

ALASKA LEGISLATURE COMMITTEE FILES

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OVERVIEW:

LOCAL

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State of Alaska
Local Boundary Commission

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February 21, 2007

The Honorable Donny Olson
Chair
Community and Regional
Affairs Committee
Alaska State Senate
State Capitol, Room 514
Juneau, Alaska 99801-1182

Dear Senator Olson:

Please accept our appreciation for the opportunity you have granted the Local Boundary Commission to address the Senate Community and Regional Affairs Committee next Tuesday, February 27. The Commission's presentation will focus on five policy issues. Those are: (1) increasing difficulties in rendering borough boundary decisions; (2) the general lack of incentives for borough incorporation; (3) the absence of standards and methods for establishment of unorganized boroughs; (4) funding for borough feasibility studies; and (5) compensation for members of the Local Boundary Commission.

Those topics are addressed in detail in the attached excerpt (pp. 83 – 99) of the Commission's annual report to the 2007 Legislature. I look forward to discussing those issues and any matters that members of the Senate Community and Regional Affairs Committee wish to bring to the attention of the Commission.

Cordially,

A handwritten signature in black ink that reads "Darroll Hargraves".

Darroll Hargraves
Chair

Enclosure:

Chapter 3

Policy Issues and Concerns

Introduction

This chapter addresses contemporary policy issues and concerns of the LBC.¹¹ In sum, these relate to:

- Increasing difficulties in rendering borough boundary determinations following the 1963 Mandatory Borough Act.
- Substantial disincentives and a lack of adequate inducements hinder incorporation of organized boroughs and annexation to existing boroughs.
- Lack of standards and methods for establishment of unorganized boroughs.
- Funding for borough feasibility studies.
- Compensation for members of the LBC.

Section I. Increasing Difficulties in Rendering Borough Boundary Determinations Following the 1963 Mandatory Borough Act

Subsection A. Statement of Issue

With the exception of a period of only eight months or so to implement the 1963 Mandatory Borough Act, the State has employed a laissez-faire policy regarding borough formation. That policy allows residents of the unorganized borough, irrespective of their fiscal and administrative capacity to support borough government, to decide when or even if they wish to incorporate boroughs. That policy has often stymied formation of large regional boroughs and may have contributed to boundary determinations that have been widely criticized and regarded by some as mistakes.

¹¹ Many of the policy matters addressed here are discussed in detail in prior reports of the LBC. Those include, in particular, the *Report of the Local Boundary Commission to the First Session of the Twenty-Fourth Alaska Legislature* (January 2005), *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation* (February 2004), and *Unorganized Areas of Alaska that Meet Borough Incorporation Standards* (February 2003). Those reports are available on the LBC Website at <<http://www.dced.state.ak.us/dca/lbc/lbc.htm>>. A copy of any of those reports can also be obtained by contacting LBC staff.

Subsection B. Background

Article X, Section 3 of the Alaska Constitution requires that "The entire State shall be divided into boroughs, organized or unorganized." It provides further that organized and unorganized boroughs, "shall be established in a manner and according to standards" enacted by the legislature. In 1960, the LBC made the following observations regarding boroughs in its report to the First Alaska State Legislature:

One thing can be agreed upon: the borough is the intermediate unit of local government between the City and the State. . . .

The Commission presently takes the position that a borough was designed to be a form of regional government. . . .

Following this concept to the next logical phase, it supports the Commission's present thinking that organized boroughs, particularly in Alaska, were to be large in size - otherwise they would be duplicating the service area's jurisdiction. No opinion is expressed at this time as to just how large the borough should be, for there are other considerations to be weighed: for example, the population density would be an important factor but, it is felt, in view of existing conditions in Alaska, the general rule should be large boroughs, and the exception should be small boroughs.

(State of Alaska Local Boundary Commission, *First Report to the Second Session of the First Alaska State Legislature* (February 2, 1960), pp. I-7 - I-9.)

To assist the legislature in carrying out the constitutional requirement that all of Alaska be divided into organized and unorganized boroughs, with each borough embracing an area and population with common interests to the maximum degree possible, the 1960 LBC formally recommended as follows to the First Alaska State Legislature:

[T]hat the Legislature give the Commission a mandate by Resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature.

(*Id.* at III-4.)

The Legislature rejected the LBC's recommendation. In 1961, a law was enacted establishing a single unorganized borough encompassing all of Alaska not within organized boroughs (at the

time there were none; so the single unorganized borough initially encompassed the entire state). State laws providing standards and procedures for *voluntary* incorporation of organized boroughs were also enacted in 1961. This created a structure in which borough boundary decisions would be made on a piecemeal basis without an overall plan for the division of all of Alaska into organized and unorganized boroughs.

Some members of the current Commission find it not surprising then that despite expressing a clear predisposition toward large regional boroughs, that the first LBC approved the creation of the 850-square mile Bristol Bay Borough in 1962. Other members of the current Commission take the view that the legislative action in 1961 was then and is now no excuse for establishment of small, nonregional boroughs.

Bristol Bay Borough and Surrounding Communities



Following approval of the Bristol Bay Borough proposal by the LBC in 1962, Alaska's Secretary of State expressed immediate and resounding criticism of the action. (*See Memorandum from Hugh J. Wade to Governor William A. Egan, July 9, 1962.*) Over the ensuing years, the creation of the Bristol Bay Borough has been repeatedly characterized as an extremely poor public policy decision by the LBC. For example, in 1991, former Constitutional Convention delegate Victor Fischer wrote:

The first violation of the regional concept came with establishment of the very first borough. In creating the Bristol Bay Borough, the Local Boundary Commission took a tiny part of a real region and gave it borough status under the constitution. This gross error was not rectified when the Lake and Peninsula Borough was created.

(Letter from Victor Fischer to the LBC, October 11, 1991.)

In 1963, the Legislature made a significant reversal of the 1961 policy by passing the Mandatory Borough Act. That landmark legislation, which was signed into law by Governor Egan (former President of the Alaska Constitutional Convention), mandated formation of boroughs in eight specific regions of Alaska (the greater areas of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks). Today, the eight boroughs formed under the Mandatory Borough Act are inhabited by an estimated 558,059 Alaskans, just over 84 percent of the state's population. The average size of the 8 boroughs formed under the Mandatory Borough Act is just under 10,000 square miles.

It is particularly noteworthy that John Rader, who sponsored the 1963 Mandatory Borough Act, viewed the LBC, in a practical sense, as an institution that was possibly incapable of exercising the political leadership necessary to achieve the vision of the framers of Alaska's Constitution regarding establishment of boroughs. In that regard, Mr. Rader wrote as follows in his recount of the legislative history of the 1963 Mandatory Borough Act:

So far as I am aware, [the Local Boundary Commission] has no broad view nor does it seek broad solutions. As a government tool, it is a small one. I would judge that its usefulness in the future would, therefore, be limited to smaller and more localized issues. The heat generated by annexation or by incorporation, particularly when it is done by executive fiat, is very intense.^[12]

Perhaps the commission could afford to make enemies one by one, bit by bit, but it could never maintain itself in the face of a barrage of criticism which was statewide. The legislature would destroy it.^[13] By the very nature of the political organization, the commission is not in a position to defend itself. The problems of annexation and incorporation of local government are political decisions which should be made in a manner permitting public political debate.



John Rader, sponsor of the 1963 Mandatory Borough Act.

(John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 90.)

After the 1963 Mandatory Borough Act, the State reverted to the 1961 laissez-faire policy of borough formation. Under that policy, the second borough proposal approved by the LBC was that providing for the creation of the Haines Borough in 1968. The boundaries approved by that LBC resulted in three enclaves within the borough, including Klukwan and Skagway.¹⁴

¹² [Footnote 18 in original.] Executives and administrators may find the Boundary Commission to be useful as a buffer between themselves and the public.

¹³ [Footnote 19 in original.] This problem was foreseen by the Constitutional Convention which gave the commission constitutional status (Art. X, sec. 12) to protect it. Despite this, the legislature could effectively limit the commission, e.g., by statutory definitions and by withholding appropriate staff and other necessary support.

¹⁴ Those consisted of (1) the military installation at Lutak Inlet known as the "base proper to the Petroleum Distribution Office, Haines Terminal and Pumping Station"; (2) a 1.4-square mile enclave including Klukwan; and (3) the 443.1 square mile area comprising the proposed Skagway Borough.

Some members of the current LBC have been critical of the boundaries set in 1968 for the Haines Borough. Other Commissioners are reluctant to criticize that prior action. The 1968 Commission approved the locally preferred alternative and, in doing so, resolved serious local and State policy concerns over the delivery of education services to the greater Haines area. It is noteworthy that voters in Haines had rejected three previous borough proposals. It is virtually

certain that if Klukwan and Skagway had been included in the borough proposal, the collective electorate would have rejected that fourth borough proposal encompassing Haines.



