



State of Alaska
Local Boundary Commission

Statement of Decision

IN THE MATTER OF THE 1999
AMENDED PETITION OF THE CITY
OF KETCHIKAN FOR ANNEXATION
OF APPROXIMATELY 1.2 SQUARE
MILES

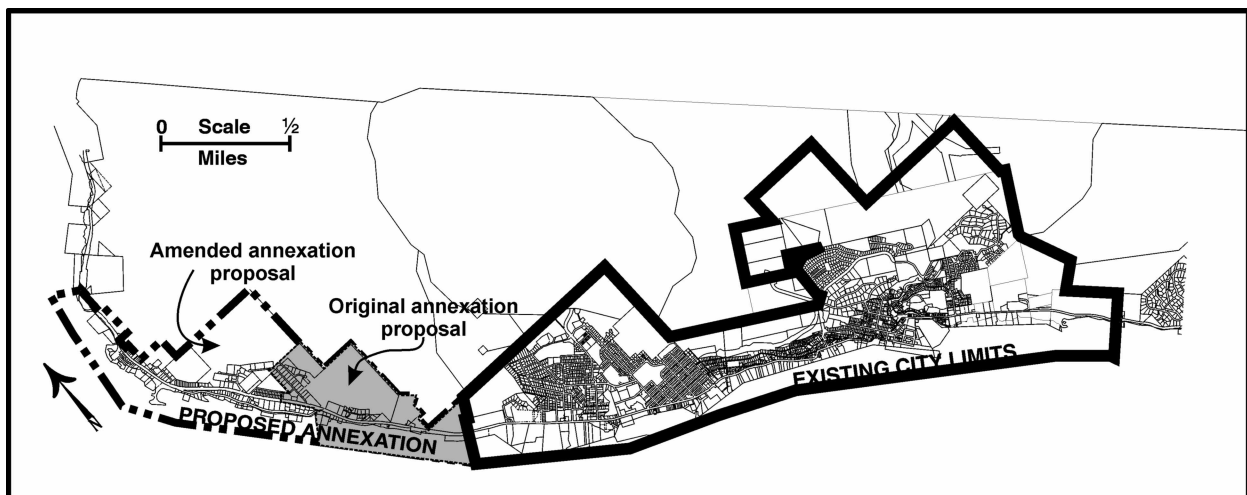
SECTION I SUMMARY OF PROCEEDINGS

As allowed by 3 AAC 110.410, the City of Ketchikan (hereinafter "City"¹) formally initiated efforts to annex approximately 0.48 square miles by a petition to the Local Boundary Commission dated February 5, 1999. The petition was received by the Commission's staff on February 25, 1999 and accepted for filing on March 17, 1999.

Public notice of the filing of the petition was given in accordance with 3 AAC 110.450. Service of the petition was performed as required by 3 AAC 110.460.

The deadline for filing responsive briefs and written comments in support of or in opposition to the annexation proposal was set by the Commission Chairman for May 14, 1999. The Shoreline Service Area (hereinafter "Shoreline") filed a timely responsive brief opposing annexation. In addition, timely written comments were received from the Ketchikan Gateway Borough (hereinafter "Borough") and fourteen others.

Shoreline's responsive brief and the Borough's written comments were critical of the petition, in part, because it encompassed only a portion of the area within Shoreline's defined boundaries. The Borough's letter requested that, "the petition either be amended to include the entire Shoreline Service Area or be rejected." In response, the City amended its petition on May 11, 1999 to encompass 1.2 square miles, including the entire service area.



On May 13, 1999, the amended petition was accepted for filing. By order of the Commission Chairman, public notice of the filing of the petition was given in the manner required for the original petition. In addition, service of the amended petition was performed as required by 3 AAC 110.460 for the original petition.

The deadline for filing responsive briefs and written comments in support of or in opposition to the amended annexation proposal was set by the Commission Chairman for July 7, 1999. Shoreline filed a timely responsive brief concerning the amended petition. In addition, 31 individuals submitted timely letters commenting on the amended petition.

The Commission Chairman set July 21, 1999 as the deadline for the City to file a reply brief. The City filed a timely reply brief in accordance with 3 AAC 110.490.

The Commission's staff prepared a 102-page preliminary report regarding the annexation proposal in accordance with 3 AAC 110.530. A 14-page summary of the preliminary report was also prepared. The report and summary were mailed to the City, Shoreline, Borough, and 39 others. In addition, the summary alone was mailed to 65 individuals and organizations. Further, multiple copies of the report and summary were provided for public review through the Ketchikan Public Library, City Clerk, and Borough Clerk. The report and summary were also available on the Internet.

