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12099 HOUSE CARA



# KETCHIKAN GATEWAY BOROUGH

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OFFICE OF THE BOROUGH ATTORNEY

SCOTT A. BRANDT-ERICHSEN

BOROUGH ATTORNEY

January 31, 2008

Representative Kyle Johansen  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Subject: House Joint Resolution 30

Dear Representative Johansen,

As you know, a number of communities in the unorganized Borough in Southeast Alaska have appealed the Local Boundary Commission decision granting the Ketchikan Gateway Borough's petition for expansion of its boundaries. These entities have also convinced their legislator, Rep. Bill Thomas, to submit HJR 30 to the legislature seeking to block the annexation by obtaining approval of a majority of both houses for a legislative veto. The legislature should take no action on HJR 30.

HJR 30 itself contains inaccurate information. Among other things, the assertion that the LBC decision failed to provide direction regarding a future petition to annex Hyder is incorrect. Page 25 of the LBC decision is appended to this letter. Clearly the LBC gave direction on this issue. Additionally, the asserted loss of funds is speculative and inaccurate.

The opposition arises primarily from the desire of the communities on Prince of Wales Island and the Annette Island School district, who oppose the petition, to continue to receive a disproportionately high amount per student in federal National Forest funds for schools. The National Forest funds are divided into three types, funds for roads, funds for schools, and funds for other projects. The split is a percentage of the total. Road and education funds are transferred to a jurisdiction for their use. The unorganized Borough communities currently receive an inequitable portion of these funds. For example, in FY 2006 Craig received \$503.95 per capita in National Forest funds for education and roads, while Ketchikan received only \$27.45 per capita for these purposes.<sup>1</sup>

In terms of education funds, the unorganized Borough areas

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<sup>1</sup>Based upon 2006 figures provided by DCCED.

in Southeast Alaska received \$1,485.00 per student, while students in Ketchikan received only \$157.00 per student.<sup>2</sup> If the same level of National Forest funds distributions were maintained, and if both the Ketchikan annexation and the Wrangell incorporation are approved, the post annexation revenues for the education component of National Forest Receipts paid to the Prince of Wales communities would be \$1,256.00 per student, and in Ketchikan they would be \$548.00 per student based upon 2006 revenue and student enrollment data.

Any reduction in National Forest Receipts funds amounts to a small figure in comparison to other changes in educational funding. The changes from institution of the ISER formula involve a greater impact. For example, as a percentage of total educational expenditures the changes from the Ketchikan annexation and Wrangell incorporation would represent about a 1.1% budget reduction in the funding available for education in the Craig School District.<sup>3</sup> However, by comparison, the increases from HB 273 would raise the funding for the Craig School District 5% in 2010 and a total of almost 10% over a 4 year period ending in 2013. As a percent of total educational expenses, the Annette Island School District would lose approximately 1.3% of their budget from the annexation, but would gain over 16% from HB 273. Against this background it is clear that the impacts of the Ketchikan boundary expansion are minor in relation to other pending changes in education funding, and as a percentage of the total educational expenses in each district.

Additionally, the continuation of high levels of National Forest funding are speculative. The program has not yet been re-authorized for next year. If it is not re-authorized, the drop in the funds available from this source, even without the annexation, would be 85% or more. The LBC has consistently ruled over the years that the redistribution of National Forest Receipts is not relevant to the legitimate expansion of local government services in the State. The speculative nature of the amounts and reliability of the funds underscores the rationale for this position.

Even if National Forest funds should be considered, as discussed above, when set in context, the Ketchikan annexation has only a minor effect on the funding picture for the Prince of Wales communities and other areas in the unorganized Borough in Southeast Alaska. Further, even with the expected impacts, Prince of Wales communities would still receive more than twice as much in National Forest Funds per student than the Ketchikan Gateway Borough.

It is also significant to note that the exclusion of Hyder

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<sup>2</sup>Based upon 2006 figures provided by DCCED.

<sup>3</sup>Based on 2006 revenue and expense numbers reported by DCCED.

is a red herring when it comes to funding. The Southeast Island School District receives more in revenues from the funding generated by the students in Hyder than it takes to fund services to those students'. Thus, a potential annexation of Hyder by the Ketchikan Gateway Borough would pose a greater fiscal impact to the SISD than the relatively minor reorganization of forest receipts.

Stepping back and looking at the big picture regarding Municipal boundaries statewide, there are many reasons that annexation of areas into Boroughs is in the State's best interests. For example, it would help the Ketchikan Gateway Borough better provide emergency rescue services in the Misty Fjords areas where those services were sorely needed last season due to a plane crash involving tourists. It will provide a basis for planning and land use regulation if U.S. Borax opens up their Molybdenum mine at Bokan Mountain, or if mining activity increases on the Cleveland Peninsula or on Duke Island. It will allow the people most affected by these and other activities to have a voice in the planning of development. It also reduces the area in which the State must be the primary service provider. All of these advantages and improvements in delivery of public services flow from the annexation.

Another significant point is that, of the alleged loss in National Forest funds, the cities of Petersburg and Wrangell are the two cities which in 2007 received the largest single distributions in the unorganized Borough areas of Southeast Alaska.<sup>5</sup> Neither Petersburg nor Wrangell opposed the Ketchikan annexation petition. Neither have they objected to the shift in National Forest funds.

Interestingly, if Wrangell's petition is successful, that action will shift about \$250,000 from the unorganized Borough to the new Wrangell Borough. Yet the aggrieved communities on Prince of Wales did not object to the Wrangell petition. Petersburg is reportedly beginning the process for their own Borough incorporation petition. Whether that effort is opposed based upon impacts

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<sup>5</sup>According to the 2006 SEISD budget, it cost \$93,864 to provide services in Hyder. Based on calculations by the Ketchikan School District finance office, the students in Hyder would generate \$254,379 in revenues from the State Foundation formula under the current formula.  $(1.194 \text{ (district cost factor-old formula)} \times 39.6 \text{ base student multiplier for between 10 and 20 students (14.17.450 School size factor)} \times \$5,380 \text{ (base student allocation)})$ . With the district cost factor under the ISER adjustments, the amount of foundation funding only increases.

<sup>6</sup>According to the arguments offered by the City of Craig to the LBC, \$417,802.00, or about 1/3, of the reduction in funds to communities in the unorganized Borough in Southeast Alaska would come from Petersburg and Wrangell.

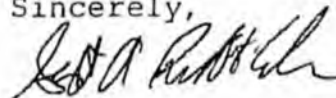
shifting National Forest funds remains to be seen.

Additionally, the City of Craig remains silent about the over \$250,000 or more in educational funding which it is taking from the Ketchikan School district through the City's illegal<sup>6</sup> operation of a correspondence school providing public education to students who are within the Ketchikan Gateway Borough's boundaries without permission from the Ketchikan Gateway Borough. This activity improperly deprives the Ketchikan Gateway Borough School District of funds in an amount more than twice the amount Craig is claiming to lose in Forest receipts. Craig is happy to take funding from the schools in Ketchikan for 51 students who reside in the Ketchikan Gateway Borough, but are enrolled in the Craig School district correspondence program. When the issues are fully examined, it is apparent that it is the City of Craig which is improperly taking education funding from Ketchikan students, not the other way around.

With respect to HJR 30, the legislature should take no action. Despite the noise and hoopla generated by the City of Craig and other Prince of Wales Island communities, the facts show that the only concerns are financial, they are based solely on National Forest Receipts, the future of which is very uncertain, and that the magnitude of any adverse financial impacts on those opposing the annexation are minor. The LBC, and the DEED, have fully and fairly considered the issues. When a long term view of the best interests of the State is examined, it is clear that the Legislature should let the LBC decision stand.

If I can provide any further information concerning this issue please contact me at your convenience.

Sincerely,



Scott A. Brandt-Erichsen  
Borough Attorney

CC: Mayor Williams  
Ray Matiashowski  
Mike Houts

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"The Ketchikan Gateway Borough is the only entity other than the State of Alaska with the legal authority to exercise public education powers within the boundaries of the Ketchikan Gateway Borough.

Local Boundary Commission  
550 West Seventh Avenue, Suite 1700  
Anchorage, Alaska 99501  
(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.  
19  
20  
21  
22

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

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

25 <sup>13</sup>If DCCED is directed to file such a petition, the staff persons working on such would, of course,  
not include employees assigned to serve as staff to the Commission.  
26

**Impact of Wrangell Incorporation and Ketchikan Annexation Upon Distribution of National Forest Receipt Revenues  
in Southeast Alaska upon the Proportion of Receipts per Student  
Boroughs and Communities in Southeast Alaska based on FY '06 Data <sup>1</sup>**

*Now*

*with wrangell + ketchikan*

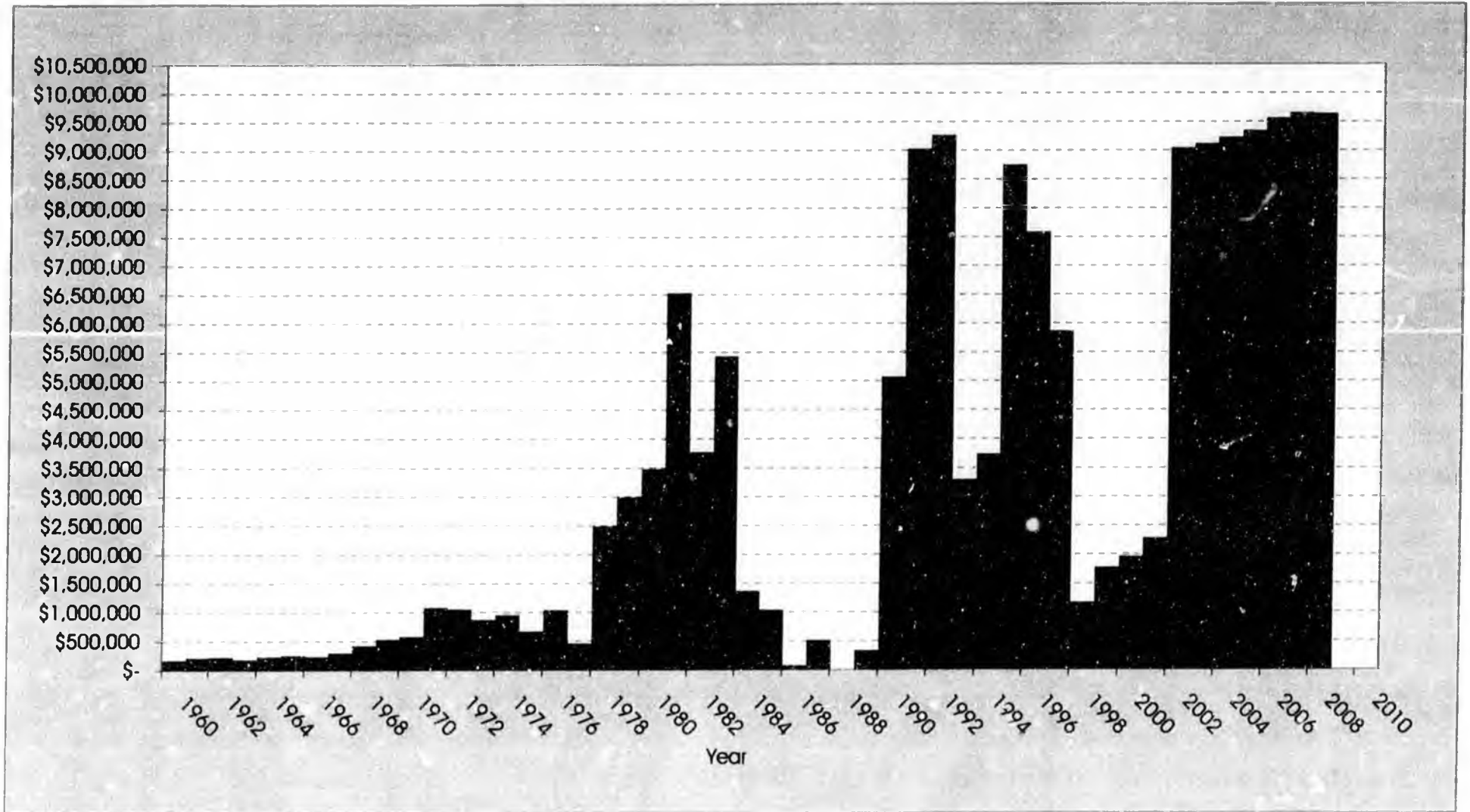
Boroughs	School Enrollment <sup>2</sup>	FY '06 Forest Receipts Available for Education	FY '06 Forest Receipts per Student	Projected Change in Forest Receipts from Annexation/ Incorporation	Amended Receipts per Student
<b>Boroughs</b>					
Haines	296.57	447,936	1,510	447,936	1,510
Juneau	5,306.28	836,450	158	836,450	158
<b>Ketchikan</b>	2,306.35	361,556	157	1,263,112	548
Sitka	1,478.31	878,324	594	878,324	594
Yakutat	133.50	599,607	4,491	599,607	4,491
<b>Home Rule</b>					
Petersburg	629.60	934,775	1,485	790,877	1,256
<b>Wrangell</b>	375.30	557,212	1,485	711,743	1,896
<b>First Class</b>					
Craig	355.80	528,261	1,485	446,941	1,256
Hoonah	171.70	254,925	1,485	215,682	1,256
Hydaburg	74.50	110,611	1,485	93,584	1,256
Kake	141.75	210,458	1,485	178,060	1,256
Klawock	159.60	236,960	1,485	200,483	1,256
Pelican	11.20	19,838	1,771	16,784	1,499
Skagway	108.75	161,462	1,485	136,607	1,256
<b>Second Class</b>					
Angoon (Chatham)	N/A	N/A	N/A	N/A	N/A
Coffman Cove (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Gustavus (Chatham)	N/A	N/A	N/A	N/A	N/A
Kasaan (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Port Alexander (Southeast Island)	N/A	N/A	N/A	N/A	N/A
Tenakee Springs (Chatham)	N/A	N/A	N/A	N/A	N/A
Thorne Bay (Southeast Island)	N/A	N/A	N/A	N/A	N/A
<b>Federal Law</b>					
Metlakatla (Annette Island)	N/A	N/A	N/A	N/A	N/A
<b>REAA's</b>					
Annette Island	298.35	442,964	1,485	374,775	1,256
Chatham	195.10	289,667	1,485	245,076	1,256
Southeast Island	212.00	314,759	1,485	266,305	1,256

<sup>1</sup> Source: DCCED

<sup>2</sup> Note that school FY '05 enrollment figures are used for FY '06 forest receipt calculations.

# Tongass National Forest Receipts

## Payments Forest-Wide 1960 - 2008



**Sonya Hymer**

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**From:** Saddler, Sally A (CED) [sally.saddler@alaska.gov]  
**Sent:** Monday, February 11, 2008 3:29 PM  
**To:** Sonya Hymer; Renee Limoge  
**Cc:** Kaci Schroeder; Rowland, Mindy B (GOV); Michael Black; Jollie, Tara L (CED); Abbott, Jennifer (CED); McPherran, Lorna J (CED); Davis, Mark R (CED); Rolfzen, Bill J (CED); Witty, Rachel L (LAW); Behr, Deborah E (LAW); Vandor, Marjorie L (LAW); Ted Leonard; Bockmon, Julia B (LAW)  
**Subject:** DCCED Talking Points on HJR30 Ketchikan Gateway Borough Annexation Petition  
**Attachments:** KGB Annex Talking Points 020808.pdf

Hi Renee and Sonya:

Attached are the talking points the department has pulled together regarding HJR30 to overturn the Local Boundary Decision on the Ketchikan Gateway Borough Annexation Petition. The points provide information in the following areas:

- Background of the Ketchikan Gateway Borough (KGB)
- The Local Boundary Commission (LBC) Response to the Resolutions
- Issue: Alleged Conflict of Interest Regarding LBC Staff
- Action Re: Ethics Issue Created when Mr Bockhorst Decided to Apply for the KGB Manager Position
- Background/timeline : Dan Bockhorst's Manager Application and the KGB Petition

The department does not have a position on the resolution which takes issue with the Local Boundary Commission's determination. For your information, the LBC is a quasi-judicial commission established in the constitution. The department provides technical and administrative staff to support the LBC, but the decision on the KGB petition belongs to the LBC.

The following LBC/DCCED/Law folks will be available for the hearing:

- Mr Lynn Chrystal, LBC Chair (expecting to fly to Juneau, planes and weather willing; but will be available off-net if he doesn't make it in)
- Bob Harcharek, LBC Vice-Chair (off-net)
- Jennifer Abbott, LBC Staff supervisor (replaced Dan Bockhorst) (Will be here in Juneau planes/weather willing)
- Lorna (Jeannie) McPherran, LBC Staff Person (off-net)
- Bill Rolfzen, Local Government Specialist (here in Juneau)
- Mark Davis, DCCED Ethics Supervisor (off-net)
- Rachael Witty, Backup AAG to Margie Vandor, LBC AAG (off-net)

Let me know if you have question and/or need additional information.

See you in the morning.

Sally

**Talking Points**  
**HJR 30/ SJR 15 Disapproving Ketchikan Annexation**  
Department of Commerce, Community, and Economic Development  
8 February 2008

These resolutions would disapprove the recommendation of the Local Boundary Commission received by the legislature in January 2008 regarding the annexation of territory to the Ketchikan Gateway Borough (KGB).

**Background on KGB Annexation**

- On January 23 the Local Boundary Commission (LBC) presented its approval of the KGB annexation petition to the Legislature for review under article X, section 12 of the Constitution of the State of Alaska.
- The Commission's decision approves the annexation of 4,510 square miles to the KGB.
- Unless the Legislature disapproves the LBC decision by passing HJR 30, sponsored by Rep. Thomas, or SJR 15, sponsored by Sen. Al Kookesh, the Commission's decision will go into effect 45 days from the date the Commission presented it to the Legislature (i.e., on March 9, 2008).
- The Department of Education and Early Development (DEED) filed a letter of non-objection to the KGB annexation.
  
- Impacts of the LBC decision regarding National Forest Receipts (NFR):
  - The KGB would acquire 4,510 square miles of unorganized borough land and, in FY 2010, the possible addition of \$1.27 million in NFR payments, if the Secure Rural Schools Act portion of the NFR Program is reauthorized by Congress in its current form and at the 2002-2007 funding levels.
  - If the annexation becomes effective, Southeast Alaska communities in the unorganized borough could lose a combined \$1.27 million in NFR payments if the NFR Program is reauthorized in its current form and at its 2002-2007 levels.
  - The portion of the NFR program, which has included funds for the Secure Rural Schools Act since 2002, is sunset; unless reauthorized by Congress, the amount of NFR funding will drop significantly for **all** schools districts in Southeast, not just those on Prince of Wales Island.
  - DEED did not oppose the annexation.
  - The Legislature's Joint Legislative Education Task Force has addressed the sunset provisions of the Secure Rural Schools Act provisions in the NFR Program and is monitoring the issue.

