

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8819 SENATE COMMUNITY & REGIONAL AFFAIRS

**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. Those figures are exclusive of additional penalties and interest charges which may have accrued against the debt. No one from Atmautluak disputed those two allegations of debt.

On May 9, 1994, Unicom advised DCRA that the City of Atmautluak had unpaid telephone bills totaling \$360.03. It is believed, however, that the Atmautluak Traditional Council has since paid this debt.

DCRA holds \$29,128 in trust for the City of Atmautluak. 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 Atmautluak exceed its alleged debts (exclusive of the debt to Unicom which is believed to have been resolved) by \$23,575.88.

**Kasigluk.** After extensive public notice, no creditors of the inactive City of Kasigluk have been 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. The trust funds may only be used to pay the debts of the City.

**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 have been identified during the dissolution proceedings.

DCRA holds \$23,374 in trust for the City of Atmautluak. 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 might be expected from 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, it appears that there are ample funds held in trust 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.

#### **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 a city government at an advisory election.

#### **Regarding Whether the five Cities at Issue have Ceased to use Each of Their Mandatory Powers.**

The term 'mandatory powers' is defined by 19 AAC 10.990 (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 tax.

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

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

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

**Tununak.** Since 1989, 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 tax.

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

**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 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 its 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).<sup>8</sup> 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 Tuluksak 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 that the Department of Interior hold an election on adopting an IRA Charter within 6 months of receiving a petition 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 so choose.

**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

---

<sup>8</sup> Informal Opinion of Assistant Attorneys General Sarah J. Felix and Marjorie L. Vandor, file number 663-94-0237 (August 19, 1994)

confusion on the part of others in dealings with the communities.

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 upon and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation.

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.

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.

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.

Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.

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.

Execution of an agreement between DCRA and a qualified local successor governing the conveyance of 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.



## 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 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 upon and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation.

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.

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.

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.<sup>9</sup>

Satisfaction of all debts, if any, of the inactive city through the DCRA Trusteeship or other means.

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.

Execution of an agreement between DCRA and the Kasigluk IRA Council or other qualified local successor governing the conveyance of 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.
- 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.

---

<sup>9</sup> 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 contend that the agreement is between the City of Nunapitchuk and AVEC, not the City of Kasigluk and AVEC.

- 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

*Darroll Hargraves, Chairperson*

*Myrtle Johnson, Vice-Chairperson, Second Judicial District*

*Frances Hallgren, Member, First Judicial District*

*H. Toni Sulmeier, Member, Third Judicial District*

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

### Recommendation Number Three

#### 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 upon and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation.

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.

Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.

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.

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.

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.

Execution of an agreement between DCRA and an IRA Council or other qualified local successor governing the conveyance of 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

*Darroll Hargraves, Chairperson*

*Myrtle Johnson, Vice-Chairperson, Second Judicial District*

*Frances Hallgren, Member, First Judicial District*

*H. Toni Salmeter, Member, Third Judicial District*

*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 upon and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation.

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.

Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.

Designation of the Tuluksak IRA Council as the successor to the inactive City or alternatively, designation by the Commission of another qualified successor.

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.

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 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.

Execution of an agreement between DCRA and the qualified local successor governing the conveyance of 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

*Darroll Hargraves, Chairperson*

*Myrtle Johnson, Vice-Chairperson, Second Judicial District*

*Frances Hallgren, Member, First Judicial District*

*H. Toni Sulmeier, Member, Third Judicial District*

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

### 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 upon and effective upon satisfaction of the following conditions within two years of tacit legislative approval of this recommendation.

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.

Satisfaction of all debts of the inactive city through the DCRA Trusteeship or other means.

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.

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.

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."

Execution of an agreement between DCRA and the qualified local successor governing the conveyance of 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 from that Borough. Residents of Lake Louise have expressed their intention to petition for detachment of that area from the Matanuska-Susitna Borough by March of 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.<sup>10</sup> Considered in isolation, those circumstances might warrant the detachment of the area in question.

<sup>10</sup> 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.

However, the policy implications reach far beyond those three issues. First, it must be recognized that the Matanuska-Susitna Borough's taxes are relatively high in large part because the Borough has a poor tax base.<sup>11</sup> 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 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.<sup>12</sup> 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."<sup>13</sup> Yet, when compared to 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.<sup>14</sup>

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.<sup>15</sup>

As an alternative to detachment, it might be argued that the Matanuska-Susitna Borough should establish a service area at Lake

<sup>14</sup> Municipal Assistance and Revenue Sharing programs have been cut more than 55% since FY '85. In addition to suffering general cuts in those programs, the Matanuska-Susitna Borough now faces a new threat of additional cuts under revisions to the Revenue Sharing and Municipal Assistance programs being proposed by the Alaska Municipal League. Whereas the Borough's current entitlement to funding under those programs is \$3,632,600, proposed revisions to the programs -- which, incidentally, maintain the overall level of funding for all municipalities -- would result in a 43% reduction in payments to the Matanuska-Susitna Borough. The Matanuska-Susitna Borough would be particularly hard hit because the proposed program revisions embrace the concept that entitlements should be based on the extent to which a municipal government funds 9 "basic" services. However, education which is the most expensive of the Matanuska-Susitna Borough's services and which is not among the "basic" services. Because the Matanuska-Susitna cannot afford to provide extensive services other than education, it would be substantially penalized under the proposed new formula.

<sup>15</sup> 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.

<sup>11</sup> The highest property tax levy by the Borough is 26 mills.

<sup>12</sup> 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, S.L.A 1963).

<sup>13</sup> Section 1, Chapter 52, Session Laws of Alaska 1963.

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.<sup>16</sup> Further, it is likely that if such tax relief 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 the 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 Matanuska-Susitna Borough. In recent years, interest has been expressed concerning detachment from the City and Borough of Sitka, the City and Borough of Juneau, the Haines Borough, the Fairbanks North Star 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 issues unique to that proposal, many policy matters will be 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, there are other areas of the state that lie outside any local government. Some of those areas enjoy services comparable to the services in the mandatory boroughs. Further, some of these areas have resources at least

<sup>16</sup> 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 "

comparable to areas within the mandatorily formed boroughs. Notwithstanding, the areas outside local government pay no taxes to support the services.

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 to many Alaskans.

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.<sup>17</sup> 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 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 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.

Here again, the Commission is not advocating any particular approach. Rather, the Commission wishes to raise these issues in order to keep the legislature informed of the nature of concerns brought to the attention of the LBC.

<sup>17</sup> The level of basic need is determined under AS 14 17 021.

## Growing Interest in Dissolution of Cities

Interest in dissolving city governments is growing, particularly among some predominantly Native communities. The movement is especially strong in the communities in the lower Kuskokwim region.

Under current law, the State typically succeeds to the assets, liabilities, duties, powers and rights of the cities if they dissolve. 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, State law will not permit the transfer of real property to traditional councils. (see AS 10.30.060 as an example where the legislature allows an unincorporated group – in that case, a cemetery association – to acquire land).

The law creates obstacles to dissolution in those communities that lack IRA Councils.

Another major obstacle to dissolution stems from the absolute provisions of AS 29.06.520 that – without a municipal successor – the State must succeed to the liabilities and duties of dissolved cities. Potential liabilities and duties are not limited to debts, but include contractual obligations and environmental liabilities relating to water and sewer systems, bulk fuel storage tanks, landfills, etc. To avoid having the state assume these liabilities, consideration should be given to amending the law to provide for assumption of the liabilities and duties by a local successor. 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 practical concerns that claims of sovereign immunity may render the contracts unenforceable for practical considerations, despite a proposed waiver of sovereign immunity.

## Lack of Limitations on Municipal Authority to Levy Certain Taxes

In the two previous years, the LBC 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. With a population of 97 residents, the tax revenue in this case amounts to more than \$6,000 for each man, woman and child of the community. This compares to a per capita average of all taxes levied by the remaining 164 municipal governments in Alaska amounting to \$1,242.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Thus, there are no legal limitations whatsoever on a municipality's authority to levy sales taxes (subject to voter ratification of rate increases).

The LBC 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 very difficult and 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 LBC 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 this state. Please consider the following:

The Alaska Supreme Court has consistently acknowledged the expertise of the LBC in all matters involving municipal boundary proposals. In doing so, the state's highest court has placed lofty expectations and demands on the LBC. 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 LBC 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 LBC 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 LBC is most similar to the Reapportionment Board which is compensated at the rate of \$150 per day.

The demands and expectations placed on the LBC 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 LBC 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 LBC 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 expanded 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 LBC take members away

from their paying professions, 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.

# INDEX

*[Faint, illegible text, likely bleed-through from the reverse side of the page]*

# Index

---

## A

Akiak, 11, 12  
Aleknagik, 15  
Aleutians East Borough, 47  
Alexander Creek, 16, 17  
Anaktuvuk Pass, 5, 8  
Anchorage, 1, 2, 17, 24, 25, 46, 47  
Angoon, 13, 14, 16  
Atmautluak, 11, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35

---

## B

Barrow, 2  
Bethel, 23, 27, 30  
Bettles, 5, 9  
Big Lake, 9

---

## C

Cantwell, 9, 10  
Chefornak, 11, 13  
Chinik, 9, 10  
Cooper Landing, 9, 10  
Cordova, 15, 20, 21  
Council, 1, 7, 8, 16, 24, 25, 27, 29, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 50  
Craig, 5, "

---

## D

Dillingham, 13, 14, 15, 19

---

## E

Egegik, 9, 49  
Ekuk, 15  
Ekwok, 15, 18  
Elfin Cove, 9, 10, 16

---

## F

Fairbanks, 2, 3, 5, 8, 10, 13, 15, 16, 45, 46, 47  
Fairbanks North Star Borough, 10, 13, 15, 16, 45, 46, 47  
Fort Yukon, 11, 12

---

## G

Gambell, 2  
Goodnews Bay, 11, 12  
Gustavus, 9, 10, 16

---

## H

Haines, 47  
Haines Borough, 47  
Healy, 9  
Hollis, 9, 11  
Homer, 13  
Hoonah, 16  
Hyder, 17

---

## J

Juneau, 17, 47

---

## K

Kake, 16  
Kaktovik, 5, 8  
Kasigluk, 11, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 36, 37, 49  
Kasilof, 9  
Kenai, 8, 10, 11, 13, 46, 47  
Kenai Peninsula Borough, 8, 10, 11, 13, 46, 47  
Kenny Lake, 9, 11  
Ketchikan, 2, 5, 7, 11, 17, 18  
Ketchikan Gateway Borough, 17, 18  
King Cove, 5, 6  
King Salmon, 19  
Kivalina, 2  
Klawock, 5, 8  
Kodiak, 5, 6, 10, 47  
Kodiak Island Borough, 6, 47  
Koliganek, 15  
Kwethluk, 13, 14

---

## L

Lake & Peninsula Borough, 18, 47  
Lake Louise, 1, 16, 17, 45, 46, 47

---

## M

Manokotak. 11, 12, 15  
Matanuska-Susitna Borough, 1, 9, 10, 16, 17, 45, 46, 47  
McCarthy, 9, 10  
Mekoryuk, 11, 12  
Meyers Chuck, 17  
Mountain Village, 11, 12

---

## N

Napaskiak, 11, 12  
New Stuyahok, 15, 19  
Newhalen, 19  
Newtok, 11, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 39, 40  
Nome, 2  
Nondalton, 19  
North Pole, 14, 15, 16, 45  
Nunapitchuk, 37

---

## P

Palmer, 5, 8, 47  
Pelican, 5, 8, 16  
Pilot Point, 19, 20, 49, 50  
Port Alexander, 14, 16  
Port Protection, 9, 11  
Portage Creek, 15

---

## Q

Quinhagak, 11, 12

---

## S

Salcha, 9, 10  
Sand Point, 5, 6  
Saxman, 18  
Seldovia, 5, 6, 11, 13  
Seward, 5, 8  
Sitka, 2, 47  
Skwentna, 47  
Sterling, 9, 11

---

## T

Talkeetna, 9, 10, 17  
Tatitlek, 15  
Tenakee Springs, 16  
Togjak, 15  
Tok, 9, 11  
Tuluksak, 11, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 41, 42  
Tununak, 11, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 43, 44, 49  
Twin Hills, 15

---

## V

Valdez, 15, 16

---

## W

Wales, 11  
Wasilla, 5, 7, 10, 47  
Whale Pass, 9, 11  
Whittier, 15, 16  
Willow, 17  
Wrangell, 14, 16

---

## Y

Yakutat, 16, 21, 22

**LOCAL  
BOUND.  
COMMIS.**

**1996**



OFFICIAL BUSINESS

# Alaska State Legislature

## Senate

### Office of the Secretary

STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3701  
FAX: 465-2832

January 18, 1996

#### MEMORANDUM

TO: Senator Torgerson, Chair  
Community and Regional Affairs Committee

FROM: Nancy Quinto *NQ*  
Secretary of the Senate

SUBJECT: Local Boundary Commission Recommendations

In accordance with AS 44.47.567 and Article X, Section 12 of the Constitution of the State of Alaska, President Pearce has referred the Local Boundary Commission Report to your committee for consideration.

NQ/vsw

Enclosure

Sec. 44.47.567. POWERS AND DUTIES.

(A) The local boundary commission shall

- (1) make studies of local government boundary problems;
- (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
- (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and regional affairs, or a political subdivision of the state; and
- (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(B) The local boundary commission may

- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and
- (2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.

## Local Government

### Areas.

Special services within an organized borough may be created, or abolished by the assembly, subject to the charter. A new service area shall not be established for purposes of this article, the new service can be a service area, by incorporation as a city, or by the assembly may authorize the levying of taxes, and within a service area to finance the special

### Organized Boroughs.

Provide for the performance of services it deems necessary in unorganized boroughs, allowing for maximum local responsibility. It may exercise any power or authority of an organized borough which the assembly may exercise in

exercised in a manner prescribed by law, and shall be exercised in which they are located. Cities shall have the authority conferred by law or charter. They may be merged, reclassified, or dissolved in the manner provided

In a city shall be the council.

5.

any borough of the first class or city of the first class, or repeal a home rule charter in a manner in the absence of such legislation, the governing body of a first class shall provide the procedure for the creation or rejection of the charter. All charters, or parts of charters, shall be submitted to the qualified voters of the borough and shall become effective if approved by a majority of the voters on a specific question.

### Home Rule.

and home rule to other boroughs and cities.

## Local Government

## Article X

### Section 11 - Home Rule Powers.

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

### Section 12 - Boundaries.

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

### Section 13 - Agreements; Transfer of Powers.

Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

### Section 14 - Local Government Agency.

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

### Section 15 - Special Service Districts.

Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

# Report of the Local Boundary Commission to the Second Session of the Nineteenth Alaska Legislature

January 17, 1996



Darroll Hargraves, Chairperson  
Kathleen Wasserman, Vice Chairperson  
First Judicial District



Nancy Cannington, Second Judicial District  
H. Toni Balmeier, Third Judicial District  
William Walters, Fourth Judicial District

The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at (907) 269-4500, or TDD (800) 930-4555.

# Report of the Local Boundary Commission to the Second Session of the Nineteenth Alaska Legislature

---

January 17, 1996

## Local Boundary Commission

Darroll Hargraves, Chairperson

Kathleen S. Wasserman, Vice-Chairperson, First Judicial District

Nancy E. Cannington, Member, Second Judicial District

H. Toni Salmeier, Member, Third Judicial District

William Walters, Member, Fourth Judicial District



Tony Knowles, Governor

Report prepared with assistance from:  
Department of Community and Regional Affairs  
Mike Irwin, Commissioner  
Lamar Coffen, Deputy Commissioner

Municipal and Regional Assistance Division  
Patrick K. Poland, Director

## For further information, contact:

Local Boundary Commission Staff  
333 W. 4th Avenue, Suite 220  
Anchorage, Alaska 99501-2341  
Telephone: (907) 269-4500  
Fax: (907) 269-4539





# MESSAGE FROM THE CHAIRPERSON

---

January 17, 1996

1995 was an active year for the Local Boundary Commission. Last year, the Commission met 17 times. During the year just ended, the Commission:

- \* affirmed the boundaries of the Lake and Peninsula Borough and thereby resolved a six-year dispute over the Borough's northwest territory;
- \* finalized action approving the incorporation of the City of Egegik;
- \* approved a petition for dissolution of the City of Akiak;
- \* approved a petition for annexation to the City of Wasilla, subject to review by the legislature;
- \* approved a petition for detachment of Lake Louise from the Matanuska-Susitna Borough, subject to review by the legislature; and
- \* formally proposed significant revisions to the Commission's regulations.

Following the Commission's action regarding Egegik, voters in the community expressed their support for city government. Consequently, the City of Egegik was incorporated, bringing the number of cities in Alaska to 150. Voters in Akiak rejected the proposition to dissolve their city government.

Regarding the detachment of Lake Louise, the Commission imposed a number of stipulations that must be satisfied before detachment will take effect. Among them is the requirement that the territory be included within another organized borough or that it incorporate as a second class city. As a matter of public policy, the Commission greatly prefers the borough alternative. However, circumstances in the case of Lake Louise compelled the Commission to permit the alternative of city incorporation.

The Commission's actions relating to the City of Wasilla annexation and the detachment of Lake Louise from the Matanuska-Susitna Borough are subject to review by the Legislature. The Commission's formal recommendations to the Legislature concerning those matters are included in Chapter 3 of the attached report. Under Article X, Section 12 of Alaska's Constitution, those recommendations receive automatic approval unless the Legislature adopts concurrent resolutions rejecting them. Such resolutions must be adopted by both houses within 45 days of the date that the Commission files its recommendations. In this case, the recommendations are automatically approved if not rejected by March 2, 1996, or at the end of the regular session, whichever is earlier.