The Commission Chairman set the deadline for comment on the staff's preliminary report for November 1, 1999. Timely comments were received from the City and four others.

Exercising the discretion allowed by 3 AAC 110.500(a), the Commission Chairman accepted into the record thirteen documents relating to a proposal for the expansion of the Borough's service area powers and taxes within Shoreline. Those documents had been considered by the governing bodies of the Borough or City in early November.

After giving due consideration to the comments on its preliminary report and the materials relating to the proposed expansion of the Borough's service area powers and taxes in Shoreline, staff prepared a 25-page final report on the City's annexation proposal. The final report was distributed on November 12, 1999 to 109 organizations and individuals. Again, multiple copies were made available to the public through the library, City Clerk, Borough Clerk, and Internet.

The Commission ordered a public hearing on the annexation proposal for December 4, 1999 in the Ted Ferry Civic Center in Ketchikan. Notice of the hearing was given in accordance with 3 AAC 110.550.

Prior to the hearing, written requests were received from the Borough and Shoreline for the postponement of the hearing. Shoreline also requested in writing that the Commission dismiss the City's petition. The City objected in writing to the requests for postponement of the hearing and dismissal of its petition. Again, exercising the discretion allowed by 3 AAC 110.500(a), the Commission Chairman accepted twelve documents into the record relating to the requests for postponement of the hearing and dismissal of the petition.

On December 4, 1999, prior to the hearing, four members of the Commission inspected the territory proposed for annexation by automobile.² The Commission convened its public meeting concerning the City's annexation proposal at the Ted Ferry Civic Center in Ketchikan at 11:00 a.m. All five members of the Commission were present at the hearing.

¹ In its lower case form, the word "city" refers to city governments in general.

² Commissioners Waring, Wasserman, Tesche, and Walters inspected the territory. As a consequence of her delayed arrival from Kotzebue, Commissioner Galstad was unable to inspect the territory.

The first substantive order of business taken up by the Commission at the meeting was Shoreline's request to dismiss the City's annexation petition. A motion was made and seconded by Commission members to amend the agenda to allow consideration of the request from Shoreline to dismiss the City's annexation proposal. In a discussion of the merits of the motion, the Commission noted that there is no provision in the law governing action by the Commission that expressly allows dismissal of a petition in the manner requested by Shoreline. Commission members stressed that, in fact, the Commission has a duty under AS 44.33.812(a)(3) to "consider a local government boundary change requested of it by . . . a political subdivision of the state." Consequently, the Commission rejected the motion to dismiss the petition by a unanimous vote.

Next, the Commission took up the request by Shoreline to postpone the hearing on the petition. A motion was made and seconded by Commission members to amend the agenda to allow consideration of the request from Shoreline to postpone the December 4 hearing.

In a discussion of the merits of the motion, the Commission concurred with the staff's November 23, 1999 written interpretation of 3 AAC 110.640(c). As applied to this case, 3 AAC 110.640(c) would have allowed the Commission to postpone consideration of the City's annexation petition for the purpose of allowing concurrent consideration of the prospective proposal for consolidation of the City and the Borough only if the consolidation petition had been filed within 90 days of the date of first posting of the notice of the filing of the City's amended annexation petition.

The Commission noted that 3 AAC 110.660 allows it to suspend or relax procedural regulations such as 3 AAC 110.640(c) if strict adherence to a regulation would work injustice or result in a substantially uninformed decision. The Commission stressed, however, that there was no reasonable factual basis to grant Shoreline's request to postpone the hearing. Although Shoreline claimed that it lacked the expertise and time to present an adequate response to the annexation petition, the Commission noted that it had filed timely and comprehensive responsive briefs for both the original and amended petitions. Shoreline's responsive briefs were prepared by a former long-time manager of the City who had extensive experience in annexation. Further, the Borough attorney, who also has experience with annexation, assisted Shoreline.

The Commission had noted in the discussion of the prior motion that not only did AS 44.33.812 impose a duty on the Commission to consider a boundary change requested of it, but that the Alaska Supreme Court held that the statute implies that the Commission will act in a timely manner.³ Postponement of the hearing would work significant injustice to the City by delaying annexation proceedings for one year. At the conclusion of the debate on the merits of the motion, the Commission voted unanimously to deny the motion.

Next, the Commission proceeded with its hearing on the City's annexation petition. Staff began by summarizing its preliminary and final reports and recommendations to the Commission. Next, the City and Shoreline each made opening statements. The City of Ketchikan then provided sworn testimony from five witnesses. Shoreline followed with sworn testimony from two witnesses. The City then provided sworn responsive testimony from one witness. Next, twenty-four individuals in attendance offered public comment. This was followed by closing statements from the City of Ketchikan and Shoreline. Lastly, the City offered its reply to the respondent's closing statement. The hearing lasted approximately six and one-half hours.

