

ALABAMA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9777 HOUSE COMMUNITY & REGIONAL AFFAIRS

Haines, the Haines Borough, HBCAA, and approximately twenty-six individuals. The hearing lasted approximately four and one-half hours. Following the hearing, the Commission deliberated for approximately two hours before approving the petition by a vote of four to one. Commissioners Waring, Cannington, Tesche, and Walters voted to approve the petition. Commissioner Wasserman cast a dissenting vote. The Commission issued a 21-page decisional statement in the matter on November 26, 1997.

On December 15, 1997, a two-page request for reconsideration was submitted by HBCAA. The Commission met by teleconference on December 18, 1997 to address the request for reconsideration. Four members of the Commission participated. Commissioners Waring, Wasserman, and Walters voted to deny the request for reconsideration (Commissioner Cannington was disconnected from the teleconference due to technical difficulties on the part of the telephone utility).

The City of Haines, the Haines Borough, and HBCAA subsequently asked the Commission to defer the filing of its recommendation for annexation with the Second Session of the Twentieth State Legislature.⁷ The deferral was endorsed by Senator Jerry Mackie and Representative Albert Kookesh in a joint letter dated January 20, 1998.⁸ The deferral was

sought to provide the three parties and local citizens a reasonable opportunity to consolidate the first class City of Haines with the third class Haines Borough. Consolidation would have dissolved the two existing Haines municipal governments and created a single consolidated borough.⁹

The Commission found the prospect of consolidation of the City of Haines and the Haines Borough to be attractive from the standpoint of political and social policy. Article VII, §1 of Alaska's constitution calls for the minimization of the number of local government units. Consolidation would reduce by half the number of municipal corporations providing local services to the citizens of the greater Haines area. Further opportunity to streamline local government in Haines exists in the context of the possible reconfiguration of the multitude of local service areas. Such reconfiguration could occur concurrent with or subsequent to consolidation.

Consolidation would also eliminate the State's only third class borough. The legislature authorized that class of borough government in 1968. However, the legislature amended the law in 1985 to prohibit the incorporation of new third class boroughs. The Haines Borough was the only third class borough to have formed during the seventeen-year period allowed for the incorporation of third class boroughs. That particular

⁷ The City of Haines was the party that filed the petition for annexation of the 6.5 square miles in question. The City of Haines' request to defer the submission of the recommendation for annexation was presented in the form of Haines Borough Resolution No. 97/98-27, adopted January 19, 1998. The Haines Borough and the Haines Borough Citizens Against Annexation were the only parties who filed responsive briefs in opposition to the annexation proposal under 19 AAC 10.480. Their requests to defer the submission of the annexation recommendation were presented, respectively, in the form of Haines Borough Resolution # 437, adopted January 20, 1998 and the January 19 resolution of the Haines Borough Citizens Against Annexation.

⁸ Senator Mackie and Representative Kookesh are, respectively, the State Senator and State House Representative serving the area encompassing the City of Haines and the Haines Borough.

⁹ Third class boroughs may not be formed through consolidation. (AS 29.06.090)

class of borough has been widely recognized to be lacking in terms of its ability to provide essential areawide and nonareawide services and to execute duties assigned by the legislature to other classes of organized boroughs.¹⁰

Consequently, on January 21, 1998, the Commission agreed to defer its recommendation for annexation. By doing so, the Commission extended an opportunity for the local governments and citizens of Haines to focus on the issue of consolidation. If the voters approved consolidation at an election conducted pursuant to AS 29.06.140(a), the Commission's November 26, 1997 decision concerning annexation to the City of Haines would have become moot since there would no longer be a City of Haines. However, the Commission stated that if such voter approval were not obtained prior to the deadline for filing municipal boundary change recommendations with the First Session of the Twenty-First Alaska State Legislature, the public interest dictated that the annexation to the City of Haines should proceed.

A petition for consolidation of the two local governments in Haines was filed on March 31, 1998. The Commission approved the petition on August 21, 1998. A proposition to consolidate was submitted to the voters in Haines on November 3, 1998. By a margin of 545 (50.1%) to 542 (49.9%), Haines Borough voters rejected the consolidation proposal. In accordance with the decision rendered by the Commission on January 21, 1998, this recommendation for annexation of 6.5 square miles to the City of Haines is submitted to the 1999 Legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. Section III of this recommendation sets out the findings and

conclusions of the four members of the Commission that voted in favor of the petition. Section IV sets out the basis for the dissenting vote by Commissioner Wasserman.

Section III — Findings and Conclusions

The record in this proceeding includes the City of Haines' annexation petition, the responsive brief of the Haines Borough, the responsive brief of HBCAA, written comments on the petition submitted directly to DCRA by nineteen individuals, DCRA's draft report, written comments on DCRA's draft report from five individuals, DCRA's final report, records relating to a similar annexation proposal rejected by the 1984 Legislature, and testimony and comments at the Commission's November 15, 1997 hearing on this matter. Based on the evidence in that record, the Commission reached the findings and conclusions set out in this section of the decisional statement.

A. Needs of the Territory Proposed for Annexation.

An area may be annexed to a city provided, in part, that the Commission determines there is a reasonable need for city government in the area. [19 AAC 10.090(a)] Section III A 1-8 of this decisional statement examines specific governmental needs of the territory proposed for annexation.

State law requires the Local Boundary Commission to apply the specific standards for annexation to cities provided by 19 AAC 10.090 - .140. Those standards are addressed in this section.

¹⁰ All other organized boroughs are required by state statute to exercise areawide planning, platting, and land use regulations. The third class borough has no such responsibility. In fact, it expressly lacks authority to exercise such powers on an areawide basis. The third class borough is permitted to exercise only two areawide powers: education and tax assessment/collection. It is permitted to exercise only one nonareawide power: hazardous substance control. All other powers of a third class borough may be exercised only on a service area basis.

1. Regarding Police Protection.

The City's annexation petition indicates that the City of Haines police department annually responds to the approximate equivalent of one call from every seven households in the territory proposed for annexation. Some who provided unsworn public comment at the November 15 hearing contested that claim. The City's claim was supported by a sworn affidavit from the City Administrator indicating that the information in the City's petition is factual to the best of his knowledge. Additionally, strong gratitude for the City's willingness to provide extraterritorial police service was expressed in the July 15, 1997 letter from Alaska State Trooper Captain Bachman. That demonstrated that the City is indeed providing such service.

Further, based on the territory's estimated population of 278, it seems reasonable that there is a need for more comprehensive police protection than can be provided by a lone State Trooper assigned to a vast area extending far beyond the community of Haines. Regarding the need for police in relatively heavily populated areas, Captain Bachman noted in his July 15 letter that, *"As the population increases and we see more and more of the criminal justice infrastructure migrate into areas where they have not previously been, it may well fall to the local communities to provide their own police services where they haven't before."*

The record also shows that a need exists for greater police protection at the Haines airport, which is located in the western territory proposed for annexation. The owner of the Haines Airport terminal indicated that the terminal building had been broken into three times between August 1996 and July 1997. The airport contains considerable development and is reasonably expected to undergo further development. Criminal activity at the airport such as breaking and entering or vandalism threatens the health and safety of community residents and others. Such safety threats are exacerbated whenever aircraft are the target of such criminal activity.

The Commission finds from the foregoing that there is a need for comprehensive police coverage in the territory proposed for annexation and that this need exceeds the capabilities of the lone State Trooper assigned to the Haines area.

2. Regarding Planning, Platting, and Land Use Regulation.

Planning, platting, and land use regulation have been generally recognized as essential municipal services by the Alaska legislature since 1961. At that time, the legislature prescribed that each organized borough must provide those services on an areawide basis. The legislature made an exception to the requirement for areawide planning, platting, and land use regulation by organized boroughs in 1968 when it authorized the incorporation of third class boroughs. However, in 1985, the legislature repealed the law allowing the incorporation of new third class boroughs. The Haines Borough is the only third class borough to have incorporated.

In addition to requiring that most organized boroughs exercise planning, platting, and land use regulation, the legislature also mandated that home rule and first class cities in both the unorganized borough and third class boroughs provide planning, platting, and land use regulation. Today, thirty-four cities and boroughs, including the City of Haines, are required by state law to provide planning, platting, and land use regulation. Those municipalities serve more than ninety-one percent of all Alaskans.

The general need for municipal planning, platting, and land use regulation has also been recognized by other Legislative branches of state government. As the record reflects, officials of the Alaska Department of Environmental Conservation, the executive branch agency charged with protecting the health and environment of Alaskans, consider municipal platting to be an important function as well.

The need for planning, platting, and land use regulation is also reflected by the growth and development of the territory proposed for annexation. The record indicates that the area has grown very substantially since 1982. This growth is evidenced by the increase in assessed value in the area from \$6,726,150 in 1982 to \$21,348,214 in 1996. That represents an increase of more than 217% (123.8% adjusted for inflation). The record indicates further that the area proposed for annexation has been subject to significant ongoing development and that there is a reasonable likelihood of continued substantial development in the foreseeable future. The Commission had the opportunity to view recent and ongoing development during its extensive tour of the territory prior to the hearing. Existing, ongoing, and potential development is clearly an integral part of the community of Haines.

The record indicates that the territory proposed for annexation currently receives no municipal planning, platting, and land use regulation from the third class Haines Borough. The Commission noted that the effects of the lack of such services were evident with regard to the University of Alaska's just-completed Letnikof Estates subdivision, which is located a short distance from the southern territory proposed for annexation. Having toured the area, the Commission found the streets in that subdivision to be extremely narrow and the cul-de-sacs to be inadequately sized. Such circumstances make it more difficult and expensive to maintain the streets in the subdivision (e.g., road graders and snow plows will have greater difficulty passing oncoming traffic and will also have difficulty turning around in the small cul-de-sacs).

The Commission recognizes that the time to provide proper land use planning is prior to development. Now is the appropriate time to extend those services to the territory proposed for annexation.

Thus, the Commission finds that there is a clear need for planning, platting, and land use regulation in the territory proposed for annexation.

3. Regarding Road Maintenance.

Public roads in the area proposed for annexation are maintained either by the Alaska Department of Transportation and Public Facilities (DOT&PF) or by the Haines Borough. The Borough provides road maintenance on a service area basis.

The record reflects that officials of DOT&PF indicate that there is an increasingly greater need for improved maintenance of the State's category 3 roads in the area proposed for annexation. Those roads have the lowest priority for maintenance by DOT&PF. The level of maintenance, particularly snow removal, provided for those roads is often inadequate.

Category 3 roads in the area proposed for annexation include Comstock Road, Beach Road, FAA Road, Menaker Road, Piedad Road, Sawmill Road, and Small Tract Road. It is the policy of DOT&PF to only encourage local governments to assume responsibility for the maintenance of such roads.

In 1997, DOT&PF and the City of Haines engaged in negotiations for the transfer of maintenance responsibility for certain category 3 roads in the area proposed for annexation. However, those negotiations stalled because of uncertainty over the outcome of the City's annexation proposal. State and federal officials insisted on a long-term commitment for the maintenance, by the City of the roads in question. However, the City was unwilling to make that commitment without assurance that the roads and adjoining property will be included within its corporate boundaries.

Concerns were expressed at the November 15 hearing regarding the City's ability to provide adequate road maintenance within its current boundaries. However, during the Commission's extensive tour of the community, the roads maintained by the City appeared to be in good repair.

The Commission finds from the facts outlined above that there is a need for greater road maintenance in the territory proposed for annexation.

4. Regarding Water and Sewer Utilities.

The City of Haines provides water utility service to approximately 38% of the households in the territory proposed for annexation. The City also provides sewer utility service to approximately 5% of those households. Otherwise, the territory lacks public water and sewer utilities.

The Commission finds from the foregoing that there is need for the water and sewer utilities in parts of the territory proposed for annexation. The need is greatest with respect to future development. Additionally, some parts of the Piedad Road and Comstock Road areas have a history of failed septic systems due to poor drainage.¹¹

5. Regarding Access to Services of the City of Haines.

Residents of the territory proposed for annexation already have access to and benefit from a variety of local governmental services provided by the City of Haines. These include fire protection, emergency medical services, and emergency dispatch services provided by the City on a contractual basis within the adjoining Borough service areas.

Residents of the territory proposed for annexation also have access to or benefit from a number of non-site specific services and facilities provided by the City of Haines. For example, the City commits very substantial resources to promote economic development, including tourism. This creates employment and economic opportunities that are available to residents throughout the community of Haines, including the area proposed for annexation.

Additionally, certain facilities and services provided by or supported by the City of Haines are of direct or indirect benefit to the residents of the territory proposed for annexation. These include police and dispatch services, canine control, household hazardous waste disposal, grants to community organizations, the NOAA weather radio facility, emergency operations center, Senior Center, Human Resources Building (containing mental health program, Alcoholics Anonymous, preschool, and Head Start), public restrooms, and port facilities which handle all of the community's freight.

The Commission finds from the foregoing that residents of the territory proposed for annexation have access to substantial services and facilities provided by or supported by the City of Haines.

6. Regarding Existing or Reasonably Anticipated Economic Development

The Alaskan and Proud Market, one of two relatively large grocery stores in Haines, has announced plans to relocate its operations from downtown Haines to the territory proposed for annexation. Other businesses, including a licensed liquor package store, have relocated or are planning to relocate to the territory proposed for annexation.

¹¹ The Commission was aware at the time of its hearing that the Alaska Public Utilities Commission was considering competing proposals from the City of Haines and a private developer for the right to provide water and sewer utilities to a portion of the western territory proposed for annexation.

The record reflects that the owner of the Alaskan and Proud Market emphasized that his business is in need of services provided specifically by the City of Haines. These include, in particular, police protection, water utility service, and sewer utility service.

The owner of the Alaskan and Proud Market also recognized that the relocation of his business operations would have significant adverse impacts on the City of Haines' sales and property tax revenues if the property were not annexed. The business owner indicated that he wants the Alaskan and Proud Market to continue to be a "good corporate citizen" in Haines. He emphasized that being a good corporate citizen, in part, means paying a "fair share" for the services provided.

The record also shows that Haines Airport Terminal and Services plans to construct a 9,600 square foot building to expand its existing operations at the Haines airport. The planned facility would provide space for the agents of all air carriers serving Haines. In addition, a small gift shop, restaurant, lounge, and rental car service would be housed in the expanded airport terminal facility.

In addition to the prospective developments noted, Waldo Enterprises is relocating its concrete mixing plant from the City to the territory proposed for annexation.

The Commission finds from the foregoing that economic development in the territory proposed for annexation is ongoing.

7. Regarding Existing or Reasonably Anticipated Health, Safety, and General Welfare Problems

The record reflects that officials of the Alaska Department of Environmental Conservation (DEC) indicate that problems relating to failed septic systems in the Piedad Road and Comstock Road area noted in the City's annexation petition have been corrected. However, those same officials indicate that,

"The Piedad Road and Comstock Road area has a history of failed systems. . ." As such, it is anticipated that there may be additional future problems relating to failed septic systems in the area.

Although DEC has responded to problems relating to improperly operating septic systems in the territory proposed for annexation, officials of that agency indicate that, *"The State's long-term goal is to have communities take over management of wastewater and drinking water."*

Considering the foregoing, the Commission finds that the history of public health threats relating to fecal coliform contamination in the Comstock Road and Piedad Road area demonstrates a need for city government in that area. This is consistent with the State's long-term goal to promote local responsibility for such matters.

8. Regarding State Policies Relating to Local Responsibility

In Fiscal Year 1996, the State Long Range Financial Planning Commission (SLRFPC) announced that, *"The State is spending \$524 million more than it will take in during the current fiscal year. The gap will grow to \$1.3 billion per year in today's dollars by 2005 if we make no changes to the State's spending and revenues policies."* The SLRFPC recommended that state spending be cut by \$100 million over three years. One of the "key elements" of the plan prepared by the SLRFPC was to *". . . shift revenues and responsibilities to local governments."* The Alaska legislature announced plans in 1997 to trim state spending by \$250 million over five years.

The City of Haines takes the position that continued reductions in state funding require local areas to take on a greater share of the responsibility for services such as police, road maintenance, and land use regulation. The City's views regarding state policy in this matter conform closely to the views expressed in the SLRFPC Report.

Based on the foregoing, the Commission finds that it is consistent with policies expressed by the State Long Range Financial Planning Commission for the City of Haines to assume responsibilities for maintenance of state category 3 roads and to provide planning, platting, land use regulation, police protection, and other relevant services in the territory proposed for annexation.

Based on the foregoing findings, the Commission concludes that there is a reasonable need for city government in the territory proposed for annexation and that the city annexation standard set out in 19 AAC 10.090(a) is satisfied.

B. Comparative Ability of the City of Haines and the Haines Borough to Deliver Essential Services to the Area.

An area may be annexed to a city provided, in part, that the Commission determines that the annexing city can provide essential city services as defined by 19 AAC 10.990(f) to the area more efficiently and effectively than another existing municipality [19 AAC 10.090(b)]. The determinations of the Commission on this point are summarized below.

1. Powers of the City of Haines.

A city within a borough is authorized to "exercise any power not otherwise prohibited by law." (AS 29.35.250) Additionally, as a first class city within a third class borough, the City of Haines is mandated by state law to provide planning, platting, and land use regulation throughout its jurisdiction. (id.) The Commission finds from this that the City of Haines enjoys the authority to provide any municipal service except for education, tax assessment, and tax collection, which are mandatory areawide duties of the Haines Borough.

