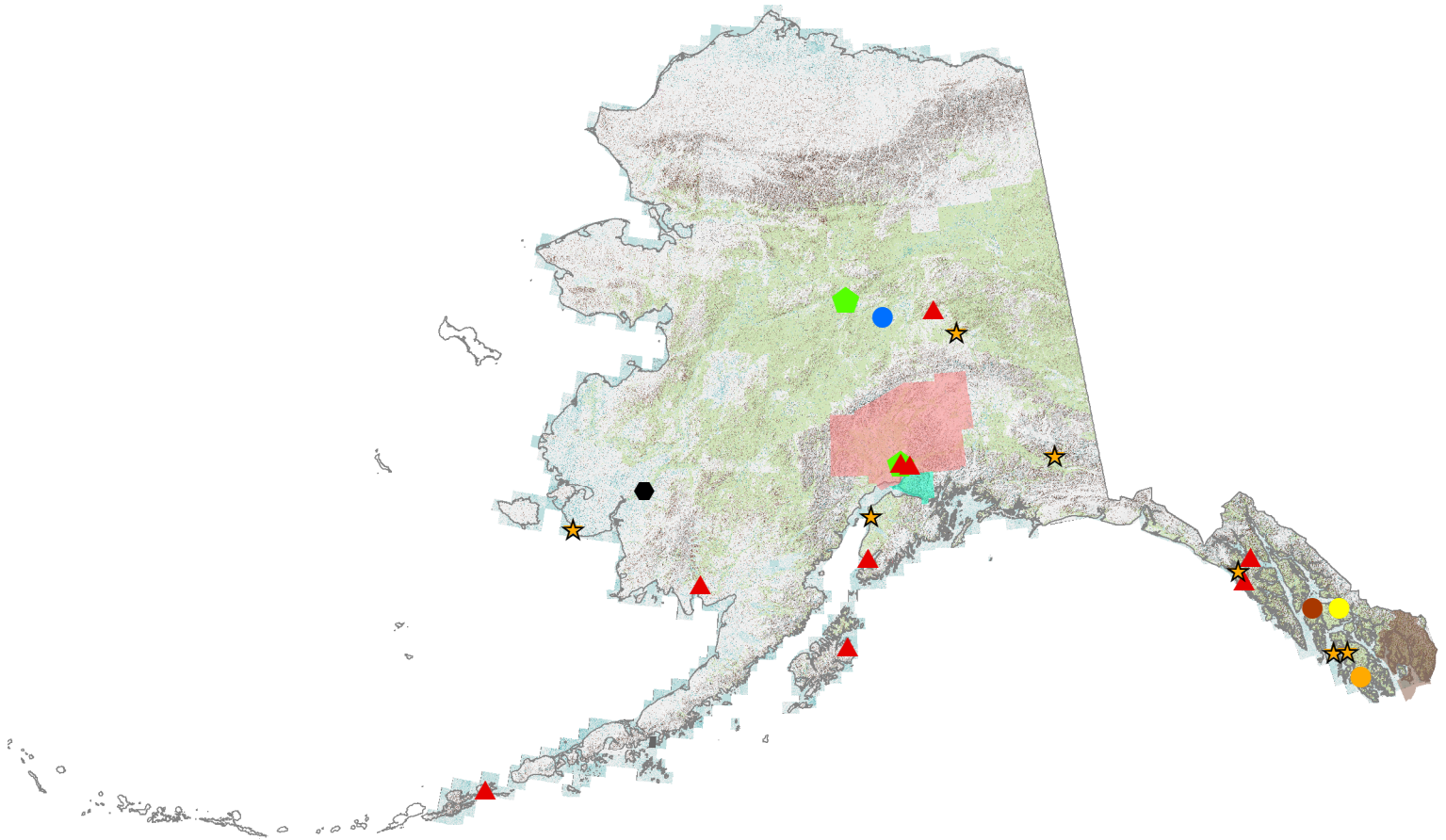


Local Boundary Commission

Report to the 26th Alaska State Legislature, 2nd Session

February 2010



Boundary Change Locations

- | | | |
|-----------------------------|---|--|
| ★ City Incorporation (7) | ■ Ketchikan Gateway Borough (Annexation) | ● Kake (Borough Incorporation) |
| ▲ City Annexation (9) | ■ Matanuska-Susitna Borough (Detachment) | ● Petersburg (Borough Incorporation) |
| ● City Dissolution (1) | ■ Municipality of Anchorage (Deunification) | ● Prince of Wales Island (Borough Incorporation) |
| ◆ City Reclassification (2) | | ● Tanana/Nenana (Borough Incorporation) |

Lynn Chrystal, Chair
John Harrington, First Judicial District
Robert Harcharek, Second Judicial District
Larry Semmens, Third Judicial District
Lavell Wilson, Fourth Judicial District



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This annual report to the legislature was prepared by Brent Williams and Brian Bitzer, local government specialists with the Department of Commerce, Community and Economic Development.

Special thanks go to people who provided information or assistance in developing this report:

Kathy Atkinson, Jean Ayers, Cheryl Bieseemeier, Drew Nerland, George Plumley, Jennie Starkey, Margie Vandor, and Brigitta Windisch-Cole.

The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4587 or 907-269-4559. This report is also available on the Local Boundary Commission website at:

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

Maps in this publication are intended to be used only as general reference guides. Source documents remain the official record.



State of Alaska Local Boundary Commission

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February 2010

Dear Members of the Alaska State Legislature:

As members of the Local Boundary Commission (LBC or commission), we are pleased to present our annual report to the Second Session of the Twenty-Sixth Alaska State Legislature. This report briefly describes the LBC and summarizes activities of the commission and its staff during late 2008 and all of 2009.

There are boundary issues of particular interest to the commission which have remained at issue since statehood, including:

1. Developing adequate incentives to encourage borough formation and annexation to existing boroughs.
2. Informing the legislature and Alaskan citizens about the commission's roles and duties.

We ask that the legislature consider these issues. The LBC is eager to work collaboratively with the Alaska State Legislature to address these local boundary change issues, and to help shape our state's future municipal landscape.

Very truly yours,

The Local Boundary Commission

Handwritten signature of Lynn Chrystal in black ink.

Lynn Chrystal, Chair

Handwritten signature of John Harrington in black ink.

John Harrington, Commissioner

Handwritten signature of Robert Harcharek in blue ink.

Robert Harcharek, Commissioner

Handwritten signature of Larry Semmens in black ink.

Larry Semmens, Commissioner

Handwritten signature of Lavell Wilson in black ink.

Lavell Wilson, Commissioner

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Chapter 1. Background

Constitutional Foundation

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as the "LBC" or "commission").¹ The commission is responsible for establishing and modifying municipal government boundaries. Those Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, but that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."² Placing decision-making authority with a state body allows arguments for and against boundary changes to be analyzed objectively, taking areawide or statewide needs into account.³

LBC Duties and Functions

The LBC acts on proposals for eight different municipal boundary changes. These are:

- Incorporating municipalities⁴
- Annexing to municipalities
- Merging municipalities
- Consolidating municipalities
- Detaching from municipalities

¹ Article X, section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the 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."

² *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing *Alaska Constitutional Convention Minutes of Committee on Local Government*, November 28 and December 4, 1955).

³ *Id.*

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

- Dissolving municipalities
- Deunifying municipalities
- Reclassifying city governments

In addition to the above, the LBC under AS 44.33.812 shall:

- Make studies of local government boundary problems
- Adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution

The LBC may present proposed local boundary changes to the legislature under article X, section 12 of the Alaska constitution.

Nature of the Commission

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within Alaska's constitutional framework for separation of powers. The LBC has attributes of all three.

Quasi-Executive

Article X, section 12 placed the LBC in the state's executive branch. The commission's duty under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the LBC's quasi-executive nature.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that Alaska's constitution gives the LBC legislative authority to make fundamental public policy decisions. 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.⁵

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ." See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

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 apply pertinent legal standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings. The LBC's quasi-legislative nature provides it with considerable discretion in applying the standards and weighing the evidence.

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis.⁶ Both the interpretation of applicable legal standards and the LBC's evaluation of evidence in the proceeding must be rational. The LBC must proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

Limits on Directly Communicating with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal

⁵ *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

⁶ 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 the decision has a reasonable basis.

boundary change must be conducted in a manner that upholds everyone's rights to due process and equal protection. Ensuring that communications with the LBC are conducted openly and publicly preserves those rights.

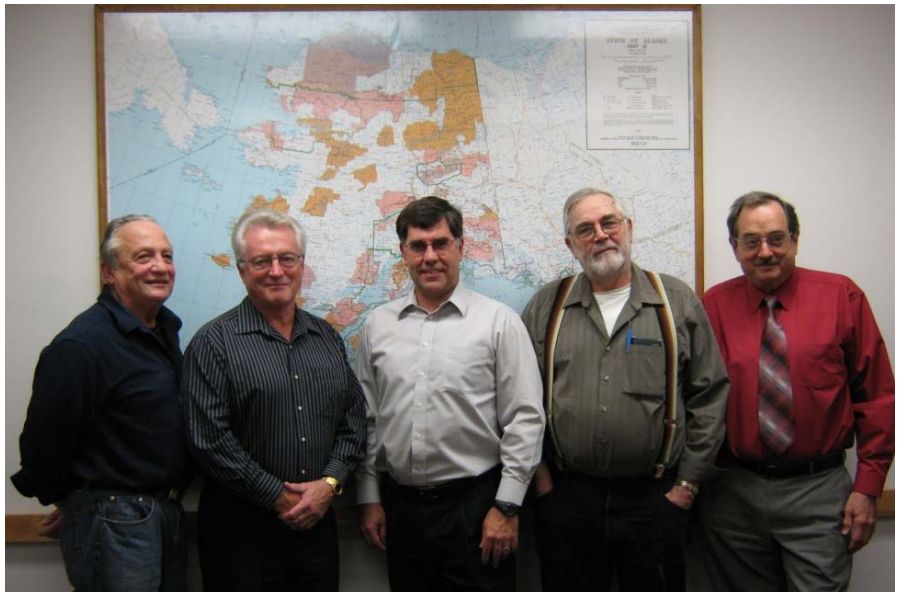
The LBC adopted 3 AAC 110.500(b), which expressly prohibits contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If an LBC decision is appealed to the court, the *ex parte* (private) contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC.

All communications with the commission must be submitted through the commission's staff.

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for overlapping five-year terms (AS 44.33.810). Despite the prescribed term length, LBC commissioners serve at the governor's pleasure (AS 39.05.060(d)).

The LBC is comprised of five members (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at-large. LBC members receive no pay for their service.



Local Boundary Commission, from left to right: Vice Chair Bob Harcharek, Chair Lynn Chrystal, Commissioner Larry Semmens, Commissioner Lavell Wilson, and Commissioner John Harrington.

The following is a brief biography for each current LBC member.



Lynn Chrystal, Chair, At-Large Appointment, Valdez.

Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. On September 10, 2009, Governor Parnell chose him to be the LBC chair. Mr. Chrystal is a former mayor and member of the city council of the City of Valdez. He has been in Alaska since 1963, and has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has also worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends on January 31, 2013.



John Harrington, First Judicial District, Ketchikan.

Governor Parnell appointed John Harrington to the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager. He previously worked as an adult education coordinator in Ketchikan from 1985-1997, and as a special education teacher and administrator in Washington from 1972-1984. He has served on the Ketchikan Gateway Borough Assembly since 2005. During 2003-2004, he served as an elected member and currently chairs the borough's Planning Liaison and Economic Development Advisory Committee. Mr. Harrington's community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-2005, and serving on the Ketchikan Charter Commission for the school board from 1988-1994. He earned a bachelor's degree in psychology and history from Western Washington University, and a master's degree in educational administration from Seattle University. His term on the LBC ends on January 31, 2011.



Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow.

Governor Knowles appointed Bob Harcharek to the LBC on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. In 1977, he earned a Ph.D. in

International and Development Education from the University of Pittsburgh. Dr. Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He recently retired from the North Slope Borough as the Community and Capital Improvement Projects planner for the Department of Public Works. Dr. Harcharek served as a member of the Barrow city council for fifteen years, and is currently Barrow's mayor and chief administrative officer. His current LBC term ends on January 31, 2014.



Larry Semmens, Third Judicial District, Soldotna. Governor Parnell appointed Larry Semmens to the Local Boundary Commission on September 10, 2009. Mr. Semmens is a certified public accountant and the city manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He served in the finance department of the Kenai Peninsula Borough from 1981-1996. Mr. Semmens currently chairs the Alaska Public Entities Insurance Pool and was recently reappointed to the Alaska Municipal League Investment Pool board. He is a member of the American Institute of Certified Public Accountants and the International City Managers Association. Mr. Semmens served in the U.S. Air Force from 1973-1976. He earned a bachelor's degree in business administration from Boise State University. His current term on the LBC ends on January 31, 2012.



Lavell Wilson, Fourth Judicial District, Tok. Governor Palin appointed Lavell Wilson to the LBC on June 4, 2007. He moved to Alaska in 1949, and has lived in the Northway/Tok area since then. Mr. Wilson attended the University of Alaska Fairbanks and Brigham Young University. He became a licensed big game guide in 1963. Mr. Wilson served the area outside of the Fairbanks North Star Borough in the Alaska House of Representatives (Eighth Legislature). He 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. He 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 White Alice system, the ballistic missile defense site at Clear, and on the Cape Newenham radar site. Mr. Wilson 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 LBC term ends on January 31, 2010.

Local Government Agency's Constitutional Origin

The Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as the constitutional local government agency is presently delegated to the Alaska Department of Commerce, Community and Economic Development ("Commerce") pursuant to AS 44.33.020(a)(1).⁷ Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. In addition to its duty to aid local governments, DCRA provides staff, research, and assistance to the Local Boundary Commission.

LBC Staff Role

Commerce is required by 3 AAC 110.530⁸ to investigate and analyze each boundary change proposal and to make recommendations to the LBC. Staff will write at least one report for the commission for each petition, which is made available to the public as well. Staff recommendations to the LBC are based on properly interpreting applicable legal standards, and rationally applying those standards to the evidence. Due process is best served when staff provides the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC is an autonomous commission. While the commission is not obligated to follow staff recommendations, it has historically considered Commerce's analyses and recommendations to be critical components of the evidence. The LBC considers the entire record when it renders a decision.

LBC staff also delivers technical assistance to municipalities; to residents of areas affected by existing or potential petitions; to petitioners; to respondents; to agencies; and to others.

Assistance and services provided by LBC staff includes:

- Answering citizen, legislative, and other governmental inquiries relating to municipal government issues
- Writing reports on petitions for the LBC

⁷ AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

⁸ Also see AS 29.04.040, AS 29.05.080, AS 29.06.110; and AS 29.06.480 - 29.06.490.

- Drafting LBC decisional statements
- Traveling to communities to present information about proposed local boundary changes
- Writing an annual LBC report to the legislature
- Developing and updating municipal incorporation or alteration forms
- Sending local boundary change forms and materials to interested persons
- Providing a link between the LBC and the public
- Maintaining incorporation and boundary records for each of Alaska's municipal governments
- Maintaining and preserving LBC records in accordance with Alaska's public records laws
- Coordinating and scheduling LBC public meetings and hearings
- Developing orientation materials and providing training for new LBC members

The following is the contact information for LBC staff.

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Commission Procedures

Procedures to establish or alter municipal boundaries and to reclassify cities are designed to ensure reasonable and timely determination for every proposal. The procedures are also intended to ensure that commission decisions are based on analyzing the facts to determine whether the applicable legal standards have been met. A summary of procedures follows.

Preparing and Filing a Petition

The LBC staff offers technical assistance, information, and petition forms to prospective petitioners. LBC staff routinely advises petitioners to submit draft petitions for staff to identify any technical deficiencies in the petition's form and content. This allows the petitioner to correct the petition before it is circulated for voter signatures, or before a municipal government formally adopts the petition.

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

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. There is ample opportunity for public comment during the process. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is then provided at least two weeks to file one brief replying to all responsive briefs.

All materials associated with the petition and the department's reports are available for review by the public throughout the proceedings at a central and convenient location in the area proposed for change, such as a municipal office or public library (3 AAC 110.460).