³ U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n, 489 P.2d 140, 142 (Alaska 1971). The statute cited by the Court in that case, AS 44.19.260(a)(3), has since been renumbered twice but remains substantially unaltered otherwise.

Following the hearing, the Commission recessed for approximately one and one-half hours. When the meeting was reconvened, the Commission began its decisional session on the proposal. The decisional session lasted approximately one hour. Following its deliberations, the Commission unanimously approved the City's amended petition to annex 1.2 square miles on the basis of the findings and conclusions outlined in Section II of this decisional statement.

SECTION II

FINDINGS AND CONCLUSIONS

Based on the evidence in the record of this proceeding, the Commission reached the findings and conclusions set out in this section of the decisional statement.

A. The 1.2 Square Mile Area Proposed for Annexation Exhibits a Reasonable Need for City Government.

The issue of the need for city government in the territory warrants consideration of local government service needs that are presently being met, not simply those that are unmet. The City currently provides extensive services and facilities that benefit the territory in question either directly or indirectly. These include the Ketchikan General Hospital, emergency medical services, emergency dispatch services, mental health and substance abuse treatment, port facilities, harbors, library, museum, civic center, solid waste disposal, cemetery, telephone utility service, and electrical utility service. The Commission finds that a reasonable need exists for those thirteen services to be provided, directly or indirectly, to residents and property owners in the territory.

According to the staff reports, officials of the Alaska Department of Public Safety anticipate that commercial development in the territory will generate additional demand for police service. Based on the planned Wal-Mart store alone, Troopers projected that the number of calls for service in the territory will likely increase by four or five per week (208 to 260 per year). Nationwide, cities with populations under 10,000 averaged 3.1 police officers per 1,000 residents. The City of Ketchikan plans to employ 2.9 officers per 1,000 residents following annexation. In comparison, there are twelve authorized Trooper positions in A Detachment serving all of southern Southeast Alaska (two of the positions are currently vacant). The 1998 population of the area served by A Detachment is estimated to be 28,320. Thus, there are 0.42 authorized Trooper positions per 1,000 residents in the area served by A Detachment. Testimony was provided at the hearing that the State Troopers in Ketchikan do not provide round-the-clock patrol and that a significant portion of the calls for City police occur during the time when the Troopers are not patrolling. The Commission finds that there is a reasonable need for City police service in the territory presently and that the imminent significant commercial development in the territory (i.e., a 64,000 square foot Wal-Mart store) will increase the need for such.

The City asserted that once the Ketchikan Wal-Mart store is constructed in the territory, National Fire Protection Association (NFPA) standards will require fire protection capabilities exceeding those of Shoreline. Specifically, the City indicates that the standards will require at least 3 pumpers, 1 ladder truck (or combination apparatus with equivalent capabilities), other specialized apparatus, 16 fire fighters, 1 chief officer, and two "rehab" personnel. The City stressed that its assessment was based on NFPA minimum requirements that are, at least in some instances, substantially less than the NFPA recommended levels of fire protection. The City offered evidence that it currently has the capability to meet the NFPA standards. Shoreline provided no testimony at the hearing to refute the City's claims concerning the capabilities demanded by the NFPA standards. Thus, the Commission finds

that the imminent significant commercial development in the territory creates a reasonable need for City fire protection service in the territory.

There are an estimated 2.5 miles of roads in the territory that receive no maintenance from the State or Borough. Further, safety concerns exist with regard to Rex Allen Drive within the territory. As the Commission observed in its inspection of the territory, Rex Allen Drive is located along a steep embankment, yet it lacks a guardrail. In addition to the 2.5 miles of secondary roads, the territory includes Shoreline Drive, a 0.9-mile long roadway that is presently maintained by the State on a low-priority basis. Recent cutbacks in its highway maintenance staff in Ketchikan will certainly make it more difficult for the State to provide adequate maintenance of Shoreline Drive. State transportation officials advised the Commission's staff that they would welcome the transfer of responsibility for the maintenance of that road to the City. Further, the City has expressed its willingness to accept responsibility for Shoreline Drive as well as the 2.5 miles of roads in the territory that presently lack maintenance. The Commission finds that there is a reasonable need for City road maintenance in the territory.

Shoreline conceded in its responsive brief, and the Alaska Department of Environmental Conservation (DEC) agreed, that future development in the territory is constrained by the lack of public water and sewer utilities. Shoreline and DEC also share the view that significant public health risks often arise in areas of concentrated development that lack sewer and water utilities. Further, several correspondents, including the Borough, criticized the City because it lacked specific plans for the extension of water and sewer utility service into the territory. DEC expressed its support for the City's annexation proposal in the hope that it would lead to the extension of City sewer and water utilities into the territory. The Commission finds from these circumstances that there is a need for water and sewer utility service in the territory proposed for annexation.