In the context of the laissez-faire policy of borough formation, it is noteworthy that only about 4 percent of Alaskans have voluntarily formed boroughs in 48 years of statehood. Moreover, in the past 16 years, only one borough has been formed. That was the City and Borough of Yakutat, a single-community borough presently inhabited by an estimated 619 people, including just 135 students.

In the 43 years since the 1963 Mandatory Borough Act, the legislature has debated numerous proposals to mandate further borough formation, consolidate school districts, impose taxes on unorganized borough residents, and create incentives for borough incorporation. However, few such proposals have been enacted, and those that have been seem to have had little effect.

Since the 1980s, the LBC, especially the current Commission, has been a strong advocate of reform. (See, in particular, *Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature* (January 19, 2005) pp. 83 – 164.) However, as anticipated by John Rader, the LBC may have become somewhat of a target because of the Commission's advocacy for reform. Further, in the general absence of locally initiated proposals for regional boroughs, the Commission also seems to bear the brunt of criticism and frustration over the lack of borough formation. Such may be evident in the conclusions of the ad hoc Advisory Commission on Local Government created by the Twenty-Fourth Alaska Legislature. That body, which was comprised of six legislators and three municipal officials, reported as follows in 2006:

The [Advisory Commission on Local Government] received testimony that *rigid adherence by the Local Boundary Commission (LBC) to regulations regarding borough boundaries have been a detriment to new borough formation*. The [members of the Advisory Commission on Local Government] therefore state their intent that the

LBC apply flexible rules when reviewing local proposals. Priority should be given to the standards listed in statute. Minor consideration will be given to the model borough boundaries and other administrative boundaries.

(Advisory Commission on Local Government, *Final Report* (January 20, 2006), p. 7. [Emphasis added.])

The Twenty-Fourth Alaska State Legislature (2005 – 2006) considered various legislative proposals to curtail the powers of the LBC. Those included, in particular, House Bill 133 and Senate Bill 128. Excerpts from the Sponsor Statement regarding House Bill 133 follow:

Sponsor Substitute for House Bill 133 makes three changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Following amendment, *CSSSHB 133(JUD) AM* passed the House by a vote of 35 in favor and only 1 opposed (with 3 members excused and 1 absent). The Senate then approved the bill by a vote of 19 to 0 (with 1 member absent). The Governor signed the bill into law and issued a press release stating:

Governor Frank H. Murkowski has signed into law *HB 133*, which makes changes in the way the Local Boundary Commission processes municipal incorporations, annexations, detachments, mergers, consolidations, reclassifications, and dissolutions.

The bill . . . also protects the voters' right to incorporate, outline the boundaries of their municipality, and select the level of service they want. It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

"This bill cleans up the process local citizens use to define their own community," Murkowski said. "It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go."

(Frank H. Murkowski, Governor, *Press Release* (May 27, 2006).)

As noted above, *SB 128* is another example of legislative action to curtail the powers of the LBC. Excerpts from the Sponsor Statement regarding Senate Bill 128, including specific reference to the provisions in Article I, Section 2 of Alaska's Constitution, follow:

[Petitions for borough incorporation] should originate with maximum local involvement. . . .

"The Alaska Constitution states, 'All government is to originate with the people and is founded upon their will only.' I interpret that to include borough governments. The role of the Local Boundary Commission is to review proposed changes, not to create boroughs. If we are to have a government by the people, those proposed changes should emanate from the local level up, not from the top of the government pyramid down."

With amendments, *SB 128 AM* passed the Senate by a vote of 15 votes in favor and only 4 against (with 1 member excused). The House then passed *SB 128 AM* by a vote of 36 to 0 (with 4 members excused). That bill was also signed into law by the Governor.

The most recent and extreme example of the sentiments characterized above is reflected in a resolution adopted by the members of the Alaska Municipal League in November 2006. That resolution urges further legislative action and states as follows:

WHEREAS, the Local Boundary Commission has assigned a disproportionate weight toward their administrative criteria¹⁵ for evaluating petitions for borough incorporation, known as the Model Borough Boundary requirement; and

¹⁵ It is noted that the Commission's "administrative criteria" are the standards set out in the Commission's regulations, adopted under AS 44.62. The adoption of such standards is mandated by AS 44.33.812(a), and the Alaska Supreme Court has overturned a Commission boundary decision when such standards were lacking.

The Alaska Supreme Court in *United States Smelt., R. & M. Co. v. Local Bound. Com'n*, 482 P.2d 140, 142 (Alaska 1975), outlined the overarching need for the Commission to adopt regulatory standards when reviewing boundary changes. The Court observed that the requirement for the Commission to adopt such standards was mandatory not discretionary. The court stated in pertinent part:

Since under AS 44.19.260(a)[] the legislature required the commission to develop standards in order to recommend boundary changes, and the commission had not developed standards prior to the Nome . . . proceedings, we hold that the commission lacked the power to recommend the Nome boundary changes in question. To do otherwise would be to condone the commission's nonobservance of a valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes.

In addition to the mandatory requirements under AS 44.33.812 for the adoption of boundary change standards, including borough incorporation, AS 29.05.100(a) provides in pertinent part:

If the commission determines that the incorporation . . . meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS . . . 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition. [Emphasis added.]

WHEREAS, the Local Boundary Commission has been unsuccessful using the Model Borough Boundary criteria to promote new borough incorporations and even inhibits such incorporations through the use of this criteria; and

WHEREAS, the Local Boundary Commission's inflexible approach when considering petitions for borough incorporations that do not conform to the Model Borough Boundaries, unduly limits the ability of political subdivisions of the State to propose other viable borough boundaries;

(Alaska Municipal League, *Resolution 2007-06* (November 17, 2006).)

The Alaska Municipal League's legislative proposal urges amendment of existing laws to impose, among other limitations, provisions that would prohibit the LBC from even considering a borough incorporation proposal that included more than one home-rule or first-class city unless the city councils of the cities involved adopted a resolution to permit such.

The LBC envisions that enactment of such a proposal would lead to the Balkanization of Alaska in terms of borough governments. Presently, there are 18 home-rule or first-class cities in the unorganized borough. Additionally, there are 31 second-class cities in the unorganized borough that meet the minimum population threshold for reclassification as a first-class city. Some of those 31 second-class cities are among the most populous communities in the unorganized borough and have expressed interest in forming a single-community borough. Bethel (population 5,960) is just one example. It can be reasonably assumed that a number of the second-class cities would seek reclassification if such would foster their goal of forming a single-community borough. Moreover, there are 12 unincorporated communities in the unorganized borough that meet the minimum population threshold to incorporate as a home-rule or first-class city. Thus, there are a total of 61 existing or prospective home-rule or first-class cities in the unorganized borough.

Communities in the Unorganized Borough that potentially qualify for borough status under AML Resolution 2007-06.



If home-rule or first-class city status becomes a basis for determining the boundaries of new boroughs, it stands to reason that it may also become a basis for subdivision of existing boroughs. Take the Kenai Peninsula Borough (KPB), for example. In the past, the LBC has rejected proposals for a "Homer-Ninilchik borough" and a "Nikiski borough." The LBC also rejected a proposal to detach Tyonek from the KPB. In 2005, interest was expressed in forming a new borough encompassing just Seward, Moose Pass, Cooper Landing, and Hope. In that Seward is the only home-rule or first-class city among those four communities, such a borough would

conform to the provisions proposed by AML. However, the KPB encompasses five home-rule and first-class cities. It also includes one second-class city with a population in excess of the minimum population required to reclassify as a first-class city. Moreover, there are 15 communities (including Nikiski, which previously proposed borough incorporation) in the KPB that have populations in excess of the minimum required to incorporate a home-rule or first-class city. In all, there are 21 communities in the KPB and 77 communities in all 16 existing boroughs that meet the minimum population threshold for being a home-rule or first-class city.

Subsection C. Recommendations

The circumstances above reflect a climate that often disfavors formation of regional boroughs. Meaningful reform of the current structure will require legislative attention. The LBC continues to offer its assistance and support for legislative efforts to reform the existing policy regarding borough formation.

Section II. Substantial Disincentives and a Lack of Adequate Inducements Hinder Incorporation of Organized Boroughs and Annexation to Existing Boroughs

Subsection A. Statement of Issue

As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives and lack of inducements for borough incorporation and annexation. The legislature and the 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, State policy makers opted to make borough formation voluntary. Policy makers 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, disincentives to borough formation and annexation have greatly increased over time. The organized borough concept had then and still has little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for essential 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 (REAA's) are not. There proved to be other inequities as well. Thus, contrary to the stated intent of the 1963 Mandatory Borough Act,

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.
- 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.¹⁶
- 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,

¹⁶ 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.

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.

