



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Commerce, Community,  
and Economic Development**

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

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# **Preliminary Report to the Local Boundary Commission**

Concerning the Petition to the Local Boundary  
Commission for Incorporation of Big Lake as a  
Second Class City in the Organized Borough  
using the Local Action Method

and

the Petition to the Local Boundary Commission  
for Annexation to the City of Houston, a  
Second Class City within the Matanuska  
Susitna Borough Using the Local Option  
Method by Unanimous Consent

December 2014



This is the Preliminary Report to the Local Boundary Commission Concerning the Petition to the Local Boundary Commission for Incorporation of Big Lake as a Second Class City in the Organized Borough using the Local Action Method (hereafter "Big Lake petition") and the Petition to the Local Boundary Commission for Annexation to the City of Houston, a Second Class City within the Matanuska Susitna Borough Using the Local Option Method by Unanimous Consent (hereafter "Houston annexation petition"). The report was written by staff to the Local Boundary Commission (hereafter "LBC"). The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (hereafter "Commerce" or "Department"). This report can also be found at the following address:

[commerce.state.ak.us/dca/lbc/2014\\_Big\\_Lake\\_Incorporation\\_and\\_Houston\\_Annexation\\_Petition/](http://commerce.state.ak.us/dca/lbc/2014_Big_Lake_Incorporation_and_Houston_Annexation_Petition/) .

The report is preliminary and should be used for public review and comment in accordance with 3 AAC 110.530, which also requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

Commerce 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. Such requests should be directed to the Local Boundary Commission staff at 269-4559/4587, TDD at 465-5437, or [LBC@alaska.gov](mailto:LBC@alaska.gov).

Graphic illustration only - this publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

# Chapter 1 Background

## **Section 1: Local Boundary Commission**

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### **Local Boundary Commission's Constitutional Foundation**

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").<sup>1</sup> The commission is responsible for establishing and modifying proposed municipal government boundaries. The Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, and they also asserted their belief 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."<sup>2</sup> Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.<sup>3</sup>

### **Local Boundary Commission's Statutory Authority**

Pursuant to 29.06.040(a):

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

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<sup>1</sup> 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."

<sup>2</sup> 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).

<sup>3</sup> *Id.*

## **LBC Duties and Functions**

The LBC acts on proposals for several different municipal (cities and boroughs) boundary changes. These are:

- Incorporating municipalities
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities
- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

In addition to acting on the above proposals for municipal boundary changes, 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, merger, consolidation, detachment, dissolution and reclassification

## **Nature of the Commission**

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes, all of which are discussed below.

### **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 that:

[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.<sup>4</sup>

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. . . ."<sup>5</sup>

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<sup>4</sup> *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).

<sup>5</sup> 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-Executive***

Article X, section 12 of Alaska’s constitution placed the LBC in the state’s executive branch. One example of the commission’s quasi-executive duty under AS 44.33.812(a)(1) is to “make studies of local government boundary problems.”

### ***Quasi-Judicial***

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. The LBC is mandated to apply established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

A reasonable basis of support must exist for the LBC’s reading of the standards and evaluating the evidence. The LBC’s quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

### ***Limits on Directly Contacting the LBC***

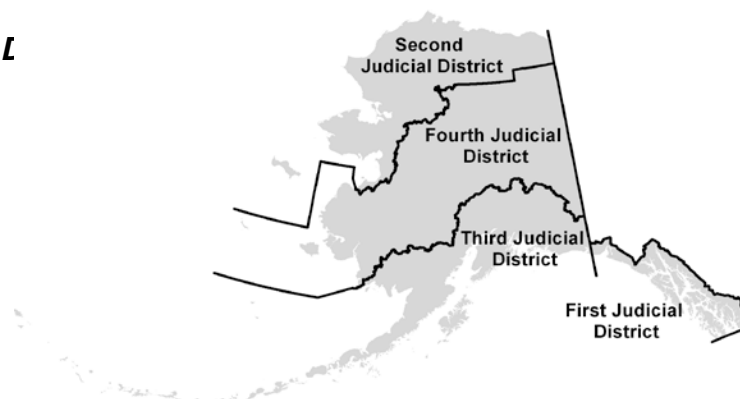
When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone’s right to due process and equal protection. Those rights are preserved by ensuring that communications with the commission concerning municipal boundary proposals are conducted openly and publicly.

To regulate communications, the commission adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition’s filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is judicially appealed, the *ex parte* limitation extends to the last date of court ordered proceedings. All communications with the commission must be through its staff.

### ***LBC Membership***

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms’ prescribed length, the commissioners serve at the pleasure of the governor (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. Commission members receive no pay for their service.

### ***Map of Alaska Judicial I***



## **Member Biographies:**



### **Lynn Chrystal, Chair, At Large Appointment, Wasilla**

Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009, and reappointed him on April 22, 2013. Although recently a Wasilla resident, Mr. Chrystal lived 39 years in Valdez and served as the mayor of Valdez and as a member of the city council. 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 worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2018.



### **John Harrington, First Judicial District, Ketchikan**

Governor Parnell appointed John Harrington of Ketchikan as the member from the First Judicial District on the Local Boundary Commission on September 10, 2009. Governor Parnell reappointed him on April 1, 2011. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington state from 1972-84. He currently serves on the Ketchikan Gateway Borough Assembly, and also served on the assembly from 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee, among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington 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 current term on the LBC ends January 31, 2016.



### **Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow**

Governor Knowles appointed Robert "Bob" Harcharek as the member from the Second Judicial District on the Local Boundary Commission on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. On March 9, 2009, Governor Palin reappointed him to the LBC. Commissioner Harcharek was again reappointed by Governor Parnell on May 14, 2014. Commissioner Harcharek serves as the commission's vice chair. In 1977 he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner 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. Commissioner Harcharek retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a member of the Barrow City Council for fifteen years, and is currently Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ends January 31, 2019.



**Darroll Hargraves, Third Judicial District, Wasilla**

Governor Parnell appointed Darroll Hargraves of Wasilla to the Local Boundary Commission as the member from the Third Judicial District on June 1, 2013. Mr. Hargraves is a consultant and owner of School and Community Resources. He is a retired school superintendent of the Nome and Ketchikan Gateway Borough school districts, and has served as the executive director of the Alaska Council of School Administrators. Commissioner Hargraves is a charter member of the Alaska Council of Economic Education, Commonwealth North, and the Wasilla Chamber of Commerce. A former member and chair of the LBC, he holds a master's degree in education, an education specialist degree from University of Alaska Fairbanks, and an honorary doctorate of letters degree from Oakland City University. His term ends on January 31, 2017.



**Lavell Wilson, Fourth Judicial District, Tok**

Governor Palin appointed Lavell Wilson, a Tok resident, as the member from the Fourth Judicial District on the Local Boundary Commission, June 4, 2007. Governor Parnell reappointed him on October 6, 2010. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. His current term on the LBC ends January 31, 2015.

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**Section 2            Local Government Agency**

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***Constitutional Origin***

Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). That agency is the Alaska Department of Commerce, Community, and Economic Development (Commerce, or department).<sup>6</sup> Commerce serves as staff to the LBC per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. This includes providing staff, research, and assistance to the LBC.

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<sup>6</sup> AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

## **LBC Staff Role**

LBC staff is required by law<sup>7</sup> to investigate and analyze each boundary change proposal and to make recommendations regarding it to the commission. For each petition, staff will write at least one report for the commission. The report(s) is publically available as well. Staff recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every local boundary change proposal.

Besides providing support to the commission, the LBC staff also delivers technical assistance to municipalities, to petitioners, to residents of areas impacted by existing or potential petitions, to respondents, to agencies, and to the general public.

### ***Assistance the LBC staff provides includes:***

- Answering public, legislative, and other governmental inquiries relating to municipal government issues
- Writing reports on petitions for the LBC
- Drafting LBC decisions
- Traveling to communities to conduct public meetings and answer questions about proposed local boundary changes
- Drafting the LBC annual report to the Legislature
- Developing and updating municipal incorporation or boundary change forms
- Sending local boundary change forms and materials to interested persons
- Providing a link between the LBC and the public
- Maintaining Alaska municipal incorporation and boundary records
- Coordinating and scheduling LBC public meetings and hearings
- Developing orientation materials and providing training for new LBC members
- Maintaining and preserving LBC records in accordance with Alaska's public records laws

### ***The LBC staff contacts:***

Local Boundary Commission staff  
550 West Seventh Avenue, Suite 1640  
Anchorage, Alaska 99501-3510  
[LBC@alaska.gov](mailto:LBC@alaska.gov)

Brent Williams: (907) 269-4559  
[brent.williams@alaska.gov](mailto:brent.williams@alaska.gov)

Brice Eningowuk: (907) 269-4587  
[brice.eningowuk@alaska.gov](mailto:brice.eningowuk@alaska.gov)

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<sup>7</sup> See AS 29.04.040, AS 29.05.080, AS 29.06.110, and AS 29.06.480 - 29.06.490; 3 AAC 110.530.



## **Section 3            Petition Procedures**

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal's reasonable and timely determination. The procedures are also intended to ensure that commission decisions are based on applying the standards to the facts.

### ***Preparing and Filing a Petition***

The LBC staff offers technical assistance, information, and forms to prospective petitioners. A petition can be prepared either as a legislative review petition or a local action petition. The petition should explain how the proposed boundary change meets the applicable constitutional, statutory, and regulatory standards. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form or content. This can allow petitioners to correct the draft before it is either circulated for voter signatures or adopted by a municipal government. If the staff finds that the petition contains all the required information, Commerce accepts it for filing.