Analysis

Following the public comment period, the LBC staff analyzes the petition, any responsive briefs, written comments, the reply brief, and other materials. The petitioner, and LBC staff, can conduct informational meetings. If the petition is for incorporation, Commerce must hold at least

one public meeting at a site located within the boundaries proposed for incorporation. Following its analysis, LBC staff issues a preliminary report which includes a recommendation to the LBC.

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

Commission Review of Materials and Public Hearings

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff reports. The commission may tour the area before the hearing. Following extensive public notice, the LBC conducts at least one hearing in or near the affected area or territory.

If the petition is for borough incorporation by local action (where there is an election), the LBC must hold at least one public hearing within the area proposed for incorporation. Legislative review incorporation petitions (where no election is required) must have at least two public hearings held in the area proposed for incorporation to receive testimony and evidence on the proposal (AS 29.05.115).

The commission must act on the petition within 90 days of its final public hearing.

The LBC may act by:

- Approving the petition as presented
- Amending the petition and approving the petition as amended (e.g., expanding or contracting the proposed boundaries)
- Imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing taxes to ensure financial viability)
- Denying the petition

If the LBC amends the petition or imposes conditions on the municipal incorporation, it must first provide public notice on each proposed amendment or condition, and provide an opportunity for public comment (AS 29.05.100(a) and 3 AAC 110.570(c)(2)). If Commerce recommended the proposed change or condition and the public had an opportunity to comment on the proposed change or condition at a commission hearing, an additional notice or comment period is not required.

While the law allows the commission 90 days following its last petition hearing to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within 30 days of its decision date, the LBC must adopt a written decision stating the basis for its decision. Decision copies are provided to the petitioner, respondents, and others who request them.

The decision becomes final on the date it is mailed, but it is subject to reconsideration. Any person may ask the LBC to reconsider its decision by filing a written request within 18 days after the decision is mailed. The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

A decision of the LBC may be appealed to superior court. The appeal must be made within 30 days after the last day on which reconsideration may be ordered by the commission.

Implementation

If the LBC approves a petition, the proposal is typically subject to approval by voters or the legislature, depending on whether it was filed as a local action petition, or a legislative review petition, respectively. A petition that has been approved by the LBC takes effect upon satisfying any stipulations imposed by the commission, when the election (if any) is certified, and the U.S. Department of Justice (or the U.S. District Court in Washington, D.C.) has verified that the proposed action complies with the federal Voting Rights Act of 1965's requirements regarding minority voting rights. The LBC staff assists with the required Department of Justice review process.

Municipal Government Overview

Alaska law provides for two types of municipalities: city governments and organized boroughs. City governments are community municipalities and organized boroughs are regional municipalities. "Areas of the state not within the boundaries of an organized borough constitute a single unorganized borough" (AS 29.03.010).

Boroughs

Alaska law provides for the following classes of organized boroughs:

- Home rule: Unified and non-unified
- General: First class and second class

Home rule boroughs are the most popular form of organized borough in Alaska, followed closely by second class boroughs. There is only one first class borough (the Municipality of Skagway).

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

- Public education
- Tax assessment and collection where municipal taxes are levied
- Planning
- Platting
- Regulating land use

Home rule boroughs have charters (constitutions). Article X, section 11, of Alaska's constitution provides that home rule boroughs "may exercise all legislative powers not prohibited by law or by charter." AS 29.10.200 lists 61 specific limitations on home rule municipalities.

Home rule boroughs can be either unified or non-unified. Alaska's unified home rule boroughs may not have city governments within them.⁹ Non-

⁹ A unified municipality is defined as a borough by 3 AAC 110.990(1).

unified home rule boroughs may have cities within them. When a unified borough is formed, all city governments within it are automatically dissolved. No city may incorporate within a unified borough.

There are four unified boroughs in Alaska:

- City and Borough of Juneau
- City and Borough of Sitka
- Municipality of Anchorage
- City and Borough of Wrangell

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

General law boroughs (first and second class) are empowered exclusively by statutes. Still, statutes allow general law boroughs to assume a broad array of powers. First class boroughs have greater powers than second class boroughs. A principal distinction between a first class borough and a second class borough relates to how its powers are assumed. A first class borough may exercise any power not prohibited by law on a nonareawide basis (i.e., in the area of the borough outside cities) by adopting an ordinance. In contrast, voters must approve a second class borough's authority to exercise many nonareawide powers.

Cities

Alaska law provides for the following classes of incorporated cities:

- Home rule
- General: First class and second class

Like home rule boroughs, home rule cities have charters (constitutions). Article X, section 11, of Alaska's constitution provides that home rule cities "may exercise all legislative powers not prohibited by law or by charter." AS 29.10.200 lists 61 specific limitations on home rule municipalities.

A city's governmental powers and duties vary depending on its particular classification, and by whether it is located within an organized borough. The most fundamental distinction among city governments is that home rule and first class city governments in the unorganized borough must provide for education, planning, platting, and land use regulation. Second class cities are not permitted to exercise education powers. No city government within an organized borough operates a school district because public education is a mandatory areawide function of organized boroughs.

Generally, first class cities have more powers than do second class cities. Other differences between first and second class cities include taxing authority and mayoral powers and duties. A community must have at least 400 permanent residents to form a first class city.

Any city within an organized borough may, upon authority delegated by the borough, exercise planning, platting, and land use regulation. Second class cities in the unorganized borough are permitted, but not required, to exercise planning, platting, and land use regulation.

Conclusion

This chapter has described the background of the Local Boundary Commission, its legal basis, powers, membership, and procedures. It also provided an overview of Alaskan municipal government.

Chapter 2. Activities and Developments

Chapter 2 discusses activities that the LBC and its staff engaged in during the past year and a quarter. The activities include petitions brought before the LBC, as well as citizen or governmental requests for assistance and information. Please note that the terms "LBC staff," "Commerce," "department," or "staff" are used synonymously.

Section I. City Incorporation

City incorporation activities occurred in the following seven localities during late 2008 through 2009:

- ◆ Birch Lake
- ◆ Edna Bay
- ◆ Elfin Cove
- ◆ Kipnuk
- ◆ McCarthy
- ◆ Moose Point/Grey Cliff
- ◆ Naukati Bay



Birch Lake

In September 2009, LBC staff responded to an inquiry on the possible need to incorporate the community of Birch Lake into a city. The citizen, a local co-trustee of a federal townsite, inquired whether and how monies collected from local property owners could be transferred to a local legal entity. The citizen was not sure whether a nonprofit corporation would satisfy federal requirements, or if the residents would need to incorporate as a city. As this issue was outside of the LBC purview, staff suggested asking the federal trustee, and informed the citizen that if residents did need to petition to incorporate as a city, then staff would provide information and technical assistance.

Later in September, LBC staff answered questions from a BLM employee about the possible need to incorporate the community of Birch Lake into a city. The BLM employee is the other co-trustee of the federal townsite.

In October 2009, the citizen asked how money would be dispersed to the townsite if it incorporated as a second class city and then annexed other properties. LBC staff explained the process to incorporate as a second class city, but also stated that the federal disbursement requirements were not within LBC purview to address.

Edna Bay

Location:	Edna Bay is located on the southeast coast of Kosciusko Island, northwest of Prince of Wales Island, in Southeast Alaska. It lies 90 miles northwest of Ketchikan. The community encompasses 56 square miles of land and 2.8 square miles of water.
Population:	40
Classification:	Unincorporated
Borough:	Unorganized Borough

On February 5, 2009, LBC and other DCRA staff traveled to Edna Bay to attend a public meeting on incorporating as a second class city. LBC staff presented incorporation pros and cons, and other DCRA personnel discussed local government development topics. Staff answered questions from about 25 participants throughout the four-hour meeting. The community of Edna Bay anticipates at least one community follow-up meeting. LBC and DCRA local government staff will continue to provide technical assistance to the community as requested.

The commission thanks the Alaska State Troopers for their assistance in Edna Bay. The island community of Edna Bay is generally isolated with the only commercial transportation being float plane service out of Ketchikan two days a week. While in Edna Bay, a major winter storm moved in, grounding small planes and threatening to strand staff in the community. As poor weather conditions were expected to persist anywhere from three days to a week, the Alaska State Troopers arranged to transport staff by small boat to AST's home port in Craig. Without their help, staff would have been stranded for several days to a week, or more. Their assistance also saved DCRA thousands of dollars in additional travel expenses.

Elfin Cove

Location:	Elfin Cove lies on the northern shore of Chichagof Island approximately 70 miles west of Juneau and 33 miles west of Hoonah. The community encompasses 10.7 square miles of land and 0.1 square miles of water.
Population:	30
Classification:	Unincorporated
Borough:	Unorganized Borough

On August 21, 2009, an Elfin Cove citizen inquired whether any petition had been submitted to incorporate as a second class city. LBC staff informed the citizen that no such petition had been filed.

Later in August, the treasurer for the Community of Elfin Cove inquired whether any petition had been submitted to incorporate as a second class city. The citizen thought that a petition had been filed in August 2008. Staff researched the issue and found that no incorporation petition had been filed with the LBC. The last contact with the community's vice chair was in March 2009. Per the citizen's request, LBC staff emailed these details, provided relevant statute and regulation citations to file an incorporation petition, and offered technical assistance.

In September 2009, a DCRA colleague contacted LBC staff in response to an Elfin Cove citizen's request. The community believed that it had filed an incorporation petition to form a second class city in the summer of 2008. Staff informed the colleague that no petition had been filed with the LBC, and the last contact with the person who staff understood was organizing the petition was in March 2009.

In November 2009, a legislative aide to Senator Stedman contacted LBC staff about the petition process for city incorporation. He reported that the Community of Elfin Cove had expressed interest in incorporating as a second class city. LBC staff provided an overview of the petition process and emailed the aide pertinent regulations, statutes, publications, and a previous petition. LBC staff also offered to provide technical assistance to the Community of Elfin Cove as it proceeds, and to answer any questions that the community or the Senator might have.



Elfin Cove's Inner Harbor

Kipnuk

Location:	Kipnuk is located on the west bank of the Kugkaktlik River in the Yukon-Kuskokwim Delta, 85 miles southwest of Bethel. It lies four miles inland from the Bering Sea.
Population:	696
Classification:	Unincorporated
Borough:	Unorganized Borough

LBC staff responded to a resident's request on November 18, 2009, regarding the process to incorporate the Native Village of Kipnuk into a city. Staff answered all her questions and provided relevant materials. Staff offered to provide her further technical assistance if requested.

McCarthy

Location:	McCarthy lies 61 miles east of Chitina off the Edgerton Highway. It is on the Kennicott River, 12 miles northeast of where the Nizina and Chitina Rivers join, in the heart of the Wrangell-St. Elias National Park and Preserve.
Population:	53
Classification:	Unincorporated
Borough:	Unorganized Borough

LBC staff spoke with a McCarthy resident on October 29, 2009, about the process to incorporate as a second class city. Commerce mailed relevant publications, materials, and a past petition, and offered to provide further technical assistance if requested.

Moose Point/Grey Cliff

Location:	Moose Point is on the northwest coast of the Kenai Peninsula, 35 miles northeast of Kenai. Grey Cliff is a 100' cliff extending 1.5 miles on the northwest coast of the Kenai Peninsula, 22 miles northeast of Kenai.
Population:	Unknown
Classification:	Unincorporated
Borough:	Kenai Peninsula Borough

In November 2008, an individual called on behalf of Moose Point and Grey Cliff, two small subdivisions outside of Kenai. The individual indicated that area residents were pursuing organizing and incorporating as a community association, and ultimately wanted to incorporate as a city. LBC staff offered to send materials to prepare for this possible incorporation.

Naukati Bay

Location:	Naukati is located on the west coast of Prince of Wales Island. The community encompasses 4.8 square miles of land and 0.2 square miles of water. It had been a logging camp, but was later settled as an Alaska Department of Natural Resources land disposal site.
Population:	124
Classification:	Unincorporated
Borough:	Unorganized Borough

In March 2009, a Naukati Bay resident asked LBC staff about who could vote in Naukati Bay elections to form a second class city. LBC staff referred the question to the Division of Elections, and let the individual know that the request was forwarded. LBC staff also informed the individual that incorporation laws had changed, and provided an Internet link to the relevant laws.

In June 2009, LBC staff answered several questions about Naukati possibly incorporating as a city. Staff sent a publication addressing the necessary standards.

In addition, LBC staff responded to a request for a copy of the local homeowners' association agreement and map. Staff informed the citizen that Commerce would not have a copy of the homeowners' association agreement, nor a plat, as Naukati is unincorporated. However, the state recorder's office would have a copy of the homeowners' association agreement had the association filed it with the recorder's office. Staff also offered to send a petition form to incorporate as a second class city.

Section II. City Annexation

In 2009, the LBC approved a legislative review petition to annex 0.05 square miles to the City of Fairbanks.

In late 2008 through 2009, city annexation activities occurred in the following nine locations:

- ◆ Akutan
- ◆ Dillingham
- ◆ Fairbanks
- ◆ Gustavus
- ◆ Houston
- ◆ Kachemak
- ◆ Kodiak
- ◆ Pelican
- ◆ Wasilla



Akutan

Location:	Akutan is located on the eastern Aleutians' Akutan Island. It is one of the Krenitzin Islands of the Fox Island group. It is 35 miles east of Unalaska and 766 miles southwest of Anchorage. The city encompasses 14 square miles of land and 4.9 square miles of water. Akutan has an estimated population of 796, of whom approximately 75 are year-round residents. The majority of the population consists of transient fish processing workers who live in group quarters.
Population:	796
Classification:	Second class
Borough:	Aleutians East Borough

In May 2009, LBC staff responded to an inquiry from the Department of Natural Resources, Division of Mining, Land and Water about whether there had ever been a petition to annex state land under AS 29.06.040(c)(4). The City of Akutan had sent the Division of Mining, Land and Water a draft annexation petition to review because the state owns the tidelands and submerged lands which the city is seeking to annex. Commerce cited a similar situation that had occurred in 2000 with the City of Ketchikan's annexation petition, and explained how the state had responded.

In July 2009, the city attorney and assistant administrator asked LBC staff to review a draft petition for annexation by local action under AS 29.06.040(c)(4) (unanimous consent of all property owners and voters). Per 3 AAC 110.435(b), Commerce provided technical assistance and information regarding the standards, procedures, and process for filing this type of annexation petition.

The City of Akutan is pursuing annexation of 21.2 square miles of land on Akutan Island for geothermal and other uses. It also proposes to annex 27.3 square miles of land on Akun Island, for an airport and cattle grazing. In addition, Akutan is interested in annexing 29 square miles of water to ensure that the current and proposed future city boundaries are contiguous.

Dillingham

Location:	Dillingham is located at the extreme northern end of Nushagak Bay in northern Bristol Bay, at the confluence of the Wood and Nushagak Rivers. It lies 327 miles southwest of Anchorage. The city encompasses 33.6 square miles of land and 2.1 square miles of water.
Population:	2,347
Classification:	First class
Borough:	Unorganized Borough

On April 2, 2009, LBC staff met with a planner interested in nautical territory within particular municipal boundaries. Staff provided relevant previous boundary change decisions and provided copies of requested material.

In June 2009, a person living outside of Dillingham contacted LBC staff about the annexation process for a city. The person also asked how a successful annexation would affect her property and rights. LBC staff outlined the statutes and regulations governing the annexation process. Staff further explained that if the petition for annexation were successful, the city's ordinances would apply to her property and she would need to discuss the issue of grandfathering with the local municipality. Staff cited a similar situation that occurred in 2002 when the City of Palmer filed a petition to annex surrounding land. The petition was successful, and landowners in the newly annexed area had to either move outside of city limits, or relocate animals within a set time because of an ordinance which limited the number of animals allowed per acre within the city boundary.

In July 2009, LBC staff sent a petition form, upon request, to a consultant regarding annexing territory into an existing first class city by local action.