Subsection B. Background

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government.¹⁷ The Framers of our Constitution recognized that the legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach needed adequate inducements to establish boroughs.¹⁸ They anticipated that the Alaska Legislature would provide such incentives. Unfortunately, that vision of the Framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment. While the Framers preferred voluntary incorporation, they recognized that if regions had the capacity to operate boroughs and refused to incorporate, the State could compel borough formation.

Statistics offer compelling evidence that inducements of voluntary borough incorporation have been generally inadequate over the course of 48 years of statehood.

- Fewer than 4 of every 100 Alaskans (3.6 percent) live in boroughs that were formed voluntarily.¹⁹
- In contrast to the above figure, 84 of every 100 Alaskans (84.1 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- Of the sixteen Alaska boroughs, only eight formed voluntarily.

¹⁷ *Borough Government in Alaska*. Thomas A. Morehouse and Victor Fischer, p. 39 (1971).

¹⁸ *Ibid.*, p. 61; also, *Alaska's Constitutional Convention*, Victor Fischer, p. 120 (1975).

¹⁹ 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.

Promotion of borough formation is sound public policy. Boroughs:

- promote maximum local self-government with a minimum of local government units;
- provide a formal structure for service delivery;
- offer stable administrative infrastructure to provide services;
- foster local responsibility and decision making;
- promote accountability;
- provide a means to promote private ownership of land;
- have capacity to provide greater financial aid to schools;
- consolidate school districts;
- have capacity for regional control of alcohol and illegal substances;
- promote economic development;
- provide a proper role for State government; and
- promote equity and fairness.

Subsection C. Recommendations

For more than four decades, experts and public policy makers have recognized that Alaska has failed to implement an effective policy regarding borough formation.

The Commission urges the Legislature to consider ways in which inducements for borough incorporation and annexation may be increased and disincentives for such may be decreased. Those include the following.

1. Tax the unorganized borough (e.g. property, sales, employment, or head taxes).
2. Provide financial aid to boroughs.
3. Increase organization grants for new boroughs and extend grants to boroughs that expand their boundaries.
4. Extend municipal land grants for annexations and consider increases in entitlements.
5. Restrict National Forest Receipts and Shared Fisheries Fees and Taxes to boroughs and cities within boroughs.

Section III. Lack of Standards and Methods 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 both organized *and unorganized* boroughs and (2) methods for establishment of both 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, laws providing standards and the manner for establishment of *unorganized boroughs* have never been enacted.

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 established in 1961 act as a significant impediment to achievement of the constitutional goal of maximum local self-government with a minimum of local government units set out in Art. X, sec. 1 of Alaska's Constitution.

This issue is reflected in the following excerpt from comments made in 1981 by Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention, Assistant Director of the National Municipal League, and Professor at the New York University School of Administration:

The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which established boundaries that make sense in terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

(*Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough*, pp. 86 - 88.)

Subsection B. Background

In summary, Alaska's Constitution imposes the following seven duties upon the legislature:

1. Enact standards for establishment of organized boroughs;
2. Enact standards for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and
7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

Five of the seven duties outlined in Article X, Section 3 have been fulfilled. The exceptions are the duty to enact standards for establishment of unorganized boroughs and the duty to enact laws providing for the manner in which unorganized boroughs will be established.

A single, residual unorganized borough does not conform to constitutional requirements. The 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, this action was inconsistent with the mandate of Article X, Section 3 that each borough, organized and unorganized, "embrace an area and population with common interests to the maximum degree possible." Prior legislative proposals, at least six in the last decade, have recognized that the unorganized borough does not conform to the common interest clause of the Alaska Constitution.

Standards for unorganized boroughs should include consideration of the fiscal and administrative capacity of the area. In the LBC's view, the capacity of an area to assume local responsibility is determined by two fundamental factors. One is the specific duties imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g. education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

The failure to follow the constitutional principles concerning unorganized boroughs hinders coordinated delivery of state services. In remarks to the LBC, former Senators Arliss Sturgulewski and Victor Fischer stressed the importance of establishing multiple unorganized

boroughs. Both stressed that the issue was the fundamental concern in a 1979 Local Government Study initiated by the Chairs of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska. The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was twofold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

Subsection C. Recommendation

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created identical to those for organized boroughs found in AS 29.05.031, except with respect to fiscal and administrative capacity.

AS 29.05.031 states:

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC is prepared to lend its expertise and assistance to the Legislature in the development of appropriate standards and procedures for establishment of unorganized boroughs.

Section IV. Funding for Borough Feasibility Studies

Subsection A. Statement of the Issue

Although the 2006 Legislature appropriated funds for borough feasibility studies in three specific areas, there is no continuing source of funding for such studies.

Subsection B. Background

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. However, funding for studies under that program has never been appropriated. The 2006 Legislature did, however, appropriate \$237,500 for borough studies in three specific regions in Alaska (Glacier Bay/Chatham, Middle Kuskokwim, and Eagle River/Chugiak). Additionally, the Department of Commerce, Community, and Economic Development provided a grant (\$30,000) for another borough study (Yukon Flats). Details of those studies are presented in Chapter 2. As further outlined in Chapter 2, a number of regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

Subsection C. Recommendation

The LBC recommends the Legislature appropriate funding for local borough study efforts in the near term; and if inducements for borough incorporation are implemented, to significantly increase funding.

Section V. Compensation for the LBC

Subsection A. Statement of the Issue

Members of the LBC receive no compensation for their service. Demands on members of the LBC have always been considerable. However, those demands have reached a point where current Commission members feel that some token compensation is warranted.

Subsection B. Background

The demands placed on the Commission have grown beyond what can be reasonably expected of unpaid members. In one proceeding before the current LBC, members of the Commission were faced with a formal record comprising approximately 3,000 pages. Members had to devote many hours to review that record. Each Commission member also devoted 5 or 6 days (including travel) to conducting a public hearing in the community. Substantial additional time was devoted to other proceedings in that case. One Commission member reported that he has devoted upwards of 350 hours (equivalent to nearly nine 40-hour weeks) to that one case alone. This was in addition to many other LBC matters in which members of the LBC had to participate.

The Commission formulates fundamental policies that have important statewide political, economic, and social implications. Such responsibilities demand that the Commission exercise prudence and diligence in carrying out its duties. The Commission is expected to exhibit expertise in all matters involving municipal boundary proposals.

It appears that nearly 20 State boards and commissions (excluding full-time boards and commissions) currently receive some form of compensation. The expectations and demands on the LBC seem to be at least equal to those nearly 20 boards and commissions that are presently compensated.

Subsection C. Recommendation

That the Alaska legislature provide compensation, at par with that provided to other unpaid boards and commissions, for service by members of the LBC.

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

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

<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

Graphic Illustration Only

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine the accuracy of the illustration.



Message from the Chairman

February 2007

Dear Members of the Alaska Legislature:

As Chair of the Local Boundary Commission (LBC) and on behalf of the other LBC members, I am pleased to present this report of the LBC to the First Session of the Twenty-Fifth Alaska State Legislature.

Chapter 1 provides background information on the LBC.

Chapter 2 describes activities of the LBC and its staff during 2006.

Chapter 3 discusses public policy issues of particular interest to the LBC including:

- Increasing difficulties in rendering borough boundary determinations following the 1963 Mandatory Borough Act.
- Substantial disincentives and a lack of adequate inducements hinder incorporation of organized boroughs and annexation to existing boroughs.
- Lack of standards and methods for establishment of unorganized boroughs.
- Funding for borough feasibility studies.
- Compensation for members of the LBC.

Many of the issues raised here have been discussed by the Alaska Legislature in the past and even now are being considered during the current legislative session. The LBC looks forward to the opportunity to review and comment on legislation proposed that will influence local government in Alaska. Please contact us or members of our staff if we can be of assistance to you.

Very truly yours,

Darroll Hargraves
Chair

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Chapter 1 - Background

Local Boundary Commission

Constitutional Foundation of the Commission

The framers of Alaska's Constitution adopted the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution."¹ The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the Local Boundary Commission (LBC or Commission) in Article X, Section 12 of the Constitution.² The LBC is one of only five State boards or commissions established in the Constitution, among a current total of approximately 120 active boards and commissions.³

The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee: "... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively."

(Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).)

¹ Victor Fischer, *Alaska's Constitutional Convention*, p. 124.

² Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

³ The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

Nature of the Commission

Boards and commissions frequently are classified as quasi-legislative, quasi-executive, or quasi-judicial, based on their functions within the separation-of-powers scheme of the Constitution. The LBC has attributes of all three.