Details concerning the actions noted above and other developments of interest to the Commission are provided in this report. The report concludes with a discussion of policy issues of concern to the Commission. The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,

Darroll Hargraves,  
Chairperson

# Contents

## CHAPTER 1 - OVERVIEW OF THE COMMISSION AND ITS

|  |          |
|--|----------|
| <b>PROCEDURES</b> .....                  | <b>1</b> |
| Role and Purpose of the Commission ..... | 1        |
| Members of the Commission.....           | 2        |
| Staff to the Commission .....            | 3        |
| Procedures of the Commission.....        | 3        |
| City Incorporation .....                 | 5        |

## CHAPTER 2 - SUMMARY OF 1995 ACTIVITIES.....5

|   |    |
|---|----|
| City Annexation.....                                    | 7  |
| City Dissolution.....                                   | 9  |
| City Detachment .....                                   | 13 |
| Borough Incorporation.....                              | 14 |
| Borough Annexation .....                                | 17 |
| Borough Detachment.....                                 | 19 |
| City and Borough Consolidation.....                     | 22 |
| Litigation .....  | 23 |
| Revision to Local Boundary Commission Regulations ..... | 28 |

## CHAPTER 3 - ACTIONS REQUIRING LEGISLATIVE REVIEW ...29

|   |    |
|---|----|
| RECOMMENDATION NUMBER ONE OF THE LOCAL BOUNDARY<br>COMMISSION TO THE SECOND SESSION OF THE NINETEENTH<br>ALASKA LEGISLATURE ..... | 30 |
|---|----|

|   |    |
|---|----|
| RECOMMENDATION NUMBER TWO OF THE LOCAL BOUNDARY<br>COMMISSION TO THE SECOND SESSION OF THE NINETEENTH<br>ALASKA LEGISLATURE ..... | 46 |
|---|----|

## CHAPTER 4 - POLICY ISSUES AND CONCERNS .....63

|  |    |
|--|----|
| Matters Relating to Detachment from Organized Boroughs .....                 | 63 |
| Continued Interest in City Dissolution .....                                 | 66 |
| Lack of Limitations on Authority of Municipalities to Levy Certain Taxes.... | 67 |
| Compensation for the Commission .....  | 68 |

|                    |           |
|--------------------|-----------|
| <b>INDEX</b> ..... | <b>71</b> |
|--------------------|-----------|



## CHAPTER I - OVERVIEW OF THE COMMISSION AND ITS PROCEDURES

This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & 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, boroughs and unified municipalities;
- ★ annexation to cities, boroughs and unified municipalities;
- ★ detachment from cities, boroughs and unified municipalities;
- ★ dissolution of cities, boroughs and unified municipalities;
- ★ merger and consolidation of cities, boroughs and unified municipalities; and
- ★ reclassification of cities.<sup>1</sup>

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 state level. The advantage of the method proposed, in the words of the committee: ". . . lies in placing the process at a level where area-wide or state-wide needs can be taken into*

*account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."*<sup>2</sup>

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

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. More than two decades ago (and again in



*Public Testimony at one of the hearings on the detachment of Lake Louise*

<sup>1</sup> See AS 29.05, AS 29.06 and AS 44.47

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

<sup>3</sup> 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.

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."*<sup>4</sup>

## 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.

Members also serve at the pleasure of the Governor.

Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field...and with a view to providing diversity of interest and points of view in the membership."<sup>5</sup> Biographical data about current Commissioners follows.



**Darroll Hargraves** is the current Chairperson. He joined the Commission in March 1991 and became Chairperson in May 1992. Commissioner Hargraves is the Superintendent of the Alaska Gateway School District in Tok. Commissioner Hargraves has also 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. His current term on the Commission expires January 31, 1997.

**Kathleen S. Wasserman** is the current Vice-Chairperson and serves from Alaska's First Judicial District. She was appointed to the LBC on September 14, 1995 and was elected Vice-Chairperson in December of 1995. Ms. Wasserman is a former mayor of the City of Kasaan. She is also a former president of the Southeast Island Regional Educational Attendance Area School Board. She currently lives in Sitka where she works as a consultant. Ms. Wasserman's present term expires January 31, 1996.



**Nancy E. Cannington** serves from the Second Judicial District. She was appointed to the Commission on September 14, 1995. Ms. Cannington is the Administrator of the City of Unalakleet. She was also a member of the State's recent ad hoc State Task Force on School Funding. Ms. Cannington's term expires January 31, 1999.

**H. Toni Salmeier** serves from Alaska's Third Judicial District. Commissioner Salmeier joined the LBC 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 term on the Commission ends January 31, 1998.



**William Walters** serves from the Fourth Judicial District. He was appointed to the LBC on September 14, 1995. Mr. Walters is a graduate of the University of Texas Law School. He is a former member of the Fairbanks North Star Borough Planning Commission. Mr. Walters' current term expires January 31, 2000.

<sup>4</sup> *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974), affirmed, *Valleys Borough Support Committee v. Local Boundary Commission*, 803 P.2d 232 (Alaska 1993)

## 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 166 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 Commis-

sion. 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.



*Chairperson Hargraves speaking with participants after a LBC hearing*

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 provided at least two

weeks to file one brief in reply to 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 record.** Members of the 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.

**Public hearing.** 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;



*LBC Commissioners listening to testimony at a recent hearing*

- \* 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 renders 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.

**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 2 - SUMMARY OF 1995 ACTIVITIES

During calendar year 1995, the LBC staff component responded to a full range of actions under the purview of the LBC.

This chapter summarizes the various activities that occurred during 1995. Also included is a report on the status of Supreme Court and Superior Court appeals stemming from decisions of the Commission.

### City Incorporation

With the incorporation of the second class City of Egegik in 1995, there are presently 150 city governments in Alaska. Interest in city incorporation was expressed in several other communities during 1995. Activities relating to city incorporation in the communities listed below during 1995 are summarized in the following discussion.

- |               |                |                 |
|---------------|----------------|-----------------|
| * Egegik      | * Anchor Point | * Memory Lake   |
| * Lake Louise | * Elfin Cove   | * Nelson Lagoon |
| * Talkeetna   | * Gustavus     | * Slana         |

**Egegik.** On March 15, 1994, Egegik voters filed a petition for incorporation of a second class city with boundaries encompassing approximately 135 square miles. About 104.6 square miles of the area is offshore. The offshore area conforms to the Egegik Fishing District. The petitioners proposed the levy of a 1% sales and use tax on commercial raw fish sales within the municipal boundaries of the city.

The LBC approved the incorporation pe-

tion on December 14, 1994. The LBC conditioned incorporation upon voter approval of a 1% sales and use tax on raw fish. A written decisional statement setting out the basis for LBC approval of the petition for incorporation was adopted in January. The 20-day reconsideration period expired on February 11, 1995.

*"Terry Cummings and Concerned Citizens for Bristol Bay"* appealed incorporation of the City of Egegik in Superior Court on February 10. Since Voting Rights Act preclearance of the proposed incorporation was pending, the U.S. Justice Department was notified of the appeal. Further discussion of the judicial appeal of incorpora-



Egegik

tion of the City of Egegik is contained in the section of this report relating to pending litigation.

The incorporation election was conducted on April 1, 1995. The election was conducted by-mail. Ballots were cast by 65.7% of Egegik's registered voters. Forty-seven ballots (72.3% of the total) were cast in favor of incorporation while 18 (27.7%) were cast in opposition. Egegik voters also approved a measure authorizing the levy of a sales and use tax on raw fish. Forty-seven voted in favor of the tax and 17 voted against imposition of the sales and use tax.

The Division of Elections certified the results of the Egegik incorporation election on April 10, 1995.

LBC staff prepared and processed the certificate of incorporation of the City (effective April 14). Notice of the incorporation was provided to 66 parties. Notice of the incorporation was also published in the Alaska Administrative Journal.

**Lake Louise.** Residents of Lake Louise are contemplating development of a petition for incorporation of a second class city in conjunction with their effort to detach from the Matanuska-Susitna

Borough. City incorporation petition forms were provided to Lake Louise residents on December 27.

**Talkeetna.** Talkeetna residents drafted a charter as part of a prospective petition to incorporate a home rule city. The group announced in a letter to LBC staff dated May 8 that, "*We plan to work with the Talkeetna Community Council over the course of the summer and if possible would like to start public hearings [on a proposal to form a home rule city] next fall . . .*"

In June, LBC staff reviewed and provided comments on a draft 55-page proposed charter for the prospective City of Talkeetna. Information and materials (including forms to petition for incorporation of a home rule city) were also provided to the group that had drafted the charter. In November, residents of Talkeetna met to discuss incorporation of a home rule city encompassing 23 square miles with a population exceeding 700. The preliminary conceptual proposal calls for the city to assume responsibility for three of the five Matanuska-Su-

itna Borough service areas in the Talkeetna area. Fire protection and emergency medical services would continue to be provided through the Borough's service areas.

**Anchor Point.** On May 8, 1995, LBC staff traveled to Anchor Point and met with area residents to discuss the city incorporation process and standards. Possible alternatives to city incorporation were also examined. Two boundary configurations were under consideration. The first encompassed 7,370 acres (11.51 square miles), with an estimated population of 765. The second encompassed 10,244 acres (16 square miles), with an estimated population of 879.

At last report, the Anchor Point group had not determined what class of city may be proposed. The group requested and was provided with budget information for three cities in the Kenai Peninsula Borough.

**Elfin Cove.** DCRA regional office staff conducted a meeting in Elfin Cove on September 19 concerning incorporation of Elfin Cove as a second class city.

**Gustavus.** Residents of Gustavus met April 6 regarding second class city incorporation. Issues such as potential municipal boundaries and tax types and rates were discussed at the meeting. In October, LBC staff reviewed



*A partial view of Lake Louise*

a "second draft" of a budget for the proposed City of Gustavus prepared by residents of the community.

**Memory Lake.** Memory Lake is a residential subdivision located north of Wasilla. In April, LBC staff met with representatives of the Memory Lake Homeowners Association. They requested and were provided petition forms for the incorporation of a second class city and related material.

LBC staff were later advised that Memory Lake residents may seek incorporation of a home rule city instead of a second class city. Sample home rule charters were provided to the group. Proposed municipal boundaries were developed. The area encompasses approximately 2.37 square miles.

**Nelson Lagoon.** Officials of the Aleutians East Borough considered the merits incorporation of a city or formation of a service area as

options to meet demands for greater services in Nelson Lagoon. LBC staff provided the Borough with petition forms and information, including the April 14, 1995, Alaska Supreme Court opinion on the Pilot Point incorporation which addresses issues relevant to the matter.

**Slana.** A representative of the Slana Improvement Corporation expressed interest in "pros and cons" of second class city incorporation.

### City Annexation

The Cities of Wasilla and Fairbanks filed annexation petitions during 1995. The City of Fairbanks later withdrew its petition. The City of Ketchikan also withdrew a petition for annexation that had been lodged in 1994 for consideration in 1995. Officials or residents of nine other cities expressed interest in city annexation during the year. This section discusses activities relating to annexation in the following Cities:

- \* City of Wasilla
- \* City of Fairbanks
- \* City of Ketchikan
- \* City of Cold Bay
- \* City of Delta Junction
- \* City of Emmonak
- \* City of Haines
- \* City of Homer
- \* City of Kodiak
- \* City of Nenana
- \* City of Palmer
- \* City of Pelican

**City of Wasilla.** On March 2, 1995, the City of Wasilla submitted a legislative review annexation petition to annex approximately 83.71 acres, including a 44-acre portion of Wasilla Lake. The territory encompassed twelve parcels occupied by 16 residents. Much of the land is developed as commercial or industrial property (as-

essed at nearly \$4.3 million). The area includes both residential property and commercial enterprises and is either surrounded or ad-

joined by property already within the boundaries of the City. After a public hearing in Wasilla, the proposed boundary change was ap-



*A view of property on Wasilla Lake*

proved by the Local Boundary Commission on December 8, 1995.

A request for reconsideration of the Commission's decision to approve the petition was received on January 4, 1996. The Commission addressed the request for reconsideration on January 12, 1996. A formal recommendation to the Legislature for the annexation of the territory to the City of Wasilla is included in Chapter III of this report. As provided by AS 29.06.040(b), if the Legislature does not formally reject the Commission's recommendation within 45 of submission of this report, it is automatically approved. However, the Legislature may reject the proposed annexation by adopting a concurrent resolution in both houses within the 45 day review period.

**City of Fairbanks.** On March 28, 1995, the City of Fairbanks submitted a legislative review annexation petition. The 5.1 square mile area proposed for annexation encompassed the Fred Meyer shopping center, Fairbanks International Airport, Castle Inn, Donnybrook Lumber, Golden North Hotel and other properties. The City estimated that

the area was inhabited by 20 residents. The assessed value of the property within the territory was nearly \$40 million.

On June 5, 1995, the Fairbanks City Council repealed the ordinance which had authorized the annexation petition. In addition to withdrawing the petition, the City Council adopted Resolution No. 3584, establishing a "*consensual annexation policy ...to annex properties into the corporate boundaries of the City provided that the majority of resident owners of the properties agree to such annexation.*"

**City of Ketchikan.** In February, the acting city manager advised LBC staff that the City of Ketchikan was withdrawing its petition for annexation of approximately 16 acres of privately owned property and a 1.25 mile long segment of the North Tongass Highway. It was also indicated that the City may initiate a review of the feasibility of annexing a much larger area.

---

**"consensual annexation policy ... to annex properties into the corporate boundaries of the City provided that the majority of resident owners of the properties agree to such annexation."** Fairbanks City Council Resolution 3584

---

In July, petition forms were provided the city attorney relating to the annexation of adjoining territory at the request of all property owners and voters.

**City of Cold Bay.** MRAD regional office staff requested and were provided information regarding annexation of territory to a city to be shared with Cold Bay officials. The City of Cold Bay is said to be contemplating annexation of coastal waters frequented by floating fish processors.

**City of Delta Junction.** The City of Delta Junction has been considering annexation in an effort to increase municipal revenues. Accordingly, staff provided city officials with information and petition forms to initiate annexation. Another option being explored is the annexation of Fort Greely as a way to gain use of Fort Greely's facilities for economic development.

**City of Emmonak.** In March, City of Emmonak officials requested information regarding standards and procedures for annexation. The requested information was provided by LBC staff.

**City of Haines.** Information was provided to the City of Haines regarding options for improving the efficiency and effectiveness of the structure of local government in Haines. Options that were being considered

included unification and consolidation of the City and Borough, as well as annexation of about eight square miles to the City. The current boundaries of the City encompass an estimated 14.25 square miles. Staff delivered a presentation on annexation procedures and standards to the Haines City Council at a work session on November 14. Twelve years ago, the LBC approved a petition for annexation of an area slightly smaller than the area currently being considered. However, that annexation was vetoed by the legislature.

**City of Homer.** City of Homer officials contemplated several annexation proposals over the past year. LBC staff met with City officials twice to discuss the different annexation proposals and the standards and procedures for merger of municipal governments.

**City of Kodiak.** A member of the Kodiak Island Borough Assembly requested information regarding procedures and standards for annexation. Interest reportedly exists in annexation of Borough Fire Protection Area Number 1 to the City of Kodiak. The City of Kodiak previously petitioned for annexation of a portion of that area, however, that petition was withdrawn in response to concerns expressed by the Borough. Specifically, the Borough expressed reservations that the territory proposed for annexation may have been too small.

**City of Nenana.** In June, the Mayor of the City of Nenana requested and was provided with information in response to an expressed interest in annexing two 20 acre parcels of city-owned land.

**City of Palmer.** City of Palmer officials expressed interest in annexation of the Matanuska Christian School and a City-owned industrial park. Annexation was reportedly desired by administrators of the school to facilitate extension of utility service to the school site. City annexation petition forms and related background information were provided to City of Palmer staff.

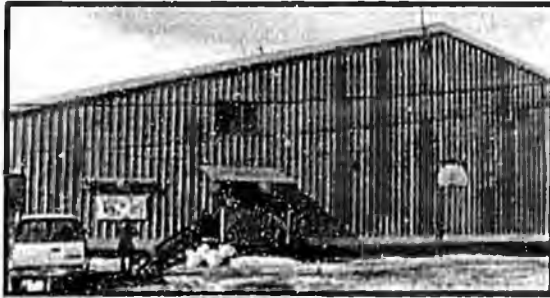
**City of Pelican.** City of Pelican officials requested and were provided with forms for developing an annexation petition. City officials have expressed interest in annexing the nearby Phonograph and Sunnyside areas. The City is reportedly interested in exerting planning powers over these areas before development occurs in the form of tourist lodges and related enterprises.

## City Dissolution

As has been evident in recent years, interest in dissolution of cities continues. During 1995, expressions of interest or activities involving city dissolution occurred with respect to the following city governments:

- \* City of Akiak
- \* City of Atmoutlauk
- \* City of Kasigluk
- \* City of Newtok
- \* City of Tuluksak
- \* City of Tununak
- \* City of Clark's Point
- \* City of Chefornak
- \* City of Coffman Cove
- \* City of Gambell
- \* City of Goodnews Bay
- \* City of Hydaburg
- \* City of Kiana
- \* City of Mountain Village
- \* City of Quinhagak
- \* City of Selawik
- \* City of Togiak

**City of Akiak.** On July 27, 1994, a petition for dissolution of the second-class City of Akiak was filed with DCRA. The petition sought dissolution of the City through the local option method specified in AS 29.06.460 - 29.06.510.



*Akiak Community Building*

On May 1, 1995, DCRA released a 64-page provisional report regarding the petition for dissolution of the City of Akiak to 59 parties. The provisional report identified known assets as well as known and potential liabilities of the City. The provisional report concluded that the petition met all applicable standards for dissolution except that all creditors of the City had not agreed to specific debt payment plans. The Department's provisional recommendation was that, contingent upon resolution of City debt issues, the dissolution petition be approved by the Local Boundary Commission.

After considering comments received on the provisional report, the Depart-

ment of Community and Regional Affairs issued a final report on July 21, 1995. The final report described unsatisfied debts of the City of Akiak and the arrangements made to satisfy all such debts.

On August 11, 1995, the Local Boundary Commission conducted a duly noticed public hearing concerning the petition for dissolution of the City of Akiak at the Akiak Community Meeting Hall. The hearing was attended by 24 local resi-

dents. Testimony was received from seven individuals. All of the public hearing testimony from Akiak residents supported approval of the dissolution petition.

Immediately upon the conclusion of the Commission's hearing, the Commission rendered its decision to approve the petition for dissolution, subject to the conditions recommended by DCRA in its report. The motion to approve the petition with conditions recommended by DCRA received affirmative votes from three

of the four members participating in the hearing.