## The LBC's Response to Resolutions

- The LBC has written to both the House and Senate Community and Regional Affairs Committees regarding the Resolutions and errors contained therein.
- The Commission explained differences between the 1998 KGB annexation proceeding and the 2006 annexation proceeding. Primary points are:
  - The members of the LBC who considered the 1998 petition are different from the LBC members who considered the current petition.
  - The rationale and conclusions of a former LCB are not binding on a subsequent LBC.
  - The LBC's regulations and controlling statutes have changed since 1999.
  - In 1974 the Alaska Supreme Court stated the LBC has been given broad power to decide in the unique circumstances presented by "each" petition.
  - The current LBC disagrees with the reliance that had been previously placed on the Model Borough Boundaries.
  - The KGB's 2006 petition differs in that it includes the Meyers Chuck/Union Bay area.
  - The Commission's decision amends the Model Borough Boundaries of the KGB and of the Wrangell/Petersburg Model Borough Boundaries.
  - The LBC conditioned its approval regarding the 2006 petition by imposing a duty on the KGB to file a petition to annex Hyder within five years.
- The current LBC also responded to the concern for loss of NFR Payment, agreeing with the 1999 decision which stated:
  - *The commission rejects the notion that state policy position concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA in this proceeding. NFR 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.*

- The LBC also stated with regard to the loss of NFR Payment:
  - *...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.*

**Issue: Alleged Conflict of Interest Regarding LBC Staff**

- The City of Craig City Administrator, Jon Bolling, has expressed concern about a possible conflict of interest regarding former LBC staff member Dan Bockhorst.
- On June 28, 2007, the LBC staff completed its preliminary report regarding the proposal. This report was principally authored by Mr. Bockhorst. It was released for public review and comment in mid-July.
- In late July, Mr. Bockhorst became aware that the KGB was recruiting for the position of Borough manager. He determined to apply for, and was offered and accepted, the position in October.
- Mr. Bolling called for an investigation into the circumstances and/or timeline of Mr. Bockhorst receiving the manager position and his recommendations to the LBC regarding the annexation.
- One of Mr. Bolling's arguments is what he alleges to be a reversal of position by Mr. Bockhorst and the LBC from a similar petition submitted by KGB in 1998.
- The City of Craig is pressing its legislators to pass resolutions disapproving the LBC Board's decision.

**Action re: Ethics Issue Created When Mr. Bockhorst Decided to Apply for KGB Manager Position**

- When Mr. Bockhorst learned of the job opening, he sought advice from his ethics supervisor and the state ethics attorney, disclosed the matter and advised that he would refrain from further action on the petition as required by the Ethics Act.
- The Department, in consultation with the State Ethics Attorney, advised Mr. Bockhorst that he must continue to refrain from any work on the annexation until his job application was rejected or he left state service.
- The Department ethics supervisor confirmed that the annexation matter had been reassigned.
- The state ethics attorney informed Mr. Bolling by letter that Mr. Bockhorst took the steps required by the Ethics Act when he learned of the vacancy, and based on the information provided by DCCED, there would be no basis to initiate an ethics investigation.
- The state ethics attorney also advised Mr. Bolling how to file an ethics complaint if he still felt there were facts showing a violation of the Ethics Act.
- Mr. Bolling later advised that the City was not complaining about an Ethics Act violation. Rather, its concern was an appearance of conflict.

### **Background/timeline: Dan Bockhorst's Manager Application and the KGB Petition**

- March 26, 2007 Mr. Bockhorst began preparing the required preliminary report on the proposed KGB annexation.
- June 28, 2007 Mr. Bockhorst finished preparing the preliminary report.
- July 29, 2007 The KGB announced it was recruiting for a Borough Manager.
- July 31, 2007 Mr. Bockhorst became aware of the recruitment for the position.
- July 31, 2007 Mr. Davis, the Department's Ethics Supervisor, was advised by Mr. Bockhorst that he had seen a public posting for the position of manager for the KGB and was considering applying.
- Mr. Davis advised Mr. Bockhorst to talk to the state ethics attorney regarding the Ethics Act requirements, which he did, also on the same day...
- Mr. Bockhorst was advised by the State's Ethics Attorney, Judy Bockmon, how to conduct himself in regard to his interest in the Ketchikan borough job.
- As required, on August 1, 2007, Mr. Bockhorst submitted an ethics disclosure to Mark Davis indicating his intent to apply for the job.
- In that disclosure, Mr. Bockhorst stated that he had recused himself from any further action regarding the KGB annexation petition during the KGB application process, as required by the Ethics Act.
- Mr. Davis confirmed with Mr. Bockhorst that he must continue to refrain from participation on the annexation petition.
- Work relating to Ketchikan matters was reassigned to other LBC staff; specifically Jeanne McPherrin, who independently reviewed all materials in the proceeding and prepared the Department's final report to the Commission in mid-October.
- October 13, 2007, Mr. Bockhorst was offered and accepted the KGB Manager position, leaving State service on October 31, 2007.
- In November, the LBC held a hearing on the KGB annexation petition, including public comments from the City of Craig and its attorney. The Commission made its decision regarding the annexation at a public meeting in Ketchikan on November 7, 2007, and published its written decision on December 5, 2007. In its decision, the Commission agreed with some of the staff recommendations and disapproved of others.

### **Department of Law's Notes re: Department Staff and Independence of the LBC**

- Allegation that the LBC decision was flawed because it concurred with the DCCED reports and recommendations is without merit.
- Preliminary and final reports and recommendations prepared by DCCED staff are required as part of the petition process under 3 AAC 110.530 [also by statute in case of incorporation - AS 29.05.080.]
- DCCED's report and recommendation on the annexation petition undisputedly was not the only evidence considered and discussed by the LBC in its proceedings. There was a full day of public hearings before the LBC. There were

briefs and public comments submitted by interested parties and persons, including the City of Craig, and other opponents of the annexation petition.

- Notwithstanding the LBC's concurrence with DCCED's recommendation on the KGB annexation petition, DCCED is **not** the entity delegated authority by the legislature to determine if an annexation meets standards and is in the best interests of the state. That authority has been delegated exclusively to the LBC. *See, Port Valdez Co. v. City of Valdez*, 522 P.2d 1147, 1155 (Alaska 1974); *Mobile Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974).
- A recommendation from DCCED on a petition to the LBC is simply that; a recommendation. It serves as evidence along with other evidence presented to the LBC in public testimony and briefs submitted regarding a petition.
- There is no legal basis upon which to find error simply because the LBC agreed with DCCED's report and recommendation in whole or in part.
- The record shows that the LBC considered the impacts on education funding and NFR distribution, based not only upon DCCED reports, but on all the evidence submitted by opponents and interested parties (written and oral testimony presented at the hearings and decisional meetings), and evidence that conflicted was addressed in its decisional document.
- The evidence submitted to the LBC, its discussions thereof, and the decisional document, constitutes a record that sufficiently reflects the basis for the decision of the LBC so as to enable meaningful judicial review. *See Alvarez v. Ketchikan Gateway Borough*, 28 P.3d 935, 940 (Alaska 2001) (threshold question on appeal is whether the record sufficiently reflects the basis for the board's decision so as to facilitate meaningful judicial review).

**Sonya Hymer**

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**From:** Saddler, Sally A (CED) [sally.saddler@alaska.gov]  
**Sent:** Monday, February 25, 2008 3:32 PM  
**To:** Sonya Hymer; Renee Limoge  
**Cc:** Abbott, Jennifer (CED); McPherran, Lorna J (CED); Jollie, Tara L (CED); Vandor, Marjorie L (LAW); Rolfzen, Bill J (CED); Kaci Schroeder; Nancy Barnes  
**Subject:** National Forest Receipts Information and Tomorrow's H CRA Hearing  
**Attachments:** LBC's NFR Conclusions 022508.pdf; NFR Overview 022508.pdf

Hi Ladies:

Attached are two documents that our LBC staff requested I forward to you regarding HJR 30/SJR 15:

- The first is an overview of National Forest Receipts, which we use when we get questions regarding the program.
- The second is a document that Commissioner Chrystal was going to address at the hearings on Feb. 12, which he was unable to attend. It is a compilation of the Commission work to bring the NFR issue to the Legislature over the last nine years in its annual reports and the *School Consolidation Report*. Jeannie McPherran referenced these efforts during the H CRA work session last week.

Thank you. If you have any questions, please let us know.

For tomorrow's hearing we will have the following folks available off-net for any questions:

- Lynn Chrystal, LBC Member
- Jennifer Abbott, DCCED LBC Supervisor
- Jeannie McPherran, Local Government Specialist for the LBC
- Bill Rolfzen, Local Government Specialist, Revenue Sharing Programs
- Margie Vandor, Law (may have a conflict that would cause her to be a bit late)

See you in the morning!

Sally

*National Forest Receipts*

*Overview since Statehood*

## National Forest Receipts

### Overview since Statehood

**Funding source:** Federal government

**How level of federal aid has been, is now, and will be determined:**

*FY 1960 – 2001:* 25 percent of the annual income earned from activities within a national forest was paid to the state. Alaska has two national forests, the Tongass and Chugach. The Tongass is much larger and has historically generated much more income than the Chugach. This is because Tongass income was derived principally from "stumpage" fees charged for commercial logging, while income in the Chugach was earned primarily from campground fees, recreation fees and mineral lease permits.

*FY 2002 – 2007:* Because of drastically declining national forest receipts, congress passed a law in 2000 altering the way in which funding was to be determined for FY 2002 - 2007. Under the revised law, the annual payment to the State is based on the average of the three highest payments during the "eligibility period" of fiscal years 1987-2000. Alaska's receives an annual payment of approximately \$9.3 million (annually adjusted for inflation). The State allocates 98.43 percent of the payment to the Tongass and 1.57 percent to the Chugach (the average proportion of the payments received for each national forest during the same eligibility period of 1987-2000).

*FY 2008 and beyond:* It is unknown how funding will be determined after FY 2007. Some believe that the federal government may revert to the 25 percent formula used prior to FY 2002.

**How national forest receipts funding has been and is now distributed by the State of Alaska:**

*1959 – 1963:* Because no organized boroughs existed within either national forest until 1963, all funds were retained by the State of Alaska.

*1964 – 1991:* Funds were allocated on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs and the State retained the share for the unorganized borough. Because the federal law required that national forest receipts be spent on schools and roads in the area where the payment was generated, the State held the view that the legal requirement was met because the State spent at least an amount equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

**1992 – Present:** The allocation of funds to organized boroughs remained unchanged. However, under the revised law, the State allocates the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, regional educational attendance areas in or near the portion of the national forest in the unorganized borough, and the community of Metlakatla. While payments to boroughs are based strictly on the amount of national forest within their respective boundaries, payments to cities and REAAs within the unorganized borough depend on student enrollment (for REAAs and city school districts) and amount of roads maintained (for cities and Metlakatla). Additionally, the State retains a portion of the road maintenance funding based on the miles of road it maintains outside of cities within the portion of the unorganized borough in the national forest.

The State and federal governments pay 100 percent of basic need for Regional Educational Attendance Areas (REAAs). Despite such, the State also pays significant amounts of National Forest Receipts to REAAs within the national forests (particularly the Tongass). Those REAAs receive funds not available to other REAAs outside the national forests.

#### **LBC Conclusions regarding National Forest Receipts**

Since 1999, the Commission has rejected the notion that State policy positions concerning borough incorporation and annexation should be driven by financial considerations such as the National Forest Receipts programs. The Commission notes that such programs are ephemeral and may operate in a significantly different manner or may no longer exist in a few years. In contrast, the Commission believes that the formation of a borough or the extension of a borough over a large area is a much more permanent action. Moreover, the Commission has asserted that 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. 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 programs such as National Forest Receipts. However, the Commission has also noted that even if financial impacts were a relevant consideration, the adverse financial impacts on numerous local service providers in Ketchikan Gateway Borough annexation would have been de minimis in terms of the percentage of the operating budgets of each of the affected entities. (1999 Statement of Decision, Ketchikan Gateway Borough Annexation, p. 12; 2007 Statement of Decision, Ketchikan Gateway Borough Annexation, pp. 26-27.)

The LBC believes that the current methodology for allocating National Forest Receipts (and other revenue programs) is an impediment to borough formation and annexation. The Commission has repeatedly brought this issue to the attention of the Legislature. The following excerpt from the LBC's 2005 Annual Report to the Legislature is illustrative of the Commission's concern:

## **6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.**

As noted above, the 1991 Task Force on Governmental Roles concluded that ". . . recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the few remaining incentives to organize boroughs." Those issues are addressed below.

### **(A) National Forest Receipts**

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the revised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of \$62.60 per capita. In contrast, nineteen entities (three REAAs, nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of \$333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received \$1,027,546 in National Forest receipts. That amounted to \$1,423 for each student in those districts (a total of 722.3 ADM [average daily membership] for those three districts, including correspondence students).

In addition to being a disincentive to borough formation, the existing system creates broad opposition to certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift \$1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

*2005 Report of the Alaska Local Boundary Commission to the First Session of the Twenty-fourth Alaska State Legislature, pp. 129 -131. See also, 2004, 2006, and 2007 LBC annual reports to the Legislature and the LBC's 2004 School Consolidation Report.*

*Local Boundary Commission Conclusions Regarding  
National Forest Receipts in Southeast Alaska  
Between 1999 Ketchikan Gateway Borough  
Annexation Decision and 2007 Decision*

*LBC Annual Report*                      1999

“    2000

“    2001

“    2002

“    2004

“    2005

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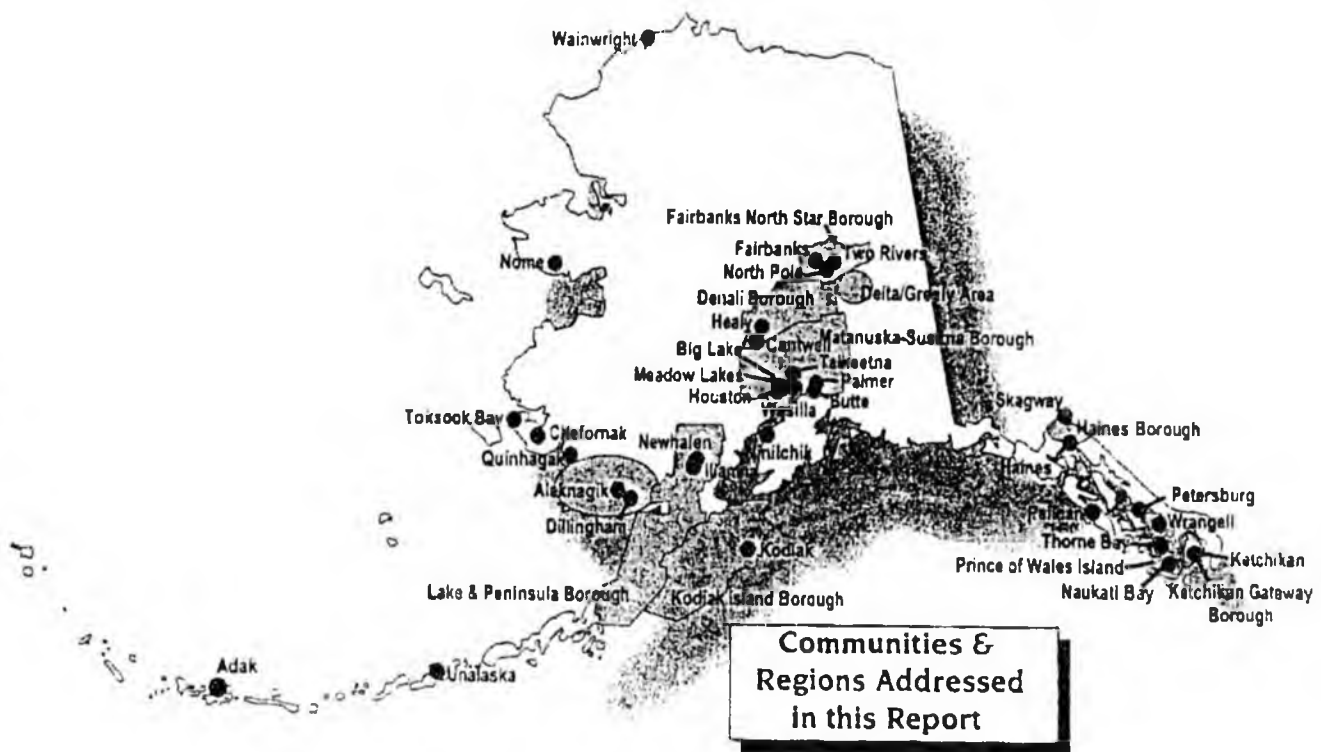
*School Consolidation Report*              2004

*(Excerpts attached.)*



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

January 28, 1999



Kevin Waring, Chairperson  
Kathleen Wasserman, First Judicial District  
Nancy Cannington, Second Judicial District  
Allan Tesche, Third Judicial District  
William Walters, Fourth Judicial District



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

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

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

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





## Chapter 4

### Policy Issues and Concerns

The Local Boundary Commission wishes to bring the following policy issues and concerns to the attention of the legislature:

- ❖ Substantial disincentives for borough incorporation and annexation are impeding the development of local government in Alaska. The City of Cordova has drafted a conceptual proposal to promote borough formation in unorganized areas that have the capacity to assume the responsibility for local government. The Commission urges the legislature to give thoughtful consideration to the City of Cordova's proposal in order to bring about formation of new boroughs in Alaska.
- ❖ There is growing ambiguity over the authority of newly formed or altered municipal governments to levy property taxes during the initial assessment year after the change. There is also a need to provide municipalities with extraterritorial authority to levy taxes in areas detached from those municipalities to pay costs associated with detachment. Further, State law should be amended to recognize that actions that come before the Local

Boundary Commission may result in changes to service areas of organized boroughs and the unorganized borough.

- ❖ The Small Community Housing Mortgage Loan program is having adverse impacts on some municipal boundary proposals. Ideally, the program could be revised to maintain homebuyer program eligibility for a period after municipal boundary changes.
- ❖ Disincentives for borough incorporation and annexation are promoting interest in single-community boroughs.
- ❖ Despite a constitutional requirement for such, there is a lack of common interests within the unorganized borough.

