

**Preliminary Report to the  
*Local Boundary Commission*  
Concerning the Proposed Annexation of  
1.2 Square Miles to the City of Ketchikan  
October 1999**

**Alaska Department of Community &  
Economic Development**



This is the Department of Community and Economic Development's preliminary report, with executive summary, regarding the City of Ketchikan's annexation petition. A copy of the report can also be found on the Internet at the following address:

[http://www.dced.state.ak.us/mra/Mrad\\_lbc.htm](http://www.dced.state.ak.us/mra/Mrad_lbc.htm)

Further, copies of the report are also available for review through the Ketchikan City Clerk, Ketchikan Gateway Borough Clerk, and the Ketchikan Public Library.

The report is preliminary in the sense that it is issued as a draft for public review and comment in accordance with 3 AAC 110.530(b). The law requires the Department of Community and Economic Development (DCED) to issue a final report after considering written comments on the preliminary report.

Occasionally, DCED's preliminary reports to the Local Boundary Commission become final with little or no modification. If such occurs in this instance, it will be announced by a letter that will serve to meet the requirement for a final report. If circumstances warrant otherwise, a separate final report will be published in this matter.

DCED complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at (907) 269-4500, or TDD (800) 930-4555.

## KEY TO ACRONYMS AND TERMS WITH SPECIAL MEANING USED IN THIS REPORT

Unless the context in which a term or acronym is used suggests otherwise:

"**Borough**" means the Ketchikan Gateway Borough (however, in its lower case or plural forms, the word refers to borough government(s) in general);

"**City**" means the City of Ketchikan (however, in its lower case or plural forms, the word refers to city government(s) in general);

"**Commission**" means the Alaska Local Boundary Commission;

"**DCED**" means the Alaska Department of Community and Economic Development;

"**DEC**" means the Alaska Department of Environmental Conservation;

"**DOT&PF**" means the Alaska Department of Transportation and Public Facilities;

"**DPS**" means the Alaska Department of Public Safety;

"**ISO**" means Insurance Services Office, Inc.;

"**Ketchikan**" means the City of Ketchikan;

"**KGB**" means the Ketchikan Gateway Borough;

"**KPC**" means the Louisiana Pacific Corporation's Ketchikan Pulp Company;

"**LBC**" means the Alaska Local Boundary Commission;

"**NFPA**" means National Fire Protection Association;

"**SSA**" means the Shoreline Service Area;

"**territory**" means the 1.2 square miles proposed for annexation to the City of Ketchikan.



Tony Knowles, Governor

**Department of Community  
and Economic Development**

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October 4, 1999

This document contains the preliminary report (with executive summary) of the Alaska Department of Community and Economic Development (DCED) concerning the petition of the City of Ketchikan to annex 1.2 square miles.

The preliminary report concludes that all standards for annexation set out in State law have been met in this case. As such, the report makes a preliminary recommendation that the Local Boundary Commission approve the City of Ketchikan's petition.

Written comments on the preliminary report are welcome. To be considered in the preparation of DCED's final report, comments must be received at the following office on or before November 1, 1999:

Local Boundary Commission Staff  
Department of Community and Economic Development  
333 West Fourth Avenue, Suite 220  
Anchorage, Alaska 99501-2341

Primary fax number: 907-269-4539  
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DCED's final report in this matter will be issued by November 12, 1999. The Local Boundary Commission will hold a hearing on the annexation proposal in Ketchikan at the following date, time, and location:

Saturday, December 4, 1999

11:00 a.m.

Ted Ferry Civic Center

Additional copies of the report are available through the Ketchikan City Clerk, Ketchikan Gateway Borough Clerk, Ketchikan Public Library, and the offices of the Local Boundary Commission Staff listed above. The report is also available on the Internet at:

[http://www.dced.state.ak.us/mra/Mrad\\_lbc.htm](http://www.dced.state.ak.us/mra/Mrad_lbc.htm)

Cordially,

Patrick K. Poland  
Director

*"Promoting a healthy economy and strong communities"*

# Acknowledgments

Policy direction concerning DCED's recommendation to the Local Boundary Commission was provided by the following DCED policy makers:

- Deborah B. Sedwick, Commissioner, DCED
- Jeff Bush, Deputy Commissioner, DCED
- Patrick Poland, Director, Municipal & Regional Assistance Division, DCED

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- Jennie Morrison, Publication Technician, DCED

DCED gratefully acknowledges the efforts of the City of Ketchikan, Ketchikan Gateway Borough, Shoreline Service Area, and the 45 correspondents in this proceeding, all of whom submitted written materials contributing to the examination of the pending annexation proposal. Additionally, DCED offers its appreciation to the following individuals (listed in alphabetical order of last name) who provided further assistance in the review of the annexation proposal.

- Karl R. Amylon, City Manager, City of Ketchikan;
- Ed Anderson, Office Engineer, City of Ketchikan;
- Linda Auger, Administrative Assistant, City of Ketchikan;
- Don Baxter, Regulatory Commission of Alaska;
- Charles Feller, Commander, A Detachment of the Alaska State Troopers in Ketchikan;
- Mike Gardner, Wal-Mart headquarters;
- Tim Garton, Deputy Director of Transportation, Ketchikan Gateway Borough;
- Betsy Germain, Mapping Technician, City of Ketchikan;
- Harvey Hansen, Public Works Director, City of Ketchikan;
- Gene Kane, Local Boundary Commission Staff, DCED;
- Ketchikan Gateway Borough School District Staff;
- Richard Leipfert, Fire Chief, City of Ketchikan;
- Mike Lukshin, Traffic Engineer, Alaska DOT&PF;
- Joyce Michaelson, Alaska Housing Finance Corporation;
- Bob Newell, Finance Director, City of Ketchikan;
- George Plumley, Cartographer, DCED;
- Gary Powell, Alaska State Fire Marshal;
- Frank Richards, Chief of Maintenance, Southeast Alaska Region, DOT&PF;
- Bill Rolfzen, Revenue Programs Manager, DCED;
- Steve Schweppe, City Attorney, City of Ketchikan;
- Gail Senumiai, Office of the Lieutenant Governor, Division of Elections;
- Mary Siroky, Manager of the Community Assistance and Information Component, Division of Statewide Public Service, Alaska Department of Environmental Conservation;
- Delbert W. Smith, Deputy Commissioner, Alaska Department of Public Safety;
- Chris Stockard, Captain, Alaska State Troopers;
- Steve Van Sant, State Assessor, DCED;
- Jim Voetberg, Assistant City Manager, City of Ketchikan;
- Laura Walters, Research and Analysis, DCED; and
- Ingrid Zaruba, Alaska Department of Labor and Workforce Development.

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# Summary of Preliminary Conclusions and Recommendation

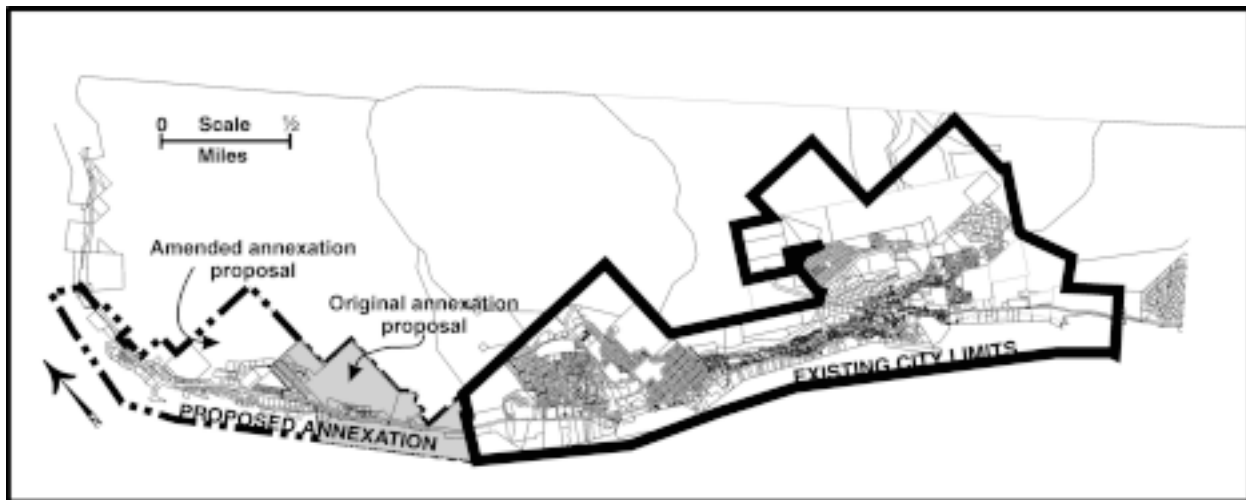
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## Background

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In February of this year, the City of Ketchikan petitioned the State of Alaska for the annexation of 0.48 square miles. That petition was amended by the City in May to seek the annexation of the entire Shoreline Service Area of the Ketchikan Gateway Borough and adjoining waters offshore. The amended territory encompasses 1.2 square miles.

*City of Ketchikan's original and amended annexation proposals*



The Alaska Department of Community and Economic Development (DCED) has the duty under State law to evaluate municipal annexation proposals and to make recommendations regarding such to the Alaska Local Boundary Commission. The Commission was created under Alaska's constitution to render objective, independent decisions from a statewide perspective regarding proposals for the creation, alteration, or abolition of city governments and organized boroughs – the two fundamental types of political subdivisions of the State of Alaska.

The Local Boundary Commission is comprised of five unpaid citizens appointed by the Governor. The Commission is independent of DCED. However, both DCED's evaluations and the Commission's decisions are based on the same standards established in law. If the Commission approves the City of Ketchikan's annexation proposal, its decision will be subject to review by the Alaska Legislature.



In preparing its preliminary report, DCED carefully examined and considered the current written record filed in this matter. That record consists of more than 1,000 pages which convey arguments both by the City in favor of its annexation proposal and by critics who oppose annexation. The written record includes:

- the original petition and supporting documents filed by the City of Ketchikan for the annexation of 0.48 square miles;
- Shoreline Service Area's brief opposing the original annexation proposal;
- the City's amendment to its original petition expanding the territory proposed for annexation to 1.2 square miles;
- Shoreline Service Area's brief opposing the amended annexation proposal;
- letters from 45 individuals, businesses, and others opposing annexation either as originally proposed or as proposed by the amended petition (These include a 14-page letter from the Ketchikan Gateway Borough stating with respect to the original proposal that, the Borough, "*as a whole, . . . does not take a position at this time either for or against the petition. However, . . . the Ketchikan Gateway Borough Assembly, on behalf of the Shoreline Service Area, opposes the annexation petition as currently formulated, and therefore requests that the petition either be amended to include the entire Shoreline Service Area or be rejected.*" After the City amended its petition to include the entire Shoreline Service Area, the Borough offered no further written comments.);
- a statement (informal petition) signed by 258 individuals opposing annexation;
- the City's rebuttal of the briefs and letters submitted in opposition to annexation; and
- materials gathered independently by DCED in the course of its examination of the amended annexation proposal.

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## Summary of Preliminary Conclusions

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The following is a summary of DCED's preliminary conclusions and recommendation to the Commission regarding the City of Ketchikan's amended petition to annex 1.2 square miles. Again, these conclusions and the recommendation stem from DCED's examination of the annexation proposal in the context of the city annexation standards established in State law.

- The territory proposed for annexation and the area within the existing boundaries of the City of Ketchikan are compatible in character, thereby satisfying the standard set out in 3 AAC 110.100. The following six principal factors led to this conclusion.

- The two areas are contiguous and quite compact. The territory proposed for annexation comprises only 1.2 square miles, more than 1/3 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. The area within the current City is *smaller* than 80% of the city governments in Alaska. The very compact and contiguous nature of the two areas alone offers a strong hint of compatibility in the context of the standard at issue.
- While there are significant *relative* differences in the population density of the two areas, each is densely populated. The City of Ketchikan is the most densely populated city government in Alaska. The territory proposed for annexation is more densely populated than 93% of the city governments in the state, including those serving Wrangell, Petersburg, Craig, Cordova, Wasilla, Homer, Kenai, Nome, and 127 other communities that have incorporated city governments.
- Land use in the 1.2 square mile area proposed for annexation is similar to land use in the adjacent 3.8 square miles within the existing boundaries of the City. Both areas contain a mixture of residential and commercial properties. Further, major commercial development in the territory proposed for annexation is imminent. The two areas also reflect similar subdivision platting characteristics.
- The territory proposed for annexation and the area within the City each contain extensive development or areas suitable for development, as is reflected in the per capita values of taxable property in each area. The assessed value of real and personal property in the City of Ketchikan is \$58,284 per capita. Remarkably, the comparable figure for the 1.2 square miles proposed for annexation is \$116,230 per capita – twice that of the City. If projections for development are realized, the assessed value of the territory proposed for annexation will climb by nearly 24% to \$143,957 per capita within five years.
- Critics assert that the two areas are incompatible, in part, because the territory proposed for annexation 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 lack bus service and a few even lack City service with respect to garbage collection, water, and sewer. 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 (indeed, 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.

- Lastly, and perhaps most significantly, the two areas in question are clearly parts of the same community that are divided by political boundaries.
- The territory proposed for annexation exhibits a reasonable need for city government. As such, the standard set out in 3 AAC 110.090(a) is met. It is noted however, that policy makers at the Alaska Department of Public Safety (DPS) do not acknowledge a clear need for City police in the territory. Further, specifics concerning the need for enhanced fire protection in the territory as stated in the City's petition cannot be independently confirmed from the record in this proceeding. A summary of the findings concerning the need for municipal police, enhanced fire protection, and other services is presented below.
  - DPS policy makers indicate that there are only minor differences between the police service currently provided to the territory by the Troopers in Ketchikan as compared to that which would be provided by City police. In rendering its judgment, DPS was aware of: (1) the territory's sizable population; (2) anticipated commercial development in the territory; (3) the size of the City's police force; and (4) the size of the City's proposed jurisdiction. DPS officials expressed confidence that the Troopers stationed in Ketchikan presently provide adequate police service to the territory in question and could continue to do so in the future. Troopers indicate that they respond to all manner of crimes including disturbances, shoplifting, trespassing, vandalism, and check forgery. They also respond to accidents, medical emergencies, and other calls for assistance except that they generally do not respond to automobile accidents on private property such as store parking lots.
  - The City asserts that once the Ketchikan Wal-Mart store is constructed, National Fire Protection Association (NFPA) standards will require 'at least 3 pumpers, 1 ladder truck (or combination apparatus with equivalent capabilities), other specialized apparatus as may be needed or available, not less than 16 fire fighters, 1 chief officer, and two "rehab" personnel' to provide adequate fire protection in the territory. However, NFPA

requirements for adequate fire protection in the territory cannot be independently confirmed without specific plans for the Wal-Mart building. Nonetheless, the City appears to offer a credible assessment of the need for enhanced fire protection services in the territory. That assessment assumes that the Wal-Mart store would encompass 64,000 square feet, that it would be of type I construction, that it would include a sprinkler system, and that it would have a 92,000 gallon water tank for fire suppression. The City stresses that its assessment was based on "NFPA minimums" which are, at least in some instances, substantially less than the NFPA recommended levels of fire protection.

- The question of the need for city government in the territory warrants consideration of local government service needs that are presently being met, not just those that are unmet. It is significant, therefore, that the City of Ketchikan 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,



*The City of Ketchikan has budgeted more than \$2 million in the current fiscal year to provide mental health services and substance abuse treatment for the greater Ketchikan community at its Gateway Human Services building.*

telephone utility service, and electrical utility service.

- The territory is in need of local street maintenance. There are an estimated 2.5 miles of roads in the territory that receive no maintenance whatsoever from the State or local governments. Further, safety concerns exist regarding one of the streets which is located along a steep embankment but lacks a guardrail. In addition to the 2.5 miles of secondary streets, the territory includes Shoreline Drive, a 0.9 mile long roadway that is maintained by the State on a low-priority basis. With recent cutbacks in its highway maintenance staff in Ketchikan, State transportation officials would welcome the transfer of responsibility for the maintenance of that road to the City.

The City has expressed its willingness to accept responsibility for maintenance of Shoreline Drive as well as the 2.5 miles of roads in the territory that presently lack maintenance.

- There is a need for water and sewer utility service in the territory proposed for annexation. The respondent Shoreline Service Area (SSA) conceded, 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. SSA and DEC also share the view that significant public health risks generally stem from the lack of public sewer and water utilities in areas of concentrated development. Further, several correspondents, including the Borough, were critical of the City for its lack of plans for the extension of water and sewer utility service in 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 City of Ketchikan is best able to serve the local governmental needs described above, thereby satisfying the standard in 3 AAC 110.090(b). The following six major considerations led to this determination.
  - The fact that the City is currently providing thirteen services and facilities that directly or indirectly benefit the territory proposed for annexation is evidence of the City's superior capability to provide those services. No one has effectively rebutted that evidence.
  - DEC favors the extension of water and sewer services by the City of Ketchikan to the territory over the establishment of an independent water and/or sewer utility operated by the Shoreline Service Area. DEC indicated that its 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. Of course, the actual extension of the utilities will require substantial capital funding. Although the competition for grants is keen, the utility extensions would qualify for significant partial funding through State grant programs and perhaps other sources. Local improvement districts, wherein property owners that benefit from capital projects contribute to their funding, are commonly used by municipal governments in Alaska to generate the local share of major capital projects.



- The City has the foundation 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. In contrast, the Borough provides no road maintenance in the territory.
- While the State Fire Marshal does not take a position favoring or opposing the annexation proposal, he agreed with the City that it is an inefficient use of resources 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 the Borough's Shoreline Service Area) to provide adequate fire protection to the territory. The City currently exceeds standards which it claims are required, SSA 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 the initial expenditure of \$37,400 for related capital improvements.
- While State public safety policy makers do not acknowledge a clear need for municipal police in the territory, the standard at issue requires a comparison of the capacity of the City versus the Borough to provide services. *If there were* a need for municipal police in the territory, the City would clearly have the greater capacity to serve that need. The Borough does not provide police service whereas the City has a fully operational police department. Upon annexation, the City plans to hire three additional officers incrementally over the course of three years to maintain the current level of service. The City plans to provide 2.9 officers per 1,000 residents within the expanded City limits.
- 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. This satisfies the standard at 3 AAC 110.110. The following four major findings led to this determination.
  - The greater community of Ketchikan is one of the more populous communities in the state. Citizens of the City of Ketchikan have successfully operated a city government for the past 99 years.

For the past 39 years, the City has exercised home rule powers. The City currently provides an impressive range of services, far more than most cities in Alaska.

- It is reasonably projected that the cost of extending City services to the territory will average \$546,118 annually over the first three years (cost for police service is based on third-year budget projections to provide more realistic estimate of long-term costs). Additionally, the City plans to spend an average of \$279,634 for capital projects annually in the territory during the first three years following annexation. Together, those figures equal an annual expenditure of \$825,752. That total is equal to 1.6 percent of the total current operating and capital budget of the City. Thus, the prospect of extending services to the territory does not represent a substantial financial challenge to the City.

- It is reasonably projected that revenues resulting from annexation (net of sales tax revenues from sales shifted to the territory) will equal \$839,078 the first year, \$885,256 the second year, and \$949,101 the third year. Approximately forty-four



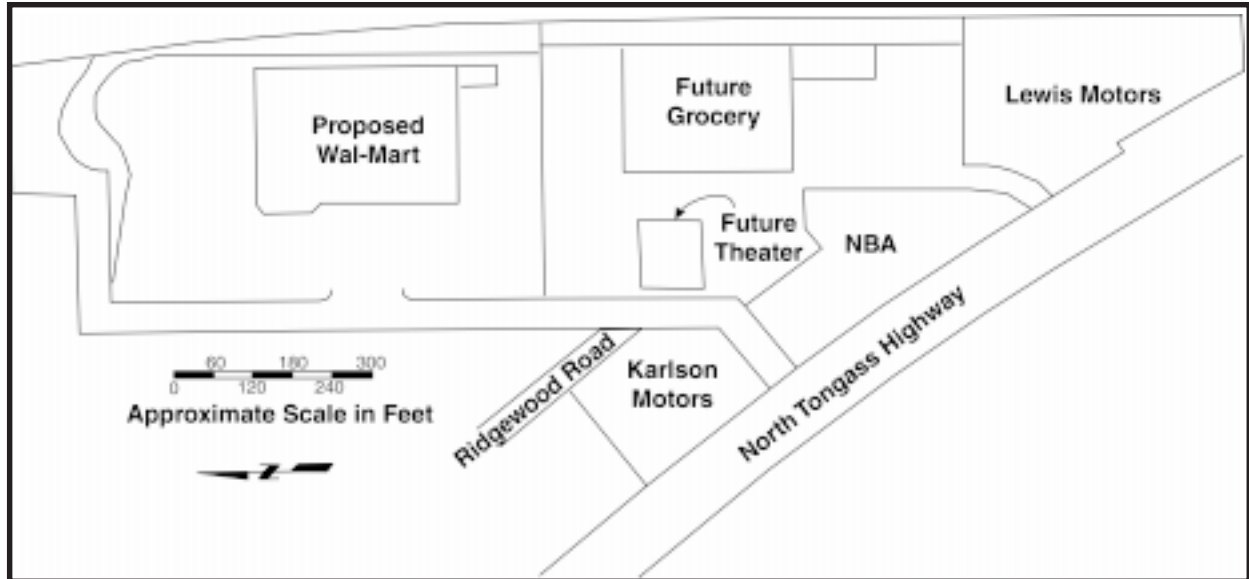
*Lewis Motors, one of several businesses operating in the area proposed for*

percent of those projected net revenues will come from sales taxes on purchases within the territory by residents of the greater Ketchikan community and visitors.

- The reasonably estimated annual net revenues exceed the reasonably projected annual expenses by an average of \$65,393 during each of the first three years following annexation. Thus, annexation will not be a financial burden on the City.
- The population within the proposed expanded City boundaries is clearly both large and stable enough to support the extension of City services, thereby satisfying the standard set out in 3 AAC 110.120. The following five predominant considerations support this conclusion.



- With 8,460 residents, Ketchikan currently ranks as the second most populous city government in Alaska.
  - The 541 residents of the territory exceed the 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.
  - The population within the proposed expanded City boundaries is stable in the sense that it is not subject to erratic seasonal population fluctuations.
  - Between 1996 and 1998, the City's population receded by 2.7%. That decline is attributed largely to the closure of the Ketchikan Pulp Company's operations at Ward Cove. Notwithstanding, from 1990 to 1998, the City's population still increased by 2.4%.
  - The Borough's non-city population, which includes the territory proposed for annexation, increased 3.8% from 1990 to 1998. Like the City's population, the Borough's non-city population has receded from its peak during the 1990s. The 1998 figure is 6.5% less than the apex for the decade reached in 1995. Again, the recent decline is largely the result of the closure of the Ketchikan Pulp Company's operations at Ward Cove.
- The proposed boundaries are inclusive of all areas needed to provide essential city services on an efficient, cost-effective level. This satisfies the standard set out in 3 AAC 110.130(a). The standard at issue concerns whether there are areas outside the five square miles encompassed by proposed post-annexation boundaries of the City that are *crucial* to the City's ability to provide essential city services efficiently and cost-effectively. The respondent Shoreline Service Area criticizes the City's annexation proposal as not addressing the long-term jurisdictional needs of the City. However, it has not shown that areas outside the five square miles in question are *essential* to the capacity of the City to operate efficiently and effectively. While the City's proposed post-annexation boundaries may not be perfect, the standard is clearly satisfied.
  - The 1.2 square miles proposed for annexation is contiguous to the existing boundaries of the City. Thus, the standard established in 3 AAC 110.130(b) is met.
  - 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 for the next ten years. Thus, the standard set out in 3 AAC



*Absent annexation, it is projected that the City of Ketchikan will lose \$10.7 million in sales taxes over the next nine years due to a shift of retail sales to Wal-Mart and other stores in the territory proposed for annexation. City sales taxes support the Ketchikan General Hospital and other public facilities and services that benefit the greater Ketchikan community.*

110.130(c) is met. As noted earlier, the territory proposed for annexation and the area within the City are compact, contiguous, and parts of the same community.

- The proposed post-annexation boundaries of the City do not include entire geographical regions or large unpopulated areas. This satisfies the standard established at 3 AAC 110.130(d). The following three primary factors support this conclusion.
  - Although the annexation proposal would expand the jurisdictional territory of the City by 31.6%, Ketchikan's expanded boundaries would remain small in comparison to most other cities in Alaska. Ketchikan's new boundaries would encompass only five square miles. That figure is 82% *smaller* than the average of all 145 cities in Alaska. More significantly, Ketchikan'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 Ketchikan).
  - 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 outpacing the second most populous city in the state.
- Despite widespread opposition among residents and property owners in the territory proposed for annexation, the City's proposal to extend its boundaries serves the balanced best interests of the State of Alaska, the territory proposed for annexation, and all political subdivisions affected by the proposal. Thus, the standard set out in 3 AAC 110.140 is satisfied. The following five major factors led to the conclusion that this standard is satisfied.
  - Residents and property owners within the territory proposed for annexation receive, directly or indirectly, the benefit of city government without commensurate tax contributions and no practical or equitable alternative method is available to offset the cost of providing that benefit.
  - Annexation will eliminate one borough service area. This serves the principle set out in Article X, Section 1 which favors minimum numbers of local government units in order to promote efficient and effective local government.
  - Annexation will extend home rule local government powers to the 541 residents of the territory. This circumstance serves the principle set out in Article X, Section 1 favoring maximum local self-government.
  - Annexation will ensure that the City of Ketchikan maintains the legal jurisdiction necessary to continue to fund a broad array of essential services that benefit the residents of the City and outlying areas. Doing so serves the interests of the residents and property owners of the City as well as those of the territory proposed for annexation. It also benefits the State and the Ketchikan Gateway Borough who are relieved of such responsibilities. Absent annexation, the City faces the prospect of significant revenue reductions that threaten its ability to fund the current level of services. It is vital that the State provide local governments with the tools they need to take on greater responsibilities, particularly when they do so willingly. This is especially important in the current era of significant budget reductions for State services and even greater reductions in direct State financial aid to local governments for general services.

- 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 City presented 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 the Shoreline Service Area. Thus, the standard set out in 3 AAC 110.900 is satisfied.
- Annexation will not deny civil or political rights to anyone because of race, color, creed, sex or national origin. Thus, the standard established by 3 AAC 110.910 is met.

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## Preliminary Recommendation

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Based on the conclusions summarized above, DCED endorses 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. Accordingly, DCED recommends that the Local Boundary Commission approve the City's amended petition without conditions or amendments of its own.

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## Opportunity for Comment

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Written comments on DCED's preliminary analysis, conclusions, and recommendation are welcome. All timely comments will be included in the formal record of this proceeding and will be considered in the development of DCED's final report on this matter. Comments must be **received** by November 1, 1999 at the following office:

Local Boundary Commission Staff  
Department of Community and Economic  
Development  
333 West Fourth Avenue, Suite 220  
Anchorage, Alaska 99501-2341  
Primary fax number: 907-269-4539  
Secondary fax number: 907-269-4520  
e-mail address: Dan\_Bockhorst@dced.state.ak.us

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## Plans for Hearing Before the Local Boundary Commission

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The Local Boundary Commission will conduct a public hearing in Ketchikan on the City's annexation proposal. That hearing is scheduled to be held as follows:

**11 a.m., Saturday, December 4, 1999**

**Ted Ferry Civic Center**

Formal notice of the hearing will be provided at least thirty days in advance of the hearing. The hearing agenda along with guidelines for testimony and public comment at the hearing will also be provided in advance of the hearing.

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## Distribution of DCED's Executive Summary and Complete Preliminary Report

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This summary of DCED's preliminary report has been distributed to more than 100 known interested individuals and organizations.

Additionally, DCED's complete preliminary report concerning the pending Ketchikan annexation proposal has been distributed to individuals and organizations, including the following:

- Local Boundary Commission;
- Mayor, Council, and appointed officials of the City of Ketchikan: 15 copies;
- Ketchikan City Clerk for distribution to the public: 15 copies;
- Mayor, Assembly, and appointed officials of the Ketchikan Gateway Borough: 15 copies;
- Ketchikan Gateway Borough Clerk for distribution to the public: 15 copies;
- Ketchikan Public Library: 15 copies;
- Dwight C. John, Chairman of the Shoreline Service Area Board of Supervisors, and other Board Members: 5 copies

- James A. Van Altvorst, consultant to the Shoreline Service Area in the pending annexation proposal: 1 copy.

The report is also available on the Internet at:

[http://www.dced.state.ak.us/mra/Mrad\\_lbc.htm](http://www.dced.state.ak.us/mra/Mrad_lbc.htm)

For those interested individuals who wish to review the complete preliminary report and are unable to do so through the sources listed above, it is also available by contacting the Local Boundary Commission Staff at the office noted on page 12.

Preliminary Report to the  
*Local Boundary Commission*  
Concerning the Proposed Annexation of  
1.2 Square Miles to the City of Ketchikan  
October 1999

Alaska Department of Community &  
Economic Development





# Introduction

## A. The Issue: Does the City of Ketchikan's proposal to annex the Shoreline Service Area satisfy the standards for annexation set out in State law?

The Alaska Department of Community and Economic Development has a duty under State law to examine proposals for annexation. This report offers the Department's preliminary analysis, conclusions, and recommendation concerning the City of Ketchikan's pending petition for annexation.

In February of this year, the City of Ketchikan petitioned the State of Alaska

for the annexation of 0.48 square miles. During the period reserved for written public comment on the petition, the proposal was criticized, in part, because it would have split the Shoreline Service Area roughly in half.

In response to the criticism over the proposed division of the service area, the City amended its petition in May to include the entire Shoreline Service Area and additional territory offshore. The amended petition seeks the annexation of 1.2 square miles. The territory proposed for annexation is inhabited by an estimated 541 individuals. The current value of taxable real and personal property in the territory is nearly \$63 million.

A map showing the territory and the area within the existing boundaries of the City appears below.

## B. Interested Organizations and Individuals

The following is a listing of the entities and individuals that have significant interests or particular duties with respect to the pending annexation proposal.

**City of Ketchikan** (hereinafter "City" or "Ketchikan") is the petitioner in this proceeding. Ketchikan is Alaska's second oldest existing city government, having incorporated in 1900 shortly after the City of Skagway was formed. Voters

*Existing boundaries of the City of Ketchikan and the 1.2 square mile territory proposed for annexation*



extended home rule powers to the City in 1960, making it one of the first home rule local governments in Alaska. The current boundaries of the City encompass approximately 3.8 square miles. In 1998, the population of the City was recorded at 8,460.

**Ketchikan Gateway Borough** (hereinafter “Borough” or “KGB”) is a second class borough government incorporated in 1963. The Borough provides services to the territory on an areawide, non-areawide, and service area basis.<sup>1</sup> The KGB submitted a fourteen-page letter (including a one-page attachment) opposing the City’s annexation proposal on behalf of its Shoreline Service Area *as that proposal was originally configured*. However, the Borough offered no follow-up written remarks during the seven-week period allowed for comment on the amended petition.

**Shoreline Service Area** (hereinafter “SSA”) is a service area formed by the Borough in 1968.<sup>2</sup> Voters in SSA long ago granted powers to the Borough for the provision of fire protection and water utility service within SSA. Fire protection powers are currently exercised by the Borough in SSA, however, water utility powers have never been exercised in that service area.

On April 30, 1999, SSA’s Board of Supervisors submit-

ted a twenty-page responsive brief opposing the original annexation proposal. On June 30, 1999, SSA’s Board filed a timely forty-five-page responsive brief entitled Review and Analysis – Amended Petition for Annexation of the North Tongass Addition (hereinafter “SSA Brief”) opposing the City’s amended annexation proposal.

Having filed responsive briefs in this proceeding, SSA has attained the status of a formal respondent.<sup>3</sup> As a respondent, SSA will have enhanced procedural standing during the hearing on the annexation proposal to be conducted by the Local Boundary Commission in Ketchikan. More specifically, SSA will have the right during the hearing to: (1) make a formal opening statement, (2) provide sworn testimony by witnesses who have expertise with respect to the subject(s) of their testimony, and (3) make a formal closing statement.

**Correspondents**, comprised of residents and property owners in the territory as well as other interested persons, have taken an active role in the proceedings to date. Letters opposing annexation were received from forty-five interested individuals, businesses, and organizations. No correspondents expressed comments in favor of annexation. Appendix A of this report lists the correspon-

<sup>1</sup> “Areawide services” are those services provided throughout the Borough; “nonareawide services” are those services provided in that portion of the Borough outside incorporated cities; “service area services” are those services provided in various portions of the Borough. One service area exists within the territory proposed for annexation, the Shoreline Service Area.

<sup>2</sup> A borough service area is a “unit of government” created by the borough assembly in which the borough itself provides special services. Special services may include services not provided by the borough on an areawide basis or non-areawide basis. Special services may also include a higher or different level of services than that provided by the borough on an areawide or nonareawide basis.

Although a borough service area is technically a “unit of government” it is a *strictly* confined unit of government. It is created solely to define the area in which a borough may provide special services and in which a borough may levy taxes and exercise other powers relating to the delivery of those special services. Service areas in a general law borough such as the KGB lack any independence whatsoever. The assembly of a general law borough may *unilaterally* establish, operate, alter, or abolish the service area by ordinance (AS 29.35.450). The assembly of a general law borough may also provide for an appointed or elected board to supervise the special services in the service area. Service areas lack legislative powers, taxing powers, and other independent powers.

Service areas are also strictly limited by the State constitution and statutes in terms of

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their creation. Art. X, § 5 of the Constitution of the State of Alaska provides that "A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city." The "purposes" of Article X are found in Art. X, § 1 and include promoting "a minimum of local government units." AS 29.35.450(b) contains language similar to that noted above for Art. X, § 5.

<sup>3</sup> DCED takes what may be a liberal view in recognizing SSA as a respondent. 3 AAC 110.480(a) provides that "Any interested person or entity may file with the department a responsive brief . . ." However, given the fact that a borough service area is such a limited unit of government without legislative, taxing, or other independent powers, it is conceivable that a service area may, in fact, lack the legal standing to file a responsive brief. DCED notes in that regard that there are at least three cases in which trial courts have held that municipal school districts in Alaska lack the capacity to sue or be sued. In those cases, it was the City or Borough itself which operated the municipal school district, not the school district, that had the capacity to sue or be sued.

<sup>4</sup> Opposition petitions such as the one submitted in this proceeding have the same status as a letter commenting on the annexation proposal. No effort was made by DCED to confirm the residency of the individuals who signed the petition. It is noted, however, that one of the forty-five correspondents wrote:

Continued on next page

dents in this matter. The following summarizes the points made by one or more of the correspondents:

- The annexation proposal is unpopular among residents and other property owners in the territory.
- Many individuals and businesses purchased property in the territory specifically because it was outside the City.
- Annexation will result in a substantial increase in property taxes, but no increase in services such as water utility, sewer utility, solid waste collection, bus service, noise pollution control, or fire hydrants.
- Property owners should be allowed to vote on any annexation proposal.
- Property owners in the territory incurred additional costs for individual water systems and sewerage systems in order to live outside the City.
- The City's annexation proposal is motivated by its greed for more sales tax and property tax revenues. If the City did not stand to gain significant tax revenues, it would avoid annexation as it has avoided discussion of consolidation of the City and Borough for years.
- Alternatives to annexation should be considered. For

example, the City should levy taxes targeting the cruise ship industry.

- While increased tax revenues accruing to the City may be used to improve services for all City residents, there are many disadvantages to annexation. These include increased costs for homeowners' insurance; a 50% increase in property taxes; the possible decline in the quality of fire protection and police service; and the loss of eligibility to participate in the Alaska Housing Finance Corporation's rural loan program.
- Misstatements were made in correspondence from the Borough and SSA indicating that SSA's Board would not oppose annexation of the entire service area. SSA's Board opposes any annexation of SSA.
- One of the principal reasons that businesses located in the territory is to be subject to lower sales and property taxes.
- Existing services in the territory by the State Trooper and State Department of Transportation are adequate.