On November 15, 1999, the Borough Assembly adopted Ordinance No. 1123 adding to the Borough's service area powers in Shoreline. The ordinance was subject to ratification by Shoreline's voters at an election held December 14, 1999. The proposed additional powers consist of the construction, maintenance, and operation of roads; "general property security services"; and "hospital and other public works services". Ordinance No. 1123 would also impose a two and one-half percent "fire, roads and security sales tax" and a one percent "hospital and other public works sales tax" on a service area basis in Shoreline. As noted above, the Commission has already found that a reasonable need exists for road maintenance, police service, hospital, and a multitude of other services offered by the City. The Commission does not ascribe any significance to the adoption of Ordinance No. 1123 with respect to the need for city government in the territory proposed for annexation.

Based on the findings outlined above, the Commission concludes that the 1.2 square mile territory proposed for annexation clearly exhibits a reasonable need for city government. Therefore, the standard set out in 3 AAC 110.090(a) is fully satisfied.

B. The City of Ketchikan is Best Able to Serve the Territory's Need for Essential City Government Services Identified with Respect to 3 AAC 110.090(a).

The fact that the City is currently providing the previously noted thirteen services and facilities that directly or indirectly benefit the territory proposed for annexation is prima facie evidence of the City's superior capability to provide those services to the territory. Neither Shoreline nor any other organization or individual has effectively rebutted that evidence. Thus, the Commission finds that the City is able to provide those thirteen services more efficiently and more effectively than another existing city government or organized borough.

The Commission finds further that those thirteen services are “essential city services” as defined in 3 AAC 110.990(8).

According to the staff reports on this matter, the Alaska Department of Environmental Conservation favors, as a matter of public policy, the extension of water and sewer services to the territory by the City as compared to the establishment of an independent water and/or sewer utility operated by Shoreline. That policy recognizes that the expansion of *existing* utilities generally promotes greater economies of scale and greater rates of success in serving public needs. The City has the infrastructure to extend water and sewer utility service to the territory. The City is currently preparing an engineering plan to extend its water utility system to a portion of the territory.⁴ The Commission finds from the evidence that the City is able to provide water and sewer utility services more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that water and sewer utility services are essential city services.

The City has demonstrated its capability to extend street maintenance to the territory proposed for annexation. The City plans to spend an average of \$120,000 annually to maintain streets in the territory. The City is also prepared to spend more than three-quarters of a million dollars over three years to upgrade the streets in the territory, including efforts to remedy the previously noted safety problems along Rex Allen Drive. In contrast, the Borough currently provides no road maintenance in the territory. The Commission finds, therefore, the City is able to provide street maintenance to the territory more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that street maintenance services are essential city services.

Although the State Fire Marshal did not take a position concerning the annexation proposal, he agreed with the City that it would be inefficient to maintain two fire departments within two miles of one another in Ketchikan, particularly if each met the standards which the City asserts are necessary to provide adequate fire protection in this case under NFPA standards. The City has greater capacity than the Borough (through Shoreline) to provide enhanced fire protection to the territory. The City currently exceeds standards that it claims are required by NFPA, Shoreline does not. Further, the City plans to hire two additional firefighters to allow full-time staffing of its “west-end fire station” located approximately 2 miles from the center of the territory proposed for annexation. The City plans to spend an average of nearly \$186,000 annually to extend enhanced fire protection to the territory, coupled with an initial expenditure of \$37,400 for related capital improvements. The Commission finds from the evidence that City is able to provide enhanced fire protection to the territory more efficiently and more effectively than another existing city government or organized borough (e.g., the Borough through Shoreline). The Commission finds further that enhanced fire protection is an essential city service.

The City has a substantial police department currently in operation. Upon annexation, the City plans to hire three additional officers incrementally over three years to maintain the current level of service within its expanded boundaries. With its larger contingent of police officers, the City would provide 2.9 officers per 1,000 residents. In contrast to the City, the Borough has little experience and existing foundation to provide police service.⁵ The Commission finds from the evidence that City is able to provide police service to the territory more efficiently and more effectively than another existing city government or organized borough. The Commission finds further that police service is an essential city service.

⁴ The Commission recognizes that the extension of City water and sewer utilities into the territory will require substantial capital funding through, perhaps, some combination of State grants, local improvement district assessments, and other sources.

⁵ The Borough’s experience in the field is limited to providing airport security at the Ketchikan International Airport.