2. Powers and duties of the Third Class Haines Borough

As a third class borough, the Haines Borough is authorized by law to provide only two services on an areawide basis -- education and taxation. (AS 29.35.160 - 29.35.170) Additionally, it is authorized by law to provide one service on a non-areawide basis (the area outside cities). The single authorized non-areawide service is the power to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance; including the ability to address oil pollution control under AS 46.04, hazardous substance releases under AS 46.08, and hazardous substance release control under AS 46.09. [AS 29.35.220(e)]

Other than the three services noted above, all services by a third class borough may be provided only on a service area basis. [AS 29.35.220(d)] A third class borough may exercise in a service area any power not otherwise prohibited by law, if the exercise of the power is approved by a majority of the voters residing within the service area. [AS 29.35.490(b)]

However, borough service areas may only be established within the provisions of Article X, § 5 of Alaska's constitution and AS 29.35.450. Those provisions stipulate that a service area may not be created if services can be provided through annexation to an existing city. The Commission finds that, in contrast to the City of Haines, the Haines Borough has significant legal constraints on its ability to provide services to the area in question (other than education, tax assessment, tax collection, and control of hazardous materials).

3. Service Area Issues

Given the limitations of the Haines Borough to provide services on a service area basis, issues concerning constitutional and statutory aspects of borough service areas are

fundamental to the question of whether needed services can be provided most efficiently and effectively by the City of Haines or the Haines Borough.

The intent of the constitutional convention delegates regarding the constitutional provisions relating to service areas is addressed in *Borough Government in Alaska* (at 42), a leading treatise on Alaska's unique form of regional government:¹²

The stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for the constitutional provision that "A new service area shall not be established if...the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city."¹³ The committee's objective 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.¹⁴ Moreover, an amendment to eliminate the preference given to city incorporation or annexation over establishment of new service areas was defeated by the convention. (Emphasis added)

In 1983, the Commission determined that the City of Haines was capable of serving nearly the same territory presently proposed for annexation. Notwithstanding, the Haines Borough continued to operate a fire service area immediately adjoining the City of Haines

that had been established in 1977. Further, the Haines Borough has since added *seven new service areas* in the territory proposed for annexation. Four of the seven new service areas are located wholly within the territory proposed for annexation. The other three new service areas encompass all of the territory proposed for annexation and more.

The Haines Borough indicates that it is prepared to create still more service areas to provide needed services in the territory proposed for annexation. For example, the Borough states in its responsive brief that, "If the residents of the area to be annexed come to the decision that they need to exercise planning, platting, and zoning powers, they are already able to do so through the current service area system used by the Borough of Haines."

Victor Fischer, preeminent expert on borough government and related constitutional principles, commented on the current annexation proposal of the City of Haines. In the context of the issue of service areas, Mr. Fischer indicated that,

In the Haines case, I would go further than the City's argument that creation of service areas is "inconsistent" with Section 5 of the constitution - I believe it violates both the intent and specific language of this section. (emphasis original)

The position that establishment of new service areas is the constitutionally preferred alternative to city annexation or on par with cities

¹² *Borough Government in Alaska*, University of Alaska, March 1971, was written by Thomas Morehouse and Victor Fischer. Mr. Morehouse and Mr. Fischer are regarded as experts relating to borough government in Alaska. Both individuals have published a number of works dealing with the topic. Further, Victor Fischer was not only a delegate to the Alaska Constitutional Convention, but was secretary to the Convention's Committee on Local Government. Additionally, the Alaska Supreme Court relied on *Borough Government in Alaska* in *Mobil Oil Corporation v. Local Boundary Commission*, 518 P2d 92 (Alaska 1974) and *Keane v. Local Boundary Commission*, 893 P2d 1239 (Alaska 1995).

¹³ Constitution of the State of Alaska, Article X, Section 5.

¹⁴ *Alaska Constitutional Convention Proceedings*, November 1955 to February 1956, Alaska Legislative Council at 2715.

is completely wrong, it's nonsense. There is no basis whatsoever to support that view. All provisions of Article X make it totally obvious that there are two preferred types of local government units under Alaska's constitution: cities and boroughs. Service areas are subsidiary units of boroughs. Section 5 unequivocally establishes that annexation is a preferred alternative to creation of a new service area.

The Commission finds that the area proposed for annexation has developed as the antithesis of the model envisioned by Alaska's constitutional convention delegates more than forty years ago. What the delegates wanted to avoid is precisely what now exists outside the corporate boundaries of the City of Haines — "a lot of separate little districts set up . . . handling only one problem . . ." Given the Borough's assurance that it is prepared to create yet more service areas in the territory proposed for annexation, the problem is only likely to worsen without annexation.

Based on the above findings, the Commission concludes that the City of Haines' capability to provide essential services to the area (exclusive of education, taxation, and control of hazardous materials) is superior to that of the Haines Borough.

C. Compatibility of the Territory Proposed for Annexation and the Area Within the City of Haines.

Under 19 AAC 10.100, an area may be annexed to a city if the Commission determines the area to be compatible in character with the annexing city.

The Commission recognized that there are differences with respect to land use in parts of the territory proposed for annexation and the area within the City of Haines. However, there are also differences regarding land use *within* the territory proposed for annexation itself. For example, there are 141 homes in the territory proposed for annexation. There are also thirty-four businesses in the territory.

Some of the businesses are home-based, while others are located in separate commercial or industrial facilities. These differences do not mean that the areas in question are incompatible.

The Commission notes that the City of Haines' Code accommodates differences in land use. Specifically, Section 18.70.100 of the City's Code makes the following accommodations for newly annexed territory:

[A] Multiple Use district will be established in . . . areas upon the effective date of their annexation. Recognizing the previous lack of land use planning in areas outside the City and the need to provide a reasonable transition toward land use regulation, the Multiple Use district is intended to allow as broad a range of land uses as possible. The Multiple Use district is intended to be temporary, however, in order to allow present land use patterns to continue until more specific land use regulations are adopted. The City shall conduct public hearings following the annexation, and within two years of the effective date of the annexation, the City may rezone this district according to the results of the public hearing process. The process may result in a rezoning of Multiple Use district areas to more restrictive land use classifications.

The Commission recognizes that the population density of the territory proposed for annexation is less than that within the existing boundaries of the City of Haines. However, it is also greater than the average of all 145 cities in Alaska. The patterns of housing development in the area proposed for annexation are compatible with those in adjacent areas inside the corporate boundaries of the City of Haines. If the annexation occurs, the population density of the expanded City of Haines will be at least twice the average of all 145 cities in Alaska.

The area within the City and the territory proposed for annexation are a mixture of relatively small lots, larger lots, and large undivided parcels. The record indicates that

there is a strong market for property in the area proposed for annexation and within the City of Haines. The Commission finds that the subdivision characteristics and characteristics relating to the salability of property in the territory proposed for annexation are compatible in character with the territory inside the current boundaries of the City of Haines.

The territory proposed for annexation and the area within the current boundaries of the City of Haines are one in the same community. The two areas are closely interconnected and interdependent. Thus, the Commission finds that land use within the territory proposed for annexation and the suitability of the territory for reasonably anticipated community purposes are compatible with such characteristics of the area within the boundaries of the City of Haines.

Considering the above findings, the Commission concludes that the territory proposed for annexation is compatible in character with the territory inside the current boundaries of the City of Haines. Thus, the standard set out in 19 AAC 10.100 is fully satisfied.

D. Adequacy of the Human and Financial Resources.

State law allows an area to be annexed to a city provided, in part, that the Commission determines the area within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. (19 AAC 10.110)

The Commission found that all of the functions of the City of Haines, with the exception of its water and sewer utilities, were reasonably anticipated to be extended to the area proposed for annexation by the beginning of the next fiscal year following annexation.

The Commission also finds that the City of Haines is projected to realize an increase in revenue as a result of annexation equal to

approximately \$113,500 annually (based on current property values, projected taxable sales, and a projected City property tax rate that is 80% of the current level). The City of Haines has projected that its operating expenditures will increase by \$79,300 annually as a result of annexation.

The Commission inquired whether the City's projected expenditures were unrealistically low. In that regard, it was noted that the City could increase its level of expenditures in the area proposed for annexation from \$79,300 to \$113,500 annually without incurring any adverse fiscal impact as a result of annexation. Still, that would represent an increase of only 3.7% in the level of funding appropriated by the City Council in the prior fiscal year (\$3,099,297) compared to a population increase of 20% as a result of annexation.

In its examination of the issue, DCRA characterized approximately two-thirds of the City's expenditures (\$2,081,271) as "fixed costs" in the context of annexation. Based on that characterization, the \$113,500 increase in spending would represent an 11% increase in funding for variable costs of the City (\$1,018,026). Still, that figure is little more than half of the relative increase in population that the City will experience.

However, DCRA also noted that certain efficiencies could be reasonably expected due to increased economies of scale. For example, it was noted that the City of Haines spent \$305 per resident to provide police services in 1995. That figure was 42% higher than the average of all municipalities in Alaska that spent at least \$50,000 annually on police and police dispatch services. By expanding the population served by the City without increasing the number of police officers, the per capita cost of providing that service would decline.

The Commission recognized that any remaining concerns over the City's projected expenditures for the territory proposed for

annexation did not detract from the ability of the area in question to satisfy the annexation standard at hand. In other words, either through the expenditure of more funds than originally projected by the City or by achieving greater efficiencies such as those anticipated with respect to the extension of police services, the Commission finds that city services can be efficiently and effectively delivered to the territory.

Property values in the territory proposed for annexation will enhance the ability of the City of Haines to provide essential city services. The per capita taxable value of property in the area proposed for annexation is fifty-one percent higher than it is within the current boundaries of the City. If annexation occurs, the per capita assessed value of the City of Haines would be greater than twenty-three of the thirty-eight municipalities in Alaska that levy property taxes.

The Commission notes that the area within the proposed post-annexation boundaries of the City of Haines enjoys a vibrant economy: On a per capita basis, taxable sales in the proposed new boundaries of the City of Haines are greater than they are in the City and Borough of Juneau. Per capita values of taxable property are 21% higher in the proposed post-annexation boundaries of the City compared to the average of the thirty-eight municipalities in Alaska that levy property taxes.

The 1990 personal income of residents of the territory proposed for annexation and the City of Haines was more than 9% above the average of all 145 cities in Alaska.

The record reflects that the City of Haines had substantial fund balances on June 30, 1996, the most recent date for which audited figures are available. In aggregate, the City's fiscal year end balance was equivalent to 76.1% of expenditures for the year. That figure is 4.7 times greater than the national average.

The City's general obligation debt totaled \$1,911,200 as of June 30, 1996. However, the City of Haines has substantial assets as well. On June 30, 1996, the City's *net* equity and other credits amounted to \$28,275,313, or \$20,197 per resident.

Considering the preceding findings, the Commission concludes that the economy within the proposed new boundaries of the City of Haines includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

Thus, the standard set out in 19 AAC 10.110 is fully satisfied.

E. Size and Stability of the Population of the Proposed Expanded City.

State law allows an area to be annexed to a city provided, in part, that the Commission determines the population within the proposed post-annexation boundaries of the city is large and stable enough to support the extension of city government. (19 AAC 10.120)

The Commission finds that the 1,678 residents within the proposed new City boundaries represent a population numerous enough to support the extension of city government. Annexation would increase the City's population by 20%. The expanded City of Haines would rank 21st in terms of population among Alaska's 145 city governments.

The Commission finds that the duration of residency, historical population patterns, and seasonal population changes in the City of Haines and the area proposed for annexation reflect a stable population.

Annexation is projected to increase the number of citizens in the age group most likely to be involved in operating and governing the City of Haines by 194 (20%).

Considering the above findings, the Commission concludes that the area within the proposed *post-annexation* boundaries of the City of Haines is sufficiently large and stable to support the extension of city government. Thus, the standard set out in 19 AAC 10.120 is fully satisfied.

F. Inclusion of all Land and Water Necessary to Provide the Full Development of Essential City Services on an Efficient, Cost-Effective Level.

State law specifies that an area may be annexed to a city provided, in part, that the Commission determines that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. (19 AAC 10.130(a))

The Commission views this particular standard as a threshold criterion. In other words, the Commission does not consider the standard to require a determination that the proposed new boundaries are ideal. Instead, the standard is satisfied if the proposed new boundaries of a city include territory needed to provide the full development of essential city services efficiently and effectively.

In that context, the Commission recognizes that there *may* be additional territory outside the proposed new boundaries of the City of Haines that need essential city services. Such *may* include the area extending to Letnikof Cove adjoining the southern area proposed for annexation, as well as the property of Southeast Road Builders, Incorporated, adjoining the western territory proposed for annexation. However, the Commission makes no judgment concerning the merits of expanding the boundaries beyond the City's proposal since there has been no opportunity for the Commission to formally consider that matter.

The Commission finds that the territory proposed for annexation includes a number of facilities owned or operated by the City of

Haines on an extraterritorial basis. These consist of water utility service to fifty-three of the estimated 141 homes in the territory, sewer utility service to seven of the estimated 141 homes, Lily Lake, the City's water treatment facility, and the City's cemetery. Additionally, the City provides emergency police protection to the territory on an extraterritorial basis.

Further, the City proposed in July of 1997 to assume responsibility for maintenance of FAA Road from the Alaska Department of Transportation and Public Facilities. That road extends 1,800 feet beyond the current boundaries of the City of Haines. An agreement to transfer maintenance of the road stalled because state and federal officials stipulated that the City must commit to maintain the road on a long-term basis. The City was unwilling to do so given the uncertainty of the outcome of its annexation proposal.

Further, the City provides fire protection services and ambulance services, including dispatch for both, outside its corporate boundaries. Those functions are performed as a contractor to the Haines Borough under the Borough's jurisdictional authority.

Annexation would eliminate the extraterritorial nature of all of the services and facilities noted above. The Commission concludes that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. Thus, the standard set out in 19 AAC 10.130(a) is satisfied.

G. Contiguous Nature of the Territory Proposed for Annexation.

State law specifies that an area may be annexed to a city provided, in part, that it is contiguous to the annexing city (unless a compelling reason exists for annexation of non-contiguous territory). (19 AAC 10.130(b))

The Commission finds that the western and southern areas proposed for annexation adjoin the current boundaries of the City of Haines. Thus, the Commission concludes that the standard set out in 19 AAC 10.130(b) is fully satisfied.

H. Inclusion of the Community, Plus Areas Reasonably Predicted to Grow Over the Next Ten Years.

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following the effective date of annexation of that city. [19 AAC 10.130(c)]

The Commission finds that the territory proposed for annexation and the area within the current boundaries of the City of Haines are the same community. This is readily apparent when Haines is viewed from the air, as the Commission did prior to the November 15 hearing. It is equally apparent as one traverses the community from the ground, as the Commission also did extensively prior to the hearing. The area proposed for annexation is clearly an interdependent part of the community of Haines.

The Commission also finds that the territory proposed for annexation is contiguous to the City of Haines and is relatively compact. The estimated 278 residents of the territory reasonably appear to make extensive use of the area within the corporate boundaries of the City for their social, economic, educational, medical, governmental, and other service needs. Similarly, the 1,400 residents of the City seem to rely on public and private facilities in the area proposed for annexation to meet certain of their needs (e.g., water supply, landfill, airport, commercial facilities, and industrial facilities).

The Commission notes that it is difficult to accurately predict what growth will occur over the next ten years. However, the area proposed for annexation has undergone very significant growth over the past fourteen years. Evidence of ongoing growth and development is also present. Further, as noted previously, plans have also been announced for the construction of a new shopping center west of the current boundaries of the City. A proposal to construct a much larger terminal at the Haines Airport is also under consideration. Testimony was also provided to the Alaska Public Utilities Commission by a private developer with substantial holdings in the territory proposed for annexation that the area in question is expected to undergo significant development. Therefore, the Commission finds that it is reasonable to assume that the area proposed for annexation will continue to grow over the next ten years.

Considering the above findings, the Commission concludes that the proposed boundaries of the City of Haines include only that area comprising the community of Haines, plus reasonably predictable growth, development, and public safety needs during the next ten years. Thus, the standard set out in 19 AAC 10.130(c) is fully satisfied.

I. Exclusion of Geographical Regions and Large Unpopulated Areas.

State law specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. [19 AAC 10.130(d)]

The terms "entire geographical regions" and "large unpopulated areas" are broad and should be considered in the context of other cities in Alaska. While the Commission recognizes that the jurisdictional needs of each city are unique, a general comparison to other

cities in Alaska is useful. In that regard, it is noted that although the City of Haines is presently the 22nd most populous city among the 145 cities in Alaska, it ranks 60th in terms of the size of territory within its corporate boundaries. In other words, the City of Haines' ranking in terms of its jurisdictional boundaries is not commensurate with its ranking in terms of population. Even if annexation occurs, the City would rank 21st in population and only 47th in terms of the size of its jurisdictional area among the 145 cities in Alaska.

The average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. The average size of the jurisdictional area of the twenty-two cities in Alaska with a population of 1,400 or more is 44.7 square miles. If the annexation occurs, the new boundaries of the City of Haines would encompass 20.9 square miles, 22.8% less than the average of all cities and 53.2% less than the average of cities with a population of 1,400 or more.

As noted previously, there are an estimated 278 individuals living in 141 homes in the area proposed for annexation. Most of the residents live along Beach Road, Mud Bay Road, Small Tract Road, FAA Road, Comstock Road, Piedad Road, and that portion of the Haines Highway immediately outside the current western boundary of the City of Haines.

Although parts of the territory are uninhabited and undeveloped, residential and commercial growth in the areas proposed for annexation appear to be reasonably likely. John Floreske, Jr., (developer of the Meadowland Subdivision in the area proposed for annexation and owner of the Chrystal Cathedral Water and Sewer System, Inc., which, at the time of the Commission's hearing, was seeking APUC authority to provide utility service to a portion of the area) testified before the APUC on June 12, 1997, that he envisions nearly eighty homes and "several

commercial customers" in the area proposed for annexation, *in addition* to those presently served by the City's Piedad utility system.

The Haines airport, located in the westernmost portion of the territory proposed for annexation, is the fifth busiest airport in Southeast Alaska in terms of numbers of commercial passengers who boarded flights at those airports in 1995 (the most recent year for which data are available). The five commercial air carriers that used the Haines airport on a regular basis in 1995 reported to FAA that 29,812 commercial passengers boarded at the Haines airport that year. That is the equivalent of more than 12.5 boardings for each resident of the Haines Borough.

