

12098

HOUSE C&RA

Representative John Coghill  
July 11, 2008  
Page 2

is one of the methods for establishing eligibility for a payment under the Alaska resource rebate program.

*(2) Are legal problems created by basing eligibility on criteria other than eligibility for permanent fund dividends?*

Basing eligibility on criteria other than eligibility for Permanent Fund dividends does not, in itself, create legal problems. The particular eligibility requirements that apply under the proposed Alaska resource rebate program do not appear to pose significant problems either.

Individuals who have been determined eligible to receive a permanent fund dividend for 2008 do not have to apply for a payment under the Alaska resource rebate program. Other people will also be eligible for payments if they apply within the application period, are physically present in the state on the application dates, are physically present in the state for the period from April 1, 2008, through October 1, 2008, and intend to maintain a home in the state. An individual's interest in receiving a permanent fund dividend is accorded a low level of protection under the state equal protection clause, because only an economic interest is implicated and that interest is not based on the need of the applicant. (Underwood v. State, 881 P.2d 322 (Alaska 1994)) The same is true of the proposed Alaska resource rebate program. The durational residency requirement under the proposed program is much shorter than the one year durational residency requirement that has been upheld for permanent fund dividend eligibility. (Lindley v. Malone, civil Action No. 3AN-90-2586, Superior Court, Third Judicial District, June 1990; see also Church v. State, Department of Revenue, 973 P.2d 1125 (Alaska 1999), and Schikora v. State, Department of Revenue, 7 P.3d 938 (Alaska 2000)). The physical presence requirements and proof of identification requirement are reasonably related to establishing objective evidence of residency.

I do note one wrinkle. There is a requirement in HB 4002 of proof of physical residence address. While this can be defended on the basis that the administrative value in using proof of a physical residence address to verify residency justifies the requirement, it is possible that under the right set of facts a homeless state resident or a resident who lives in a remote cabin with no address would be able to challenge this requirement as applied to him or her. If such a challenge were to succeed, the provision would be severable under AS 01.10.030 as applied to that person, so the program itself would remain valid. I note in this regard that the general test of residency set out in AS 01.10.055 includes a requirement that the person claiming residency demonstrate the intent to remain in the state indefinitely and make a home in the state "by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation. . . ." There is no explicit requirement that the place of abode have an address.

IBC/ljw  
08-291 ljw

# FISCAL NOTE

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

Fiscal Note Number: 1  
Bill Version: HB 4002  
(H) Publish Date: 7/9/08

Identifier (file name): 773080057-DOA-OAH-07-03-08 Dept. Affected: Administration  
Title: An act establishing the Alaska resource rebate program RDU: Centralized Administrative Services  
Sponsor: Rules Committee by Request Component: Office of Administrative Hearings  
Requester: Governor Component Number: 2771

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

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

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

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This bill provides for individuals denied a resource rebate payment to have an administrative hearing before the office of administrative hearings (OAH) to determine eligibility for the rebate program. Based on Department of Revenue estimates, OAH anticipates that this would add to the caseload, on a one-time basis, only a small number of cases, if any. Some such cases might be consolidated with related PFD eligibility appeals. OAH presently has the capacity to handle these cases without increasing personnel. The cost of doing so would be recovered from the Department of Revenue through interagency receipts under OAH's cost allocation plan, based on the time commitment required for hearings. OAH does not anticipate increased expenditures for its operation due to the one-time addition of this case category.

Prepared by: Terry L. Thurbon, Chief Administrative Law Judge Phone 465-1886  
Division: Office of Administrative Hearings Date/Time 07/03/08 2 26 p m  
Approved by: Kevin Brooks, Deputy Commissioner Date \_\_\_\_\_  
Department of Administration

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: HB 4002  
 (H) Publish Date: 7/9/08  
 Dept. Affected: Health & Social Services  
 RDU: Public Assistance  
 Component: General Relief Assistance

ID (File name) LL057-DHSS-GRA-07-08-08  
 Title: ALASKA RESOURCE REBATE PROGRAM

Sponsor: RULES BY REQUEST OF THE GOVERNOR  
 Requester: \_\_\_\_\_

Component No. 221

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

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

	Appropriation		Information					
	Required		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services		546.1						
Travel		10.0						
Contractual		108.0						
Supplies		108.0						
Equipment								
Land & Structures								
Grants & Claims		9,896.2						
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>10,668.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES (0)</b>								
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**FUND SOURCE (Thousands of Dollars)**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts						
1003 GF Match						
1004 GF		10,668.3				
1037 GF/Mental Health						
Other (Specify Type-do not abbreviate)						
Other (Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>10,668.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary		9					

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

This legislation establishes the Alaska Resource Rebate Program, which shares the state's resource wealth by providing a special one-time \$1,200 payment to eligible Alaskans.

This legislation prohibits counting the rebate as income or resources for veterans' benefits and public assistance programs, unless required to do so by federal law. Section 1 (l), (m), (n), and (p) require that benefits which would be lost as a result of counting the rebate as income or as an asset be replaced with Hold Harmless (HH) benefits. Replacements of public assistance benefits are limited to four months. Veterans' benefits are not subject to the 4-month limitation.

Prepared by: Ellie Fitzjarrald  
 Division: Public Assistance  
 Approved by: William H. Hogan, Acting Commissioner  
 Agency: Department of Health and Social Services

Phone: 465-5847  
 Date/Time: 07/03/2008  
 Date: 07/08/2008

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION****ANALYSIS CONTINUATION**

In some circumstances, the \$1,200 rebate will count in determining if a person or household qualifies for public assistance, and reduce their benefits. The primary programs affected by this legislation are: Food Stamps; Supplemental Security Income (SSI); income-tested veterans' benefits; and Medicaid.

The department estimates a total increment of \$10,668.7 will be needed in FY 09 to implement the hold harmless provisions in the new Alaska Resource Rebate Program. These costs include: \$9,896.2 to replace the loss of benefits, and \$772.5 in administrative costs, which includes funding for 9 temporary staff needed to manage the additional workload. This funding is included in a separate appropriation bill.

**Benefit Cost Assumptions:**

Persons who apply for public assistance in the same month they receive the resource rebate, or who do not spend the money right away, could be affected.

For most public assistance programs, the department will not be able to anticipate when ongoing recipients will receive the rebate check, or in time to take action to count it as income. The department also expects most individuals will spend the money immediately on basic needs and continue to have assets below the various program limits.

**Food Stamp Program:** Federal rules allow the resource rebate to be excluded as income; however, any portion of the payment that is not spent must be counted as an asset. The department estimates 7,000 households (30% of nearly 24,000 households currently eligible for the Food Stamp Program) will need hold harmless benefits to replace federal food stamp benefits for one month. These households will not spend their resource rebate payments right away, causing them to exceed the \$2,000 asset limit set in federal rules. The average allotment is \$400. Estimated food stamp hold harmless cost is \$2,800.0.