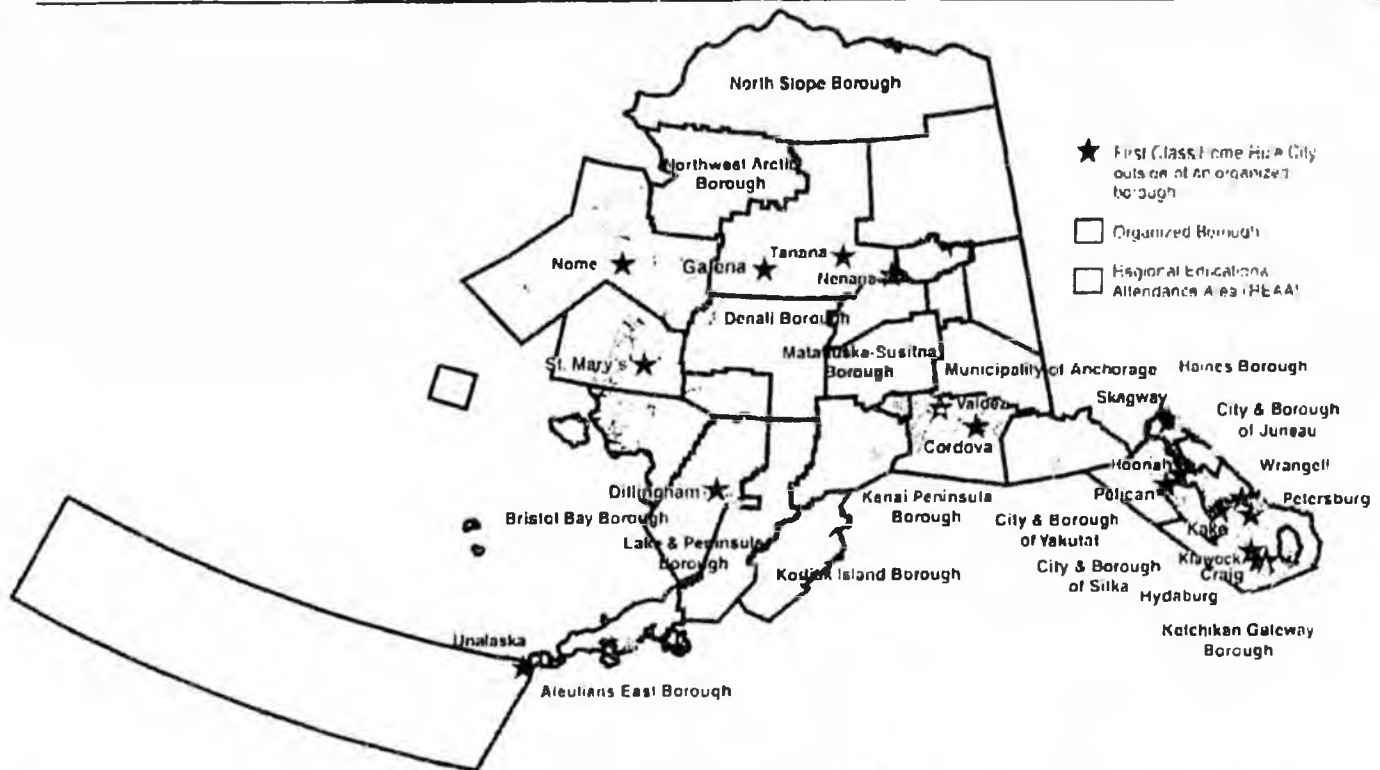
<sup>15</sup> The Commission stresses that its concern over the lack of incentives to form boroughs does not apply to the same degree to communities interested in forming single community borough governments. Concerns on the part of the Commission regarding prospective single community borough incorporation proposals are addressed separately in this chapter.

.....

**Substantial Disincentives Hindering Beneficial Borough Incorporation and Annexation are Impeding the Development of Local Government in Alaska**

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pp. 69  
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As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives for borough incorporation and annexation.<sup>15</sup> The legislature and the Commission have



<sup>26</sup> Matanuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997)

<sup>27</sup> ibid., 406

continuum of interests protected by the equal protection clause.<sup>26</sup> In that same case, Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts. Specifically, they stated:

...the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>27</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ❖ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ❖ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is



fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.

❖ In some cases, borough formation carries the prospect of *substantial* education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.

❖ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.

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NFR

❖ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).

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PILT

❖ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.

❖ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.

❖ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.

❖ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those



 Boroughs Formed Voluntarily

- North Slope Borough
- Northwest Arctic Borough
- Aristol Bay Borough
- Lake and Peninsula Borough
- Aleutians East Borough
- Denali Borough
- City and Borough of Yakutat
- Haines Borough

 Legislatively Mandated Boroughs

- Fairbanks North Star Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- Kodiak Peninsula Borough
- Kodiak Island Borough
- City and Borough of Juneau
- City and Borough of Sitka
- Ketchikan Gateway Borough





Declaration of Intent. It is the intention of the legislature to provide for maximum local self government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation ... Session Laws of Alaska, 1963, Chapter 52.

26 In addition to required local contributions, organized boroughs have budgeted more than \$100 million in discretionary contributions for their schools.

Organized boroughs are mandated to carry out the State's constitutional duty for public education within their boundaries. They are also required to pay a significant portion of the State's cost of education, while regional educational attendance areas are not. Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being deprived of State services, revenues, or assistance and are being penalized because of incorporation.

27 Maranuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

For example, in the current fiscal year alone, organized boroughs are required by AS 14.17.410 to contribute more than \$135 million to support education.<sup>26</sup> Attempts by local governments to achieve a judicial remedy of perceived tax inequities inherent in AS 14.17.410 have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.<sup>27</sup> In that same case, Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

28 *Ibid.*, 406.

... the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>28</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ✕ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ✕ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.
- ✕ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.

29 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

- ✗ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.
- ✗ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- ✗ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ✗ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ✗ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ✗ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ✗ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

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Perhaps no statistic is more illustrative of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.<sup>29</sup> In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Commission's concerns are shared by at least one of the larger and more sophisticated local governments in the unorganized borough. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process." Cordova City officials have drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

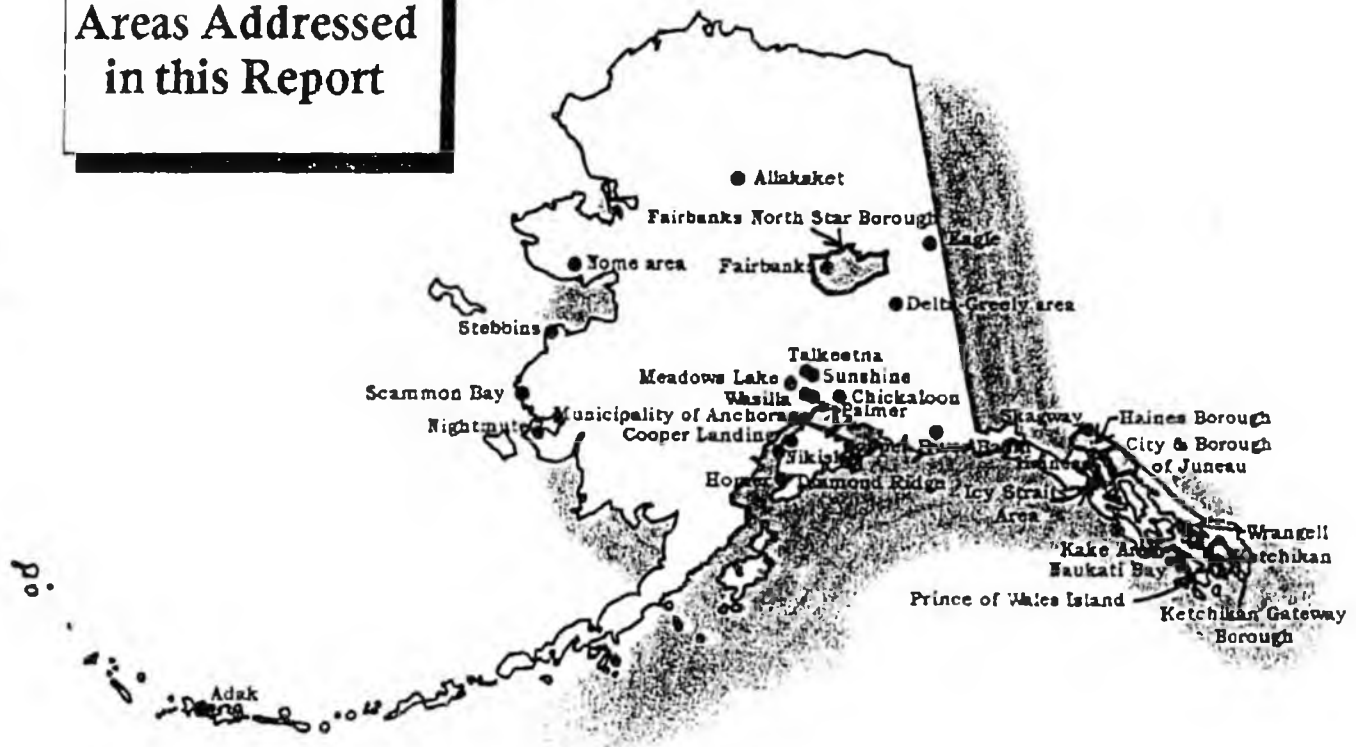
The Local Boundary Commission has developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature.



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

January 23, 2002

## Areas Addressed in this Report



Kevin Waring, Chairperson  
Vacant, 1st Judicial District  
Vacant, 2nd Judicial District  
Allan Tesche, 3rd Judicial District  
Ardith Lynch, 4th Judicial District



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<sup>21</sup> Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. However, the remainder of the unorganized borough, made up of regional educational attendance areas which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, regional educational attendance areas (REAs) suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAs in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

<sup>22</sup> Matanuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

foundation aid than they would have received had they not been organized as boroughs.<sup>21</sup> Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$143 million in required "local contributions", the sixteen organized boroughs made "voluntary local contributions" of \$159,401,604 or \$1,508 per student last year. The total contributions in support of schools by organized boroughs last year amounted to \$302,866,353 or \$2,866 per student.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.<sup>22</sup> Justices Matthews and Rabinowitz stated that any remedy of the per-

ceived inequities must be pursued through the legislature rather than the courts.

... the legislature can decide whether and how much to tax property in REAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>23</sup>

\* A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ♦ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ♦ Borough formation would bring about consolidation of school districts in the unorganized borough,

an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13% of the state's population, the unorganized borough encompasses 70% of Alaska's school districts.

- ♦ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ♦ Borough formation or annexation would mean the loss of eligibility on the part of REAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ♦ The extension of borough government would result in the loss of eligibility on the part of cities for federal

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payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.

- ◆ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ◆ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ◆ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ◆ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ◆ In some cases, borough formation carries with it the prospect of significant

funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were formed voluntarily.<sup>24</sup> In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Alaska Municipal League shares the Commission's concerns. The 2002 Policy Statement adopted by the Alaska Municipal League States:

**Encouragement of Municipal Government in the Unorganized Borough.** The League supports state policies that remove disincentives and encour-

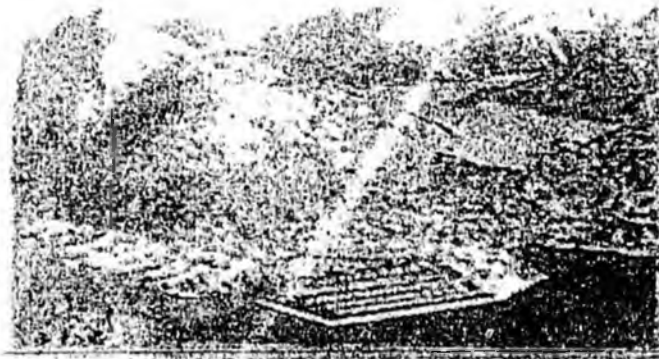
age the formation and annexation to boroughs in the unorganized areas of the state . . .

**Call for a Review of the Role of Government.** The League calls for a review of municipal government . . . to determine if state policies are consistent with the Intent of the Alaska Constitution mandating "maximum local self-government with a minimum of local government units. . ." According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments

It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for the type of reform provided by Senate Bill 48. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process."

<sup>23</sup> Ibid., 406

<sup>24</sup> Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.



Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48.

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

January 21, 2004

## Areas Addressed in this Report



Darroll Hargreaves, Chair  
Georgianna Zimmerman, 1st Judicial District  
Robert Harcharak, 2nd Judicial District  
Robert Hicks, Vice-Chair, 3rd Judicial District  
Anthony Nakazawa, 4th Judicial District



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organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$152.5 million in required "local contributions" for FY 2003, the 16 organized boroughs made "voluntary local contributions" of \$127,172,543 or \$1,201 per student last year.<sup>24</sup> The total contributions in support of schools by organized boroughs last year amounted to \$279,703,457 or \$2,642 per student. The data in Table 3-1 on the following page sets out school districts, by type, and the required and voluntary local contribution of each under the education foundation program in AS 14.17.410.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case, the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.<sup>25</sup> Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions. If its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>26</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ➔ Areas of the unorganized borough outside of home rule and first class cities have no obligation to

financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).

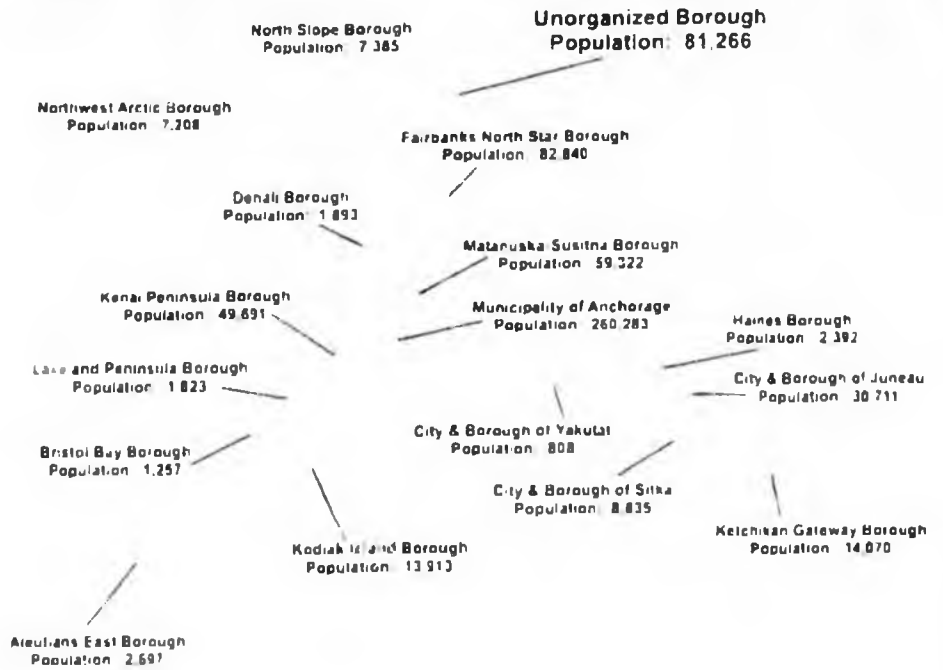
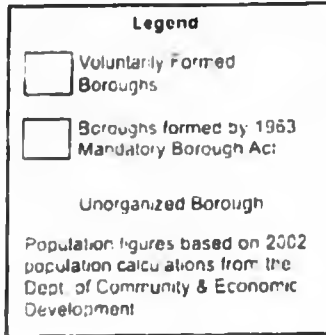
- ➔ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13 percent of the state's population, the unorganized borough encompasses 70 percent of Alaska's school districts.
- ➔ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ➔ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.

\*  
NFR

<sup>24</sup> Using a borough FY 2003 average daily membership of 105,884.5.

<sup>25</sup> *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 398 (Alaska 1997)

<sup>26</sup> *Ibid.*, 406.



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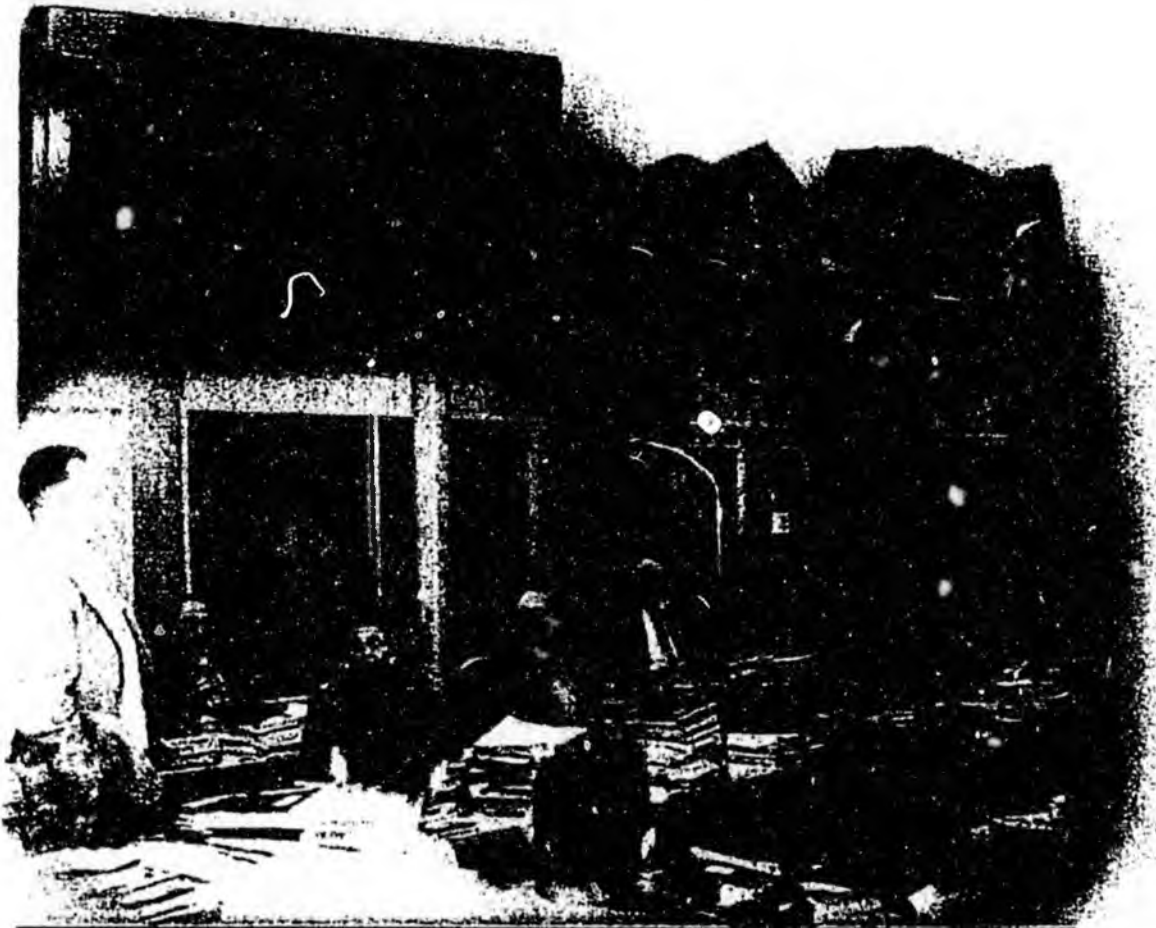
- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 91-565, as amended by PL 101-333). Funds would be paid to the borough.
- Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

- In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.<sup>27</sup> In contrast, 83 percent of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13 percent of Alaskans live in the unorganized borough.

Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

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



**Commemorating the 50th Anniversary of the  
Convening of the Alaska Constitutional Convention**

**1956 - 2006**

**"We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska."**

Further in this regard, the LBC notes that land entitlements for boroughs have not always been transferred as quickly as borough officials would prefer. See, Table 3-12 for details regarding this issue as of February 2003. The LBC understands that additional funds have been appropriated for the State agency dealing with municipal land transfers and anticipates that the remaining entitlements will be conveyed expeditiously and that any future municipal entitlement transfers will be a priority of the State.

**Borough Land Entitlements - AS 29.65**

Municipality	Original Entitlement	Acreage Remaining to Convey
Aleutians East Borough	7,633	5,713
Municipality of Anchorage	44,893	272
Bristol Bay Borough	2,998	349
Denali Borough	49,789	29,303
Fairbanks North Star Borough	112,000	177
Haines Borough	2,800	25
City and Borough of Juneau	19,584	160
Kenai Peninsula Borough	155,780	20,892
Ketchikan Gateway Borough	11,593	0
Kodiak Island Borough	56,500	0
Lake and Peninsula Borough	125,000	92,865
Matanuska-Susitna Borough	355,210	8,489
North Slope Borough	89,850	89,486
Northwest Arctic Borough	285,438	285,434
City and Borough of Sitka	10,500	0
City and Borough of Yakutat	21,500	20,088

Source: Table attached to February 28, 2003, Letter from Dick Mylius, Chief, DNR Resource Assessment and Development Section, Division of Mining, Land, and Water, Department of Natural Resources, to Senator Thomas Wagner, Chair, Senate Community and Regional Affairs Committee, Alaska Senate.

few remaining incentives to organize boroughs." Those issues are addressed below.