In addition to the letters, a petition signed by 258 individuals claiming to be residents of SSA was submitted in opposition to the annexation proposal.<sup>4</sup>

Interested persons will have an opportunity to comment to the Local Boundary Commission at a public hearing to be held in Ketchikan on the City’s annexation proposal.

**Local Boundary Commission** (hereinafter “LBC” or “Commission”) is a five-member State commission that will decide whether to grant the petition as presented, amend the petition, impose conditions, or deny it altogether. The LBC’s decision will be based strictly on criteria established in law governing annexation to cities.

The Commission was created under Alaska’s constitution to render objective, independent decisions from a statewide perspective regarding proposals for the creation, alteration, or abolition of city governments and organized boroughs. Of the 130 or so State boards and commissions, the LBC is one of only five with constitutional origins.<sup>5</sup>

LBC members are appointed by the Governor and serve without compensation. Appendix B provides additional background information regarding the Commission and the nature of local government boundary changes in Alaska.

**Alaska Department of Community and Economic Development** (hereinafter “DCED”) serves as staff to the

LBC.<sup>6</sup> DCED has the duty under State law to evaluate annexation proposals and to present recommendations to the Commission regarding such. Appendix B of this report provides additional background information regarding DCED.

**Alaska Legislature** will review the proposed annexation if the City’s petition is granted by the LBC. More specifically, if the petition is approved (with or without amendments and/or conditions), the LBC will file a recommendation for the annexation with the next regular session of the Alaska Legislature under the terms of Article X, § 12 of the Constitution of the State of Alaska. The Legislature will then have forty-five days to consider the recommendation. If the Legislature takes no action within the forty-five day review period, the recommendation is automatically approved. However, if the State Senate and House of Representatives adopt a joint resolution rejecting the recommendation, the annexation is denied.

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### **C. Reasons for the Annexation Proposal**

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#### **(1) City’s Reasons for the Original Petition**

The following is a summary of the reasons expressed by the City for the

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“The Shoreline Service board (sic) had a petition written opposing this annexation. A volunteer resident is coordinating circulating this petition to residents, business and property owners in the area, as well as employees of businesses in the area who may live elsewhere in the borough.” (emphasis added; see letter of July 2, 1999 from Linda Raitanen)

No effort was made by DCED to determine the extent of duplicate signatures. However, it appears that there are some duplicate signatures on the petition. For example, a Cheryl Painter signed the petition on page 13 using the address 4973 Rex Allen Drive; a Cheryl Painter also signed the petition on page 27 using the address 4746 Bucey Avenue. The two signatures appear to be identical. Michael Painter’s signature also appears on the same two pages with the same two addresses noted for Cheryl Painter. His signature, however, appears to be different on the two pages.

<sup>5</sup> The others are the University of Alaska Board of Regents, the Judicial Council, the Commission on Judicial Conduct, and the Redistricting Board.

<sup>6</sup> DCED was formed on July 1, 1999 pursuant to Chapter 58, SLA 1999 which consolidated the former Department of Community and Regional Affairs (DCRA) and Department of Commerce and Economic Development. As a result of the consolidation, the regulations of the Local Boundary Commission which were previously located in Title 19, Chapter 10 of the Alaska Administrative Code were relocated to Title 3, Chapter 110 by the State Regulations Attorney under the authority of AS 44.62.125(b)(6) effective August

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4, 1999. There were no substantive changes to the Commission's regulations. Materials filed in this proceeding by the petitioner, respondent, and others refer to the LBC's regulations under their former location. This report refers to the regulations under their current location.

ing of sales occurring within the existing City to the territory proposed for annexation as retailers *new to Ketchikan*, such as Wal-Mart, build facilities in the territory. The loss would be compounded if some retailers that *are currently within the City* were to relocate to the territory.

City sales tax revenues are used to fund local services for City residents and other residents of the Borough. More than one-quarter of the City's sales tax revenues (28.6%) is dedicated to support Ketchikan General Hospital. An equal amount is dedicated to public safety services. The

area. The City noted in its original petition that, absent annexation, the growing number of retailers in the territory proposed for annexation will enjoy significant competitive advantages over retailers within the existing boundaries of the City. In particular, these advantages would include sales tax rates that are nearly two-thirds lower than those in effect in the City (currently 2% vs. 5.5%) and property tax rates that are nearly one-third lower (currently 9.43 mills vs. 13.9 mills). The City anticipates that if these circumstances are not addressed through annexation they are likely to drive

annexation proposal in its *original* petition. (Petition, pages 1 – 7)

(a) To avert the substantial erosion of the City's sales tax base resulting from exist-

down the value of commercial property inside the City.



.....  
**(2) City's Reasons for Amending its Petition**

The following is a summary of the reasons expressed by the City in its amended petition for the expansion of the area pro-

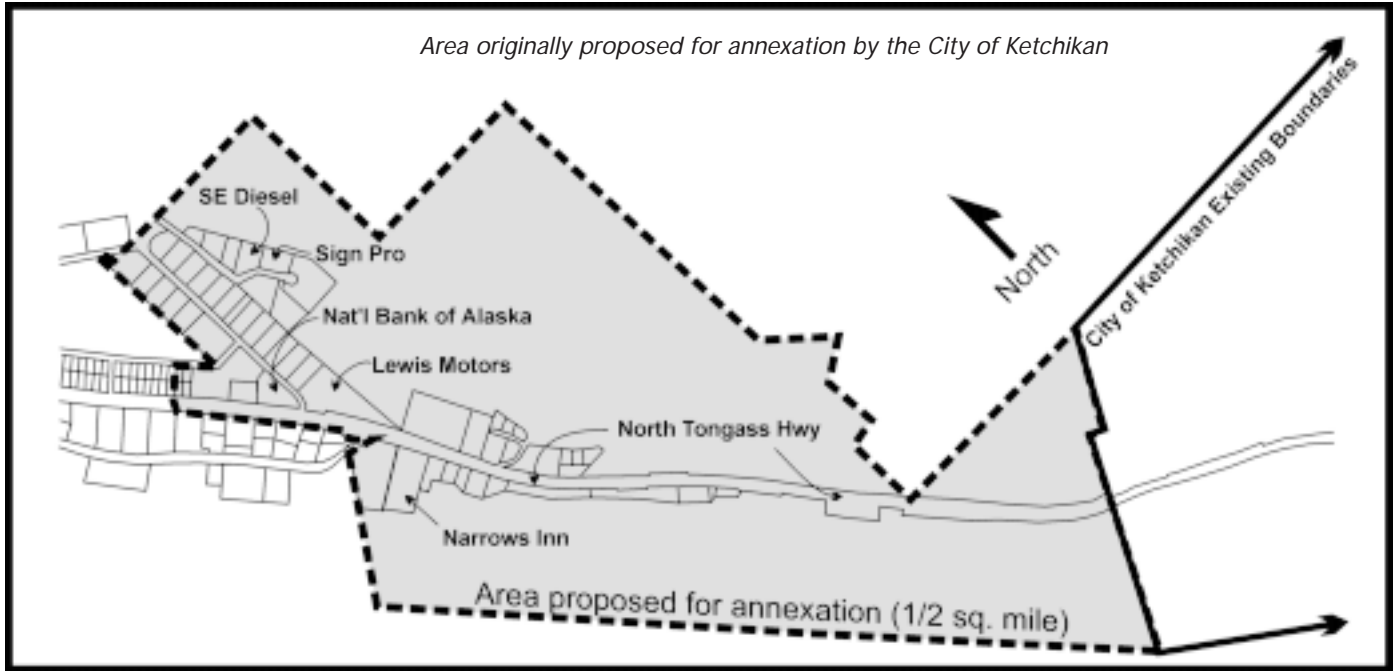
ing and anticipated significant additional commercial development beyond the City's boundaries. Absent annexation, the City projected that it may lose as much as \$1,160,000 in sales tax revenues *annually*. City officials indicate that the loss would result from a shift-

balance (42.8%) is dedicated to public works.

(b) To offset anticipated reductions in the commercial property tax base within the current boundaries of the City due to commercial growth in the territory and the resulting shift of retail sales to that

posed for annexation from 0.48 square miles to 1.2 square miles. (Amended Petition, pages 1 – 2)

(a) SSA's Board indicated to the Borough Assembly on April 19, 1999, that all or none of SSA should be annexed.



(b) On May 3, 1999, the Borough Assembly approved a motion that stated, in part:

... the Ketchikan Gateway Borough, as a whole, does not have an objection to the City of Ketchikan's right to file such a petition and does not take a position at this time either for or against the petition. However, the Ketchikan Gateway Borough is responsible for the Shoreline Service Area. After receiving information and public testimony, the Ketchikan Gateway Borough Assembly, **on behalf of the Shoreline Service Area**, (emphasis added by City) opposes the annexation petition as currently formulated, **and therefore requests that the petition either be amended to include the entire Shoreline Service Area or be rejected.** The Shoreline Service Area has indicated that it **would not oppose the annexation petition if it were amended to annex the entire Shoreline Service Area** (emphasis added by City), but must oppose annexation of only a portion of the service area due to the insignificance of the need

for City services in the affected area and the negative impacts on the remaining service area.

(c) The LBC encourages local governments to take a more comprehensive approach to annexation as expressed in the LBC's annual report to the State Legislature dated January 28, 1999. The LBC stated in that report that while voluntary, piecemeal annexations may be favored politically at the local level, they do not necessarily serve optimum public policy and may diminish efficiency and effectiveness in the delivery of city services.

.....  
**(3) Criticism of the City's reasons for annexation**

Respondent SSA is critical of the City's reasons for annexation expressed in the original and amended petitions. SSA takes the view that

while the City's motives for annexation are understandable, they do not appear to respond suitably to the standards for annexation (SSA Brief, page 6). In particular, SSA contends that the City fails to demonstrate that the territory manifests a reasonable need for city government or that the City can provide services more efficiently and effectively than the Borough. These points are explored by DCED, respectively, in Sections 2 and 3 of this report.

Additionally, SSA takes the position that "annexation is not a tool to generate revenues." (Ibid., pages 6 - 7) Further, SSA derides the City's amendment of its original petition by noting that the City originally claimed that annexation of the entire service area

would be imprudent, but that 95 days later “the City suddenly, without demonstrating its supporting analysis, changed its mind...” (Ibid., page 8).

With respect to the City’s concerns that nonresidents receive the benefit of City services without commensurate local tax contributions, SSA again takes the view that “Annexation of SSA is not the appropriate tool to address this problem.” (Ibid., page 9).

SSA states that the City incorrectly suggests that its amended proposal to annex the entire service area has the endorsement of SSA’s Board. SSA states unequivocally that it is opposed to annexation of any portion or all of SSA to the City. (Ibid., pages 11 – 12 )

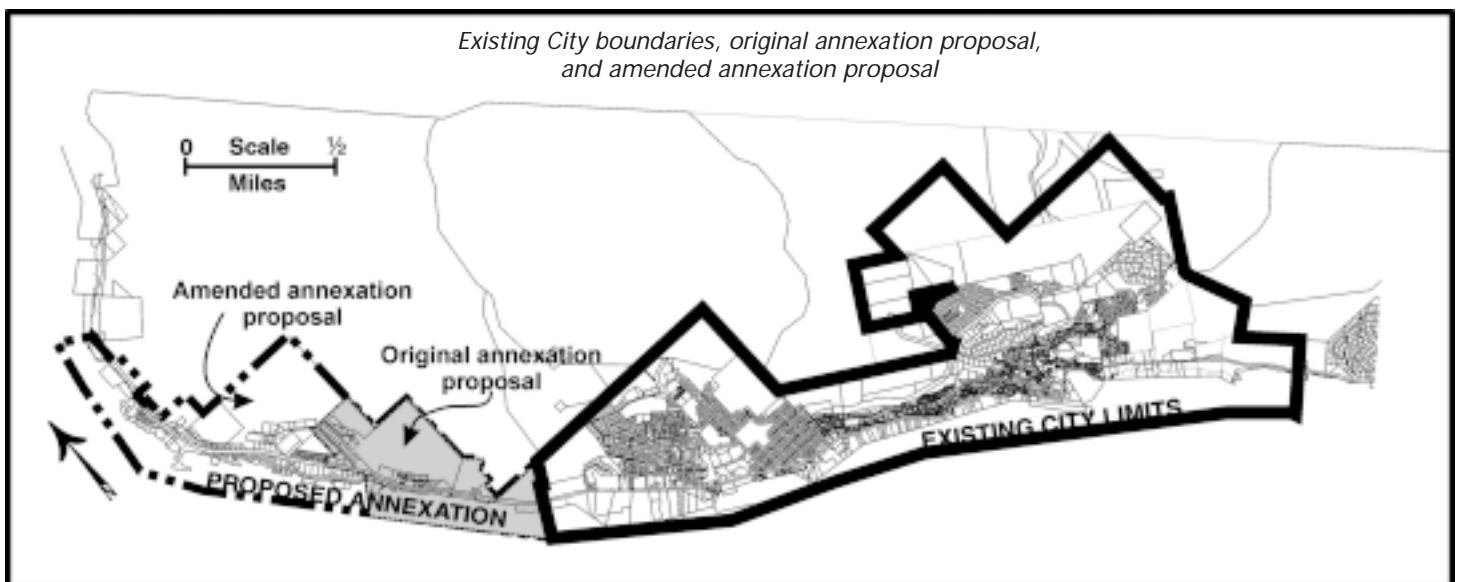
Regarding the City’s statement that the petition was amended, in part, to

deal with annexation in a more comprehensive fashion as encouraged by the LBC, SSA asserts that the City misunderstands the Commission’s policy views. Specifically, SSA states that although the City did, in fact, expand the size of its annexation proposal, both the original and amended proposals fail to properly consider the City’s long-term jurisdictional needs. SSA notes that such long-term needs may include Ward Cove, the Ketchikan International Airport, and surrounding areas. SSA is also critical of the City’s efforts to pursue annexation while developing a proposal for consolidation of the City and Borough, calling the concurrent activities “piecemeal” and “duplicative”. (Ibid., pages 13 – 16)

Like SSA, the Borough was also critical of the City’s reasons for annexation as the petition was originally pro-

posed. More specifically, the Borough stated that “The justification for the annexation offered by the City is incomplete, and in some cases is misleading or inaccurate.” (May 4, 1999 letter from the Borough, hereinafter “KGB letter”, page 1) Further, the Borough expressed the view that “The assertions of the City of Ketchikan are both speculative and erroneous in many cases.” (Ibid., page 2) The Borough also offered counter arguments to the City’s claims about the need for improved fire service and police service in the territory proposed for annexation. (Ibid., pages 2 – 5) Those issues are explored in Section 2 of this report.

In addition to the points noted above, the Borough offered other criticisms of the City’s reasons for annexation. Specifically, the KGB indicated with respect to the City’s original petition that:





- the City's projected revenue losses, even if accurate, are insignificant in that they range from 1.56% to 4.14% of the City of Ketchikan's 1998 general government revenues;
- "annexation would be a windfall to the City" involving a "net revenue enhancement to the City of Ketchikan of \$884,936 annually beginning in the year 2003";
- "the City's presumptions concerning historical [revenue] impacts [of businesses relocating outside the City boundaries] are inaccurate";
- the City fails to address the anticipated loss of \$10,000 - \$15,000 in Borough bed tax revenue annually which would result from annexation; and
- "the City of Ketchikan receives adequate compensation for services provided to nonresidents." (Ibid., pages 5 - 8)

proposal are valid. (Reply Brief, pages 2 - 3) The City cites the following statements in SSA's *initial* brief dated April 30, 1999, as evidence of such:

- "The City makes a convincing case that it needs the North Tongass Addition or the tax-generating potential it offers." (SSA Initial Brief, page 6)
- "The City could face significant revenue problems if projected development occurs immediately outside the City's current Boundary." (Ibid., page 7)
- "The City's Petition appears to make a reasonable case supporting its

*judgment that future growth and development in the subject territory could require services of a higher level than presently offered.*" (Ibid., page 19)

The City expresses frustration over its perception that SSA's policy regarding annexation has shifted. The City notes that it amended the original petition with the expectation that SSA would not oppose annexation of the entire service area. (Reply Brief, page 4) In support of that statement, the City cites the minutes of the April 19, 1999 Borough Assembly meeting according to which a

.....  
**(4) City's Rebuttal of Criticism**

The City stresses that SSA concedes that the principal factors that led to the City's annexation



Portion of area proposed for annexation. Upper left: Lewis Motors. Upper right: National Bank of Alaska. Foreground: site of anticipated future commercial development.

representative of SSA's Board advised the Assembly that, ". . . the Board wanted either the entire service area annexed, or none . . ." (Ibid., page 3) The City also submitted a transcript of the discussion of that portion of the Assembly meeting to further support its position. (Ibid., Exhibit C) Further, the City notes SSA's initial brief stated on page 6 with respect to the original annexation proposal that, "The proposed North Tongass Addition includes only approximately one half of [the Shoreline] community. To be acceptable under [3 AAC 110.130(c)], the area proposed for annexation should be expanded to incorporate the entire SSA." (Ibid., page 3)

The City indicates that the "all or nothing" position of SSA was corroborated in the Borough's May 4, 1999 letter which states, "The Shoreline Service Area board has indicated that it would not oppose the annexation petition if it were amended to annex the entire Shoreline Service Area, but must oppose annexation of only a portion of the service area due to the insignificance of the need for City services in the affected area and the negative impacts on the remaining service area." (Ibid., page 3)



Portion of area proposed for annexation. Background: Karlson Motors. Center, Wal-Mart site.

Regarding the Borough's criticism of the original petition, the City notes that the Borough took an advocacy role concerning the views of 3.5% of the Borough's population, but failed to respond to or even acknowledge impacts from significant pending development within the territory that will profoundly affect nearly 60% of its citizens. (Ibid., page 11)

Regarding the Borough's characterization that the City's original annexation petition was 'incomplete, misleading, inaccurate, speculative, erroneous, and that it exaggerated the impact of anticipated development', the City expresses the view that Borough's posi-

tion lacked a solid foundation. (Ibid., page 11) The City notes that the projections in its petition regarding impacts of anticipated commercial development in the territory were confirmed by a subsequent study completed on July 16, 1999. (Ibid., pages 15 – 18 and Exhibit K) Details of the impacts are addressed in Section 10 of this report.

Regarding the Borough's criticism that annexation would give the City a windfall, the City takes the position that it is appropriate from a public policy standpoint to consider revenues and expenditures for the community as a whole when funding City-wide general governmental expenditures. In other words, it is

inappropriate to isolate and compare the cost of serving a particular portion of the City with the revenues received from that portion of the City.

Ketchikan indicates that, notwithstanding the Borough's criticism on this point, the Borough itself would fail to meet such standards. The City also notes that the Borough's contemporary views on this point are markedly inconsistent with those expressed by the Borough just last year regarding its own unsuccessful proposal to annex 5,524 square miles. (Ibid., pages 18 – 19)

#### **D. Past, ongoing, and future proceedings**

Individuals and organizations have four weeks to review and comment on DCED's preliminary report concerning the pending annexation proposal. Written comments must be received by mail, facsimile, or e-mail at the following office by November 1, 1999:

Local Boundary Commission Staff  
Department of Community and  
Economic Development  
333 West Fourth Avenue, Suite 220  
Anchorage, Alaska 99501-2341  
primary fax number: 907-269-4539  
alternate fax number: 907-269-4520  
e-mail:  
Dan\_Bockhorst@dced.state.ak.us

DCED's final report concerning this matter will be issued after timely comments on the preliminary report are carefully considered.

The LBC will conduct a hearing on the annexation proposal in Ketchikan. The hearing is set to convene at 11:00 a.m. on Saturday, December 4, 1999, in the Ted Ferry Civic Center. Formal notice of the hearing will be given at least thirty days prior to the hearing.

Further details about past, ongoing, and future actions relating to this particular annexation proposal are provided in Appendix C of this report.

#### **E. Criteria for judging the annexation petition**

Decisions of the LBC must be based on criteria established in law. The Commission renders a decision on a petition after it receives testimony on the proposal at a public hearing and reviews all written evidence, including the petition, responsive brief, correspondence, reply brief, and reports from DCED. In summary, the criteria are outlined below:

1. the territory must be compatible in character with the annexing city;
2. the territory must exhibit a reasonable need for city government;



*One of the businesses operating inside the area proposed for annexation*

3. the annexing city must be able to provide essential city services to the territory better than another existing city or an organized borough;
4. the territory, in combination with the area inside the existing city, must have the human and financial resources to provide essential city services on an efficient, cost-effective level;
5. the population of the territory, when combined with the population inside the existing city, must be sufficiently large and stable to support city government;
6. the proposed new city boundaries must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level;
7. the territory must be contiguous (unless a compelling reason exists for annexation of non-contiguous territory);
8. the proposed boundaries must include only the existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation;
9. the proposed boundaries must not include entire geographical regions or large unpopulated areas, except when such is justified by other annexation standards;
10. annexation must serve the broad public interest;
11. the annexing city must present a suitable plan for the assumption of all appropriate powers, duties, rights, functions, assets, and liabilities relating to annexation; the plan must have been prepared in consultation with appropriate local government officials;
12. annexation cannot deny any person civil or political rights because of race, color, creed, sex or national origin.

Sections 1 through 12 of this report summarize the views of the parties and other interested persons and organizations. Those sections also present DCED's analysis and conclusions with respect to the annexation proposal.





# Section 1

## Compatibility of the Territory and Existing City

### A. The Standard

State law provides that an area may be annexed to a city only if the LBC determines that it is compatible in character with the annexing city. Specifically, 3 AAC 110.100 provides as follows:

The territory must be compatible in character with the annexing city. In this regard, the Commission will, in its discretion, consider relevant factors, including the:

(1) land use and subdivision platting;

(2) salability of land for residential, commercial, or industrial purposes;

(3) population density;

(4) cause of recent population changes; and

(5) suitability of the territory for reasonably anticipated community purposes.

### B. Views Expressed by Ketchikan in its Petition

The City’s amended petition includes a half-page statement in support of its position that the territory and

the area within the existing boundaries of the City are compatible.

(Amended Petition, Exhibit H, page 5). The following is a summary of the City’s views on this point.

- The City is the center of residential and business activity within the greater Ketchikan community.
- The territory is largely comprised of residential and commercial properties compatible with properties currently within the City. Existing commercial development in the territory is a continuation of the commercial corridor that runs through the City. Residential development within the area is similar to that found in the City.
- Land use and platting in the territory are comparable with that inside the City. The characteristics of the territory and its inhabitants are indistinguishable from the City and its residents in the context of this standard.



*Ketchikan Autobody & Glass within the territory proposed for annexation*

**C. Views of the Respondent and Correspondents**

**(1) Views of the Respondent SSA**

Respondent SSA wrote the approximate equivalent of one page contending that the character of SSA and the City are incompatible. (SSA Brief, pages 23-24). The views of SSA regarding such are summarized below. Several of the points expressed by SSA regarding this standard are virtually identical to points made earlier by the Borough in its letter of May 4, 1999. For the sake of brevity, those points (marked by an asterisk [★] in this and subsequent sections of this report) will not be repeated in the discussion of the Borough's views.

- Although the territory is becoming increasingly urban in character, recent and projected commercial development is nearly one mile from the City limits. The intervening area is no more urban than much of the area along North and South Tongass Highway outside the City.
- ★ While economic activities and lifestyles of residents of the territory are

similar to those of City residents, they are more similar to those of residents in the remainder of the Borough. Residents of the latter typically rely on self-contained roof catchment systems for water and either on-site or ocean outfall sewer systems. In contrast, City residents receive public water and sewer service, Borough bus service, and City street plowing.

- ★ People chose to live outside the City often because of reduced infrastructure cost and the lower population density. The population density in the territory is significantly less than that within the City.
- ★ Even if annexed, the territory would bear greater similarity to the remaining out-of-City areas of the Borough than the City because it would not enjoy services such as public water, sewer or City refuse collection. The City's petition does not propose any schedule to bring those City services to the territory.
- If the character of SSA is compatible with the City, much of the development along North Tongass Highway to the Mile 10 area is similarly compatible to the City. The City's stated reasons for the

proposed annexation would appear to apply as well to areas immediately north of the proposed boundary and adjacent to the Ketchikan International Airport.

**(2) Views of the KGB and other Correspondents**

The Borough wrote the equivalent of a half-page disputing the City's assertion in its original petition that the territory and the area within the City are compatible. (KGB letter, pages 9 – 10) All of the views on this point expressed in the KGB letter were included in SSA's Brief.

The petition opposing annexation that was signed by 258 individuals states that, "The character of the SSA territory is not compatible with the City. Lifestyles, population densities, and supporting infrastructure within SSA are clearly more similar to other non-City portions of the Borough than they are to the City."

**D. Views Expressed by Ketchikan in its Reply Brief**

The City affirms the view expressed in its amended petition that commercial and residential development in the territory is an extension of that found in the City. (Reply Brief, page 23) Additionally, the City notes that SSA conceded in its April 30, 1999 reply brief that,

“Without question, the area known as the North Tongass Addition is becoming increasingly urban in character.” (Ibid., page 3) Further, the City stresses that the Borough has acknowledged that the economic activities and lifestyles of those living in the territory proposed for annexation are similar to those living in the City. (Ibid., page 23)

**E. DCED’s Views**

**(1) The territory is not required to be “more similar” to the City than it is to other areas of the Borough.**

acter with the area inside the corporate boundaries of the City.<sup>7</sup> It does *not* require, as SSA and the Borough infer, that the territory is “more similar” to the City than it is to any other area of the Borough outside the City.<sup>8</sup>

Cities in Alaska are typically aggregations of different parts, with each having characteristics that are distinctly different from other parts of the same city. Similarly, territory approved by the Commission for annexation to a city is often comprised of areas with noticeably different characteristics. The most recent de-

<sup>7</sup> “Compatible” is defined in Webster’s New World Dictionary, Second College Edition, as, “capable of living together harmoniously or getting along well together; in agreement; congruous . . .” The standard at issue does *not* require an area proposed for annexation to be identical or even similar in character to an annexing city. Rather, the character of the two areas must be harmonious — capable of working together.

<sup>8</sup> It should not be inferred that DCED accepts the premise that the territory has more in common with areas other than the City. Since the issue is irrelevant, it has not been examined.



*Narrows Inn located within the area proposed for annexation serves tourists and other visitors to Ketchikan*

The respondent SSA and the Borough misinterpret and misapply the standard at issue. The law requires, as a condition for annexation, that the territory proposed for annexation is “compatible” in char-

cision rendered by the Commission is a case in point.

On September 3, 1999, the LBC approved the annexation of 19.5 square miles to the City of Kodiak. The

Commission formally concluded in that case that although the territory proposed for annexation was comprised of three areas with divergent characteristics, they were all compatible with the area inside the current boundaries of the City of Kodiak. Of the 19.5 square miles approved for annexation, 2.4 square miles were characterized as urban and densely populated, 5.4 square miles were considered to be rural and sparsely populated, and the remaining 11.7 square miles were uninhabited. (LBC decisional statement regarding Kodiak annexation, page 10, September 3, 1999, hereinafter “Kodiak Decision”)



The preceding discussion is intended to promote a better understanding of the standard at issue. It is not intended to infer that DCED considers SSA to be distinctly different in terms of its character as compared to areas presently within the corporate boundaries of the City. As is discussed in the remainder of this section of the report, the two areas have a great deal in common.

.....  
**(2) The territory and the City are compact.**

One of the more conspicuous characteristics of the territory proposed for annexation is that it is compact. The territory comprises 1.2 square miles, 36% of which is water (Tongass Narrows). In comparison, the average size of a proposal approved by the Local Boundary Commission for annexation to a city using the legislative review process during the 1990s has been 10.45 square miles; the median figure is 4.75 square miles. Thus, the size of the territory proposed for annexation to the City of Ketchikan is 89% smaller than the average city legislative re-

view annexation in this decade and 75% smaller than the median figure.

The current boundaries of the City of Ketchikan are also small in comparison to other cities in Alaska. The City's present boundaries encompass 3.8 square miles, 18% of which is water. Only twenty-five of the 145 city governments in Alaska have corporate boundaries that encompass less area than those of the City of Ketchikan. Twenty of those smaller cities are second class city governments, five are first class city governments, and none has attained the status of Ketchikan as a home rule city. Further, none of the twenty-five cities had a population even reaching 900 in 1998. In comparison, the population of the City of Ketchikan in 1998 was 8,460.

In addition to being compact, the two areas in question are contiguous. It is difficult to conceive that any areas that are contiguous and as compact as the two areas in this case have incompatible characteristics in the context of the standard at issue. More specific characteristics of the two areas are examined in the remainder of this section.

.....  
**(3) The absence of certain public services is not a basis for incompatibility.**

Contrary to the views of SSA and the Borough, the fact that the territory presently lacks a public water system, bus service, municipal street maintenance, or City garbage service does not support a conclusion that it is incompatible with the City. The boundaries for the delivery of such



Cruise ships at the City docks

services are transitory – they could change in a brief period of time.

Evidence of the ephemeral nature of service delivery boundaries is found in the fact that the Ketchikan City Council recently took the initial step toward extending water utility service to a portion of the territory proposed for annexation. On July 15 of this year, the City Council authorized the expenditure of \$59,031 to design an extension of the City water utility to serve the approximate southeastern one-third of the territory proposed for annexation (as far as the southeastern intersection of the Tongass Highway and Shoreline Drive).

Although City officials presently have no specific plans to design extensions of the water utility beyond the southeastern intersection of the Tongass Highway and Shoreline Drive, when such occurs, it will likely involve branch lines with one serving Shoreline Drive and the other serving properties uphill of the Tongass Highway. (Reply Brief, Exhibit G and August 16, 1999 letter from City).<sup>9</sup>

Regarding bus service, Borough officials currently recognize that there is a demand for that service in the territory and that the demand will increase significantly once major commercial development occurs.<sup>10</sup> The Borough Assembly adopted a transit development plan on September 20, 1999 which calls for the exten-

sion of bus service to the territory. Under phase I of the plan, bus service would be extended to Wal-Mart. Under phase II, bus service would be extended to Ward Cove, beyond the territory proposed for annexation.

City snowplows would begin serving the territory following annexation. The City would maintain all roads in the territory except the Tongass Highway which would continue to be maintained by the State. The City indicates in its petition that it plans to assume responsibility for maintenance of Shoreline Drive following annexation. That roadway is currently maintained by the State.

Solid waste collection in the territory proposed for annexation is regulated by the Alaska Regulatory Commission under AS 42.05. Tongass Sanitation, Inc., currently holds "Certificate of Public Convenience and Necessity Number 201" authorizing it to provide residential and commercial solid waste collection service in the greater Ketchikan area outside the boundaries of the City of Ketchikan and the City of Saxman as those boundaries existed on January 1, 1973. (Don Baxter, Alaska Regulatory Commission) Because the boundaries of the City of Ketchikan have expanded since 1973, Tongass Sanitation holds the right to provide solid waste

<sup>9</sup> In terms of the critics' argument, it is also noteworthy that a few undeveloped areas within the current boundaries of the City, such as the "Ketchikan Lakes" area, lack City water and sewer utility service. Similarly, many areas within the current City lack bus service.

<sup>10</sup> Tim Garton, Deputy Director of Transportation for the Borough, indicated on August 12, 1999 that there is currently a demand for bus service in the territory as well as other parts of the Borough such as Saxman, located immediately south of Ketchikan. Further, he acknowledged that the demand for such service would grow significantly when the projected commercial development in the territory occurs.

collection within the post-1973 parts of the City. Tongass Sanitation's service area would not automatically change as a result of annexation. Any change in the Tongass Sanitation service area requires approval by the Regulatory Commission of Alaska.

.....  
**(4) A careful examination of population density statistics supports a conclusion that the two areas in question are compatible.**

SSA and the Borough suggest that the two areas are incompatible because, in part, the population density in the territory is significantly less than it is within the existing boundaries of

<sup>11</sup> The 1998 population of the City was 8,460; the current City boundaries encompass 2,436 acres (which results in a population density of 3.473 persons per acre or 2,223 persons per square mile). The estimated 1990 population of the territory proposed for annexation was 486; the size of the territory is estimated to be 792 acres (which results in a population density of 0.614 persons per acre or 393 persons per square mile.) It is noted that SSA incorrectly stated on page 24 of its analysis that the population density of the territory is 1.6 persons per acre (or 1,024 persons per square mile).

<sup>12</sup> The City of Kiana is the second most densely populated city with 402 residents inside an area of 0.3 square miles (1,340 persons per square mile).

<sup>13</sup> The average population density of Alaska's 145 cities is 41.04 persons per square mile. The City of Houston, with a population density of 37.9 persons per square mile, is the median.

<sup>14</sup> The current City boundaries encompass 1,999 acres of land and 437 acres of submerged land (water), which results in a population density of 4.232 persons per acre of land or 2,709 persons per square mile of land. The territory is estimated to encompass 504 acres of land and 288 acres of submerged lands, which results in a population density of 0.964 persons per acre or 617 persons per square mile.

the City. Methodology used by SSA and the Borough to calculate population density indicates that 2,223 persons per

square mile live within the current boundaries of the City and 393 persons per square mile live in the territory.<sup>11</sup> Those figures indicate that the population density of the City is 5.7 times greater than the territory proposed for annexation. However, a more thoughtful consideration of this factor fails to support the views of the critics that the two areas are incompatible because of such differences in population density. DCED offers five principal points that are relevant for further consideration of the population density factor.

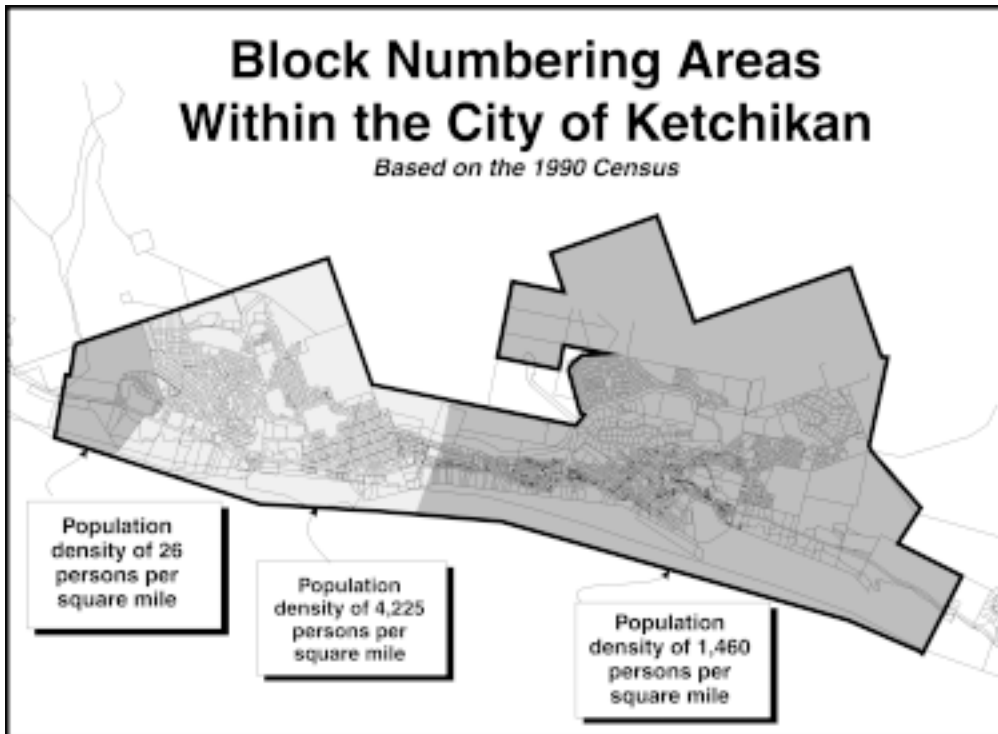
First, it should be recognized that the City of Ketchikan is, by far, the most densely populated city government in Alaska. Ketchikan's population density is, in fact, two-thirds greater than that of the second most densely populated city government in Alaska.<sup>12</sup> Further, the population density within the City of Ketchikan is 54.2 times greater than the average population density of all 145 city governments in Alaska (and 58.7 times greater than the median figure).<sup>13</sup> Thus, it is not surprising that the City of Ketchikan has a substantially higher population density than the territory proposed for annexation.