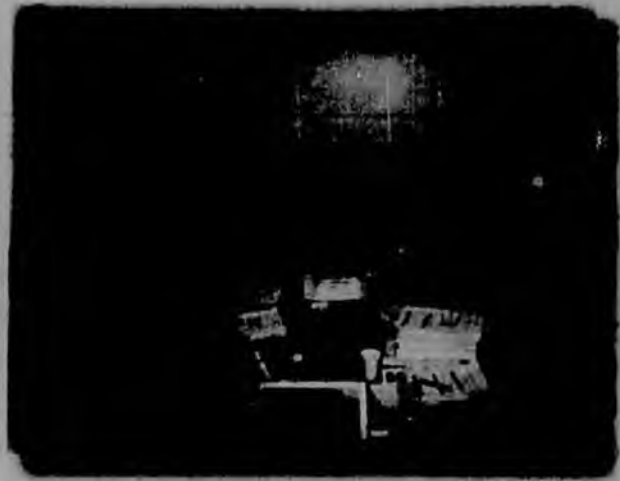
Article X, Section 12 of the Constitution of the State of Alaska provides that the LBC, "shall be established by law in the *executive branch* of the state government." (Emphasis added.) Members of the LBC are appointed by and serve at the pleasure of the Governor. The duty of the LBC under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the quasi-executive nature of the LBC.

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska delegates legislative authority to the LBC to make fundamental public policy decisions, thus conferring quasi-legislative status upon the LBC. Specifically, the Court stated:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. *Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.* Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

(Mobil Oil Corp. v. Local Boundary Com'n, 518 P.2d 92, 98-99 (Alaska 1974) (Emphasis added). See also Moore v. State, 553 P.2d 8, n. 20 at 36 (Alaska 1976) and Valleys Borough Support Committee v. Local Boundary Com'n, 863 P.2d 232, 234 (Alaska 1993).)

In addition to exercising quasi-legislative powers in making boundary determinations, the LBC carries out a quasi-legislative duty under AS 44.33.812(a)(2), when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution."



Local Boundary Commission during a recent meeting.

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting hearings and ruling on petitions.

The quasi-judicial nature of the LBC requires that there be a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence, even though the quasi-legislative nature of the LBC provides it with considerable discretion in the application of those standards and the weighing of evidence. See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n*, 489 P.2d 140 (Alaska 1971), discussing application of due process requirements in Commission proceedings.

Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes.

These are:

- incorporation of municipalities;⁴
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;
- merger of municipalities; and
- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's Constitution.

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*. That report was prepared in response to the directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*. That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called

⁴ The term "municipalities" includes both city governments and borough governments.

for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (Section 48 Chapter 159 SLA 2004).

LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁵ The LBC must proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

Limitations on Direct Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

⁵ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy, the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at:

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559
Fax: (907) 269-4539
Alternate fax: (907) 269-4563
E-mail: LBC@commerce.state.ak.us

LBC Membership

The LBC is an autonomous commission. The Governor appoints members of the LBC for five-year overlapping terms. (AS 44.33.810) Notwithstanding the prescribed length of their terms, however, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d))

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as Chair of the LBC.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)



LBC members receive no pay for their service. However, they are entitled to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.

Darroll Hargraves, Chair, At-Large Appointment.



Governor Murkowski appointed Darroll Hargraves of Wasilla Chair of the LBC in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been school superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and nonprofit organizations.

Commissioner Hargraves previously served as Chair of the LBC from 1992-1997 under Governors Hickel and Knowles. His current term on the LBC ends January 31, 2008.

Georgianna Zimmerle, First Judicial District.



Commissioner Zimmerle is a life-long resident of Ketchikan. She earned an Associate of Arts degree from the University of Alaska in May 1985. Commissioner Zimmerle was appointed to the LBC on March 25, 2003, and was reappointed to her second term in January 2006. An Alaska Native, Commissioner Zimmerle is a Tlingit of the Raven moiety and her Indian name is JEEEX-GA-TEET. She is also Haida from her paternal family. Commissioner Zimmerle worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Commissioner Zimmerle served as the General Manager of Ketchikan

Indian Community for 2½ years. She is currently retired and working part-time for Tongass Federal Credit Union. Her current term on the LBC ends January 31, 2011.

Robert Harcharek, Second Judicial District.

Commissioner Harcharek was appointed to the LBC on July 18, 2002 by then-Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. Commissioner Harcharek has lived and worked on the North Slope for more than 25 years. He has been a member of the Barrow City Council since 1993. He is currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public Works. Commissioner Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Sociocultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He has served on numerous boards of directors, including the Alaska Association of School Boards, the Alaska School Activities Association, the National American Indian/Alaska Native Caucus of School Board Members of the National School Boards Association, and the Arctic Development Council, a State of Alaska DCCED Regional Development Organization. His current term on the LBC ends January 31, 2009.

Bob Hicks, Vice-Chair, Third Judicial District.

Commissioner Hicks, a resident of Seward, was appointed to the LBC from the Third Judicial District in March 2003. His fellow commissioners elected him as Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the fields in which he specialized as an attorney was the field of local government, including LBC matters. Since 2001, Commissioner Hicks has worked at the Alaska SeaLife Center in Seward, where he serves as the Dive Officer and Vessel Safety Officer. His current term on the LBC ends January 31, 2007.

Dr. Anthony Nakazawa, Fourth Judicial District.



Anthony "Tony" Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in fifteen communities throughout Alaska. He previously served as the Director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981. He worked for the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971 and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the LBC ends January 31, 2010.

Staff to the Commission



The Alaska Department of Commerce, Community, and Economic Development (Commerce or DCCED), Division of Community Advocacy (DCA) provides staff to the Commission.

Constitutional Origin of the Local Government Agency

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed." In addition to the five boards and commissions named in the Constitution previously noted, the framers provided for only one State agency or department – the local government agency mandated by Article X, Section 14 to advise and assist local governments.⁶ It is worth noting that of the five boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with

⁶ Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The constitutional standing granted to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in large part, upon those two entities.

The duty to serve as the constitutional local government agency is presently delegated to the Department of Commerce, Community, and Economic Development.

The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.



Local Government Committee meeting during the February 1956 Alaska State Constitutional Convention.

Commerce Serves as Staff to the LBC

Within DCCED, the Division of Community Advocacy carries out the duty to advise and assist local governments. Commerce also serves as staff to the LBC pursuant to AS 44.47.050(a)(2). The LBC Staff component is part of the Division of Community Advocacy.

Commerce is required by AS 29.05.080 and 3 AAC 110.530 to investigate each municipal incorporation proposal and to make recommendations regarding such to the LBC. LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, Commerce adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC Staff is committed to developing its recommendations to the LBC, based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC Staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

Commerce's Commissioner, Deputy Commissioners, and the Director of DCA provide policy direction concerning recommendations to the LBC.

The recommendations of the LBC Staff are not binding on the LBC. As noted previously, the LBC is an autonomous commission. While the Commission is not obligated to follow the recommendations of the LBC staff, it has, nonetheless, historically considered Commerce's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC Staff also delivers technical assistance to: municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by the LBC Staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during Commission hearings and other meetings;
- drafting decisional statements of the LBC;
- implementing decisions of the LBC;
- certifying municipal boundary changes;
- maintaining incorporation and boundary records for each of Alaska's 162 municipal governments;
- coordinating, scheduling, and overseeing public meetings and hearings for the LBC;
- developing orientation materials and providing training for new LBC members;
- maintaining and preserving LBC records in accordance with the public records laws of the State; and
- developing and updating forms and related materials for use in municipal incorporation or alteration.



LBC staff answering audience questions during a public information meeting in Delta Junction.

Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public

notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

Preparation and Filing of the Petition

The LBC Staff offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. LBC Staff routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulation of the petition for voter signatures or formal adoption by a municipal government sponsor.

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

Public Notice and Public Review

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

Analysis

Following the public comment period, the LBC Staff analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and the LBC Staff may conduct informational meetings. At the conclusion of its investigation, the LBC Staff issues a preliminary report for public review and comment. The report includes a formal recommendation to the LBC for action on the petition.

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

Commission Review of Materials and Public Hearings

Members of the LBC review the petition, responsive briefs, written comments, reply brief, and the LBC Staff reports. If circumstances permit, LBC members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the LBC conducts at least one hearing in or near the affected territory. The Commission must act on the petition within ninety days of its final public hearing.

The LBC may take any one of the following actions:

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



The LBC listening to testimony during the Skagway Remand hearing in Skagway.

While the law allows the Commission ninety days following its last hearing on a petition to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the LBC must adopt a written statement setting out the basis for its decision. Copies of the decisional statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the LBC to reconsider its decision. Such requests must be filed within eighteen days of the date that the decision becomes final. If the LBC does not approve a request for reconsideration within twenty days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation

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

Overview of Municipal Government in Alaska

State law provides for two types of municipalities: city governments and organized boroughs. City governments are community-level municipalities and organized boroughs are regional-level municipalities. Further information about this topic is available in Appendix A: *Fundamental Nature of Boroughs and Cities in Alaska*. Regions of Alaska not located within an organized borough constitute a single unorganized borough.

There are three classifications of city governments:

- home-rule;
- first-class; and
- second-class.

