



Local Boundary Commission

Statement of Decision

Members

Kevin Waring
Chairperson
At-Large

**IN THE MATTER OF THE
PETITION FOR CONSOLIDATION
OF THE CITY OF FAIRBANKS
AND THE FAIRBANKS NORTH
STAR BOROUGH**

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Galstad
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

Ardith Lynch
Member
Fourth Judicial District



SECTION I BACKGROUND

As allowed by AS 29.06.100, registered voters of the City of Fairbanks and the Fairbanks North Star Borough filed the *Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough* (hereinafter “Petition”) with the Local Boundary Commission.¹ The Commission subsequently granted the Petition with limited modifications that had been endorsed by the Petitioners’ Representative. Consolidation is subject to approval by the voters of the Fairbanks North Star Borough. If approved by the voters, consolidation would:

1. Dissolve the Fairbanks North Star Borough, a second class borough.
2. Incorporate the Municipality of Fairbanks, a new second class borough with corporate boundaries identical to those of the former Fairbanks North Star Borough.
3. Dissolve the City of Fairbanks, a home rule city.
4. Create the City Service Area, a 33.8 square-mile service area of the Municipality of Fairbanks with boundaries identical those of the former City of Fairbanks.
5. Except as provided otherwise by the consolidation Petition approved by the Commission:
 - (a) Grant or transfer to the Municipality of Fairbanks in accordance with AS 29.06.150(b), all rights, powers, duties, assets, and liabilities of the former Fairbanks North Star Borough.
 - (b) Grant or transfer to the Municipality of Fairbanks for the area within the City Service Area, all rights, powers, duties, assets, and liabilities of the former City of Fairbanks in accordance with AS 29.06.150(b). The grant or transfer of assets includes, but is not limited to, the City of Fairbanks Permanent Fund and the so-called “Techite Pipe proceeds”² which are to be used exclusively for the benefit of the City Service Area. Additionally, the grant or transfer of powers includes the authority to levy within the City Service Area the 5% alcohol tax and 8% tobacco tax of the former City of Fairbanks for the exclusive benefit of the City Service Area.

¹ “Consolidation” is defined by AS 29.71.800(6) as “dissolution of two or more municipalities and their incorporation as a new municipality.”

² City officials indicated during the consolidation proceedings that the Techite Pipe proceeds would generate \$150,000 per year for 30 years starting in 2002.

- (c) Maintain in full force and effect all ordinances, resolutions, regulations, procedures, and orders of the former Fairbanks North Star Borough in accordance with AS 29.06.160 unless and until superseded by action of the Municipality of Fairbanks.
 - (d) Maintain in full force and effect within the City Service Area, all ordinances, resolutions, regulations, procedures, and orders of the former City of Fairbanks in accordance with AS 29.06.160 unless and until superseded by action of the Municipality of Fairbanks. This includes, but is not limited to the provisions of Section 8.8 of the Home Rule Charter of the former City of Fairbanks providing for the City of Fairbanks Permanent Fund.
6. Extend to the Municipality of Fairbanks areawide powers of:
- (a) economic development;
 - (b) solid waste collections at the transfer stations;
 - (c) maintenance of the Fairbanks Health Center; and
 - (d) cemeteries.
7. Provide for the 8% bed tax of the Municipality of Fairbanks to accrue as areawide revenue for the consolidated borough. Presently, the 8% bed tax accrues to the City of Fairbanks for hotel transactions within its jurisdictional boundaries, and accrues to the Fairbanks North Star Borough for all other hotel transactions within the Borough.

The City of North Pole will remain in existence and will be part of the Municipality of Fairbanks, just as it is now part of the Fairbanks North Star Borough.

SECTION II

SUMMARY OF PROCEEDINGS

A. Citizens Explore Local Government Options.

In April 1998, nineteen citizens of the City of Fairbanks and Fairbanks North Star Borough met to explore alternatives of combining their two local governments. Consideration was given to consolidation, merger of the City of Fairbanks into the Fairbanks North Star Borough, dissolution of the City of Fairbanks, and unification of all local governments in the Fairbanks North Star Borough. The group chose to pursue consolidation and subsequently developed the Petition.

B. Signature Gathering Effort.

Organizers initiated the effort to gather the requisite signatures on the Petition in October 1998.³ The signature gathering effort was completed in March of 2000.

C. Petition Submitted for Technical Review.

On March 20, 2000, the Petition was submitted to the Alaska Department of Community and Economic Development (hereinafter "DCED") for technical review. The 561-page portion of

³ AS 29.06.100(a) requires that a petition for consolidation "must be signed by a number of voters of each existing municipality equal to at least 25 percent of the number of votes cast in each municipality's last regular election." The Local Boundary Commission has interpreted AS 29.06.100(a) by adopting 3 AAC 110.410(b) which provides as follows:

If a statute requires that the petition be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition.