Second, although the method of calculating the population densities was

technically correct, an alternative method is warranted given the particular characteristics of the areas involved. Additionally, the population data used in the calculations are not comparable. Regarding the methodology, the calculations were made without excluding submerged lands (i.e., areas offshore in Tongass Narrows) within the two areas in question. The territory proposed for annexation contains, in relative terms, twice as much submerged land as the City. As such, the territory would naturally tend to have a lower population density. Just over thirty-six percent of the territory proposed for annexation consists of the Tongass Narrows, whereas the comparable figure for the area inside the current City is slightly less than eighteen percent.<sup>14</sup> Additionally, the population figure for the territory used by the City, Borough, and SSA is nine years old, whereas the figure for the City's population is only one year old. Population figures for cities in Alaska are updated annually by the State Demographer. Such is not the case for service areas. However, the Borough itself estimated the 1998 population of the Shoreline Service Area to be 541 for State Revenue Sharing purposes. That figure was accepted by DCED. (Bill Rolfzen, DCED)

By excluding submerged lands in both areas and using the Borough's more contemporary population estimate for





SSA, the population density of the territory proposed for annexation is more accurately reported as 687 persons per square mile of land. The comparable figure for the City is 2,709 persons per square mile. With these adjustments, the difference in the population densities of the two areas narrows by 31.6% from a ratio of 5.7:1 to a ratio of 3.9:1.

The third point is that population densities are far from uniform throughout the existing City. For purposes of the 1990 Census, the City was included in various "Block Numbering Areas" (BNAs). The City's population density within these various BNAs ranged from a low of 26 persons per square mile to a high of 4,225 persons per square mile (land and water included). As is shown on the map above, the 1990

population density of the portion of the City adjoining the territory proposed for annexation was only 26 persons per square mile.<sup>15</sup>

Fourth, it must be recognized that population densities are not always a reasonable gauge of the extent to which an area is developed. For example, one would typically expect an *inverse* relationship between the degree to which an area is used for commercial purposes and the population density of that area. On the other hand, a *direct* relationship would typically exist between the extent of an area's commercial development and its property values expressed in per capita terms. In other words, an area that contains extensive commercial development

<sup>15</sup> Ingrid Zaruba of the Alaska Department of Labor and Workforce Development advised LBC staff that the City of Ketchikan was included in four BNAs for purposes of the 1990 Federal Census. These were BNA 9688 which included 3,658 City residents; BNA 9688.99 which included 37 City residents and was an enclave within BNA 9688, BNA 9687 which included 4,563 City residents, and BNA 9686 which included 5 City residents. George Plumley, DCED Cartographer, estimated that BNA 9688 (including BNA 9688.99) encompassed 2.53 square miles of the City, BNA 9687 encompassed 1.08 square miles of the City, and BNA 9686 encompassed 0.19 square miles of the City. Thus, the 1990 population density of that portion of the City within each of the BNAs was as follows: BNA 9688 (including BNA 9688.99) – 1,460.47 persons per square mile; BNA 9687 – 4,225 persons per square mile, and BNA 9686 – 26.31 persons per square mile. BNA 9686 contains the part of the City adjoining the territory proposed for annexation.

(or properties reserved for such) is likely to have a lower population density but higher per capita property value than an area developed or reserved for residential purposes.

The current per capita assessed value of the territory proposed for annexation is two times greater than the area within the City.<sup>16</sup> Anticipated development in the territory coupled with the prospect

<sup>16</sup> The per capita assessed value of the territory is \$116,230 (\$62,880,600 per page 3 of amended petition divided by 541, the Borough's estimate of population in the Shoreline Service Area). In contrast, the per capita assessed value of the area within the current City is \$58,284 (\$493,083,200 per page 3 of the amended petition, divided by 8,460, the 1998 population of the City). \$116,230 divided by \$58,284 equals 1.994.

<sup>17</sup> Table 29 of the July 15, 1999 impact study by the City projects that a 6.4 mill property tax on the 138,000 square foot development would generate \$96,000 in 2004; the assessed value of the 138,000 development extrapolated from those figures is \$15,000,000. This would boost the assessed value in the territory to \$77,880,600 or \$143,957 per capita. The study further projects that revenue from a 6.4 mill tax on property in the existing City would be \$48,000 less as a result of the entrance of mass merchandisers; the projected loss suggests a decline in the assessed value of the existing City of \$7,500,000. This would reduce the assessed value of the City to \$485,583,200 or \$57,398 per capita. \$143,957 divided by \$57,398 equals 2.508. Of course, this analysis makes no allowance for the prospect of other development or population growth either in the territory or the existing City.

<sup>18</sup> The population density of the land in all cities in Alaska is 55.83 persons per square mile. The comparable figure for cities with a population in excess of 500 is 87.2 persons per square miles. Figures extrapolated from data provided by Laura Walters of DCED.

for declining commercial property values in the existing City reasonably suggest that the per capita assessed value of the territory may increase to 2.5 times that of the existing City within five years.<sup>17</sup> Such data offer compelling evidence that the territory is developed or suitable for development.

Fifth, it is important to note that although there is considerable difference in the population densities of the two areas in question, the territory proposed for annexation is densely populated in its own right (at least by Alaska standards). SSA itself stated that, *"The territory is not 'sparsely inhabited.' Indeed, the SSA community is home for 486 people. That is enough to meet the State's population standards for incorporation as a first class city."* (SSA Brief, pages 27 and 31) With 687 persons per square mile of land, the territory proposed for annexation is more densely populated than ninety-three percent of Alaska's incorporated cities including Wrangell, Petersburg, Craig, Cordova, Wasilla, Homer, Kenai, Nome, and 127 others. The population density of the land in the territory proposed for annexation is 12.3 times greater than the average of all 145 cities in Alaska. Even if the comparison is limited to Alaska's more populous cit-

ies, the population density of the territory is still 7.9 times greater than the average of the 57 cities in Alaska with populations in excess of 500.<sup>18</sup>

.....  
**(5) The territory and City have compatible land use and platting characteristics.**

An examination of maps included with the City's petition demonstrates that the territory and the City share similar characteristics with respect to subdivision of property. Exhibits C-1, C-2A, and C-2B of the City's amended petition show that much of the land in the territory proposed for annexation bordering Tongass Avenue and Shoreline Drive has been subdivided into lots that are similar in size to adjacent properties within the current boundaries of the City. (See the maps on the following page.)

The territory proposed for annexation also includes a number of larger parcels, one of which is under development as a Wal-Mart Shopping Center. There are several similarly-sized parcels within the existing boundaries of the City.

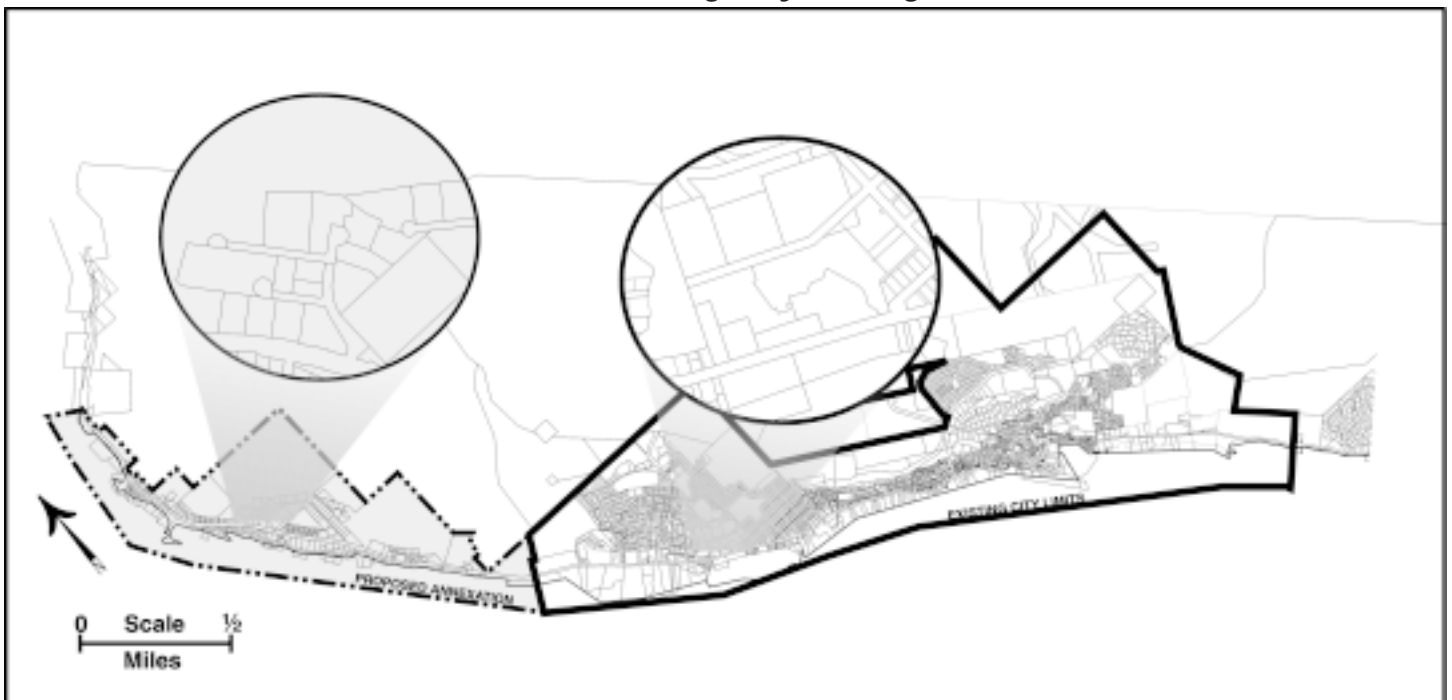
The territory and the area within the existing City are subject to similar land uses. Both areas contain a mixture of residential and commercial properties.

The territory proposed for annexation contains extensive privately owned lands. This is

*Comparison of Subdivision Characteristics in the Territory Proposed for Annexation and the Existing City -- Small Lots*



*Comparison of Subdivision Characteristics in the Territory Proposed for Annexation and the Existing City -- Large Lots*



<sup>19</sup> Figures based on 1999 local assessed values and 1998 populations. 1999 assessed value figures for Anchorage, Juneau, Sitka, Wrangell, Ketchikan Gateway Borough, and Petersburg were provided by Steve Van Sant, State Assessor. Assessed value figures for the City of Ketchikan and SSA taken from the City's amended petition.

reflected, in part, by the nearly \$62.9 million in assessed value for the territory. That figure is the equivalent of \$116,230 per resident. As noted in Section 1 E (4) of this report, the per capita value of the territory is twice that of the City. As was also previously indicated, reasonably an-

anticipated development in the territory is projected to boost the per capita assessed value of the territory to \$143,957 within five years—an increase of 23.9%.

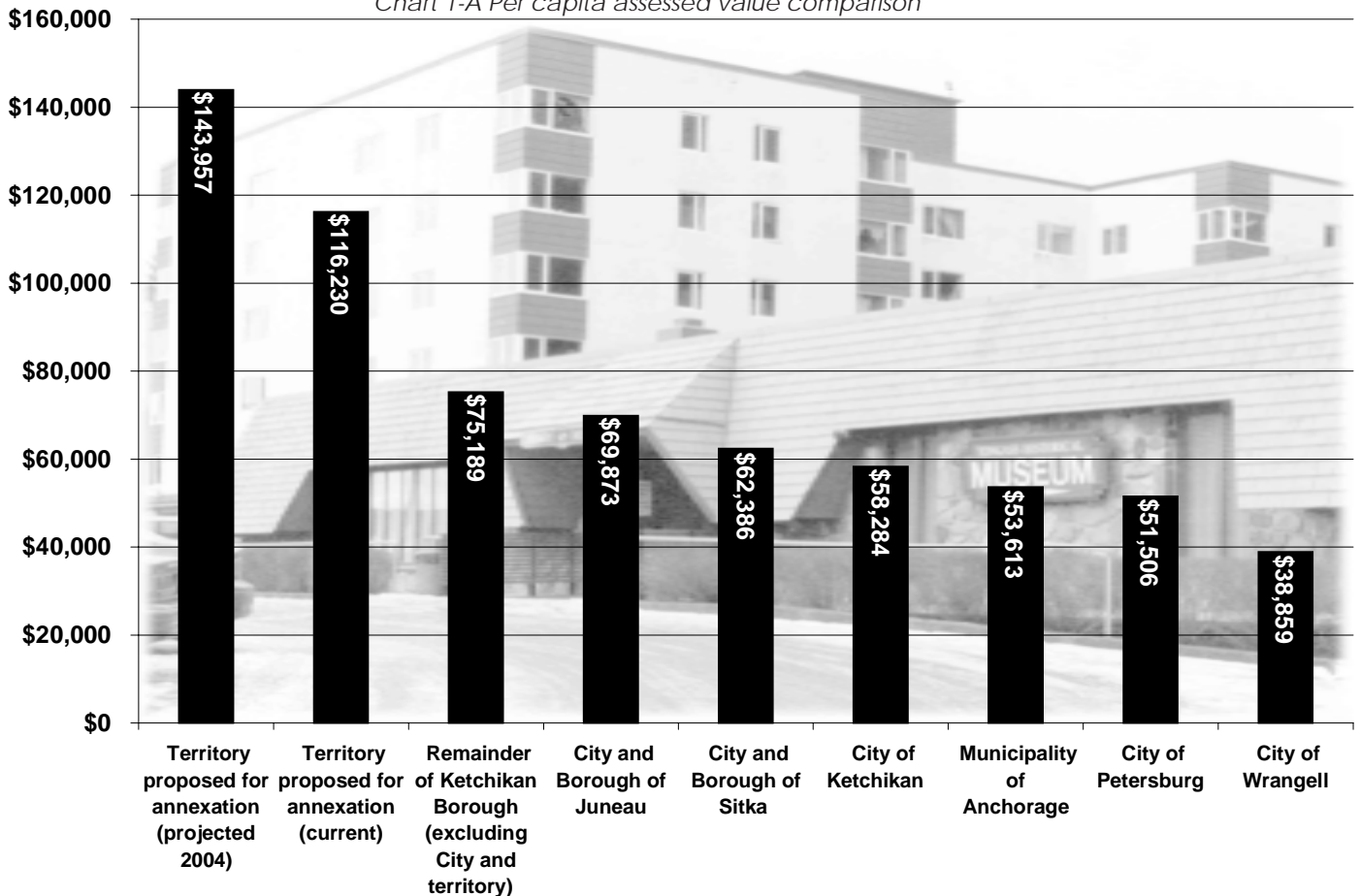
Further insights into the character of the territory proposed for annexation are gained by comparing its per capita assessed value with figures for various municipalities as shown in Chart 1-A.<sup>19</sup>

.....  
**(6) The two areas in question are part of the same community.**

The territory proposed for annexation and the area within the existing City are

reasonably viewed as parts of the same community. 3 AAC 110.920(a) provides standards for the determination of a community by the LBC. The law provides that the Commission will consider such factors as whether the people “reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living.” The Borough’s previously noted admission that residents of the territory and the City share economic activities and lifestyles relates directly to those factors. So, too, does the acknowledgment by SSA that the territory proposed for annexation is be-

Chart 1-A Per capita assessed value comparison





coming *more* urbanized. Further, it is evident from the discussion in Section 1 E (4) of this report that the population densities of the two areas are characteristic of neighborhood living.

3 AAC 110.920(a) also provides for consideration of whether the people “residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as

employment, and share other economic interests. The two areas also share common means of transportation (i.e., Tongass Highway, Ketchikan terminal for the Alaska Marine Highway, local harbors, Ketchikan International Airport, etc.).

Voter registration and precinct boundaries differ between the two areas, of course, because of necessity in conducting City and Borough elections. It is noted in that regard, however, that 3 AAC 110.920 is a general provision; the factors relating to precinct boundaries and voter registration are not relevant for consideration in this particular

tion to annexation consider “Ketchikan” to be their place of residence.

.....  
**(7) Conclusion: The territory proposed for annexation and the area with in the City are compatible in character.**

The two areas in question are quite compact and contiguous. While certain services enjoyed by most City residents are presently lacking in the territory, such is not a basis for concluding that the two areas are incompatible.

Although the City as a whole has a population density approximately four times greater than the territory, even greater variations exist within different parts of the existing boundaries of the City. Further, differences in population



*View of Ketchikan and the airport*

school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.” Students who live in the territory proposed for annexation attend the same schools as those who live in the City. Again, as the Borough noted, residents of the two areas have common economic interests. That is, people in the two areas in question shop at the same stores, have access to the same sources of em-

instance.<sup>20</sup>

Lastly, DCED considers it noteworthy that of the forty-five letters offering comments on the petition by interested parties, all but eight were written by individuals and organizations listing Ketchikan as their address.<sup>21</sup> Further, of the 258 individuals that signed the petition, 231 listed Ketchikan as their residence. In other words, 82% of the correspondents opposed to annexation and 90% of those that signed the petition in opposi-

<sup>20</sup> AS 15.10.040 dictates that, “Whenever practicable, precinct boundaries shall conform to municipal boundaries.” Consideration of precinct boundaries would be relevant when dealing with the incorporation of a new city or borough government.

<sup>21</sup> Four individuals wrote from Ward Cove, one of whom corresponded twice. Additionally, one individual wrote from Deep Bay – Moser Bay, Alaska; one wrote from Eatonville, Washington, and one wrote from Marysville, Washington.



density are not always a reasonable measure of compatibility. With a population density greater than 93% of Alaska's 145 city governments and per capita assessed value two times greater than the City of Ketchikan, the territory proposed for annexation is highly developed in its own right.

The analysis of maps, aerial photos, and other data in Section 1 E (5) of this report demonstrate that the territory proposed for annexation and the City have compatible land use and platting characteristics. Lastly, and most significantly, Section 1 E (6) provides strong evidence that the ter-

ritory proposed for annexation and the area within the existing City are parts of the same community. DCED concludes from this that the territory proposed for annexation is indeed compatible in character with the area inside the current boundaries of the City. As such, the standard set out in 3 AAC 110.100 is clearly satisfied.



## Section 2

### Need for City Government in the Territory

#### A. The Standard

State law specifies that an area may be annexed to a city provided, in part, that the LBC determines there is a reasonable need for city government in the area. Specifically, 3 AAC 110.090(a) states as follows:

The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) existing or reasonably anticipated social or economic problems;

(2) existing or reasonably anticipated health, safety, and general welfare problems;

(3) existing or reasonably anticipated economic development;

(4) adequacy of existing services; and

(5) extraterritorial powers of adjacent municipalities.

#### B. Views Expressed by Ketchikan in its Petition

The City wrote four pages in support of its position that there is a need for city government in the territory. (Amended Petition, Exhibit H, pages 1 – 4) Other parts of the original and revised petition provide additional information relevant for consideration in this regard. In particular these materials include the amended Transition Plan (Exhibit F, page 2) the original petition (page

17), and the January 20, 1999 memorandum from the City Fire Chief (Exhibit I-3). The following is a summary of the City's views concerning the need for City government as expressed in its petition.

- The territory is becoming one of the more extensively developed commercial areas in the Borough. In addition to significant existing development, the territory is the planned site for a 64,000 square foot Wal-Mart shopping center; an additional 74,000 square feet of commercial development is expected within five years.
- The territory currently receives local government services associated with rural and residential areas of the Borough. These include education, tax collection, zoning, planning, and ani-

mal control. Additionally, the Borough has the power to provide water utility service and fire protection within SSA, however, water utility powers are not exercised in that service area.

- The City provides services and facilities that currently benefit the territory. These include the hospital, emergency medical services, emergency dispatch services, mental health and substance abuse treatment, harbors, port facilities, library, museum, civic center, solid waste disposal, cemetery, electricity, and telephone service.
- The State of Alaska provides certain services in the territory. These include maintenance of the North Tongass Highway, limited building inspection by State Fire Marshal staff in Juneau, regulation of on-site sanitary sewage systems, and law enforcement.
- The greatest need for municipal services in the territory is for law enforcement. Currently, six State Troopers cover the estimated 1,748 square miles within the Borough but outside the City and also serve the distant community of Hyder. In contrast, the City employs twenty-three officers to serve the 3.8 square miles



*Ted Ferry Civic Center in Ketchikan, one of the City facilities serving the entire community*

within the City. Troopers lack the resources to provide full-time service. The anticipated commercial development in the territory will render it much more difficult for the Troopers to respond to traffic accidents and traffic violations in the territory. Shoplifting, theft, vandalism, and other more serious crimes in the territory are also likely to increase. The City projects that commercial development in the territory will generate more than 275 calls for police service annually. The City plans to add three officers to meet this need, bringing the total number of City Police officers to twenty-six.

- The territory also requires improved fire and emergency medical services.

Based on the anticipated development in the territory, National Fire Protection Association (NFPA) standards will require an initial response capability of three engines, one ladder truck, one chief officer, two EMS personnel, and at least sixteen fire fighters. SSA presently has only two engines, one tanker, and twelve volunteer firefighters. SSA relies on the City to assist in fighting any significant fires. However, mutual aid agreements will not reduce SSA's responsibility to provide the facilities and personnel required by the NFPA standards. Further, the City is not compensated for mutual aid service. When the territory was sparsely developed it

had minimal needs for City services and could not generate sufficient revenue to support separate services or to meaningfully contribute to City services. However, those circumstances have changed.

- The territory lacks a local governmental structure to maintain streets and drainage. The estimated 2.5 miles of collector streets in the territory either go without maintenance or are maintained by adjoining property owners.
- The State of Alaska and the City of Ketchikan are the only governments capable of meeting the public works and public safety needs of the territory. Given the State’s financial challenges, it is unlikely that

the State will respond to growing service needs in the area. The Borough does not exercise areawide or non-areawide public safety and public works powers sufficient to meet the growing needs of the territory. It would be cost-prohibitive and inefficient for the Borough to do so.

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### C. Views of the Respondent and Correspondents

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#### (1) Views of the Respondent SSA

The respondent SSA wrote the equivalent of nearly five pages in support of its view that SSA does not exhibit a reasonable need for city government. (SSA Brief, pages 16 - 21). The views of SSA regarding such are sum-

marized below. Two of the points expressed by SSA regarding this standard were similar to points made earlier by the Borough in its letter of May 4. Those points are marked by an asterisk (★) and are not repeated in the subsequent summary of the Borough’s views on this issue.

- There is no foundation for the City’s statements that, “The North Tongass Addition can no longer exist with minimal government given the commercial growth experienced to date and that which is projected to occur in the immediate future. The State of Alaska and the City of Ketchikan are the only governments fully capable of fulfilling the public works, fire protection and law enforcement needs that are required by the area.” (Emphasis by SSA) Obviously, the area will still “exist” if it is not annexed. Secondly,

there are reasonable alternatives to providing services other than annexation. (Note: SSA’s views on the latter point are identified in Section 3 of this report.)

★ The City’s assertion that the Wal-Mart facility “will be by far the largest single retail operation in the Ketchikan Community” is incorrect.



City of Ketchikan ambulance

The Plaza Port West commercial retail facility, located at the geographic heart of the City, is approximately three times the size of the proposed Wal-Mart facility.

★ The Ketchikan Pulp Company (KPC) employed 544 people in 1995 at its Ward Cove industrial site approximately eight miles north of the City. The KPC facility was valued at \$65,066,800 in 1997. If that facility did not require City fire or police services during its nearly 50 years of operation, it is difficult to understand how a substantially smaller facility with lower employment requires such services. To date, SSA residents or businesses, including Wal-Mart, have not requested City services.

★ SSA meets the governmental service needs of the territory. The record of the lengthy deliberations by the KGB Planning Commission and Assembly regarding the proposed Wal-Mart development supports the contention that SSA is capable of providing needed services. In response to questions concerning the adequacy of fire protection services, the developer committed to installing a 92,000-gallon water tank to provide adequate water capacity for SSA fire suppression service.

• NFPA standards are not laws; further, they "are constantly evolving". Few departments fully meet all NFPA standards at all times. Even if the City is correct that SSA cannot meet NFPA standards for the planned development, the City's judgment should not be substituted for that of the owners and residents of affected properties, SSA Board, KGB administration, or Assembly. Development has been proceeding with full understanding and acceptance of SSA's limitations.

• If the City withdrew from the mutual aid agreement with SSA, it would diminish fire protection service within the City as well. Since 1990, SSA has responded to eleven requests from the City for mutual aid. Three of those responses required tankers and other equipment that was available to the City only through mutual aid support. The other incidents simply exceeded the City's available equipment or staff.

• The City presently enjoys an ISO rating of 4; while SSA has an ISO rating of 8. Lower ISO ratings generally equate to lower insurance premiums. If annexed, the territory would be immediately granted an ISO rating of

4. However, upon the next ISO inspection, the territory would revert to a rating of 8 if it did not have a pressure water system and hydrants. The ISO has scheduled its next evaluation of Ketchikan in 2005. The City does not promise to provide a public water system with fire hydrants. However, SSA could develop its own system.

• The City notes that residents and businesses in the territory may want and expect water and sewer utility services but that such would not be extended simply by virtue of annexation. While water and sewer utility services play an important role in community development, Wal-Mart and related developers, like others before them, have not predicated their development on the availability of public water systems.

.....  
**(2) Views of the KGB and other Correspondents.**

Like SSA, the Borough contests the City's view that there is a need for city services in the territory as the petition was originally filed. The equivalent of more than four pages of the Borough's fourteen page letter of May 4, 1999 were dedicated to this is-



sue (pages 2 – 5, and 9). The following summarizes the views expressed by the Borough that are not summarized above.

- Fire service by the Shoreline Fire Department is adequate. The territory is further protected by mutual aid agreements with other fire departments. The existing capabilities of the Shoreline Fire Department could be enhanced with service area fund balances (estimated to be \$161,951 as of June 30, 1999) coupled with increased property tax revenues resulting from anticipated development in the territory (an additional \$6,700 - \$13,800 annually).
- Police service in the territory is adequate. The reported statement of the Troopers that "the Ketchikan Police Department is better positioned to serve the territory proposed for annexation" falls far short of the conclusion that current resources are inadequate to provide necessary public safety coverage. State Troopers can and do provide the type of police service that a shopping development in

the territory would require. For example, there is a large Fred Meyer shopping center outside the City of Fairbanks that relies upon Troopers for police service. The Fairbanks North Star Borough has more than 83,000 residents, less than half of whom receive city police service.

- If the ratio of retail space to police calls for the proposed Wal-Mart is the same as the existing Plaza Port West mall located in the City, there will be an average of fewer than two calls per week. Even if commercial development grows by the full 138,000 square feet projected by the City, there would be an average of fewer than four calls per week. The actual demand for police service may be less since the proposed development lacks the attributes that promote the area becoming "a gathering place at night." Six state troopers headquartered in SSA should be adequate to meet the demand for police service.

### D. Views Expressed by Ketchikan in its Reply Brief

#### (1) Regarding adequacy of existing services in general.

The City indicates that substantial opposition to its annexation proposal was expected, in part, because annexation will increase ad valorem taxes of property owners in the territory. According to the City, assertions that existing services are adequate depend on the ability of the Shoreline Fire Department, State Troopers, and Alaska Department of Transportation and Public Facilities (DOT&PF) to adequately provide increased services to the territory. The City stresses that the pending Wal-Mart development and associated growth will dramatically change the character of the territory. The City notes that establishment of a mass mer-



Ketchikan Police Station

chandiser, theater complex, grocery store, and fast-food restaurant will result in higher concentrations of people and increased vehicular traffic for extended periods of time resulting in the need for additional public safety and public works services which the City is best able to provide.

**(2) Regarding the need for improved fire protection.**

The following is a summary of the views expressed by the City in its reply brief regarding the need for better fire protection in the territory proposed for annexation.

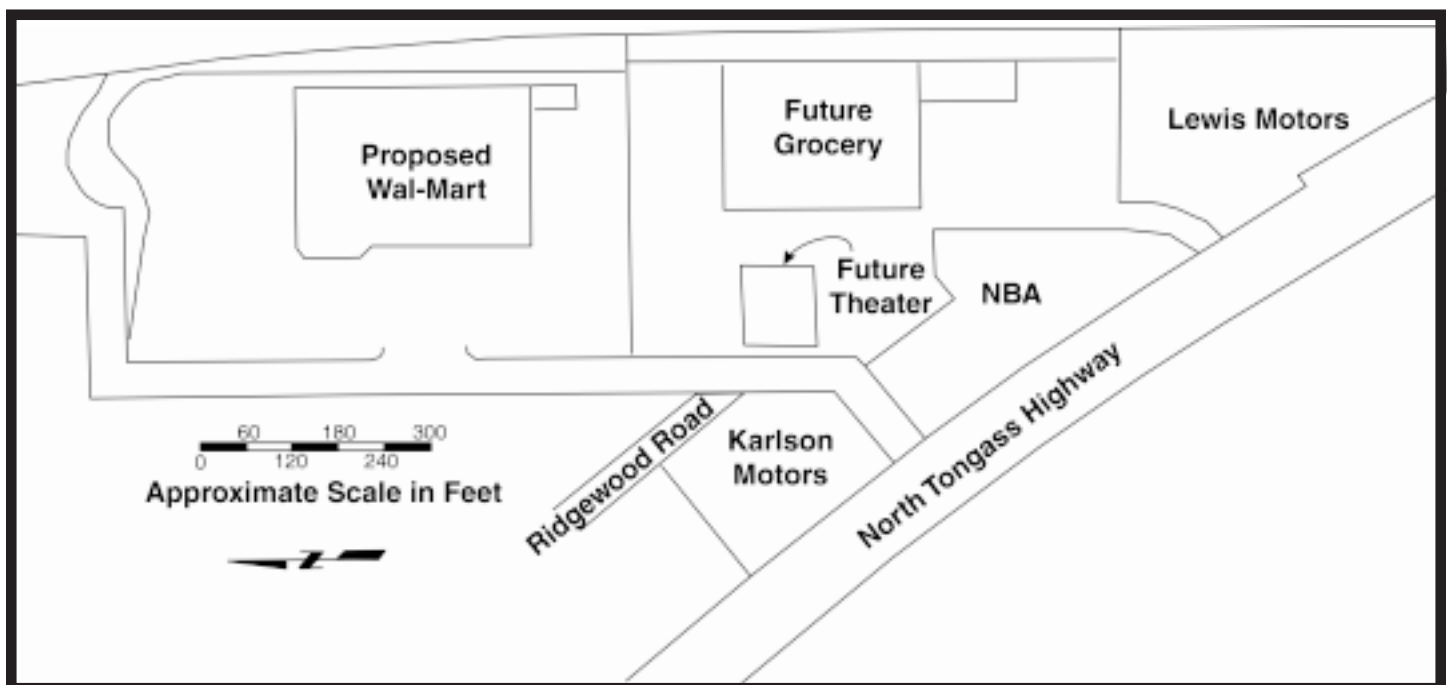
The City takes life and safety issues seriously and has not overstated the importance of meeting NFPA standards. The Borough should do likewise. However, it has made no provi-

sion to prepare for increased fire fighting needs in the territory despite the imminent significant commercial development in the territory.

- The argument that SSA's Fire Department could be upgraded to meet NFPA requirements as an alternative to annexation represents a grossly inefficient approach for a community the size of Ketchikan. It would result in two independent fire departments located less than two miles apart – each with three engines, one ladder truck, one chief officer, and not less than sixteen fire fighters.
- The Borough's belief that the \$160,000 Shoreline Service Area fund balance

and additional income from property taxes may be sufficient to upgrade SSA's fire department to meet NFPA standards is unrealistic. The City's current fire-suppression budget equals \$938,316.

- The Borough's comparison of the KPC facilities to the territory proposed for annexation is disingenuous. First, the Borough infers that since the KPC facilities at Ward Cove were never annexed to the City of Ketchikan, they did not need City services. The Borough then stresses that the KPC facilities were more valuable and employed more



Conceptual site plan for prospective commercial development in the area proposed for annexation

people than the planned Wal-Mart. The Borough asserts that the "logical" conclusion from these facts is that because the more valuable KPC facilities did not need City services, neither does the proposed commercial development in the territory proposed for annexation. However, the Borough overlooked the fact that KPC had its own fire suppression equipment; trained its employees in fire suppression; and had daily fire patrols throughout its facilities. More importantly, even with the KPC fire protection measures, there was still a need for City fire protection at the KPC facilities. That need was fulfilled by the City as evidenced by its fire protection agreement with KPC included as Exhibit I of the City's reply brief.

.....  
**(3) Regarding the need for improved police service.**

The following summarizes the City's views in its reply brief regarding the need for enhanced police protection in the territory proposed for annexation.

- The Borough contends that the Troopers are capable of providing police protection in the

territory, even in the face of pending commercial development as evidenced by the fact that the Trooper detachment in Fairbanks provides law enforcement services to a large Fred Meyer shopping center outside the City of Fairbanks. The Borough fails to recognize, however, that the Fairbanks detachment is comprised of fifty-eight Troopers, compared to six in Ketchikan.

- The Borough gives no weight to the statements of the Commander and Deputy Commander of the Trooper detachment in Ketchikan that the Ketchikan City Police Department is better positioned to serve the territory proposed for annexation.
- Further, the Borough fails to recognize that the State Troopers in Ketchikan do not provide round-the-clock patrol.
- The Borough fails to acknowledge the ongoing State budget problems, which have previously reduced, and most likely will continue to reduce, State funded services such as law enforcement.
- The Borough's projections that police would be called 95 times per year at Wal-Mart and 204 times

per year in the expanded commercial area were the result of flawed methodology. The projections were based on the size of retail space in the anticipated development in comparison to the existing Plaza complex. However, in making its projections, the Borough neglected to deduct the indoor lobby area from the Plaza complex. Doing so increases the projected number of calls to 275 per year in the larger commercial development. Further, those projections do not include police calls for traffic accidents separately in terms of incident reports. The projected call volume represents a significant demand for police services.

- The Borough contests the City's belief that the pending development will create a gathering place at night for mischief and/or crimes. The Borough has little experience in law enforcement and its arguments on this point are without foundation. The City reasserts its belief that the development at Mile 4 North will become a gathering place at night.
- The City acknowledges that the headquarters for the Trooper detachment in Ketchikan is located within the territory proposed for annexation, but doubts that will deter or prevent crimes. The projected twenty-six of-



ficer City Police Department will enable a law enforcement presence not possible by six Troopers regardless of the fact that their offices are within the territory proposed for annexation.

- The Borough makes the same disingenuous arguments concerning the KPC facilities at Ward Cove when it comes to police protection. Here again, the pulp mill had its own security measures, including a gate guard to prohibit unauthorized entry into the facilities. Comparisons of a pulp mill to a commercial retail center, which includes a Wal-Mart, theater, fast food establishments and grocery store, are nonsensical.

.....

**(4) Regarding the need for improved road maintenance.**

In response to views expressed by correspondents that DOT&PF provides adequate road maintenance in the territory proposed for annexation, the City stresses that the State only serves Shoreline Drive and Tongass Highway within the territory proposed for annexation. Other roads in the territory are not maintained by DOT&PF. State budget cuts have recently reduced the size of Ketchikan’s DOT&PF office by 33% to a two-man department. The City notes that the State has also enacted strict prohibitions on overtime and

weekend snow removal efforts. Because the Tongass Highway and school bus routes receive priority road maintenance from the State, the City suggests that Shoreline Drive will receive maintenance on a lower priority.

