

Local Boundary Commission Decision

In the matter of the petition to incorporate Edna Bay as a second class city within the unorganized borough

Members

Lynn Chrystal
Chair
At Large

John Harrington
Member
First Judicial District

Bob Harcharek
Vice Chair
Second Judicial District

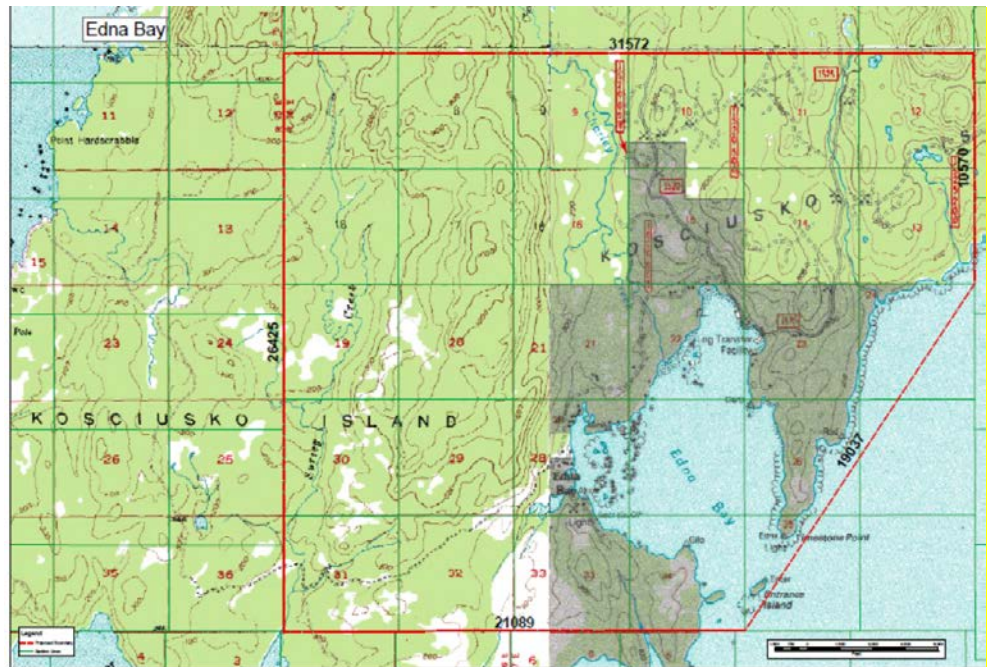
Darroll Hargraves
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District



Section I Introduction

Voters (hereafter "Petitioner") in the community of Edna Bay submitted a petition in accordance with AS 29.05.060(12), petitioned the Local Boundary Commission (also referred to as "LBC" or "commission") to incorporate as a second class city. The area proposed for incorporation as the City of Edna Bay includes state, federal, Mental Health and privately owned lands in and around the community of Edna Bay positioned in Township 68S, Range 76E of the Copper River Meridian starting with Section 7, continuing on with consecutively numbered sections, and ending with a portion of Section 35. The proposed city consists of approximately 27¹ square miles of land and water.



¹ While the petition describes the size of the proposed city as 27.5 square miles of land and water, research by Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs staff estimates it to be 22.91± sq. miles of land and 4.06± sq. miles of water, or a total of 26.97 square miles.

SECTION II PROCEEDINGS

LBC Public Hearing Regarding the Proposed City Incorporation Petition

In accordance with 3 AAC 110.550 and 3 AAC 110.560, the commission held a duly noticed public hearing on Thursday, May 15, 2014, at 11:00 a.m. regarding the Edna Bay second class city incorporation petition.² The hearing was held in the Edna Bay school.

Both the Petitioner and Respondent Sealaska Corporation (hereafter “Respondent”) gave opening and closing statements. The commission heard sworn testimony from witnesses for both parties. The commission also heard comments from numerous public members, both for and against the proposed incorporation.

LBC Decisional Meeting Regarding the Proposed City Incorporation Petition

In accordance with 3 AAC 110.570, the Local Boundary Commission held a duly noticed decisional meeting on Friday, May 16, 2014 regarding the petition to incorporate Edna Bay as a second class city. The commission voted 4 to 0 (one commissioner was unable to attend the hearing and decisional meeting) to approve the petition without amendment.

SECTION III FINDINGS AND CONCLUSIONS

The record in this proceeding includes the city incorporation petition with supporting materials, written comments received on the petition, the responsive brief, the Petitioners’ reply brief, Commerce’s preliminary report, comments received on the preliminary report, and Commerce’s final report. It further includes opening and closing statements, testimony, and verbal comments received at the LBC’s May 15, 2014, public hearing on the petition.

