

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

SCRA

124

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON



ALASKA
STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182

(907) 465-3707
FAX (907) 465-4821

SPONSOR STATEMENT

SB 304, CFEC as Information Source

There are eleven Alaska regional development organizations (ARDOR) established under AS 44.33.895. These are nonprofit organizations comprised of representatives of the economic, political, and social interests in each region. Their purpose is to encourage and assist economic development in their individual areas. For eight of these organizations, commercial fishing activities provide a substantial portion of their regions' economic base.

For example, the wholesale value of the 2005 commercial fishing activities exceeded \$3 billion. Earnings of the 27,700 participating fishermen accounted for \$1.2 billion. Another 22,500 persons participated in the seafood processing workforce earning \$277 million dollars in wages. For coastal communities, approximately 37% of private workers were employed in fish harvesting or seafood processing.

SB 304 allows ARDORs to benefit free of charge from the fisheries information and analyses generated by the Commercial Fisheries Entry Commission. This information can be critical for ARDOR understanding of the economic trends in their region and development opportunities that may be present.

SJR

15

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/30/08

FURTHER: Finance

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 12/13/08

Community and Regional Affairs Committee considered SENATE JOINT RESOLUTION NO. 15

SJR 15 DISAPPROVING KETCHIKAN ANNEXATION

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

and recommends:

- be replaced with SCS or CS SJR 15 (CRA)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input checked="" type="checkbox"/> Same Title
<input type="checkbox"/> New Title
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LEG	2/12/08			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	✓			
	WAGNER		✓		
	STEVENS			X	
	Keekesh	✓			
CHAIR	OLSON	✓			

25-LS1393\C
Cook
2/11/08

CS FOR SENATE JOINT RESOLUTION NO. 15()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR KOOKESH

A RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SJR 15
 () Publish Date: 2/12/2008

Identifier (file name): _____ Dept. Affected: _____
 Title: SJR 15 Disapproving Ketchikan Annexation RDU _____
 Sponsor: Senator Kookesh Component _____
 Requester: (S) Community and Regional Affairs Committee Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

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

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: _____

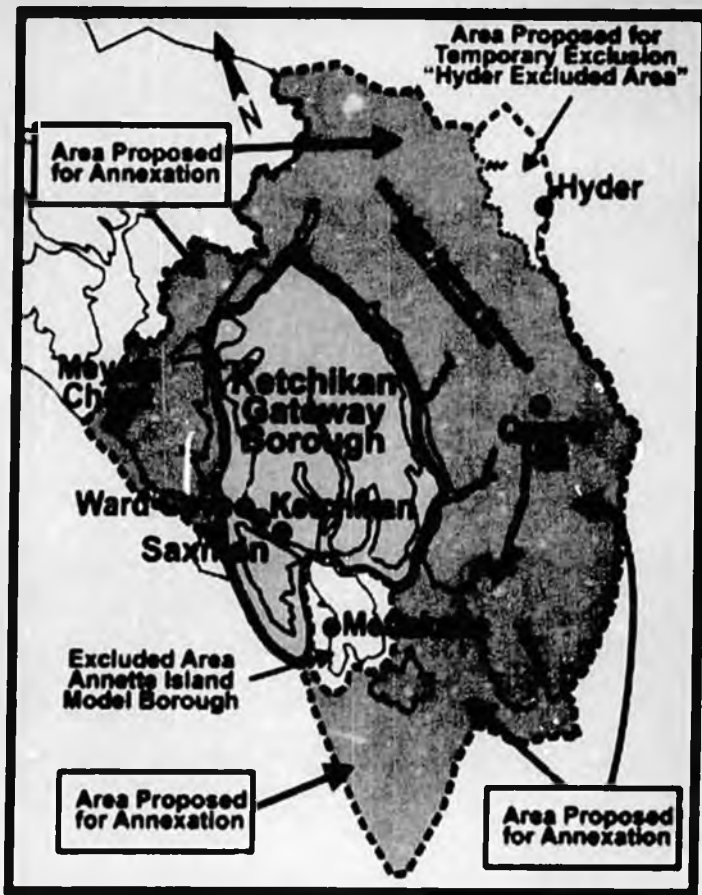
POSITIONS

Full-time							
Part-time							
Temporary							

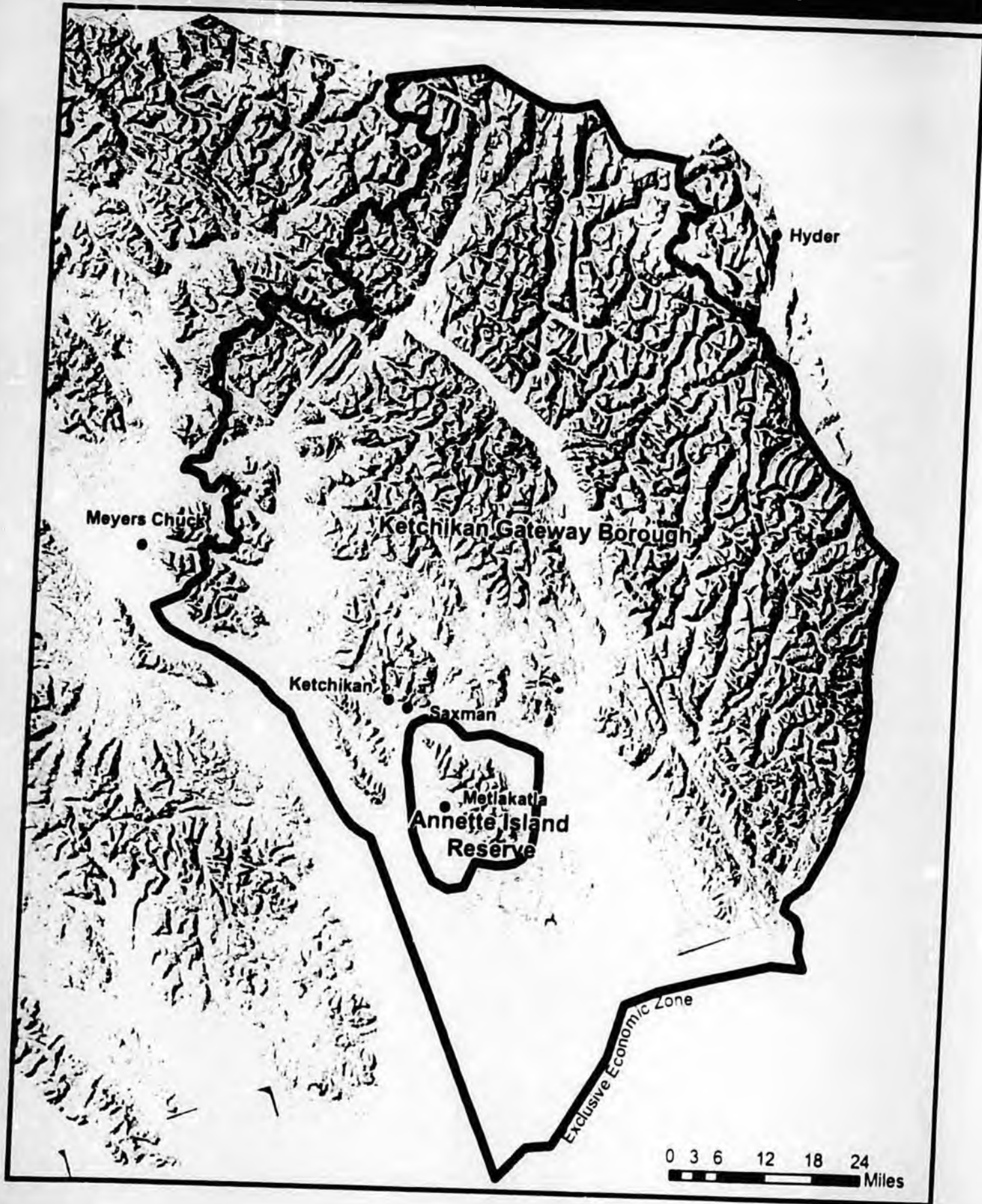
ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senate Community and Regional Affairs Committee
 Division: _____
 Approved by: *Donald W. Khan by SA*