The City notes that the Borough took a position similar to the correspondents regarding the adequacy of DOT&PF road maintenance in the area proposed for annexation. The City points out, however, the Borough objected on other occasions to the reduction of DOT&PF highway maintenance staff in Ketchikan because it would diminish needed services.

.....

**(5) Regarding the need for water and sewer utility service.**

The City recognizes a need for water and sewer utility service in the territory, but it has no firm plans for the extension of such. The City indicates, however, that it is prepared to explore all alternatives for the extension of such service through Federal aid, State assistance, the formation of local improvement districts, and other means. As reported earlier, Ketchikan notes that the City Council has funded the design of a waterline extension to Shoreline Drive.

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**E. DCED’s Views**

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**(1) Local government needs that are presently being met must be recognized as contributing to the satisfaction of the standard at issue.**

A proper examination of the need for city government in the territory requires consideration of *existing facilities and services* provided by the City that benefit the territory *directly or indirectly*. This is consistent with the historical interpretation of this particular standard by the Commission. Further, the Commission generally favors direct jurisdiction by a municipality as compared to the exercise of powers on an extraterritorial or indirect basis. As a case in point, the Commission made the following determination regarding in its most recent decision involving annexation of territory to the City of Kodiak:

Generally, from a public policy standpoint, the Commission considers the exercise of powers on an extraterritorial or indirect basis to be less desirable than direct jurisdictional control. A municipality exercising powers extraterritorially or indirectly typically does so without the ability to exert the level of control it would have if the powers were exercised within its corporate

boundaries. Further, although the law is unclear, it is possible that authority for extraterritorial or indirect services could be unilaterally rescinded by another entity.<sup>22</sup> Additionally, municipalities providing extraterritorial or indirect services sometimes fail to receive adequate financial support from those benefiting from such services. Lastly, individuals receiving extraterritorial or indirect services are not enfranchised with the entity providing such services and, therefore, lack equal standing to shape public policy relating to the delivery of such services. (Kodiak Decision, pages 4 – 5)

The following is a list of City services and facilities that directly or indirectly benefit residents, property owners, and others in the 1.2 square mile territory proposed for annexation:



*Ketchikan museum located within the city boundaries*

1. Ketchikan General Hospital,
2. emergency medical services,
3. emergency dispatch services,
4. mental health and substance abuse treatment,
5. port,
6. harbors,
7. library,
8. museum,
9. civic center,
10. solid waste disposal,
11. cemetery,
12. telephone utility service, and
13. electrical utility service.

.....

**(2) Other service needs exist to varying degrees in the territory.**

In addition to the thirteen needs for city government in the territory that are currently satisfied as outlined above, there are a number of needs

that are unfulfilled to varying degrees. Details concerning these service needs are addressed below.

**(a) Adequate road maintenance is lacking in the territory.**

The lack of any formal structure for the maintenance of the estimated 2.5 miles of collector streets in the territory proposed for annexation represents a clear need for local road maintenance. Further, DOT&PF officials advised DCED that maintenance of the 0.9 mile-long Shoreline Drive by the State is given a low priority. As such, Frank Richards, DOT&PF’s Chief of Maintenance for the Southeast Alaska Region, indicated that his agency would welcome the transfer of responsibility for the maintenance of Shoreline Drive to the City.

22 AS 29.35.020 does not expressly authorize the revocation of extraterritorial authority once granted. This is contrasted, for example, with the AS 29.40.010(b) concerning delegation of borough planning authority: “If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining the consent of the city, revoke any power or duty delegated under this section.” Thus, it may be possible that authorization for extra-territorial services could be rescinded.

On August 4 of this year, DOT&PF Commissioner Joseph L. Perkins, P.E., wrote to the Borough responding to concerns the Borough had expressed over the reduction of staff at DOT&PF's Ketchikan highway maintenance station. Comments by Commissioner Perkins regarding that matter are germane to the consideration of the need for improved services in the territory proposed for annexation. Specifically, Commissioner Perkins noted:

The Senate made a \$1.3 million unallocated reduction to the department's budget which was upheld during the conference committee. The clear legislative intent during the budget hearings and in the appropriation bill was to close maintenance stations. However, in Southeast consolidation of stations is not an option, since the communities are not connected by highways. Therefore, the only option left is to reduce staff.

With a reduced staff, winter snowplowing will be more difficult. My priorities are to get kids to school, get people to work, and keep the lifeblood of Alaska's economic system open. We will have to utilize the mechanic in Ketchikan to plow snow during peak events. The foreman is a working position and operates equipment to plow snow. However, the public may still notice a reduction in service. It will take more time to clear snow-covered roads. We will set priorities and attempt to keep open the roads with the higher traffic counts. I would appreciate your help in explaining to the public when they call that the Department's response is limited because of budget constraints. We can only do so much

and the amount is limited by the budget.

If this level of service is unacceptable, I suggest that local governments look into picking up part of the job of plowing snow on the lighter traffic roads which feed into the main arterials. When the state can no longer provide the service, then the local communities may have to assume those tasks. Until we as a state develop a long range plan for stable funding of essential services, I anticipate continued budget cuts and reduced maintenance.

Commissioner Perkins clearly indicates that roads with lower traffic counts will receive maintenance on a lower priority. In 1998, Shoreline Drive had an average daily traffic count of 227 vehicles per day compared to 7,720 for the adjacent Tongass Highway. (Mike Lukshin, DOT&PF) It is reasonable to conclude from Commissioner Perkins' comments that Shoreline Drive is also in need of local road maintenance.

***(b) Alaska Department of Public Safety officials maintain that differences between police service provided by Troopers and that proposed by City are minor.***

DCED solicited the opinion of policy makers at the Alaska Department of Public Safety (DPS) concerning the need for increased police services in the territory proposed for annexation. In do-

ing so, DCED provided DPS with approximately fifteen pages of materials including relevant excerpts of the record filed in this matter by the City, Borough, and SSA. These materials included information concerning: (1) the territory's sizable population, (2) its imminent commercial development, (3) the size of the City's police force, and (4) the size of the City's proposed jurisdiction.

On September 9, 1999, DPS Deputy Commissioner Del Smith responded as follows:

I have reviewed the record of calls for service made to the Department of Public Safety in the area proposed for annexation, the Trooper staffing at the Ketchikan Post, and the estimates of future calls for service prepared by the parties to the annexation. This review has led me to conclude that while the police coverage provided by the Troopers and that proposed by the Ketchikan City Police do have differences, that these differences are of little consequence to the safety of citizens in the area subject to annexation.

The City of Ketchikan emphasizes that they would provide 7x24 on-duty patrol of the annexed area. Troopers provide 7x21 coverage with the 3 hour per day difference falling between 3 and 6 am. This is a time period during which most commercial establishments will be closed and there will be





*Alaska State Trooper photo. Picture obtained from the Trooper website.*

little reason for people to gather in the area. In the event of crimes occurring during the hours when no Trooper is on-duty, a Trooper is always available for call-out. During the 3 to 6 am period, the Ketchikan Police Department would probably have faster response to calls by virtue of having on-duty patrol officers available to respond to complaints from this area; however, in similar commercial developments around the state, this time period generates few calls for service. I conclude that either the Troopers or the Ketchikan Police could provide adequate levels of police service in this area.

The area subject to annexation currently generates only a few calls for service to the Ketchikan Trooper Post. If this area is annexed by the City of Ketchikan, this small reduction in calls for service will not significantly reduce the need for Troopers at the Ketchikan Post. Thus, even if annexation takes place, I do not anticipate any change in staffing

at the post. Conversely, if annexation fails and Troopers are required to provide police services to the new commercial development, the relatively small increase in calls for service (4 to 5 per week) is not sufficient to justify adding staff to the Post.

In conclusion, I find that the differences between the police service provided by the Troopers and that proposed by the Ketchikan Police to be minor, and that those differences should be given little weight in the annexation decision.

State Troopers advised DCED that they respond to all manner of crimes including disturbances, shoplifting, trespassing, vandalism, and check forgery. They also respond to accidents, medical emergencies, and other calls for assistance except that they generally do not respond to automobile accidents on private property

such as store parking lots. (Chris Stockard, Captain, Alaska State Troopers)

DCED is unaware of any formal standards regarding numbers of police officers that are necessary to provide "adequate" police protection. In the recently concluded proceedings for annexation of 19.5 square miles to the City of Kodiak, DCED reported that the supervisor of the Kodiak Trooper detachment expressed the belief that a rough standard for adequate police protection in that area is one police officer for every 1,200 residents (or stated differently, 0.83 officers per 1,000 residents). (Final Report and Recommendation Regarding the City of Kodiak's Petition to Annex Approximately 19.5 Square Miles, page 4, DCED, August 6, 1999)

With respect to numbers of police officers needed to provide adequate police protection, the U.S. Justice Department, Federal Bureau of Investigation states that:

Varying demographic and other jurisdictional characteristics greatly affect the requirements for law enforcement service from one locale to another. The needs of a community having a highly mobile or seasonal population, for example, may be very different from those of a city whose population is relatively stable. Similarly, a small community situated between two large cities may require a greater number of law enforcement personnel than a community of the same size which has no urban

centers nearby.

The functions of law enforcement are also significantly diverse throughout the Nation. In certain areas, sheriffs' responsibilities are limited almost exclusively to civil functions and/or the administration of the country jail facilities. Likewise, the responsibilities of state police and highway patrol agencies vary from one jurisdiction to another.

In view of these differing service requirements and responsibilities, care should be used when attempting any comparison of law enforcement employee rates... Adequate personnel for a specific locale can be determined only after careful study and analysis of the various conditions affecting service requirements in that jurisdiction. (Crime in the United States - 1997 Uniform Crime Reports, page 296, U.S. Department of Justice, Federal Bureau of Investigation, November 22, 1998)

The FBI notes that the national average for sworn law enforcement personnel for all cities was 2.4 full-time officers for every 1,000 inhabitants as of October 31, 1997. Nationwide, cities with populations under 10,000 averaged 3.1 officers per 1,000 residents. Regional differences were significant as shown in Chart 2-A.

The City of Ketchikan plans to utilize twenty-six officers (including the

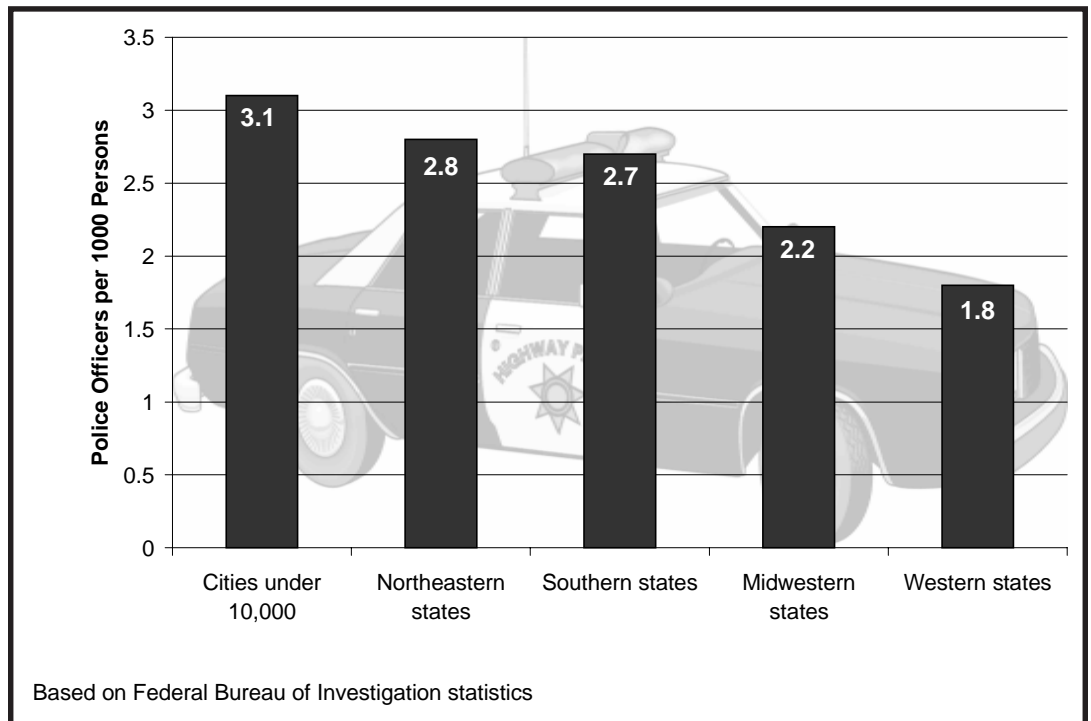
Police Chief and other sworn officers whose duties are principally supervisory) to serve the estimated 9,001 residents in the proposed post-annexation boundaries of the City. That represents 2.9 officers per 1,000 residents. That figure is slightly less than the national average of cities with fewer than 10,000 residents.

In comparison, there are currently ten Troopers in A Detachment serving southern Southeast Alaska. These consist of one detachment commander, one supervising sergeant, and six Troopers in Ketchikan, as well as two Troopers stationed on Prince of Wales Island. Additionally, authorization exists for one Trooper position each in Wrangell and Petersburg, however, those authorized

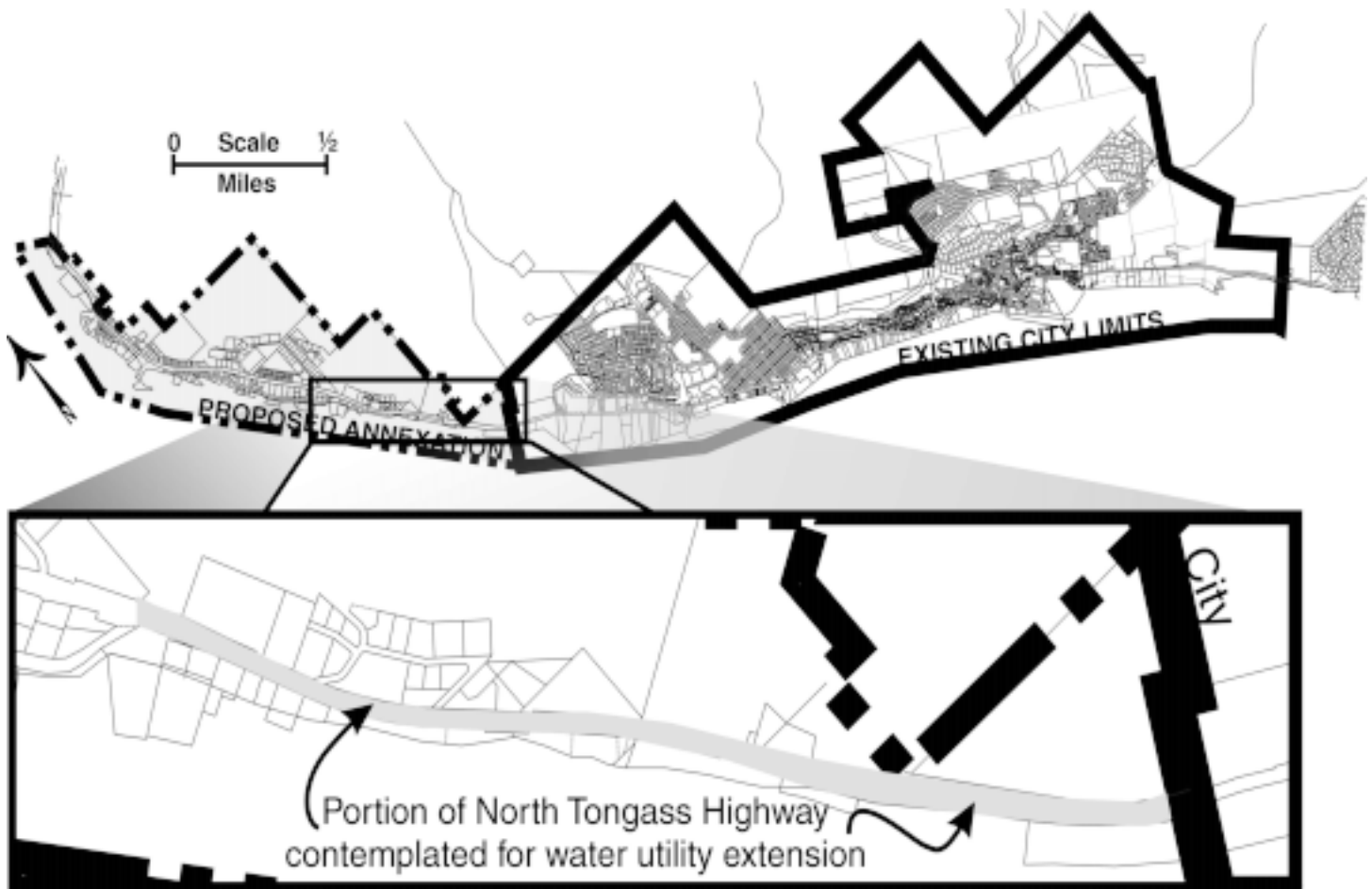
positions are presently vacant. (Lieutenant Charles Feller, Commander, A Detachment).

The 1998 population of the area served by A Detachment (from Kake south) is estimated to be 28,320. (Laura Walters, DCED Research and Analysis) Thus, there are 0.35 Troopers presently for each 1,000 residents in A Detachment. If the two authorized but vacant positions are considered, the figure increases to 0.42 Troopers per 1,000 residents. While the Troopers are the only law enforcement in A Detachment outside of communities that provide police service, the Troopers also exercise jurisdiction within the boundaries of the City of Ketchikan and other cit-

Chart 2-A Nationwide Police Levels







*The Ketchikan City Council has authorized design of a water utility extension to the southeast intersection of Shoreline Drive and North Tongass Highway*

ies that operate municipal police departments. The 28,320 population figure noted above includes residents of cities that provide police service.

***(c) There is a need for water and sewer utility service in the territory proposed for annexation.***

Existing residential and commercial development in the territory is served by individual water and sewage disposal systems. However, several correspondents, including

the Borough, were critical of the City for its lack of plans for the extension of water and sewer utility service in the territory.

Future development in the territory is constrained by the lack of public water and sewer utilities. The respondent Shoreline Service Area conceded that point when it cited a “nearly contemporaneous report” indicating that, “the primary inhibition to substantial immediate development is the lack of public water and sewer systems in the neighborhood.” The

respondent also stressed that significant public health risks stem from the lack of public sewer and water utilities in areas of concentrated development.

The Alaska Department of Environmental Conservation (DEC) shares the same general views as the respondent concerning the need for water and sewer utilities in areas of concentrated development. For that reason, 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. (Mary Siroky, Manager, Community Assistance and Information, Division of Statewide Public Service, DEC)

***(d) There appears to be a need for improved fire protection in the territory.***

DCED consulted extensively with the State Fire Marshal concerning fire protection issues in the territory proposed for annexation. After reviewing relevant parts of the record in this proceeding, the State Fire Marshal indicated that both sides in the debate were partially correct regarding certain aspects of their assertions. The Fire Marshal offered comments on four principal issues relating to fire protection that have been raised in this proceeding. However, he stressed that his comments were not to be construed as taking sides in the debate over the annexation.

**(1) NFPA requirements.**

Construction plans for the Ketchikan Wal-Mart store have not been made available in this proceeding. The City's assertion regarding the requirements for adequate fire protection in the territory are based on the assumption that the Wal-Mart store will be 64,000 square feet, classified as "type I construction" under fire codes, and that it will have a sprinkler system served by a 92,000 gallon water tank for fire suppression. In the absence of

specific plans for the Wal-Mart store, the State Fire Marshal is unable to confirm what NFPA standards would require to ensure adequate fire protection in the territory.

The City asserted in its petition that NFPA standards require the fire department serving the planned Wal-Mart development to have an initial response capability of three engines, one ladder truck, one chief officer, two EMS personnel, and at least sixteen fire fighters. Critics of the City's annexation proposal, including the respondent SSA, have offered no evidence that the City's assumptions and interpretation are incorrect. After being advised by DCED that the Fire Marshal was unable to confirm the City's assertions, the City provided a detailed explanation of its position in a memorandum dated September 21, 1999. That memorandum states the following points:

- The record in this annexation proceeding indicates that the planned Wal-Mart store will be served with a 92,000 gallon capacity catchment type water system. That is insufficient to support a sprinkler system for a 64,000 square foot building for a minimum of one hour as required by "NFPA 13."

- The "Uniform Fire Code 1997" requires a minimum fire flow of 2,750 gallons per minute for a 64,000 square foot building. If a proper sprinkler system is provided, that figure would be reduced. However, since the 92,000 gallon catchment water system cannot provide adequate support for a sprinkler system, the required fire flow in this case remains at 2,750 gallons per minute.
- To meet the required fire flow will necessitate a minimum of two engines. The third engine was included for support of the sprinkler system.
- A ladder truck is required to accomplish ventilation and salvage for a 64,000 square foot building according to NFPA standard 1500.
- 1 chief officer is required by NFPA standard 1201. Additionally, NFPA standard 1500 requires 1 safety officer, 2 rapid intervention personnel, 2 "rehab personnel" (previously referred to as EMS personnel), and 9 fire fighters to operate two engines and one ladder truck.
- Four fire fighters would be needed to operate two water tankers.

- The needs identified by the City are “NFPA minimums” which are less than the recommended levels. For example, NFPA recommends the use of four fire fighters per engine, whereas the City utilized only the minimum requirement of three in determining the need for fire protection in the territory.

**(2) Consideration of mutual aid.** The Fire Marshal confirmed that the City of Ketchikan is correct in its assertion that mutual aid arrangements cannot be considered when evaluating the ability of a fire department to meet NFPA standards.

**(3) NFPA standards and the law.** The Fire Marshal agreed with Shoreline Service Area that the NFPA standards have not been adopted as State law. Further, the Borough has not adopted those standards in the territory proposed for annexation. Therefore, NFPA standards are not currently the law within the territory proposed for annexation.

The Fire Marshal also concurred with SSA that few fire departments in Alaska *fully* meet the NFPA standards *at all times* because, as SSA pointed out, the

standards change frequently. City officials advised DCED, however, that the City of Ketchikan has adopted and operates under current NFPA standards.

Notwithstanding the fact that NFPA standards are not the law in the territory proposed for annexation, the Fire Marshal stressed that relevant NFPA standards are a good measure of fire protection needs. He noted that relevant NFPA standards are typically used by courts to judge the adequacy of local fire protection even when those standards have not been enacted as local or state law.

**(4) Efficiency of operating two fire departments close together.** The Fire Marshal agreed with the City of Ketchikan that it is an inefficient use of resources to maintain two fire departments within two miles of one another, particularly with the capabilities that the City asserts are necessary to provide adequate fire protection in the territory.

Again, the State Fire Marshal stressed that his comments on the four issues he addressed were not to be taken as a position in favor of or in opposition to annexation. (Personal communication, Gary Powell, Alaska State Fire Marshal)

.....  
**Conclusion.**

The City plans to provide 2.9 police officers per 1,000 residents in the expanded boundaries of the City. In contrast, the Troopers in A Detachment that serve southern Southeast Alaska have 0.42 positions authorized per 1,000 residents. Notwithstanding, DPS officials expressed confidence that the Troopers stationed in Ketchikan presently provide adequate police services to the territory in question and could continue to do so in the future.

While the record in this proceeding does not allow independent confirmation of the City’s assertions concerning the need for enhanced fire protection, the assumptions which the City used in developing those projections appear to be reasonable. Further, critics of the annexation proposal have not provided any evidence suggesting that the City’s assumptions and interpretation of NFPA standards in that regard are incorrect. The Shoreline fire department lacks the equipment and personnel which the City asserts are required by NFPA standards to provide adequate fire protection. The City’s capabilities exceed those standards.

The City of Ketchikan 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 territory is in need of local street maintenance. An estimated 2.5 miles of roads in the territory presently receive no maintenance from the State or local governments.

Another street in the territory (0.9 miles long) receives maintenance from the State on a low-priority basis. Safety concerns exist regarding one of the streets.

There is a need for water and sewer utility service in the territory proposed for annexation to allow future development in the territory and to avoid significant public health risks that generally stem from the lack of public sewer and water utilities in areas of concentrated development.

Therefore, DCED concludes that there is a reasonable need for city government in the territory proposed for annexation to the extent that the standard set out in 3 AAC 110.090(a) is clearly satisfied.



# Section 3

## Comparative Abilities of the City and Borough to Deliver Essential Services

### A. The Standard

3 AAC 110.090(b) provides that territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

The phrase "essential city services" as used in 3 AAC 110.090(b) is defined in 3 AAC 110.990(8) as:

"...those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state..."

### B. Views Expressed by Ketchikan in its Petition

The City claims that it can provide essential city services to the territory more efficiently and effec-



Ketchikan General Hospital is owned by the City of Ketchikan

tively than another existing local government. Specifically, the City stated:

*As the North Tongass Addition continues to grow, and within the context of present service delivery, there can be no question that the City of Ketchikan municipal government is needed, in order to adequately provide for the public works, fire protection and law enforcement needs of the area. No other entity, with the exception of the State of Alaska, can provide the necessary resources to extend these essential services. (emphasis added; Amended Petition, Exhibit H, page 2)*

### C. Views of the Respondent and Correspondents

#### (1) Views of Respondent SSA.

SSA maintains that "the City's conclusion that 'Annexation of the proposed properties is the only viable alternative' is unfounded. (SSA Brief, page 10) emphasis added by SSA) Alternatives suggested by SSA include:

- amend SSA boundaries or powers to address concerns of the City and others;



- develop a “comprehensive solution” to service delivery problems such as the ongoing effort by the City to consolidate the City and Borough governments;
- transfer City powers to the Borough pertaining to those services which benefit non-City residents and for which the City does not receive fair compensation;
- amend City sales tax laws to compensate for loss of revenues (e.g., eliminate exemptions since approximately 40% of current sales are exempt; increase the rate of taxation; or provide for seasonal differentials for the sales tax to “export a good portion of the tax burden to the heavy influx of tourists”).

In addition to the points summarized above, SSA takes the position that the City’s claim that only it or the State can provide needed services is untrue for two reasons. (SSA Brief, page 21) First, the State does not provide most of the services on the City’s list such as fire or water services. The State does, however, provide for the creation of boroughs, service areas within boroughs, and cities to enable local residents and businesses to decide what level of services they wish to provide.



*Ketchikan waterfront*

Second, the City’s statement ignores the role of the KGB and SSA. The first course of action should be for area residents feeling a growing need for new or increased levels of service to request SSA and KGB to provide those services. Alternatively, the KGB might initiate new or expanded services. Clearly, however, the KGB and its SSA can provide or at least assist in obtaining the necessary resources to extend essential services if asked.

.....  
**(2) Views of the KGB and other Correspondents.**

Like SSA, the Borough noted that there are alternatives to annexation that could address the City’s concerns about providing services for non-City residents. Among those listed by the

Borough were changes in tax structures, transfer of certain powers to the Borough, and a “fee for service” approach to the new commercial area for any required fire or other public safety services. (KGB letter, page 8)

The formal petition signed by 258 individuals in opposition to the annexation expressed views similar to the KGB.

---

**D. Views Expressed by Ketchikan in its Reply Brief**

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The City notes that legislative review annexations are often controversial and face intense opposition from residents and property owners in the territory pro-

posed for annexation. Thus, the City is not surprised that property owners and residents of SSA have offered comments such as:

- "...*There is nothing to be gained by annexing to the City...*",
- "...*No residents of the Shoreline Service Area have expressed the need for City services...*", and
- "...*I cannot see anything that will benefit my properties in the annexation other than being highly taxed...*"

However, the City stresses that the legislative review annexation process affords the opportunity to balance the benefits and interests of the entire community, including those residing or having interests in the territory proposed for annexation.

Despite the intense opposition, the City contends that the issues associated with its petition are complex and that opponents are not considering broader implications. The City contends that only it will be able to provide the public services that will be required as a result of pending development in

the territory. Further, essential regional services currently enjoyed by the greater Ketchikan community are in jeopardy of being eroded if annexation does not occur. These include the Ketchikan General Hospital; EMS; emergency 911 and fire dispatch; mental health and substance abuse treatment; and facilities such as the library, museum, and civic center.

The City indicates that SSA's Board has minimized the importance of NFPA standards. In doing so, the City feels that SSA's Board and indirectly, the Borough, fail to address, discuss, budget, or plan for impacts of pending development of Wal-Mart and other commercial business in the territory. The City notes that SSA is also silent regarding its ability to meet increased needs for law enforcement and public works within the service area.

The City considers suggested alternatives to annexation as being problematic or unrealistic. In particular, the City indicates the following with respect to four specific alternatives suggested by critics:

- The amendment of SSA's boundaries and powers would do nothing to remedy the issue of the significant loss of sales tax revenues to the City.

- The vision of a cooperative effort by the City and Borough to develop a community wide comprehensive plan to address service responsibilities and methods of funding those services may be unrealistic. Similar issues are at the core of the prospective proposal to consolidate the two major local government in Ketchikan which the City is developing. However, the Assembly has declined to participate in the process.

- The alternative of transferring certain City services to the Borough may also be unrealistic. It is unlikely that the Borough could provide the services as efficiently as the City. Further, the alternative assumes that voters would grant additional powers and duties to the Borough. Traditionally, residents of the Borough outside of the City have been reluctant to do so.

- The alternative of increasing the City sales tax to offset revenue losses due to the shift of sales outside the City would place additional burdens on City residents. It would also increase the competitive advantage of businesses outside the City. Businesses will likely find it difficult to compete with Wal-Mart on an even playing field; to give Wal-Mart a 4% to 5% sales tax advan-

tage and a lower property tax rate will make direct competition impossible.

**E. DCED’s Views**

The standard at issue requires a determination by the LBC whether the City or the Borough can most efficiently and effectively provide essential services.<sup>23</sup> Theoretically, the Borough would have the option of providing the services needed in the territory on an areawide, non-areawide, or service area basis. The following is DCED’s analysis of the standard at issue.

**(1) The fact that the City presently provides certain services to the territory is rebuttable evidence that it can best provide those services.**

In prior proceedings, the LBC has held that if a particular municipal government is providing an essential service to a specific area, it is rebuttable evidence of the municipal government’s ability to provide that service more effectively and efficiently than another local government. Turning again to its September 3, 1999 decision approving the annexation of 19.5 square miles to the City of Kodiak, the Commission determined:

It is reasonable to find that the City [of Kodiak] provides [(1) extraterritorial sewer and water utility services and land use control



*Bayview Cemetery is provided by the City of Ketchikan.*

in a portion of the territory; (2) extraterritorial or quasi-extraterritorial emergency medical services, emergency dispatching services, animal control, building plan review, and building inspection services throughout the territory, and (3) services such as the library that indirectly benefit the territory] because it is able to do so more effectively and efficiently than the [Kodiak Island] Borough.” (Kodiak Decision, page 7)

No one in the current Ketchikan annexation proceeding has rebutted the evidence that the City can provide the hospital, emergency medical services, emergency dispatch services, mental health and substance abuse treatment, ports, harbors, library, museum, civic center, solid waste disposal, cemetery, telephone utility service, and electrical utility service more efficiently and effectively than the Borough by virtue of

the fact that the City currently provides those services. Further, DCED is unaware of any facts which suggest that the Borough can provide those services more efficiently and effectively than the City. Thus, it is reasonable to find that the City provides the territory with the 13 services enumerated earlier because it is able to do so more effectively and efficiently than the Borough.

<sup>23</sup> The standard refers generally to any other existing city or organized borough. DCED finds it reasonable to conclude that no existing city other than the City of Ketchikan and no organized borough other than the Ketchikan Gateway Borough could effectively serve the territory.

**(2) The City is best able to provide unmet service needs of the territory.**

As was noted in the discussion of the prior standard, there are unmet needs for a number of essential services in the territory proposed for annexation. These needs include water utility service, sewer utility service, road maintenance, and improved fire protection. Although the City asserts that there is also a need for municipal police protection in the territory, such is not clearly acknowledged by the Alaska Department of Public Safety.

In terms of whether the City or the Borough is best able to provide water and sewer utilities to the territory, it is noteworthy that DEC favors the extension of water and sewer services by the City of Ketchikan to the territory over the establishment of an independent water and/or sewer utility operated by the Borough's Shoreline Service Area. DEC indicated that its policy recognizes that the expansion of existing utilities generally promotes greater economies of scale and greater rates of success in serving public needs. (Mary Siroky, DEC)

Further, the City has the foundation in place to extend water and sewer utility

service to the territory. As noted in DCED's analysis of the preceding standard, the City has recently authorized the expenditure of \$59,031 to design an extension of the City water utility to serve the approximate southeastern one-third of the territory proposed for annexation. The actual extension of utility service to the territory will require substantial capital funding. Such utility extensions are eligible for significant partial funding through State grant programs. However, there is strong competition for funding. Local improvement districts are commonly used by municipal governments in Alaska to generate the local share of major capital projects.

Despite Ketchikan's renowned precipitation (both snow and rain), the need for municipal street maintenance in the territory has heretofore gone unmet by the Borough. The previously noted letter from DOT&PF Commissioner Joseph L. Perkins, P.E., described the demands that winter brings with respect to road maintenance in Ketchikan. Commissioner Perkins wrote, "*The [DOT&PF] employees in Ketchikan work very hard at maintaining the highways and plowing snow. Last winter with the heavy snowfall was particularly difficult, and they performed commendably.*"

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. The capital improvement funds will be used, in part, to resolve safety concerns regarding one of the roads in the territory. The City notes that one of those roads is unsafe because it traverses a steep embankment, but lacks a guardrail. With the additional operating and capital funds, the City's public works department will be capable of providing efficient and effective street maintenance in the territory proposed for annexation.

While the State Fire Marshal did not take a position favoring or opposing the annexation proposal, he did agree with the City that it is an inefficient use of resources to maintain two fire departments within two miles of one another in Ketchikan. DCED notes that the City has greater capacity than the Borough (through the Borough's Shoreline Service Area) to provide fire protection to the territory. The Shoreline Fire Department currently has two engines, one tanker, and twelve volunteer firefighters. In comparison, the City Fire Department operates three engines and one ladder truck. The City also has air re-servicing capabilities, two chief officers, twenty-eight firefighters,



fifteen EMS personnel and fifteen dispatchers trained to perform EMS and support functions. 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 the initial expenditure of \$37,400 for related capital improvements.

While State public safety policy makers do not acknowledge a clear need for municipal police in the territory, the standard at issue requires a comparison of the capacity of the City versus the Borough to provide services. *If there were*

*a need for municipal police in the territory*, the City would clearly have the greater capacity to serve that need. The Borough does not provide police service whereas, the City has a fully operational police department. Upon annexation, the City plans to hire three additional officers incrementally over the course of three years to extend service to the territory while maintaining the current level of service within the current City limits.

.....  
**(3) Conclusions.**

The fact that the City currently provides the hospital, emergency medical services, emergency dispatch services, mental health and substance abuse treatment, ports, harbors, library, mu-

seum, civic center, solid waste disposal, cemetery, telephone utility service, and electrical utility service for the territory is evidence of the City's ability to provide those services more efficiently and effectively than the Borough. The City also has the superior ability to provide water utility service, sewer utility service, road maintenance, and improved fire protection to the territory proposed for annexation. Further, if a need exists for municipal police protection in the territory, the City would also be able to best provide that service. Thus, the standard set out in 3 AAC 110.090(b) is clearly satisfied.





# Section 4

## Resources of the Proposed Expanded City

### A. The Standard

State law allows an area to be annexed to a city provided, in part, that the LBC determines the area within the proposed *post-annexation* boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Specifically, the law provides as follows:

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

The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, 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;

- (3) actual income and the reasonably anticipated ability to collect local revenue and income from the territory;
- (4) feasibility and plausibility of the anticipated operating budget of the city through the third full fiscal year of operation after annexation;
- (5) economic base of the territory after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial,

commercial, and resource development;

- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled people.