The powers and duties of a city government vary both with its particular classification and whether it is located within an organized borough. The most fundamental distinction among city governments relates to the requirement that home-rule and first-class city governments in the unorganized borough must provide for education, planning, platting, and land use regulation. Other city governments are not permitted to exercise education powers. Second-class cities in the unorganized borough are permitted, but not required, to exercise planning, platting, and land use regulation. Any city within an organized borough may, upon delegation of authority by the organized borough in which it is located, exercise planning, platting, and land use regulation. For more information, see Appendix B: *Local Government in Alaska*.

Alaska law provides the following four classes of organized boroughs:

- home-rule;
- first-class;
- second-class; and
- third-class (State law prohibits the creation of new third class boroughs).

Alaska Divided by Organized Boroughs and the Unorganized Borough



By law, every organized borough must exercise the following two powers areawide:

- public education; and
- tax assessment and collection where municipal taxes are levied.

Further, state law requires that every organized borough, except third class boroughs, provide the following three additional areawide powers:

- planning;
- platting; and
- land use regulation.

Home rule boroughs have charters (constitutions). Article X, Section 11, of the Alaska Constitution provides that home rule boroughs, "may exercise all legislative powers not prohibited by law or by charter." In other words, the assembly of a home rule borough has any power that is constitutionally available to the state legislature, provided the power is not prohibited by state law or by the borough charter. AS 29.10.200

lists 53 specific limitations on home rule municipalities found in Title 29 of the Alaska Statutes.

Home rule boroughs are the most popular form of organized borough in Alaska, followed closely by second class boroughs.

General law boroughs (1st, 2nd, and 3rd class) derive their powers exclusively from State statutes. Still, state statutes grant general law boroughs the ability to assume a very broad array of powers.

A summary on the current status of boroughs in Alaska is provided in Appendix C: *2006 Overview of Boroughs in Alaska*.

Existing Classification of Organized Boroughs in Alaska

Name	Type	Date Incorporated
Municipality of Anchorage	Home-rule	09/15/75 ^a
Bristol Bay Borough	Second-class	10/02/63
Denali Borough	Home-rule	12/07/90
Fairbanks North Star Borough	Second-class	01/01/64
Haines Borough	Home-rule	10/17/02 ^b
City and Borough of Juneau	Home-rule	07/01/70 ^c
Kenai Peninsula Borough	Second-class	01/01/64
Ketchikan Gateway Borough	Second-class	09/06/63
Kodiak Island Borough	Second-class	09/30/63
Laini and Peninsula Borough	Home-rule	04/24/89
Matanuska-Susitna Borough	Second-class	01/01/64
North Slope Borough	Home-rule	07/01/72
Northwest Arctic	Home-rule	06/02/86
City and Borough of Sitka	Home-rule	12/02/71 ^d
City and Borough of Yakutat	Home-rule	09/22/92

^a Region was first incorporated as Greater Anchorage Area Borough on January 1, 1964.

^b Region was first incorporated as third class borough on August 29, 1968; formed home rule borough October 17, 2002.

^c Region was first incorporated as Greater Juneau Borough on September 24, 1963.

^d Region was first incorporated as Greater Sitka Borough on September 24, 1963.

Alaska also has unified municipalities.⁷ Simply stated, a unified municipality is a home rule borough that can have no city governments within it. At the time a unified municipality is formed, all city governments within the unified municipality are automatically dissolved and none can ever form again.

There are three unified municipalities in Alaska:

- City and Borough of Juneau;
- City and Borough of Sitka; and
- Municipality of Anchorage.

There are three other organized boroughs in Alaska that also have no city governments within them. They are the Bristol Bay Borough, the Haines Borough, and the City and Borough of Yakutat. As such, city governments could legally be formed in those boroughs.

⁷ A unified municipality is defined as a borough by 3 AAC 110.990(1). Further, the legislature consistently characterizes unified municipalities as boroughs. For example, the statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Another example is found in the fact that newly formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190;29.05.210), whereas newly formed cities are entitled to different levels of organization grants and transitional assistance. Additionally, all three of the existing unified municipalities recognize themselves as boroughs in that each is governed by an assembly. Art. X, Sec. 4 of Alaska's constitution reserves the term "assembly" for the governing body of a borough, whereas Art. X, Sec. 8 of Alaska's constitution reserves the term "council" for the governing body of a city.

Chapter 2

Activities and Developments During 2006

Section I. City Incorporation

City incorporation activities and inquiries occurred to various degrees with respect to six communities. The six communities are:

- Big Lake;
- Horseshoe Lake;
- Healy;
- Igiugig;
- Levelock; and
- Naukati.

Big Lake

Location:	Big Lake is a community located on the shore of Big Lake, 13 miles southwest of Wasilla, in the Chugach Mountains. It lies adjacent to Houston and Knik-Fairview. The area encompasses 131.9 sq. miles of land and 12.9 sq. miles of water.
Population:	2,982 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Matanuska-Susitna Borough
School District:	Matanuska-Susitna Schools



At their request, LBC Staff made a presentation to 25 individuals at the Big Lake Chamber of Commerce's meeting on August 15. Staff discussed city incorporation procedures, characteristics of Alaska's boroughs and compared the "strong mayor" to the "manager" forms of borough government. In the "manager" form, the elected assembly members hire a manager who is usually a professional administrator; the borough mayor serves as the presiding officer of the borough assembly. In the "strong mayor" form of government, the person elected as mayor is not required

to be a professional administrator. A "strong mayor" usually hires a professional manager or administrator. In the "strong mayor" form of government, an assembly member elected by and from the assembly serves as presiding officer of the borough assembly. The Matanuska-Susitna Borough is a second-class borough that has the "manager" form of borough government. The Municipality of Anchorage is a home-rule borough with the "strong mayor" form. See Appendix D - Chart on Powers and Duties Home-Rule, First-class and Second-class Boroughs.

LBC Staff pointed out that Alaska's Constitution promotes a minimum number of governmental units. Statutory law would prohibit residents of Big Lake from creating a new city government when the services that are needed may be supplied by an existing government, such as the City of Houston or the Mat-Su Borough.

Horseshoe Lake

LBC Staff also responded to an inquiry about city incorporation from a resident of the Horseshoe Lake area, which is located near Houston and Big Lake. The individual indicated that substantial growth in the vicinity has created an environment in which some property owners and residents see a greater need for municipal services such as police protection. LBC Staff provided background information concerning the standards and procedures for city incorporation.

Healy

Location:	Healy lies at the mouth of Healy Creek on the Nenana River, 78 miles southwest of Fairbanks. It is located on a 2.5 mile spur road, just north of the entrance to the Denali National Park and Preserve on the Parks Highway. The area encompasses 669.0 sq. miles of land and 0.4 sq. miles of water.
Population:	1,012 (2005 State Demographer estimate).
City Classification:	Unincorporated
Borough:	Denali Borough
School District:	Denali Borough Schools



In February, LBC staff was contacted by a resident in an unincorporated area north of Healy who is interested in forming some sort of municipality. The individual was calling on behalf of several people in her area that believe they should get organized in order to have representation as local

government expands in their area. They have concerns about local government decisions being made that affect them without having the chance to be heard.

Since the individual and neighbors were just getting started, LBC staff prepared a packet of general information on local government and city incorporation and sent it to them.

Igiugig

Location:	Igiugig is located on the south shore of the Kvichak River, which flows from Iliamna Lake, on the Alaska Peninsula. It is 50 air miles northeast of King Salmon and 48 miles southwest of Iliamna. The area encompasses 19.8 sq. miles of land and 1.3 sq. miles of water.
Population:	50 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Lake & Peninsula Borough
School District:	Lake & Peninsula Schools



In April, LBC Staff responded to a request for information about city incorporation from the Administrator of the Igiugig Village Council. Interest in incorporation appears to be motivated, in part, by financial considerations (e.g., potential for new State revenue sharing programs proposed by HB 371 and SB 234, and the prospect of property taxes levied on property including seven lodges that serve sports fishermen and hunters). Interest in forming a city also seems to be motivated in part by the opportunity to transfer certain responsibilities for public services and facilities (e.g., landfill) from the Village Council in order to shield the Village Council from liabilities.

LBC Staff provided background materials on city incorporation (e.g., State laws establishing standards and procedures for incorporation, incorporation petition forms and instructions, a copy of the Naukati city incorporation decisional statement, and the publication "Local Government in Alaska"). Information about municipal taxation (e.g., Alaska Taxable 2005) was also provided.

Levelock

Location:	Levelock is located on the west bank of the Kvichak River, 10 miles inland from Kvichak Bay. It lies 40 miles north of Pitmeek and 278 air miles southwest of Anchorage. It is located near the Alagnak Wild and Scenic River Corridor. The area encompasses 14.5 sq. miles of land and 0.0 sq. miles of water.
Population:	54 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Lake & Peninsula Borough
School District:	Lake & Peninsula Schools



LBC Staff received an inquiry from an official of the Lake and Peninsula Borough about forming a city government in Levelock. The Borough official indicated that local interest in city government stems from the prospect of generating revenues through a city tax on commercial fishing operations.