Phone 465-4989
 Date/Time 2/12/08 5:45 p.m.
 Date 2/12/2008



Ketchikan Gateway Borough Boundary



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

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

Background on KGB Annexation

- On January 23 the Local Boundary Commission (LBC) presented its approval of the KGB annexation petition to the Legislature for review under article X, section 12 of the Constitution of the State of Alaska.
- The Commission's decision approves the annexation of 4,510 square miles to the KGB.
- Unless the Legislature disapproves the LBC decision by passing HJR 30, sponsored by Rep. Thomas, or SJR 15, sponsored by Sen. Al Kookesh, the Commission's decision will go into effect 45 days from the date the Commission presented it to the Legislature (i.e., on March 9, 2008).
- The Department of Education and Early Development (DEED) filed a letter of non-objection to the KGB annexation.

- Impacts of the LBC decision regarding National Forest Receipts (NFR):
 - The KGB would acquire 4,510 square miles of unorganized borough land and, in FY 2010, the possible addition of \$1.27 million in NFR payments, **if** the Secure Rural Schools Act portion of the NFR Program is reauthorized by Congress in its current form and at the 2002-2007 funding levels.
 - If the annexation becomes effective, Southeast Alaska communities in the unorganized borough could lose a combined \$1.27 million in NFR payments if the NFR Program is reauthorized in its current form and at its 2002-2007 levels.
 - The portion of the NFR program, which has included funds for the Secure Rural Schools Act since 2002, is sunset; unless reauthorized by Congress, the amount of NFR funding will drop significantly for **all** schools districts in Southeast, not just those on Prince of Wales Island.
 - DEED did not oppose the annexation.
 - The Legislature's Joint Legislative Education Task Force has addressed the sunset provisions of the Secure Rural Schools Act provisions in the NFR Program and is monitoring the issue.

The LBC's Response to Resolutions

- The LBC has written to both the House and Senate Community and Regional Affairs Committees regarding the Resolutions and errors contained therein.
- The Commission explained differences between the 1998 KGB annexation proceeding and the 2006 annexation proceeding. Primary points are:
 - The members of the LBC who considered the 1998 petition are different from the LBC members who considered the current petition.
 - The rationale and conclusions of a former LCB are not binding on a subsequent LBC.
 - The LBC's regulations and controlling statutes have changed since 1999.
 - In 1974 the Alaska Supreme Court stated the LBC has been given broad power to decide in the unique circumstances presented by "each" petition.
 - The current LBC disagrees with the reliance that had been previously placed on the Model Borough Boundaries.
 - The KGB's 2006 petition differs in that it includes the Meyers Chuck/Union Bay area.
 - The Commission's decision amends the Model Borough Boundaries of the KGB and of the Wrangell/Petersburg Model Borough Boundaries.
 - The LBC conditioned its approval regarding the 2006 petition by imposing a duty on the KGB to file a petition to annex Hyder within five years.
- The current LBC also responded to the concern for loss of NFR Payment, agreeing with the 1999 decision which stated:
 - *The commission rejects the notion that State policy position concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA in this proceeding. NFR and Payments in Lieu of Taxes programs are ephemeral-in a few years these programs may operate in a significantly different manner or may no longer exist. In contrast, the formation of a borough or the extension of a borough over a large area is a much more permanent action.*

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

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

- The LBC also stated with regard to the loss of NFR Payment:
 - *...The Commission is very sympathetic to that loss. However, it is not a bar to the development of boroughs or their extension. It is a factor that is considered in consultation with the DEED and when considering the best interests of the state; and DEED does not oppose this annexation proposal.*

Issue: Alleged Conflict of Interest Regarding LBC Staff

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

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

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

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

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

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

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

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

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



KETCHIKAN GATEWAY BOROUGH

144 FRONT STREET • KETCHIKAN, ALASKA 99901

• 907/228-6635 • fax 907/228-6683

E-MAIL: BORO_LAW@BOROUGH.KETCHIKAN.AK.US

OFFICE OF THE BOROUGH ATTORNEY

SCOTT A. BRANDT-ERICHSEN

BOROUGH ATTORNEY

January 31, 2008

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

Subject: House Joint Resolution 30

Dear Representative Johansen,

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

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

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

In terms of education funds, the unorganized Borough areas

¹Based upon 2006 figures provided by DCCED.

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

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

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

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

It is also significant to note that the exclusion of Hyder

²Based upon 2006 figures provided by DCCED.

³Based on 2006 revenue and expense numbers reported by DCCED.

is a red herring when it comes to funding. The Southeast Island School District receives more in revenues from the funding generated by the students in Hyder than it takes to fund services to those students⁴. Thus, a potential annexation of Hyder by the Ketchikan Gateway Borough would pose a greater fiscal impact to the SISD than the relatively minor reorganization of forest receipts.

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

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

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

⁴According to the 2006 SEISD budget, it cost \$93,864 to provide services in Hyder. Based on calculations by the Ketchikan School District finance office, the students in Hyder would generate \$254,379 in revenues from the State Foundation formula under the current formula. $(1.194 \text{ (district cost factor-old formula)} \times 39.6 \text{ base student multiplier for between 10 and 20 students (14.17.450 School size factor)} \times \$5,380 \text{ (base student allocation)})$. With the district cost factor under the ISER adjustments, the amount of foundation funding only increases.

⁵According to the arguments offered by the City of Craig to the LBC, \$417,802.00, or about 1/3, of the reduction in funds to communities in the unorganized Borough in Southeast Alaska would come from Petersburg and Wrangell.

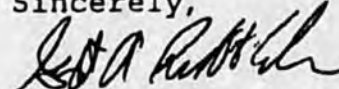
shifting National Forest funds remains to be seen.

Additionally, the City of Craig remains silent about the over \$250,000 or more in educational funding which it is taking from the Ketchikan School district through the City's illegal⁶ operation of a correspondence school providing public education to students who are within the Ketchikan Gateway Borough's boundaries without permission from the Ketchikan Gateway Borough. This activity improperly deprives the Ketchikan Gateway Borough School District of funds in an amount more than twice the amount Craig is claiming to lose in Forest receipts. Craig is happy to take funding from the schools in Ketchikan for 51 students who reside in the Ketchikan Gateway Borough, but are enrolled in the Craig School district correspondence program. When the issues are fully examined, it is apparent that it is the City of Craig which is improperly taking education funding from Ketchikan students, not the other way around.

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

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

Sincerely,



Scott A. Brandt-Erichsen
Borough Attorney

CC: Mayor Williams
Ray Matiashowski
Mike Houts

\\Main\svr\kgtdocs\Law\Letters\1.HJR 30.johansen.wpd

⁶The Ketchikan Gateway Borough is the only entity other than the State of Alaska with the legal authority to exercise public education powers within the boundaries of the Ketchikan Gateway Borough.