### B. Views Expressed by Ketchikan in its Petition

The City's amended petition projects that the additional revenues shown on Chart 4-A will accrue to the City as a result of annexation for the three year period beginning 2001. (Amended Petition, pages 3 – 5)

Chart 4-A Revenues estimated by the City that will result from annexation

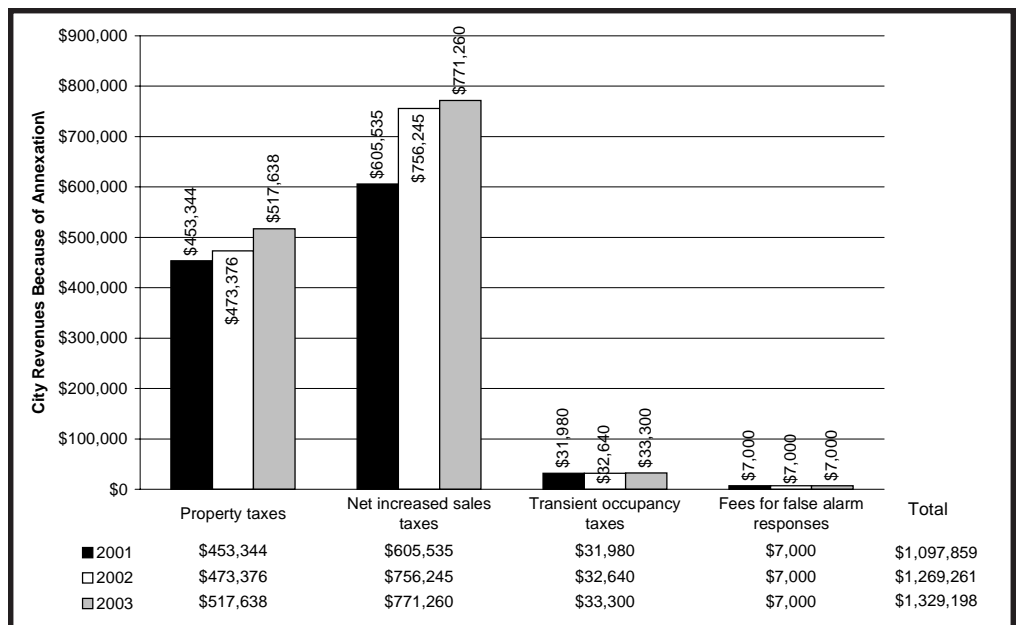
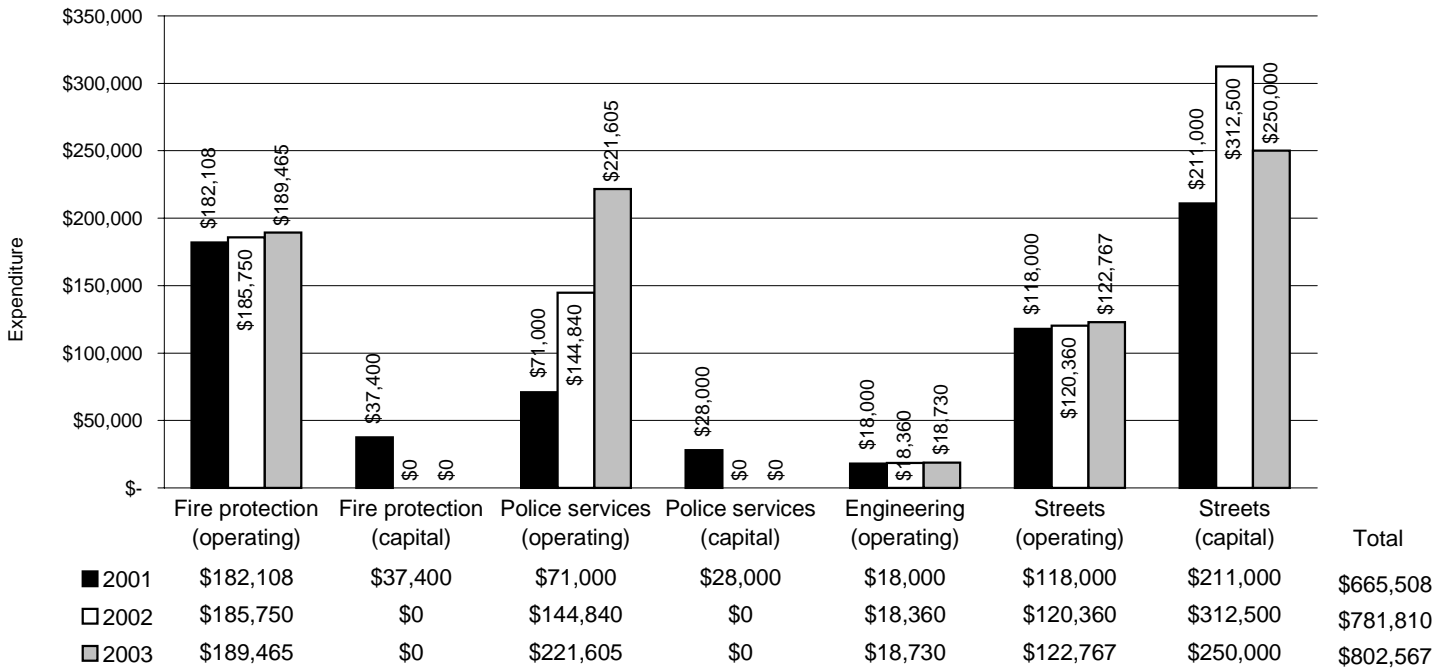


Chart 4-B City of Ketchikan's estimated expenditures from extending new services into the area proposed for annexation



The City estimates that it will incur the costs shown on Chart 4-B to extend *new* services into the territory proposed for annexation during the first three years following annexation. (Amended Petition, pages 6 – 8)

The City states that without annexation, it will be difficult to maintain regional services without placing an undue burden on City residents.

**C. Views of the Respondent and Correspondents**

The respondent and correspondents in this proceeding did not offer substantive comments concerning this standard.

**D. Views Expressed by Ketchikan in its Reply Brief**

Since the respondent and correspondents in this proceeding offered no substantive comments concerning this standard, the City did not address this issue in its reply brief.

**E. DCED's Views**

Information relevant to this standard was provided in DCED's analysis of other standards presented in Sections 1-E, 2-E, and 3-E of this report. In particular, that information

relates to land use in the territory, human resources of the territory, services to be provided by the City, and property valuations in the territory. To avoid redundancy, those discussions are not repeated here. It is reiterated, however, the community of Ketchikan is one of the more populous communities in the state. Citizens in Ketchikan have successfully operated a city government for the past 99 years. For the past 39 years, the City has exercised home rule powers. The City currently provides an impressive range of services, far more than most cities in Alaska.

24 The City's street maintenance component provides services in addition to those strictly related to street maintenance. These include dumping of City trash cans, maintenance of sidewalks, and assisting with community service projects.

miles of streets. The proposed annexation would increase that figure by 3.4 miles, or 15.1%.

The City's current operating budget for street maintenance is \$1,011,849 (\$44,951 per mile) while the current capital budget for street maintenance is \$731,500.<sup>24</sup> The City projects that it will spend an average of \$120,376 annually to maintain the 3.4 miles of roads in the territory. That figure equals \$35,405 per mile. It is projected that the added responsibilities for street maintenance in the territory will increase the City's existing operating budget for street maintenance by 11.9 percent.

The lower *unit cost* for road maintenance in the territory (\$35,405 per mile vs. \$44,951 per mile in the City) reflects the benefits of economies of scale. Following annexation, the overall cost of road maintenance by the City is projected to drop from \$44,951 per mile to \$43,698 per mile, a reduction of 2.8 percent.

In addition to the operating expenditures, the City plans to spend a total of \$773,500 on capital improvements to the streets in the territory during the first three years following annexation.

The City projects that it will expend modest sums for public works engineering in

the territory. The average annual figure is \$18,363. That figure is equivalent to a 2.4 percent increase in the City's current budget for such services.

The City's current operating budget for emergency medical services and fire protection (administration and suppression) totals \$1,825,241. That equals \$216 per person or \$3.70 per \$1,000 in taxable property.

The City estimates that it will spend an average of \$185,774 annually over the first three years to extend fire protection services to the territory. That figure represents a 10.2% increase over the current budget. The \$185,774 average operating cost of extending City fire protection services to the territory is equivalent to \$343 per resident or \$2.95 per \$1,000 in taxable property within the territory.

Projected per capita expenditures in the territory for fire protection are higher than they are for the City. However, projected expenditures in the territory expressed in relation to property values are lower than they are for the City. This is the result of the lower population density of the territory and its higher per capita assessed value as compared to the City.

In addition to the operating expenditures noted above for fire protection, the City estimates that it will incur \$37,400

More specific considerations are outlined below.

.....  
**(1) Projected expenditures associated with the extension of new services to the territory.**

The City has provided the thirteen services previously noted to the direct or indirect benefit of residents and property owners of the territory for an extended period of time. As such, it is reasonable to assume that the City has the human and financial resources to continue to do so, provided the current threat to those resources is addressed. No one in this proceeding has suggested otherwise. Therefore, DCED's analysis of the standard at issue focuses on whether the City has the resources to extend *new* services to the territory.

Regarding the extension of municipal street maintenance, DCED notes that the City of Ketchikan currently maintains 22.51

in capital costs to extend its fire protection to the territory. The City's current capital budget for fire protection and emergency medical services is \$45,150.

The City plans to add three police officers incrementally over three years to maintain adequate service in the expanded territory. In the third year, the City projects that it will spend \$221,605 for the additional police personnel and related expenses. That figure represents a 7.6 percent increase in the current operating budget for the police department.

The projected cost to extend police service in the third year equals \$410 per resident or \$3.52 per \$1,000 of assessed value within the territory proposed for annexation. In comparison, the \$2,901,911 current operating budget for the City's police department amounts to \$343 per resident or \$5.89 per \$1,000 of assessed value within the existing boundaries of the City.

As was the case for fire protection, projected per capita expenditures in the territory for police services are higher than they are for the City. Again, however, projected expenditures in the territory expressed in relation to property values are lower than they are for the City.

In addition to operating costs, the City projects that it will spend \$28,000 in capital

costs to extend police services to the territory during the first three years. The current capital budget for the City's police department is \$88,000.

The City's projections of the cost of extending police, fire protection, and street maintenance to the territory were developed by individuals with knowledge and expertise.

.....  
**(2) Projected sales tax revenues resulting from annexation.**

The City's amended petition estimates that the City will collect \$1,043,035 in sales taxes in the territory in 2001. In the following year, that figure is projected to increase by nearly 29% to \$1,343,895. In 2003, the City projects that the figure will increase by an additional 43.7% to \$1,930,810.

The City's amended petition estimates, however, that a significant portion of the projected sales tax revenues would be shifted from sales that presently occur within the current boundaries of the City. For years 2001, 2002, and 2003 those estimates are, respectively, \$437,500, \$587,650, and \$1,159,550.

Thus, the City projected in its amended petition that it would realize a net increase of \$605,535 in sales taxes during 2001 as a result of annex-

25 The consultants were Reed Hansen & Associates of Bainbridge Island, Washington; Chase Economics of Tacoma, Washington; and Dr. Thomas Muller of Fairfax, Virginia.

ation. The comparable figures for 2002 and 2003 were, respectively, \$756,245 and \$771,260.

After the City filed its petition, it retained the services of a group of consultants to independently review the economic and fiscal impacts of the anticipated commercial development in the territory proposed for annexation.<sup>25</sup> The City spent approximately \$60,000 on the consulting services. The study was completed on July 16, 1999 and is included with the City's reply brief as Exhibit K. The study projected that sales tax revenues from the prospective development in the territory proposed for annexation will be substantially less than that projected by the City.

By extrapolating data from the City's petition, DCED determined that the City had projected that the prospective commercial development in the territory proposed for annexation would generate \$3,482,144 in City sales taxes for the



26 The City projected overall sales tax collections in the territory of \$1,043,035 in 2001, of which \$273,035 were projected be from businesses presently in the territory proposed for annexation. Anticipated sales taxes in 2002 were estimated to be \$1,343,895, of which \$278,496 were expected to be from business presently in the territory. For 2003, the City estimated that sales tax revenues would equal \$1,646,745, of which \$284,065 would be from existing businesses. (Data extrapolated from pages 4 and 5 of the amended petition)

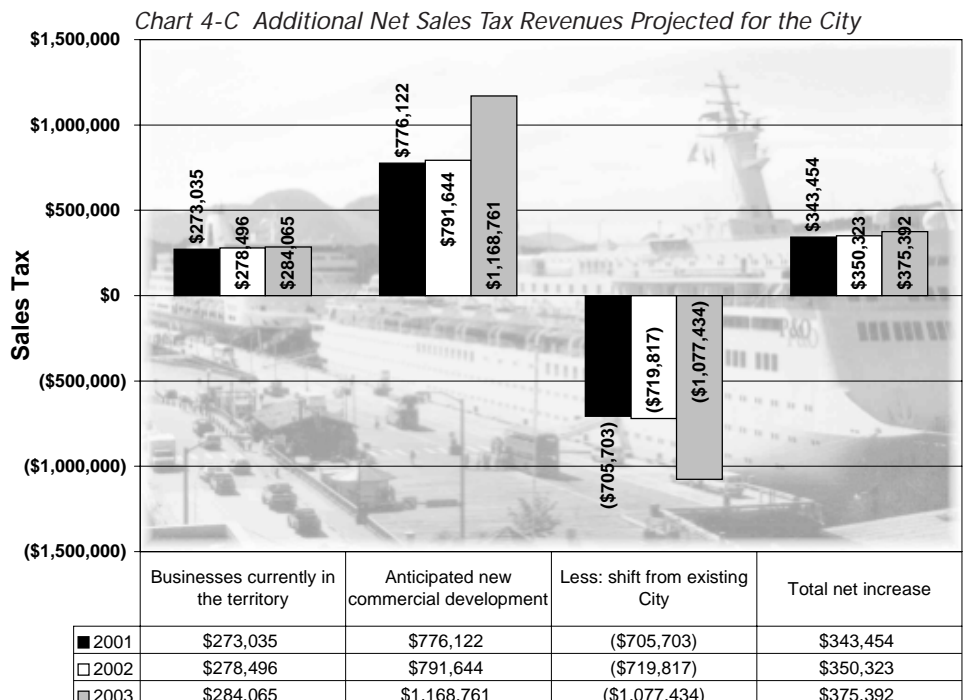
three year period beginning 2001.<sup>26</sup> In comparison, the consultants projected that the prospective commercial development would generate \$2,736,527 over the same period of time. (Reply brief, Exhibit K, page 90) The sales tax revenues projected by the consultants for the prospective commercial development in the territory proposed for annexation were \$745,617 (21.4%) less than those projected by the City over the three year period in question.

Additionally, compared to the City, the consultants anticipate that a substantially greater shift will occur of retail sales from businesses presently within the City to the territory proposed for annexation. Over the three year period beginning 2001, the

City projected that, without annexation, \$2,184,700 in sales tax revenues would be lost as a result of sales shifting from the area currently within the City to the territory. That figure represents 62.74% of the \$3,482,144 in sales taxes that the City projected would be generated in the prospective commercial development from 2001 – 2003. However, the consultants project that the City would lose \$2,502,954 in sales tax revenues over the same period of time. That figure amounts to 91.5 percent of the \$2,736,527 in sales taxes that the consultants project will be generated in the prospective commercial development from 2001 – 2003.

City officials consider the projections by the consultants to be superior to their own given the vastly greater effort by the consultants.

DCED recognizes, of course, that actual sales tax collections in the territory and the extent of sales shifted from businesses within the existing City will depend upon many different variables. Notwithstanding, the consultants appear to have conducted a thorough analytical study of the matter. Further, the consultants appear to have expertise in the study of such matters. Consequently, DCED finds that the sales tax projections by the consultants are reasonable. Those figures are utilized by DCED in this analysis. However, DCED also accepts the City's projections of sales tax revenues from existing businesses within the territory proposed for annexation. The City's projections were based on existing sales tax data provided by the Borough, which currently levies and collects sales taxes on those businesses.





Thus, DCED accepts the sales tax projections shown in Chart 4-C on the previous page for City sales tax revenues with regard to the proposed annexation.

**(3) Other revenues resulting from annexation.**

The City's amended petition projected that the following additional revenues, as shown in Chart 4-D, will result from annexation during the years 2001 – 2003.

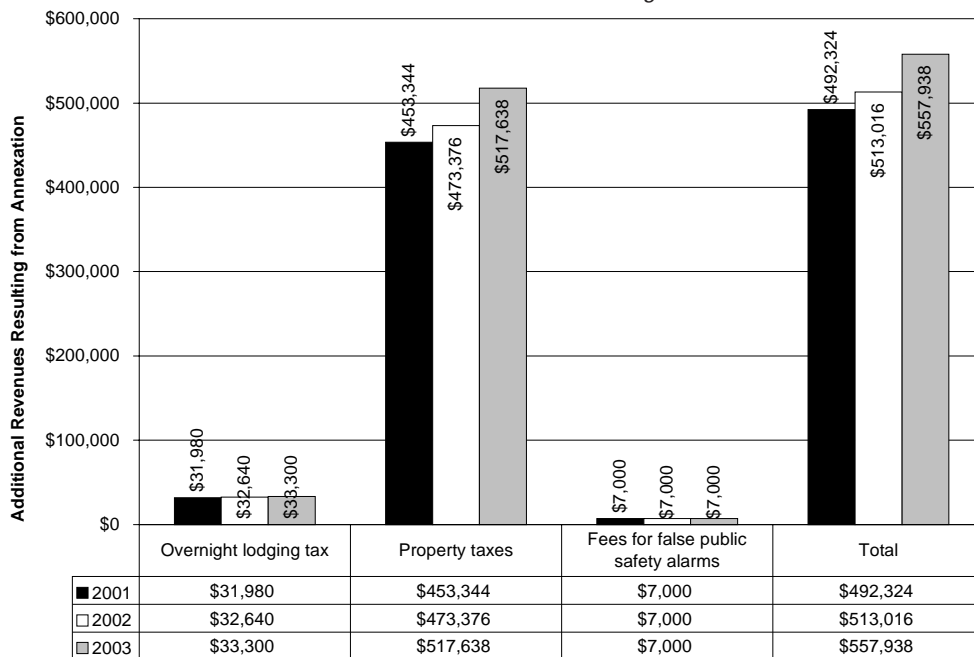
DCED notes that the City did not include projections for increases in State Revenue Sharing and Safe Communities payments from the State. City officials advised DCED that funding from those two programs was not included in the City's projections because of uncertainty over the future of those programs. While acknowledging that there is indeed uncertainty over future funding for the two programs, DCED considers it reasonable to include projections for

advised DCED that a reasonable estimate for such fees would be \$3,300 annually. Thus, DCED projects that additional revenues, as shown on Chart 4-E would accrue to the City as a result of annexation.

**(4) Conclusions.**

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.

Chart 4-D Additional Revenues Resulting from Annexation



DCED carefully considered the City's projections for revenues from the overnight lodging tax, property tax, and fees for false public safety alarms. Those projections are based largely on existing data. As such, they are considered reasonable by DCED.

State Revenue Sharing and Safe Communities funding based on current fiscal year levels. DCED also noted that the City did not include an estimate for revenues resulting from building inspection fees in the territory proposed for annexation. City officials

The \$825,751 figure is equivalent to 1.6 percent of the total current operating and capital budget of the City. As such, the proposed annexation does not represent a major financial challenge for the City. The impacts on certain indi-

Total Anticipated Net Revenues & Expenses

	2001	2002	2003
Net Revenues	\$839,078	\$885,256	\$949,101
Expenditures	\$665,508	\$781,810	\$802,567
Difference	\$173,570	\$103,446	\$146,534

margin by which annual average net revenues exceed annual average expenditures in the territory during the first three years from \$141,183 to \$65,393. Even so, annexation will not be a financial burden on the City.

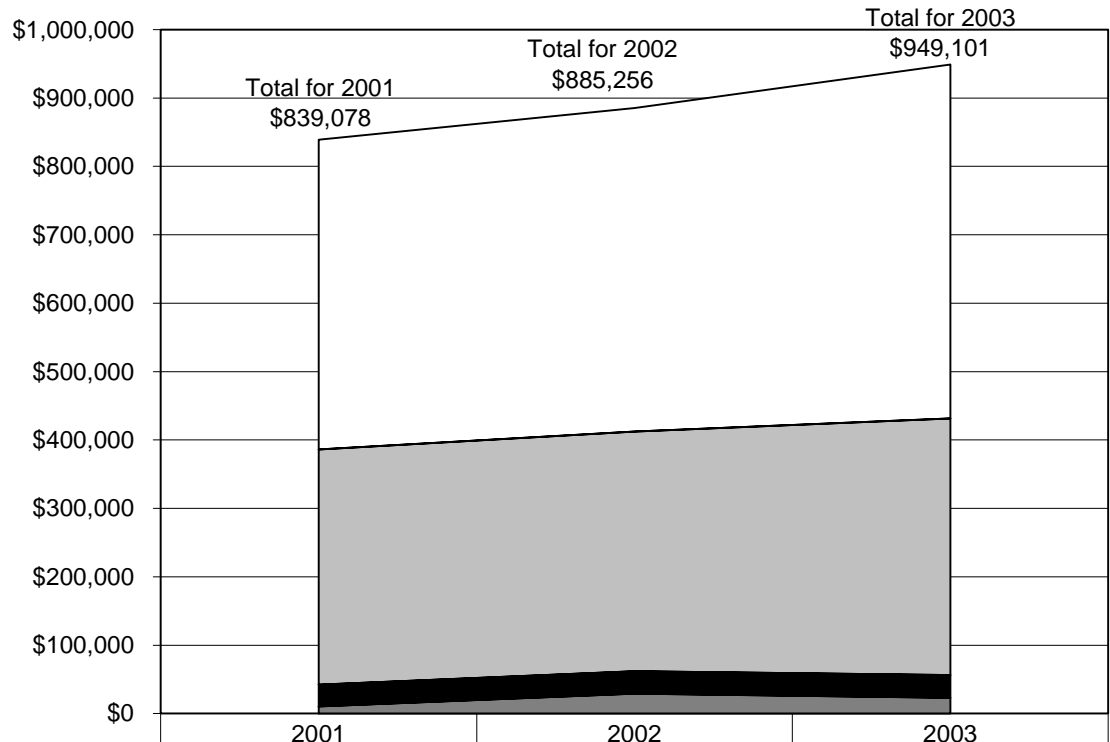
DCED concludes from the foregoing that the area within the proposed *post-annexation* boundaries of the City clearly has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. As such, the standard set out in 3 AAC 110.110 is satisfied.

vidual affected departments of the City will, of course, be greater. In relative terms, the 11.9% increase in the operating budget for the City's street maintenance effort represents the largest impact. Projected increases for other departments are as follows: fire protection: 10.2%; police service: 7.6%; and engineering: 2.4%. Such relative increases do not represent especially formidable challenges for the City.

The reasonably estimated annual net revenues exceed the reasonably projected annual expenses by an average of \$141,183. However, that does not fully reflect the contingent of the planned three new police officers. To provide a more realistic projection of long-term costs, it would be best to use the projected cost for police during 2003 for the preceeding two years as well. Doing so reduces the

The total reasonably anticipated net revenues and expenses associated with the extension of City services into the territory proposed for annexation for the first three years are shown on the table above.

Chart 4-E Additional Revenues Accruing to the City as a Result of Annexation



	2001	2002	2003
Property Taxes	\$453,344	\$473,376	\$517,638
Net Increased Sales Taxes	\$343,454	\$350,323	\$375,392
Overnight Lodging Tax	\$31,980	\$32,640	\$33,300
Other	\$10,300	\$28,917	\$22,771

# Section 5

## Population Size and Stability

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### A. The Standard

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State law allows an area to be annexed to a city provided, in part, that the LBC determines the population within the proposed *post-annexation* boundaries of the city is large and stable enough to support the extension of city government. In that respect, the law provides as follows:

.....  
**3 AAC 110.120. POPULATION.**

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

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### B. Views Expressed by Ketchikan in its Petition

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In its amended petition, the City's position that this stan-

dard is met is supported by the following assertions:

The annexation proposal is not driven by population considerations but by the need to expand the City's jurisdiction in response to an anticipated shift in retail sales activity from inside the current boundaries of the City to the territory proposed for annexation. Nevertheless, the proposed expansion of the boundaries of the City following annexation is expected to increase the population of the City by 486 people (5.7%).

Since incorporation nearly 100 years ago, the population of the City has been large and stable enough to support delivery of essential local government services. The City views the proposed annexation as a means to maintain that stability.

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### C. Views of the Respondent and Correspondents

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The Borough indicated that it concurs with the City's view that the boundaries proposed by the original petition include a sufficiently large population to support the extension of City government. (KGB letter, page 11) The SSA offered no substantive comments disputing the City's contention that this standard was satisfied.

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### D. Views Expressed by Ketchikan in its Reply Brief

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The City notes that the KGB concurs with the City regarding population size and stability. (Reply Brief; page 25)

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### E. DCED's Views

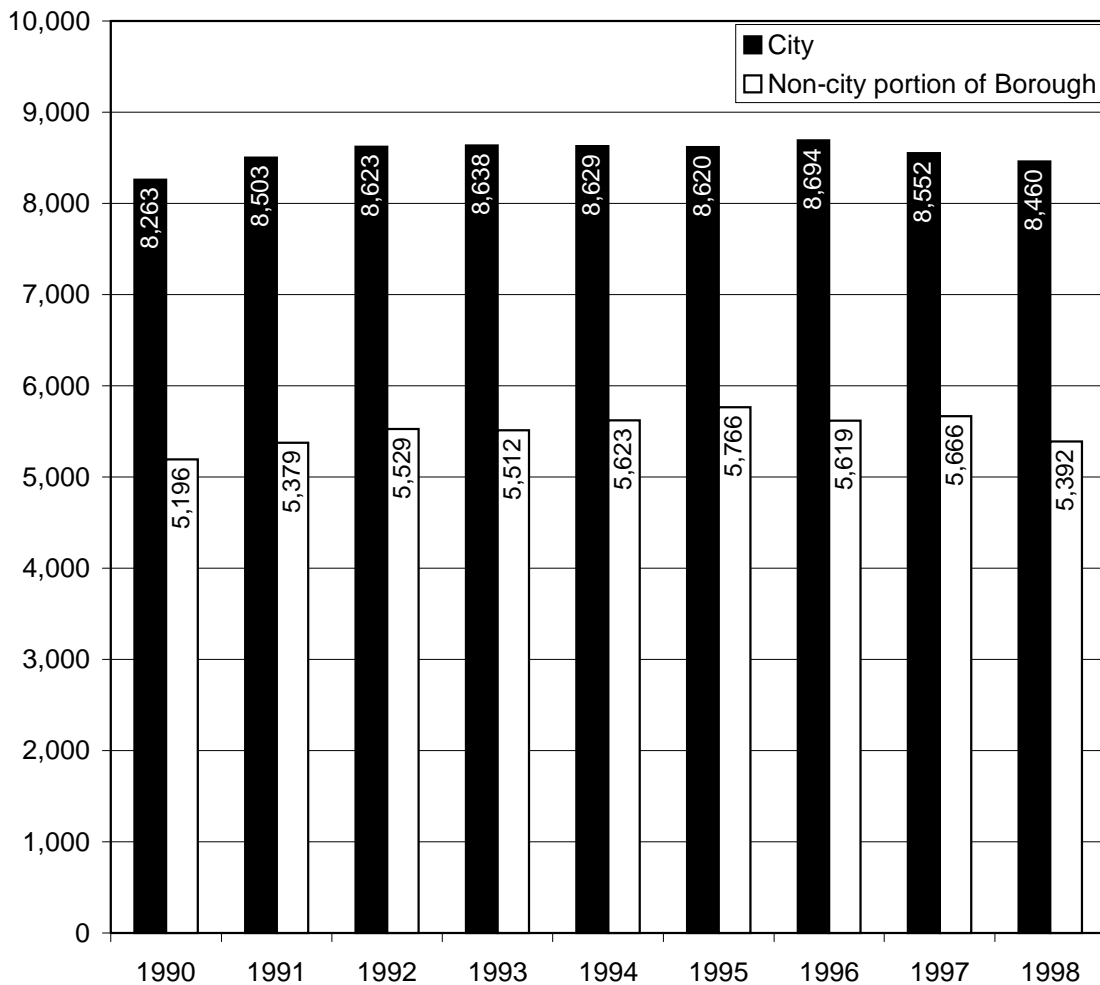
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As noted in Section 1 E(4), DCED estimates that the territory proposed for annexation was inhabited by 541 residents in 1998. That figure exceeds the population threshold for incorporation of first class and home rule cities in Alaska by more than 35%.

With 8,460 residents, the City of Ketchikan currently ranks as the second most populous city government in Alaska. The population of the City of Ketchikan is 20% larger than that of the City of Kenai, the third most populous city government in the state.

The combined population of the territory and the City totals 9,001. The proposed expanded City would continue to rank as

Chart 5-A Population



the second most populous city government in Alaska. As such, it clearly has a population that is large enough to support the extension of city government.

Chart 5-A lists the population figures for the City and the "non-city portion" of the Borough (which includes the area proposed for annexation) during the past 9 years.

Between 1996 and 1998, the City's population receded by 2.7%.

That decline is attributed largely to the closure of the Ketchikan Pulp Company's operations at Ward Cove. Notwithstanding, from 1990 to 1998, the City's population still increased by 2.4%. The Borough's non-city population, which includes the territory proposed for annexation, increased 3.8% from 1990 to 1998. Like the City's population, the Borough's non-city population has receded from its peak of the decade. The 1998 figure is 6.5% less than the apex for the decade

reached in 1995. Again, the recent decline is largely the result of the closure of the Ketchikan Pulp Company's operations at Ward Cove.

DCED concludes from the foregoing that the population of the proposed expanded City is both large and stable enough to support the extension of city government to the territory proposed for annexation.



# Section 6

## Inclusion of All Necessary Areas

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### A. The Standard

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An area may be annexed to a city provided, in part, that the enlarged boundaries include all areas needed to provide city services in an efficient and cost-effective manner.

Specifically, the law provides as follows:

**3 AAC 110.130(a).** The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, 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.

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### B. Views Expressed by Ketchikan in its Petition

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In support of its contention that this standard is satisfied, the City states the following in its amended petition:

The City's rationale for its particular boundary proposal is two-fold. First, annexation of those areas that will undergo significant commercial growth in the near future will allow the City to provide necessary services to residents and businesses within the North Tongass Addition and other areas proposed for annexation at a manageable cost. Given economic uncertainty following closure of the Ketchikan Pulp Mill, the continuing decline of Southeast Alaska's resource based economy, and the significantly increased operating and capital costs of annexing additional territory, annexation of only a portion of the Shoreline Service Area was proposed by the original annexation petition. However, following the filing of that original petition, both the Borough and SSA recommended that the entire Shoreline Service Area be annexed to the City. Although economic uncertainty continues, the City believes that adequate resources exist within the entire Shoreline Service Area to ad-

equately provide services while offsetting impacts from the development in the territory proposed for annexation.

The City contends that enlarging the territory to include the entire Shoreline Service Area also follows recommendations of the Local Boundary Commission. In its January 28, 1999 report to the Twenty-First State Legislature, the LBC encouraged city governments to adopt a more comprehensive approach to annexation. The Commission recognized that while voluntary, piecemeal annexations may be locally favored politically, they do not necessarily represent the best public policy. In particular, efficiency and effectiveness in the delivery of City services such as planning, utilities, road maintenance and public safety are likely to diminish as a consequence of unnaturally constrained corporate boundaries.

Secondly, the proposed new boundaries will offset the projected loss of \$1,159,550 in sales tax revenue that the City depends upon to help finance services provided to the greater Ketchikan community. By the end of its third year, the pro-



posed annexation is expected to generate \$1,329,198 in additional revenues resulting from increased real and personal property taxes; new sales and transient occupancy taxes; State Revenue Sharing and Safe Communities Funding; and other miscellaneous service fees. Additional operating costs resulting from annexation are projected at \$552,567. The City has identified \$838,900 in capital improvements to be undertaken by the City in the territory proposed for annexation. The proposed new boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.

*capital costs of annexing additional territory" caused the City to severely limit the size of the original proposal. However, according to SSA, all businesses in the greater Ketchikan area are subject to the same factors. This raises questions as to how the proposed annexation would provide for the full development of essential city services on an efficient, cost-effective level. SAA follows up by asking, "What would be the effect on the City's ability to provide services within the present City limits or the SSA after annexation, if the City's projections for revenues fall short for any reason?"*

clude all land and water necessary to provide the full development of essential City services are an efficient cost effective level. The Borough stated, ". . . the City's discussion of this issue is deficient in that it does not address the fact that the remainder of the Shoreline Services Area is additional land which should be included to provide services on a (sic) efficient and cost effective level." (KGB letter, page 11)

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### D. Views Expressed by Ketchikan in its Reply Brief

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The City notes in its reply brief that the concerns expressed by the Borough regarding this topic are addressed by the amendment of the petition initiated by the City. Otherwise, the City reasserts its belief that the standard at issue is met.

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### E. DCED's Views

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The standard at issue concerns whether there are areas outside the five square miles encompassed by the proposed post-annexation boundaries of the City that are crucial to the City's ability to provide essential city services efficiently and cost-effectively. Relevant information concerning land use characteristics, land ownership patterns, population densities, extraterritorial powers, and transporta-

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### C. Views of the Respondent and Correspondents

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#### **Views of Respondent SSA.**

SSA takes the position that the proposed annexation "does not meet [the] 'all land and water necessary' test" (SSA Brief, page 24) SSA contends that the City's proposal is based upon an inconsistent philosophy. Specifically, SSA states that the City's concern over "economic uncertainty following the closure of the Ketchikan Pulp Mill, continuing decline of southeast Alaska's resource based economy and the significantly increased operating and

The second point regarding this standard raised by SSA deals with topographic features and development patterns in the territory proposed for annexation. Those factors, SSA claims, would render extension of water and sewer utility services difficult and expensive. SSA states that initially, City services that would be offered to the territory proposed for annexation would be limited "largely to fire, police and some public works department services." (Ibid., page 25)

.....

#### **Views of the KGB and other Correspondents.**

The Borough maintained that the City's initial boundary proposal failed to in-

tion patterns was provided in each of the prior sections of this report. To avoid redundancy, such information will not be repeated here.

The respondent Shoreline Service Area criticizes the City's annexation proposal in the context of this standard as not addressing the long-term jurisdictional needs of the City. However, SSA has not shown that areas outside the five square miles in question are actually *crucial* to the capacity of the City to operate efficiently and effectively.

The City's proposed post-annexation boundaries may not be perfect. As noted previously, the City's boundaries are, by Alaska standards, quite

conservative. This is reflected in the City's standing as the most densely populated city government in the state – a distinction it would retain by a wide margin even after annexation.

Because of the fiscal impacts that the anticipated commercial development would have on the City, DCED considers the annexation of that territory to be essential to the City's ability to maintain the current level of services on an efficient and cost-effective basis.

As commercial development in the territory proposed for annexation occurs, the projected shift in sales between the two areas in

question increases substantially over time as is reflected in chart 6-A.