DCED determined that the Fairbanks consolidation petition had to be signed by at least 1,159 voters of the City of Fairbanks and at least 2,564 voters of that portion of the Fairbanks North Star Borough outside the City of Fairbanks.

the Petition containing signatures was forwarded by DCED to the Division of Elections in the Office of the Lieutenant Governor on March 21, 2000.

D. Commissioner Lynch Recused from Proceedings.

Ardith Lynch, who is both a member of the Local Boundary Commission and the Attorney for the Fairbanks North Star Borough, notified the Commission Chairman in a letter dated April 10, 2000, that provisions of the State Executive Branch Ethics Act (AS 39.52.110 - .190) and the Commission's Bylaws (Article IX, Section [b]) appeared to prohibit her from participating as a member of the Commission in deliberations on the consolidation proposal. On April 28, 2000, Commissioner Lynch was recused by the Commission from participating as a member of the Local Boundary Commission in the proceedings relating to the Fairbanks consolidation proposal.

E. Petition Accepted for Filing.

The Division of Elections completed its review of the Petition signatures on May 11, 2000. The Elections Division determined that the Petition had been signed by 1,416 qualified voters in the City of Fairbanks and 2,626 qualified voters in that portion of the Fairbanks North Star Borough outside the City of Fairbanks. The number of qualified signatures exceeded the minimum number required by law.

On May 17, 2000, DCED completed its technical review of the form and content of the Petition. DCED noted that certain elements of the Petition such as the budget and brief lacked detail. Additionally, DCED noted that the budget was 17 months old at the time it was submitted. However, after conferring with the Commission Chairman and the Attorney General's Office, DCED advised the Petitioners that a liberal construction of the form and content requirements would be utilized since citizens were exercising their right to petition the Local Boundary Commission. DCED noted that such an approach is consistent with the general rule of liberal construction given to matters of initiative and referendum when citizens are exercising a power reserved to them under the constitution or in statute. *See Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974); *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977); and *Meiners v. Bering Strait School District*, 687 P.2d 287 (Alaska 1984). Accordingly, DCED determined that the Petition was substantially complete and in proper format. The Petition was accepted for filing on May 17, 2000.

F. Public Notice of Filing of the Petition.

The LBC Chairman established August 1, 2000, as the deadline for filing responsive briefs and comments on the Petition. Public notice of the filing of the Petition was posted, published, and served by the Petitioners and DCED in accordance with 3 AAC 110.450. Additionally, notice of the filing was provided through the State of Alaska's *Online Public Notice* System and on the Internet web site maintained by DCED.⁴

G. Service of the Petition.

On May 18, 2000, the Petitioners served a copy of the Petition on the Mayors of the Fairbanks North Star Borough, the City of Fairbanks, the City of North Pole, and the Denali Borough as required by 3 AAC 110.460(a). The Petition documents were also made available for public review at the Noel Wien Public Library in accordance with 3 AAC 110.460(b).

H. Proof of Notice and Service.

In accordance with 3 AAC 110.470, the Petitioners submitted proof to DCED on June 2, 2000, that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 – 3 AAC 110.460 had been satisfied.

I. Request for Extension of Comment and Briefing Period.

On June 6, 2000, the Fairbanks North Star Borough requested that the Commission Chairman extend the deadline for responsive briefs and public comment from August 1 to December 1, 2000. The Borough indicated that its extension request stemmed from concerns that a pending

⁴ The State's *Online Public Notice* System is found at <<http://notes.state.ak.us/pn/pubnotic.nsf/?Open>>. DCED posted consolidation materials at <<http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>>.

statewide initiative to limit municipal property taxes to 10 mills created great uncertainty as to the feasibility of a consolidated borough.

On June 8, 2000, the Petitioners objected to the request for an extension. On June 16, 2000, the City of Fairbanks submitted a written statement supporting the Borough's request.

The Commission Chairman brought the request before the Commission on June 27, 2000. During the meeting, the four participating members of the Commission addressed the matter. Ultimately, the Commission Chairman decided not to grant the request to extend the deadline for comments. He did so without objection from the other three participating members. The Chairman noted, however, that if the voters approved the tax cap, it would have significant implications for the consolidation proposal.

J. Comments and Responsive Briefs Filed.

Two letters and three responsive briefs were filed with the Commission by the August 1, 2000 deadline. The letters were submitted by:

1. Bonnie Williams, who wrote a 6-page letter in opposition to the consolidation; and
2. James Moody, who wrote a 4-page letter in opposition to the consolidation.