**SSI:** The department expects that the Social Security Administration will count the resource rebate as income, and any money not spent will be counted as an asset, under the federal SSI rules. SSA will likely make this determination after the fact and establish an overpayment retrospectively. About 11,500 individuals receive SSI in Alaska. The average monthly SSI payment is \$400. Estimated SSI hold harmless cost is \$4,600.0.

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION****ANALYSIS CONTINUATION**

Veterans Disability and Survivor Benefits: For veterans' benefits that are means tested, the Veterans Administration will treat the resource rebate as income. Benefits will be reduced dollar for dollar and prorated over the calendar year. VA estimates 376 beneficiaries (312 vets and 64 widows and dependents) will be impacted. The department estimates the VA hold harmless cost is \$451.2 (376 x \$1,200).

Medicaid: The rebate can be excluded for most Medicaid coverage groups, including Family Medicaid & Denali KidCare. Federal law, however, requires the state to count the resource rebate as income for seniors and people with disabilities if it brings their total income to more than \$1911/month (300% of the SSI standard).

The department estimates 715 seniors and individuals with disabilities will receive the rebate in the same month they apply for Medicaid and will need hold harmless benefits to help pay for medical care that would otherwise be covered by federal Medicaid funds. The average monthly medical cost for these individuals is \$2,818.00. The department estimates Medicaid hold harmless cost of approximately \$2 million.

Savings to the benefit programs are primarily outside of the DISS budget (SSI and veterans' benefits), or 100% federally funded (food stamps) and will not result in any GF savings. Medicaid savings would be reflected in the department's budget. However, due to the \$23 million reduction already absorbed by the Medicaid program in FY 2009, and the uncertainty of the new program's impact, the department is not proposing an additional \$2 million reduction in Medicaid.

It is anticipated that all Resource Rebate Hold Harmless payments will be made in FY 09. It may be necessary to make some payments in FY 10; if so, the Department will include the necessary adjustments in its FY 10 budget.

# FISCAL NOTE

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

Fiscal Note Number: 3  
 Bill Version: HB 4002  
 (H) Publish Date: 7/9/08

Identifier (file name): 08-0057-DOR-RRP-08 Dept. Affected: 04 Revenue  
 Title: Alaska Resource Rebate Program RDU: Taxation and Treasury  
 Component: Resource Rebate  
 Sponsor: Rules  
 Requester: Governor Component Number: 2930

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

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services		170.0						
Travel								
Contractual		591.2						
Supplies		58.8						
Equipment		30.0						
Land & Structures								
Grants & Claims		799,150.0						
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>800,000.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		800,000.0					
1005 GF/Program Receipts							
1037 GF/Mental Health							
<b>TOTAL</b>		<b>800,000.0</b>					

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

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

This bill creates a new program and budget component to be administered by the Department of Revenue that provides for a one time resource rebate payment of \$1,200 for each eligible Alaskan. Eligible Alaskans under this program will include those Alaskans who applied for and have been deemed eligible for the 2008 permanent fund dividend, and those persons who apply for the program under a supplemental application, are physically present in Alaska, have resided in the state for the 180 days preceding the application period and meet the other eligibility criteria in the bill. Funding for this program is in a separate appropriations bill.

(See page two)

Prepared by: Loretta Withington  
 Division: Admin Services  
 Approved by: Jerry Burnett  
Department of Revenue

Phone 465-2312  
 Date/Time 7/3/08 12:00 AM  
 Date 7/3/2008

FISCAL NOTE #3

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

BILL NO. HB 4002

**ANALYSIS CONTINUATION**

The actual number of persons eligible for the 2008 PFD will not be known until September but for the purposes of projecting the costs of administering this program we are assuming that 620,000 persons will be eligible for the 2008 PFD, and that 45,000 additional persons will qualify for the energy assistance program under the supplemental application process, for an estimated total of 665,000 persons.

Based on PFD program costs the direct cost of printing and mailing the checks will be approximately \$525,000 for issuing the payments and 1099 advices. We will not use the PFD payment system for this purpose but instead will contract with either the Division of Finance or a financial institution.

The cost of administering the supplemental application process is estimated at \$325,000. This includes printing and distribution of applications, programming costs for a new database to collect applicant information and personal services costs related to receiving applications, scanning and filing applications and related documents, determining eligibility, etc. Since this is a one time program we will use existing equipment and bring in seasonal employees, non-permanent employees and contractors to accomplish this work.

Note that while we are using information from the PFD eligibility system, this project will be done outside of the PFD Division and every attempt will be made to minimize impacts on PFD processing.

**HB**

**4003**

**State of Alaska**  
Department of Revenue  
*Commissioner's Office*



**SARAH PALIN, GOVERNOR**  
333 Willoughby Avenue, 11<sup>th</sup> Floor  
P.O. Box 110400  
Juneau, Alaska 99811-0405  
Phone: (907) 465-2300  
Fax: (907) 465-2394

The Honorable Anna Fairclough,  
The Honorable Gabrielle Ledoux  
Co-Chairs, House Community and Regional Affairs Committee  
State Capitol,  
Juneau, AK 99801

July 10, 2008

Dear representatives Fairclough and Ledoux:

Thank you for scheduling House Bill 4002, "An Act establishing the Alaska resource rebate program and relating to the program, and providing for an effective date," before the House Community and Regional Affairs Committee. House Bill 4002 would provide a payment of \$1,200.00 to each Alaskan who qualified for a permanent fund dividend for 2008 and for each person who has established and maintained Alaska residency since April 1 of 2008.

The State of Alaska is enjoying record revenues in fiscal years 2008 and 2009 as a result of high energy prices. This proposal allows for all Alaskans to share in that increased resource wealth.

As prices have greatly exceeded our department's spring forecast and a new forecast will not be done until the fall, I have attached a spreadsheet that shows estimated revenues at various price levels for your information. Please feel free to call me with any questions.

Sincerely,

Jerry Burnett  
Director, Administrative Services  
Alaska Department of Revenue

**Title:** Estimated FY 2009 General Fund Unrestricted Revenue, at Oil Prices of \$80 - \$170 per bbl (In \$millions)

**Preparer:** Cherie Nienhuis, Petroleum Economist

**Date:** 18-Jun-08

**Purpose:** Provide information to Senator Hollman

**Data Source:** DOR Forecast Model

**Key Assumptions:** Same assumptions that were in place as of Spring 2008 forecast

**History:** Revised spreadsheet titled GFUR FY09 Sen\_cn\_20080617, added progressivity breakout and chart

**Disclaimer:** The Department of Revenue is in the process of reviewing and updating the data on which this analysis is based. As a result, future analysis could have different results.