### ***Public Notice and Public Review***

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

### ***Analysis***

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff can conduct public informational meetings. If the petition is to incorporate, the staff must hold at least one public meeting within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report with a recommendation to the commission as to whether the proposed boundary change meets the applicable standards. The preliminary report is available for public review and comment for a minimum of four weeks. After considering the comments, the LBC staff issues its publically available final report. The final report discusses comments received on the preliminary report, and notes any changes to the staff's recommendation. The final report must be issued at least three weeks prior to the LBC's public hearing.

### ***Public Hearings and LBC Decisional Meeting***

Following extensive public notice, the LBC conducts at least one public hearing. Before the hearing commission members review the petition, written comments, responsive briefs, reply briefs, and the staff reports. Typically the hearing is in or near the boundaries of the proposed change. Parties may present sworn witnesses, and the public has the chance to comment.

While the LBC has up to 90 days after the hearing to hold a decisional meeting, it usually does so immediately after the hearing. The decisional meeting is open to the public. At the decisional meeting the commission considers the entire record. Both the commission's interpretation of the applicable

legal standards and its evaluation of the evidence in the proceeding must be reasonable.<sup>8</sup> The LBC must proceed within its jurisdiction, conduct a fair hearing, and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the commission has not proceeded in the manner required by law, or if the evidence does not support its decision.

***The LBC may act by:***

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

***Written Decision***

Within 30 days of its decisional meeting, the LBC must adopt a written decision stating the basis for its decision. Copies of the decision are provided to the petitioner, respondents, and others who request them. At that point the decision becomes final, but any person may ask the LBC to reconsider its decision. Such requests must be filed within 18 days after the decision is mailed. The LBC may order reconsideration on its own motion. If the LBC does not act on a reconsideration request within 30 days of when the decision was mailed, the request is automatically denied.

***Implementation of Decision***

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a legislative review petition, it goes to the Legislature, which can disapprove it by a majority of both houses per article 10, section 12 of Alaska's constitution. If the LBC approves a local action petition, it typically goes to the voters for approval.<sup>9</sup> A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election is held, it must be certified by the director of elections or the appropriate municipal official. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the changed boundaries of the municipality.

***Conclusion***

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This chapter has described the Local Boundary Commission's background, the role of the LBC staff, and petition procedures. Chapter 2 will discuss these petitions' proceedings.

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<sup>8</sup> 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.

<sup>9</sup> Unless it is a local action annexation petition, either with unanimous consent, or if the municipality already own the land. In those cases, no election is necessary.

# Chapter 2 – Petition Proceedings

## ***Submission and Review of Petitions***

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The Petition to the Local Boundary Commission for Incorporation of Big Lake as a Second-Class City within the Organized Borough using the Local-Option Method (Big Lake petition) was submitted to LBC staff on October 17, 2013. It was returned to the petitioners to gather more valid signatures, and to address deficiencies within the petition. After the petitioners addressed those, the department accepted the petition for filing on July 24, 2014.

The Petition to the Local Boundary Commission for Annexation to the City of Houston, a second class city within the Matanuska-Susitna Borough, Using the Local Option Method by Unanimous Consent (Houston petition) was submitted to LBC staff on January 21, 2014, and accepted for filing on July 25, 2014 after recommended changes to the petition were addressed. Recommended changes ensured that the petition addressed the standards and procedural regulations for detachment and concurrent annexation.

Both petitions affect all or some portion of the same boundaries and the LBC chair consolidated the two petitions' informational sessions, briefing schedules, departments reports commission hearings, decisional meetings, or other procedure under 3 AAC 110.430.

The commission met on November 6, 2014 to apply 3 AAC 110.590(b) for the Houston annexation petition. 3 AAC 110.590(b) states “[t]he commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.700, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.” This was done so that the commission could review the two petitions an effective and efficient manner, and make a concise decision regarding the two proposals.

## ***Public Notice***

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The notice that both petitions had been accepted for filing was published in the Mat-Su Valley Frontiersman on July 29, August 5, and August 12, 2014. The opportunity for the public to submit written comments for both petitions started on July 29 and ended on October 3, 2014. This provided ample opportunity for public comment. Interested parties were given 66 days to submit responsive briefs and comments supporting or opposing one or both petitions. No responsive briefs were filed for either petition, so there are no respondents. 22 comments and reply briefs were submitted.

## ***Deadline for Comments on this Report***

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The deadline for receipt of written comments concerning this report and its recommendations is 4:30 p.m., Friday, January 16, 2014. Submit written comments to:

LBC staff  
550 W. 7th Ave., Ste. 1640,  
Anchorage, AK 99501  
Fax: 907-269-4539  
Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Big Lake Incorporation Petition  
Jim Faiks,  
Petitioner's Representative  
19559 W. Bryant Road  
Big Lake, AK 99652  
[alaskalpaca@mtaonline.net](mailto:alaskalpaca@mtaonline.net)

and/or

Houston Annexation Petition  
Mayor Virgie Thompson,  
Petitioner's Representative  
13878 W. Armstrong  
Houston AK 99694  
[vthompson@houston-ak.gov](mailto:vthompson@houston-ak.gov)

After all of the comments have been submitted, the staff will then consider and analyze the petitions and comments. After doing so it will issue a final report with a recommendation to the commission. The recommendation could vary from or remain the same as the recommendation in the preliminary report. The report will be publically available.

## ***Conclusion***

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This chapter has described discuss these petitions' proceedings. Chapter 3 will discuss the department's analysis.

# Chapter 3 – Department’s Analysis

## ***Introduction***

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This is a preliminary report that provides recommendations to the LBC. The report addresses the applicable incorporation and annexation standards by analyzing the two separate petitions and the 22 comments and briefs submitted. Both the petitions and all pertinent documents are available at: [commerce.alaska.gov/dca/lbc/2014\\_Big\\_Lake\\_Incorporation\\_and\\_Houston\\_Annexation\\_Petition](http://commerce.alaska.gov/dca/lbc/2014_Big_Lake_Incorporation_and_Houston_Annexation_Petition). There will be a public comment period on this report until January 16, 2015 (see notices in Appendix A and Appendix B). After reviewing the comments on the preliminary report, Commerce will issue a final report.

## ***Legal Standards for City incorporation and Annexation from Cities***

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This report will address the city incorporation standards for the Big Lake petition, and then address the city annexation standards for Houston. A conclusion will be made on boundaries of each petition. Some standards contain factors that the commission “may consider” in determining whether the standard is met. They are guidelines or examples. As the factors use the word “may,” it is not required that the commission (or this report) consider those factors, only that the commission consider whether or not the overall standard is met.

The criteria used by the commission to evaluate the standards for incorporation of cities and the standards for annexation to cities are set out in AS 29.05.011 – 29.05.150, AS 29.06.040 – 29.06.060, 3 AAC 110.010 – 3 AAC 110.042, 3 AAC 110.090 – 3 AAC 110.150, 3 AAC 110.090 – 3 AAC 110.150, and 3 AAC 110.900 - 3 AAC 110.990. A summary of those criteria follows:

## ***Standards for Incorporation of Cities***

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### ***3 AAC 110.005. Community***

*Territory proposed for incorporation as a city must encompass a community.*

### ***3 AAC 110.990. Definitions***

*Unless the context indicates otherwise, in this chapter*

*(5) a "community" means a social unit comprised of 25 or more permanent residents as determined under [3 AAC 110.920](#);*

### ***3 AAC 110.920. Determination of community***

*(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the*

*(1) settlement is inhabited by at least 25 permanent residents;*

*(2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and*

- (3) *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, community services, and service centers.*
- (b) *Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if*
- (1) *public access to or the right to reside at the location of the population is restricted; or*
  - (2) *repealed 1/9/2008;*
  - (3) *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.*
- (c) *A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.*

### **Analysis**

Commerce finds that Big Lake encompasses a community in the Matanuska-Susitna Borough (hereafter “borough”) for several reasons. First, according to the latest estimate from the Alaska Department of Labor and Workforce Development, Big Lake has 3,590 people as of July 2013. A permanent population of 3,590 greatly surpasses that of the 25 permanent residents required by the regulations.

Further, Big Lake has existed for at least 30 years. It was originally a summer recreation destination that evolved into a community with over 3,500 year round residents. Residents frequent local restaurants and stores, support local social groups such as the Big Lake Lions Club. The Matanuska-Susitna Borough School District has an elementary school in Big Lake. The proximity of all these services and infrastructure allow for frequent personal contacts and interaction.

Also, under [3 AAC 110.920\(b\)](#), public access to or the right to reside at the location of the population is not restricted, nor is the location of the population provided by an employer and occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. Thus, Big Lake still constitutes a community.

After analyzing [3 AAC 110.005](#), [3 AAC 110.920](#), and [3 AAC 110.990\(5\)](#), Commerce finds that Big Lake comprises a community, and that the standards are met.

### **AS 29.05.021(b). Limitations on incorporation of a city**

(b) *A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city.*

### **3 AAC 110.010. Need**

- (a) In accordance with [AS 29.05.011\(a\)\(5\)](#), a community must demonstrate a reasonable need for city government. In this regard, the commission may consider relevant factors, including
- (1) existing or reasonably anticipated social or economic conditions;
  - (2) existing or reasonably anticipated health, safety, and general welfare conditions;
  - (3) existing or reasonably anticipated economic development; and
  - (4) adequacy of existing services.
- (b) In accordance with [AS 29.05.021\(a\)](#), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, 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.
- (c) In accordance with [AS 29.05.021\(b\)](#), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a community within an organized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively
- (1) by annexation to an existing city;
  - (2) by an existing organized borough on an areawide or nonareawide basis; or
  - (3) through an existing borough service area.