3 AAC 110.920 Determination of Community

In further examining whether Edna Bay comprises a community, the commission will presume that a population does not constitute a community if public access to or the right to reside at the location of the population is restricted, or the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. The commission finds that there is no restriction on public access, or on the right to reside at the location of population. The commission further finds that the location of the population is not provided by an employer, nor is Edna Bay occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. After considering all of the record and arguments, the commission finds that 3 AAC 110.920 is met.

3 AAC 110.005 Community

In determining whether the territory proposed for incorporation constitutes a community, the commission considers factors such as whether: the settlement is inhabited by at least 25 permanent residents; the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial or industrial establishments,

² The hearing was originally scheduled to start on May 14. Due to inclement weather, planes could not land in Edna Bay until the next day. The parties were notified of the postponement, and the petitioner posted notice of the postponement in the community, and notified all of the community members.

community services, and service centers. The commission finds that there are at least 25 permanent residents, and that the residents' geographical proximity allows frequent personal contacts and interaction. The commission further finds that the permanent residents form a discrete and identifiable social unit. After considering all of the record and arguments, and after considering the meaning of community as defined by 3 AAC 110.990(5), the commission finds that 3 AAC 110.005 is met.

AS 29.05.011(a)(5) and 3 AAC 110.010(a) Need

In determining whether the community demonstrates a reasonable need for city government, the commission may consider factors such as existing or reasonably anticipated social or economic conditions; existing or reasonably anticipated health, safety, and general welfare conditions; existing or reasonably anticipated economic development; and adequacy of existing services. The commission finds that the community is impeded by not being a city, and that incorporating will enable the presently unincorporated community to carry out its current functions more efficiently and effectively as a city. After considering all of the record and arguments, the commission finds that the community demonstrates a reasonable need for city government, and that both 3 AAC 110.010(a) and AS 29.05.011(a)(5) are met.

AS 29.05.021(a) Limitations of Incorporation of a City and 3 AAC 110.010(b) Need

AS 29.05.021(a) states that a community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city. Edna Bay is in the unorganized borough. The commission finds that there is no existing city that could annex Edna Bay.

3 AAC 110.010(b) states that a community in the unorganized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively by annexation to an existing city. Edna Bay is in the unorganized borough. The commission finds that essential municipal services cannot be provided more efficiently or more effectively by annexation to an existing city. Edna Bay is not near any existing city that could provide those services through annexation.

After considering all of the record and arguments, the commission finds both AS 29.05.021(a) and 3 AAC 110.010(b) are met.

AS 29.05.011(a)(3) and 3 AAC 110.020 Resources

In determining whether the economy of the community includes the human and financial resources necessary to provide municipal services under AS 29.05.021(a)(3), and in determining under 3 AAC 110.020 whether the economy of the proposed city includes the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, the commission considers factors including: The reasonably anticipated functions of the proposed city, the reasonably anticipated expenses of the proposed city, the ability of the proposed city to generate and collect revenue at the local level, the reasonably anticipated income of the proposed city, the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date for receipt of the final organization grant under AS 29.05.180 and for completion of the transition set out in AS 29.05.130 - AS 29.05.140 and 3 AAC 110.900, the economic base of the proposed city, valuations of taxable property within the proposed city, existing and reasonably anticipated industrial, commercial, and resource development within the proposed city, and personal income of residents of the proposed city.

The commission finds that the community has the ability and resources to carry out the functions that it is already doing, and do so more efficiently and efficiently as a city. The commission finds that the community has demonstrated its ability to assume the responsibility

of future functions as the need arises. The commission finds that the community has not taken on more functions than it can handle. The commission finds that the community has the ability and willingness to levy and collect taxes if necessary. The commission finds that there is a sufficient economic base, and that it will evolve with time. The commission finds that the powers and economic base of the city are well balanced. The commission finds that there is existing and potential future development in the proposed city.

The commission considers all of the mandatory factors of AS 29.05.011(a)(3) and 3 AAC 110.020, and other factors too in finding that the proposed city's economy has sufficient human and financial resources to provide essential municipal services on an efficient, cost-effective level. After considering all of the record and arguments, the commission finds that both AS 29.05.011(a)(3) and 3 AAC 110.020 are met.

AS 29.05.011(a)(4) and 3 AAC 110.030 Population

In determining whether the population of the proposed city is sufficiently stable enough to support city government under AS 29.05.011(a)(4), and whether the population of the proposed city is sufficiently large and stable to support the proposed city government under 3 AAC 110.030, the commission considers factors such as census enumerations, durations, of residency, historical population patterns, seasonal population changes, age distributions, contemporary and historical public school enrollment data, and nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.