The information contained in this workbook may be privileged, confidential or otherwise protected from disclosure. If you are not the intended recipient, any use, dissemination, disclosure, distribution or copying is strictly prohibited.

Estimated FY 2009 General Fund Unrestricted Revenue, at Oil Prices of \$80 - \$170 per bbl (in \$millions)

<i>ANS WC Oil Price (\$ per barrel)</i>	<b>\$80</b>	<b>\$90</b>	<b>\$100</b>	<b>\$110</b>	<b>\$120</b>	<b>\$130</b>	<b>\$140</b>	<b>\$150</b>	<b>\$160</b>	<b>\$170</b>
Unrestricted Royalties	1,934	2,188	2,442	2,696	2,950	3,204	3,458	3,712	3,965	4,219
Production Tax - Base Tax	2,132	2,687	3,240	3,794	4,348	4,901	5,455	6,009	6,562	7,116
Production Tax - Progressivity	1,126	1,900	2,851	3,979	5,211	5,997	6,827	7,701	8,620	9,583
Corporate Income Tax	563	597	631	666	700	734	768	802	837	871
Property Tax	59	59	59	59	59	59	59	59	59	59
Non-oil GF Revenue	708	708	708	708	708	708	708	708	708	708
<b>Total Unrestricted GF Revenue</b>	<b>6,523</b>	<b>8,139</b>	<b>9,931</b>	<b>11,902</b>	<b>13,976</b>	<b>15,603</b>	<b>17,275</b>	<b>18,991</b>	<b>20,751</b>	<b>22,556</b>



# RECORDS CERTIFICATION



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

*Stan Hubbard*

Signature of Camera Operator

*5-28-2009*

Date

**HJR**

**30**

**(FILE 1)**

# STATE OF ALASKA

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

**SARAH PALIN, GOVERNOR**

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

February 25, 2008

## **Hand Delivered**

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

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

Dear Representative LeDoux:

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

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

AS 29.06.040(a) provides in relevant part:

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

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

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

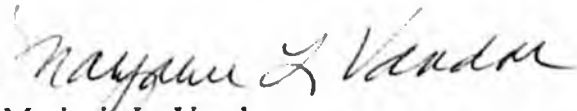
In conclusion, we believe under the proper circumstances the LBC has the legal authority to condition the acceptance of an annexation petition on the discontinuance of National Forest Receipts funding, however, we also believe that this condition must include a deadline date for that event to avoid staleness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

We hope this addresses your concerns.

Sincerely,

TALIS J. COLBERG  
ATTORNEY GENERAL

By:

  
Marjorie L. Vandor  
Assistant Attorney General

MLV:ajh

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

# FISCAL NOTE

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

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

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

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

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

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

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

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

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

**Number of Significant Differences  
KGB Annexation Proceedings**

Page 1 of 3

**1998-99 KGB Annexation Proceeding**

**2006-07 KGB Annexation Proceeding**

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

**Number of Significant Differences  
KGB Annexation Proceedings**

Page 2 of 3

**1998-99 KGB Annexation Proceeding**

**2006-07 KGB Annexation Proceeding**

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

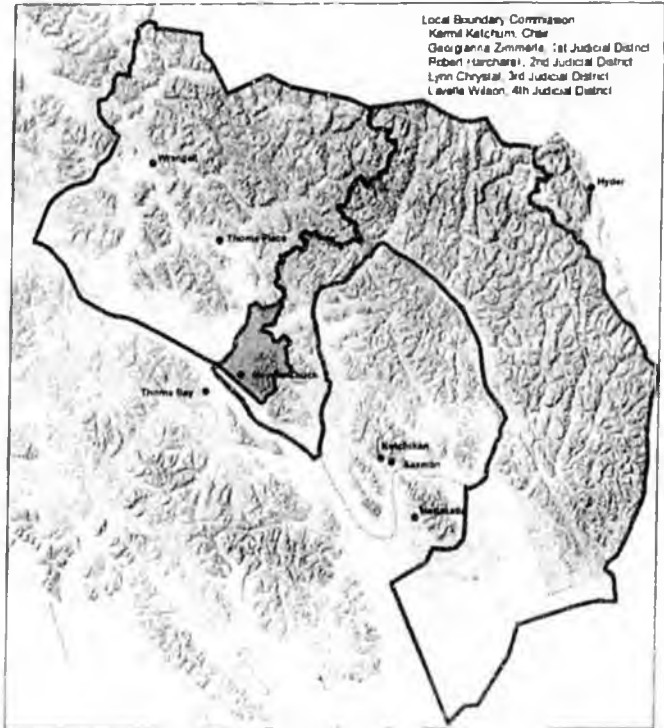


# Ketchikan Gateway Borough (KGB) Proposed Annexation and Proposed Wrangell Borough

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

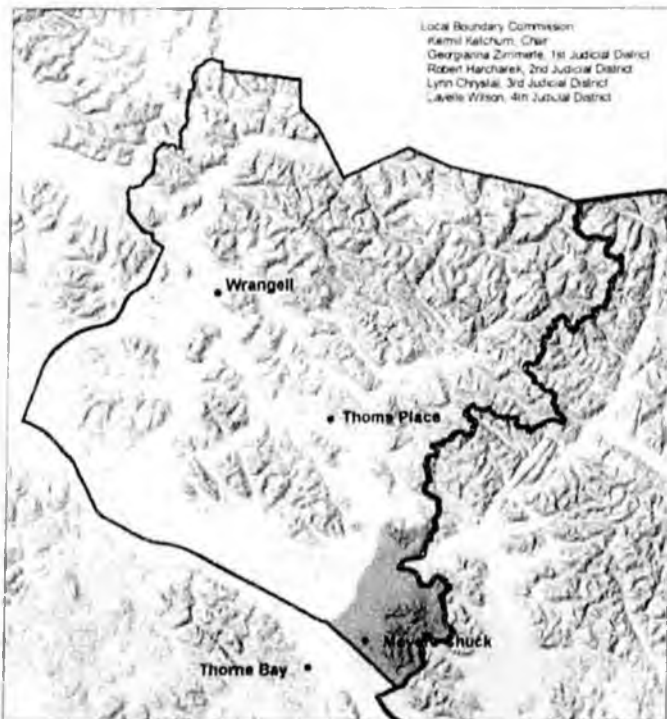


**Wrangell Borough and KGB Annexation Boundaries as Petitioned, 2006**

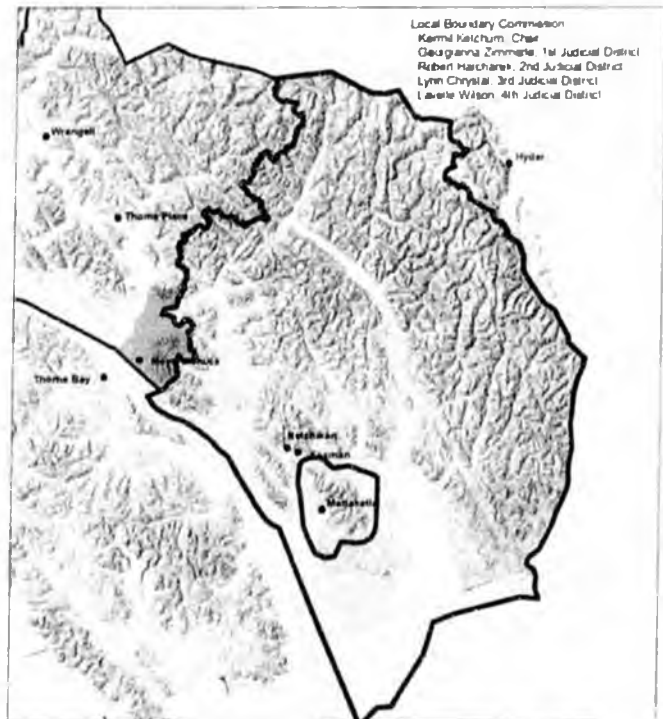


- Legend**
- KGB Annexation as Petitioned, 2007
  - Wrangell Borough Boundary as Approved, 2007
  - KGB Boundary as Rejected by LBC, 1998
  - Area Excluded from KGB Proposal and Included with Wrangell Borough Proposal by LBC, 2007
  - KGB Annexation as Approved by LBC, 2007

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



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



**Sonya Hymer**

---

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

---

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

Good afternoon:

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

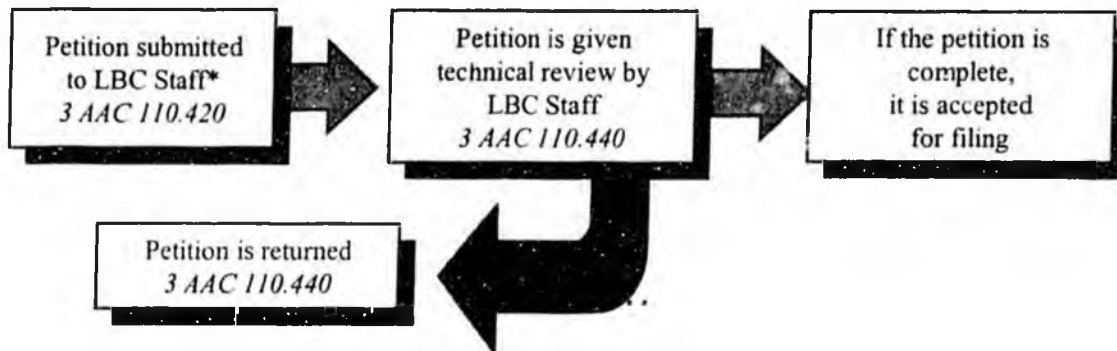
- 1) **1998 – KGB Annexation Petition** was denied because it excluded Meyers Chuck and Hyder, depriving these two communities of their rights; and the proposed area did not meet the "model borough boundaries" guidelines developed by the Commission in early 1990s.
- 2) **2006- KGB Annexation Petition**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

Thank you kindly,  
Jennifer

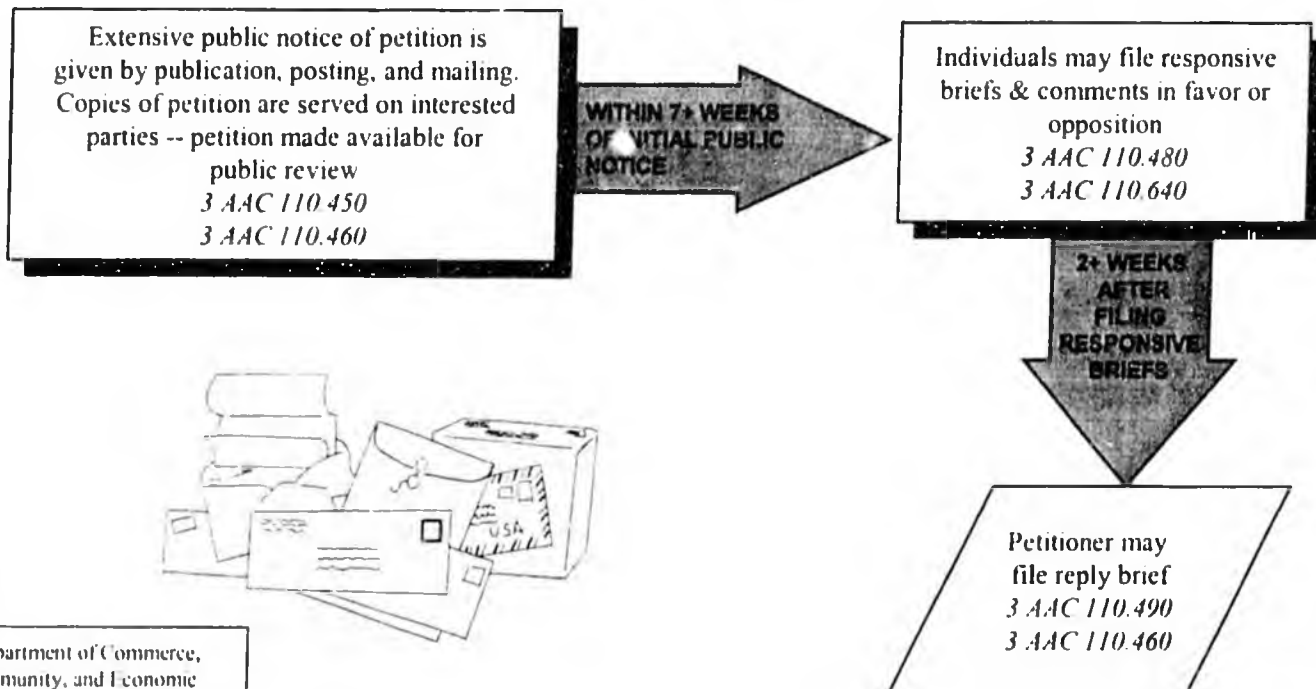
Jennifer Abbott  
Unit Supervisor  
Local Boundary Commission Staff  
Division of Community and Regional Affairs  
Department of Commerce, Community, and Economic Development  
550 W. 7th Avenue, Suite 1770  
Anchorage, AK 99501  
(907) 269-4559  
FAX 269-4539  
<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