Here again, the Commission does not give any significance to the adoption of Borough Ordinance No. 1123 with respect to the City's ability to provide services more efficiently or effectively than another existing local government.

Based on the foregoing findings, the Commission concludes that the City can provide essential city services more efficiently and more effectively to the territory proposed for annexation than any other existing city or any organized borough. Consequently, the standard set out in 3 AAC 110.090(b) is satisfied.

C. The Territory Proposed for Annexation and the Area Within the Existing Boundaries of the City are Compatible in Character.

Commissioners noted that an aerial photograph showing the area within the City and Shoreline on display in the hearing room provided compelling visual evidence of the compatibility of the territory proposed for annexation and the area currently within the City's boundaries.⁶ In particular, the photograph demonstrated that the two areas share similar patterns with respect to residential and commercial development, subdivision platting, and geographic features. Further evidence of such similarities was garnered during the inspection of the territory by four Commissioners prior to the hearing. Still more evidence of similarities was noted in the written record in this proceeding. For example, staff reported that the territory proposed for annexation has a taxable value of \$116,230 per capita – twice the \$58,284 per capita figure for the City.⁷ Despite the relative differences in per capita values, the figures demonstrate that each area is developed. The Commission finds from the evidence that the 1.2 square mile territory proposed for annexation and 3.8 square mile area within the City have similar characteristics with respect to land use development, subdivision platting, and geography.

The two areas in question are contiguous and compact. The territory proposed for annexation comprises only 1.2 square miles, more than one-third of which is water. The territory is nearly 90% smaller than the average city legislative review annexation approved by the Commission in this decade. The territory proposed for annexation adjoins the 3.8 square miles within the existing boundaries of the City of Ketchikan. Although the City of Ketchikan is the second most populous city government in Alaska, the area within its current boundaries is smaller than that of 80% of the other city governments in Alaska. The Commission finds that the compact and contiguous nature of the two areas offers further compelling evidence of compatibility with respect to the two areas.

There are significant relative differences in the population density of the City and the territory proposed for annexation. However, as was the case with respect to per capita values, the relative population differences are without distinction. Both areas are densely populated. The City is the most densely populated city government in Alaska while the territory proposed for annexation is more densely populated than 93% of the existing city governments in the state. The population density of the territory exceeds that of the city governments serving Wrangell, Petersburg, Craig, Cordova, Wasilla, Homer, Kenai, Nome, and 127 other communities that have incorporated city governments. The Commission finds that the two areas are compatible with respect to population density characteristics.

As the greater community of Ketchikan continues to develop, much of the development is likely to occur in the territory proposed for annexation. The Commission noted that it was imminent significant commercial development in the territory that led to the filing of the

⁶ The photograph was taken July 2, 1999 by AeroMap US, Inc., 2014 Merrill Field Drive, Anchorage, Alaska.

⁷ If projections for development in the territory proposed for annexation are realized, the assessed value of the territory proposed for annexation will climb by nearly 24% to \$143,957 per capita within five years.

petition. The Commission finds that population growth and commercial development will occur in the territory proposed for annexation thereby rendering the territory suitable for reasonably anticipated community purposes of all sorts.

Annexation critics asserted that the two areas are incompatible, in part, because the territory proposed for annexation allegedly lacks certain services that are available to City residents. Specifically cited were the absence of water and sewer utilities, bus service, street maintenance, and municipal garbage collection. However, many areas within the City of Ketchikan lack Borough bus service and some even lack City service with respect to garbage collection, water, and sewer. The Commission finds that current differences in the level of services noted are not a basis to conclude incompatibility. The boundaries for the delivery of such services are flexible. City street maintenance would be extended upon annexation, bus service could be readily extended (the Borough Assembly approved a plan for such on September 20, 1999), and water and sewer utilities could be extended upon funding for capital improvements. The boundaries for City solid waste collection are under the control of the Regulatory Commission of Alaska.

The Commission concludes from the preceding findings that the two areas in question are part of a single community divided by political boundaries. The Commission concludes further that the 1.2 square mile territory proposed for annexation and 3.8 square mile area within the City's current boundaries are clearly compatible in character. Thus, the standard set out in 3 AAC 110.100 is satisfied.

D. The Five Square Mile Area Within the City's Proposed Post-Annexation Boundaries Includes the Human and Financial Resources Necessary to Provide Essential Services on an Efficient, Cost-Effective Level.

The City is the second most populous city government in Alaska. The citizens of the City have successfully operated a local government for the past 99 years. The City is one of Alaska's oldest home rule local governments in Alaska, having attained that status in 1960. The City currently provides an impressive range of services, far more than most cities in Alaska. The Commission finds from this evidence that the human resources represented by the 8,460 people currently within the City and 541 people in the territory are clearly sufficient to allow the extension of essential city services into the territory proposed for annexation on an efficient and cost-effective level.