At its meeting of August 25, 1995, the LBC voted to approve the decisional statement relating to the petition for dissolution. Copies of the approved decisional statement were sent to interested parties on August 25. No requests for reconsideration of the decision were made by the September 14 deadline. The Division of Elections scheduled an election on the proposed dissolution. LBC staff developed the requisite Federal Voting Rights Act preclearance submission and forwarded it to the U.S. Department of Justice.

The Division of Elections conducted the dissolution election among Akiak voters by mail.

The final tally of the Akiak dissolution election results was reported to DCRA on November, 20, 1995. At the time of the election, there were 111 voters registered in the City of Akiak. Only 55 ballots were cast. Since AS 29.06.510(c) requires an affirmative vote for dissolution by majority of the registered voters in the city proposed for dissolution, the proposition failed.

| FINAL ELECTION RESULTS                |                 |                              |            |                 |                              |                           |
|---------------------------------------|-----------------|------------------------------|------------|-----------------|------------------------------|---------------------------|
| CITY OF AKIAK DISSOLUTION PROPOSITION |                 |                              |            |                 |                              |                           |
| "Yes" Votes                           |                 |                              | "No" Votes |                 |                              | Successor                 |
| # of Votes                            | % of Votes Cast | % of Total Registered Voters | # of Votes | % of Votes Cast | % of Total Registered Voters |                           |
| 44                                    | 80%             | 39.6                         | 11         | 20              | 9.9%                         | IHA Council: 46 yes; 9 no |

**Cities of Atmautluak, Kasigluk, Newtok, Tuluksak, Tununak.** On March 10, 1995, the Legislature provided tacit approval for the dissolution of the five inactive cities under provisions of AS 29.06.450(b) and Art. X, Sec. 12 of the Alaska Constitution. On October 3, 1995, advisory elections regarding the dissolution petitions were duly scheduled and conducted by the Division of Elections.

On October 20, the Division of Elections certified the dissolution elections.

The five dissolutions will take effect upon satisfaction of conditions stipulated by the LBC. The stipulations include provisions to ensure that the cities' debts are paid, that the cities' assets and liabilities are transferred to local successors and that other appropriate transition measures are carried out.

On December 20, the Director of MRAD sent a six-page proposed agreement developed by the Department of Law between the Atmautluak Traditional Council and the State of Alaska to convey and accept assets, liabilities and obligations of the dissolving City of Atmautluak. The agreement must be signed by the Traditional Council, the State Attorney General and the Commissioner of DCRA. The signed agreement takes effect once it is recorded with the Department of Natural Resources. At that time, the City of Atmautluak will be dissolved and the Traditional Council will be the City's successor. Similar agreements will be provided to the other successor organizations in the other four inactive cities early in 1996.

In each instance, the inactive city exhibits special circumstances. For instance,

City of Tununak delinquent federal tax liability has been calculated by the IRS at \$154,177.98, largely based upon estimates of the Alaska Department of Labor for the first quarter of 1989. The Internal Revenue Service has agreed to conduct a review of City of Tununak payroll records from that period. An accurate determination and hopefully, a reduction, of the City's federal tax liability is necessary for City of Tununak dissolution to occur.

All the conditions set forth in the agreements must be satisfied by March 10, 1997, or the dissolutions will not occur.

**City of Clark's Point.** Concern exists regarding whether the City of Clark's Point is an active and functioning municipality. On November 3, DCRA formally notified the City of Clark's Point about such concerns.

| FINAL ADVISORY ELECTION RESULTS<br>REGARDING DISSOLUTION OF INACTIVE CITIES |                         |                 |                              |                         |                 |                              |  |
|---|-------------------------|-----------------|------------------------------|-------------------------|-----------------|------------------------------|--|
| City  | Dissolution Proposition |                 |                              | Dissolution Proposition |                 |                              | Successor                                  |
|   | "Yes" Votes             |                 |                              | "No" Votes              |                 |                              |  |
|   | # of votes              | % of votes cast | % of total registered voters | # of votes              | % of votes cast | % of total registered voters |  |
| Atmautluak  | 41                      | 58.6            | 35.7                         | 29                      | 41.4            | 25.2                         | Traditional Council: 45 yes<br>25 no       |
| Kasigluk  | 65                      | 78.3            | 32.3                         | 18                      | 21.7            | 9.0                          | Traditional Council: 58 yes<br>14 no       |
| Newtok  | 50                      | 84.7            | 39.3                         | 9                       | 15.3            | 7.1                          | Traditional Council: 49 yes<br>10 no       |
| Tuluksak  | 58                      | 69.0            | 34.3                         | 26                      | 31.0            | 15.4                         | IRA Council: 61 yes<br>24 no               |
| Tununak   | 69                      | 53.1            | 41.6                         | 61                      | 46.9            | 36.7                         | Traditional Council: 66<br>IRA Council: 63 |

DCRA's November 3 letter advised City officials that the Department is prepared to initiate an investigation as required by AS 29.06.450(b). If such an investigation determines that the City is not functioning, such a determination could lead to a recommendation by DCRA for dissolution of the City. The letter made the following points with respect to the possible inactive status of city.

- ⊖ although the city is required by State law [AS 29.20.640(a)(2)] to file an annual audit or financial statement with the Department, the last financial statement received from the City of Clark's Point was for Fiscal Year 1987;
- ⊖ although the city is required by State law [AS 29.20.640(a)(4)] to file a copy of its current budget with the Department, the last City of Clark's Point budget filed with DCRA was for fiscal year 1988;
- ⊖ the City has not qualified for State Revenue Sharing since Fiscal Year 1989;
- ⊖ the City has not qualified for Municipal Assistance funding since Fiscal Year 1991;
- ⊖ despite a requirement for annual municipal elections [AS 29.26.040], it is rumored that there have been no municipal elections in recent years; and
- ⊖ it has been reported that the City Council has not met for an extended period of time. State law [AS 29.20.160(b)] requires city councils to meet regularly.

The City was invited to respond by December 3, 1995. However, as of January 1, 1996, no written response to the letter had been received from the City of Clark's Point. A second letter was sent to the Mayor on January 3, 1996. It requested a response by January 12. The City was advised that failure to respond would result in the initiation of the investigation into whether the City of Clark's Point is functioning.

On January 9, 1996, the Clark's Point Administrator/Clerk responded to the DCRA inquiry. She asserted that the City never intended to become inactive. She acknowledged that the City had not conducted regular elections. She indicated that the City had not conducted regular city council meetings because of difficulties in establishing a quorum. She requested additional time to respond to issues raised by DCRA. The matter is presently being reviewed by DCRA staff.

**City of Chefnak.** An official of the Chefnak Tribal Council requested and was provided with petition forms and informational materials regarding city dissolution.

**City of Coffman Cove.** Petition forms and information regarding standards and procedures for city dissolution and effects of city dissolution were provided to a

resident of Coffman Cove. The materials provided were developed in cooperation with DCRA's Southeast Regional Office and State Revenue Sharing Program staff.

**City of Gambell.** On December 16, LBC staff attempted to travel to Gambell to meet with officials of the City of Gambell, the Gambell IRA Council and residents of the community regarding local interest in dissolution of the City of Gambell. Weather conditions forced cancellation of the meeting, which has tentatively been rescheduled for early 1996.

**City of Goodnews Bay.** Staff of the Lt. Governor's office requested and were provided with information and copies of correspondence regarding interest in city dissolution on the part of Goodnews Bay residents. Evidently, local proponents of dissolution believed that dissolution of the City of Goodnews Bay could be accomplished by submission of an informal petition to the Lt. Governor's office.

**City of Hydaburg.** On February 16, LBC staff met with four representatives of Hydaburg village corporation concerning procedures and standards for dissolution of the City of Hydaburg. In September, LBC staff met with a resident of Hydaburg and provided him with information regarding city disso-

lution. Local interest in dissolution of the City of Hydaburg reportedly persists.

**City of Kiana.** LBC staff traveled to Kiana on November 14 and participated in a public meeting to discuss standards and procedures for city dissolution. The meeting was requested by Kiana City officials and residents.

**City of Mountain Village.** In March, information and

petition forms to dissolve the City of Mountain Village were sent to a resident of the community upon request.

**City of Quinhagak.** In April, DCRA regional office staff reported that residents of Quinhagak expressed interest in dissolving the City of Quinhagak.

**City of Selawik.** LBC staff traveled to Selawik during the week of Novem-

ber 13 and participated in a public meeting to discuss standards and procedures for city dissolution. The meeting was requested by Selawik City officials and residents.

**City of Togiak.** Residents of Togiak are reportedly interested in examining the "pros and cons" of City dissolution. A community meeting is scheduled for early 1996.

## City Detachment

During 1995, interest was expressed in detachment of territory from the following cities:

- \* City of Cordova
- \* City of Fairbanks
- \* City of St. Mary's
- \* City of Klawock

**City of Cordova.** On September 29, 1995, a petition was submitted to DCRA calling for the detachment of the "Outer Point Whitshed" area from the City of Cordova. According to the petition, there are 19 residents in the territory proposed for detachment, nine of whom are registered voters. The petition also indicates that taxable real property within the territory is assessed at \$467,100, just under one-half of one percent of the assessed value of real property throughout the City. On

December 21, the Director of MRAD wrote to the petitioners in review of the detachment proposal. The letter candidly expressed the view that the petition effort would likely be futile given the circumstances associated with the prospective proposal.

**City of Fairbanks.** Officials of the Fairbanks North Star Borough have expressed interest in detaching 10 - 15 acres of uninhabited territory from the City of Fairbanks. The ter-

ritory in question is owned by the federal government and is part of Fort Wainwright. The site has been proposed for development as a solid waste collection facility to be operated by the Borough on a nonareawide basis. The project would be funded by bonds issued for solid waste collection facilities outside the City of Fairbanks and City of North Pole. Given restrictions on the funding for the project, the Borough's bond counsel has taken the position that the territory must be de-

tached from the City of Fairbanks. The Borough expressed confidence that the property owner and the City of Fairbanks would endorse the prospective detachment proposal. The Borough had expressed interest in seeking the relaxation of the LBC's procedural regulations as permitted by 19 AAC 10.660 in order that the matter might be considered by the 1996 legislature. However, it appeared that there was insufficient time for even the minimal procedural steps which would have been required before

the Commission could act in order to present the matter to the legislature in 1996. Further, there were some potential complications associated with the proposal which indicated that an expedited process might not have been appropriate. Borough officials are reportedly planning to file a petition for detachment of the area in question by March, 1996.

**City of St. Mary's.** A representative of "Yupiit of Andreafski" requested and was provided records relating to the 1980 annexation of An-

dreafski to the City of St. Mary's. The group is considering detachment of Andreafski from the City of St. Mary's.

**City of Klawock.** Information regarding detachment was requested by a Juneau attorney representing Klawock residents considering detachment from the City of Klawock. Detachment petition forms, as well as information about standards and procedures, were provided by LBC staff.

## Borough Incorporation

Activities or interest relating to borough incorporation occurred in the following six areas during 1995.

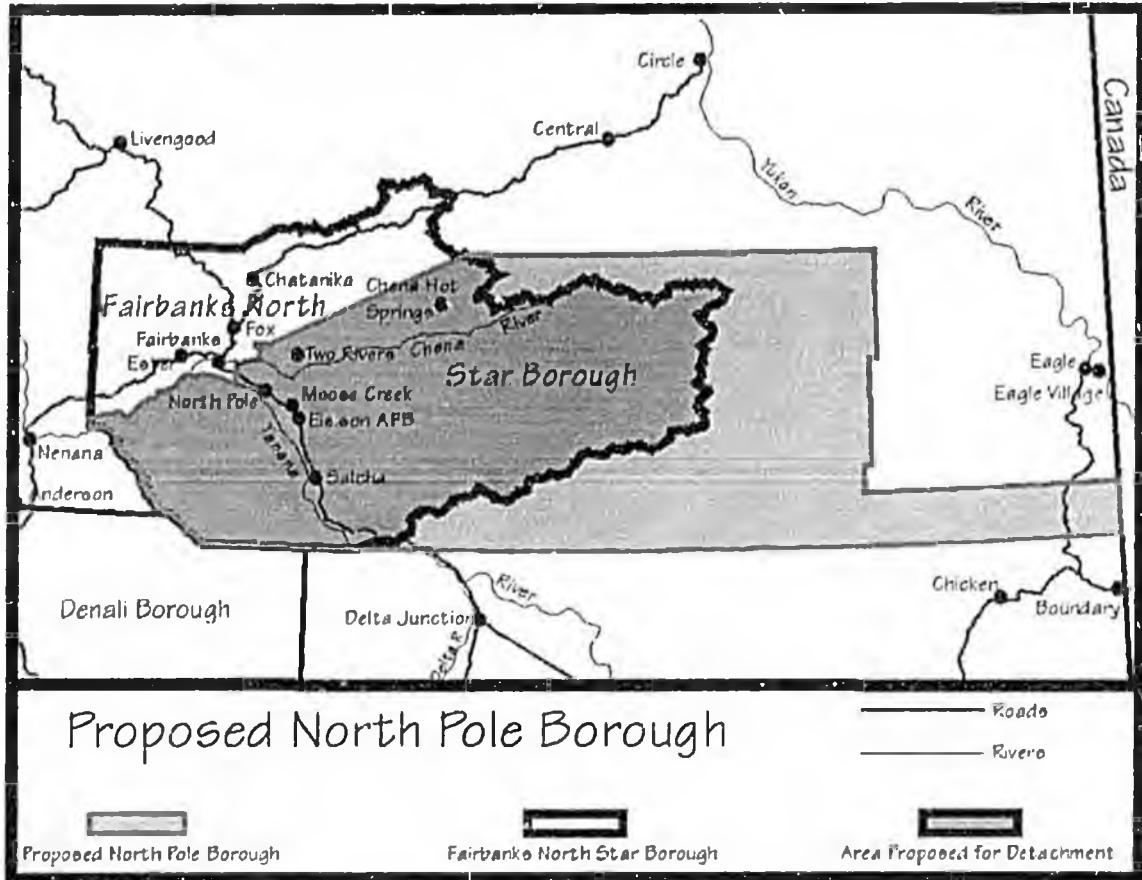
- \* North Pole Region
- \* Aleutians West Region
- \* Prince William Sound Region
- \* Tok Region
- \* Yukon-Kuskokwim Delta Region

**North Pole Area.** On January 5, 1995, a petition for detachment of approximately 5,400 square miles from the Fairbanks North Star Borough (FNSB) and incorporation of a 10,000 square mile North Pole Borough was accepted for filing. Copies of the notice of filing were sent to 48 parties. Copies of the petition were made available for public re-

view at DCRA's Fairbanks Regional Office and the City of North Pole. Arrangements were made for posting and publication of the notice of filing of the petition. A press release concerning the filing of the petition was also circulated to Fairbanks area media and interested parties.

On January, the FNSB requested a 90-day extension

of the deadline for filing responsive briefs and informal comments in opposition to or in support of the proposed North Pole Borough. The Commission granted the request. LBC staff prepared an amended notice extending the deadline for comments until July 6, 1995. Arrangements were made to publish, post and mail the amended notice.



The North Pole Borough Committee conducted a series of 8 informational meetings in Fairbanks and North Pole during the period between February 10 and February 20.

LBC staff addressed a group of interested citizens in Fairbanks about the North Pole Borough proposal on March 4. Those present included representatives of the Fairbanks North Star Borough, North Pole Borough Committee, Tanana Valley League of Women Voters and the Fairbanks Republican Womens' Club.

On April 4, the representative of the petitioners for incorporation wrote to indi-

cate that the 'North Pole Borough Planning Committee finds compelling arguments to exclude the 12-mile wide 60-mile long area extending to the Canadian border from the territory proposed for incorporation'.

In June, seven residents of the Upper Tanana Basin submitted a written request that the LBC conduct a hearing on the North Pole Borough proposal in Tok.

By the July 6 deadline for comments and briefs on the North Pole Borough proposal, LBC staff received ten responsive briefs and 57 letters. The responsive briefs were filed by the following parties:

- Fairbanks North Star Borough;
- Fairbanks North Star Borough School District;
- Alaska Gateway School District;
- Mapco Alaska Petroleum, Inc.;
- National Education Association - Alaska;
- Greater Fairbanks Chamber of Commerce;
- Alaska AFL-CIO on behalf of the Fairbanks Central Labor Council;
- Alaska State District Council of Laborers;
- Feasibility and Research Committee; and
- Salchans for Education.

The day after the deadline for filing response briefs, the petitioners filed a set of

"corrections" to their petition. Principally, the "corrections" provided for:

- ⊕ a 17.4% reduction in the areawide property tax levy;
- ⊕ a 77.9% increase in the non-areawide property tax levy;
- ⊕ a shift of the Sheriff's Department from an areawide function to a non-areawide function;
- ⊕ a \$6.5 million reduction in the reserve fund over three years; and
- ⊕ an annual \$31,500 reduction in the emergency services budget.

The "corrections" themselves were found to contain numerous errors and omissions. The Department of Law was consulted on issues relating to the matter.

DCRA concluded in a letter dated July 28 that, despite errors and omissions, the intent of the petitioners' July 7 eight-page list of corrections was reasonably clear. Further, DCRA concluded that the corrections were of a nature that did not require formal amendment to the petition. DCRA took the position in an effort to avoid further delay in the proceedings. Respondents were informed of DCRA's conclusion and were asked to contact LBC staff by August 9 if they felt that the petitioners should be required to amend the petition or if they should be given additional time to respond to the corrections.

Interested parties were advised that the Commission was allowing respondents in the North Pole Borough to comment on the July 7, 1995 submission of the petitioners. On August 23, the FNSB filed 23 pages of comments and revised exhibits in response to the July 7 "corrections" of the North Pole Borough petitioners. The FNSB concluded that the corrections only make "a bad situation worse." A copy of the Borough's filing was provided to the petitioners' representative and to the parties that have filed responsive briefs in the matter.

In July, the petitioners also filed a 33-page brief in reply to the ten responsive briefs filed in opposition to the borough proposal. The reply brief asked the Commission to amend the boundaries of the proposed North Pole Borough to accommodate objections of the Alaska Gateway School District. However, the petitioners found the remaining briefs to be lacking in merit.