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

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

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

7
8 The Commission agrees with DCCED that this standard is satisfied.
9 However, at its decisional meeting on the KGB annexation, the Commission expressed
10 concern with Hyder's status as an enclave. In approving the KGB annexation, as
11 amended, the Commission directed the KGB to file a petition within five years to annex
12 the Hyder area. In that regard, the Commission encourages the KGB to work toward
13 developing communication, transportation, and economic ties between Hyder and the
14 Borough, including working with the State to help develop these ties. The Commission
15 noted that this was particularly appropriate in view of the federal revenues the Borough
16 will be receiving from the newly annexed area. If such a petition is not filed, the Com-
17 mission committed to directing DCCED to file such a petition.¹³ In that event, DCCED
18 should develop a petition in coordination with the DEED and KGB staff.
19
20
21
22

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

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

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



*Grand Camp
Alaska Native Brotherhood*

February 11, 2008

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

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

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

Dear Senator Olsen and Representative Fairclough:

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

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

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



SENATOR ALBERT M. KOOKESH
ALASKA STATE LEGISLATURE SENATE DISTRICT C

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

Sponsor Statement for SJR 15 Disapproving the Local Boundary Commission recommendation regarding the annexation of territory to the Ketchikan Gateway Borough

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

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

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

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

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

January 30, 2008

September 4, 2007



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

Dear Local Boundary Commission Members:

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

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

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

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

Thank you for considering our comments.

Sincerely,

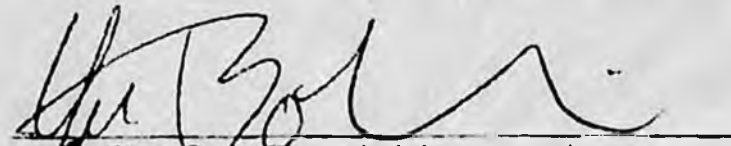


John Bolling
City Administrator

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

**IN THE MATTER OF THE PETITION OF THE KETCHIKAN
GATEWAY BOROUGH FOR LEGISLATIVE REVIEW ANNEXATION
OF APPROXIMATELY 4,701 SQUARE MILES TO THE KETCHIKAN
GATEWAY BOROUGH**

**COMMENTS ON BEHALF OF THE CITY OF CRAIG AND THE PRINCE
OF WALES COMMUNITY ADVISORY COUNCIL, IN RESPONSE TO
THE PRELIMINARY REPORT OF THE STAFF OF THE DEPARTMENT
OF COMMUNITY, COMMERCE AND ECONOMIC DEVELOPMENT**



Jon Bolling, Craig City Administrator, and
Prince of Wales Community Advisory Council Chairman

9/4/07
Date

I. INTRODUCTION

On April 16, 1999, the Local Boundary Commission (hereafter LBC) denied the Annexation Proposal of the Ketchikan Gateway Borough because "the proposal fails to serve all the relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14) The 1998 Annexation Proposal petitioned to annex essentially the same uninhabited area as the present proposal and it excluded the communities of Hyder and Myers Chuck. The current petition excludes the community of Hyder.

To accept KGB's petition, the LBC must find that it meets "the relevant principles established in the Constitution." The 1998 Proposal did not do so because Hyder was excluded.¹ Thus, the LBC's proper course in order to be consistent with the principles established in the Alaska Constitution is to deny this petition because, again, Hyder is excluded.

The City of Craig does not advocate that the LBC should require KGB to amend the Petition to include Hyder. KGB has been emphatic in its refusal to include Hyder. Equally as emphatic have been the residents of Hyder against being annexed by the KGB. The proper constitutional decision is to deny the Petition for the same constitutional reasons the LBC denied the 1998 Proposal. The Alaska Constitution has not changed. The Alaska Supreme Court has not entered any decision since 1999 upon which the LBC could rely to reverse its 1999 decision. Therefore, the City of Craig respectfully requests that the LBC reject the recommendation of the Preliminary Report, and deny the Petition.

¹ Myers Chuck was also excluded. However, the LBC left no doubt in its Statement of Decision that the reason that the 1998 Proposal did not meet constitutional standards was the exclusion of Hyder. There is no suggestion that the Proposal would have been accepted, and thus found constitutional, by the LBC, if the Proposal had included Myers Chuck, but not Hyder.

II. LBC STAFF'S RECOMMENDATION TO "APPROVE THE KGB PETITION WITHOUT CONDITION OR AMENDMENT IS CONTRARY TO THE LBC'S DECISION IN 1999 AND CANNOT BE RECONCILED WITH THAT DECISION OR STAFF'S RECOMMENDATION IN 1998

The 1998 Petition by the KGB is functionally identical to this Petition except as follows:

1. Myers Chuck would be annexed under this Petition;
2. The boundaries creating the Hyder "enclave" would not divide a natural drainage.

Of significance, none of the factual basis for the LBC's denial of the 1998 Petition has changed. The LBC noted in denying the 1998 Petition:

1. KGB refused the invitation of the LBC to amend its Petition to include Hyder and Myers Chuck (Statement of Decision, 1999, p. 3);
2. "Residents of Meyers Chuck and Hyder have expressed strong opposition to being included in a borough and the Borough has expressed little interest in annexing those communities. **Such an arrangement would poorly serve the State's long-term interests.**" (Statement of Decision, 1999, p. 8, emphasis added);
3. "If the Borough's annexation proposal were approved, the Borough would have little or no incentive to further extend its boundaries to include Hyder and Myers Chuck." (Statement of Decision, 1999, p. 8);
4. "...the constitution calls for boundaries to embrace an area of common interests to the maximum degree possible. Without Myers Chuck and Hyder, this standard cannot be met." (Statement of Decision, 1999, p. 11);

5. "...the Borough's annexation proposal significantly undercuts its own ability to effectively address planning needs by excluding Myers Chuck and Hyder."
(Statement of Decision, 1999, p. 12);
6. "The State would be left with the responsibility for the education of students in those communities. The State currently contracts directly with the school district in Stewart, British Columbia for the education of Hyder students." (Statement of Decision, 1999, p. 12);
7. "Because the annexation petition excludes Hyder and Meyers Chuck, the Commission considers the proposal to fail in terms of promoting maximum local self-government." (Statement of Decision, 1999, p. 13);
8. "Further, the proposal fails to serve all relevant principles established in the Constitution of the State of Alaska." (Statement of Decision, 1999, p. 14).

None of these circumstances have changed since 1999. KGB again deliberately excludes Hyder. Without addressing a single significant changed fact or circumstance, the Preliminary Report now recommends that the Petition be approved.

1. KGB has again refused to include Hyder in the area proposed to be annexed.

It is apparent that the LBC found it significant that the 1998 annexation proposal did not include Hyder. The LBC gave the KGB the opportunity to amend the petition to include Hyder. It refused. Seven years later it files another petition deliberately excluding Hyder. The reality is that the KGB will never voluntarily annex Hyder. Given the expense that would be involved, meaning it would have to provide schools and other mandatory borough services, why would it if it can annex the uninhabited lands, receive

approximately an additional \$1,200,000 in National forest receipts revenue, and not have to provide services?

LBC staff's conclusion that the LBC's interpretation of Article X, Section 1 of the Alaska Constitution is "unduly restrictive" is wrong, biased, and indefensible.

(Preliminary Report, p. 17) In the absence of changed facts, which there are none, and none were identified in the 117 page Preliminary Report, the LBC should not change its interpretation of the Constitution solely because of an unsupported new legal opinion offered by LBC staff.²

2. The residents of Myers Chuck and Hyder remain unanimously opposed to annexation.

The Preliminary Report acknowledges that the residents of Myers Chuck and Hyder remain adamantly and unanimously opposed to annexation by KGB. In conjunction with KGB's adamant opposition to annexing Hyder, the long-term state's best interests again would be "poorly served" by allowing the annexation without Hyder. These facts are the same as used by the LBC to deny the Petition in 1998, and no basis is shown in the Preliminary Report that changes the importance of these facts to the LBC. They were important in the denial of the petition in 1999; they should be equally important in denying this petition.