The commission finds that there has been a stable core population, and that the core has resided in Edna Bay for a long time. The commission finds that the community has had losses of population before (similar to other communities in Southeast Alaska), but that there has been a long term stable population in Edna Bay. The commission finds that while the Edna Bay population might not be large, it has a strong stable center and will remain stable. The commission finds the population is large enough to support the proposed city government. The commission further finds that there is the potential for growth in Edna Bay.

As above, the commission finds that the population is sufficiently large and stable, and particularly notes the long durations of residency. After considering all of the record and arguments, the commission finds that both AS 29.05.011(a)(4) and 3 AAC 110.030 are met.

AS 29.05.011(a)(2) and 3 AAC 110.040 Boundaries

In determining under AS 29.05.011(a)(2) and 3 AAC 110.040(a) whether the boundaries of a proposed city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level, the commission considers factors such as land use, subdivision platting, and ownership patterns, population density, existing and reasonably anticipated transportation patterns and facilities; natural geographical features and environmental factors; extraterritorial powers of cities; salability of land for residential, commercial, or industrial purposes; and suitability of the territory for reasonably anticipated community purposes, the commission finds that the boundaries are rational and well thought through. The commission also finds that the population density is appropriate for the boundaries of the proposed city. In particular, the commission finds that the boundaries include all water and land necessary to provide essential municipal services because they include the watershed which the community depends on for its drinking water. The commission finds that the boundaries do include all water and land necessary to provide essential municipal services on an efficient and cost effective level under 3 AAC 110.040. For the same reasons, the commission finds that the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale under AS 29.05.011(a)(2).

Under 3 AAC 110.040(b)(1), to promote the limitation of community, the commission must determine whether the boundaries of the proposed city on a scale suitable for city government, and whether they include only that territory comprising a present local community, plus

reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation. The commission finds that the boundaries are on a scale suitable for city government, and that they include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation. The commission finds that this is particularly true regarding preserving the watershed to protect the water quality and as a potential site for a hydro plant. The commission finds that 3 AAC 110.040(b)(1) is met.

Under 3 AAC 110.040(b)(2), the commission will consider whether the boundaries of the proposed city include entire geographical regions or large unpopulated areas, and if so, whether the boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042, and are otherwise suitable for city government. The commission finds that the boundaries do include entire geographical regions or large unpopulated areas. However, because the commission finds that the boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042, and are otherwise suitable for city government, that the requirements of 3 AAC 110.040(b)(2) are met.

Under 3 AAC 110.040(c), the commission finds that the territory proposed for incorporation is contiguous, and that it does not contain enclaves. The commission finds that 3 AAC 110.040(c) is met.

Under 3 AAC 110.040(d), the commission finds that the petition for incorporation of the proposed city does not describe boundaries overlapping the boundaries of an existing organized borough or city. The commission finds that 3 AAC 110.040(d) is met.

After considering all of the record and arguments, the commission finds that the standards of AS 29.05.011(a)(2) and 3 AAC 110.040 are met.

3 AAC 110.042 Best Interests of State

In determining whether incorporation is in the best interests of the state under AS 29.05.100(a), the commission may consider relevant factors, including whether incorporation: promotes maximum local self-government, as determined under 3 AAC 110.981; promotes 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; will relieve the state government of the responsibility of providing local services; and is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.

The commission finds that although the chance of city dissolution exists, that chance is small. Further, the commission finds that the given the fact that the city would provide a limited number of services, that the city would be in a better position and fare better than other cities should state funding decrease. After considering all of the record and arguments, the commission finds that the standards of AS 29.05.100(a) and 3 AAC 110.042 are met.

3 AAC 110.900 Transition Plan

3 AAC 110.900(a) asks whether the petition includes a transition plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practical time after the effective date of the proposed change. The commission finds that the petition does include such a transition plan. 3 AAC 110.900(b) asks whether the petition includes 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 LBC finds that such a practical plan exists because the unorganized borough is providing no functions or services there now, and because

the powers and duties of the community organization would be transferred to the proposed city.

3 AAC 110.900(b) also asks if the plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. The commission finds that plan was so prepared because the petitioners met with the community association officials.

3 AAC 110.900(b) further asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The LBC finds that it is so designed.

3 AAC 110.900(c) asks if the petition includes 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 entities located within the boundaries proposed for change. The commission finds that the community association has no bond debt, and its assets would be transferred to the city.

3 AAC 110.900(c) also asks if the plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change. The LBC finds that because there is no such existing borough, city, and unorganized borough service area, that the consultation requirement is inapplicable.