On December 15, the North Pole Borough Planning Committee and the petitioners' representative petitioned the Superior Court for a temporary restraining order and injunction to prevent the Fairbanks North Star Borough from issuing new bonds until the LBC has rendered its decision regarding the petition to form the

North Pole Borough. The petition to the court also asked that the FNSB be instructed to "fully comply with Chapter 10 of Title 19 of the Alaska Administrative Codes" (sic). The latter is in reference to the alleged refusal of the FNSB to cooperate with the petitioners in the development of a transition plan.

In 1996, DCRA will issue a report and recommendation to the LBC concerning the North Pole petition.

**Aleutians West Region.** In May, LBC staff provided information to the City of Unalaska concerning borough incorporation. The information addressed procedures to form a borough, dissolve the City of Unalaska and leave the City of Atka in place.

In August the City of Unalaska selected a contractor to study the feasibility of forming a borough. The area under consideration extends from the western boundary of the Aleutians East Borough to the end of the Aleutian chain. City of Unalaska staff have indicated that the study should be issued early in 1996.

**Prince William Sound Region.** LBC staff met by teleconference with the Board of Directors of Chugachmiut regarding formation of an organized borough in the Prince William Sound region. Board members expressed

concerns about prospective efforts by the City and Borough of Yakutat to extend the borough's boundaries west of the 141st meridian.

**Tok Region.** LBC staff addressed questions and issues relating to borough formation at a public forum on

June 8 in Tok. The public forum in Tok was co-sponsored by the Tok Umbrella Corporation and the Tok Chamber of Commerce.

**Yukon-Kuskokwim Delta Region.** At an August 19 economic development workshop in Bethel, an offi-

cial of the Calista Corporation announced that the Corporation will sponsor a Calista Region borough feasibility study.

## Borough Annexation

Officials or residents of the three areas listed below engaged in efforts involving potential annexation of territory to organized boroughs during 1995.

- \* Bristol Bay/Dillingham Census Area
- \* Yakutat
- \* Denali Borough

A summary of these matters follows.

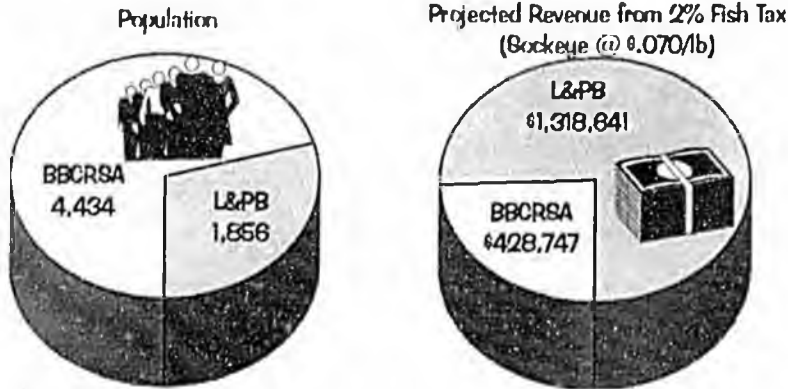
**Bristol Bay/Dillingham Census Area.** On March 8, 1995, LBC staff and staff from DCRA's Dillingham regional office met in Dillingham with representatives of the Nushagak area villages to discuss various municipal boundary options. These included: 1) reclassification of the City of Dillingham 2) formation of a Nushagak/Togiak Borough and 3) annexation of the Bristol Bay Borough (BBB) and Bristol Bay Coastal Resource Service Area (BBCRSA) to the Lake and Peninsula Borough (L&PB). At that point, the group was most interested in proposing the annexation of the BBCRSA to the L&PB (and

possibly including the BBB). The group planned to seek the cooperation of the L&PB (and perhaps the BBB) in asking DCRA to provide preliminary information concerning that option. The desired information includes fish tax projections, education funding projections, Municipal Revenue Sharing and Municipal Assistance projections, assembly apportionment plans and ways in which the existing assets (e.g., permanent funds, school endowments) of the BBB and L&PB could be reserved for the benefit of those areas. The ad hoc group, called "Options for the Future Committee" was also interested in seeking

funding from DCRA (e.g. Coastal Management funds) or the legislature to prepare a transition plan to be included in an annexation petition

In April, the Department of Education (DOE) released its projections of education funding under various potential borough boundary scenarios in the Bristol Bay region. The projections indicate that after consolidation of the Dillingham City School District, the Southwest Region REAA and the Lake & Peninsula School District, the area would receive \$21,447,924 (\$160,841 less than the current total for the three districts). If the Bristol Bay Borough were

### Comparison of the Bristol Bay Coastal Resource Area (BBCRSA) and the Lake and Peninsula Borough (L&PB)



included in the consolidation, the region would receive \$24,852,936 (\$280,151 less than the current total for the four districts). The projected reduction in funding is due largely to the elimination of the \$250,100 annual "single site grant" to the Dillingham School District. In making its projections, DOE assumed an area cost differential of 1.29 (compared to the current figure of 1.27 for Bristol Bay and Dillingham and 1.31 for the Southwest Region REAA and the Lake & Peninsula Borough). The use of an average area cost differential is a more favorable approach over other recent projections by DOE.

DCRA's staff in Juneau also prepared Revenue Sharing, Municipal Assistance and extraterritorial fisheries business tax refund projections for the various boundary scenarios. The projections were forwarded to a

representative of the "Options for the Future Committee."

On July 25, LBC staff met by teleconference with representatives and legal counsel of the Options for the Future Committee concerning the proposed annexation of the Bristol Bay Coastal Resource Service Area to the Lake and Peninsula Borough. Issues addressed included reapportionment of the Borough assembly; establishment of service areas; reserve accounts of the Lake and Peninsula Borough, City of Dillingham and Southwest Region REAA; forward funding by the L&PB; and issues relating to the transition from three school districts to a single district. The Options for the Future Committee planned to conduct meetings on the draft proposal. It was expected that such meetings would include a meeting with the Lake and Peninsula Borough Assem-

bly, at least two meetings in Lake & Peninsula Borough communities (one in the north and one in the south) and meetings in some Bristol Bay CRSA communities.

**City and Borough of Yakutat.** In May, officials of the City and Borough of Yakutat advised LBC staff that they intended to seek extension of the Borough's western boundary approximately 110 miles to Cape Suckling. Petition forms and other materials were provided to Borough officials. At the close of 1995, Borough officials indicated that the petition would be filed by the end of January, 1996.

**Denali Borough.** As noted in the following discussion of borough detachment activities, the Denali Borough is considering annexation of 997 square miles presently within the boundaries of the Matanuska-Susitna Borough. On September 10, the Denali Borough Assembly directed the Mayor to proceed with a petition for the boundary change. The Denali Borough has been soliciting public comment regarding the proposed annexation of lands south of Cantwell to the Denali Borough. An informational packet was also distributed by the Denali Borough. The packet included a map of the area being considered for annexation and a description of the Denali Borough.

## Borough Detachment

During 1995, borough detachment proposals or interest in proposing such detachments surfaced with respect to the following:

- \* Lake Louise (Matanuska-Susitna Borough)
- \* North Pole Area (Fairbanks North Star Borough)
- \* Wasilla-Palmer area (Matanuska-Susitna Borough)
- \* Ahtna Lands (Matanuska-Susitna Borough)
- \* Denali State Park (Matanuska-Susitna Borough)
- \* Tyonek (Kenai Peninsula Borough)
- \* Eklutna (Municipality of Anchorage)

Brief summaries of these matters follow.

**Lake Louise.** On April 7, 1995, voters of the Lake Louise area submitted a petition for detachment of 648 square miles from the Matanuska-Susitna Borough. The area is inhabited by an estimated 39 residents (less than one-tenth of one percent of the Borough's total population). The territory reportedly has an assessed value of \$10.7 million (less than one-half of one percent of the Borough's total assessed value).

Following technical review, the Lake Louise detachment petition was accepted for filing. Public notice of the filing of the petition and guidelines for filing responsive briefs and comments were prepared. The deadline for filing responsive briefs and comments was set for June 15. Arrangements were made for publication, posting and distribution of the notice.

LBC staff provided public notice of the filing of the Lake Louise detachment petition to 47 parties. Included with each notice was a 4-page set of guidelines prepared by LBC staff for filing responsive briefs and comments. Also included was a 6-page rebuttal to the guidelines that was prepared by the petitioners. The petitioners provided the notice, guidelines and rebuttal to approximately 425 property owners, resident registered voters and others.

On June 8, the Mayor and Assembly of the Matanuska-Susitna Borough held a work session at the Wolverine Lodge at Lake Louise to address the pending petition for detachment of that area from the Borough. LBC staff participated at the work session.

June 15 was the deadline for filing responsive briefs and public comments sup-

porting or opposing the petition to detach 8 square miles from the Matanuska-Susitna Borough. Nearly 70 letters were filed in support of detachment. On June 13, the Matanuska-Susitna Borough Assembly adopted a resolution opposing the detachment by a vote of 6 to 0 (1 member was absent). The Borough subsequently filed a responsive brief in opposition to the detachment proposal.

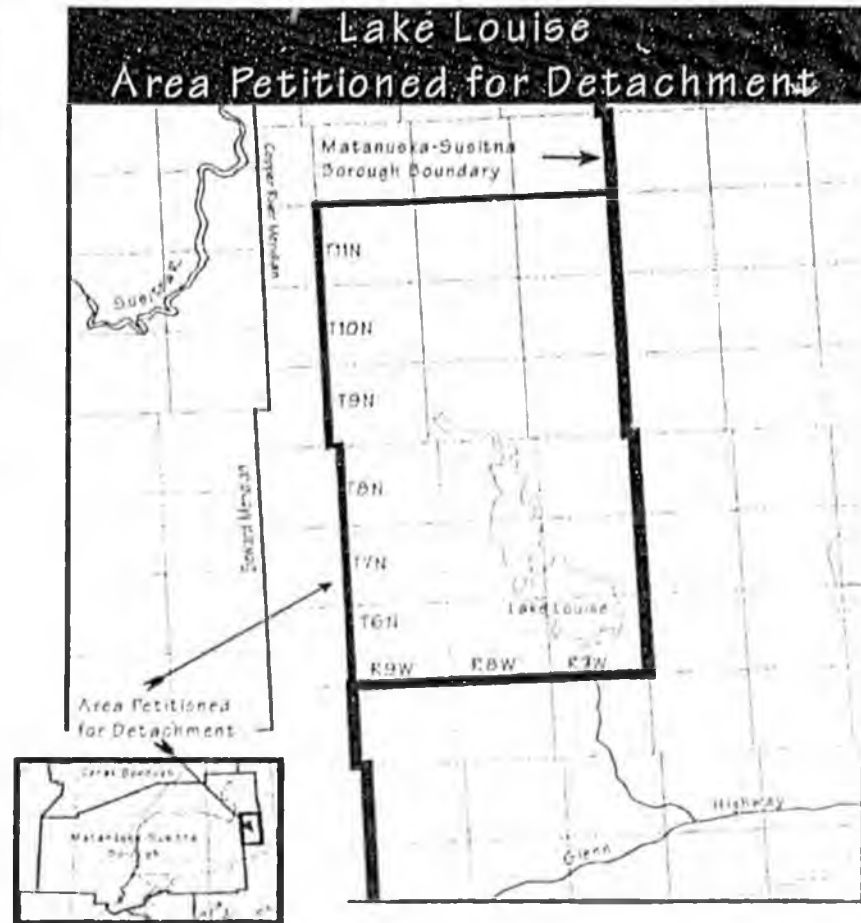
On July 17, the petitioners for detachment filed a brief with the LBC responding to the MSB's June 15 brief.

On October 3, DCRA issued its preliminary report on the Lake Louise detachment petition. The preliminary report supported the detachment of approximately 252 square miles. The recommendation included stipulations intended to mitigate adverse financial

impacts on the Matanuska-Susitna Borough. Those included a requirement that the territory proposed for detachment pay a proportional share of the Borough's existing bonded indebtedness, that the territory pay the Borough's post-detachment required local contribution for education for that area, and that the territory assume responsibility for a 23-acre sewage management site currently operated by the Borough.

The report was distributed to the petitioners' representative and the Borough Mayor and Manager on October 3. The following day, the report was distributed to 81 others. On October 5, a letter summarizing the report was sent to 78 other interested parties. A press release concerning the matter was also prepared and submitted to selected news media on October 5. Comments on the report were accepted through November 1.

DCRA's final report and recommendation on the Lake Louise detachment petition was issued on November 15. The 24-page final report was presented as a supplement to the 72-page October 3 provisional report on the matter. The final report reaffirmed DCRA's earlier recommendation that the Commission approve the detachment of an estimated 252 square miles. Further, the final report reiterated recom-



mendations that the Commission impose stipulations requiring the Lake Louise area to: (1) assume a proportional share of the Borough's bonded indebtedness, (2) reimburse the Borough for a proportional share of its local contribution in support of education for two years, and (3) assume responsibility for a sewage management site at Lake Louise. Ninety-three copies of the report were distributed to interested parties.

IBC staff arranged for public notice of the hearings to be given as required by law. Specifically, arrangements were made to publish notice of the hearings three times each in the *Frontiers-*

*man*, and the Alaska Administrative Journal. In addition, notice of the Lake Louise hearing will be published once in the *Anchorage Daily News* and three times in the *Copper River Country Journal*. Further, notice of the hearings on the Lake Louise matter was mailed to 158 parties. The petitioners were also instructed post the notice in at least three public and prominent locations in the area in which the hearings are to be held, and to include the notice with the petition materials available for public review. Lastly, requests for public service announcements concerning the hearing were sent to selected radio stations serving

the area proposed for detachment.

The LBC conducted two public hearings on the detachment petition. Those hearings were held at the following times and locations:

1. Thursday, December 7, 1995, 1:00 p.m.,  
The Point Lodge,  
Mile 17.2 Lake  
Louise Rd.
2. Friday, December 8, 1995, 3:00 p.m.,  
Wasilla City Council  
Chambers, 290 East  
Herning Avenue

At the conclusion of the public hearing on December 8, the Commission voted unanimously to amend and approve the petition for detachment. The amended petition excludes an about 396 square miles from the area originally proposed for detachment. Thus, the amended petition for detachment encompasses an estimated 252 square miles.

The Commission stipulated that the detachment will not take effect unless and until the detached territory becomes part of another organized borough. Such inclusion in another organized borough would be required to occur within two years of the date of tacit legislative approval of the detachment.

At 10:00 a.m. on December 15, 1995, the LBC met by teleconference and adopted a written statement explaining all major considerations leading to the decisions regarding the detachment petition.

On December 20, the petitioners filed a 12-page request for reconsideration. The petitioners requested that the Commission modify its original decision to allow detachment upon the alternative of forming a second class city.

On December 27, the LBC unanimously agreed to reconsider its decision. The Matanuska-Susitna Borough and the petitioners filed briefs regarding the change proposed by the petitioners. On January 4, the Borough also filed a request for reconsideration. The Commission met in Palmer on January 12 to address the petitioners' proposed modification and to consider the Borough's request for reconsideration. The Commission approved the option of forming a second class city with several stipulations. Among the stipulations were provisions which also responded to the Borough's request for reconsideration.

**North Pole Area.** As described in the discussion of borough incorporation activities, North Pole area residents have submitted a petition to detach 5,400

square miles from the 7,350 square mile Fairbanks North Star Borough and formation of a new borough. For additional information, see the North Pole Area Borough discussion.

**Wasilla-Palmer Area.** In December, the City of Wasilla appropriated \$12,000 to initiate a plan for the study of detachment of the "core area" of the Matanuska-Susitna Borough. The study will examine detachment of 288 square miles, encompassing the Cities of Wasilla and Palmer, and formation of a new borough to serve the area. The area includes about 64 percent of the taxable real property in the Matanuska-Susitna Borough and about 80 percent of the Borough's population.

**Ahtna Lands.** The Denali Borough and Ahtna Inc., the ANCSA regional corporation for the Copper River area, support detachment of lands owned by the Corporation within the northern portion of the Matanuska-Susitna Borough. In July, LBC staff participated by teleconference in a meeting between Denali Borough officials, representatives of the Ahtna Regional Corporation and others regarding the possible annexation of territory presently within the MSB. The territory currently under consideration extends beyond the Ahtna lands to en-

compass approximately 997 square miles. Three students from that area presently attend school in the Denali Borough. LBC staff agreed to provide petition forms and related materials to the Borough.

**Denali State Park Area.** On May 2, residents and property owners met at the Chulitna River Lodge to discuss possible detachment of Tokositna from the Matanuska-Susitna Borough and incorporation of a second class city for properties within the Denali State Park.

The meeting was organized by a developer of a subdivision in the area.

**Tyonek.** In February, DCRA's Southcentral Regional Office reported that residents of Tyonek were interested in detachment of the village from the Kenai Peninsula Borough. Petition forms and information regarding detachment standards were provided the Native Village of Tyonek.

**Eklutna.** Staff of the Native Village of Eklutna requested information con-

cerning the criteria and procedures for detachment of territory from a unified municipality and detachment petition forms. Local interest in detachment has been generated by the controversy over the Municipality of Anchorage's response to Eklutna residents' concerns about development of a quarry near the village.

## City and Borough Consolidation

Recent or ongoing interest in consolidation exists in two areas:

- \* Haines
- \* Ketchikan

**Haines.** The Haines City Clerk requested information and materials about options for improving the efficiency and effectiveness of the structure of local government in Haines. Options under consideration included annexation of territory to the City of Haines; as well as merger, consoli-

dation or unification of the City of Haines and the Haines Borough.

**City of Ketchikan and the Ketchikan Gateway Borough.** The Ketchikan City Attorney advised staff that efforts of an ad hoc committee to develop a petition for consolidation of the City of

Ketchikan and the Ketchikan Gateway Borough were continuing. The Committee has drafted a charter for the consolidated government. In September, the Ketchikan City Attorney forwarded to LBC staff the draft charter for review.

## Litigation

Five cases involving the Local Boundary Commission received attention from the Courts or required action by the Commission in 1995. These are summarized as follows:

### Regarding Incorporation of the City of Egegik [Terry Cummings and Concerned Citizens of Bristol Bay; Case No. 3AN 95-1313 CI - June 26, 1995.]