In November 2009, staff spoke with a DCRA colleague regarding the City of Aleknagik's concerns that Dillingham might seek to annex land within Aleknagik's boundaries. LBC staff explained that if the City of Dillingham were to propose annexing land within the City of Aleknagik, the annexation petition would also have to address the standards to detach territory from a city, to merge cities, or to consolidate cities. In addition, staff is unaware of a city's ability to create a "buffer zone" that could be used to prevent an annexation. LBC staff has not received any direct communication from Dillingham reflecting a desire to annex land within Aleknagik.

Fairbanks

Location:	Fairbanks is located in the heart of Alaska's interior on the Chena River in the Tanana Valley. It lies 358 road miles north of Anchorage. The city encompasses 31.9 square miles of land and 0.8 square miles of water.
Population:	30,367
Classification:	Home rule
Borough:	Fairbanks North Star Borough

Over a year ago, the City of Fairbanks filed a petition to annex two parcels of land ("territory") within the Fairbanks North Star Borough. One territory, referred to as the "enclave lots," consists of several lots outside the city which adjoin lots inside the city. The enclave lots are by the city's northwestern corner, between the city limits and the Chena River.

The second territory is known as the "Fred Meyer subdivision." It is on the city's western end. Included in the subdivision are Taco Bell and Mt. McKinley Bank.

The annexation petition process included the following: petition submission, technical review by LBC staff, a public comment period, brief submission by both the city and the borough, a preliminary report written by LBC staff analyzing the petition, briefs, and comments, an additional comment period, a final report considering new comments, an informational hearing conducted by LBC staff, an LBC hearing, an LBC decision, a written decisional statement and a dissenting opinion, and finally, a meeting held to consider the borough's reconsideration request. The LBC ultimately voted to approve the annexation of both territories.

On January 15, 2010, the decisional statement and dissenting opinion were sent to the legislature for presentation on January 19. The legislature convened on January 19. Under article X, section 12 of Alaska's constitution, the legislature has 45 days to disapprove the proposed change by a resolution concurred in by a majority of each house's members.

For more information, please see Chapter 3.

Gustavus

Location:	Gustavus lies on the north shore of Icy Passage, 48 air miles northwest of Juneau. It is bordered on three sides by Glacier Bay National Park and Preserve, and by Icy Passage on the south. The city encompasses 29.2 square miles of land and 10 square miles of water.
Population:	448
Classification:	Second class
Borough:	Unorganized Borough

LBC staff has worked closely with the City of Gustavus on the city's annexation petition. The proposed annexation included both the Falls Creek drainage area (including the hydroelectric facility), and the Icy Passage area.

In August 2009, the City of Gustavus sent LBC staff an annexation by legislative review petition. In September, staff finished its technical review of the petition. The staff found petition form and content deficiencies and, per 3 AAC 110.440(c), consulted the LBC chair. The chair concurred with staff to return the petition for correction and completion.

The consultant working on the City of Gustavus' annexation petition spoke with LBC staff regarding the department's technical review. LBC staff reviewed each deficiency, answered the consultant's questions, and offered technical assistance to Gustavus in completing and correcting its petition.

As of December 2009, Gustavus planned to reexamine its petition in the spring, and submit a corrected petition in May or June 2010.

Houston

Location:	Houston is located north of Wasilla in the Matanuska-Susitna Borough. It is 57 road miles north of Anchorage on the George Parks Highway. The city encompasses 22.4 square miles of land and 1.2 square miles of water.
Population:	1,755
Classification:	Second class
Borough:	Matanuska-Susitna Borough

In December 2008, the Houston mayor called LBC staff to request petition forms and information regarding annexing property surrounding the city's boundaries within the Matanuska-Susitna Borough. The mayor stated that

immediately after completing the proposed annexation, the city wanted to pursue detaching from the Matanuska-Susitna Borough while simultaneously preparing a petition to form a new borough. Commerce has not received further requests regarding such petitions.

Kachemak

Location:	Kachemak is adjacent to Homer, on the Kenai Peninsula. It lies on the northern shore of Kachemak Bay. The city encompasses 1.6 square miles of land.
Population:	453
Classification:	Second class
Borough:	Kenai Peninsula Borough

In October 2009, LBC staff received an annexation inquiry from a person who lives in a subdivision adjoining the City of Kachemak. Some lots are inside the city's boundaries and some are outside. LBC staff informed the caller about the city annexation process, the city annexation standards involved, and possible methods the subdivision could use to file a petition. Per the caller's request, LBC staff emailed a summary of the discussion and attached a copy of all LBC city annexation petition regulations.

In November 2009, the same resident requested an update on the petition form for city annexation by unanimous consent of voters and property owners. LBC staff explained that active petitions receive priority, and staff was diligently working to update all forms to reflect regulatory changes.

Kodiak

Location:	The City of Kodiak is located near the northern tip of Kodiak Island in the Gulf of Alaska. Kodiak Island is Alaska's largest island, and is America's second largest island. It is 252 miles south of Anchorage (a 45-minute flight). The city encompasses 3.5 square miles of land and 1.4 square miles of water.
Population:	5,974
Classification:	Home rule
Borough:	Kodiak Island Borough

In December 2009, LBC staff received a request from a Kodiak Island Borough associate planner on the procedures for a city to annex by unanimous consent of property owners and voters. The territory involves

two lots, which are now partly within City of Kodiak boundaries. LBC staff explained petition procedures and standards, and provided relevant statutes and regulations.

Pelican

Location:	Pelican is located on the northwest coast of Chichagof Island. It lies 80 miles north of Sitka and 70 miles west of Juneau. Most of the city is built on pilings over the tidelands. The city encompasses 0.6 square miles of land and 0.1 square miles of water.
Population:	113
Classification:	First class
Borough:	Unorganized Borough

In November 2008, the mayor sent a letter to the DCRA director requesting onsite technical assistance from LBC staff. The City of Pelican was seriously considering a proposal to annex the inlet, as well as Phonograph Cove and Sunnyside. LBC staff agreed to provide a variety of resources including the new regulations, the current statutes, petition forms, and other documents.



Pelican's Harbor

In April 2009, LBC staff assisted DCRA development specialists with their upcoming presentation in Pelican. While the presentation did not focus on boundary changes, the subject was expected. Staff provided the specialists a petition process chronology, answered questions about who may vote in annexation elections, and provided the applicable regulations concerning annexation by local action.

Wasilla

Location:	Wasilla is located midway between the Matanuska and Susitna Valleys, on the George Parks Highway 43 miles north of Anchorage. The city encompasses 11.7 square miles of land and 0.7 square miles of water.
Population:	7,176
Classification:	First class
Borough:	Matanuska-Susitna Borough

In February 2009, staff traveled to Wasilla and met with Wasilla city officials to discuss a possible annexation. Commerce answered questions and mentioned applicable constitutional provisions, statutes, and regulations for the city to use in discerning whether its prospective proposal would meet the standards. City officials appreciated the informational meeting.

During 2009, LBC staff answered a number of questions from both city officials and private citizens about the possibility of Wasilla annexing territory. The queries involved both the substance and the process of annexing.

In response to other inquiries about how the petition process works, LBC staff described the notice and hearing requirements, explained petition comment opportunities, and provided a petition process overview. Commerce sent materials to citizens and encouraged them to examine the local boundary change statutes and regulations, in order to learn the standards and procedures.

Section III. City Dissolution

In late 2008 through 2009, city dissolution activities occurred at one location:

◆ Akiak



Akiak

Location:	Akiak is located on the west bank of the Kuskokwim River, 42 air miles northeast of Bethel. The city encompasses 2.0 square miles of land and 1.1 square miles of water.
Population:	341
Classification:	Second class
Borough:	Unorganized Borough

In November 2008, the Akiak Native Community called LBC staff to ask for technical assistance. The association was interested in dissolving the City of Akiak, and asked staff to provide resources to accomplish its goal. LBC staff will continue to help as needed.

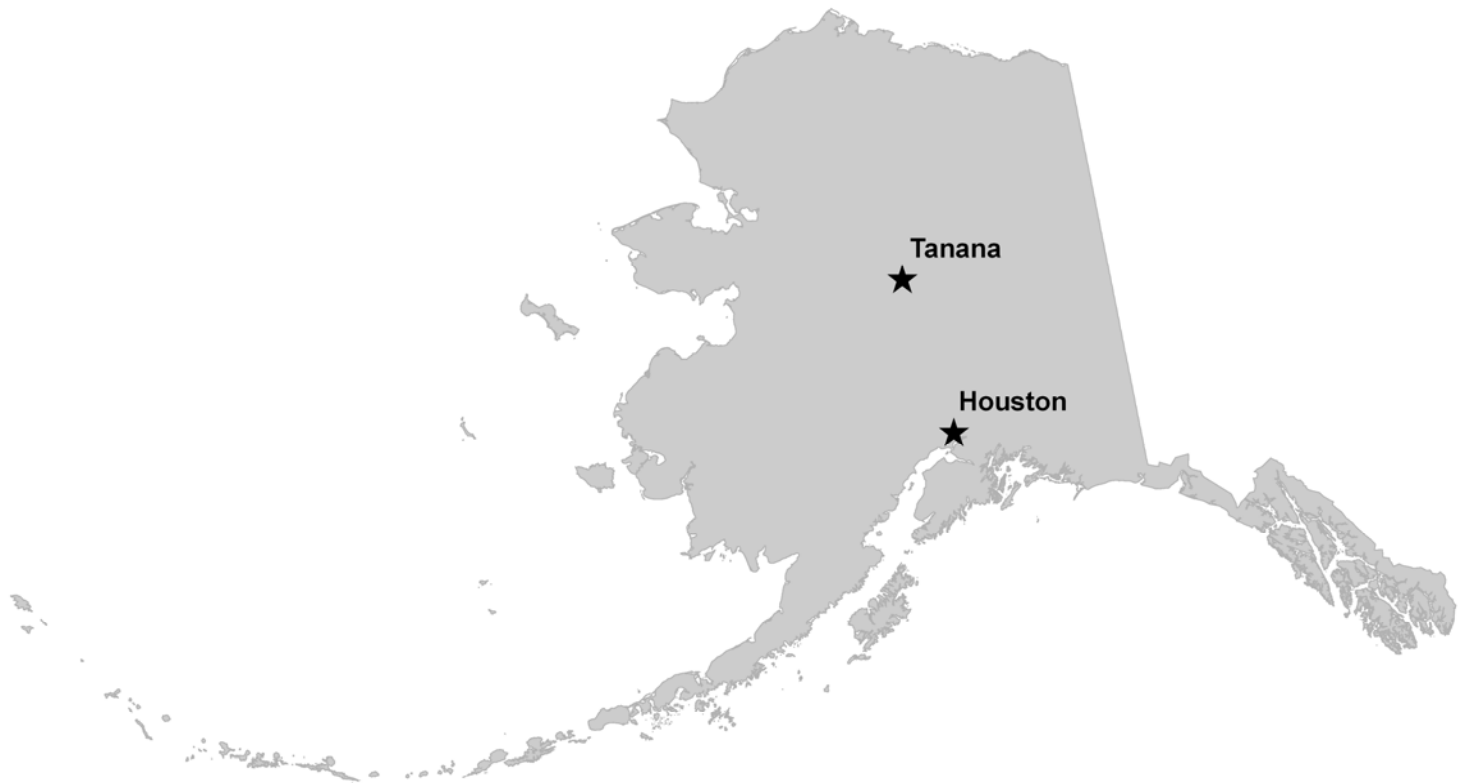
In June 2009, Commerce responded to a community member's request for a copy of the 1996 petition to dissolve the city. Staff provided one.

Section IV. City Reclassification

City reclassification activities happened in the following two locations during late 2008 through 2009:

◆ Houston

◆ Tanana



Houston

Location:	Houston is located north of Wasilla in the Matanuska-Susitna Borough. It is 57 road miles north of Anchorage on the George Parks Highway. The city encompasses 22.4 square miles of land and 1.2 square miles of water.
Population:	1,755
Classification:	Second class
Borough:	Matanuska-Susitna Borough

In June 2009, the City of Houston sought information on the costs of reclassifying a second class city to a first class city, and whether a reclassified city would have to assume additional responsibilities, or make changes to the city administration. LBC staff explained that because

Houston is located in an organized borough, the city would not be required to assume responsibility for services it doesn't already provide. Houston could reclassify to a first class city, allowing for direct election of the mayor, without making other major changes to the city administration. Aside from the cost of conducting the election, reclassifying to first class city status shouldn't cost the city any more than continuing to operate as a second class city.

Tanana

Location:	Tanana is located in interior Alaska about two miles west of the junction of the Tanana and Yukon rivers, 130 miles west of Fairbanks. The city encompasses 11.6 square miles of land and 4.0 square miles of water.
Population:	252
Classification:	First class
Borough:	Unorganized Borough

The Tanana school superintendent called on January 15, 2009, to ask about reclassifying the city from first class to second class status. He said that he knew the procedures, but asked how long the process would take. LBC staff informed him that it would take at least a year, and maybe longer if school issues were involved. Staff encouraged him to call back with any questions.

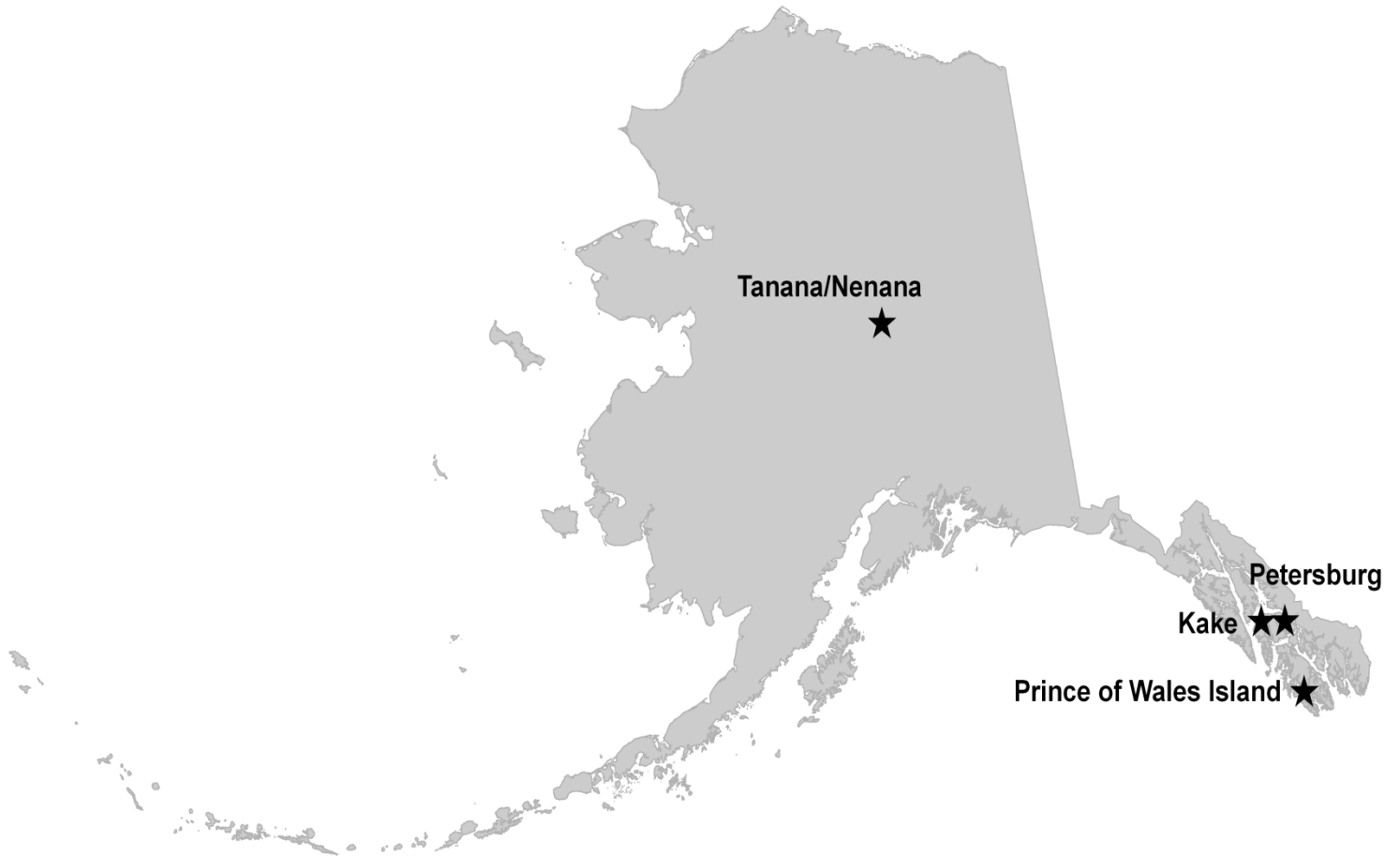


Tanana Street Scene

Section V. Borough Incorporation

Borough incorporation activities occurred in the following localities during late 2008 through 2009:

- ◆ Kake
- ◆ Petersburg
- ◆ Prince of Wales Island
- ◆ Tanana/Nenana



Kake

Location:	Kake is located on the northwest coast of Kupreanof Island, 38 miles northwest of Petersburg, and 95 miles southwest of Juneau. The City of Kake encompasses 8.2 square miles of land and 6.0 square miles of water.
Population:	563
Classification:	First class
Borough:	Unorganized Borough

In April 2009, LBC staff received an email from a Kake city representative inquiring about borough formation. Staff informed the representative about the borough incorporation process.