# PROCEDURES FOR LEGISLATIVE REVIEW ANNEXATION

## STAGE 1 - FILING THE PETITION

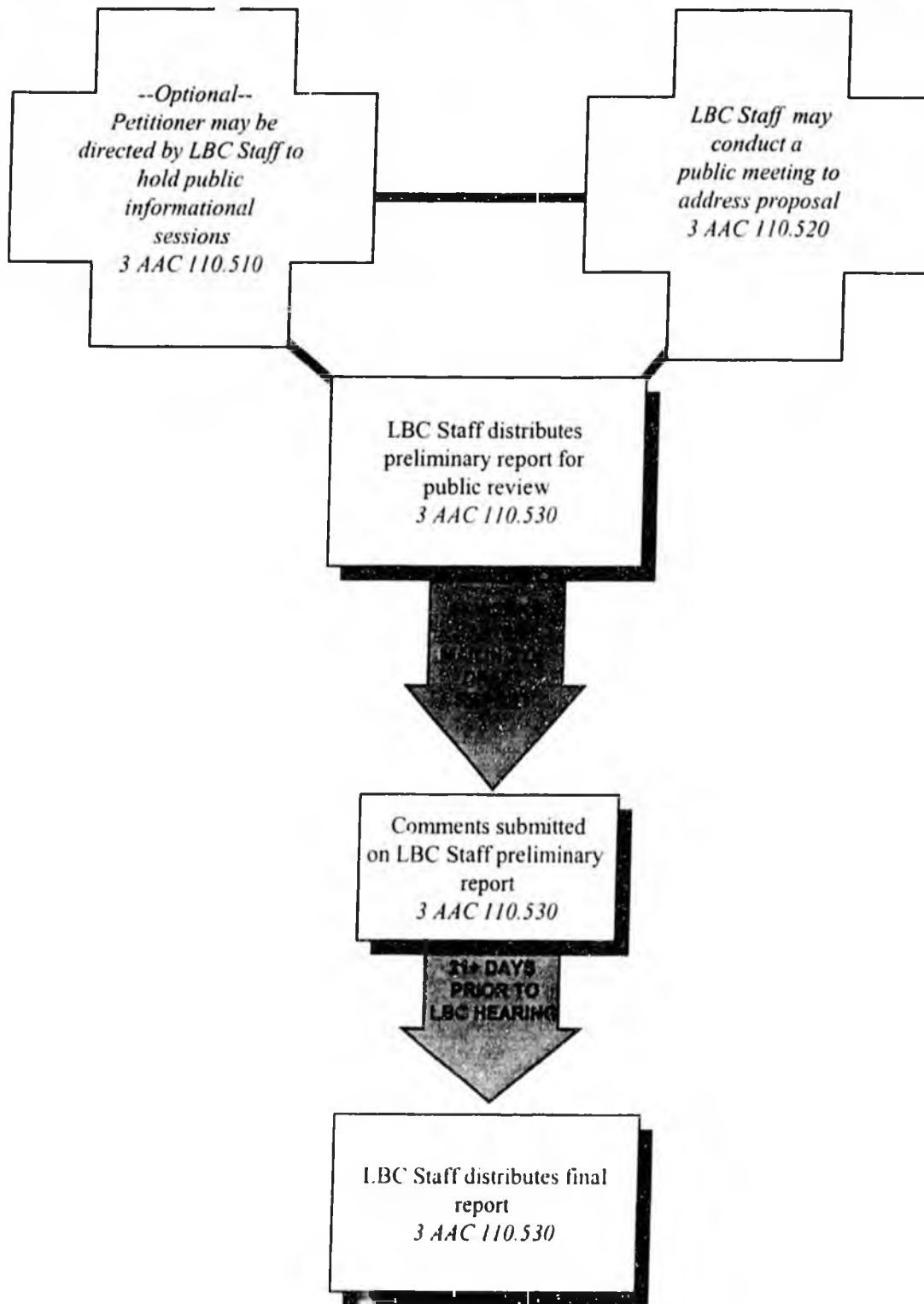


## STAGE 2 - PUBLIC REVIEW & COMMENT



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

**STAGE 3 - ANALYSIS**



## STAGE 4 - HEARING, DECISION & RECONSIDERATION

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

### Hearing Procedures

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

LBC decisional meeting  
(verbal decision reached)

Option 1  
Petition Approved

Option 2  
Petition Amended  
and/or Conditionally  
Approved

Option 3  
Petition Denied

Written decision issued  
*3 AAC 110.570*

Opportunity for  
reconsideration  
*3 AAC 110.580*

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

If petition is denied,  
process ends

\*Decisions of the LBC  
are subject to judicial  
appeal

**STAGE 5 - IMPLEMENTATION**

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



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



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



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



## REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

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

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

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

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

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

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

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

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

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

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

**BY**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE THOMAS**

**A RESOLUTION**

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

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

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

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

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

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

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

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

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

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

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

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

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



# Alaska State Legislature

House of Representatives

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

*Official Business*

Office of the Chief Clerk

January 24, 2008

## MEMORANDUM

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

From: Suzi Lowell   
Chief Clerk

Subject: Local Boundary Commission

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

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



# State of Alaska Local Boundary Commission

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

January 23, 2008

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

JAN 23 2008

*Rec'd al*

Subject: Legislative-Review Annexation by the Ketchikan Gateway Borough

Dear Representative Harris:

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

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

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

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

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

Sincerely,

LOCAL BOUNDARY COMMISSION



Kermit L. Ketchum  
Chairman

Enclosures:

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

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

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

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

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

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STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

Before Commissioners:

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

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

STATEMENT OF DECISION

I. BACKGROUND AND SUMMARY OF PROCEEDINGS

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

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

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

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

6  
7 As previously noted, the Borough is using the "legislative review  
8 annexation" method. That method, authorized by article X, section 12 of the Alaska  
9 Constitution, provides that the LBC may present proposed municipal boundary changes  
10 to the legislature during the first ten days of any regular session. The proposal  
11 becomes effective forty-five days after presentation by the LBC or at the end of the  
12 session, whichever is earlier, unless disapproved by a resolution concurred in by a  
13 majority of the members of each house.

14  
15 Under 3 AAC 110.425(a), before a petition for annexation by the  
16 legislative-review process may be submitted, the prospective petitioner must, among  
17 other things, conduct a public hearing on the annexation proposal. On January 21,  
18 2006, the KGB Assembly held a public hearing on its proposed legislative-review  
19 petition. Detailed information regarding that hearing is included with the Petition.<sup>2</sup> On  
20 February 6, 2006, the KGB Assembly authorized the filing of the Petition to expand the  
21

22  
23  
24 <sup>2</sup>See also Appendix C to LBC Staff's June 30, 2007, *Preliminary Report to the Local Boundary  
25 Commission Regarding the Petition for Annexation of Approximately 4, 701 Square Miles to the Ketchikan  
26 Gateway Borough (Preliminary Report)* for more detail regarding the KGB Assembly's January 21, 2006,  
27 hearing and public meeting.