3. If the petition is approved, KGB will have no incentive to annex Hyder in the future.

² The LBC has access to the Department of Law for legal opinions regarding the interpretation of the Alaska Constitution. If there has been an opinion from the Department of Law that the LBC has been interpreting the Constitution in an "unduly restrictive" manner, the LBC should make that opinion part of the record.

The LBC was correct in 1999. Why would KGB annex Hyder and have to provide schools and all mandated borough services if it could obtain all of the additional National Forest receipts revenues through this annexation and avoid the expense of providing services? The Preliminary Report has no answer. Indeed, the Report essentially acknowledges that KGB will never annex Hyder. In order to justify the fact that KGB is never going to annex Hyder, LBC staff came up with the new concept of creating official enclaves within boroughs, completely contrary to the historical position of the LBC. What is particularly disconcerting about LBC staff's new position is that the \$1,200,000 that would go to KGB upon annexation, with no corresponding obligation to provide services, will result in a direct loss of school funding dollars to the other Southeast Communities who do have the obligation to provide schools, such as the City of Craig. The LBC was honest in its assessment in 1999—KGB has no incentive to annex Hyder. The LBC should be honest again in 2007—KGB still has no incentive to annex Hyder if this petition is approved.

4. The Constitution has not changed—the KGB petition cannot meet the constitutional standard to embrace an area of common interests to the maximum degree possible without the annexation of Hyder.

Despite 25 pages of discussion, primarily related to snippets of the Constitutional Convention, and LBC staff's disagreement with the decision of the Superior Court in *Petitioners for the Dissolution of the City of Skagway and the Incorporation of the Skagway Borough v. Local Boundary Commission*,³ the Report fails to cite to a single fact or changed circumstance such that this constitutional standard can now be met without the annexation of Hyder.

³ 1JU-02-0124 CI, September 20, 2005)

The Preliminary Report goes so far as to recommend that the LBC change the words of the Constitution. The Preliminary Report states that this constitutional standard is satisfied if "the post annexation boundaries of the borough would embrace a population that is interrelated and integrated with respect to social, cultural, an economic characteristics and activities." (Preliminary Report, p. 115) That is not what the Constitution says or mandates. As applied to this petition, the statement is meaningless. This Petition would "embrace" a population of no more than 25 people, probably only 14. Article X, Section 2 cannot be so lightly disregarded. The LBC stated clearly in 1999 that, without Hyder, the Constitutional standard could not be met. The LBC's application and interpretation of the Constitution was correct. The LBC did not say that without "Hyder or Myers Chuck, one or the other" the Constitutional standard could not be met. The LBC should not reinterpret such an important Constitutional mandate without any new facts or new circumstances that would justify such a significant shift in the historical interpretation of this provision of the Constitution by the LBC.

5. The exclusion of Hyder continues to undercut the ability of the KGB to meet its own planning needs.

In "considering the best interests of the State of Alaska," in its 1999 decision, the LBC stated clearly that the planning needs of the proposed borough, as annexed, must include Hyder. As the only community in the area of the KGB model boundaries with roads, schools, land use issues (commercial, industrial, and residential development), and tourism growth, the planning needs in the nine years since that decision have increased, not decreased. Thus, the planning needs have increased. These are the facts. In considering these facts in 1999, the LBC rejected the proposed annexation without Hyder. In order to reverse its 1999 decision, without being totally arbitrary and

capricious, the LBC must cite to new facts that warrant approval of the petition, in the "best interests of the state," without the inclusion of Hyder.

The Preliminary Report does not provide any new facts upon which the LBC could rely to reverse its 1999 decision. The preliminary report makes the remarkable statement that "creating the 205-square mile Hyder enclave would not initially impede 'the full development of essential borough services on an efficient, cost-effective level.'" (Preliminary Report, p. 88) The annexation proposal does not include any land or community that needs "services." By excluding Hyder, it goes without saying that the services presently provided by the State in Hyder "would not be impeded." The Preliminary Report is saying that since the annexed area has no need for services, the exclusion of Hyder would not "impede" the "full development" of no services! As a constitutionally created body, with a mandate to act in the best interests of the State, how can the LBC act in a constitutional manner and reverse its 1999 decision on such a basis? A reversal of its 1999 decision would be arbitrary and capricious if the LBC adopts the double-speak of the preliminary report.

6. The state will continue to be left with the responsibility for providing education services to Hyder students.

It is a simple fact that this proposal does not relieve the State of any of its current responsibilities and obligations in the area proposed to be annexed. The important obligation is the provision of school services. It cost money to provide school services in Hyder. KGB wants the additional \$1,200,000 in yearly revenues, and does not want to have to spend any of it on providing any services in the area to be annexed, in particular it wants no part of providing school services in Hyder. This was a significant factor in the LBC's recommendation against the proposal in 1998. It was a significant factor in

the LBC's denial of the petition in 1999. Nothing has changed. Hyder needs a school system. The state provides the school system.⁴ KGB does not want to have the obligation of providing the school system. The proposal excludes Hyder so that KGB does not have to provide educational services in Hyder. What facts are the LBC going to rely on to reverse the 1999 decision and now say it is in the best interests of the State to continue to require the State to provide the educational services in Hyder and yet allow KGB to annex all the uninhabited land and collect the additional \$1,200,000 annually? None are advanced in the Preliminary Report.

The people of the State have to rely on the Commissioners to maintain constitutional and policy consistency, that is, to again deny this Petition based on the same best interests of the state and constitutional principles as resulted in the 1999 Decision.

7. The exclusion of Hyder continues to mean that the petition does not promote maximum local self-government.

Promoting maximum local self-government is a constitutional mandate for consideration of a borough proposal. (Article X, Section 1) As the LBC stated in its 1999 Decision, "the annexation proposal seeks to add 99.6 percent of the area within the Borough's model boundaries not already within its corporate boundaries, but excludes 87.7 percent of the residents of that area." The current petition, which includes Myers Chuck, but still not Hyder, continues to essentially grab all the land, but take no responsibility for the people. As the Preliminary Report states, the population of Myers

⁴ The school system in Hyder is provided by the Southeast Island School District at state expense.

Chuck is reported at 14, but is probably less. Therefore, the same factual scenario is presented to the LBC as the one rejected by the LBC in 1999.⁵

The LBC upheld the Article X, Section 1 mandate in 1999 by properly denying the annexation proposal because it excluded Hyder. The LBC has no basis to conclude that the mandate of Article X, Section 1 can now be satisfied by granting a petition for nearly the same area that still excludes Hyder.

8. With the exclusion of Hyder, the petition again fails to serve all relevant principles established by the Alaska Constitution.

We continue to stress that nothing has changed since the LBC concluded that KGB's annexation of this area, without including Hyder, fails to serve all the relevant principles established by the Alaska Constitution. (Statement of Decision, 1999, p. 14) The Constitutional principles have not changed. The best interests of the state standard has not changed. The LBC's constitutional obligations to all the people and the communities in the state—including the people and communities in the unorganized borough—has not changed. Hyder remains the only community in the area that needs essential services. Hyder remains the only community in the area where the State is presently providing all the essential services that would be provided by a borough. And, KGB continues to exclude Hyder from the proposed annexed area. Based on the facts and the Constitution, the LBC's decision must remain the same, and deny the Petition. There is no conceivable Constitutional basis, and no benefit to the State, for the LBC to reverse its 1999 Decision.