In September 2009, staff participated in a teleconference with the borough formation committee for the City of Kake. Committee members expressed interest in forming either a borough including Kake by itself, or a borough encompassing Kake, Angoon, and Hoonah. LBC staff directed the committee to relevant constitutional, statutory, and regulatory citations regarding borough incorporation, and to publications available on the LBC website. Staff offered to answer any questions that the committee might have throughout the process, and offered to participate in future teleconferences. Staff has not received any further requests from the City of Kake.

Petersburg

Location:	Petersburg lies on the northwest end of Mitkof Island, where the Wrangell Narrows meet Frederick Sound. It is about 120 miles between Juneau and Ketchikan. The city encompasses 43.9 square miles of land and 2.2 square miles of water.
Population:	3,009
Classification:	Home rule
Borough:	Unorganized Borough

In August 2009, a consultant contacted LBC staff regarding a petition to incorporate the Petersburg area as a borough. LBC staff answered questions about the acceptable age of a petition's data and signatures. Staff provided citations to regulations allowing for an amended petition, and to the technical review process. The consultant will inform staff when to expect a petition.

In November 2009, a Petersburg resident informed staff that there was much discussion of incorporating the Petersburg area as a borough. The resident asked for an overview of the petition process, and for information regarding borough government. Commerce provided the requested material, and offered to answer any additional questions.

LBC staff has not heard anything since regarding a possible borough incorporation petition.

To the right is a picture of Petersburg's small boat harbor.



Prince of Wales Island

Location:	Prince of Wales Island is in Southeast Alaska: 132 miles long and 45 miles across, it is the largest island of the Alexander Archipelago. Communities on the island include Klawock, Hydaburg, Kasaan, Hollis, Edna Bay, Thorne Bay, Port Protection, Craig, Whale Pass, and Coffman Cove.
Population:	3,988
Classification:	Various
Borough:	Unorganized Borough

In May 2009, the Craig city administrator asked if LBC staff were available to present information regarding borough powers and duties. Following a formal request with details on needed content, Commerce staff was invited to a May meeting. Subsequently, staff was unable to attend that particular meeting.

In June 2009, Commerce staff, with the assistance of the state assessor's office, answered numerous questions from the Prince of Wales Community Advisory Council (POWCAC) regarding a borough's powers and functions. Later that month, staff responded to additional questions regarding the petition process for borough incorporation, and how that would affect existing communities.

To date, LBC staff has not received any update from the Prince of Wales Island community on a borough incorporation petition.

Tanana/Nenana

Location:	Tanana is located in interior Alaska about two miles west of the junction of the Tanana and Yukon rivers, 130 miles west of Fairbanks. The city encompasses 11.6 square miles of land and 4.0 square miles of water.	
	Nenana is located in interior Alaska, 55 road miles southwest of Fairbanks on the George Parks Highway. The city encompasses 6.0 square miles of land and 0.1 square miles of water.	
Population:	Tanana: 252	Nenana: 479
Classification:	Tanana: First class	Nenana: Home rule
Borough:	Tanana and Nenana:	Unorganized Borough

In March 2009, the Tanana city manager sought information regarding borough incorporation. Commerce answered questions on feasibility studies and on who could be the petitioner for a proposed borough that would encompass Tanana, Nenana, Minto, Rampart, and Stevens Village. Staff also provided citations to the borough incorporation standards. The city manager anticipated the City of Tanana would file a borough incorporation petition sometime in late 2009.

The Tanana city manager contacted staff in April 2009, requesting a formal presentation about the borough incorporation petition process. In May 2009, a meeting was held in Anchorage to discuss the incorporation process. Staff provided a notebook containing applicable borough formation standards and procedures, as well as a petition chronology.

In July 2009, staff received a request from a Nenana resident for information regarding the borough incorporation process. Staff provided the requested information, and offered technical assistance.

Staff has not heard from Tanana or Nenana since July regarding a borough incorporation petition.

Section VI. Borough Annexation

In late 2008 through 2009, borough annexation activities occurred at one location:

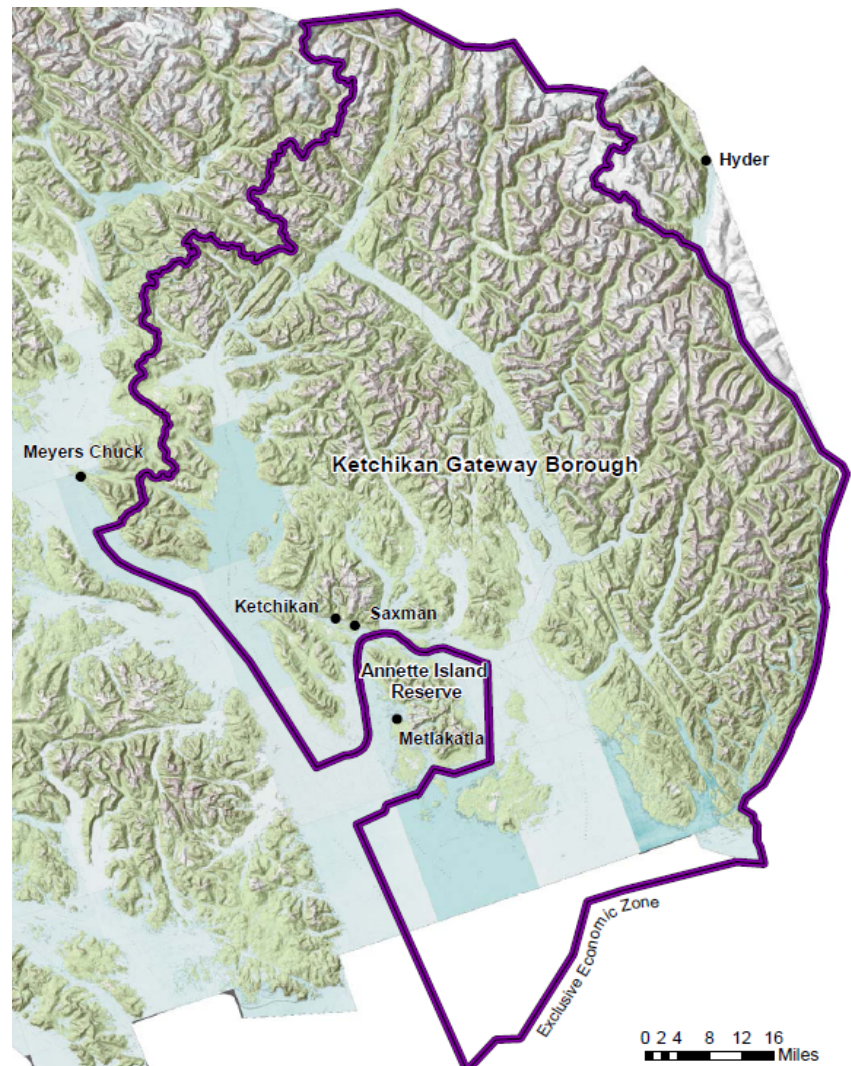
- ◆ Ketchikan Gateway Borough



Ketchikan Gateway Borough

Location:	The Ketchikan Gateway Borough is located near the southernmost boundary of Alaska. It has two incorporated municipalities inside its boundaries: the City of Ketchikan and the City of Saxman. The borough encompasses 6,264 square miles of land and water.
Population:	12,993
Classification:	Second class
Borough:	Ketchikan Gateway Borough

On December 5, 2007, the Local Boundary Commission issued its written decision approving the Ketchikan Gateway Borough's annexation petition, except for the 191 square mile area of Meyers Chuck/Union Bay. The approval of the petition as amended made Hyder an enclave. This concerned the commission, and so in approving the annexation petition, the LBC directed the Ketchikan Gateway Borough (KGB) to file a petition within five years to annex the Hyder area.



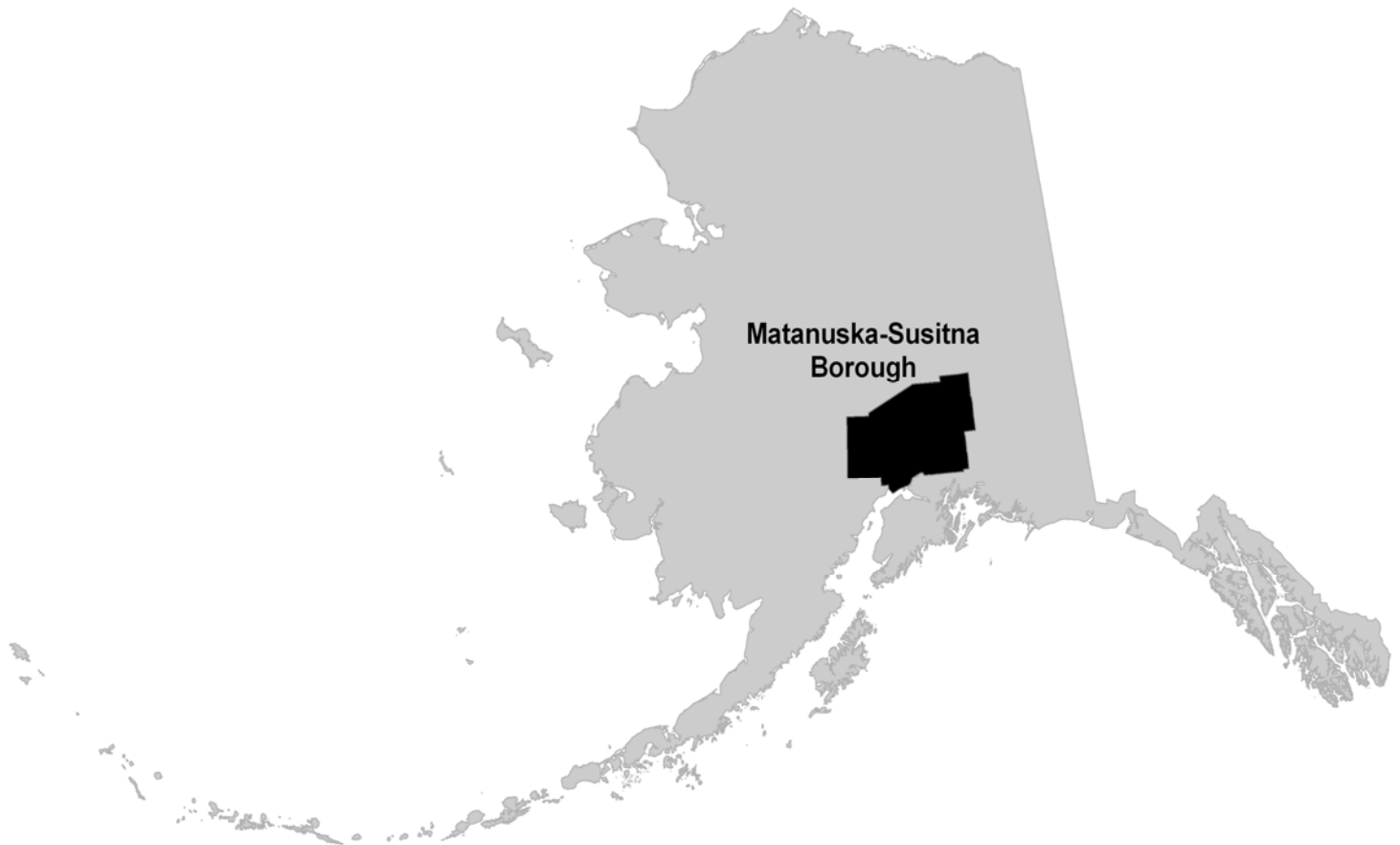
In October 2008, staff received an inquiry from a Hyder resident on the status of the Ketchikan Gateway Borough annexing Hyder. Staff explained that part of the LBC's 2007 decision directed the KGB to file a petition to annex Hyder within five years. If the KGB did not, then the LBC would direct the Commerce commissioner to file such a petition. LBC staff went through the petition process, including all the periods required by law for public participation (written and oral). Staff emailed the resident a discussion summary and attached both the borough annexation standards and a borough annexation petition schedule. No such annexation petition has been filed, and staff is unaware of any such petition presently being worked on.

Later that month, LBC staff answered additional questions from the same resident concerning borough annexation.

Section VII. Borough Detachment

In late 2008 through 2009, borough detachment activities occurred at one locality:

- ◆ Matanuska-Susitna Borough



Matanuska-Susitna Borough

Location:	The Matanuska-Susitna Borough is approximately 40 miles northeast of Anchorage. It encompasses 24,681.5 square miles of land and 578.3 square miles of water.
Population:	82,515
Classification:	Second class
Borough:	Matanuska-Susitna Borough

In March 2009, a Matanuska-Susitna Borough assembly member, representing the northwest part of the borough, called to seek detachment information. LBC staff provided a link to several pertinent regulations, statutes, and constitutional articles as well as a rough summary of the petition process.

Later that month, a Skwentna resident called to request petition forms. LBC staff answered questions, and explained that the forms were being revised because the regulations had changed. However, staff would provide newly revised forms to him.

In August 2009, Wasilla's deputy administrator met with LBC staff and asked how the state would view splitting the Matanuska-Susitna borough into three boroughs. Staff said that it could not speak for the LBC or the state, but did explain the standards that a possible detachment would involve. The state constitution provides for maximum self government with a minimum number of local government units. Each petition is judged on its own merits. Staff further suggested that interested parties should thoroughly examine the standards. The deputy administrator left the meeting satisfied and cognizant of the standards. Commerce has not received any notice of a detachment petition being worked on by the City of Wasilla.

Staff also answered multiple inquiries on the process to detach two municipalities from an existing borough, and the process to incorporate one or two new boroughs. Residents had seen newspaper articles in the *Frontiersman* concerning possible "secession" by the cities of Houston, Wasilla, and Palmer from the borough. Staff explained that there are no provisions for an incorporated city to secede from a borough or from the state. Staff explained the process for detachment and incorporation, and how to find the standards governing the process.