### **Analysis**

Per 3 AAC 110.010(a), Commerce finds that the Big Lake community demonstrates a reasonable need for city government. First, while there is an existing community organization now (“Big Lake Community Council”), it is a nonprofit corporation (#129975) registered with the State of Alaska. It formed on August 18, 2010. It serves as the de facto government in some ways for the unincorporated community because it provides advisory recommendations to the borough regarding Big Lake community needs. But there are limits to the community council’s authority. It has no police or revenue powers. There are grants and matching funds that only municipalities can obtain. In the current Community Revenue Sharing formula, unincorporated communities in a borough receive 1/19 of the base funding formula amount, but incorporated cities, regardless of borough status, receive 1/4 of the base funding formula amount.

On the other hand, a city council can administer municipal powers more effectively. It can also represent the community’s interests more effectively than having constituents drive to the borough seat in Palmer to meet with borough officials. It can provide services that the community association cannot.

The community demonstrates a reasonable need for city government because of existing or reasonably anticipated economic development. The populations of both the borough and the Big Lake territory are growing rapidly. There is recent or planned development near Big Lake. The Goose Creek prison southeast of the proposed city boundaries recently opened. Rail extension and the Knik Arm Bridge are also being planned. The residents of Big Lake can better control or influence planned development if they have a city because the city could eventually adopt planning powers, if permitted to do so by the borough.

The community also demonstrates a reasonable need for city government because of the existing or reasonably anticipated health, safety, and general welfare conditions. The populations of both the borough and Big Lake are growing. Despite that growth, there is no borough police department. Instead, borough residents outside of the cities of Wasilla, Palmer, and Houston rely on the state troopers. While Big Lake enjoys a much lower crime rate than both the state and national median, crime does exist.<sup>10</sup> The prospective city would like to have the ability to develop a police department in the future. A Big Lake police force is not possible without incorporation.

Most importantly, the community demonstrates a reasonable need for city government because of the inadequacy of existing services. Big Lake is a rapidly growing community whose needs are not effectively met by the borough. If Big Lake incorporates, it can assume the responsibility of road maintenance of local roads from the borough. The borough currently provides road maintenance through the Big Lake Road Service Area (RSA #21). It levies 2.57 mills in FY 15 to pay for the road maintenance in the proposed city. The FY 2013 actual revenue generated from RSA #21 includes real property taxes, delinquent property taxes, penalty and interest, vehicle tax state collection, and interest on investments. Those sources generated \$1,127,864 in FY 13, \$1,203,100 in FY 14, and are estimated to generate \$1,249,350 in FY 15 for the borough. The petitioners feel that a city government can provide more effective and efficient road maintenance through an annual contract of \$600,000. Their capital expenses start at \$300,000 and go to \$450,000. The proposed city could exercise the power over road maintenance to provide safer roadways for the residents within Big Lake.<sup>11</sup>

3 AAC 110.010(b) does not apply to the incorporation of Big Lake because Big Lake is within an organized borough.

Regarding 3 AAC 110.010(c), no other city or borough can provide Big Lake with essential municipal services more efficiently or more effectively than a city of Big Lake could. As shown above, the prospective city could offer the essential municipal service of road service for less money than the borough. It is likely that the city would have a very good knowledge of the road conditions within the city. The borough cannot provide road service to the city more effectively or efficiently than the city could. Further, as above, the borough cannot provide police service because it has no police department.

Essential municipal services proposed could conceivably be provided by annexation to the City of Houston, but the services would not be done as efficiently and effectively as a city in Big Lake could. The population and services provided by the current City of Houston are adequate for their current boundaries, but to extend those services to the entire proposed Big Lake boundaries would be inefficient. Houston has a police department, but according to its website, it is currently unstaffed, so

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<sup>10</sup> <http://www.neighborhoodscout.com/ak/big-lake/crime/>

<sup>11</sup> Big Lake incorporation petition, p. 38.



Houston could offer no police service for the time being.<sup>12</sup> Moreover, the City of Houston has expressed no interest in annexing the entire community of Big Lake.

For the reasons shown above, Commerce finds that 3 AAC 110.010 is met for the Big Lake petition.

### **3 AAC 110.020. Resources**

*In accordance with AS 29.05.011(a)(3), the economy of a proposed city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission*

*(1) will consider*

- (A) the reasonably anticipated functions of the proposed city;*
- (B) the reasonably anticipated expenses of the proposed city;*
- (C) the ability of the proposed city to generate and collect revenue at the local level;*
- (D) the reasonably anticipated income of the proposed city;*
- (E) 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
  - (i) for receipt of the final organization grant under AS 29.05.180;*
  - (ii) for completion of the transition set out in AS 29.05.130 - 29.05.140 and 3 AAC 110.900; and*
  - (iii) on which the proposed city will make its first full local contribution required under AS 14.17.410(b)(2) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;**
- (F) the economic base within the proposed city;*
- (G) valuations of taxable property within the proposed city;*
- (H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and*
- (I) personal income of residents of the proposed city; and*

*(2) may consider other relevant factors, including*

- (A) land use within the proposed city;*
- (B) the need for and availability of employable skilled and unskilled persons to serve the proposed city government; and*
- (C) the reasonably predictable level of commitment and interest of the residents in sustaining a city government.*

### **Analysis**

Per 3 AAC 110.010(a), Commerce finds that the proposed city include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

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<sup>12</sup> [http://www.houstonak.com/index.asp?SEC=A3BF3399-0617-46EE-B3FB-42AC20F8AF11&Type=B\\_BASIC](http://www.houstonak.com/index.asp?SEC=A3BF3399-0617-46EE-B3FB-42AC20F8AF11&Type=B_BASIC).

*(A) the reasonably anticipated functions of the proposed city;*

The Big Lake petition states that if incorporated, the city would exercise local community development, local economic development, taxation, disaster planning in coordination with the borough, capital improvement programs, road maintenance, and parks and recreation powers.<sup>13</sup> The petition also states on page 42 that the city would provide road maintenance, parks, recreation, and general administration, but states on page 30 that road service is the only power that the city will take control of upon incorporation at that time. The city would initially provide road maintenance and city administration. It is the staff's understanding that in two years or so the city would assume parks and recreation service, but that there are no definite plans to assume other services. The community of Big Lake has a community inhabited by a diverse group of skilled and professional residents that possess the necessary skills to employ and fulfill the general administration, road maintenance, and parks and recreation departments.

*(B) the reasonably anticipated expenses of the proposed city;*

The petition includes the proposed city's budgets for the first four years of incorporation. The budgets include general and capital revenue and expenses, and generate a surplus for the first four fiscal years after incorporation.<sup>14</sup> After reviewing the budget, staff has found a minor error in the addition of the second year's revenue and this has offset the following years by a revenue decrease of \$22,000 – \$26,000.

City expenses include staff, travel, facility expense, supplies, equipment, elections, and a road service contract. Commerce's figures indicate that total expenditures for the first fiscal (FY) year is \$1,403,272, second FY is \$1,468,886, third is FY \$1,544,731, and the fourth FY is \$1,626,866. Commerce's figures indicate that the proposed FY budget will have a surplus of \$274,312 the first year of incorporation, and at the end of the fourth year of incorporation, the city will have an estimated \$81,024 budget surplus. The budget shows capital expenses rising by \$50,000 in each of the first few years, but it is staff's understanding that the city will not continue to make capital expenses at that increasing rate; the spending would only occur if there are sufficient funds to do to.

The staff recommends that the commission approve a city comprising about 68 square miles, instead of the 113 requested by the petition. The remaining territory includes the most of roads in RSA#21. While much of the territory not included in the recommended boundaries is untaxable state and borough land, there is some taxable property in that excluded territory. If that territory is excluded, it cannot be taxed by the city because it would lie outside the city limits. The city's revenue would be smaller due to the decreased tax base. Staff estimates that the lost taxable income would amount to about \$63,753.74, out of a first year property taxes income of \$1,277,584. That is about a 5% decrease. Staff verified with State Assessor Ron Brown that decrease in city revenue would be partially offset by decreased city expenses, including in the area around Miller's Reach Road. Miller's

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<sup>13</sup> Big Lake incorporation petition, p. 28.

<sup>14</sup> Big Lake incorporation petition, p. 26 to 27.

Reach Road is closer to the center of Houston than it is to the center of Big Lake. It can only be reached by driving outside of the proposed city limits. That distance would increase any road service expenses to Miller's Reach if it were in the city and provided with city road service.

After considering the budget provided and the comments and briefs regarding the proposed city's financial position, Commerce finds that the community is in sound fiscal shape, even given the smaller tax base (and smaller expenses). Commerce further finds that the reasonably anticipated expenses of the proposed city show that the city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

*(C) the ability of the proposed city to generate and collect revenue at the local level;*

If approved, the proposed city will get \$75,000 in organization grants from the state over a two year period.

Commerce's figures indicate that there will be revenues of \$1,477,584 in the first FY, \$1,457,135 in the second FY, \$1,481,218 in the third FY, and \$1,508,842 in the fourth FY (the organization grants stop after the second year). That would leave balances of \$274,312 in the first FY, \$262,561 in the second FY, \$199,048 for the third FY, and \$81,024 for the fourth FY. Those figures include the \$200,000 capital fund balance that the community association currently possesses.

The proposed city does plan to levy property taxes (the petitioners ask that the LBC condition incorporation upon voter approval of a proposition authorizing the city to levy a three mil rate real property tax condition). Under AS 29.45.590, a second class city may by referendum levy property taxes. If levied, a property tax must be assessed, levied, and collected per the requirements of AS 29.45.010 – AS 29.45.500. To do so, each property needs to be researched to be assured of proper ownership and taxable status. Then the property needs to be properly appraised so it may be assessed correctly. Currently the borough levies property taxes. The proposed city's tax would be collected by the borough and sent to the city.