The Haines airport is undergoing growth and development. The number of passenger boardings at the Haines airport in 1995 represented an increase of 7,710 (34.8%) over the prior year. Additionally, as noted previously, Haines Airport Terminal and Services has announced plans to build a 9,600 square foot facility at the airport.

The airport is used extensively to support commercial tourism in the Haines area. The petition indicates that, "*Most of the [estimated \$1,007,125] in taxable sales volume [in the territory proposed for annexation] results from summer tour excursion services using the Haines Airport.*" Given the level of development and activity at the airport, coupled with the fact that the City of Haines spends considerable resources to promote tourism (\$289,871 had been appropriated for that purpose in the fiscal year current at the time of the Commission's hearing), it seems particularly fitting that the airport should be included in the boundaries of the City of Haines.

Lily Lake serves as the principal source of water for the City of Haines water utility. The Lake is within a portion of the Chilkat State Park in the southern area proposed for annexation. The legislature has formally preserved the rights of the City of Haines to regulate

water use and City facilities within the Chilkat State Park under AS 41.21.112. However, as long as Lily Lake remains outside the City limits, the City of Haines may exercise the specific rights preserved for it under AS 41.21.112 only on an extraterritorial basis. Unlike other extraterritorial powers (e.g., water utility, sewer utility, road maintenance, and cemetery), AS 29.35.020(b) authorizes the exercise of extraterritorial powers needed to protect water supplies and watersheds only on the condition that the municipality in which the water supply and watershed is located grants its approval. In other words, the City of Haines cannot exercise extraterritorial powers to protect the Lily Lake water supply and watershed unless the Haines Borough grants its approval by ordinance.

In response to a question from the Commission, the Mayor of the Haines Borough expressed the belief that the Borough Assembly would be willing to adopt an ordinance authorizing the City of Haines to exercise extraterritorial land use regulation over its watershed and water supply at Lily Lake. The Borough Mayor expressed that belief despite the contrary position taken in the Borough's responsive brief submitted to the Commission. The Borough's brief stated that there is "absolutely no need for city government" in the area, *particularly* with respect to City regulation of the watershed and water supply. However, even if the Borough authorized the City to exercise the extraterritorial powers in question, there is still sufficient need to exercise general land use planning power in that area to determine that the standard has been met.

In consideration of the foregoing, the Commission finds that the inclusion of the large uninhabited portions of the territory proposed for annexation, such as the Lily Lake area, Haines airport, and developable privately owned lands is justified through satisfaction of other annexation standards.

Considering the preceding findings, the Commission concludes that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards. Thus, the standard set out in 19 AAC 10.130(d) is fully satisfied.

J. Overlapping Boundaries.

State law specifies that if a city annexation proposal overlaps the boundaries of a borough, unified municipality, or another city, the city annexation proposal must also address standards for detachment from the borough, unified municipality, or other city; or annexation of the city to the borough or unified municipality. [19 AAC 10.130(e)]

The City of Haines and the territory proposed for annexation are both within the Haines Borough. The City's annexation proposal does not overlap the boundaries of another existing municipality. Therefore, the Commission concludes that the standard set out in 19 AAC 10.130(e) is fully satisfied.

K. Balanced Best Interests of the State, the Territory Proposed for Annexation, and Affected Political Subdivisions.

State law provides that the Commission may recommend a municipal boundary change to the state legislature pursuant to Article X, § 12 of Alaska's Constitution as long as the proposal satisfies the annexation standards set out in 19 AAC 10.090 - 19 AAC 10.130. Additionally, the Commission must determine that annexation will serve the balanced best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions. "Balanced best interests" means that when the interests of all are considered, the proposal must serve the best interests of the whole. Because the proposal may not serve the particular interests of some does not preclude a finding that the standard is satisfied. (19 AAC 10.140)

19 AAC 10.140 lists six factors which the Commission may consider in judging the balanced best interests of those affected by annexation. The first factor is whether the territory is an enclave surrounded by an annexing city. This factor is not specifically relevant to this petition. Nevertheless, although the territory proposed for annexation is not surrounded by the annexing city, it is adjacent to and is integrally tied to the City of Haines. There is too much interplay between the two areas to conclude otherwise. The area proposed for annexation contains key facilities for the community of Haines including the airport, the source of water supply, the landfill, a substantial part of the community's growing residential subdivisions, and a growing number of commercial facilities.

The second factor relates to whether the health, safety, and general welfare of City residents will be or is endangered by conditions as they currently exist. Unregulated land use activities taking place in the area sought for annexation demonstrate that this factor applies in this case. The second factor also supports a finding that annexation serves the balanced best interests of the whole.

The third factor concerns whether the extension of city services or facilities to the territory is necessary to enable the city to provide adequate services to city residents. The record shows that there may be a flight of businesses from the area within the current boundaries of the City of Haines to the area proposed for annexation. This will endanger the tax base of the City. The Commission must consider the economic viability of the existing municipality when it makes an annexation decision. Thus, the third factor supports a determination that annexation is in the balanced interests of all.

The fourth consideration is whether residents or property owners within the territory proposed for annexation receive direct or indirect benefits of city government without

commensurate tax contributions. Given the proximity of the territory proposed for annexation to the City of Haines, the availability of public services to residents and non-residents alike within the City, the lack of other nearby urban centers, and the benefits provided to non-residents on an extraterritorial basis, the Commission finds that residents within the territory proposed for annexation derive substantial direct and indirect benefits from the city government. Although residents of the territory proposed for annexation contribute to the cost of city services through payment of sales taxes and through service with the volunteer fire department, those contributions are not commensurate with the direct and indirect benefits of city government they receive.

In this case, the record indicates that this factor supports annexation since the status quo enables residents of the area proposed for annexation to receive an increasing level of the benefits from the City of Haines without paying a commensurate share. And at the same time businesses have incentives to leave the area within the unnaturally constrained existing corporate boundaries of the City of Haines, making matters worse. Thus, the fourth factor supports a finding by the Commission that annexation is in the balanced best interests of all.

The fifth factor is whether the annexation of the territory will enable the city to plan and control reasonably anticipated growth or development. Previous findings and conclusions of the Commission regarding the current annexation proposal have indicated this to be the case.

The sixth and last factor specifically listed in 19 AAC 10.140 is whether the territory is so sparsely inhabited or so extensively uninhabited by persons who are not landowners that a local election would not adequately represent the interest of the majority of the landowners. Although there is a history of the community

not being able to address issues through unification, the area is not uninhabited or sparsely inhabited. The area's inability to resolve its governance dilemmas does not appear to be related to the sixth factor.

The Commission is not limited to considering just the six factors listed in 19 AAC 10.140, but may consider any other relevant factor as well. In that regard, the Commission notes that the effect of the proposed annexation would be to localize the cost and administrative responsibility for providing some services now funded and provided by state government. The State Long Range Fiscal Planning Commission's goal of closing the state fiscal gap, in part, by promoting greater local responsibility for local services would be supported by annexation. Annexation would facilitate the transfer of maintenance responsibility for so-called category 3 roads from DOT&PF to the City of Haines. Annexation will extend city police services to an area in need of such services thereby relieving the State Trooper assigned to the Haines area of some demands. Annexation will also extend platting authority into the territory, thereby avoiding the assumption of platting responsibilities in the area by the Alaska Department of Natural Resources under the provisions of CSHB 17(RES). Similarly, extension of municipal planning, land use regulation, and platting authority to the area proposed for annexation would enable the City of Haines to assume greater responsibility for proper wastewater disposal, a long-term goal expressed by the Alaska Department of Environmental Conservation. Moreover, several state agencies positively supported the proposed annexation; none opposed annexation. In light of the state's ongoing fiscal condition and policies, the proposed annexation would be advantageous to the state. Lastly, Article X, §§ 1 and 5 of Alaska's constitution encourage annexation in that it would reduce the number of service areas adjacent to the City of Haines.

For the City itself, it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation also has some advantages for the area proposed to be annexed. It would extend the right to participate in the political process of the City. Annexation would also bring improved police service, better road maintenance, and other services of the City of Haines such as planning, platting, and land use regulation. There is some evidence in the record that there are inequities in that many services of the City of Haines are available to residents of the area proposed for annexation, but those residents do not pay a commensurate level of support for those services. When such circumstances arise, it is natural for those residents to oppose annexation. Nonetheless, however controversial the issue is now, in light of the development that is inevitable in the areas adjoining the City, annexation now will prevent more costly and belated remedies in the future. That is, it is much more difficult to address or prevent pollution problems, water supply problems, sanitation problems, and similar issues that may arise in the absence of land planning services.

Lastly, as far as the Haines Borough is concerned, the effects of annexation are negligible. Annexation does not alter its powers or functions. It does not change the population of the Borough, and it does not change the Borough's tax base.

Given the foregoing findings, the Commission concludes that annexation is in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. Thus, the standard set out in 19 AAC 10.140 is satisfied.

L. Effect of Annexation on Civil and Political Rights.

An annexation proposal may not be approved by the Commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. [19 AAC 10.910]

The Commission examined this issue regarding two aspects of the annexation proposal. The first related to the effect that annexation would have on the apportionment of the Haines Borough Assembly. The second concerned the impacts on voting rights of minorities.

1. Regarding Apportionment of the Haines Borough Assembly

The Commission notes that arguments have been advanced that the annexation proposal should be rejected because the boundary change would alter the balance on the Haines Borough Assembly between seats held by residents of the City of Haines and seats held by Assembly members residing outside the City.

Nothing in the law requires borough election districts to be based upon city boundaries. (AS 29.20.060 - 29.20.120) Indeed, doing so is a vestige of a constitutional provision abandoned by the State of Alaska twenty-five years ago.

Originally, Article X, § 4 of Alaska's constitution required that, "Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities." The purpose of the provision was to promote greater communication and coordination between a borough and cities within the borough.

However, the constitutional provision at issue was repealed in 1972 because the constraint brought about disproportional representation of borough voters. Although the Haines Borough Assembly is fairly apportioned under its current election district scenario, continuing the practice of dividing the Assembly into "city" and "non-city" districts may eventually bring about disproportional representation or will require a change in the composition and apportionment of the Assembly of the Haines Borough.

In fact, the current election districts of the Haines Borough are *not* based on the current boundaries of the City of Haines. There was no change to the Haines Borough Assembly election district boundaries following the 1993 annexation of 11.75 square miles to the City of Haines. Although that annexation involved a small population, the fact that the Borough left its election district boundaries intact following the 1993 annexation demonstrates that the Borough is not committed to the apportionment of the Assembly strictly in the manner suggested in its responsive brief. In addition to creating difficulties in achieving fair apportionment, basing the Borough's election districts on the boundaries of the City may promote a sense of separatism between the City of Haines and the rest of the Haines Borough on the part of the Assembly and voters.

The Commission finds from the foregoing that the issue of apportionment of the Haines Borough Assembly is unrelated to the pending issue of annexation to the City of Haines.

2. Regarding Conformance with the Federal Voting Rights Act

Assertions were made that a violation of the Federal Voting Rights Act would occur as a consequence of the annexation since the percentage of minority voters within the City would be reduced. Although the annexation would decrease the minority population in percentage terms of the total population, such reduction in percentage terms would be marginal – 2.06 percentage points (from 19.93% to 17.87%). However, annexation would increase the minority population of the City of Haines by allowing minority voters in the area proposed for annexation a vote in City affairs for the first time. Further, reductions, per se, in the voting strength of minorities are not prohibited by the federal Voting Rights Act

There is no indication that the proposed annexation involves any purposeful effort or intent to withdraw or diminish the civil or voting rights of any minority individual or group. The proposed annexation would add new voters to the city electorate, including minority voters.

The Commission finds assertions that the annexation proposal violates the provisions of the federal Voting Rights Act to be unfounded. There is no evidence to suggest that implementation of the City's annexation proposal will result in any violation of the federal Voting Rights Act. The annexation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives. The provisions of law relating to this issue were never intended to thwart legitimate annexation proposals.

The Commission concludes that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

M. Adequacy of Transition Plan.

A petition for annexation must include:

- ➔ a practical plan demonstrating the intent and capability of the annexing city to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation;
- ➔ a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed;
- ➔ a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation. [19 AAC 10.900]

Plans for assumption of powers and functions and transfer of assets and liabilities must be developed in consultation with the officials of the affected borough or service area. The record shows that the City of Haines developed its transition plan with at least minimal consultation with staff of the Haines Borough.

The Commission considers the proposed transition plan to be elementary or uncomplicated with respect to provisions for extension of essential city services into the territory proposed for annexation in the shortest practicable time after annexation. The petition and transition plan state that all of the City's services, except for water and sewer utilities, will be extended to the area proposed for annexation on July 1, 1998. That date anticipated that the annexation would take effect in March of 1998. The date for the planned extension of services was less than four months from the date that annexation was expected to take effect. It also coincides with the date on which the City expected to begin to levy ad valorem taxes and sales taxes in the area proposed for annexation.

The Commission finds that the transition will be relatively simple since the City of Haines is already delivering municipal services such as fire protection, emergency medical services, and emergency dispatch services to the area proposed for annexation under terms of contractual agreements with the Haines Borough. Further, the City of Haines is providing other services on an extraterritorial basis. Extension of the City's boundaries will simply eliminate the extraterritorial nature of those services.

The Commission finds that the City of Haines exhibits both the capability and intent to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation.

Regarding a plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by the Haines Borough will be assumed by the City of Haines

The City's transition plan provides that the City will assume the powers, duties, rights, and functions presently exercised within the area proposed for annexation by the Borough on a service area basis. AS 29.05.130 - 29.05.140 provides guidance for the integration of service areas and related transitional measures.

The Commission notes the request from HBCAA that the Commission approve a "prezoning plan . . . conditioned as to time, [to] protect residents from changes for the first ten years." Elsewhere, HBCAA states that, "Protections must be afforded the areas proposed for annexation to continue their rural lifestyle and subsistence uses. Existing City Code does not allow for continuation of animal husbandry, keeping of horses, rabbits, goats, provide agricultural taxation differentials or allow dogs to run free, etc. . . if the annexation is recommended to proceed by the LBC to the Legislature without prezoning, that a transitional period of application of

City regulations regarding planning and zoning and permit regulations be required in order to allow the residents time to participate in the City's suggested planned hearings for said purpose. The period of this transition should be from 1 to 3 years after the effect of the annexation as determined appropriate to the LBC."

It is beyond the purpose and powers of the Commission to dictate to the City of Haines and residents of the area proposed for annexation what particular land use regulations will be imposed upon annexation, let alone for the next ten years. The Commission noted, that the multiple use districts provided by the City of Haines Code §18.70.100 as detailed previously provides for much of what HBCAA asks regarding this issue.

HBCAA also requested that the Commission require differential tax zones to be "implemented for a minimum of ten years and to freeze taxation values on properties to avoid revenue creep without millage increases." HBCAA also expresses the view that, "The areas that should be considered for even further tax reductions, than the 80% proposed by the City, should include the large uninhabited areas of Small Tract, Piedad and from One to Four mile along the Haines Highway." (sic)

Here again, it is beyond the role and authority of the Commission to dictate to the City of Haines that it must impose differential property taxes in the area proposed for annexation. The City is authorized by state law to levy lower taxes in an area of the city *only* if it provides a commensurate lower level of services to that area. Further, neither the Commission, the City of Haines, nor any other party has the authority to "freeze" assessed values of taxable property in the area proposed for annexation. AS 29.45.110 provides that property shall be assessed, "at its full and true value as of January 1 of the assessment year . . ."

The Commission finds that the City has provided a practical plan demonstrating the manner in which all relevant and appropriate

powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed.

Regarding a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area or other entity located in the territory proposed for annexation.

The proposed annexation involves negligible, if any, transfer of liabilities or assets of the Borough to the City. As such, there is no substantial issue in this context. Thus the Commission finds that the requirement of 19 AAC 10.900(c) is satisfied.

In summary, the Commission concludes that, the City's petition, existing municipal code, and State statutes provide transition measures sufficient to satisfy the requirements of 19 AAC 10.900.

N. Rejection of Similar Annexation Proposal by 1984 Legislature.

Opponents of the proposed boundary change have contended that the current petition inappropriately seeks to revive a similar annexation proposal that was rejected by the legislature in 1984.

In rejecting the similar annexation in 1984 and by enacting standards governing exercise of the Commission's power to approve or disapprove proposed annexations, the Alaska legislature has never required the Commission to defer to previous legislative action on a similar annexation. Instead, by state law the Commission must apply the same legal standards to the pending annexation as it would to all others considered by the Commission.

There are some significant distinguishing differences between events and conditions relating to the 1984 annexation proposal and the current annexation petition. For instance, a February 6, 1984 letter from the legislator who sponsored the resolution rejecting the

1984 annexation expressed concern that the 1984 annexation came largely at the request of the Local Boundary Commission. In the context of the current petition, the impetus for the annexation petition came *exclusively* from the City of Haines. Another major distinction is that in 1984 the Commission approved that annexation with the proviso that it would not take effect if within two years the City of Haines and the Haines Borough unified. That condition was also of significant concern to the sponsor of the legislative resolution to reject the 1984 annexation proposal.

In the current proceedings, the Commission is simply acting on a petition presented to it by the City of Haines. No aspect of the annexation proposal is tied to unification. Thus, the policy issues which concerned the 1984 Legislature do not exist in the context of the current proposal.

Additionally, current conditions in the area proposed for annexation are significantly different than those which existed in 1984. For instance, there has been a proliferation of new Haines Borough service areas. The Commission finds that such proliferation of service areas raises serious legal questions as prominently mentioned in the record of the current proceedings. Additionally, since 1984, major changes have occurred in the types of growth and the consequent demand for municipal services exhibited by the area proposed for annexation. The Commission finds that such changes suggest that the need for annexation of the area has grown significantly since 1984.

Further, state revenues have declined significantly since 1984 and state funding of local services has declined even further. Therefore, the Commission finds that enhanced financial efficiency in the context of municipal service delivery which would be realized as a consequence of the City of Haines' annexation proposal is to be encouraged.

