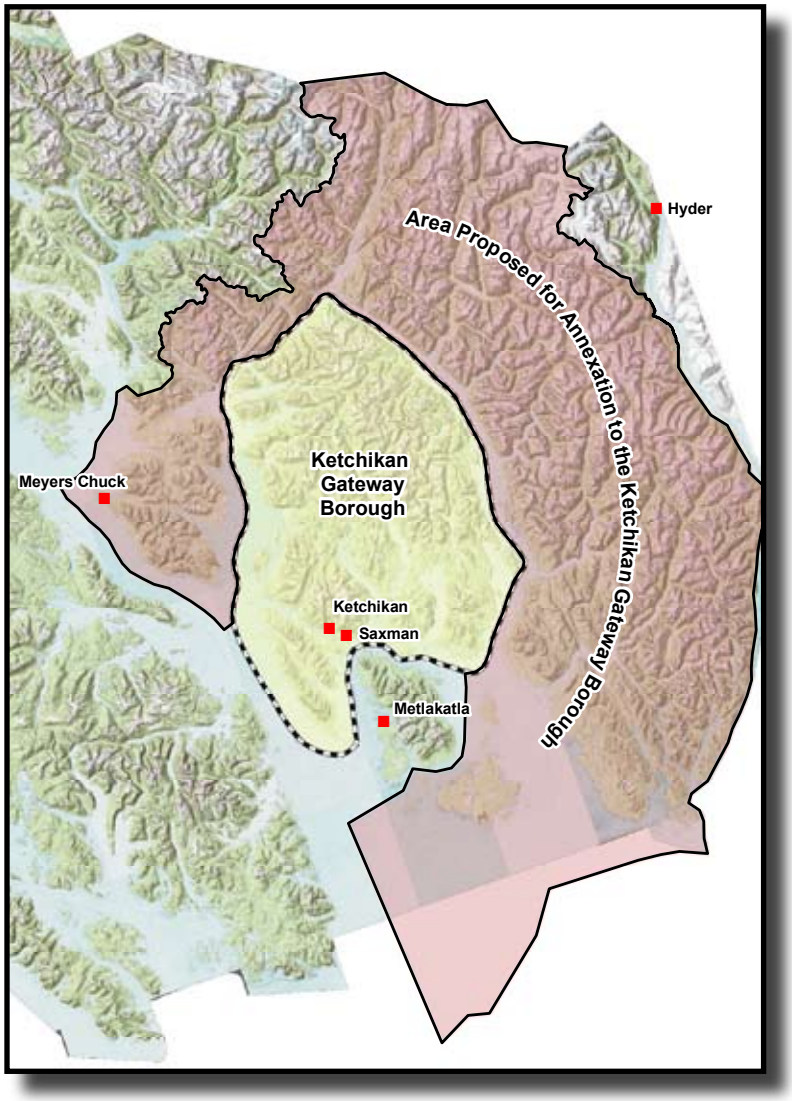
Department of Commerce, Community,
and Economic Development

Staff for the Local Boundary Commission **June 30, 2007**

Preliminary Report to the Local Boundary Commission Regarding the Petition for Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough



This is the *Preliminary Report to the Local Boundary Commission Regarding the Petition for Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough.* The report was prepared by the Alaska Department of Commerce, Community, and Economic Development ("DCCED"), which serves as staff to the Local Boundary Commission. The report can also be found on the Internet at the following address:

http://www.commerce.state.ak.us/dca/lbc/ketchikan4.htm

This Preliminary Report is issued for public review and comment in accordance with 3 AAC 110.530(b). That same law requires DCCED to issue a Final Report after considering written comments regarding the Preliminary Report.

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The deadline for **receipt** of comments on this Report is **4:30 p.m. on September 4, 2007**. Comments can be delivered to the Local Boundary Commission by USPS mail, fax, or e-mail as indicated below:

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Part I. Introduction

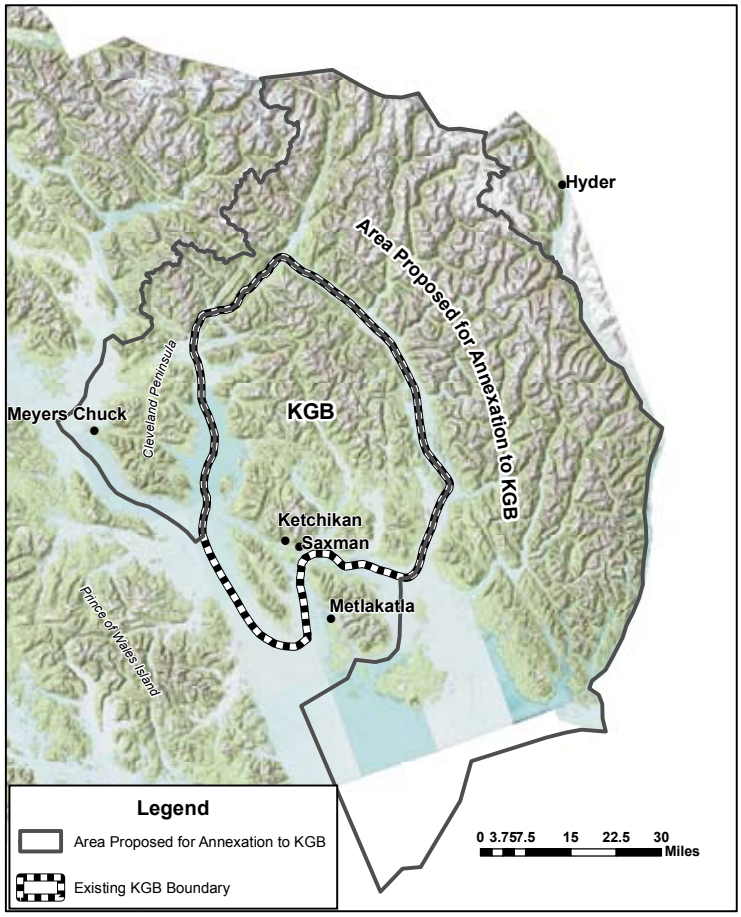
On February 10, 2006, the Ketchikan Gateway Borough ("KGB," "Borough," or "Petitioner") initiated a proposal to expand the area within the Borough's corporate boundaries by 4,701 square miles. The KGB designated its proposal as the *Petition by the Ketchikan Gateway Borough for Legislative Review Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough* ("Petition").

The KGB is a second-class, general law borough. Appendix A to this report provides information about the KGB, including its incorporation in 1963 and prior KGB boundary proposals.

The Petition was filed with the Local Boundary Commission ("LBC" or "Commission"), a State commission established in Alaska's Constitution to adjudicate municipal boundary proposals, including proposals for borough annexation and incorporation. Information about the LBC is included in Appendix B to this report.

Figure 1-1 provides a map of the area proposed for annexation. That area lies entirely within Alaska's unorganized borough.[1] Approval of the proposal would generally extend the southern and eastern boundaries of the Borough to the Canadian border. The Petition also proposes to expand the Borough's jurisdictional boundaries northward to include most of the Cleveland Peninsula. On the west, the Borough's proposed new boundaries would extend to Clarence Strait. The area proposed for annexation includes the settlement of Meyers Chuck and the adjoining area in and around Union Bay. However, the proposal excludes the Annette Islands Reserve encompassing Metlakatla and a 205-square-mile area in and around Hyder.

Figure 1-1: KGB Area Map



As the formal title of the Petition indicates, the Borough is using the "legislative review annexation"

[1] AS 29.03.010 provides, "Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough."

method. That method, authorized by article X, section 12 of the Alaska Constitution, provides that the LBC may present proposed municipal boundary changes to the legislature during the first ten days of any regular session. The proposal becomes effective forty-five days after presentation by the LBC or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

Appendix C to this report summarizes the proceedings to date and future proceedings regarding the pending Petition. Statutory procedures for legislative review annexation are set out in AS 29.06.040 and AS 44.33.812 – 44.33.828. Additionally, as required by AS 44.33.812(a)(2), the LBC has adopted regulations providing additional procedures for annexation. Those procedures are set out in 3 AAC 110.400 - 3 AAC 110.660 and 3 AAC 110.900 - 3 AAC 110.990.

Proposals for boundary changes under article X, section 12 undergo review by the Alaska State Legislature at the State Capitol in Juneau

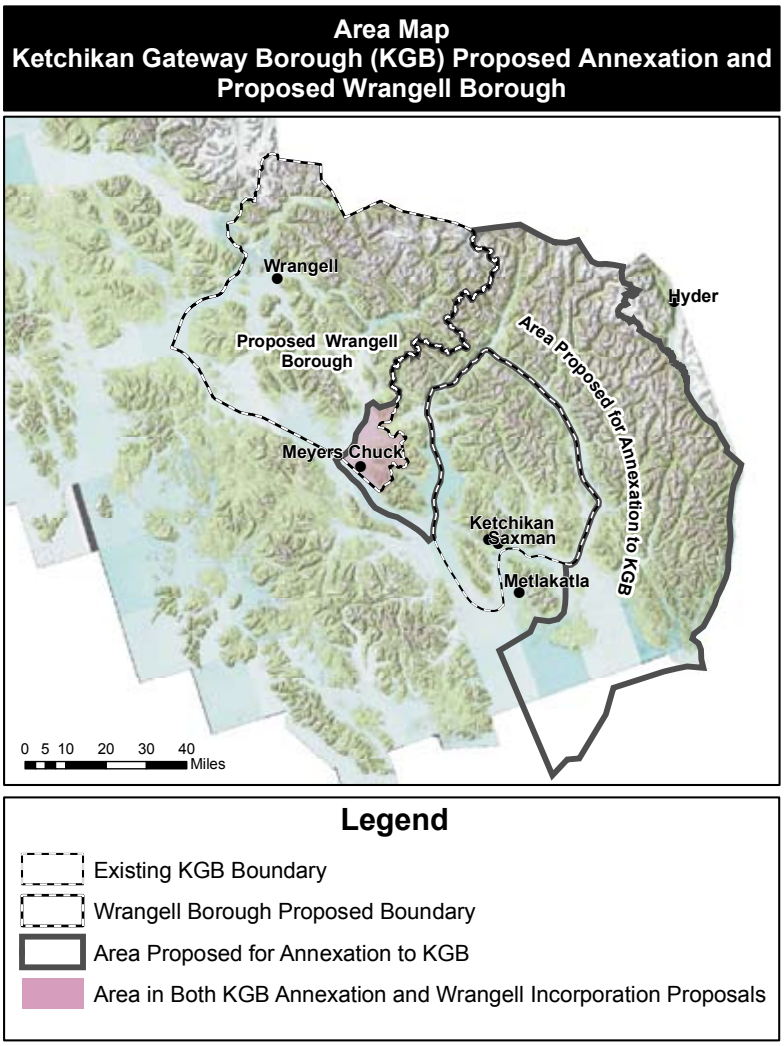
Among the procedures adopted by the LBC is a requirement in 3 AAC 110.530 that the Department of Commerce, Community, and Economic Development ("DCCED") "investigate and analyze" a legislative review annexation proposal and prepare a preliminary written report of "its findings with recommendations" regarding the proposal. This report fulfills that procedural requirement.

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

State law (AS 44.33.812(a)(2)) requires the LBC to adopt regulations providing standards governing annexation. The LBC has complied with that requirement by adopting standards for borough annexation in 3 AAC 110.160 - 3 AAC 110.210 and 3 AAC 110.900 - 3 AAC 110.990.

It is noteworthy that on April 30, 2007, the LBC adopted amendments to its regulations, including standards for borough annexation. However, those modified regulations are not retroactive.[2] In other words, the recent revisions to the borough annexation standards are not formally applicable to the KGB Petition. Nevertheless, the newly adopted regulations offer relevant insights regarding the LBC's policy views with respect to borough boundary issues. Consequently, this report cites pertinent aspects of the newly adopted regulations.

Figure 1-2: KGB and Wrangell Area Map



It is also noteworthy that voters in a 3,465-square-mile area including Wrangell, petitioned the LBC in April 2006 for incorporation of a new borough. That proposal, which was designated as the *Petition for Incorporation of a City and Borough of Wrangell* ("Wrangell Petition"), seeks boundaries that overlap a portion of the area proposed for annexation to the KGB. Specifically, both the KGB Petition and the Wrangell Petition include the same 191-square mile territory in and around Meyers Chuck and Union Bay. Figure 1-2 provides a map showing the areas proposed for annexation by the KGB petition and incorporation by the Wrangell Petition. The Wrangell proposal is evaluated by DCCED in a separate preliminary report to the LBC.

[2] AS 44.62.240 states:

If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter that is primarily an "interpretative regulation" has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct.

Part II. Findings and Conclusions

State law, AS 29.06.040(a), provides as follows regarding a proposed municipal boundary change, including a proposal for annexation using the legislative review method:

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

The Alaska Supreme Court has held that statutory standards for borough *incorporation* were intended to be flexibly applied to a wide range of regional conditions.[3] The Court stated further that the Commission's determinations regarding whether such standards are satisfied should be affirmed if the Court perceives that the LBC's reading of the standards and its evaluation of the evidence has a reasonable basis. Specifically, the Court stated:

> A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy. The standards for incorporation set out in AS 07.10.030 [now AS 29.05.031] were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as 'large enough', 'stable enough', 'conform generally', 'all areas necessary and proper', 'necessary or desirable', 'adequate level' and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska,[4] and the Local Boundary Commission

---

[3] The case involved borough incorporation. However, DCCED finds no basis for distinction between borough incorporation and borough annexation in terms of the Court's conclusion that the standards should be flexibly applied to a wide range of regional conditions and that the Commission's determinations should be affirmed if the Court perceives that the LBC's reading of the standards and its evaluation of the evidence has a reasonable basis.

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

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

Flexibility – The proposed article provides a local government framework adaptable to different areas of the state as well as to changes that occur with the passage of time. . . .

(Footnote continued on next page)

> has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974) (emphasis added).

For reasons outlined in Section A below, DCCED finds no basis to distinguish between borough *incorporation* and *annexation* in terms of whether the applicable standards should be flexibly applied and whether the law should be read to uphold LBC decisions approving borough annexation as well as borough incorporation whenever the applicable requirements have been met. Moreover, DCCED concludes that borough incorporation and borough annexation of areas that meet applicable standards are equally encouraged by the law.

Sections A through K of this part of the report present DCCED's preliminary findings and conclusions regarding each of the standards for borough annexation applicable to the pending KGB annexation proposal.

Section A. Whether annexation to the KGB would provide for maximum local self-government in accordance with article X, section 1 of the Alaska Constitution.

Subsection 1. The legal standard.

Article X, section 1 of the Alaska Constitution reads as follows:

> Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units. (De-emphasis added.)

(Footnote continued from previous page)

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

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

Subsection 2. Maximum local self-government is achieved by means of democratic self-government through cities and boroughs.

Alaska's Constitutional Convention convened on November 8, 1955. Fifteen committees were organized by the Delegates, including the Committee on Local Government ("Local Government Committee" or "Committee"). The Local Government Committee was given the task of crafting the local government framework for the future State of Alaska.

Local Government Committee in session during the Constitutional Convention

The Local Government Committee held 31 meetings before Convention Delegates recessed for a 15-day period from December 20, 1955 through January 3, 1956. On December 15, five days before the recess, the Committee unanimously approved its fourth draft of the Local Government Article and agreed to formally submit it as the Committee's proposal to the Convention.[5] However, at the time, members also agreed that when the Convention reconvened on January 4, 1956, the Committee "would ask for the return of the proposal to the committee for additional work, primarily to cut out the excess language, eliminate duplication and resolve conflicts." [6]

[5] Section 1 of the proposed Local Government Article approved by the Committee on December 15, 1955, stated as follows:

> Section 1. The purposes of this Article are to secure the maximum amount of local self-government consistent with the state's responsibilities to the whole people and the state's membership in the Union, and to provide a framework which will accommodate future development and prevent the pyramiding of independent tax-levying local government units. A liberal construction shall be given to the provisions of this Article in order that these purposes may be progressively achieved.

[6] Committee Minutes, December 15, 1955.

On December 17, 1955, the Local Government Committee approved the commentary for the Local Government Article.[7] The commentary, designated *General Discussion of Local Government Under Proposed Article*, was introduced to the Convention on December 19, 1955. The commentary described the Committee's goal of maximum local self-government and articulated five fundamental principles to achieve that goal:[8]

> The committee on local government aimed at providing a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established -- boroughs and cities. This framework is designed to accommodate today's needs and tomorrow's growth and development.
>
> The proposed article is based upon experiences in the territory, the states, Canada and other countries. Proven principles and practices were brought together to establish a system of local government for the State of Alaska. It is a system which, in essence, many states have been attempting to achieve by modernizing existing units. We are fortunate in being able to start more or less from scratch.
>
> The "borough", area-wise, is the larger of the two local government units. Cities would be located within the boundaries of the boroughs. The relationship between the two emphasizes mutual interest and cooperation.
>
> <u>Principles Underlying Proposed Local Government System:</u>
>
> 1. <u>Self-government</u> -- The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D. C. The proposed article allows some degree of self determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.
>
> 2. <u>One basic local government system</u> -- The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.

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[7] Committee Minutes, December 17, 1955.

[8] The *General Discussion of Local Government Under Proposed Article* and the initial proposed Local Government Article are included in Appendix V to the Minutes of the Alaska Constitutional Convention. Although approved on December 17, 1955, the *General Discussion* is dated December 19, 1955, the date on which it and the proposed Local Government Article were introduced.

> 3. Prevention of overlapping taxing authorities -- The proposed article grants local taxing power exclusively to borough and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.
>
> 4. Flexibility -- The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.
>
> 5. State interest -- The proposed article recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of non-charter governments, to withhold authority from home-rule boroughs and cities and to exercise advisory and review functions.

Local Government Committee, *General Discussion of Local Government Under Proposed Article*, pp. 1 – 3, December 19, 1955.

The Local Government Article and commentary were formally introduced at the Convention on December 19, 1955. As noted above, the Convention recessed the following day for fifteen days.

After the Convention reconvened on January 4, 1956, the proposed Local Government Article was returned to the Committee. The Committee held thirteen post-recess meetings to redraft the Local Government Article. The Committee's revised proposal was introduced on January 18, 1956. The Committees revisions to Section 1 of the proposed Local Government Article did not alter the intent of the initial proposal.[9]

In its January 18 commentary that accompanied the revised proposal, the Local Government Committee offered the following explanation of Section 1 of the proposed Local Government Article:

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[9] Section 1 of the proposed Local Government Article prepared by the Committee on Local Government and formally introduced at the Alaska Constitutional Convention on January 18, 1956, stated as follows:

> Section 1. The purposes of this Article are to secure the maximum amount of local self-government consistent with the interests and welfare of all the people of the state, and to provide a framework which will accommodate future development and prevent the duplication and overlapping of independent tax-levying local government units. A liberal construction shall be given to the provisions of this article in order that these purposes may be achieved.

> Section 1. This section states the purpose and intent of this article; to promote democratic self-government below the state level, guarding the interests and welfare of all concerned in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities.

Local Government Committee, *Commentary on Local Government Article*, p. 1, January 18, 1956.

Subsection 3. The framers viewed home-rule as the greatest level of local self-government; however, in practical terms, general law municipalities today have access to home-rule like powers.

As noted in the preceding subsection, the Committee expressed the view in December 1955 that "The highest form of self-government is exercised under home rule charters." However, today, as a practical matter, the nature of powers to which a general law municipality in Alaska has access is substantially the same as that to which a home-rule municipality has access.

Delegates in plenary session at the Constitutional Convention

General law local governments derive their powers from laws enacted by the State legislature. The principle of liberal construction of local government powers set out in article X, section 1 is reflected in laws enacted by the legislature granting powers to general law governments. Among such are the following statutory provisions that apply to general law local governments:

> **Sec. 29.35.400. General construction.** A liberal construction shall be given to all powers and functions of a municipality conferred in this title.
>
> **Sec. 29.35.410. Extent of powers.** Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.
>
> **Sec. 29.35.420. Enumeration of powers.** Specific examples in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Moreover, Alaska's courts have largely recognized that general law local governments have broad powers. For example, in 1983, the Alaska Supreme Court concluded that a second-class general law borough had powers beyond those expressly stated in law. The Court held that even though State statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was "fairly implied." *(Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983).)

In reaching its conclusion that a general law government had implied powers, the court cited the irreconcilable conflict rule that it had utilized in a case involving a home-rule municipality. (*Jefferson v. State,* 527 P.2d 37, 43 (Alaska 1974).) The court made no distinction regarding the deference due to a home-rule municipal enactment compared to an enactment by a general law municipality. The application of the irreconcilable conflict rule in *Gilman v. Martin* enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced when the 1985 Alaska Legislature eliminated an enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and an enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists were replaced with the broadest possible grant of powers to general law municipalities; i.e., "any power not otherwise prohibited by law." (AS 29.35.200(a) and (c); 29.35.210(c) and (d); 29.35.220(d); 29.35.250(a); 29.35.260(a).)

The Court held that even though State statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was "fairly implied." *(Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983).)

The statutory grant of powers to general law municipalities has no general limitations such as "any municipal power" or "any local government power," which would imply that the granted powers were limited to those that the court might view as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of article X, section 1; *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978); *Gilman v. Martin*; and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of article X, section 1 reads, "A liberal construction shall be given to the powers of local government units" instead of, "A liberal construction shall be given to local government powers." The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a "local government power" as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska's Constitution does not lend itself as easily to such an interpretation and,

coupled with the granting language of AS 29 ("any power not otherwise prohibited by law"), would make it difficult for a court (in a well-briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

Subsection 4. In 1963, the Legislature passed, and Governor signed into law, legislation citing the Maximum-Local-Self-Government Clause as a basis for mandatory boroughs.

In 1963, four years after the inauguration of statehood and the effective date of the Local Government Article of our Constitution, the State of Alaska mandated formation of organized boroughs in eight regions of Alaska. The area in and around Ketchikan was among the eight regions that were required to incorporate.

In drafting the bill mandating borough government in certain regions, Representative John L. Rader emphasized that "The Legislature, the Courts and the Executive are bound by the local government article to provide maximum local self-government with a minimum number of local government units and tax levying jurisdictions." (*Supplement to House Journal*, p. 3, February 25, 1963 (emphasis added).) Representative Rader stressed that the intent of the legislature was to accomplish the constitutional purpose set out in article X, section 1. (*Id.,* p. 5.)

John L. Rader

Section 1 of the 1963 law mandating borough formation specifically cited the provisions of article X, section 1 of the Constitution as a fundamental basis for the action.

> Section 1. **Declaration of Intent**. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. With the exception of planning and zoning, education, and tax collection and assessments, all powers granted the first-class boroughs are exercised at the option of the borough assemblies.

Chapter 52 Session Laws of Alaska 1963 (emphasis added).

It is noteworthy that six of the twenty members of the 1963 Senate (30 percent) had been delegates to the Constitutional Convention[10] and that two members of the 1963 House of Representatives had also served as delegates.[11] Moreover, the 1963 Mandatory Borough Act was signed into law by Governor William Egan, who had served as President of the Alaska Constitutional Convention.

The 1963 Mandatory Borough Act afforded the eight affected regions an opportunity to incorporate "by local option" before January 1, 1964. For any of the eight areas that did not incorporate by local option before the deadline, a borough with boundaries designated in the Mandatory Borough Act would be established on January 1, 1964.[12] Five of the regions were each defined by an existing 1960 State election district; e.g., Sitka Election District #3. One region was defined as a combination of two 1960 State election districts; i.e., Seward Election District #9 and Kenai-Cook Inlet Election District #10, and one was defined by an initial State election district as set out in the Alaska Constitution; i.e., Ketchikan Election District #2, which was defined as follows:

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[10] The former delegates in the 1963 Senate were Senators John B. Coghill, Yule F. Kilcher, Robert J. McNealy, James Nolan, Frank Peratrovich, and W. O. Smith.

[11] The former delegates that were members of the 1963 House of Representatives were Representatives Dora M. Sweeney and Warren A. Taylor.

[12] Section 3(a) and (b) of Chapter 52, SLA 1963 provided as follows:

> **Areas Incorporated.** (a) If an organized borough is not incorporated by local option as provided by AS 07.10.010 within areas designated in this section, each area designated becomes, on January 1, 1964, a first- or second-class organized borough as determined by local election and a municipal corporation, and possesses all the powers and privileges prescribed by AS 07. Areas designated are:
>
> (1) Sitka Election District #3
>
> (2) Juneau Election District #4
>
> (3) Palmer-Wasilla-Talkeetna Election District #7
>
> (4) Anchorage Election District #8
>
> (5) Combined Seward Election District #9 and Kenai-Cook Inlet Election District #10
>
> (6) Kodiak Election District #11
>
> (7) Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 3, 1961, 26 Stat. 1101.
>
> (8) Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution.
>
> (b) If a portion of any district designated above is incorporated by local option before October 1, 1963, and the remaining portion of the district meets the standards for incorporation as provided in AS 07.10.030, the Local Affairs Agency shall make a finding to that effect and notify the secretary of state to hold elections in the area. The area is incorporated as an organized borough on January 1, 1964.

> That area comprising the Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 3, 1961, 26 Stat. 1101. (Section 3(a)(7) of Chapter 52, Session Laws of Alaska 1963.)

Election District #2 as designated in section 3, article XIV, of the State Constitution, was described as follows:

> The area of the mainland drained by streams flowing into Revillagigedo Channel, Behm Canal, Burroughs Bay, and east side of Clarence Strait from the southernmost point of the Alaska-British Columbia boundary line to and including Lemesurier Point; and those islands south of Ernest Sound and east of Clarence Strait, including Revillagigedo, Gravina, Annette, and Duke Islands, and other adjacent smaller islands.

Figure 2-1: Election District 2 (1956)

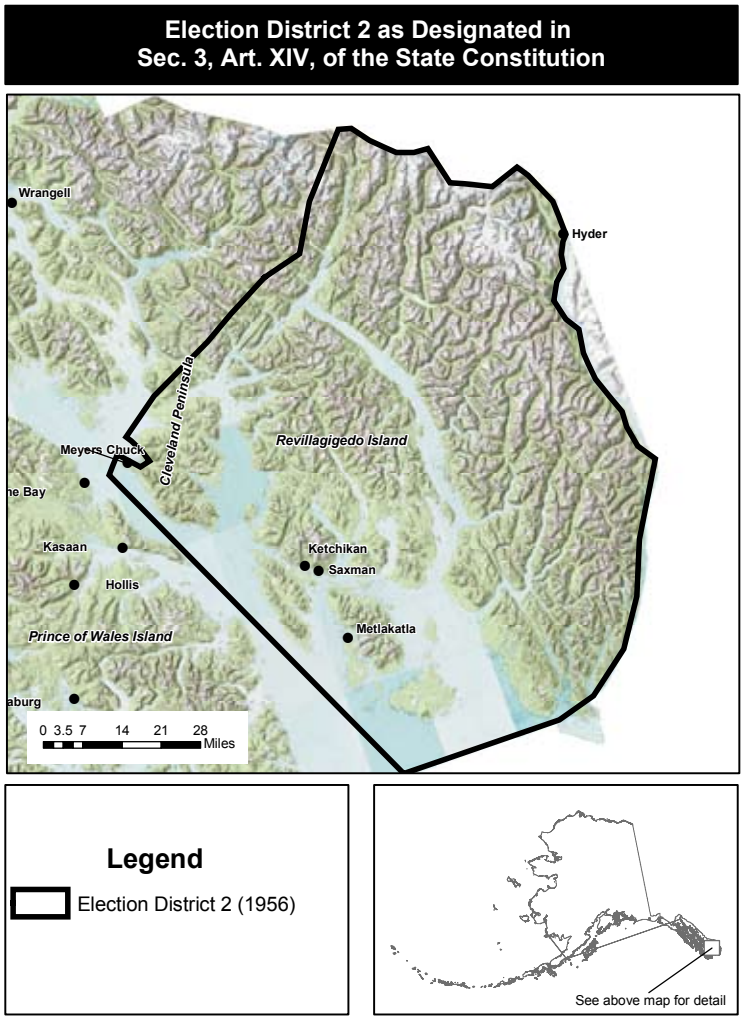

Figure 2-1 shows the Ketchikan Election District #2 as designated in section 3, article XIV, of the State Constitution (without the exclusion of the Annette Island Indian Reservation).

Representative John Rader, the sponsor of the Mandatory Borough Act, wrote as follows regarding the use of election district boundaries for boroughs:

> As a practical legal matter, a bill which provides ultimately for mandatory incorporation must state boundaries with precision. We considered definitions in terms of mountain ranges, shorelines, rivers, and watersheds, and in terms of longitude and latitude. Finally, we settled on election district lines, which were precise and known to everyone. In many instances, election district lines seemed to be closer to the lines proposed by the local groups, or at least considered by the local groups, than any other existing definitions of area. I considered, as a

> general proposition, that the election district lines in most areas covered too small a geographical area for regional government. I hoped that when the tax equalization problem was overcome there would be a tendency for adjacent boroughs to consolidate. In other words, when talk was commenced concerning the joining of boroughs, the only question would be whether or not the area could best be governed by one or two boroughs. This combined with the land grant incentive, I thought, resulted in a good formula which would bring the rural and urban areas together.

John L. Rader, "Legislative History [of the Mandatory Borough Act]," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 102.

As is outlined in Appendix A, voters in the greater Ketchikan area petitioned the LBC in 1963 for incorporation of a borough using the local option method. The LBC modified that petition by significantly expanding the boundaries of the proposed borough. Voters in Ketchikan subsequently approved the amended petition. The boundaries of the KGB have not changed since they were established in 1963. The 4,701 square miles currently proposed for annexation lie within the boundaries that would have been instituted on January 1, 1964, had the KGB not incorporated under the local option provisions.

Subsection 5. In 1974, the Alaska Supreme Court found that article X, section 1 encourages borough formation.

Article X, section 1 was cited twice by the Alaska Supreme Court in the *Mobil Oil* case discussed in the introduction to Part II of this report. First, the Court found that article X, section 1 favors the establishment of boroughs such that LBC decisions granting borough status should be sustained whenever the requirements for incorporation have been minimally met.[13] In that regard, the Court stated:

> The appellants argue that neither the geography nor the transportation standard is satisfied by the record evidence. Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

[13] In a 1995 decision, the Alaska Supreme Court clarified that the LBC was not obligated to approve any minimally acceptable petition:

> Petitioners' arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt "the most desirable" borough boundaries. Given the Alaska Constitution's mandate that boroughs be cohesive "to the maximum degree possible,"[ ] the LBC acted well within the purview of its authority in considering the desirability of future incorporation of neighboring areas such as Prince William Sound and the interests of affected land owners and users such as the Chugach Alaska Corporation. (*Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Com'n*, 900 P.2d 721, 727 (Alaska 1995).)

(Footnote continued on next page)

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. . . .

> We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

Id., p. 99 (emphasis added).

The Supreme Court also stated in *Mobil Oil* that article X, section 1 encourages the formation of boroughs. The Court indicated:

> Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities.[14] They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.[15] (*Id.,* p. 101 (emphasis added).)

(Footnote continued from previous page)

Moreover, in the *Yakutat* case, the Supreme Court expressed its expectation that the LBC would undertake "a thorough consideration of alternative boundaries" and decide "as to what boundaries would be optimal" and "most appropriate." The Court stated:

> An informed decision as to whether boundaries proposed in a petition for incorporation maximize the common interests of the area and population and thus meet the applicable statutory standards presupposes a thorough consideration of alternative boundaries and a decision as to what boundaries would be optimal. For this reason, in discharging its duties under AS 29.05.100(a), the LBC is inevitably called upon to undertake precisely the type of inquiry that Petitioners allege to be improper: an inquiry into the "most appropriate boundaries" for the proposed borough. (*Id*., p. 725.)

[14] The Court was making a distinction between "boroughs" and "municipalities" (e.g., "boroughs are not restricted to the form and function of municipalities"). It appears that the Court was referring to city governments when it used the term "municipalities." When the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in "Alaska Statutes – Title 7 – Boroughs." In contrast, statutory standards and procedures for city incorporation were codified in "Alaska Statutes – Title 29 – Municipal Corporations." In 1972, after the LBC decision in the North Slope Borough case, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as "Alaska Statutes – Title 29 – Municipal Government". Today, AS 29.71.800(13) defines municipality as "a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality."

[15] [Footnote 25 in original.] See [original] note 14, *supra*. [See n. 4 in this report.]

Subsection 6. In 1999, the LBC addressed article X, section 1 in regard to a similar KGB annexation proposal.

As is reflected in Appendix A to this report, the KGB filed an annexation proposal in 1998. That proposal was similar to its current proposal, but differed in two notable respects. First, the 1998 proposal did not include a 3.5-square-mile territory in and around Meyers Chuck, whereas the current one includes that territory. Second, the size of the territory in and around Hyder excluded from the 1998 proposal was much smaller than the current proposal (17.9 square miles compared to the current 205 square miles).

The LBC rendered its decision on the prior KGB annexation proposal on April 16, 1999. In that decision, the LBC concluded that article X, section 1, "encourages the extension of organized borough government to unorganized areas." (*Statement of Decision in the Matter of the February 28, 1998 Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, p. 11, April 16, 1999.[16]) In other words, the Commission made no distinction between borough *incorporation* and borough *annexation* in that respect.

The Commission found that the extension of the KGB's jurisdiction over the area would "in one respect . . . advance local self-government." However, the LBC ultimately concluded that the proposal failed to fulfill the maximum local self-government principle because the proposal excluded Hyder and Meyers Chuck. Specifically, the LBC stated in 1999:

> Article X, Section 1 of the Constitution of the State of Alaska reads as follows: "The purpose of this article is to provide for *maximum local self-government* with a minimum of local government units. . ." (emphasis added)
>
> In one respect, the annexation proposal would advance local self-government by including an area of potential significant development within the Borough's boundaries. Such would position the Borough to exert significant local self-government powers over that area.
>
> Here again, the Borough's proposal is deficient in that it omits Hyder and Meyers Chuck. As was noted earlier, 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 same area. That deficiency overshadows the benefit noted in the preceding paragraph.
>
> **Conclusion:** Because the annexation petition excludes Hyder and Meyers Chuck, the Commission considers the proposal to fail in terms of promoting maximum local self-government.

Id., p. 13.

[16] That decision is hereinafter referred to as "LBC 1999 *Statement of Decision*."

DCCED considers the conclusion above (i.e., that the annexation proposal fails to advance maximum local self-government because it excludes some areas within the KGB's model boundaries) to be an unduly restrictive reading of article X, section 1. Alaska's Constitution (article X, section 3) requires the entire state to be divided into boroughs. That requirement means that boroughs must encompass the most remote, undeveloped, and uninhabited portions of the state as well as populated and developed areas.

Subsection 7. Conclusion: annexation to the KGB will provide for maximum local self-government with a minimum of local government units.

In general terms, DCCED finds no basis to distinguish borough *incorporation* from borough *annexation* with respect to the application of article X, section 1. In either instance, the goal articulated by the Local Government Committee for "democratic self-government below the state level"[17] is realized. Further, whether through incorporation or annexation, there is achievement of the Committee's goal that "the interests and welfare of all concerned" are guarded "in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities."[18] Thus, DCCED takes the view that article X, section 1 should be read to uphold LBC decisions approving borough annexations that meet the reasonable-basis test. Moreover, DCCED concludes that borough incorporation and borough annexation are equally encouraged by article X, section 1 whenever the applicable standards are satisfied.

As noted in Subsection 6, the Commission concluded in 1999 that the earlier KGB annexation proposal failed to advance the constitutional principle of maximum local self-government because it excluded Hyder and Meyers Chuck. DCCED considers that restricted conclusion to be an unduly narrow reading of article X, section 1. Moreover, in the previously noted *Mobil Oil* case, the Court stated that boroughs were intended to encompass areas in which there is no need for local government services. Immediately following its citation of article X, section 1, the Court stated that boroughs "are meant to provide local government for regions as well as localities <u>and encompass lands with no present municipal use</u>. (*Mobil Oil*, p. 101 (emphasis added).) Thus, DCCED takes the view that the standard in article X, section 1 is met whenever organized borough government is extended to an unorganized area in accordance with applicable standards, regardless of any particular need for municipal services.[19]

That view is wholly consistent with new provisions in 3 AAC 110.981 adopted by the LBC on April 30, 2007, to guide determinations whether a proposed boundary change promotes maximum local self-government. With regard to a borough annexation proposal, 3 AAC 110.981(2) provides as follows:

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[17] Local Government Committee, *Commentary of Local Government Article,* p. 1 (January 18, 1956).

[18] *Id.*

[19] With regard to borough incorporation, this view is tempered by the requirement that the proposed borough comply with the regional size intent underlying the applicable standards in the Alaska Constitution, statutes, and Commission regulations.

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

In the view of DCCED, the proposed annexation meets the provisions of 3 AAC 110.981(2). The entire area proposed for annexation by the KGB is entirely within Alaska's unorganized borough. The area in question has held that status since the unorganized borough was created 46 years ago in 1961. Moreover, there are no city governments within the estimated 4,701 square miles proposed for annexation. Thus, the entire area proposed for annexation is currently outside any municipal jurisdiction.

Furthermore, the area proposed for annexation to the KGB is very sparsely inhabited. Based on the latest population estimates of the State Demographer, the area proposed for annexation was inhabited in 2006 by only 16 people, or one person in nearly 300 square miles. Additionally, the area proposed for annexation has minimal development. None of it would appear to meet the standards for incorporation of a city government in the foreseeable future. Thus, except for the 191-square-mile area portion of the area proposed for annexation that is also included in the competing Wrangell proposal, the 4,510 square miles of the area proposed for annexation are likely to remain unorganized for the foreseeable future absent annexation to the KGB.

Based on the findings above, DCCED concludes that the KGB annexation proposal provides for maximum local self-government in accordance with article X, section 1 of the Alaska Constitution.

Section B. Whether annexation to the KGB would comport with the minimum-number-of-local-government-units constraint in article X, section 1 of the Alaska Constitution.

Subsection 1. The legal standard.

Article X, section 1 of the Alaska Constitution reads as follows:

Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units. (De-emphasis added.)