The Big Lake petition requests the LBC to condition the petition to a levy three mills to the incorporation question. This condition will be upon voter approval of both the city incorporation and the three mills.<sup>15</sup> The proposed city's mill rate along with the borough taxes will be 0.090 mills less than the current borough taxes. The total average revenue generated is about \$1,715,175 for the first four years of operation.

After analyzing the financial data, Commerce finds that the ability of the proposed city to generate and collect revenue at the local level that shows that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

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<sup>15</sup> Big Lake incorporation petition, p. 7 of 60.

*(D) the reasonably anticipated income of the proposed city*

The petition's proposed budget shows property tax, community revenue sharing, the organization grants (New City Funds), and vehicle registration fees as the primary sources of income for the municipality for the first four years of operation. The organization grants will be \$50,000 in the first FY and \$25,000 in the second FY. After analyzing the financial data and the tax revenues discussed in (B) and (C) of this section, Commerce finds that the proposed city has the reasonably anticipated income to provide the development of essential municipal services on an efficient, cost-effective level.

*(E) 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*

*(i) for receipt of the final organization grant under [AS 29.05.180](#) ;*

*(ii) for completion of the transition set out in [AS 29.05.130](#) - [29.05.140](#) and [3 AAC 110.900](#); and*

*(iii) on which the proposed city will make its first full local contribution required under [AS 14.17.410](#) (b)(2) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;*

Under 3 AAC 110,020(E)(i), Big Lake has the feasibility and plausibility to operate as a city government even after receiving the organizational grants. The proposed city will rely on locally generated funds and generate a surplus even after the organizational grants are exhausted.

Under 3 AAC 110,020(E)(ii), The transition of the road service area from the borough is planned to occur in 2016. The transition plan has transitional meetings between the city manager and borough manager at least three times within the first six months. The city manager and clerk will meet with the borough counterparts as many times as necessary to establish the city functions laid out in the petition.<sup>16</sup>

Under 3 AAC 110,020(E)(iii), The city is not required to make a local contribution under [AS 14.17.410](#)(b)(2) because the proposal does not seek to incorporate a home rule or first class city in the unorganized borough.

In sum, the anticipated operating and capital budgets of the proposed city are feasible and plausible through the period extending one full fiscal year beyond the reasonably anticipated date of receiving the final organization grant, and for completing the transition. Commerce also finds that the budgets of the proposed city through that period show that it has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

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<sup>16</sup> Big Lake incorporation petition, p. 31 of 60.

*(F) the economic base of the area within the proposed city*

Big Lake is a community of summer residents and year round residents. Most of the permanent residents commute to work in either Anchorage, or elsewhere in the Mat-Su. There is possible development with the planned Knik Arm bridge, possible expansion of the Alaska Railroad, and the new Goose Creek prison. Commerce finds that, while the present economic base is not diverse, that it is sufficient for now, and will continue to grow. Commerce finds that the economic base is sufficient so that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

*(G) valuations of taxable property within the proposed city*

The levy of an ad valorem tax may not exceed two percent of the value of the property taxed (except for bonds and their indebtedness). The estimated RSA #21 2014-2015 fiscal year assessed valuation (as of January 1, 2014) is \$497,434,200. A mill rate of 2.57 has been approved to fund the RSA #21 budget. The tax levy is \$1,277,600, the borough exemptions equate to \$100,500, and there is an estimated \$41,500 in uncollectable taxes. This results in a total RSA #21 total net tax of \$1,135,600.<sup>17</sup> As found in (B) above, the proposed city would have about \$63,753.74 less in property tax revenue. Similarly to what Commerce found in (B) regarding city expenses, Commerce finds that the valuations of taxable property within the proposed city are such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

*(H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and*

There is the possibility of developments in the rail extension, proposed gas line and the Port Mackenzie Natural Gas Holding Station, port expansion, NANA Manufacturing Plan, and the existing Goose Creek prison projects. These projects in or near the territory proposed for incorporation are examples of growing trends of an economic base other than recreational homes and businesses. Commerce finds that the existing and reasonably anticipated industrial, commercial, and resource development within the proposed city is such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

*(I) personal income of residents of the proposed city*

The Alaska Department of Labor and Workforce Development, Research and Analysis Section (hereafter "DOL"), has economic and other data for the entire Big Lake Census Designated

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<sup>17</sup> Based on RSA 21 estimates from the FY 15, Matanuska-Susitna Borough Budget, p. 422.

Place (CDP) available on its website at

<http://live.laborstats.alaska.gov/alari/details.cfm?yr=2013&dst=01&dst=03&dst=04&dst=06&dst=07&r=1&b=16&p=33>. The CDP does not equate to either the proposed or recommended boundaries, but both RSA #21 and the recommended boundaries include the majority of residents in the DOL data. According to that website, the total community wages for 2013 were \$56,761,513. That, however, does not take into account the large number of retirees that commenters refer to, and their income from Social Security, pensions, or investments. If people are retired, that income would not be included as wages. Further, PFD checks, which are distributed per person, would not be included in that wages figure either, but would be part of the community's income. The residents' collective income can be much larger than the wages figure indicated. In 2013 the estimated capita income was \$28,981 and the estimated median household income was \$61,196.

Those figures appear to Commerce to indicate reasonable financial situation. Commerce finds that the personal income of residents of the proposed city is such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

In sum, Commerce finds that that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, and that 3 AAC 110.020 and 29.05.011(a)(3) are met.

### **3 AAC 110.030 Population**

(a) *In accordance with [AS 29.05.011\(a\)\(4\)](#), the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including*

- (1) census enumerations;*
- (2) durations of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

(b) *To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.*

### **Analysis**

The US Census Bureau estimated the Big Lake CDP's 2010 census population to be 3,350. The CDP does not equate to either the proposed (RSA #21) or the recommended boundaries, but both RSA #21 and the recommended boundaries include the majority of residents in the DOL data. Every July the DOL estimates each community's population. Its July 2013 estimate for the Big Lake CDP was 3,590, its 2012 estimate was 3,492, and its 2011 estimate was 3,375. This indicates a growing

population. A spreadsheet showing those figures can be found at <http://laborstats.alaska.gov/pop/popest.htm>.

Big Lake had its first recorded population of 74 in 1960. In 1970 it was 36. In 1980 it was 410. In 1990 it was 1,477. In 2000 it was 2,635. Those data further indicate a growing population. Please visit Commerce's website at <http://commerce.state.ak.us/cra/DCRAExternal/community/Details/6712351C-7DBE-422B-AA97-F5067C977E92> for those data.

[3 AAC 110.030](#)(b) does not apply because the petition is to incorporate Big Lake as a second class city, not as a first class city.

Commerce finds that 3 AAC 110.030 is met because the proposed city's population is sufficiently large and stable to support the proposed city government.

### **3 AAC 110.040. Boundaries**

- (a) *In accordance with [AS 29.05.011](#)(a)(2), the boundaries of a proposed city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*
- (1) land use, subdivision platting, and ownership patterns;*
  - (2) population density;*
  - (3) existing and reasonably anticipated transportation patterns and facilities;*
  - (4) natural geographical features and environmental factors;*
  - (5) extraterritorial powers of cities;*
  - (6) salability of land for residential, commercial, or industrial purposes; and*
  - (7) suitability of the territory for reasonably anticipated community purposes.*
- (b) *To promote the limitation of community, the boundaries of the proposed city*
- (1) must be on a scale suitable for city government and may 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; and*
  - (2) may not include entire geographical regions or large unpopulated areas, except if those 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.*
- (c) *Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*
- (d) *If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough or city, the petition for incorporation must also address and comply with all standards and procedures to alter the boundaries of the existing organized borough or city to remove the overlapping territory. The commission will consider that petition for incorporation as also being a petition to alter the boundaries of the existing borough or city.*

## **Analysis**

In analyzing [3 AAC 110.040\(a\)](#), the recommended boundaries are 68 square miles, a good deal of which is water. About 3,500 people live in those 68 square miles, so there is ample land and water for the population size. For those reasons Commerce finds that the boundaries of the proposed city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

In analyzing [3 AAC 110.040\(b\)\(1\)](#), regarding whether the city is on a scale suitable for city government, the regulations do not specify maximum sizes or specific formulas determining square mileage for cities. While the proposed city would be large, it is not without comparison or precedent. Other Alaskan cities are larger, but are still on a scale suitable for city government. St. Paul, for example, has a land area of 40 square miles and 255.2 of water for a total size of 295.2 square miles. Togiak has 45.2 square miles of land and 183.3 of water for a total size of 228.5 square miles. Valdez consists of 222 square miles of land and 55.1 square miles of water, totaling 277.1 square miles. Skagway's size was 464.3 square miles when it was a city. Those city boundaries are all larger than the proposed city's recommended boundaries. Except for Valdez, they all have a smaller population. This indicates that Big Lake is on a scale suitable for city government.

Further, in its analysis of [3 AAC 110.005](#) above, LBC staff found that Big Lake is an existing local community. The LBC staff also finds there is reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation. That growth and development is occurring both in and outside of the proposed city boundaries, but can spur growth and development in the city. For example, the borough and the Alaska Railroad Corporation jointly propose construction and operation of a new rail line from Port Mackenzie to the main rail line. That new line will pass through the recommended city limits. It is reasonable to anticipate growth from that. Although the Goose Creek prison is outside (but near) city boundaries, it is reasonable to anticipate that some of the prison employees would commute from Big Lake. That indicates future growth and development. The proposed Knik Arm Bridge could spur growth in the city as well.