The Commission concludes that legislative rejection of the 1984 annexation petition does not establish a binding precedent for the current proceeding.

O. Constitutional Principles of Maximum Local Self-Government with a Minimum of Local Government Units.

The Alaska Constitution requires maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local governments. [Article X, § 1]

The Commission finds that the proposed annexation would result in minimizing the number of local governmental entities since it would eliminate certain service areas. The Commission also finds that annexation would maximize local self-government since the City of Haines is a general government with comprehensive powers.

Therefore, the Commission concludes that the annexation petition is consistent with the principles set out in Article X, § 1 of Alaska's constitution.

P. Constitutional Principles Regarding Service Areas.

The Alaska Constitution provides for establishment of borough service areas to deliver special services. Borough service areas may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if the new service can be provided by an existing service area, by incorporation as a city or by annexation to a city. [Article X, § 5]

The issue now before the Commission does not directly relate to establishment of any new service area. The formation, however, of seven new service areas within the area proposed for annexation after 1984 together with the expected population growth and

commercial and residential development in the area support the finding that even more service areas are likely to be created in that area in future years if the annexation is not approved. The Commission finds that the effect of the proposed annexation would be to bring the status quo into harmony with Article X, § 5. Further, the Commission finds that annexation would eliminate the need for formation of any additional service area in the area proposed for annexation that might violate Article X, § 5 of the Alaska constitution.

Section IV — Dissenting Views of Commissioner Wasserman

As noted previously, Commissioner Wasserman concluded that the City of Haines' annexation proposal did not meet certain of the standards governing annexation. In particular, she expressed uncertainty whether the City of Haines was capable of providing essential city service more efficiently and more effectively to the 6.5 square mile area proposed for annexation than the Haines Borough. In that context, she raised particular reservations regarding the City's ability to provide police service and road maintenance to the area.

Commissioner Wasserman also indicated that she was unconvinced that the area within the proposed new boundaries of the City of Haines has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Further, Commissioner Wasserman concluded that annexation was not in the balanced best interests of the State of Alaska, the territory proposed for annexation, and the affected political subdivisions. In that context she recognized that annexation was in the best interests of the State of Alaska. She also recognized that there is a need for city government to some extent in the territory proposed for annexation. However, the intense opposition to annexation on the part of

residents of the territory proposed for annexation was a formidable concern to Commissioner Wasserman. She expressed reservations that annexation would be so divisive that it would drive a wedge between the residents of the territory proposed for annexation and residents of the existing City of Haines.

Lastly, Commissioner Wasserman expressed disappointment over the City of Haines' transition plan. In that context she indicated that greater details should have been provided concerning plans for the proposed differential tax zones. Additionally, she expressed the view that the City should have provided details concerning its municipal code allowing for multiple use zoning in newly annexed areas.

Section V — Recommendation

The Local Boundary Commission hereby recommends to the First Session of the Twenty-First Alaska Legislature the annexation to the City of Haines of the territory described in the City of Haines' March 1997 petition. This recommendation is offered in accordance with the provisions of Article X, §12 of the Constitution of the State of Alaska.

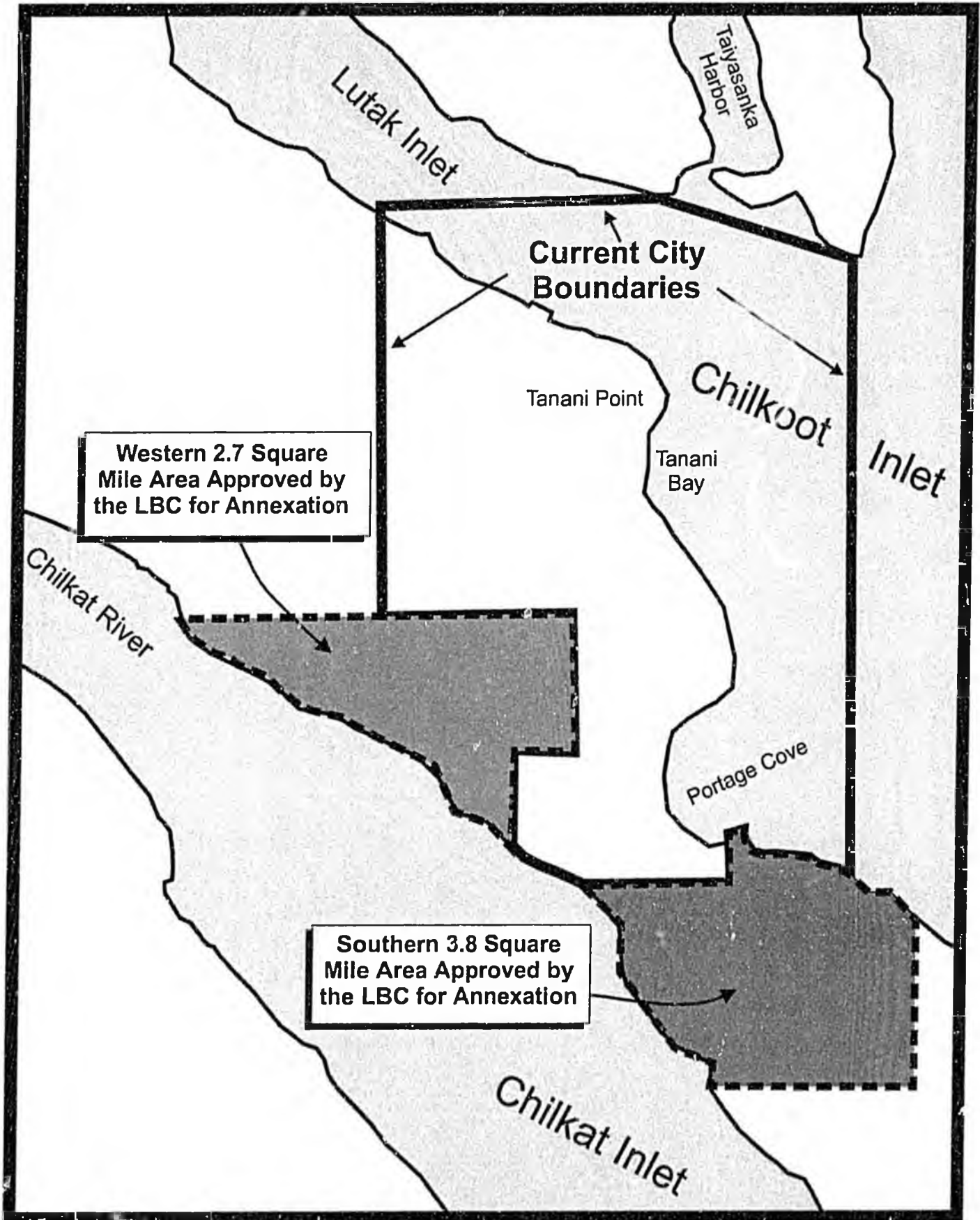
The area recommended for annexation encompasses an estimated 6.5 square miles. Tacit approval of this recommendation by the legislature will result in jurisdictional boundaries for the City of Haines described as follows and shown on the map that accompanies the description.

LEGAL DESCRIPTION OF RECOMMENDED CORPORATE BOUNDARIES OF THE CITY OF HAINES

Beginning at the point of intersection of the West line of Section 9, T.30S., R.59E., Copper River Meridian (C.R.M.) and the line of mean high tide of Lutak Inlet; thence North-easterly, across Lutak Inlet to USGS Station "SANKA"; thence Southeasterly to USGS

Station "TAIYA PT."; thence Southeasterly to "Indian Rock Light", navigation aid; thence Southerly, across Chilkoot Inlet to the point of intersection of the South line of Section 36, T.30S., R.59E., C.R.M., and the line of mean high tide of Chilkoot Inlet; thence southeasterly along the line of mean high tide of Chilkoot Inlet to the point of intersection with the East line of Section 1, T.31S., R.59E., C.R.M.; thence South along the East line of Sections 1 and 12, T.31S., R.59E., C.R.M. to the East ¼ corner of said Section 12; thence West along the East - West ¼ corner line of Section 12 and 11, to a point of intersection with the line of mean high tide at the Easterly bank of Chilkat Inlet; thence Northwesterly, meandering along the said line of mean high tide of Chilkat Inlet into the confluence along the East bank of the Chilkat River thence continuing along the ordinary high water mark of the East bank of said River to a point of intersection with the South line of Section 19, T.30S., R.59E., C.R.M.; thence East along the South line of Sections 19 and 20, T.30S., R.59E., C.R.M. to the Southeast corner of said Section 20, T.30S., R.59E., C.R.M.; thence North along the West line of Sections 21, 16, and 9, T.30S., R.59E., C.R.M. to said line's intersection with the line of mean high tide of Lutak Inlet; the point of beginning; containing 20.9 square miles, more or less, within the Haines and Skagway Recording Districts, First Judicial District, State of Alaska.

Section line locations based upon U.S.G.S. 1:63360 Skagway (A2 & B2), Alaska, dated 1954 with minor revisions in 1963.





Chapter 4

Policy Issues & Concerns



Current policy issues that the Commission wishes to bring to the attention of the legislature relate to:

- the need to amend statutory provisions governing decisions of the Commission;
- disincentives for borough incorporation and annexation;
- promotion of maximum common interests within boroughs;
- interest in single-community boroughs;
- the need for a more comprehensive approach to city annexations;
- review of Commission's regulations;
- laws governing the small community housing mortgage loans programs.

Proposed Amendments to Statutory Provisions Governing Decisions of the Commission

Proposed Amendments to State Law

Current statutory provisions concerning actions by the Commission relating to reclassification, incorporation, annexation, detachment, merger, consolidation, and dissolution are inconsistent and ambiguous. In almost every case, the statutes provide that the Commission *shall* deny a petition if it does not meet the applicable standards and that the Commission *may* accept a petition *if it does meet the applicable standards*. Such provisions could be construed to compel the Commission to deny a petition *even though the petition could be made to satisfy the applicable standards and constitutional principles through amendments or conditions*.

The Commission's concern is more than hypothetical. Experience has shown that

advocates and opponents of matters that come before the Local Boundary Commission sometimes urge a particular interpretation of the law which may not have been intended. In one recent case, litigants asserted that the Commission lacked the authority to alter the boundaries of a proposed borough unless the Commission initially determined that the borough, as proposed, would fail to meet applicable standards for incorporation. Alaska's Supreme Court agreed that the law, since amended, provided for such, but determined that the Commission had implicitly acted in compliance with the law.¹⁵

The Commission has drafted language which it believes would eliminate the inconsistencies and ambiguities. The legislature is encouraged to consider the following proposed amendments to existing law to address the concerns of the Commission.

¹⁵ Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Com'n, 900 P.2d 721, (Alaska 1995)

Reclassification of Cities

Sec. 29.04.040(a) is amended to read as follows:

(a) A second class city may be reclassified as a first class city. A first class or home rule city may be reclassified as a second class city. Reclassification is proposed by filing a petition with the department. The department shall investigate the proposal and report its findings to the Local Boundary Commission with its recommendations. The commission shall hold at least one public hearing in the city on the proposal. **To reclassify, a city must satisfy [IF THE COMMISSION DETERMINES THAT THE CITY MEETS] the standards for incorporation under AS 29.05.011 for the class of city proposed in the reclassification petition and [THAT] reclassification must be [IS] in the best interests of the state. The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.** |, IT MAY ACCEPT OR AMEND AND ACCEPT THE PETITION. IF THE COMMISSION DETERMINES THAT THE CITY DOES NOT MEET THE STANDARDS OR THAT RECLASSIFICATION IS NOT IN THE BEST INTERESTS OF THE STATE, IT SHALL REJECT THE PETITION.| The commission shall notify the city of its decision. The decision may be appealed under AS 44.62 (Administrative Procedure Act).

Incorporation of Cities and Boroughs

Sec. 29.05.100(a) is repealed and reenacted to read:¹⁶

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Annexation to and Detachment from Cities and Boroughs

Sec. 29.06.040(a) is amended to read as follows:

(a) The Local Boundary Commission may consider any proposed municipal boundary change. **The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.** |IT MAY REJECT THE PROPOSED CHANGE, ACCEPT THE PROPOSED CHANGE, OR AMEND AND ACCEPT THE PROPOSAL.| A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

¹⁶ AS 29.05.100(a) currently reads: "If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it may accept the petition or amend and accept the petition."

Merger and Consolidation of Cities and Boroughs

Sec. 29.06.130(a) is repealed and reenacted to read:¹⁷

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. Before the commission accepts or rejects a petition, it may amend the petition and impose conditions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Dissolution of Cities and Boroughs

Sec. 29.06.500(a) is repealed and reenacted to read:¹⁸

(a) The commission may accept or shall reject the petition based on applicable standards and constitutional principles. The commission may accept the petition only if it determines that dissolution of the municipality is in the best interests of the state. Before the commission accepts or rejects a petition, it may amend the petition and impose condi-

tions if that action furthers the extent to which the applicable standards and constitutional principles are served.

Issues Relating to Disincentives for Borough Incorporation and Annexation

As it has done for the past many years, the Local Boundary Commission continues to urge the legislature to examine and address existing disincentives for borough formation and expansion. Perhaps no statistic is more telling of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.¹⁹ In contrast, 82.6% of Alaskans live in organized boroughs that were formed under a mandate from the legislature. The remaining 13.4% of Alaskans live in the unorganized borough.

Article X, Section 3 of Alaska's constitution provides that the legislature shall prescribe procedures and standards for borough formation. Authors of the local government article of Alaska's constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local

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- 17 AS 29.06.130(a) currently reads, "If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the merger or consolidation petition. If the commission determines that the proposed municipality meets these standards, it may accept the petition or amend and accept the petition."
- 18 AS 29.06.500(a) currently reads, "If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the petition meets the standards under AS 29.06.470 (a)(1), (2), or (3) and that dissolution of the municipality is in the best interest of the state, it shall accept the petition. The commission may amend the proposal and accept the petition."
- 19 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes which make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough. The population of those eight boroughs is 24,723, or 3.98% of the 621,400 Alaskans.

government.²⁰ As noted below, while the founders preferred voluntary borough incorporation, they recognized the prospect that the State may mandate the establishment of boroughs where necessary:²¹

The authority to organize a borough was also vested in the state, and there was initial discussion of whether boroughs should be established on a voluntary or compulsory basis.²² It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state action was that the borough:

*... is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.*²³

*It was anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum.*²⁴



Constitutional Convention's Local Government Committee, January 1956

Photo provided by Anchorage Museum of History & Art, Steve McCutcheon, Photographer

While compulsory establishment of organized boroughs was authorized, it was also expected that the state would offer adequate inducement to local people to accept organized borough status or even to initiate incorporation:

... we [the Local Government Committee] thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them [boroughs] to organize . . . [To] the extent that the benefits that the legislature sets up will offset the added cost to the people . . . it was our thought that there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated

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

21 Ibid., pages 61 - 62

22 Alaska Constitutional Convention, Minutes of the Committee on Local Government, 1955-1956, 8th Meeting

23 Alaska Constitutional Convention Proceedings. (Juneau: Alaska Legislative Council, March 1965) pages 2673-2674

24 Ibid., pages 2674-2676

boroughs. . . The thought was that inducements to organize would be offered on the basis of the granting of home rule powers plus certain other inducements that would make it advantageous to them to be boroughs, as we now have the same program of inducement to organized communities.²⁵

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the [inducement] method . . . would be the most desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government. If we do it the other way and force it upon the people, I think you're going to have it taken with resentment and probably a lack of good local government. Now, as far as wanting home rule, I think that you will find that this is a common interest. I think people, most citizens, most cities, villages, be they ever so small, really want home rule. They like to feel that they are governing themselves, and by making

it possible to share responsibility, to share in the work of local government, even though they be not organized, then as they see the financial picture where they will be able to do it, I think they will take the step.²⁶

In 1961, the legislature adopted the initial laws implementing the borough concept. It was recognized from the very beginning that the legislature had not provided adequate inducement for people to form boroughs. Jay Hammond, who was a member of the State House of Representatives at the time of the adoption of the Borough Act of 1961 stated subsequently:²⁷

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis? Understandably, during the early years of statehood there were no organized boroughs in Alaska.

Thomas Morehouse and Victor Fischer wrote of the Borough Act of 1961:²⁸

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

25 *Ibid.*, Page 2650

26 *Ibid.*, page 2651

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

28 *Borough Government In Alaska*, page 73

In 1963, former State Attorney General John Rader, who was a member of the State House of Representatives at the time, considered the issue of borough government to be the "greatest unresolved political problem of the State."²⁹

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

To address that pressing issue, Representative Rader introduced a bill that mandated incorporation of boroughs in Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks. In promoting his bill, Representative Rader stressed:³⁰

We must make local government and, in this instance, boroughs, financially desirable and generally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to

cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that [sic] they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.

While the 1963 Mandatory Borough Act did not provide major incentives to form boroughs voluntarily, it at least promised that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of the Act provided:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. . . . Session Laws of Alaska, 1963, Chapter 52.³¹

However, since organized boroughs are mandated to carry out the State's constitutional duty for public education within their bound-

²⁹ Metropolitan Experiment in Alaska, page 93 (1968).

³⁰ Ronald Cease, Areawide Local Government in the State of Alaska, page 47 (1964)

³¹ Ironically, while the Mandatory Borough Act promised that boroughs would not be deprived of State revenues or penalized because of incorporation, the fact that many areas were allowed to remain unorganized precluded the fulfillment of that promise from the very beginning. More than thirty-five years after the Mandatory Borough Act was passed, organized boroughs received \$121,360,429 less in State education foundation aid for Fiscal Year 1998 alone as compared to the level of State aid had those areas remained unorganized.