The responsive briefs in opposition to the consolidation were filed by:

1. Fairbanks North Star Borough;
2. City of Fairbanks; and
3. Interior Taxpayers' Association, Incorporated.

The responsive briefs and comments were made available for public review at the Noel Wien Public Library. In addition, the responsive briefs and comments were posted on the Internet web site maintained by DCED.

K. Petitioners' Reply Brief.

The Commission Chairman established August 29, 2000 as the deadline for filing the Petitioners' Reply Brief.

The Petitioners filed their Reply Brief on August 25, 2000. A copy of the brief was made available for public review at the Noel Wien Public Library and through DCED's Internet web site.

L. DCED's Preliminary Report.

On December 28, 2000, DCED issued its *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (hereinafter "Preliminary Report"). The Preliminary Report, prepared in accordance with 3 AAC 110.530(b), consisted of seventy-six pages of background and analysis, a twenty-eight-page appendix, and a four-page executive summary. The Preliminary Report was distributed to eighty-four individuals. A separate four-page executive summary of the Preliminary Report was distributed to an additional sixty-two individuals. Multiple copies of the Preliminary Report were provided to the Noel Wien Library. Additionally, the report was made available for public review on the Internet.

M. Comments on Preliminary Report.

Individuals and organizations were given until January 31, 2001 to comment on the Preliminary Report. Timely comments were received from the following:

- David Shewfelt, resident of the City of Fairbanks;
- Garry Hutchison, resident of the Fairbanks North Star Borough;
- Bonnie Williams, resident of the Fairbanks North Star Borough;
- Don Lowell, Petitioners' Representative;

- Ron Kovalik, resident of the Fairbanks North Star Borough;
- Cynthia M. Klepaski, Assistant Borough Attorney, Fairbanks North Star Borough; and
- Patrick B. Cole, Administrative Services Director, City of Fairbanks.

A copy of the written comments on the Preliminary Report was provided to each member of the Local Boundary Commission. A copy was also made available for public review at the Noel Wien Library and through DCED's Internet web site.

N. DCED's Final Report.

On March 16, 2001, DCED issued its *Final Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (hereinafter "Final Report"). The Final Report, prepared in accordance with 3 AAC 110.530(d), consisted of forty-one pages and seven pages of appendices. On the same date, DCED issued *Addendum Number 1 to DCED's Final Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough*, (hereinafter "Addendum") consisting of two pages.

Both the Final Report and Addendum were distributed to 148 individuals and were also made available for public review at the Noel Wien Public Library and on DCED's Internet web site.

O. Notice of public hearing.

Pursuant to AS 29.06.120 and 3 AAC 110.550, the Commission scheduled a public hearing on the Fairbanks consolidation proposal to begin at 1 p.m., Saturday, April 7, 2001, in the Fairbanks North Star Borough Assembly Chambers. Notice of the hearing was published, posted, and served in accordance with 3 AAC 110.550. In addition, notice of the hearing was provided through the State of Alaska's *Online Public Notice System* and on DCED's Internet web site.

P. Public hearing.

The Commission convened the public hearing on the Petition at the time, date, and place scheduled. The hearing lasted approximately seven hours. During the hearing, sworn testimony was given by the following individuals:

Witnesses called by the Petitioners:

- Jeffery Jacobson, Mayor of North Pole,
- Juanita Helms,
- Charles Bettisworth,
- Jeff Cook,
- Jim Movius,
- Michael Walleri, and
- Jerry Norum.

Witnesses called by the Respondent Fairbanks North Star Borough:

- Fairbanks North Star Borough Mayor Rhonda Boyles,
- Michael Lamb, and
- Sandra Stringer.

Witnesses called by the Respondent City of Fairbanks:

- Jerry Cleworth,
- Brian Rogers, and
- Patrick Cole.

Witnesses called by the Respondent Interior Taxpayers' Association, Inc.:

- Donna Gilbert

In addition, public comment on the proposal was provided by the following:

- Charlie Rex
- Doug Isaacson
- Marlene Leak
- Cheryl Humme
- Rita Leake
- Cam Carlson
- Nancy Webb
- Garry Hutchison
- Jim Moody

During the hearing, Brian Rogers, one of the three witnesses who appeared on behalf of the City of Fairbanks, urged the Commission to suspend action on the consolidation Petition to allow an opportunity for the development of a home rule charter with the understanding that the charter would be added to the consolidation Petition.