\*

**6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.**

As noted above, the 1991 Task Force on Governmental Roles concluded that "... recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the

**(a) National Forest Receipts.**

\*

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where

the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the re-

vised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of \$62.60 per capita. In contrast, nineteen entities (three REAAs,



nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of \$333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received \$1,027,546 in National Forest receipts. That amounted to \$1,423 for each student in those districts (a total of 722.3 ADM for those three districts, including correspondence students).

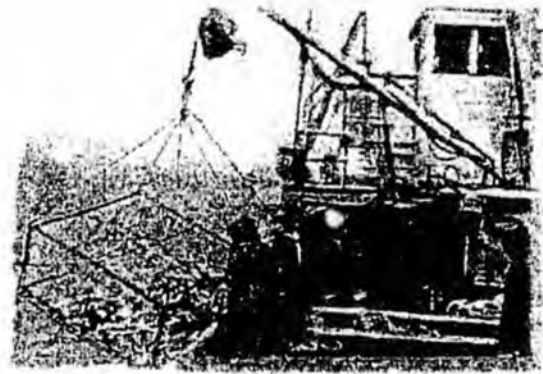
In addition to being a disincentive to borough formation, the existing system creates broad opposition to

certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift \$1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

(b) Shared Fisheries Fees and Taxes.

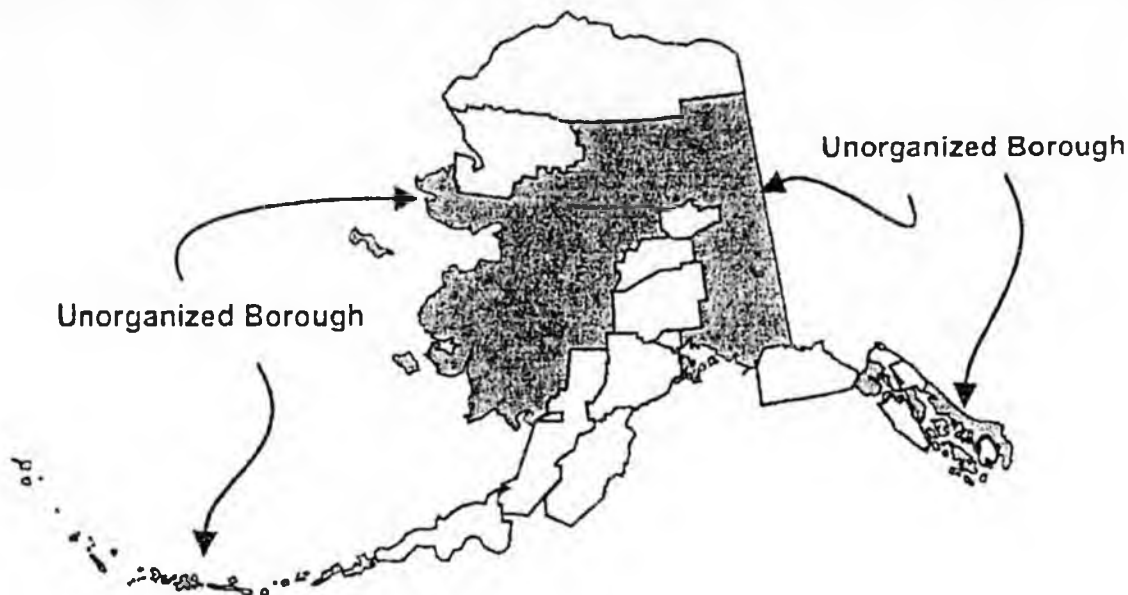
DOR collects fisheries business license fees and taxes under the provisions of AS 43.75.011 - 43.75.290. A portion of the fees and taxes are distributed



by DOR to eligible municipalities under the formula set out in AS 43.75.130.

Fifty percent of any revenue not transferred to eligible municipalities is allocated to the Department for distribution to eligible municipalities that demonstrate significant effects from fisheries business under the provisions of AS 29.60.450.

Under the Fisheries Resource Landing Tax statutes (AS 43.77.010-200), DOR collects a landing tax on floating fisheries businesses and distributes it directly to eligible municipalities according to the formula spelled out in AS 43.77.060. Once this allocation is made, 50 percent of the funds not distributed by DOR to eligible municipalities are also transferred to Commerce for distribution to eligible municipalities.



As is the case with National Forest receipts, restricting shared fisheries fees and taxes to organized boroughs would create further incentives for borough incorporation.

## Section II. Lack of Standards and Law Providing the Manner for Establishment of Unorganized Boroughs

### Subsection A. Statement of the Issue:

Article X, section 3 of Alaska's Constitution requires the Alaska Legislature to enact laws providing for (1) standards for establishment of organized and unorganized boroughs and (2) methods for establishment of organized and unorganized boroughs. In 1961, the Legislature enacted standards for establishment of *organized*

*boroughs*. Laws providing the manner for establishment of *organized boroughs* have also been enacted. However, in 46 years, the Legislature of the State of Alaska has yet to enact laws providing standards and the manner for establishment of *unorganized boroughs*.

The absence of standards for establishment of unorganized boroughs and the lack of compliance with the common-interest principle on the part of the single unorganized borough act as a significant impediment to achievement of the constitutional goals of maximum local self-government with a minimum of local government units set out in Article X, section 1 of Alaska's Constitution.

Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention,



Local Boundary Commission Report to the  
**Second Session of the  
Twenty-Fourth Alaska Legislature**

January 2006



Darroll Hargraves, Chairman  
Georgianna Zimmerle, 1st Judicial District  
Robert Harcharek, 2nd Judicial District  
Robert Hicks, 3rd Judicial District  
Anthony Nakazawa, 4th Judicial District

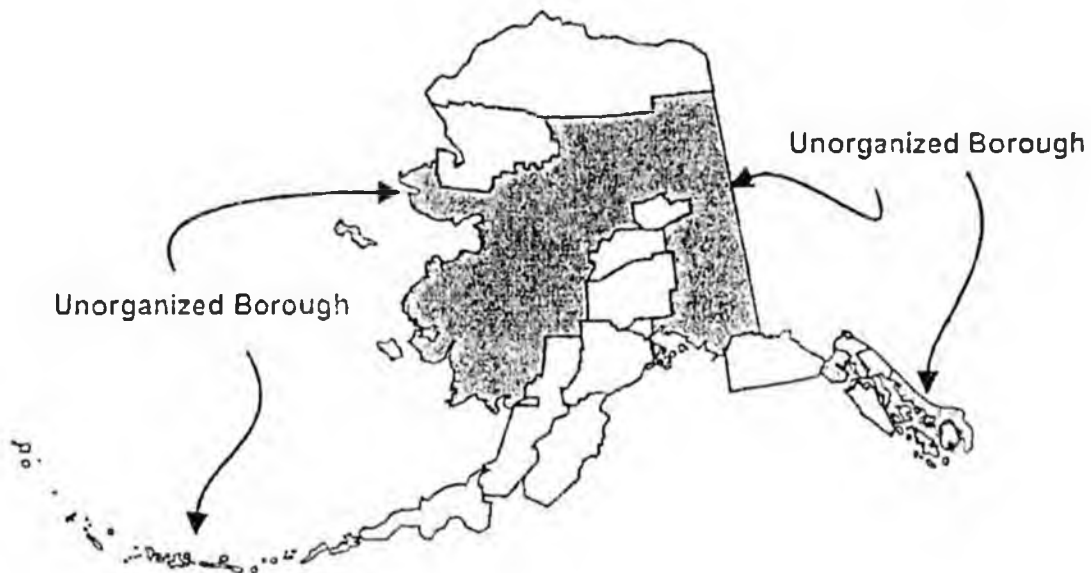
Local Boundary Commission  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Phone: 907-269-4560  
Fax: 907-269-4539

Commission have complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812[a][1]).

In 1961, the founders of Alaska local government opted to make borough formation voluntary. Legislators recognized from the very beginning that there were inadequate incentives to encourage people to form boroughs. Unfortunately, the inducements to organize that were lacking failed to evolve over time. In fact, there were substantial disincentives to borough formation and annexation. The organized borough concept had little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for the majority of services, especially education. Under Alaska law, boroughs that organize are mandated to carry out the State's constitutional duty for public education within their boundaries. They are also required to pay a significant portion of the State's cost of education, while regional educational attendance areas are not. There proved to be other inequities as well. Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being deprived of State services, revenues, or assistance and are being penalized because of incorporation.

\* A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).



- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.
- In some cases, borough formation carries the prospect of *substantial* education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. \* NFR
- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333). \* PLT
- Borough formation or annexation would cause the loss of eligibility for State Revenue sharing by unincorporated communities and volunteer fire departments in the unorganized communities and volunteer fire departments in the unorganized borough.
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

Circumstances such as the above, have contributed to a growing interest in forming single-community borough governments. In addition to the disincentives and the lack of inducements to form boroughs, it appears that local officials are concerned about being compelled into larger, legislatively-mandated boroughs. Local officials from Wrangell, Nome, Petersburg, Hoonah, Unalaska, Valdez, and other communities have recently expressed interest in forming single-community or relatively small boroughs. Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Nenana, Tanana, Cordova, and Pelican. The Commission is concerned that if this trend continues, it will lead to a proliferation of single-community boroughs created in a piecemeal fashion across Alaska. The prospect of single-community boroughs also raises serious questions whether such would undermine the ability of surrounding communities to ever shoulder the responsibility of borough government in an effective and efficient manner.



organized boroughs have long been deprived of significant State services, revenues, or assistance and heavily penalized because of incorporation.

\* A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- Areas of the unorganized borough outside of home-rule and first-class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).
- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under present circumstance, the delivery of education services in the unorganized borough is carried out in a fractured manner. Although the unorganized borough accounts for about 12 percent of the state's population, 70 percent of Alaska's school districts exist in the unorganized borough.
- In some cases, borough formation carries the prospect of education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- NFR \* ▪ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.<sup>16</sup>
- XPICT ▪ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

Circumstances such as the above have contributed to a growing interest in forming single-community borough governments. In addition to the disincentives and the lack of inducements to form boroughs, it appears that local officials are concerned about being compelled into larger, legislatively-mandated boroughs. Local officials from Wrangell, Nome, Petersburg, Hoonah,

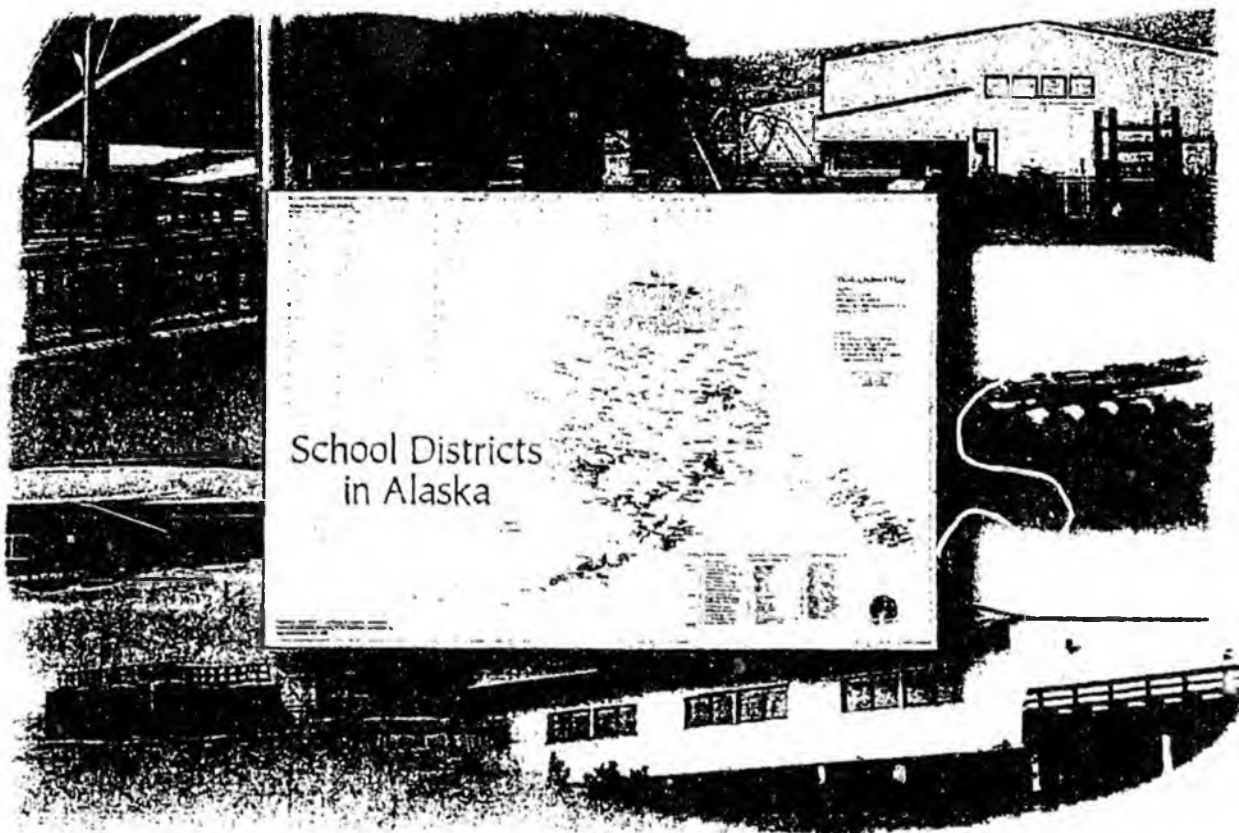
<sup>16</sup> The 109th Congress failed to reauthorize the Secure Rural Schools and Community Self-Determination Act. Without such reauthorization, National Forest Receipts funding in FY 08 will revert back to the original distribution formula which will likely result in payments to municipalities and school districts in southeast Alaska decreasing by roughly 85 percent. An effort was made to include the reauthorization legislation in the Continuing Resolution or tax extender package. There is a possibility that the program will be reauthorized in February with the Omnibus Spending Bill, which would provide money for the FY 08 distribution. However, the program has a substantial cost and is viewed by a number of representatives and senators as an "earmark" - a large expenditure that benefits some areas much more than others.

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# School Consolidation:

Public Policy Considerations and a  
Review of Opportunities for Consolidation

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LOCAL BOUNDARY  
COMMISSION

550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Phone: (907) 269-4560  
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A Joint Report to the 2004 Alaska Legislature by the  
Local Boundary Commission and  
Department of Education and Early Development



ALASKA DEPARTMENT OF  
EDUCATION  
& EARLY DEVELOPMENT

801 West Tenth Street, Suite 200  
Juneau, Alaska 99801-1894  
Phone: (907) 465-2800  
Fax: (907) 465-4156

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February 2004

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>74</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ⊖ Areas of the unorganized borough outside of home-rule and first-class cities have no obligation to financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less). A significant levy of taxes by the Legislature in areas outside municipal school districts would address, at least in part, this disincentive.
- ⊖ Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13 percent of the state's population, the unorganized borough encompasses 70 percent of Alaska's school districts.
- ⊖ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ⊖ Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ⊖ The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.
- ⊖ Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ⊖ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ⊖ In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

In their 1971 critique of borough government, Victor Fischer and Thomas Morehouse asserted that, "The State has never had a sound policy . . . it has been unable to cope effectively with the problems of borough formation."<sup>75</sup>

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.<sup>76</sup> In contrast,

<sup>74</sup> *Ibid.*, p. 406.

<sup>75</sup> *Borough Government in Alaska*, p. 138.

<sup>76</sup> Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

\*  
PILT

NFR \*

**Impact of Wrangell Incorporation and Ketchikan Annexation Upon Distribution of National Forest Receipt Revenues  
In Southeast Alaska as a Percent of Total Education Expenses  
Boroughs and Communities in Southeast Alaska based on FY '06 Data <sup>1</sup>**

	Existing Pop.	Amended Land (acres) <sup>4</sup>	Amended National Forest Receipt Revenues <sup>5</sup>				Education Expenses <sup>2</sup>	New Forest Receipt Education Payments as Percent of Total Education Expenses <sup>3</sup>	Existing Proportion (FY'06)	Percent Change
			Road Payment	Education Payment	Project Payment	Total Forest Receipts				
<b>Boroughs</b>										
Haines	2,241	916,193	447,936	79,047	528,983	5,811,207	7.7%	7.7%	0.0%	
Juneau	30,650	1,710,847	836,450	147,808	984,059	67,172,497	1.2%	1.2%	0.0%	
Ketchikan	13,174	2,928,955	1,263,112	421,037	1,684,149	31,937,764	4.0%	1.1%	2.9%	
Sitka	8,833	1,796,494	878,324	154,998	1,033,322	15,546,815	5.6%	5.6%	0.0%	
Yakutat	634	1,226,418	599,607	105,813	705,420	2,827,481	21.2%	21.2%	0.0%	
Wrangell	1,911	1,650,419	711,743	40,956	948,991	5,756,654	12.4%	9.7%	2.7%	
<b>Home Rule</b>										
Petersburg	3,129	28,096	57,818	790,877	163,823	1,012,517	7,917,147	10.0%	11.8%	-1.8%
<b>First Class</b>										
Craig	1,105	4,288	24,208	446,941	90,946	562,096	7,566,274	5.9%	7.0%	-1.1%
Hoonah	829	4,224	23,561	215,682	46,181	285,425	4,180,475	5.2%	6.1%	-0.9%
Hydaburg	352	192	16,052	93,584	21,163	130,799	1,205,015	7.8%	9.2%	-1.4%
Kake	536	5,248	36,300	178,060	41,377	255,739	3,376,278	5.3%	6.2%	-0.9%
Klawock	776	384	26,669	200,483	43,846	270,999	2,928,295	6.8%	8.1%	-1.3%
Pelican	106	384	3,398	16,784	0	20,182	594,072	2.8%	3.3%	-0.5%
Skagway	854	289,536	31,199	136,607	32,391	200,198	3,268,131	4.2%	4.9%	-0.7%
<b>Second Class</b>										
Angoon (Chatham)	482	14,400	23,754	N/A	0	23,754	0	0	0	0.0%
Coffman Cove (Southeast Island)	162	6,656	48,002	N/A	0	48,002	0	0	0	0.0%
Gustavus (Chatham)	441	18,688	82,621	N/A	15,948	98,570	0	0	0	0.0%
Kasaan (Southeast Island)	59	3,392	26,164	N/A	0	26,164	0	0	0	0.0%
Pelican Alexander (Southeast Island)	64	2,432	3,861	N/A	0	3,861	0	0	0	0.0%
Peke Springs (Chatham)	109	8,832	7,722	N/A	0	7,722	0	0	0	0.0%
Thorne Bay (Southeast Island)	482	16,320	88,033	N/A	16,992	105,025	0	0	0	0.0%
<b>Federal Law</b>										
Metlakatla	1,404	83,328	89,845	N/A	17,343	107,188	0	0	0	
<b>REAA's</b>										
Annette Island				374,775	72,342	447,117	5,326,229	7.0%	8.3%	-1.3%
Chatham				245,076	47,307	292,384	2,760,891	8.9%	10.5%	-1.6%
Southeast Island				266,305	51,404	317,710	4,178,202	6.4%	7.5%	-1.1%

<sup>1</sup> Source: DCCED website and published reports

<sup>2</sup> Figure includes all moneys expended on education from local, state, and federal sources per DCCED staff.