On June 26, 1995, Terry Cummings and Concerned Citizens of Bristol Bay filed an appeal in Superior Court of the Commission's decision to approve the petition to incorporate Egegik as a second class city. Ms. Cummings fishes commercially in Bristol Bay. Concerned Citizens of Bristol Bay is an unincorporated association of area residents, property owners and fishermen.

The appellants claimed that:

- ✓ adequate study was not made of alternatives to incorporation;
- ✓ the Department did not comply with applicable law regarding public review of its report;
- ✓ the Department and the Commission failed to consider all the significant factors relevant to the decision;
- ✓ the LBC abused its discretion;
- ✓ the Department and the LBC improperly deferred to the

judgment of the Lake and Peninsula Borough when considering whether service delivery in Egegik by the Borough was preferable to service delivery by a city.

On September 1, the Department of Law filed a brief in Superior Court responding to the appeal.

### 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 July 22, 1994, 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 determined that the Borough's boundary should be changed, another borough incorporation election would be required in accordance with 29.05.110(a).

Proceedings for reconsid-

eration of the boundary by the Local Boundary Commission began immediately. In early August, DCRA provided extensive notice of reconsideration of the northwest boundary. 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, 1994. Approximately 100

copies were circulated for public review and comment. The report recommended that the Commission affirm the existing boundaries of the Lake and Peninsula Borough. December 30, 1994 was the deadline for submission of comments on the provisional report.

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

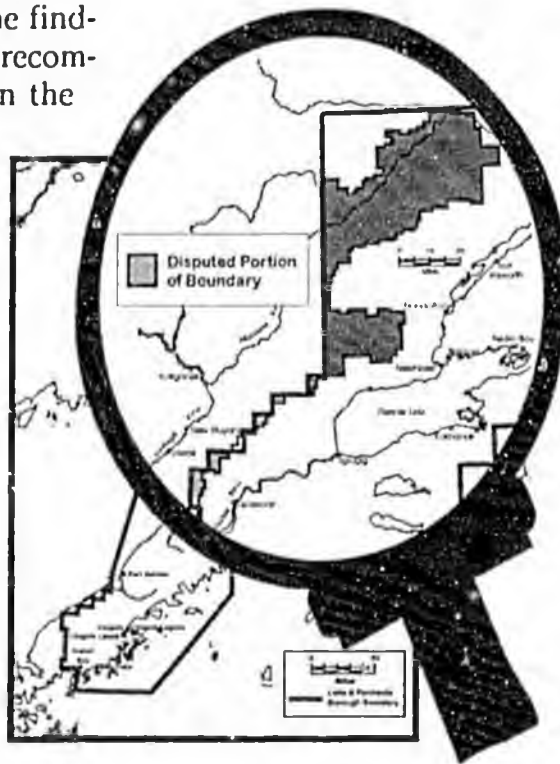


meeting was held in King Salmon, with teleconference sites established in Dillingham and Nondalton.

Five parties submitted comments on the provisional report by the December 30 deadline. DCRA released its final report concerning 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 Local Boundary Commission held two hearings concerning the disputed boundary on Sunday, January 29. The first hearing was held in New Stuyahok beginning just after noon and lasting until nearly 4:00 p.m. Approximately 75 people were present. Iliamna, Nondalton, Dillingham, Clark's Point, Levelock and Chignik Lake participated in the hearing by teleconference. The second hearing was held in Newhalen beginning just after 7:00 p.m. and lasting until nearly 11:00 p.m. Teleconference sites participating in the hearing included Newhalen, Levelock, Pedro Bay, Kokhanok, Igiugig, Port Alsworth and Dillingham. Arguments in favor of excluding the area

lying covered by the Nushagak & Mulchatna Rivers Recreation Management Plan were heard. The Lake and Peninsula Borough argued in favor of retaining its existing boundaries. DCRA recommended that the LBC affirm the existing boundaries. Following the hearing, the Commission scheduled a decisional session on the



matter for February 14, 1995.

At the February 14 decisional session, the LBC voted 4-0 (1 member abstained) to affirm the existing boundaries of the Lake and Peninsula Borough.

The Commission met by teleconference on March 9 at 10:00 a.m., and adopted a 39-page decisional statement. Copies of the deci-

sional statement were mailed on March 9 to the Borough, Nushagak respondents and others who had requested a copy.

On March 29, 1995, a request for reconsideration of the LBC's decision was filed on behalf of several Nushagak area villages. The request for reconsideration asked the LBC to "*withdraw their current decision.*" A preference was expressed for a ruling that the existing northwest boundary of the L&PB does not meet the standards for incorporation. However, the request also stated that, ". . . *the village leaders are more than willing to work with the Commission, the DCRA staff and all other interested parties to try to bring about a mutually satisfactory settlement of this conflict.*" The reconsideration request specifically invited the LBC to "*explore the possibility that the 'Super Borough' concept may well be the best and fairest resolution of this conflict.*" The LBC had until April 10 to act on the reconsideration request.

At 10:00 a.m., April 10, 1995, the LBC conducted a duly-noticed meeting to take up the reconsideration request.

At the April 10, meeting, the LBC voted 4 to 1 to deny the March 29 request for reconsideration. Parties had until May 10 to file an ad-

ministrative appeal of the Commission's decision to the Superior Court. No appeal was filed during the period provided.

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

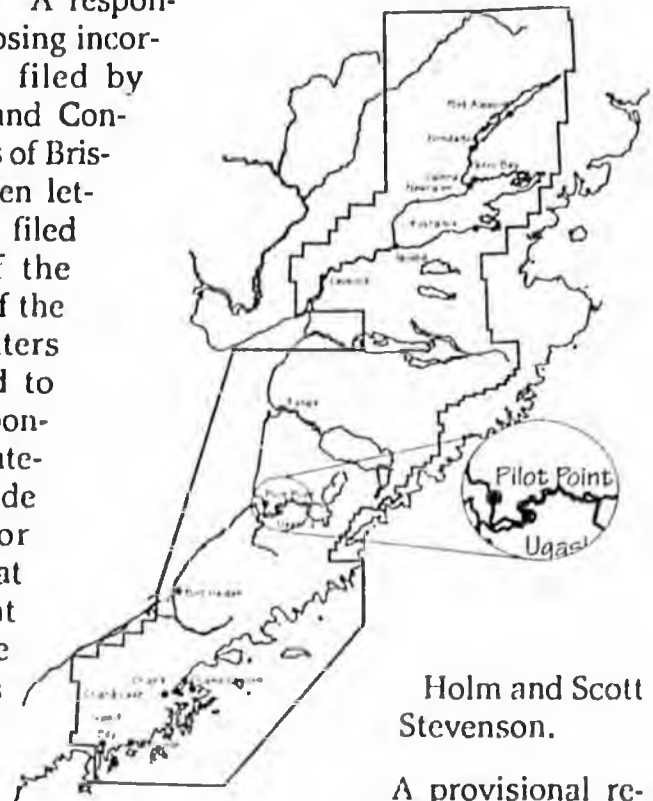
On April 14, 1995, the Alaska Supreme Court directed that the Commission reconsider incorporation of the City of Pilot Point. The Court concluded that during the original incorporation proceedings, the Commission had not adequately inquired into whether municipal services sought by Pilot Point residents might not be more reasonably and practicably provided by the Lake and Peninsula Borough [AS 29.05.021(b)].

Notice of reconsideration of the incorporation was published and posted in the City of Pilot Point. The notice was also mailed to 87 potentially interested parties and news media. Interested parties were given until July 14, 1995, to file responsive briefs and informal comments regarding the reasonability and practicability of the Lake and Peninsula Borough providing services in lieu of the City of Pilot Point.

Responsive briefs supporting city incorporation were filed by the Lake and Penin-

sula Borough and the City of Pilot Point. A responsive brief opposing incorporation was filed by "Jack Keane and Concerned Citizens of Bristol Bay." Seven letters were also filed in support of the city. Copies of the briefs and letters were provided to the three respondents. The materials were made available for public review at the Pilot Point City Hall, Lake & Peninsula Borough Offices and DCRA's office in Dillingham. The deadline for submission of reply briefs and comments was August 18, 1995.

On August 10, 1995, the Lake and Peninsula Borough filed a seven-page reply brief regarding the reconsideration. The Borough's brief is directed at a responsive brief opposing incorporation filed by Andrew Hemenway on behalf of "Jack Keane and Concerned Citizens of Bristol Bay." Reply briefs were also submitted by Jack Keane and Concerned Citizens of Bristol Bay; the City of Pilot Point and the Lake and Peninsula Borough. In addition, letters were received from Jack Keane, Douglas A. Stokes, Elaine



Holm and Scott  
Stevenson.

A provisional report analyzing whether the Lake and Peninsula Borough could reasonably and practicably provide the services desired by the residents of Pilot Point is currently being prepared by LBC staff. The DCRA provisional report and recommendations to the LBC on the reconsideration will be issued in 1996.

**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 14, 1995, the Director of MRAD approved an agreement for an

out-of-court settlement in the dispute over the 1993 annexation of territory to the City of Cordova. The agreement (1) dismissed the appeal of the annexation; (2) provided for a differential tax zone in the annexed area (taxes reduced by 2.51 mills); (3) generally exempted the annexed area from the City's laws regarding building standards, zoning, animal control, gun control and use of snowmachines; (4) provided for a credit of 50% of property taxes paid by the property owners in the annexed area in 1993; (5) provided that the Department of Law will pay the appellants' attorney's fees; and (6) prohibited the City from opposing a petition for detachment of the "Outer Whitshed Area" if that petition was filed before October 1995. Under the terms of the agreement, the City resolved not to oppose the detachment of that area if "a majority of residents . . . petition the LBC for detachment before October 1995." However, another part of the agreement — one that supersedes all others — provides that "any limitation on action by the City Council or Mayor in this Agreement shall only be in effect until the next municipal election in October, 1995."

On February 16, 1995, Superior Court Judge Mark C. Rowland held a hearing on the proposed settlement of the Cordova annexation appeal. The proposed agreement had been signed by 69 of the 72 appellants, as well as the City of Cordova and DCRA. Three of the appellants refused to accept the agreement. During the February 16 hearing, one of the three holdouts decided to sign the agreement. The Judge dismissed the remaining two holdouts (with their approval).

Following agreement by all parties, Superior Court Judge



Mark Rowland dismissed the appeal of the Cordova annexation. He also vacated his order of October 12, 1994, in which he had ruled that the LBC failed to comply with the reconsideration provisions of the Administrative Procedure Act (AS 44.62.540). Because AS

44.62.330 does not list the LBC among the agencies to which Article 8 of the Administrative Procedure Act applies, DCRA has long believed and continues to believe that AS 44.62.330 - 44.62.630 do not apply to the LBC. In 1974, the Alaska Supreme Court ruled that the LBC was not subject to those provisions (Mobil Oil v. LBC). In 1993, Superior Court Judge Beverly Cutler reached a similar conclusion in the appeal of the decision concerning an annexation to the City of Palmer.

On September 29, a petition was submitted to DCRA calling for the detachment of the "Outer Point Whitshed" area from the City of Cordova by the local action election process. According to the petition, there are 19 residents in the territory proposed for detachment, 9 of whom are registered voters. The petition also indicated that taxable real property within the territory is assessed at \$467,100, just under one-half of one percent of the assessed value of real property in the City. Upon review by LBC staff the petition was found to be incomplete.

**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 Ar-*

*ticle 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 de-

cision 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 rule making 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 rule making authority for matters involving annexation, detachment, merger and consolidation (the Court did not mention dissolution, although the Commission has express legislative rule making authority for such

under AS 29.06.450)<sup>6</sup>. Judge Thompson noted that interpretative regulations are given less deference by the Court than legislative regulations.

The ruling was appealed to the Supreme Court. On April 28, the Alaska Supreme Court affirmed the LBC's decision relating to the incorporation of the City and Borough of Yakutat. At issue was whether the Commission was required to ap-

prove the Yakutat petition with boundaries extending to Cape Suckling so long as that proposal at least minimally met the statutory standards for incorporation. In concluding that the LBC acted properly in reducing the Borough's boundary to the 141st meridian (110 miles east of Cape Suckling), the Court relied heavily on Art. X, Sec. 3 of Alaska's constitution. That provision requires that boroughs encompass an area and population

with common interests to the maximum degree possible. Further, the Court reiterated its earlier views that the Commission has broad powers and that statutory borough incorporation standards were intended to be flexibly applied.

### Revision to Local Boundary Commission Regulations

In May, the Commission proposed changes to its regulations in ways that would include broader options for voter participation in matters that come before the Commission. The proposed changes would expand options for:

- X annexation and detachment through approval by voters collectively in the territory proposed for change and the affected municipality;
  - X annexation and detachment upon approval of the voters of the affected municipality, if the territory proposed for change is uninhabited;
  - X annexation and detachment through dual majority elections (approval of the voters in the territory proposed for change and separately in the affected municipality);
  - X annexation, detachment, dissolution, incorporation, merger, consolidation and city reclassification by local vote and tacit review by the legislature;
  - X dissolution, merger, consolidation and city reclassification by tacit approval of the legislature; and
  - X merger and consolidation by approval of the voters separately in each municipality proposed to be merged or consolidated.
- Additionally, the Commission proposed regulations to establish standards for reclassification of cities.
- The Commission held a hearing on the proposed regulations in Anchorage on August 10. Teleconference sites were established at Dillingham, Fairbanks,

Unalaska, King Salmon and Nondalton.

Following the hearing, the Commission determined that it would be best to conduct at least one additional meeting to further consider the written and verbal comments.

On August 25, DCRA requested the advice of the Department of Law on fundamental questions that were raised at the hearing. The Commission plans to take up the issue again once the Department of Law offers its advice.

<sup>6</sup> Chapter 58, SLA 1994 provided the Commission with authority to adopt legislative regulations concerning incorporation and reclassification of cities.



## CHAPTER 3 - ACTIONS REQUIRING LEGISLATIVE REVIEW

This chapter presents two formal recommendations of the Commission to the Second Session of the Nineteenth Alaska Legislature for boundary changes pursuant to Article X, Section 12 of Alaska's constitution. The first recommends detachment of an estimated 252 square miles from the Matanuska-Susitna Borough. The second recommends annexation of approximately 83.71 acres to the City of Wasilla.

Under the constitution and statutes, these recommendations receive automatic legislative approval, unless rejected by a concurrent resolution adopted by the House and Senate within 45 days of the date that the recommendations were filed (or at the end of the session, whichever is earlier). Forty-five days from the date of filing of these recommendations is March 2, 1996.

The recommended boundary changes will take effect only upon tacit legislative approval, satisfaction of any conditions imposed by the Commission, and demonstration of compliance with the federal Voting Rights Act.



## Local Boundary Commission

*Darroll Hargraves, Chairperson*  
*Kathleen S. Wasserman, Vice-Chairperson, First Judicial District*  
*Nancy E. Cannington, Member, Second Judicial District*  
*H. Toni Salmeier, Member, Third Judicial District*  
*William Walters, Member, Fourth Judicial District*

### RECOMMENDATION NUMBER ONE OF THE LOCAL BOUNDARY COMMISSION TO THE SECOND SESSION OF THE NINETEENTH ALASKA LEGISLATURE

A recommendation for detachment of the Lake Louise area, encompassing approximately 252 square miles, from the Matanuska-Susitna Borough

#### SUMMARY OF PROCEEDINGS

On April 10, 1995, resident voters in the Lake Louise area submitted a petition to the Alaska Department of Community and Regional Affairs (DCRA) for detachment from the Matanuska-Susitna Borough (MSB). The petition proposed detachment of the territory into Alaska's unorganized borough.

The territory proposed for detachment encompassed an estimated 648 square miles, including Lake Louise, Susitna Lake, Tyone Lake and Tyone River. According to the petition, the area is inhabited by 39 residents.

DCRA accepted the petition for filing following its technical review of the document on April 13, 1995. Public notice of the filing of the petition was subsequently given by publication, posting and through the mail. A copy of the petition was served on the MSB. A copy of the petition was also made available for public review at Lake Louise.

The public notice invited responsive briefs and comments on the petition to be filed with DCRA by June 15, 1995. The MSB filed a timely 136-page responsive brief in opposition to the petition. Sixty-three individuals wrote timely letters in support of the petition. On July 17, 1995, the Petitioners filed a 47-page brief in reply to the Borough's responsive brief.

DCRA issued a 72-page draft report regarding the detachment proposal on October 3, 1995. November 1 was established as the deadline for comment on DCRA's draft. The report was distributed to more than 80 individuals and organizations. Fourteen individuals, including the Petitioners and the MSB, submitted comments on the draft. The written comments totaled 79 pages.

On November 15, DCRA issued its final report and recommendation on the detachment proposal. The 24 page final report was presented as a supplement to the 72-page draft. The final report affirmed DCRA's draft recommendation that the Commission approve the detachment of an estimated 252 of the 648 square miles petitioned for detachment. Further, the final report reiterated recommendations in the draft report that the Commission impose stipulations requiring the Lake Louise area to: (1) assume a proportional share of the Borough's bonded indebtedness, (2) reimburse the Borough for a proportional share of its local contribution in support of education for two years, and (3) assume responsibility for a sewage management site at Lake Louise. Ninety-three copies of the report were distributed to interested parties.

The Commission conducted two hearings on the petition. The first was held at the Point Lodge at Lake Louise on December 7, 1995 from 1:00 p.m. to approximately 7:00 p.m. The second was held at the Wasilla City Council Chambers on December 8 from 3:15 p.m. to approximately 10:00 p.m. Immediately following the hearing on December 8, the LBC voted unanimously to approve an amended the petition with boundaries reduced to encompass 252 square miles. The Commission also stipulated that detachment not occur unless and until Lake Louise is included as part of another organized borough within two years of tacit approval of this recommendation.

On December 15, the LBC adopted a 14-page statement of the major considerations that led to its decision to approve detachment. Copies of the statement were sent to the Petitioners and the MSB on the same date. Under 19 AAC 10.580, January 4, 1996, was established as the deadline for requests for reconsideration in the matter.

On December 20, the Petitioners filed a 12-page request for reconsideration. The Petitioners asked the Commission to modify its December 15 decision to allow detachment upon the alternative of forming a second class city. On December 27, the LBC unanimously agreed to reconsider its decision to as requested by the Petitioners.