Subsection 2. The minimum-number-of-local-government-units constraint favors boroughs that are large enough to prevent too many subdivisions in Alaska.

Article X, section 1 of the Alaska Constitution constrains the number of local government units. The Alaska Supreme Court termed the provisions in article X, section 1 to be, "an express constitutional policy of minimizing *the number of* local government units." (*City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 (Alaska 1971) (emphasis added).)

The constitutional constraint on the number of local government units is an important factor in the character of borough government. Principles articulated by the Local Government Committee at the Constitutional Convention included that "in the formation of the new areawide government units [boroughs] . . . should be large enough to prevent too many subdivisions in Alaska . . . [and] should cover large geographic areas with common economic, social, and political interests." (Victor Fischer, *Alaska's Constitutional Convention*, p. 119 (1975).)

The KGB has the second smallest area among Alaska's 16 organized boroughs. The KGB's existing boundaries encompass an area less than 10 percent of the average size of the 16 organized boroughs. If the proposed KGB annexation is approved and if three pending borough incorporation proposals are approved, the KGB would move from the second smallest among sixteen boroughs to the ninth smallest among nineteen boroughs. It would then be just over 41 percent of the average size of organized boroughs. Table 2.1 lists the size of existing and proposed boroughs.

Table 2.1
Size of Existing and Proposed Boroughs

Borough	Size (Sq. Miles)
*Proposed Skagway Borough**	*443*
Bristol Bay Borough	850
Ketchikan Gateway Borough (existing)	**1,752**
Municipality of Anchorage	1,940
Haines Borough	2,730
City and Borough of Juneau	3,248
Proposed Wrangell Borough	*3,465*
City and Borough of Sitka	4,530
Proposed Deltana Borough	*5,892*
Ketchikan Gateway Borough (proposed expanded)	**6,453**
Fairbanks North Star Borough	7,430
City and Borough of Yakutat	9,251
Median of existing boroughs	**10,701**
Kodiak Island Borough	12,150
Denali Borough	12,610
Aleutians East Borough	15,020
Average of existing and proposed boroughs	**15,583**
Average of existing boroughs	**17,599**
Kenai Peninsula Borough	21,330
Matanuska-Susitna Borough	25,260
Lake & Peninsula Borough	29,560
Northwest Arctic Borough	39,150
North Slope Borough	94,770

Source for existing boroughs: DCCED Borough Boundaries Map, March 13, 2007.

* At the time this report was written, the official results of the election to incorporate a Skagway borough had not been certified by the Division of Elections. It was evident from the unofficial results, however, that Skagway voters had overwhelmingly approved the incorporation proposal.

Subsection 3. In 1963, the Legislature passed, and the Governor signed, a law citing the Minimum-of-Local-Government-Units Clause as a basis for mandatory boroughs.

As noted in Part II-B-4 of this report, the Alaska Legislature, with the formal endorsement of Governor Egan, mandated formation of organized boroughs in eight regions of Alaska. The sponsor of the measure, Representative John L. Rader emphasized that "The Legislature, the Courts and the Executive are bound by the local government article to provide maximum local self-government with a minimum number of local government units and tax levying jurisdictions." (*Supplement to House Journal*, p. 3, February 25, 1963 (emphasis added).) Representative Rader stressed that the intent of the legislature was to accomplish the constitutional purpose set out in article X, section 1. (*Id.,* p. 5.)

"The Legislature, the Courts and the Executive are bound by the local government article to provide maximum local self-government with a minimum number of local government units and tax levying jurisdictions."

Supplement to House Journal, p. 3, February 25, 1963 (emphasis added).

Section 1 of the 1963 law mandating borough formation specifically cited the provisions of article X, section 1 of the Constitution as a fundamental basis for the action.

> Section 1. **Declaration of Intent**. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. With the exception of planning and zoning, education, and tax collection and assessments, all powers granted the first-class boroughs are exercised at the option of the borough assemblies.

Chapter 52 Session Laws of Alaska 1963 (emphasis added).

The Legislature clearly endorsed boundaries encompassing large and natural regions for the eight regions listed in the 1963 Mandatory Borough Act. Of the eight boroughs formed under the Mandatory Borough Act, four were created with boundaries defined in the Act itself. Those were boroughs encompassing the greater Anchorage area, the Kenai Peninsula, the Matanuska-Susitna area, and the greater Fairbanks area. The average size of those boroughs

was approximately 16,420 square miles.[20] Through the local action option allowed under the Mandatory Borough Act, the LBC approved boundaries for the other four boroughs that were smaller than those prescribed in the Mandatory Borough Act. In the case of the greater Ketchikan area, the LBC approved boundaries encompassing slightly more than one-quarter of the area proposed by the Legislature. In the case of Sitka, the Mandatory Borough Act designated boundaries that encompassed Angoon, Jamestown Bay, Mt. Edgecumbe, Sitka, and Tenakee. Boundaries approved for a Sitka borough under the local action option encompassed a considerably smaller area.

Subsection 4. In 1999, the LBC addressed the minimum-number-of-local-government-units constraint in regard to a similar KGB annexation proposal.

In its 1999 decision on the previous KGB annexation proposal, the five-member LBC was divided on the proper application of the minimum-number-of-local-government-units constraint. Three members of the Commission concluded that the constitutional provision calls for boroughs to be maximally expansive to encompass any unincorporated community that might incorporate as a city. The other two LBC members rejected that view. The two members in the minority cautioned that it would be inadvisable to suggest that every borough annexation proposal must be maximally expansive within its model boundaries (or some other reasonable boundaries) to include all areas that might form city governments. Specifically, the 1999 LBC stated as follows in its decision:

> Article X, Section 1 of the Constitution of the State of Alaska states: "The purpose of this article is to provide for maximum local self-government *with a minimum of local government units* . . ." (emphasis added)
>
> The Commission is divided on this issue. Commissioners Wasserman, Cannington, and Walters interpret this provision of the constitution to encourage the Commission to consider whether the annexation proposal may lead to the proliferation of local governments because it was not sufficiently expansive. In this regard, the three Commissioners noted that Hyder, which is within the Borough's model boundaries, clearly has governmental needs. Commissioners Wasserman, Cannington, and Walters expressed the view that the proposed exclusion of Hyder from the Borough virtually guarantees that the only way those service needs are going to be met in the future, other than by the State of Alaska, is through a city government. On the other hand, those Commissioners note that if Hyder were annexed into the Borough, it could obviate the need to form a city because its governmental needs can be met by the Borough.

[20] All four of those boroughs have undergone some boundary changes since 1964. However, only one borough has undergone significant change in terms of size. The Fairbanks North Star Borough boundaries originally encompassed 17,151 square miles, but currently encompass only 7,430 square miles. Based on the original boundaries of the Fairbanks North Star Borough and the current boundaries of the Anchorage, Kenai Peninsula, and Matanuska-Susitna area boroughs, the average size of those four boroughs originally was 16,420 square miles.

> In contrast to the other three Commissioners, Commissioners Waring and Tesche view the constitutional provision in question as simply favoring changes that would not increase or might even decrease the number of local governments. In this particular case, they noted that the proposal neither increases nor decreases the number of local governments. Commissioners Waring and Tesche believe that such cannot be used as a basis to conclude that the standard is not met. Rather, they viewed the standard as being irrelevant in this particular instance. Commissioners Waring and Tesche contend that it is inadvisable to suggest that every borough annexation proposal would have to be sufficiently expansive within its model boundaries (or some other reasonable boundaries) to preclude the opportunity for city formation.
>
> **Conclusion**: Through Commissioners Wasserman, Cannington, and Walters, the Commission determines that the Borough's annexation proposal failed to meet this standard because the exclusion of Hyder from the Borough would likely encourage that community to form a city government, which might not be necessary if it were included within the Borough. Commissioners Waring and Tesche, however, consider this standard irrelevant because the Borough's proposal neither increases nor decreases the number of local government units.

LBC 1999 *Statement of Decision*, pp. 13 – 14.

Subsection 5. Conclusion: annexation to the KGB would comport with the minimum-of-local-government-units constraint.

The newly adopted regulations of the LBC provide as follows under 3 AAC 110.982(2) regarding the minimum-number-of-local-government-units constraint:

> Among the factors to be consider in determining whether a proposed boundary change comports with the minimum-number-of-local-government-units constraint of art. X, sec. 1, Constitution of the State of Alaska, the commission will consider . . . for borough annexation, whether the jurisdictional boundaries of an existing borough are being enlarged rather than promoting the incorporation of a new borough and whether the proposed boundaries maximize an area and population with common interests.

Approval of the proposed annexation would increase the geographic size of the KGB from an estimated 1,752 square miles to approximately 6,453 square miles, an increase of 268 percent. DCCED concludes that the Alaska Constitution promotes boroughs that embrace large and natural regions.

Based on the discussion and findings above, DCCED concludes that the KGB annexation proposal would comport with the minimum-number-of-local-government-units constraint in article X, section 1 of the Alaska Constitution.

Section C. Whether the proposed expanded KGB would embrace an area and population with common interests to the maximum degree possible and, on a scale suitable for borough government, have a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities.

Subsection 1. The legal standard.

Two provisions of law relate to this particular standard. Those consist of article X, section 3 of the Alaska Constitution and 3 AAC 110.160(a). Article X, section 3 of the Alaska Constitution states as follows:

> The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law. (Emphasis and de-emphasis added.)

The provisions of 3 AAC 110.160(a) state:

> Community of interests. (a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough. In this regard, the commission may consider relevant factors, including the
>
> (1) compatibility of urban and rural areas within the proposed borough boundaries;
>
> (2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough boundaries;
>
> (3) existence of customary and simple transportation and communication patterns throughout the proposed borough boundaries; and
>
> (4) extent and accommodation of spoken language differences throughout the proposed borough boundaries.

Subsection 2. The framers of Alaska's Constitution intended that boroughs encompass large, natural regions; accordingly, the mandate that each borough embrace an area and population with common interests to the maximum degree possible should be applied in a regional context.

As outlined in II-A of this report, the Local Government Committee initially outlined the proposed constitutional framework for local government in its *General Discussion of Local Government Under Proposed Article*. With regard to boroughs, the Committee stated as follows:

> The Borough
>
> Under terms of the proposed article, all of Alaska would be subdivided into boroughs. Each would cover a large geographic area with common economic, social and political interests. Boundaries are to be established by the state.
>
> The borough will fill the gap so often caused by the absence of a unit sufficiently large enough to deal with a particular local government problem. For instance, such needs as schools, health service, police protection, recording, could be met at the borough level or in smaller areas within the borough.
>
> Areas in Alaska vary widely as to economy, population size and density, means of transportation, financial ability to support local government and other factors. Therefore, three classes of boroughs were created to allow for variations.
>
> A borough of the first class would offer the largest amount of authority and self-government to its citizens through adoption of home rule charters. The third class borough would have the most limited scope, with the state performing most of the local functions. It could remain unorganized. A governing body might be elected to act in an advisory capacity to the state in cases where the state is providing funds to perform local services. The second class borough is granted powers falling in the range between the other two classes.
>
> The governing body of the borough is to be known as the assembly. The basis for representation would be established by the legislature or by charter in the case of first class boroughs. Apportionment could be on the basis of population or area or both. Cities within boroughs would be represented by city council members.
>
> ("Borough" means a place organized for local government purposes. It was adopted by the committee after many names were reviewed. The committee felt it desirable to avoid any term, such as "county", already encumbered with detailed legal definitions or having a definite connotation in people's minds.)

Local Government Committee, *General Discussion of Local Government Under Proposed Article,* pp. 3 – 4, December 19, 1955 (emphasis added).

The Local Government Committee's initial proposal was introduced to the Constitutional Convention on December 19, 1955, the day before the Convention recessed for fifteen days. As initially introduced, Article X, section 3 read as follows:

> Boroughs shall be established according to such standards and in such manner as the legislature may provide. These standards shall include, but not be limited to, such factors as population, geography, economy and transportation. Each borough shall embrace, to the maximum extent possible, an area and population with common interests. The entire area of the state shall be divided into boroughs. The legislature shall provide for three types of boroughs to be known as boroughs of the first class, boroughs of the second class, and boroughs of the third class. A minimum of three boroughs each of the first and second classes shall be established. The legislature shall provide the methods by which boroughs may be merged, consolidated, dissolved, reclassified or otherwise changed.

On January 4, 1956, following the Convention recess, the Commission asked that the proposed Local Government Article be returned to it for further work.[21] Over the next several weeks, the proposed Local Government Article underwent several changes, including changes to section 3. After the recess, the Committee met thirteen more times before submitting its revised proposed to the Convention on January 18, 1956. The revised article X, section 3 read as follows:

> Boroughs shall be established according to such standards and in such manner as the legislature may provide. These standards shall include, but not be limited to, such factors as population, geography, economy and transportation. Each borough shall embrace, to the maximum extent possible, an area and population with common interests. The entire area of the state shall be divided into boroughs which may be either organized or unorganized. The legislature shall classify boroughs and provide the methods by which they may be organized, incorporated, merged, consolidated, dissolved, reclassified or otherwise changed.

Following its introduction on January 18, the Committee's revised proposal had its second reading on January 19 and was considered in plenary session at the Convention on January 19 and 20.

During consideration of the proposed Local Government Article on January 19, 1956, John Rosswog, Chairman of the Local Government Committee, responded to a question from delegate John Coghill about the intent of the Committee regarding the language that each borough must embrace an area and population with common interests to the maximum degree possible.

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[21] Committee Minutes, January 4, 1956. *See also*, Committee Minutes, December 15, 1955.

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, "Each borough shall embrace, to the maximum extent possible, an area and population with common interests." My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic factors in it -- would they come under one borough?

Delegate Jack Coghill

ROSSWOG: We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the states, the very small units, and they get beyond, or they must be combined or extended.

Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council, pp. 2620 – 2621 (1963).

A similar question arose on the floor of the Convention later that same day. Delegate Barrie White inquired about the Committee's intent with respect to the term "maximum extent possible." Committee member James Doogan and Committee Chairman John Rosswog responded.

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.

Delegate James Doogan

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could. (*Id.,* p. 2638.)

Delegate John Rosswog

Additionally, the following dialogue concerning the size of boroughs occurred among Delegate James Hurley, Committee Chairman John Rosswog, Committee member Eldor Lee, and Delegate John Hellenthal.

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socioeconomic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

PRESIDENT EGAN: Mr. Lee.

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

Delegate Eldor Lee

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Did any of you think that they might ever be greater than the election districts in size?

LEE: If that question is directed to me, we did not give it any consideration because actually we have not made any statement about the size. But in our thinking we didn't consider that thought, but it is certainly very possible.

Delegate John Hellenthal

HELLENTHAL: In other words, that the boundaries of the election districts could possibly be maximums governing the size of the boroughs?[22]

LEE: It is possible. It is up to the legislature to decide.

HELLENTHAL: Would it be desirable to make them minimums?

LEE: That would take away the flexible portion which we wish to keep here.

HELLENTHAL: I gather then you would not desire to make them minimums but probably would have little objection to making them maximum.

LEE: I can't speak for the Committee. I would have no objection, personally.

Id., pp. 2641 - 2642.

On January 20, 1956, Delegate Katherine Nordale revisited the question about the meaning of the fourth sentence of Section 3. Vic Fischer, Local Government Committee Secretary responded.

Delegate Victor Fischer

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, "Each borough shall embrace to the maximum extent possible an area and population with common interests." Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area -- I mean the square mile?

V. FISCHER: What it means is that wherever possible, "Each borough shall embrace an area and population with common interests."

NORDALE: Yes. Then "the maximum extent possible" refers to the common interests, not to the area, the size?

V. FISCHER: No, that is right.

Id., p. 2711.

[22] It is worth noting that election districts were generally used by the Alaska Legislature to define the prospective boundaries of each of the eight regions that were required to form boroughs under the 1963 Mandatory Borough Act.

The January 20, 1956, exchange between Delegates Nordale and Fischer is included here because a 2005 Superior Court ruling seemed to suggest that it reflects a viewpoint that conflicts with those of other members of the Committee on Local Government expressed during the proceedings of January 19, 1956.[23]

Delegate Katherine Nordale

While DCCED acknowledges that the exchange between Delegates Nordale and Fischer is perhaps ambiguous, a thorough reading of the minutes and materials of the Local Government Committee, those of the Constitutional Convention, and documents published by Mr. Fischer leads to an interpretation that it is consistent with the views expressed the previous day (January 19, 1956) on the very same point by Committee Chair John Rosswog and Committee member James Doogan.[24]

Moreover, it is noteworthy that Committee Chairman John Rosswog, and members James Doogan and Eldor Lee – all of whom spoke in the formal session on January 19 about the size of boroughs – were present during the January 20 exchange between Delegates Nordale and Fischer.[25] If Delegate Fischer's January 20 remarks regarding such a fundamental issue had been interpreted as being in conflict with the views expressed on January 19 by Committee Chairman Rosswog,[26] Committee

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[23] The court stated:

> [A]though the Commission cites Vic Fischer, recognized by the Supreme Court and the Commission as "an authority on Alaska government" they do not include his statement to Constitutional Convention Delegate Nordale regarding the meaning of the language in Article X, Section 3 of the Alaska Constitution that "[e]ach borough shall embrace an area and population with common interests to the maximum degree possible." Delegate Nordale asked whether the "maximum extent possible" language " refers to the common interest, not to the area, the size?" Mr. Fischer responded, "No, that is right." (Footnotes omitted.) (*Petitioners for the Dissolution of the City of Skagway and Incorporation of the Skagway Borough v. Local Boundary Commission*, Case No. 1 JU-02-0124 CI, slip op., p. 16 (Alaska, September 20, 2005).)

[24] Even assuming, for the sake of argument, that Delegate Fischer's exchange with Delegate Nordale reflected views that conflicted with those expressed by other members of the Committee, those conflicting views would not prevail. The Alaska Supreme Court has held that an interpretation of a standing committee at the Constitutional Convention that was "diametrically opposed" to the view of a single delegate "*stands on more solid footing than an opinion voiced by any individual member of the convention and may be resorted to by this court in determining the intent of the constitutional convention*." (*Walters v. Cease*, 388 P.2d 263, 265 (Alaska 1964) (emphasis added).)

[25] *See* roll call, *Proceedings,* p. 2696.

[26] "*[W]e would not want too small a unit*, because that is a problem that has been one of the great problems in the states." (Emphasis added.)

member Doogan,[27] and Committee member Lee,[28] it is difficult to conceive that none of those delegates would have addressed the conflict. The Committee's formal views concerning the general size of boroughs are clearly stated in its December 19, 1955, *General Discussion of Local Government Under Proposed Article*. That document provides:

> Under terms of the proposed article, all of Alaska would be subdivided into boroughs. Each would cover a *large* geographic area with common economic, social and political interests. (Emphasis added.)

The Committee's *General Discussion of Local Government Under Proposed Article* was submitted to the Constitutional Convention delegates along with the proposed Local Government Article. It is a formal record included in Appendix V to the Minutes of the Constitutional Convention.

DCCED's reading of the dialogue between Delegates Nordale and Fischer is consistent with views expressed by Mr. Fischer in other contexts. For example, in his book *Alaska's Constitutional Convention,* Mr. Fischer notes:

> As the committee was evolving these principles, its members agreed that some type of unit *larger than the city and smaller than the state* was required to provide both for a measure of local self-government and for performance of state functions on a *regionalized* basis. . . . The result was the borough concept – an areawide unit that while different from the traditional form of the counter, was in effect a modernized county adapted to Alaska's needs."

Alaska's Constitutional Convention, pp. 118-119 (emphasis added, footnotes omitted).

Similar statements are made in *Borough Government in Alaska*[29] at p. 37. Moreover, in his *Alaska's Constitutional Convention,* Mr. Fischer observes that

> When the local government article came before the convention, the delegates did not question the need of an *areawide unit*. Similarly, they accepted without argument most of the basic concepts evolved by the committee, even though many ideas were quite tentative and subject to further evolution upon statehood. Most of the floor discussion on local government involved questions and explanations; there were few proposals for substantive amendments. . . .

Alaska's Constitutional Convention, p. 120 (emphasis added).

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[27] "[B]oroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things. . . . [T]hey would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could." (Emphasis added.)

[28] "[W]e are *unanimous* in the opinion that many of these *boroughs will be substantially the same as election districts* but that is just the idea that we had in mind." (Emphasis added.)

[29] Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971.

One of the most direct judicial interpretations of the constitutional framework for boroughs is reflected in a 1977 ruling by Judge James K. Singleton. In an appeal of the Commission's decision to deny a proposal to split the Municipality of Anchorage into two boroughs, Judge Singleton stated:

> The constitution mandates that in setting boundaries the commission strive to maximize local self government, i.e., as opposed to administration by the state government, but with a minimum of local government units preventing where possible the duplication of tax levying jurisdictions. *See* art. X, sec. 1. Further, the constitution tells us that each borough should embrace an area and population with common interests to the maximum degree possible. *See* art. X, sec. 3. Finally, while the constitution encourages the establishing of service areas to provide special services within organized boroughs it cautions that "a new service area shall not be established, if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city . . ." *See* art. X, sec. 5.
>
> The constitution is thus clear that *if large local governmental entities can provide equal services small governmental entities shall not be established.*
>
> . . . .
>
> Appellants' criticism of each of the commission's fact findings is based on the false assumption that the question to be decided is limited to whether Chugiak-Eagle River could survive if independent while the commission correctly recognized that *the true question posed by constitution and statute is whether the area could function as part of the [Anchorage borough]. It is only if the facts support a negative answer to this question, e.g. that the [Anchorage borough] either couldn't or wouldn't furnish needed services, that the commission could lawfully permit detachment*.
>
> . . . .
>
> In reaching these conclusions, I have not overlooked the sincere aspirations of appellants for political autonomy or their strongly held belief, so eloquently argued by their counsel, that Chugiak-Eagle River will be better governed if governed separately from Anchorage. But decision for union or separation is political, not judicial and committed by constitution, statute and regulation to the Local Boundary Commission not the court. Thus my views regarding the wisdom of the proposed secession are irrelevant. A judge must always remember that his function is a limited one, to apply the law to the facts before him, not to use a strained interpretation of statutes or constitution to foist his political, ethical and moral views on the parties or the public. To forget this limitation is to abandon the judicial restraint without which an independent court cannot be permitted to function in a republic.

Chugiak-Eagle River Borough Association v. Local Boundary Commission, No. 76-104, slip op. (Alaska, March 16, 1977) (emphasis added).

In a 1996 review of the Local Government Article of Alaska's Constitution, sponsored by the LBC and moderated by Bob Hicks,[30] Judge Thomas Stewart, the former Secretary to the Constitutional Convention and retired Superior Court Judge, outlined his views regarding the nature of boroughs:

> JUDGE THOMAS STEWART: My strong thought is, that the legislature and the governor, and the Department and the Commission, have failed to give weight to that word. You are talking about local government, not regional government. And too many of the boroughs that have been formed, are regional in nature, and in my judgment, never should have been. If there are taxable properties out there like Prudhoe Bay, that should have been in an unorganized borough administered by the State. Barrow has no business managing Prudhoe Bay - - that, they never used. They didn't have anything to do with it. It's not local. It's regional, in my judgment. And you should confine those boundaries down to the land surface that the local people have traditionally used, that have those characteristics of population, geography, economy, transportation that are local. The word "local" has not been adequately recognized.
>
> BOB HICKS: Are you saying that "local" for boroughs should be a very, very small equivalent of a very small county, shouldn't be that expansive . . . ?
>
> JUDGE THOMAS STEWART: Absolutely.

Panelists at the 1996 Constitutional Review. Left to Right: Judge Thomas Stewart, Victor Fischer, Dr. George Rogers, and moderator Bob Hicks

[30] Mr. Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the fields in which he specialized as an attorney was the field of local government, including matters involving the LBC. In 1991- 1992, he was retained by the LBC to draft comprehensive changes to the Commission's regulations. In 1996 and again in 2007, Mr. Hicks served as moderator for a review before the LBC of the Local Government Article of Alaska's Constitution. Mr. Hicks served as Vice-Chair of the LBC from March 1, 2003 to March 27, 2007. He currently serves on the City of Seward Planning and Zoning Commission.

Panelists and the LBC at the 1996 Constitutional Review

BOB HICKS: Then how do we deal with this one -- "common interest to a maximum degree" -- when we talk about all of these factors here? Each borough shall embrace an area that is of common geography and population to a maximum.

JUDGE THOMAS STEWART: Because to a maximum degree, the local unit has those common interests. And the moment you start moving away from local, then they don't have those common interests.

Transcript - Review of Article X of the Alaska Constitution, pp. 23 – 24, February 13 and 14, 1996 (hereinafter "1996 Transcript").

A no-less prominent public figure disagreed with Judge Stewart's characterization of boroughs. Constitutional Convention Delegate Vic Fischer, also participated in the 1996 review of the Local Government Article and reacted to Judge Stewart's comments by declaring, "We finally have a disagreement." (*Id.,* p. 25.) Mr. Fischer proceeded to offer his view of the nature of a borough:

> VIC FISCHER: The concept in the Constitution is a two, actually a three tier level. You have the State level, you have the city level, and between the State and the cities, you have a regional borough. The boroughs were conceived as regional units. If Naknek wants to have its own local, local, local, local area, they form a city. Dillingham is a city. There are lots of cities there. You cannot get more local than a city. You don't need a borough to create a city. Juneau-Douglas has done this. But essentially they've taken in a lot of hinterlands because you have combined a city and what would be a regional borough. But if you were talking of strictly local, you would draw the boundary right around the settled area out the highways a little bit, and that would be the City of Juneau-Douglas. Then you don't need a borough for the other side of the island. So, essentially we have to think of terms of one local level is the city, and the other local level, is the local regional level. Just as you have the Kenai Peninsula as a whole series of cities, each of which has its own local interest. Then you have the local regional interests that comes together as the borough, which does regional planning and education.

Id., p. 26.

Judge Stewart responded by stating: "I don't really have an argument with you Vic. But let me put a little different picture on that -- he's better informed than I am. He was on the committee, and I wasn't a delegate, and I didn't deal with it that closely. . . ."[31] *(Id*. (emphasis added).)

In a 2005 – 2007 proceeding before the LBC, Judge Stewart expressed views similar to those that he expressed during the 1996 review of the Constitution. He wrote:

> I personally do not believe the Constitutional framers envisioned the "very large" boroughs that we see in Alaska today. . . . . The framers of the Alaska Constitution envisioned that boroughs would encompass the geographic area actually used by the people of a particular area.

Letter from Judge Thomas B. Stewart, December 14, 2005.

By letter dated January 29, 2006, Kevin Waring, LBC Chair from 1997 – 2003,[32] addressed Judge Stewart's letter of December 14, 2005. Mr. Waring first observed that "Anyone would be reluctant to debate Judge Stewart on a constitutional issue, but in this case, he is in debate with the Alaska Supreme Court, the legislature, past decisions of the Commission, and the facts. His viewpoint illuminates the policy choice this petition poses." (Letter from Mr. Waring, January 29, 2006, p. 3.)

Mr. Waring also addressed Judge Stewart's comments during the Commission's 1996 review of the Local Government article. In discussing what he termed a "minimalist view of boroughs" by Judge Stewart, Mr. Waring noted that:

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[31] On May 17, 2007, the LBC held a review in Anchorage of the Local Government Article and other provisions in the Alaska Constitution relevant to the LBC. Judge Stewart had been invited to participate as one of four panelists but declined for two reasons. First, he indicated that he would be in Anchorage on May 6 – 9, 2007, and that it would be awkward for him to return from his home in Juneau a week later. Second, he said that he did not consider himself to be an expert on local government. (Personal conversation with DCCED staff, April 12, 2007.)

[32] Mr. Waring was appointed to the LBC on July 15, 1996. He was appointed as Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998 and served until March 1, 2003. From 1973 to 1978, Mr. Waring served as one of the original division directors of the former Alaska Department of Community and Regional Affairs ("DCRA"), the predecessor agency to DCCED. Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Mr. Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees.

> The Alaska Supreme Court, in *Mobil v. the Local Boundary Commission*, found *explicitly* that Alaska's largest borough, the North Slope Borough at 94,770 square miles, met the constitution's geography standard.[33]. . .
>
> . . . .
>
> The Court's finding that "[boroughs] are meant to provide local government for regions as well as localities and encompass lands with no present municipal use" and its rejection of "limitation of community" as applied to boroughs can be compared to the regulatory restrictions on city boundaries in 3 AAC 110.040(b) and (c). The comparison invites the question whether a city's boundaries could simultaneously obey these regulatory restrictions and satisfy the territorial standards of Article X, Section 3.
>
> The Mandatory Borough Act of 1963 is the earliest and most telling legislative policy statement on the appropriate territorial scale of boroughs. The [Legislature] modeled the boundaries of the eight mandated boroughs on state house election district boundaries. . . . The average area of the mandated boroughs was well in excess of 10,000 square miles.
>
> . . . .
>
> The Commission itself has approved eight borough incorporation petitions outside the Mandatory Borough Act. [The] average area of those boroughs exceeds 25,000 square miles.
>
> On the other hand, the area of the city of Skagway is 443 square miles.[34]
>
> In short, the minimalist view goes against every borough incorporation mandated by legislature, approved by the Commission, and affirmed by the Alaska Supreme Court. . . .[35]

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[33] [Footnote 6 in original.] In a footnote about the flexibility of the borough concept, the Court instructively quotes this excerpt from T. Morehouse and V. Fischer, Borough Government in Alaska:

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

[34] [Footnote 9 in original.] Most of Skagway's territory consists of unpopulated federal national forest and park lands and state lands not open for settlement. Skagway's petition notes that Skagway is Alaska's largest (in area) city. It is also Alaska's most sparsely populated city with about 2 persons per square mile. Skagway's city boundaries would not meet the city incorporation standards in above-cited 3 AAC 110.040(b) and (c).

[35] Mr. Waring's letter, pp. 3-6 (some footnotes and emphases omitted).

It is noteworthy that later in the above-cited 1996 review, Judge Stewart seemed to express the view that a borough must have multiple communities.

> BOB HICKS: Well, we have two levels of local governments. We have the cities and we have a borough. Why do you say it's not local? You have a lot of plausible arguments, I'm not arguing with you -- I'm playing a devil's advocate here.
>
> JUDGE THOMAS STEWART: Because it is the community that's the focus – the central focus of it. Barrow, doesn't really, has not traditionally had, and it goes beyond their interests today. It's only out to reach a tax base that wasn't really there.
>
> BOB HICKS: So the city should be the central focus of the formation of the borough?
>
> JUDGE THOMAS STEWART: No. The formation of the borough, it seems to me, comes when you have more than one concentration of population, that does have common interests, that can be operated by that second level of government, the borough, but not whether it was only one, like Barrow.
>
> VIC FISCHER: It seems to me though, that the North Slope Borough's really a perfect example of a region that has a common interest. It's an ethnic region, it does have a series of . . .
>
> DR. GEORGE W. ROGERS: . . . regional corporation as its boundaries . . .regional corporation, Native association before the borough was formed. Their communities, Point Hope all the way to Kaktovik have a common language, a common tradition of whaling. It's very much an integrated culture. One problem they've had is you can't say they have a common sort of transportation as a common link. They've been trying to deal with that by establishing some local linkages, air linkages. But I would say that, that is, in terms of a regional borough, it's a very, very logical unit. Just like the NANA region is.

1996 Transcript, pp. 85-86.

As discussed above, the LBC sponsored a review of the Local Government Article of Alaska's Constitution. Further, as noted above at n. 32, on May 17, 2007, the LBC sponsored a second review, focusing particularly on constitutional provisions applicable to municipal boundary determinations. The distinguished Vic Fischer was among the panelists at that forum. As outlined below, Mr. Fischer had the opportunity to clarify the previously cited exchange that he had with Delegate Nordale on January 20, 1956.

> MR. HICKS: There is a statement that I would like to have Senator Fischer respond to. There just is no question that if somebody wanted to put together a brief on references to size, they would find the word "large" many, many times

and they would find references to election districts, which we can show as these regions here,[36] which are quite large. There's no question that that's in the Minutes.

There is one statement which the Superior Court judge in southeast picked out from that; and it's this statement: It's Delegate Nordale saying, "Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On . . . line 4 . . . page 2, section 3, there was some discussion of the wording, 'Each borough shall embrace to the maximum extent possible an area and population with common interests.' Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area -- I mean the square miles?"

Delegate Fischer responded: "What it means is that whenever possible, 'Each borough shall embrace an area and population with common interests.'"

Delegate Nordale says: "Yes. Then 'the maximum extent possible' refers to the common interests, and not to the area in size?"

Delegate Fischer said: "No, that is right."

What did you mean by "no, that is right?"

SENATOR FISCHER: What I meant, it was that, insofar as possible, each borough shall embrace an area and population with common interests.

MR. HICKS: Haven't you just restated . . . (interrupted)

SENATOR FISCHER: Yes, I have.

MR. HICKS: . . . what you're saying here?

SENATOR FISCHER: Yes, I have.

MR. HICKS: You can give us no more insight?

SENATOR FISCHER: I would say that my response was gibberish.

(Laughter)

MR. HICKS: I rest my case your honor.

(Laughter)

[36] The statement "these regions here" refers to the Alaska State Constitution Election Districts depicted on Map 1 on p. 97 of *Alaska's Constitutional Convention*.

> SENATOR FISCHER: My response, I was, I said "no." She asked me . . . [interrupted]
>
> SENATOR STURGULEWSKI: "No" *to her*.
>
> SENATOR FISCHER: . . . is that's what it means. I said "no," period.
>
> SENATOR COGHILL: (indiscernible).
>
> SENATOR FISCHER: And then I said to myself, "Vic, that's right what you just said, 'no.' "
>
> MR. HICKS: So what you really meant to say was "no."
>
> SENATOR FISCHER: I *did* say "no."
>
> MR. HICKS: "That's right." Were you're talking to yourself when you say, "that is right?"
>
> SENATOR FISCHER: I guess so.

Transcript of portion of May 17, 2007, forum, DCCED.

As noted earlier in this report, the mandate in article X, section 3 that all of Alaska must be divided into boroughs (organized and unorganized) reflects the fact that boroughs were intended to encompass the most remote, undeveloped, and uninhabited portions of the state as well as populated and developed areas. As the Supreme Court stated in *Mobil Oil*, boroughs "are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. (*Mobil Oil*, p. 101.)

The provision in article X, section 3 for the division of the entire state into boroughs, coupled with the "minimum of local government units" clause in article X, section 1, calls for boroughs that encompass large, natural regions. Thus, DCCED finds that the standards relating to "community of interests" and other borough boundary standards should be applied in a regional context.

Subsection 3. The 1999 LBC concluded that although the area proposed for annexation had a "great deal in common with the Borough," the standard could not be met if Meyers Chuck and Hyder were excluded.

In its 1999 written decision regarding the previous KGB annexation proposal, the LBC made the findings and reached the conclusions set out below:

> The territory proposed for annexation lies in Alaska's vast unorganized borough. The unorganized borough was established in 1961 by the State Legislature to fulfill the mandate of Article X, § 3 of Alaska's constitution that the entire state

be divided into boroughs. The 1961 Legislature enacted a law providing that, "Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough." No organized boroughs existed at the time. Consequently, the 1961 Legislature "divided" Alaska into one unorganized borough encompassing the entire state.

While the action of the 1961 Legislature may have met with the letter of the law requiring the state to be "divided" into boroughs, it failed to closely conform to a related provision of the constitution. By creating a single borough comprised of the entire state, the 1961 Legislature neglected the mandate in Article X, § 3 that each borough embrace an area and population with common interests to the maximum degree possible.

Today, the unorganized borough contains an estimated 374,843 square miles – an area substantially larger than California, Oregon, and Washington combined. The unorganized borough encompasses 57% of Alaska. It ranges in a *non-contiguous* fashion from the southernmost tip of Alaska to an area approximately 150 miles north of the Arctic Circle. The unorganized borough also extends in a *non-contiguous* manner from the easternmost point in Alaska (at or near Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

The unorganized borough is comprised of a vast area with *extremely* diverse interests. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, judicial districts, and model borough boundaries – each of which are to some extent comprised of areas with common social, cultural, economic, geographic, and other characteristics.

In this case, the territory proposed for annexation has a great deal in common with the Borough. Existing State House Election District 1 conforms closely to the proposed new boundaries of the Borough. However, Election District 1, like the Borough's model boundaries, includes Hyder and Meyers Chuck. The area proposed for annexation also conforms substantially to the "Outer Ketchikan Census Subarea" of the "Prince of Wales-Outer Ketchikan Census Area." Hyder and Meyers Chuck are included in that subarea as well.

Further, the territory proposed for annexation includes most of the Cleveland Peninsula. That area is used by the residents of Ketchikan and surrounding communities for subsistence hunting, fishing, and primitive recreation. Meyers Chuck is also located on Cleveland Peninsula.

Substantial portions of the Ketchikan Ranger District and the Misty Fiords National Monument are currently within the Borough. The proposed annexation would bring those areas wholly within the boundaries of the Borough. The Ketchikan Ranger District and the Misty Fiords National Monument are both administered by U.S. Forest Service staff based in Ketchikan.

Links between Ketchikan and the area proposed for annexation have existed for many years. In 1963, the Legislature determined that the territory proposed for annexation, plus Hyder and Meyers Chuck, was suitable for inclusion within the Borough under the terms of the Mandatory Borough Act. However, smaller boundaries were implemented under a local initiative that preempted the boundaries set by the Mandatory Borough Act.

Lastly, links between the Borough and the area proposed for annexation are evident in that the territory proposed for annexation is wholly within the model boundaries of the Borough. Those boundaries were set by the Commission in 1991 using the legal borough boundary standards and constitutional principles established in law.

There are strong ties between the Borough and both Hyder and Meyers Chuck. Common ties concerning transportation and communication were addressed previously. Beyond that, the Borough identified four factors that it considered to be of "particular importance" in demonstrating the close ties between it and the territory proposed for annexation. Those factors related to: (1) election districts, (2) recording districts, (3) borough government boundaries as mandated by the 1963 legislature, and (4) model borough boundaries. However, each and every one of those four factors also links the Borough to Meyers Chuck and Hyder. Other common interests linking the Borough to Hyder and Meyers Chuck include natural geography and census sub-area boundaries. Medical care is another area in which there are common interests since both Hyder and Meyers Chuck are within the "Primary Service Area" of the Ketchikan General Hospital.