<sup>3</sup> Note that for Boroughs Road and Education payments are combined. For all others, only the education payment is used.

<sup>4</sup> Note that acreage figures for Boroughs, Home Rule Communities are National Forest acreage figures. All other figures are area figures for the political subdivisions.

<sup>5</sup> Based on a projected 25.61% decrease in total payments to the unorganized borough resulting from Ketchikan's annexation and Wrangell's incorporation and a value of 57.5 cents an acre for organized boroughs and the unorganized borough.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT KETCHIKAN

CITY OF CRAIG, ANNETTE ISLAND )  
SCHOOL DISTRICT, )  
ORGANIZED VILLAGE OF KASAAN, )  
CRAIG CITY SCHOOL DISTRICT, )  
CITY OF KASAAN, )  
KLA WOCK CITY SCHOOL )  
DISTRICT, NAUKATI WEST, INC., )  
SOUTHEAST ISLAND )  
SCHOOL DISTRICT, CITY OF )  
THORNE BAY, PRINCE OF WALES )  
COMMUNITY ADVISORY COUNCIL, )  
HOLLIS COMMUNITY COUNCIL )  
CITY OF KLA WOCK, HYDABURG CITY )  
SCHOOL DISTRICT, CITY OF HYDABURG )  
HYDABURG COOPERATIVE ASSOC. )  
Appellants, )  
vs. )  
LOCAL BOUNDARY COMMISSION, )  
Appellee. )

Case No. IKE-08-004 CI

AFFIDAVIT OF BILL ROLFZEN

STATE OF ALASKA )  
 ) s.s.  
FIRST JUDICIAL DISTRICT )

Bill Rolfzen, being first duly sworn, deposes and says:

I. I am a Local Government Specialist for the Department of Commerce,  
Community & Economic Development (DCCED), Division of Community and

ATTORNEY GENERAL, STATE OF ALASKA  
DIAMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

ATTORNEY GENERAL, STATE OF ALASKA  
DIAMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

1  
2  
3 Regional Affairs in Juneau, Alaska. I have held this position for 20 years. In my  
4 capacity as a Local Government Specialist for DCCED, my responsibilities include  
5 administering community financial assistance programs including state revenue sharing,  
6 shared fisheries business tax, fishery resource landing tax, payment in lieu of taxes, and  
7 national forest receipts. As the national forest receipts program administrator, I am  
8 responsible for the calculations regarding the effect on the money distribution in  
9 S.E. Alaska as to forest receipts, school funding, etc. that were included in the  
10 preliminary and final reports to the Local Boundary Commission regarding the petition  
11 to annex land that is the subject of the above-captioned appeal.  
12

13 2. Up until 2000, the National Forest Receipts Program annual payment to  
14 the State for distribution to boroughs (organized and unorganized) was based on 25% of  
15 the annual revenue generated by the National Forest. The majority of the annual  
16 revenue generated within the Tongass National Forest was derived through "timber  
17 stumpage fees" charged to commercial timber companies for harvesting trees from the  
18 National Forest. Historically in Southeast Alaska, the majority of the timber harvesting  
19 occurred within the Unorganized Borough on places like Prince of Wales Island,  
20 Etolin Island, Zarembo Island, Kupreanof Island, Kuiu Island, Chichagof Island, and  
21 Wrangell Island. The current distribution of funds under the Secure Rural Schools  
22 Program is based on the average three highest years of annual National Forest Receipts  
23 payments to the State during the period 1986-1999.  
24  
25  
26

AFFIDAVIT OF BILL ROLFZEN  
*City of Craig, et al v LBC*

Page 2 of 4  
Case No. 1KF-08-004 CI

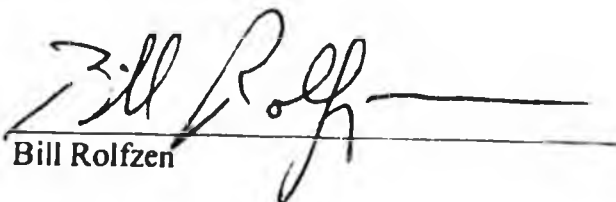
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3 3. Although it is part of the Tongass National Forest, to my knowledge, no  
4 trees were cut and no timber stumpage revenues were derived from within the  
5 Misty Fiords National Monument. This means that the geographic area being annexed  
6 by the Ketchikan Gateway Borough (KGB) contributed little to the past income from  
7 which National Forest Receipts payments are based but could result in forest receipts  
8 going to the KGB by annexing the National Monument acres from the unorganized  
9 borough.  
10

11 4. The state's current National Forest Receipt Program regulations,  
12 3 AAC 132.060, require DCCED to calculate a borough's payment "based upon the  
13 area of the national forest located within its boundaries as of September 30 of the state  
14 fiscal year immediately preceding the application year". For example, the FY 08  
15 payments DCCED is currently distributing are based upon the September 30, 2006  
16 borough acreage figures. If the KGB annexation becomes effective March 15, 2008,  
17 the first year the KGB would see the annexation affect its National Forest Receipts  
18 payment would be in FY 10. And, FY 09 distribution will be based on the acreage  
19 within the KGB as of September 20, 2007. If the current program is not reauthorized  
20 by Congress and the program reverts back to the 25% formula, DCCED would no  
21 longer need to use prior year acreage and the KGB annexation could impact the FY 09  
22 distribution.  
23  
24

25 5. The National Forest Receipts Program was established in 1908. If the  
26 Secure Rural Schools Program is allowed to sunset this year, the program will revert

1  
2  
3 back to the 25% formula. In my opinion, it is highly likely that this program will  
4 continue in some form for as long as there are National Forest lands.  
5

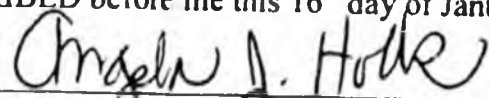
6 Further your affiant sayeth naught.

7  
8   
9 Bill Rolfzen

10  
11  
12  
13  
14 SWORN TO AND SUBSCRIBED before me this 16<sup>th</sup> day of January, 2008.

15 **STATE OF ALASKA**  
16 **Angela J. Hobbs**  
17 **Notary Public**  
18 **My Commission Expires With Office.**



19   
20 Notary public in and for Alaska  
21 My Commission Expires: With Office  
22  
23  
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26

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
PO BOX 110300 JUNEAU, ALASKA 99811  
PHONE: 465-3600

AFFIDAVIT OF BILL ROLFZEN  
City of Craig, et al v. LBC

Page 4 of 4  
Case No. 1KE-08-004 CI

STATE OF ALASKA  
 FY 08 NATIONAL FOREST RECEIPTS - FINAL PAYMENTS  
 TONGASS NATIONAL FOREST - UNORGANIZED BOROUGH  
 \*DOT/PF FUNDED AT \$170,000 AND PROJECTS @ 15%\*  
 \*\*PROJECTS \$ DISTRIBUTION BASED UPON SCHOOL & ROAD PAYMENTS\*\*  
 \*\*\*ENTITIES < \$100,000 EXEMPT FROM PROJECTS EXPENDITURES\*\*\*

Municipality	Road Miles	Road Mile \$	ADM	School \$	First Stage Total School & Road \$	State Redistribution > \$170 K	Preliminary Total School & Road \$	Preliminary Projects \$	Final Total National Forest Receipt Payment	Final Road Payment	Final School Payment	Final Projects Payment
<b>Home Rule</b>												
Petersburg	24.90	\$75,717.71	588.55	\$892,826.73	\$968,544.44	\$87,957.42	\$1,056,501.87	\$193,035.62	\$1,249,537.48	\$81,820.67	\$964,789.88	\$202,926.94
Wrangell	11.67	\$35,486.97	354.74	\$538,138.40	\$573,625.37	\$52,093.23	\$625,718.61	\$114,326.33	\$740,044.93	\$38,347.28	\$581,513.14	\$120,184.51
<b>First Class</b>												
Craig	9.35	\$28,432.15	361.55	\$548,469.13	\$576,901.28	\$52,390.73	\$629,292.01	\$114,979.23	\$744,271.24	\$30,723.82	\$592,676.54	\$120,870.87
Hoonah	9.10	\$27,671.93	152.95	\$232,024.21	\$259,696.14	\$23,584.05	\$283,280.20	\$51,758.70	\$335,038.90	\$29,902.33	\$250,725.70	\$54,410.87
Hydaburg	6.20	\$18,853.41	79.60	\$120,752.71	\$139,606.12	\$12,678.19	\$152,284.31	\$27,824.18	\$180,108.49	\$20,373.02	\$130,485.56	\$29,249.91
Kake	14.02	\$42,633.02	103.55	\$157,084.71	\$199,717.74	\$18,137.17	\$217,854.91	\$39,804.72	\$257,659.62	\$46,069.31	\$169,745.97	\$41,844.35
Klawock	10.30	\$31,320.98	140.45	\$213,061.79	\$244,382.77	\$22,193.38	\$266,576.15	\$48,706.67	\$315,282.82	\$33,845.50	\$230,234.88	\$51,202.45
Pelican	1.10	\$3,344.96	14.95	\$22,674.06	\$26,024.02	\$2,363.35	\$28,387.36	\$5,186.71	\$33,574.08	\$4,315.39	\$29,258.68	\$0.00
<b>Second Class</b>												
Angoon	7.69	\$23,384.30	N/A	N/A	\$23,384.30	\$2,123.62	\$25,507.93	\$4,660.61	\$30,168.53	\$30,168.53	N/A	\$0.00
Coffman Cove	15.54	\$47,255.15	N/A	N/A	\$47,255.15	\$4,291.43	\$51,546.58	\$9,418.18	\$60,964.76	\$60,964.76	N/A	\$0.00
Gustavus	30.01	\$91,256.56	N/A	N/A	\$91,256.56	\$8,287.38	\$99,543.94	\$18,187.88	\$117,731.81	\$98,611.97	N/A	\$19,119.84
Kasaan	8.47	\$25,756.18	N/A	N/A	\$25,756.18	\$2,339.02	\$28,095.21	\$5,133.33	\$33,228.54	\$33,228.54	N/A	\$0.00
Port Alexander	1.25	\$3,801.09	N/A	N/A	\$3,801.09	\$345.19	\$4,146.28	\$757.58	\$4,903.86	\$4,903.86	N/A	\$0.00
Tenakee Springs	2.50	\$7,602.18	N/A	N/A	\$7,602.18	\$690.38	\$8,292.56	\$1,515.15	\$9,807.72	\$9,807.72	N/A	\$0.00
Thorne Bay	34.64	\$105,335.80	N/A	N/A	\$105,335.80	\$9,565.97	\$114,901.77	\$20,993.94	\$135,895.70	\$113,826.02	N/A	\$22,069.69
<b>Federal Law</b>												
Metlakatla	34.90	\$106,126.43	N/A	N/A	\$106,126.43	\$9,637.77	\$115,764.19	\$21,151.51	\$136,915.71	\$114,680.37	N/A	\$22,235.34
<b>REAA'S</b>												
Annette Island	N/A	N/A	282.35	\$428,323.21	\$428,323.21	\$38,897.76	\$467,220.97	\$85,366.90	\$552,587.87	N/A	\$462,846.69	\$89,741.18
Chatham	N/A	N/A	194.82	\$295,540.74	\$295,540.74	\$26,839.25	\$322,379.99	\$58,902.71	\$381,282.70	N/A	\$319,361.76	\$61,920.94
Southeast Island	N/A	N/A	186.90	\$283,526.15	\$283,526.15	\$25,748.15	\$309,274.30	\$56,508.14	\$365,782.44	N/A	\$306,378.77	\$59,403.67
<b>TOTAL LOCAL</b>	<b>221.64</b>	<b>\$673,978.82</b>	<b>2,460.41</b>	<b>\$3,732,426.85</b>	<b>\$4,406,405.67</b>	<b>\$400,163.46</b>	<b>\$4,806,569.13</b>	<b>\$878,218.08</b>	<b>\$5,684,787.21</b>	<b>\$751,589.08</b>	<b>\$4,038,017.58</b>	<b>\$895,180.55</b>
<b>STATE</b>	<b>187.50</b>	<b>\$570,163.46</b>	<b>N/A</b>	<b>N/A</b>	<b>\$570,163.46</b>	<b>\$170,000.00</b>	<b>\$170,000.00</b>	<b>\$0.00</b>	<b>\$170,000.00</b>	<b>\$170,000.00</b>	<b>N/A</b>	<b>\$0.00</b>
<b>GRAND TOTAL</b>	<b>409.14</b>	<b>\$1,244,142.28</b>	<b>2,460.41</b>	<b>\$3,732,426.85</b>	<b>\$4,976,569.13</b>	<b>\$570,163.46</b>	<b>\$4,976,569.13</b>	<b>\$878,218.08</b>	<b>\$5,854,787.21</b>	<b>\$921,589.08</b>	<b>\$4,038,017.58</b>	<b>\$895,180.55</b>



**SENATOR ALBERT M. KOOKESH**  
**ALASKA STATE LEGISLATURE SENATE DISTRICT C**

State Capitol, Room 11  
Juneau AK, 99801-1182  
907-465-3473  
888-288-3473  
FAX 907-465-2827

**For Immediate Release: February 20, 2008**

## **Senator Cries Foul Over Borough Land Grab**

(JUNEAU) – Sen. Albert Kookesh, D-Angoon, is fighting the proposed annexation by the Ketchikan Gateway Borough (KGB) of more than four thousand square miles of uninhabited land lying outside its boundaries. Senator Kookesh is sponsoring Senate Joint Resolution 15, which calls for the annexation to be stopped.

“Annexation of land is a serious issue with long term consequences that can permanently affect a community,” said Kookesh. “This proposed annexation was defeated more than ten years ago and I still don’t see any good reason for it to go forward.”

The annexation plan is deeply opposed by people living in the unorganized borough because it will take away \$1.2 million in education funding and other state revenues while not delivering any level of public services in return. Senator Kookesh is also concerned about inconsistencies in the Local Boundary Commission’s decision in favor of the annexation and the lack of public support on this matter.

SJR 15 moved out of the Senate Community & Regional Affairs Committee and Senator Kookesh has requested a hearing in the Senate Finance Committee

SJR 15 has a companion resolution in the House, HJR 30, sponsored by Representative Bill Thomas.

For more information, contact Senator Kookesh at (907) 465-3473.

###

Superintendent's Office  
(907) 886-6332  
FAX: (907) 886-5130

Business Office  
(907) 886-6009  
FAX: (907) 886-5130

Special Education  
(907) 886-6020  
FAX: (907) 886-4122



**ANNETTE ISLANDS SCHOOL DISTRICT**  
P.O. Box 7 • Metlakatla, AK 99926  
Accredited by Northwest Accreditation Association

Metlakatla High School  
(907) 886-6000  
FAX: (907) 886-5120

C.R. Leask Sr. Middle  
School  
(907) 886-6003  
FAX: (907) 886-6019

R.J. Elementary School  
(907) 886-4121  
FAX: (907) 886-4120

Honorable Representative Thomas,

Please find enclosed some Newspaper articles and information you may find informative as it relates to Ketchikan's Annexation of the unorganized borough in Southeast Alaska.

As a District representative I would like you to know that in talking top members of the Metlakatla Indian Communities Tribal council, the community like the School District is strongly opposed to the annexation of 4,700 square miles of the unorganized Borough here in Southeast.

At the very least the Local Boundary Commission (LBC) should hold us harmless for educational Federal Forest Receipt revenues for a period of no less than five years; Especially since the Ketchikan Gateway Borough and the LBC commissioners repeated state that the annexation "is not about Forest Receipts" but is about providing additional Borough services. This is difficult rhetoric to understand when the Ketchikan petition excludes Hyder from the annexation proposal. And Myers Chuck has organized with Wrangell, against their will.

In corresponding with Senator Kookesh he states that you, like himself, are opposed to Ketchikan's \$1,600,000 revenue and land grab.

Honorable Representative your assistance in drafting and sponsoring legislation will be greatly needed early in the next session if the LBC's approval decision is to be stopped at the state legislative level.

Respectfully,

Mr. Agenbroad  
Superintendent ASID  
11/29/2007

1991 Alaska Daily News  
606-308  
KETCHIKAN



48°/42°

# DAILY NEWS

KETCHIKAN, ALASKA

VOL. 79 NO. 254 (USPS 293-940)

14 PAGES

## Craig, CCA seek probe

Suggest Bockhorst had conflict in KGB's annexation petition

By ANDREW DAMSTEDT  
*Daily News Staff Writer*

The City of Craig and Craig Community Association have asked the governor's office to investigate a possible conflict of interest of the incoming Ketchikan Gateway Borough manager regarding his involvement in the borough's annexation petition.

An Oct. 19 letter to Gov. Sarah Palin, signed by Craig city administrator Jon Bolling and Craig Community Association tribal president Millie Stevens, asks that the Nov. 6 Local Boundary Commission public hearing be canceled until an investigation by the Attorney General's office.

"We truly cannot believe that you will allow the LBC to go forward on

this petition without conducting a full investigation into these circumstances," the letter states.

"We request that you consider the devastating impact on the school children in the unorganized borough of the loss of \$1,200,000 per year in school funding, which cannot be allowed constitutionally or under the unquestionable appearance of a direct and serious conflict of interest."

Sharon Leighow, the governor's deputy press secretary, said the letter has been forwarded to the Attorney General's office and the Department of Commerce, Community and Economic Development for review. The LBC operates under the state commerce department.

Bolling was traveling Monday and

could not be reached for comment.

The letter alleges that shortly after Dan Bockhorst, a state local government specialist, wrote the preliminary report recommending that the Local Boundary Commission approve Ketchikan's annexation petition, he applied for the vacant borough manager position.

Borough Manager Roy Eckert resigned in June, effective Oct. 31. The borough did not begin advertising the position until July 29, according to Deputy Borough Clerk Kacie Paxton. The Ketchikan Gateway Borough Assembly hired Bockhorst Oct. 13, and his first day is Thursday.

The preliminary report was published June 30, and Bockhorst told the Daily News that he completed the

See 'Craig letter,' page 3

## Cordovans disappointed

Upset Supreme Court accepted oil-spill appeal

By JEANNETTE J. LEE  
*AP Business Writer*

ANCHORAGE — For most of the year, thick rain clouds lend a somber air to the once-thriving fishing town of Cordova, whose economy has never quite recovered from the Exxon Valdez oil spill in 1989.

On Monday the town was downright glum as news spread that Exxon Mobil Corp. had convinced the U.S. Supreme Court to step in on the battle over additional compensation for about 33,000 spill victims.

The supertanker accident sent 11 million gallons of thick, black crude pouring into Prince William Sound, killing thousands of fish, seabirds, otters and other marine animals. It was the worst oil spill in U.S. history.

prices down. It's a really dark day."

The news reached the town of 2,200 by 6 a.m. Monday, setting the streets, coffee shops and grocery store abuzz with the news by breakfast.