In May, LBC Staff responded to a request from the President of the Levelock Tribal Village Council for information about incorporating a second-class city.

The Village Council President expressed particular interest in incorporating the nearby "Alagnak river and getting fishing revenue from that river."

LBC Staff encouraged the Village Council President to also consider the prospect of seeking the creation of a borough service area as an alternative to city incorporation.

LBC Staff provided information regarding standards and procedures for incorporation. Other general materials regarding city incorporation along with sample materials pertaining to the recent Naukati city incorporation attempt were also made available.

Naukati

Location:	
Population:	106 (2005 State Demographer estimate)
City Classification:	Unincorporated
Borough:	Unorganized
School District:	Southeast Island Schools



Pre-2006 Background

In 2004, voters in Naukati submitted a petition to incorporate as a second class city. The technical review of the petition revealed several aspects that required correction. By April 2004, the corrected petition was reviewed, but the conflicting interests and views of several of the parties that were involved necessitated further investigation.

Commerce's 196-page preliminary report and recommendations on the Naukati proposal were published and distributed in August 2005. LBC Staff conducted a public informational meeting in Naukati the following October to discuss matters relating to the proposed city incorporation. LBC staff toured portions of the 44 square miles within the proposed City of Naukati.

Eighteen individuals, groups and organizations submitted comments on Commerce's preliminary report. LBC Staff studied those comments and published a final report on the Naukati proposal in November.

The LBC conducted a public hearing in Naukati on December 12, 2005. Following the hearing, the LBC approved the petition with amended boundaries. In order to ensure fiscal viability of the proposed city, promote the State's best interest, and measure the personal commitment of local residents regarding the proposed city, the LBC imposed two conditions on incorporation. The conditions require voter approval of a proposition authorizing the city to levy a 5-percent sales tax and 3.5-mill property tax.

2006

On January 4, 2006 the LBC formally adopted a 40-page decisional statement setting out the basis for its December 12, 2005 action to amend and approve, with conditions, the petition to incorporate Naukati as a second-class city. The amendment reduced the boundaries of the

territory proposed for incorporation from 44 square miles to 11.7 square miles, and imposed the taxing authority specified above.

On January 9, after conferring with the LBC Chair on final editorial changes to the LBC's decisional statement regarding the Naukati city incorporation proposal, LBC Staff served the statement on the Petitioner and Respondent.

The Division of Elections was notified on January 31 of the need to conduct an election on city incorporation. Qualified voters would have the chance to vote on the incorporation of Naukati as a second class city. Incorporation would not occur unless local voters voted in favor of incorporation and approved authorization for the City

to levy a 5 percent sales tax and a 3.5 mill property tax. They would also vote to elect the initial seven-member City Council to take office if the incorporation propositions passed.

The election was held under the general administration and supervision of the Director of Elections, and conducted as prescribed by the Alaska Election Code. The election was conducted by mail pursuant to Alaska law. An absentee voting official, appointed from among Naukati residents, was available from March 27 through April 11 to accept absentee ballots.

In the April election, voters of Naukati rejected the proposal to form a city government. On April 26, the State Division of Elections certified the following election results in the Naukati city incorporation election.

BALLOT MEASURE number 1: Shall Naukati be incorporated as a second class city? yes: 37 (44.6 %) no: 46 (55.4%)

BALLOT MEASURE number 2: Shall the City of Naukati be authorized to levy a 5 percent sales tax? (Approval of this proposition is a condition for incorporation; i.e., voters must authorize the City of Naukati to levy a 5 percent sales tax in order for incorporation to occur.) yes: 35 (42.2%) no: 48 (57.8%)

BALLOT MEASURE number 3: Shall the City of Naukati be authorized to levy a 3.5 mill property tax? (Approval of this proposition is a condition for



Naukati Public Hearing

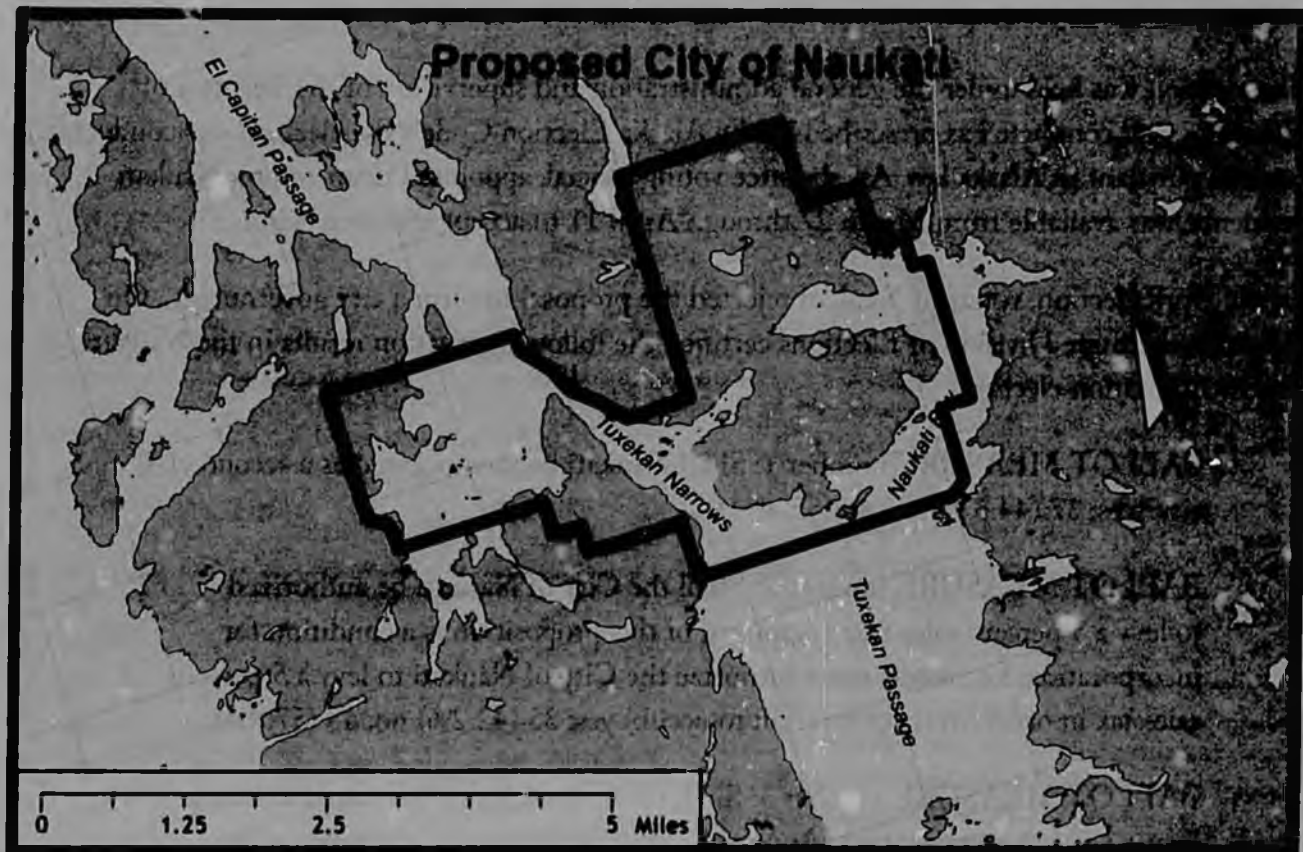
incorporation; i.e., voters must authorize the City of Naukati to levy a 3.5 mill property tax in order for incorporation to occur.) yes: 34 (41.0%) no: 49 (59.0%)

On June 13, LBC Staff received an inquiry about limitations on the submission of a new petition for incorporation of Naukati as a second-class city. The inquiry was from Art King, the representative of the Petitioners in the recently concluded proceedings for incorporation of the City of Naukati.

Mr. King inquired about 3 AAC 110.650, which provides "[e]xcept upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that is substantially similar to a petition & rejected by the voters during the immediately preceding 24 months." Mr. King asked whether a significant change in the proposed city boundaries and a significant change in the proposition to grant taxing powers to the proposed city would constitute a petition that was substantially dissimilar to the one rejected by the voters the previous April, or whether such changes would constitute "significantly changed conditions."

Mr. King noted that local residents were considering a new proposal that excluded Naukati Industrial Subdivision from the prospective proposal. That subdivision had been included in

Naukati City Boundaries as Approved by the Local Boundary Commission



the boundaries proposed in the original petition as well as those approved by the LBC. Mr. King indicated that there is strong sentiment against city government among the estimated 17 residents of Naukati Industrial Subdivision. Mr. King speculated that a new city incorporation proposal that excluded that subdivision would stand a better chance for voter approval. Mr. King also indicated that a proposition to authorize the proposed city to levy a sales tax would not likely be resisted by the voters; however, a proposition to levy a property tax would be. He also expressed the perception that despite efforts to inform the voters in the recently concluded incorporation proceedings, a number of voters did not understand that the sales and property tax propositions on the ballots would have empowered the city to levy taxes, but would not have compelled it to do so.