Conclusion: Given the extreme diversity of the unorganized borough, coupled with the social, cultural, economic, geographic, transportation, and other ties between the Borough and the area proposed for annexation, the territory unquestionably has stronger ties to the Borough than it does to the rest of the unorganized borough. Even if a comparison is made between a select adjacent portion of the unorganized borough (e.g., Prince of Wales Island) versus the Borough, the territory still exhibits stronger ties to the Borough.

While annexation would better satisfy the constitutional mandate for the Borough's boundaries to encompass maximum common interests than is the case currently, the constitution calls for boundaries to embrace an area of common interests "to the maximum degree" possible. Without Meyers Chuck and Hyder, this standard cannot be met.

Subsection 4. Whether the commonalities between the area proposed for annexation and the area within the boundaries of the KGB cited by the LBC in 1999 continue to exist.

As noted in the preceding subsection, the LBC made findings and conclusions eight years ago with respect to the community-of-interest standard in terms of the 1998 KGB annexation proposal. Citing State Election District boundaries, census subarea boundaries, hunting and fishing on the Cleveland Peninsula, ranger districts of the Tongass National Forest, the 1963 Mandatory Borough Act, and the Model Borough Boundaries, the Commission concluded that the area then proposed for annexation had a great deal in common with the KGB. With the exception of election district boundaries, the commonalities cited by the LBC in 1999 remain in place today, as outlined below.

House Election District Boundaries

As required by article VI of the Constitution of the State of Alaska and in accordance with AS 15.10.300, the State House Election District boundaries in Alaska were adjusted following the 2000 federal census. Meyers Chuck and Union Bay continue to be in the same State House election district as the area within the existing boundaries of the KGB (House Election District 1). However, Hyder and much of the remainder of the area proposed for annexation are now in House Election District 5, which stretches from Prince of Wales Island to Prince William Sound.

It is also noteworthy that most of the inhabited portions of the proposed Wrangell Borough are in House District 2. As noted above, Meyers Chuck and Union Bay, which are also proposed to be part of the Wrangell Borough, lie within House District 1. Much of the uninhabited portion of the proposed Wrangell Borough is within House District 5. Maps of House Districts 1, 2, and 5 are included in Appendix D of this report.

While the 1999 LBC cited State Election Districts as a basis for evaluation of common interests, those views were retrenched three years later by the Commission. Following the post-2000 census redrawing of the State Election Districts, the 2002 Commission, which included some members who were on the Commission in 1999, stated:

> While the early State election districts were viewed by the framers to be, in many cases, suitable borough models, the Commission does not take the position that the same is necessarily true today. Social and economic integration remains a fundamental characteristic of election districts for the State of Alaska, however, there have been numerous social, political, and legal developments which have had great influence over the size and configuration of election districts in Alaska. Social changes include a significantly greater concentration of Alaska's population

in southcentral Alaska. Political changes include the uniform use of single-member election districts throughout Alaska.[37] They also include the enactment of legislation such as the Federal Voting Rights Act which [has] significantly influenced the configuration of election districts in Alaska. Lastly, judicial rulings have shaped election districts. For example, in *Hickel v. Southeast Conference*, *id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts:[38]

> Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority inter se in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.
>
> While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

LBC, *Statement of Decision in the Matter of the Proposal to Dissolve the City of Skagway and Incorporate a Skagway Borough*, pp. 15 – 16, September 27, 2002.

Census Subarea Boundaries

The U.S. Census Bureau reports data for Alaska on various geographic levels. Since the 1980 census, the primary division of Alaska for such reporting has been with respect to organized boroughs and census areas in the unorganized borough. During the 2000 census, there were 16 organized boroughs and 11 census areas.[39] Boroughs and census areas were further divided into census subareas delineated cooperatively by the State of Alaska and the U.S. Census Bureau.

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[37] [Footnote 22 in original.] The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

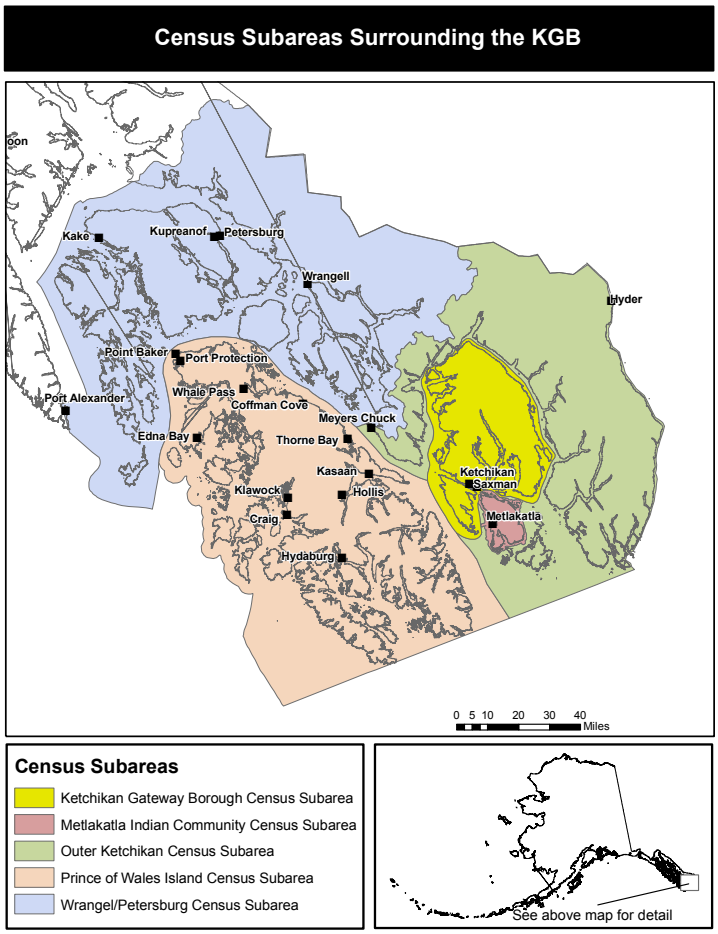
[38] The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases,* 44 P.3d 141 (Alaska 2002).

[39] The eleven census areas are: Aleutians West Census Area, Bethel Census Area, Dillingham Census Area, Nome Census Area, Prince of Wales-Outer Ketchikan Census Area, Skagway-Hoonah-Angoon Census Area, Southeast Fairbanks Census Area, Valdez-Cordova Census Area, Wade Hampton Census Area, Wrangell-Petersburg Census Area, and Yukon-Koyukuk Census Area.

The Commission found in 1999 that the area in the Outer Ketchikan Census Subarea (OKCS) had strong common ties to the area within the KGB. The boundaries of the OKCS, which includes Meyers Chuck and Union Bay, did not change for purposes of the 2000 census.

The OKCS generally corresponds to the area proposed for annexation, with the notable exception that Hyder is part of the OKCS but is excluded from the annexation proposal. The OKCS is bordered on the north by the Wrangell-Petersburg Census Area. On the east and south, the OKCS is bordered by the Alaska/Canada boundary. On the west, the OKCS extends to Clarence Strait but excludes Annette Island.

Figure 2-2: Census Subareas



Use of the Cleveland Peninsula

The LBC Staff preliminary report on the 1998 KGB annexation proposal quoted the following description of the use of Cleveland Peninsula by the Cleveland Users Coalition, a group based in Ketchikan:

> For years, this area has been used by the residents of Ketchikan and surrounding communities for subsistence hunting, fishing, and primitive recreation. Only twenty minutes by skiff from the north end of Ketchikan, the Peninsula has four major estuary type bays which are popular destinations for hunting, fishing beachcombing and crabbing. The Peninsula has over one hundred and thirty miles of shoreline, most of which is small boat and kayak accessible. There are countless fish streams, and nine major upland lakes, supporting a wide variety of fresh water fishing. An increasing number of visitors have discovered its many opportunities, especially summertime boaters.
>
> . . . .
>
> The only permanent community is Meyers Chuck, on the northwest corner. This is a remote fishing village, with access only by plane or boat. The community numbers between 20 and 40, depending on the season. Most people work in the fishing industry; most people are dependent on subsistence hunting as well.

There is heavy usage of the harbor and surrounding area by pleasure craft in the summer season. A small fishing lodge as well as a small gallery displaying locally made art and handicrafts both do a thriving seasonal business. The gallery was recently profiled in the Seattle Times and on KTOO's Rain Country program.

Sealaska Timber has the largest private holding on the peninsula, owning 8000 acres on the Clarence Straits coast. (See Maps). Ketchikan Pulp Corporation owns two former mining claims in the Helm Bay area. There are other scattered private holdings totaling less then a hundred acres. The State of Alaska has two land selections: 330 acres at Little Vixen, and 1600 acres at Spacious Bay. Both of these are designated as a part of the Mental Health settlement, and were chosen for possible sale for recreational home sites. (http://www.ktn.net/cuc/)

Cruise ship passing along the Tongass National Forest

Ketchikan - Misty Fiords Ranger District

The vast majority of the land in the area proposed for annexation is part of the Tongass National Forest. The 4,701 square miles proposed for annexation includes 928 square miles of submerged lands.[40] That leaves 3,773 square miles of land in the area proposed for annexation. The KGB reports that 3,531 square miles of the area proposed for annexation consist of Tongass National Forest lands. (*Petition,* pp. 1 – 2.) Thus, 93.6 percent of the lands in the area proposed for annexation are part of the Tongass National Forest.

Those National Forest lands lie within the Ketchikan – Misty Fiords Ranger District. That district extends beyond the area proposed for annexation to include both Hyder and Annette Island. In the following passage of its Petition, the KGB addressed the common interests of the area and population within the existing boundaries of the Borough and the area proposed for annexation:

[40] Source: DCCED Cartographer.

The vast majority of the 4,701 square miles proposed for annexation is owned by the Federal government and located within the Tongass National Forest and Misty Fjords National Monument. The Ketchikan Ranger District manages these lands and is located wholly within Ketchikan's model boundaries and the area proposed for annexation. The Ranger District headquarters and personnel are based in the city of Ketchikan. To the extent that the Federal government develops these lands according to a variety of planned and likely scenarios, it is the Borough that will provide the majority of infrastructure, goods, and services for their improvement. Consequently, it is the Borough that should proportionately benefit from the potential revenues associated with such development since it is the community most affected by the outcome of Federal activities. For example, significant, and growing, volumes of tourists transfer in Ketchikan to Misty Fjords and other points of interest.

Figure 2-3: Ketchikan - Misty Fiords Ranger District

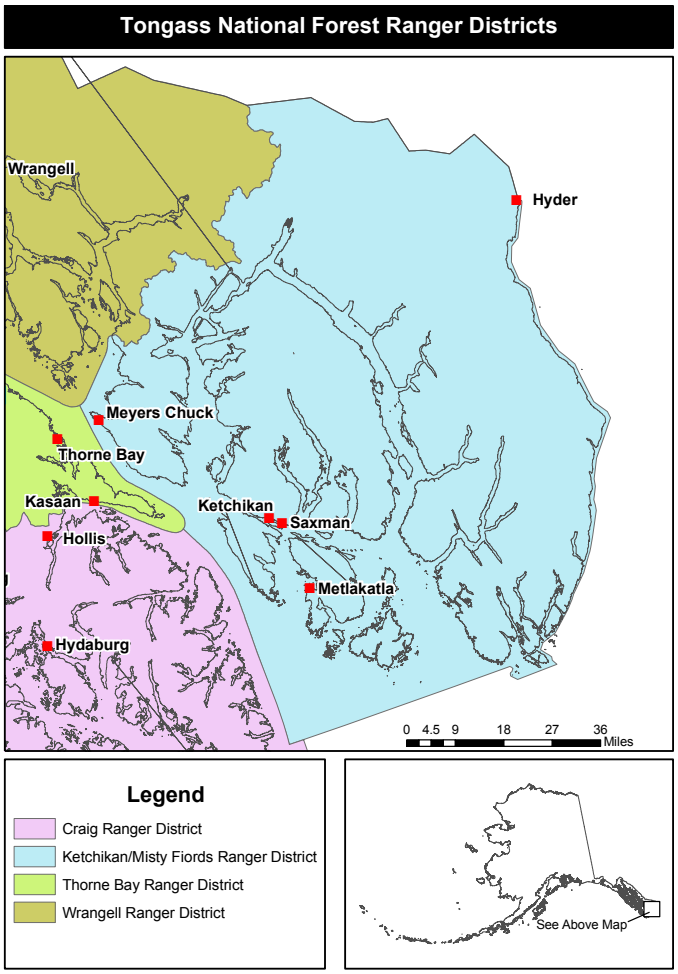


Figure 2-3 shows the boundaries of the Ketchikan – Misty Fiords Ranger District.

1963 Mandatory Borough Act Boundaries

As noted previously, the 1963 Legislature passed legislation, signed into law by then-Governor Egan, which prescribed boundaries for a Ketchikan borough that would take effect January 1, 1964, unless preceded by the incorporation of a Ketchikan borough under the local option method. The boundaries prescribed by the 1963 Legislature are very similar to the proposed post-annexation boundaries, plus Hyder.

As outlined in Appendix A, the 1963 boundaries defined by the Legislature were not implemented because voters incorporated a borough with different boundaries prior to the mandatory borough incorporation deadline. The petitioner had proposed a borough with

boundaries encompassing just 75 square miles. The LBC expanded the area to 1,752 square miles – more than 23 times the area proposed by the petitioner. The record clearly reflects that the 1,752 square mile area approved for incorporation was considered by the LBC to be smaller than the region's ideal jurisdictional territory. The LBC concluded that "the Ketchikan trading area is much larger than the area proposed by the sponsor for borough incorporation. The trading area includes and roughly approximates Election District # 1." The Commission indicated that it did not wish *at that time* to alter the proposed borough boundaries to include the entire election district, but did expand them well beyond those proposed by the petitioners.

Model Borough Boundaries

The model borough boundaries for the KGB have not changed since they were first adopted by the LBC in 1991. Those boundaries were defined using the legal borough boundary standards, including the constitutional provisions addressed in this report.

Subsection 5. Other common interests between the greater Ketchikan area and the area proposed for annexation.

Beyond the points addressed above, the KGB offered observations in its Petition about other common ties between the area and population within the boundaries of the KGB and the area proposed for annexation. In particular, the Petition states:

> Alaska Department of Fish and Game (ADF&G) boundaries also roughly coincide with the existing model boundaries of the area proposed for annexation as shown on Map Figure 4. According to ADF&G data, Game Management Unit 1A is used primarily by Ketchikan residents. For example, 81% of the 523 hunters engaged in deer hunting in Unit 1A listed Ketchikan as their community of residence. In addition, according ADF&G commercial fisheries data, 94% of subsistence salmon and personal use permits (218 total) issued within the area proposed for annexation (principally Yes Bay) were issued to residents of the existing Borough.
>
> The Patient Service Area of Ketchikan General Hospital includes all of the area proposed for annexation including Prince of Wales Island and Metlakata [*sic*]. In addition, the proposed expanded boundaries are contained wholly within the Ketchikan Recording District (see Map Figure 5).

Petition, p. 52.

Regarding the Game Management Unit (GMU) boundaries in question, DCCED notes that GMU boundaries run down the middle of the cape at Lemesurier Point on the Cleveland Peninsula. The GMU boundaries divide Meyers Chuck (in Unit A) from Union Bay (in Unit 1B).

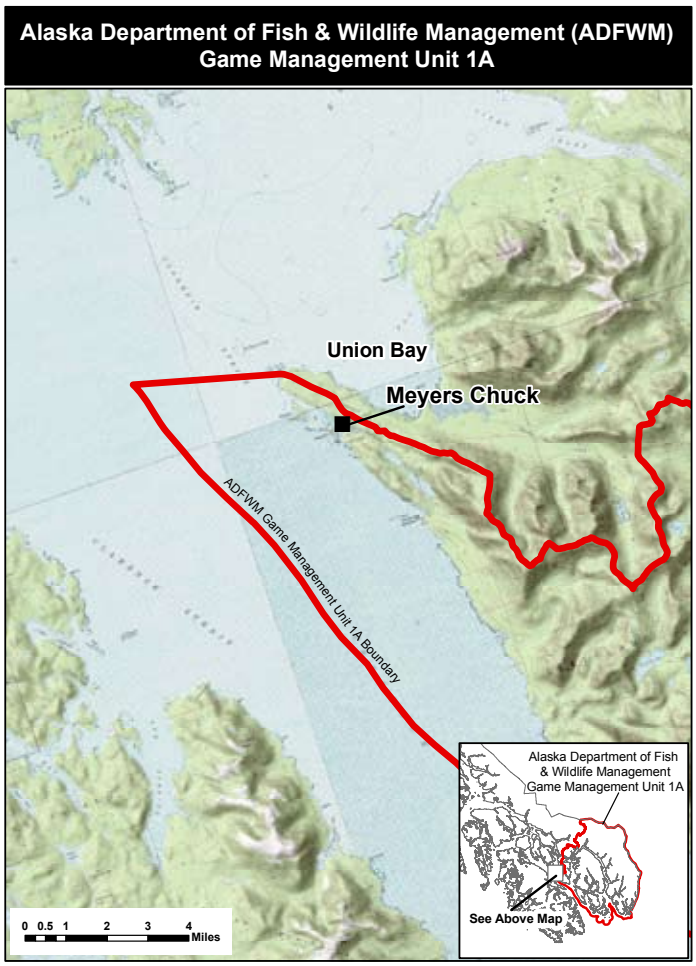
The KGB noted correctly that 81 percent of the deer hunters in Unit 1A who were surveyed in 2003 reported that they lived in Ketchikan. DCCED notes the following additional relevant information presented in the *2003 Deer Hunter Survey Summary Statistics – Southeast Alaska,* Alaska Department of Fish and Game (September 2004):

- Hunters residing in Ketchikan who participated in the survey reported that they hunted in Game Management Units 1A, 1B, 2, 3, 4, and perhaps other areas ("unknown").
- Hunters residing in Meyers Chuck who participated in the survey reported that they hunted in both Game Management Units 1A and 1B, as well as Game Management Unit 3 and perhaps other areas ("unknown").
- Hunters residing in Wrangell who participated in the survey reported that they hunted in Game Management Units 1B, 2, 3, 4, and perhaps other areas ("unknown").

Id., pp. 14-16.

In response to inquiries from DCCED, a Wildlife Biologist with the Alaska Department of Fish and Game recently stated that the fish-and-game harvest-use patterns for the area in question, particularly the Cleveland Peninsula, follow the boundaries of the GMUs. Specifically, he advised DCCED, "When you look at the use patterns for the Cleveland, you can follow the GMU lines; and it follows very close to use patterns. Wrangell folks use the peninsula on the west side down to Union Bay, and Ketchikan folks use it on the east side." The Biologist noted further, "About 15 deer were reported killed on the Cleveland last year, and all were taken by Ketchikan hunters and Meyers Chuck residents." He added, "If you looked at deer harvest numbers back to the early 90s there were lots of deer harvested then, but very little of that by Wrangell residents." (Personal communication, June 6, 2007.)

Figure 2-4: GMU Boundaries on the Cleveland Peninsula



As noted above, the KGB pointed out in its Petition that the Patient Service Area for the Ketchikan General Hospital includes the area proposed for annexation. The Alaska Department of Health and Social Services (DHSS) advised DCCED

recently that the emergency medical service patient transportation pattern links Meyers Chuck with the Ketchikan General Hospital. DHSS indicated further that Meyers Chuck has three volunteer Emergency Medical Technicians in the summer and one "First-Aider with AED [Automated External Defibrillators]" in the winter. DHSS reported that in 2006, Dr. Anthes, a medical doctor in Ketchikan, was listed as the Meyers Chuck EMS Medical Director. (Personal communication, June 5, 2007.)

Subsection 6. Conclusion: the proposed expanded boundaries of the KGB would embrace an area and population with common interests to the maximum degree possible and, on a scale suitable for borough government, have a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities.

In Section C of this report, DCCED provided an extensive account reflecting the intent of the framers of Alaska's Constitution that boroughs encompass large, natural regions. Section 3 also summarized the 1999 LBC conclusions that a similar area proposed for annexation at that time had a "great deal in common" with the KGB. Section 3 reviewed any changes to the factors that the 1999 LBC relied on to make that determination. DCCED also examined other common interests between the greater Ketchikan area and the area proposed for annexation. Based on the discussion and findings above, DCCED concludes that the KGB annexation proposal satisfies the standards set out in article X, section 3 of the Alaska Constitution and 3 AAC 110.160(a). Other relevant factors such as communications and transportation links between the greater Ketchikan area and the area proposed for annexation and general conformance with natural geography are addressed later in this report.

Section D. Whether communications media and transportation facilities allow for the level of communications and exchange necessary to develop an integrated borough government.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.160(b) state as follows:

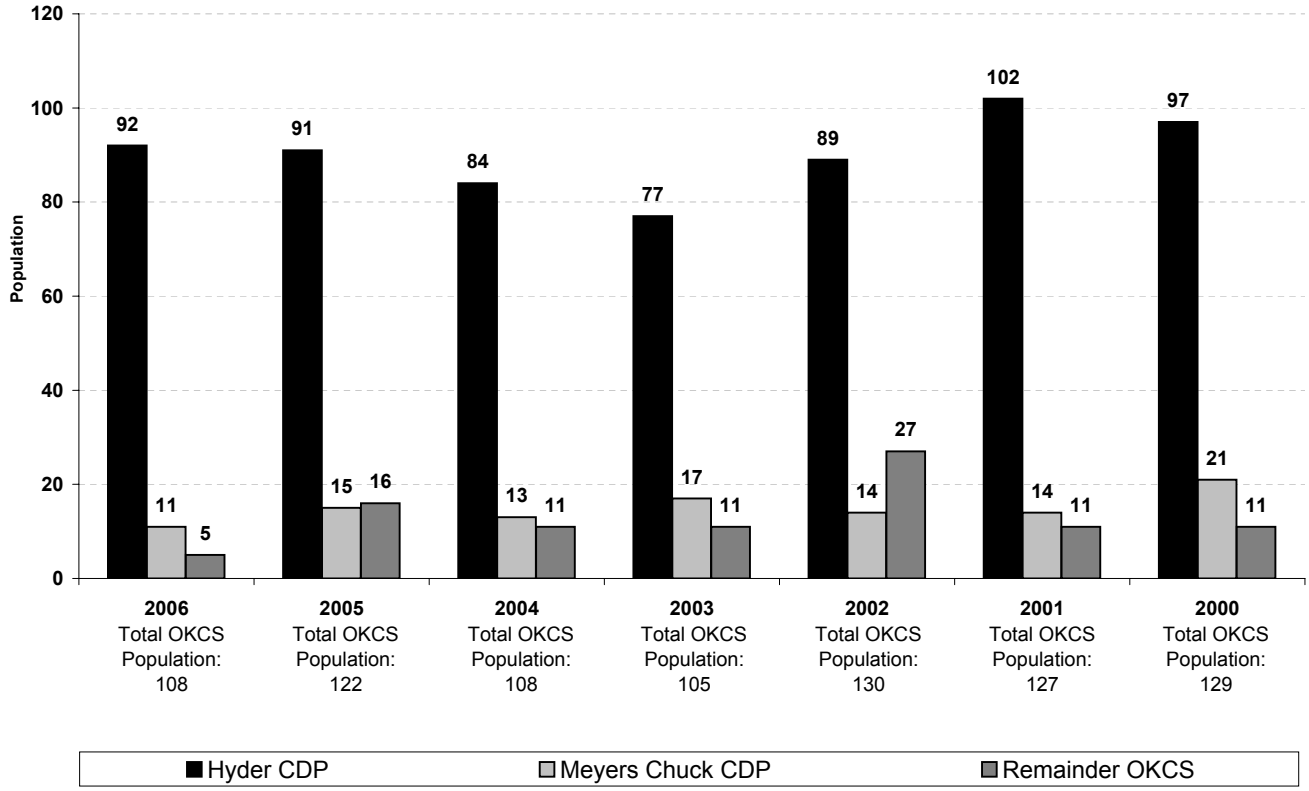
> The communications media and the land, water, and air transportation facilities throughout the proposed borough boundaries must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission may consider relevant factors, including
>
> (1) transportation schedules and costs;
>
> (2) geographical and climatic impediments;
>
> (3) telephonic and teleconferencing facilities; and
>
> (4) electronic media for use by the public.

SubSection 2. Context in which the communication and transportation standard should be applied.

For reasons outlined in Part II-C-2 of this report, DCCED maintains that the examination of transportation and communication links between the area within the boundaries of the KGB and the area proposed for annexation is most appropriately carried out in a regional context. Moreover, a reasonable evaluation of this standard should recognize the sparse population of the area proposed for annexation.

The latest figures provided by the State Demographer in the Alaska Department of Labor and Workforce Development estimate that only 16 individuals lived in the area proposed for annexation in 2006. Of those 16, 11 individuals lived at Meyers Chuck; and the remaining five lived in other parts of the area proposed for annexation. Thus, the 2006 population density of the area proposed for annexation was approximately 1 person per 294 square miles of land and water. In comparison, the population density for the entire state in 2006 was 1 person per square mile of land and water.[41] Chart 2.1 reports the estimated population figures for the area proposed for annexation for the period from 2000 – 2006:

Chart 2.1: Outer Ketchikan Census Subarea Population Figures - 2000 - 2006



[41] The State Demographer estimates that the 2006 population of Alaska was 670,053. The DCCED Cartographer estimates that there are 644,057 square miles within the corporate boundaries of the State of Alaska (582,391 square miles of land and 61,666 square miles of water extending to the three-mile-limit offshore).

It is worthwhile to consider that the Commission and Alaska Supreme Court both found the communications and transportation standard to be met for the North Slope Borough (hereinafter, "NSB"). At the time, the NSB encompassed approximately 97,121 square miles and was inhabited by 3,384 people. The population density of the North Slope at that time was 1 person per 29 square miles.

Table 2.3 - North Slope Borough Distances

Community	Distance from Barrow (point to point)
Atquasuk	58 miles
Wainwright	88 miles
Nuiqsut	154 miles
Point Lay	181 miles
Deadhorse	209 miles
Anaktuvuk Pass	249 miles
Point Hope	316 miles
Kaktovik	318 miles

It is difficult to imagine that any area of the state today is as lacking in transportation and communication facilities as was remote portions of the NSB when it incorporated in 1972. Point Hope, the westernmost community in the NSB, and Kaktovik, the easternmost community in the NSB, are separated by nearly 600 miles. Table 2.3 shows the distances from Barrow, the NSB seat, to each community within the Borough.

Yet, regarding transportation and communication in the NSB 35 years ago, the Alaska Supreme Court concluded:

> We are also satisfied that the transportation standard has been reasonably met. The dispute surrounds the language of AS 07.10.030(4):
>
> > The transportation facilities in the area proposed for incorporation shall be of such a unified nature as to facilitate the communication and exchange necessary for the development of integrated local government and a community of interests. Means of transportation may include surface (both water and land) and air. Areas which are accessible to other parts of a proposed organized borough by water or air only may not be included within the organized borough unless access to them is reasonably inexpensive, readily available, and reasonably safe. In considering the sufficiency of means of transportation within a proposed organized borough, existing and planned roads and highways, air transport and landing facilities, boats and ferry systems, and railroads, shall be included.
>
> Regular travel among borough communities is available only by charter aircraft. Surface transportation is limited to dog teams and snowmachines. Even at this stage of development, we agree with the superior court that the Commission could reasonably have found travel facilities adequate to support borough government when present and future capacity is considered in the context

> of transportation in Alaska generally and compared to the present cost and availability of travel to centers of government which affect the lives of North Slope residents.

Mobil Oil, p. 100.

Subsection 3. In 1999, the LBC concluded that the communication and transportation standard was met for the prior KGB annexation proposal.

When the 1999 LBC evaluated this standard, the Commissioners recognized the thinly populated nature of the area proposed for annexation:

> The territory proposed for annexation is a sparsely-populated rural area. As is typical of such areas in Alaska, transportation and communication facilities in the territory are limited. Virtually all organized boroughs include areas of similar character. It is noteworthy that in 1974, the Alaska Supreme Court concluded that the North Slope Borough satisfied similar standards concerning communication and exchange. At the time, the North Slope Borough encompassed 97,121 square miles and was inhabited by 3,384 residents.

One of the ways to access the northwestern portion of the territory proposed for annexation is to travel through Meyers Chuck. Similarly, Hyder serves as a point of access to the northeastern portion of the territory proposed for annexation.

Meyers Chuck (Photo Credit: http://grandbanks.com)

Further, Hyder and Meyers Chuck appear to be integrated into the transportation and communication system centered in Ketchikan. For example, DCRA reported that there were 249 commercial passenger enplanements in Meyers Chuck during 1996 (equivalent to eight enplanements per resident, which is higher than that found in many communities in Southeast Alaska). According to DCRA, an official from the Alaska Department of Transportation stated that it was reasonable to assume that virtually all of the 249 passengers were destined for Ketchikan. Regarding communications, DCRA reported that approximately 40% of the occupied homes in Meyers Chuck subscribe to the *Ketchikan Daily News.*

Transportation and communication ties between Ketchikan and Hyder are more attenuated, but do exist. For example, it was reported that residents of Hyder rely on Ketchikan-based Pond Reef EMS for emergency medical transport. It was also reported that a proposal had been advanced for a municipally owned and operated day-ferry be developed for service between Saxman and Hyder. The proposed ferry between Ketchikan (Saxman) and Hyder was included among the Borough's legislative priorities. It is also among the Borough's recommendations for funding under the Statewide Transportation Improvement Program.

Hyder

Hyder (located approximately 75 air miles from Ketchikan) and Meyers Chuck (located approximately 40 air miles from Ketchikan) may be considered by some to be distant from Ketchikan. However, communities in many other organized boroughs in Alaska are separated by far greater distances. For example, Kaktovik and Point Hope are each more than 300 miles from the seat of the borough government in which they are both located.

Conclusion: The Commission concludes from the foregoing that the communication and exchange standard set out in 19 AAC 10.160(b) is satisfied, albeit minimally. The exclusion of Hyder and Meyers Chuck from the annexation proposal significantly diminishes the extent to which this standard is met.

LBC 1999 *Statement of Decision*, pp. 4 – 5.

Subsection 4. Contemporary considerations regarding the transportation and communication standard.

The KGB Petition offers the following statements with respect to this standard.

> Ketchikan's present role as a regional service center is underscored by existing communications media and transportation facilities provided within and beyond the boundaries of the area proposed for annexation. While the actual provision of these facilities and services is typical of a rural region, they collectively allow for the level of communications and exchange necessary to develop an integrated borough government.

Ketchikan's daily paper has a weekly circulation of 3,600 and a weekend circulation of 4,200. Also published in Ketchikan is a weekly shopper and neighborhood magazine with a distribution of 4,800 copies. Both of the print media described above regularly carry real estate ads for property sales throughout the existing Borough and the territory proposed for annexation.

All of Ketchikan's radio stations service the Southeast Alaska region to varying degrees. It is reported that Meyers Chuck reliably receives radio signals from Ketchikan which carry news and other items of local and regional interest. In addition, there is a local web-site in Ketchikan that provides news, public forums, information and advertising services throughout the region.

The territory proposed for annexation is part of the region's air transportation system based in Ketchikan. The Ketchikan International Airport is located in Ketchikan and provides travel to destinations outside of the region. Float plane companies based out of Ketchikan provide air transportation from Ketchikan to the remote areas of the existing Borough, as well as to the territory to be annexed. Combined air carrier statistics to Meyers Chuck for 2004 (approximately 40 air miles distant) indicate 210 regularly scheduled passenger trips, 3,648 pounds of freight, and 13,609 pounds of mail out-bound and 88 trips, 335 pounds of freight, and 221 pounds of mail in-bound to Ketchikan. The disparity between outbound and in-bound passenger trips to Meyers Chuck most likely results from the use of personal watercraft for at least one of the trip legs between Ketchikan and Meyers Chuck.

Meyers Chuck (Photo credit: http://members.virtualtourist.com)

. . . .

In conclusion, the level of transportation and communication facilities and services based in Ketchikan underscore the community's role as a regional service provider in throughout southern southeast Alaska. These facilities and services collectively allow for the level of communications and exchange necessary to develop an integrated borough government within the area proposed for annexation

Petition, pp. 63 – 64.

DCCED's Community Database[42] states as follows regarding transportation to and from Meyers Chuck:

> Meyers Chuck is accessible only by float plane or boat. A State-owned seaplane base is available. With the exception of the mail plane, there are no scheduled flights. Ketchikan-based charter services and barge transport are available. A boat dock provides 650 feet of moorage, and the site is a natural sheltered harbor. Residents use skiffs for local travel; a few boardwalks and trails connect homes.

DCCED recently contacted Sunrise Aviation, the only air carrier in Wrangell that might serve Meyers Chuck. Other than to state that it does not have regular passenger service to Meyers Chuck, a representative of Sunrise Aviation declined to make any statement regarding the extent, if any, to which Sunrise Aviation serves Meyers Chuck. (Personal communication, June 5, 2007.)

DCCED contacted the representatives of the *Ketchikan Daily News* and *Wrangell Sentinel* to determine the number of subscribers in Meyers Chuck. The *Ketchikan Daily News* indicated that there is one subscriber living in the settlement; the *Wrangell Sentinel* stated that no one in Meyers Chuck subscribes to its newspaper. (Personal communications, June 4, 2007.)

It is noted further that DCCED's Community Database lists two radio stations as serving Meyers Chuck.[43] Those are KTKN-AM and KRBD-FM, both based in Ketchikan.

Lastly, it was noted in Part II-C-4 of this report that the Cleveland Users Coalition described the Cleveland Peninsula as being "only twenty minutes by skiff from the north end of Ketchikan." The organization Tidepool[44] describes the distance between Ketchikan and the Cleveland Peninsula as follows:

> The peninsula is just a short boat ride from Ketchikan through relatively sheltered waters, making it accessible to people with inexpensive skiffs. And finally, it has a number of protected anchorages, where people can leave their boats safely while they hunt.

Subsection 5. Conclusion: the communications media and transportation facilities allow for the level of communications and exchange necessary to develop an integrated borough government.

As noted above, DCCED maintains that it is proper to apply borough annexation standards in a regional context. In the early 1970s, the LBC and Alaska Supreme Court determined that the North Slope met the communication and transportation standard even though some

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[42] <http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.htm>

[43] <http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm>.

[44] <http://tidepool.org/INDEX.CFM>.

communities were more that 300 miles from the proposed borough seat. In comparison, the settlement of Meyers Chuck is 36.6 miles (point to point) from Ketchikan.[45] The LBC concluded eight years ago that the communication and transportation standard was met for the prior KGB annexation proposal. Based on the discussion and findings above, DCCED concludes that the KGB annexation proposal satisfies the standards set out in 3 AAC 110.160(b).

Section E. Whether the population of the proposed borough after annexation is sufficiently large and stable to support the resulting borough.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.170 state as follows:

> The population of the proposed borough after annexation must be sufficiently large and stable to support the resulting borough. In this regard, the commission may consider relevant factors, including
>
> (1) total census enumerations;
>
> (2) durations of residency;
>
> (3) historical population patterns;
>
> (4) seasonal population changes; and
>
> (5) age distributions.

Subsection 2. The 1999 LBC concluded that the population standard had been met by the prior KGB annexation proposal.

In 1999, the LBC reached the following conclusions regarding the somewhat similar KGB annexation proposal:

> 19 AAC 10.170 [renumbered in 2002 as 3 AAC 110.170] provides that annexation may occur only if the population within the proposed new boundaries of the Borough is "sufficiently large and stable to support the resulting borough."
>
> The 1997 population of the Borough was 14,599. Five of the sixteen organized boroughs in Alaska had larger populations while ten had smaller ones. The 1997 population of the Borough was eighty-three percent greater than the median figure for all organized boroughs in Alaska.

[45] With respect to the competing Wrangell borough petition, DCCED notes that Meyers Chuck is 50.7 miles from Wrangell.

> The Borough's population has shown reasonably steady growth. In 1970, the population of the Borough was 10,041. From 1970 to 1980, the population increased 12.7 percent to 11,316. The 1990 population stood at 13,828, an increase of 22.2 percent since 1980. From 1990 to 1997, the population rose to 14,599, an increase of 5.6 percent.
>
> At the time of the 1990 Census, twenty-one individuals were counted as residents of the territory proposed for annexation (Outer Ketchikan Census Subarea, excluding Meyers Chuck and Hyder). Thus, the Borough's estimate of twenty-five residents in the area proposed for annexation seems reasonable. Based on that figure, the population density of the territory proposed for annexation is 0.005 persons per square mile. Again, substantial portions of virtually all organized boroughs have similar characteristics. The population density of the proposed expanded borough is two persons per square mile.
>
> **Conclusion:** The Commission concludes that the combined population of the Borough and the area proposed for annexation is large and stable enough to support borough government in those areas. Thus, the standard set out in 19 AAC 10.170 [now 3 AAC 110.170] is satisfied.

LBC 1999 *Statement of Decision*, p. 5.

Subsection 3. Total census enumerations and historical population patterns.

As noted previously, the 2006 estimated population of the area proposed for annexation was 16. The State Demographer's estimate of the 2006 population of the area within the KGB was 13,174. The 2006 population within the area proposed for annexation represents one-tenth of 1 percent of the population of the KGB.