By mid-morning, Patience Anderson Faulkner, a volunteer at the Exxon Valdez Oil Spill Information Center, had discussed the pending review with about 20 people.

"The decision feels so negative," Faulkner said. "People have said, 'You know, this is what I expected, it's the giant stepping on the little ant.'"

Faulkner, 60, has worked with plaintiffs' attorneys for nine years, gathering personal information from the thousands of people claiming damages. Because she is Alaska

major analysis for the report by June 11. He said he did not learn of the vacant manager position until the weekend of July 28 and that he did not apply for the position until Aug. 11.

Bockhorst said when he first thought of applying for the job, he told the department's ethics supervisor Aug. 1 that he was considering the job and excused himself from any future proceedings. Another staff member, Jeanne McPherrin, wrote the final report that was published earlier this month, and she also recommended approval of the annexation petition.

Kathy Atkinson, LBC local government specialist, said the department did not believe that Bockhorst has a conflict of interest. She said it would be unlikely that the hearing would be postponed because the letter was sent too late for that to be considered.

The letter refers to the 1999 LBC decision which rejected Ketchikan's annexation proposal because Hyder and Meyers Chuck were excluded.

The letter states that Bockhorst submitted the 2007 preliminary report "completely reversing his recommendation of 1998. Although nothing had changed, he now stated to the LBC that the Constitution had sufficient 'flexibility' to allow KGB to annex the uninhabited land and exclude Hyder. Shortly after submitting that report, he

applied for the KGB borough manager position." Bockhorst recommended in 1998 that the LBC reject the annexation petition and said that recommendation reflected former Gov. Tony Knowles' administration policy direction. Bockhorst said he had encouraged the borough to apply for annexation in 1998 in a letter because borough expansion is a constitutional goal of the state.

He said he doesn't believe that he has been inconsistent in his position in regard to Ketchikan borough annexation.

Lamar Cotten, former deputy commissioner of Department of Community and Regional Affairs, said he made the 1998 decision to not recommend approval of Ketchikan's petition even though he knew Bockhorst supported the petition.

Cotten said he made that decision because Meyers Chuck and Hyder weren't included as well as how timber receipts would be distributed that the administration.

The Ketchikan borough submitted the petition again in 2006, excluding Hyder and including Meyers Chuck. Bockhorst recommended approval in his June 30 preliminary report.

Bolling and Stevens' letter also outlines the effect annexation could have on surrounding unorganized boroughs, which could lose \$1.2 million each year in forest receipts.

In Sept. 4 written comments responding to the preliminary report, Bolling had also brought up the alleged conflict-of-interest issue. He requested then that the LBC reject the petition because the annexation petition does not include Hyder.

The LBC is expected to hold a public hearing Saturday in Wrangell on the Wrangell borough petition. The City of Wrangell submitted a petition to incorporate a Wrangell borough, which also includes 191-square miles are that the Ketchikan Gateway Borough seeks to annex. That area includes Meyers Chuck.

A public hearing on the Ketchikan petition is scheduled for Nov. 6 at 9 a.m. in the Ketchikan City Council chambers. A decisional meeting on both petitions will be Nov. 7, also in City Council chambers, beginning at 10 a.m.

If the LBC recommends approval of the Ketchikan annexation, the commission will present the boundary changes during the first 10 days of the regular session of the Alaska Legislature in January.

The proposed boundary changes would become effective either 45 days after the presentation or at the session's end, whichever comes first, unless the Legislature disapproves the petition by a resolution.

*andrew@ketchikandailynews.com*

## WEATHER

### KETCHIKAN AND METLAKATLA

Tuesday will be rainy, heavy at times. The highs will be around 46. Winds will be from the southeast at 30 mph with gusts to 40 mph. Chance of rain 90 percent.

Tuesday night will be rainy, heavy at times in the evening. The lows will be around 36 to 42. Winds will be from the southeast at 20 to 30 mph with gusts up to 40 mph in

the evening. Chance of rain 100 percent.

Wednesday will be rainy and breezy. The highs will be around 46. Winds will be from the south at 25 mph. Chance of showers 70 percent.

Wednesday night will be rainy. The lows will be around 38. Chance of showers 100 percent.



### LOCAL TIDES

	Tuesday		Wednesday	
High	4:27 a.m./14.4'	4:07 p.m./16.5'	High	5:27 a.m./13.3' 5:06 p.m./14.9'
Low	9:55 a.m./4.2'	10:53 p.m./-0.8'	Low	10:56 a.m./5.3' 11:58 p.m./0.7'

### ALASKA

### U.S. TEMPERATURES

# KETCHIKAN DAILY NEWS

45°/40°

NTS

FRIDAY, NOV. 2, 2007

KETCHIKAN, ALASKA

VOL. 79 NO. 257 (USPS 293-940)

14 PAGES

## No conflict for new manager

### LBC Tuesday hearing will go on as planned, division director says

By ANDREW DAMSTEDT  
*Daily News Staff Writer*

The director of the Division of Community and Regional Affairs found no reason for a conflict of interest investigation into the new Ketchikan Gateway Borough manager's involvement in the borough's annexation petition.

Tara Jollie, division director, concluded there was no reason to support a conflict of interest claim against Dan Bockhorst, former state local government specialist, or request an investigation.

She also wrote that Tuesday's Local Boundary Commission hearings will not be canceled. The division provides staff support to the Local

Boundary Commission.

Craig City Administrator Jon Bolling and Craig Community Association Tribal President Millie Stevens sent a letter, dated Oct. 19, to Gov. Sarah Palin asking that the LBC hearing on Tuesday be canceled until a conflict of interest investigation by the Attorney General's office could be completed. Jollie's letter Wednesday was addressed to Bolling and Stevens and released to the Daily News by the governor's office.

Sharon Leighow, the governor's deputy press secretary, said Jollie's letter was the official response from the governor's office, but said the Alaska Department of Law had yet to

See 'No conflict claim,' page 2

## No conflict claim ————— Continued from page 1

review the original complaint.

Neither Bolling nor Jollie returned phone calls by the Daily News requesting comment.

Bockhorst said Thursday he had no comment on Jollie's decision.

The letter from Bolling and Stevens alleged that shortly after Bockhorst wrote the preliminary report recommending the LBC approve Ketchikan's annexation petition, he applied for the vacant borough manager position. The letter also alleged that Bockhorst reversed his position on annexation from his recommendation to deny of 1998.

Jollie noted in her response that Bockhorst does not set policy direction and the 1998 decision was based upon a prior administration's policy direction.

Jollie wrote that she carefully reviewed official division records, going over the timeline of events. She wrote that Bockhorst began his analysis of the Ketchikan annexation proposal on March 26 and concluded his analysis on June 28, with the preliminary report being published June 30. In that report, Bockhorst recommended the LBC approve Ketchikan's petition.

Former Borough Manager Roy Eckert resigned in June, but his last day was not until Wednesday. The borough began advertising for a new manager July 29. Bockhorst applied for the job Aug. 11 and was chosen for the job Oct. 13. He started Thursday.

Jollie wrote that Bockhorst told his ethics supervisor Aug. 1 that he had interest in applying for the borough manager job. The final analysis on the Ketchikan annexation petition was given to Jeanne McPherrin, who completed the report Oct. 15. McPherrin also recommended approval of the petition.

The LBC will conduct a public hearing Saturday in Wrangell on the Wrangell borough petition. The City of Wrangell submitted a petition to incorporate a Wrangell borough, which also would include a 191-square mile area around Meyers Chuck that the Ketchikan Gateway Borough seeks to annex.

A public hearing on the Ketchikan annexation is scheduled for Tuesday at 9 a.m. in the Ketchikan City Council Chambers. A decisional meeting on both petitions is Wednesday, also in the City Council Chambers, beginning at 10 a.m.

[andrew@ketchikandailynews.com](mailto:andrew@ketchikandailynews.com)



*Grand Camp  
Alaska Native Brotherhood*

*Rep LeDoux*

February 11, 2008

To: Senator Donny Olsen, Chair, Senate Community and Regional Affairs  
Representative Anna Fairclough, Chair, House Community and Regional Affairs

From: Dewey Skan Jr., President, Alaska Native Brotherhood Grand Camp

Re: HJR 30 and SJR 15, Opposing the Ketchikan Borough Annexation

Dear Senator Olsen and Representative Fairclough:

On behalf of the Alaska Native Brotherhood Grand Camp, I am writing to support the Ketchikan Alaska Native Brotherhood Camp Number 14's opposition to the decision of the Local Boundary Commission to allow the Ketchikan Gateway Borough to annex 4,510 miles of uninhabitant lands. If this annexation is allowed to go forth, the scenario would be disastrous to our southeast school districts that would loose the forest receipt funds. These funds are crucial for the survival of our small rural schools.

The intent of the legislation is to correct a course of action by the Ketchikan Borough to annex lands and capture funds which were never intended for their borough to the detriment of other communities in Southeast Alaska. Clearly, this is not the intention of the Local Boundary Commission or the intention of our State Constitution to burden smaller communities for the benefit of a larger borough or community. This unconstitutional act will cause communities to bring a court action against Ketchikan and that would only cause a rift between communities which may never be settled without the court system intervention.

We also question whether the Ketchikan Borough manager has a conflict of interest since he was part of the decision making process at the Local Boundary Commission level.



**SEALASKA** Corporation  
One Sealaska Plaza, Suite 400, Juneau, Alaska 99801

February 22, 2008

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

Re: Support of HJR 30 and SJR 15 and disapproval of the annexation of territory to the Ketchikan Gateway Borough

Dear Representative Fairclough:

Sealaska Corporation writes to express its concern regarding the annexation of territory to the Ketchikan Gateway Borough (Borough) and supporting both HJR 30 and SJR 15. Sealaska Corporation is licensed by the State of Alaska as a for profit corporation. Sealaska is the Southeast Alaska regional corporation formed under the Alaska Native Claims Settlement Act and is owned by approximately 19,000 Alaska Native shareholders with its corporate headquarters located in Juneau, Alaska.

Sealaska owns over 7,000 acres of land plus the right to over 1,400 additional acres currently located within the exterior boundaries of the unorganized borough. Sealaska is opposed to the proposed annexation by the Borough because no increased benefits or services would result from this annexation for the annexed landholders e.g. fire department services, law enforcement, infrastructure investment and maintenance, to name a few. Moreover, the annexation will disrupt the rural community schools that rely on the current land holdings for their funding.

The annexation should be prohibited to prevent the negative impacts that will occur to the schools in the unorganized borough of Southeast Alaska. At issue is more than 1.2 million dollars for community schools including Craig, Hoonah, Hydaburg, Kake, Kasaan, and Klawock. Should the annexation be approved, the Borough receives a substantial windfall to the detriment of the rural community schools. To approve the annexation would unjustly enrich the Borough at the expense of the current K-12 education system, and the school children in our rural communities.

---

Letter to Representative Anna Fairclough  
Co-Chair, House Community and Regional Affairs Committee  
February 22, 2008  
Page 1 of 2

We request you reject the Borough's application submitted to the Local Boundary Commission to annex land outside the current borough boundaries by supporting both HJR 20 and SJR 15. Sealaska respectfully request that you please distribute this letter to your committee and colleagues. Should you have any questions please contact me and know that Sealaska is available for additional comments and/or testimony on this issue. Thank you for your time and consideration and I look forward to hearing your response.

Sincerely,



Rick Harris  
Executive Vice President

c: Senator Bert Stedman, Co-Chair, Finance Committee  
Senator Albert Kookesh  
Representative Bill Thomas  
Senator Kim Elton  
Representative Beth Kerttula  
Representative Andrea Doll  
Governor Sarah Palin

**Sonya Hymer**

---

**From:** Bob Blasco [rpblasco@hsgblaw.com]  
**Sent:** Tuesday, February 19, 2008 4:46 PM  
**To:** Rep. Anna Fairclough; Rep. Gabrielle LeDoux  
**Cc:** Kaci Schroeder; lgc@hsgblaw.com  
**Subject:** Comments Related to CRA Committee Work Session of February 19, 2008  
**Attachments:** commentstoCRA2-19-08signed.pdf

Dear Representative Fairclough and Representative LeDoux,

We have accepted your invitation to forward comments to you electronically related to the CRA work session this morning. We represent the communities of Craig, Thorne Bay, Coffman Cove, Hydaburg, Kake, Kasaan, Klawock; the school districts of Annette Island, Craig, Kake, Klawock, Hydaburg, and the Southeast Island School District; and the Organized Village of Kasaan, the Hydaburg Cooperative Association, the Prince of Wales Community Advisory Council, the Hollis Community Council, and Naukati West, Inc.

We appreciate the opportunity to provide comments on behalf of these communities, school districts, and organizations. Attached is our letter with our comments. On behalf of our clients, we thank you for your consideration of their concerns and interests, and continue to urge the adoption of House Joint Resolution 30.

Respectfully,

Bob Blasco

Robert P. Blasco

CONFIDENTIAL

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Hoffman, Silver, Gilman & Blasco  
9360 Glacier Highway, Suite 202  
Juneau, AK 99801  
Phone 907 586-3340  
Fax 907 586-6818  
Cell 907 723-1314

**HOFFMAN, SILVER, GILMAN & BLASCO**

**WASHINGTON, D.C. AND  
VIRGINIA OFFICE**

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2300 CLARENDON BOULEVARD, SUITE 1010  
ARLINGTON, VIRGINIA 22201  
PHONE (703) 527-4414  
FACSIMILE (703) 527-0421

\*\* STEVEN W. SILVER  
\* CARL W. WINNER  
\* BRADLEY D. GILMAN  
\* RICKIE MARHS

**ANCHORAGE OFFICE**

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L.G. BERRY

A PROFESSIONAL CORPORATION  
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JUNEAU ALASKA 99801

February 19, 2008

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BLAINED GILMAN

ADMITTED IN WASHINGTON, D.C. \*  
AND ALASKA

ADMITTED IN VIRGINIA \*  
WASHINGTON, D.C. AND ALASKA

ALL OTHERS ADMITTED  
IN ALASKA

NEW LAWYER PROFESSIONAL

On Behalf of: ANNETTE ISLAND SCHOOL DISTRICT,  
ORGANIZED VILLAGE OF KASAAN, CITY OF CRAIG,  
CRAIG CITY SCHOOL DISTRICT,  
CITY OF KASAAN, CITY OF KAKE, KAKE SCHOOL DISTRICT,  
KLAWOCK CITY SCHOOL  
DISTRICT, NAUKATI WEST, INC., SOUTHEAST ISLAND  
SCHOOL DISTRICT, CITY OF THORNE BAY, PRINCE OF WALES COMMUNITY ADVISORY  
COUNCIL, HOLLIS COMMUNITY COUNCIL,  
CITY OF KLAWOCK, HYDABURG CITY  
SCHOOL DISTRICT, CITY OF HYDABURG,  
HYDABURG COOPERATIVE ASSOCIATION

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

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

Subject: House Joint Resolution 30

Dear Representative Fairelough and Representative LeDoux:

On behalf of the above communities, school districts, and tribal entities, I listened to the Committee work session on February 19, 2008 with the Local Boundary Commission and DCCED staff. At the conclusion of the work session, you invited electronic comments. We respectfully request that you consider the following comments, which are primarily directed at answering questions posed by each of you and other Committee members. We will use a numbered format for ease of organization.

1. Many questions were raised about the national forest receipts program. Commissioner Chrystal stressed several times that the receipts are "transitory" and the Local Boundary Commission does not "put stock in something that is transitory."

**Response:** As Mr. Rolfzen stated, the national forest receipts program has existed since 1908 and will continue to exist, regardless of whether the Secure Rural Schools Act is extended. Although the exact amount of the forest receipts for the unorganized borough communities is not known, the annexation by the KGB will decrease those funds to the above communities by 22%. All of the above communities and school districts will lose this federal funding if the annexation is not disapproved, even if the Congress does not extend the Secure Rural Schools Act.

Additionally, Commissioner Chrystal failed to advise the Committee of the loss of the Payment in Lieu of Taxes federal funding. The communities in the Prince of Wales/Outer Ketchikan Census district, which include the communities listed above, will lose 50% of their federal PILT funds, which is unrelated to the national forest receipts. In fiscal year 2008, the PILT funds for these communities totaled approximately \$598,000. If the legislature does not disapprove this annexation, this federal funding will be lost to these communities. As one Representative commented in the meeting today, these amounts will have a significant adverse impact on these communities, regardless of what the technical percentage is of the amount to an overall budget analysis.

2. Commissioner Chrystal was asked whether the Local Boundary Commission considered the impact of the loss of the forest receipts funding on the above communities. He answered yes.

**Response:** At the hearing before the Local Boundary Commission on November 6, 2007, Commissioner Ketchum, Chair of the Commission stated: "I just want to make that mention to you, because we hear a lot about the National Forest Receipts. It has nothing to do with borough formation. It's basically out of the picture on the borough formation on the National Forest Receipts." (Tr., p. 90) The LBC did not consider the impact of the loss of the national forest receipts on the educational services in the above communities. The impacted communities, school districts, and tribal organizations listed above believe the LBC had an obligation under A.S. 29.06.040 to consider the impact under that statutory "bests interests of the state" standard.

Additionally, Commissioner Ketchum's remark about "borough formation" demonstrated a fundamental misunderstanding by the Commission of the differences between borough formation and the annexation of additional uninhabited land by an existing borough. Commissioner Chrystal made a similar statement in the work session today when he said the Constitution "encourages borough formation." The KGB petition proposes annexation to an existing borough, not borough formation.

3. Ms. Vandor stated the Constitution requires the entire state to "eventually" be divided into boroughs, and therefore, the framers of the Constitution anticipated annexation.

**Response:** We have a fundamental disagreement as to the plain words of the Constitution. Article X, Section 3 of the Alaska Constitution states: "The entire state shall be divided into boroughs, organized or unorganized." (emphasis added) The unorganized borough, of which the above communities and tribal organizations are a part, have the same Constitutional status as the organized boroughs. Importantly, the Constitutional framers considered a draft of Article X, Section 3 that would have deleted the words "or

unorganized," but they rejected that draft. The framers considered, and rejected, the concept that the entire state must be divided into organized boroughs.

4. Commissioner Chrystal stated that the Commission listened to testimony from "both sides" of the KGB petition, for and against. A Representative also asked whether there was any objection from anyone in Ketchikan to the petition.

**Response:** No private citizen or resident of the Ketchikan Gateway Borough spoke in favor of the petition at the hearing. All of the testimony for the petition came from KGB Assembly members, former assembly members, its attorney, other employees, and its paid consultant. We believe that the reason the KGB Assembly directed that the petition be filed as a "legislative option" rather than a "voter option" was to avoid a public vote in the Ketchikan. We do not believe this petition would have received a favorable vote from the people of Ketchikan.

5. Ms. McPherran stated that the reason KGB did not include Hyder in its petition was because of the lack of a "community of interest."

**Response:** The reason KGB did not include Hyder is because KGB would have been required to provide all services to Hyder that are presently being provided to Hyder by the State. KGB did not want any of those financial obligations, although it clearly wants the potential multi-million dollar windfall every year from the forest receipts. The LBC is required by regulation to determine whether a petition is in the "best interests of the state." The regulation requires the LBC to ask whether the petition relieves the state of any of the State's present responsibilities in the area. The answer as to the KGB petition is that it does not relieve the State of any responsibilities because the State must still provide all services to Hyder.