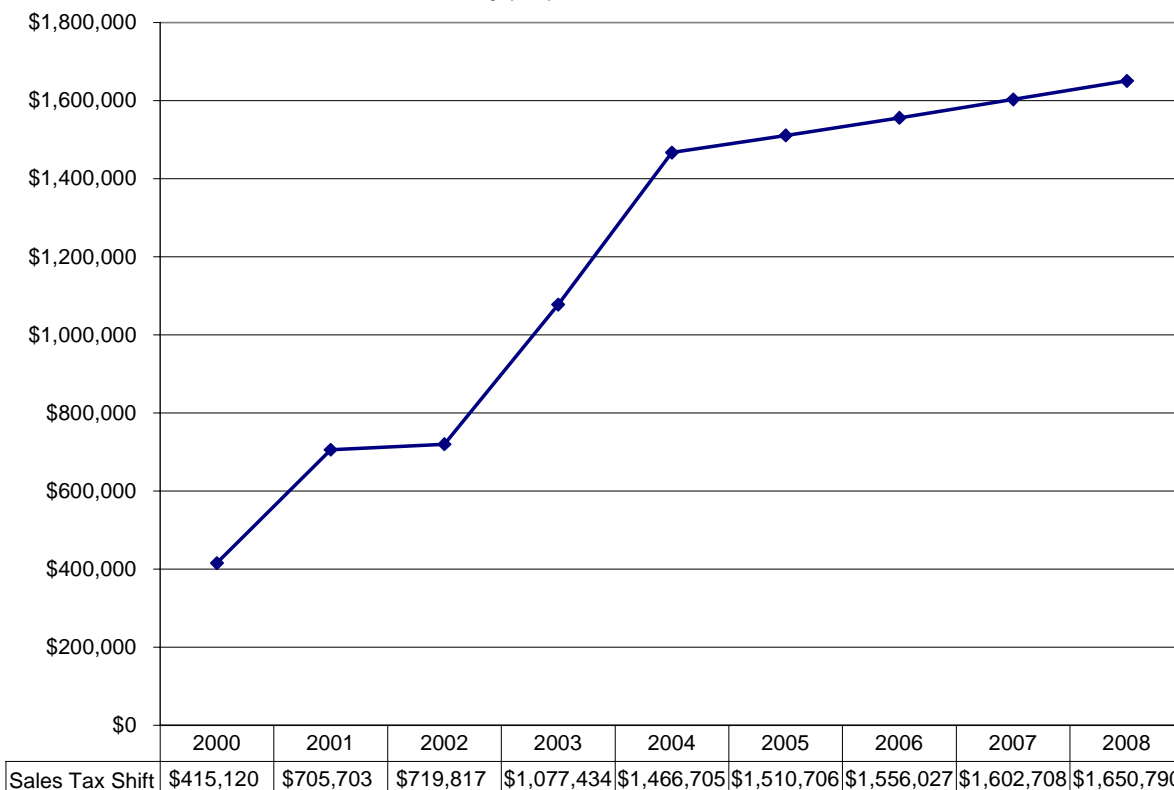
As noted in Section 4 E of this report, consultants retained by the City project that 91.5 percent of the taxable sales in the prospective commercial development from 2001 – 2003 will be shifted from the area within the City's current boundaries.

The Borough characterized the City's original projected annual losses of revenue as "insignificant" (\$437,500 initially, increasing to \$1.16 million by 2003). The Borough noted in that respect that the range of projected losses was equivalent

to 1.56% – 4.14% of the City's current revenues. (KGB letter, page 5).

Expressing the projected losses in *relative terms* based on the *entire budget* of the City, as the Borough has done, makes the figures appear deceptively modest. The City's pro-

Chart 6-A Projected shift of City sales tax revenues from the area within the current City boundaries to the territory proposed for annexation



jected loss of \$1.16 million in 2003 is equivalent to 18.4% of the total projected sales tax revenues of the City in the current year. Further, as was shown in the preceding chart, the City's consultants projected that, absent annexation, the City's losses will escalate to more than \$1.6 million by 2008.

Additionally, when the City's projected losses are expressed in *absolute terms*, they are anything but insignificant. \$1.6 mil-

lion in 2008 will fund many City services. It is ironic that the Borough characterized the City's prospective losses as "insignificant" but was also critical that the City failed to mention the Borough's projected annual loss of \$10,000 - \$15,000 in general fund revenues that would stem from annexation. (KGB letter, page 7)

To offer a comparison similar to that of the Borough, \$15,000 represents 0.03% of the Borough's current budget (even excluding most education funds).

Based on the foregoing discussion, DCED concludes that the standard in 3 AAC 110.130(a) is satisfied. There may be other areas, however, that are *suitable* for inclusion within the corporate boundaries of the City that are outside the scope of its current annexation proposal. However, again, there is no evidence that such areas are "necessary to provide the full development of essential city services on an efficient, cost-effective level."



# Section 7

## Contiguity

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### A. The Standard

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An area may be annexed to a city provided, in part, that it is contiguous to the annexing city, unless a compelling reason exists for annexation of non-contiguous territory. Specifically, the law provides as follows:

**3 AAC 110.130(b)** Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation.

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### B. Views Expressed by Ketchikan in its Petition

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The City’s brief notes that the territory is contiguous to its existing corporate boundaries. (Amended Petition, Exhibit H, pages 8 and 11). Additionally,

maps provided in Exhibit C of the City’s amended petition demonstrate that the territory is contiguous to the existing boundaries of the City.

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### C. Views of the Respondent and Correspondents

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.....  
***Views of Respondent SSA, Correspondent KGB and other Correspondents.***

Neither the respondent nor any of the correspondents assert that the territory is not contiguous.

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### D. Views Expressed by Ketchikan in its Reply Brief

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Since lack of contiguity between the area proposed for annexation and the area within the existing boundaries

of the City was not raised by the respondent or correspondents, the City does not address the issue in its reply brief.

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### E. DCED’s Views

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The territory clearly adjoins the current boundaries of the City. Thus, the standard set out in 3 AAC 110.130(b) is satisfied.



# Section 8

## Boundaries Limited to Local Community and Next Decade of Growth

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### A. The Standard

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An area may be annexed to a city provided, in part, that it is limited to the "existing local community", plus areas projected for growth and service needs during the next ten years.

Specifically, the law provides as follows:

**3 AAC 110.130(c)** The proposed boundaries of the city must 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 of that city.

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### B. Views Expressed by Ketchikan in its Petition

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The City makes multiple references throughout its brief expressing the view that the territory is part of the greater Ketchikan community. (Amended Petition, Exhibit H, pages 1, 3-9, 11, and 12)

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### C. Views of the Respondent and Correspondents

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.....  
**Views of Respondent SSA.**

SSA considers 3 AAC 110.190(c) to require petitioners to "look forward ten years, to project likely developments, and to incorporate plans for those changes." In this particular case, SSA asserts that the City "did not meet that responsibility." (SSA Brief, page 14)

.....  
**Views of the KGB and other Correspondents.**

No substantive comments were offered on this aspect of the petition by correspondents.

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### D. Views Expressed by Ketchikan in its Reply Brief

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The City points out that page 6 of SSA's initial brief states, "The Shoreline area has been a community for many years. The KGB formalized that community structure in 1969 when it established the SSA. The pro-

posed North Tongass Addition includes only approximately one half of that community. To be acceptable under (3 AAC 110.130(c)), the area proposed for annexation should be expanded to incorporate the entire SSA."

The City notes further, that page 7 of SSA's initial brief states, "However, many in the SSA believe that the City intends eventually to annex the entire SSA. If that could reasonably occur within 10 years, it would appear appropriate to propose the entire area at this time. This seems especially appropriate given the fact that the SSA is a community."

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### E. DCED's Views

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SSA misinterprets 3 AAC 110.130(c). That law *allows* but does *not compel* a petitioner to propose the annexation of areas of "reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation." Like the standard addressed in Section 9 of this report, 3 AAC 110.130(c) is a limit on the inclusion of excess territory within the corporate boundaries of cities.



As DCED addressed extensively in Section 1 E of this report, particularly Section 1 E (6), the 1.2 square mile territory proposed for annexation and the 3.8 square mile area within the current boundaries of the City are clearly parts of the

same community. To avoid redundancy, details of that prior discussion are not repeated here.

Since all of the 5.0 square mile area encompassed by the proposed post-annex-

ation boundaries of the City is part of the same community, the City's annexation proposal obviously conforms to the standard set out in 3 AAC 110.130(c).



# Section 9

## Exclusion of Large Unpopulated Regions

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### A. The Standard

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An area may be annexed to a city provided, in part, that the proposed boundaries exclude large uninhabited areas, except when justified by other annexation standards. Specifically, the law provides as follows:

**3 AAC 110.130(d)** The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.130.

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### B. Views Expressed by Ketchikan in its Petition

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The City implicitly asserts that it complies with this standard by noting that the territory proposed for annexation encompasses 1.2 square miles and is inhabited by 486 individuals. (Amended Petition, Exhibit H, page 6)

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### C. Views of the Respondent and Correspondents

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.....  
**Views of Respondent SSA.**

The SSA does not suggest that the area proposed for annexation contains large, unpopulated areas.

.....  
**Views of the KGB and other Correspondents.**

None of the correspondents suggested that the area proposed for annexation or the area within the current boundaries of the City of Ketchikan contains excessively large, unpopulated areas.

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### D. Views Expressed by Ketchikan in its Reply Brief

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The subject is not addressed in the reply brief, presumably because nothing in the record suggests that the City of Ketchikan's annexation proposal violates the prohibition against inclusion of large unpopulated areas.

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### E. DCED's Views

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Approval of the City's annexation proposal would expand its jurisdictional territory by 1.2 square miles or 31.6%. However, Ketchikan's expanded boundaries would remain small in comparison to most other cities in Alaska. Ketchikan's new boundaries would encompass only five square miles.

In comparison, the average size of Alaska's 145 city governments is 27.11 square miles. The median size of all cities in Alaska is 8.5 square miles. The proposed post-annexation boundaries of the City encompass an area that is 82% smaller than the average and 41% smaller than the median of all 145 cities in Alaska.

Comparisons among Alaska's most populous cities provides even more relevant and dramatic evidence of the relatively small size of Ketchikan's proposed boundaries. The average area encompassed by the corporate boundaries of the other 10 most populous cities in Alaska is 67.27 square miles; the median figure is 29.4 square miles. Ketchikan's proposal is 93% *smaller* than the average and 83% *smaller* than the median.

As is shown in Chart 9-A, with one exception, the population of the ten cities in question is substantially less than the population of the City of Ketchikan.

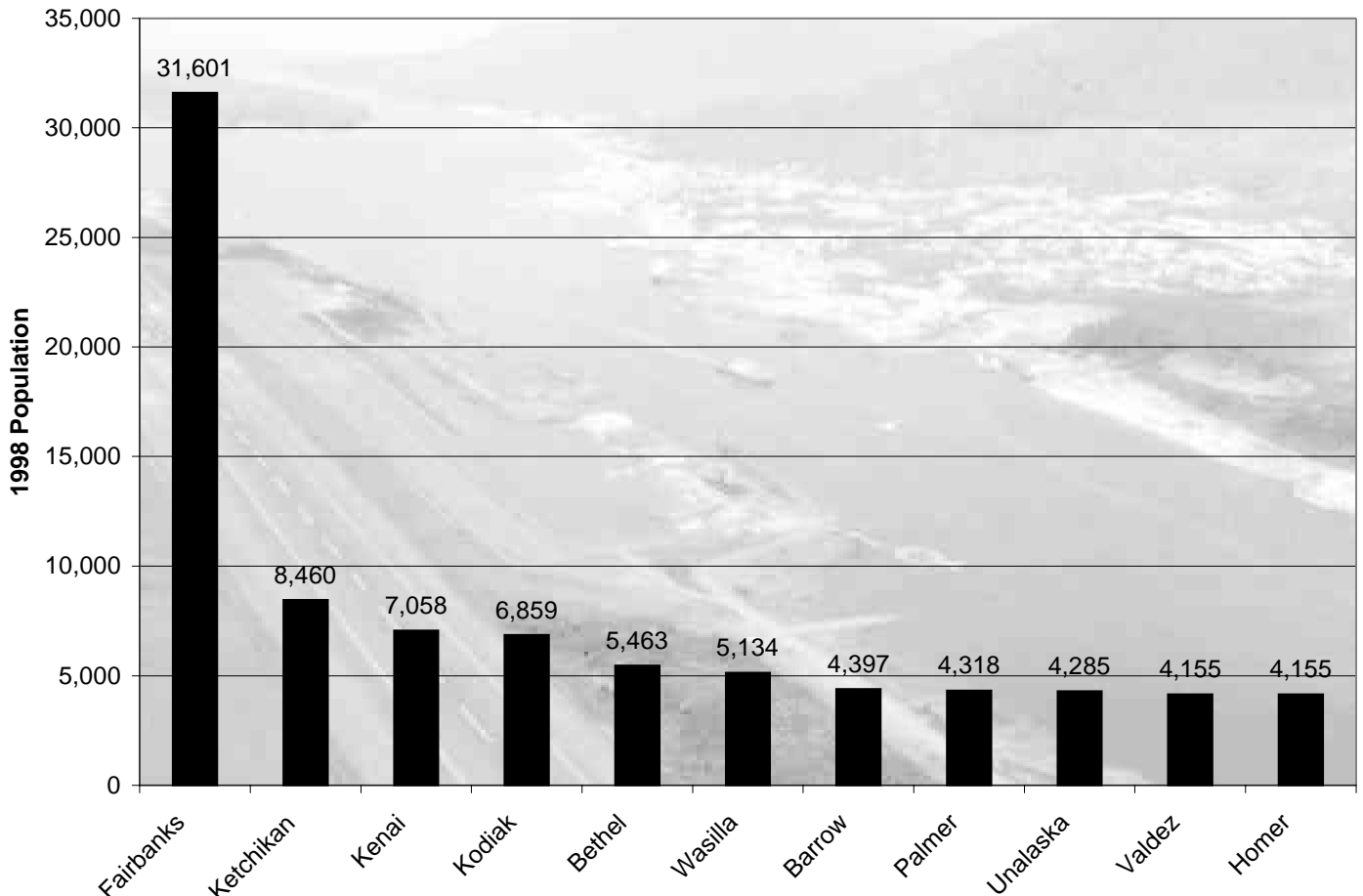
Thirty-nine cities in Alaska have boundaries encompassing an area equal to or less than the proposed size of the City of Ketchikan. Of these, only North Pole and Palmer have populations in excess of 900. However, neither of those two cities have populations or development approaching that of Ketchikan.

Even after annexation, the City of Ketchikan would remain the most densely populated city government in Alaska, far out-pacing the second most populous city in the state.

The per capita assessed value of real and personal property within the proposed expanded boundaries of the City would be \$61,766. The comparable figure for the 1.2 square miles proposed for annexation is \$116,230. Those figures alone are strong evidence of significant development within the area in question.

Based on the foregoing, DCED concludes that the proposed post-annexation boundaries of the City do not include entire geographical regions or large unpopulated areas. Thus, the standard established at 3 AAC 110.130(d) is satisfied.

Chart 9-A Alaska's Most Populous Cities



# Section 10

## Balanced Best Interests

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### A. The Standard

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3 AAC 110.140 sets out the “best interests” standard relating to legislative review annexation proposals as follows.

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

(1) territory is an enclave surrounded by the annexing city;

(2) health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

(3) extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city resi-

dents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;

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

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

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

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### B. Views Expressed by Ketchikan in its Petition

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In the City’s view, *“An equitable balancing of interests clearly favors annexation of the North Tongass Addition.”*

(Amended Petition, Exhibit H, page 7) The City contends that if the proposed annexation does not occur, the rapidly growing territory proposed for annexation will be denied essential public safety and public works services, and the City will be deprived of revenues required to provide essential services.

The City asserts that the relocation of auto sales and service dealerships and the construction of new overnight lodging facilities in the territory proposed for annexation already costs the City at least \$97,000 in lost sales and transient occupancy taxes annually. Given the prospects of a slow growth or no growth economy due to the closure of the Ketchikan Pulp Mill, such loss of tax revenues cannot be recouped by the City.

The City anticipated that residents and property owners in the area proposed for annexation might argue against the annexation proposal on the grounds that it is not in their best interests. The City predicted that opponents of annexation would assert that they would not benefit from annexation and would characterize themselves as victims



who happen to be located between the City's present boundaries and the Mile 4 North development. The City also predicted that opponents of the annexation proposal would malign the City's annexation as a "money grab."

The City's brief noted that the average assessed value of a residence in the territory to be annexed is approximately \$182,000, requiring the average homeowner to pay \$1,165 annually in additional taxes as a result of annexation (based on the City's current levy of 6.4 mills). According to the City's brief, the impact of such additional taxes would be partly offset by the elimination of the 1 mill Shoreline Service Area levy and the 0.92 mill non-areawide Borough tax levy. Elimination of those taxes would reduce the additional tax burden upon the average homeowner by \$349. The City also projected that the added property tax burden would be mitigated by "up to a thirty-nine percent decrease in fire insurance premiums through at least 2005," at which time the City will undergo its next scheduled ISO evaluation. Such would produce insurance savings estimated at \$384 on a \$182,000 residence. Thus, argues the City, annexation would result in a net annual increase of \$432 to the average homeowner within the area proposed for annexation. The City also notes that homeowners in the area pro-



*National Bank of Alaska branch located in the area proposed for annexation*

posed for annexation could further benefit from the federal income tax deduction for municipal property tax payments.

The City notes that residents and businesses of the North Tongass Addition will continue to benefit from services that the City provides to the entire community. They will also receive municipal police service, improved fire protection, and improved street maintenance.

According to the City's brief, absent the proposed annexation, residents and businesses in the North Tongass Addition will, in all likelihood, be required to assume a greater percentage of the cost of regional service delivery through Borough sales and property taxes. The City would be unable to continue to finance

regional services at the level to which the community has become accustomed.

Rather than being a "money grab," the City characterizes the proposed annexation as a change to provide needed municipal services to the North Tongass Addition and provide for the maintenance of regional services afforded to the community at large. The City considers annexation as the means by which it will be enabled to balance the community's resources with the community's service needs. Thus, annexation is considered by the City as the best way to ensure provision of the greatest degree of services to all residents within the greater Ketchikan area.

The City opines that, absent annexation, the State will be permanently burdened with the cost of providing services to the territory. The City concludes that in this case application of the “balanced best interests” test ensures the well-being of the State, the City, the Borough, and the area proposed for annexation.

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### C. Views of the Respondent and Correspondents

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#### ***Views of Respondent SSA.***

In its first responsive brief, SSA stressed that the best interests of the area proposed for annexation were not served because the annexation, as originally proposed, would have split the service area in half and could eliminate the viability of the SSA. (at 17)

In its second responsive brief, the SSA stated that:

- SSA residents only represent approximately eight percent of the non-City population benefiting from City services without a commensurate tax contribution. The City’s proposal to annex the North Tongass Addition would reduce, but not

eliminate, the number of residents and businesses that reportedly pay less than a fair share of the cost of providing the City services that they enjoy.

- The proposed boundaries do not reflect a comprehensive approach to community problems. Other adjacent areas (e.g., Ward Cove and the airport) are similarly poised for significant development; the City’s “balanced best interest” arguments for annexation of SSA would seemingly apply equally well to those areas.
- The Petition appears to be duplicative of the City’s petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough governments.
- 19 AAC 10.140(3) requires a showing that “it is impossible or impractical for the city to extend the services unless the territory is within the boundaries of the city.” “Impossible” and “impractical” are relatively high standards. As an example, the petitioner claimed that the City could arrange with the KGB to extend fire protection and water services under contract or other means into the North Tongass Addition area.

- The Petitioner does not demonstrate that “extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents.” Until the City demonstrates that it cannot extend those services by some other acceptable means, it seemingly cannot address this standard.
- The Petitioner fails to show that “no practical or equitable alternative method is available to offset the cost of providing these benefits.” There are alternative methods available to offset the cost of providing fire protection and public water system services to the North Tongass Addition. The City should bear the burden of identifying the alternatives and demonstrating that these alternatives for offsetting the cost of providing those services are not “practical or equitable.”
- The City does not demonstrate that the territory proposed for annexation is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners. Since it is inhabited by 486 people, the SSA is not sparsely populated. It has enough population to meet the State’s



*This view of the territory proposed for annexation shows Lewis Motors (upper left), National Bank of Alaska (upper center), Karlson Motors (upper right). The new Wal-Mart store will be located in the center. Additional future development is expected to occur in the center left.*

population standards for incorporation as a first class city. A local election would serve well to “represent the interests of the majority of the landowners.”

.....  
**Views of the KGB and other Correspondents.**

The Borough indicated with respect to the original petition that annexation would not serve the balanced best interests of the State, the territory to be annexed and all political subdivisions affected by the annexation. Specifically, the Borough asserted that:

- health, safety, or general welfare of City residents will not be endangered by conditions existing or potentially developing in the territory, and annexation is not necessary to enable the City to regulate or control the detrimental effects of those conditions;

- extension of City services or facilities into the territory is not necessary to enable the City to provide adequate services to City residents;
- annexation is not necessary to enable the City to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the City;
- residents or property owners within the territory do not receive, and may not be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions.

The Borough concluded, however, that the balanced best interests of the state, the territory to be annexed and all political subdivisions are best served if the City of

Ketchikan annexes either all or none of the Shoreline Service Area.

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**D. Views Expressed by Ketchikan in its Reply Brief**

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In its reply brief, (pages 2 – 5), the City observes that the April 30 SSA brief acknowledged certain factors which prompted the City to seek annexation of the SSA. These factors included the tax generating potential of the North Tongass Addition, the significant City revenue problems if projected development occurs immediately outside the City’s current boundary and the likelihood that future growth and development in the subject territory could require services of a higher level than presently offered.

The City stated that it considered the Shoreline Service Area Board of Directors' second brief to further validate many of the City's underlying reasons for proposing annexation of the entire SSA. For instance, the SSA Board acknowledged the inequity and inefficiency that exists when services are extended by the City yet enjoyed by those who reside outside the City limits. The City contended that such underscores the importance of redressing the inequity by enhancing the City's ability to recapture sales tax revenue that will be lost to the City as a direct result of Wal-Mart and the other pending development at Mile 4 North. The City indicated that without annexation, existing inequities and inefficiencies would be exacerbated.

The City noted the statement in SSA's second brief that residents of the SSA were purportedly willing to "pay their fair share" for services but objected to the annexation on the basis that SSA taxpayers should not have to bear the relatively heavy burden of annexation to solve problems that are clearly community-wide.

The City insisted that it had not singled out the Shoreline Area from other areas of the Borough for

annexation to eliminate inequities and inefficiencies. Instead, the City considered annexation of the Mile 4 North area to represent a logical response to a major shift in taxable sales from inside the City to Mile 4 North as a result of the development of a Wal-Mart and other commercial activity. Annexation would allow the City to remain whole by extending the City's ability to capture existing sales tax revenues and benefit the developing area by providing enhanced life and safety services under the auspices of the City.

The City rejected as invalid, assertions that it is "*unreasonable to impose the weight of annexation on only the Shoreline Service Area,*" and that becoming City residents places a "*heavy burden*" on Shoreline residents. The City characterized such positions as failing to accept the fact that 59 percent of the Borough's population currently are able to pay their fair share without it being a burden. The City also considered inconsistent the recognition by the SSA Board of Directors of inequities and inefficiencies with the Board's opposition to the City's efforts to reduce those inequities. According to the City, consideration of the "best interests" of the entire community compels support for the proposed annexation.

The City asserted that conclusions in the Reed Hansen study clearly affirmed the City's position that a major shift in sales tax generation will occur as a result of the Mile 4 North development. It contends that "Rather than asserting a '*Henny Penny*' allegory, the Borough would have been better positioned to make its arguments had it undertaken an analysis comparable to that commissioned by the City." The City states that if the KGB had done so, it would have concluded that a major shift in sales tax generation will occur and, absent annexation, that the Mile 4 North development will become to the City's ability to provide essential community services what a "north Atlantic iceberg became to the *R.M.S. Titanic*."

The City argues that pending development will increase the need for law enforcement and fire protection and that the current level of services is insufficient to meet the increased needs. The City maintained that given the current budget crisis facing the State, the KGB "*cannot continue to rely on free law enforcement services provided by the state, free road services provided by the state and the availability through mutual aid agreements of fire protection services provided by the City to meet increased needs.*" The City predicted that State services will decrease, placing more responsibility on local



municipalities and noted that the City has the infrastructure and ability to provide these life/safety services on a cost-efficient basis. On this basis the City considers the health, safety and general welfare of City residents to be endangered by conditions developing in the territory proposed for annexation and considers annexation necessary to provide the City with the ability to regulate or control detrimental effects of those conditions.

On pages 24 – 25 of its reply brief, the City takes issue with the suggestion by the KGB that **if** a shift in retail sales from within the City to areas outside of the City occurs, such reduction in City sales tax revenues might not jeopardize the ability of the City of Ketchikan to provide services to its residents.

The City expressed frustration that the Borough failed to recognize the extent to which a shift of retail sales from inside the City to outside the City would negatively impact the ability of the City to provide services. The City held that *"the shift is real and of sufficient magnitude to require immediate action. For the Borough to again state that the City enjoys more than its population proportionate share of taxable sales is irresponsible and not in the interest of fifty-nine percent of its*

*population."* On this basis, the Petitioner considers extension of City services or facilities into the territory to be necessary to enable the City to provide adequate services to City residents.

The City argues that as a result of the amendment to its petition to include the entire Shoreline Service Area, it had satisfied the concerns of the Borough and that the best interests of the State, the territory to be annexed and all political subdivisions are served by the annexation.

The City complained that the Borough viewed the City's annexation from a different perspective than its own. The reply brief stated that as the governmental body representing both City and non-City residents of the KGB, the Borough's response should have been consistent with the best interests of a majority of its citizens. To respond simply on behalf of the Shoreline Service Area residents ignores the Borough's greater responsibility for the community as a whole. On this basis, the City argues that annexation will serve the balanced best interest of the State, the territory to be annexed and all political subdivisions affected by the annexation.

27 As noted in the Introduction to this report, DCED has modified all references by the parties to the LBC's regulations to conform to the current Title and Chapter to avoid confusion. It is noted however, that the subsections cited here by SSA are incorrect. There are no subsections 7- 11 in 3 AAC 110.140.

## E. DCED's Views

Both SSA and the Borough misinterpret and misapply the standard at issue by characterizing the discretionary factors listed in 3 AAC 110.140 as standards that must be met. For example, SSA incorrectly asserts at page 27 of its responsive brief that<sup>27</sup>:

- "(3 AAC 110.140(7)) requires a showing that 'it is impossible or impractical for the city to extend the services unless the territory is within the boundaries of the city.' . . ."
- "(3 AAC 110.140(8)) requires a showing that 'extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents.' . . ."



- “(3 AAC 110.140(9)) *requires* a showing that ‘no practical or equitable alternative method is available to offset the cost of providing these benefits.’ . . .”
- “(3 AAC 110.140(11)) *requires* a showing that the territory proposed for annexation ‘is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.’ . . .” (emphasis added)

The Borough makes similar incorrect assertions regarding the factors. For example, the Borough states on pages 8 and 9 of its letter, “Turning to the statutory criteria for evaluating annexation petitions, this petition fails to satisfy those criteria. . . . Health, safety, or general welfare of City residents will not be endangered by conditions existing or potentially developing in the territory, and annexation is not necessary to enable the City to regulate or control the detrimental effects of those conditions.”

As clearly indicated in Section 10 A of this report, the law provides that when the LBC applies the best interests standard, “the com-

mission will, *in its discretion, consider relevant factors, including* whether . . .” any of the six discretionary factors set out in 3 AAC 110.140 exist with respect to the city annexation proposal.

The law does not *require* all – or for that matter, any – of the six factors listed in 3 AAC 110.140 to be present in order for the best interests standard to be met. The Commission has the discretion to consider those factors *if they are relevant* to the particular proposal under consideration. The Commission is free to examine any other factors that it considers to be relevant in judging the balanced best interests in this particular proposal. Factors which DCED considers to be relevant to the determination of the best interests standards in this particular proceeding are addressed below.

.....  
**(1) Inequities in the delivery of services and alternatives to resolve those inequities.**

DCED has determined that at least one of the factors listed in 3 AAC 110.140 exists in the territory. That is, residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or re-

ceived inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits.

Respondent SSA has, in fact, conceded that residents and property owners in the territory proposed for annexation enjoy City services without commensurate tax contributions to the City. Specifically, SSA states:

“SSA residents and businesses are not unique among outside-City residents and businesses – they all enjoy City-provided services without fully compensating the City through normal tax structures. Indeed, SSA residents only represent approximately eight (8) percent of the Borough population living outside the City of Ketchikan.” (SSA Brief, page 9)

As far as alternatives to addressing that issue are concerned, several have been identified by opponents to annexation. Briefly, these include:

- imposition of fees for services such as fire protection and police for new commercial development in the territory;
- implementation of comprehensive changes to service delivery systems such as that envisioned by the prospective proposal for consolidation of the City and the Borough;
- assumption of additional powers by SSA;

- transfer of regional powers from the City to the Borough;
- amendment of City sales tax laws to compensate for the loss of revenues (e.g., eliminate current exemptions; increase tax rates; or provide for higher rates in the summer).

A fee-for-services approach is not likely to be practical or equitable. Since it does not involve taxation, property owners would have a choice as to whether they wish to participate in funding essential services in the territory. Those who chose not to participate would place an inequitable burden on those who did contribute.

The prospective consolidation of the City of Ketchikan and the Ketchikan Gateway Borough offers great potential for resolving current inequities in the delivery of services. However, its future is too uncertain to consider it a practical alternative to the pending annexation proposal. The City notes in that regard:

While the City is pursuing consolidation of the City and the Borough, an effort the Assembly has declined to participate in, one can only imagine the opposition this effort might evoke. Should the Borough take a stance on consolidation as it has done against annexation of the Shoreline Service Area, the success of any such effort is by no means assured. (Reply Brief, page 6)

To be successful, any proposal for consolidation of the two principal local governments in Ketchikan will have to overcome significant challenges, particularly intrinsic disincentives for support of such a proposal among those living outside the City of Ketchikan. For example, it is reasonable to assume that consolidation will result in higher taxes and greater responsibilities for the area outside the City of Ketchikan. Too, consolidation will render homebuyers outside the City ineligible to receive *new* Alaska Housing Finance Corporation (AHFC) Small Community Housing Mortgage loans (rural loans).<sup>28</sup> Similar effects regarding AHFC rural loans in other communities facing consolidation or annexation have proven to be major concerns for those affected.

There is another important and practical reason to proceed with annexation notwithstanding the prospective consolidation of local governments in Ketchikan. Invariably, every proposal for unification and consolidation of city and borough governments in Alaska has involved the creation of borough service areas with boundaries coterminous to the boundaries of former cities at the time of unification or consolidation. DCED concluded previously that the area pro-

<sup>28</sup> *Existing* loans would *not* be affected by annexation. Further, *such loans could be assumed* if homes financed under the program were sold. In other words, annexation would only affect new loans. Additionally, it should be noted that some urban loan programs are currently available through the Alaska Housing Finance Corporation at lower interest rates than those available through the rural loan program. Lastly it should be noted that Senate Bill 150, currently pending before the legislature, would eliminate the rural loan interest rate advantage. (Joyce Michaelson, AHFC)

posed for annexation is essential to the efficient and cost-effective delivery of services to the City. The annexed area would have the same relationship to the urban service area that would be created upon the successful consolidation of local governments in Ketchikan.

The suggested alternative involving the assumption of additional powers by SSA would address certain of the service needs of the territory proposed for annexation. However, it would not address the inequities associated with the current service responsibilities of the City of Ketchikan unless the SSA contributed directly to the hospital and the other twelve services and facilities identified pre-

viously. If SSA were to assume such broad powers, it would — to a degree — be duplicating many of the services offered by the City. That scenario would result in inefficient delivery of services.

The transfer of regional powers from the City to the Borough would address the inequities inherent in the current structure. However, it would require areawide approval by Borough voters under AS 29.35.300(b). The City notes that this alternative, *“assumes that other residents of the Borough, excluding the Shoreline Service Area, desire to be taxed for increased services provided by the Borough. Traditionally, non-City Borough residents have been reluctant to endorse additional powers by the Borough and additional taxes.”*

The alternative of raising City sales taxes to compensate for lost revenues only makes existing inequities worse. Thus, DCED concludes that this and the other alternatives discussed above are impractical or inequitable.

Based on the foregoing discussion, DCED concludes that the factor set out in 3 AAC 110.140(4) ex-

ists with respect to the territory proposed for annexation.

In addition to the factor set out in 3 AAC 110.140(4), DCED addresses four additional aspects of the annexation proposal which it considers to be relevant in the context of this standard.

.....  
**(2) Minimizing the number of local government units.**

The Commission has often focused on the principles of local government set out in Article X of the Constitution of the State of Alaska when applying the “best interests” standard. Article X, Section 1 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).

As indicated in the Introduction to this report, DCED considers borough service areas to be local government units (albeit severely limited ones). In recent proceedings relating to annexation of territory to the City of Haines, Victor Fischer, Constitutional Convention Delegate and Secretary to

the Convention’s Local Government Committee, concurred with DCED’s characterization of service areas as units of local government. He noted in that regard:

The Section 1 purpose of providing for a *minimum of local government units* was definitely meant to cover service areas and other types of single or multiple service districts. The Local Government Committee Minutes and Constitutional Convention Proceedings make it perfectly clear that the delegates sought to avoid the multiplicity of special districts that characterized most American urban areas (e.g., Chicago) and then already developing around the City of Anchorage. (emphasis original)

Note in this connection that Section 2 states that *All local government powers shall be vested in boroughs and cities*. It clearly does not state that cities and boroughs shall be the only local government units. This means that other local government units (e.g., REAA’s and other service areas) can exist, but they are not vested with local government powers – they can exist only as a creature of a borough as set forth in Section 5. . . (emphasis original)

The Alaska Supreme Court has also expressly recognized service areas as local government units in the context of Article X, Section 1. Specifically, the court held that:

It is reasonable to interpret AS 29.35.450(b) and article X, section 5 as preferring incorporation of a city over the creation of new



service areas. This interpretation is supported by legislative history and is not inconsistent with article X, section 1 of the Alaska Constitution.<sup>29</sup> Constructing a barrier to approving an excessive number of government units does not prohibit the creation of them when they are necessary.<sup>30</sup> *Whether a service area or a city is established, another government unit is created.* If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, once a city is established, it can provide many services, and other communities can annex to the city in the future.<sup>31</sup> Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.<sup>32</sup> (emphasis added) Keane v. Local Boundary Commission, 893 P.2d 1239, 1243 (Alaska 1995).

The territory proposed for annexation wholly encompasses one borough service area (SSA). No other borough service areas are partially included in the annexation proposal. Aside from the fact that annexation will eliminate one local government unit, DCED believes that the integration of the SSA with the City of Ketchikan will promote greater equity, efficiency, and effectiveness in the delivery of local governmental services which are at the heart of the constitutional provision in question. Thus, DCED concludes that the City's annexation proposal promotes the principles found in Article X, Section 1 of the Constitution of the State of Alaska.

.....  
**(3) Maximum local self-government.**

In addition to promoting a minimum of local government units, Article X, Section 1 of Alaska's constitution favors "maximum local self-government." 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:<sup>33</sup>

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

29 See Morehouse & Fischer, supra, at 42 ("the stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for [article X, section 5 of the Alaska Constitution]."); see also 4 Proceedings of the Alaska Constitutional Convention (PACC) 2714-15 (January 20, 1956) (Delegate Rosswog stated that the main intention of section 5 was "to try not to have a lot of separate little districts set up . . . handling only one problem.") It is noteworthy that an amendment to eliminate the option of "incorporation as a city" from article X, section 5 was defeated by the convention. 4 PACC 2712-17 (January 20, 1956).

Indeed, the LBC has recognized that the provisions for service areas in article X, section 5 would be "particularly applicable to conditions in Alaska. Thus many areas which have not yet attained a sufficient tax base or population to incorporate as a city will be assisted." Local Boundary Commission, First Report to the Second Session of the First Alaska State Legislature at I-7 to I-8 (1960).