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

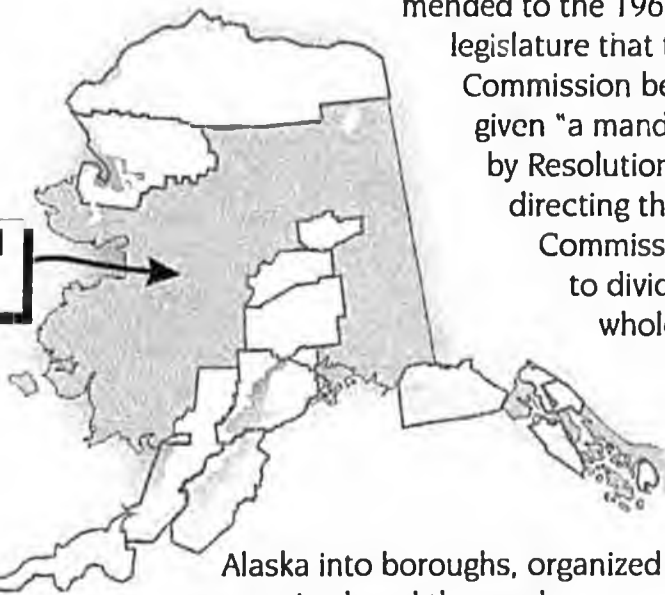
Education funding is just one example of many disincentives that have incrementally crept into law over the years. Other specific issues include the following.

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

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

- ➔ Borough formation or annexation would mean a fifty percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ➔ The extension of borough government requires areawide planning, platting, and land use regulation, an act that is commonly perceived as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ➔ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Unorganized Borough



portation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. . . .

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given "a mandate by Resolution, directing the Commission to divide the whole of

Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature."³³ However, that recommendation was rejected. Instead, in 1961, the legislature implemented Article X, Section 3 by "dividing" Alaska into a single unorganized borough. For the past thirty-eight years, state law has stipulated that the unorganized borough comprises that portion of the state not within organized boroughs.

By raising the foregoing issues, the Commission is not advocating any specific solution. However, given the certainty of further reductions in State revenues, and the persistent interest in mandatory organization of the remainder of the State, serious attention to these issues is warranted.

Promotion of Maximum Common Interests Within Boroughs

Article X, Section 3 of Alaska's constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, trans-

From its inception, the unorganized borough has embraced an area and population with *highly diverse* interests rather than *maximum common interests* as the constitution requires. The contemporary contrasting interests within the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles – 57% of total area of Alaska. It ranges in a *non-contiguous* fashion from the southernmost tip of Alaska to an area approximately 150 miles above the Arctic

33 Local Boundary Commission, First Report to the Second Session of the First Alaska State Legislature, III - 4 (February 2, 1960)

Circle. The unorganized borough also extends in a *non-contiguous* manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough:

- ➔ encompasses portions of each of Alaska's four judicial districts;
- ➔ wholly encompasses eleven census districts;
- ➔ encompasses all or portions of nine state house election districts;
- ➔ wholly encompasses nineteen regional education attendance areas;
- ➔ encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- ➔ wholly encompasses nineteen model borough areas for unorganized regions; and
- ➔ partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely *diverse* rather than common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model borough boundaries, each of which is

to some extent comprised of an area with common social, cultural, and other characteristics.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs — each embracing an area and population with common interests to the maximum degree possible.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992.³⁴ However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model boundaries must also remain flexible. It has been ten years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educational attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak

34 Increasing conflicts over existing and prospective borough boundaries compelled the LBC to undertake the model borough boundaries study beginning in 1989. After holding hearings in person or by teleconference in eighty-eight communities, the study was completed in 1992. Essentially, the Commission undertook an effort similar to that which was envisioned by the first Local Boundary Commission thirty years earlier. However, when the model borough boundaries project was initiated in 1989, much of the flexibility that existed thirty years earlier had been lost.

The Local Boundary Commission went through a great deal of effort to develop the model borough boundaries. The Commission has adopted regulations at 19 AAC 10.060 and 19 AAC 10.190 which require *consideration of* model borough boundaries during borough incorporation and annexation proceedings.

closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if the Commission were defining model borough boundaries for the Aleutian region, it would encompass all of the territory west of the Aleutians East Borough. The Commission is currently contemplating modifying its regulations to facilitate modification of the model borough boundaries.

Interest in Single-Community Boroughs

Interest in forming single-community borough governments is increasing. It appears that two circumstances may be the principal basis for such interest. The first is the lack of incentives to form more expansive boroughs (see prior discussion on this topic in this chapter). The second is concern by local officials of being included in larger, legislatively mandated boroughs. Local officials from the following cities have recently expressed interest in forming single-community or relatively small boroughs:

- Wrangell,
- Skagway,
- Nome,
- Petersburg,
- Hoonah,
- Unalaska, and
- Valdez.

Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Nenana, Tanana, Cordova, and Pelican.

Public sentiments concerning this issue are strong. Consider, for example, the position taken by officials in Kupreanof regarding a prospective Petersburg Borough. The City of Kupreanof has a population of 24 residents. The corporate boundaries of the City of Kupreanof are contiguous to the corporate boundaries of the City of Petersburg. Students who live in Kupreanof attend public schools within the City of Petersburg. Notwithstanding such close links between the two communities, consideration of boundaries for a prospective Petersburg Borough elicited the following response in the form of Resolution 98-7 adopted by the Kupreanof City Council on September 13, 1998.

Whereas, The City of Kupreanof was established to maintain autonomy over local planning, taxation, and municipal development decisions, and

Whereas, The City of Petersburg intends to include the City of Kupreanof within the Borough of Petersburg boundaries, and;



Whereas, The determination of borough planning authority, taxation, and administration of boroughs schools will reside outside the City of Kupreanof by virtue of the large voting population of Petersburg;

Therefore, be it resolved, The City of Kupreanof wishes to remain an autonomous municipal authority exclusive of the Borough of Petersburg.

The Commission recognizes that boroughs were intended to be an intermediate form of government – smaller than the state, but larger than a city.³⁵ The Commission is concerned that single community boroughs will lead to the “Balkanization” of Alaska. The prospect of single-community boroughs also raises serious questions whether such would undermine the ability of surrounding communities to ever take on the responsibility of borough government in an effective and efficient manner.

LBC Encourages Comprehensive Approach to City Annexations

The LBC has encouraged certain city governments to take a more comprehensive approach to annexation. In July of last year, the LBC asked the City of Palmer to pursue future annexation proposals in a broader fashion. Since 1970, there have been forty-two separate annexations to the City of Palmer. In September, the Commission expressed similar concerns to the City of Wasilla (since 1976 there have been eleven annexations to the City of Wasilla). In October, the same concern was raised both by the LBC and the Mayor of the Fairbanks North Star Borough concerning the City of Fairbanks. The City of Fairbanks has undertaken more than twenty annexations since 1970.

The Commission’s concern recognizes that while voluntary, piecemeal annexations may be locally favored politically, they do not necessarily serve optimum public policy. In particular, efficiency and effectiveness in the delivery of city services such as planning, utilities, road maintenance, and public safety are likely to diminish as a consequence of unnaturally constrained corporate boundaries. Further, the Commission noted that multiple annexations are an inefficient use of limited resources of the general public, DCRA, LBC, borough governments, and numerous other agencies, such as the Division of Elections and the U.S. Justice Department, which are also burdened by excessive numbers of city annexations.

Review of Commission’s Regulations

In December of 1997, the Local Boundary Commission initiated a comprehensive review its administrative regulations, 19 AAC 10.010 - 19 AAC 10.990. The purpose of the review is to eliminate unduly burdensome provisions, resolve ambiguities, and make other improvements.

For example, current regulations oblige the Commission to follow the lengthy process outlined in 19 AAC 10.400 - 19 AAC 10.660 for a properly submitted petition, even if the petition is apt to be rejected as a matter of law, regardless of the facts of the case. Some municipal representatives have suggested that this obligation may needlessly impose a heavy burden on petitioners, respondents, the Commission, and the general public.

During 1998, the Commission solicited comments on possible regulatory revisions from individuals and organizations with par-

35 See Borough Government in Alaska, by Thomas A. Morehouse and Victor Fischer, pages 37 – 41 (1971)

tical interest or expertise in municipal government in Alaska and in the Commission's duties. The Commission hopes to substantially complete its review of the regulations in 1999.

Laws Governing the Small Community Housing Mortgage Loans Programs

The Local Boundary Commission is increasingly aware that provisions in the law concerning the Small Communities Housing Assistance program (AS 18.56.400 – 18.56.600) are potentially affecting the outcome of important municipal boundary determinations. During 1998, concerns were raised in three important instances that pending or prospective municipal boundary proposals would adversely affect the eligibility of individuals to participate in the housing assistance program. These three instances were:

- a prospective proposal for annexation to the City of Kodiak;
- a prospective proposal for consolidation of the Ketchikan Gateway Borough and the City of Ketchikan;
- a formal proposal for consolidation of the City of Haines and the Haines Borough.

In the case of the latter, opponents of consolidation of the City of Haines and the Haines Borough published an advertisement stating, in part:³⁶

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

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

If only two of the 545 people who voted against consolidation were influenced to vote in that fashion by the circumstance described above, then that was enough to cause the defeat of the Haines consolidation proposal.

³⁶ Paid commentary by Dan Turner. Mr. Turner is the Haines Borough Assessor and Land Manager. However, Mr. Turner's advertisement emphasized that he did "not speak for the Mayor or the Assembly or as the Borough Assessor/Land Manager."

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Local
Boundary
Commission

2/24/00

**Remarks to the Joint House-Senate Community & Regional Affairs
Committee of the Second Session of the 21st Alaska Legislature
Kevin Waring, Chairman, Local Boundary Commission
February 24, 2000 – 8:00 a.m.
Capitol Room 124**

Introduction

Good morning. I am Kevin Waring, Chairman of the Local Boundary Commission. I appreciate the opportunity to address you in person at your joint meeting today. Other Commission members participating by teleconference are:

- Kathleen Wasserman, Vice-Chairman, of Pelican, appointed from the First Judicial District; and
- Nancy Galstad, of Kotzebue, from the Second Judicial District.

Two members of the Commission were unable to participate by teleconference today. They are:

- Allan Tesche, of Anchorage, from the Third Judicial District; and
- Ardith Lynch, of Fairbanks, from the Fourth Judicial District.

Annual Report Filed

The Local Boundary Commission filed its annual report with the Legislature on January 19th of this year. A copy was provided to each member of the House and Senate. The Commission's report addresses four principal topics.

- Chapter 1 provides an overview of the Commission;
- Chapter 2 summarizes the Commission's activities last year along with pending proposals;
- Chapter 3 presents the Commission's recommendations to the Legislature for annexation of territory to the City of Ketchikan and the City of Aleknagik; and
- Chapter 4 discusses important public policy issues concerning local government in Alaska.

I will speak briefly about the first three topics, in order to allow time to address three important public policy issues.

Overview

Alaska's Constitution established the Local Boundary Commission to ensure that proposals to create and boroughs or alter their boundaries would be dealt with objectively and from a statewide perspective.

The Commission's responsibilities include judging proposals for:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;

- reclassification of cities;
- dissolution of cities and boroughs; and
- merger and consolidation of cities and boroughs.

The Commission has other powers and duties established in law, including a duty to make studies of local government boundary problems.

The Commission consists of five members who are appointed by and serve at the pleasure of the Governor. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed at-large and serves as chair. Members are appointed for overlapping five-year terms. Commission members donate their time as a public service. They receive no compensation for the time they contribute to Commission activities. The Department of Community and Economic Development provides staff support to the Commission.

1999 and Prospective Activities of the Commission

The Commission met eleven times in 1999. Eight of those meetings were by teleconference. Collectively, the five members of the Commission spent all or part of 85 days conducting the business of the Commission. In all, Commission members volunteered many hundreds of hours reviewing and analyzing documents filed in proceedings and on other Commission business.

Specifically, during 1999 the Commission addressed proposals for:

- annexation of 5,524 square miles to the Ketchikan Gateway Borough;
- annexation of 19.5 square miles to the City of Kodiak;
- annexation of 24.29 square miles to the City of Aleknagik; and
- annexation of 1.2 square miles to the City of Ketchikan.

Several proposals are now pending before the Commission or are expected to be filed shortly. These include petitions for:

- incorporation of the City of Adak as a second-class city;
- incorporation of Talkeetna as a home rule city;
- annexations to the cities of Palmer, Wrangell, Ketchikan, and Homer;
- consolidation of the City of Ketchikan and the Ketchikan Gateway Borough;
- consolidation of the City of Fairbanks and the Fairbanks North Star Borough; and
- dissolution of the City of Skagway and concurrent incorporation of a Skagway Borough.

Recommendations

Article 10, Section 12 of Alaska's constitution requires the Local Boundary Commission to present proposed local government boundary changes to the legislature during the first ten days of a regular session. The constitution further provides that 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.

This year, the LBC has approved and recommends two boundary changes for legislative review. The background for these recommendations is found on pages 27 through 64 of the Report and in the Commission's addendum of January 19, 2000 to Senate President Pearce and House Speaker Porter.

- On November 29, 1999, the Commission unanimously approved the City of Aleknagik's petition to annex 24.29 square miles.
- On December 4, 1999, the Commission unanimously approved the City of Ketchikan's petition to annex 1.2 square miles. Subsequently, on January 19, 2000, the day it filed its Report to the Legislature, the Commission amended its original decision to defer the effective date of the Ketchikan annexation to January 1, 2001. The Commission took this unusual action at the joint request of the City of Ketchikan, Ketchikan Gateway Borough, and the Shoreline Service Area, the area affected by the annexation, so they could have a window of time to consider city-borough consolidation before annexation was finalized.

The Commission's action in this case warrants an aside. Two years ago, Senator Mackie and Representative Kookesh provided positive leadership to help resolve a controversial annexation in Haines. This year, Representative Bill Williams deserves credit for his peace-making efforts on a divisive annexation proposal involving his Ketchikan constituents. Representative Williams, assisted by City and Borough leaders, helped bridge the divisions and bring about a compromise, so Ketchikan residents could pursue a broad solution—city-borough consolidation—to deliver local government services more equitably and more efficiently. Representative Williams helped keep this controversy from escalating to the legislature and perhaps the courts, and saved both local and state governments a great deal of time and money.

The Commission acted on two other annexation petitions this past year.

- On March 31, 1999, the Commission voted unanimously not to approve the Ketchikan Gateway Borough's petition to annex 5,524 square miles; and
- On August 28, 1999, the Commission determined that the City of Kodiak's annexation petition satisfied all the requirements in law and unanimously approved the petition. Local voters, however, rejected the proposed annexation at local election.

No legislative action is called for on these two failed annexation petitions.

I am pleased to report for the third year in a row that there is no outstanding litigation of any Commission decision.

Introduction to policy issues

Next, I would like to turn to three public policy issues that the Commission raised in its Report to the Legislature. In raising these issues, the Commission is fulfilling its duty to address local government boundary problems.

These issues concern:

- Several ambiguities in state law that affect boundary changes;
- AHFC's Small Communities Housing Assistance Program; and
- Disincentives to borough incorporation, and an innovative proposal to create an additional process for borough incorporation.

Need to Eliminate Certain Ambiguities in the Law Involving Boundary Changes.

This year, as last year, the Commission is asking for consideration of proposed legislation to clarify several statutory provisions that may affect boundary changes. Here, I would like to take a moment on behalf of the Commission to thank the Committee Chairs, Senator Kelly, Representative Harris, and then Co-Chair Representative Halcro, along with committee members, for their support last session for Senate Bill 156, which was recommended by the Commission and approved by unanimous vote of both houses and signed into law.

This year, the Commission wishes to direct legislative attention to continuing uncertainty over the authority of municipalities to levy property taxes during the initial calendar year in an area that has been incorporated or annexed after January 1. State law is also ambiguous about the effect of incorporations and boundary changes upon service areas of organized boroughs and the unorganized borough. Lastly, the Commission believes that municipal governments should expressly be given limited extraterritorial power to levy taxes in an area that has been detached from a municipality. This would ensure that the detached area could be held accountable for its prorated share of municipal debts and other costs associated with detachment. These issues are addressed in pages 71-74 of the Commission's Report.

These issues concern the Commission because they may cloud implementation of boundary changes. We have drafted conceptual legislation to resolve the issues, as outlined on pages 73-74 of the Report. We recognize, however, that these issues are of even greater interest to municipal governments. Therefore, we asked several parties with a fundamental interest in these matters to review the proposed legislation, and comment to the Legislature. These parties included the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers. The State Assessor reports that the conceptual legislation has the support of the Alaska Association of Assessing Officers. Kevin Ritchie, Executive Director of the Alaska Municipal League, is available this morning to offer his views on the matter. The Commission invites and welcomes legislative attention to this matter.

AHFC Rural Housing Loan Program

The Local Boundary Commission has become increasingly aware that certain eligibility provisions in the Alaska Housing Finance Corporation's Small Communities Housing Assistance program have influenced the outcome of important municipal boundary determinations. Briefly, incorporation, annexation, or consolidation may result in local loss of eligibility for reduced-interest home loans. This prospect has generated local opposition to some proposed boundary changes. Details of this issue are addressed on pages 74 and 75 of the Commission's report. The Commission encourages the Legislature to explore ways to maintain this worthwhile program, but eliminate the unintended adverse impacts that it has on legitimate municipal boundary proposals. Coincidentally, this is the same AHFC program that prompted the City of Kenai to adopt a resolution in support of legislation to equalize AHFC mortgage loan rates inside and outside cities, because the current program promoted growth outside city boundaries to the city's detriment.

Borough Government Incorporation

Finally, we come to the topic of incentives and disincentives to borough government development, and to an innovative concept advanced by the City of Cordova for legislation to create an additional route to borough incorporation and borough annexation.

Incentives for incorporation have always been an element of the State's local governmental policy. Constitutional delegates preferred a voluntary approach to borough formation, coupled with adequate incentives to encourage residents to form boroughs. They intended that organized boroughs exist in every area of Alaska that met appropriate standards. Further, the founders took the position that if citizens failed to form boroughs where needed, the State should intervene and compel the creation of boroughs in those areas.