The City has proposed specific plans to extend enhanced fire protection, road maintenance, engineering, and police services into the territory. Although estimates vary somewhat, it is reasonably projected that the added responsibility of serving the territory proposed for annexation will increase the City's operating budgets for the police department, fire department, street maintenance division, and engineering division collectively by an average of \$546,118 annually (third year expenditures for police were used rather than the average). In addition to the operating costs, the City plans to spend an average of \$279,633 annually for capital projects in the territory during the first three years following annexation. Together, the average projected operating and capital expenditures equal \$825,751 per year. That figure is equivalent to 1.6 percent of the total current operating and capital budget of the City. The Commission finds from the evidence that the proposed expanded City will have adequate resources to provide services throughout its enlarged area.

Based on the findings set out above, the Commission concludes that the economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard at 3 AAC 110.110 is met.

E. The Population within the Proposed Expanded City Boundaries is Clearly Both Large and Stable Enough to Support the Extension of City Services.

As noted previously, the City is the second most populous city government in the state. Additionally, the 541 residents of the territory exceed the statutory population threshold for incorporation of first class and home rule cities in Alaska by more than 35%. The combined population of the territory and the City exceeds 9,000. Annexation will increase the population of the City by approximately 6.4 percent. While the City's population and the Borough's population declined slightly due to the recent closure of the Ketchikan Pulp Corporation's operation at Ward Cove, the population of each has increased overall since 1990. The population within the proposed expanded City boundaries is stable in the sense that it is not subject to erratic seasonal population fluctuations. The Commission finds from this evidence that the proposed expanded boundaries of the City encompasses a mature community with a substantial population.

The Commission concludes from the above finding that the population within the proposed post-annexation boundaries of the City is sufficiently large and stable to support the extension of city government. As such, the standard set out in 3 AAC 110.120 is met.

F. The Proposed Boundaries are Inclusive of all Areas Needed to Provide Essential City Services on an Efficient, Cost-Effective Level.

The standard at issue concerns whether areas outside the five square miles encompassed by the proposed post-annexation boundaries of the City are *crucial* to the City's ability to provide essential city services efficiently and cost-effectively. Although Shoreline criticized the City's annexation proposal as failing to address the long-term jurisdictional needs of the City, the Commission finds that Shoreline has not demonstrated that areas outside the five square miles in question are essential to the capacity of the City to operate efficiently and effectively.

Cursory evidence suggests that in addition to Shoreline, other areas outside the City might also meet the standards for annexation to the City. These include the Ward Cove area, Ketchikan International Airport, and other areas. While the City's proposed post-annexation boundaries may not be perfect, the Commission finds the boundaries proposed by the City are logical and reasonable in light of the imminent significant commercial development in the territory.

The Commission concludes from the findings above that the proposed boundaries of the City include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. This satisfies the standard set out in 3 AAC 110.130(a).

G. The 1.2 Square Miles Proposed for Annexation is Contiguous to the Existing Boundaries of the City.

Maps included in the record clearly indicate that the territory proposed for annexation adjoins the boundaries of the City. The Commission finds from this evidence, and concludes from that finding, that the territory and the City are contiguous. As such, the standard established in 3 AAC 110.130(b) is met.

H. The Five Square Miles within the City's Proposed Post-Annexation Boundaries do not Extend Beyond the Existing Community Plus Reasonably Predictable Growth, Development, and Public Safety Needs Over the Next Decade.

The Commission observed, again, that cursory evidence suggests that the City's proposed new boundaries may be under-inclusive. However, the Commission finds that conformance, on land, with the Shoreline boundaries is a logical and appropriate approach at this particular time.

The Commission finds further that the same evidence that led to its conclusion that the territory and City are compatible in character (3 AAC 110.100) is supports the satisfaction of this particular standard.

The Commission concludes from the findings above that the proposed boundaries of the City include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. Thus, the standard set out in 3 AAC 110.130(c) is satisfied.

I. The Proposed Post-Annexation Boundaries of the City do not Include Entire Geographical Regions or Large Unpopulated Areas.