6. A Representative asked Mr. Brandt-Erichsen if the KGB would have gone through with the petition if Hyder had to be included. He responded that he did not know.

**Response:** KGB knew that the LBC had denied this petition in 1999 because the LBC said that without Hyder the petition "violated" the Alaska Constitution. KGB made a conscious decision in 2006 to make another run at the LBC without Hyder, knowing that the LBC had already decided the petition was unconstitutional without Hyder included. As KGB's attorney, Mr. Brandt-Erichsen would likely have been involved in the decision of the Assembly to direct the preparation of this petition without Hyder. The simple answer is that KGB did not and would not go through with the petition if Hyder were included because it does not want the expense of providing services to the people of Hyder.

7. Questions were asked as to whether the LBC could have required that Hyder be included in the petition now. One Representative accurately stated that the LBC decision simply puts Hyder "back on the table again" in five years.

**Response:** The LBC did have the authority to require KGB to annex Hyder now, which would have been consistent with its 1999 decision, consistent with the Alaska Constitution, and consistent with the best interests of the State. The LBC did exactly that in 1999—and KGB refused to amend its petition to include Hyder in 1999. Additionally, the LBC had the authority in deciding on the 2006 petition to amend the petition to include Hyder, allowing a five year period to accomplish the transition of services from the State to KGB for Hyder. Instead, the LBC approved the annexation recognizing that KGB cannot be forced to file

a petition to annex Hyder, once it has achieved the annexation allowed by the LBC decision, and that KGB is not likely to file a petition in five years to annex Hyder and KGB has made no commitment to do so.

8. Questions were asked as to whether the annexation could be approved as to the land, with the provision that the national forest receipts distribution would remain unchanged. Ms. Vandor responded that the LBC could do that with federal approval.

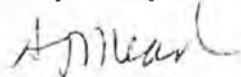
**Response:** The LBC did have the authority to approve the annexation of the land without a change in the recipients of the national forest receipts by simply saying so. If federal approval would be required, it would and should be up to KGB to obtain that approval, or forego the annexation. It is not clear that federal approval would be necessary because, as Mr. Rolfzen stated, the national forest receipts distribution is actually administered by the State.

Additionally, KGB could simply agree to forego the national forest receipts. This is an easy solution that meets the needs of KGB, all of the above communities, school districts, and tribal organizations, and the State. KGB would get all of its land; the communities and school districts would not lose the millions of dollars annually in educational funding. The fact that KGB will not agree to this solution seems a clear acknowledgment by KGB that the annexation is a "money grab."

There is precedent for KGB agreeing to forego the national forest receipts. The Municipality of Skagway passed a resolution to forego the \$600,000 in borough formation grant funds if the LBC approved the petition by the Skagway Petitioners to form a borough in the Skagway region. The LBC did approve the petition to create the Skagway borough. The people who petitioned to form the Skagway borough made it plain that it was not about what money the borough could get, and backed that up by obtaining the resolution. KGB could have done the same. If this proposed annexation were not about getting the \$1,200,000 per year in forest receipts, then KGB could have agreed to forego those funds so the children in the above communities, schools, and tribal organizations do not suffer such a tremendous loss of educational services. Rather, KGB chose to request annexation of the essentially uninhabited land to obtain the national forest receipts, and without providing any educational services in the area proposed to be annexed, leaving that financial responsibility to the State with substantially less funding.

On behalf of the communities, school districts, and tribal organizations listed above, we appreciate the opportunity to provide these comments. We are available to answer questions or provide other information upon the request of the Committee.

Respectfully,

  
Robert P. Blasco

cc: The Honorable Bill Thomas  
The Honorable Al Kookesh  
Jon Bolling, Craig City Administrator  
Richard Carlson, Klawock Superintendent of Schools  
Brett Agenbroad, Annette Island School District  
Marjorie Vandor, Assistant Attorney General

**PETER CAFFALL-DAVIS**

Willow Street Box 77  
Hyder, Alaska 99923  
(250) 636-2594  
pcaffalldavis@starband.net

February 20, 2008

Alaska House of Representatives  
Community and Regional Affairs Committee

Reference HJR 30

Dear Representative Co-Chair Fairclough and other Committee Representatives:

In an effort to provide you with the information you requested regarding the Forestry Timber receipts, detailing how the KGB annexation will reduce the revenues to the affected school districts and municipalities throughout the Unorganized Borough, both in actual dollar amounts and as percentages of both school and municipal budgets, I have put together some information I believe will be informative.

First I must say that the person most aware of the individual numbers for each of the 18 school districts who could best answer your questions in the form of a complete list itemizing the amounts and percentages for every school and municipal district is away on vacation until next week.

Like you I have endeavored to understand these various numbers and percentages we have all been hearing. In my inquiries on your behalf today I came up with two good examples. One which I have been informed is representative of nearly all the affected communities and school districts located within municipalities having taxing authorities. The Superintendents of the Craig School District and Southeast Island School Districts helped me understand their positions and provided the numbers. I found this information quite helpful. It is my hope and belief that it might also help you better understand the various percentages being reported in testimony.

First, there are two ways that funding for schools in the Unorganized Borough are handled.

For school districts located within a municipality (where there is a taxing authority) there is a formula used to calculate the amount of school funding each municipality is required to provide. I am told this amount is derived from a formula that uses the value of all taxable property located within the municipality. In our example, the Municipality of Craig on Prince of Wales Island, that figure is \$400,000 - \$440,000.

This annexation will reduce the Federal Timber receipts going to the municipality of Craig by \$130,000.

To further flesh out the numbers in our example the Craig School District budget is about \$6.8 million. This includes all State & Federal funding, grants and monies from all revenue sources used for education. The City of Craig municipal budget however is only about \$2 million. We can see the school budget is more than three times the municipal budget.

As we learned above, Craig's municipality requirement to fund their school district is approximately \$400,000. For years, the municipality of Craig has been using Federal Timber receipts to pay for ALL of its required contribution toward school funding and education (\$400,000). And rightly so, as education and roads are the only two uses for which Timber Receipts may be used.

This reduction of \$130,000 is about 1.9% of Craig's School Budget. However, the \$130,000 reduction in timber receipts represents about 32% of Craig's requirement to fund their school district (\$130,000 of \$400,000 is 32%).

We know Craig's municipal budget is less than 1/3 that of their school district budget, or only about \$2 million. That \$130,000 reduction in timber receipts will have to be made up entirely from the municipal budget. We can see \$130,000 is about 6.5% of Craig's annual municipal budget of \$2 million. This large reduction in Craig's municipal budget is extreme, both as the dollar figure of \$130,000, and as 6.5% of their total municipal budget. True, the \$130,000 may only be about 2% of Craig's total school budget, but the impact on the community is more than three times that percentage or 6.5%.

Similar percentages I'm told will be found for virtually every school district that is located within a taxing municipal authority within the Unorganized Borough. So we can see that the 1%-2% of school budget figure often used is somewhat misleading with regard to the impact these reductions would have on communities as a whole.

Now for those school districts located in the Unorganized Borough but not within any taxing authority or municipality; they are governed by Rural Education Administrative Area (REAA) guidelines. The situation for these schools is a bit different. There are no minimum requirements for funding by a local or regional taxing authority because there is no local or regional taxing authority.

All responsibility to fund schools in the REAA category falls upon the State and the Federal government. For school districts governed by REAA, any reductions in funding cannot be made up from another source as they can be for school districts located within taxing municipalities. For these rural schools any reduction in funding translates into a corresponding reduction in programs and services. It must be so as there is no other contributing entity to help fund the REAA school districts.

I'm told in the example of Southeast Island School District (SISD) which operates eight schools in SE Alaska, all under the REAA guidelines in remote towns and villages (none of which are within taxing authorities) the reduction in Timber Receipts would be

\$80,000 if the annexation becomes law. The SISD total budget for these eight schools is about \$6 million. So we can see in this case the impact is about 1.4% of the total school budget. This may be more in line with the percentages we are hearing from the KGB in their petition, subsequent briefs, and testimony. But we perhaps need to realize that while that may be a small amount in percentages, in these cases there are no other funds available for the REAA school districts to tap into to help offset these funding reductions.

I hope this information helps you, our Representatives, understand the different percentages we have all been hearing about how Federal Timber receipts impact our schools and small rural southeast communities.

When you asked me as a citizen to help obtain this information for you yesterday I agreed to do my best and to do it as quickly as possible. I am not in any way an expert in these matters. I spent the entire day speaking with school district superintendents, listening, learning and trying to get the simple truth about the issues to which I believe you were seeking answers.

A more detailed list for each of the 18 school districts outlining their proposed reductions in Forestry Receipt amounts, those amounts as a percentage of their respective school budgets, and also as a percentage of their respective municipal budgets when applicable, does not seem to be available through any sources I'm aware of for at least another week. Certainly not before you hearing tomorrow morning. If you would like me to continue working on obtaining this list for you into next week please let me know. Jon Bolling, the man I'm told would be best able to prepare such a list should return from his vacation by then.

If there is any way I can be of further help please don't hesitate to ask. I remain your willing servant, dutiful resident of the Unorganized Borough, and proud citizen of our Great State and Country.

I thank each and every one of you for ongoing efforts.

Sincerely,

Peter Caffall-Davis

**Southeast Alaska Native Economic Futures Coalition**

One Seaview Plaza, Suite 400, Juneau, Alaska 99801 (907) 586-9111

AFN  
Southeast  
Alaska  
Villages

ANB Grand  
Camp

ANS Grand  
Camp

City of Kake

Douglas  
Indian  
Association

Goldbelt  
Incorporated

Haida  
Corporation

Huna Totem  
Corporation

Hydaburg  
Cooperative  
Association

Inside  
Passage  
Electric  
Cooperative  
Inc.

Kake Tribal  
Corporation

Kootznoodoot  
Incorporated

Organized  
Village of  
Kasaan

Sealaska  
Corporation

Sealaska  
Heritage  
Institute

Southeast  
Alaska  
Regional  
Health  
Consortium

Tlingit &  
Haida  
Central  
Council

Tlingit - Haida  
Regional  
Housing  
Authority

February 22, 2008

Anna Fairclough, Co-Chair  
House Community and Regional Affairs Committee  
House of Representatives  
Alaska State Capital  
Juneau, Alaska 99801

Re: Support of HJR 30 and SJR 15 – Objecting to the annexation of territory to the Ketchikan Gateway Borough

Dear Representative Fairclough:

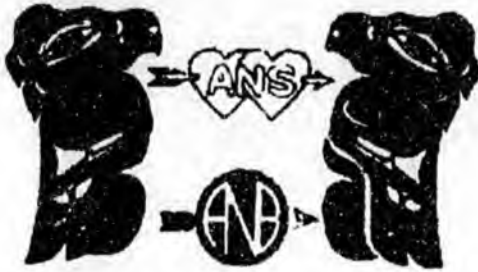
The Southeast Alaska Native Economic Futures Coalition (Coalition) writes in opposition to the annexation of the territory to the Ketchikan Gateway Borough and in support of both HJR 30 and SJR 15. The Coalition's objection to the annexation is due to the negative impacts that will occur to the schools in the unorganized borough of Southeast Alaska. Specifically, at stake is over 1.2 million dollars for community schools including Craig, Hoonah, Hydaburg, Kake, Kasaan, and Klawock. If the annexation is approved, the Ketchikan Gateway Borough stands to receive a substantial windfall to the detriment of these community schools. It is unconscionable to approve the annexation as it would unjustly enrich Ketchikan Gateway Borough at the price of the current K-12 education system, and ultimately the school children in Craig, Hydaburg, Kasaan, and Klawock.

We request you disapprove the Ketchikan Gateway Borough's application submitted to the Local Boundary Commission to annex land outside the current borough boundaries by supporting HJR 30 and SJR 15. In addition, I request that you please distribute this letter to your committee and colleagues. Should you have any questions please contact us and know that we are available for additional comments and/or testimony. Thank you for your time and consideration and I look forward to hearing your response.

Sincerely,

*Dewey Skan*  
Dewey Skan  
Chair

c: Senator Bert Stedman, Co-Chair, Finance Committee  
Senator Albert Kookesh  
Representative Bill Thomas  
Senator Kim Elton  
Representative Beth Kerttula  
Representative Andrea Dell  
Governor Sarah Palin



**ALASKA NATIVE BROTHERHOOD  
AND  
ALASKA NATIVE SISTERHOOD**  
Ketchikan Camp #14  
P.O. Box 6704  
429 Deermount  
Ketchikan, Alaska 99901  
Phone: (907) 617-9848

February 11, 2008

Dear Sir:

RE: HJR30 and SJR15

The Alaska Native Brotherhood/Alaska Native Sisterhood (ANB/ANS), Camp #14, Ketchikan strongly OBJECTS to the Annexation of land the Ketchikan Gateway Borough (KGB) is proposing.

Our Objection focuses mainly on the detrimental impact this Annexation Plan will have on the Alaska Native Subsistence rights of our local native citizens. Rights KGB and other Governmental entities seems to be ignorant about. Traditional native subsistence areas within KGB has been basically shutdown since our Community natives have been re-categorized as "Urban Indians" once again. Currently, our traditional subsistence usage areas within KGB are inaccessible because of this "Urban" label. Local Alaska natives have been pushed out to the furthest boundaries of their traditional land and sea food gathering sites trying to eek out scarce native foods. The Governmental entities do not seem to understand why Alaska Natives are continuing to seek traditional subsistence foods when there is so much to be had at the local Safeway and A&P Grocery Stores. They do not understand that it is in our Cultural, thousands and thousands of years of Cultural beating through our blood. This Annexation proposal will foster governmental attempts to further cut off Alaska natives from traditional food gathering sites in our local area. It will further efforts to "assimilate" Alaska natives to the white cultural only. If this Annexation is approved by the Alaska Legislature, traditional food gatherers living within KGB will once again be pushed farther and farther out into geographical areas that may very well be "inaccessible" to the majority of local Alaska natives without great expense.

Therefore, on behalf of all the local "urban" Alaska natives living in KGB, we OBJECT to KGB's proposed Annexation and urge a "No" vote on its approval. Send it back to them with a clear message that if the rights of its native citizens will not be protected by them, than the Alaska Legislature will do it for them.

Gunaalheesh, Howaa, Docykshin! Thank you!

Sincerely,

Joseph Reeves, President  
ANB Camp #14 Ketchikan

WHERE STUDENTS LIVE AND LEARN IN THEIR GREAT OUTDOORS

SOUTHEAST ISLAND SCHOOL DISTRICT



P.O. Box 19569, Thorne Bay Alaska 99919 Phone: 907-828-8254 Fax: 907-828-8257  
[www.sisd.org](http://www.sisd.org)

Port Protection, Goffman Cove, Naukati, Hollis, Hyder, Kasaaq, Port Alexander, Thorne Bay

SOUTHEAST ISLAND SCHOOL DISTRICT  
PROFILE:

Southeast Island School District (SISD), is a Regional Education Attendance Area, currently operating eight remote schools on Prince of Wales Island, Baranof Island, and the mainland. Our district encompasses 2 million geographical acres of marine waters and islands. The region is temperate rain forest; densely forested islands give way to marine waterways of Alaska's Inside Passage. Our children are our priority and we are committed to providing them with the best education possible.

- FY 08 enrollment is 140 students.
- Six sites are single teacher, K-12 and correspondence study program.
- Five member school board.
- Eight active Advisory School Councils.
- All stakeholders have the opportunity to engage in collaborative planning, problem solving, and decision making.
- Quality education for all students in a safe learning environment.
- Kayaks, bikes, snowshoes, shooting and archery programs.
- SISD is comprised of small communities that support their youth, contributing to youth sense of belonging to community and district.

LEGISLATIVE PRIORITIES:

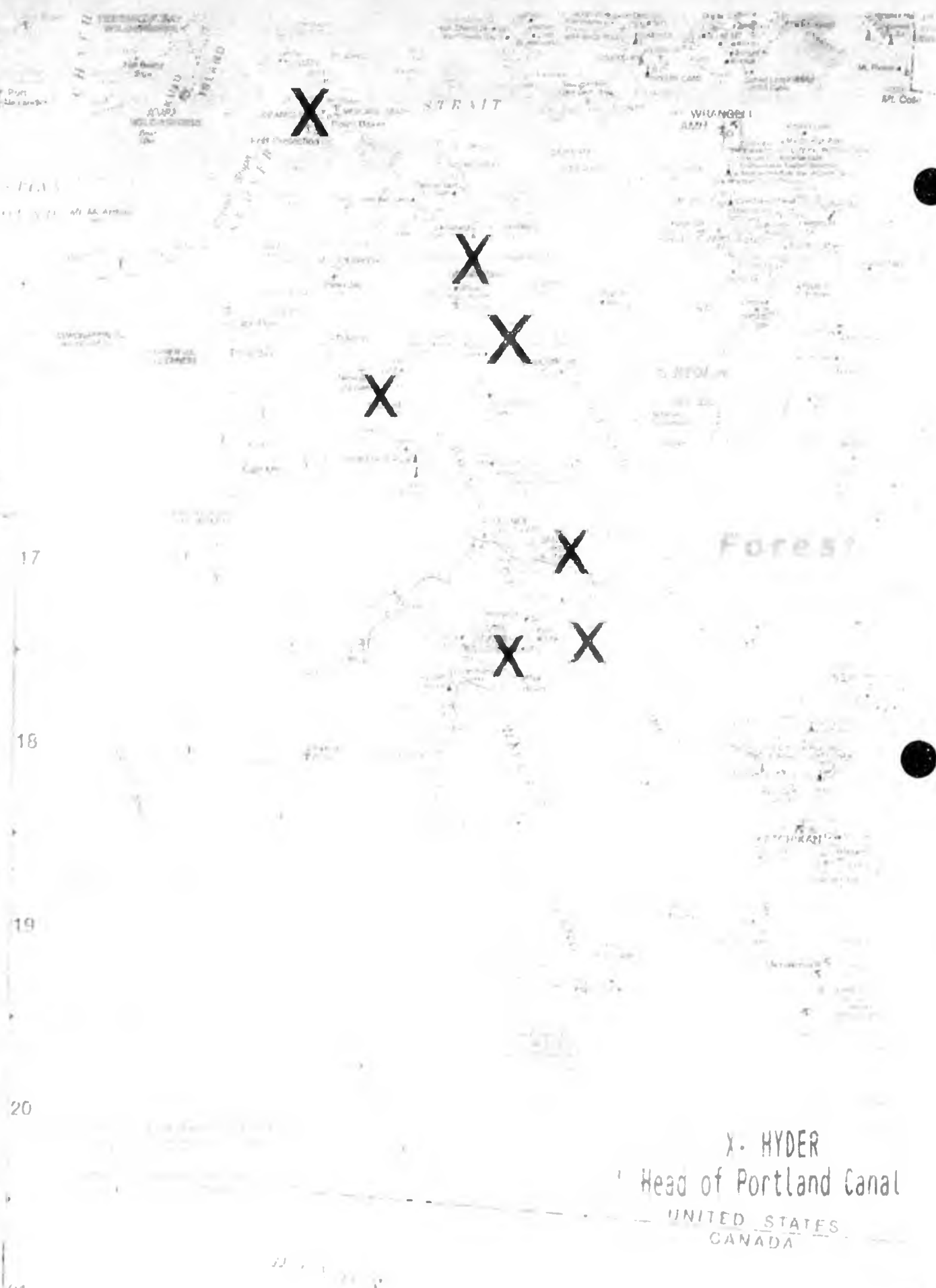
- Vocational Education
- CIP list projects: Hyder new construction, Port Protection gym and generator, Thorne Bay repairs.
- Continued implementation of ISER \$.
- Forward fund education.
- Include pre-K early education in BSA.
- Prevent suicide and drug/alcohol abuse.
- Financial support to help students meet and go beyond standards.
- Relief for high energy costs.