In analyzing [3 AAC 110.040\(b\)\(2\)](#), Commerce finds that the recommended city boundaries do not include entire geographical regions or large unpopulated areas. Instead, they are on a scale suitable for city government, and are populated.

[3 AAC 110.990\(28\)](#) states that "region"

*"(A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;*

*(B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section."*



[3 AAC 110.990](#)(15) defines “area” as “the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.” Commerce finds that the expanded boundaries of the proposed city do not meet the definition of “area” because they do not describe a borough.

Commerce finds that the boundaries of the proposed city do not fit the definition of “region” because those boundaries do not constitute a relatively large area, or contain multiple communities that share common attributes. Nor do they include a regional educational attendance area, a state house election district, an organized borough, or a model borough.

Commerce further find that even if the recommended boundaries did include entire geographical regions or large unpopulated areas , that those boundaries are justified by applying the standards in [3 AAC 110.005](#) - [3 AAC 110.042](#) because the boundaries meet both the letter and spirit of those standards. Again, the recommended city boundaries are otherwise suitable for city government and on a scale suitable for city government.

[3 AAC 110.040](#)(c) does not apply because presume that territory proposed for incorporation that is not noncontiguous, and does not contain enclaves. Even if it did, Commerce found above that the boundaries proposed for change do include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

[3 AAC 110.040](#)(d) does not apply because the petition does not describe boundaries overlapping the boundaries of an existing organized borough or city.

For those reasons above, Commerce finds that [3 AAC 110.040](#) is met.

### **3 AAC 110.042. Best interests of state**

*In determining whether incorporation of a city is in the best interests of the state under [AS 29.05.100](#)(a), the commission may consider relevant factors, including whether incorporation*

- (1) promotes maximum local self-government, as determined under [3 AAC 110.981](#);*
- (2) 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;*
- (3) will relieve the state government of the responsibility of providing local services; and*
- (4) 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.*

### **3 AAC 110.981(8) Determination of Maximum Local Self-Government**

*In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

- (8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area;*

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

*Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

*(6) for city incorporation, whether incorporation of a new city is the only means by which residents of the territory can receive essential municipal services;*

#### **Analysis**

The petition to incorporate Big Lake is in the best interests of the state because it promotes maximum local self-government, as determined under [3 AAC 110.981](#) and Alaska's constitution. The incorporation will allow Big Lake residents to govern themselves. Big Lake's local government needs cannot be met by the borough. Although currently the borough is the local government, incorporating Big Lake would further empower its residents. They would have more say about possible development in the area because they would be able to speak with one voice and would have more influence than a community association would. Nor can Big Lake's local government needs be met by the City of Houston. Although the proposed city could theoretically be annexed to Houston, the size and population of the proposed city would put undue stress on that city. The petition to incorporate Big Lake is further in the best interests of the state because there is a possibility of creating a local police department. The petition states that law enforcement is currently being provided by the Alaska State Troopers, not the borough. It further states that the "[i]ncorporation of the City of Big Lake will allow its citizens to hire and maintain a police force to serve and protect the community."<sup>18</sup> For those reasons Commerce finds that 3 AAC 110.981 is met.

The petition to incorporate Big Lake is in the best interests of the state because it 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. The doctrine of a minimum number of local government units is not to prevent new municipalities from forming, but to prevent a duplication of services. Big Lake is in a borough, but the road maintenance can be best served by the proposed city. Big Lake would assume the responsibility of road service from the borough. This proposed incorporation does not duplicate services or government, and so maintains a minimum number of local government units. In analyzing 3 AAC 110.982, as discussed above, Commerce finds that Big Lake residents can only receive the essential municipal service of road maintenance and possibly law enforcement if the community incorporates. Incorporating Big Lake is the only practical means by which residents of the territory can receive essential municipal services because the proposed city can do so more effectively than either the borough or another city. While it is possible that the borough could continue to maintain the roads, the City of Big Lake would assume and operate the responsibility more effectively and efficiently than the borough. Although the proposed city could theoretically be annexed to the existing city of Houston, but the size and population of the proposed city would put undue stress on the current City of Houston. Commerce finds that 3 AAC 110.982 is met.

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<sup>18</sup> Big Lake incorporation petition, p. 39 of 60.

Also, the petition to incorporate Big Lake is in the best interests of the state because it is not 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.

In conclusion, Commerce finds that that the proposed incorporation is in the best interests of the state under Alaska's constitution, [AS 29.05.100\(a\)](#), [3 AAC 110.042](#), [3 AAC 110.981](#), and [3 AAC 110.982](#). [3 AAC 110.042 is met](#).

## **Standards for Annexation to Cities**

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### **3 AAC 110.090. Need**

- (a) *The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including*
- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;*
  - (2) existing or reasonably anticipated health, safety, and general welfare conditions;*
  - (3) existing or reasonably anticipated economic development;*
  - (4) adequacy of existing services;*
  - (5) extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and*
  - (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.*
- (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.*

### **Analysis**

In analyzing 3 AAC 110.090(a), Commerce finds that the territory does exhibit a reasonable need for city government so that the property owners in the territory proposed for annexation can receive the benefit of city zoning regulations, road maintenance, fire protection, and code enforcement. This is in their best interests because it would protect the values of their commercial properties. The owners requested the annexation.

Further, under 3 AAC 110.090(b), Commerce finds that essential city services cannot be provided more efficiently and more effectively by another existing city, or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area. The borough does not have a police force, but Houston does (albeit temporarily inactive). The city, but not the borough, can provide that service to the territory. Houston also provides planning and zoning. Planning power can be best performed locally because the Houston residents have the best idea of what their planning needs are. The borough has delegated that power to the city.

Commerce finds that 3 AAC 110.090 is met.

### **3 AAC 110.100. Character**

*The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the*

- (1) land use, subdivision platting, and ownership patterns;*
- (2) salability of land for residential, commercial, or industrial purposes;*
- (3) population density;*
- (4) cause of recent population changes;*
- (5) suitability of the territory for reasonably anticipated community purposes;*
- (6) existing and reasonably anticipated transportation patterns and facilities; and*
- (7) natural geographical features and environmental factors.*

#### **Analysis**

The territory is commercial in nature. It borders the Parks Highway on the west. Commerce finds that the territory is compatible in character with the annexing city because Houston also has extensive commercial properties along the highway. Houston has zoned other city territory for commercial and industrial purposes. For those reasons, Commerce finds that 3 AAC 110.100 is met.

### **3 AAC 110.110. Resources**

*The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the*

- (1) reasonably anticipated functions of the city in the territory being annexed;*
- (2) reasonably anticipated new expenses of the city that would result from annexation;*
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;*
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;*
- (5) economic base of the territory within the city after annexation;*
- (6) valuations of taxable property in the territory proposed for annexation;*
- (7) land use in the territory proposed for annexation;*
- (8) existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;*
- (9) personal income of residents in the territory and in the city; and*
- (10) need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.*

#### **Analysis**

The City of Houston's FY14 budget shows income of \$937,944 and expenses of \$937,944. The projected FY15 budget showed income of \$960,731 and expenses of \$960,731. The FY16 budget has revenue of \$984,540 and expenses of \$984,540. Houston's FY14, FY15, and FY16 budgets are balanced. The city's overall budgetary health is sound because past budgets indicate that the city spends less than it forecasts.

Regarding human resources, Houston incorporated in 1966, and has a 2013 estimated population of 2,039. That is larger than most Alaska cities, and is more than enough people to provide essential municipal services efficiently. Commerce finds that the economy within the proposed boundaries of the city includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

For those reasons, Commerce finds 3 AAC 110.110 is met.

### **3 AAC 110.120. Population**

*The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including*

- (1) census enumerations;*
- (2) duration of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

### **Analysis**

Houston's population has increased from 69 in 1970, to 697 in 1990, to 1,202 in 2000, to 1,912 in 2010, and to 2,039 in 2013. The first four figures are from the U.S. Census, and the last is a Commerce certified estimate. This results in a large second class city population (the third largest second class city in the state, behind Bethel and Kotzebue). The population is not only large by Alaskan second class city standards, it is also growing. For those reasons, Commerce finds that the population is large and stable enough to support the extension of city government. For those reasons, Commerce finds 3 AAC 110.120 is met.

### **3 AAC 110.130. Boundaries**

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

- (b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*
- (c) To promote the limitation of community, the proposed expanded boundaries of the city*
- (1) 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 10 years following the effective date of annexation; and*
  - (2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.*
- (d) 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.*

### **Analysis**

In analyzing 3 AAC 110.130(a), Houston presently consists of approximately 22.87 square miles. If the commission approves annexation of approximately 2.43 square miles of territory, the proposed post-annexation city size would be about 25.3 square miles. Commerce finds this is sufficient land and water to provide the development of essential municipal services on an efficient, cost-effective level.

In analyzing 110.130(b), the territory is contiguous to the city. The annexation would not create enclaves.

For 3 AAC 110.130(c)(1), the proposed post-annexation city size would consist of over 25 square miles of land and water. Commerce finds that it is on a scale suitable for city government. Commerce finds because Houston is an incorporated city, it is an existing local community. Given Houston's population growth discussed in the analysis of 3 AAC 110.120 above, the proposed expanded boundaries of the city include reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. The territory proposed for annexation does not exceed the reasonably predictable growth, development, and public safety needs during the 10 years after the proposed annexation.