Section VIII. Deunification

In late 2008 through 2009, deunification activities occurred at one locality:

- ◆ Municipality of Anchorage

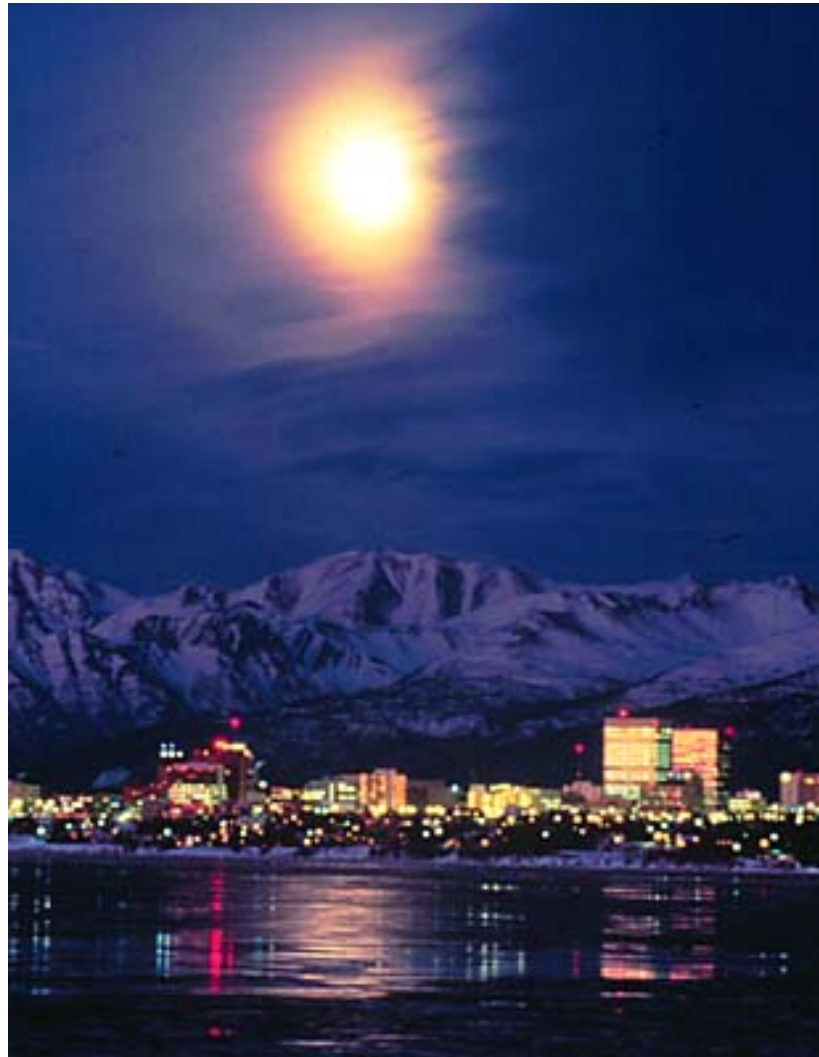


Municipality of Anchorage (Eagle River)

Location:	Anchorage, the most populated municipality in Alaska, is located in southcentral Alaska at the head of Cook Inlet. The area encompasses 1,697.2 square miles of land and 263.9 square miles of water.	
	Eagle River is located within the Municipality of Anchorage, between Fort Richardson and Chugach State Park.	
Population:	Borough: 284,994	Eagle River: 22,000
Classification:	Borough: Home rule	Eagle River: Unincorporated
Borough:	Municipality of Anchorage	

In August 2008, LBC staff responded to inquiries from Eagle River Senator Fred Dyson's office on petitioning to deunify the Municipality of Anchorage in order to allow Eagle River the opportunity to petition to become a home rule city. Commerce directed Senator Dyson's staff to all available resources.

In January 2009, Senator Dyson stopped by the LBC staff office to pick up an additional copy of relevant statutes and regulations.



Anchorage at Night

Section IX. General Requests

LBC staff handled dozens of requests since the fall of 2008 that did not concern proposed local boundary changes. For brevity's sake, these requests and queries are not enumerated. They included requests for current municipalities' incorporation certificates, publications, LBC minutes, and information about Regional Educational Attendance Areas. There were also questions about incorporation grants, municipal charters, municipal borders, municipal classifications, the LBC website, general petition procedures, and other subjects.

These requests and questions came from Alaskan citizens as well as from municipal, state, and federal officials. Some requests came from outside the state. Staff did its best to respond efficiently, accurately, and courteously. If the requests were outside of the LBC's purview, staff referred the person to the proper agency which could best help him or her.

Section X. Local Boundary Commission Activities

Local Boundary Commission Public Meeting Activities

The Local Boundary Commission does not have a standing meeting schedule. The commission meets as necessary to discuss any pending issues. Many of the LBC's 2009 meetings regarded the City of Fairbanks' annexation petition. The following lists the commission's meeting dates and discussion topics:

- December 17, 2008: The LBC held a live public meeting in Anchorage. Topics included the annual report to the 2009 legislature, policy review of required local contributions of schools, the elections supervisor's visit regarding local action petition election procedures, and changes to the commission's bylaws. The LBC directed staff to periodically contact the Division of Elections to inform it of pending local action petitions that would require an election. As of December 17, 2008, there were no such pending petitions.
- January 12, 2009: This meeting was held by teleconference from Anchorage. Actions taken by the commission included making minor revisions to the annual report, and approving it. The report included a commission resolution in support of the

education funding inequity issue raised by the Ketchikan Gateway Borough. The report and resolution were unanimously adopted. Final review of the commission's revised bylaws was deferred to the commission's next public meeting, scheduled for June 2009.

- June 2, 2009: The commission held a live public meeting in Anchorage. Among other items, the commission discussed the bylaws, relaxed regulations concerning the City of Fairbanks' annexation petition, discussed the ombudsman's final report concerning the Deltana Borough incorporation petition and election process, and approved minutes.
- August 4, 2009: The commission held a live public meeting in Anchorage to discuss the commission's future. At this meeting, the commission passed resolutions of appreciation for DCRA employee Jennie Starkey, former DCRA employee Jeanne McPherrin, former chair Kerm Ketchum, and former commissioner Georgianna Zimmerle. Also, the vice chair set dates for subsequent proceedings for the City of Fairbanks' annexation petition.
- October 23, 2009: The commission held a training session led by former commissioner Bob Hicks. The training session focused on the historical background of the commission, commissioners' roles and duties, the Open Meetings Act, *ex parte* rules, and methodology for analyzing and applying standards to petitions. This was the first opportunity for all the commissioners to meet each other since Governor Parnell filled commission vacancies on September 10, 2009.
- November 9, 2009: The commission held a live public hearing in Fairbanks regarding the City of Fairbanks' annexation petition. The commission heard sworn testimony of witnesses for the City of Fairbanks, for the Fairbanks North Star Borough, and heard comments from the public.
- November 10, 2009: The commission held a live decisional meeting in Fairbanks regarding the City of Fairbanks' annexation petition. The commission reviewed and applied city annexation

standards to the City of Fairbanks' annexation proposal. The commission approved the annexation of the "enclave lots" territory by a vote of 4-0 and approved the annexation of the "Fred Meyer subdivision" by a vote of 3-1.

- December 2, 2009: This meeting was held by teleconference from Anchorage. The new assistant attorney general responsible for advising the commission introduced himself. The commission discussed the draft decisional statement regarding the City of Fairbanks' annexation petition and adopted it. The decisional statement was scheduled for public dissemination on Wednesday, December 9, 2009.

Commission and Staff Changes

The commission composition changed during 2009. Commissioner Georgianna Zimmerle resigned from the commission on June 17, 2009. Chair Kerm Ketchum resigned effective July 31, 2009. Effective September 10, 2009, Governor Parnell appointed John Harrington of Ketchikan to the First Judicial District seat, Larry Semmens to the Third Judicial District seat, and Lynn Chrystal as the LBC chair (the chair is an at-large seat).

The commission's staff has undergone numerous changes from late 2008 through 2009. Brent Williams is a local government specialist assigned as the commission staff supervisor, and Brian Bitzer is a local government specialist assigned as commission staff.

Ombudsman's Final Report on the Petition for Incorporation of the Deltana Borough

In April 2009, the LBC received the ombudsman's final report concerning its investigation of a complaint about the 2006-2007 Deltana Borough incorporation petition and election process. The election to incorporate a Deltana Borough failed in August 2007. At the June 2, 2009, public meeting, the LBC discussed the ombudsman's final report, which included findings and recommendations.

Conference Activities

The commission staff feels that it is important to attend public events regarding local government issues. The events staff attended in 2009 include the following:

- Southeast Conference Summit: In March 2009, staff attended the Southeast Conference mid-session summit held in Juneau. LBC staff heard presentations concerning solid waste, transportation, economics, and other issues. Attending the conference helped staff better understand Southeast issues. Staff also heard from community representatives interested in boundary changes.
- 2009 Alaska Federation of Natives Convention: In October 2009, staff attended the Alaska Federation of Natives Convention held in Anchorage. Staff heard addresses by Willie Iggiagruk Hensley and Governor Parnell.
- 2009 Alaska Municipal League Conference: In November 2009, staff attended the Alaska Municipal League's Local Government Conference held in Anchorage. Staff heard lectures on "Budgets and Governmental Accounting" and the "Open Meetings Act."

Section XI. Litigation Update

The commission is still engaged in litigation regarding previous petitions. This summarizes completed and pending litigation from late 2008 through 2009:

City of Craig, et al., v. Local Boundary Commission (Case No. 1KE-08-004 CI)

In 2007, the Local Boundary Commission amended and approved a petition initiated by the Ketchikan Gateway Borough Assembly to annex approximately 4,701 square miles of land and water to the KGB. The City of Craig and other communities filed a joint appeal in superior court challenging the annexation on the grounds that it did not meet constitutional and regulatory requirements.

The LBC presented the approved KGB annexation to the legislature in

January 2008, for review under article X, section 12, of the Alaska constitution. That section provides that a boundary change is effective 45 days after presentation to the legislature, “unless disapproved by a resolution concurred in by a majority of the members of each house.” The legislature did not disapprove the KGB annexation, and took no action under article X, section 12. The annexation thus became effective May 14, 2008.

The superior court appeal continued, and the KGB was allowed to intervene in the case to assist in defending the LBC’s decision. This case generated a large record on appeal. It included an evidentiary hearing before the court.

Briefing by all parties is complete. Oral argument was held before Superior Court Judge Trevor Stephens in August 2009. The court took the case under advisement, and a decision on the appeal is pending.

Mullins v. Local Boundary Commission and Division of Elections **(Case No. S-12912)**

The briefing in this Alaska Supreme Court case was completed in July 2009. Mullins challenged the superior court’s dismissal of her underlying appeal of the Local Boundary Commission’s decision issued in April 2007. The 2007 decision amended and approved a petition to incorporate a proposed Deltana Borough.

The petition proceeded to an incorporation election conducted by mail by the Division of Elections in August 2007. The election failed with over 90 percent of the votes being cast against incorporation of the proposed Deltana Borough. The LBC then successfully sought dismissal of Mullins’ superior court appeal challenging the LBC’s decision to allow the petition to go forward to a vote. The LBC’s basis was that her underlying appeal became moot once the incorporation election failed. In her appeal, Mullins asserted that the appeal is not moot under the public interest exception doctrine. No oral argument was held in this case. It was submitted to the Alaska Supreme Court upon the parties’ briefing. A decision is pending.

Conclusion

This chapter presented activities that the LBC and its staff engaged in during the past year and a quarter. These entailed petitions brought before the LBC, as well as citizen or governmental requests for assistance and information.

Chapter 3. Legislative Review Petition

Chapter 3 contains information regarding the City of Fairbanks' annexation petition which was approved by the LBC in 2009. It is a legislative review petition. Chapter 3 includes a reproduction of the LBC's decision and Commissioner Harrington's dissent.

City of Fairbanks Annexation Petition

On December 9, 2009, the Local Boundary Commission issued its written decision to the public regarding the City of Fairbanks' annexation petition. The commission had voted to approve the annexation of both territories (the "enclave lots" and the "Fred Meyer subdivision"). On January 15, 2010, the decisional statement and dissenting opinion were delivered to the legislature for presentation on January 19, 2010. Under article X, section 12 of the Alaska constitution, the legislature has 45 days to disapprove the proposed change by a resolution concurred in by a majority of each house's members.



Local Boundary Commission at the November 10, 2009, decisional meeting, Fairbanks, Alaska. From left to right: Commissioner John Harrington, Vice Chair Bob Harcharek, Chair Lynn Chrystal, and Commissioner Larry Semmens.

LBC Decision



Members

Lynn Chrystal
Chair
At Large

John Harrington
Member
First Judicial District

Bob Harcharek
Vice Chair
Second Judicial District

Larry Semmens
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District
(Recused)