3 AAC 110.900(c) also asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The commission finds that it is so designed.

3 AAC 110.900(c) further asks whether the plan specifically addresses procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities. The LBC finds that it does.

Under 3 AAC 110.900(d), 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. The commission finds that it is not necessary to require that agreement.

3 AAC 110.900(e) asks if the transition plan states the names and titles of all the officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The commission finds that the requirement is inapplicable due to the absence of any pertinent existing borough, city, and unorganized borough service area.

3 AAC 110.900(e) also asks the dates on which that consultation occurred, and the subject addressed during that consultation. The commission finds that the requirement is inapplicable.

3 AAC 110.900(f) asks if the prospective petitioner was unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner. If so, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The commission finds that 3 AAC 110.900(f) is inapplicable due to the absence of any existing borough, city, and unorganized borough service area, and hence it is not necessary to address any potential waiver request.

The commission finds that 3 AAC 110.900 is met.

3 AAC 110.910 Statement of Nondiscrimination

3 AAC 110.910 asks whether 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. After considering all of the record and arguments, the commission finds that the petition does not deny any person the enjoyment of any civil or political right, and so the standard is met.

3 AAC 110.970(c) Determination of Essential Municipal Services

3 AAC 110.970(c) asks whether a provision of this chapter calls for the identification of essential municipal services for a city. If yes, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the city, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

The commission finds that provisions of this chapter call for the identification of essential municipal services for a city. The commission further finds that the services that the city would provide consist of mandatory and discretionary powers and facilities that are reasonably necessary to the city, would promote maximum local self-government by transferring power from the state to the community, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. After considering all of the record and arguments, the commission finds that 3 AAC 110.970 is met.

3 AAC 110.981(7) Determination of Maximum Local Self Government

In determining under 3 AAC 110.981(7) whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, for city incorporation or annexation in the unorganized borough, the commission considers whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists. The commission finds that the proposed incorporation extends local government to territory and population of the unorganized borough where no local government currently exists. After considering all of the record and arguments, the LBC finds that 3 AAC 110.981(7) is met.

3 AAC 110.982(6) Minimum Number of Local Government Units

In determining whether a proposed boundary change promotes a minimum number of local government units under art. X, sec. 1, Constitution of the State of Alaska, for city incorporation, the commission considers whether incorporation of a new city is the only means by which residents of the territory can receive essential municipal services. The commission finds that it is the only means. After considering all of the record and arguments, the LBC finds that 3 AAC 110.982(6) is met.

SECTION IV ORDER OF THE COMMISSION

The commission concludes that all of the relevant standards and requirements for incorporation of the City of Edna Bay are met. The commission reaches that conclusion after fully considering the all of the parties' arguments, as well as the public comments, and the rest of the record in this proceeding. That record includes the incorporation petition and supporting materials, written comments received on the petition, the responsive brief, the Petitioners' reply brief, Commerce's preliminary report, comments received on Commerce's preliminary report, Commerce's final report, and opening and closing statements, testimony, and comments received at the LBC's May 15, 2014 public hearing on the petition.

The metes and bounds of the proposed city are:

Commencing at the Northwest corner of Section 7, Township 68 S, Range 76 E, of the Copper River Meridian, Alaska: the true point of beginning hereof;

Thence east approximately 31,572' to the Northeast corner of Section 12;

Thence south approximately 10,570' to the Southeast corner of Section 13;

Then southwest approximately 19,037' to the protracted Southeast corner of Section 34

Thence west approximately 21,089' to the Southwest Corner of Section 31;

Thence north approximately 26,425' to the Northwest corner of Section 7, Township 68 S, Range 76 E: The true point of beginning. Description based on USGS Quads Craig D-5 (1996) and D-6 [1951(revised 1993)].

Containing approximately 27 square miles, more or less.

Approved in writing this ____ day of June, 2014

Local Boundary Commission

By: _____ X
Lynn Chrystal, Chair

Attested by: _____ X
Brent Williams, Staff

RECONSIDERATION BY THE COMMISSION

3 AAC 110.580 (Reconsideration) states that:

“(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 that decision, describing in detail the facts and analyses that support the request for reconsideration.

“(b) Within 30 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.

(c) A person filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(d) If the person filing the request for reconsideration is a group, the request must identify a representative of the group. Each request for reconsideration must provide the physical residence address and mailing address of the person filing the request for reconsideration and the telephone number, facsimile number, and electronic mail address, if any, for the person or representative of the group.

(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.

(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. If it 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. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

JUDICIAL APPEAL

A decision of the LBC may be appealed to the Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2).