⁵ The Preliminary Report remarks that the inclusion of Myers Chuck in this petition is a "notable" difference from the 1998 proposal. We assume the LBC staff used the word "notable" only to signify a technical difference, not that the inclusion of Myers Chuck while excluding Hyder is meaningful in any sense.

III. LBC STAFF'S STATEMENT THAT THE ALASKA CONSTITUTION MANDATES ANNEXATION HAS NO BASIS IN THE CONSTITUTION OR ALASKA CASE LAW

Article X, Section 3 of the Alaska Constitution states: "The entire State shall be divided into boroughs, **organized and unorganized.**" (emphasis added) The Constitution does not say that the State must be divided into only "boroughs." The Constitution is silent as to annexation of lands in the unorganized borough. The Constitutional article further states: "Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law." Again, the Constitution does not mention annexation. By its plain language, Article X, Section 3 does not equate the formation of a borough with annexation of land from the existing unorganized borough by an already formed borough. The Constitution does encourage the formation of boroughs, as stated by the Alaska Supreme Court in *Mobil Oil Corp. v. Local Boundary Commission*.⁶ The Alaska Supreme Court did not say that the Constitution encourages the formation of boroughs or the annexation of land in the unorganized borough by an already formed borough. The new Constitutional interpretation offered in the Preliminary Report would rewrite the Constitution, and deny important Constitutional protection to the people in the unorganized borough.

The Preliminary Report does not cite to any Alaska Supreme Court case that interprets the Constitution as mandating or encouraging the annexation of lands in the unorganized borough by an existing borough. We are not aware of any. Both under the Constitution and the "balanced best interests of the state" standard (19 AAC 10.200), annexation is not the same as the formation or incorporation of a borough.

⁶ 518 P. 2d 92 (Alaska 1974)

In *Port of Valdez Co., Inc. v. City of Valdez*, the Alaska Supreme Court noted that the LBC had a statutory duty to develop standards for "borough annexation."⁷ If the formation of boroughs and the annexation of land in the unorganized borough were the functionally the same acts under Article X, Section 3 of the Alaska Constitution, there would be no need for mandated annexation standards. The Alaska Supreme Court would not specifically point out that there are "three purposes underlying the statutory requirement of annexation standards."⁸ Principles related to constitutional interpretation and statutory interpretation require that provisions and statutes not be read as superfluous. By imposing a separate legislative requirement related to annexation standards, and with the Alaska Supreme Court specifically noting the distinction of annexation, the formation of boroughs and the annexation of land in the unorganized borough by an existing borough, are not constitutionally the same.

Despite lengthy quotes from the Alaska Constitutional Convention, the preliminary report fails to quote anything that equates borough formation under the Constitution with the annexation of land in the unorganized borough by an existing borough. Importantly, the Preliminary Report quotes a draft version of Article X, Section 3 of the Constitution, which was not adopted. (Preliminary Report, p. 25) The draft version of Article X, Section 3 would have divided the state into boroughs—there is no mention of unorganized boroughs. By rejecting that draft version, the delegates made a clear choice to provide constitutional status to the unorganized borough (s).

The Preliminary Report fails to address the constitutional issues of Article X, Section 3 as to the annexation of land in the unorganized borough by an existing borough.

⁷ Preliminary Report of DCRA, October 1998, p. 25, quoting 522 P. 2d 1147, 1155 (Alaska 1974)

⁸ 522 P. 2d at 1155

In the Preliminary Report prepared by the same LBC staff person in 1998, the Report concluded that the KGB proposal, without Hyder, "would seriously diminish the significance of this principle" [referencing Article X, Section 3]. (Preliminary Report, 1998, p. 80-81) The "principle" embodied in Article X, Section 3 has not changed. The only thing that has changed is that the same LBC staff person recommends ignoring the Constitutional principle of Article X, Section 3 for reasons not explained anywhere in the report. The LBC staff went on record in 1998 stating unequivocally that annexation of this area without Hyder violated the principles of Article X, Section 3. The LBC agreed in its 1999 decision. The LBC has the obligation to the State to maintain its consistency in the interpretation and application of constitutional principles, and as such, must again deny this Petition because it excludes Hyder.

Rather than be consistent in the interpretation of Article X, Section 3 advanced and followed by the LBC staff in 1998, the Preliminary Report ignores Article X, Section 3, and argues that Article X, Section 1 makes "no distinction" between borough formation and the annexation of land from the unorganized borough by an existing borough. (Preliminary Report, p. 16) The Report cites to two Alaska Supreme Court cases involving the interpretation of Article X, Section 1. (Preliminary Report, p. 14). Neither of those cases involved the issue of whether the standards for annexation of land from the unorganized borough by an existing borough is encouraged or mandated by the Constitution in the same manner as the formation of boroughs. Indeed, the Report highlights that section of the *Mobil Oil* case that specifically says "Our constitution encourages their creation." (Preliminary Report, p. 15, underlining in Report, bold emphasis added) Without citation to any other case, or even to anything from the

constitutional convention, the Preliminary Report states: "borough incorporation and borough annexation are equally encouraged by article X, section 1, whenever the applicable standards are satisfied." This interpretation of the Constitution offered in the Preliminary Report is not supported by the language of the Constitution, existing Alaska case law, and the applicable statutes and regulations.

Because the people and communities of the unorganized borough are afforded specific constitutional status and protection, the LBC cannot constitutionally equate borough formation with the annexation of land from the unorganized borough by an existing borough. In particular, the LBC cannot accept a tortured interpretation of Article X, Section 1, such that annexation can be used as a vehicle to increase its National Forest Receipts revenues without in fact minimizing local government units.

The KGB petition neither maximizes "local self-government" nor minimizes "local government units." It is undisputed that none of the area to be annexed has any need for "local self-government." It is also undisputed that the area to be annexed does not "minimize" the local government units because Hyder, which does need borough services, is excluded and may incorporate as a city—thus increasing the local government units. Nothing from the Constitutional convention would be supportive of the interpretation of the Constitution offered by the LBC staff, that is, the Constitution encourages borough formation and the annexation of land in the unorganized borough equally, regardless of the detrimental impact on the people and communities in the unorganized borough, and particularly the devastating loss of school funding in those communities.

The Constitutional significance of creating boroughs is specifically to provide necessary services that are currently being provided by the State. Thus, when an area seeks to form a borough, it must provide necessary services, such as schools. That is why the formation of boroughs is encouraged by Article X, Section 1 and Section 3. The Constitution cannot be similarly interpreted to encourage the annexation of land from the unorganized borough by an existing borough which does not provide any necessary service, particularly schools, in the proposed annexed area, and will in fact seriously impair the provision of school services by the communities in the unorganized borough directly as a result of the annexation. The KGB petition will not provide any necessary services in the area to be annexed, and thus, cannot satisfy the purpose and intent of Article X, Section 1 and 3 of the Alaska Constitution.