Local Boundary Commission

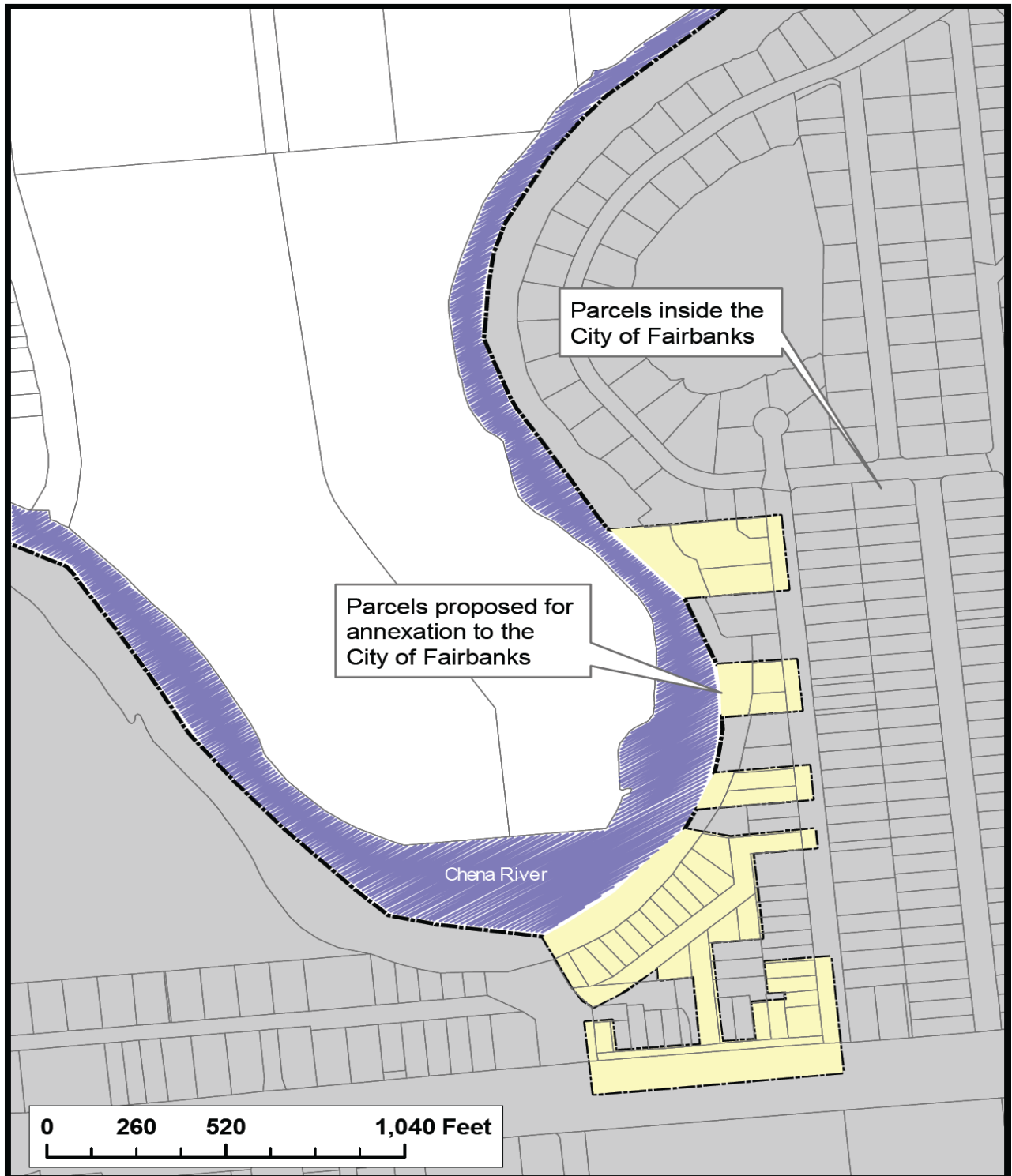
Statement of Decision

**In the Matter of the
December 10, 2008, Petition
by the City of Fairbanks to
Annex 0.05 Square Miles**

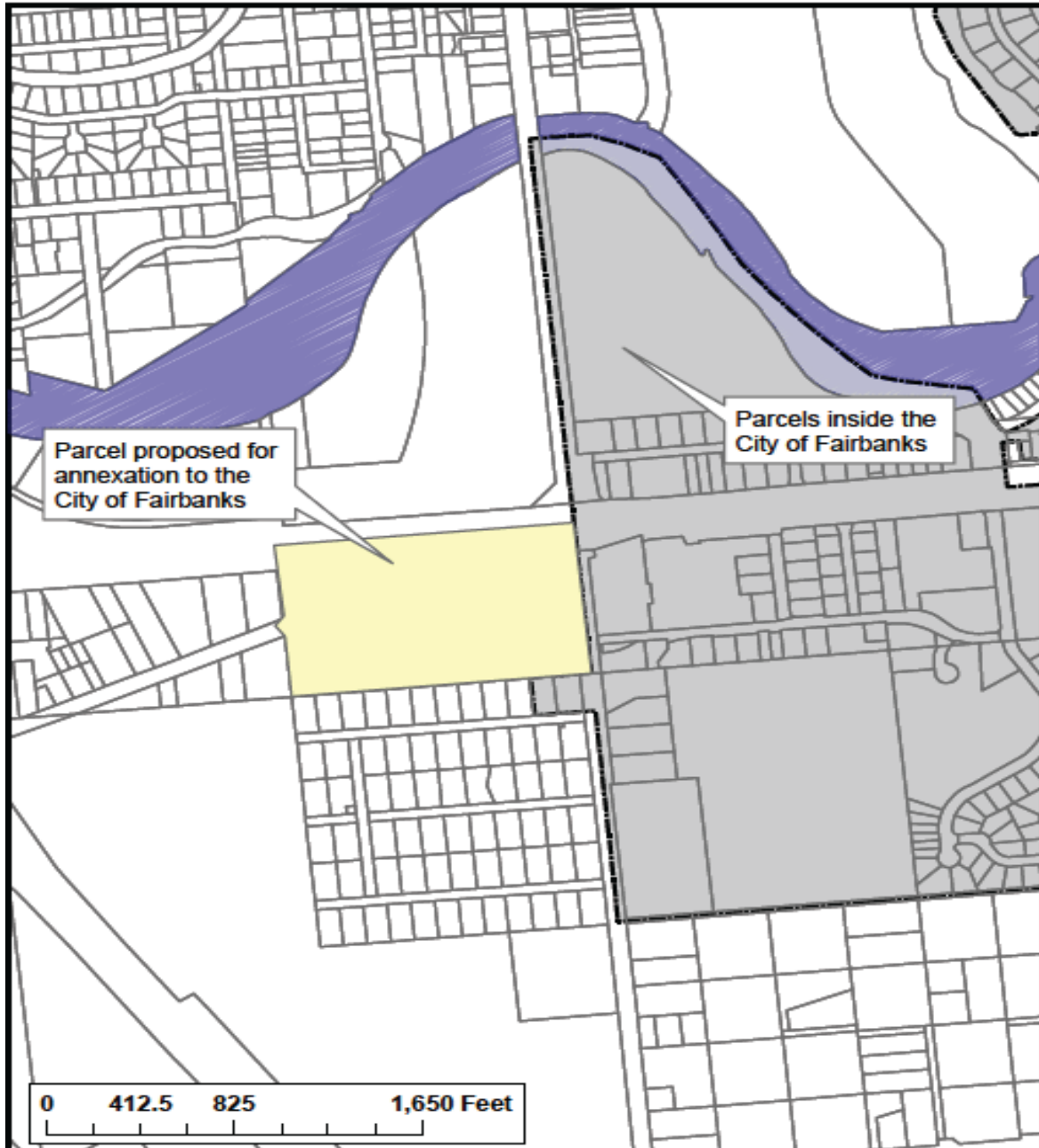
Section I Introduction

On December 10, 2008, the City of Fairbanks petitioned the Local Boundary Commission (also referred to as “LBC” or “commission”) to annex 0.05 square miles comprised of two separate territories. The territories proposed for annexation are described as follows and are shown on the maps below:

Area 1 – Territory known as the enclave lots. This site includes lots on Park and Riverside Drives, Bartlett Avenue, and Airport Access Road comprising approximately 0.02 square miles and was authorized for annexation by Ordinance #4335.



Area 2 – Territory known as the Fred Meyer subdivision (also referred to as “Fred Meyer”). This site includes a large Fred Meyer retail center, a Taco Bell, and Mt. McKinley Bank. This territory comprises approximately 0.03 square miles and was authorized for annexation by Ordinance #4335.



SECTION II PROCEEDINGS

- **Deposit of Petition**

On July 23, 2008, the City of Fairbanks provided a copy of the City's prospective petition in notebooks at the following locations:

- Clerk's Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks; and
- Clerk's Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks.

On February 27, 2009, the City updated those notebooks to include the submitted petition, public notice, and copies of the laws establishing standards and procedures for city annexation. They have been subsequently updated.

- **Petitioners Pre-Petition Public Hearing**

On November 21, 2008, the City of Fairbanks conducted a duly noticed public hearing, as required by 3 AAC 110.425. At the hearing, 17 individuals provided oral comments regarding the proposed annexation.

- **Submission and Review of Petition**

The petition was submitted to LBC staff (also referred to as "Commerce") on December 10, 2008, and accepted for filing on January 26, 2009.

- **Posting of Notice**

On February 2, 2009, notice was posted at the following locations within the territories proposed for annexation:

- On Riverside Drive, just north of Ping's Laundry;
- At the intersection of Park Drive and Airport Frontage Road;
- At the north end of Park Drive, just south of the Park Drive and Kiska intersection;
- On the light pole at the northeastern entrance/exit to Fred Meyer subdivision;
- On the light pole at the northwest corner of Fred Meyer subdivision, intersection with Old Airport Way; and
- On the utility pole at the southeastern entrance/exit to Fred Meyer subdivision.

On February 2, 2009, notice of the filing of the Petition was also posted within the existing boundaries of the City:

- Clerk's Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks;
- Clerk's Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks;
- United States Post Office, 315 Barnette Street, Fairbanks; and
- Rabinowitz State Court House, 101 Lacey Street, Fairbanks.

- **Public Notice**

Notice of the petition was published in the *Fairbanks Daily News-Miner* on February 2, 2009, February 9, 2009, and February 16, 2009.

On February 27, 2009, a public service announcement was sent to the following radio stations to broadcast for 14 days:

KUAC-FM, KAKQ, KFBX, KIAK, KKED, KSUA, KFAR, KWLF, KTDZ, KXLR, and KCBF.

On March 6, 2009, a shortened version of the public service announcement was provided to the above radio stations to broadcast over the next 14 days.

- **Service of Petition**

On February 20, 2009, the Fairbanks North Star Borough and the City of North Pole were served, via United States Postal Service, complete copies of the petition.

On February 20, 2009, a copy of the Notice of Petition was mailed by City employee Amber Courtney to the individuals and organization whose names and addresses are listed in Exhibit No. 3, attached to the March 13, 2009, City affidavit.

- **Deadline for Initial Comments and Responsive Briefs**

The notice of filing invited written public comment concerning the proposed annexation by April 17, 2009. The Fairbanks North Star Borough submitted a timely received responsive brief on April 17, 2009, before 4:30 p.m., via an internet link. Staff received 23 public comments.

A few technical errors have occurred which the staff would like to bring attention to. First, under 3 AAC 110.480(d), LBC staff should have informed potential commenters that the commenters needed to either serve a copy of the comments upon the petitioner, and file a statement that service was made, or to notify staff of their inability to do so. Upon realizing this error, staff sent the petitioner copies of the comments.

Second, under 3 AAC 110.700(d), when notice for public comment went out it should have told each potential commenter that if he or she filed electronically, which most of them did, he or she would also need to follow up with an original. Upon realizing the omission, staff contacted each commenter to inform him or her of the error and request that he or she file an original as well, to comply with the regulation. All but four did. The four comments that did not have an original filed do not comply with the regulation.

Lastly, under 3 AAC 110.490, the reply brief must be accompanied by an affidavit of service at the time the reply brief was timely filed. The reply brief was filed on time; however, the affidavit of service was submitted later, which did not comply with the regulation.

To ensure the fairness of the process and to allow every commenter the opportunity to have his or her comments addressed, staff requested that the LBC relax the relevant regulations to allow in the four comments that were submitted on time (but without an original on file) and the reply brief. This request was part of an item on the agenda for the duly noticed June 2, 2009, LBC public meeting titled "Relax procedural regulations to allow emailed comments and reply brief affidavits to be considered." Both the Fairbanks North Star Borough and the City of Fairbanks were notified and attended the meeting telephonically. Staff and the LBC did not know the four commenters' identity or position on the proposed annexations when the LBC considered the relaxation of the regulations. Staff felt it was in the interest of justice to allow all comments to be considered regardless of its position.

Both the Borough and the City had an opportunity to comment or object before the commission voted on the issue. The borough stated it did not object to relaxing the regulations. The city chose not to comment on the issue at that time. After lengthy discussion, the LBC took the following actions: (1) relaxed 3 AAC 110.480(d), which required that comments be served on the petitioner; (2) relaxed 3 AAC 110.490 which required that the reply brief be accompanied by an affidavit of service at the time the reply brief was timely filed, and (3) relaxed 3 AAC 110.700(d) which required any comment regarding the petition filed electronically to be followed by an original document.

Relaxation was approved by three votes yes to one vote no. This allowed comments made by Craig Compeau, Shawnee Dunham, John Havard, and Bartholomew Roberts to be considered by the staff and the LBC, as well as the reply brief.

- **Petitioner's Reply Brief Filed**

On May 11, 2009, the City of Fairbanks filed a 139-page reply brief.

- **LBC Meeting**

On August 4, 2009, the LBC held a public meeting. One of the items on the agenda was the rescheduling of future petition proceedings dates. The meeting was duly noticed.

- **Preliminary Report Distribution**

On August 17, 2009, Commerce distributed copies of its 204 page *Preliminary Report Regarding the Proposal to Annex Approximately 0.05 Square Miles of Territory to the City of Fairbanks by Legislative Review* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

- **Appointment of Two New Members to the Local Boundary Commission**

On September 10, 2009, Governor Sean Parnell appointed two individuals to fill vacancies on the Local Boundary Commission. John Harrington of Ketchikan and Larry Semmens of Soldotna joined previously appointed commission members Robert “Bob” Harcharek of Barrow, Lynn Chrystal of Valdez, and Lavell Wilson of Tok. That same day Governor Parnell appointed Lynn Chrystal to serve as the LBC’s chair.

- **Commerce Informational Meeting**

On September 11, 2009, Commerce conducted a duly noticed public informational meeting concerning the city of Fairbanks’ annexation proposal and future petition proceedings.

- **Receiving Timely Comments on Preliminary Report**

The public comment period for the preliminary report was from August 17, 2009, until September 16, 2009. Commerce received six timely submitted comments, including comments from the City of Fairbanks and the Fairbanks North Star Borough.

- **Final Report Distribution**

On October 13, 2009, Commerce distributed copies of its *Final Report to the Local Boundary Commission Regarding the Proposal to Annex Approximately 0.05 Square Miles of Territory to the City of Fairbanks by Legislative Review* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

- **Notice of Local Boundary Commission Public Hearing and Decisional Meeting**

After Commerce conferred with the City of Fairbanks and the Fairbanks North Star Borough, the Local Boundary Commission chair scheduled a public hearing regarding the City of Fairbanks’ annexation petition. The hearing was held on Monday, November 9, 2009, beginning at 12:00 p.m. in the Fairbanks North Star Borough School District’s board room. The decisional meeting occurred at the same place on Tuesday, November 10, 2009, at 3:00 p.m.

Formal notice of the hearing had been given by Commerce under 3 AAC 110.550. Commerce published the full notice in a display ad in the *Fairbanks Daily News-Miner* on October 5, 2009. It was also published on October 19, 2009, and November 3, 2009. The notice was also posted on the internet through the state’s *Online Public Notice*

System, on the Division of Community and Regional Affairs' website, and on the LBC website.

Additionally, notice of the hearing was provided to the Petitioner's representative (Mayor Terry Strle) and to the Respondent's representative (Mayor Jim Whitaker). The City posted the notice where the petition documents available for public review are (Fairbanks City Hall, Fairbanks North Star Borough Administrative Office Building, and the Noel Wien Public Library); at the United States Post Office and at the Rabinowitz State Courthouse; and at the six street locations specified on page 3 under "Posting of Notice."

- **LBC Tour of the Territories Proposed for Annexation**

On Monday, November 9, 2009, the Local Boundary Commission (all members were present except for Commissioner Wilson who is recused from proceedings) and staff conducted a tour of the territories proposed for annexation by automobile at 10 am. The tour was conducted and recorded in accordance with 3 AAC 110.550(f).

- **LBC Public Hearing Regarding the City of Fairbanks' Annexation Petition**

In accordance with 3 AAC 110.550 and 3 AAC 110.560 the Local Boundary Commission held a duly noticed public hearing on Monday, November 9, 2009, regarding the City of Fairbanks' annexation petition. The commission heard sworn testimony from witnesses for the City of Fairbanks and for the Fairbanks North Star Borough, as well as comments by numerous public members both for and against the proposed annexations.

- **LBC Decisional Meeting Regarding the City of Fairbanks' Annexation Petition**

In accordance with 3 AAC 110.570 the Local Boundary Commission held a duly noticed decisional meeting on Tuesday, November 10, 2009, regarding the City of Fairbanks' annexation petition. The commission voted 4 to 0 to vote on the two territories proposed for annexation (the enclave lots and the Fred Meyer subdivision) separately, as allowed under 3 AAC 110.570(c)(1). The commission approved by a vote of 4 to 0 the territory referred to as the enclave lots for annexation into the City of Fairbanks. The commission also approved by a vote of 3 to 1 the territory referred to as the Fred Meyer subdivision for annexation by the City of Fairbanks. Commissioner John Harrington dissented on approving the Fred Meyer subdivision for annexation.

Section III

FINDINGS AND CONCLUSIONS

The record in this proceeding includes the City of Fairbanks' annexation petition and supporting materials, written comments received on the petition, the Fairbanks North Star Borough's responsive brief, the City of Fairbanks' reply brief, Commerce's preliminary report, comments received on Commerce's preliminary report, Commerce's final report, and testimony received at the LBC's November 9, 2009, public hearing on the petition.

Alaska law requires the Local Boundary Commission to apply the standards for annexation to cities found at 3 AAC 110.090 – 3 AAC 110.140 and 3 AAC 110.900 – 3 AAC 110.982. Section III of this decisional statement recounts such application by the commission. Based on the evidence in the record relating to the subject petition, the Local Boundary Commission has reached the findings and conclusions set out in this section.

A. 3 AAC 110.090. Need.

Two standards relate to the need for city government in the territory proposed for annexation. First, 3 AAC 110.090(a) states that a territory may be annexed to a city provided the commission determines that there is a reasonable need for city government in the territory. Second, 3 AAC 110.090(b) states that territory may not be annexed to a city if the commission determines that essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area.

1. 3 AAC 110.090(a)

Regarding the first standard, the commission finds that there is clearly a reasonable need for city government for the enclave lots. There is currently no fire service being provided to lots in the enclave located outside of the city's limits. Further, the enclave lots are in a patchwork of lots in which some homes receive fire services and some do not. This poses a danger if a house in the enclave lots catches fire and the fire spreads to a house within the city limits. Commission members expressed that there is also a need for street services and police services.

While there are no permanent residents of Fred Meyer subdivision, thousands of borough and city residents work, shop, bank, and eat at businesses in the territory every day. Commissioners were concerned with the lack of building code enforcement in the territories proposed for annexation. Some commissioners expressed that a developed commercial area could use the services of an urban police force, the City of Fairbanks police department, compared to a traditionally rural police force, the Alaska State Troopers. The Fred Meyer subdivision is in reasonable need of an enhanced level of municipal services.

The LBC finds that the petition meets 3 AAC 110.090(a)'s criteria for both the enclave lots and the Fred Meyer subdivision.

2. 3 AAC 110.090(b)

With respect to the second standard relating to the need for city government, 3 AAC 110.090(b) provides that territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city, by an organized borough, or through a borough service area. Neither the enclave lots nor Fred Meyer are in close proximity to the City of North Pole, the only other city within the Fairbanks North Star Borough and are not suitable for annexation to that more distant city government.

The LBC finds that neither the Borough nor the University Fire Service Area (also referred to as the “UFSA”) can provide essential municipal services more efficiently and more effectively than can the City because neither the borough nor the UFSA is currently providing the enclave lots with police, fire/EMS, code enforcement, or other services.