Over time and with the best of intentions, we have stood the notion of incentives for borough development on its head. For many years, the Commission has stated its concern about the disincentives that inhibit the ongoing development of local government, especially borough government, in Alaska. Most often, these disincentives are good programs with unwelcome, unintended side-effects. State financial support for local education in the unorganized borough is the prime example of a good program that can work at cross-purposes with the constitutional goal of borough self-government. The Small Communities Housing Assistance program I just spoke of is another typical example.

This year, the Commission would like to restate its concern about the inhibiting effect of disincentives. But we would also like to encourage the Legislature to consider a new concept proposed by the City of Cordova, itself a city in the unorganized borough, to

create a new process for borough incorporation. The proposal outlines a case-by-case proactive approach to borough incorporation that side-steps the current impasse.

The proposed concept has three features:

1. Every year, the Local Boundary Commission shall identify areas of the unorganized borough that meet existing standards for second class borough incorporation or for annexation to a borough or unified municipality.
2. The Commission shall prepare a written decision that explains the basis for any proposed borough incorporation or annexation, and sets out an incorporation plan. The decision shall be distributed to all affected communities and local governmental units for comment. Based on comments received, the Commission may reconsider and modify its original decision.
3. The Commission shall submit any proposed incorporation or annexation for legislative review, a requirement that does not now apply to borough incorporations.

To these three features, the Commission would add a fourth—that the Commission also hold public hearings in the affected areas before it prepares its written decision proposing incorporation or annexation.

The appeal of this straight-forward concept is that it takes a proactive approach to borough incorporation in a way that respects established standards and practice, and provides accountability for Commission decisions. In the view of the Commission, the concept:

- Fulfills the intent of Article X of the Constitution to "*provide for maximum local self-government with a minimum of local governmental units*" and to divide the State "*into boroughs, organized or unorganized . . . [each of which] shall embrace an area and population with common interests to the maximum degree possible*";
- Maintains existing substantive standards, and with incorporation of the Commission's suggested public hearing provision, maintains essential procedural standards for borough incorporation or annexation; and
- Provides for legislative review and oversight for any borough incorporations and annexations proposed by the Commission.

The concept is consistent with the Alaska Municipal League's policy statement on borough government. While expressing the same preference for voluntary borough formation held by the Constitutional convention delegates 45 years ago, Governor Knowles has acknowledged that the lack of incentives has stymied borough incorporation prospects. Consequently, Governor Knowles encouraged the City of Cordova to pursue its proposal for reform of current laws relating to this matter.

In conclusion with respect to this issue, the Commission respectfully urges the Legislature to give thoughtful consideration to any proposed legislation that incorporates the conceptual approach I have outlined.

The Commission has no illusion that effective action to advance borough development in unorganized areas that meet borough incorporations standards will be easy or quick. Commission members have discussed at length the time and effort this proposal would require of them. We would anticipate a time-consuming, painstaking case-by-case process that will prove well worth the effort in the long run.

Conclusion

Thank you. That concludes my prepared remarks. If you have questions on any of these matters, I will do my best to respond.



State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-269-4539

January 19, 2000

The Honorable Brian Porter
Speaker
State House of Representatives
State Capitol
Juneau, Alaska

Dear Speaker Porter:

Enclosed is the report of the Local Boundary Commission to the Second Session of the Twenty-First Alaska State Legislature. The report includes recommendations to the Legislature under Article X, Section 12 of Alaska's Constitution for changes to the corporate boundaries of certain municipal governments, including the City of Ketchikan.

This morning, the Local Boundary Commission met at the request of Representative Bill Williams, City of Ketchikan, Ketchikan Gateway Borough, and Shoreline Service Area to consider amending the effective date of the proposed annexation to the City of Ketchikan presented on pages 42 - 64 of the enclosed report. The amendment was sought to allow local government officials and other citizens in Ketchikan an opportunity to pursue municipal consolidation or alternative improvements to the structure of local government in Ketchikan.

This morning, the Commission unanimously approved the request to amend the effective date of annexation to January 1, 2001 as outlined in the enclosed order of the Commission titled "Amendment Number One to the Commission's Order of December 16, 1999." Given the timing of this development, it is necessary to reflect the action taken by the Commission this morning as an addendum to the Commission's report to the Legislature. That addendum is also enclosed.

The Commission looks forward to favorable consideration by the Legislature of the Commission's recommendations.

Cordially,

A handwritten signature in black ink that reads "Kevin Waring".

Kevin Waring
Chairperson

cc: Members of the State House of Representatives

enclosures:

- January 19, 2000 LBC report to the Legislature
- Amendment to December 16, 1999 LBC order
- Addendum #1 to LBC report to the Legislature



State of Alaska
Local Boundary Commission
**Amendment Number One to the
Commission's Order of December 16, 1999**

IN THE MATTER OF THE 1999
AMENDED PETITION OF THE CITY
OF KETCHIKAN FOR ANNEXATION
OF APPROXIMATELY 1.2 SQUARE
MILES

On December 16, 1999, the Local Boundary Commission entered a written order approving annexation of approximately 1.2 square miles to the City of Ketchikan.

The Local Boundary Commission's decision in the matter became final on December 16, 1999 under terms of 3 AAC 110.570(g). A timely request for reconsideration of the Commission's decision was filed by the Shoreline Service Area on January 4, 2000 under the provisions of 3 AAC 110.580. The Commission met on January 7, 2000 to address the request for reconsideration. During the January 7, 2000 meeting, the Commission denied the request for reconsideration by a vote of four to zero. The opportunity for further reconsideration of the matter under 3 AAC 110.570(g) expired.

Subsequently, the Ketchikan City Council, Ketchikan Gateway Borough Assembly, and Shoreline Service Area Board of Supervisors adopted a joint resolution requesting the Local Boundary Commission to defer the effective date of annexation to January 1, 2001.¹ The three parties indicated in the joint resolution that, "deferral of the effective date will allow time for the community, as a whole, to explore consolidation or the change in governments which might also address issues raised in the annexation process." The joint resolution provided, in part, as follows:

Section 1: The City of Ketchikan, the Ketchikan Gateway Borough and the Shoreline Service Area request that the Local Boundary Commission, pursuant to 3 AAC 110.660, relax or suspend its regulations and amend its December 16, 1999 decision to the Twenty-First State Legislature – Second Session 2000, to recommend deferral of the effective date of annexation to January 1, 2001.

Section 2: The Ketchikan Gateway Borough and the Shoreline Service Area will discontinue all opposition to the City of Ketchikan's petition for annexation of 1.2 square miles to the City and will not oppose or litigate the Local Boundary Commission's decision or Legislature's decision to allow annexation to occur.

Section 3: The City of Ketchikan, the Ketchikan Gateway Borough and the Shoreline Service Area will explore the possibility of consolidation or other more efficient forms of local government and the possibility of a petition to the Department of Community and Economic Development

¹ The joint resolution was adopted by the Shoreline Service Area Board of Supervisors as Resolution Number 00-2 on January 17, 2000; by the Ketchikan Gateway Borough Assembly as Resolution Number 1510A on January 17, 2000, and by the Ketchikan City Council as Resolution Number 00-1968 on January 18, 2000.

seeking authorization for a vote on consolidation or approval of another more efficient form of local government

Section 4: This resolution shall become effective immediately upon passage.

3 AAC 110.660 does indeed allow the Commission to relax or suspend certain procedural regulations. Such are limited to those regulations establishing procedures that are not specifically required by the constitution or statutes. Further, to relax or suspend any such regulation, the Commission must determine that its application would work injustice or bring about an uninformed decision.

The joint resolution of the City of Ketchikan, Ketchikan Gateway Borough, and the Shoreline Service Area asserts that injustice to the two local governments and citizens of Ketchikan would result from a strict adherence to 3 AAC 110.570(g) and 3 AAC 110.580. Specifically, the three parties indicate that "the injustice would result, not in the narrow sense of a wrongful act or a violation of rights, but rather in a much broader context of encumbering the community's ability to further consider the options of other forms of more efficient local government."

3 AAC 110.660 emphasizes that the Commission's procedural regulations are intended "to facilitate the business of the commission" and are to be "construed to secure the reasonable . . . determination of every action and proceeding." Clearly, the business of the Commission includes promoting the creation or alteration of local governments in a manner that serves fundamental constitutional principles and the broad public interest.

In its December 16, 1999 written decision concerning this particular matter, the Commission concluded, in part, as follows:

The Commission recognizes that while the pending annexation proposal remedies certain inequities and inefficiencies with respect to the structure of local government in Ketchikan, many others remain. The City will continue to be the entity responsible for a number of services and facilities that are enjoyed by all residents of the Borough. This circumstance apparently resulted from the fact that long before the Borough was formed the City assumed responsibilities that, in contemporary light, appear to be legitimate areawide Borough functions.

A comprehensive restructuring of local government duties and responsibilities in Ketchikan appears warranted. Without such, the door clearly remains open for additional annexations to the City.

Consolidation seems to offer the tools and flexibility needed to address the fundamental deficiencies relating to the structure of local government in Ketchikan. The Commission notes that considerable interest currently exists with respect to the prospect of consolidation of the City and the Borough. Yet, there has been a lengthy history of frustration in Ketchikan with respect to local efforts to achieve consolidation.

The Commission strongly encourages the City and Borough to actively pursue consolidation as a means to improve the structure of local government in the greater Ketchikan area.

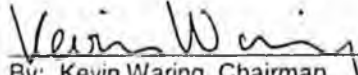
The Commission finds from the foregoing that deferral of annexation until January 1, 2001 would likely facilitate consolidation or other beneficial improvements to the structure of local government in Ketchikan. Since a strict application of 3 AAC 110.570(g) and 3 AAC 110.580 prevents such deferral, the Commission concludes that the application of those two provisions would work injustice on the City of Ketchikan, Ketchikan Gateway Borough, and citizens of the greater Ketchikan community by impeding the community's ability to pursue alternative forms of more efficient local government such as that which could be achieved through consolidation. The

Commission finds further that neither 3 AAC 110.570(g), regarding finality of the Commission's decision, nor 3 AAC 110.580, regarding reconsideration, is strictly provided for in the constitution or statutes.

Based on the foregoing findings and conclusions, the Local Boundary Commission hereby grants the joint request of the City of Ketchikan, Ketchikan Gateway Borough, and Shoreline Service Area to amend the Commission's December 16, 1999 decision to defer the effective date of annexation to January 1, 2001. This action of the Commission takes effect immediately and is not subject to reconsideration.

Approved in writing this 19th day of January 2000.

LOCAL BOUNDARY COMMISSION


By: Kevin Waring, Chairman

Attest:


Dan Bockhorst, Staff

**Addendum Number 1 to the
"Report of the Local Boundary Commission to the
Second Session of the Twenty-first Alaska Legislature"
dated January 19, 2000**

Modify the second paragraph of Section III of "*Recommendation Number Two of the Local Boundary Commission to the Second Session of the Twenty-First Alaska Legislature*" on page 59 of the above-titled report to read as follows:

The Commission has stipulated in its order approving annexation that the effective date of annexation shall be deferred until January 1, 2001. The deferral will allow officials of the City of Ketchikan and Ketchikan Gateway Borough, as well as other citizens of the greater community of Ketchikan an interim period to explore consolidation of the two local governments and other local government options. [AS PROVIDED BY] In accordance with Article X, Section 12 of Alaska's constitution, if the Legislature does not reject this recommendation within 45 days of the date it was submitted or at the end of the session, which occurs first, it will result in boundaries for the City of Ketchikan on January 1, 2001 as described on the following page and as shown on the map that accompanies this description.

(text that is underlined has been inserted and text within brackets has been deleted)

Tony Knowles, Governor



State of Alaska
Local Boundary Commission

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-269-4539

February 8, 2000

FEB 15 2000

The Honorable John Harris
Co-Chairman
House C&RA Committee
Capitol Room 110
Juneau, Alaska 99801-1182
via facsimile @ 465-3799

The Honorable Carl Morgan
Co-Chairman
House C&RA Committee
Capitol Room 409
Juneau, Alaska 99801-1182
via facsimile @ 465-2197

Dear Representatives Harris and Morgan:

This is to request that you schedule an opportunity for the House Community and Regional Affairs Committee to hear from the Local Boundary Commission concerning its January 19, 2000 Report to the Legislature. It is customary that the Commission address the Community and Regional Affairs Committee of each house during the 45-days allowed by Article X, Section 12 of Alaska's Constitution for legislative review of the Commission's municipal boundary recommendations. For the current session, the 45-day review period ends Saturday, March 4.

Such meetings afford the Community and Regional Affairs Committees a chance to ask questions about Commission recommendations that must be considered by the Legislature under Article X, Section 12. Further, it provides the opportunity to exchange ideas concerning important public policy issues raised by the Commission in fulfillment of its duty under AS 44.33.812 to address local government boundary problems.

With respect to the latter, I would particularly encourage the Community and Regional Affairs Committee to consider concerns raised by the Commission on pages 71 – 74 of its report. These relate to ambiguities in the law regarding municipal incorporation, boundary changes, dissolution, and reclassification. If you share the Commission's concerns, I encourage you to introduce legislation to resolve the issues. The Commission has provided conceptual legislation on pages 73 and 74 of its report. As noted in the report, the Commission has contacted the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers, encouraging them to express their positions on the proposed legislative revisions.

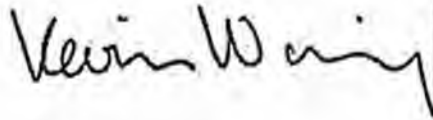
Representative John Harris
Representative Carl Morgan
February 8, 2000
Page Two

Often, the House and Senate Community and Regional Affairs Committees have met jointly to hear from the Commission. If this is not possible this year, I am hopeful that the two Committees will schedule meetings as close to each other as possible.

I will be available to meet personally with each Committee. Unless other Commission members are in Juneau on other business, they will participate by teleconference.

Dan Bockhorst, Local Boundary Commission staff, may be contacted at 269-4559 to arrange for the meeting. I look forward to meeting with the Committee.

Cordially,



Kevin Waring
Local Boundary Commission Chairman

cc: Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission
Nancy Galstad, Local Boundary Commission Member
Allan Tesche, Local Boundary Commission Member
Ardith Lynch, Local Boundary Commission Member
Dan Bockhorst, Local Boundary Commission staff

Tony Knowles, Governor



State of Alaska
Local Boundary Commission

550 West Seventh Avenue, Suite 1790 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-289-4539

February 8, 2000

The Honorable Tim Kelly
Chairman
Senate C&RA Committee
Capitol Room 101
Juneau, Alaska 99801-1182
via facsimile @ 465-3756

Dear Senator Kelly:

This is to request that you schedule an opportunity for the Senate Community and Regional Affairs Committee to hear from the Local Boundary Commission concerning its January 19, 2000 Report to the Legislature. It is customary that the Commission address the Community and Regional Affairs Committee of each house during the 45-days allowed by Article X, Section 12 of Alaska's Constitution for legislative review of the Commission's municipal boundary recommendations. For the current session, the 45-day review period ends Saturday, March 4.

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Members: Kevin Waring, Chairperson; Kathleen Wasserman, Vice-Chairperson, First Judicial District; Nancy Galstad, Second Judicial District; Allan Tesche, Third Judicial District; William Walters, Fourth Judicial District

Senator Tim Kelley
February 8, 2000
Page Two

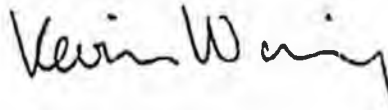
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Cordially,



Kevin Waring
Local Boundary Commission Chairman

cc: Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission
Nancy Galstad, Local Boundary Commission Member
Allan Tesche, Local Boundary Commission Member
Ardith Lynch, Local Boundary Commission Member
Dan Bockhorst, Local Boundary Commission staff

Representative
State Capitol
Juneau AK 99801



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

January 19, 2000

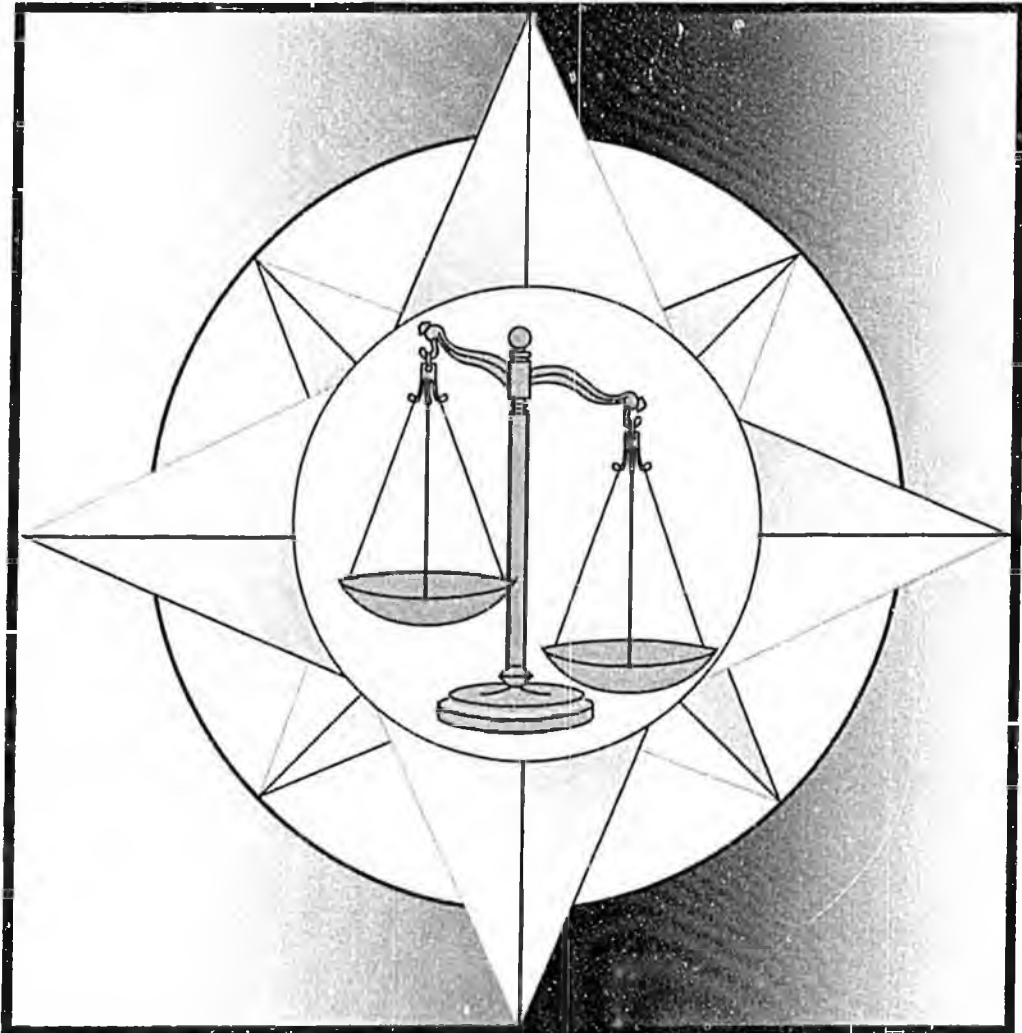
Communities and Regions Addressed in this Report



Kevin Waring, Chairperson
Kathleen Wasserman, 1st Judicial District
Nancy Galstad, 2nd Judicial District
Allan Tesche, 3rd Judicial District
Ardith Lynch, 4th Judicial District



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

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

http://www.dced.state.ak.us/mra/Mrad_lbc.htm

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

Local Boundary Commission

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

Tony Knowles, Governor

Report prepared with assistance from:

Department of Community and Economic Development

Deborah Sedwick, Commissioner
Jeff Bush, Deputy Commissioner
Bernice Joesph, Deputy Commissioner

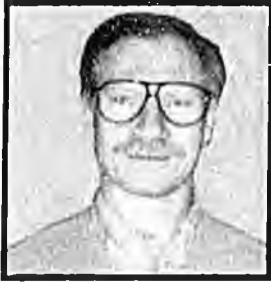
Municipal and Regional Assistance Division

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Message from the Chairperson

January 19, 2000

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

Chapter 1 provides background information concerning the Local Boundary Commission.