For 3 AAC 110.130(c)(2), Commerce finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. Even if the territory did include entire geographical regions or large unpopulated areas, those boundaries are justified by applying the standards of 3 AAC 110.090 - 3 AAC 110.135 because the boundaries meet both the letter and spirit

of those standards. The recommended city boundaries are otherwise suitable for city government. Commerce finds that the standards of 3 AAC 110.130(c)(2) are met.

3 AAC 110.130(d) is inapplicable because this petition for annexation to a city neither describes boundaries overlapping the boundaries of an existing organized borough, nor describes boundaries overlapping the boundaries of another existing city.

For the reasons above, Commerce finds that 3 AAC 110.130 is met.

**3 AAC 110.135. Best interests of state**

*In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation*

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (2) 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; and*
- (3) will relieve the state government of the responsibility of providing local services.*

**3 AAC 110.981(8). Determination of maximum local self-government**

*(8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area*

**3 AAC 110.982(7). Minimum number of local government units**

*(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area*

**Analysis**

The petition would be in the best interests of the state for several reasons.

First, the annexation would promote maximum local self-government under 2 AAC 110.981(8) by further empowering the City of Houston. This is so because the city would grow in size and the territory would receive city services. The closest borough fire station is 10 miles away, but the closest city fire station is two miles away from the proposed annexation. The city also provides road service and this will extend to the territory proposed for annexation. As development occurs, the city can extend their road service more effectively and efficiently than the borough. Also, the City of Houston has a police department, but at this time the city relies on the Alaska State Troopers for law enforcement. The City of Houston plans to reinstate the police department within the next few years. Nor is there a nearby city that the territory could be annexed to.

Secondly, it would promote a minimum number of local government units under 3 AAC 110.982(7) because no new municipalities would be created from the territory to be annexed. As the territory proposed for annexation has no residents and the sole land owner is a corporation the territory



proposed for annexation by itself will not meet the standards for incorporation. Instead, an existing city would expand.

Further, the annexation would also decrease the demand for state services because the Houston police, when reinstated in a few years, would be the primary responders to the territory instead of the Alaska State Troopers (AST).

Commerce finds that 3 AAC 110.981(8) and 3 AAC 110.982(7) are met. Commerce then concludes that annexation is in the best interests of the state and so 3 AAC 110.135 is met.

### ***General Provisions [Incorporation and Annexation to Cities]***

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Regulations 3 AAC 110.900 – 3 AAC 110.970 address both the Big Lake incorporation petition and the Houston annexation petition. These regulations are the General Provisions for petitions which are separate from the Standards for City Incorporation and the Standards for Annexation to Cities. As the regulations apply to both petitions, Commerce addresses both the Big Lake incorporation petition and the Houston annexation petition below.

#### **3 AAC 110.900. Transition**

- (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*
- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*

- (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included 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.*
- (e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*
- (f) If a prospective petitioner has been 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, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

### **Analysis**

In 3 AAC 110.900(a), each petition has a practical plan that will be fulfilled within the shortest possible time after the respective effective dates. If the commission approves either petition or both petitions, most of the transition would take effect almost immediately.

For Big Lake, if the LBC approves the petition, the State of Alaska Division of Elections will conduct an incorporation election for the voters within the proposed Big Lake city boundaries, and certify the results. The incorporation would become effective upon a certification indicating that the voters had approved the petition and any conditions associated with the petition. The Big Lake incorporation petition requests the LBC to condition the petition that the incorporation be concurrent with an affirming vote for the city to levy three mills. If approved by the LBC and the voters, the City of Big Lake will assume the road service from the borough on April 21, 2016.

The City of Houston petition indicates in its transition plan that there are several essential municipal services that it anticipates extending to the territory proposed for annexation. These include road service, planning and land use, public safety, and possible law enforcement. The Houston annexation petition will not hold a local election, and it is not required to do so under AS 29.06.040(c)(4), as the sole property owner has requested that the city annex their property.

Both the proposed City of Big Lake and the City of Houston anticipates completing their respective transitions, within a few months to a couple of years. Both petitions' plans demonstrates the capacity of the respective municipal government to extend essential city services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change.

For 3 AAC 110.900(b), as above, the transition of the appropriate powers, duties, rights, and functions of each petition is fairly minimal. Each petition has described how and when the respective municipality will extend existing powers, rights, duties, and functions to the territory proposed for incorporation or annexation. These plans were prepared in consultation with the borough manager. Both city governments will assume the responsibility for road maintenance in the territories proposed for change from the borough.

Regarding 3 AAC 110.900(c), the Big Lake Community Council will vote to cease operations and move all assets and liabilities to the proposed City of Big Lake or comply with borough codes to cessation of a community council organized with the borough. Regarding the RSA #21 fund balance, either the funds could be turned to the taxpayers, or they could be transferred through a grant to the new city. Such a transfer would need to be approved by the borough assembly.

There are no assets or liabilities for the City of Houston to assume because of the proposed annexation. Nor is there any public infrastructure in the privately owned territory that the city would assume, either as an asset or as a liability.

3 AAC 110.900(d) is not a requirement, but it's an option that the LBC may exercise to require agreements for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. It is not recommended by the LBC staff to include this as a requirement upon the incorporation of Big Lake, or for Houston.

For 3 AAC 110.900(e), each petition lists the officials consulted for the respective transition plans. The petitioners also listed the dates and subjects discussed.

3 AAC 110.900(f) is inapplicable for each petition.

This transition plans in the Big Lake incorporation petition and the City of Houston annexation petition are feasible, and meets the standard of 3 AAC 110.900.

### **3 AAC 110.910. Statement of nondiscrimination**

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

### **Analysis**

Nothing in these proceedings suggest that the proposed city incorporation or city annexation will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin, for either the Big Lake incorporation petition or the Houston annexation petition.

Commerce finds that 3 AAC 110.910 is met.

### **3 AAC 110.970. Determination of essential municipal services [(c) and (d) apply to cities]**

...

- (c) *If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*
- (1) are reasonably necessary to the community;*
  - (2) promote maximum, local self-government; and*
  - (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.*
- (d) *The commission may determine essential municipal services for a city to include*
- (1) levying taxes;*
  - (2) for a city in the unorganized borough, assessing the value of taxable property;*
  - (3) levying and collecting taxes;*
  - (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;*
  - (5) public safety protection;*
  - (6) planning, platting, and land use regulation; and*
  - (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

#### **Analysis**

Regarding 3 AAC 110.970(c)(1) for Big Lake, the proposed Big Lake city essential municipal services initially include levying taxes and road maintenance. They are essential municipal services because without revenue a municipality cannot function, and so tax levying and collection are reasonably necessary. The roads are also reasonably necessary because that is how people get around.

Those services promote maximum local self-government because the incorporation would allow Big Lake residents to govern themselves. Although currently the borough is the local government, incorporating Big Lake would further empower its residents. They would have more say about possible development in the territory because they would be able to speak with one voice and would have more influence than a community association would. Residents could approach their city officials rather than drive to Palmer to visit borough officials to discuss road services.

Those services cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state because Big Lake's local government needs cannot be met by the City of Houston. Although the proposed city could theoretically be annexed to Houston, the size and population of the proposed city would put undue stress on that city. Nor could those services be provided more efficiently and more effectively by modifying the borough government.

Regarding 3 AAC 110.970(c)(1) for Houston, the essential municipal services include levying taxes because without revenue, a municipality cannot function. Tax levying and collection are reasonably necessary. Houston levies three mills on property taxes, and a levies a two percent sales tax. Other

city services such as road maintenance, and planning and zoning are also reasonably necessary to the city.

All of these services promote maximum local self-government because they empower Houston to run its own affairs, and to generate the revenue for doing so, as opposed to either having no services, or to having the services provided by the borough or the state. This puts the city government and its citizens in a position of being proactive to the needs of the community.

Those services cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state because Houston is already in a borough, and there is no other city nearby to offer the services. Nor has there been a showing that Big Lake, if incorporated, could better provide services to the territory proposed for annexation than Houston could. As both the borough and Houston already exist, and Houston is already providing essential municipal services, there is no need to modify or create another political subdivision to provide those services.

For the above reasons, Commerce concludes that both petitions meet 3 AAC 110.970.

# Chapter 4 – Conclusion

Commerce finds that the city incorporation and concurrent annexation standards are met. The Big Lake petitioner chose the proposed city boundaries to follow the boundaries of RSA #21. Big Lake's incorporation petition borders overlap all of what Houston seeks to annex. Partly for this reason, Commerce recommends that the commission amend the Big Lake petition to reduce the boundaries proposed for incorporation, as both petitions cannot possess that overlapping territory. After analyzing the consolidated petitions, Commerce recommends that the overlapping territory is more appropriately in Houston.

LBC staff recommends that the LBC amend the boundaries of the proposed Big Lake incorporation by removing:

- the territory proposed by the City of Houston annexation petition;
- territory north and west of Horseshoe Lake and north of the Papoose Twins Lakes;
- territory to the west of Burma Road and south of Diamond Lake; and
- territory east of Stephan Lake and Anna Lake.

In seeking out a person knowledgeable about RSA #21, staff consulted Terry Dolan, Director of Public Works for the Matanuska-Susitna Borough. He wrote that:

[F]rom the Borough's perspective what remains of RSA 21 is probably not maintainable given the very low tax base and long distance between what would become non-contiguous segments. Twin Papoose and Burma for example are on opposite sides of what would be the city and are 20 or so miles apart. Cutting the RSA like this would be very problematic in terms of getting a contractor to provide the maintenance services at a cost the RSA could afford. If the boundaries go in where they were proposed I think the Borough would have to terminate road maintenance services for the rest of the RSA because we would not have sufficient funding to provide that service.