30 Victor Fischer, an authority on Alaska government, "advises that the 'minimum of local government units' language . . . was aimed at avoiding special districts such as health, school, and utilities districts having separate jurisdiction or taxing authority. He notes no policy was stated limiting the number of cities and boroughs." *DCED Report to the Alaska Local Boundary Commission on the Proposed Yakutat Borough In-*

*Continued on next page*

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corporation and Model Borough Boundaries for the Prince William Sound, Yakutat, Cross Sound/Icy Strait Regions 50 (December 1991) [hereinafter *Yakutat Report*]. Nonetheless, in *City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040 (Alaska 1971), we noted that article X, section 1 “expresse[s] [a] constitutional policy of minimizing the number of local government units.” *Id.* at 1044 (emphasis added). In addition, the DCED has concluded that “the constitutional language ‘minimum of local government units’ does admonish the LBC to guard against approving the creation of an excessive number of local governments.” *Yakutat Report, supra* at 52. We note that neither view supports the addition of unnecessary government units.

31 Delegate Doogan referred to a city as a “combination of service areas within a borough.” 4 PACC 2652 (January 19, 1956).

32 In an attempt to simplify local government and prevent the overlapping of governmental functions,” consistent with the purpose of article X, section 1, “the framers of the constitution ... considered establishing a single unit of local government with the abolition of cities altogether.” *City of Homer v. Gangl*, 650 P.2d 396, 400 (Alaska 1982). Although advantageous, the framers considered it a “concept whose time had not yet come.” *Id.* “Section 2 of Article X presents the compromise solution: ‘All local government powers shall be vested in boroughs

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)

Residents of Alaska have often demonstrated their preference for home rule cities and boroughs over general law cities and boroughs. Overall, 62.5% of Alaskans live in home rule cities and boroughs. The four most populous cities in Alaska are home rule cities. Ketchikan was one of the first local governments in Alaska to attain home rule city status in 1960 and has maintained it successfully for the past thirty-nine years.

Annexation would extend home rule municipal status to the 541 residents of the territory proposed for annexation. DCED concludes that annexation promotes the principle of maximum local self-government found in Article X, Section 1.

.....  
**(4) Financially sound local governments with boundaries that are flexible to accommodate changing needs.**

Article X, Section 2 of Alaska’s constitution vests “all local government powers . . . in boroughs and cities.” Cities in Alaska are a key element in the delivery of public services. It is in the interests of the State government, therefore, to promote fiscally sound local governments to ensure their ability to deliver essential city services. Victor Fischer stated as follows with respect to Article X as it was drafted by the Committee on Local Government:

The proposed article recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters, and local units are the agencies through which many state functions are performed. The proposal therefore gives the state powers to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of noncharter governments, to withhold authority from home rule boroughs and cities, and to exercise advisory and review functions. (Alaska’s Constitutional Convention, page 118, Victor Fischer, 1975)

Further, Article X, Section 12 of Alaska’s constitution provides for flexibility with respect to municipal boundaries. Where growth and development outside the boundaries of a municipal government

Continued on next page



threaten the tax base of that municipal government, it is reasonable to adjust the boundaries of that municipality to respond to the growth. Again, Victor Fischer articulated the views of the Constitutional Convention's Committee on Local Government with respect to this issue. He stressed that the Committee concluded that municipal boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interest, and that boundaries must remain flexible in order to permit future adjustment to growth and changing requirements for the performance of municipal functions. (Ibid, page 119)

There have been several instances in the past where the Commission has approved annexations, in large part, to accommodate shifting tax bases. For example, the Commission approved the annexation of 6.5 square miles to the City of Haines that took effect in March of this year. The Commission approved that annexation, in large part, to address concerns by the City of Haines that its property and sales tax bases were being eroded. The Commission noted in its decision:

The Alaskan and Proud Market, one of two relatively large grocery stores in Haines, has announced plans to relocate its operations from downtown Haines to the territory proposed for annexation. Other businesses, including a licensed li-

quor package store, have or are planning to relocate to the territory proposed for annexation as well.

The record reflects that the owner of the Alaskan and Proud Market emphasized that his business is in need of services provided specifically by the City of Haines. These include, in particular, police protection, water utility service, and sewer utility service.

The owner of the Alaskan and Proud Market also recognized that the relocation of his business operations would have significant adverse impacts on the City of Haines' sales and property tax revenues if the property were not annexed. The business owner indicated that he wants the Alaskan and Proud Market to continue to be a "good corporate citizen" in Haines. He emphasized that being a good corporate citizen, in part, means paying a "fair share" for the services provided. (LBC decisional statement concerning Haines annexation, page 5)

... For the City itself, it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. **It will also provide the City of Haines with suitable jurisdictional boundaries - without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem**

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and cities. The state may delegate taxing powers to organized boroughs and cities only.' " *Id.* (quoting Alaska Const. art. X, Sec. 2).

33 Mr. Morehouse, like Mr. Fischer is regarded as an expert relating to local government in Alaska. Both individuals have published a number of technical works dealing with the topic. As noted earlier, Victor Fischer was not only a delegate to the Alaska Constitutional Convention, but was secretary to the Convention's Committee on Local Government. It is also noted that the Alaska Supreme Court relied on *Borough Government in Alaska*, written by Misters Morehouse and Fischer and quoted here, in *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974).

**taxes from property owners who receive direct and indirect benefit from City services and facilities.** Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community. (emphasis added) (Ibid., page 15)

In another recent case, the Local Boundary Commission approved the annexation of 11.39 acres to the City of Wasilla. The area in question was about to undergo development of a 171,540 square foot Fred Meyer shopping center. Plans also called for future construction of 7 tenant shops requiring an additional 42,200 square

34 DCED has confirmed with Mike Gardner of Wal-Mart's corporate headquarters that Wal-Mart plans to open a store in Ketchikan probably in the late summer or early fall of 2000. DCED has sought a written statement of Wal-Mart's views on the Ketchikan annexation proposal on several occasions, however, none has been issued.

feet. The shopping center was projected to add approximately \$9.4 million to the property tax base of the City of Wasilla. Additionally, the developer estimated that the shopping center would generate \$740,000 in sales tax from the City of Wasilla's two percent sales tax levy. That would be equivalent to \$1,295,000 from the City of Ketchikan's 3.5% sales tax levy.

Wal-Mart has not taken any formal position with respect to the City of Ketchikan's pending annexation petition.<sup>34</sup> However, *in general terms*, Wal-Mart appears to hold views similar to those expressed by the Alaskan and Proud Market in the recent Haines annexation proceedings. The following general statements currently appear on Wal-Mart's Internet website:



*The Wasilla Fred Meyer store opened on September 1, 1999, breaking the firm's record for opening day sales that had stood since 1991.*

### Supporting The Local Tax Base

Wal-Mart takes its role as a corporate citizen seriously and willingly assumes its obligation to support public services through taxes. The taxes generated by the large-scale facilities, payrolls and sales involved with every Wal-Mart store often make a measurable impact on local communities. During the fiscal year that ended in January 1998, Wal-Mart paid a total of \$897 million in federal, state and local taxes. During the same period, state and local governments received \$5.5 billion in sales taxes from Wal-Mart stores.

### Taxes generated by individual Wal-Mart stores may include:

- Real estate taxes paid on Wal-Mart property and buildings. These taxes support schools, law enforcement, libraries, and a host of local government activities rang-

ing from trash hauling to recreation to street maintenance.

- Sales taxes which are usually shared among state and local governments and add significantly to the tax base. Wal-Mart's service and value are an incentive for customers to stay home and spend dollars within the community - not only at Wal-Mart, but at other local businesses as well.
- Income taxes related to store payrolls. These are also shared among various state and local bodies with distribution formulas varying from state to state.
- Other taxes generated by Wal-Mart's presence, including personal property, license, use and unemployment taxes.
- Communities across the country can attest that local tax receipts usually increase substantially when a Wal-Mart opens its doors. ([http://www.wal-mart.com/news-room/crg\\_tax.html](http://www.wal-mart.com/news-room/crg_tax.html))

**A Good Neighbor**

Every Day Low Prices on the over 80,000 products carried by a Wal-Mart store add up to considerable savings for the local community. But stretching the consumer's dollar is only the most visible contribution made by Wal-Mart to the local economy.

...

- Keeping Dollars at Home: Prior to the arrival of a Wal-Mart store, many towns and counties have seen their tax base drained by residents driving to a suburban shopping center to satisfy their demand for quality, selection and low prices. A new Wal-Mart in the city or county limits, however, encourages residents to "buy local" and provides the local government with additional tax revenue. Wal-Mart and SAM'S Clubs generated over \$821 million in state and local taxes and near \$4.5 billion in sales taxes last year. ([http://www.wal-mart.com/news-room/good\\_neighbor.html](http://www.wal-mart.com/news-room/good_neighbor.html))

DCED views annexation as the means to ensure that the City of Ketchikan maintains the legal jurisdiction necessary to continue to fund a broad array of essential services that benefit the residents of the City and outlying areas. Doing so serves the interests of the residents and property owners of the City as well as those of the territory proposed for annexation. It also benefits the State and the Ketchikan Gateway Borough who are relieved of such responsibilities. Absent annexation, the City faces the prospect of significant revenue reductions that threaten its ability to fund the current level

of services. It is vital that the State provide qualified local governments with the tools they need to take on greater responsibilities, particularly when they do so willingly. This is especially important in this era of significant budget reductions for State services and even greater reductions in direct State financial aid to local governments for general services.

.....  
**(5) Enfranchisement of citizens.**

Lastly, DCED notes that residents of the Shoreline Service Area are currently disenfranchised with respect to the City of Ketchikan. However, as noted earlier, the City provides many services and facilities that residents of the Shoreline Service Area depend upon for their health, safety, and other needs. City officials currently 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. Annexation, however, will enfranchise voters in the Shoreline Service Area with regard to the City of Ketchikan.

.....  
**(6) Conclusion.**

The City's annexation proposal addresses public policy concerns regarding equity in the delivery of services to the

community. It also reduces the number of local government units in the greater Ketchikan community and thereby promotes greater efficiency and effectiveness in the delivery of services as favored by Article X, Section 1 of Alaska's constitution. The annexation proposal also extends home rule status to 541 citizens of Ketchikan as encouraged by Article X, Section 1 of the constitution. Annexation also allows the City to adjust its boundaries to accommodate growth and development to remain financially strong. Lastly, annexation will enfranchise citizens of the territory proposed for annexation with regard to a local government that has great influence over their daily lives.

Thus, despite widespread opposition among residents and property owners in the territory proposed for annexation, DCED concludes that the City's proposal to extend its boundaries serves the balanced best interests of the State of Alaska, the territory proposed for annexation, and all political subdivisions affected by the proposal. As such, the standard set out in 3 AAC 110.140 is satisfied.

# Section 11

## Transition Plan

### A. The Standard

3 AAC 110.900 requires that a petition for annexation to a city include:

- a practical plan demonstrating the intent and capability of the annexing city to provide essential city services in the shortest practicable time after the effective date of annexation;
- a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough or other entity located in the territory proposed for change will be assumed by the annexing city; and
- a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough or other entity by the annexing city government.

### B. Views Expressed by Ketchikan in its Petition

The City's transition plan was included as Exhibit F of its petition.

The petition stated that all real and personal property within the territory will be subject to real and personal property taxes levied by the City effective July 1, 2000. On that date, all taxable commercial transactions conducted within the annexed territory will become subject to sales taxes levied by the City. However, the City has indicated that if there is a delay in the initiation of delivery of City services, imposition of City taxes will be delayed until the date such services are provided.

The transition plan states that no later than July 1, 2000, the City will extend all services currently funded by City real and personal property taxes, sales tax, and transient occupancy tax. Such services include the following:

- police protection;
- fire protection;
- emergency medical services;
- emergency dispatch services;
- hospital services;
- human services (mental health and substance abuse);
- streets and storm drains maintenance;
- solid waste disposal;
- public works engineering (including building code enforcement)\*;
- municipal facility maintenance;
- harbors;
- port of Ketchikan;
- library;
- museum;
- civic center;
- cemetery;
- telephone; and
- electricity.

Effective July 1, 2000 building code enforcement within the territory to be annexed will be provided on a prospective basis.

In terms of its capability to extend services to the territory, the City notes that it is currently



providing thirteen services that directly or indirectly benefit residents and property owners in the territory. The petition indicated that there are no limiting geographic features that preclude delivery of services to the territory proposed for annexation.

The City reasserted views expressed earlier that annexation is a financially viable option for the City.

The City's transition plan notes that non-areawide services provided to the area proposed for annexation by the KGB would be assumed by the City upon annexation. These include the following:

- wastewater collection and treatment;
- library;
- emergency services communication center; and
- bonds and tax increment financing.

The City's transition plan states that upon annexation, the service area in its entirety will be incorporated into the City. After annexation, the City will provide fire suppression services utilizing existing equipment modified with necessary drafting capabilities supplemented with the Shoreline Fire Department's fire fighting equipment and buildings. The petition indicates that the City will hire

two additional career firefighters to provide for staffing of the City's Fire Station No. 2 on a full-time basis to meet NFPA and ISO requirements.

If water treatment and distribution is provided to the territory proposed for annexation at a future date, it will be done under the auspices of Ketchikan Public Utilities. Further, Ketchikan Public Utilities will continue to provide electric and telephone services to the territory proposed for annexation.

Police powers will be exercised by the City of Ketchikan within the annexed territory beginning July 1, 2000. While State Troopers will continue to exercise law enforcement powers, the City will be the principal police agency within the territory to be annexed.

The amended petition assumes that the City will become responsible for Shoreline Drive and other secondary roads off of North Tongass Highway. Secondary roads are not presently maintained by government agencies. The City's transition plan states that the City of Ketchikan will assume street and storm drain maintenance of an esti-



*New construction at the City-owned Ketchikan General Hospital*

mated two and one-half miles of secondary roads within the subject territory, as well as engineering and building inspection.

The petition indicates that the transition plan was discussed with officials of the Ketchikan Gateway Borough, the City of Saxman, and representatives of the Shoreline Service District. The City requested resolutions of support for the proposed annexation from both the Borough and Saxman. Resolutions of non-objection to the petition were adopted by those governing bodies on March 1, 1999 and February 17, 1999 respectively.

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**D. Views of the Respondent and Correspondents**

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.....  
***Views of Respondent SSA.***

In its brief on the initial petition, the SSA stated that the City should seek a transition agreement with an established and more balanced funding formula,

which would protect SSA from negative financial impacts of the proposed annexation. Since such issues were rendered irrelevant by the amended petition, the Respondent did not specifically comment on the Petitioner's amended transition plan.

.....  
***Views of the KGB and other Correspondents.***

Correspondents did not substantively comment on the Petitioner's transition plan.

.....  
***Views Expressed by Ketchikan in its Reply Brief***

The City did not further address transition plan issues in its reply brief since issues about impacts to the remnant service area raised in the SSA's first responsive brief ceased to be pertinent after the amended petition was filed.

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**E. DCED's Views**

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The transition plan prepared by the City consists of six pages. The City's plan, coupled with other provisions

in the petition, offers a blueprint for the extension of services and taxes to the area proposed for annexation on July 1, 2000. Those materials also demonstrate the capability of the City to extend essential city services to the area in question.

Further, the plan addresses integration of relevant Borough assets and liabilities into the City. The City also indicates that officials of the Borough, including those affiliated with the Shoreline Service Area, were consulted in the development of the plan.

DCED concludes from the foregoing that the City's transition plan fulfills the requirements of 3 AAC 110.900.



# Section 12

## Voting Rights

### A. The Standard

Any change that affects voting rights, practices, or procedures in Alaska is subject to review under the Federal Voting Rights Act. This includes any annexation to a city or borough. The Voting Rights Act is intended to prohibit the "*denial or abridgement of the right of any citizen of the United States to vote on account of race or color*" or because a citizen is a "*member of a language minority group.*" (42 U.S.C. 1973)

Additionally, State law provides with respect to annexation that, "*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*" (3 AAC 110.910)

### B. Views Expressed by Ketchikan in its Petition

The City has indicated that all civil rights and political rights would be extended on an equal basis to residents of the annexed area and has stated that nothing in the annexation

denies or limits the exercise of any civil or political rights to any person.

The City's population in 1998 was 8,460. When the petition was filed, the City had 6,983 registered voters. The Ketchikan Gateway Borough had a 1998 population of 13,828. There were 11,282 registered voters in the entire Borough at the time the petition was filed.

tively. Using the Borough's percentage, the City expects that annexation of the SSA would increase the number of City voters by 396, an increment of 5.6%. The City suggests that such an increase would not significantly alter voting patterns in City elections.

Because all Borough elected officials are elected at large, City vot-



Totem Heritage Center

The percentages of registered voters compared to the total populations of the City and the Borough are 82.5% and 81.6% respec-

ers vote for all assembly positions. The proposed annexation would have no effect on the number of persons eligible to vote in

Borough areawide elections. The City noted that dissolution of the Shoreline Service Area upon annexation of that area to the City would extinguish the right of SSA voters to vote on service area matters and the right to be appointed to service area boards. Similarly, annexation would eliminate the right of voters to vote on any non-areawide Borough propositions. Annexation would, however, enfranchise voters in the annexed area to run for City office, vote on City propositions and serve on City appointed boards and commissions. Since the City owns the electric and telephone utilities serving the area proposed for annexation, the proposed boundary change would extend to all voters in the annexed area the right to vote on ballot propositions concerning City electric and telephone service. They would also be franchised to vote on propositions concerning the City-owned water utility. No redistricting will be required as a result of annexation.

The City has stated that annexation does not exclude minorities while including other similarly situated persons. The area proposed for annexation includes all areas and

populations appropriate for annexation without regard to race.

The City noted that DCED records show that the percentages of minorities living in the Borough and in the City are similar. Consequently, annexation would not significantly affect the percentage of minority residents within the City. The City's annexation petition indicates that its population is approximately 78.3% Caucasian, 15.7% Native, 4.9% Asian/Pacific Islander and 0.6% African-American, with the remainder identified as other ethnic background. In comparison, the Borough's population is approximately 81.8% Caucasian, 13.7% Native, 3.6% Asian/Pacific Islander, 0.5% African-American, with the remainder identified as other ethnic background. If Borough percentages are applied to the area proposed for annexation, approximately 396 of the 486 people living within the area would be Caucasian, 66 would be Alaska Native and 24 would be Asian/Pacific Islander.

The City states that its electoral system ensures minority voting strength through at-large elections for all offices.

The City stated that it had written to prominent minority group organizations to inform them of the pending

annexation and to invite formal and informal participation by the organizations and their members. The annexation proposal was addressed at several public meetings during which public comment was permitted by all persons.

The City indicated that English is spoken and understood throughout the City of Ketchikan and throughout the Ketchikan Gateway Borough. All minority groups are familiar with English in written and spoken form. Spanish or Tagalog may occasionally be spoken within the Filipino community by new immigrants. Some residents are fluent in Tlingit, Haida or Tshimshian as well as English.

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### **C. Views of the Respondent and Correspondents**

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#### ***Views of Respondent SSA.***

The Respondent did not raise federal Voting Rights Act concerns in the context of the proposed annexation.

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#### ***Views of the KGB and other Correspondents.***

Neither the Borough nor other correspondents raised concerns in the context of the Federal Voting Rights Act during annexation proceedings to date.



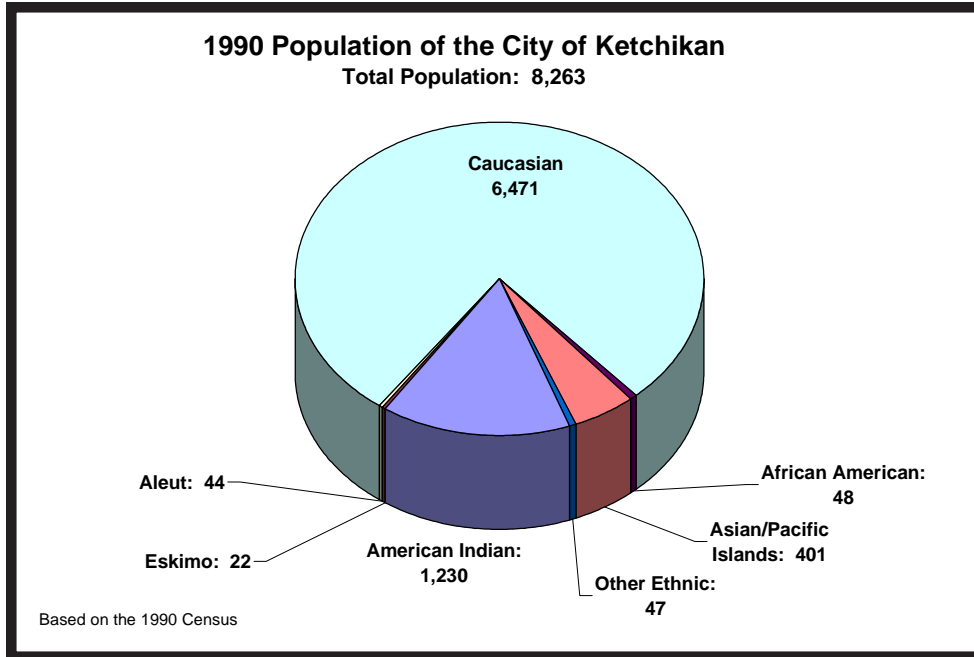


Chart 12-A, 1990 Population of the City of Ketchikan

ough population. This probably provides a more accurate reflection of the territory proposed for annexation. Whereas the 18.2% of the Borough's total 1990 population was comprised of racial minorities, only 8.2% of its non-areawide population was so comprised. In contrast, 21.7% of the City's 1990 population was comprised of minorities. Charts 12-A and 12-B depict the ethnicity of the 1990 population of the City of Ketchikan and the non-areawide population of the Borough.

### D. Views Expressed by Ketchikan in its Reply Brief

Since Federal Voting Rights Act concerns were not raised by the SSA or others, the City's reply brief did not address the matter.

For its analysis of this issue, DCED compares the population of the City of Ketchikan to the non-areawide Bor-

Given the reasonably anticipated racial composition of the two areas in question, it is projected that

### E. DCED's Views

Data concerning the racial composition of the residents exclusively within the territory proposed for annexation are not available. However, DCED confirmed the City's statements concerning ethnic composition of the City and the Borough based on 1990 Federal Census data.

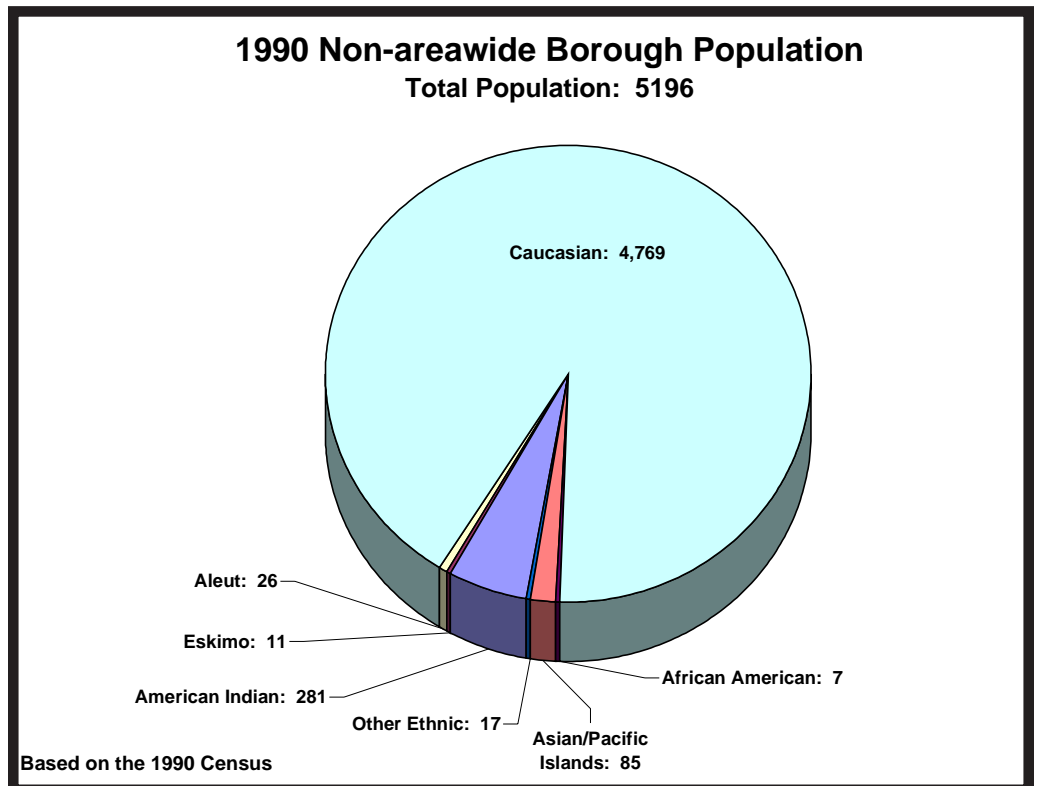


Chart 12-B, 1990 Population of the non-city portion of the Borough

annexation would increase the overall minority population of the City by 44 individuals. At the same time, however, it is projected that annexation would reduce the relative size of the City's minority population from 21.7% to 20.5%.

The reduction in relative terms would be fairly small – a decline of 1.2 percentage points. Reductions, per se, in the voting strength of minorities is not prohibited by the federal Voting Rights Act. What is prohibited are changes *for the purpose of denying or abridging voting rights because of race or color.*

There is no evidence that implementation of the City's annexation proposal would result in any violation of the Federal Voting Rights Act. As indicated in the analysis of the preceding sections, the boundaries proposed by the City encompass the natural community of Ketchikan. Further, the annexation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives.

Based on the foregoing, DCED finds no evidence that Ketchikan's annexation proposal will result in the denial or abridgment of the right of

any citizen to vote on account of race, color or membership of a language minority group. DCED finds further that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Thus, the standard set out in 3 AAC 110.910 is satisfied.



## **Recommendation to the Local Boundary Commission**

Based on the analysis presented in Sections 1 – 12 of this report, DCED has concluded that all of the city annexation standards established in law are satisfied with regard to the February 5, 1999 annexation 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. Accordingly, DCED hereby recommends that the Local Boundary Commission approve the City's amended petition without conditions or amendments of its own.



# Appendix A

## List of Correspondents Who Submitted Timely Written Comments on the City's Annexation Proposal

1. **Outdoor Alaska** (Dale Pihlman) of P.O. Box 7814 Ketchikan, wrote a one-page letter dated March 28 opposing annexation.
2. **Dan Eichner** of P.O. Box 557 Ward Cove, wrote a one-page letter dated April 15 expressing opposition to annexation.
3. **Joanne Klein** of Deep Bay – Moser Bay, wrote a two-page letter dated April 30, 1999, opposing annexation.
4. **Ketchikan Gateway Borough** (Georgianna Zimmerle, Borough Manager) wrote a fourteen-page letter (including a one-page attachment) dated May 4, 1999, opposing annexation (as initially configured) on behalf of the Shoreline Service Area.
5. **Ketchikan Ready-Mix & Quarry, Inc.** (Tammy Carroll) of 4418 N. Tongass Highway in Ketchikan wrote a two-page letter dated May 6 in opposition to annexation.
6. **Puffin Marine & Equipment, Inc.** (Harold Enright) of 4418 N. Tongass Highway in Ketchikan wrote a two-page letter dated May 6 opposing annexation.
7. **Chere Klein** of 8860 North Tongass Highway in Ketchikan wrote a two-page undated letter (received May 10) expressing opposition to annexation.
8. **Loren Enright** of P.O. Box 1373 Ward Cove wrote a two-page undated letter (received May 10) expressing opposition to annexation.
9. **Dwight and Janet John** of P.O. Box 7962 in Ketchikan wrote a two-page letter dated May 10 opposing annexation.
10. **Linda Raitanen** of 4928 Shoreline Drive in Ketchikan wrote a two-page letter dated May 10 expressing opposition to annexation.
11. **John Raitanen** of 4928 Shoreline Drive in Ketchikan wrote a one-page letter dated May 10 opposing annexation.
12. **Shoreline Volunteer Fire Department** (Dwight C. John, Chairman, Shoreline Service Area Board of Directors) of 5401 North Tongass Highway in Ketchikan wrote a one-page letter dated May 10 opposing annexation.
13. **Rosemary Crowder** of 5129 North Tongass Highway in Ketchikan wrote a one-page undated letter (received May 14) opposing annexation.
14. **Michael J. Painter** of 4746 Bucey Avenue North in Ketchikan wrote a two-page letter dated May 14 opposing annexation.
15. **Ketchikan Autobody & Glass** (Axel Svenson) of 4979 Rex Allen Drive in Ketchikan wrote a one-page letter dated May 14, 1999 expressing opposition to annexation.
16. **Charles and Sherrel Stewart** of 3725 South Tongass Highway in Ketchikan wrote a one-page undated letter (received May 26) opposing annexation if water and sewer utilities are not provided.
17. **SWS Investors** (Leif Singstad, Steve Weberg and Greg Singstad) of 4693 North Tongass Highway in Ketchikan wrote a one-page letter dated June 16 opposing annexation of all but the proposed Wal Mart shopping center.
18. **Joe Burns and Sharon Boatwright** of P. O. Box 8416 Ketchikan wrote a one-page letter dated June 16 opposing annexation.
19. **Joan Martin** of P.O. Box 636 Ward Cove, who owns property at 5035 North Tongass in Ketchikan, wrote a one-page letter dated June 19 opposing annexation.
20. **Irene Bienek** of 5314 North Tongass Highway in Ketchikan wrote a one-page letter dated June 21 expressing opposition to annexation.



21. **Dan Eichner** of P.O. Box 557 Ward Cove wrote a second one-page letter opposing annexation; this one was dated June 23.
22. **Gerald Wick** of 4975 N. Tongass Highway in Ketchikan wrote a one-page letter dated June 23 expressing opposition to annexation.
23. **Lawrence and Marcia Hilley** of P.O. Box 7483 Ketchikan sent a one-page note by e-mail dated June 26 opposing annexation.
24. **Fred E. Fricke** of Mile 4 ½ Tongass Highway in Ketchikan sent a one-page note by e-mail dated June 27 opposing annexation.
25. **Henry and Glenna Dyson** of 5511 390th Street Ct. E in Eatonville, Washington, who own property at 5517 North Tongass, sent a one-page note by e-mail dated June 28 opposing annexation.
26. **John and Ann Vredeveld** of 5302 North Tongass Highway in Ketchikan wrote a one-page letter dated July 17 (which presumably should have been dated June 17 as the letter was received June 21) expressing opposition to annexation.
27. **Larry and Cheryl Elliott** of 5142 Shoreline Drive in Ketchikan wrote a one-page letter dated June 23 opposing annexation.
28. **Mary Jane Walton** of 3112 Mission Beach Lane in Marysville, Washington who owns 11.71 undeveloped acres near Mile 5 of the North Tongass Highway, wrote a one-page letter dated June 28 opposing annexation.
29. **Mary Hastings** of 4770 North Tongass Highway in Ketchikan wrote a one page letter dated June 29 opposing annexation.
30. **Glenn L. Lervick** of 5247 Shoreline Drive wrote a one-page letter dated June 29 opposing annexation.
31. **Evelyn Thompson** of 5331 B Shoreline Drive in Ketchikan wrote a two-page letter dated June 29, 1999 opposing annexation.
32. **Bertha Hussman** of 5213 Shoreline Drive in Ketchikan wrote a one-page letter dated June 30, 1999 expressing opposition to annexation.
33. **Eric F. Bjella** of 5419 Densley Drive in Ward Cove wrote a two-page letter dated June 30 opposing annexation.
34. **William and Deborah Harney** of 5351 Shoreline Drive wrote a one-page letter dated July 1 opposing annexation.
35. **Linda Raitanen** of 4928 Shoreline Drive in Ketchikan wrote a second letter two-page letter opposing annexation; the second letter was dated July 2.
36. **Jason Wick**, a property owner in the territory, wrote a one page letter dated July 2 opposing annexation.
37. **Andrew L. Thompson** of 5187 Shoreline Drive in Ketchikan wrote a one-page letter dated July 3 opposing annexation.
38. **Josephus Govaars** of 5210 Shoreline Drive in Ketchikan wrote a one-page letter dated July 5 in opposition to annexation.
39. **H. J. Govaars** of 5210 Shoreline Drive in Ketchikan wrote a one-page letter dated July 5 opposing annexation.
40. **Gary Shorts** of 4961 North Tongass Highway in Ketchikan wrote a one-page letter dated July 6 opposing annexation.
41. **Gordon and Henrietta Kalk** of 5528 N. Tongass Highway in Ketchikan wrote a one-page undated letter (received July 7) opposing annexation.
42. **Flora P. Gray** of 5260 Shoreline Drive in Ketchikan wrote a one page undated letter (received July 7) opposing annexation.
43. **Jerry E. Collins** of 5339 Shoreline Drive North in Ketchikan wrote a one-page letter dated July 7 in opposition to annexation.
44. **Rosemary Crowder** of 5129 North Tongass Highway wrote a second one-page letter opposing annexation; this one was dated July 7.
45. **Paul Slenkamp**, a property owner in the territory wrote a one-page e-mail dated July 7 in opposition to annexation.