After conferring with the LBC Chair about the inquiry, the issue was added to the agenda for the LBC's June 26 meeting in Ketchikan. At that meeting, Mr. King assured the Commission that any new petition would be substantially dissimilar in terms of the proposed city boundaries, the proposed budget, and changes in the proposition to taxing powers. The LBC voted (3-2) to allow voters of Naukati to file a new petition for incorporation prior to April 2008 that is significantly revised from the petition rejected by voters in April 2006.



Naukati

LBC staff responded to numerous inquiries regarding the LBC's June 26 action from Art King and Van Huffman, current President of the Naukati West community association. Mr. Huffman called to inquire about changing the articles of incorporation for Naukati West community association. Mr. Huffman stated that during the formation of the community association there was some waterfront property that was not included in the community boundaries. LBC Staff discussed the process for amending the articles of incorporation with Mr. Huffman, and sent him a copy of the non-profit community association handbook.

On July 20, Naukati residents met to discuss the prospect of filing a new petition to incorporate as a second class city.

A new petition has not yet been filed with the LBC.

Section II. City Annexation

Although no city annexation petitions are pending before the LBC, annexation was explored to various degrees with respect to 10 city governments during 2006.

City annexation activities occurred in the following localities during 2006:

- City of Homer (conclusion of litigation);
- City of King Cove;
- City of Klawock;
- City of Kodiak;
- City of Palmer;
- City of Petersburg;
- City of North Pole;
- City of Seldovia;
- City of Soldotna; and
- City of Wasilla.

Homer

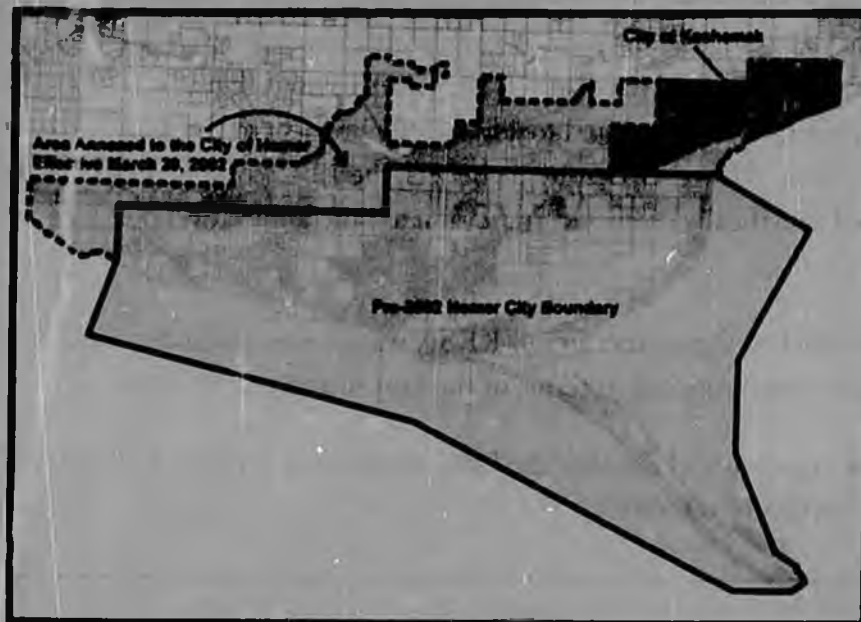
Location:	Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. It is 227 road miles south of Anchorage, at the southern-most point of the Sterling Highway. The area encompasses 10.6 sq. miles of land and 14.9 sq. miles of water.
Population:	5,435 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Kenai Peninsula Borough
School District:	Kenai Peninsula Schools



Pre-2006 Background

On December 26, 2001, the LBC approved an annexation of 4.58 square miles to the City of Homer. Following tacit approval by the 2002 Alaska State Legislature, the annexation took effect on March 20, 2002.

The annexation was appealed to superior court. On December 4, 2003, the superior court ordered a remand to the LBC to discuss the effect of the annexation on the Kachemak Emergency Service Area (KESA) created by the Kenai Peninsula Borough.

Homer Annexation

On January 5, 2005, following an opportunity for written comments by the public, analysis by staff, and a public hearing before the Commission in Homer, the LBC affirmed the December 26, 2001 decision granting annexation of 4.58 square miles to the City of Homer. A decisional statement setting out the basis for the January 5 ruling was adopted by the LBC on February

4 and distributed to all interested parties. This action was followed by a formal request for reconsideration of the Homer annexation remand decision, which the LBC denied for failure to meet the criteria for reconsideration set out in the law. Appeals by Abigail Fuller and the Kachemak Area Coalition, Inc., d/b/a Citizens Concerned About Annexation (CCAA) of the LBC's February 4, 2005 decision followed and are currently pending.

2006

Superior Court Judge Rindner heard oral arguments on the latest appeal of the Homer annexation in Anchorage on June 29. This appeal involved the LBC's affirmation of its December 26, 2001 decision granting annexation of 4.58 square miles to the City of Homer. This latest appeal was initiated by Abigail Fuller and the Kachemak Area Coalition, Inc., d/b/a CCAA. Attorneys representing Kachemak Area Coalition, the LBC (Assistant Attorney General Marjorie Vandor), and the City of Homer made oral arguments in person, while appellant Abigail Fuller appeared telephonically. The gist of the appellant's argument was that the Commission failed to adequately consider and give proper weight in their decision of the impact of the annexation on the KESA in that it took 25 percent of its tax base away, and this failure denied them due process of law. The Judge questioned all the participating attorneys and said he would take their comments and arguments under advisement and issue a written decision.

On August 22, Judge Rindner issued an 11-page decision affirming all aspects of the LBC's January 2005 decision upon remand of the 2001 annexation of 4.53 square miles to the City of Homer. Judge Rindner had remanded the case back to the Commission to discuss the impact of annexation on the Kachemak Emergency Service Area (KESA), a service area of the Kenai Peninsula Borough created after the City of Homer annexation petition had been filed.

In his August 22 decision, Judge Rindner noted with respect to the LBC's 2005 decision that:

The LBC determined that in its original decision, it gave proper consideration to the impact that the annexation would have on KESA. It also stated that it believed that the Commission was not required to address the impacts of the annexation on the service area. However, despite its beliefs, the LBC complied with the Court's order and specifically discussed and evaluated the annexation's impact on KESA.

The LBC found that the effect of the annexation of KESA was *de minimis* and that the annexation was not inappropriate in terms of the best interest of the state.

Judge Rindner also dismissed the appellants' claim that the LBC erred when it recused one of the Commission members due to a conflict of interest.

King Cove

Location:	King Cove is located on the south side of the Aleutian Peninsula, on a sand spit fronting Deer Passage and Deer Island. It is 18 miles southeast of Cold Bay and 625 miles southwest of Anchorage. The area encompasses 25.3 sq. miles of land and 4.5 sq. miles of water.
Population:	723 (2000 State Demographer estimate)
City Classification:	First Class City
Borough:	Aleutians East Borough
School District:	Aleutians East School District



On April 25, LBC Staff met with a consultant retained by the City of King Cove to prepare a petition for annexation of an estimated 22 square miles of offshore territory. The territory in question is reportedly used by commercial fishing operations and is not currently subject to city taxation. Earlier in the month, LBC Staff met with this consultant to give information on city annexation procedures and standards in general.

The City began the annexation process in 2003, and submitted a draft petition to LBC at that time. LBC Staff reviewed the draft petition and returned it with comments. Discussion in April of this year centered on determining where the petition process left off in 2003, what documents and correspondence are on file at LBC, and what the City needs to do to resume its efforts to submit an annexation proposal.

Klawock

Location:	Klawock is located on the west coast of Kodiak Island, Kodiak Borough, Alaska. It is 7 road miles north of Craig, 24 road miles from Hollis, and 56 air miles west of Ketchikan. The area encompasses 0.6 sq. miles of land and 0.3 sq. miles of water.
Population:	780 (2005 State Demographer estimate)
City Classification:	First Class City
Borough:	Unorganized
School District:	Klawock City Schools



On February 28, a representative of the City of Klawock advised LBC Staff that local officials were contemplating a proposal to expand the boundaries of the City of Klawock. LBC Staff provided information about prior Klawock annexation proposals. Information was also provided about annexation standards and procedures.