Under authority of 3 AAC 110.660 and AS 29.06.130, the Petitioners' Representative, City of Fairbanks, and Fairbanks North Star Borough submitted a written request that the Local Boundary Commission delay action on the Petition to allow an opportunity for the City and Borough to call an election for a charter commission. The request provided as follows:

1. If the Borough Assembly passes a resolution calling for election of a charter commission to prepare a charter for the proposed consolidated municipality and the City Council passes a resolution approving said election, the pending Petition shall be held in abeyance conditioned on the events specified below.
 - (a) If either body fails to pass such a resolution on or before May 22, 2001, the LBC shall act on the pending Petition.
 - (b) At the regular election on October 2, 2001, the voters of the Borough shall consider the question "Shall a charter commission be elected to prepare a proposed charter for the proposed consolidated Municipality of Fairbanks?" and shall elect the members of the commission in accordance with AS 29.10.040 - .050.
 - (c) If the question is not approved by the voters, the LBC shall act on the pending Petition.
2. If the voters approve, the charter commission shall prepare a proposed home rule charter for the proposed consolidated municipality and submit it to the Local Boundary Commission by June 15, 2002.

If a charter is not presented to the LBC by June 15, 2002, the LBC shall act on the pending Petition.

If the charter commission presents a charter to the LBC by June 15, 2002, the LBC is requested to amend the pending Petition, to provide for consolidation of the City and Borough as a home rule municipality. If the LBC approves the Petition, it shall be submitted to the voters in accordance with AS 29.06.140.

After receiving the request, the Local Boundary Commission recessed the meeting without acting on the Petition.

Q. Developments During the Hearing Recess.

The Fairbanks City Council addressed the issue of an elected charter commission on April 23, 2001 by considering Resolution No 3915, "A Resolution Supporting Placing the Question of Whether a Charter Commission Should be Elected to Write a Proposed Home Rule Charter Before the Voters, and Providing an Effective Date." The Resolution was rejected by a 4 – 2 vote of the Council. A member of the City Council subsequently gave notice that reconsideration would be requested.

On April 26, 2001, the Fairbanks North Star Borough Assembly took up Resolution No. 2001 – 37, "A Resolution Placing on the Ballot at the Next General Election the Question of Electing a Charter Commission to Prepare a Proposed Charter for the Proposed Consolidated Municipality of Fairbanks." The Resolution was rejected by a 5 - 4 vote of the Assembly. Reconsideration was immediately requested and denied.

On May 7, the Fairbanks City Council took up the request for reconsideration of its April 23 action. The consideration of the matter ended when none of the City Council members moved for reconsideration.

Parliamentary rules prohibited the Borough Assembly from considering the same resolution that it had rejected on April 26 because a motion to reconsider the matter had also been rejected. However, another resolution had been prepared by an Assembly member for consideration by the

Assembly. The new resolution, Resolution No. 2001-40, was titled “A Resolution Placing On The Ballot At The Next General Election The Question Of Electing A Charter Commission With Representatives From The City Of Fairbanks, City Of North Pole, And Fairbanks North Star Borough To Prepare A Proposed Charter For The Proposed Consolidated Municipality Of Fairbanks.”

As indicated in the title, Resolution No. 2001 – 40 differed from Resolution No. 2001 – 37 in that it provided for a charter commission with members to be elected from the City of Fairbanks, the City of North Pole, and the remainder of the Borough, rather than the at-large election method proposed in Resolution No. 2001 - 37. The presiding officer of the Assembly ruled that Resolution No. 2001 - 40 was different than the initial resolution. However, on May 10, the Assembly determined that Resolution No 2001 – 40 was dilatory and refused to consider it.

There was no further consideration of the matter by either the Fairbanks City Council or the North Star Borough Assembly between May 11 and May 22.

R. Hearing Reconvened.

The Commission Chairman called a meeting for May 23, 2001 to reconvene the April 7 hearing. Notice of the meeting was provided to the Petitioners, City of Fairbanks, Fairbanks North Star Borough, and Interior Taxpayers’ Association, Inc. Notice was also published in the Fairbanks Daily News-Miner and was placed on the State of Alaska’s *Online Public Notice System*.

The hearing was reconvened on May 23, 2001 at 9 a.m. in the Fairbanks North Star Borough Assembly Chambers. The Petitioners’ Representative and respondents were each allowed five minutes to make statements to the Commission.

At the conclusion of the hearing, the Commission convened a decisional session pursuant to 3 AAC 110.570. After deliberating for approximately one hour, the Commission voted unanimously among the four participating members to amend the Petition as recommended by DCED in its Final Report as supplemented by the Addendum. Additionally, the Commission agreed to a request from the Petitioners’ Representative to amend the Petition to change the name of the Urban Service Area to the City Service Area. The Commission then approved the amended Petition by a unanimous vote among the four participating members.