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

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

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

14 Following receipt of the Responsive Briefs and written comments on the  
15 Petition, the LBC Chair set June 21, 2006, as the deadline for the Petitioner to file its  
16 Reply Brief. The KGB filed its Reply Brief on June 19, 2006, with service on  
17 commentors, Respondents, and others. In its Reply Brief, the KGB summarized and  
18 responded to the comments and Responsive Briefs.  
19

20  
21  
22  
23  
24  
25 <sup>3</sup>Under AS 44.33.020(a)(4), DCCED serves as staff to the Local Boundary Commission and is al-  
26 ternatively referred to herein as Staff.

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

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

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

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

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

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

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

11 October 23, 2007, was the deadline for filing lists of witnesses to be called  
12 by the Petitioner or Respondents at the public hearing. The Petitioner timely filed its list  
13 of eight witnesses; Respondent Metlakatla timely filed a list of two witnesses; Respon-  
14 dent Wrangell did not file a witness list; and Respondent Caffall-Davis filed notice that  
15 he did not intend to call witnesses.  
16  
17  
18

19  
20 <sup>4</sup>DCCED's *Preliminary Report* was written by Dan Bockhorst. In the weeks following completion  
21 of his review and analysis, the KGB began its recruitment for a borough manager. Upon seeing a re-  
22 cruitment notice for that position on July 31, 2007, Mr. Bockhorst wrote a memorandum on August 1,  
23 2007, to DCCED's Ethics Supervisor disclosing an interest in applying for the KGB manager position. In  
24 his disclosure, Mr. Bockhorst recused himself with respect to any and all future dealings regarding this  
annexation proposal. DCCED's continuing responsibilities for the annexation proposal was immediately  
assigned to Jeanne McPherrren, Local Government Specialist IV, to complete. Commission Chair  
Ketchum was also immediately notified by Mr. Bockhorst of his recusal and the reasons therefor. A time-  
line regarding Mr. Bockhorst's work in this proceeding is attached to this decision as Appendix B.

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

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

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

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

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

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

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

19 Statements and testimony by the Petitioner elaborated on the merits of the  
20 annexation Petition and addressed differences between the 1998 annexation proposal  
21 and the current proceeding. Statement by Respondents paralleled their written  
22 comments in this proceeding, except that Metlakatla clarified the reservation expansion  
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26

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1 request it had filed with the Secretary of Interior. That request sought an expansion of  
2 the reserves maritime boundaries; it was not a land acquisition request for Duke Island.

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

10 The Commission convened a decisional session, pursuant to 3 AAC  
11 110.570, on November 7, 2007, in Ketchikan. The decisional session regarding the  
12 KGB annexation proposal followed the decisional session regarding the Wrangell bor-  
13 ough incorporation proposal. In the Wrangell decisional session, the Commission de-  
14 termined that the Meyers Chuck/Union Bay area more appropriately belonged in the  
15 Wrangell borough, and, thus, amended the KGB annexation proposal to delete that  
16 area. The Commission deliberated on the amended KGB annexation proposal for ap-  
17 proximately an hour. At the conclusion of the deliberations, the Commission voted  
18 unanimously to approve the Petition, as amended to delete the Meyers Chuck/Union  
19 Bay area. DCCED will work with the KGB and the newly created Wrangell borough to  
20 determine the descriptions of their respective boundaries resulting from the inclusion of  
21 the Meyers Chuck/Union Bay area in the Wrangell borough.  
22  
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24 <sup>6</sup>In proposing the enclave, the commentors contemplated then becoming a part of a Prince of  
25 Wales Island Borough when one is formed. In its decisional session regarding the Wrangell incorporation  
(continued . . . )

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

7 **II. FINDINGS AND CONCLUSIONS**

8 State law, AS 29.06.040(a), provides as follows regarding a proposed mu-  
9 nicipal annexation, including one using the legislative review method:  
10

11 The Local Boundary Commission may consider any proposed municipal  
12 boundary change. The commission may amend the proposed change and  
13 may impose conditions on the proposed change. If the commission de-  
14 termines that the proposed change, as amended or conditioned if appro-  
15 priate, meets applicable standards under the state constitution and  
16 commission regulations and is in the best interests of the state, it may ac-  
17 cept the proposed change. Otherwise it shall reject the proposed change.  
18 A Local Boundary Commission decision under this subsection may be ap-  
19 pealed under AS 44.62 (Administrative Procedure Act).

17 The Alaska Supreme Court has held that statutory standards for borough incorporation  
18 were intended to be flexibly applied to a wide range of regional conditions. The Court  
19 stated further that the Commission's determinations regarding whether such standards  
20 are satisfied should be affirmed if the Court perceives that the LBC's reading of the  
21 standards and its evaluation of the evidence has a reasonable basis. Specifically, the  
22

24 \_\_\_\_\_  
25 (. . . continued)  
26 petition, the Commission expressed doubt that such a borough would be proposed in the foreseeable fu-  
27 ture.

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

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

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

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

19 For reasons set out in Part A below, the Commission finds no basis to  
20 distinguish between borough *incorporation* and *annexation* in terms of whether the

21 <sup>7</sup>[Footnote 14 in original.] A summary by the local government committee at the constitutional  
22 convention of the principles underlying the borough concept is preserved in T. Morehouse & V. Fischer,  
23 *Borough Government in Alaska*, at 63-64 (1971). This relates:

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

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

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

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

1 applicable standards should be flexibly applied and whether the law should be read to  
2 uphold Commission decisions approving borough annexation as well as borough  
3 incorporation whenever the applicable requirements have been met. Moreover, the  
4 Commission concludes that borough incorporation and borough annexation of areas  
5 that meet applicable standards are equally encouraged by the law.  
6

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

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

12 Article X, section 1 of the Alaska Constitution promotes "maximum local  
13 self-government." DCCED addressed this standard on pp. 5 - 18 of its *Preliminary Re-*  
14 *port* and concluded that the proposed annexation will provide for maximum local self-  
15 government. DCCED affirmed that review and analysis in its *Final Report*. Based on its  
16 review of the Alaska Constitution, prior decisions of the Commission, and other relevant  
17 materials, DCCED concluded that maximum local self-government is achieved when-  
18 ever organized borough government is extended to an unorganized area in accordance  
19 with applicable standards, regardless of any particular need for municipal services. The  
20 Commission agrees. In fact, that conclusion is incorporated in the Commission's recent  
21 adoption of new 3 AAC 110.981(2):  
22  
23