On January 4, 1996, the Matanuska-Susitna Borough filed a separate request for reconsideration. The Borough asked the Commission to amend its December 15 decision to stipulate that the Borough be held harmless by Lake Louise with regard to financial impacts relating to education funding, bonded indebtedness and other considerations.

On January 8, the Petitioners filed a 9-page brief in support of the proposed modification of the December 15 decision to allow detachment upon incorporation of a city. On the same date, the MSB filed a 15-page brief opposing the Petitioners' proposal.

The LBC met on January 12 at Palmer in the Borough Assembly Chambers to address the requests of the Borough and the Petitioners. The Commission denied the Borough's request for reconsideration, stressing that the substance of the request could be addressed in the context of the Petitioners' proposed modification. The Commission subsequently approved the Petitioners' request to modify its December 15 decision. The Commission added several stipulations, including provisions to hold the Borough harmless in terms of debt service and education funding.

The Commission's findings, conclusions and specific recommendations concerning this matter follow.

## FINDINGS AND CONCLUSIONS

The Commission was guided in this matter by three principal considerations. The first was Article X, Section 1 of the Constitution of the State of Alaska. In relevant part, it provides that, "*The purpose of this article is to provide for maximum local self-government with a minimum of local government units . . .*"

The second principal consideration was Article X, Section 3 of the Constitution of the State of Alaska. In relevant part it provides that, "*Each borough shall embrace an area and population with common interests to the maximum degree possible.*"

The third principal consideration was the standard for detachment from boroughs set out in 19 AAC 10.270. It provides as follows:

(a) In addition to the requirements of AS 29.06, territory may be detached from a borough or unified municipality if the commission determines that the detachment will serve the balanced best interests of the state, the territory to be detached, and the political subdivisions affected by the detachment. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) the health, safety and general welfare of the borough or unified municipality and the territory after detachment;
- (2) the ability of the borough, unified municipality, or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment;
- (3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;
- (4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;
- (5) the historical pattern of cooperation and shared commitment between the people of the borough or unified municipality and the people of the territory;
- (6) the extent to which detachment might enhance or diminish the ability of the remaining borough or unified municipality to meet the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060;
- (7) the extent to which a transition plan of a previous annexation has been implemented and is effective;
- (8) the effect of the proposed detachment on the long-term stability of the finances of the remaining borough or unified municipality, other municipalities, and the state;
- (9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and
- (10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation.

The reference in 19 AAC 10.270(a) to additional requirements of AS 29.06, is made with regard to AS 29.06.040. That deals with the requirement for either legislative review or a local election in the event the Commission grants a petition for detachment.

There are no standards for detachment established in statute. However, AS 44.47.567(a)(2) gives the Commission the power and duty to establish such standards by regulation. The Commission fulfilled its duty by adopting 19 AAC 10.270 addressed earlier.

Based on: (1) the petition for detachment, (2) MSB's responsive brief, (3) letters from 63 parties who commented on the petition, (4) the petitioners' reply brief, (5) DCRA's draft report, (6) comments from the 14 parties on DCRA's draft report, (7) DCRA's final report, and (8) testimony at the December 7 and 8 hearings, (9) requests for reconsideration of the December 15 decision filed by the Petitioners and the MSB, (10) briefs from the MSB and the Petitioners concerning reconsideration, and (11) communications at the January 12 meeting, the Local Boundary Commission makes the findings and conclusions set out in this section.

#### **A. REGARDING THE PUBLIC POLICY IMPORTANCE OF ARTICLE X, § 1 OF ALASKA'S CONSTITUTION**

As noted previously, Article X, § 1 of the Constitution of the State of Alaska calls for maximum local self-government. That section of the constitution has been viewed by the Alaska Supreme Court as encouraging the creation of borough governments. Further, the Supreme Court reads the provision to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

The Commission finds that, as a matter of public policy, great importance should be placed on the constitutional provision calling for maximum local self-government. The Commission further finds that detachment of territory from an organized borough to the unorganized borough results in a serious diminution of local self-government. Consequently, both the factors and the standard set out in the previously listed provisions of 19 AAC 10.270(a) will be prejudicially affected by any proposal to detach territory from an organized borough to the unorganized borough.

Based on the foregoing findings, the Commission concludes that any detachment from an organized borough to the unorganized borough is to some degree contrary to the provisions of Article X, § 1 of Alaska's constitution. Approval of the detachment petition as presented would, in fact, remove local self-government from Lake Louise. This would not, however, be the case if the territory were being detached to become part of another organized borough or part of a city government within the unorganized borough.

## B. REGARDING ARTICLE X, § 3 OF ALASKA'S CONSTITUTION AND LAKE LOUISE'S INTERRELATIONSHIPS

As noted previously, Alaska's constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible. The Commission takes the position that this particular provision is consistent with the standard relating to the balanced best interests of the State, the territory and the affected political subdivisions.

Further, the Commission takes the position that Article X, § 3 of Alaska's constitution applies to all boroughs, organized and unorganized. It is apparent to the Commission that the 1961 legislature, in providing for a single residual unorganized borough encompassing all of the state not within organized boroughs, failed to adhere closely to the principle of Article X, § 3. Consequently, the Commission has difficulty applying the principle in this instance. The Commission is concerned with the suggestion that it should compare Lake Louise to the MSB vs. the Copper River Basin -- the latter being only a small part of the unorganized borough. If the Copper River Basin were an organized borough or even an unorganized borough unto itself, the provisions of Article X, § 3 would take on much different dimensions, and the proposal's compliance with Article X, § 3 could be balanced against its compliance with Article X, § 1. That is, the effect of the proposal on local self-government could be weighed against its impact on ensuring "common interests".

The constitutional principle is examined in the context of Lake Louise's interrelationships. The Commission makes the following findings in this regard.

**Primary and Secondary Education.** Students from Lake Louise attend schools operated by the Copper River Regional Educational Attendance Area. Historically, these have included the Lottie Sparks and Glennallen schools, respectively located approximately 33 and 45 miles from Lake Louise. Lake Louise students have the option of attending the MSB's Glacier View School, located about 74 miles from Lake Louise. However, public transportation to the Glacier View School is not provided by the MSB for Lake Louise students. Those students also have the option of correspondence study offered by the MSB. The MSB correspondence study program requires once-a-month trips to Wasilla during the school year. Alternatively, Lake Louise students may receive education services through the State's correspondence study program.

**Higher Education.** Some residents of Lake Louise currently attend, at least on a part-time basis, college classes through the Prince William Sound Community College. The community college has a campus at Glennallen.

**State Judicial Services.** Lake Louise is within the Palmer District and Superior Court venues established under Alaska Rules of Court, CrR 18(a). However, just as Lake Louise is served by a school district other than the one in which it is formally located, Lake Louise receives State judicial services from Glennallen. Glennallen has a deputy magistrate who handles certain district court matters (AS 22.15.120). Glennallen has no district court judge or superior court judge. Historically, matters beyond the authority of the magistrate but within the jurisdiction of the superior court have been typically heard by the superior court judge in Valdez. It was recently reported, however, that the Valdez Superior Court position is to be transferred to Palmer.

**State Trooper Service.** Lake Louise residents are typically served by the Glennallen Detachment of the State Troopers. That same detachment routinely operates to milepost 110 of the Glenn Highway.

**Service by Other State Agencies.** In addition to State education services, trooper services and judicial services, it appears that State agencies in Glennallen and the immediate vicinity are more likely to serve the needs of Lake Louise residents than are agencies located in Palmer or Wasilla. These include the following:

- Department of Fish and Game, Game Division;
- Department of Fish and Game, Sport Fish Division;
- Department of Labor, Alaska Employment Service;
- Department of Natural Resources, Division of Forestry;
- Department of Natural Resources, Division of Parks;
- Department of Transportation (Nelchina Station);
- Department of Public Safety, Fish & Wildlife Protection Division;
- Department of Public Safety, Division of Motor Vehicles;
- Division of Social Services (Copper Center);
- Glennallen Health Center, Public Health Nurse; and
- Legislative Affairs Agency.

**U.S. Postal Service.** Lake Louise receives mail service from the U.S. Post Office in Glennallen. On July 1, 1995, mail service from the Glennallen Post Office was extended to milepost 120 of the Glenn Highway.

**Service by Other Federal Agencies.** In addition to mail service, it is reasonable to assume that federal agencies with offices in Glennallen and the vicinity serve Lake Louise residents. These include the following:

- Department of Commerce, NOAA/National Weather Service (Gulkana);
- Department of the Interior, Bureau of Land Management;
- Department of the Interior, Wrangell - St. Elias National Park & Preserve;
- Department of Transportation, Federal Aviation (Tahneta Pass); and
- Department of Transportation, Flight Service Station.

**Telephone Service.** Lake Louise is served by the Copper Valley Telephone Cooperative through the use of radio telephones. The utility's telephone service extends to milepost 120 of the Glenn Highway.

**Economic Development.** Testimony was given that the Copper Valley Economic Development Council (the Alaska Regional Development Organization formed under AS 44.33.026) informally serves the Lake Louise area.

Lake Louise businesses are also active members of the Greater Copper River Valley Chamber of Commerce. It was also noted that two Lake Louise residents were recently elected to the board of directors of the Greater Copper River Valley Chamber of Commerce. One of the two was also elected to a two-year term as President of the Chamber of Commerce.

**Commerce.** Many of the Lake Louise residents and property owners who wrote comments in support of the detachment proposal stressed that they routinely shop in the Glennallen vicinity. Some indicated that to the extent that they do not shop in Glennallen for major purchases or specialty items, they bypass businesses in the MSB and shop in Anchorage.

Assuming that businesses advertise where their existing and prospective patrons are, DCRA reviewed the yellow pages of the telephone directory used by Lake Louise residents. DCRA reported 298 listings in the Copper Valley Telephone Cooperative yellow pages for businesses in the Glennallen vicinity. Anchorage was close behind with 246 listings. Businesses in Palmer and Wasilla had 15 and 27 listings, respectively. The figures for commerce did not include listings for health and social services, religious organizations and clubs, all of which were reported separately by DCRA.

**Private Social and Health Services.** The Cross Road Medical Center in Glennallen is a primary care medical facility. It is staffed by one physician, one physician's assistant and one nurse practitioner. The Cross Road Medical Clinic operates an emergency room open 24 hours each day.

In its responsive brief, the MSB indicated that the lack of a major medical facility in the Glennallen area presupposes that *"Lake Louise residents would use the medical facilities in the Palmer, Wasilla or Anchorage area. In addition, if a specialty medical problem arises, the residents of the area would likely use specialists in either Wasilla, Palmer or the Anchorage area, because there are limited doctors in their area."* (MSB Brief, Exhibit P)

DCRA reported that during the 18 months from January 1, 1993 to June 30, 1995, 19 individuals with a Glennallen/Lake Louise zip code were treated at the Valley Hospital in Palmer on an inpatient basis. In addition, 30 people with a Glennallen/Lake Louise zip code were treated at the Valley Hospital on an outpatient basis. Of the 30 outpatients, 25 involved emergency room visits, 4 involved outpatient surgery and 1 was hospitalized for "observation".

DCRA reported 22 listings in the Copper River Valley Telephone Cooperative yellow pages for private health and social service providers located in the Glennallen vicinity. These included health counseling services, clinics, physicians, dentists, drug abuse treatment facilities and the like. Forty-three such listings were counted for the Anchorage area; one was counted from Palmer and four were counted from Wasilla.

**Religious Organizations.** Some of the Lake Louise residents who submitted written comments in support of the proposed detachment indicated that they attend church in Glennallen. DCRA counted 13 churches and religious organizations in the Glennallen vicinity listed in the yellow pages of the Copper Valley Telephone Cooperative. No listings were included for religious organizations based in Anchorage, Palmer or Wasilla.

**Social Clubs.** Two social clubs in the Copper Valley yellow pages were from Glennallen. No clubs in Palmer or Wasilla were listed, while 2 clubs in Anchorage were listed.

**Electrical Utility Service.** The Copper Valley Electrical Cooperative's power lines run westerly more than 50 miles past the Lake Louise cutoff to milepost 108 of the Glenn Highway. However, its utility service is not currently available at Lake Louise. Lake Louise residents generate their own electricity.

**Commercial Broadcast Radio Coverage.** Lake Louise receives radio broadcasts from KCAM-AM, a 5,000 watt station based in Glennallen. KCAM's primary coverage area includes the Copper River Basin, but extends to the Sheep Mountain area at approximately milepost 115 of the Glenn Highway. Lake Louise is also served by KCHU-FM, a public radio station headquartered in the Prince William Sound region. KCHU's primary coverage area extends to the Gunsight Mountain area at approximately milepost 123 of the Glenn Highway. In July, KCAM staff expressed the belief that one or more Anchorage stations were constructing translators to extend service to the Glennallen region.

**Newspapers.** The *Copper River Country Journal* (circulation 1,800), headquartered in Glennallen, is provided by mail without charge to all Copper River residents. Lake Louise residents are included, since the editor of the Journal considers them to be part of the Copper River basin. The same applies to the area extending to approximately milepost 120 of the Glenn Highway. The *Copper River Country Journal* also sends complimentary copies of the paper as far west as milepost 102 of the Glenn Highway as a courtesy to an area at the gateway of the Copper River Basin. The editor of the Journal advised DCRA that the MSB occasionally publishes public notices in, and provides news reports to, the *Copper River Country Journal*, "but not as often as it should."

The *Frontiersman* (circulation 7,000) and the *Valley Sun* (circulation 9,500), published by the Mat-Su Valley Newspapers, in Wasilla, serve the central MSB area. The latter is a free weekly shopper. According to Mat-Su Valley Newspaper staff, the *Valley Sun* had been provided to the Glennallen area until February or March of 1995 when the practice ended. The *Valley Sun* newspaper rack currently nearest to Glennallen is located in Palmer. The *Valley Sun* is distributed free of charge by mail to residents as far east as Chickaloon, at milepost 76 of the Glenn Highway.

The *Frontiersman* provides news coverage of the area within the entire MSB. However, like the *Valley Sun*, its newspaper rack nearest to Lake Louise is located at Palmer. The Mat-Su Valley Newspaper staff indicated that there is only one subscriber with a Glennallen/Lake Louise zip code.

**Emergency Medical Service.** The MSB's EMS dispatching staff indicated that the MSB's ambulance located at Sutton consistently responds to calls from milepost 54 to milepost 123 of the Glenn Highway. The area from milepost 123 to milepost 140 is considered a "mutual aid area." For calls in that area, the MSB dispatches the Sutton ambulance, but immediately thereafter checks with the Copper River EMS Council to see if it is available to respond. If it is available, the Sutton ambulance is recalled.

The MSB's EMS dispatcher noted that the MSB has an obligation to respond to calls at Lake Louise, but conceded that the distance for the Sutton ambulance was so great as to render it much more practical to obtain service from Glennallen. The MSB notes in its brief that it "has negotiated an agreement with the Lifeguard helicopter to medivac injured individuals out of the [Lake Louise] area." It is noteworthy, however, that because Lake Louise and the area extending to milepost 120 of the Glenn Highway are on the Copper Valley Telephone system, 911 calls from that area will be received in Glennallen whenever the dispatcher is on duty. When the dispatcher is not on duty, the calls are forwarded to Anchorage.

Seven Lake Louise residents received 40 hours of "Emergency Trauma Technician Training" in October of 1995. The training was funded by the Lake Louise Community Non-profit Corporation and was provided by "Copper River Emergency Medical Services."

**Libraries.** The Copper Valley Community Library, operated by a non-profit corporation in Glennallen, serves the Copper River Basin. As of June of last year, it was open 25 hours per week. At that time the library held 5,000 books, 500 video materials and 50 subscriptions. The total circulation of books and other library materials at the Glennallen library for the year ending June 30, 1994, was 17,389 items. Staff at the Glennallen library indicated that Lake Louise residents use that library, although they were unable to provide any statistics concerning such patronage.

The public libraries nearest to Lake Louise that are in the MSB are at Sutton and Palmer. The Sutton library is open 35 hours per week and held 8,231 volumes of books and other materials at the end of fiscal year 1994. The Palmer library is open 36 hours per week and held 40,802 volumes at the end of last fiscal year. Officials of the public library system in the MSB report that seven patrons have Glennallen addresses (three are patrons of the Wasilla library and four are patrons of the Palmer library). It appears that none of the seven lives at Lake Louise. Two of the patrons are at milepost 156, one is at milepost 185, one is at Manker Creek and the rest appear to be at Glennallen.

**De Facto Enclave Status.** As far as travel by roadway is concerned, Lake Louise is an enclave separated from the rest of the MSB. The MSB's eastern boundary crosses the Glenn Highway at approximately milepost 137. The turnoff to Lake Louise is approximately 23 miles past that point at milepost 160 of the Glenn Highway. One re-enters the MSB at approximately milepost 14 of the Lake Louise Road. Thus, one has to travel approximately 37 highway miles through the unorganized borough to get from one part of the MSB to Lake Louise.

**Native Regional Corporation Boundaries.** Lake Louise is within the boundaries of the Ahtna Regional Corporation established under the Alaska Native Claims Settlement Act. The Corporation's boundary extends approximately to milepost 102 on the Glenn Highway. The vast majority of the remaining inhabited portions of the MSB are within the boundaries of the Cook Inlet Regional Corporation. While regional corporation boundaries are, by definition, a measure of social and cultural ties among Natives, their importance in this proceeding is tempered by the fact that there are few Natives living in the Lake Louise area (the petition estimates the Native population to be only 5%).

**Property Ownership.** Ownership by Copper River Basin residents of private taxable property at Lake Louise is minimal, amounting to only one-half of 1% of the acreage and less than three-tenths of 1% of its taxable value. Most of private taxable property in the territory proposed for detachment is owned by individuals who live in the Municipality of Anchorage (67.9% in terms of acreage and 61.4% in terms of assessed value). Residents of the MSB, exclusive of the Lake Louise area, own 11.5% of the acreage (10.7% in terms of its value), while residents of Lake Louise own 3.9% of the acreage (11.7% of its value).

**House Election District Boundaries.** Lake Louise is in State House Election District 27 which was established under the reapportionment plan adopted by then-Governor Walter Hickel on March 24, 1994. Election District 27 is wholly within the MSB. In addition to Lake Louise, it includes the communities of Palmer, Sutton and Chickaloon. The district occupies roughly the eastern two-fifths of the MSB.