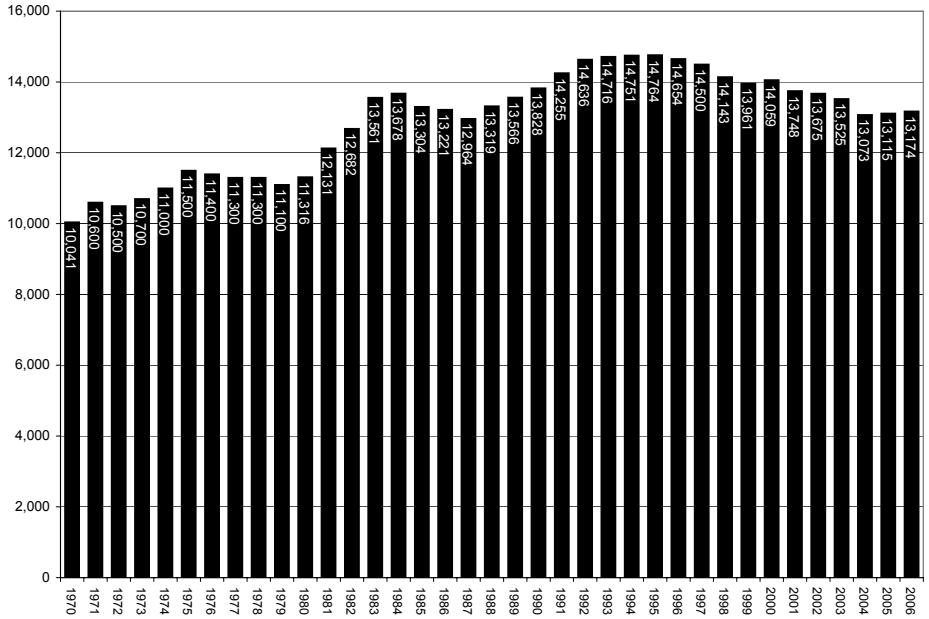
As shown in the table below, the KGB was the seventh most populous of Alaska's 16 organized boroughs in 2006. The population of organized boroughs ranged from a low of 634 (Yakutat) to a high of 282,813 (Anchorage).

The average population of the 16 organized boroughs in 2006 was 36,839. That figure was skewed by Anchorage, which accounted for 48 percent of Alaska's organized-borough population in 2006. Excluding Anchorage, the 2006 average population of the remaining 15 organized boroughs was 20,440. The 2005 median population of all 16 organized boroughs was 8,084.

Based on the foregoing, DCCED concludes that the combined population of the KGB and the area proposed for annexation is large enough to support the proposed expanded borough government.

In terms of population stability, the Chart 2.2 lists the annual population of the KGB for each of the past 37 years. During that period, the KGB population ranged from a low 10,041 (1970) to a high of 14,764 (1995). The estimated 13,174 residents in the KGB in 2005 was 1,639 (10.8 percent) less than the 1995 peak.

Chart 2.2: Ketchikan Gateway Borough Population Figures 1970 through 2006



The KGB population losses since the mid-1990s are generally attributed to declines in southeast Alaska's timber industry and, in particular, to the closure of the Ketchikan Pulp Company operations in March 1997. The latter resulted in the loss of nearly 500 jobs.

Table 2.4 shows the changes in the population of the KGB in both absolute and relative terms between 1996 - 2006. After the peak in 1995, the population of the KGB declined in each of the years through 1999. In 2000, the population increased slightly. The estimated population of the KGB declined in each of the four years from 2001 through 2004. The population dropped by more than 1 percent in each of three of those years. The net change between 2000 and 2006 was a loss of 885 residents (6.3 percent).

Table 2.4 - Change in KGB Population from 1996 – 2006

Year	Population	Change from Prior Year (Absolute)	Change from Prior Year (Relative)
1996	14,654	-110	-0.75%
1997	14,500	-154	-1.05%
1998	14,143	-357	-2.46%
1999	13,961	-182	-1.29%
2000	14,059	98	0.70%
2001	13,748	-311	-2.21%
2002	13,675	-73	-0.53%
2003	13,525	-150	-1.10%
2004	13,073	-452	-3.34%
2005	13,115	42	0.32%
2006	13,174	59	0.45%

Subsection 4. Conclusion: the population within the proposed expanded KGB boundaries is sufficiently large and stable to support the resulting borough.

The KGB's population is greater than most organized boroughs. The KGB is the seventh most populous organized borough in Alaska. Its population is 63 percent greater than the median population of all organized boroughs in Alaska.

As reflected in Table 2.5, the KGB's population, coupled with its relatively small boundaries, give it the fourth highest population density of any organized borough in Alaska. Even though the proposed annexation would quadruple the amount of land within the KGB but would increase its population by only one-tenth of 1 percent, the proposed expanded KGB would still have a population density greater than nine of Alaska's sixteen organized boroughs.

Table 2.5 - Population, Area, and Population Density for Boroughs in Alaska

Borough	2006 Population	Land Within Boundaries (Sq. Mi.)	Persons Per Square Mile of Land
Lake and Peninsula Borough	1,557	26,426	0.059
North Slope Borough	6,807	89,611	0.076
City and Borough of Yakutat	634	7,813	0.081
Denali Borough	1,795	12,687	0.141
Northwest Arctic Borough	7,334	36,315	0.202
Aleutians East Borough	2,643	7,041	0.375
Haines Borough	2,241	2,378	0.942
Kodiak Island Borough	13,506	6,837	1.975
Bristol Bay Borough	1,060	510	2.079
Proposed Expanded Ketchikan Gateway Borough	13,190	5,015	2.630
City and Borough of Sitka	8,833	2,913	3.032
Matanuska-Susitna Borough	77,174	25,000	3.087
Kenai Peninsula Borough	51,350	16,437	3.124
Ketchikan Gateway Borough	13,174	1,242	10.607
City and Borough of Juneau	30,650	2,760	11.106
Fairbanks North Star Borough	87,849	7,469	11.762
Municipality of Anchorage	282,813	1,731	163.406

While there was a population downturn in the late 1990s and earlier this decade, the population of the KGB has increased in the past two years. Over the long term, the population of the KGB has shown reasonably stable growth.

The minimal population of the area proposed for annexation, coupled with the land ownership of the area (93.6 percent Tongass National Forest), means that there will be relatively little demand for borough services in the area proposed for annexation. Based on the findings above, it is reasonable to conclude that the size and stability of the population within the proposed new boundaries of the KGB are sufficient to support the proposed expanded borough. Thus, in DCCED's view, the standard set out in 3 AAC 110.170 is satisfied.

Section F. Whether the economy within the proposed borough boundaries includes the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.180 state as follows:

> The economy within the proposed borough boundaries must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the
>
> (1) reasonably anticipated functions of the borough in the territory being annexed;
>
> (2) reasonably anticipated new expenses of the borough that would result from annexation;
>
> (3) actual income and the reasonably anticipated ability of the borough to generate and collect local revenue and income from the new territory;
>
> (4) feasibility and plausibility of those aspects of the borough's anticipated operating and capital budgets that would be affected by annexation through the third year of operation after annexation;
>
> (5) economic base of the borough after annexation;
>
> (6) property valuations in the territory proposed for annexation;
>
> (7) land use in the territory proposed for annexation;

(8) existing and reasonably anticipated industrial, commercial, and resource development;

(9) personal income of residents in the territory to be annexed and in the borough; and

(10) the need for and availability of employable skilled and unskilled persons to serve the borough as a result of annexation.

Subsection 2. The 1999 LBC concluded that the economy standard had been met by the prior KGB annexation proposal.

Eight years ago, the LBC reached the following conclusions regarding the application of the economy standard to the similar KGB annexation proposal:

> For annexation to be approved, 19 AAC 10.180 [now 3 AAC 110.180] provides that the Commission must determine that the economy of the proposed expanded borough includes the human and financial resources needed to provide borough services.
>
> The Commission previously addressed aspects of the human resources issue, concluding that the size and stability of the population within the proposed expanded borough was sufficient to support borough government.
>
> With respect to financial resources, the 1997 full and true value of taxable property in the Borough was $1,138,128,200. That was equivalent to $77,959 per resident. The Borough's per capita figure was higher than that of twelve of the other fifteen organized boroughs in Alaska. The per capita value for the Borough was twenty-three percent greater than the median figure for all organized boroughs in Alaska.
>
> According to the most recent data published by the Alaska Department of Labor, $253,880,759 was paid to workers in the Borough for services performed during 1996. That figure does not include income from workers who are excluded from unemployment insurance coverage (e.g., self-employed individuals, fishers, unpaid family help, domestics, and most individuals engaged in agriculture.) Earnings in the Borough in 1996 amounted to $17,270 per capita. The comparable statewide figure was $13,815. The Borough figure was nineteen percent greater than the median figure for all 16 organized boroughs.

Ketchikan waterfront

KGB bus service

The Borough's FY 1998 budget projected total revenues of $15,010,131. Expenditures for the same period were projected to be $13,977,251.

The Borough estimated that annexation would increase its annual revenues by a range of $256,796 to $1,052,681. The substantial variation ($795,885) was attributed to fluctuations and uncertainty relating to the National Forest Receipts program. The Borough projected that expenditures resulting from the extension of services into the area proposed for annexation would amount to $62,000 annually. Using the Borough's figures, revenues resulting from annexation would exceed expenditures resulting from annexation by a range of $194,796 to $990,681 annually.

DCRA indicated that the Borough's projections of nearly $62,000 in annual expenditures to extend its boundaries appeared reasonable. However, DCRA projected that Borough revenues would increase by nearly $348,000 as a result of the annexation. Thus, DCRA projected that annexation revenues would exceed annexation expenditures by roughly $286,000 annually.

Conclusion: The size and stability of the Borough's population, tax base, its budget, and the income of Borough residents demonstrate that the proposed new boundaries of the Borough encompass an economy with sufficient human and financial resources to provide essential borough services on an efficient, cost-effective level.

LBC 1999 Statement of Decision, pp. 5 - 6.

Subsection 3. The reasonably anticipated functions of the borough in the area proposed for annexation.

Table 2.6 on the following page lists powers exercised by the KGB on an areawide basis (i.e., throughout the KGB), a nonareawide basis (i.e., in the part of the KGB outside the boundaries of city governments), and within service areas (areas of varying size that may encompass city governments). The table also indicates which powers the KGB proposes to extend to the area proposed for annexation.

Table 2.6 - Powers Currently Exercised by the KGB and Powers Planned to be Provided Within the Area Proposed for Annexation

Power	Provided Within Existing KGB	Planned to Be Provided Within Area Proposed for Annexation
Education	Areawide	Yes
Assessment and collection of property, sales, and transient occupancy taxes	Areawide	Yes
Planning, platting, and land use regulation	Areawide	Yes
Recreation	Areawide	Yes
Economic Development Assistance	Areawide	Yes
Public Transportation	Areawide	Yes
Airport	Areawide	Yes
Animal Control	Areawide	Yes
Library	Nonareawide	Yes
Regulation of Fireworks	Nonareawide	Yes
Wastewater Enterprise Fund	Nonareawide	Yes
Solid Waste Collection	Nonareawide	Yes
Solid Waste Disposal	Nonareawide	Yes
Fire Suppression	Within Some Service Areas	Not Initially
Emergency Medical Service	Within Some Service Areas	Not Initially
Road Maintenance	Within Some Service Areas	Not Initially
Water Utility	Within Some Service Areas	Not Initially
Street Lighting	Within Some Service Areas	Not Initially
Docks and Marine Facilities	Within Some Service Areas	Not Initially
Road Construction	Within Some Service Areas	Not Initially

Subsection 4. The reasonably anticipated new expenses of the borough that would result from annexation.

The Petition projects that annexation will result in an increase of KGB expenditures by approximately $77,000 during the first year of annexation. During the following year, the KGB projects that its cost of serving the area proposed for annexation will be approximately $63,000. Following implementation of initial planning and assessment efforts during the two-year transition period, the KGB projects that its direct costs to serve the area proposed for annexation will level out at around $45,000 annually.[46]

[46] Section 12 of the Petition states that the projected costs during the first four years are, respectively, $76,988, $62,820, $45,195, and $45,682. The KGB's brief states at p. 66 that the first-year expenses are projected to be $78,988.

Subsection 5. The actual income and the reasonably anticipated ability of the borough to generate and collect local revenue and income from the new area.

The Petition provides two revenue scenarios. The scenario that presents the higher estimate of revenues resulting from annexation – roughly $1.2 million annually – assumes that funding from the National Forest Receipts (NFR) program will continue at current levels. The lower scenario – projecting revenues of approximately $300,000 annually – assumes that NFR program funding will drop to levels of the late 1990s. (*See* Petition, pp. 9 - 13.)

Table 2.7 reflects KGB revenue projections for the area proposed for annexation as reported in the Petition (pp. 11 – 12).

Table 2.7 - KGB Revenue Projections Presented in Petition

Revenues	Year 1	Year 2	Year 3	Year 4
Property Tax (7.5 mills)	$0	$55,873	$56,990	$58,130
Nonareawide Tax (Library 1.2 mills)	$0	$8,940	$9,118	$9,301
Sales Tax	$0	$21,224	$21,648	$22,081
NFR ("Estimate A" high scenario)	$0	$1,075,684	$1,087,517	$1,099,480
NFR ("Estimate B" low scenario)	$0	$203,612	$205,852	$208,116
Federal PILT	$0	$64,586	$64,586	$64,586
Transient Occupancy Tax	$0	$8,489	$8,659	$8,832
Charges for Services	$0	$1,000	$1,000	$1,000
Total ("Estimate A"	$0	$1,235,796	$1,249,518	$1,263,410
Total ("Estimate B"	$0	$299,138	$303,267	$307,460

Subsection 6. The feasibility and plausibility of those aspects of the borough's anticipated operating and capital budgets that would be affected by annexation through the third year of operation after annexation.

Generally, the KGB projections of revenues and expenditures appear feasible and plausible. DCCED offers no alternative projections of expenditures. However, due in part to changes in funding levels, tax levies, and other circumstances, DCCED offers the following review of the KGB revenue projections.

Property tax revenues. Estimates regarding the taxable value of property in the area proposed for annexation were provided by the KGB Assessment Department (Petition, p. 8). The mathematical computations in the Petition regarding property tax revenues are correct. Actual

revenues from property taxes levied in the area proposed for annexation will, of course, depend on the true (versus projected) mill rate levied and the certified assessed value. However, the KGB's projections are reasonable.[47]

Meyers Chuck

For purposes of its projections, DCCED adopts the 2005 value ($7,020,000) prepared by the KGB Assessment Department. Adjusted at a rate of 2 percent annually, the projected assessed value of taxable property in the area proposed for annexation in 2009 (the value at the time the property would become taxable) would be $7,598,674. The Petition projected an areawide property tax levy of 7.5 mills and a nonareawide levy of 1.2 mills. However, the KGB tax rates have dropped significantly since those projections were made. For Fiscal Year (FY) 2008, the KGB Assembly has adopted a resolution providing for an areawide levy of 6.8 mills, a level that is 9.3 percent less than the rate in the Petition. The Assembly also recently established the nonareawide levy at 0.9 mills for FY 2008. That figure is 25 percent less than the rate in place at the time of development of the Petition. DCCED used those more current rates in its projections.

Sales Tax and Transient Occupancy Tax. Estimates regarding the taxable value of sales in the area proposed for annexation were prepared by the KGB Finance Department (Petition, p. 8). The Finance Department projected that taxable sales in the area proposed for annexation would equal $848,960 in the first year in which the KGB's sales tax would be applicable.[48] At a tax rate of 2.5 percent, the tax was projected to generate $21,224 during that first tax year. Sales tax revenues were projected to grow 2 percent annually (Petition, p. 11).

Estimates regarding sales that would be subject to the KGB's 4 percent transient occupancy tax were prepared by the KGB Finance Department (Petition, p. 8). The Finance Department projected that such sales in the area proposed for annexation would equal $200,000 in FY 2006.

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[47] DCCED notes that AS 29.06.055(a) provides as follows regarding the levy of property taxes in a newly annexed area:

> Unless the annexation takes effect on January 1, the annexing municipality may not levy property taxes in an annexed area before January 1 of the year immediately following the year in which the annexation takes effect. However, notwithstanding other provisions of law, the municipality may provide services in the annexed area that are funded wholly or partially with property taxes during the period before the municipality may levy property taxes in the annexed area.

[48] The Petition at p. 8 states that projected annual taxable sales would be $1,456,560, but notes that the KGB code limits sales taxes to the first $1,000 for each transaction. Adjusting for that limitation, the KGB projects that revenues from a 2.5 percent tax would generate $21,224. DCCED extrapolated the $848,960 projection from those figures.

It was projected further that sales would grow by 2 percent annually. At a tax rate of 4 percent, the tax was projected to generate $8,489 during the first year in which the tax would apply.

Cruiseship at port in Ketchikan

During the period of public comment on the KGB petition, some cast doubt on the sales tax and transient tax projections. In its Reply Brief, the Borough stated as follows:

> 3 AAC 110.420(11)(b) requires the Borough to provide projected taxable sales in the territory proposed for annexation. Commenters note that there are no transient accommodations in Meyers Chuck and only limited retail. The Borough notes this for the record. However, its taxable sales projections for the territory as a whole are based on the best information available. The Borough also notes that sources of taxable sales tend to change over time based on market conditions and investment.

DCCED notes that four operations in Meyers Chuck are currently licensed by the State of Alaska to conduct business. Those are listed in Table 2.8 below.

Table 2.8 - Commercial Operations in Meyers Chuck with Current State Business Licenses

License Number	Business Name	Address	Expiration Date	North American Industry Classification System Code (Business Activity)
44125	Meyer Trading Company	#6 Beach Path, Meyers Chuck, AK 99903	12/31/2007	452990 General Merchandise Store
275578	Meyers Chuck Gallery of Fine Art	Box 22, Meyers Chuck, AK 99903	12/31/2007	711510 Independent Artists
289818	Provider Co	Harbor Point, Meyers Chuck, AK 99903	12/31/2007	713990 Recreation Industries
732468	School House Project	Island D, Meyers Chuck, AK 99903	12/31/2007	531110 Lessors of Residential Buildings and Dwellings

Source: DCCED <http://www.commerce.state.ak.us/occ/bussearch/BusMain.cfm>

DCCED notes further in Table 2.9 that the following thirteen former businesses licensees in Meyers Chuck are no longer licensed by the State of Alaska.

Table 2.9 - Former Commercial Operations in Meyers Chuck No Longer Holding Current State Business Licenses

License Number	Business Name	Address	Expiration Date	North American Industry Classification System Code (Business Activity)
6865	Campbell's Guide Service	General Delivery, Meyers Chuck, AK 99903	not stated	81 Other services
41380	Grizzly Bear Supply	General Delivery, Meyers Chuck, AK 99903	not stated	42 Wholesale trade
306827	MTC Wilderness Adventures	#6 Beach Path, Meyers Chuck, AK 99903	12/31/2005	713990 Recreation industry
165585	Aurora Borealis Glass	Old Growth Forest/Sunbeam Creek, Meyers Chuck, AK 99903	12/31/2004	327211 Flat glass manufacturing
272990	Go Fishing	PO Box 10, Meyers Chuck, AK 99903	12/31/2003	5416 5417 Professional services
272442	Ravenswood Retreat Lodge	PO Box 22, Meyers Chuck, AK 99903	12/31/2003	72 7211 Accommodations
222372	Icy Beaver Logging	#3 Island Way, Meyers Chuck, AK 99903	12/31/2001	11 1133 Forestry
246458	Blanco Salvage	General Delivery, Meyers Chuck, AK 99903	12/31/2000	48 4831 Transportation
254716	Go Fish	PO Box 10, Meyers Chuck, AK 99903	12/31/1999	54 Professional services
250917	Ravenswood	PO Box 22, Meyers Chuck, AK 99903	12/31/1999	81 Other services
217696	Scott Logging	P.O. Box 16, Meyers Chuck, AK 99903	12/31/1997	31 Manufacturing
185065	Pat Chapman	Box 9, Meyers Chuck, AK 99903	12/31/1995	61 Education services
170993	MCH-57	Back Chuck Flats, Meyers Chuck, AK 99903	12/31/1994	72 Accommodation and Food Services

Source: DCCED <http://www.commerce.state.ak.us/occ/bussearch/BusMain.cfm>

Currently, there are no licensed businesses in Meyers Chuck (and apparently none in the remainder of the area proposed for annexation) that provide transient accommodations. The license for the last business in Meyers Chuck to provide accommodations expired on December 31, 2003. Consequently, for purposes of its analysis of the feasibility and plausibility of the revenue projections, DCCED eliminated the projected transient accommodations tax revenues.

Moreover, businesses that provide transient accommodations are also generally subject to the KGB sales tax. Because DCCED eliminated the projected transient accommodates tax revenues, the sales tax revenues should be adjusted accordingly. Adopting the most conservative approach, DCCED reduced the KGB projected sales by $200,000 annually. That reduced the $848,960 projected taxable sales noted above to $648,960.

Further, in response to legitimate comments noted above about the limited commercial operations in the area proposed for annexation coupled with the small population of the area, DCCED takes the position that further reductions in the projected taxable sales appear to be warranted. Again, adopting a conservative stance, DCCED is using a preliminary projection of $300,000 in taxable sales in the area proposed for annexation. That figure is less than half the $648,960 adjusted figure above. At the KGB's current sales tax rate of 2.5 percent, DCCED projects that annexation will result in an increase in sales tax in the amount of $7,500 during the first year. Like the KGB's projections, DCCED's projections provide for a 2 percent annual increase in sales tax revenues. The KGB and others will have an opportunity to comment on that projection for purposes of DCCED's final report in this matter.

NFR. Based on State Fiscal Year 2007 funding levels, DCCED projects that the KGB would receive an additional $1,310,008 in NFR funding if the proposed annexation occurs.[49] That funding level corresponds to the KGB's "Estimate A" (high scenario) for NFR program funding.

The KGB's alternative "Estimate B" (low scenario) for NFR program funding is based on the average funding for State FY 1998 – 2001. Under that alternative scenario, DCCED projects that the KGB would receive an additional $241,192 NFR funding if the proposed annexation is granted.[50]

If the annexation were effective in March 2008, the first increase in NFR program funding would occur in State FY 2010. Although future funding for the NFR program is uncertain, it is reasonable to assume that funding under either scenario will increase by 2 percent annually due to inflation.

Payment in Lieu of Taxes (PILT). Based on State FY 2007 funding levels, DCCED projects that the KGB will receive an additional $40,994 in federal PILT funding as a result of annexation.[51]

If the annexation were effective in March 2008, the first increase in funding would occur in State FY 2009. Historically appropriations for this program have not always included adjustments for inflation. Consequently, DCCED made no provision for such in its projections.

Charges for Services. The KGB estimates annual charges for services in the amount of $1,000 as a result of annexation. That figure may be credible and plausible; however, given the limited development and the sparse population of the area proposed for annexation, DCCED has not included the figure in its projections.

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[49] In FY 2007, the KGB received $429,617 in NFR funding. Thus, based on FY 2007 funding levels, annexation would increase the KGB's funding under that program to $1,739,625 annually.

[50] Based on the lower funding scenario, the KGB would have received $78,928 in NFR funding rather than the $429,617 listed in the preceding footnote. Under the lower funding scenario, annexation would increase the overall level of funding to the KGB under the program by $241,192 to a total of $320,120.

[51] In FY 2007, the KGB received $565,969 in PILT funding. Thus, based on FY 2007 funding levels, annexation would increase the KGB's funding under that program to $606,963 annually.

Summary of Projected Revenues. Table 2.10 summarizes DCCED's revenue projections based on the assumption that annexation occurs in March 2008. Year 1 is the first full fiscal year following annexation (FY 2009 beginning July 1, 2008 and ending June 30, 2009).

Table 2.10 - DCCED Revenue Projections

Revenues	Year 1 (FY 2009)	Year 2	Year 3	Year 4
Property Tax (6.8 mills)	$0	$51,671	$52,704	$53,758
Nonareawide Tax (Library 0.9 mills)	$0	$6,839	$6,976	$7,115
Sales Tax	$7,500	$7,650	$7,803	$7,959
NFR ("Estimate A" high scenario)	$0	$1,310,008	$1,336,208	$1,362,932
NFR ("Estimate B" low scenario)	$0	$241,192	$246,016	$250,936
Federal PILT	$40,994	$40,994	$40,994	$40,994
Transient Occupancy Tax	$0	$0	$0	$0
Charges for Services	$0	$0	$0	$0
Total ("Estimate A"	$ 48,494	$ 1,417,162	$1,444,685	$ 1,472,758
Total ("Estimate B"	$ 48,494	$ 348,346	$354,493	$ 360,762

Subsection 7. The economic base of the borough after annexation.

Table 2.11 presents 2000 census data regarding the occupations of employed civilians in the KGB who were at least 16 years of age. Data for the entire state are also provided for comparison.

Table 2.11 - Occupation of Employed Civilian Population 16+ Years Old KGB Compared to Alaska 2000 Census Data

Occupation	Ketchikan Employed Civilian Population	Percentage of Ketchikan Employed Civilian Population	Percentage of Alaska Employed Civilian Population
Management, professional, and related occupations	2,003	28.5%	34.4%
Service occupations	1,194	17.0%	15.6%
Sales and office occupations	1,934	27.6%	26.1%
Farming, fishing, and forestry occupations	158	2.3%	1.5%
Construction, extraction, and maintenance occupations	777	11.1%	11.6%
Production, transportation, and material moving Occupations	951	13.6%	10.8%

In addition to the information provided above, the KGB *Economic Indicators 2005* provide the following more contemporary overview of the economic base of the proposed borough. At the time of the 2000 census, there were only three individuals living in Meyers Chuck who were at least 16 years of age and employed. Given the small population, limited development, and land-ownership characteristics of the area proposed for annexation,[52] the data above and the discussion below are reflective of the economic base of the area within the proposed expanded boundaries of the KGB. In the preceding subsection, DCCED provided information concerning current and past licensed businesses in Meyers Chuck.

> Ketchikan's population, employment and personal income grew through the early 1990's then declined through 2004. During this time, the impacts of the Ketchikan Pulp Co. mill closing and the general decline in Alaska's timber industry were partially offset by a healthy and stable fishing industry, growth in Ketchikan Shipyard employment, and a major increase in cruise ship visitor traffic and related gross business sales.
>
> . . . . Ketchikan's population and total employment increased substantially from 1990 through 1995, then decreased beginning in 1996. Population declined to approximately its 1990 level by mid-1999 increasing slightly in Census 2000, declining substantially again through 2004, below its 1990 level. Total employment declined to 95.2% of its 1990 level in 2000, with a further small decline through 2003. Insured wage and salary employment[53]. declined to 90.2% of its 1990 level in 2000, and to 81.7% of its 1990 level in 2004.
>
> From 1990 through 1995 total employment increased in spite of a gradual decline in manufacturing employment, such as in the timber industry. During this period, growth in other sectors of the local economy outweighed timber's decline. From 1995 through 1998, timber employment declined more severely; including the Ketchikan Pulp Co. mill closure a total of 558 manufacturing jobs were lost from 1995 through 1998, a reduction of 37% in this sector. Manufacturing employment increased in 1999, to almost its 1997 level, then declined again in 2000, averaging just 54.1% of is 1990 level in that year. Since 2000, manufacturing employment has declined still further, to 31.0% of its 1990 level.

---

52 The 2006 population was estimated by the State Demographer to be 16; the 2005 value of taxable property was estimated to be $7,020,000 (Petition, p. 8); 2005 estimated annual retail sales were projected to be $1,456,560 (*Id.*); 2005 estimated annual transient occupancy sales were projected to be $200,000 (*Id.*); and land ownership comprised largely (93.6 percent) of Tongass National Forest.

53 [Footnote "a" in original] "Total Employment," and "Total Personal Income", reported by the U.S. Department of Commerce, Bureau of Economic Analysis, includes all wage and salary employment and income, plus domestic workers, piece workers such as timber fallers, proprietors, fishers and military personnel. "Insured Wage and Salary Employment and Earnings", reported by the Alaska Department of Labor, includes only employees eligible for Unemployment Insurance, excluding domestic workers, piece workers, proprietors, fishers and military personnel.

The severe loss of manufacturing employment from 1995 through 1999 led to job loss in other sectors as well: Total insured wage and salary employment dropped by 956 from 1995 through 1998, a reduction of 12.0% recovering 99 jobs by 2000. The percentage loss of employment in manufacturing was somewhat mitigated by better performance of non-timber industries especially transportation equipment, which increased from 26 in 1996 to 114 in 2001. However, these modest gains have not offset the additional decline in the timber industry since 2000.

[T]otal personal income declined along with employment from 1996 through 1999 then increased substantially through 2003. Insured Wage and Salary Earnings[54] fell from its peak in 1995 to approximately its 1990 level in 2000 falling again through 2003, then increasing slightly over its 1990 level by 2004. But personal income from manufacturing decreased 38.7% from 1995 through 1998, and further decreased 43.4% through 2004.

Loss of total personal income to residents was mitigated by a substantial reduction in employment of non-residents, by a large increase in transfer payments, including unemployment insurance, and by a continuing increase in proprietors' income. From 1995 through 1999, total personal income declined only 3.1%, but increased 15.2% from 1999 through 2004. . . . In current dollars [total personal income per capita] increased from 1990 through 2004. In constant dollars, deflated using the Anchorage Consumer Price Index, All Urban Consumers (Anchorage CPI (U)), per capita income declined 5% from 1990 through 1999, but increased 13.6% from 2000 through 2003. A decline of 14.9% was indicated in average insured wage and salary earnings per wage earner from 1990 through 2000. In the private sector from 1990 through 2000, these earnings declined 17.7%, in the public sector 4.0%. From 2000 through 2004, private sector earnings have remained stable-to-declining, while public sector earnings have increased slightly.

Downtown Ketchikan

54 [Footnote a in original]

> Gross business sales are a leading indicator of local economic performance. These data are reported quarterly, and usually can be compiled within six to ten weeks of the end of the quarter reported. These data correlate generally over the long term with total personal income and more closely in the short term with insured wage and salary earnings. . . . Comparing gross business sales in 1995 with subsequent years indicates a sharp non-recurring decline after 1995; construction of Ketchikan High School greatly affected increased gross sales by contractors in 1995. For the years 1996 through 2000, the period encompassing the pulp mill closing, annual gross sales increased 13.9%. During the years 1996 through 2000 gross sales for the first two quarters increased 7.7%, but fell sharply in 2001 ending that year at only 87.9% of their 1996 level, a further decline was experienced in 2002, followed by a 14.4% increase in 2003 and a further 14.7% increase in 2004. Annual gross sales reflect the impact of increasing sales of goods and services to visitors; first and second quarter sales, less affected by visitors, were stable-to-declining from 1995 through 2003, but increased sharply in 2004 and 2005, an increase attributable to the second quarter only.

Historical Creek Street with retail shops

KGB *Economic Indicators 2005*, pp. vii – viii.

Subsection 8. Property valuations in the area proposed for annexation.

The 2007 assessed value of taxable property in the KGB is $1,230,155,200. Table 2.12 on the next page shows the KGB assessed values since 2000, including the 2007 figure. The table also shows the change from the prior year, both in absolute and relative terms.

While the assessed value of taxable property in the KGB dropped in 2002, 2003, and 2004, the value has since rebounded. The 2007 figure represents an all-time high, which is $186,547,900 (17.9 percent) greater than the 2001 figure.

Table 2.12 - Assessed Value of Property in the KGB 2000 – 2007

Year	Assessed Value	Change From Prior Year	Percentage Change From Prior Year
2000	$1,014,686,000	NA	NA
2001	$1,043,607,300	$28,921,300	2.85%
2002	$1,022,874,200	-$20,733,100	-1.99%
2003	$1,001,896,000	-$20,978,200	-2.05%
2004	$986,731,300	-$15,164,700	-1.51%
2005	$1,024,185,800	$37,454,500	3.80%
2006	$1,094,029,200	$69,843,400	6.82%
2007	$1,230,155,200*	$136,126,000	12.44%

* The 2007 figure is expected to increase by approximately $700,000 as a result of a certification of a supplemental assessment roll in mid-June.

Source for data above: KGB Assessor

The assessed values shown in the preceding table, of course, reflects only the value of taxable property. Excluded from the figures is the value of property that is exempt from taxation under State law (AS 29.45.030). Also excluded is the value of property that the KGB, in its discretion, has exempted from taxation as allowed by AS 29.45.050. Optional exemptions granted by the KGB are set out in Section 45.11.025 of the KGB Code of Ordinances. Those include, for example, business inventories, certain properties used exclusively for community purposes, and certain properties used in manufacturing. As allowed by AS 29.45.055, the KGB also levies a flat tax on boats and vessels.

Given the broad discretion among municipalities in terms of the optional property tax exemptions allowed under AS 29.45.050, Commerce is required by AS 14.17.510 and AS 29.60.030 to determine the "full and true value" of property in all organized boroughs and some cities. Those determinations provide for uniform comparisons that are utilized in funding calculations under Alaska's education foundation formula. The State Assessor describes the full value determination as follows:

> In brief, the Full Value Determination (FVD) is the sum total of the full and true value established for every piece of taxable real and personal property within a municipality's boundary regardless of any optional exemption which may have been enacted by local ordinance. AS 29.45.110 specifies that the full and true value is the "estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with the prevailing general price levels." This section also requires the assessor to assess property at its full and true value as of January 1 of the assessment year.

Alaska Taxable 2006, pp. 7 – 8 (January 2007).

The State Assessor listed the 2006 KGB assessed value of taxable property at $1,018,847,600 and the full value at $1,255,171,900. The full value figure is $236,324,300 (23.2 percent) greater than the assessed value.[55]

Table 2-13 below compares the 2006 full and true value of taxable property among all 16 organized boroughs. In per capita terms, the 2005 full value of taxable property in the KGB was $89,790 per resident. Comparable data for other boroughs ranged from a high of $1,502,630 per resident in the North Slope Borough to $33,033 per resident in the Lake and Peninsula Borough. The average for all boroughs was $105,505 per resident. The median figure is $88,601. The figure for the KGB is $1,189 (1.3 percent) greater than the median.

Table 2.13 - 2006 Full Value Figures for All Organized Boroughs in Alaska (ranked in descending order of per capita value)

Borough	2006 Full Value Determination	Population	Per Capita Full Value
North Slope Borough	$10,695,169,950	6,894	$1,551,374
Bristol Bay Borough	$157,644,400	1,073	$146,919
City and Borough of Juneau	$4,249,188,100	31,193	$136,222
Haines Borough	$272,988,900	2,207	$123,692
Kenai Peninsula Borough	$6,172,932,290	51,224	$120,509
Denali Borough	$197,526,000	1,823	$108,352
City and Borough of Sitka	$945,701,100	8,947	$105,700
Municipality of Anchorage	$28,833,782,720	278,241	$103,629
Matanuska-Susitna Borough	$7,507,998,500	74,041	$101,403
KGB	$1,255,171,900	13,125	$95,632
City and Borough of Yakutat	$53,120,600	619	$85,817
Kodiak Island Borough	$1,134,159,100	13,638	$83,162
Fairbanks North Star Borough	$7,267,077,780	87,650	$82,910
Northwest Arctic Borough	$385,637,200	7,323	$52,661
Aleutians East Borough	$101,343,287	2,659	$38,113
Lake and Peninsula Borough	$55,133,500	1,620	$34,033
Total	$69,284,575,327	582,277	$118,989

Source: *Alaska Taxable 2006*, pp. 44 – 45, DCCED (January 2007).

The KGB ranks tenth among the sixteen organized boroughs in terms of per capita value of taxable property. However, those figures are skewed by various factors. In particular, the North Slope Borough, with nearly $10.7 billion in taxable property (97.7 percent of which is related to the oil industry) and more than 15 percent of the total full value for all organized boroughs in

[55] The assessed value listed in Alaska Taxable 2006 is different from the figure provided by the KGB. The disparity is presumed to be the result of inclusion of a supplemental tax roll in the figure from the KGB.

Alaska but with only 1.2 percent of the population of all organized boroughs, has a per capita figure more than 10 times that of the second-ranked borough. Additionally, four boroughs (Denali, Northwest Arctic, Aleutians East, and Lake and Peninsula) lack local assessment data because they do not levy property taxes.

Table 2.14 provides full value comparisons of eleven organized boroughs, exclusive of the North Slope Borough and the four boroughs that do not levy property taxes. With a per capita figure of $95,632, the KGB is just slightly below the average of $102,943 for the 11 boroughs listed in the table below.

Table 2.14 - 2006 Full Value Figures for 11 Organized Boroughs in Alaska (ranked in descending order of per capita value)

Borough	2006 Full Value Determination	Population	Per Capita Full Value
Bristol Bay Borough	$157,644,400	1,073	$146,919
City and Borough of Juneau	$4,249,188,100	31,193	$136,222
Haines Borough	$272,988,900	2,207	$123,692
Kenai Peninsula Borough	$6,172,932,290	51,224	$120,509
City and Borough of Sitka	$945,701,100	8,947	$105,700
Municipality of Anchorage	$28,833,782,720	278,241	$103,629
Matanuska-Susitna Borough	$7,507,998,500	74,041	$101,403
KGB	$1,255,171,900	13,125	$95,632
City and Borough of Yakutat	$53,120,600	619	$85,817
Kodiak Island Borough	$1,134,159,100	13,638	$83,162
Fairbanks North Star Borough	$7,267,077,780	87,650	$82,910
Total	$57,849,765,390	561,958	$102,943

Source: *Alaska Taxable 2006*, pp. 44 – 45, DCCED (January 2006).

Subsection 9. Land use in the area proposed for annexation.

As noted above, it is estimated that 93.6 percent of the land in the area proposed for annexation is part of the Tongass National Forest. The KGB describes ongoing and potential land use activities in the area proposed for annexation as follows:

> As the territory proposed for annexation develops, its ties to Ketchikan and the existing Borough will strengthen further. For example, Federal land, as represented by the Tongass National Forest and Misty Fjords National Monument and managed by the United States Forest Service (USFS), comprises the vast majority of land in the area proposed for annexation. This Federal land supports a multitude of uses and leases consistent with the agency's mandate including

timber harvest, mining, and the ever increasing commercial tourism market. In almost all cases, Ketchikan will play a key role in providing support to these activities while also helping to guarantee that these activities provide a maximum of benefits to community residents.

. . . .

The USFS also administers a number of use permits for other commercial uses of the National Forest within the annexed area. The majority of these permits are for commercial tourism uses that have facilities based in Ketchikan (*See Map Figure 7*). For example, the USFS documents that approximately 10,000 people fly into and land on lakes within Misty Fjords National Monument each year. It is estimated that there are perhaps four times this many visitors (up to 40,000 people) who fly into the National Monument for general flight seeing or saltwater landings. Nearly all of these flights originate in Ketchikan.