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

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

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

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

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

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

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

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

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

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

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

3           Among other things, DCCED stated:

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

12 DCCED *Preliminary Report*, p. 19.

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

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

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

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

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

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

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

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

- 18 • Written comments submitted by the residents of Meyers Chuck indi-  
19 cated that they prefer inclusion in a Wrangell borough. The residents believe  
20 they have more in common with Wrangell and that it makes more sense to be  
21 included in the Wrangell borough on a social, economic, geographic and cul-  
22 tural basis. Fifteen residents giving addresses as Meyers Chuck or Union  
23 Bay signed the petition requesting incorporation of a Wrangell borough, feel-  
24 ing their needs more readily met by Wrangell.  
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- The residents of Meyers Chuck and Union Bay share common rural lifestyles and sensibilities with other residents of the proposed borough
- The residents of Meyers Check and Union Bay have historically shared the same geographic areas as the Wrangell community for hunting and fishing
- There are strong economic and social ties between Meyers Chuck and Union Bay area and Wrangell. Meyers Chuck and Union Bay residents have testified that they shop at the grocery and hardware stores in Wrangell regularly, and complete boat repair and maintenance in Wrangell.
- Residents of Meyers Chuck receive radio signal from KSTK in Wrangell. There is a locally published newspaper, the Wrangell Sentinel that is available to Meyers Chuck residents should they choose to subscribe. The local newspaper is available to residents in the proposed Wrangell borough.
- Clarence Strait is a major transportation impediment for residents of Meyers Chuck and Union Bay. The exposed route along Clarence Strait from Meyers Chuck to Ketchikan features rough water with strong tidal currents that are frequently at odds with the prevailing southeast winds. There are no safe harbors between Lemesurier Point and Tongass Narrows. Caamano Point experiences rough weather that compares closely to Southeast Alaska's major capes. The out-flowing tides of Clarence Strait and Behm Canal water meet at this point and the waves can stack up dangerously. Small boats and skiffs more readily access Wrangell for fuel and supplies via the protected Ernest Sound and Zimovia Strait route.

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- Maritime connections are more important than overland connections for Meyers Chuck and Union Bay residents.

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

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

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

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

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

3           However, additional areawide services that are offered by the KGB are  
4 minimally relevant to the residents of Meyers Chuck and Union Bay. They feature pub-  
5 lic transportation, animal control, and regulation of fireworks. The KGB petition antici-  
6 pates that "[I]t is not intended to extend any public transportation services within the  
7 area proposed for annexation at this time." Moreover, the KGB Petition also anticipates  
8 that animal control services "will likely be continued on an ad-hoc, unofficial basis con-  
9 sistent with current practice." Finally, the KGB petition states "it is expected that resi-  
10 dents of Meyers Chuck will at some time in the future form a service area to provide  
11 services such as dock maintenance, solid waste disposal, wastewater treatment and  
12 disposal, or water treatment and distribution, depending upon when residents wish to  
13 organize and pay for provision of these services."  
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16           There are significant differences in relevant additional services offered by  
17 the Wrangell borough that would immediately benefit the Meyers Chuck/Union Bay resi-  
18 dents. Those services include search and rescue services, police, city hospital, boat  
19 harbor, and incarceration facilities. The leaders in Wrangell made a persistent and en-  
20 thusiastic effort to contact residents of Meyers Chuck and Union Bay to assure and con-  
21 firm the services that would benefit the residents of the area. To their credit, the people  
22 of Wrangell obviously showed energetic enthusiasm to be friendly, welcoming and help-  
23 ful to the people of the outlying areas of their proposed borough as they developed their  
24 petition.  
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1 In addition, the Commission also addresses recent comments by residents  
2 of the Meyers Chuck/Union Bay communities withdrawing from their previous testimony  
3 supporting inclusion in the Wrangell borough. Some individuals made statements favor-  
4 ing the creation of an enclave and inclusion, at some future time, in a Prince of Wales  
5 Island borough. The Commission believes that such an enclave would violate the mini-  
6 mum number of local government units clause of article X, section 1 of the Alaska Con-  
7 stitution. If such an enclave were authorized, it would have impacted the Wrangell  
8 petition because of the constitutional mandate to embrace an area with common inter-  
9 ests to the maximum degree possible.<sup>9</sup> The common interests and interrelationships of  
10 Wrangell, Meyers Chuck and Union Bay is well documented in these proceedings and  
11 especially emphasized in initial written comments received from Meyers Chuck and Un-  
12 ion Bay residents. The Commission believes that the preferences of the local residents  
13 of Meyers Chuck and Union Bay were, at a minimum, ambiguous.  
14  
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16 The Commission noted that including the Meyers Chuck/Union Bay area  
17 in the Wrangell borough rather than in the KGB differs from the recommendations by  
18 DCCED. However, the Commission found that the records contain a specific and per-  
19 suasive argument that a sufficient level of interrelationship exists between that  
20 191-square mile area and the Wrangell borough. That decision requires an amendment  
21 to the KGB Petition to exclude that area from the proposed annexation and the KGB  
22 Model Borough Boundaries. The Commission does not support the proposal of leaving  
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25 <sup>9</sup>That same conclusion would be applicable to this proceeding if the area had not been included  
26 in the Wrangell borough.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 DCCED examined land-use and ownership patterns, population density patterns, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, model borough boundaries, and other factors.  
6  
7  
8 DCCED found it is evident that the proposed new boundaries of the KGB conform generally to natural geography, include all land and water necessary to provide the full development of essential borough services on an efficient and cost-effective level, and are otherwise proper.  
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13 DCCED recognized that the KGB annexation proposal creates a  
14 205-square mile enclave in and around Hyder, albeit for the short term. However,  
15 DCCED found that such an enclave would not result in inefficient, cost-ineffective service delivery in the near-term. DCCED noted that if a Prince of Wales Island Borough were formed, the enclave would become a small remnant of the former Southeast Island Regional Educational Attendance Area, which currently provides education to students in Hyder. DCCED recommend that the Hyder enclave should be annexed to the KGB at that time. In its *Final Report*, DCCED also observed that concerns by the Department of Education and Early Development (DEED) regarding the proposed exclusion of Hyder at this time had been resolved after DEED's review of the Petition in this regard and that it DEED did not oppose the KGB's annexation proposal.  
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550 West Seventh Avenue, Suite 1700  
Anchorage, Alaska 99501  
(907) 269-4570 (tel); (907) 269-4539 (fax)

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DCCED also noted that the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough. DCCED found that the KGB proposal satisfies this boundary standard and affirmed that review, analysis, and conclusion in its *Final Report*.