The MSB claimed that because Lake Louise is in the same house election district as other parts of the MSB and that the district is wholly within the MSB, there exists, "*a prima facie case that Lake Louise should not be detached from Mat-Su.*" (MSB's Brief, page 6) This contention is based on a recent case in which the Alaska Supreme Court held that, "*a borough is by definition socio-economically integrated. It is axiomatic that a district composed wholly of land belonging to a single borough is adequately integrated. Thus, district 27 complies with that requirement.*" [Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992)]

In that same case, the Court held that election districts must be "relatively" integrated. The Court explained that, " '*Relatively*' means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient."

In addition to being relatively integrated, election districts must also be of an approximately equal population. Typically, the courts limit the maximum deviation between election districts to no more than 10%. In other words, because the Court presumes that a borough embraces an area and population with common interests to the maximum degree possible, it makes allowances for the use of borough boundaries as election districts. In fact, the Court is so willing to accommodate the use of borough boundaries that it will allow election districts to exceed a 10% population deviation if borough boundaries are consistently used as election district lines.

It is readily apparent from a comparison of borough boundaries and election district boundaries that the requirement for approximately equal population districts often dictates that election districts and organized borough boundaries differ. Some election districts encompass multiple organized boroughs in their entirety. Other election districts include portions of organized boroughs in less than their entirety.

**Physiographic Characteristics.** Lake Louise is in the Susitna River drainage as is much of the MSB. However, the Susitna Area Plan (DNR, 1985) describes the Lake Louise Subregion as, ". . . a unique and popular residential and visitor recreation area, with an 'interior' Alaska character quite different from the rest of the [Susitna drainage]."

The Talkeetna Mountain Range sometimes acts as a barrier to air traffic between Palmer and Lake Louise. Staff at the U.S. Department of Transportation FAA Flight Service Station in Glennallen roughly estimated that the Chickaloon/Tahneta Pass between Upper Cook Inlet and the Copper River Basin was closed due to weather about 35 percent of the time.

**Employment.** The representative of the petitioners for detachment estimated that 11 Lake Louise residents are self-employed at the five businesses in the community. An additional seven Lake Louise residents are employed by those businesses on a full-time or part-time basis. It was further estimated that three residents work in the oil industry on the North Slope and one resident works for the U.S. Forest Service building cabins (presently in the Sitka area). The remainder of the residents are unemployed or not in the job market (i.e., retired, students or pre-school age residents).

Based on the foregoing findings, the Local Boundary Commission concluded that the 252-square mile area identified by DCRA in its report as that portion of the 648-square mile area proposed for detachment that is inhabited, developed and contains privately owned property, has more in common with Glennallen and the rest of the Copper River Basin than it does with the rest of the Matanuska-Susitna Borough.

**C. REGARDING WHETHER DETACHMENT WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE DETACHED, AND THE POLITICAL SUBDIVISIONS AFFECTED BY THE DETACHMENT.**

The Commission found that the principal effects upon Lake Louise of detachment in the manner proposed include the following:

1. elimination of the MSB's property taxes (FY '95 @ 16.7 mills; FY '96 @ 14.55 mills);
2. elimination of the MSB's 5% bed tax;
3. elimination of municipal authority in the area, including planning, platting and land use regulation;
4. in a de facto sense, voters in the area will be enfranchised regarding the school board;
5. the area will qualify for State Revenue Sharing and State Capital Matching grants;
6. the area would be responsible for its own solid waste collection; and
7. if DCRA's recommended stipulations were imposed, the area would be responsible for the Lake Louise septic management site.

The Commission also found that the principal effects of detachment upon the MSB include the following:

1. property tax revenues will be reduced by roughly 1/2 of 1% (\$180,000 in FY '95);
2. bed tax revenues will be reduced by an estimated \$2,000 annually;
3. funding under the State education formula will be increased by an estimated \$46,500 annually;
4. responsibility for Lake Louise solid waste collection would be eliminated;
5. responsibility for Lake Louise septic management site would be eliminated; and
6. Revenue Sharing, Municipal Assistance and Capital Grants reduced by an estimated \$3,500 annually.

The Commission found that the principal effects of detachment upon the State include the following:

1. education funding requirements would be increased by an estimated \$46,500 annually;
2. responsibility for replatting in the area would be assumed by the Department of Natural Resources;
3. Capital Matching grants program costs would likely increase by \$25,000 annually;
4. Revenue Sharing funds to other recipients would likely be diluted by an estimated \$7,327 annually;
5. Municipal Assistance Funding to other recipients would be concentrated by an estimated \$1,602 annually; and
6. the unorganized borough would be expanded which only worsens inequities involving organized boroughs vis-à-vis the unorganized borough.

The Commission found that the health, safety and general welfare of the territory would be negatively affected if detachment occurs. This finding is based largely on the fact that detachment would eliminate local self-government from the territory. Consequently, it would greatly diminish the area's ability to meet the health, safety and general welfare needs of the community. The Commission found that the health, safety and general welfare of the remnant MSB would be minimally affected by the detachment.

The Commission found that the Copper River Regional Educational Attendance Area is able to efficiently and effectively provide educational facilities and services to the territory. The Department of Environmental Conservation will continue to have regulatory authority over water quality in the area if detachment occurs. Authority for municipal planning, platting and land use regulation will be eliminated.

Regarding the reasonably anticipated potential for future population growth or economic development and the need for local government regulation, the Commission found that the residents of the area are genuinely motivated to ensure proper development in the territory. They are particularly motivated to maintain high water quality since Lake Louise serves as their principal source of potable water. However, leaving a municipal government diminishes their ability to ensure proper development and to maintain high water quality. Additionally, DCRA also reported that the Department of Natural Resources is selling 23 parcels on Lake Louise encompassing 91.27 acres. The sale of that land will add to development pressures in the territory.

Regarding the historical pattern of providing to the territory municipal services that have been or should be supported by tax levies in the territory, the Commission found that the level of services is clearly not to the satisfaction of the residents of Lake Louise. The lack of satisfaction may be due in part to the lack of communication on the part of both sides in this issue. The MSB's services available to the area include solid waste disposal, planning, platting, land use regulation, tax assessment, tax collection, education services through correspondence study and other functions. Residents of Lake Louise choose not to avail themselves of some of the services offered by the MSB on an areawide and nonareawide basis. Nonetheless, those services must be funded in part by property taxes. There are parts of the MSB that receive even fewer services than those provided to the Lake Louise area. Detachment of the territory on the basis of the lack of services could lead to a landslide of other detachment proposals that could, in turn, seriously diminish the MSB's ability to pay for the services that are necessary.

Regarding the historical pattern of cooperation and shared commitment, the Commission found that there is greater social, cultural, economic and other ties between the Lake Louise area and the Copper River Basin than there is between the Lake Louise area and the rest of the MSB. It appears reasonable to conclude that this circumstance will not change in the foreseeable future. This particular factor has greater significance than others listed in 19 AAC 10.270(a). The issue remains, however, that the Copper River Basin is not an organized or unorganized borough unto itself. The Commission is concerned whether it is proper to compare Lake Louise's interrelationships between an organized borough and only a portion of the unorganized borough.

Regarding the ability of the MSB to meet the standards for incorporation contained in the Alaska Constitution, AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060, the Commission found that detachment will have minimal effect.

The Commission found that the extent to which a transition plan of a previous annexation has been implemented and is effective is irrelevant in this instance.

The Commission found that detachment would have adverse financial effects on the State and remnant MSB as identified earlier in the discussion of this standard. However, if Lake Louise remains in the MSB, it is reasonable to conclude that expectations and demands for services from the MSB by the residents of Lake Louise will increase.

With respect to the financial interests of the MSB, the Commission believes that it would be ideal to require, as a condition of any detachment, that the territory assume a proportional share of the MSB's bonded indebtedness. Further, the area should be required to reimburse the MSB for that portion of the required local contribution provision of the education foundation program (AS 14.17.025) which it must pay based on the full and true value of taxable property in the territory after detachment occurs. However, the Commission is concerned that State law provides no express authority for the MSB to collect taxes on detached territory.

The Commission found that detachment will not increase the number of local government units. However, detachment will eliminate local self-government for the residents of Lake Louise because it will place the territory in the governmental vacuum known as the unorganized borough.

The Commission found that certain of the territory's requirements for local government services will not be adequately met following detachment. Testimony indicated that the residents of Lake Louise will rely to a large extent on the Lake Louise Community Non-profit Corporation to provide services such as solid waste collection, management of the sewage disposal site and efforts to promote responsible development in the area. Regardless of how successful the nonprofit corporation is in these endeavors, it would not be able to carry out its functions with governmental authority. Detachment from an organized borough to the unorganized borough is an abdication of governmental authority. Further, there was evidence that roughly fifty percent of the property owners in the Lake Louise area are not members of the local nonprofit corporation.

The Commission concluded that the interests of the State, the MSB and the Lake Louise area are affected in favorable and unfavorable ways by the proposed detachment. The Commission concludes that the proposed detachment is not in the balanced best interests of the State, the territory to be detached and the political subdivisions affected by the detachment. The Commission concludes further that if the territory were being detached to an organized borough the unfavorable effects of the detachment would be diminished to the extent that detachment would serve the balanced best interests of the State, the territory to be detached, and the political subdivisions affected by the detachment. The Commission also concludes that if this territory is incorporated into a city government within the unorganized borough, it is possible that the balanced best interests could still be served if the city is structured in such a way as to take up a significant portion of the responsibilities of a borough for its own territory.

The Commission specifically notes that this area could qualify only as a second class city under Alaska Statutes, and it could not take on its own educational responsibilities. As a city in the unorganized borough, the education of the children of its residents would be the complete responsibility of the State, and no borough taxes could be levied on the area's properties to aid organized public education. For this reason, incorporation as a city is clearly a less desirable resolution of this dilemma than incorporation in a Copper River borough. Nevertheless, the Commission recognizes the great difficulties the residents of this territory face in attempting to organize a borough. Considering the particularly compelling facts in this case, the Commission concludes that the balanced best interests of the State, Matanuska-Susitna Borough, and territory to be detached could best be served by allowing the petitioners both options.

Based upon the foregoing, the Local Boundary Commission determined that in a general sense that the proposal satisfies to a degree the principles set out in Article X, § 3 of Alaska's constitution. That is, the MSB would better satisfy the constitutional requirement that it embrace an area and population with common interests to the maximum degree possible, if the detachment of the inhabited and developed properties surrounding Lake Louise occurred. This area clearly has more in common with the Copper River Basin. On the other hand, the Copper River Basin is not an organized or unorganized borough unto itself. Therefore, satisfaction of the constitutional principle is limited in the sense that detachment would place Lake Louise in the huge residual unorganized borough. Lake Louise has little or nothing in common with many of the regions in the unorganized borough.

While the proposal furthers the extent to which Article X, § 3 is satisfied, it fails to fulfill the constitutional principle set out in Article X, § 1. Again, that provision calls for maximum local self-government. Without an organized borough or city government in place, detachment of Lake Louise would abolish rather than promote local self-government in the territory.

The proposal fails to maximize local self-government as required by Article X, § 1. This fault could be overcome, however, if the territory were included within another organized borough or a city government. The Commission's regulations expressly allow the Commission to condition the approval of a detachment upon voter approval of the incorporation of a new borough into which the territory will be placed [19 AAC 10.270(b)].

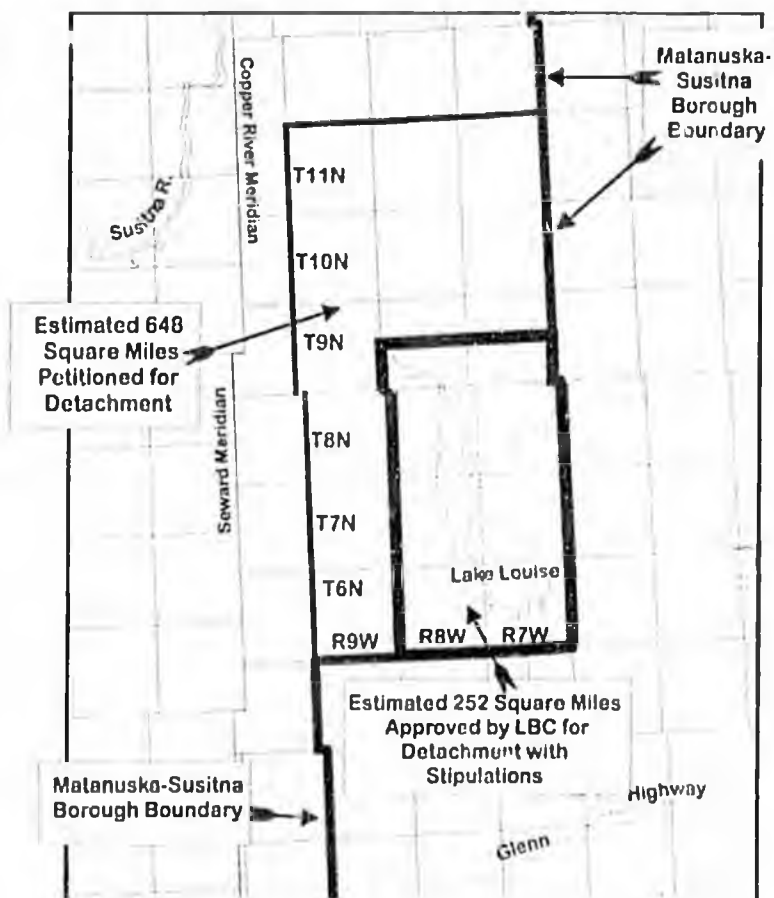
## RECOMMENDATION

The Local Boundary Commission hereby recommends the detachment of the territory described below to the Second Session of the Nineteenth Alaska Legislature in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska. This recommendation is made subject to the stipulations noted below.

1. The area recommended for detachment encompasses an estimated 252 square miles, described as follows and shown on the map to the right:

T6N, R8W; T6N, R7W; T7N R8W; T7N R7W; T8N, R8W; T8N R7W; S 1/2 T9N, R8W; S 1/2 T9N; R7W; all in the Copper River Meridian.

2. Detachment of the area described above is approved with the stipulation that it will not take effect unless and until substantially the same territory approved for detachment becomes part of another organized borough or becomes incorporated as a second class city within two years of the date of tacit legislative approval of a recommendation for the detachment of Lake Louise. It is stipulated that the organized borough or second class city:



- a. pay \$160,000 to the Matanuska-Susitna Borough within two years of incorporation; said payment is to reasonably compensate the Matanuska-Susitna Borough for: (1) the estimated \$93,000 "local contribution" it is expected to be required to make under AS 14.17.025 based on the taxable value of property in the detached territory after detachment occurs — provided, however, that if the Matanuska-Susitna Borough is not legally required to make those "local contributions" (as a result of an amendment of the law; modification of the interpretation of the law by the Department of Education or some other basis), the amount to be paid to the Borough shall be reduced by \$46,500 for each year that such contribution is not required, and (2) a proportional share of the principal of the Matanuska-Susitna Borough's bonded indebtedness, less reasonably anticipated payments from the State for partial reimbursement of principal and interest payments on bonds for school improvements;

- b. assume full responsibility for the Lake Louise sewage management site (ADL 224505; ASLS 92-162) in a manner that provides minimal or no interruption in service after detachment;
- c. assume responsibility for solid waste collection and disposal in a manner that provides minimal or no interruption in service after detachment;
- d. assume responsibility for platting, planning and land use regulation in a manner that provides minimal or no interruption in service after detachment;
- e. assume responsibility for emergency medical services in a manner that provides minimal or no interruption in service after detachment.

It is further stipulated in the event a city government is formed, that incorporation be conditioned upon the passage of a proposition authorizing the city to levy a property tax at a rate that will generate revenues (in combination with State aid to the city) sufficient to pay the \$160,000 noted above to the Matanuska-Susitna Borough within two years of incorporation and to carry out the duties listed above and other reasonably anticipated functions of the city.

3. That the Local Boundary Commission shall be the arbitrator of any dispute between the petitioners and the Matanuska-Susitna Borough concerning the payments required by this action or the implementation of any other aspect of the detachment and the conditions stipulated above.



## Local Boundary Commission

*Darroll Hargraves, Chairperson*  
*Kathleen S. Wasserman, Vice-Chairperson, First Judicial District*  
*Nancy E. Cannington, Member, Second Judicial District*  
*H. Toni Salmeier, Member, Third Judicial District*  
*William Walters, Member, Fourth Judicial District*

### RECOMMENDATION NUMBER TWO OF THE LOCAL BOUNDARY COMMISSION TO THE SECOND SESSION OF THE NINETEENTH ALASKA LEGISLATURE

**A recommendation for annexation of 83.71 acres to the City of Wasilla**

**Introduction.** On March 2, 1995, the City of Wasilla petitioned for annexation of 83.71 acres encompassing twelve parcels occupied by sixteen residents. The area proposed for annexation contains commercial, industrial and residential property. The assessed value of the area totals nearly \$4.3 million.

The areas proposed for annexation is either surrounded or adjoined by property already within the boundaries of the City.

#### A. PROCEEDINGS

Following a technical review of the petition, DCRA accepted the petition for filing on April 5, 1995. Public notice of filing of the petition was subsequently given by publication, posting and through the mail. A copy of the petition was served upon the Matanuska-Susitna Borough (MSB), the City of Palmer and the City of Houston. The petition was made available for public review at the Wasilla City Hall and the Wasilla Public Library.

The public notice invited responsive briefs and comments on the petition to be filed with DCRA by June 15, 1995. No responsive briefs were received in response to the proposal by the June 15 deadline. However, timely letters conveying comments regarding the annexation were received from five parties. The City responded to the comments with a letter on August 8, 1995.

On September 29, 1995, DCRA issued a provisional report and invited public review and comment. The provisional report was distributed to 51 known interested parties. October 31, 1995 was set as the deadline for submission of comments on the provisional report. One party, Noel H. Kopperud, submitted comment on the provisional report.

On November 15, 1995, DCRA issued its final report and recommendation on the annexation proposal. The final report affirmed DCRA's draft recommendation that the Commission approve the petition, as submitted. The final report was mailed to 52 interested parties.