There were mixed feelings expressed as to whether the UFSA or the City provided more efficient and more effective fire and EMS services to the Fred Meyer subdivision. The UFSA’s stations are closer to Fred Meyer, and it has a better ISO rating. The City’s paramedics receive more training than the UFSA’s EMTs.

A majority of commission members felt it necessary to consider essential municipal services in a broad sense. The Fairbanks North Star Borough cannot provide police services, or building and fire code inspection and enforcement. The City of Fairbanks provides these services within its limits and has the capability to extend essential municipal services into the territories proposed for annexation. When considering the basket of essential municipal services, the commission finds that no other city, borough, or borough service area can provide essential municipal services on a more efficient and more effective basis.

The LBC finds that the petition meets 3 AAC 110.090(b)'s criteria for both the enclave lots and the Fred Meyer subdivision.

B. 3 AAC 110.100. Character.

Alaska law allows a territory to be annexed to a city provided, in part, that the territory is compatible in character with the annexing city. (3 AAC 110.100).

The view, “if it looks like a city it is a city” was expressed in testimony and public comment. Commissioners felt that both areas looked like a city and that they were compatible in several areas. The enclave lots are part of an established neighborhood of predominately residential properties with a few commercial properties. This land use is consistent with similarly located lots within the City’s boundaries.

Fred Meyer is the only box store outside of the city limits. Similar commercial properties are found within the City of Fairbanks including the Safeway retail center directly across University Avenue.

We find that the petition satisfies 3 AAC 110.100’s requirements for both territories because both the enclave lots and the Fred Meyer subdivision are compatible in character to the City of Fairbanks.

C. 3 AAC 110.110. Resources.

Alaska law allows a territory to be annexed to a city provided, in part, that the commission determines that the economy within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. (3 AAC 110.110).

Commissioners expressed that the resources of the territory would be able to provide essential city services on an efficient, cost-effective level. The budget information provided shows that the revenues the City will be able to collect from the existing tax structure exceeds the projected expenses for providing city services. The commission heard testimony that there would not be a problem meeting the increased need for police or fire services. Annexation would also expand the economic base of the City of Fairbanks.

Given the above circumstances, the commission concludes that the economy within the proposed post-annexation boundaries of the City of Fairbanks has the human and financial resources necessary to provide essential city services to the territories proposed for annexation on an efficient, cost-effective level. Thus, the requirements of 3 AAC 110.110 are satisfied by the annexation petition.

D. 3 AAC 110.120. Population.

3 AAC 110.120 states that “[t]he population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government.”

The 2007 population estimate for the City of Fairbanks is 31,627 persons. The enclave lots are mainly residential, with a few businesses. The Fred Meyer subdivision is exclusively commercial with no residents. There are approximately 35 residents in the enclave lots, and no known permanent residents of the Fred Meyer subdivision. Fairbanks is Alaska’s second most populous community, and is the most populous of Alaska’s incorporated cities. The population density of the City of Fairbanks will not be significantly affected by this annexation petition. The commission heard testimony that the City of Fairbanks has the capability of extending police and fire services to the territories proposed for annexation.

Given the small size of the territories proposed for annexation and the stability of the City’s population, the LBC concludes that the population within the proposed post-annexation boundaries of the City of Fairbanks is sufficiently large and stable to support the extension of city government. Thus, the standard set out in 3 AAC 110.120 is satisfied.

E. 3 AAC 110.130. Boundaries.

There are five standards related to boundaries that the commission must consider. We find that the petition has satisfied 3 AAC 110.130’s requirements based on the rationale below.

1. 3 AAC 110.130(a)

3 AAC 110.130(a) states that the proposed expanded boundaries of the city must include the land and water necessary to promote developing essential municipal services in an efficient, cost-effective manner.

Both the enclave lots and the Fred Meyer subdivision are developed territories. There has been nothing presented to suggest the proposed expanded boundaries of the City of Fairbanks does not contain all the land and water necessary to provide development of essential municipal services on an efficient, cost-effective level.

The LBC finds that the proposed boundaries of the city include all land and water necessary to develop essential municipal services in an efficient and cost-effective manner. This applies to both territories.

2. 3 AAC 110.130(b)

3 AAC 110.130(b) states that territory that is noncontiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to develop essential municipal services in an efficient, cost-effective manner (absent a specific and persuasive contrary showing).

The enclave lots and Fred Meyer subdivision are both contiguous to the City of Fairbanks. Annexation of the enclave lots would eliminate an enclave currently within the city. As the enclave lots are contiguous to the annexing city, and because annexing them does not create an enclave, we need not address the land and water issue.

While the Fred Meyer subdivision could arguably create an enclave, the territory is already fully developed and receiving services. The expanded City of Fairbanks would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective manner.

We find that 3 AAC 110.130(b)'s requirements have been met for both territories.

3. 3 AAC 110.130(c)(1)

The expanded boundaries of the City of Fairbanks must be on a scale suitable for city government, and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following the effective date of annexation.

For both the enclave lots and the Fred Meyer subdivision, there is no reasonably anticipated future growth or anticipated public safety needs for the next ten years. As was discussed in 3 AAC 110.100, it is difficult to distinguish among the enclave lots, the Fred Meyer subdivision, and the City of Fairbanks as separate communities. These areas seem to comprise a single community, socially and economically.

For 3 AAC 110.130(c)(1) we find that the proposed expanded boundaries of the city, including both territories, are on a scale suitable for city government and only include an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years after the effective date of annexation.

4. 3 AAC 110.130(c)(2)

The proposed expanded boundaries of the City of Fairbanks may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of standards in 3 AAC 110.090 – 3 AAC 110.135 and are otherwise suitable for city government.

Both the enclave lots and Fred Meyer are small (only comprising 0.05 square miles) and are highly developed territories. They do not contain entire geographical regions or large unpopulated areas. There are approximately 35 residents in the enclave lots. While there are no permanent residents of the Fred Meyer subdivision, thousands of borough and city residents work, shop, bank, and eat in the territory.

For 3 AAC 110.130(c)(2), we find that neither the enclave lots nor the Fred Meyer subdivision includes entire geographical regions or large unpopulated areas.

5. 3 AAC 110.130(d)

3 AAC 110.130(d) states that “if a petition for annexation to a city 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 either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.”

This annexation petition does not describe boundaries overlapping the boundaries of an existing organized borough or another existing city. For that reason the petition does not need to address the standards and procedures for annexation of the enlarged city to the existing organized borough, detachment of the enlarged city from the existing organized borough, detachment of territory from an existing city, merger of cities, or consolidation of cities.

We find that the overlapping boundary standard is satisfied for both the enclave lots and the Fred Meyer subdivision.

F. 3 AAC 110.135. Best Interests of the State.

Alaska’s constitution promotes maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. (Article X, §1).

The commission finds that the proposed annexation would have no effect upon the number of local government units. It is important to note that the Fairbanks North Star Borough is a second class borough, whereas the City of Fairbanks is a home rule city. Annexation of the enclave lots and Fred Meyer would promote the principles of maximum local self-government because the territories would receive the benefits of belonging to both the City and the Borough. We found in analyzing 3 AAC 110.140(7) that both annexations would meet the constitutional mandate of maximum local self-government and a minimum number of local government units.

Annexation would meet even a broader interpretation of best interests of the state than merely the impact upon the state budget. The commission finds that the proposed annexation of the enclave lots would help improve the boundaries of the City of Fairbanks and extend city police protection to territories which are now served by the Alaska State Troopers, and in the case of the enclave lots, extend fire protection where such protection is not currently provided. Also, building and fire code enforcement and inspection is currently provided by the state. The state would be relieved of the responsibility of providing building and fire code enforcement and inspecting. Even if the buildings were already built, code inspections are in the best interests of the state. The commission believes with better code enforcement comes better safety and better buildings.

While this annexation will probably not reduce the state's budget for the Alaska State Troopers, annexing Fred Meyer and the enclave lots will allow the troopers to provide better service to the other areas they are responsible for.

While it is not required that the commission review the financial impact on the Borough or the UFSA, commissioners expressed opinions on the financial impact this annexation will cause. All revenue losses cause pain to municipalities. It is a normal course of events that service areas will provide services near a city's boundaries. The fact that a service area exists should not impede a city from expanding. The financial impacts to the borough and the UFSA were not significant enough for this annexation to be viewed as not being in the best interests of the state.

We find that the petition satisfies 3 AAC 110.135's requirements for both territories.

G. 3 AAC 110.140. Legislative Review.

For territory to be annexed under the legislative review method the commission must determine that one of eight circumstances enumerated in 3 AAC 110.140 exists.

We find for the enclave lots that circumstance (1), whether "the territory is wholly or substantially surrounded by the annexing city" is met because the enclave lots are substantially surrounded by the City and the Chena River.

Circumstance (7) exists if the commission determines that "annexation will promote (A) maximum local self-government, as determined under 3 AAC 110.981; and (B) a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska."

The commission finds that the residents and property owners of the territories proposed for annexation would benefit from belonging to both the Fairbanks North Star Borough (second class borough) and the City of Fairbanks (home rule city). The commission finds that this annexation will not affect the number of local government units. The commission, based on previous decisions, does not believe this standard is so stringent that it requires that the proposal reduce the number of local government units. Rather it means that no new local government unit will be created unless it is justified. We find that annexing both the enclave lots and the Fred Meyer subdivision promotes maximum local self-government and a minimum number of local government units.

As at least one circumstance has been found to exist for both the enclave lots and the Fred Meyer subdivision, we find that the petition meets 3 AAC 110.140's requirements.

H. 3 AAC 110.900. Transition.

3 AAC 110.900 concerns whether the transition plan contains all the required information, and that all required actions were undertaken to prepare for a smooth transition. There are six parts to 3 AAC 110.900 that the commission reviewed.

The commission considers the prospective transition of extending essential city services into the territories proposed for annexing to be elementary and uncomplicated. In particular, the commission notes that annexation would not involve the transfer of assets or liabilities from one local government to another. The petition states that the City will provide fire, police, and other essential municipal services to both of the territories proposed for annexation. City officials testified that the City consulted with Borough and UFSA officials concerning the proposed annexation.

The commission finds that 3 AAC 110.900's requirements have been satisfied with respect to the current annexation proposal based on the rationale below.

1. 3 AAC 110.900(a)

3 AAC 110.900(a) requires the petition to include a practical plan demonstrating the capacity of the annexing city to extend essential city services into the territories proposed for annexation in the shortest practical time after the effective date of the proposed annexation. The City of Fairbanks included the required transition plan as Exhibit E of its petition. The City of Fairbanks stated in its transition plan that it was ready to extend municipal services to the territories immediately after the effective date of the proposed annexation.

We find that the petition has met 3 AAC 110.900(a)'s requirements.

2. 3 AAC 110.900(b)

3 AAC 110.900(b) requires that the petition 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, or other appropriate entity located within the boundaries proposed for change.

The plan must be prepared in consultation with borough officials. The City stated that it is prepared to assume all relevant and appropriate powers, duties, rights, and functions to expand essential city services to the Fred Meyer subdivision and the enclave lots promptly upon the annexations' effective date.

We find that the petition has met 3 AAC 110.900(b)'s requirements.

3. 3 AAC 110.900(c)

3 AAC 110.900(c) requires that the 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 within the boundaries proposed for annexation. Here, a plan to transfer assets and liabilities is a moot subject because there are no assets or liabilities that would be affected by the annexations.

4. 3 AAC 110.900(d)

3 AAC 110.900(d) allows the LBC to condition approval upon executing an agreement for assuming powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

The commissioners discussed whether it was necessary to require that the City and Borough execute an agreement prescribed or approved by the commission for the City to assume the powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities from the Borough. Commissioner Harrington expressed concern that annexation of the Fred Meyer subdivision would increase response time for fire and EMS services to employees and patrons of the commercial business located there. A majority of the commission felt that it was not necessary to require such an agreement, but wished the City and Borough would continue dialogue regarding the financial impact to the Borough and the UFSA.

3 AAC 110.900(d) is optional, and the commission did not act upon it.

5. 3 AAC 110.900(e)

The transition plan did state the names and titles of all officials consulted by the petitioner as required by 3 AAC 110.900(e). While the petition did not state the dates and subjects of these meetings, all required entities were aware of the petition. There is no question from testimony given by the Borough and the City at the November 9, 2009, public hearing that consultation occurred.

The commission finds that the spirit of 3 AAC 110.900(e) has been met.

6. 3 AAC 110.900(f)

If a petitioner has requested consultation, and borough officials have declined to consult or were unavailable during reasonable times, the petitioner may ask the LBC to waive that requirement. As no such request was received, no such waiver was granted.

I. 3 AAC 110.910. Statement of Nondiscrimination

As provided by 3 AAC 110.910, an annexation proposal may not be approved by the commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

We find no evidence that 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.

J. 3 AAC 110.920. Determination of Community.

3 AAC 110.920 applies to determining whether a settlement comprises a community. Given the City's size, and that the commission sees the two territories as part of the City of Fairbanks' social and economic community, the LBC determines that this regulation was not relevant to this petition.

K. 3 AAC 110.970. Determination of Essential Municipal Services.

Essential municipal services were discussed under 3 AAC 110.090. The commission sees fire and EMS services, police services, fire and building code enforcement and inspection, and dispatch as being essential municipal services deserving highest consideration. It is important to note that the Fairbanks North Star Borough, as a second class borough, does not have its own police force. Also, it does not provide building and fire code enforcement and inspection. The state is currently responsible for providing those services. The City of Fairbanks has demonstrated its ability to provide and extend these services to the territories proposed for annexation. We find that the petition has met 3 AAC 110.970's requirements.

L. 3 AAC 110.981. Determination of Maximum Local Self-Government.

This standard has been discussed in consideration of best interests of the state and whether this annexation is appropriately sought under legislative review. The commission finds that the residents and property owners of the territories proposed for annexation would benefit from belonging to both the Fairbanks North Star Borough (second class borough) and the City of Fairbanks (home rule city) because the territories will continue to receive areawide services which only the Borough can provide. The territories would also receive additional essential municipal services which the City can provide but the Borough and the UFSA cannot, such as police enforcement, and building and fire code enforcement and inspection.

We find that annexing the enclave lots and the Fred Meyer subdivision would extend local government needs (police enforcement, building and fire code inspections and enforcement) which cannot be met by the borough on an areawide or nonareawide basis, by annexation to another existing city, or through an existing borough service area. We find that the petition has met 3 AAC 110.981's requirements.

M. 3 AAC 110.982. Minimum Number of Local Government Units.

This standard has been discussed in consideration of best interests of the state and whether this annexation is appropriately sought under legislative review. The commission finds that this annexation will not affect the number of local government units. The commission, based on previous decisions, does not believe this standard is so stringent that it requires that the proposal reduce the number of local government units. Rather it means no new local government unit will be created unless it is justified.

We find that enlargement of the city's boundaries is more appropriate than promoting the incorporation of a new city or the creation of a new borough service area. We find that the petition has met 3 AAC 110.982's requirements.

SECTION IV ORDER OF THE COMMISSION

The commission concludes that all of the relevant standards and requirements for annexation of both territories (the enclave lots and Fred Meyer) are satisfied by the City of Fairbanks' petition. Therefore, the Commission approves the December 10, 2008, petition of the City of Fairbanks for the annexation of approximately 0.05 square miles.

The LBC in the past has held the view that multiple piecemeal annexations do not necessarily serve optimum public policy. The current commission supports this view. Notwithstanding, the commission reaffirms its conclusion that both territories, while small in nature, do meet all relevant standards and requirements.