Kodiak

Location:	Kodiak is located near the northeast tip of Kodiak Island in the gulf of Alaska. It is 252 air miles southwest of Anchorage, a 45-minute flight. The area encompasses 3.5 sq. miles of land and 1.4 sq. miles of water.
Population:	6,088 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Kodiak Island Borough
School District:	Kodiak Island Borough School District



On July 17 LBC staff received an inquiry from a reporter with the *Kodiak Daily Mirror*. He indicated that there is a renewed interest in city annexation among some Kodiak residents. The reporter wanted information about Kodiak's failed annexation attempt in 1999, as well as information on city annexation in Alaska. Staff answered questions over the phone and then followed up with materials from the 1999 Kodiak annexation and general information about the city annexation process.

Palmer

Location:	Palmer is located in the center of the Matanuska Valley, 43 miles from Anchorage on the Glenn Highway. The city encompasses 3.8 sq. miles of land and 0.0 sq. miles of water.
Population:	5,382 (2005 State Demographer estimate)
City Classification:	Home Rule City
Borough:	Matanuska-Susitna Borough
School District:	Matanuska-Susitna Schools



Pre-2006 Background

There were inquiries about two separate city annexation proposals in Palmer. In July 2005 the City of Palmer's Community Development Director advised LBC Staff that Palmer City officials were exploring the possibility of a substantial annexation. LBC Staff provided information about standards and procedures for annexation. No particular territory had yet been identified in terms of the prospective annexation proposal. Once City officials define the proposed annexation boundaries, the City intends to use a consultant to examine the fiscal viability of annexation. Initially, the City of Palmer anticipated that a petition might be filed early in 2006. However, City officials informed LBC staff in October 2005 that they extended their timeline by one year. The City plans to use the extra time to complete its comprehensive plan update, conduct an economic analysis of annexation options, and to revise its land use code.

In an unrelated matter, City of Palmer officials advised LBC Staff in October that the Matanuska-Susitna Borough recently obtained a 159 acre uninhabited parcel contiguous to the City's boundary. The property is subject to a lease between the City and the property owner (formerly State, now Borough) for public use of the property. City officials want to annex the parcel. They indicate that the property owner consents to the annexation. LBC staff provided information about the standards and procedures for the annexation.

2006

An August 16 article in the *Anchorage Daily News* stated that the City of Palmer was considering a proposal to annex almost six square miles to the City's boundaries, doubling the size of the city. According to City Manager Tom Healy, the City was also developing a rural residential zoning district that could apply to property that might be annexed.

The news article reported that the City Council would meet to discuss the annexation on August 22. Even if the Council agreed to move forward with the annexation plan, it might be mid-2008 before new lots are added to the city.

According to the *Anchorage Daily News* article:

“Northern Economics, an Anchorage consulting group the city hired to study costs associated with annexation, estimated that bumping the city boundaries out north of Scott Road, south of Inner Springer Loop and Crimsonview subdivision and east of Equestrian Acres subdivision would add about 1,400 residents to the city. It’d also cost the city another \$90,000 to provide services like police protection and road maintenance to all the new homes....[T]he proposal now on the table is just one phase of a four-phase plan.

If all four phases are adopted, city boundaries will be a loop from Palmer-Fishhook Road to the Glenn and Parks highways interchange, bordered on the east by the Matanuska River, and will extend past Trunk Road on the west. Palmer’s population would double, according to Northern Economics.

In about 10 years, the city would collect \$1.3 million less in tax revenue than the cost of providing services.

Taxes in the city are set at 3 mills. Property owners outside the city pay 2.5 to 3 mills but don’t get city police protection and some other services....

The Northern Economics study shows that a 1-mill increase in city property taxes could recoup the additional \$1.3 million economists expect it would take to serve a larger city....



Palmer City Hall

City Council approved a plan Aug. 8 to begin preparing an annexation petition. Public hearings will likely begin later this year. Healy said he hopes to present an annexation petition to the Boundary Commission in February. If the commission approves the request, it will go before the Legislature in 2008.”

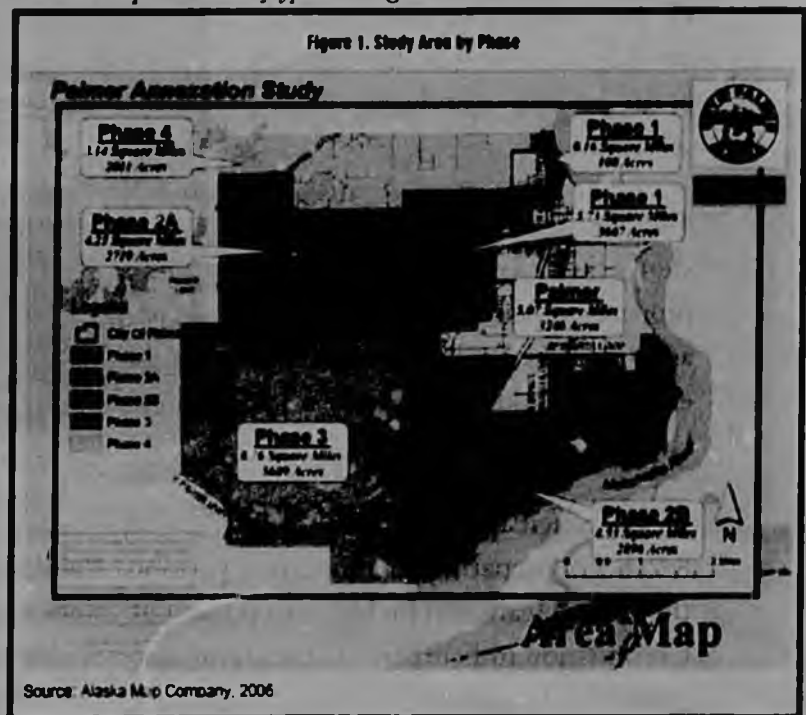
Mr. Healy said there were a number of ways to cover the new costs for a larger city, for instance, a slight increase in property taxes or more retail development.

Annexation and rural residential zoning would address concerns about unbridled strip development along the Glenn or Palmer-Wasilla highways. The Palmer Comprehensive Plan calls for appropriate development in keeping with Palmer.

In August, LBC Staff responded to inquiries from some Palmer area residents concerning the prospect of annexation to the City of Palmer. Concern was expressed, in particular, that annexation might occur without voter approval.

In September, LBC Staff responded to inquiries from the Palmer City Manager and others regarding a prospective legislative review proposal for annexation to the City of Palmer. Under consideration is a prospective proposal to annex 14.75 square miles inhabited by an estimated 3,520 residents. If implemented, the prospective annexation would represent a nearly 300 percent increase in the jurisdictional territory of the City of Palmer and a 65 percent increase in its population. It would also result in a 90 percent increase in the extent of roads for which the City would have maintenance responsibility. The City estimates that annexation of the 14.75 square mile territory would require an additional 20 employees to serve the expanded territory. The matter was brought before the Palmer City Council at its September 26 meeting in the form of motions to approve the draft annexation boundaries, and award a contract for preparation of an annexation petition. Some City Council members expressed concern over rushing through the process before fully understanding the issues involved. There was concern over financial issues such as the need to further analyze annexation costs, and a desire not to alienate any of those who would be annexed. The motions failed. City Council members wanted to study the 2007 budget and take a closer look at the future unfunded liability (i.e. PERS) before proceeding.

Map of the Palmer Annexation Study Area. Map Credit: City of Palmer website <http://www.cityofpalmer.org>



LBC Staff responded to separate inquiries from the President of the Crimson View Homeowners Association and the President of the Equestrian Acres Homeowners Association regarding plans by the City of Palmer for annexation of those subdivisions and other territory. Information was provided about standards and procedures for annexation.

Some residents spoke against the plan at the Palmer City Council meeting on September 12. One property owners' association member said that in a survey distributed to the 46 homes in his subdivision, 24 out of 31 survey respondents were opposed to becoming part of the City of Palmer. Another property owner in the Crimson View subdivision said she was opposed to the annexation because it would significantly increase her taxes, including her utility taxes.

On September 26, the Palmer City Council voted to delay plans for a prospective annexation proposal. In doing so, the City Council cited the need to first carefully assess the impact on existing City services of increased costs associated with the Public Employees Retirement System. City officials also want to examine how those increased costs might affect future annexations.

At its meeting of October 24, the Palmer City Council voted to authorize the preparation of a petition for legislative review annexation of an estimated 5.73 square miles. With current boundaries encompassing 5.07 square miles, annexation of the area in question would more than double the size of the area within the City's jurisdiction. With an estimated \$150,040,000 in taxable property, annexation of the 5.73 square miles would increase the \$286,650,000 property tax base of the City of Palmer by 52.3 percent. It is estimated that the territory is inhabited by 1,382 residents. Annexation would increase the population of the City of Palmer by 25.7 percent. Although the Palmer City Council voted to authorize development of the annexation petition, it was stressed to LBC Staff that the City Council could later elect not to file the petition with the LBC.

On December 20, LBC Staff met with a consultant for the City of Palmer regarding the prospective petition for annexation to the City of Palmer. City of Palmer officials contemplate the filing of a petition by early March, 2007.