On December 8, the Commission conducted a public hearing from 1:00 p.m., to approximately 3:00 p.m., at the Wasilla City Hall. Testimony was received from eleven individuals.

Immediately following the hearing on December 8, the LBC acted on the petition. On December 15, 1995, the Commission met by teleconference to adopt its Statement of Decision.

On January 4, 1996, four property owners submitted a request for reconsideration of the Commission's December 15 decision. The Commission addressed the request for reconsideration at a meeting on January 12, 1996.

Based upon the record, the LBC reached the conclusions outlined below concerning the Wasilla annexation proposal. More detailed information concerning the conclusions of the LBC is provided in the LBC's 12-page decisional document relating to this matter. A copy of the decisional statement is available upon request. The following reflects the extent to which the Commission has determined that annexation standards are met in this instance.

**Findings.** The Commission is guided in this matter by standards set out in Title 19 of the Alaska Administrative Code. The following reflects the extent to which the Commission determined that annexation standards are met in this instance.

#### **B. THE TERRITORY MUST EXHIBIT A REASONABLE NEED FOR CITY GOVERNMENT [19 AAC 10.090]**

In deciding whether there is a reasonable need for city government in the area proposed for annexation, the Commission may consider any factor that it deems relevant and appropriate. 19 AAC 10.090 lists five factors which the Commission commonly considers. These relate to:

1. social or economic problems;
2. health, safety and general welfare problems;
3. economic development;
4. adequacy of existing services; and
5. extraterritorial powers of municipalities.

Three factors seem particularly relevant in this instance. Those are: existing or reasonably anticipated health, safety, and general welfare problems, adequacy of existing services, and the extraterritorial powers of the City of Wasilla.

**Social or economic problems.** No significant social or economic problem has been described as a factor relevant to the proposed annexation. The proposed boundary change relates more to the jurisdictional problems created by the City of Wasilla's current boundaries.

**Health, safety and general welfare problems.** More than half the area proposed for annexation consists of a portion of Wasilla Lake. The Matanuska-Susitna Borough has described public health and safety issues specific to water quality in Wasilla Lake.<sup>7</sup>

*Wasilla Lake is fed by drainage from Cottonwood Lake and only has a small outlet through a swamp into a small pond and then into Cottonwood Creek. The Lake has experienced significant development pressures for both residential and recreational uses. Surface use of the lakes and the impacts to habitat and water quality from motorized recreational vehicles (jet skis, planes, boats) are of concern to core area residents. Surface use of lakes can introduce some pollution such as oil from boats and airplanes. Other surface uses [which] reduce the enjoyment of the lakes include noise and wakes generated by boats and airplanes. Wakes can also adversely affect bank stabilization and fish and wildlife habitat. As development pressures increase, adjacent land uses and the potential for increased pollution must be addressed by the City of Wasilla and the borough. [emphasis added]*

The plan also describes some of the water and wastewater problems of the general area.

*There are also public health and safety issues related to water quality. These are linked to quality of life issues for core area residents. High density residential development on individual soil absorption waste water treatment systems and high water use and discharge from commercial and industrial activities on relatively small lots using individual soil absorption waste water treatment systems may present public health and safety problems. Problems include the introduction of noxious substances such as human wastes and household gray water as well as petroleum products, nitrates, and phosphates into ground water and surface waters.*

*As development densities increase, the borough will need to address questions of water quality, especially ground water quality, and the provision of sewer service. These will need answering for the borough as a whole, not just the core area. For example, the capability of soil types to handle on site systems at an ever increasing density must be looked at on a watershed basis. The role of the borough as sewer service provider will also have to be described and agreed upon. Policy about how the borough determines who will get sewer and water service and how the systems will interface with the cities' systems will have to be discussed by the borough and city governments.*

Annexation of the area would facilitate extension of water and wastewater services, which help preserve both surface and groundwater quality in the area. According to the petitioner, "Water and sewer lines currently extend past the properties fronting the Parks Highway making it simple for these properties to connect to the water and sewer. Hookup would only be required for new development, however, or when existing on-site systems fail. [Wasilla Municipal Code: 5.10.020 and .5.20.0020.]"<sup>8</sup>

**Adequacy of existing services.** The Commission's regulations provide that "territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough." [19 AAC 10.090(b)]

No other existing city government seems to be in a position to serve the area proposed for annexation more efficiently and effectively than the City of Wasilla. The nearest adjacent city government is the City of Palmer. The City of Palmer is located approximately 13 miles east of Wasilla.

<sup>7</sup> Matanuska Susitna Borough Core Area Comprehensive Plan, September, 1993, HDR Engineering, Inc., pg. II -57.

<sup>8</sup> Petitioner's Transition Plan, Section 1.

The Matanuska-Susitna Borough provides certain essential services to the residents of Wasilla. These include the functions mandated by State law consisting of education, and planning, platting & land use regulation. [AS 29.35.150 – 29.35.180] The Matanuska-Susitna Borough has delegated authority for comprehensive plan development for the area within the boundaries of the City of Wasilla to the City. [AS 29.40.010] However, the Borough fully exercises its planning powers and duties in the area outside of the City, including the area proposed for annexation. The Borough electorate has also approved areawide borough authority for recreation; emergency medical services; ports, harbors, wharves; public transportation systems; water pollution control; day care facility licensing; historic preservation and transient accommodations.

Non areawide borough powers exercised by the Borough include fireworks regulation; solid waste disposal; animal control and libraries.

The Borough exercises the following powers on a service area basis in the area:

- Emergency response (fire, emergency medical, search and rescue)
- Road maintenance (Bogard and Fairview Road Service Areas)

There is no indication that the Borough plans to provide new services to the area proposed for annexation. Even if it were willing to do so, it would face obstacles that would prevent it from providing the level of services currently provided by the City of Wasilla. Unless the Borough arranged to provide additional services on an areawide or nonareawide basis, it could do so only by creating new service areas encompassing the territory proposed for annexation. However, Alaska's Constitution and statutes prohibit the creation of any new service area as long as the desired service can be provided through annexation to an existing city. [Alaska Constitution Art. X, §6; AS 29.35.450(b)]

This strong preference for annexation over the formation of new service areas stems from Article X, § 1 of the Constitution. That provision states that the purpose of the local government section of the constitution is "*to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions*" (emphasis added). An authoritative study on the principles of local government in Alaska states that the purpose of the limitation on the creation of new service areas, "*was to avoid having 'a lot of separate little districts set up . . . handling only one problem . . .'; instead, services were to be provided wherever possible by other jurisdictions capable of doing so.*" [Borough Government in Alaska, pages 41 - 43, Morehouse, Thomas A. and Fischer, Victor]

The local government services required by the area proposed for annexation appear to be similar to those needs existing within the existing boundaries of the City of Wasilla. The similar local government service needs would render annexation of the area to the City of Wasilla preferable to provision of such services by the Matanuska-Susitna Borough, whether on a service area, non-areawide or area-wide basis.

**Extraterritorial powers of the City of Wasilla.** The petitioner indicated that "*Occasionally WPD [Wasilla Police Department] has responded to calls in the proposed annexation areas because of a quicker response time than the Alaska State Trooper. The Palmer Dispatch Center will call on the Wasilla Police Department to respond outside the City if a trooper is not available in the reasonably immediate area.*"<sup>9</sup>

<sup>9</sup> Petitioner's brief, paragraph 1.

The City lacks full authority to provide police protection and other emergency response services to the area on an extraterritorial basis. Wasilla Police Chief Irl Stambaugh wrote "From a law enforcement perspective it does not make any sense for these areas to be outside the City of Wasilla when they are in fact in the middle of our service area. This has also become a confusing issue for the Wasilla and State Trooper dispatchers when they are trying to sort out and identify the different areas of coverage."

On August 18, 1995, Captain Robert Clontz of the Alaska State Troopers in Palmer indicated that to the extent that the proposed boundary change alleviates jurisdictional questions relating to provision of public safety to the area, it would be beneficial from a law enforcement perspective.

**Findings and Conclusion.** The City asserted that there is a demonstrated need for police services in the area. Given the developed nature of the area proposed for annexation, other City services, such as water and sewer, road improvement and fire hydrants, should prove beneficial to residents and property owners in the area.

From these circumstances, the Commission concluded that there is a reasonable need for city government in the area. There was no evidence that the Matanuska-Susitna Borough or any city government could provide needed services to the area more efficiently or effectively than the City of Wasilla. Thus, the Commission concluded that the standard set out in 19 AAC 10.090 was satisfied.

### C. THE TERRITORY MUST BE COMPATIBLE IN CHARACTER WITH THE ANNEXING CITY (19 AAC 10.100)

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 19 AAC 10.100 lists five factors which the Commission commonly considers. These relate to:

1. land use and subdivision platting;
2. salability of land for residential, commercial or industrial purposes;
3. population density;
4. cause of recent population changes; and
5. suitability of the territory for community purposes.

**Land use and subdivision platting.** More than half (52.5%) of the area proposed for annexation consists of a portion of Wasilla Lake. A portion of the land within the area proposed for annexation is within the platted residential Lakeshore Subdivision. Other portions of the area are used for commercial purposes.

**Salability of land for residential, commercial or industrial purposes.** The twelve parcels encompassed by the area proposed for annexation are salable for both commercial and residential purposes. In its letter of August 8, 1995, the City suggested that annexation would enhance the salability of some of the waterfront lots. "*The availability of City water and sewer could allow a greater density of development on waterfront lots . . .*" According to the City of Wasilla, residential lots in Lakeshore Subdivision are substantially smaller than

the 40,000 square feet required by regulations of the Alaska Department of Environmental Conservation for onsite wastewater systems. The August 8 letter stated *"It seems likely that the requirements for wastewater disposal may be a limiting factor for development of these residential lakeside lots. Given the value of lake frontage lots it may be more cost effective in the long run to connect with City water and sewer in order to develop the lots more efficiently."*

**Population density.** The area's population density is relatively low, since much of the area is submerged by Wasilla Lake. The population density of the area within the existing boundaries of the City of Wasilla is approximately 409 residents per square mile. Residential population density within the area proposed for annexation is approximately 121 per square mile. That portion of the area proposed for annexation which is not submerged by Wasilla Lake has a residential population of approximately 243 per square mile. However, given the commercial nature of much of the area proposed for annexation, residential population does not provide a complete understanding of the extent to which the area is used and developed.

**Cause of recent population changes.** There has been no suggestion that the area proposed for annexation has experienced significant recent population changes.

**Suitability of the territory for community purposes.** Wasilla Lake is used for community purposes by Wasilla area residents. According to the City of Wasilla, *"Maintaining the high habitat value, recreational value and aesthetic value of Wasilla Lake is a high priority of the City of Wasilla."*

**Findings and Conclusion.** The area proposed for annexation is surrounded or adjoining the current city boundary. The existing development located in the territory proposed for annexation area is similar to development in adjacent areas located within existing City of Wasilla boundaries.

From these circumstance, the Commission concluded that, the territory proposed for annexation is compatible in character with the City of Wasilla. Thus, the standard set forth in 19 AAC 10.100 is satisfied for the area.

**D. THE PROPOSED POST-ANNEXATION BOUNDARIES MUST INCLUDE THE RESOURCES NECESSARY TO PROVIDE ESSENTIAL CITY SERVICES ON AN EFFICIENT, COST-EFFECTIVE LEVEL. (19 AAC 10.110)**

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 19 AAC 10.110 lists ten factors which the Commission commonly considers. These relate to:

1. functions the city may perform in the territory;
2. added expenses of the city;
3. current revenues of the city;
4. added revenues of the city;
5. economic base;
6. property values in the territory;
7. land use in the territory;
8. industrial, commercial and resource development;
9. personal income of residents; and
10. availability of employable skilled and unskilled people.

**Functions the city may perform in the territory.** The City has provided police protection to the area. The petitioner's brief (Section III.B.1.) states that the City will begin providing road maintenance to that portion of the area not on State-maintained roads. The Matanuska-Susitna Borough will also continue to play a key role in delivery of services to the area.

Annexation will not affect education, tax assessment and collection, platting or education services currently provided to the area by the Matanuska-Susitna Borough. However, responsibility for comprehensive plan development has been delegated to the City of Wasilla by the Borough.

The Matanuska-Susitna Borough has retained platting powers and coastal zone management within the City of Wasilla, and would continue to exercise these powers in the area subsequent to annexation.

**Added expenses of the city as a result of annexation.** As noted, the City has indicated that it will provide road maintenance to the Westpoint Drive extended right of way "*when the road is brought up to City standards.*" This right-of-way is 270 feet by 35 feet. The City has not provided estimates for additional projected expenses associated with extension of this service. Attempting to calculate precise costs associated with road service would be highly complex and speculative. This is partially a function of the proximity of the area to the City and the minimal stretch of road in the area which is not State-maintained.

Similarly, costs which the City would incur providing police protection to the area have not been calculated by the City. Attempts to address questions regarding specific costs of police service by the Wasilla Police Department are complicated by the fact that the City already provides limited police patrols through the area because of the current city boundary configuration.

It is evident that the City will have the financial capability to extend city services to the twelve lots proposed for annexation. Based on these projections, the increased revenues resulting from annexation will exceed the increased expenses resulting from annexation by \$80,570.57 annually. Those funds will be used to provide general fund support of City services and facilities, subject to annual appropriations by the Wasilla City Council.

The City indicated that it has no plans for the immediate extension of roads, sidewalks, water and sewer utilities or other capital improvements to the area proposed for annexation. The City expects to undertake such improvements only as requested by local property owners and as capital projects funding is made available by City Council appropriation. The City will use whatever means are available to it to arrange for such funding (e.g. 50% DEC grants for sewer extensions, legislative grants, sale of low interest municipal bonds, et cetera). Any local share or matching funds, however, will typically be paid by the establishment of a local improvement district.

The City committed to providing the annexed area with all of those services funded by City taxes at the time those taxes are levied. The City claimed that it anticipates no limitations in doing so. To the extent that unforeseen circumstances render this intent impractical, however, the City may institute a "differential tax zone" as authorized by AS 29.45.580, or local improvement districts.

**Current revenues of the city.** For the fiscal year ending June 30, 1994, the City recorded total revenues of \$6,953,568. Of this, \$4,490,376 was general government revenue. The largest single source of locally generated revenue \$3,219,602 was generated by the City's 2% sales tax.

**Added revenues of the city.** Based on 1994 tax year information, the city property tax levy of 1.7 mills would generate \$7,274.13 of direct additional property tax revenue for the City of Wasilla.

The City projected that annual taxable sales in the area proposed annexation total about \$3,610,722. On this basis, the petitioner estimates that a 2% sales tax on this volume of taxable sales (\$500 maximum taxable per transaction) would generate \$72,214.44 in sales tax revenue to the City of Wasilla.

DCRA estimated that, based upon current funding levels, the City would gain \$580 in State Municipal Assistance program funding and \$502 in State Revenue Sharing funding.<sup>10</sup>

Thus, the City anticipates gaining the following revenues if the proposed annexation occurs.

| Source                | First Year Revenue |
|-----------------------|--------------------|
| Sales Taxes           | \$72,200           |
| Property Taxes        | 7,274              |
| Municipal Assistance  | 580                |
| State Revenue Sharing | 502                |

**Economic base.** The taxable value of real and personal property within the current boundaries of the City of Wasilla totaled \$269,881,500.<sup>11</sup> City officials have asserted that *"Wasilla's undisputed position as the retail and service center for the Valley will be favorably impacted by an increasing customer base attracted by the greater selection of goods, superior service and lower prices."*

**Property values in the territory.** The Matanuska-Susitna Borough assessed the twelve lots proposed for annexation at \$2,320,900 (real property only). The current value of personal property in the area is estimated to be \$1,958,000.

**Land use in the territory.** Land in the area is used for a variety of purposes, including residential, commercial and recreation. Approximately 44 acres of the area proposed for annexation is comprised of a portion of Wasilla Lake, which is heavily utilized by recreational watercraft operators.

**Industrial, commercial and resource development.** Development in the area includes retail, service and light industrial enterprises including Valley Yamaha, Aurora Properties, Papa Nick's Restaurant, Wasilla Concrete, Kenai Supply, Ti-Le-An Property Management, World System Watch & Clock and Books, Inc.

<sup>10</sup> Estimate provided 6/22/95 by Bill Rollzen, State Revenue Sharing Program Coordinator

<sup>11</sup> Alaska Taxable, 1994, January, 1995

**Personal income of residents.** The 1990 federal decennial census recorded median household income in Wasilla at \$37,619, and adult unemployment at 11.1%.

**WASILLA HOUSEHOLD INCOME BY TYPE OF INCOME, 1989<sup>12</sup>**

| <u>Income Type</u>       | <u>% of Households</u> |
|--------------------------|------------------------|
| <i>Households with:</i>  |                        |
| Wage and salary income   | 82.4                   |
| Self-employment income   | 17.8                   |
| Social security income   | 13.6                   |
| Retirement income        | 15.4                   |
| Public assistance income | 6.4                    |

Availability of employable skilled and unskilled people. Approximately 30% of the Wasilla workforce commutes to Anchorage. More than 22% of the Wasilla workforce was employed by government in 1990.<sup>13</sup> The City of Wasilla is currently operated by 46 full time employees.<sup>14</sup>

**Findings and Conclusions.** The City's estimated \$80,570.57 increase in annual revenues will enhance the ability of the City to provide essential city services on an efficient, cost-effective level. To a certain extent, the area is already enjoying at least limited police services from the City on an extraterritorial basis because of the configuration of the municipal boundary and the Parks Highway. Such an arrangement is neither efficient, in terms of jurisdictional problems created, nor cost-effective for the City of Wasilla. In such circumstances, reasonable boundary adjustments which would enhance the capacity of the City to generate local revenues is appropriate. This is particularly significant given continued reductions in State financial aid to cities and boroughs.

The proposed post-annexation City of Wasilla boundaries include the resources necessary to provide essential City of Wasilla services on an efficient, cost-effective level. Thus, the standard set out in 19 AAC 10.110 is satisfied.

<sup>12</sup> Matanuska Susitna Borough Core Area Comprehensive Plan, September, 1993, HDR Engineering, Inc.

<sup>13</sup> DCRA Community Database.

<sup>14</sup> City of Wasilla Fiscal Year 1995 Budget Message pg A-6.