To explain the basis for the Commission’s decision in this proceeding, the following is an account of the findings and conclusions reached by the Commission with respect to the Petition.

SECTION III FINDINGS AND CONCLUSIONS

A. Introduction.

State law (AS 29.06.130[a]) provides that the Local Boundary Commission *may* approve the Petition (with or without amendments and/or conditions) *if* the Commission determines that the consolidation proposal (as may be amended or conditioned) meets the following tests:

1. that it serves applicable principles in Alaska’s Constitution,
2. that it satisfies standards for consolidation in Alaska Statutes AS 29.06.130(a) and AS 29.05.031,
3. that it fulfills the standards for consolidation in 3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060, and
4. that it is in the best interests of the State.

If the Commission determines that the Petition does not meet all of those four tests, the Petition must be denied.

The standards in the Constitution, Alaska Statutes, and Alaska Administrative Code relate to the following eleven issues:

1. community of interests,
2. population,
3. boundaries,
4. resources,
5. borough classification,
6. civil and political rights,
7. transition,
8. maximum local self-government,
9. minimum of local governments,
10. constitutional provisions relating to cities and service areas, and
11. best interests of the State.

B. Standards Relating to Community of Interests.

1. Standards Established in Law.

Article X, § 3 of Alaska's Constitution requires that each borough embrace an area and population with common interests to the maximum degree possible. In addition, AS 29.05.031(a)(1) states, in relevant part, that the population of the proposed consolidated borough must be interrelated and integrated as to its social, cultural, and economic activities. 3 AAC 110.045(a) lists four factors which the Commission may consider in making its determination as to whether the population of the proposed borough is interrelated and integrated as to its social, cultural, and economic activities.⁵ 3 AAC 110.045(a) also allows the Commission to consider other relevant factors.

In addition, AS 29.05.031(a)(4) states that the proposed consolidated borough must have the land, water, and air transportation facilities to allow the communication and exchange necessary for the development of integrated borough government. 3 AAC 110.045(c) is similar to, but more specific than, AS 29.05.031(a)(4). It lists four factors that the Commission may consider in making its determination on that point; it also allows the Commission to consider other relevant factors.⁶ Further, 3 AAC 110.045(c) provides for consideration of communications media in terms of allowing for adequate communications and exchange necessary to develop an integrated borough government.

3 AAC 110.045(b) states that, absent a specific and persuasive showing to the contrary, the Commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed consolidated borough.

3 AAC 110.045(d) states that absent a specific and persuasive showing to the contrary, the Commission will presume that communications and exchange patterns are insufficient unless all communities within the proposed consolidated borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

2. Application of the Standards to the Fairbanks Proposal.

The Commission notes that the Fairbanks North Star Borough has existed since January 1, 1964, more than thirty-seven years. The constitutional standard in Article X, § 3 noted above has not changed since it went into effect in 1959. Moreover, the statutory standards in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) noted above are very similar to borough standards

⁵ These are: (1) the compatibility of urban and rural areas within the proposed borough; (2) the compatibility of economic lifestyles, and industrial or commercial activities; (3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and (4) the extent and accommodation of spoken language differences throughout the proposed borough.

⁶ These are (1) transportation schedules and costs; (2) geographical and climatic impediments; (3) telephonic and teleconferencing facilities; and (4) public electronic media.

established in 1961, three years before the Fairbanks North Star Borough was formed. Further, the standards set out in 3 AAC 110.045(a)-(d) have been in place since 1991. The jurisdictional boundaries of the Fairbanks North Star Borough have not changed since March 13, 1983. The boundaries that have been in place for more than eighteen years are identical to the boundaries of the proposed consolidated borough. The Commission finds that these circumstances create a strong presumption that the referenced standards in the Constitution, Alaska Statutes, and Alaska Administrative Code are satisfied.

Moreover, the Commission concluded in a 1996 proceeding that, “[t]here is overwhelming evidence . . . that the FNSB is an extremely well integrated borough in terms of its social, cultural and economic characteristics, natural geography, and transportation facilities.” (See Local Boundary Commission, *Statement of Decision in the Matter of the Petition for Detachment of 5,400 Square Miles from the Fairbanks North Star Borough and the Petition for Incorporation of the Home Rule North Pole Borough*, August 30, 1996, p. 8.)

The Commission’s 1996 determination was based on consideration of factors including the compatibility of urban and rural areas of the Borough, the compatibility of economic lifestyles, and the system of transportation and communication throughout the Borough. These same factors apply to the present consolidation proposal under 3 AAC 110.045(a). There is no evidence in this proceeding that these factors have changed significantly over the past five years. Consequently, the Commission finds that the 1996 determination remains valid today.