IV. LBC STAFF'S STATEMENT THAT THE LBC HAS A POLICY ALLOWING THE CREATION OF ENCLAVES IS CONTRARY TO THE LBC'S 1999 STATEMENT OF DECISION

In its Statement of Decision denying the KGB annexation proposal in 1999, the LBC stated: "The annexation proposed by the Borough create [sic] enclaves. The Commission has a formal policy to avoid enclaves within boroughs as reflected in 19 AAC 10.200(2)." (Statement of Decision, 1999, p. 13) The present Petition creates a Hyder enclave. (Preliminary Report, p. 86) LBC staff admit that the Haines Borough is the only borough in the state with an enclave—Klukwan. (Preliminary Report, p. 87) LBC staff admit that the creation of the Klukwan enclave was a "public policy" issue that "would not exist with respect to the proposed Hyder enclave." (Preliminary Report, p. 88) Thus, there is no "public policy" impediment to the inclusion of Hyder in the KGB. Therefore, the approval of this Petition with a Hyder enclave would be the first enclave

ever created by the LBC where it is admitted that no reason exists at all for the enclave except that KGB does not want the obligation of providing services to Hyder. Rather than evidencing a historical "policy" of creating enclaves, approval of this Petition would contravene the Constitution, applicable statutes, the regulations, and every prior decision of the LBC with respect to the analysis of enclaves proposed as part of a borough formation or annexation. The preliminary report offers no reasonable or persuasive reason for such a dramatic reversal of LBC policy and precedent.⁹

LBC staff's "conclusion" that the Hyder enclave "should be annexed to the KGB" if "a Prince of Wales Island Borough were formed," fundamentally ignores the regulation precluding enclaves and makes the condition of annexation of Hyder unrelated to any Constitutional, statute or regulation related to borough formation or annexation. Hyder is in the KGB borough boundaries, constitutionally, statutorily, and in accordance with LBC regulations. It is under those standards that this Petition must be reviewed. There is no constitutional provision, statute or regulation that allows an existing borough to annex land in the unorganized borough, specifically excluding the only populated area, under the novel hypothetical concept that if some other area is later formed as a borough, then the enclave "should" be annexed. By what mechanism? The LBC staff does not explain how the LBC can force or order or direct that Hyder be annexed by the KGB if a Prince of Wales Borough is formed. Equally as important, there is no standard in the

⁹ As addressed below, the Preliminary Report was written by LBC staff person, Dan Bockhorst. Mr. Bockhorst has applied for the position of Ketchikan Gateway Borough Manager. Without question, he has a substantial conflict of interest. It cannot escape the scrutiny of the LBC, nor will it escape the scrutiny of the Alaska courts, that the Preliminary Report authored by Mr. Bockhorst recommends that the LBC reverse its historical policy on enclaves, which will benefit the KGB directly by allowing it to receive an additional \$1,200,000 annually without the provision of any services at all in the annexed area because of the creation of the Hyder enclave. As a minimum, the LBC should, in fairness to the people of the State as whole, and the people in the Southeast communities in the unorganized borough, hire an independent staff person, who has never worked for DCCED or Mr. Bockhorst, to prepare a new Preliminary Report.

Constitution, statutes, or regulations which allows the KGB the benefit of excluding Hyder from its borough until other communities form a different borough—which would not include Hyder. The impact of the LBC's staff recommendation is clear—if the LBC approves this Petition, Hyder will never be annexed into the KGB. The Preliminary Report misrepresents the historical policy of the LBC against creating enclaves, and then creates a fictional "possibility" of later annexation of Hyder that the LBC staff, and the LBC, knows will never happen. Therefore, the LBC should continue to maintain its historical policy against enclaves, clearly stated in the 1999 decision, and deny this Petition.

V. THE LBC MUST TAKE INTO ACCOUNT THE CONFLICT OF INTEREST OF THE LBC STAFF PERSON WHO PREPARED THE PRELIMINARY REPORT IN ASSESSING WHY LBC STAFF HAS CHANGED ITS POSITION AS TO THE KGB PETITION

The LBC is a "quasi-judicial" body, according to the Preliminary Report.

(Preliminary Report, p. B-4) The LBC must provide a fair hearing and review of petitions, according to the Preliminary Report. (Preliminary Report, p. B-4) The Preliminary Report acknowledges that Alaska courts will review decisions of the LBC "to determine whether a fact finder has shown bias such as prejudgment of the facts or issues or a personal bias for or against an issue or a participant in the proceeding."

(Preliminary Report, p. B-4)

A judge is required not only to avoid bias and avoid any impropriety, a judge must avoid the appearance of bias and the appearance of impropriety. For example, it would be an unquestionable appearance of impropriety if a judge's law clerk prepared a memorandum for the judge with a recommended decision in favor of one party in a case

where the law clerk was seeking employment with that party. The LBC is in no different situation.

The author of the Preliminary Report wants to be employed by the KGB as its Borough Manager. The Preliminary Report was completed as of June 30, 2007. The Borough position became open in June of 2007, when the KGB Borough manager resigned.

It cannot be disputed that this Preliminary Report represents a complete reversal of the recommendation of the same LBC staff in its Preliminary Report in 1998. It also cannot be disputed that nothing has changed except this petition includes Myers Chuck—a totally inconsequential change under the Alaska Constitution, applicable statutes, applicable regulations, and the best interests of the state standard. The Preliminary Report fails to offer any distinguishing Constitutional or factual reason for the reversal of the LBC staff position. If the LBC considers this Preliminary Report and approves the Petition, the appearance of bias and impropriety will undoubtedly result in judicial review of the decision.

The LBC has two choices. It can reject the recommendation of the LBC staff, and deny the Petition because that would be the factually and legally correct decision. The denial of the Petition would be consistent with the Constitutional principles the LBC is obligated to uphold and apply. The denial of the Petition will be consistent with the 1999 Decision.

The second choice is for the LBC to remove the Preliminary Report from the record and to retain an independent consultant to prepare a report not tainted with the appearance of bias and conflict of interest enveloping this Preliminary Report.

We urge the LBC to carefully scrutinize this problem. The people of this State are entitled to not only a fair decision that is in the best interests of the state, the people of the State are entitled to a decision that all can feel is free from any potential bias or conflict. Under the circumstances presented by the author of the Preliminary Report having applied to be the KGB borough manager, and having recommended the approval of this Petition—a complete reversal from the same author's position in 1998 on annexation of this area without Hyder—the people of this State cannot have any confidence in a decision being free of bias if the LBC relies on the Preliminary Report and approves the Petition.

VI. THE PETITION CANNOT MEET THE BEST INTERESTS STANDARDS WHEN THE PRELIMINARY REPORT ADMITS THAT THE STATE WILL BE REQUIRED TO CONTINUE TO PROVIDE ALL NECESSARY SERVICES TO HYDER AND THE ANNEXATION WILL NOT RELIEVE THE STATE OF ANY RESPONSIBILITIES

The Preliminary Report acknowledges that the best interests of the standard applies to the proposed annexation of land from the unorganized borough to the existing KGB, including by legislative review, pursuant to 3 AAC 110.195. (Preliminary Report, p. 100) In order to be in the best interests of the State, the petition must demonstrate that the proposed annexation “will relieve the state government of the responsibility of providing local services. (3 AAC 110.195(3)) LBC staff identifies two “areas” “in which the KGB would relieve the State of responsibility of providing local services...Those are education and platting.” (Preliminary Report, p. 92)

After admitting that the proposed annexation will not in fact result in the provision of education services in the area proposed to be annexed, the LBC staff notes that in 2011 the KGB required local contribution to its existing school system, may increase by

\$15,197. (Preliminary Report, p. 93) LBC staff then acknowledges this potential increase is "not particularly significant." (Preliminary Report, p. 94) Unexplainably, the next sentence reads: "Thus, KGB provides a significant financial relief to the State in terms of responsibility for delivery of education services. (Preliminary Report, p. 94) The alleged "financial relief" to the state of \$15,197 cannot be both "not particularly significant" and "a significant financial relief."