A map showing property ownership and land use is included in Exhibit H of the Petition.

In addition to forest related activities, the territory proposed for annexation contains mineral deposits that, when developed, will directly impact Ketchikan. Presently, there are three principal areas that will likely see large-scale commercial mining development in the future (See Map Figure 7). The largest of these potential mines is located at Union Bay on the north-side of the Cleveland Peninsula which includes a camp supporting active and on-going exploration in the area. Other areas include Duke Island and Quartz Hill (located within Misty Fjords). Exploration alone on these claims generates substantial local sales and revenue to the Ketchikan economy.

For example, recent exploration on Duke Island generated $911,299 in local Ketchikan sales, mostly for transportation services. 2005 exploration expenditures are estimated to be $260,175. Wholesale development at any of these sites, although at least 15-20 years in the future, could pose significant planning considerations within the Ketchikan community in terms of land use, housing, transportation, employment, and other important items of community interest. Given the proximity of Meyers Chuck to Union Bay, the potential

> impacts that development of the mine could pose to the community, and the likelihood that Ketchikan would be the primary service provider to the mine, it is sensible to include both Meyers Chuck and Union Bay within the same regional Ketchikan Gateway Borough government for the purposes of land use planning and administration.
>
> The State of Alaska also leases land, or will likely develop land, for a variety of commercial, recreational and transportation uses that are logically integrated into the Borough's cultural, social, and economic sphere of interest. One of its largest commercial permits is for a dock facility in Misty Fjords (See Map Figure 7). The facility accommodates approximately 10,000 visitors a year who travel there from Ketchikan via float plan and/or boat.' In addition, there are an estimated 10,000 annual commercial lake landings and uncounted recreational lake landings in Misty Fjords National Monument, the overwhelming majority of which originate in Ketchikan.

Petition, pp. 60 – 62.

Like the area proposed for annexation, most of the land within the existing boundaries of the KGB are part of the Tongass National Forest. Contemporary KGB planning documents offer the following overview of land ownership and management within the existing KGB:

> The Ketchikan Gateway Borough covers approximately 1,752 square miles of land. The primary landowners or managers are the U.S. Forest Service (USFS), (Ketchikan Ranger District); the State of Alaska Department of Natural Resources (DNR), Division of Lands; the Alaska Mental Health Trust Authority; the Ketchikan Gateway Borough; the University of Alaska; and private (including Native Corporations). See *Map Figures 2.9 and 2.10*, Generalized Borough-wide Land Ownership-South and Generalized Borough-wide Land Ownership-North and *Map Figure 2.11*, Land Ownership Detail. Issues pertaining to specific land ownership rights persist since the reevaluation and reapportionment of the Alaska Mental Health Trust Authority lands approximately three years ago. Clearly defining some property boundaries and ownership in the Borough is problematic. The borough's 1996 Comprehensive Plan provides the following distribution of ownership in the borough:
>
> | | |
> |---|---|
> | Federal | 94.63% |
> | Native | 2.87% |
> | State | 1.41% |
> | Private | 0.78% |
> | Borough | 0.38% |
> | City of Ketchikan | 0.01% |

Ketchikan Coastal Management Program, Volume 2: Final Draft Plan Amendment, p. 24, December 7, 2005.

The land-ownership characteristics reflected above are typical for regions in southeast Alaska. Details of land ownership and use within the KGB are provided in the KGB's *Coastal Management Program Final Draft Plan Amendment.*

Subsection 10. Existing and reasonably anticipated industrial, commercial, and resource development.

At the time of the 2000 census, it was reported that 7,017 KGB residents were at least 16 years of age and employed in the civilian workforce. Table 2.15 presents 2000 census data regarding the specific industries in which those workers were employed. Data for the entire state are also provided for comparison.

Table 2.15 - Occupation by Industry of Employed Civilian Population 16+ Years Old KGB Compared to Alaska 2000 Census Data

Industry	Ketchikan Employed Civilian Population	Percentage of Ketchikan Employed Civilian Population	Percentage of Alaska Employed Civilian Population
Agriculture, forestry, fishing and hunting, and mining	330	4.7%	4.9%
Construction	557	7.9%	7.3%
Manufacturing	415	5.9%	3.3%
Wholesale trade	159	2.3%	2.6%
Retail trade	762	10.9%	11.6%
Transportation and warehousing, and utilities	764	10.9%	8.9%
Information	179	2.6%	2.7%
Finance, insurance, real estate, and rental and leasing	378	5.4%	4.6%
Professional, scientific, management, administrative, and waste management services	399	5.7%	7.6%
Educational, health and social services	1,323	18.9%	21.7%
Arts, entertainment, recreation, accommodation and food services	654	9.3%	8.6%
Other services (except public administration)	321	4.6%	5.6%
Public administration	776	11.1%	10.7%

Table 2.16 below shows the classification (e.g., private wage and salary, and government) of the 7,017 KGB civilian workers in the KGB at the time of the last census. Data for the entire state are also provided for comparison. The figures for the KGB are virtually identical to those of the state as a whole.

Table 2.16 - Class of Worker of Employed Civilian Population 16+ Years Old KGB Compared to Alaska 2000 Census Data

Classification	Ketchikan Employed Civilian Population	Percentage of Ketchikan Employed Civilian Population	Percentage of Alaska Employed Civilian Population
Private wage and salary workers	4,545	64.8%	64.9%
Government workers	1,886	26.9%	26.8%
Self-employed workers in own not incorporated business	566	8.1%	8.0%
Unpaid family workers	20	0.3%	0.3%

Existing and reasonably anticipated development in the KGB is summarized in the following excerpt from the KGB *Economic Indicators 2005*. DCCED emphasizes that the summary includes a discussion of the Gravina Bridge construction, funding for which is clearly uncertain.[56] Notwithstanding that uncertainty, the following summary provides relevant insights into the existing and future economic outlook for the greater Ketchikan area.

> Ketchikan's outlook for future growth and development provides a marked contrast to recent years' decline. Ketchikan's current short-term outlook includes the $315 million Gravina Bridge construction project, to begin in 2007 and continue for three to four years.
>
> It also includes the $65 million Ketchikan Shipyard Completion project, also scheduled to begin by 2007 and continue for approximately seven years. These two major public sector construction projects are unprecedented in size for Ketchikan, and will have a significant short-term impact on its population, employment and personal income.
>
> During the Ketchikan Shipyard Completion project, the shipyard's lessee and operator plans concurrent development of the yard's manufacturing capabilities. This major improvement will begin with construction of the

[56] On June 3, 2007, the *Alaska Journal of Commerce* published an account relating to the project. The article quoted Malcolm Menzies, the Alaska Department of Transportation's Southeast regional director as stating that "The project does lack for complete financing." Mr. Menzies was further quoted as stating, "Realistically, the department doesn't think any more earmarks will come through for the bridge. It's always possible to get general fund money to build it. It will be a struggle to get the money to build the bridge."

"E-craft", an innovative vessel type now under contract with the U.S. Navy and the Matanuska-Susitna Borough. The Ketchikan Shipyard has also become one of the three U.S. West Coast yards qualified for U.S. Army shiprepair, and has to date completed its first refit contract on U.S. Army LSV landing ship. The yard has also just become a certified HUB-zone contractor, as a result of new federal legislation, which also extends this advantage to other Ketchikan firms. Following the yard's completion, with its expanding shiprepair and newbuilding orderbook, the operator expects to increase full-time employment from the present 100 jobs to over 300.

Cruise ships docked at Ketchikan

Concurrent development of long-term growth opportunities facilitated by the Gravina bridge project has not yet begun, however, it is clear that the bridge can provide basic access necessary for development of the 120-acre South Gravina Fisheries Industrial Park, outlined in the Ketchikan Gateway Borough's Central Gravina and Airport Reserve Area Plan. The Gravina bridge will also facilitate expansion of Ketchikan International Airport's role in the economy of southern Southeast Alaska, enabling expansion of its use by general aviation and airmotive services.

Ketchikan's visitor industry is also capable of future growth, however its near-term outlook includes a decline of about 100,000 cruise visitors in 2006 and possible stabilization beyond that year. This adjustment results from competition from other ports, including Prince Rupert and Icy Strait Point, increasing use of Seattle as a cruise port of embarkation, which reduces foreign-flag ship's availability in other U.S. ports, and an adjustment in cruise ship deployments to Alaska. Ketchikan's current port berthage and anchorage are also fully utilized on certain days of the week during the peak cruise season.

KGB *Economic Indicators 2005*, pp. viii - ix.

Subsection 11. Personal income of residents in the area to be annexed and in the borough.

The U.S. Department of Commerce Bureau of Economic Analysis gathers personal income data. The Alaska Department of Labor characterizes personal income as "a good measure of economic wellbeing because it includes income generated through work and investments, as well as transfer payments (essentially government payments)." (*Economic Trends,* p. 4, Alaska Department of Labor and Workforce Development, November 2005.) The Bureau of Economic Analysis' formal definition of *personal income* is:

> [T]he income received by all persons from all sources. Personal income is the sum of net earnings by place of residence, rental income of persons, personal dividend income, personal interest income, and personal current transfer receipts. Net earnings is earnings by place of work (the sum of wage and salary disbursements (payrolls), supplements to wages and salaries, and proprietors' income) less contributions for government social insurance, plus an adjustment to convert earnings by place of work to a place–of–residence basis. Personal income is measured before the deduction of personal income taxes and other personal taxes and is reported in current dollars (no adjustment is made for price changes).

Table 2.17 shows the per capita personal income of residents of the KGB from 1969 to 2005. Comparable data are provided for the entire state. Since 1985, per capita income in the KGB has been higher than the figure for all of Alaska. In 2005, the latest year for which data are available for the KGB, per capita personal income in the KGB was 13.3 percent higher than it was in the entire state.

The U.S. Department of Commerce, Bureau of Economic Analysis, offered the following observations concerning the 2005 data for the KGB.

Table 2.17 - Per Capita Personal Income KGB and Alaska 2005 – 1969

Year	KGB	Alaska	Difference (KGB - Alaska)	Relative Difference (difference / Alaska)
2005	$40,291	$35,564	$4,727	13.3%
2004	$38,337	$33,889	$4,448	13.1%
2003	$36,922	$32,705	$4,217	12.9%
2002	$36,018	$32,351	$3,667	11.3%
2001	$36,576	$31,712	$4,864	15.3%
2000	$34,384	$29,865	$4,519	15.1%
1999	$31,799	$28,100	$3,699	13.2%
1998	$31,506	$27,560	$3,946	14.3%
1997	$31,258	$26,759	$4,499	16.8%
1996	$31,192	$25,805	$5,387	20.9%
1995	$31,377	$25,504	$5,873	23.0%
1994	$30,397	$25,050	$5,347	21.3%
1993	$30,029	$24,538	$5,491	22.4%
1992	$28,415	$23,786	$4,629	19.5%
1991	$27,849	$23,161	$4,688	20.2%
1990	$28,258	$22,804	$5,454	23.9%
1989	$25,241	$21,628	$3,613	16.7%
1988	$23,303	$19,907	$3,396	17.1%
1987	$22,710	$19,357	$3,353	17.3%
1986	$21,643	$19,807	$1,836	9.3%
1985	$20,434	$20,321	$113	0.6%
1984	$18,109	$19,503	-$1,394	-7.1%
1983	$18,164	$19,174	-$1,010	-5.3%
1982	$17,610	$18,538	-$928	-5.0%
1981	$15,978	$16,569	-$591	-3.6%
1980	$16,447	$14,866	$1,581	10.6%
1979	$14,146	$13,219	$927	7.0%
1978	$12,457	$12,501	-$44	-0.4%
1977	$11,321	$12,405	-$1,084	-8.7%
1976	$10,518	$12,125	-$1,607	-13.3%
1975	$8,734	$10,683	-$1,949	-18.2%
1974	$8,603	$8,148	$455	5.6%
1973	$7,724	$6,823	$901	13.2%
1972	$6,384	$5,956	$428	7.2%
1971	$5,510	$5,600	-$90	-1.6%
1970	$5,100	$5,263	-$163	-3.1%
1969	$4,556	$4,769	-$213	-4.5%

Source: U.S. Department of Commerce, Bureau of Economic Analysis <http://www.bea.gov/regional/reis/drill.cfm>

> In 2005 Ketchikan Gateway Borough had a per capita personal income (PCPI) of $40,291. This PCPI ranked 5th in the state and was 113 percent of the state average, $35,564, and 117 percent of the national average, $34,471. The 2005 PCPI reflected an increase of 5.1 percent from 2004. The 2004-2005 state change was 4.9 percent and the national change was 4.2 percent. In 1995 the PCPI of Ketchikan Gateway Borough was $31,377 and ranked 3rd in the state. The 1995-2005 average annual growth rate of PCPI was 2.5 percent. The average annual growth rate for the state was 3.4 percent and for the nation was 4.1 percent.

U.S. Department of Commerce http://www.bea.gov/regional/bearfacts/lapipdf.cfm?yearin=2005&fips=02130&areatype=02130.

Subsection 12. The need for and availability of employable skilled and unskilled persons to serve the borough as a result of annexation.

Table 2.18 compares 2000 census data regarding educational attainment of the KGB population and population of the entire state (25 years of age and older). The data show that a slightly higher percentage of KGB residents completed high school, while a slightly lower percentage received a bachelor's degree or higher.

Tabled 2.18 - Educational Attainment of Population 25+ Years Old
KGB Compared to Alaska
2000 Census Data

Educational Attainment	KGB Population 25+ Years Old	Percent of KGB Population 25+ Years Old	Percent of Alaska Population 25+ Years Old
Less than 9th grade	205	2.3%	4.1%
9th to 12th grade, no diploma	727	8.1%	7.5%
High school graduate (includes equivalency)	2,673	29.7%	27.9%
Some college, no degree	2,961	32.9%	28.6%
Associate degree	619	6.9%	7.2%
Bachelor's degree	1,289	14.3%	16.1%
Graduate or professional degree	525	5.8%	8.6%

Given that the KGB has operated successfully for nearly forty-four years, it is axiomatic that local residents have the employable persons needed to operate the proposed consolidated borough.

Subsection 13. Conclusion: The economy within the proposed borough boundaries includes the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.

The foregoing analysis of the reasonably anticipated functions, expenses, and income of the proposed expanded borough; the ability of the proposed expanded borough to generate and collect local revenue; and the feasibility and plausibility of the anticipated operating and capital budgets reflect a fiscally viable proposal. The economic base, property valuations, land use, existing and reasonably anticipated development, and personal income are evidence of an economy that is fully capable of supporting the proposed expanded borough government. Lastly, the availability of employable persons to serve the proposed expanded borough reflects positively on the region. Accordingly, DCCED concludes that the standard set out in 3 AAC 110.180 regarding the human and financial resources is fully satisfied by the Petition.

Section G. Whether the proposed new boundaries of the borough conform generally to natural geography; include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level; and are otherwise proper.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.190 state as follows:

> (a) The proposed boundaries of the borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including
>
> (1) land use and ownership patterns;
>
> (2) ethnicity and cultures;
>
> (3) population density patterns;
>
> (4) existing and reasonably anticipated transportation patterns and facilities;
>
> (5) natural geographical features and environmental factors; and
>
> (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing borough, or that would create enclaves in the annexing borough, does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(c) Absent a specific and persuasive showing to the contrary, the commission will not approve annexation of territory to a borough extending beyond the model borough boundaries developed for that borough.

(d) The commission will consult with the Department of Education and Early Development in the process of balancing all standards for annexation to a borough.

(e) If a petition for annexation to a borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough.

Subsection 2. The proposed boundaries of the borough conform generally to natural geography.

In 1999, the LBC reached the following conclusions regarding whether the new boundaries proposed at that time conformed generally to natural geography.

> The expanded northern boundaries sought by the Borough followed the centerline of Ernest Sound to Eaton Point where the boundaries then followed the Wrangell Ranger District boundary to the U.S./Canada border. The Wrangell Ranger District boundary follows the divide between the drainage for Burroughs Bay and Behm Canal to the south and the drainage for Bradfield Canal and Ernest Sound to the north.
>
> The eastern boundaries proposed by the Borough followed the U.S./Canada border, except for the exclusion of Hyder. The Hyder exclusion followed the thread of the Salmon River from its mouth to the U.S./Canada border. The Borough's proposed new southern boundaries conformed to the southern boundaries of the State of Alaska. The western boundaries followed various natural waterways (e.g., along the mid-point of Clarence Strait), with the exception of the exclusion of Meyers Chuck.
>
> . . . .

> Lastly, the Commission notes that the boundaries proposed by the Borough for the exclusion of Hyder followed the thread of a river. Typically, the Commission considers the standard relating to natural geography to be best served when borough boundaries do not divide a natural drainage, as was proposed in this case.
>
> **Conclusion:** The exclusion of Hyder and Meyers Chuck from the annexation proposal precludes the satisfaction of the requirement that the Borough conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level.

LBC 1999 Statement of Decision, pp. 6-7.

In developing its current proposal, the KGB responded to the 1999 concerns of the LBC regarding the standard at issue. Specifically, the current proposal includes Meyers Chuck. Moreover, the boundaries of the Hyder exclusion have been modified to conform more closely to natural geography. The KGB states as follows in its current proposal:

> [T]he LBC noted, among other items, that the previously proposed boundaries near Hyder followed the thread of the Salmon River and constituted the division of a natural drainage inconsistent with the Commission's interpretation of the natural geography standard. . . .
>
> The eastern boundary follows the Canadian border south to the boundary separating Misty Fjords National Monument from unrestricted National Forest lands (approximately 205 square miles) surrounding Hyder. This proposed boundary is based upon long recognized boundaries which conform to natural geography (based on watersheds and glaciers).

Petition, p. 67.

Earlier this year, the LBC granted a petition for incorporation of the proposed Skagway borough. In its deliberations on that proposal, the LBC attributed significance to the boundaries of National Oceanic and Atmospheric Administration's weather forecast zones as an indicator of natural geography. Specifically, the LBC stated:

> [W]e place significant weight on the fact that the boundaries of the proposed Skagway borough conform generally to those of the "Taiya Inlet - Klondike Highway" weather forecast zone (Zone 18) as defined by the National Oceanic and Atmospheric Administration's National Weather Service. We find those zones to be reflective of natural geography.

Upon Remand in the Matter of the Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough, LBC, p. 45 (January 11, 2007).

A map showing the weather forecast zones for the area proposed for annexation and adjoining areas is included in Appendix D. It is notable that Meyers Chuck, Union Bay, and Ketchikan are in same zone (Zone 28).[57] The area generally described as the Misty Fjords is identified as a separate forecast zone (Zone 29). In DCCED's view, the inclusion of multiple forecast zones in a single borough does not violate of the requirement for general conformance with natural geography. Many existing boroughs in Alaska include multiple forecast zones. Lastly, DCCED notes that Wrangell, Petersburg, and Kake are together in Zone 26 to the north.

DCCED finds from the circumstances above that the proposed new boundaries of the KGB conform generally to natural geography.

Subsection 3. The proposed boundaries of the borough include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level.

The provisions of 3 AAC 110.190 require the LBC to evaluate whether the proposed expanded borough boundaries include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. DCCED maintains that it is reasonable to address the standard in the context of borough government as outlined in Part II-A and Part II-C of this report. In Part II-A of this report, DCCED pointed out that the Alaska Supreme Court stated in *Mobil Oil* that our Constitution encourages the creation of boroughs. For reasons expressed earlier, DCCED takes the position that the same principle applies to borough annexations. That is, DCCED views the Alaska Constitution as encouraging the extension of borough government through annexation. In Part II-C of this report, DCCED emphasized that Alaska's Constitution requires the entire state to be divided into boroughs, organized or unorganized. As further outlined in that part of the report, the Alaska Supreme Court stated in *Mobil Oil* that boroughs were meant to "encompass lands with no present municipal use." Given the principles of borough government in article X, sections 1 and 3 of the Alaska Constitution, this aspect of the standard must be broadly construed. It is notable in that regard, that the LBC refined the standard set out in 3 AAC 110.190(a) in the amendments adopted by the LBC on April 30, 2007. As amended, the new standard in 3 AAC 110.190(a) reads (underlined text was added; bracketed text was deleted):

> The proposed **<u>expanded</u>** boundaries of the borough must conform generally to natural geography[,] and must include all land and water necessary to provide the [FULL] development of essential **<u>municipal</u>** [BOROUGH] services [ON AN EFFICIENT, COST-EFFECTIVE LEVEL].

The 4,701-square-mile area proposed for annexation is inhabited by an estimated 16 individuals. Overall, the area has an extremely low population density (1 person per 294 square miles or, stated differently, 0.003 persons per square mile). However, 11 individuals – nearly 70 percent

[57] DCCED notes that a significant part of the eastern portion of Prince of Wales Island is also included in Zone 28. DCCED does not take the view that this circumstance is evidence that the eastern part of Prince of Wales Island is more geographically linked to Ketchikan than it is to the remainder of Prince of Wales Island. A number of forecast zones overlap the existing boundaries of organized boroughs.

of the residents of the area proposed for annexation – live within the 0.8-square mile Meyers Chuck census designated place. The population density of that census designated place is 1 person per 0.07 square miles or, stated differently, 14 persons per square mile.

There are limited needs for municipal services in the sparsely populated area proposed for annexation, which is comprised largely of federally owned lands. However, those limited needs are fairly concentrated in the Meyers Chuck area. Because of that concentration, DCCED finds that services can be delivered *within the area proposed for annexation* by the KGB in a reasonably efficient, cost-effective manner. In the context of the proposed expanded boundaries of the KGB (6,453 square miles), DCCED concludes that the KGB can deliver services in an efficient and cost-effective manner.

The provisions of 3 AAC 110.190(b) establish a rebuttable presumption that an annexation which would create enclaves in the annexing borough does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level. Stated another way, the LBC lawfully must be wary and skeptical when evaluating an annexation proposal that would create enclaves.

As noted throughout this report, the KGB proposal would create a 205-square mile enclave in and around Hyder. Thus, the evidentiary presumption set out in 3 AAC 110.190(b) requires a higher level of proof (i.e., "a specific and persuasive showing") that the proposed expanded boundaries of the KGB meet the "all-land-and-water-necessary" part of the boundaries standard.

The KGB takes the position that the 205-square mile enclave "should eventually be included into the Borough, [but] the current cultural, social, economic and other ties between this area and the Borough does not justify inclusion at this time." (Petition, p. 82.) The KGB Petition includes a seven-page exhibit (Exhibit K) offering justification for the initial exclusion of Hyder from the proposed expanded boundaries of the KGB. In sum, the KGB offers the following arguments in favor of the exclusion of Hyder from its current annexation proposal.

1. More than four decades of boundary decisions offer clear precedence for incremental extension of borough boundaries or boundaries that reflect compromise. The KGB cites the following as examples where borough boundary decisions have reflected such policies.

    - the 1963 incorporation of the KGB, in which case the LBC approved boundaries encompassing approximately just 27 percent of the area within boundaries defined by the Legislature;

    - the 1989 annexation of territory to the City and Borough of Juneau (CBJ), in which case the LBC allowed the CBJ to annex the Greens Creek Mine, which represented a small portion of the area within the CBJ's model borough boundaries;

    - the 1990 incorporation of the Denali Borough, in which case the LBC approved boundaries that did not include all of the area within the region's model boundaries;

- the 1992 drawing of model borough boundaries for the KGB, in which case the LBC excluded the Annette Island Indian Reservation;

- the 1998 approval of the petition to consolidate the City of Haines and the Haines Borough, in which case the LBC approved boundaries that did not include all territory within the model borough boundaries for the area;

- the 2001 approval of the petition for consolidation of the City of Ketchikan and the KGB, in which case the LBC determined that the existing borough boundaries (encompassing approximately 27 percent of the area within the KGB's model boundaries) met applicable standards.

2. The boundaries of the proposed Hyder enclave have been redefined in the pending KGB annexation proposal to meet objections expressed by the LBC in the 1999 decision that the proposed boundaries did not conform generally to natural geography.

3. While Hyder is appropriately included in the KGB's model borough boundaries, which represent a long-term target, the present-day cultural, social, and economic ties between Hyder and the area within the proposed new KGB boundaries are too attenuated to include Hyder within the KGB at this time. Residents of Hyder depend largely on Stewart, Canada for economic services, transportation, communications, and other needs. (Petition, pp. 82 - 86.)

The KGB takes the position that while "there are no indications that the strengthening of ties [between Ketchikan and Hyder] will occur in the near term, at some future time conditions will change that will justify the inclusion of Hyder into the [KGB]." (Petition, p. 87.) The KGB offers four "examples of when phasing-in of Hyder to the [KGB] should be reconsidered and possibly warranted." (*Id.*) The KGB emphasizes, however, that the examples are not "meant to present specific 'triggers' for annexation but to describe the circumstances and context within which annexation would be reexamined." (*Id.*) The four examples are:

- If Hyder residents desire to form a political subdivision of the State, Hyder might be annexed and included within a borough service area.
- If Hyder experiences significant economic development (e.g., tourism and/or mineral development), there may be an increased need for municipal services (e.g., roads, harbors, and utilities).
- If residents of Hyder desire municipal services to address development concerns and health issues, or to provide other services that benefit the community (e.g., regulation of growth and development relating to commercial tourism).
- If transportation, communication, and commerce ties between Hyder and Ketchikan improve significantly. In that respect, the KGB states that Hyder might be annexed when regular and frequent transportation service is established between Ketchikan and Hyder.

Currently, the Haines Borough is the only organized borough in Alaska in which enclaves exist. Specifically, the boundaries of the Haines Borough surround a 892.2 acre (1.4 square mile) area encompassing Klukwan, located about 21 miles north of Haines along the Haines Highway.

Public policy issues relating to the Klukwan enclave have been examined previously by the LBC. Most notably, the LBC addressed the matter in *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*. That report was prepared in response to an assignment from the 2003 Legislature under Section 1 Chapter 83 SLA 2003. While issues relating to Klukwan are addressed in multiple places throughout the 330-page report, the three-page excerpt from that report included as Appendix E of this report reasonably reflects the policy issues involved with the existence of Klukwan as an enclave surrounded by the Haines Borough.[58]

The public policy issues that exist regarding the Klukwan enclave would not exist with respect to the proposed Hyder enclave, at least not initially. The Klukwan enclave and the proposed Hyder enclave are distinguishable in fundamental respects. For example, the majority of students who attend the Klukwan School live in the Haines Borough. Some Klukwan students also attend schools in the Haines Borough. In contrast, no Hyder students attend KGB schools, and no KGB students attend the Hyder School. Additionally, Klukwan, located 21 miles from Haines along the Haines Highway, relies on Haines for much of its commercial services, communications, and other needs. In contrast, Hyder presently has closer social, cultural, and economic ties to Stewart, B.C., than it does to Ketchikan.

Creating a Hyder enclave would have no initial effect on the structure for delivery of local services to the community of Hyder. Moreover, DCCED finds 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" within the proposed new boundaries of the KGB.

However, DCCED recognizes that circumstances might arise in which the existence of the enclave would trigger significant public policy concerns. In particular, such concerns would arise in the context of the delivery of education services in the event a Prince of Wales Island Borough were organized along the model boundaries for the Prince of Wales Island area.

Education services are currently provided in Hyder by the Southeast Island Regional Educational Attendance Area (REAA). The Southeast Island REAA also provides education services to all communities within the Prince of Wales Island model borough boundaries, except the three communities organized as home-rule or first-class cities.[59]

As reflected in Table 2.19 on the following page, school enrollment in Hyder during the 2006/2007 school year totaled 18 students, or just under 10 percent of the total enrollment in the Southeast Island School District. If a Prince of Wales Island Borough were formed, that borough would be required to provide areawide education within a single borough school district. At that point, the 205-square mile Hyder enclave would be the only remnant of the Southeast Island REAA. It seems evident that the remnant Southeast Island REAA would no

[58] Readers interested in exploring the enclave issue further are encouraged to review the complete report on school consolidation. That report is available from DCCED and may also be viewed online at <ftp://ftp.dcbd.dced.state.ak.us/DCBD/School_Consolidation_Study/Final_Report/School_Consolidation_Rpt.pdf>.

[59] Those are the City of Craig, City of Klawock, and City of Hydaburg.

Table 2.19 - 2006/2007 School Year Enrollment in the Southeast Island Regional Educational Attendance Area

School	Pre-Elem	KG	1	2	3	4	5	6	7	8	9	10	11	12	Total KG-12	Total PE-12
Hollis School	0	0	0	0	0	0	1	0	5	0	4	2	1	0	**13**	**13**
Howard Valentine School	0	1	4	2	0	3	0	0	1	0	1	0	4	3	**19**	**19**
Hyder School	1	1	3	2	1	2	0	0	0	2	3	3	0	0	**17**	**18**
Kasaan School	0	0	0	1	0	1	2	1	0	3	0	1	0	1	**10**	**10**
Naukati School	0	1	0	4	0	4	1	0	3	2	3	3	0	0	**21**	**21**
Port Alexander School	0	0	0	1	1	1	0	2	1	0	1	2	0	3	**12**	**12**
Port Protection School	0	1	1	0	1	0	2	0	0	2	1	1	1	0	**10**	**10**
SE Island Corresp.	1	0	0	0	0	0	0	0	0	0	0	0	1	0	**1**	**2**
Thorne Bay School	2	5	4	5	8	3	5	7	9	1	9	9	4	11	**80**	**82**
Totals	**4**	**9**	**12**	**15**	**11**	**14**	**11**	**10**	**19**	**10**	**22**	**21**	**11**	**18**	**183**	**187**

longer meet the statutory standards for an REAA set out in AS 14.08.031.[60] Moreover, it would seem that operation of an REAA with so few students would give rise to concerns regarding efficient and cost-effective delivery of services.

[60] AS 14.08.031 provides as follows:

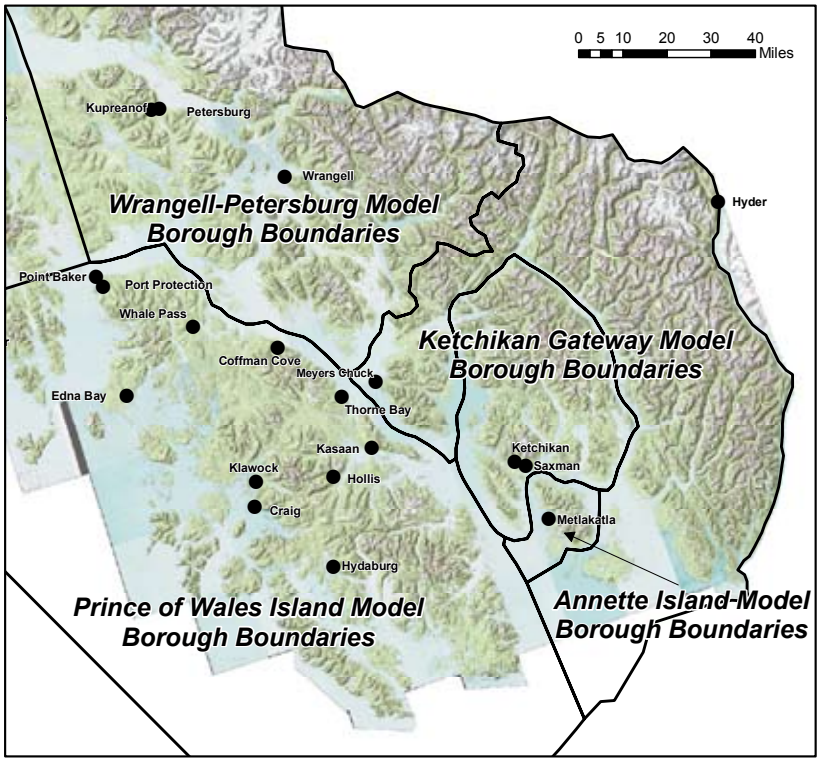
> Sec. 14.08.031. Regional educational attendance areas.
>
> (a) The Department of Commerce, Community, and Economic Development in consultation with the Department of Education and Early Development and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.
>
> (b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational attendance area. As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the regional educational attendance areas, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication between communities that comprise the area.
>
> Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins, and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas.
>
> (c) Military reservation schools shall be included in a regional educational attendance area. However, operation of military reservation schools by a city or borough school district may be required by the department under AS 14.12.020 (a) and AS 14.14.110. Where the operation of the military reservation schools in a regional educational attendance area by a city or borough school district is required by the department, the military reservation is not considered part of the regional educational attendance area for the purposes of regional school board membership or elections.

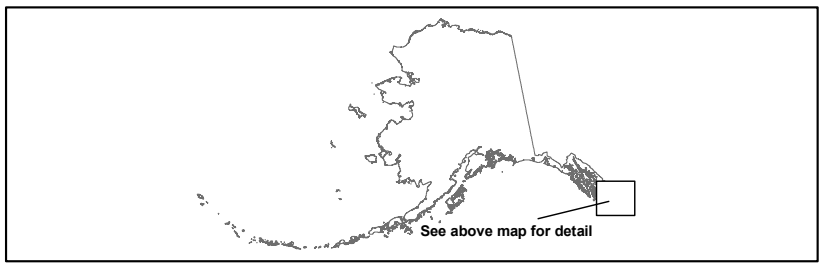
Given these circumstances, DCCED concludes that while the creation of the enclave would not initially bring about inefficient, cost-ineffective delivery of essential services, such would result upon formation of a Prince of Wales Island Borough. It would be appropriate at that point to initiate proceedings for the annexation the 205-square mile Hyder enclave to the KGB.

Subsection 4. The proposed boundaries of the borough do not extend beyond the model borough boundaries developed for that borough.

The provisions of 3 AAC 110.190(c) state that without a specific and persuasive showing to the contrary, the LBC will not approve annexation of an area to a borough extending beyond the model borough boundaries developed for that borough. DCCED finds that the area proposed for annexation lies wholly within the KGB's model boundaries.

Model Borough Boundaries
Lower Southeast Alaska Panhandle





Subsection 5. The LBC must consult with the Department of Education regarding the proposed boundaries.

The provisions of 3 AAC 110.190(d) require the LBC to consult with the Alaska Department of Education and Early Development (DEED) in the process of balancing all standards for annexation to a borough. Notice of the filing of the KGB Petition was provided to the Commissioner of DEED on March 9, 2006. DEED did not comment on the Petition during the period of public comment on the proposal. DCCED will provide a copy of this report and the final report to DEED and invite that agency to comment on the preliminary report. Notice of the LBC's public hearing on the proposal will also be provided to DEED. Beyond that, DCCED will take any additional measures directed by the Commission to consult with DEED.

Subsection 6. The proposed boundaries of the borough do not overlap the boundaries of an existing organized borough.

The provisions of 3 AAC 110.190(e) state that if a petition for annexation to a borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough. DCCED finds that the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough.

Subsection 7. Conclusion: The proposed new boundaries of the borough conform generally to natural geography; include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level; and are otherwise proper.

The foregoing analysis has addressed relevant factors including land use and ownership patterns; population density patterns; existing and reasonably anticipated transportation patterns and facilities; and natural geographical features and environmental factors. The analysis also addressed whether creation of the proposed 205-square mile enclave would lead to inefficient, cost-ineffective service delivery. Consideration was also given to the model borough boundaries of the KGB. In terms of the requirement for the LBC to consult with DEED on the annexation proposal, it is noted that DEED has been invited to comment on the annexation proposal, but has not yet done so. DEED will have further opportunity to express its views, if any, on this matter. Lastly, the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough. Accordingly, DCCED concludes that the standard set out in 3 AAC 110.190 regarding boundaries is fully satisfied by the Petition.

Section H. Whether annexation is in the best interests of the State.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.195 state as follows:

> In determining whether annexation to a borough is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation
>
> (1) promotes maximum local self-government;
>
> (2) promotes a minimum number of local government units; and
>
> (3) will relieve the state government of the responsibility of providing local services.

Additionally, the provisions of 3 AAC 110.980 state as follows:

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

(1) the broad policy benefit to the public statewide; and

(2) whether the municipal government boundaries that are developed serve

(A) the balanced interests of citizens in the area proposed for change;

(B) affected local governments; and

(C) other public interests that the commission considers relevant.

Subsection 2. The KGB annexation proposal promotes maximum local self-government.

Based on the extensive analysis in Part II-A of this report, DCCED concluded that the KGB annexation proposal provides for maximum local self-government in accordance with article X, section 1 of the Alaska Constitution.

Subsection 3. The KGB annexation proposal comports with the minimum-number-of-local-government-units constraint.

Based on the findings and conclusions set out in Part II-B of this report, DCCED determined that the KGB annexation proposal comports with the minimum-number-of-local-government-units constraint in article X, section 1 of the Alaska Constitution.

Subsection 4. Annexation will relieve the state government of the responsibility of providing local services.

There are two areas in particular in which the KGB would relieve the State of the responsibility of providing local services in the area proposed for annexation. Those are education and platting.

Education

Organized boroughs are required by AS 29.35.160 to establish, maintain, and operate a system of public schools on an areawide basis (i.e., throughout the entire borough) as provided in AS 14.14.060.[61]

As noted previously, the area proposed for annexation is currently part of the Southeast Island REAA. REAAs are defined by AS 14.60.010(7) as educational service areas in the unorganized borough. Educational service areas in the unorganized borough are established pursuant to the general provisions of AS 29.03.020 and the specific provisions of AS 14.08.031.

REAAs are dependent upon State aid and federal impact aid for operating funds (*see* AS 14.17.410). REAAs in southeast Alaska also receive NFR aid passed through the State of Alaska. Thus, REAAs are heavily dependent upon the State to fund educational services.

While organized boroughs also receive significant education funding from the State, they are required by AS 14.17.410(b)(2) to make a substantial local contribution in support of their schools. The required "local contribution" is a dollar-for-dollar reduction in the level of State education aid that is paid to the borough. Thus, the State, not the borough school district, benefits from the local contribution required by AS 14.17.410(b)(2). The required local contribution has been characterized by the LBC as a "State tax imposed on organized boroughs and cities that operate schools." (*See Local Boundary Commission Report to the Second Session of the Twenty-Fourth Alaska Legislature,* p. 63, January 2006.)