Approval of the proposed annexation by the Local Boundary Commission will result in boundaries for the City of Fairbanks described as follows:

CITY OF FAIRBANKS CORPORATE BOUNDARIES

Commencing at the south 1/4 corner of Section 36, T1N, R1W, F.B. & M. which is located on the Fairbanks Base Line, being the true point of beginning of this description; thence west along the Fairbanks Base Line to the northwesterly corner of Section 3, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line common to Sections 3 and 4, T1S, R1W, F.B. & M., to an intersection with the thread of the Noyes Slough; thence downstream along the thread of the Noyes Slough to the easterly 1/16 line of Section 4, T1S, R1W, F.B. & M.; thence in a northerly direction along said easterly 1/16 line to the southerly boundary of Johnston Subdivision, filed in the Fairbanks Recorder's Office October 4, 1954, as Instrument No. 151.674; thence in northerly, northeasterly and northerly directions, respectively, along the easterly boundary of Johnston Subdivision filed in the Fairbanks Recorder's Office on October 4, 1954, as Instrument No. 151.674, to the southernmost right of way limit of College Road, State of Alaska Project S-SG-0644(5); thence in a northwesterly direction along the southernmost right of way limit of College Road, State of Alaska Project S-SG-0644(5), to the Fairbanks Base Line; thence west along said Base Line to the thread of Noyes Slough; thence downstream along the thread of Noyes Slough to the northerly extension of the lot line common to Lots 1 and 11 of the Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a southerly direction along the westerly boundaries of Lots 1 through 6 and 9 and the southerly extension of said line to the southernmost right of way limit of Hanson Road, shown on the plat of Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a westerly direction along the southernmost right of way limit of Hanson Road to the northwesterly corner of Lot 21, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a southerly direction along the westerly boundary of said Lot 21 to the southwest corner of Lot 21, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office, on October 15, 1976, as Instrument No. 76-

165; thence easterly and northeasterly along the southerly boundaries of Lots 21, 20 and 24 to the southeasterly corner of Lot 24, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence easterly, normal to the section line, to said section line common to Sections 5 and 4, T1S, R1W, F.B. & M.; thence in a southerly direction along said section line common to Sections 4, 5, 8 and 9, T1S, R1W, F.B. & M. to an intersection with the easterly extension of the southernmost right of way limit of Phillips field Road as shown on the plat of Doyon Estates subdivision, filed in the Fairbanks Recorders Office on October 16, 1997 as Instrument No. 97-100 ; thence in a westerly direction along said easterly extension of the southernmost right of way limit of Phillips Field Road to an intersection with the westernmost right of way limit of Mouton Street as shown on the plat of Doyon Estates subdivision, filed in the Fairbanks Recorders Office on October 16, 1997 as Instrument No. 97-100 ; Thence southeasterly and southwesterly along said westernmost right of way limit of Mouton Street to the northern most boundary of Government Lot 10, Section 8, T1S, R1W, F.B.& M.; thence in a westerly direction along the northerly boundary of Government Lot 10, Section 8, T1S, R1W, F.B.& M. extended to intersect with the thread of the Chena River; thence downstream along the thread of the Chena River to the section line common to Sections 7 and 8, T1S, R1W, F.B. & M.; thence in a southerly direction along said section line to the easterly extension of the northerly boundary of Fred Meyer Subdivision as filed in the Fairbanks Recorder's Office as Plat No. 91-55; thence westerly, southerly and easterly along the boundary of said Fred Meyer Subdivision to the northwesternmost corner of Lot 2, Block 1, Fairwest Subdivision West Addition filed in the Fairbanks Recorder's Office January 24, 1964, as Instrument No. 64-486; thence in a southerly direction along the westerly lot line of said Lot 2, Block 1, to the northernmost right of way limit of Mitchell Avenue as shown on said plat of Fairwest Subdivision West Addition; thence in an easterly direction along the northernmost right of way limit of Mitchell Avenue as shown on said plat of Fairwest Subdivision West Addition extended to the section line common to Sections 17 and 18, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line common to Sections 17 and 18, T1S, R1W, F.B. & M. to the northernmost 1/16 corner common to Sections 17 and 18, T1S, R1W, F.B. & M.; thence in an easterly direction along the northernmost east-west 1/16 line to the northerly 1/16 corner on the centerline (north-south) of Section 17, T1S, R1W, F.B. & M.; thence in a southerly direction along the centerline (north-south) of Section 17, T1S, R1W, F.B. & M. to the center 1/4 corner of Section 17, T1S, R1W, F.B. M; thence in a easterly direction along the centerline (east-west) of Section 17, T1S, R1W, F.B. & M. to an intersection with the westernmost right of way limit of Peger Road, State of Alaska Project S-0665(2); thence in a southerly direction along the westernmost right of way limit of Peger Road, State of Alaska Project S-0665(2), to a point on the extended southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), to the easternmost limit of Schacht Street as shown on the plat of Metro Industrial Airpark subdivision filed in the Fairbanks Recorders Office on December 12, 1969, as instrument No. 69-12194; thence in a southerly direction along the easternmost limit of said Schacht Street to the southwest corner of Lot 1-A as shown on the replat of Lot 1, Block 7, Metro Industrial Air Park filed in the Fairbanks Recorders Office on June 18, 1985, as Instrument No. 85-96; thence in a easterly direction along the southerly boundary of said Lot 1-A to the southeasterly corner of said Lot 1-A at the westerly boundary of the Subdivision of the Arvo A. Joki Property in the SE 1/4 of Section 21, T.1S. R.1 W. F.M., filed in the Fairbanks Recorder's Office on May 31, 1973, as instrument No. 73-34; thence in

southerly easterly and northerly directions around the perimeter of the Avro A. Joki Property encompassing Tract A and Tract B to the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2); thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2) to the easternmost limit of South Lathrop Street, a 66 foot section line easement centered on the section line common to Sections 21 and 22, T1S, R1W, F.B. & M.; thence in a southerly direction along the easternmost limit of South Lathrop Street, a 66 foot section line easement centered on the section line common to Sections 21 and 22, T1S, R1W, F.B. & M. to the northwesterly corner of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160; thence in an easterly direction along the northerly boundary of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160; thence in a southerly direction along the easterly boundary of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160 common to the westerly boundary of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southwesterly corner of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in an easterly direction along the southerly boundary of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the westernmost right of way limit of Royal Road, as shown on the plat of King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in a northerly direction along the westernmost right of way limit of Royal Road, as shown on the plat of King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the northeasterly corner of Lot 7, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in an easterly direction along the westerly extension of and continuing along the southerly boundary of Lot 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southeasterly corner of Lot 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence northerly along the easterly boundary of Lots 1 and 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2); thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), to an intersection with the westernmost right of way limit of South Cushman Street; thence in a southerly direction along the westernmost right of way limit of South Cushman Street as shown on the plat of Tennessee Miller Industrial Park recorded in the Fairbanks District Recorders Office on March 14, 1986 as instrument number 86-35; thence continuing along the southerly extension of said westernmost right of way limit of South Cushman Street to the section line common to Sections 22 and 27, T1S, R1W, F. B. & M; thence in an easterly direction along the section line common to Sections 22, 27, 23 and 26, to the $\frac{1}{4}$ common to Sections 23 and 26, T1S, R1W, F.B. & M.; thence in a northerly direction along the north-south centerline of Section 23, to the northernmost $\frac{1}{16}$ corner on said north-south centerline of Section 23, T1S, R1W, F.B. & M.; thence in an easterly direction along the northernmost eastwest $\frac{1}{16}$ line of said Section 23 to the northernmost $\frac{1}{16}$ corner common to Sections 23 and 24, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line

common to Sections 23 and 24 to the southerly limit of Parcel B of Exhibit A to the Special Warranty Deed recorded in the Fairbanks Recorder's Office on February 27, 1985, in Book 414, Pages 331 through 337, as Instrument Number 85-4616; thence North 8959'52" East along the southerly boundary of said Parcel B a distance of 330.14 feet; thence North 002'05" West a distance of 330.22 feet to a point on the southerly boundary of said Parcel B; thence North 8959'59" East a distance of 690.39 feet to a point on the southerly boundary of said Parcel B; thence South 000'01" East a distance of 660.40 feet to a point on the southerly limit of said Parcel B; thence North 8959'46" East a distance of 300.44 feet to the southeasternmost corner of said Parcel B which lies on the westerly 1/16 line of Section 24, T1S, R1W, F.B. M; thence in a southerly direction along the westerly 1/16 line of Sections 24 and 25, T1S, R1W, F.B. & M., to the meander of the north bank of the Tanana River; thence in northeasterly and southeasterly directions along the meanders of the north bank of the Tanana River to an intersection with the section line common to Sections 32 and 33, T1S, R1E, F.B. & M.; thence in a northerly direction along the section line common to Sections 33, 28, 29 and 32, T1S, R1E, F.B. & M., to the section corner common to Sections 21, 28, 29 and 20, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 28 and 21, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 28 and 21, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M., to the southernmost right of way limit of the Old Richardson Highway, FAP 62-4; thence in a northwesterly direction along the southernmost right of way limit of the Old Richardson Highway, FAP 62-4, extended to the westernmost right of way limit of Badger Road, State of Alaska Project S-0620(2); thence in a northerly direction along the westernmost right of way limit of Badger Road State of Alaska Project S-0620(2) to an intersection with the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 21 and 16, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 21 and 16, T1S, R1E, F.B. & M. to the centerline of Badger Road State of Alaska Project RS-0622(6); thence in a northerly direction along the centerline of Badger Road State of Alaska Project No. RS-0622(6) to the centerline of Holms Road State of Alaska Project RS-0622(1) /63872; thence in a southeasterly direction along the centerline of Holms Road to a point of tangent at centerline station 24+59.63; thence South 02°32' 10" West (basis of bearing for this call is Holms Road State of Alaska Project RS-0622(1) /63872) to the section line common to Sections 21 and 16, T1S, R1E, F.B. & M; thence in an easterly direction along said section line to the section corner common to Sections 22, 21, 16 and 15, T1S, R1E, F.B. & M.; thence in a northerly direction along the section line common to Sections 15 and 16, T1S, R1E, F.B. & M., to the section corner common to Sections 10, 15, 16 and 9, T1S, R1E, F.B. & M.; thence in a westerly direction along the section line common to Sections 9 and 16, T1S, R1E, F.B. & M., to the 1/4 corner common to Sections 9 and 16, T1S, R1E, F.B. & M.; thence in a northerly direction along the centerline (north-south) of Section 9, T1S, R1E, F.B. & M., to the 1/4 corner common to Sections 9 and 4, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 9, 4, 3 and 10, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 10 and 3, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line to the mid 1/16 corner located in the SW 1/4 of Section 3, T1S, R1E, F.B. & M.; thence in an easterly direction along the southerly 1/16 line to the southerly 1/16 corner on the centerline (north-south) of Section 3, T1S, R1E, F.B. & M.; thence in a northerly direction along the centerline (north-south) of Section 3, T1S, R1E, F.B. & M., to the 1/4 corner of Section

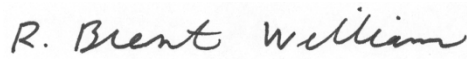
3, T1S, R1E, F.B. & M., located on the Fairbanks Base Line; thence east along the Fairbanks Base Line to the southerly 1/4 corner of Section 34, T1N, R1E, F.B. & M.; thence in a northerly direction along the centerline (north-south) of Section 34, T1N, R1E, F.B. & M., to the 1/4 corner common to Sections 34 and 27, T1N, R1E, F.B. & M.; thence in a westerly direction along the section line common to Sections 27, 34, 33 and 28, T1N, R1E, F.B. & M., to the section corner common to Sections 29, 28, 33 and 32, T1N, R1E, F.B. & M.; thence in a southerly direction along the section line common to Sections 32 and 33, T1N, R1E, F.B. & M., to the 1/4 corner common to Sections 32 and 33, T1N, R1E, F.B. & M.; thence in a westerly direction along the centerlines (east-west) of Sections 32 and 31, T1N, R1E, F.B. & M., to the 1/4 corner of Section 31, T1N, R1E, F.B. & M., located on the Fairbanks Meridian; thence north along the Fairbanks Meridian to the northernmost 1/16 corner of Section 36, T1N, R1W, F.B. & M., thence in a westerly direction along the northerly 1/16 line of Section 36, T1N, R1W, F.B. & M., to the mid 1/16 corner located in the NE 1/4 of Section 36, T1N, R1W, F.B. & M.; thence in a southerly direction along the easterly 1/16 line to the easterly 1/16 corner on the centerline (east-west) of Section 36, T1N, R1W, F.B. & M.; thence in a westerly direction to the interior 1/4 corner of Section 36, T1N, R1W, F.B. & M.; thence in a southerly direction along the centerline (north-south) of Section 36, T1N, R1W, F.B. & M., to the 1/4 corner common to Section 36, T1N, R1W, F.B. & M., and located on the Fairbanks Base Line, the true point of beginning of this description. This description encompasses an area of 33.85 square miles.

Approved in writing this 2nd day of December, 2009.

LOCAL BOUNDARY COMMISSION

By:  x
Lynn Chrystal, Chair

Attest:

By:  x
Brent Williams, Staff

RECONSIDERATION BY THE COMMISSION

Per 3 AAC 110.580(a) “within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of the decision, describing in detail the facts and analyses that support the request for reconsideration.”

Per 3 AAC 110.580(e) “the commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law;
or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.”

Additionally, per 3 AAC 110.580(f) “if the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied.”

Also, per 3 AAC 110.580(f) “if the commission orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered.”

JUDICIAL APPEAL

Per 3 AAC 110.620, “a final decision of the commission made under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).” Please note that AS 44.62.560 requires that “the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding.”

Commissioner Harrington’s Dissenting Opinion

STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

In the Matter of the)
Petition for Annexation)
of 0.05 Square Miles to)
the City of Fairbanks)

STATEMENT OF DISSENT BY

COMMISSIONER JOHN HARRINGTON

INTRODUCTION

This dissent in the annexation of the Fred Meyer Subdivision is limited to a narrow issue. The essential problem in this annexation is the mixed effect that the action will have on the delivery of services to the subdivision. I believe the Commission erred in only one aspect of the annexation process. It made a mistake by not requiring the City of Fairbanks and the Fairbanks North Star Borough execute an agreement allowed by 3 AAC 110.900(d) regarding the delivery of Fire and EMS services.

The City can provide police service and building code enforcement more efficiently and more effectively than can the Borough or the State of Alaska. But the Borough, exercising nonareawide EMS powers and service area fire suppression powers, is providing more efficient and more effective fire and EMS service than can the City. The presentation by the City lauded its more highly trained EMS and fire staff, but training cannot make up for the significantly longer response time. The current delivery of service from a station just 0.3 miles from the subdivision will be changed to a response from a station several miles away.

STATEMENT OF DISSENT

The Fred Meyer Subdivision has a reasonable need for city government. That need is partially met by the exercise of nonareawide EMS powers of the Borough and fire suppression through the University Fire Service Area. If it were not for the lack of several essential municipal services available from the Borough (e.g. police, and building code enforcement), this subdivision would not meet the applicable standards for annexation.

3 AAC 110.090. Need

(a) The territory must exhibit a reasonable need for city government. . . .

(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an

organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.

Because of the emphasis in 3 AAC 110.090 on “*services provided more efficiently and more effectively...*” the Commission was required to address the relative efficiency and effectiveness in the delivery of Fire and EMS services to the subdivision. During the hearings the Commission heard testimony regarding the City’s attempt to come to an agreement with the Borough regarding the University Fire Service Area, specifically, the financial impact on the service area. The financial impact on the service area is significant, but the more important impact is the degradation of service delivery.

It is within the power of the commission (3 AAC 110.900(d) Transition) to prescribe an agreement between the City and the Borough.

3 AAC 110.900. Transition

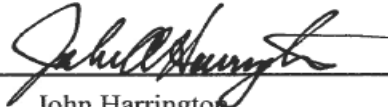
(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

One possible agreement would provide for the retention of the Fred Meyer Subdivision within the University Fire Service Area until such time as the City can provide a more comparable response time.

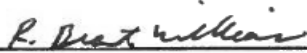
It is in the best interest of the subdivision, the community of Fairbanks, and the State that essential services are delivered efficiently and effectively. In this annexation action the degradation in delivery of fire and EMS services can be avoided, and as such, should be.

It is in this very limited area that I dissent from the action taken by the Commission. In all other aspects of the Commission’s approval of the annexation, I concur.

Approved in writing this 2nd day of December, 2009.

By:  x
 John Harrington,
 Commissioner
 First Judicial District

Attest:

By:  x
 Brent Williams, Staff