3 AAC 110.045(b) establishes the rebuttable presumption that the statutory standard at issue requires the presence of at least two communities within a borough. That presumption is clearly met in this case. The Fairbanks North Star Borough contains two city governments (Fairbanks and North Pole) each of which encompasses a separate community. In addition, nine “census designated places” (CDPs) have been identified in the Borough by the U.S. Bureau of the Census. Those consist of College, Eielson AFB, Ester, Fox, Harding-Birch Lakes, Moose Creek, Pleasant Valley, Salcha, and Two Rivers. The following is a description of the characteristics of CDPs published by the Census Bureau.

The purpose of the CDP program is to identify and delineate boundaries for closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar sizes. The intent is for a CDP to differ from an incorporated city, town, village, or borough⁷ only in regard to legal status and recognition within its respective state.

The Census Bureau’s definition of CDPs is different from the legal definition of community adopted by the Local Boundary Commission under 3 AAC 110.920. Therefore, it is possible that some of the nine CDPs may not meet the Commission’s definition of a community. Nonetheless, the Commission finds that the presumption of multiple communities in the proposed Municipality of Fairbanks is clearly met.

The written record in this proceeding provides further evidence of a strong community of interests. Most of the residents throughout the proposed consolidated borough share basic public facilities such as schools, health facilities, and utilities. Residents engage in similar industrial and commercial activities and share other economic traits. English is spoken and understood throughout the proposed consolidated borough. Although there are urban and rural areas in the proposed consolidated borough, those areas are compatible with one another.

With respect to AS 29.05.031(a)(4) and 3 AAC 110.045(c), the Commission concluded in the previously noted 1996 proceedings that:

Borough incorporation standards require that various forms of transportation allow the communication and exchange necessary for the development of integrated borough government. Again, the existing FNSB is extremely integrated in terms of transportation.

⁷ It is the Commission’s understanding that the term “borough” is used in the Census Bureau’s definition in a general sense as a place organized for local government; it is not used in the sense as the term is applied to the borough form of municipal government in Alaska.

Several other statements supporting the conclusion that the Fairbanks North Star Borough has a strong community of interests appear in the Commission's decisional statement concerning the 1996 proceeding. (*Ibid.*, pages 7, 9, and 12.)

The record in this proceeding lacks any evidence that circumstances have changed since the Commission concluded in 1996 that the Borough is "extremely integrated in terms of transportation." Therefore, the Commission finds that there is adequate communication and exchange in the existing boundaries of the proposed Municipality of Fairbanks.

With respect to 3 AAC 110.045(d), the Commission finds that all communities within the proposed consolidated borough are connected to the Borough seat by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

Based on the foregoing findings, the Commission concludes that all of the standards relating to community of interests set out in Article X, § 3 of the Constitution, AS 29.05.031(a)(1), AS 29.05.031(a)(4), and 3 AAC 110.045(a)-(d) are satisfied with respect to the proposed consolidation of the City of Fairbanks and the Fairbanks North Star Borough.

C. Standards Relating To Population.

1. Standards Established in Law.

AS 29.05.031(a)(1) states, in part, that the population of the proposed consolidated borough must be large and stable enough to support borough government. 3 AAC 110.050(a) lists five factors that the Commission may consider in making its determination on that point; it also allows the Commission to consider other relevant factors.⁸

3 AAC 110.050(b) states that absent a specific and persuasive showing to the contrary, the Commission will presume that the population is not large enough and stable enough to support the proposed consolidated borough government unless at least 1,000 permanent residents live in the proposed borough.

2. Application of the Standards to the Fairbanks Proposal.

The Commission notes that the Alaska Department of Labor and Workforce Development estimated that the July 1, 2000 population of the Fairbanks North Star Borough was 83,814. The Fairbanks North Star Borough ranks as the second most populous organized borough in Alaska. Its population is nearly eighty-four times greater than the presumed minimum population for borough governments established under 3 AAC 110.050(b). Given these facts, the Commission finds that the population of the area in question is large enough to support the proposed consolidated borough.

The population of the Fairbanks North Star Borough has increased by 7.8% since 1990. The former Alaska Department of Labor projected in 1998 that the population of the Borough would continue to show moderate growth over the ensuing two decades. A low-range scenario based on an annual average population growth rate of 0.54% estimated that the Borough would have 96,767 residents by 2018. A high-range scenario estimated an annual population growth rate of 0.94%. The high-range scenario projected that the Borough's population would reach 104,533 in 2018. The Commission finds from the historic and projected population data that the population of the proposed Municipality of Fairbanks is stable enough for borough government.