Twin Papoose Lakes and the Burma Road territories are on the road system, and receive road service. LBC staff recommends that the commission keep those territories within the proposed municipal boundaries, and eliminate the more remote territory of RSA #21. This way the Twin Papoose Lakes and the Burma Road territories would retain road service, albeit from the city instead of the RSA. Those territories recommended not to be included in the city will remain with the borough RSA, but the level of road maintenance will either be reduced or eliminated altogether by the borough.

Commerce recommends a smaller city because the boundaries proposed by the petitioner simply coincided with those of RSA #21. The staff examined the borough's parcel viewer map and determined that the territory recommended for exclusion was roadless and largely unpopulated. As the primary reason to incorporate was for road service, it made little sense to include that roadless

territory. *For this particular proposed city*, 68 square miles seems more appropriate than the originally proposed 113.3 square miles. Removing those lands will allow the city to provide essential municipal services effectively and efficiently to a smaller territory.

Not including all of that territory would reduce the city tax revenue. Commerce estimates that in FY 14 the borough RSA #21 tax revenues generated in the territory not to be included is about \$63,800. This estimate is generated using the borough Property and Maps, Interactive Mapping Services, Matanuska-Susitna Parcel Viewer at the following website: <http://maps.matsugov.us/webmaps/>. Using this interactive map, LBC staff manually viewed the real property detail and reviewed the amounts billed in FY 14 of the RSA #21 territory that would not be included in the recommended boundaries.

Miller's Reach Road is not included within the recommended boundaries. Commerce realizes that the Miller's Reach Road territory is populated and has roads. Despite that, Commerce recommends that the commission not include Miller's Reach Road within Big Lake because it would not be contiguous to the city. There is no way to reach it by road except to drive through Houston. It is possible that either Houston, or the residents and voters of Miller's Reach Road, might petition for annexation of that territory to Houston in the future.

As to the territory north of Horseshoe Lake, staff respectfully disagrees with a comment made in Houston's October 15, 2015, reply brief. In that brief Houston referred to "the proposed Big Lake land areas north and west of the territory subject to annexation. Granting the Big Lake incorporation petition without amending the boundaries is a probable violation of 3 AAC 110.040(b) and would forever block the orderly westward growth and development of the city of Houston."

Staff does not know what the future holds, but respectfully submits that the territory north of Horseshoe Lake cannot at this time be determined to be more appropriate for either Big Lake (if incorporated) or Houston. It is possible that the territory could experience growth or development that could make that territory appropriate for annexation to one, both, or neither city.

Per the Big Lake petitioner's request, Commerce also recommends the LBC to condition the petition to incorporate Big Lake as a second class city upon voter approval of a proposition authorizing the city to levy a three mill rate real property tax.

Commerce recommends that the LBC amend and approve the Big Lake incorporation petition with the recommended boundaries, and impose a condition to levy a real property tax. Commerce also recommends that the LBC approve the City of Houston annexation petition without amendment. The recommended boundaries and map can be found in Appendix B.

# Appendix A

## LOCAL BOUNDARY COMMISSION PUBLIC NOTICE

### NOTICE OF PUBLIC COMMENT PERIOD ON THE PRELIMINARY REPORT WITH A RECOMMENDATION TO THE LBC CONCERNING THE HOUSTON ANNEXATION PETITION AND THE BIG LAKE CITY INCORPORATION PETITION

The Local Boundary Commission (LBC) staff preliminary report concerning the petition to incorporate a Big Lake city by local option and the petition for annexation to the City of Houston by unanimous consent will be released on December 17, 2014. The report recommends that the LBC approve the Houston annexation petition without amendment or condition. The LBC staff also recommends that the LBC amend the boundaries of the proposed Big Lake incorporation by removing:

- the territory proposed by the City of Houston annexation petition
- territory north and west of Horseshoe Lake and north of the Papoose Twins Lakes
- territory to the west of Burma Road and south of Diamond Lake,
- territory east of Stephan Lake and Anna Lake.

A map with the recommended boundaries is shown below. The territory recommended for the Big Lake incorporation is now approximately 68 square miles. The territory proposed for the Houston annexation remains approximately 2.43 square miles.

The report and both petitions with related materials will be available 24 hours a day, 7 days a week at the LBC website under: [http://commerce.state.ak.us/dca/lbc/2014\\_Big\\_Lake\\_Incorporation\\_and\\_Houston\\_Annexation\\_Petition](http://commerce.state.ak.us/dca/lbc/2014_Big_Lake_Incorporation_and_Houston_Annexation_Petition). If the report is not immediately available on the LBC website, contact the LBC staff to request a copy.

Interested persons or entities may file with the LBC written comments regarding the preliminary report, as well as the recommendation. Comments should also be served on the applicable petitioner(s). The comments to the LBC staff should be accompanied by a statement that the comment was served on the applicable petitioner(s), or the commenter should notify LBC staff of an inability to serve comments on the petitioner. Public comments must be filed and served in accordance with 3 AAC 110.480 and 3 AAC 110.700. The LBC has waived the requirement that commenters send a paper original of an electronically submitted comment. Oral comments on the recommendation for amendment may be provided at the hearing. Written comments on the recommendation must be filed on or before the same date as comments on the preliminary report. All comments must be received by 4:30 pm, Friday, January 16, 2015 at:

#### LBC staff

550 W. 7th Ave., Ste 1640, Anchorage, AK 99501-3510

Fax: 907-269-4563 • [LBC@alaska.gov](mailto:LBC@alaska.gov)

and

#### Big Lake Incorporation Petition

Jim Faiks, Petitioner's Representative  
19559 W. Bryant Road, Big Lake, AK 99652  
[alaskalpaca@mtaonline.net](mailto:alaskalpaca@mtaonline.net)

and/or

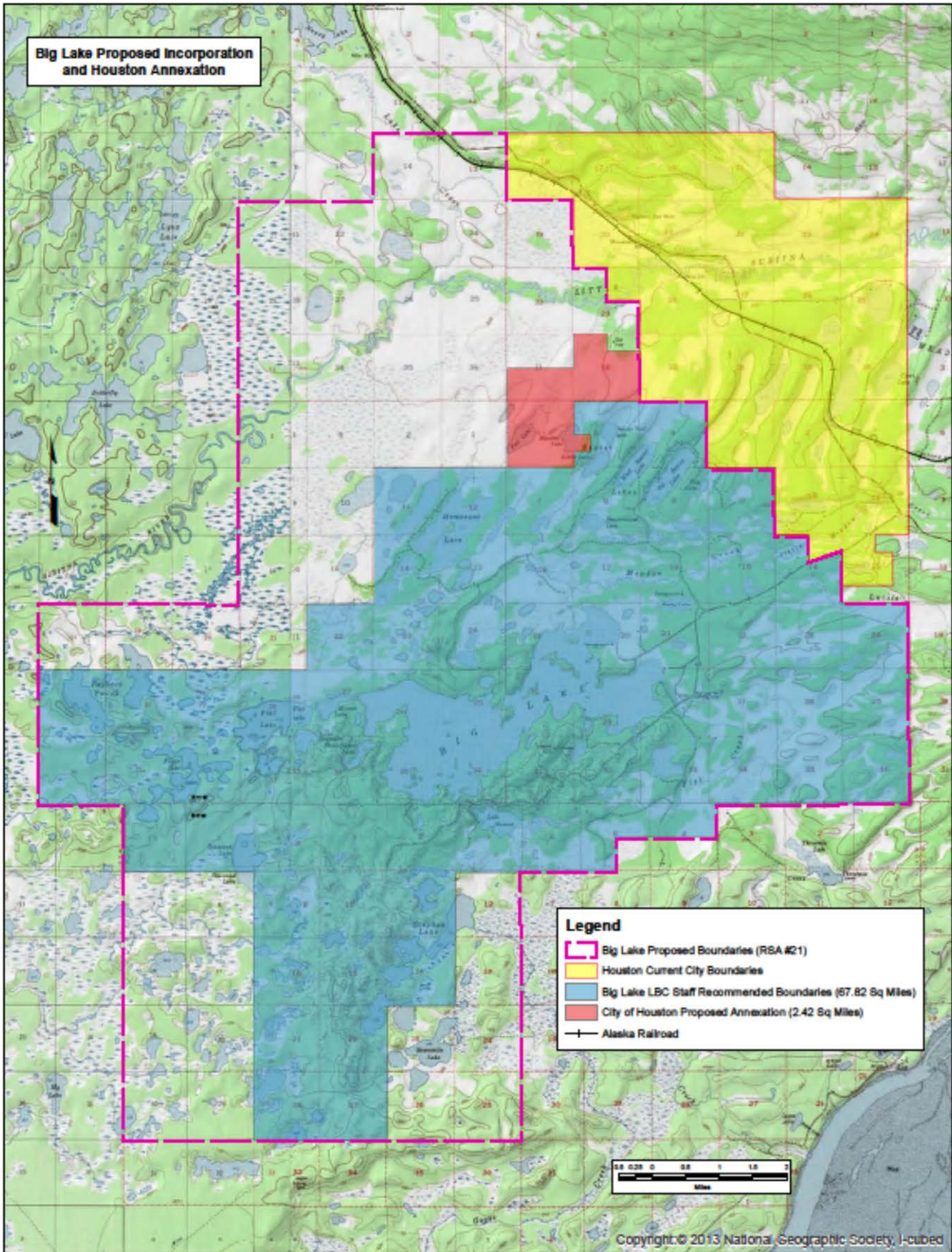
#### Houston Annexation Petition

Mayor Virgie Thompson, Petitioner's Representative  
13878 W. Armstrong, Houston AK 99694  
[vthompson@houston-ak.gov](mailto:vthompson@houston-ak.gov)

Following its consideration and analysis of comments on the preliminary report, LBC staff will issue its final report, scheduled to be issued on February 18, 2015. Procedures governing departmental reports are set out in 3 AAC 110.530. It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/index.htm>, selecting "DCED-Local Boundary Commission," and following the instructions.