The Preliminary Report fails to discuss the burden that remains on the State by KGB not annexing Hyder. That burden on the State is currently approximately \$174,000 to provide education services in Hyder, and can only be projected to go up. In essence, without any discussion, rationale, or reasoning, LBC calls the \$15,000 increase in KGB's school contribution "significant relief" to the State, and makes no characterization of the \$174,000 State must expend because KGB does not want the responsibility of providing the school system in Hyder. Similarly, LBC makes no comparison of the \$15,000 increase in 2011 in KGB's school contribution with the more than \$1,000,000 additional revenues KGB will get annually. The \$15,000 contribution is less than 10% of what the State will continue to pay to serve Hyder. The \$15,000 contribution is approximately 1% of the additional National Forest receipts KGB will receive, and KGB would receive nearly four additional years of the dramatically higher receipts before even paying the additional \$15,000 school funding contribution. The Preliminary Report fails to offer any actual analysis of the best interests of the state standard under A.S. 29.06.04(a) and 3 AAC 110.195(3).

The Preliminary Report devotes all of three sentences to how the petition will supposedly relieve the state of "plating" responsibility and this aspect of the application

of 3 AAC 110.195(3). Without identifying any potential planning, platting, or land use regulation necessary within the proposed annexed area, LBC staff concludes that “the power and duties for platting within the area proposes for annexation would shift from the State to the KGB.” (Preliminary Report, p. 94) That the “powers and duties” would shift is a given—what is important under the best interests standard is how this proposed annexation in fact relieves the state of “the responsibility of providing local services.” (3 AAC 110.195(3). The state does not provide any local services in the proposed annexed area, including platting. No local services would be provided by the state in the foreseeable future. KGB does not propose to provide any local services in the area to be annexed, nor does it anticipate providing any local services in the foreseeable future. 3 AAC 110.195(3) cannot be met by KGB agreeing to provide nothing in the area where nothing is currently provided and nothing is needed. 3 AAC 110.195(3) is stated in the affirmative and with mandatory language—“will.” “Will” this petition “relieve the state government of the responsibility of providing local services?” The answer is factually and legally easy—the record is undisputed—the answer is a resounding no.¹⁰

VII. THE PETITION CANNOT BE CONSTITUTIONALLY IN THE BEST INTEREST OF THE STATE WHEN THE ONLY REASON FOR THE ANNEXATION IS TO GARNER OVER \$1,000,000 ANNUALLY IN FEDERAL FUNDS THAT PRESENTLY IS DISTRIBUTED THROUGHOUT THE COMMUNITIES OF SOUTHEAST ALASKA AND NO SERVICES WILL BE PROVIDED BY KGB IN THE ANNEXED AREA WITH THOSE FUNDS

¹⁰ The proportion of private land in the area proposed to be annexed is so small that if a private land owner sought some platting service in the future, it would be such minimal relief to the State that it could not properly be characterized as the State being relieved of the burden of providing local services. If the cost savings would be a benefit to the State, the Preliminary Report would have quantified the benefit.

The City of Craig is very concerned about the impacts on the school children of Craig and all the Southeast communities in the unorganized borough if the LBC approves the petition request submitted by the Ketchikan Gateway Borough.

1. National Forest Receipts Revenues

We believe the LBC is well aware of the financial impacts to the communities and school districts of the unorganized borough that will result from the proposed annexation. The proposed annexation will remove up to \$1.2 million annually from the budgets of regional school districts and transfer that funding to the KGB, whose proposed annexation would add exactly zero students to the KGB School District.¹¹ This impact was not anticipated when the model borough boundaries were adopted because communities like Craig, which have precisely the same legal obligation to support local schools as do boroughs, did not receive NFR payments until 1993. The entire model borough boundary issue should be revisited and revised to account not just for the NFR impacts, but for other relevant issues that may have changed since 1992.

2. Best Interest Finding

The Best Interest Findings section of the preliminary report fails to properly apply the provisions of 3 AAC 110.980. The report does not reasonably weigh the impacts of the proposed annexation on affected local governments nor does it relieve the state of significant financial obligations that could otherwise be assumed by the KGB. In addition, the report fails to note that proposed annexation also reduces state revenues.

¹¹ LBC staff's discussion of the amount of national forest receipts that will be transferred to the KGB as a result of this petition is identical to the its discussion of the amounts in 1998. LBC staff ignores what has actually been received by the communities during the intervening nine years. The loss to the communities, and corresponding windfall to the KGB is in fact closer to the \$1,200,000 than LBC staff's "projection" of "roughly \$286,000 annually." To use that substantially lower figure is not justified, misleading, inaccurate, unreasonable, and unfair.

A) Provision of Local Services – 3 AAC 110.195(3)

The preliminary report fails to recognize the financial detriment to the State of Alaska should the annexation be approved. The proposed annexation does not relieve the State of Alaska of the cost to deliver state services in proportion to the area subject to annexation. The petition seeks the financial benefits that the annexation will bring but rejects including in the annexation the four percent of the model borough boundary that would bring with it the responsibility typically required of local government: education funding. The petition proposes to annex 4,701 square miles of the area within the KGB model borough boundaries, but exclude the 205 square miles of the model borough boundaries that would require the actual delivery of local government services. The result of this is that the State of Alaska, through the Southeast Island School District REAA, will continue to be responsible for the full \$174,000 cost of educating the 16 students in Hyder. Were this area included in the annexation petition, the state's obligation would be reduced by the borough's four mill equivalent requirement.

While the petition proposes to avoid the cost of providing education to Hyder, the petition would also reduce revenue to the State of Alaska to provide those same education services. Currently the state receives national forest receipts funding that provide education funding to the three REAAs in Southeast Alaska. The Preliminary Report fails to account for this loss of state funding, which would have totaled more than \$280,000 in the current fiscal year. Ironically, this funding loss occurs because the approval of the petition increases the KGB's national forest receipts funding at the expense of the State of Alaska.

B) Affected Local Governments – 3 AAC 110.980(2)(B) and (C)

The preliminary report fails to account for the losses suffered by affected local governments as called for in 3 AAC 110.980(2)(B) and (C). The reduction in education and other funding that will result from the proposed annexation is substantial, as shown below.

Home Rule	FY 2007	Income Loss	Income Loss	Income Loss
	Ed. Receipts	Ed. Funding	Road Funding	Project Funding
Petersburg	\$ 914,381	\$ 201,164	\$ 15,236	\$ 41,806
Wrangell	\$ 571,788	\$ 125,793	\$ 7,963	\$ 25,840
First Class				
Craig	\$ 594,437	\$ 130,776	\$ 6,380	\$ 26,497
Hoonah	\$ 257,409	\$ 58,630	\$ 6,209	\$ 12,140
Hydaburg	\$ 112,085	\$ 24,659	\$ 4,230	\$ 5,581
Kake	\$ 179,336	\$ 39,454	\$ 9,566	\$ 9,470
Klawock	\$ 209,638	\$ 46,120	\$ 7,028	\$ 10,268
Pelican	\$ 25,087	\$ 5,519	\$ 896	\$ -
Skagway	\$ 168,900	\$ 37,158	\$ 8,222	\$ 8,767
Second Class				
Angoon	-	-	\$ 5,294	-
Coffman Cove	-	-	\$ 10,698	-
Gustavus	-	-	\$ 20,659	\$ 3,956
Kasaan	-	-	\$ 5,831	-
Port Alexander	-	-	\$ 861	-
Tenakee Springs	-	-	\$ 1,721	-
Thorne Bay	-	-	\$ 23,847	\$ 4,566
REAA'S				
Annette Island	\$ 537,333	\$ 118,213	\$ 23,677	\$ 19,140
Chatlam	\$ 368,934	\$ 81,165	-	\$ 13,141
Southeast Island	\$ 373,545	\$ 82,180	-	\$ 13,306
Total Annual Loss		\$ 948,832	\$ 158,317	\$ 194,477
Aggregate loss of funding				\$ 1,301,626

Every affected local government that has commented to date on this proposed annexation has gone on record in opposition, due to severe impacts to education funding. These comments demonstrate that there is broad agreement among the affected local governments that public interests are not served by the proposed annexation. For its part, the preliminary report fails to address how the losses detailed above, losses that negatively impact twelve school districts, sixteen cities, and 2,700 K-12 public school

students, are in the best interests of the State. When weighing the claims of the preliminary report against the multiple community statements against the proposed annexation, it is not reasonable or fair for the LBC to ignore the specific academic harm identified by the communities of the region.