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

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

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(907) 269-4560 (tel); (907) 269-4539 (fax)

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

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

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

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

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

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

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

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

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

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

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

18 The Commission concurs with DCCED's analysis of this standard and  
19 adopts that analysis by reference for purposes of this decision statement. As set out  
20 above, the loss of NFRs to other communities in southeast Alaska was the focus of the  
21 majority of written and oral comment in this proceeding. As observed at the decisional  
22 session, the Commission is very sympathetic to that loss. However, it is not a bar to the  
23 development of boroughs or their extension. It is a factor that is considered in  
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(907) 269-4560 (tel); (907) 269-4539 (fax)

1 consultation with the DEED and when considering the best interests of the State; and  
2 DEED does not oppose this annexation proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(907) 269-4560 (tel); (907) 269-4539 (fax)

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

3 LOCAL BOUNDARY COMMISSION

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

7  
8 Attest:

9 *Jeanne McPherran*  
10 Jeanne McPherran, Staff

11  
12  
13 RECONSIDERATION BY THE COMMISSION

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

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

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

(continued . . . )

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

**JUDICIAL APPEAL**

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

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

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

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

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

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

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

**SEAK Professional Services, LLC**  
2415 Hemlock Avenue #104 Ketchikan, AK 99901  
Phone: 907.225.1145  
Fax: 907.225.1148

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

**SEAK Professional Services, LLC**  
2415 Hemlock Avenue #104 Ketchikan, AK 99901  
Phone: 907.225.1145  
Fax: 907.225.1148

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

**SEAK Professional Services, LLC**  
2415 Hemlock Avenue #104 Ketchikan, AK 99901  
Phone: 907.225.1145  
Fax: 907.225.1148

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

# STATE OF ALASKA

Department of Education & Early Development

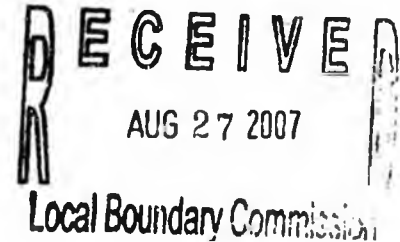
*Division of School Finance*

SARAH PALIN, GOVERNOR

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

August 22, 2007

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



Dear Ms. McPherran:

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

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

Thank you,

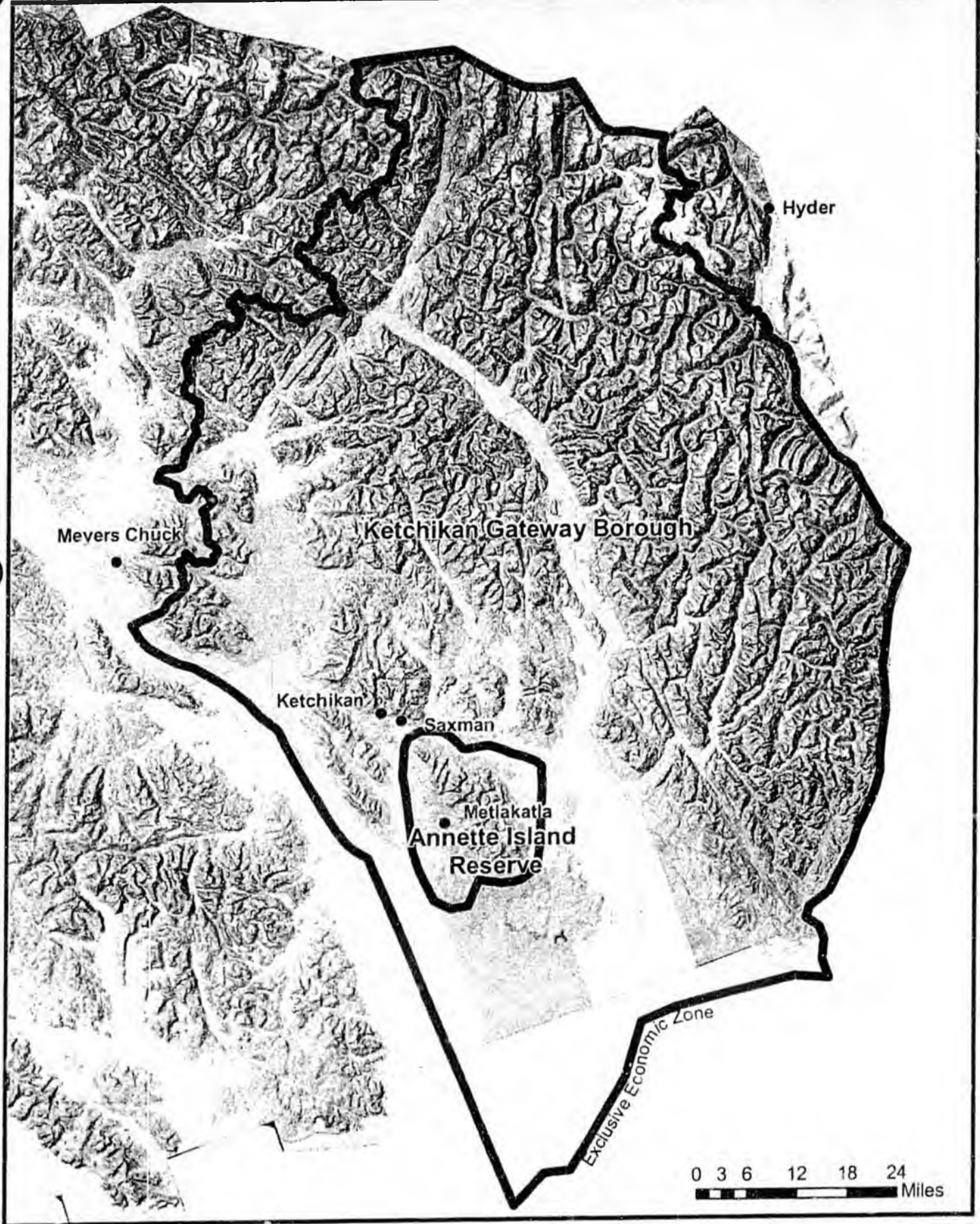
A handwritten signature in black ink, appearing to read "Eddy Jeans".

Eddy Jeans  
School Finance Director

cc: Lance Mertz  
Business Manager, KGBSD

**Map of Ketchikan Gateway Borough  
Following Annexation**

# Ketchikan Gateway Borough Boundary



0 3 6 12 18 24  
Miles



# State of Alaska Local Boundary Commission

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

February 1, 2008

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

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

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

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

Dear Representatives Fairclough and LeDoux and Senator Olson:

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the 1999 Decision, the Commission stated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

LOCAL BOUNDARY COMMISSION



Kermit L. Ketchum  
Chairman

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