Currently, there are no schools operating in the area proposed for annexation. While it may not be necessary in the foreseeable future for the KGB to establish, maintain, and operate a public school in the area proposed for annexation, the KGB would, nonetheless, bear some burden relating to education in the short-term as a result of annexation. Specifically, the provisions of AS 14.17.410(b)(2) require that the KGB make a local contribution in support of education that is "the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year." If annexation occurred in March 2008, it would first increase the "full and true value of the taxable real and personal property" in the KGB as of January 1, 2009. Thus, beginning in FY 2011, the KGB's required local contribution for schools would increase as a result of annexation. DCCED estimates that the KGB's contribution would increase by $15,197 effective FY 2011 as a direct result of annexation.[62]

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[61] AS 14.14.060 deals with the relationship between the borough school district and the borough government, particularly with respect to finances and buildings.

[62] State statutes provide that if a municipal school district's full and true value is higher than it was in 1999, only 50 percent of the difference between the current figure and the 1999 value is included in calculation of the required local contribution. Specifically, AS 14.17.510(c) provides

> Notwithstanding AS 14.17.410 (b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base year, only 50 percent of the annual increase in assessed value may be included in determining the

Footnote continued on next page

While $15,197 is not particularly significant, it is appropriate to recognize that the KGB's current required local contribution under AS 14.17.410(b)(2) equals $4,529,134. Thus, the KGB provides a significant financial relief to the State in terms of responsibility for delivery of education services.

Platting, planning, and land use regulation

Presently, under AS 29.03.030, the Alaska Department of Natural Resources serves as the platting authority for the area proposed for annexation. AS 29.35.150 and 29.35.180(a) mandate that a second-class borough provide for areawide planning, platting, and land use regulation in accordance with AS 29.40. Thus, following annexation, the power and duties for platting within the area proposed for annexation would shift from the State to the KGB.

Subsection 5. Annexation will result in broad policy benefit to the public statewide.

DCCED has noted in multiple places in this report that Alaska's Constitution encourages the extension of borough government. For reasons underlying that circumstance, DCCED finds that annexation will result in broad policy benefit to the citizens of Alaska. Public policy issues favoring the extension of borough government have long been addressed by the LBC. Readers are encouraged to review annual reports of the LBC to the Alaska Legislature.

Subsection 6. Annexation will serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests.

Concerns have been raised in these proceedings that annexation will have adverse financial impacts on communities within that portion of the unorganized borough in and adjoining the Tongass National Forest. For example, on April 27, 2006, the City of Craig wrote in opposition to the current proposal, stating:

> The City of Craig has reviewed the annexation petition submitted by the [KGB] to annex 4,701 square miles into the borough. The City of Craig is deeply concerned about the financial impact of this proposed annexation to communities in the unorganized borough. The city has raised these concerns to you in past attempts by the KGB to annex areas within their boundaries.

Footnote continued from previous page.

> assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410 (b)(2) and 14.17.490(b). In this subsection, the base year is 1999.

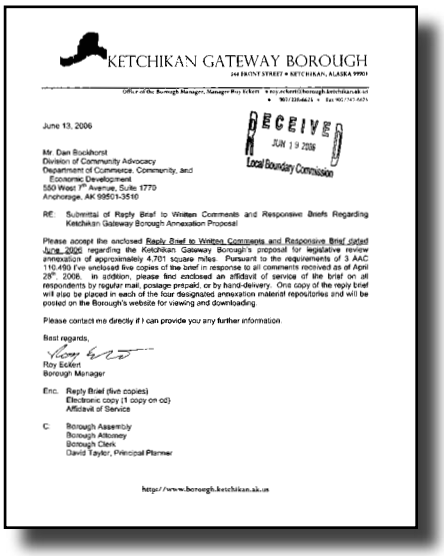
As noted earlier in the report, DCCED estimates that the 2009 value of the area proposed for annexation will be $7,598,674. A four-mill equivalent tax on 50 percent of that value is $15,197.

> It is obvious from the petition and published press reports that the KGB's sole purpose of the proposed annexation is to secure substantial increases from the [NFR and PILT] programs. Because the increases that the KGB will enjoy will come at the expense of sixteen cities, twelve school districts, and 2,700 K-12 students, the City of Craig submits that the proposed annexation is not in the best interests of the State of Alaska. LBC staff should recommend disapproval of the petition to the LBC, as it has done with other annexation petitions that sought principally to increase program funding.

John Bolling, Craig City Administrator, letter, p. 1, April 27, 2006.

The KGB addressed such concerns in its reply brief filed with the LBC in June 2006. Specifically, the KGB stated:

> 3 AAC 110.420(5) requires the Borough to state its reasons for the petition. Comments suggest that the Borough's sole reason for the petition, contrary to its published goals (see page 4 of this brief), is a land grab to increase Borough revenues. The Borough responds that if approved, annexation would require the Borough to pay for services, as needed, within the territory. As expected, forest receipts and property tax revenues would offset these projected expenses. This arrangement is part of the state's long-standing design for the finance and operation of local government. In Ketchikan's original incorporation report, dated May 1963, the state noted that "the forest service stumpage fees accruing to the borough with the enlarged area, . . . would provide an important yearly revenue to the borough [for the operation of local government]".[63] Ketchikan has been, and will continue to be, a major service provider to timber and mineral industries in the region contrary to the comments received. Specifically, Ketchikan is the Forest Service Headquarters for the region as well as the District Ranger Headquarters for the Ketchikan/Misty Fjords Ranger District. The community has an operating sawmill which regularly and successfully bids on timber in the region. The community also has industry support services and a trained labor force. In addition, the majority of recent mineral exploration services on the Cleveland Peninsula were purchased in Ketchikan.[64] While



KETCHIKAN GATEWAY BOROUGH

June 13, 2006

RECEIVED JUN 19 2006 Local Boundary Commission

Mr. Dan Bockhorst
Division of Community Advocacy
Department of Commerce, Community, and Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

RE: Submittal of Reply Brief to Written Comments and Responsive Briefs Regarding Ketchikan Gateway Borough Annexation Proposal

Please accept the enclosed Reply Brief to Written Comments and Responsive Brief dated June, 2006 regarding the Ketchikan Gateway Borough's proposal for legislative review annexation of approximately 4,701 square miles. Pursuant to the requirements of 3 AAC 110.450 I've enclosed five copies of the brief in response to all comments received as of April 28th, 2006. In addition, please find enclosed an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery. One copy of the reply brief will also be placed in each of the four designated annexation material repositories and will be posted on the Borough's website for viewing and downloading.

Please contact me directly if I can provide you any further information.

Best regards,

Roy Eckert
Borough Manager

Enc. Reply Brief (five copies)
Electronic copy (1 copy on cd)
Affidavit of Service

C: Borough Assembly
Borough Attorney
Borough Clerk
David Taylor, Principal Planner

http://www.borough.ketchikan.ak.us

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63 [Footnote 17 in original.] Report to the Local Boundary Commission on a proposal to incorporate an organized borough in the Ketchikan area, submitted in accordance with AS 07.10.090. Local Affairs Agency, May, 1963, page 7.

64 [Footnote 18 in original.] Source: Avalon Development Corporation, Primary Geologic Consultant, presentation April 14, 2005, Alaska Discovery Center.

> it's is true that a number of mineral claims have been abandoned in the Union Bay area, it is also true that there are still 78 claims covering 1,560 acres in the area as of May 2006.[65] The potential for commercially viable mineral deposits in the Ketchikan region, and for that matter throughout Southeast Alaska, is well known. Commercial mineral recovery is inevitable depending upon world market forces. In addition, the existence of oil and gas deposits in British Columbia's Queen Charlotte Basin (adjacent to the southern model boundary) is also well documented[66] and underscores the importance of developing a local government perspective and response to any future recovery activities.

Similar concerns were raised in the 1998 – 1999 proceedings involving a somewhat comparable proposal. However, in its 1999 decision on the prior KGB annexation proposal, the LBC clearly rejected arguments that annexation should be denied because it would have adverse fiscal implications for communities in the unorganized borough in or adjoining the Tongass National Forest. Specifically, the Commission stated:

> The Commission rejects the notion that State policy positions concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA[67] in this proceeding. [NFR and PILT] programs are ephemeral – in a few years those programs may operate in a

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65 [Footnote 19 in original.] Source: USFS, Realty Department, May 19, 2006.

66 [Footnote 20 in original.] Source: http://www.cwilson.com/pubs/energy/legalshoals.pdf and http://temagami.carleton.ca/jmc/cnews/01042005/n4.shtml

67 DCRA policy makers in the Knowles Administration (i.e., the Office of the Commissioner and Division Director, as contrasted the LBC Staff Component), opposed the prior KGB annexation proposal. Reflecting the views of the DCRA policy maker's, DCRA's preliminary report stated the following with respect to the standard at issue here:

> Article X, § 1 of Alaska's constitution encourages the extension of borough government, either through incorporation or annexation. Further, Article X, § 3 of Alaska's constitution requires boroughs to conform to natural regions based on geographic, social, cultural, and economic considerations.
>
> However, DCRA policy makers take the position that the nature of the territory proposed for annexation by the KGB (largely undeveloped and uninhabited, with little demand for local government services) diminishes the significance of those principles in judging the merits of the KGB annexation proposal. The KGB annexation proposal also suffers in the context of the constitutional principles from the fact that the KGB excluded Hyder and Meyers Chuck from its annexation proposal.
>
> In the view of DCRA policy makers, significant adverse financial impacts on communities in the unorganized borough are a more important consideration than the constitutional principles *in this particular instance*. Those adverse financial impacts are viewed by DCRA policy makers as an overriding consideration which compels the conclusion that annexation is not in the balanced best interests of the State, the territory proposed for annexation, the KGB, and the other affected political subdivisions.

> 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.
>
> If there are adverse fiscal consequences, parties should seek legislative remedies. The State and Federal legislatures have passed a variety of laws that affect the distribution of revenues to and among local governments. In this particular instance, it appears from the record that the State legislature was mindful of the possible consequences that would result from this type of annexation proposal when it extended National Forest Receipts funding to entities in the unorganized borough. During the deliberations on the matter, some legislators expressed a hope that the legislation would not inhibit borough government.
>
> Even if financial impacts were a relevant consideration, the adverse financial impacts on numerous local service providers in this particular instance would have been de minimus in terms of the percentage of the operating budgets of each of the affected entities. As such, the Department's concern as to the financial impact on others was overstated.

LBC 1999 Statement of Decision, p. 12.

The LBC has reinforced the policy views expressed in its 1999 decision on multiple occasions. In particular, in its annual reports to the Alaska State Legislature in 2005, 2006, and 2007, the LBC has characterized the policy of paying NFR aid to entities in the unorganized borough as a significant disincentive to borough incorporation and borough annexation. Accordingly, the LBC has urged the Legislature to restrict NFR aid to organized boroughs.

Beyond the specific fiscal issues, DCCED notes that Subsections 2 – 5 of this portion of the report address broader constitutional and other reasons why the extension of borough government is in the broad public interest.

Subsection 7. Conclusion: The proposed annexation is in the best interests of the State.

The analysis in subsections 2 – 6 above addressed relevant issues pertaining to the best interests of the State. Those included the constitutional principles of maximum local self-government and minimum numbers of local government units. The analysis also addresses the manner in which annexation will relieve the state government of the responsibility of providing local services and how annexation will result in broad policy benefit to the public statewide. While annexation will have some adverse fiscal impacts on communities in the unorganized borough, those impacts are not a basis to reject the proposal. DCCED concludes from the findings in this part of the report that annexation is in the best interests of the State. Accordingly, DCCED concludes that the standard set out in AS 29.06.040 and 3 AAC 110.195 regarding the best interests of the State is fully satisfied by the Petition.

Section I. Whether the proposed annexation meets the legislative review annexation standard.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.200 state as follows:

> Territory that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.195 may be annexed to a borough by the legislative review process if the commission also determines that any one of the following circumstances exists:
>
> (1) the territory manifests a reasonable need for borough government that can be met most efficiently and effectively by the annexing borough;
>
> (2) the territory is an enclave surrounded by the annexing borough;
>
> (3) the health, safety, or general welfare of borough residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the borough to regulate or control the detrimental effect of those conditions;
>
> (4) the extension of borough services or facilities into the territory is necessary to enable the borough to provide adequate services to borough residents, and it is impossible or impractical for the borough to extend the facilities or services unless the territory is within the boundaries of the borough;
>
> (5) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(6) annexation of the territory will enable the borough to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the borough;

(7) repealed 5/19/2002;

(8) annexation of the territory will promote local self-government with a minimum number of government units;

(9) annexation of the territory will enhance the extent to which the existing borough meets the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065;

(10) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the territory by the legislative review process.

Subsection 2. Conclusions by the LBC in 1999 regarding this standard.

The standard in 3 AAC 110.200 has undergone significant change since the LBC's decision on the prior KGB annexation proposal.[68] In 1999, the standard set out in 3 AC 110.200 provided that a legislative review annexation proposal could be approved by the LBC only if it served the State's best interest. The standard in place at that time listed seven factors that could be used by the LBC in determining whether the proposal served the best interests of the State.

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[68] In 1999, 3 AAC 110.200 read as follows:

Territory that meets the annexation standards specified in 19 AAC 10.160 - 19 AAC 10.190 may be annexed to a borough or unified municipality by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

(1) territory manifests a reasonable need for borough or municipal government that can be met most efficiently and effectively by the annexing borough or unified municipality;

(2) territory is an enclave surrounded by the annexing borough or unified municipality;

(3) health, safety, or general welfare of borough or unified municipality residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the borough or unified municipality to regulate or control the detrimental effect of those conditions;

(4) extension of borough or unified municipality services or facilities into the territory is necessary to enable the borough to provide adequate services to borough or unified municipality residents, and it is impossible or impractical for the borough or unified municipality to extend the facilities or services unless the territory is within the boundaries of the borough or unified municipality;

(5) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough or unified municipal government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(Footnote continued on next page)

In 2002, the LBC adopted a new standard in 3 AAC 110.195 providing that any annexation proposal – legislative review or local action – had to serve the State's best interest in order to be approved by the LBC.

The provisions of 3 AAC 110.200 became a standard requiring that at least one of nine "circumstances" must exist before the LBC could approve a legislative review annexation proposal. Six of the nine "circumstances" are virtually identical to "factors" listed in the regulation in place in 1999. The three circumstances listed in 3 AAC 110.200(8) – (10) were added in 2002.

The LBC concluded that the area proposed for annexation manifested a need for borough services that could be met most efficiently and effectively by the KGB. Specifically, the LBC stated:

> Considering the best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions, the Commission notes that the territory manifests a need for services that can be met most efficiently and effectively by the Borough. This is particularly the case with respect to planning. While there is no substantial mining activity ongoing in the territory, there is a reasonable likelihood that significant mineral development will occur. Substantial weight should be given to the need for planning in an area that has potential for significant mining activity. It is best to institute the local governmental mechanism to provide for planning before substantial development occurs.
>
> However, the need for municipal government is not limited to the area proposed for annexation. That area includes Meyers Chuck and Hyder as well. When planning is conducted around those communities, special focus should be given to how activities in the adjacent region will affect those

Local Boundary Commission Decisional Statement
Regarding Ketchikan Gateway Borough Annexation Proposal
Page 12

The Commission rejects the notion that State policy positions concerning borough incorporation and annexation should be driven by the financial considerations such as those expressed by DCRA in this proceeding. National Forest Receipt and Payments in Lieu of Taxes programs are ephemeral – in a few years those programs may operate in a significantly different manner or may no longer exist. In contrast, the formation of a borough or the extension of a borough over a large area is a much more permanent action.

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

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

If there are adverse fiscal consequences, parties should seek legislative remedies. The State and Federal legislatures have passed a variety of laws that affect the distribution of revenues to and among local governments. In this particular instance, it appears from the record that the State legislature was mindful of the possible consequences that would result from this type of annexation proposal when it extended National Forest Receipts funding to entities in the unorganized borough. During the deliberations on the matter, some legislators expressed a hope that the legislation would not inhibit borough government.

Even if financial impacts were a relevant consideration, the adverse financial impacts on numerous local service providers in this particular instance would have been de minimus in terms of the percentage of the operating budgets of each of the affected entities. As such, the Department's concern as to the financial impact on others was overstated.

Considering the best interests of the State of Alaska, the territory proposed for annexation, and affected political subdivisions, the Commission notes that the territory manifests a need for services that can be met most efficiently and effectively by the Borough. This is particularly the case with respect to planning. While there is no substantial mining activity ongoing in the territory, there is a reasonable likelihood that significant mineral development will occur. Substantial weight should be given to the need for planning in an area that has potential for significant mining activity. It is best to institute the local governmental mechanism to provide for planning before substantial development occurs.

However, the need for municipal government is not limited to the area proposed for annexation. That area includes Meyers Chuck and Hyder as well. When planning is conducted around those communities, special focus should be given to how activities in the adjacent region will affect those communities. As such, the Borough's annexation proposal significantly undercuts its own ability to effectively address planning needs by excluding Meyers Chuck and Hyder.

There are no schools in the territory proposed for annexation. However, here again, the Borough undermines its own annexation proposal by excluding Meyers Chuck and Hyder. 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. Any students in Meyers Chuck would be served by the State's educational service area encompassing Meyers Chuck (Southeast Island REAA).

It is also appropriate to again observe that the Borough's annexation proposal would establish Hyder as an enclave within the Borough. Additionally, Meyers Chuck would be surrounded by the Borough on three sides. Enclaves typically lead to diminished efficiency and effectiveness in the delivery of municipal services.

(Footnote continued from previous page)

(6) annexation of the territory will enable the borough or unified municipality to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the borough or unified municipality; and

(7) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

> communities. As such, the Borough's annexation proposal significantly undercuts its own ability to effectively address planning needs by excluding Meyers Chuck and Hyder.
>
> There are no schools in the territory proposed for annexation. However, here again, the Borough undermines its own annexation proposal by excluding Meyers Chuck and Hyder. 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. Any students in Meyers Chuck would be served by the State's educational service area encompassing Meyers Chuck (Southeast Island REAA).

LBC 1999 Statement of Decision, p. 12.

Subsection 3. The need for borough services.

Obviously, with only 16 residents and little development, the area does not presently manifest a significant need for services. The KGB notes in its Petition, however, that:

> The Borough currently exercises no formal extraterritorial jurisdiction in the area proposed for annexation although some residents outside the Borough utilize the Borough's library, animal control, airport, health care, and other facilities on an as-needed, sometimes fee-based, basis.

Petition, p. 40.

Notwithstanding the limited services provided to residents of the area, as the LBC pointed out in 1999, it is optimum to have in place prior to significant development a local government jurisdiction with authority to exercise planning, platting, and land use regulation. In that respect, the KGB states as follows in its current Petition:

> [S]everal of the circumstances outlined in 3 AAC 110.200(1) - (I0) exist and merit discussion. It is in the State's best interest to enable the Borough to locally plan and control for reasonably anticipated growth or development in the annexed territory that otherwise may adversely impact the Borough. As described earlier in the petition, there are a number of current and likely future commercial and economic development activities that would require Borough services and consequent management. These include the possible expansion of commercial tourism in the area and the likelihood of mine development in either Union Bay or Duke Island during the next 20 to 30 years. Specifically, tens of thousands of visitors depart Ketchikan annually for destinations within the territory (mostly Misty Fjords National Monument). It should be noted that the community of Wrangell is currently preparing a petition which may propose to annex the Union Bay mining district, including the community of Meyers Chuck. As the likely primary service provider in the event of mine development, the Borough

> is proactively seeking to include this area within its boundaries well in advance of any active mining to allow sufficient time for planning and to minimize any negative impacts upon the community. In addition, the Borough expects that there will continue to be private, State, and Federal land trades and disposals within the annexed territory which would merit Borough planning participation. It is also in the Borough's best interest to maximize its influence over use of Federal lands in the territory as a local government representative during the NEPA process. Other planning issues include the gradual trend towards development of second homes in the territory both by state and out-of-state residents; and development of additional resort destinations. Taken together, future activities within the territory proposed for annexation will utilize Ketchikan as a hub for services and supplies and will look to Ketchikan for assistance on planning and land use issues.

Petition, p. 72.

DCCED concurs with the views of the LBC in 1999 and the contemporary views of the KGB regarding the need for planning, platting, and land use regulation in the area proposed for annexation.

Subsection 4. Residents of REAAs, including the area proposed for annexation, receive directly and indirectly the benefit of borough government.

The KGB also states that the circumstance set out in 3 AAC 110.200(5) also exists because residents of the area proposed for annexation receive benefits of borough government without commensurate tax contributions. In particular, the KGB states:

> Residents of the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of Borough government without commensurate tax contributions. Meyers Chuck residents, like all state residents, indirectly benefit from educational services provided to children. Although Meyers Chuck does not currently have any school-age children, it is reasonable to believe that this could change in the future. Annexation of the proposed territory would offset the cost of providing this state provided service through local property taxes.

Id.

The circumstance set out in 3 AAC 110.200(5) has historically been evaluated in the context of whether an area proposed for annexation receives, directly or indirectly, services *from the borough to which annexation is proposed*. The KGB's interpretation of the circumstance has a more general application. It is undeniable, as the KGB argues, that any area of the unorganized borough outside of home-rule and first-class cities (which includes the entire 4,701-square-mile area proposed for annexation) indirectly receives benefit of borough government without commensurate tax contributions. Organized boroughs and home-rule/first-class cities in the

unorganized borough will pay $189,043,074 in the form of required local contributions under AS 14.17.410(b)(2) to support schools. If the boroughs and cities that operate those school districts did not make those contributions, the State of Alaska would have to pay that additional amount or it would have to lower the funding to all school districts. In that regard, REAAs clearly benefit from borough government.

Subsection 5. Annexation will maximize local self-government with a minimum of local government units.

The KGB takes the position that annexation will maximize local self-government and minimize the number of local government units. As noted previously, DCCED reached the same conclusion following the extensive analysis set out in Parts II-A and II-B of this report.

Subsection 6. Annexation will enhance the extent to which the KGB meets the standards for borough incorporation.

Based on the same analysis set out in Parts II-A and II-B, DCCED takes the position that annexation will enhance the extent to which the existing KGB meets the standards for incorporation of boroughs as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065. As outlined in this report, DCCED maintains that those standards promote boroughs that encompass large and natural regions.

Subsection 7. Annexation will serve the constitutional policy of encouraging the extension of borough government.

Lastly, as noted previously in this report, the Alaska Supreme Court held in *Mobil Oil* that article X, section 1 of Alaska's Constitution encourages borough incorporation. In terms of that holding, DCCED finds no basis to distinguish between borough annexation and borough incorporation. DCCED views that holding as a clear constitutional policy favoring the extension of borough government whenever the other applicable standards are satisfied.

Subsection 8. Conclusion: Several of the circumstances set out in 3 AAC 110.200 exist with regard to the pending KGB annexation proposal.

The analysis in subsection 3 leads DCCED to conclude that the following circumstances exist regarding the area proposed for annexation.

- the area manifests a reasonable need for borough government that can be met most efficiently and effectively by the annexing borough;
- in a general sense, residents or property owners within the area receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the area, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

- annexation of the area will enable the borough to plan and control reasonably anticipated growth or development in the area that otherwise may adversely impact the borough;
- annexation of the area will promote local self-government with a minimum number of government units;
- annexation of the area will enhance the extent to which the existing borough meets the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065; and
- specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the area by the legislative review process.

Based on the findings above, DCCED concludes that the standard set out in 3 AAC 110.200 is satisfied.

Section J. Whether a proper plan for the orderly transition to borough government has been provided.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.900 state as follows:

> Transition. (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.
>
> (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.
>
> (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with

> the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.
>
> (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities**.** (De-emphasis added.)

Subsection 2. Review of the KGB transition plan.

Legislative review annexations take effect in accordance with 3 AAC 110.630(a)(1) and (3), which state that "a final decision of the commission is effective when . . . notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice . . . and . . . 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision."

If the LBC accepts the KGB Petition, annexation would be subject to review by the Alaska Legislature under the provisions of article X, section 12 of Alaska's Constitution. That constitutional provision states that the LBC may submit a proposal for annexation to the Legislature only during the first 10 days of a regular session. It provides further that the proposal receives legislative approval if it is not rejected by the legislature during a forty-five day review period (or the end of the session, whichever occurs first).

The 2008 Legislature convenes in regular session on January 15, 2008. The tenth day of the Session, the deadline for submission of proposals by the LBC, is January 24, 2008. Forty-five days after that deadline is March 9, 2008. Thus, legislative approval of a boundary proposal submitted to the 2008 Legislature, if accepted, would occur no later than March 9, 2008.

As noted above, the proposal would also be subject to review under the federal Voting Rights Act. The KGB would be responsible for preparing and filing the preclearance submission with the U.S. Justice Department. Federal law (28 C.F.R. 51.21) provides that "Changes affecting voting should be submitted as soon as possible after they become final." The decision of the LBC becomes final following the process for reconsideration.

Thus, if the LBC accepts the Petition, the KGB could file its preclearance submission immediately following the LBC reconsideration process. Review by the U.S. Justice Department typically takes 63 – 65 days. If the KGB files its preclearance request upon conclusion of the

reconsideration process, it is likely that the preclearance process would be concluded by the end of the forty-five day legislative review period. Thus, it is anticipated that the KGB annexation could take effect by March 9, 2008.[69]

The law prescribes that the KGB must demonstrate its capacity to extend essential borough services into the area proposed for annexation "in the shortest practicable time after the effective date of the proposed change." Elsewhere, 3 AAC 110.900 addresses the "shortest practicable time" as, "not to exceed two years after the effective date of the proposed change."

The KGB outlined its plan to provide services to the area proposed for annexation as follows:

> Prior to preparation of the petition, Borough representatives traveled to Hyder and Meyers Chuck and met with community members to discuss the Borough's annexation goals, to hear from residents regarding any desire or need for services, and to receive any information regarding capital improvements needs in the affected communities. Community residents expressed overwhelming opposition to the annexation proposal, expressed no desire or need for Borough administered services (i.e. education, planning, tax assessment and collection, library, regulation of fireworks, public transportation, wastewater collection and disposal of septic system waste or animal control), and did not express a need for capital improvements that could be financed by or through the Borough.
>
> The territory proposed for annexation, however, is abundant in natural resources and will at some time in the future be developed. Such development will directly impact the existing Ketchikan Gateway Borough due to Ketchikan's economic role within the region.

Petition for Annexation to the Ketchikan Gateway Borough December 21, 2005
Exhibit E Page 40

4. Borough Capability to Extend Services. When planning for the extension of the above referenced services, the Borough considered the following factors:

- The extent to which local residents expressed either a need or desire for provision of discretionary area-wide or non-area-wide services by the Borough;
- The extent to which the services are already being provided by the Borough to the territory;
- Geographic features which might limit the Borough's ability to serve the territory; and
- The financial impacts that annexation might reasonably be expected to have on the Borough.

Need and Desire for Services. Prior to preparation of the petition, Borough representatives traveled to Hyder and Meyers Chuck and met with community members to discuss the Borough's annexation goals, to hear from residents regarding any desire or need for services, and to receive any information regarding capital improvements needs in the affected communities. Community residents expressed overwhelming opposition to the annexation proposal, expressed no desire or need for Borough administered services (i.e. education, planning, tax assessment and collection, library, regulation of fireworks, public transportation, wastewater collection and disposal of septic system waste or animal control), and did not express a need for capital improvements that could be financed by or through the Borough.

The territory proposed for annexation, however, is abundant in natural resources and will at some time in the future be developed. Such development will directly impact the existing Ketchikan Gateway Borough due to Ketchikan's economic role within the region. Any development will also require a structured planning and development process to assure the needs of developers are balanced with desires of nearby and impacted residents.

The Borough proposes to initially provide only those mandatory services required by State Statutes (education, planning, platting, land use regulation and assessment and collection of taxes). Additional services such as economic development (grants and loans) and recreation (development or maintenance of facilities) or other discretionary services will be provided on an as-needed basis or as desired by the residents to be annexed.

Services Currently Provided. The Borough currently exercises no formal extraterritorial jurisdiction in the area proposed for annexation although some residents outside the Borough utilize the Borough's library, animal control, airport, health care, and other facilities on an as-needed, sometimes fee-based, basis.

[69] The KGB anticipated in its transition plan that annexation would have taken effect in March 2007. However, given the number of actions pending before the LBC and the filing of the competing Wrangell borough petition, consideration of the KGB Petition did not occur within the timeframe contemplated by the KGB. For purposes of this review, the dates anticipated by the KGB in its transition plan have been adjusted to reflect the later consideration of its proposal.

> Any development will also require a structured planning and development process to assure the needs of developers are balanced with desires of nearby and impacted residents.
>
> The Borough proposes to initially provide only those mandatory services required by State Statutes (education, planning, platting, land use regulation and assessment and collection of taxes). Additional services such as economic development (grants and loans) and recreation (development or maintenance of facilities) or other discretionary services will be provided on an as-needed basis or as desired by the residents to be annexed.

Petition, p. 40.

In a literal sense, upon transition, the KGB must exercise all areawide and nonareawide powers within the area proposed for annexation. However, the exercise of areawide and nonareawide powers does not necessarily require the KGB to do anything more than is outlined in the above excerpt from p. 40 of the Petition. For example, the KGB is obligated by AS 29.35.160 to establish, maintain, and operate a system of public schools on an areawide basis. However, that does not mean that the KGB must build and operate a school in the annexed area just as the Southeast Island REAA does not operate a school in the area proposed for annexation. The Southeast Island REAA, which currently has jurisdiction over the area proposed for annexation, is obligated by AS 14.08.041 to "be operated on an areawide basis under the management and control of a regional school board."

Thus, in the context outlined above, the KGB proposes to extend the services and impose the areawide and nonareawide powers listed below no later than the beginning of its first full fiscal year following the effective date of annexation:

- areawide education,
- areawide assessment and collection of property, sales, and transient occupancy taxes,
- areawide planning, platting, and land use regulation,
- areawide recreation (development and maintenance of parks and recreation facilities),
- areawide economic development assistance (grants and loans),
- areawide public transportation,
- areawide airport,
- areawide animal control,
- nonareawide library services,
- nonareawide regulation of fireworks,
- nonareawide wastewater enterprise fund,
- nonareawide solid waste collection, and
- nonareawide solid waste disposal.

The timing outlined in the transition plan meets the requirements of law. The powers and duties listed above include those relating to education, which is the only function exercised in the area by an unorganized borough service area (Southeast Island REAA). Thus, the Petition

includes a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by unorganized borough service areas located in the area proposed for annexation. The KGB will also assume responsibility from the State of Alaska for platting within the area proposed for annexation.

The Petition indicates that the transition plan was prepared in consultation with the Superintendent of the Southeast Island REAA. The Borough's transition plans states that the Southeast Island REAA is not currently serving any students in the area proposed for annexation. It also states, "there are no facilities or equipment that would need to be transferred to the [KGB]." (Petition, p. 43.)

Based on the factors outlined above, DCCED finds that the transition plan is "designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change."

Since there are reportedly no education-related assets to be transferred to the KGB, the provisions in 3 AAC 110.900 which require a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing unorganized borough service area located in the area proposed for annexation are irrelevant.

Subsection 3. Conclusion: A proper plan for the orderly transition to borough government has been provided.

The KGB Petition includes a seven-page transition plan. That plan demonstrates the capacity of the KGB to extend borough services into the area proposed for annexation in the shortest practicable time after annexation. Moreover, the transition plan includes a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by Southeast Island REAA and the State of Alaska.

Based on the findings above, DCCED concludes that a proper plan for the orderly transition to borough government has been provided in accordance with 3 AAC 110.900.

Section K. Whether the proposed annexation will have the effect of denying any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Subsection 1. The legal standard.

The provisions of 3 AAC 110.910 state as follows:

> A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Subsection 2. The federal Voting Rights Act.

In addition to the provisions of 3 AAC 110.910, annexation and other municipal boundary actions (e.g., borough incorporation) in Alaska are subject to the federal Voting Rights Act (42 U.S.C. Section 19; 28 C.F.R. Part 51).

The Voting Rights Act requires demonstration to federal authorities that municipal boundary changes do not have a racially discriminatory purpose or will not make racial or language minority voters worse off than they were prior to the boundary change. State law (3 AAC 110.630(a)) requires proof of compliance with the federal Voting Rights Act before a boundary change takes effect.

The federal Voting Rights Act was enacted in 1965. Standards were established to determine which jurisdictions nationwide would be required to preclear changes in voting rights and practices under Section 5 of the Act. If the U.S. Justice Department determined that a state or political subdivision maintained a "test or device"[70] and if the Census Bureau determined that less than 50 percent of the voting-aged residents of the jurisdiction were registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act. At that time, Alaska had low voter registration and turnout. The U.S. Justice Department had also determined that Alaska had maintained a literacy test, which was considered a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Rights Act, Alaska immediately filed a lawsuit asserting that the State had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position, and Alaska was allowed to withdraw from the preclearance requirements. The federal Voting Rights Act was amended in 1970, at which time Alaska was once more made subject to the preclearance requirements. However, with the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclear changes affecting voting. In 1975, the Voting Rights Act was amended a third time. The amendments expanded the definition of "test or device" to apply to a jurisdiction that conducted elections only in English if 5 percent or more of the population were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting.

The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have since remained subject to the Section 5 Voting Rights Act requirements. All municipal annexations in Alaska are subject to review under the Voting Rights Act.

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[70] "Test or device" was defined as "any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

The federal Voting Rights Act includes minority-language-assistance provisions. Under those provisions, the covered jurisdictions are required to provide language assistance to groups covered by the Act. The requirement to provide minority-language assistance applies to ballots (polling place, sample and absentee), voter-registration forms and instructions, candidate-qualifying forms and instructions, polling-place notices, instructional forms, voter-information pamphlets, and oral assistance throughout the electoral process. (28 C.F.R. 55.19).

Language-minority groups covered by the federal Voting Rights Act are limited to American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens - the groups that Congress found to have faced barriers in the political process. Language-minority groups covered by the federal Voting Rights Act are determined by the U.S. Census Bureau after each census based upon a formula set out in the Voting Rights Act. The most recent determinations were made on July 26, 2002. For Alaska, the areas in which language minority groups were identified are listed in Table 2.20.

Table 2.20

Area	Language Minority Group
Aleutians West Census Area:	Aleut
Bethel Census Area	Eskimo
Bethel Census Area	American Indian (Tribe not specified)
Bethel Census Area	American Indian (Other Tribe specified)
Denali Borough	Athabascan
Dillingham Census Area	Eskimo
Dillingham Census Area	American Indian (Other Tribe specified)
Dillingham Census Area	Native (Other Group specified)
Kenai Peninsula Borough	American Indian (Tribe not specified)
Kenai Peninsula Borough	Aleut
Kodiak Island Borough	Filipino
Lake and Peninsula Borough	Athabascan
Lake and Peninsula Borough	Aleut
Lake and Peninsula Borough	Eskimo
Nome Census Area	Eskimo
North Slope Borough	American Indian (Tribe not specified)
North Slope Borough	Eskimo
Northwest Arctic Borough	Eskimo
Northwest Arctic Borough	Alaska Native (Other Group specified)
Southeast Fairbanks Census Area	Athabascan
Southeast Fairbanks Census Area	Native (Other Group specified)
Valdez-Cordova Census Area	Athabascan
Wade Hampton Census Area	Eskimo
Wade Hampton Census Area	American Indian (Chickasaw)*
Wade Hampton Census Area	American Indian (Tribe not specified)
Yukon-Koyukuk Census Area	Athabascan
Yukon-Koyukuk Census Area	Eskimo
Yukon-Koyukuk Census Area	American Indian (Other Tribe specified)

Source: *Federal Register*, Vol. 67, No. 144, p. 48872, Friday, July 26, 2002, Notices

* The *Federal Register* does indeed list Chickasaw as a minority language group in the Wade Hampton Census Area. We recognize the Chickasaw as a Native American people originally from present-day Mississippi, now mostly living in Oklahoma. They are related to the Choctaws, who speak a language very similar to the Chickasaw language, both forming the Western Group of the Muskogean languages.

The area proposed for annexation lies within the Prince of Wales – Outer Ketchikan Census Area. No minority-language groups covered by the federal Voting Rights Act exist in that region.

To provide readers with an understanding of the scope of the federal Voting Rights Act, the following outlines the contents of a preclearance submission required under the provisions of 28 C.F.R. Part 51:

- A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting (28 C.F.R. § 51.27(a)).
- A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed (28 C.F.R. § 51.27(b)).
- If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting (28 C.F.R. § 51.27(c)).
- The name, title, address, and telephone number of the person making the submission (28 C.F.R. § 51.27(d)).
- The name of the submitting authority and the name of the jurisdiction responsible for the change, if different (28 C.F.R. § 51.27(e)).
- If the submission is not from a State or county, the name of the county and State in which the submitting authority is located (28 C.F.R. § 51.27(f)).
- Identification of the person or body responsible for making the change and mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar) (28 C.F.R. § 51.27(g)).
- A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change (28 C.F.R. § 51.27(h)).
- The date of adoption of the change affecting voting (28 C.F.R. § 51.27(i)).
- The date on which the change is to take effect (28 C.F.R. § 51.27(j)).
- A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made (28 C.F.R. § 51.27(k)).
- Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change (28 C.F.R. § 51.27(l)).
- A statement of the reasons for the change (28 C.F.R. § 51.27(m)).
- A statement of the anticipated effect of the change on members of racial or language minority groups (28 C.F.R. § 51.27(n)).
- A statement identifying any past or pending litigation concerning the change or related voting practices (28 C.F.R. § 51.27(o)).
- A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made (28 C.F.R. § 51.27(p)).

- For redistrictings and annexations; the items listed under § 51.28(a)(1) and (b)(1); for annexations only: the items listed under § 51.28(c)(3) (28 C.F.R. § 51.27(q)).
- Other information that the Attorney General determines is required for an evaluation of the purpose of effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type (28 C.F.R. § 51.27(r)).[71]

Subsection 3. Analysis of the standard.