# Appendix B

## Background Concerning the LBC, DCED, and the Nature of Local Government Boundary Changes in Alaska

The power to create, alter, and abolish political subdivisions of state governments is an inherent power of the legislature of each state. (McQuillin Mun Corp § 7.10 – 3<sup>rd</sup> Ed.) In most cases, state constitutions or statutes delegate those powers to others entities. In the case of annexations, for example:

- 6 states provide for municipal determination where a local government extends its

boundaries by unilateral action of the governing body;

- 6 states use judicial determination where the court determines if a proposed boundary change will take place;
- 10 states, including Alaska, use an independent tribunal or board that is empowered to determine if a proposed annexation will occur;
- 6 states use legislative determination in which municipal boundary changes are made by special acts of the state legislature; and
- 22 states use popular determination which involves voting or the direct use of political power by people to determine whether an annexation will occur. (Report by Center for Urban Policy and the Environment, November 1998)

pointed by the Governor to “consider any proposed local government boundary change.” (Art. X, § 12) In the first of ten rulings relating to the Commission over a span of forty years, the Alaska Supreme Court commented as follows as to the nature of the Commission:

An examination of the relevant minutes of [the meetings of the Local Government Committee at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.<sup>i</sup> The advantage of the method proposed, in the words of the committee –

\* \* \* lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.<sup>ii</sup>

This expressed need for state adjustment of local boundaries was of immediate concern, and not something that the del-

Alaska’s constitution provides for the establishment of a 5 member commission ap-

i Alaska Constitutional Convention Minutes of Committee on Local Government, Nov. 28 and Dec. 4, 1955. (This and all subsequent statements and quotes concerning proceedings of the Alaska Constitutional Convention refer to Records of the Alaska Constitutional Convention, now in the custody of the Secretary of State, Juneau, Alaska.)

ii Alaska Constitutional Convention, Commentary on Proposed Article on Local Government, Dec. 19, 1955 at 6.

egates considered would arise only after a borough government had been formed.<sup>iii</sup> (*Fairview Public Utility Dist. No. One v. City of Anchorage*, 368 P.2d 540, Alaska 1962)

The specific statutory powers and duties of the Commission include, but are not limited to, judging proposals for:

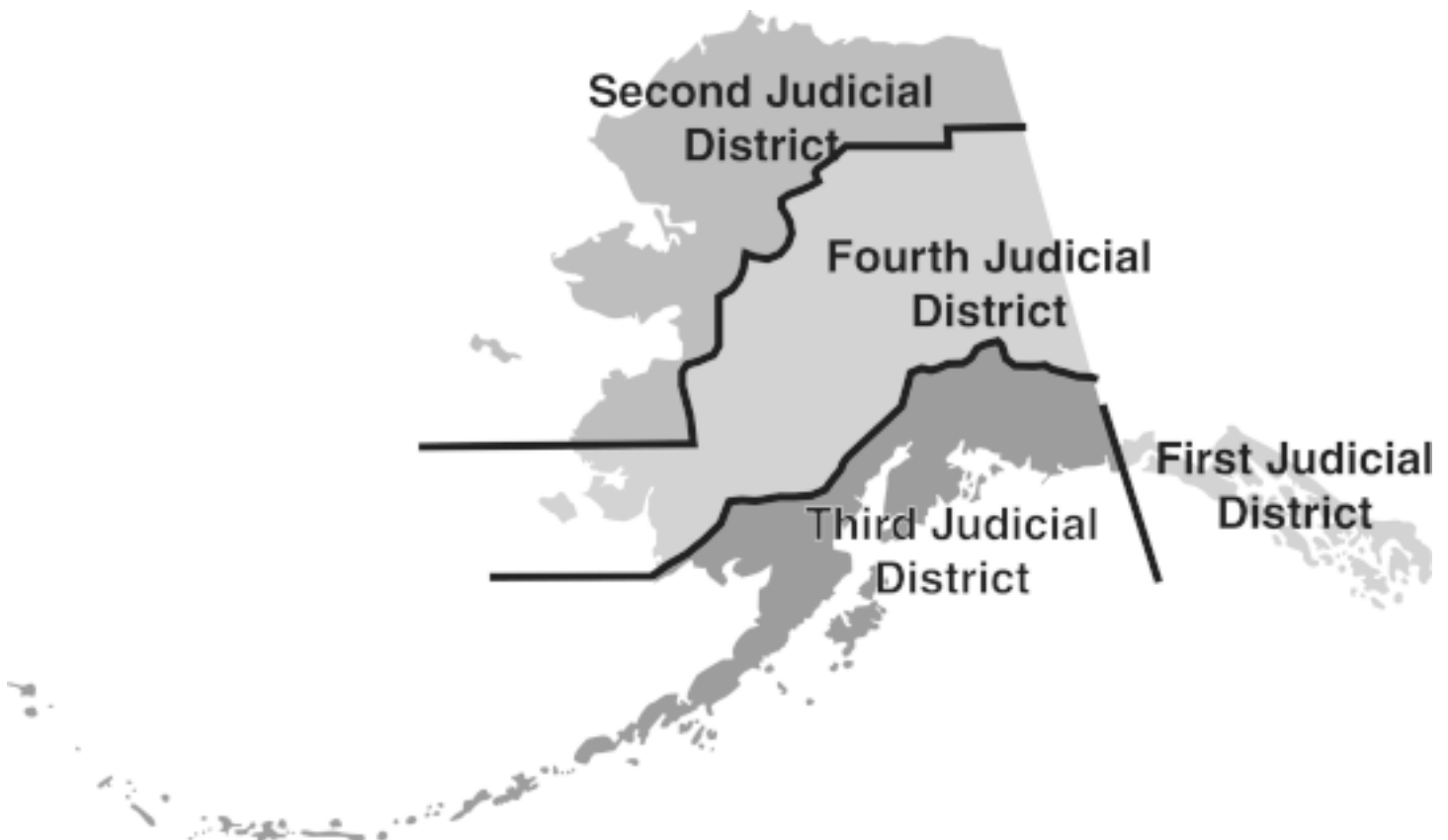
- incorporation of cities and boroughs (AS 29.05);
- annexation to cities and boroughs (AS 29.06.040 – 29.06.060; AS 44.33.812);
- detachment from cities and boroughs (AS 29.06.040 – 29.06.060; AS 44.33.812);
- merger of cities and boroughs (AS 29.06.090 – 29.06.170);

- consolidation of cities and boroughs (AS 29.06.090 – 29.06.170);
- dissolution of cities and boroughs (AS 29.06.450 – 29.06.530); and
- reclassification of cities (AS 29.04.040).

The LBC consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “. . . on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.” (AS 39.05.060) Members serve at the pleasure of the Governor. The Chairperson is

iii Alaska Const. art. X, § 3, states in the first sentence ‘The entire State shall be divided into boroughs, organized or unorganized.’ It was not until 1961 that the legislature enacted a statute providing for the establishment of boroughs. SLA 1961, ch. 146 effective Oct. 1, 1961.

appointed from the state at-large and one member is appointed from each of Alaska’s four judicial districts. Members serve without compensation.





**Kevin Waring**, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson of the LBC on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the Department of Community and Regional Affairs' original division directors (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. Commissioner Waring is now manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

**Kathleen S. Wasserman**, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman works as the Southeast Alaska Projects Director for Ecotrust. Her present term on the Commission expires January 31, 2001.



**Nancy E. Galstad** serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.

**Allan Tesche** serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS Title 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



**William Walters** serves from the Fourth Judicial District and lives in the greater Fairbanks area. He was appointed to the LBC on September 14, 1995. Mr. Walters works as the Chief of Adjudications for the Division of Workers' Compensation in the Alaska Department of Labor and Workforce Development. He is a graduate of the University of Texas School of Law. He worked for the Tanana Chiefs Conference on the development of tribal courts from 1992 to 1998. He is a former member of the Fairbanks North Star Borough Planning Commission. Mr. Walters' current term on the LBC expires January 31, 2000. However, Commissioner Walters has informally indicated that he will resign his seat on the Local Boundary Commission because his employment will require him to move his residence outside the Fourth Judicial District. He has indicated that he anticipates that his move and resignation will occur in October, 1999.



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## **Communications with the LBC**

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The LBC is a quasi-judicial board. To preserve the rights of petitioners, respondents, and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the LBC on all matters pending before it. The law prohibits communication between the LBC and any party in a proceeding, other than its staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains

effective through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

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## **Staff to the Commission**

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The Alaska Department of Community and Economic Development (DCED) serves as staff to the LBC. The LBC's staff is required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the LBC concerning such.

The LBC and DCED are independent of one another concerning policy matters. Therefore, DCED's recommendations in this or any other matter are not binding upon the LBC.

Under the terms of Chapter 58, SLA 1999, the former Department of Community and Regional Affairs and the former Department of Commerce and Economic Development were consolidated effective July 1, 1999.

# Appendix C

## Proceedings to Date and Future Proceedings

This Appendix summarizes the formal activities that have occurred to date with regard to the pending petition for annexation of territory the City of Ketchikan. Information about future proceedings concerning this matter is also provided.

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### Annexation Petition Accepted for Filing

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The original petition of the City of Ketchikan for annexation of an estimated 0.48 square miles was received by DCED on February 25, 1999. On March 17, 1998, DCED determined that the form and content of the petition were technically complete and sufficient. The petition was formally accepted for filing on March 17, 1999.

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### Notice of Filing of the Petition

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Public notice of the filing of the petition was given in accordance with the requirements of law. The deadline for filing respon-

sive briefs and comments in support of or in opposition to the annexation proposal was set by the Chairperson of the LBC for May 14, 1999, at 5:00 p.m.

A copy of the petition for annexation was delivered to the following parties by the City of Ketchikan, as required by law, prior to March 25, 1999:

- Ketchikan Gateway Borough;
- City of Saxman; and
- Shoreline Service Area, c/o Ketchikan Gateway Borough.

Notice of filing of the petition was published by DCED in the *Alaska Administrative Journal* on March 29, April 5, and April 19, 1999. Additionally, notice of filing of the petition was published by the City in the *Ketchikan Daily News* on March 25, April 2, and April 9, 1999.

Notice of the filing of the petition was posted by the City of Ketchikan at the following locations in the area proposed for annexation on or before March 25, 1999:

- National Bank of Alaska;

- Karlson Motors;
- Narrows Inn; and
- Shoreline Volunteer Fire Department.

Notice of the filing was also posted by the Petitioner at the following locations within the existing boundaries of the City of Ketchikan on or before March 25, 1999:

- Office of the City Clerk;
- City Hall, Second Floor Bulletin Board;
- Ketchikan Public Library; and
- City Police Department.

Prior to March 25, 1999, the Petitioner delivered a copy of the notice of filing of the petition to the following parties:

- Ketchikan Gateway Borough;
- City of Saxman; and
- Shoreline Service District (c/o Ketchikan Gateway Borough).

On March 30, 1999, a full set of petition documents was made available for public review at both the Offices of the Ketchikan City Clerk and the Ketchikan Public Library.

On March 18, 1999, DCED provided notice of the filing to 39 agencies and individuals.

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## Comments and Responsive Brief Filed on the Petition

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As noted previously, comments and responsive briefs were to be received by DCED staff by 5:00 p.m., May 14, 1999. The Shoreline Service Area filed a responsive brief in opposition to the annexation. Timely written comments were received from the following 14 parties:

- Dale Pihlman, a one-page letter in opposition to the annexation;
- Dan Eichner, a one-page letter in opposition to the annexation;
- Joanne Klein, a two-page letter and attachment in opposition to the annexation;
- Tammy Carroll, Ketchikan Ready-Mix & Quarry, Inc., a two-page letter in opposition to the annexation;
- Georgianna Zimmerle, Ketchikan Gateway Borough Manager, a 13-page letter with attachment in opposition to the annexation;
- Chere Klein, a two-page letter in opposition to the annexation;
- Harold Enright, Puffin Marine & Equipment, Inc., a two-

page letter in opposition to the annexation;

- John Raitanen, a one-page letter in opposition to the annexation;
- Linda Raitanen, a one-page letter in opposition to the annexation;
- Rosemary Crowder, a one-page letter in opposition to the annexation;
- Michael Painter, a two-page letter in opposition to the annexation;
- Axel Svenson, Ketchikan Autobody & Glass, a one-page letter in opposition to the annexation;
- Shoreline Service Area Board, a one-page letter clarifying their position on the annexation;
- Dwight and Janet John, a two-page letter in opposition to the annexation.

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## Amendment of Petition

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On May 13, 1999, DCED received an amended petition from the City of Ketchikan. The Amendment sought to include the entire Shoreline Service Area in the annexation. On May 13, 1999, DCED determined that the form and content of the amended petition were technically complete and sufficient. The amended petition was then formally accepted for filing.

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## Notice of Filing of the Amended Petition

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Public notice of the filing of the amended petition was given in accordance with the requirements of law. The deadline for filing responsive briefs and comments in support of or in opposition to the amended annexation proposal was set by the Chairperson of the LBC for July 7, 1999, at 5:00 p.m.

Notice of the filing of the amended petition was published by the Petitioner in the *Ketchikan Daily News* on May 18, May 25, and June 1, 1999.

Notice of the filing of the amended annexation petition was posted by the Petitioner in the following locations in the area proposed for annexation on or before May 18, 1999:

- National Bank of Alaska;
- Karlson Motors;
- Narrows Inn; and
- Shoreline Volunteer Fire Department.

Notice of the filing of the amended petition was also posted by the Petitioner in the following locations within the existing boundaries of the City of Ketchikan on or before May 18, 1999:

- Office of the City Clerk;
- City Hall, Second Floor Bulletin Board;
- Ketchikan Public Library; and
- City Police Department.

On May 18, 1999, the Petitioner delivered a copy of the amended notice of filing to the following parties, as required by law:

- Ketchikan Gateway Borough;
- Shoreline Service District; and
- City of Saxman.

On June 8, 1999, the City delivered a copy of the amended Petition to the following parties, as required by law:

- Ketchikan Gateway Borough;
- City of Saxman; and
- Shoreline Service Area.

On May 18, 1999, a full set of amended petition documents was made available for public review at both the Offices of the Ketchikan City Clerk and the Ketchikan Public Library.

On May 18, 1999, DCED provided notice of the filing to 56 agencies and individuals.

### **Comments Filed on the Amended Petition**

As noted previously, the deadline for submission of comments and responsive briefs to DCED staff regarding the amended petition was 5:00 p.m., July 7, 1999. The Shoreline Service Area filed a timely responsive brief. Timely written comments were received from the following 31 parties:

- Charles Stewart, a one-page letter in opposition to annexation;
- SWS Investors, a one-page letter in opposition to annexation;
- John and Ann Vredevelde, a one-page letter in opposition to annexation;
- Joe Burns and Sharon Boatwright, a one-page letter in opposition to annexation;
- Irene Bienek, a one-page letter in opposition to annexation;
- Henry and Glenna Dyson, a one-page letter in opposition to annexation;
- Dan Eichner, a one-page letter in opposition to annexation;
- Fred Fricke, a one-page letter in opposition to annexation;
- Lawrence and Marcia Hilley, a one-page letter

in opposition to annexation;

- Joan Martin, a one-page letter in opposition to annexation;
- Gerald Wick, a one-page letter in opposition to annexation;
- Larry and Cheryl Elliott, a one-page letter in opposition to annexation;
- Glenn Lervick, a one-page letter in opposition to annexation;
- Mary Hastings, a one-page letter with attachment in opposition to annexation;
- Gary Shorts, a one-page letter in opposition to annexation;
- Josephus Govaars, a one-page letter in opposition to annexation;
- M.J. Govaars, a one-page letter in opposition to annexation;
- Paul and Vicky Slenkamp, a one-page letter in opposition to annexation;
- Flora and David Gray, a one-page letter in opposition to annexation;
- Evelyn Thompson, a one-page letter in opposition to annexation;
- Gordon and Henrietta Kalk, a one-page letter in opposition to annexation;
- Eric Bjella, a two-page letter in opposition to annexation;

- Jerry Collins, a one-page letter in opposition to annexation;
- Rosemary Crowder, a one-page letter with attachment in opposition to annexation;
- William and Deborah Harney, a one-page letter in opposition to annexation;
- Bertha Hussman, a one-page letter in opposition to annexation;
- Linda Raitanen, a two-page letter in opposition to annexation;
- Andrew Thompson, a one-page letter in opposition to annexation;
- Mary Jane Walton, a two-page letter in opposition to annexation;
- Jason Wick, a one-page letter in opposition to annexation;
- A 38-page "petition" in opposition to the annexation.

ment. 3 AAC 110.640 requires that at least 28 days be allowed for comment on the draft report from the date the report was mailed to the petitioner and respondent.

Written comments on DCED's preliminary analysis, conclusions, and recommendation are welcome. All timely comments will be included in the formal record of this proceeding and will be considered in the development of DCED's final report on this matter. Comments must be received by November 1, 1999 at the following office:

Local Boundary Commission Staff  
 Department of Community and Economic Development  
 333 West Fourth Avenue, Suite 220  
 Anchorage, Alaska 99501-2341

Fax numbers: 907-269-4539 or 907-269-4520  
 e-mail address:  
 Dan\_Bockhorst@dced.state.ak.us

sued to meet the legal requirement for a final report.

.....  
**LBC Public Hearing**

The Local Boundary Commission will conduct a public hearing in Ketchikan on the City's annexation proposal. That hearing is scheduled to be held as follows:

11 a.m., Saturday,  
 December 4, 1999  
 Ted Ferry Civic Center

Formal notice of the hearing will be provided at least thirty days in advance of the hearing. Guidelines for testimony and public comment at the hearing will be provided in advance of the hearing.

**Agenda.** A sample hearing agenda is shown on the following page.

The Commission may amend the order of the hearing proceedings and change allotted times, if such will promote efficiency without detracting from LBC's ability to make an informed decision. The LBC Chairperson will regulate the time and content of testimony to exclude irrelevant or repetitious testimony. A member of the Commission may question

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## Future Proceedings

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**Review of Draft Report**

3 AAC 110.530 requires that copies of this draft report be provided to the Petitioner and Respondent for review and comment. Copies will also be provided to other interested parties for review and com-

.....  
**Final Report**

After written comments on the draft report have been reviewed, a final report will be issued.

Occasionally, preliminary reports to the LBC become final with little or no modification. In such cases, a letter announcing the adoption of the preliminary report is is-



persons providing public comment or testimony as a sworn witness. The Commission may also call additional witnesses.

The petitioner and respondent each have the opportunity to provide sworn testimony to the Commission. This allows the petitioner and respondent to present witnesses possessing particular expertise or credibility about the specific topics addressed in testimony. It is an opportunity to present relevant facts and analysis and not intended to provide a forum for individuals to make general comments and

“swear or affirm” that they sincerely believe what they are stating.

A brief or document may not be filed at the time of the public hearing unless the Commission determines that good cause exists for the failure to present the submission in a timely manner.

In compliance with Title II of the Americans with Disabilities Act of 1990, reasonable auxiliary aids, services, and/or special modifications to accommodate individuals with disabilities will be provided to those requiring such accommodations to participate at the hearing. To se-

cure such arrangements, persons requiring special accommodations must contact LBC staff at 269-4500, or TDD 800 930-4555 one week prior to the hearing.


If anyone attending the hearing does not have a fluent understanding of English, the LBC will allow time for translation. Unless other arrangements are made prior the hearing, the individual requiring assistance must arrange for a translator. Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.

.....  
**LBC Decisional Meeting**

Depending on the circumstances, the LBC may render its decision immediately upon conclusion of the hearing. If the LBC does not render a decision immediately after the hearing, it is likely to do so shortly thereafter.

During the decisional meeting, no new evidence, testimony or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

After a verbal decision is rendered, the LBC will adopt a written statement explaining all major considerations leading to its decision concerning the City of Ketchikan annexation petition. A copy of the statement will be provided to the



## Agenda

### City of Ketchikan Annexation Hearing

**Members**


*Kevin Waring*  
Chairperson  
At-Large

*Kathleen Wasserman*  
Vice-Chairperson  
First Judicial District

*Nancy Cannington*  
Member  
Second Judicial District

*Allan Tesche*  
Member  
Third Judicial District

*William Walters*  
Member  
Fourth Judicial District



- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- IV. Comments by members of the Local Boundary Commission
- V. Comments by members of the public concerning matters **not on the agenda**
- VI. Public hearing on the City of Ketchikan Annexation Petition
  - A. Summary of DCED's report & recommendations
  - B. Opening statement by the Petitioner (limited to 10 minutes)
  - C. Opening statement by the Respondent (limited to 10 minutes)
  - D. Sworn testimony of witnesses called by the Petitioner
  - E. Sworn testimony of witnesses called by the Respondent
  - F. Sworn responsive testimony of witnesses called by the Petitioner
  - G. Period of public comment by interested persons (limited to 3 - 5 minutes per person)
  - H. Closing statement by the Petitioner (limited to 10 minutes)
  - I. Closing statement by the Respondent (limited to 10 minutes)
  - J. Reply by the Petitioner (limited to 5 minutes)
- VII. Decisional session concerning the City of Ketchikan Annexation Petition (optional at this time)
- VIII. Comments from Commissioners and staff
- IX. Adjourn

The LBC Chairperson will preside at the hearing, and may regulate the time and content of testimony to exclude irrelevant or repetitious testimony. The LBC may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the LBC's ability to make an informed decision.

petitioner, respondent, and to all others who request a copy. A decision of the LBC becomes final once the written statement of decision is mailed to the petitioner and others who request a copy at the time of the decision.

.....  
**Reconsideration**

Any party may ask the LBC to reconsider its decision in this matter. The provisions of 3 AAC 110.580 provide details concerning requests for reconsideration.

A request for reconsideration of the LBC’s decision may be filed within 20 days after the decision becomes final. The LBC may also order reconsideration of all or part of its decision on its own motion.

Requests for reconsideration must describe, in detail, the facts and analyses that support the request for reconsideration. If the Commission takes no action on a request for reconsideration within 30 days after its decision becomes final, the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner and respondents opposing reconsideration may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

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**Judicial Appeal**

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A decision of the LBC may be appealed to Superior Court. The appeal must be made within 30 days after the last day on which reconsideration may be ordered by the Commission. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

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**Legislative Review**

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The City of Ketchikan’s annexation petition seeks alteration of the City’s municipal boundaries under the process that involves review by the legislature.

Legislative review is initiated under Article X § 12 of Alaska’s constitution when the LBC files a recommendation for annexation with the legislature during the first 10 days of a regular session. If the legislature takes no action on the recommendation within 45 days after presentation (or at the end of the session, whichever is earlier) the recommendation is deemed to have been approved by the legislature.

However, if the Senate and House of Representatives adopt a joint resolution rejecting the recommendation within the 45-day review period, the action is denied.

Rule 49(a)(5) of the Uniform Rules of the Alaska State Legislature provides that a joint resolution “is treated in all respects as a bill but it is not subject to veto.”

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**Federal Voting Rights Act Review**

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Federal law (43 U.S.C. 1973) subjects municipal annexations in Alaska to review under the federal Voting Rights Act. The Voting Rights Act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging the right to vote for racial reasons.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of Columbia. However, DCED staff are available to assist in the effort. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (see 28 CFR § 51.22). Annexation will not take effect until the City provides DCED with evidence that the

Justice Department or U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630). Commission staff is available to assist cities in meeting their obligations under the Voting Rights Act.

If the LBC and the legislature approve annexation, the boundary change will take effect on the date that the City provides the LBC staff with documentation that the annexation has successfully passed the requisite Federal

Voting Rights Act review. After such documentation is received by DCED, a certificate of boundaries for the City reflecting the annexation will be issued.

# Appendix D

## Background Concerning Ketchikan

### Location

Ketchikan is located on the western coast of Revillagigedo Island, near the southernmost boundary of Alaska. It is 679 miles north of Seattle and 235 miles south of Juneau. A map of the region appears below.

### History

Tongass and Cape Fox Tlingits used Ketchikan Creek as a fish camp which they called "kitschk-hin," meaning creek of the "thundering wings of an eagle."

The abundant fish and timber resources attracted non-Natives to Ketchikan. In 1885,

Mike Martin bought 160 acres from Chief Kyan, which later became the township.

The first cannery opened in 1886 near the mouth of Ketchikan Creek and four more were built by 1912. The Ketchikan Post Office was established in 1892. In the late 1890s, nearby gold and copper discoveries briefly brought activity to Ketchikan as a mining supply center. By 1936, seven canneries were in operation, producing 1.5 million cases of salmon.

The need for lumber for new construction and packing boxes spawned the Ketchikan Spruce Mills in 1903, which operated for over 70 years. Spruce was in high demand during World War II, and Ketchikan became a supply center for area log-

ging. A \$55 million pulp mill was constructed at Ward Cove near Ketchikan in 1954. Its operation fueled the growth of the community. The mill's 50-year contract with the U.S. Forest service for timber was canceled, and the pulp mill closed in March 1997.

15.7% of the population are Alaska Natives. A federally recognized tribe is located in the community. The largest collection of totem poles in the world is found at Totem Bight State Historical Park, Saxman, and the Totem Heritage Center Museum.

During the April 1990 U.S. Census, there were 3,360 total housing units, and 196 of these were vacant. 4,258 jobs were estimated to be in the community. The official unemployment rate at that time was 8.6%. 31.2% of all adults were not in the work force. The median household income was \$41,931, and 5.5% of residents were living below the poverty level.



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## Economy

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Ketchikan is an industrial center and a major port of entry in Southeast Alaska, with a diversified economy.

Ketchikan is supported by a large fishing fleet, fish processing facilities, timber and wood products manufacturing, and tourism.

Ketchikan Pulp Corporation's mill closed in March 1997, forcing 400 residents into unemployment. To ease the affects of the shut-down, the U.S. Forest Service is allocating timber for the sawmill to continue operations for three additional years. Several smaller timber companies are also based in Ketchikan. Local government leaders and business owners are working to develop new wood-products plants that could create more jobs while cutting fewer trees. The state operates the Deer Mountain Hatchery, which produces over 450,000 king salmon, coho salmon, steelhead, and rainbow trout annually.

438 area residents hold commercial fishing permits. Four canneries, three cold storage facilities, and a fish processing plant support the fishing industry in summer months. Over 480 cruise ships dock in Ketchikan each summer, bringing over 300,000 annual visitors.

A new Ketchikan Visitors Association office building was completed in 1998, with a visitors' center and retail sales space for 20 tourism operators. Mining would play a role in the future if the molybdenum mine at Quartz Hill is developed.

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## Transportation

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Regularly-scheduled jet services offer three north-bound and three south-bound departures daily. The State-owned Ketchikan International Airport offers a paved, lighted 7,500' runway. The airport lies on Gravina Island, a 10-minute ferry ride from the waterfront. Ketchikan is a regional transportation hub, with numerous air taxi services to surrounding communities. There are four float plane landing facilities: Tongass Narrows, Peninsula Point, Ketchikan Harbor, and Murphy's. Ketchikan is the first port of call in Alaska for cruise ships and Alaska Marine Highway vessels. Harbor and docking facilities include a breakwater, a deep draft dock, five small boat harbors, a dry dock and ship repair yard, boat launch, and a State ferry terminal. The shipyard is privately-owned, and is used for repairs to vessels of the Alaska Marine Highway and offshore fish processors. The Inter-Island Ferry Authority,

based on Craig, is coordinating funding to develop a twice-daily, year-round ferry service between Ketchikan and Hollis. (Alaska Department of Community and Economic Development community profiles, [http://www.comregaf.state.ak.us/CF\\_BLOCK.htm](http://www.comregaf.state.ak.us/CF_BLOCK.htm)).

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## Climate

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The area lies in the maritime climate zone noted for its warm winters, cool summers, and heavy precipitation. Summer temperatures range from 51 to 65. Winter temperatures range from 29 to 39. Ketchikan averages 162 inches (13.5 feet) of precipitation annually, including 32 inches of snowfall.

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## History of the Establishment and Expansion of the Ketchikan City Government

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Ketchikan is Alaska's second oldest existing city government, having incorporated in 1900 shortly after the City of Skagway was formed. Voters extended home rule powers to the City in 1960, making it one of the first home rule local governments in Alaska. The current boundaries of the City encompass approximately 3.8 square miles. In 1998, the population of the City was recorded at 8,460.



Prior annexations of the City have included those listed in the adjacent chart.

*Boundary changes to the City of Ketchikan*

**Current Proceeding**

As was discussed in the City’s the petition, the subject of expanding the City’s boundaries to the northwest has been considered for several years. After a November 1998 announcement that Wal-Mart Corporation planned to locate a 64,000 square foot facility one-mile north of the City limits, the question of annexation became an immediate concern. The petition for the current annexation proposal was subsequently developed and filed.

Name	Area	Effective Date
Revilla Precinct	Unknown	05/21/30
Tongass View	Unknown	11/10/55
U.S.S. 550	18.48 acres	03/17/63
Carianna Area	Unknown	05/17/66
Bear Valley Addition	Unknown	01/02/71
Dennis Shull Addition	2.51 acres	10/02/79
Washington Park	27.3 acres	07/30/82
College Court Addition	0.95 acres	05/21/83
Peril Addition	2.37 acres	07/18/83
Aubuchon Addition	10.79 acres	07/18/83
Shull Addition	85.16 acres	07/18/83
KPU Tracts	9.67 acres	07/18/83
Tuscarora Lode	6.82 acres	03/03/84
Three Remnant Parcels	0.03 acres	03/03/84
KPU-BLM Addition	478.55 acres	03/09/86
Landfill Tract	37.07 acres	03/09/86
Spear Addition	0.47 acres	03/09/86
Furseth Addition	2.88 acres	03/09/86
Gisse-Furseth	55.26 acres	03/09/86
College Tract	48.30 acres	03/09/86
U.S.C.G.	121.31 acres	03/09/86
Dawson Addition	52.3 acres	05/19/90
Wayne Const. Addition	1.3 acres	05/19/90

**Background Regarding the Ketchikan Gateway Borough Government**

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

Five days after the KGB petition was filed, the 1963 State legislature convened. John

Rader, who was a member of the State House of Representatives at the time, considered the lack of progress on forming organized boroughs to be the most pressing issue facing the legislature:

“My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of

honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could. Metropolitan Experiment in Alaska, page 93.

Representative Rader proceeded to draft a bill that mandated the incorporation of certain regions of the state. These included the Ketchikan and the Annette Island Indian Reservation, Sitka, Juneau, Haines-Skagway, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks. Representative Rader explained:

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

v Ironically, while the Mandatory Borough Act promised that boroughs would not be deprived of State revenues or penalized because of incorporation, the fact that many areas were allowed to remain unorganized precluded the fulfillment of that promise from the very beginning. More than thirty-five years after the Mandatory Borough Act was passed, organized boroughs received \$121,360,429 less in State education foundation aid for Fiscal Year 1998 alone as compared to the level of State aid had those areas remained unorganized.

We considered many areas as possibilities for mandatory borough incorporation. However, after looking over the available information on taxable wealth, I concluded that the areas we proposed as boroughs,

together with cities such as

Nome, Wrangell, Petersburg, Cordova, Valdez, and others not included in any boroughs, encompassed roughly 90 per cent of the taxable wealth in the State and approximately 80 per cent of the population. These cities had not outgrown their corporate boundaries and did not have significant suburban development. Nor was it necessary to the tax equalization features of the bill that they be within a borough. Metropolitan Experiment in Alaska, page 102.

The Annette Island Indian Reservation, the Haines-Skagway area, and military reservations were excluded from the bill by the House of Representatives. The bill passed the House with 27 votes in favor – six more than the required minimum. John Rader noted:

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

porters on the last day on the last critical vote switched his vote from “Yes” to “No” after being persuaded that the next step would be further equalization affecting his area. The people who were continuing to benefit from the inequity of taxes recognized that if the bill passed, they would have a hard time politically maintaining the inequity in the future because their numbers would be diminished substantially. People benefiting from tax inequities do not like to discuss tax reforms; they never know when reform will finally reach home. Metropolitan Experiment in Alaska, page 117.

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

**Declaration of Intent.** It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. . . . Session Laws of Alaska, 1963, Chapter 52.<sup>v</sup>

Section 3(a)(7) of the Mandatory Borough Act stipulated that if Ketchikan voters did not incorporate a borough voluntarily, one would be established by legislative fiat with

boundaries corresponding to “*Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 3, 1961, 26 Stat. 1101.*”

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

The Local Affairs Agency (the predecessor to DCED) which served as staff to the LBC, considered the boundaries proposed in January 23, 1963 petition to be arbitrary. The Local Affairs Agency recommended that the LBC enlarge the boundaries to include all of Gravina and Revillagigedo Islands. See Report to the Local Boundary Commission on a proposal to incorporate an organized borough in the Ketchikan area, Local Affairs Agency, May 1963. The boundaries recommended by the Local Affairs Agency took in more than 23 times the area requested by the petitioners, but about ¼ of the territory provided by the Mandatory Borough Act. In recommending the larger boundaries, the Local Affairs

Agency stressed that the KGB would gain additional National Forest Receipts while it would incur minimal added expense:

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

On May 3, 1963, the LBC held a hearing on the petition in Ketchikan. Following the hearing, the LBC amended the petition to expand the boundaries as recommended by the Local Affairs Agency. However, the LBC concluded that the proper boundaries of the KGB should be even larger. Specifically, the Commission stated:

“The boundaries of the proposed borough do not conform to the natural geography of the area as required by AS 07.10.030(2). Pursuant to AS 07.10.110, the Commission alters the boundaries to include all of Revillagigedo and Gravina Islands, as well as several lesser islands. The Commission makes this boundary change for the following reasons:

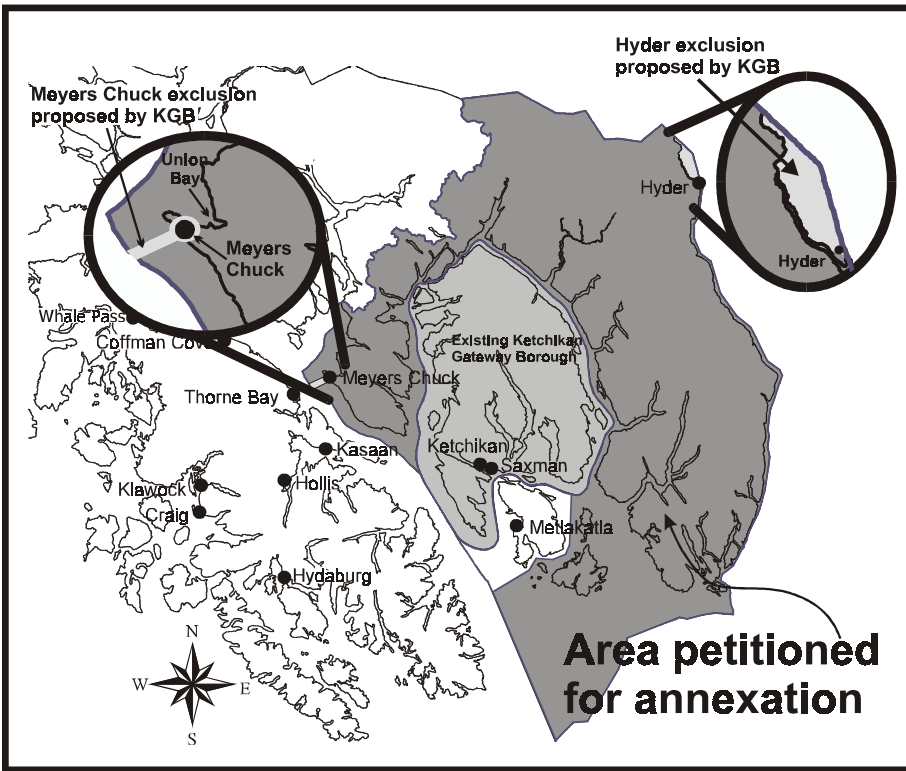
(1) The Ketchikan trading area is much larger than the area proposed by the sponsor for borough incorporation. The trading area includes and

roughly approximates Election District # 1. The Commission does not wish at this time to alter the proposed borough boundaries to include the entire election district. It does, however, feel that the borough should be significantly larger than the Independent School District.” . . . (emphasis added) See Notice to the Secretary of State of the Acceptance of a Petition for the Incorporation of the Gateway Borough, Local Boundary Commission, May 25, 1963.

On February 28, 1998, the Ketchikan Gateway Borough petitioned the Commission for annexation of an estimated 5,524 square miles. The expanded corporate boundaries proposed by the Borough were nearly identical to its model boundaries as defined by the Commission in 1991. However, the proposed expanded corporate boundaries omitted Hyder consisting of 17.9 square miles and Meyers Chuck consisting of 3.5 square miles, whereas the Borough’s model boundaries included those 21.4 square miles. The map below shows the Borough’s existing corporate boundaries, the territory proposed for annexation, and the Borough’s model boundaries, including Hyder and Meyers Chuck.

On December 12, 1998, the Local Boundary Com-

Ketchikan Gateway Borough 1998 annexation proposal



mission held its public hearing on the Ketchikan Gateway Borough's petition to annex 5,524 square miles. After the hearing, during the Commission's deliberations on the petition, several Commissioners voiced concerns that the petition failed to meet certain standards for borough annexations. Those concerns related to the omission of the communities of Hyder and Meyers Chuck from the territory proposed for annexation. Rather than deny the Borough's petition outright, the Commission voted unanimously to allow the Borough ninety days to amend its petition. The deadline for receipt of an amended petition was

March 12, 1999.

The Borough ultimately decided not to amend its petition. Accordingly, on April 16, 1999, the Commission denied the Borough's annexation petition.

The Ketchikan Gateway Borough currently has the following powers and duties:

.....  
**Areawide**

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. eminent domain;
5. emergency disaster pow-

ers;

6. garbage and waste services;
7. alcohol regulation;
8. transportation;
9. parks and recreation;
10. economic development;
11. voter services;
12. animal control and protection;
13. property management and control.

.....  
**Non-areawide**

1. library;
2. sewage and septic waste collection and disposal;
3. emergency services communications;
4. bonds and tax increment financing.

.....  
**Service Areas**

The KGB has 14 service areas in which services are provided that are not provided generally on an areawide or non-areawide basis. Nine of those service areas are in parts of the KGB that are interconnected by streets, roads, and highways. The remaining five service areas are in parts of the KGB not connected by roads.