Although the City's annexation proposal would expand its jurisdictional territory by 31.6%, the City's expanded boundaries would remain small in comparison to most other city governments in Alaska. As previously noted, the City's new boundaries would encompass only five square miles. That figure is 82% smaller than the average of the jurisdictional territory of all 145 city governments in Alaska. Perhaps even more relevant is the fact that the City's expanded boundaries would encompass an area that is 93% smaller than the average of the other ten most populous cities in Alaska (all but one of which have substantially smaller populations than the City). Thirty-nine other cities in Alaska have boundaries encompassing five square miles or less. Of these, only North Pole and Palmer have populations in excess of 900. However, neither of those two cities have populations or development approaching that of Ketchikan. Even after annexation, the City of Ketchikan would remain the most densely populated city government in Alaska, far exceeding the second most populous city in the state. Lastly, the Commission observed from its inspection of the territory prior to the hearing and from its review of the maps in the record that the territory is developed. The Commission finds from the evidence that the territory proposed for annexation is compact, densely populated, and developed.

The Commission concludes from the finding that the territory proposed for annexation does not include entire geographical regions or large unpopulated areas. This satisfies the standard established at 3 AAC 110.130(d).

J. Annexation will not Deny Civil or Political Rights to Anyone Because of Race, Color, Creed, Sex, or National Origin.

The Commission found no evidence in the record or testimony that would support a conclusion that annexation will breach civil or political rights in a discriminatory manner. The Commission concludes, therefore, that annexation will not infringe on the enjoyment of any civil or political rights because of race, color, creed, sex, or national origin. Thus, the standard established by 3 AAC 110.910 is met.

K. The City has Provided a Proper Transition Plan.

The City's annexation petition includes a six-page transition plan that outlines its proposal for the assumption of appropriate powers, duties, rights, functions, assets, and liabilities relating to annexation. The plan was prepared in consultation with appropriate Borough officials, including those affiliated with Shoreline. Ideally, there would have been greater consensus on the annexation proposal among Borough officials, including representatives of Shoreline. However, the Commission finds that the City attempted to be reasonably accommodating concerning its transition plan.

The Commission would also have preferred that the City's plans for the extension of water and sewer utilities to the territory offered greater assurance that the utilities would, in fact, be extended. Nevertheless, the Commission recognizes that the extension of water and sewer utilities are often funded, in part, by assessments on the area that benefits from the improvements. The Commission also recognizes that the City is presently developing engineering plans for the extension of its water utility to a portion of the territory proposed for annexation.

The Commission concludes that the City has provided an adequate transition plan that meets the requirements of 3 AAC 110.900.

L. The City's Annexation Proposal Serves the Balanced Best Interests of the State, the Territory, and Affected Political Subdivisions.

Annexation is a fundamental tool that allows local governments to address a classic urban problem where a local government, with fixed boundaries, finds growth and development occurring outside its jurisdiction. Unless it expands, there is significant potential that the economic health of the established local government will be impaired over time. Deterioration of the local government's financial health, in turn, leads to a decline in its ability to provide services and facilities. Eventually, the vitality of the community decays. Annexation is a way to prevent the dynamism of central communities from being eroded by development occurring immediately outside the boundaries of local government. It is for this very reason that Alaska's constitution provides flexibility with respect to the jurisdictional boundaries of cities and boroughs through Article X, Section 12. The Commission takes seriously the concerns expressed by Shoreline and the residents of the territory. However, the Commission must weigh those concerns against other public issues and concerns. Absent annexation, the City faces the prospect of significant revenue reductions that threaten its ability to fund the current level of services. The Commission finds that the long-term capability of the City (or any successor it might have) to meet the service needs of its residents is an overriding State and local government interest.

As noted previously, the City currently provides thirteen fundamental services and facilities that benefit, directly or indirectly, the residents and property owners of the territory. The Borough provides financial support to the City on behalf of the territory and other areas of the Borough for two of those services (landfill and library). Certain other services and facilities are funded in whole or in part by user fees. However, the Commission finds from the evidence that a number of the thirteen services and facilities that benefit the territory are provided without commensurate tax support from the territory.

Ordinance No. 1123 appears to be an attempt on the part of the Borough, in part, to offer an alternative to annexation as a remedy of inequities through the assumption of additional responsibilities by the Borough on a service area basis within the territory proposed for annexation. As noted previously, the additional powers in question consist of construction, maintenance, and operation of roads; general property security services, hospital, and other public works services. The assumption of hospital powers on a service area basis

(presumably with a payment to the City for the City-owned Ketchikan General Hospital) would remedy some of the inequities, but certainly not all. More importantly, even if the Borough's plan addressed all of the inequities, it is flawed for fundamental reasons. Article X, Section 5 of Alaska's constitution clearly disfavors service areas adjoining city boundaries where those service areas mimic the powers of the adjoining city and exist as a barrier to the legitimate expansion of the city government. The Commission finds from these circumstances that no practical or equitable alternative to annexation is available to offset the cost of providing the benefits enjoyed by the territory.