LBC staff offers no justification at all for recommending the transfer of nearly \$1,200,000 per year in academic funding presently shared by sixteen cities and twelve school districts in Southeast Alaska to the Ketchikan Gateway Borough with absolutely no increase in either the number of students to serve or education services in the Ketchikan Gateway Borough. LBC staff offers no justification at all for not only recommending that the KGB be the recipient of this additional \$1,200,000, at the expense of all the other Southeast Communities in the unorganized borough, but in addition, recommending the exclusion of Hyder from the annexation even though Hyder is within the model borough boundaries and Hyder does have education services presently provided and paid for by the State. The LBC must carefully scrutinize why LBC staff has so dramatically changed its recommendation from 1998, even though the annexation petition is essentially identical, and neither the facts supporting the denial nor the reasons supporting the denial by the LBC in 1999 have changed.

VIII. CONCLUSION

The people of the State of Alaska should expect, and receive, fairness and consistency from the LBC. The Constitution is the Constitution—it cannot be manipulated to achieve a desired result. The best interests of the State standard for annexation of land from the unorganized borough is also a constant—it should not be manipulated to achieve a desired result.

What possible constitutional, statutory, regulatory, or best interest of the State reason can the LBC rely on to approve this Petition, with Hyder excluded, after having rejected the nearly identical petition as not justifiable under the Alaska Constitution because Hyder was excluded in the 1998 annexation proposal? The LBC will not find an answer to that question in the Preliminary Report.

Despite a 117 page report, with attachments, the LBC staff is not able to cite to a single comment from any person or community in this State in support of this Petition. All comments we are aware of to date in response to the Petition oppose the Petition. The LBC has a Constitutional obligation to consider the voice of a unanimous people against this Petition.

We request that the LBC reject the recommendation of the LBC staff and deny the annexation petition of the KGB.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

CITY OF CRAIG, ANNETTE ISLAND)
SCHOOL DISTRICT,)
ORGANIZED VILLAGE OF KASAAN,)
CRAIG CITY SCHOOL DISTRICT,)
CITY OF KASAAN,)
KLAWOCK CITY SCHOOL)
DISTRICT, NAUKATI WEST, INC.,)
SOUTHEAST ISLAND)
SCHOOL DISTRICT, CITY OF)
THORNE BAY, PRINCE OF WALES)
COMMUNITY ADVISORY COUNCIL,)
HOLLIS COMMUNITY COUNCIL)
CITY OF KLAWOCK, HYDABURG CITY)
SCHOOL DISTRICT, CITY OF HYDABURG)
HYDABURG COOPERATIVE ASSOC.)

Appellants,)

vs.)

LOCAL BOUNDARY COMMISSION,)

Appellee.)

Case No. 1KE-08-004 CI

AFFIDAVIT OF BILL ROLFZEN

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

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

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

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

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

ATTORNEY GENERAL, STATE OF ALASKA
DIAMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 485-3600

ATTORNEY GENERAL, STATE OF ALASKA
DIAMOND COURTHOUSE
P.O. BOX 110000, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

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

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

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

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

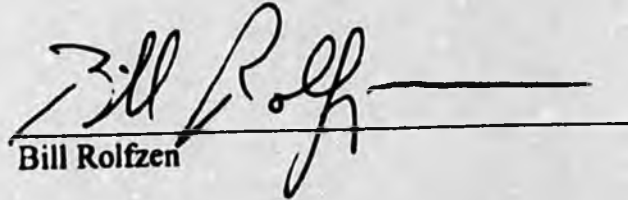
11 4. The state's current National Forest Receipt Program regulations,
12 3 AAC 132.060, require DCCED to calculate a borough's payment "based upon the
13 area of the national forest located within its boundaries as of September 30 of the state
14 fiscal year immediately preceding the application year". For example, the FY 08
15 payments DCCED is currently distributing are based upon the September 30, 2006
16 borough acreage figures. If the KGB annexation becomes effective March 15, 2008,
17 the first year the KGB would see the annexation affect its National Forest Receipts
18 payment would be in FY 10. And, FY 09 distribution will be based on the acreage
19 within the KGB as of September 30, 2007. If the current program is not reauthorized
20 by Congress and the program reverts back to the 25% formula, DCCED would no
21 longer need to use prior year acreage and the KGB annexation could impact the FY 09
22 distribution.
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25 5. The National Forest Receipts Program was established in 1908. If the
26 Secure Rural Schools Program is allowed to sunset this year, the program will revert

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

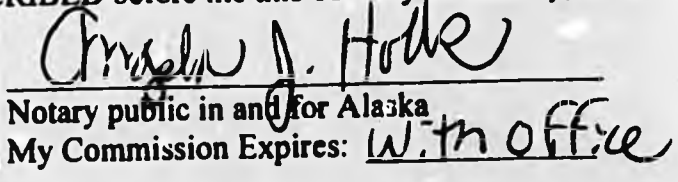
Further your affiant sayeth naught.


Bill Rolfzen

SWORN TO AND SUBSCRIBED before me this 16th day of January, 2008.

STATE OF ALASKA
Angela J. Hobbs
Notary Public
My Commission Expires With Office.




Notary public in and for Alaska
My Commission Expires: with office

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

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

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

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



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

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

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

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

Honorable Representative Thomas,

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

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

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

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

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

Respectfully,

Mr. Agenbroad
Superintendent ASID
11/29/2007

DAILY NEWS



48 / 42°

KETCHIKAN, ALASKA

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

14 PAGES

Craig, CCA seek probe

Suggest Bockhorst had conflict in KGB's annexation petition

By ANDREW DAMSTEDT
Daily News Staff Writer

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

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

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

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

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

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

Bolling was traveling Monday and

could not be reached for comment.

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

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

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

See 'Craig letter,' page 3

Cordovans disappointed

Upset Supreme Court accepted oil-spill appeal

By JEANNETTE J. LEE
AP Business Writer

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

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

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

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

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

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

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

Faulkner, 60, has worked with plaintiffs' attorneys for nine years, gathering personal information from the thousands of people claiming damages. Because she is Alaska Native, she has a claim based on the harm to subsistence

Craig letter

Continued from page 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

andrew@ketchikandailynews.com

WEATHER

KETCHIKAN AND METLAKATLA

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

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

the evening. Chance of rain 100 percent.

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

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



LOCAL TIDES

Tuesday		Wednesday	
High	4:27 a.m./14.4'	4:07 p.m./16.5'	High 5:27 a.m./13.3'
Low	9:55 a.m./4.2'	10:53 p.m./-0.8'	5:08 p.m./14.9'
			Low 10:56 a.m./5.3'
			11:58 p.m./0.7'

ALASKA

U.S. TEMPERATURES