Chapter 2 discusses the Commission's activities during 1999. Chapter 2 also lists a number of proposals currently under consideration by municipalities and voters throughout Alaska.

Chapter 3 presents the Commission's formal recommendations for annexation of 24.29 square miles to the City of Aleknagik and 1.2 square miles to the City of Ketchikan. Those recommendations are submitted in accord with Article X, Section 12 of the Constitution of the State of Alaska.

Chapter 4 discusses important public policy issues of particular interest to the Commission. These include the following.

- Concerns regarding substantial disincentives that hinder borough incorporation and annexation and impede the ongoing development of local government in Alaska. In that context, the Commission urges the Legislature to consider the City of Cordova's conceptual proposal to reform State law governing the incorporation of organized boroughs. The City of Cordova's proposal calls for a new process to establish organized boroughs in unorganized areas that are ready and capable of operating an organized borough.
- The need to: (1) eliminate ambiguities in current law regarding the timing of the assessment, levy, and collection of property taxes by a city or organized borough upon incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification; (2) authorize the extraterritorial levy of municipal taxes in areas detached from municipalities; and (3) recognize that service areas of organized boroughs and the unorganized borough can be altered or abolished as a result of incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification.
- A recommendation that the Alaska Housing Finance Corporation rural housing loan programs be revised to maintain homebuyer program eligibility for a period after municipal boundary changes. This revision would eliminate a significant local objection to appropriate municipal boundary changes.

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

Cordially,

A handwritten signature in black ink that reads "Kevin Waring". The signature is written in a cursive style with a long horizontal line extending to the right.

Kevin Waring
Chairperson


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Chapter I

Background and Procedures

- 1 See AS 29.04, AS 29.05, AS 29.06, and AS 44.33.
- 2 Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).
- 3 The Local Boundary Commission was established pursuant to Article X, §12 of the Constitution of the State of Alaska and AS 44.33.810. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct, and Redistricting

This chapter provides information concerning the Local Boundary

Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & Economic Development (DCED). Details of the procedures used by the Commission are also provided.

.....

Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

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

The Local Boundary Commission was established under Alaska's Constitution to serve as an impartial body to review proposals relating to the establishment and alteration of municipal

corporations 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."²

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

Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. More than twenty-five years ago (and again in 1993), the Alaska

Supreme Court remarked that:

"A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy ... The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."⁴

Members of the Commission

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



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed as Chairperson on July 10, 1997. He was reappointed to a new term

as Chairperson effective January 31, 1998. Commissioner Waring was one of the former Department of Community and Regional Affairs' original division directors (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. Commissioner Waring is now manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First



Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman currently serves as Mayor of the City of Pelican. She is also a member of the Board of Directors of the Alaska Municipal League. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as President of the Southeast Island Regional Educational Attendance Area School Board. Commissioner

Board.

- 4 Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232, 234 (Alaska 1993).

Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.

Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and



reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice-Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.

Allan Tesche serves from the



Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10,

1997. A 25-year resident of Anchorage, he was first employed with the legal department of the former Greater Anchorage Area Borough. After unification of local governments in Anchorage, he served as Deputy Municipal

Attorney. Before entering private practice in 1985, Mr. Tesche also served as Director of Property and Facility Management for Anchorage and as Borough Attorney for the Matanuska-Susitna Borough. He is presently a partner in a private firm where he specializes in administrative and municipal law. Mr. Tesche has served in leadership positions on twelve boards and commissions, ranging from the Anchorage Museum Association, the South Addition Community Council, and the Anchorage Police and Fire Retirement Board. He currently serves as a member of the Assembly of the Municipality of Anchorage. Mr. Tesche's term on the Commission expires January 31, 2002.

Ardith Lynch serves from the



Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the

LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.

The Commission also wishes to acknowledge the contributions during 1999 of William Walters. Mr. Walters resigned from the Commission effective December 21, 1999. His resignation was a consequence of his work-related relocation from Fairbanks to Anchorage which made him ineligible to serve as the appointee from the Fourth Judicial District. Commissioner Walters served with great distinction on the LBC since his appointment in September, 1995. A graduate of the University of Texas School of Law, Mr. Walters is the Chief of Adjudications with the Workers' Compensation Division of the Alaska Department of Labor and Workforce Development. Mr. Walters had previously worked for the Tanana Chiefs Conference on the development of tribal courts from 1992 to 1998. His other public service included a term on the Fairbanks North Star Borough Planning Commission.

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

As required by law, staff analyzes formal petitions filed with the Commission and prepares reports conveying DCED's recommendations for action by the Commission.⁷ DCED also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations, and reclassifications. The Commission and DCED are independent of one another with respect to policy matters. For example, the Commission is not bound to follow the recommendations which DCED is required by law to provide to the Commission.

5 AS 39.05.060.
 6 AS 44.33.020(4)
 7 See AS 29.04, AS 20.05, and AS 29.06.

.....
Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Municipal and Regional Assistance Division (MRAD), provides staff to the Commission.⁶

The staff provides technical assistance to municipalities, residents, petitioners, respondents, and others regarding matters under the Commission's jurisdiction. Types of assistance include:

.....
Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely,

and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

Preparation and Filing of the Petition. DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals.

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

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

Analysis. Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. Informational meetings may be conducted by the petitioner and DCED. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission for action on the petition.

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

Commission Review of Materials and Public Hearing. Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED reports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a first-hand picture of the area. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing. The Commission may take any one of the following actions:

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

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents, and others who

request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Commission does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

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



Chapter 2

1999 Developments & Activities

City Incorporation

One petition for city incorporation was filed in 1999. Another pending petition for city incorporation was amended during the year just concluded. Additionally, officials or residents of five other communities expressed interest in city incorporation during the year. Such pending or prospective city incorporation activity occurred in the following communities.

- Adak
- Talkeetna
- Anchor Point
- Caswell
- Igiugig
- Lake Louise
- Two Rivers
- Whale Pass

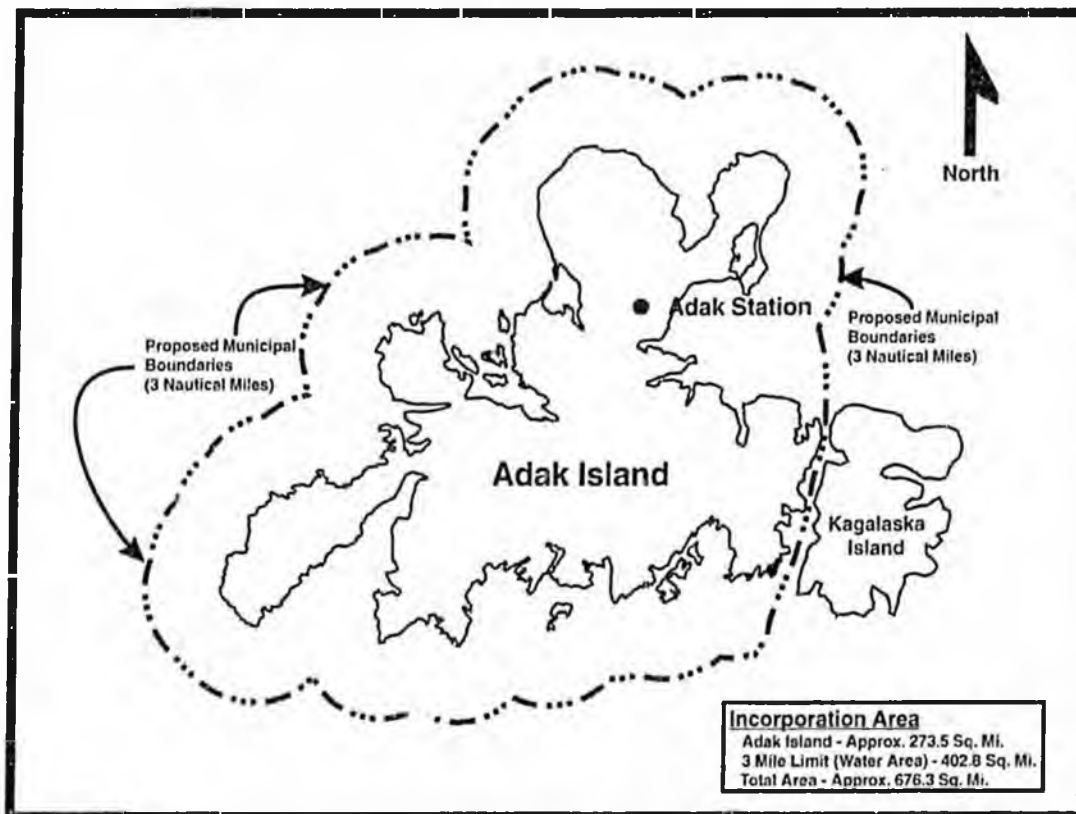


Details concerning these city incorporation activities are provided below.

Adak

LBC staff received a petition for incorporation of a second class City of Adak on April 29, 1999. The petition proposes that the City of Adak will levy a 3% sales tax and a 2% fuel transfer tax. The area proposed for incorporation encompasses 676.3 square miles, including the entire 273.5 square mile Adak Island and adjacent waters extending three miles offshore.

On May 10, 1999, the petition was accepted for filing. Notice of the filing of the petition was published, posted, and distributed to 71 parties by mail and e-mail. The Petitioners' Representative served copies of the petition on neighboring municipalities. The deadline for submission of written comments on the petition was July 20, 1999. Timely comments were received from four parties



Corporate boundaries proposed by the petitioners for the prospective City of Adak.

and a responsive brief was filed by the U.S. Fish and Wildlife Service.

The preliminary staff report and recommendation is under development and will be issued shortly. The Local Boundary Commission will conduct a public hearing in Adak during April of this year.

Talkeetna

On March 25, 1998, residents of Talkeetna petitioned to incorporate a home rule city with boundaries encompassing twenty-three square miles. On December 7, 1998, a 41-page draft report and recommendation concerning the petition was issued to 134 parties by LBC staff.

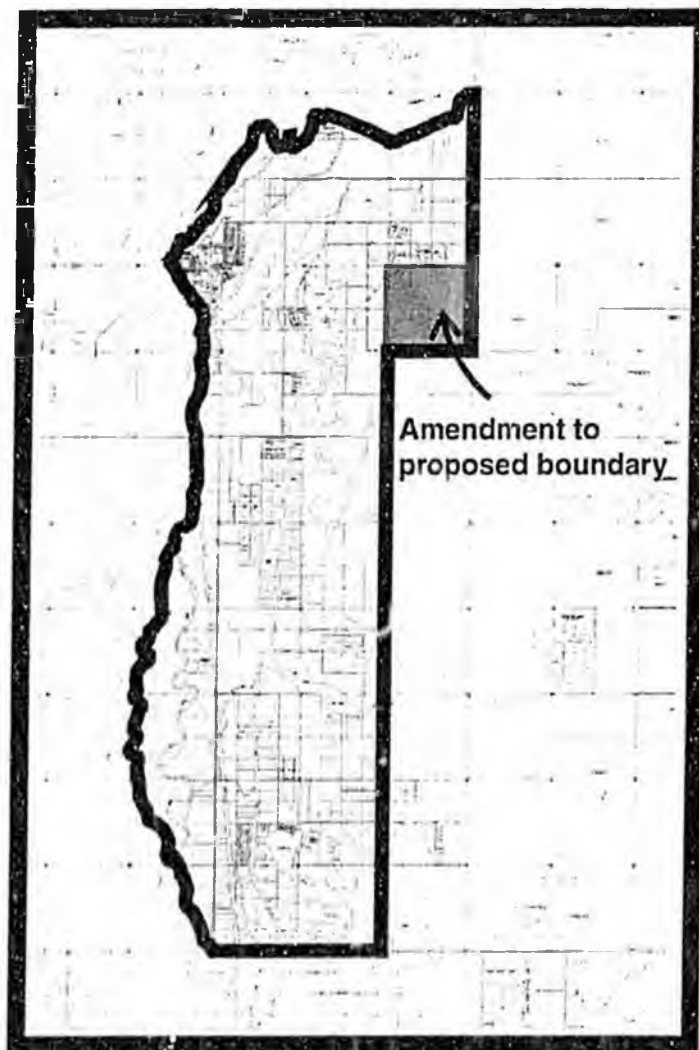
The report recommended that the petition be denied. That recommendation was based upon the following concerns.

- That the petition failed to include all land and water necessary to provide the full development of essential services on an efficient, cost effective level as required by AS 29.05.011(a)(2).
- That the petition did not adequately demonstrate a need for government as required by AS 29.05.011(a)(5). The City of Talkeetna, as proposed by the current petition, would leave certain Matanuska-Susitna Borough service areas intact and fracture others.

- That incorporation would not result in a significant minimization of the number of local government units as promoted by Article X, Section 1 of the Alaska Constitution. When incorporation of a city government in an organized borough occurs without a reasonably commensurate reduction in the number of service areas, the constitutional principle requiring minimum numbers of local government units is not served.
- That unresolved questions existed with respect to municipal service delivery, both in the area proposed for incorporation and in neighboring areas. Concern existed that implementation of the original incorporation proposal could result in a significant diminution of the number of municipal services provided to residents of the area. Nonarea-wide Matanuska-Susitna Borough services provided to the greater Talkeetna area include solid waste disposal, library service, and animal control. Delivery of such nonareawide services would be disrupted or cease altogether unless provisions are made

for transition of such services upon city incorporation. Since such provisions had not been made, the draft report concluded that the requirement of AS 29.05.021(b) was not satisfied by the original incorporation proposal.

The deadline for submission of written comments regarding the draft report was January 7, 1999. Comments were received from the Talkeetna Community Council, ten individuals, and the Matanuska-Susitna Borough.



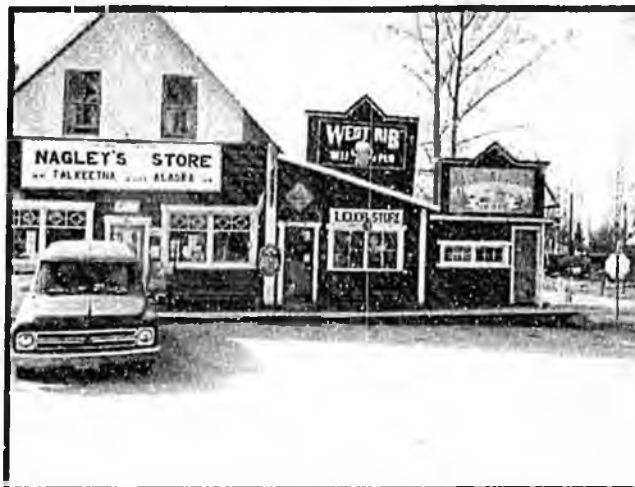
Proposed City of Talkeetna boundaries.

In January, the Petitioners' Representative requested LBC staff to secure additional information about budgets and services of other Alaska cities of similar size to assist Talkeetna residents in determining whether to amend the incorporation petition or withdraw it. Accordingly, a duly noticed public informational meeting was conducted by LBC staff in Talkeetna on March 24, 1999. About thirty persons attended the meeting, which was also broadcast on local radio.

On May 14, 1999, LBC staff received a letter from the Petitioners' Representative indicating that an amended petition would be submitted by June 30, 1999.

On October 6, 1999, LBC staff received the amended petition. Changes to the original petition include:

- offering voters the option of a 4% seasonal sales tax or 2% year-round sales tax;
- deletion of the proposed 15% bed tax on facilities with more than 50 beds;
- provision for a part-time city manager, part-time city clerk/treasurer, full-time public works operator, and seasonal recreation director;
- enlargement of the proposed boundaries to include one



Retail businesses in Talkeetna core area.

section (Section 28) to ensure that known existing and potential access routes to the Freedom Hills Subdivision are included within the proposed boundaries;

- provision for assumption of solid waste services within 18 months after incorporation;
- provision for assumption of library services within 18 months after incorporation.

The amended petition is under technical review by LBC staff.