In 1999, the LBC concluded that the similar KGB annexation proposal satisfied the standard set out in 3 AAC 110.910. The Commission also found no concern with respect to federal Voting Rights Act matters. Specifically, the LBC stated:

> 43 U.S.C. 1973 subjects municipal annexations in Alaska to review under the Federal Voting Rights Act. This Federal requirement is intended to ensure that changes in voting rights, practices, and procedures (including those brought about by annexation) will not result in "a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or because a citizen is a "member of a language minority group."
>
> Additionally, 19 AAC 10.910 provides that, "A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin."
>
> The territory proposed for annexation is largely uninhabited. There is no evidence to suggest that the extension of the Borough's boundaries would result in any violation of the federal Voting Rights Act or the provisions of 19 AAC 10.910.

LBC 1999 Statement of Decision, p. 8.

With respect to the standard set out in 3 AAC 110.910, the KGB states as follows in its pending Petition:

> The area proposed for annexation is largely uninhabited except for residents located in Meyers Chuck. State estimates in 2004 suggest that there may be 11 people living in remote cabins or lodges and 14 residents in Meyers Chuck. There is only limited data on the racial mixture of these populations. Assuming a total Borough population of 13,030 (according to 2004 estimates), the population

[71] "Other information" typically includes information regarding assistance available to voters, information about election boundaries, information about where the submission is available for public review, language usage, and demographic information.

> of the proposed territory represents less than 0.0082% (eight-tenths of one percent) of the Borough's population. No impact on the racial composition of the Borough is anticipated as a result of annexation. There is little to suggest that the annexation would violate provisions of the Voting Rights Act or 3 AAC 110.910.

Petition, p. 73.

Table 2.21 lists the racial composition of residents of the KGB and Meyers Chuck at the time of the 2000 census. As noted earlier in this report, the 2006 population of Meyers Chuck was estimated to be 11, roughly half of the population at the time of the last federal census.

Table 2.21 - 2000 U.S. Census Population by Race

Area	Total Population	White	Alaska Native or American Indian*	Black	Asian	Hawaiian Native or Other Pacific Islander	Other Race	2 or more Races*
KGB	14,070 (100.0%)	10,460 (74.3%)	2,109 (15.0%)	70 (0.5%)	603 (4.3%)	22 (0.2%)	62 (0.4%)	744 (5.3%)
Meyers Chuck CDP	21 (100.0%)	19 (90.5%)	0 (9.0%)	0 (9.0%)	0 (9.0%)	0 (9.0%)	0 (9.0%)	2 (9.5%)

The table showing the racial composition of the KGB and Meyers Chuck indicates that the KGB has a more diverse racial composition compared to Meyers Chuck.

As noted in Subsection 2, no minority language groups covered by the federal Voting Rights Act exist in the area proposed for annexation. In terms of the language skills of residents in the KGB and the area proposed for annexation, the 2000 Census indicates that among residents at least 5 years old, 398 residents of the KGB (3.0 percent) spoke English "less than 'very well'." The Census also indicates that all residents of Meyers Chuck at least five-years old spoke English very well.

If the area proposed for annexation becomes part of the KGB, qualified residents of the annexed area will gain all voting rights currently available to qualified residents of the KGB. Prior federal Voting Rights Act reviews of KGB boundary changes have never identified a fundamental issue or concern with the voting structure in place. Most recently, the U.S. Justice Department reviewed the voting structure of the KGB in the context of the proposal to consolidate the City of Ketchikan and the KGB. In that respect, the Justice Department expressed no objection to the proposal in a letter dated November 2, 2006.

Subsection 4. Conclusion: annexation will not deny any person enjoyment of any civil or political right because of race, color, creed, sex, or national origin and will not violate the federal Voting Rights Act.

Based on the analysis in subsection 3, DCCED finds no evidence in this proceeding to indicate that proposed annexation will have the purpose or effect of discriminating based on race, color, creed, sex, or national origin. Moreover, DCCED finds that the proposed annexation would have

no retrogressive purpose or effect with regard to any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Further, no minority-language groups covered by the federal Voting Rights Act exist in the area proposed for annexation. Even if such a group existed, there is no evidence to indicate that annexation will have the purpose or effect of discriminating against a language minority group. Consequently, DCCED concludes that the standard set out in 3 AAC 110.910 is satisfied. Further, DCCED concludes that the proposed annexation does not violate any provision of the federal Voting Rights Act.

Part III. Recommendations

Based on the analyses and findings in Part II of this Report, DCCED concludes that the KGB Petition satisfies all requisite standards governing annexation by the legislative review method. The following summarizes DCCED's conclusions in Part II.

- The Delegates who authored the Local Government Article of the Alaska Constitution strived to create an effective structure for "democratic self-government below the state level." They constructed broad constitutional provisions for local government in a manner such that "the interests and welfare of all concerned" would be guarded "in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities." Article X, section 1 of Alaska's Constitution promotes those ideals and encourages the extension of borough government through incorporation and annexation. It is DCCED's view that Article X, section 1 should be read to uphold LBC decisions approving any borough incorporation and annexation that meets the reasonable-basis test. Boroughs are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. In light of these facts, DCCED takes the view that the KGB annexation proposal provides for maximum local self-government in accordance with article X, section 1 of the Alaska Constitution.

Alaska state constitutional convention in session

- Article X, section 1 of Alaska's Constitution also promotes boroughs that embrace large and natural regions, in part, to avoid too many boroughs. Currently, the boundaries of the KGB encompass the second-smallest area of any organized borough. The KGB annexation proposal would significantly increase the size of the area within the KGB. The 1963 Legislature determined that the appropriate boundaries of the KGB were more on the order of those currently proposed. Given

those and other facts outlined in Part II, DCCED reaches the conclusion that the annexation proposal comports with the minimum-number-of-local-government-units constraint in article X, section 1 of the Alaska Constitution.

- Article X, section 3 of Alaska's Constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible. Moreover, 3 AAC 110.160(a) allows annexation of an area if, on a scale suitable for borough government, the post-annexation boundaries of the borough would embrace a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities. In the context of boroughs embracing large and natural regions, the large area and small population proposed for annexation have many interests in common with the area and population within the existing boundaries of the KGB. Based on the evidence in this proceeding, DCCED concludes that the KGB annexation proposal satisfies the standards set out in article X, section 3 of the Alaska Constitution and 3 AAC 110.160(a).

- Again, in the context of large and natural regions, the communications media and transportation facilities in the proposed expanded boundaries of the KGB allow for the level of communications and exchange necessary to develop an integrated borough government. DCCED concludes from those circumstances that the KGB annexation proposal satisfies the standards set out in 3 AAC 110.160(b).

- Based on the most current available data, the population of the KGB is 63 percent greater than the median population of all organized boroughs in Alaska. The population density of the KGB is the fourth highest of among the sixteen organized boroughs in Alaska. Although the proposed annexation would quadruple the amount of land within the KGB and increase its population by only one-tenth of one percent, the proposed expanded KGB would still have a population density greater than nine of Alaska's sixteen organized boroughs. While the KGB experienced a moderate population downturn from 1996 - 2004, its population has increased in the past two years. Based on the facts outlined in Part II of this report, DCCED concludes that the size and stability of the population within the proposed new boundaries of the KGB are sufficient to support the proposed expanded borough and that the standard set out in 3 AAC 110.170 is satisfied.

- In DCCED's view, the KGB annexation proposal is fiscally sound considering the reasonably anticipated functions, expenses, and income of the KGB in the area proposed for annexation; the ability of the KGB to generate and collect local revenue; and the feasibility and plausibility of the KGB's anticipated operating and capital budgets. Moreover, the economic base, property valuations, land use, existing and reasonably anticipated development, and personal income in the KGB's proposed expanded boundaries demonstrate that the economy in the greater Ketchikan region is capable of supporting the proposed expanded borough government. Furthermore, there are sufficient employable persons to serve the needs of the

proposed expanded borough. DCCED concludes, therefore, that the standard set out in 3 AAC 110.180 regarding the human and financial resources is fully satisfied by the Petition.

- In the context of the boundary standard in 3 AAC 110.190, DCCED examined land use and ownership patterns, population density patterns, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, model borough boundaries, and other factors. It is evident to DCCED that the proposed new boundaries of the KGB conform generally to natural geography, include all land and water necessary to provide the full development of essential borough services on an efficient and cost-effective level, and are otherwise proper. DCCED recognizes, of course, that the KGB annexation proposal would create a 205-square mile enclave in and around Hyder. Based on the discussion in Part II, DCCED finds that such an enclave would not result in inefficient, cost-ineffective service delivery in the near-term. However, if a Prince of Wales Island Borough were formed, the enclave would become a small remnant of the former Southeast Island REAA. At that point, the enclave should be annexed to the KGB. Lastly, it is noted that the proposed expanded boundaries of the KGB do not overlap the boundaries of an existing organized borough. In DCCED's view, the KGB proposal satisfies the boundary standard set out in 3 AAC 110.190.[72]

- An annexation proposal may only be approved if the LBC finds that it serves the best interests of the State. Examination of that standard by DCCED included consideration of the constitutional principles of maximum local self-government and minimum numbers of local government units. DCCED's review also addressed the manner in which annexation will relieve the State of Alaska of the responsibility of providing local services and how annexation will result in broad policy benefit to the public statewide. While the KGB annexation would have some adverse fiscal impacts on communities in the unorganized borough, the LBC has repeatedly indicated that such circumstances are not relevant in terms of the applicable standards and are no basis to deny the proposal. Based on these facts, DCCED takes the view that the standard set out in AS 29.06.040 and 3 AAC 110.195 regarding the best interests of the State is satisfied.

- The provisions of 3 AAC 110.200 allow a legislative review annexation if certain circumstances exist. Among those are several that DCCED finds to be evident in the KGB proposal. For example, the area proposed for annexation manifests a reasonable need for borough government that can be met most efficiently and effectively by the KGB. Additionally, in a general sense, residents and property owners within the area proposed for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate tax contributions. Annexation of the area will also enable the KGB to plan and control reasonably anticipated growth or development in the

[72] Following publication of this report, DCCED will engage in further efforts to consult with DEED regarding the proposed new KGB boundaries.

area that otherwise may adversely affect the area and population within the KGB. Moreover, annexation of the area will promote maximum local self-government with a minimum number of government units. Annexation of the area will also enhance the extent to which the KGB meets the legal standards for borough incorporation. Lastly, specific policies set out in the Constitution of the State of Alaska are best served through annexation of the area by the legislative review process. Given its findings, DCCED concludes that the standard set out in 3 AAC 110.200 is satisfied.

- The Petition presents a seven-page transition plan that demonstrates KGB's capacity to extend borough services into the area proposed for annexation in the shortest practicable time after annexation. The document includes a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by Southeast Island REAA and the State of Alaska. Given those circumstances, DCCED concludes that a proper plan for the orderly transition to borough government has been provided in accordance with 3 AAC 110.900.
- DCCED finds no evidence in this proceeding to indicate that the KGB annexation proposal proposed will have the purpose or effect of discriminating based on race, color, creed, sex, or national origin. Nothing suggests that the proposed annexation will have a retrogressive purpose or effect with regard to any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. No minority-language groups covered by the federal Voting Rights Act exist in the area proposed for annexation. Even if such groups existed in the area, there is no evidence to indicate that annexation will have the purpose or effect of discriminating against a language minority group. Those facts led DCCED to conclude that the standard set out in 3 AAC 110.910 is satisfied and that the proposed annexation does not violate any provision of the federal Voting Rights Act.

Based on the analyses, findings, and conclusions summarized above and outlined in detail in Part II of this Report, DCCED recommends that the LBC approve the KGB Petition without condition or amendment.[73]

[73] As outlined Parts II and III of this report, DCCED takes the view that the proposed 205-square mile enclave should be annexed to the KGB upon incorporation of a Prince of Wales Island Borough. However, DCCED does not believe that an obligation can be imposed by the LBC on a future KGB Assembly to petition for annexation. Similarly, DCCED does not believe that the current LBC can obligate a future LBC to initiate annexation proceedings on its own or commit to the prospective annexation of the 205-square mile area in question.

Appendix A
Background Regarding the Ketchikan Gateway Borough

Information about the establishment of the KGB and prior KGB boundary proposals are set out in this Appendix.

I. General Background.

Alaska's Constitution (article X, section 3) requires that Alaska be divided into boroughs – organized or unorganized. The framers of our Constitution envisioned boroughs as regional governments. They intended them to be intermediate sized units of government ("larger than the city and smaller than the state.") Further, Alaska's Constitution at article X, section 1 calls for a minimum number of local government units.

II. Historical Boundary Actions Regarding the KGB.

On January 23, 1963, voters in the greater Ketchikan area petitioned the LBC to form the KGB. The boundaries encompassed only the Ketchikan Independent School District and the Mountain Point Public Utility District, an area of approximately 75 square miles. It is noteworthy that when the petition was filed, only one organized borough existed in Alaska. That borough, the Bristol Bay Borough, encompassed only 850 square miles.

Just five days after the KGB petition was filed, the 1963 State legislature convened. John Rader, who was a member of the State House of Representatives at the time, considered the issue of borough government to be the most pressing issue facing the legislature:

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

John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 93.

Representative Rader proceeded to draft a bill that mandated the incorporation of certain regions of the state. Those consisted of the following:

(1) Sitka Election District #3;[A-1]

(2) Juneau Election District #4;[A-2]

(3) Lynn Canal – Icy Straights Election District #5;[A-3]

(4) Palmer-Wasilla-Talkeetna Election District #7;[A-4]

(5) Anchorage Election District #8;[A-5]

(6) Kenai-Cook Inlet Election District #10;[A-6]

(7) Kodiak Election District #11;[A-7]

(8) Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution;[A-8] and

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[A-1] Sitka Election District #3 encompassed the precincts of Angoon, Jamestown Bay, Mt. Edgecumbe, Sitka 1- 3, and Tenakee.

[A-2] Juneau Election District #4 encompassed the precincts of Auke Bay, Douglas, Juneau 1- 7, Lynn Canal, Mendenhall, Salmon Creek, and Sheep Creek.

[A-3] Lynn Canal – Icy Straights Election District #5 included the precincts of Chilkat, Elfin Cove, Funter, Gustavus, Haines, Hoonah, Klukwan, Lisianski (Pelican), Port Chilkoot, Skagway, Yakutat, and Yakutat Airport.

[A-4] Palmer-Wasilla-Talkeetna Election District #7 included the precincts of Big Lake, Butte, Eska-Sutton, Palmer, Matanuska, Talkeetna, Wasilla, and Willow.

[A-5] Anchorage Election District #8 encompassed the precincts of Abbott Loop, Anchorage 1 – 29, Baxter, Chugach Mountains, Chugiak, Creekside Park, DeBarr, Eagle River, Eklutna, Evergreen, Girdwood, Glenn Highway, Hart, Hill, Homestead Acres, Lincoln Park, North Star, Nunaka Valley, Portage, Rabbit Creek, Sand Lake, South Turnagain, Spenard Central, Utah, Willow Crest, and Woodland Park.

[A-6] Kenai-Cook Inlet Election District #10 included the precincts of Anchor Point, Cohoe, English Bay, Halibut Cove, Homer 1 – 2, Kasilof, Kenai, Nikishki, Ninilchik, Port Graham, Seldovia, Soldotna, Sterling, and Tyonek.

[A-7] Kodiak Election District #11 encompassed the precincts of Afognak, Alitak, Karluk, Kodiak 1 - 2, Larsen Bay, Mission Road, Navel Base, Old Harbor, and Ouzinkie.

[A-8] Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution was defined as, "That area of the mainland drained by streams flowing into Revillagigedo Channel, Behm Canal, Burroughs Bay, and east side of Clarence Strait from the southernmost point of the Alaska-British Columbia boundary line to and including Lemesurier Point; and those islands south of Ernest Sound and east of Clarence Strait, including Revillagigedo, Gravina, Annette, and Duke Islands, and other adjacent smaller islands." It included the precincts of Annette Island, Clover Pass, -Gravina, Hyder, Ketchikan 1 - 5, Metlakatla, Mountain Point, Meyers Chuck, Pennock Island, Saxman, Traitors Cove, Ward Cove, and Wacker.

(9) Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution.[A-9]

Representative Rader explained:

> We considered many areas as possibilities for mandatory borough incorporation. However, after looking over the available information on taxable wealth, I concluded that the areas we proposed as boroughs, together with cities such as Nome, Wrangell, Petersburg, Cordova, Valdez, and others not included in any boroughs, encompassed roughly 90 per cent of the taxable wealth in the State and approximately 80 per cent of the population. These cities had not outgrown their corporate boundaries and did not have significant suburban development. Nor was it necessary to the tax equalization features of the bill that they be within a borough.

Id., p. 102.

Through amendments to the bill, the Annette Island Indian Reservation was excluded from the prospective Ketchikan area borough. Additionally, the Lynn Canal – Icy Straights Election District #5 and all military reservations were excluded from the bill. The bill passed the House with 27 votes in favor – six more than the required minimum. John Rader noted:

> It is probably true that many of the rural representatives who voted for the bill would have voted against it had their areas been included. Actually, most of these areas could not possibly have supported or operated a borough successfully.[A-10] Surprisingly, even through I had therefore omitted great expanses of rural undeveloped areas, the representatives from these areas still feared the bill because they realized that it provided for a general tax equalization and that they were the only ones who were not being "equalized." They were easily persuaded by some of the opponents of the bill that they would be "equalized" by the next legislature. This was particularly true in the

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[A-9] Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution was defined as, "That area drained by the Tanana River and its tributaries from and including Clear Creek, near Blair Lakes, on the west, to the Alaska-Canada boundary on the east; and also that area drained by Goldstream Creek and its tributaries up stream from, and including, Nugget Creek and Spinach Creek; and that portion drained by the Chatanika River and its tributaries up stream from, and including, Vault Creek. It included the precincts of Badger Road, Big Delta, Chatanika, Dot Lake, Eielson AFB, Ester (Berry), Fairbanks 1 – 9, Fairbanks Creek, Fox, Graehl, Hamilton Acres, International Airport, Ladd Field, Lemeta, North Pole, Northway, Salcha, Steese Highway, Tanacross, Tetlin, Tok Junction, and University.

[A-10] Although Mr. Rader asserted generally that "most" of the areas excluded from the Mandatory Borough Act "could not possibly have supported or operated a borough successfully," seven boroughs have formed since the Mandatory Borough Act was passed. Further, in the 1980's DCRA conducted borough feasibility studies of most of the unorganized borough. Those studies concluded that with the possible exception of one region, the study areas had the financial capacity to support borough government. (See Synopsis of Borough Feasibility Studies Conducted During 1988 and 1989, DCRA, September, 1989.)

> Senate, where one of my strong supporters on the last day on the last critical vote switched his vote from "Yes" to "No" after being persuaded that the next step would be further equalization affecting his area. The people who were continuing to benefit from the inequity of taxes recognized that if the bill passed, they would have a hard time politically maintaining the inequity in the future because their numbers would be diminished substantially. People benefiting from tax inequities do not like to discuss tax reforms; they never know when reform will finally reach home.

Id., p. 117.

After considerable effort, the bill passed the Senate by one vote. The governor subsequently signed the measure into law on April 12, 1963. Section 1 of the act stated as follows:

Governor William Egan

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

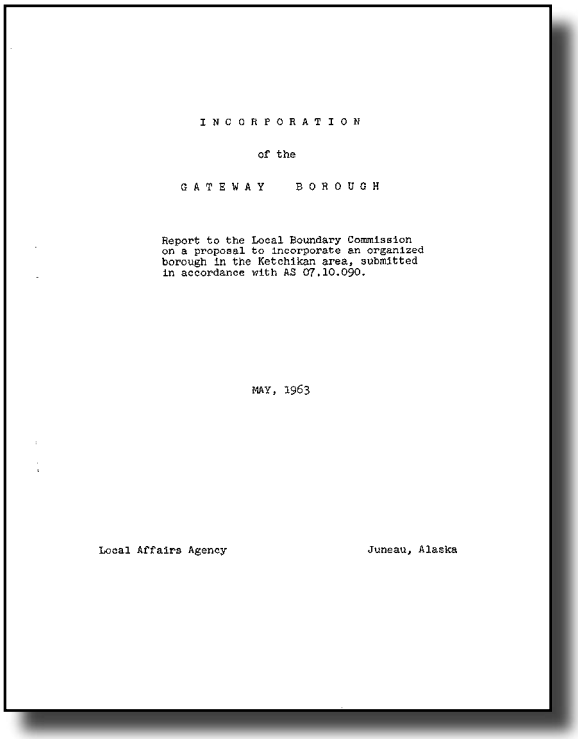
Chapter 52 Session Laws of Alaska 1963.[A-11]

Section 3(a)(7) of the Mandatory Borough Act stipulated that if Ketchikan voters did not incorporate a borough voluntarily, one would be established by legislative fiat with boundaries corresponding to *"Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 3, 1961, 26 Stat. 1101."*

[A-11] While the Mandatory Borough Act promised that boroughs would not be deprived of State revenues or penalized because of incorporation, the fact that organized boroughs are required by AS 14.17.410(b)(2) to make local contributions in support of schools, while REAA school districts are not, precludes the fulfillment of that promise. In FY 2007 alone, forty-four years after the Mandatory Borough Act was passed, organized boroughs received $179,091,163 less in State education aid compared to the level of State aid they would have received had they not formed boroughs. The vast majority of that penalty -- $165,023,467 of the $179,091,163 (more than 92 percent) was imposed on the eight boroughs formed under the Mandatory Borough Act. Home-rule cities in the unorganized borough and first-class cities in the unorganized borough are also required to make such contributions. In FY 2007, contributions from those cities totaled $9,951,911. Again, REAA school districts are not required to make contributions under AS 14.17.410(b)(2).

The KGB boundaries set out in the Mandatory Borough Act encompassed an area 95 times larger than the boundaries proposed by the local voters. The Mandatory Borough Act boundaries for Ketchikan are virtually identical to the model boundaries of the KGB as defined by the LBC in 1991.

The Local Affairs Agency (the predecessor to DCRA) which served as staff to the LBC, considered the boundaries proposed in January 23, 1963 petition to be arbitrary. The Local Affairs Agency recommended that the LBC enlarge the boundaries to include all of Gravina and Revillagigedo Islands. *See Report to the Local Boundary Commission on a Proposal to Incorporate an Organized Borough in the Ketchikan Area*, Local Affairs Agency, May 1963. The boundaries recommended by the Local Affairs Agency took in more than 23 times the area requested by the petitioners, but only about one-fourth of the territory provided by the Mandatory Borough Act. In recommending the larger boundaries, the Local Affairs Agency stressed that the KGB would gain additional NFR while incurring minimal added expense:



INCORPORATION

of the

GATEWAY BOROUGH

Report to the Local Boundary Commission on a proposal to incorporate an organized borough in the Ketchikan area, submitted in accordance with AS 07.10.090.

MAY, 1963

Local Affairs Agency Juneau, Alaska

> The additional expense to the borough if the entire area of the two islands is incorporated would be minimal, since the population outside the Ketchikan urban area is limited. The forest service stumpage fees accruing to the borough with the enlarged area, however, would provide an important yearly revenue to the borough.

On May 3, 1963, the LBC held a hearing on the petition in Ketchikan. Following the hearing, the LBC amended the petition to expand the boundaries as recommended by the Local Affairs Agency. However, the LBC concluded that the proper boundaries of the KGB should be even larger. Specifically, the Commission stated:

> The boundaries of the proposed borough do not conform to the natural geography of the area as required by AS 07.10.030(2). Pursuant to AS 07.10.110, the Commission alters the boundaries to include all of Revillagigedo and Gravina Islands, as well as several lesser islands. The Commission makes this boundary change for the following reasons:
>
> *(1) The Ketchikan trading area is much larger than the area proposed by the sponsor for borough incorporation. The trading area includes and roughly approximates Election District # 1.* The Commission does not

> wish at this time to alter the proposed borough boundaries to include the entire election district. It does, however, feel that the borough should be significantly larger than the Independent School District. . . .

See *Notice to the Secretary of State of the Acceptance of a Petition for the Incorporation of the Gateway Borough*, Local Boundary Commission, May 25, 1963 (emphasis added).

The 23 fold expansion of the boundaries by LBC was criticized by the *Ketchikan Daily News* in an editorial published June 7, 1963:

> We thought we would have some say in this borough business, like boundaries. Now we find we have none at all.
>
> The declaration from the Local Affairs Agency in Juneau the other day that we would have no say in setting our boundaries is an insulting slap in the face to those who spent countless days, hours, weeks and months on a group called the "Borough Study Committee."
>
> Now, after 1,000 people have approved of everything the committee did, the Local Boundary Committee [*sic*] in Juneau comes back and tells them in effect that they don't know what they're talking about.
>
> This is bureaucratic muddling at its greatest.
>
> Sitting in their ivory tower they tell us what to do. If they can do that, then why in heck didn't they do it in the first place and not cause our patriotic people to waste their time in all that study?
>
> What in hell has happened to the good old democratic system?

Other significant historical developments regarding local government structure within the Greater Ketchikan Area include the following:

1900: Congress first authorized the formation of city governments in what was then the Civil and Judicial District of Alaska. Ninety-five residents of Ketchikan petitioned the U.S. District Court to incorporate the "Town of Ketchikan." The Court granted the petition and set August 18, 1900, as the date for the incorporation election. One hundred and three votes were cast in the election. Of those, 82 (79.6 percent) voted in favor of incorporation; 18 (17.5 percent) voted against incorporation;

Ketchikan waterfront in 1908

and the remaining 3 were blank. The Town of Ketchikan became the third municipal government incorporated in Alaska.

1929: Residents of Saxman petitioned the U.S. District Court for the incorporation of a "municipality of the second class." An election was held on October 26, 1929. Voters approved the incorporation of Saxman.

Downtown Ketchikan, 1938

1935: The Alaska Territorial Legislature enacted laws allowing the creation of independent school districts and public utility districts. Each independent school district could encompass a city and adjoining unincorporated territory. This provided a mechanism through which taxes could be levied to support schools and voting rights could be extended beyond the boundaries of a city to the adjoining outlying areas. Public utility districts were allowed in areas outside city governments. Public utility districts had the capacity to provide a broad range of services including utilities, hospitals, dams, cold storage plants, warehouses, and canneries.[A-12]

1959: Alaska became a state, at which time the Constitution of the State of Alaska took effect. The Constitution allowed municipal governments to adopt home-rule charters. It also provided for the division of all of Alaska into boroughs (organized or unorganized). Independent school districts and public utility districts were rendered unconstitutional; however, provisions were made to allow for a transition of those governments into city and borough governments.

1960: The City became one of the first home-rule cities in Alaska when voters adopted a home-rule charter.

[A-12] The Ketchikan Independent School District was formed under Territorial law (date unknown). Its southern boundary encompassed Mountain Point, its northern boundary extended to the end of the North Tongass Highway, its western boundary encompassed a portion of Gravina Island and its eastern boundary ran along George Inlet. In 1963, it was reported that the value of taxable property in the City was $40,626,918; the value of taxable property in the remainder of the Ketchikan Independent School District was $19,777,343. (Incorporation of the Gateway Borough, report to the LBC, Local Affairs Agency, May 1963, p. 3,). The Mountain Point Public Utility District was also formed under Territorial law (date unknown). Its only function was to provide water utility service on a fee basis. It did not levy taxes. (Id., p. 5)

1961: The Alaska State Legislature enacted standards and procedures for incorporation of boroughs using the local option method.

1963: Concerned over the lack of progress in terms of borough formation, the Alaska State Legislature mandated that the greater Ketchikan region and seven other areas of Alaska form boroughs. The legislature declared that the purpose of the mandate was to "provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions. . . ." (Section 1, Chapter 52, SLA 1963.) The KGB was incorporated in September 1963.

Members of the 1963 State Legislature

1973: Voters in the KGB considered a proposition to unify the City, the City of Saxman, and the KGB into a single borough government. In order to proceed, unification proposals had to be approved by two groups of voters: (1) those within first-class and home-rule cities (the City) and (2) the remainder of the KGB. Although the proposal was endorsed by a majority of all votes cast and by 78 percent of the voters inside the City, it failed when only 40 percent of the voters in the rest of the borough endorsed it.

1975: The Mayor of the City appointed a "Study Committee for Local Government Efficiency." The Committee concluded that "a consolidated form of government . . . offers the greatest promise." The Mayors of the KGB and the City subsequently directed their respective staffs to refine the Committee's report, in order that reorganization of the local government structure could be advanced. The City and the KGB prepared a consolidation study. However, no action followed to attempt consolidation of the local governments.[A-13]

1979: A second attempt was made to unify the KGB, City, and City of Saxman. The 1979 proposal was approved by 55 percent of the voters in the City, but failed when only 22 percent of those in the remainder of the KGB endorsed it.

[A-13] Unification is distinct from consolidation in a number of ways. Prominent among the differences is that unification requires all city governments to be combined with the borough. For example, it would require the KGB, City of Saxman, and City to be combined as a single government. In contrast, consolidation allows some existing city governments (e.g., City of Saxman) to remain in place. Another significant difference is that consolidation is decided by a majority of all votes cast. Under current law, a proposition to form a charter commission for unification must be approved by a majority vote in each home-rule and first-class city in the borough or (55 percent of all votes in such cities) and by a majority vote in the area of the borough outside of all home-rule or first-class cities.

1986: A third unification effort was undertaken. The 1986 proposal was approved by 70 percent of the voters in the City; however, only by 37 percent of the voters in the rest of the KGB supported it. Overall, the unification proposal was approved by 56 percent of the voters in the KGB, but still failed.

1990: The Ketchikan Chamber of Commerce formed a study group to investigate the process and benefits of consolidating the City and the KGB. The efforts of this group resulted in the City and KGB jointly funding a local government consolidation study, which was published in 1993 (the 1993 study*)*.

1994: The City established a committee of citizens and local officials to draft a charter for a consolidated city and borough government. That work formed the basis of a proposal submitted in 2000.

1998 – 1999: The KGB petitioned for annexation of much of the area within its Model Borough Boundaries. The LBC rejected the proposal largely because it excluded Hyder and Meyers Chuck.

2000: The City petitioned the LBC for consolidation of the City and the KGB. That proposal left the City of Saxman in place. On April 27, 2001, following a public hearing, the LBC approved the City's Petition for consolidation. On May 18, 2001, the State Division of Elections scheduled a special election on the proposed consolidation. The election was scheduled to be conducted by mail.

The election results were certified by the Division of Elections on August 2, 2001. The outcome of the consolidation proposition was determined by a majority of the areawide vote. Borough voters rejected the consolidation proposal by a margin of 2,273 (58.1 percent) to 1,642 (41.9 percent).

2003 - 2006: In 2003, voters in the KGB approved an initiative to establish a seven-member elected commission ("Ketchikan Charter Commission or "KCC") to draft a proposal to consolidate the City of Ketchikan ("City") and the KGB. Three members of the KCC were elected from the City, three from the portion of the KGB outside the City, and one at-large.

The KCC prepared and filed a petition for consolidation in September 2004. The City filed a responsive brief that opposed the Consolidation Petition. The KGB Manager and the Mayor of the City also filed comments regarding the proposal.

The KCC met in January and February 2005 to plan its reply to the City's response brief and the other comments. LBC Staff, the City Manager, City Finance Director, KGB Manager, KGB Attorney, and KGB Clerk all attended the February meeting.

The City, KGB, and KCC officials worked cooperatively over the next several months in a good faith effort to address all concerns. In October 2005, the KCC submitted an amended petition and its reply brief.

Following a public hearing in Ketchikan on June 26, 2006, the LBC approved the amended petition. No timely requests for reconsideration of that decision were filed.

On August 25, the Director of Elections issued the order for the Ketchikan local government consolidation election. On December 7, 2006, the final results of the by-mail election on the proposal to consolidate the City and the KGB were certified by the State Division of Elections. The outcome of the proposition, which was determined by the areawide tally, reflected nearly two-to-one opposition to the proposal. Only 1,170 of the 3,301 (35.4 percent) votes were cast in favor of consolidation, while 2,131 (64.6 percent) votes were cast in opposition. A total of 3,301 ballots were cast among the 10,162 registered voters. That represents a 32.5 percent voter turnout.

This was the fifth time that voters in Ketchikan had rejected unification or consolidation.

Appendix B
The Alaska Local Boundary Commission

I. Constitutional Foundation of the Commission.

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

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

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

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

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

B-2 Article X, section 12 states,

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

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

II. Duties and Functions of the LBC.

The LBC acts on proposals for different types of municipal boundary changes.

These are:

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

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

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

The Alaska Supreme Court has stated that the above three Commission duties are mandatory. (*United States Smelt. R. & M. Co. v. Local Bound. Com'n*, 489 P.2d 140 (Alaska 1971).)

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska That Meet Borough Incorporation Standards.* That report was prepared in response to the directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and

The LBC at a recent hearing

[B-4] The term "municipalities" includes both city governments and borough governments.

Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation.* That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (Section 48 Chapter 159 SLA 2004).

III. Nature of Proceedings.

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

A. Quasi-Executive.

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

B. Quasi-Legislative.

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

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

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

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

C. Quasi-Judicial.

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to hold hearings, follow due process in conducting hearings and ruling on petitions, and apply pertinent standards in the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code to facts when making decisions.

D. Hearings and Decisions.

In *U.S. Smelting, supra*, the Alaska Supreme Court found that due process requirements apply in Commission proceedings.[B-5] The Court stated it was the administrative action of the Commission, rather than legislative action, that it was reviewing in the case.

Among other things, due process in Commission proceedings means that adequate notice be given, that a fair and impartial hearing be conducted, and that a reasoned decision on the merits of the petition be set out in writing. Notice requirements are set out in statute (AS 44.33.818) and in numerous sections of the Commission's regulations (e.g., 3 AAC 110.450, 3 AAC 110.520, 3 AAC 110.550).

A fair and impartial hearing[B-6] entails having the opportunity to present and examine evidence and having that evidence judged by impartial, unbiased fact finders. To some extent, the State's ethics laws (AS 39.52.110 - 39.52.950; 9 AAC 52.010 - 9 AAC 52.180) and the Commission's regulations at 3 AAC 110.800 address ethics requirements for Commissioner conduct. However, the Court also reviews fair-hearing issues to determine whether a fact finder has shown bias such as a prejudgment of the facts or issues or a personal bias for or against an issue or a participant in the proceeding.

[B-5] The Court addressed judicial review of LBC decisions to determine whether applicable rules of law and procedure were followed. The Court stated:

> [The *Murkowski*] test delineates the contours of judicial review employed by us in the case at bar in reaching the conclusion that the [LBC] failed to comply with the mandate of [AS 44.33.812(a)] that it develop standards for the changing of the local boundary lines. Without doubt there are questions of public policy to be determined in annexation proceedings which are beyond the province of the court. Examples are the desirability of annexation, as expressed in published standards. Judicial techniques are not well adapted to resolving these questions. In that sense, these may be described as political questions," beyond the compass of judicial review. **But other . . . issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques. *Murkowski* clearly permits this latter type of review.**

U.S. Smelting, at 143 (emphasis added).

[B-6] In many instances, a fair hearing also entails the right to cross-examine adverse witness. However, the Department of Law has advised that there is no right to cross-examine witnesses in LBC proceedings. Furthermore, in the Commission's 2006 – 2007 comprehensive review of its regulations, the Commission rejected a conceptual proposal to allow cross-examination.

LBC at a recent hearing

Due process in Commission proceedings also entails a written, well-reasoned decision[B-7] based on the facts in the record and the application of pertinent boundary-change standards. Procedural requirements for Commission decisions are set out 3 AAC 110.570. Commission decisions dealing with the different types of municipal boundary changes that come before it are subject to appeal[B-8] under the Administrative Procedure Act (at AS 44.62.560 - 44.62.570). Commission decisions must be written so that the Court can determine if there is a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence.[B-9]

Assuming compliance with due process and jurisdictional limitations, a Commission decision is typically reviewed for abuse of discretion,[B-10] which occurs if the LBC has not proceeded in the manner required by law, if its decision is not supported by the evidence, or if the Commission has not properly interpreted applicable standards.

B-7 In *Mobil Oil*, the Alaska Supreme Court stated that commission decisions do not have to contain formal findings of fact and conclusions of law. The court stated that as long as the Commission's decisions reflected a reasonable basis for its interpretation of applicable legal standards, the Court would sustain the decision (assuming, of course, compliance with due process of law, *U.S. Smelting*).

B-8 AS 29.04.040; 29.05.100, 29.06.040, 29.06.130, 29.06.500.

B-9 *See Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059,1062 (Alaska 1994); *Mobil Oil* at 97-8. Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; when the LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); *see also Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

B-10 In interpreting AS 44.62.570, the Alaska Supreme Court has recognized at least four principal standards of review of administrative decisions: "These are the 'substantial evidence test' for questions of fact; the 'reasonable basis test' for questions of law involving agency expertise; the 'substitution of judgment test' for questions of law where no expertise is involved; and the 'reasonable and not arbitrary test' for review of administrative regulations." *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

IV. Limitations on Direct Communications with the LBC.

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

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC Staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

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

Telephone: (907) 269-4501
Fax: (907) 269-4539
E-mail: **LBC@alaska.gov**

A. LBC Membership.

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

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

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

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

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

Kermit L. Ketchum, Chair, At-Large Appointment. On June 25, Governor Palin appointed Kermit L. Ketchum as Chair of the LBC, effective July 1, 2007. Commissioner Ketchum succeeds Darroll Hargraves, who retired effective June 30, 2007. Commissioner Ketchum is a resident of the greater Wasilla area in the Matanuska-Susitna Borough. He received his bachelor's degree in business administration and has undertaken graduate studies in computer science. Commissioner Ketchum served 21 years in the U.S. Air Force, retiring from that career in 1976. He subsequently worked for the University of Alaska, Matanuska-Susitna College from 1976 to 1997, and was an Associate Professor in Computer Science at the College from 1987 to 1997.