HOW ARE THE CHILDREN?

- All sites meet and exceed AYP.
- Two of the top ten schools in the state.
- Use of VTC to provide highly qualified and special education instruction.
- Student voice valued.
- Strategic Plan in place.
- COHO classroom aides working with high impact students.
- Enhance student opportunities through funds provided by grants
- Utilize community volunteers to provide a wider range of educational opportunities for students.
- School breakfast, lunch and snack program.
- Individual attention given each student; helping them achieve their life goals.

**THANK YOU FOR YOUR COMMITMENT TO EDUCATION!**

SOUTHEAST ISLAND SCHOOL DISTRICT



X. HYDER  
Head of Portland Canal  
UNITED STATES  
CANADA

**Sonya Hymer**

---

**From:** Sonya Hymer  
**Sent:** Monday, February 11, 2008 3:22 PM  
**To:** Sonya Hymer  
**Subject:** FW: Hyder CIP

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**From:** Carol Denton [mailto:rustyfish@missouristreet.com]  
**Sent:** Monday, February 11, 2008 2:31 PM  
**To:** Kaci Schroeder  
**Cc:** Pete Caffall-Davis; Pablo Larkin  
**Subject:** Re: Hyder CIP

Kaci,

I did see that there is a committee hearing for HJR 30 tomorrow. Thanks for asking about our relationship with Ketchikan Borough: It is non-existent. I have lived here 5 years, and the only KGB representative in town flew in and had the plane stand by while he zipped up to the community building to post a notice about a hearing on annexation. I believe that none of the current KGB Assembly members have ever spent any time here, they have no idea what our life is like here. We certainly were not consulted about being included in the Borough, and get the impression that we are the necessary evil connected with their being able to annex all that Forest Service land with its lovely timber receipts. I am not optimistic that they will try to build a relationship with us.

I will pass this to Pete Caffall-Davis, who has been handling the annexation battle for Hyder, and also to Paul Larkin, the former town Administrator. Perhaps they will send comments also.

Carol

On Feb 11, 2008, at 1:34 PM, Kaci Schroeder wrote:

Carol,

Just wanted to confirm with you that I did receive your CIP request with the color photos in the mail today  
Thanks!

Also, we have HJR 30 Opposing the KGB Annexation up tomorrow. I was just wondering if anyone consulted Hyder before the directive was made to include you guys in the Ketchikan Borough within 5 years. I understand that they are supposed to begin building a relationship with you guys. Are you optimistic that that will happen?

Just curious about Hyder's perspective.

Thanks,

Kaci Schroeder Holch  
Legislative Aide to Rep. Thomas  
1-888-461-3732

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

CITY OF CRAIG, ANNETTE ISLAND )  
 SCHOOL DISTRICT, )  
 ORGANIZED VILLAGE OF KASAAN, )  
 CRAIG CITY SCHOOL DISTRICT, )  
 CITY OF KASAAN, )  
 KLAWOCK CITY SCHOOL )  
 DISTRICT, NAUKATI WEST, INC., )  
 SOUTHEAST ISLAND )  
 SCHOOL DISTRICT, CITY OF )  
 THORNE BAY, PRINCE OF WALES )  
 COMMUNITY ADVISORY COUNCIL, )  
 HOLLIS COMMUNITY COUNCIL )  
 CITY OF KLAWOCK, HYDABURG CITY )  
 SCHOOL DISTRICT, CITY OF HYDABURG, )  
 HYDABURG COOPERATIVE ASSOC. )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 LOCAL BOUNDARY COMMISSION, )  
 )  
 Appellee. )  
 ) Case No. 1KE-08-004

**AFFIDAVIT OF JON BOLLING IN SUPPORT OF APPELLANTS' MOTION TO STAY**

Jon Bolling, being first duly sworn, states as follows:

1. I am the City Administrator for the City of Craig and have been the City Administrator for five years.
2. I am familiar with some of the issues relevant to the appeal of the Local Boundary Commission's decision regarding the Ketchikan Gateway Borough's annexation petition.
3. The fact that the National Forest Receipts (NFR) payments will change in 2009 if Congress does not reauthorize the Secure Rural Schools Program (see LBC Opposition to

Appellants' Motion for Stay, p. 10) constitutes an immediate change and impact to the Appellants because it impacts the next scheduled payment the Appellants would receive. From that standpoint, the impact to NFR is immediate if the KGB petition is submitted to the legislature and not disapproved by the legislature. For example, municipal school districts in the Unorganized Borough have a statutory requirement (AS 14.20.140) to notify tenured teachers by March 15 if the district cannot afford to maintain staffing levels. The School District representatives among these Appellants have expressed this serious and immediate concern to me and the Superintendent for the Klawock School District testified about this impact at the LBC hearing. Municipal school districts may find it necessary to notify teachers of non-retention. This causes needless anxiety among school staffs, and needlessly affects school services because of staff uncertainties.

4. The impact to Appellants from the loss of funding is significant and well beyond the 2% estimate alleged by the KGB. A more meaningful comparison of the impact of losing National Forest Receipts is to compare the NFR payment to a community's local contribution to its school district, in part because the NFR, under state law, may be counted toward a community's required contribution under state law. First class and home rule cities in the Unorganized Borough, just like organized boroughs, must support their school districts somewhere between the required local effort (four mills of a community's real and personal property value – AS 14.17.410.b.2) and the funding cap (equivalent to an additional two mills of a city's real and personal property tax base, or 23% of a district's basic need – AS 14.17.410.c.1 & 2). In Appellant City of Craig's case, the required local effort is approximately \$430,000, and its cap approximately \$1.2 million. Craig's 2007 NFR payment of \$594,437 is 138% of the community's required local effort, and about 50% of its cap.

5. Regarding the differences in per pupil allocation of National Forest Receipts between KGB and Craig and Klawock referenced on p.15 of KGB's Opposition to Appellants' Motion for Stay, four important points must be considered:

- A. The NFR program is not designed to be distributed solely on a per-pupil basis.
- B. Cities in the Unorganized Borough did not receive NFR payments from the State of Alaska until 1991, despite a prior forty years of high volume commercial timber harvest from within the boundaries of the Unorganized Borough that yielded exactly zero dollars in NFR payments to cities and their municipal school districts in the Unorganized Borough.
- C. Many, many millions more board feet were logged from the Unorganized Borough than from within either the existing or proposed KGB borough boundaries (see affidavit from Bill Rolfzen in LBC's Opposition to Appellants' Motion for Stay).
- D. The State of Alaska's own statutes (AS 14.70.160) and research (Alaska School District Cost Study Update January 31, 2005, prepared for Alaska Legislative Budget and Audit Committee) show that the cost to educate preK-12 students in the unorganized borough is significantly higher than in the KGB.

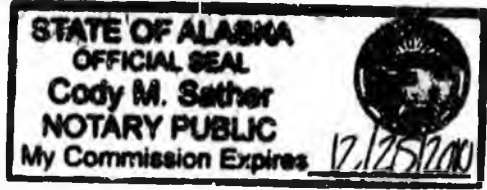
6. Given the complexities of the funding formula for the Payment in Lieu of Taxes Program, the annexation may result in a loss of funding to appellants within the Prince of Wales/Outer Ketchikan Census Area without a commensurate gain for the KGB, leaving appellant communities with significant financial losses wholly independent of the NFR program. These important federal funding contributions to our communities may be lost forever if the stay is not extended to final resolution of this Appeal.

DATED: 1/18/08

*[Signature]*  
Jon Bolling, Craig City Administrator

SUBSCRIBED AND SWORN TO before me this 18 day of January, 2008.

*[Signature]*  
Notary Public in and for Alaska  
My Commission Expires: 12/25/2010



Certificate of Service

On \_\_\_\_\_ a true and correct copy of the foregoing document was served on the following attorney(s) of record via:

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 Hyder, AK 99923

Laurie Gyles-Chemut

On Behalf of: ANNETTE ISLAND SCHOOL DISTRICT, CITY OF COFFMAN COVE, CITY OF CRAIG, CITY OF HYDABURG, CITY OF KAKE, CITY OF KASAAN, CITY OF KLAWOCK, CITY OF THORNE BAY, CRAIG CITY SCHOOL DISTRICT, CRAIG COMMUNITY ASSOCIATION, HOLLIS COMMUNITY COUNCIL, HYDABURG CITY SCHOOL DISTRICT, HYDABURG COOPERATIVE ASSOC., KAKE CITY SCHOOL DISTRICT, KLAWOCK CITY SCHOOL DISTRICT, KLAWOCK COOPERATIVE ASSOCIATION, NAUKATI WEST INC., ORGANIZED VILLAGE OF KASAAN, PRINCE OF WALES COMMUNITY ADVISORY COUNCIL, SOUTHEAST ISLAND SCHOOL DISTRICT

February 7, 2008

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

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

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

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

Dear Senator Olson, Representative Fairclough, and Representative LeDoux:

We are a subcommittee of representatives of the Tribal Organizations, Municipalities, and School Districts, who urge the adoption of House Joint Resolution 30 and Senate Joint Resolution 15. Our Tribal entities, communities and school districts have appealed the decision of the Local Boundary Commission to approve the Ketchikan Gateway Borough annexation of 4,510 acres of essentially uninhabited land to the Alaska Superior Court. We write in response to the letter sent to you by the Chair of the Local Boundary Commission, dated February 1, 2008.

For convenience, we will set out our response by each point in the letter of LBC.

1. We firmly believe the LBC decision did not comply with the Alaska Constitution and the applicable statutes and regulations. Our Statement of Points on Appeal to the Superior Court outlines numerous constitutional violations in the decision, as well as statutory and regulatory violations. Of particular importance are the violations of Article X, Sections 1 and 3 of the Alaska Constitution, and violations of due process as to our Tribal entities and community associations.
2. We encourage the Committees to review the transcript from the LBC hearing on the KGB Annexation petition. We have provided the transcript to Representative Thomas and hope it will be distributed. The transcript demonstrates the immense harm to our children because of the loss of not only the national forest receipts funds, but the Payment in Lieu of Taxes federal funding on which our communities rely.
3. The Order of the LBC did not "direct" Ketchikan to file a petition to annex Hyder within five years. Although the decision discussed whether KGB or LBC or "staff" might file a petition to annex Hyder within five years, the Order actually entered by the LBC did not do so. The entire Order states:

"On the basis set out in Section II of this decision statement, the Commission determines that the Petition, as amended to delete the approximately 191 square mile area of Myers Chuck and Union Bay, meets all the applicable Constitutional, statutory, and regulatory standards for borough annexation and is in the best interest of the State. According, the Petition, as amended, is approved."

There is no "Order" directing the KGB to file a petition to annex Hyder. We do not believe the omission of that directive from the Order was an accident or a mistake. As written, KGB is not compelled to do anything. What if KGB does not file a petition to annex Hyder in five years? Will the LBC "dismantle" the Borough? We seriously doubt it. The LBC carefully constructed its decision and Order in a manner that does not require KGB to annex Hyder, and when they fail to do so, as they surely will, we will have no recourse.

4. There are only two differences between the 1997 petition and the 2006 petition. In 1997, KGB did not include Meyers Chuck/Union Bay. In 2006, it did, but the LBC amended the petition to delete Meyers Chuck/Union Bay. The second difference is the boundary line creating the Hyder enclave. The boundary line encircling Hyder followed the flow of the river in the 2006 petition; it followed a slightly different route in the 1997 petition. That boundary line change had no significant or practical impact as to the amount of uninhabited land to be annexed in either petition.

5. We understand that the LBC "adopted" the position of the LBC in 1999 that the loss of the national forest receipts by our school districts and communities "is not a bar to the development of boroughs or their extension." Although we disagree with that position by both LBC bodies, what is important is that the current LBC ignored the Constitutional findings of the LBC in 1999, without any constitutional change in the interim. In 1999, the LBC stated unequivocally: "...the constitution calls for boundaries to embrace an area of common interests to the maximum degree possible. Without Myers Chuck and Hyder, this standard cannot be met." (Statement of Decision, 1999, p. 11) The LBC also stated unequivocally in 1999: "Further, the proposal fails to serve all relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14).

The LBC cannot change the Constitution or interpret it differently to the same area and petition simply by saying it's a different commission. The Constitution is not a "policy" that changes with the LBC, or its staff. The LBC cannot pick and choose from its 1999 decision. It cannot adopt one portion—which it knows will directly harm all our children and communities—and reject the Constitutional portion. The Constitution does not change with the "policy makers" as suggested by Commissioner Ketchum's letter. We believe the action of the LBC with respect to the KGB's 2006 petition was arbitrary and capricious.

6. Although the Secure Rural Schools Act funding has not yet been extended, if it is, the loss to our schools will be \$1,200,000. The windfall to KGB will be \$1,200,000 even though it will provide no educational services in the annexed area, and no children will be added to the KGB schools. Even if the Secure Rural School Act funding is not extended, the annexation would mean a loss of 22% of the regular forest receipts funding.
7. The LBC Chair failed to address at all the loss of the Payment in Lieu of Taxes funding to the communities of Prince of Wales. This federal funding amounted to \$543,913 in FY 2008. What possible equity is there in taking this federal funding away from the Prince of Wales communities so that KGB can annex essentially uninhabited land and provide no services to this area? When an agency like the LBC acts with this disregard of the Constitution and insensitivity to the best interests of the State, we can only come before our legislators as provided for in Statute and appeal to you to do what is right. How can this annexation possibly benefit the State when our communities may lose over \$1,500,000 in federal funding, and KGB will offer nothing of benefit to the State because it has deliberately removed Hyder from the annexation?
8. The LBC Chair notes several times that DEED "filed a statement of non-objection to the [KGB] annexation." This is perplexing; we do not understand how DEED could reach that conclusion given that the governing statute and regulations call

Letter to Sen. Olson, Rep. Fairclough, Rep. LeDoux  
February 7, 2008  
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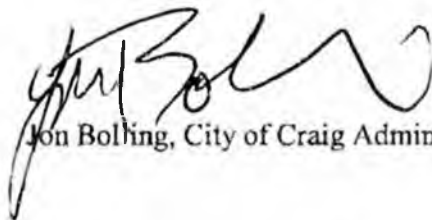
for "balancing all standards for annexation to a borough." By excluding Hyder, the proposed KGB annexation effectively shifts to the KGB the funds otherwise available to fund the education of Hyder students through Southeast Island School District, without imposing upon the KGB the requirement of providing that education. How does that meet the standard of "balancing all standards for annexation to a borough?" We do not believe, in all fairness, that it can or does meet that standard.

The letter from the LBC Chair indicated he was "troubled by the inaccuracies contained in the Resolutions." The Resolutions are accurate. We are troubled by the continued "inaccuracies" published by the LBC. We are troubled by the LBC's attempt to divert your attention from the Constitutional problems with its decision. We are troubled by the LBC's attempt to divert your attention away from the direct harm to our children and their educational opportunities.

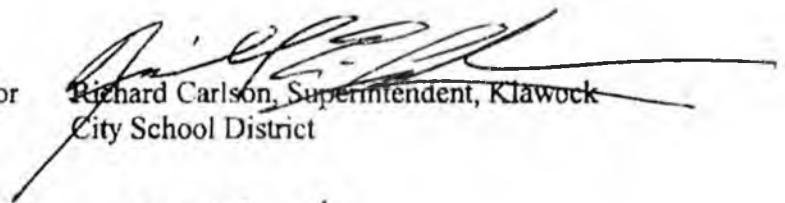
Finally, we are troubled by the fact that the LBC Chairman's seven page letter to the committee chairs is seven pages longer than the response that the LBC provided those who submitted timely written comments on the LBC's preliminary report on the proposed annexation. The LBC chose not to respond in the final report to the many concerns raised in writing, choosing instead to state that it was too busy to reply to the written concerns of the commenters. Had the LBC chosen to respond to these concerns, timely raised during the LBC's annexation petition review process, the legislature may not have these troubling questions before it today.

Our Tribal organizations, Communities and School Districts appreciate your careful consideration of the House Joint Resolution 30 and Senate Joint Resolution 15. We stand willing to provide any additional information that the Committees may feel helpful.

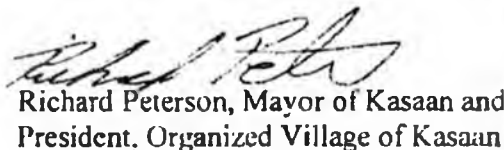
Sincerely,



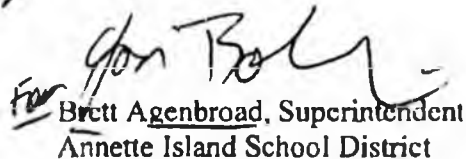
Jon Bolting, City of Craig Administrator



Richard Carlson, Superintendent, Klawock City School District



Richard Peterson, Mayor of Kasaan and President, Organized Village of Kasaan



Brett Agenbroad, Superintendent Annette Island School District

cc: The Honorable Kyle Johansen  
The Honorable Bert Stedman

Letter to Sen. Olson, Rep. Fairclough, Rep. LeDoux  
February 7, 2008  
Page 5 of 5

The Honorable Bill Thomas  
The Honorable Al Kookesh  
cc: The Honorable Lyda Green  
The Honorable John Harris  
The Honorable Sarah Palin  
DCCED Commissioner Emil Notti  
DCRA Director Tara Jollie  
LBC Staff Supervisor Jennifer Abbot  
Robert P. Blasco, Attorney for Appellants



September 4, 2007

Local Boundary Commission  
Department of Commerce, Community, and Economic Development  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

Dear Local Boundary Commission Members:

Attached you will find comments regarding the LBC preliminary report in the matter of the petition of the Ketchikan Gateway Borough for legislative review annexation of approximately 4,701 square miles to the Ketchikan Gateway Borough.

The comments detail the city's concerns regarding the proposed annexation. There are a number of problematic areas in the preliminary report that the LBC must address prior to the issuance of a final report and the holding of a public meeting where comments and testimony can be offered. These problematic areas will require careful consideration by the LBC before the annexation petition is again the subject to Commission action.

Among the many issues that the LBC must address regarding this proposed annexation is the equity of requiring many small communities to collectively forfeit some \$1.3 million in education and other funding every year to the Ketchikan Gateway Borough, which in turn will face no proportional requirement to deliver public services to the area subject to annexation.

Please note that the attached comments are also those of the Prince of Wales Community Advisory Council.

Thank you for considering our comments.

Sincerely,

Jon Bolling  
City Administrator

- Cc Governor Sarah Palin
- Senator Albert Kookesh
- Representative Bill Thomas
- Ketchikan Gateway Borough
- City of Wrangell
- Annette Island Indian Community
- Meyers Chuck Community Association
- Prince of Wales Community Advisory Council