforcement that would violate our Sovereign jurisdiction in this matter, and create an incident that would result in action against the United States concerning genocidal interference by third parties into our mutual sovereign rights of Contract.

Claims of Debt

DCRA received claims of debt concerning four of the five cities in question. The claims of debt are addressed in the individual recommendations for dissolution.

Establishment of Trusts

On August 4, 1994, the Superior Court in Bethel granted the State's request to appoint the Commissioner of DCRA as Trustee for the Cities of Tununak, Kasigluk, Newtok and Atmautluak. Further, the Judge granted trusteeship for the City of Tuluksak on August 9. The trusteeships are for a period of one year for the purpose of administering FY '93 and FY '94 municipal assistance funds in order to pay outstanding debts of the inactive cities. Approval from the Court must be obtained before the funds may be

used. Any funds remaining after the debts have been paid will be returned to the State general fund.

DCRA Reports

On August 26, 1994, DCRA issued a draft report with recommendations to the Commission regarding the proposed dissolution of the five cities. The report recommended that the inactive cities be dissolved so long as certain stipulations were met within two years of tacit legislative approval of the Commission's formal recommendations for dissolution.

Copies of the draft report were distributed to 136 parties. Parties were given until September 26, 1994, to review and comment upon the draft report. Only one party, the Alaska Department of Environmental Conservation (DEC), submitted comments on the draft report. DEC's comments reflected concern that there is a high likelihood that the State of Alaska, as successor to the inactive City of Atmautluak, would assume considerable environmental liability.

DCRA issued its final report on the proposed dissolutions on October 15, 1994. Copies were provided to interested parties.

Commission Public Hearings

The Commission scheduled public hearings on the dissolution proposal to be held October 24, 25 and 26. Notice of the hearings was posted in at least three public and prominent places in each community. DCRA also mailed notice of the hearing to 132 parties.

Arrangements were also made to publish the hearing notice in the *Alaska Administrative Journal*. Further, DCRA requested that broadcast media serving the communities announce the hearing notice as a public service from September 16 to October 25, 1994.

DCRA also arranged for publication of the hearing notice as a 2 column by 6-inch display ad in the *Tundra Drums* on September 15, 22 and 29, 1994. Notice was also published in the *Tundra Times* on September 9, September 21 and October 5, 1994.

Hearings were conducted by the Commission as follows:

- Newtok: 10:30 a.m., October 24, 1994
- Tununak: 1:30 p.m., October 24, 1994
- Tuluksak: 10:30 a.m., October 25, 1994
- Kasigluk: 1:30 p.m., October 25, 1994
- Atmautluak: 10:30 a.m., October 26, 1994

Commission's Findings, Conclusions and Decisions

Immediately following each hearing, the Commission unanimously approved the dissolution of the respective city. The approval was granted subject to the stipulations recommended by DCRA.

The Commission adopted decisional statements for each action on December 13, 1994. The Commission's findings and conclusions concerning dissolution of the five cities are summarized below.