**Big Lake Proposed Incorporation  
and Houston Annexation**



# Appendix A2

## LOCAL BOUNDARY COMMISSION PUBLIC NOTICE

### SUPPLEMENTAL NOTICE TO THE DECEMBER 17, 2014

#### NOTICE OF PUBLIC COMMENT PERIOD ON THE PRELIMINARY REPORT WITH RECOMMENDATIONS TO THE LBC CONCERNING THE HOUSTON ANNEXATION PETITION AND THE BIG LAKE CITY INCORPORATION PETITION

The Local Boundary Commission (LBC) staff preliminary report concerning the petition to incorporate a Big Lake city by local option, and the petition for annexation to the City of Houston by unanimous consent, was released on December 17, 2014. The report recommends that the LBC approve the Houston annexation petition without amendment or condition. This is a SUPPLEMENTAL NOTICE to the NOTICE OF PUBLIC COMMENT PERIOD ON THE PRELIMINARY REPORT CONCERNING THE HOUSTON ANNEXATION PETITION AND THE BIG LAKE CITY INCORPORATION PETITION published on December 16, 2014. This supplemental notice gives notice that PER THE BIG LAKE PETITIONER'S REQUEST, THE LBC STAFF RECOMMENDS THAT THE LBC CONDITION INCORPORATION UPON VOTER APPROVAL OF A PROPOSITION AUTHORIZING THE CITY TO LEVY A THREE MIL RATE REAL PROPERTY TAX. The LBC staff also recommends that the LBC amend the boundaries of the proposed Big Lake incorporation by removing:

- the territory proposed by the City of Houston annexation petition
- territory north and west of Horseshoe Lake and north of the Papoose Twins Lakes
- territory to the west of Burma Road and south of Diamond Lake,
- territory east of Stephan Lake and Anna Lake.

A map with the recommended boundaries is shown below. The territory recommended for the Big Lake incorporation is now approximately 68 square miles. The territory proposed for the Houston annexation remains approximately 2.43 square miles.

The report and both petitions with related materials will be available 24 hours a day, 7 days a week at the LBC website under: [http://commerce.state.ak.us/dca/lbc/2014\\_Big\\_Lake\\_Incorporation\\_and\\_Houston\\_Annexation\\_Petition](http://commerce.state.ak.us/dca/lbc/2014_Big_Lake_Incorporation_and_Houston_Annexation_Petition). If the report is not immediately available on the LBC website, contact the LBC staff to request a copy.

Interested persons or entities may file with the LBC written comments regarding the preliminary report, as well as the recommendations. Comments should also be served on (sent to) the applicable petitioner(s). Comments submitted to the LBC staff should be accompanied by a statement that the comment was served on the applicable petitioner(s), or the commenter should notify LBC staff of an inability to serve comments on the petitioner. Public comments must be filed and served in accordance with 3 AAC 110.480 and 3 AAC 110.700. The LBC has waived the requirement that commenters send a paper original of an electronically submitted comment. Oral comments on the recommendations for amendment or conditional approval may be provided at the hearing. Written comments on the recommendations must be filed on or before the same date as comments on the preliminary report. All comments must be received by 4:30 pm, Friday, January 16, 2015 at:

#### LBC staff

550 W. 7th Ave., Ste 1640, Anchorage, AK 99501-3510

Fax: 907-269-4563 • [LBC@alaska.gov](mailto:LBC@alaska.gov)

and

#### Big Lake Incorporation Petition

Jim Faiks, Petitioner's Representative  
19559 W. Bryant Road, Big Lake, AK 99652  
[alaskapaca@mtaonline.net](mailto:alaskapaca@mtaonline.net)

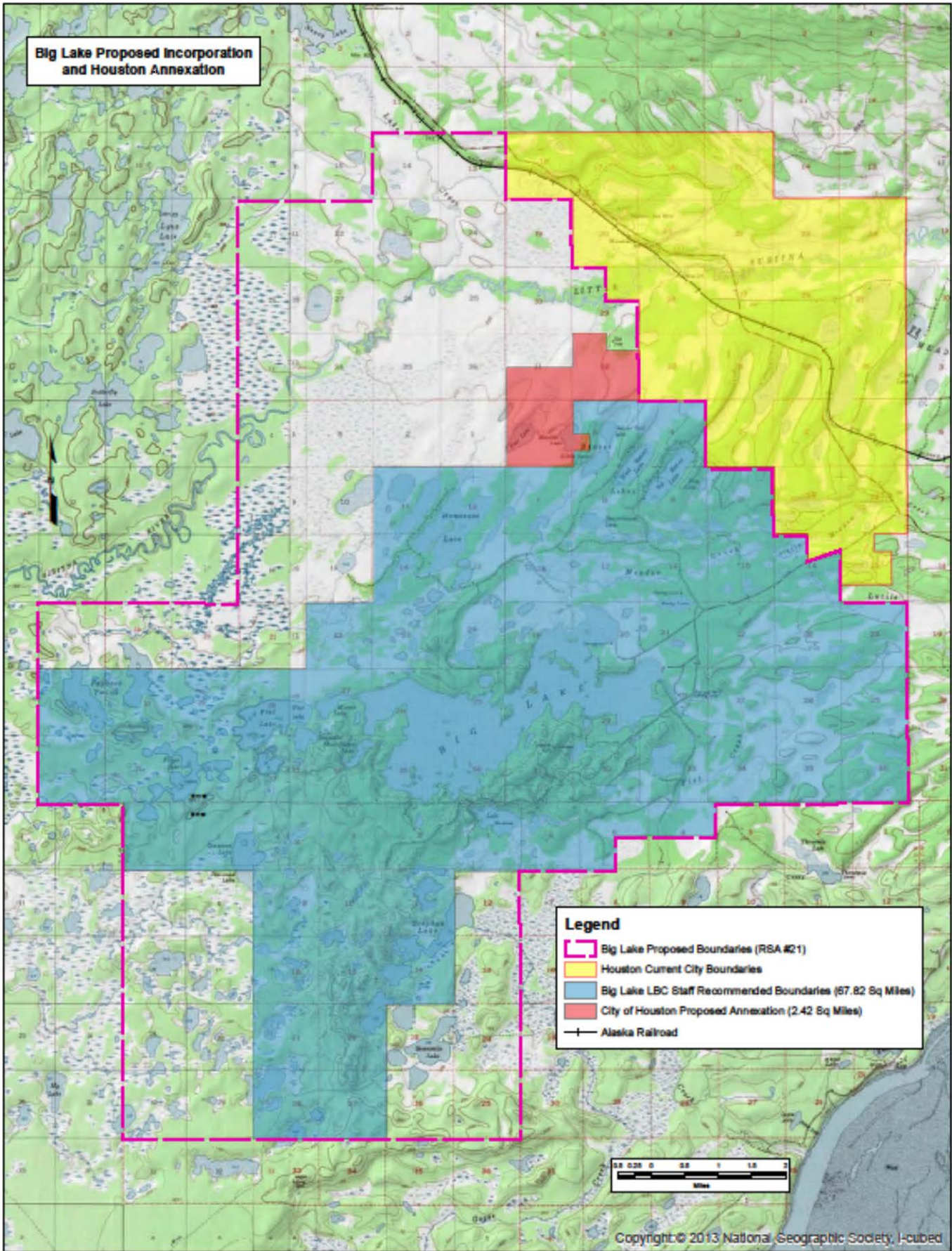
and/or

#### Houston Annexation Petition

Mayor Virgie Thompson, Petitioner's Representative  
13878 W. Armstrong, Houston AK 99694  
[vthompson@houston-ak.gov](mailto:vthompson@houston-ak.gov)

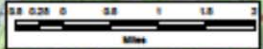
Following its consideration and analysis of comments on the preliminary report, LBC staff will issue its final report, scheduled to be issued on February 18, 2015. Procedures governing departmental reports are set out in 3 AAC 110.530. It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/index.htm>, selecting "DCED-Local Boundary Commission," and following the instructions.

**Big Lake Proposed Incorporation and Houston Annexation**



**Legend**

- Big Lake Proposed Boundaries (RBA #21)
- Houston Current City Boundaries
- Big Lake LBC Staff Recommended Boundaries (67.82 Sq Miles)
- City of Houston Proposed Annexation (2.42 Sq Miles)
- Alaska Railroad



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# APPENDIX B

## Matanuska-Susitna Borough



December 15, 2014

LBC Staff  
550 W. 7th Ave., Ste 1640  
Anchorage, AK 99501-3510  
LBC@alaska.gov

Jim Faiks, Petitioner's Representative  
19559 W. Bryant Road  
Big Lake, AK 99652  
alaskapaca@mtaonline.net

RE: RSA Fund Balance and the Proposed City of Big Lake

Dear Mr. Faiks and LBC Staff,

If the City of Big Lake forms, by law, the Big Lake Road Service Area (RSA) ceases to exist. There are two things that could occur with the RSA fund balance. Refund the money to the tax payer or transfer the funds through a grant to the new City of Big Lake for road service purposes. I would recommend to the Assembly that the funds be transferred to the New City after all current road related obligations are met.

Please note that the Borough Manager does not have the authority to authorize the funding transfer. The transfer decision rest with the Borough Assembly by resolution.

Sincerely,

John M. Moosey  
Borough Manager