Given the foregoing findings, the Commission concludes that the standards set out in 3 AAC 110.050(a)-(b) and the relevant portion of AS 29.05.031(a) are satisfied with respect to the pending Petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough.

⁸ The five factors listed consist of: (1) total census enumerations; (2) durations of residency; (3) historical population patterns; (4) seasonal population changes; and (5) age distributions.

D. Standards Relating to Boundaries.

1. Standards Established in Law.

AS 29.05.031(a)(2) provides that the boundaries of the proposed consolidated borough must conform generally to natural geography and include all areas necessary for full development of municipal services. 3 AAC 110.060(a) is similar to, but more specific than, AS 29.05.031(a)(2). It directs the Commission to examine the region's capability to provide "essential borough services" on an "efficient, cost-effective level." 3 AAC 110.060(a) lists six factors that the Commission may consider in making its determination on that point; it also allows the Commission to consider other relevant factors.⁹

The term "essential borough services" is defined at 3 AAC 110.990(7) as follows:

"essential borough services" means those mandatory and discretionary activities and facilities that are determined by the Commission to be reasonably necessary to the territory 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; "essential borough services" may include (A) assessing and collecting taxes; (B) providing primary and secondary education; (C) planning, platting, and land use regulation; and (D) other services that the Commission considers reasonably necessary to meet the borough governmental needs of the territory;

3 AAC 110.060(b) states that absent a specific and persuasive showing to the contrary, the Commission will not approve the proposed consolidated borough with boundaries extending beyond the model borough boundaries adopted by the Commission.

3 AAC 110.060(c) states that the proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the Commission determines, after consultation with the Commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards.

3 AAC 110.060(d) states that if the petition for consolidation describes boundaries overlapping the boundaries of an existing organized borough, the petition must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough.

2. Application of the Standards to the Fairbanks Proposal.

As the Commission noted with respect to the application of the community of interests standard in Section III B of this Decisional Statement, the boundaries of the Fairbanks North Star Borough have remained unchanged since 1983. The statutory standard for borough boundaries in place at that time was similar to the current AS 29.05.031(a)(2). History alone suggests the validity of the boundaries proposed here. No reason has been advanced in this proceeding to suggest that the boundaries are not appropriate to the specific purposes of the Petition. The Commission finds that these circumstances create a presumption that the statutory standard and 3 AAC 110.060(a), which interprets that statute and makes it more specific, are met.

The Commission notes that the Petition provides that the City of North Pole will retain its status as a home rule city government. The Commission views such to be a local political choice made by the Petitioners. There was little support during the consolidation proceedings to dissolve the City of North Pole as part of the pending consolidation proposal. The Commission notes that there is a recent precedent for approving a partial consolidation of local governments. The Commission's April 27, 2001 decision approving consolidation of the City of Ketchikan and the Ketchikan Gateway Borough allows the second class City of Saxman to retain its status as a second class city within the proposed consolidated borough.

⁹ 3 AAC 110.060(a) states that the Commission will, in its discretion, consider relevant factors, including (1) land use and ownership patterns; (2) ethnicity and cultures; (3) population density patterns; (4) existing and reasonably anticipated transportation patterns and facilities; (5) natural geographical features and environmental factors; and (6) extraterritorial powers of boroughs.

The Commission notes further that it considered the standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a) when the Commission defined model boundaries for the Fairbanks North Star Borough on October 8, 1990. 3 AAC 110.060(b) requires consideration of model borough boundaries in this instance. The boundaries proposed here do not extend to the entire area of the model borough boundaries. However, the Commission has previously taken the view that the lack of conformity to model borough boundaries is not an impediment to consolidation. The Commission applies the same reasoning here as it did with respect to both the 1998 proposal for consolidation of local governments in Haines and the recently approved proposal for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. In the case of the former, the Commission concluded as follows:

The existing boundaries of the Haines Borough do not conform to the model boundaries of the Haines Borough as established by the Local Boundary Commission on May 8, 1992. The latter includes Klukwan and the City of Skagway. However, the Haines Borough is not the only organized borough in Alaska whose corporate boundaries do not conform to its model boundaries as defined by the Commission. Others consist of the Ketchikan Gateway Borough, the City and Borough of Juneau, the Denali Borough, and the Fairbanks North Star Borough.

Additionally, there have been instances in which the Commission has approved petitions for borough incorporation and annexation with boundaries not fully extending to the model boundaries for the respective borough. In 1990, the Commission approved incorporation of the Denali Borough with boundaries not extending to full limits of its model boundaries. Additionally, the Commission approved annexation to the City and Borough of Juneau in 1990 without compelling the inclusion of all territory within its model boundaries.