Georgianna Zimmerle, First Judicial District. Commissioner Zimmerle is a life-long resident of Ketchikan.[B-11] She earned an Associate of Arts degree from the University of Alaska in May 1985. Commissioner Zimmerle was appointed to the LBC on March 25, 2003, and was reappointed to her second term in January 2006. An Alaska Native, Commissioner Zimmerle is a Tlingit of the Raven moiety and her Indian name is JEEX-GA-TEET´. She is also Haida from her paternal family. Commissioner Zimmerle worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Commissioner Zimmerle served as the General Manager of Ketchikan Indian Community for 2½ years. She is currently retired and working part-time for Tongass Federal Credit Union. Her current term on the LBC ends January 31, 2011.

[B-11] Commissioner Zimmerle lives within the corporate boundaries of both the City of Ketchikan and the Ketchikan Gateway Borough. The City of Ketchikan was incorporated in 1900. Sixty years later, voters adopted a home-rule charter for the City of Ketchikan, making it one of the first home-rule local governments in the newly formed State of Alaska. DCCED's 2006 certified population for the City of Ketchikan is 7,622. The Ketchikan Gateway Borough was incorporated in September 1963 under the Mandatory Borough Act. It is a second-class borough. The 2006 population of the Ketchikan Gateway Borough, as certified by DCCED, is 13,174.

Robert Harcharek, Second Judicial District. Commissioner Harcharek, a resident of Barrow,[B-12] was appointed to the LBC on July 18, 2002 by then-Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him Vice-Chair of the Commission. Commissioner Harcharek has lived and worked on the North Slope for more than 25 years. He has been a member of the Barrow City Council since 1993. He has also been a member of the North Slope Borough School Board . He is currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public Works. Commissioner Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska School Activities Association. His current term on the LBC ends January 31, 2009.

Lynn Chrystal, Third Judicial District. Lynn Chrystal, a resident of Valdez,[B-13] serves from the Third Judicial District. Governor Palin appointed him to the Commission on March 27, 2007. Commissioner Chrystal is a former Mayor and member of the City Council of the City of Valdez. He has lived in Valdez for the past 32 years. Commissioner Chrystal retired in 2002 from the federal government after 4 years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. Commissioner Chrystal is retired, but teaches on a substitute basis at Valdez schools. His current term on the LBC ends January 31, 2012.

[B-12] Commissioner Harcharek lives within the corporate boundaries of both the City of Barrow and the North Slope Borough. The City of Barrow, incorporated in 1958, is a first-class city. DCCED's 2006 certified population for the City of Barrow is 4,065. The North Slope Borough was incorporated in 1972. DCCED's 2006 certified population for the North Slope Borough is 6,807.

[B-13] Commissioner Chrystal lives within the corporate boundaries of the City of Valdez, a city in the unorganized borough. The City of Valdez, incorporated in 1901, became a home-rule city in 1961. DCCED's 2006 certified population of the City of Valdez is 4,353.

Lavell Wilson, Fourth Judicial District. Lavell Wilson, a resident of Tok,[B-14] serves from the Fourth Judicial District. Governor Palin appointed him to the Commission on June 4, 2007. Commissioner Wilson is a former member of the State House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since that time. Commissioner Wilson attended college at the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981- 1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. He has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2010.

V. Staff to the Commission.

The Alaska Department of Commerce, Community, and Economic Development (DCCED), Division of Community Advocacy (DCA) provides staff to the Commission pursuant to AS 44.33.020(a)(4).[B-15] The following sections address the role of DCCED/DCA.

A. Constitutional Origin of the Local Government Agency.

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed." In addition to the previously noted five boards and commissions named in the Constitution, the framers provided for only one State agency or department – the local government agency mandated by article X, section 14 to advise and assist local governments.[B-16] It is worth noting that of the six boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local

[B-14] Commissioner Wilson lives in Tok, an unincorporated community in the unorganized borough. The State Demographer estimates that the population of Tok was 1,347 in 2006. (Note: Elsewhere in this appendix, population figures are listed as DCCED certified figures. DCCED does not certify population figures for unincorporated communities.)

[B-15] AS 44.33.020(a)(4) provides that DCCED shall "serve as staff for the Local Boundary Commission."

[B-16] Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

governments. The constitutional standing granted to the LBC and the local government agency reflects the framers' conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in part, upon those two entities.

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

In its capacity as staff to the LBC, DCCED is required to investigate each boundary-change proposal and to make recommendations regarding such to the LBC.[B-17] As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCCED adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC Staff is committed to developing its recommendations to the LBC based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC Staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

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

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

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

Types of assistance provided by the LBC Staff include:

- conducting feasibility and policy analysis of proposals for city reclassification and incorporation, annexation, detachment, merger, consolidation, and dissolution of cities and boroughs;
- writing reports regarding the analyses of petitions for such boundary changes;
- responding to legislative and other governmental inquiries relating to issues on municipal government;

[B-17] AS 29.04.040, 29.05.080, 29.06.110, and 29.06.450 and 3 AAC 110.530.

- conducting informational meetings;
- providing technical support during Commission hearings and other meetings;
- drafting decisional statements of the LBC;
- implementing decisions of the LBC;
- preparing and overseeing appeals of Commission decisions, in coordination with agency counsel from the Department of Law;
- drafting annual reports of the Commission as directed;
- preparing Commission ethics reports for the LBC Chairman;
- certifying municipal boundary changes;
- maintaining incorporation and boundary records for each of Alaska's 162 municipal governments;
- coordinating, scheduling, and overseeing public meetings and hearings for the LBC, including arranging travel and accommodations for Commissioners and staff;
- developing orientation materials and providing training for new LBC members;
- maintaining and preserving LBC records in accordance with the public records laws of the State;
- developing and updating forms and related materials for use in municipal incorporation, alteration, dissolution, and reclassification;
- at direction of the Commission, proposing amendments to Commission regulations and completing the regulations amendment and adoption process under the Administrative Procedure Act (AS 44.62) as necessary; and
- at direction of the Commission, proposing amendments to Commission bylaws and completing the amendment and adoption process as necessary.

Appendix C
Proceedings to Date and Future Proceedings

I. Proceedings to Date Regarding the Pending Annexation Proposal.

The KGB Assembly held a public hearing[C-1] on its proposed legislative review petition on January 21, 2006. At that meeting, the Assembly voted to hold a local public advisory election on the issue prior to taking action on proposed Resolution No. 1949, which would have authorized filing of the petition with the LBC.[C-2] However, on February 6, 2006, the Assembly rescinded that action and authorized the filing of the Petition to expand the area within the Borough's corporate boundaries by 4,701 square miles. The Petition was received by DCCED on February 14, 2006.

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

Written comments regarding the Petition were timely filed by Peter Rice; Bill Rotecki; Rebecca Welti and Glen Rice; Ed Stahl; Susan Millay; Debbie Johnson, Brad Johnson, Kurt Broderson, Rory Bifoss, and Marion Bifoss; Jerry and Terry Gucker; Steve and Catherine Peavey; Tim and Donna Collins; Herbert and Shirley Lee; Janice Lang; Dan Higgins and Carol Brown; Debra and Brent Stucki; Carol Denton; Shawn McAllister; Sheila Spores; the City of Craig; the Prince of Wales Community Advisory Council; and Sandy Powers.

Responsive briefs were timely filed by Peter Caffall-Davis, the City of Wrangell, and the Metlakatla Indian Community.

Following receipt of the Responsive Briefs and written comments on the Petition, the LBC Chair set June 21, 2006, as the deadline for the Petitioner to file its Reply Brief. The KGB filed its reply brief on June 19, 2006, with service on commentors, Respondents, and others.

LBC Staff has provided each member of the LBC with a copy of the record in the proceeding. To date, that record consists of the (1) Petition and supporting documents; (2) Responsive Briefs; (3) written comments; (4) KGB Reply Brief; and (5) DCCED's Preliminary Report.

[C-1] Under 3 AAC 110.425(a), before a petition for annexation by the legislative review process may be submitted, the prospective petitioner must, among other things, conduct a public hearing on the annexation proposal.

[C-2] For further information regarding the KGB hearing, see the detailed information the KGB filed with its Petition for annexation.

II. Future Proceedings Regarding the Pending Annexation Proposal.

A. Opportunity to Comment on DCCED's Preliminary Report

DCCED's Preliminary Report has been provided to the Petitioner, Respondents, and others. The LBC Chair has set the deadline for the **receipt** of written comments on the Preliminary Report for September 4, 2007 at 4:30 p.m.

Comments may be submitted by mail, courier, facsimile, or e-mail. To be considered, comments must be received at the following location by the deadline noted above:

Local Boundary Commission Staff
Department of Commerce, Community, and Economic Development
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
Fax: 907-269-4539
e-mail: LBC@alaska.gov

B. DCCED's Final Report

After DCCED has considered any timely written comments on its Preliminary Report, it will issue a Final Report on the matter. The Final Report will be mailed to the Petitioner, Respondents, and others at least three weeks prior to the LBC's hearing on the Petition.

C. Pre-Hearing Requirements

As described below in II-D of this appendix ("LBC Public Hearing"), the Petitioner and Respondents may present sworn testimony during the upcoming public hearing on the annexation proposal. The public hearing will be conducted by the LBC in Ketchikan.

Witnesses providing sworn testimony must have expertise in matters relevant to the pending annexation proposal. If the Petitioner and Respondents plan to provide sworn testimony, each must submit to the LBC a list of witnesses the party intends to call to provide such testimony. The list must be received by LBC Staff at least 14 days prior to the hearing.

The witness list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. Each party must also provide the other parties with a copy of its witness list.

D. LBC Public Hearing

The LBC will hold at least one public hearing on the annexation proposal in Ketchikan. The date, time, and location of the hearing have not yet been set.

Formal notice of the hearing will be published at least three times in the *Ketchikan Daily News*, with the initial publication occurring at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations and mailed to the Petitioner and Respondents.

The hearing will begin with a summary by LBC Staff of its conclusions and recommendations concerning the pending proposal.

Following the LBC Staff's summary, the Petitioner and Respondents will be allowed to make opening statements limited to ten minutes each.

Next, sworn testimony will be taken, beginning with that provided by the Petitioner. After sworn testimony by the Respondents, the Petitioner is also allowed to provide sworn responsive testimony.

The time and content of testimony will be regulated by the LBC Chair to exclude irrelevant or repetitious testimony. Commission members may question witnesses providing sworn testimony.

Following the sworn testimony, the public will have an opportunity to comment on the proposal. Three minutes will be allowed for each person who wishes to offer comments. Commission members may question persons providing public comment.

The hearing will conclude with a closing statement by the Petitioner not to exceed ten minutes, a closing statement by the Respondents not to exceed ten minutes each, and a reply by the Petitioner not to exceed five minutes.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by the Petitioner, Respondents, and LBC Staff.

In compliance with Title II of the Americans with Disabilities Act of 1990, LBC Staff will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact LBC Staff at least two weeks prior to the hearing.

If anyone attending the hearing lacks a fluent understanding of English, the LBC may allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator. Upon request, and if local facilities permit, reasonable arrangements can be made to connect other sites to the hearing by teleconference.

E. LBC Decision

The LBC must make its decision within 90 days following its last hearing on the Petition.

During the decisional session, no new evidence, testimony, or briefing may be submitted to the LBC. However, the LBC may ask its staff or another person for a point of information or clarification.

After the LBC renders its decision, it must adopt a written statement explaining all major considerations that led to its decision. A copy of the statement will be provided to the Petitioner, Respondents, and all others who request a copy.

F. Opportunity to Seek Reconsideration

The LBC may grant a request for reconsideration or, on its own motion, order reconsideration of its decision if

1. a substantial procedural error occurred in the original proceeding;
2. the original vote was based on fraud or misrepresentation;
3. the LBC failed to address a material issue of fact or a controlling principle of law;
4. new evidence not available at the time of the hearing relating to a matter of significant public policy has become known; or
5. insufficient opportunity was provided to refute a matter of official notice that was given significant weight by the Commission in reaching its decision.[C-3]

Details regarding procedural requirements for reconsideration are set out in 3 AAC 110.580.

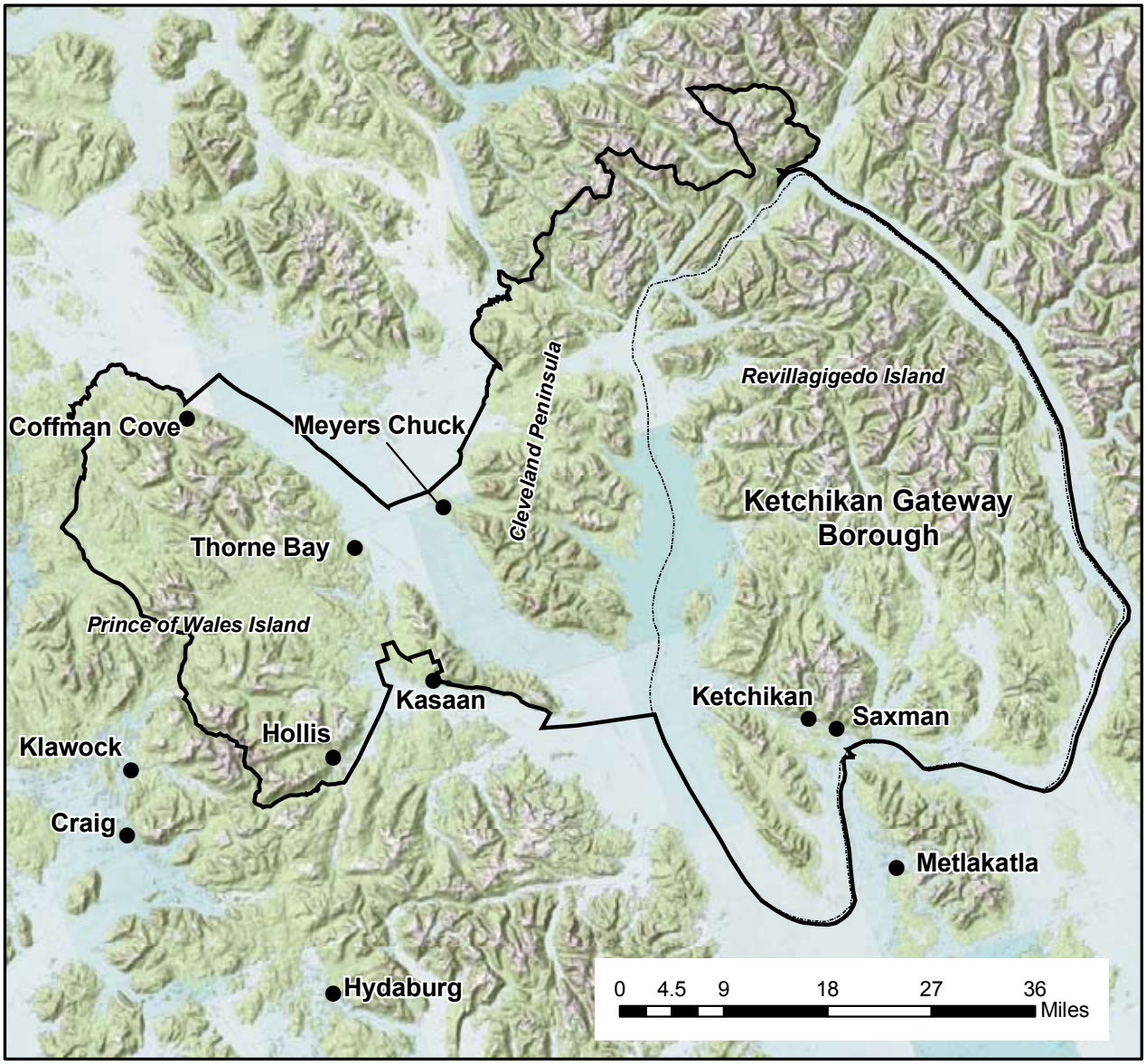
G. Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within thirty days after the last day on which reconsideration may be ordered by the Commission. (Alaska Rules of Appellate Procedure, Rule 601, *et seq*.)

[C-3] The fifth standard for reconsideration ("insufficient opportunity was provided to refute a matter of official notice that was given significant weight by the Commission in reaching its decision") was added by the Commission on April 30, 2007. At the time that this report was written, however, that provision had not yet taken effect.

Appendix D
Election District and NOAA Weather Service Maps

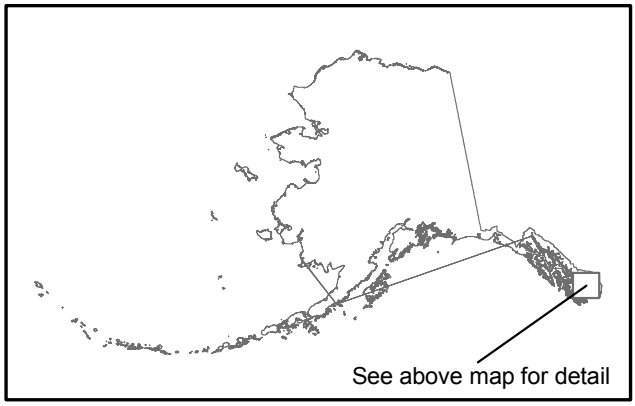
Election District 1A



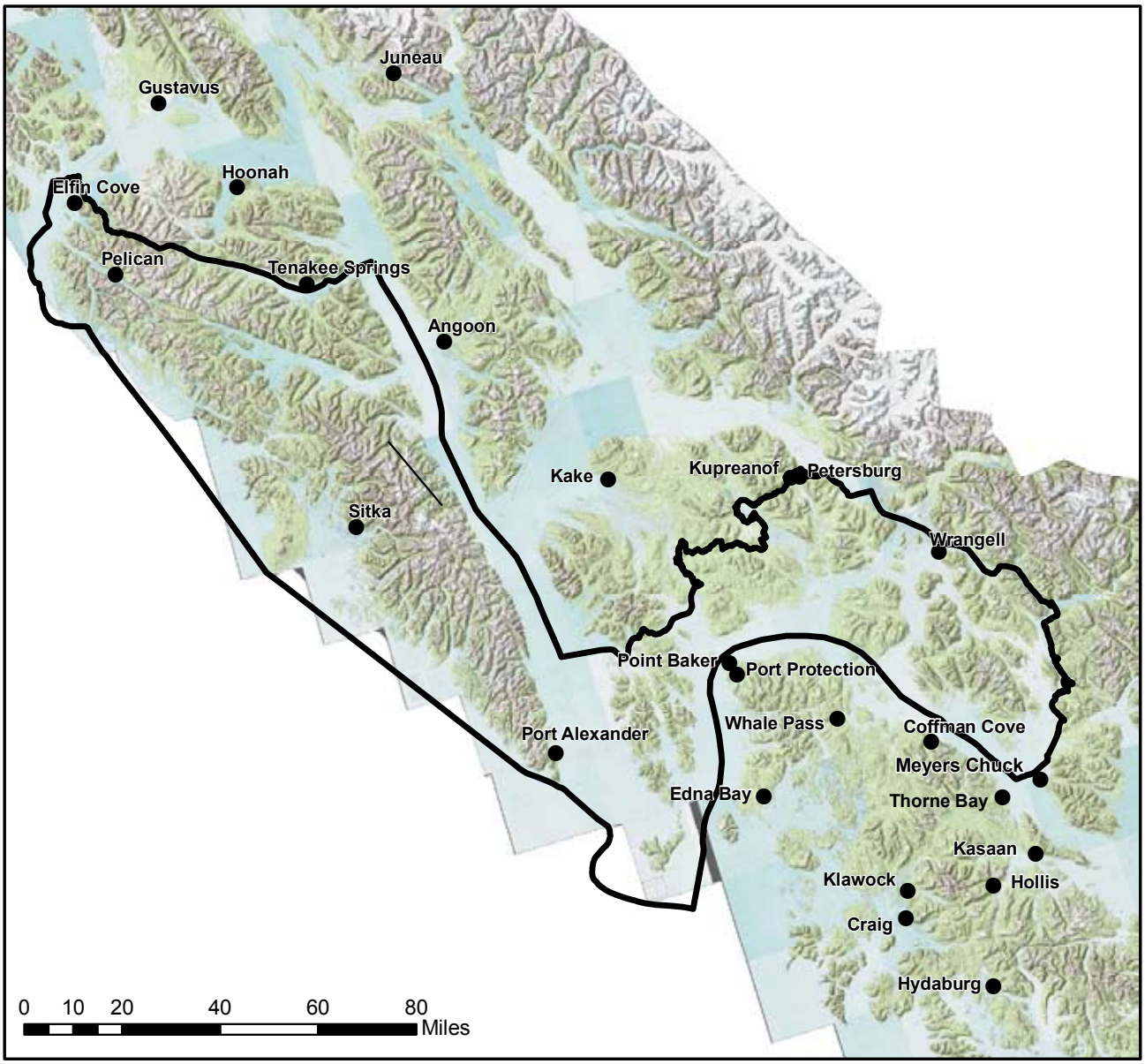
Legend

Election District 1A

Ketchikan Gateway Borough



Election District 2A



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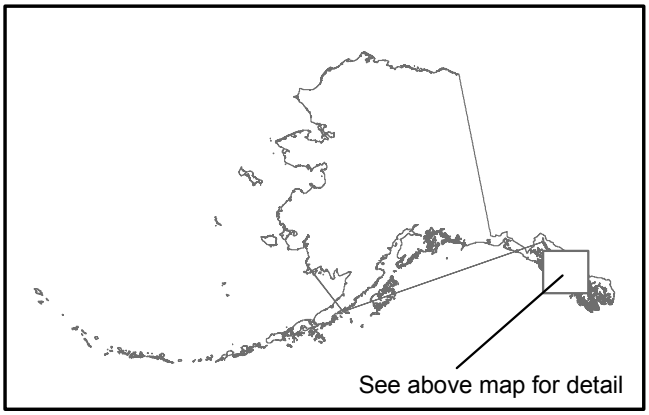
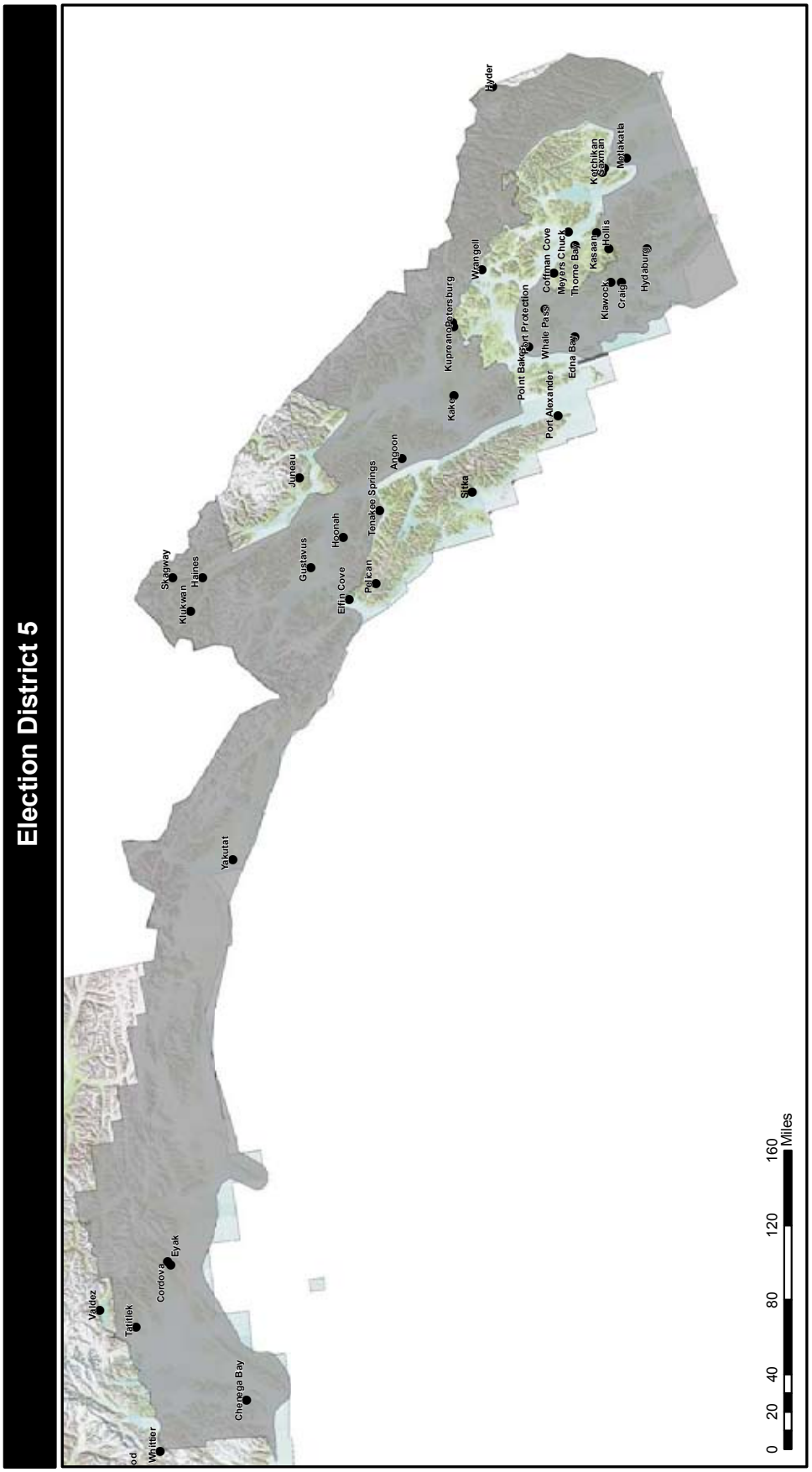
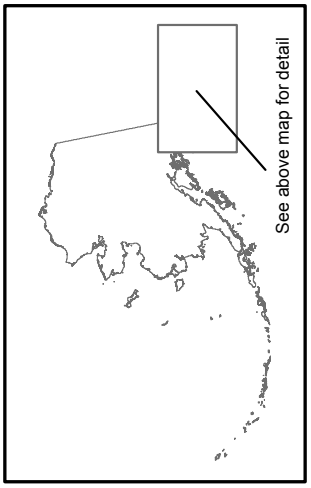
Election District 2A







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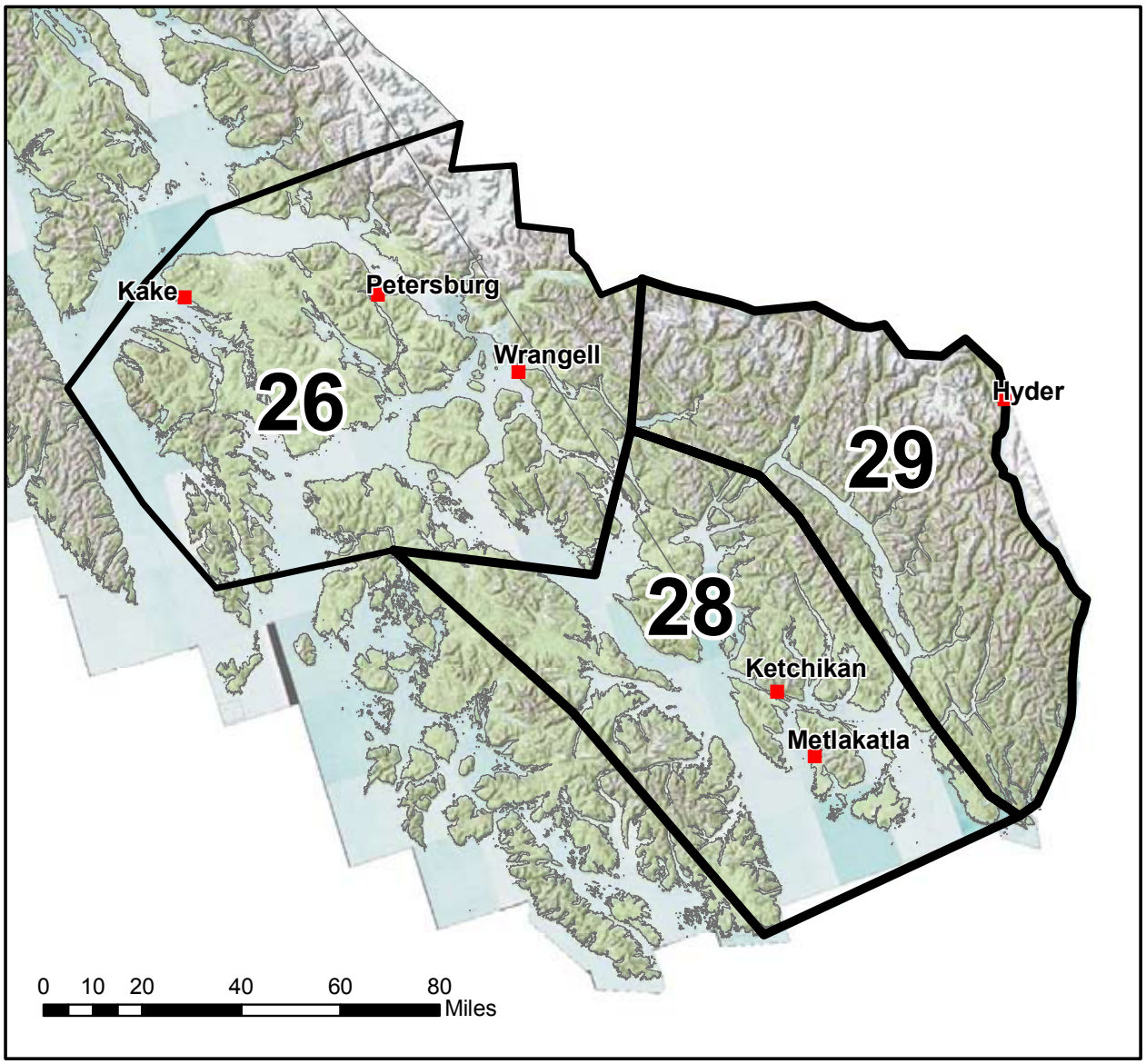
Election District 5A

National Oceanic and Atmospheric Administration National Weather Service Zone Boundary Map



Legend

- Zone 26 - Inner Channels from Kupreanof Island to Etolin Island
- Zone 28 - Dixon Entrance to Cape Decision
- Zone 29 - Misty Fjords

Appendix E
Policy Issues Regarding Borough Enclaves (Excerpt from 2004 School Consolidation Study)

Klukwan School operated by the Chatham REAA.

The Klukwan School is operated by the Chatham REAA, which has its central office in Angoon. Angoon is approximately 150 air miles south of Klukwan.[27] The Mosquito Lake School is operated by the Haines Borough, which is headquartered in nearby Haines.

That peculiar jurisdictional arrangement exists because the 892.2-acre (1.4 square mile) area encompassing Klukwan is excluded from the 2,357 square-mile Haines Borough.[28]

The current school at Klukwan was constructed in 1985. It has the capacity to accommodate approximately 50 students. However, at one point in the 1980s the Klukwan School served about 55 students. To serve that number of students, storage rooms and offices were converted to classrooms.

Forty students are presently enrolled at the Klukwan School. Enrollment in the Klukwan School has increased significantly in recent years. In 1999, only 12 students attended school at Klukwan. At that time, the total population of Klukwan was 136. Three years later, enrollment at the Klukwan School had increased to 41 (a 241.7 percent increase). The significant enrollment increase occurred despite the fact that the total population of Klukwan declined by 25 (a loss of 18.4 percent) during the same period.

It is noteworthy that most of the students that attend the Klukwan School live in the Haines Borough. Specifically, 29 of the 40 students currently enrolled in the Klukwan School (72.5 percent) reside within the Haines Borough.

27 There is no road connecting Angoon and Klukwan. To travel to Klukwan from Angoon, it is necessary to fly to Haines or travel to Haines by ferry, then drive to Klukwan.

28 Klukwan has been an enclave surrounded by the Haines Borough since the Haines Borough incorporated in 1968. Although former statutory borough boundaries standards (former AS 07.10.030(2)) required the exclusion of "all areas such as military reservations, glacier, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government," current law (3 AAC 110.040(d)) creates a rebuttable presumption that a proposed borough with enclaves fails to meet applicable borough incorporation standards. Today, the Haines Borough is the only borough government in Alaska with enclaves. Appendix J provides a summary of the incorporation of the Haines Borough and the exclusion of Klukwan therefrom. It also allows the reader to understand that forming borough governments under the "local option" process may necessitate concessions that might not be required under the legislative review method.

Table 5

Reasons Given That Haines Borough Students Are Attracted to the Klukwan School	Cited by Haines	Cited by Klukwan
Klukwan class size is smaller and students receive individualized instruction	✓	✓
Tlingit language/culture program offered at Klukwan	✓	✓
Some students do not find success in larger school settings but thrive in a system that is small enough to meet their needs		✓
Klukwan relies on traditional values and mores, students have an opportunity to work in an environment that reinforces respect for elders, peers, and the environment		✓
Problems with bullying, harassment at Haines Elementary, especially at the 6-8 grade level	✓	
Dissatisfaction with individual teachers	✓	
Availability of free transportation – most parents would not transport their students to Klukwan at their own expense	✓	

Representatives of the Klukwan School and the Haines Borough School District cited a number of circumstances often given as reasons that the Klukwan School attracts students from Haines.[29] Those are listed in Table 5.

While enrollment at the Klukwan School increased significantly from 1999 to 2002, enrollment at the Mosquito Lake School declined from 17 to 11 students (a loss of 35.3 percent) during the same period. The school at Mosquito Lake was built in 1982. It was designed to accommodate up to 30 students. Given its small and declining enrollment, the Mosquito Lake School has often faced the prospect of closure during the past four years.

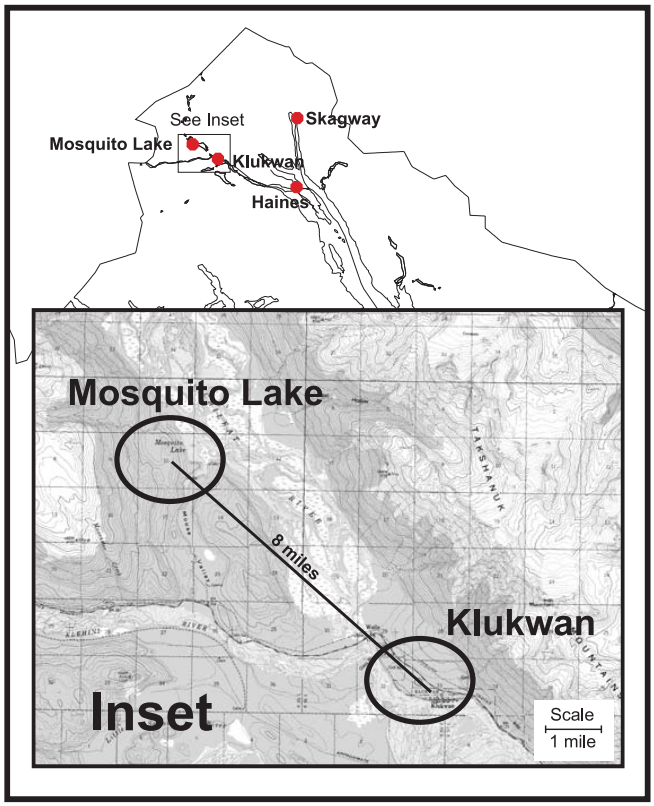
Historically, some students living in Klukwan, particularly those in high school, have elected to attend schools operated by the Haines Borough. According to Haines Borough School District officials, there are currently three students from Klukwan attending Haines Borough schools at the high school level. Klukwan students are attracted to the Haines Borough schools because of the variety of extracurricular activities offered.

Financial challenges in the Haines Borough School District are not limited to the Mosquito Lake School. Enrollment in all schools operated by the Haines Borough, including the Mosquito Lake School, declined from 425 students in 1999 to 331 in 2002 (a loss of 22.1 percent). A portion of the enrollment decline was likely attributable to a 4.6 percent drop in population during the same period. However, in relative terms, the enrollment decline was far greater (4.8 times) than the general population drop.

In February 2003, the Haines School Board voted to layoff six teachers and one principal to cope with declining financial resources. School Board members vowed to work to overcome the difficulties, in part, by halting the loss of students to the Klukwan School as reflected in the following article published in the February 13, 2003, edition of the *Chilkat Valley News*:

[29] Personal communication (11/24/03), Cheryl Stickler and Haines Borough School Principal Charlie Jones.

> Six teachers and a principal will lose their jobs under a staffing plan approved by the Haines Borough School Board Tuesday. . . .
>
> But it could have been worse. After three hours' discussion and an hour consulting with their lawyer, the board restored the job of [a] physical education and math teacher . . . shaving the district's fund balance by $63,000 to do so. . . .
>
> Members said they hope to restore further jobs by boosting enrollment, finding grants and convincing the Legislature to boost education funding. . . .
>
> Board members reiterated their distaste of the layoffs and vowed to work hard to attack the budget shortfall in other ways.
>
> Lobbying the Legislature, stemming loss of students to Klukwan, privatizing some janitorial work, and enhancing Mosquito Lake School as a magnet site are among the options being studied.



Location of Mosquito Lake and Klukwan schools.

The Principal at the Haines Borough schools noted that the loss of students from Haines to Klukwan has adversely affected the finances of the Haines Borough School District. Specifically, he noted that the Haines Borough School District could have avoided the recent layoffs if the twenty-nine Haines Borough students enrolled at the Klukwan School would have attended school in the Haines district.[30]

The Haines Borough School District Principal indicated that the administration and School Board have been working on solutions to address the matter. Those include: (1) staff development to address the bullying/harassment issue (resulting in establishment of a "zero tolerance" approach to the problem); (2) establishment of a "crossover program" using the Borough's special education teacher to assist those students who are having difficulties; (3) investigating and working to solve any teacher/methods difficulties that are identified; and (4) investigating the possibility of alternative programs and financing/grants to start them.

If the Haines Borough annexed Klukwan, the Haines Borough would be responsible for the delivery of educational services to the community. The Borough would have the opportunity to consolidate the schools at Klukwan and Mosquito Lake. Consolidating the two schools would result in a student population that would exceed the design capacity at the Mosquito Lake School and would be at or just above the historical capacity of the Klukwan School.

[30] Personal communication (11/24/03), Charlie Jones, Principal, Haines Borough School District.