In contrast to the Borough's proposal, annexation of the territory to the City will integrate the Shoreline Service Area into the City so that Shoreline will no longer exist as a unit of government. This approach is favored by Article X, Section 1 of Alaska's constitution which promotes "a minimum of local government units." The Alaska Supreme Court has interpreted that provision to be a "constitutional policy of minimizing the *number* of local government units." (emphasis added). City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1044 (Alaska 1971). The Commission believes that the integration of Shoreline into the City will promote greater equity and will allow the City to deliver services more efficiently and effectively. Such will benefit the City, Borough, citizens of Shoreline, and property owners in the territory.

Annexation will also shift responsibility for certain local services in the territory from the State to local government. These consist of police service and maintenance of certain roads. Annexation may also foster the extension of water and sewer utilities to the territory. The Commission finds that, as a matter of public policy, where communities have the resources to assume responsibility for local services, the State should transfer those responsibilities to the local government.

The express purpose of the local government article of Alaska's constitution is, in part, to "provide for maximum local self-government." (Article X, Section 1) Alaska's constitutional convention delegates considered home rule local governments to be the epitome of maximum local self-government. As noted by Thomas A. Morehouse and Victor Fischer, recognized experts in local government in Alaska:

An oft-repeated theme of the [Alaska constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. As envisioned, the self-government concept would apply not only to formal home rule cities and boroughs, but extend also to general law units and even to unorganized areas, where it could take the form of local participation in state policy making and provision of state services. *Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political conditions.* (emphasis added)

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, *particularly in the case of home rule units.* (emphasis added) Moreover, a "strong state role" also meant that the state would support local governments with financial aid and technical assistance. (Borough Government in Alaska, by Thomas A. Morehouse and Victor Fischer, page 56)

Alaskans have demonstrated their preference for home rule cities and boroughs over general law cities and boroughs. Overall, 63.1% of Alaskans live in home rule cities and boroughs. The four most populous cities in Alaska are home rule cities. Ketchikan attained home rule city status in 1960 and has maintained it successfully for the past thirty-nine years. The Commission finds that annexation of the territory to the City will promote maximum local self-government.

Residents of the territory proposed for annexation will be enfranchised with respect to the City of Ketchikan as a result of annexation. Currently, City officials make many decisions that affect residents and property owners in the territory proposed for annexation. Yet, those residents have no formal voice in the operation of the City. If they are annexed, they will be enfranchised. The Commission finds that the enfranchisement of citizens of the territory serves the best interest of the affected local governments and the territory.

The Commission concludes from the findings noted above that the annexation proposal serves the balanced best interests of the State, the affected local governments, and the territory proposed for annexation. Thus, the standard set out in 3 AAC 110.140 is satisfied.

M. The Commission Encourages the City and Borough to Actively Pursue Consolidation in the Near Future.

The Commission recognizes that while the pending annexation proposal remedies certain inequities and inefficiencies with respect to the structure of local government in Ketchikan, many others remain. The City will continue to be the entity responsible for a number of services and facilities that are enjoyed by all residents of the Borough. This circumstance apparently resulted from the fact that long before the Borough was formed the City assumed responsibilities that, in contemporary light, appear to be legitimate areawide Borough functions.

A comprehensive restructuring of local government duties and responsibilities in Ketchikan appears warranted. Without such, the door clearly remains open for additional annexations to the City.

Consolidation seems to offer the tools and flexibility needed to address the fundamental deficiencies relating to the structure of local government in Ketchikan. The Commission notes that considerable interest currently exists with respect to the prospect of consolidation of the City and the Borough. Yet, there has been a lengthy history of frustration in Ketchikan with respect to local efforts to achieve consolidation.

The Commission strongly encourages the City and Borough to actively pursue consolidation as a means to improve the structure of local government in the greater Ketchikan area.

SECTION III

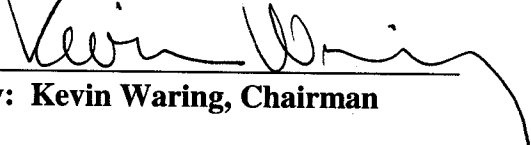
ORDER OF THE COMMISSION

Based on the findings and conclusions set out in Section II of this decisional statement, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied by the annexation proposal filed by the City of Ketchikan. Accordingly, the Commission hereby approves the February 5, 1999 petition of the City of Ketchikan, as amended by the City on May 11, 1999. The amended petition seeks the annexation of approximately 1.2 square miles.

The Commission will submit a recommendation for the annexation of the territory in question to the Second Session of the Twenty-First Alaska Legislature in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

Approved in writing this 16th day of December 1999.

LOCAL BOUNDARY COMMISSION



By: **Kevin Waring, Chairman**

Attest:



Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.