Anchor Point

On April 30, 1999, MRAD regional office staff participated in a community meeting of Anchor Point residents to discuss city incorporation standards, city incorporation procedures, and incorporation options. About thirty area residents attended the meeting.

Caswell

On August 24, a resident of Caswell, located north of Willow on the Parks Highway, requested and was provided information regarding second class city incorporation. The individual indicated that community residents are exploring the merits of forming a city or, alternatively, a community council recognized by the Matanuska-Susitna Borough. The individual indicated that the community has 250 homes in an area approximately 22 miles by 14 miles in size.

Igiugig

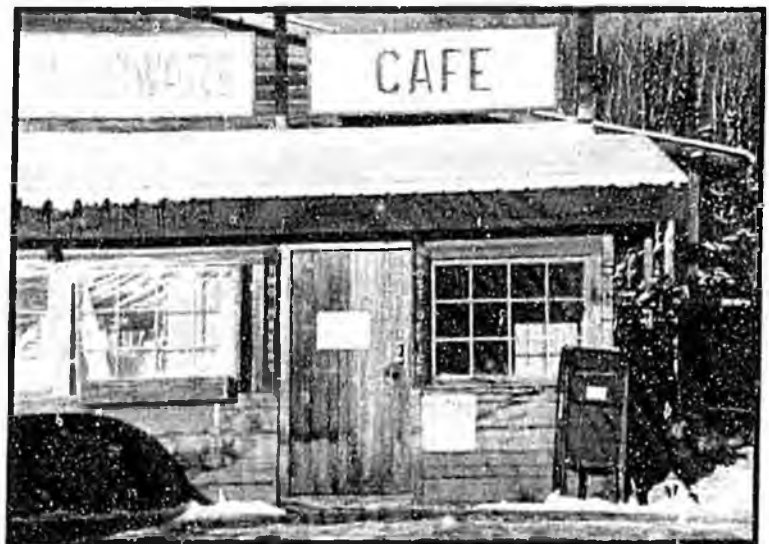
In August, Igiugig village officials requested and were provided with information regarding second class city incorporation. Dillingham regional office staff met with community members in December to discuss city incorporation.

Lake Louise

On June 7, 1999, a resident of Lake Louise contacted LBC staff to discuss petitioning for incorporation of a second class city in concert with an effort to detach the territory from the Matanuska-Susitna Borough. Lake Louise residents unsuccessfully sought such a change in 1996.

Two Rivers

In January 1999, a Two Rivers resident indicated that a petition for city incorporation of that community was being circulated. However, it appears that interest in city incorporation diminished and was supplanted by interest in detachment of Two Rivers from the Fairbanks North Star Borough.



Two Rivers Post Office.

Whale Pass

In March, a Whale Pass resident requested and was provided with information regarding incorporation of a second class city. Estimates of municipal entitlement land that could accrue to a City of Whale Pass were also provided.

City Annexation

Seventeen city annexations were considered, initiated, or implemented during 1999. Such pending or prospective city annexation activity occurred with respect to the following municipalities.

- *City of Aleknagik*
- *City of Ketchikan (2)*
- *City of Kodiak*
- *City of Ekwok*
- *City of Fairbanks (2)*
- *City of Haines*
- *City of Homer*
- *City of Klawock*
- *City of Newhalen*
- *City of Nondalton*
- *City of Palmer*
- *City of Petersburg*
- *City of Sand Point*
- *City of Toksook Bay*
- *Wrangell*



Details concerning 1999 City annexation activities are provided below.

Aleknagik

In March of last year, the City of Aleknagik petitioned for annexation of approximately 24.29 square miles.

The Commission conducted a two-hour public hearing on the annexation proposal on November 20, 1999 in the Aleknagik School. Following the hearing, the Commission recessed the meeting until November 29, 1999. At that

time it unanimously approved the petition. In accordance with the final written decision rendered by the Commission on December 16, 1999, a recommendation for annexation of 24.29 square miles is submitted with this report to the 2000 Legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. The formal recommendation for annexation is included in Chapter 3.

City of Ketchikan

In February of last year, the City of Ketchikan petitioned for annexation of approximately 0.48 square miles. After considering a responsive brief from the Shoreline Service Area and written comments from the Ketchikan Gateway Borough and others in response to the petition, the City amended its petition to encompass 1.2 square miles including the entire Shoreline Service Area. The amended petition was accepted for filing on May 13, 1999.

The Commission conducted a public hearing on the annexation proposal on December 4, 1999 in the Ted Ferry Civic Center in Ketchikan. Following the hearing, the Commission unanimously approved the petition. In accordance with the final written decision rendered by the Commission on December 16, 1999, a recommendation for annexation of 1.2 square miles is submitted to the 2000 Legislature under the terms of Article X,

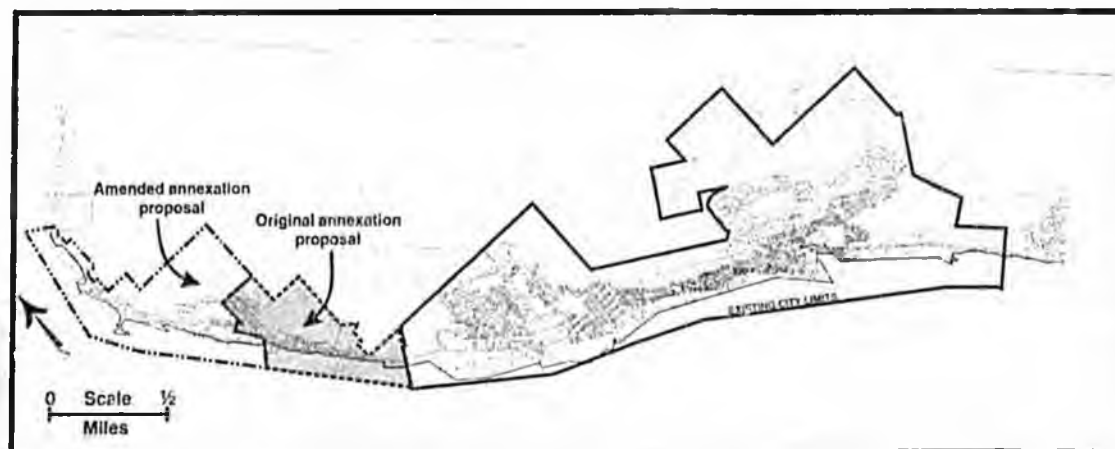
Section 12 of the Constitution of the State of Alaska. The formal recommendation for annexation is included in Chapter 3 of this report.

City of Kodiak

On March 19, 1999, the City of Kodiak filed a petition for annexation of approximately 19.5 square miles containing 3,500 residents and taxable property valued at nearly \$165 million. On August 28, 1999, the Commission convened a public hearing on the petition in Kodiak at the North Star Elementary School.

Twenty-four individuals provided oral comments on the annexation proposal during the public comment phase of the hearing.

The hearing lasted approximately four hours. Following the hearing, the Commission deliberated for approximately 1.5 hours. Following its deliberations, the Commission determined that the



Ketchikan annexation proposal



A portion of the area proposed for annexation to the City of Kodiak.

petition satisfied all requirements established in law and unanimously approved the petition. The annexation issue was placed before voters in the area proposed for annexation on October 5, 1999. At the election, area voters overwhelmingly rejected the proposed boundary change by a vote of 820 (88%) to 112 (12%). City officials indicated that the fact that the residents of the territory would have lost eligibility for new AHFC rural loans if it were annexed likely contributed to the heavy opposition to annexation. Concerns that the AHFC loan program is having adverse effects on some important municipal boundary proposals are noted in Chapter 4 of this report.

City of Ketchikan

A petition for local action annexation of about 12 acres is currently under development by the City of Ketchikan.

City of Ekwok

In April, Dillingham MRAD regional office staff indicated that officials of the City of Ekwok were contemplating annexation.

City of Fairbanks

On January 21, 1999, notification

of Federal Voting Rights Act preclearance of the City of Fairbanks' annexation of 42.46 acres was received by LBC staff, rendering the boundary change effective on that date. Notice of the annexation was issued to interested parties and a new certificate of boundaries was issued.

City of Fairbanks

In November of last year, staff of the City of Fairbanks requested forms for local action annexation initiated by all property owners and registered voters in the territory sought for annexation. The owner of a residential parcel adjacent to the Chena River in west Fairbanks has requested annexation.

City of Haines

In accordance with Article X, Section 12 of the Constitution of the State of Alaska, annexation of 6.5 square miles to the City of

Haines was tacitly approved by the legislature on March 14, 1999, forty-five days after submission of the LBC recommendation. In January 1998, the LBC had deferred submission of formal recommendation for the annexation to the Second Session of the Twentieth Alaska State Legislature. The deferral was made at the request of the City of Haines, the Haines Borough, and Haines Borough Citizens Against Annexation. The deferral was intended to allow local government officials and citizens the opportunity to first consider consolidation of the City of Haines and the Haines Borough. In November 1998, voters rejected the consolidation proposal by a vote of 542 to 545. Accordingly, the LBC submitted its formal recommendation for annexation of the territory to the First Session of the Twenty-First Alaska State Legislature on January 28, 1999.

parcels with a taxable value of about \$12,190,000. The areas considered for annexation are provided with City water and sewer service on an extraterritorial basis. The City solicited comments whether the area contemplated for annexation was large enough to be appropriately considered for annexation. Petition forms and information regarding the standards and procedures for annexation were provided to the City.

City of Klawock

A City of Klawock official advised LBC staff that a public meeting was conducted in Klawock on March 17, 1999 dealing, in part, with a prospective proposal for annexation to the City of Klawock.

City of Newhalen

A voter initiated petition for annexation of 351.5 square miles to the City of Newhalen under



Haines airport, part of the territory annexed to the City of Haines in 1999.

City of Homer

In January, the City of Homer planning director wrote to LBC staff advising that the City was considering annexation of 207

provisions of the legislative review annexation process was accepted for filing on April 14, 1999. The area proposed for annexation included the unincorporated

community of Iliamna. On June 7, LBC staff participated in a Lake and Peninsula Borough Planning Commission meeting in Newhalen regarding the petition. About 40 persons attended the meeting. Extensive public comment was given and discussion of annexation lasted nearly three hours.

A petition to withdraw the annexation petition was subsequently received by LBC staff. Since the requirements of 3 AAC 110.540(a)(2) were satisfied by the withdrawal petition, the Petitioners' Representative was formally advised on September 1, 1999 that the petition was withdrawn.

City of Nondalton

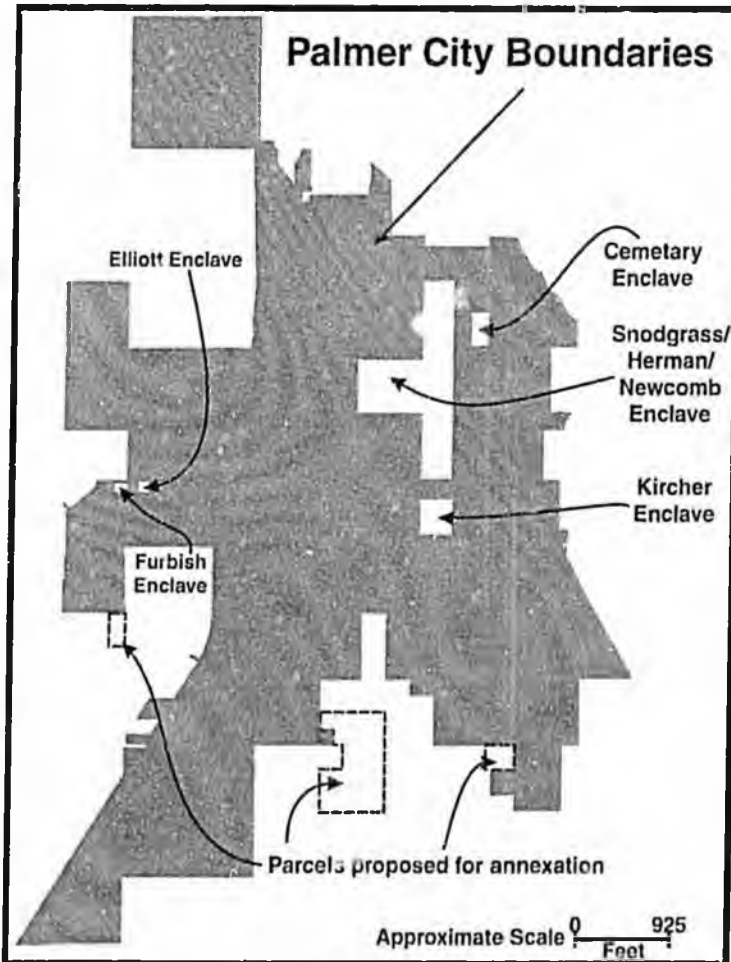
In June, the Mayor of Nondalton informed LBC staff that the City was contemplating annexation.

City of Palmer

On February 8, 1999, the City of Palmer filed a petition for annexation of four parcels, collectively comprising 64.9 acres. The annexation is sought under provisions of 3 AAC 110.150(2), that permit annexation of contiguous territory to a city "by ordinance and a petition signed by all of the voters and property owners of the territory." One of the parcels proposed for annexation is the ten-

acre site of the Mat-Su juvenile detention facility. No public opposition was been expressed regarding the proposed annexation. The only comment submitted by the June 4 deadline for public in response to the filing of the petition was a letter of support for the annexation from the Matanuska-Susitna Borough.

On September 2, 1999, the Commission approved a request by the City of Palmer to relax certain of the procedural regulations regarding the petition pursuant to 3 AAC 110.590(c). Specifically, the



Enclaves within the City of Palmer.

Commission directed that:

- Notice of the public hearing would be published one time instead of three times.
- One abbreviated DCED staff report would be issued three weeks prior to the date of a teleconferenced public hearing.
- Written comments on the consolidated report may be submitted until at least one week prior to the public hearing. DCED will respond to any comments on the consolidated report at that public hearing.
- The Commission's public hearing on the petition will be conducted by teleconference.

In November, the Palmer City Manager indicated that additional property owners adjacent to the existing City of Palmer boundaries were also seeking annexation.

City of Petersburg

City officials requested and were provided with information concerning annexation standards and procedures.

City of Sand Point

In March, information was provided to the City of Sand Point concerning the City's previous attempt to annex Baralof Bay (Squaw Harbor). City staff indicated that another proposal to annex that

area was being contemplated by officials of that City.

City of Toksook Bay

In September, the Toksook Bay City Clerk requested and was provided information regarding the standards and procedures for annexation by legislative review and petition forms for annexation.

City of Wrangell

In October, the Wrangell City Manager requested and was provided petition forms and related materials to develop a petition for legislative review annexation of the area referred to locally as "Wrangell West". The City delivers education, school bus transportation, electrical power, police service, fire protection, and garbage service to that area. Other City facilities and services also benefit the area in question. The area is inhabited by an estimated 45 individuals. It is anticipated that a petition for legislative review annexation will be filed by March, 2000.



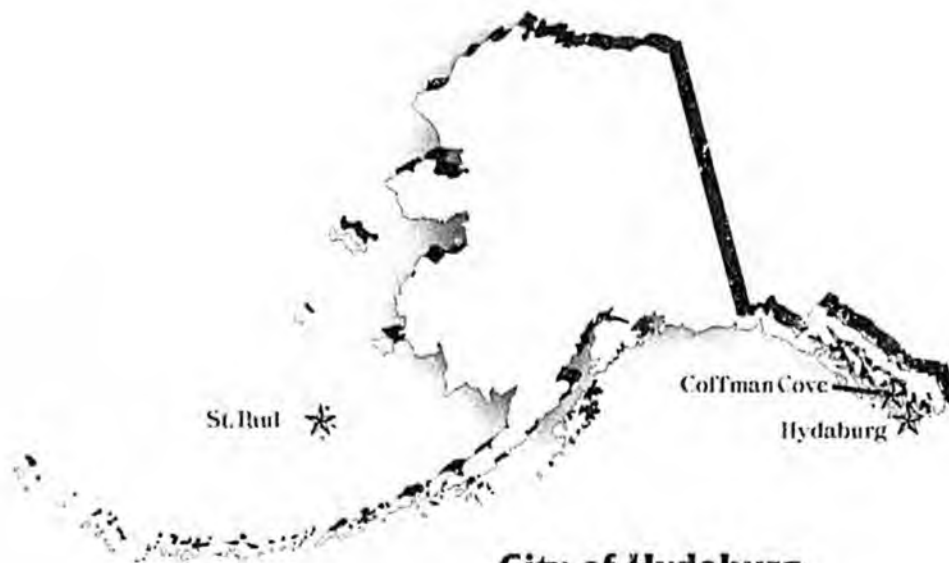
Sand Point

City Dissolution

Inquiries concerning city dissolution occurred regarding the following Cities during 1999.

- *Coffman Cove*
- *Hydaburg*
- *St. Paul*

Details concerning 1999 city dissolution activities are provided below.



City of Coffman Cove

In April, a City of Coffman Cove official requested and was provided with information on standards and procedures for dissolution. The official stressed, however, that the request should not be construed as a signal that the City of Coffman Cove anticipates development of a petition for dissolution.

City of Hydaburg

In April, LBC staff drafted a summary of the effects that dissolution would have upon Hydaburg. The analysis was prepared at the request of the City of Hydaburg's Mayor.

City of St. Paul

In January, officials of the City of St. Paul requested and were provided with information regarding procedures and standards for city dissolution and general considerations relevant to such an action.

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City Merger

During 1999, no petitions for merger of cities were filed or processed.

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City Reclassification

Interest was expressed in exploring the merits of reclassification of the City of Pelican from first class to second class city status. LBC staff participated in a public informational meeting conducted on the topic in Pelican. City officials subsequently indicated that it is unlikely that a petition for such reclassification will be filed.

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City Detachment

City of Nenana

In December, residents of the Nenana South Subdivision expressed interest in detaching from the City of Nenana. The area in question is inhabited by an estimated 35 individuals. LBC staff provided written information to the group concerning standards and procedures for detachment.