The Commission finds that consolidation is a highly favorable development with respect to local government in Haines. The positive direction resulting from consolidation is more than sufficient to overcome shortcomings with respect to the model boundaries of the Haines Borough. In other words, the Commission recognizes that ideal municipal boundaries and governmental structure are goals which may not be achieved in the near future, but toward which progress may be attained incrementally over time.

Any proposal to modify the boundaries of the Haines Borough in conjunction with the consolidation effort would be procedurally cumbersome. The issue of consolidation involves an areawide election among the residents of the Haines Borough whereas annexation would require either legislative review or a separate election just in the territory proposed for annexation. It is also apparent that any proposal to expand the boundaries of the Haines Borough would likely be controversial and involve existing communities whose residents have not yet requested extension of borough boundaries into their communities.

(Local Boundary Commission, *Statement of Decision in the Matter of the March 31, 1998 Petition for Consolidation of the City of Haines and the Haines Borough*, August 21, 1998, p. 13.)

3 AAC 110.060(c) establishes a rebuttable presumption that proposed new boroughs will conform to existing regional educational attendance area boundaries. This provision is inapplicable to the pending consolidation proposal since the territory proposed for consolidation is entirely within an organized borough. The Commission reached the same conclusion with respect to the 1998 Haines consolidation proposal and the recently approved proposal for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough, both of which exhibited similar characteristics concerning this particular standard.

3 AAC 110.060(d) provides that if a borough proposal describes boundaries overlapping the boundaries of an existing borough, the Commission must address the overlapping area in the context of the detachment standards. The Commission finds that there is no overlapping area in this instance.

Based on the foregoing findings, the Commission concludes that the boundary standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a)-(d) are satisfied with respect to the pending proposal for consolidation of the City of Fairbanks and the Fairbanks North Star Borough.

E. Standards Relating to Resources.

1. Standards Established in Law.

AS 29.05.031(a)(3) states that the economy of the proposed consolidated borough must contain the human and financial resources necessary to provide municipal services. That statutory

standard provides that consideration must be given to land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed consolidated borough.

3 AAC 110.055 is similar to, but more specific than, AS 29.05.031(a)(3). It focuses on the human and financial resources necessary to provide “essential borough services” (defined in the discussion of the prior standard) on an “efficient, cost-effective level.” It allows consideration of the same eight standards that are listed under AS 29.05.031(a)(3), but adds four discretionary factors and allows the Commission to consider other relevant factors.¹⁰

2. Application of the Standards to the Fairbanks Proposal.

Certain of the respondents in this proceeding contested whether the Petition satisfied the resources standard.

History alone – the long performance of both the Fairbanks North Star Borough and the City of Fairbanks – offers clear evidence that the area in question has adequate financial resources to meet the standard.

The Fairbanks North Star Borough ranks twelfth among the sixteen organized boroughs in Alaska in terms of per capita value of taxable property. At \$57,782, the per capita value of taxable property in the Borough is 14.4% below the median figure for all organized boroughs in Alaska and is slightly below that of Anchorage. In light of the relatively minor changes proposed in the Petition with regard to the functions and services that would be provided in the consolidated borough, the Commission finds that the assessed valuation is adequate to support those services.

The Commission notes that the average per capita income of borough residents is slightly below the State average. In 1998, per capita personal income in Alaska’s sixteen organized boroughs ranged from a high of \$43,439 to a low of \$18,419. The median figure for Alaska’s sixteen organized boroughs was \$27,916. The 1998 per capita personal income of the Fairbanks North Star Borough was \$25,341.

The Commission notes that the area within the proposed consolidated borough has a diverse economic base.

Questions were raised about how well the original Petition addressed financial issues and the adequacy and suitability of the proposed consolidated borough budget. The information in the Petitioners’ Reply Brief, particularly the materials prepared by Judith A. Slajer, added a good deal of credibility to the Petition with respect to the ability of the proposed consolidated borough to fund services.

The Commission does not take the view that the Petition must perpetuate the status quo (i.e., the precise current level of services or the manner in which those services are funded). There are some minor adjustments and minor glitches that were called to the attention of the Commission concerning bed tax allocation and economic development. Those concerns can be remedied through amendments recommended by DCED.

Beyond that, of course, exactly what services are provided and how they are funded is a political question to be settled by the local citizens and its governing bodies. The obligation of the Petition is to show that there are adequate human and financial resources and that there is a capability to provide the type of services and the scale of services that are proposed in the Petition.

¹⁰ 3 AAC 110.055 states in that regard as follows (words or derivations of words used in AS 29.05.031(a)(3) are italicized to facilitate a comparison of the factors to be considered that are listed in the statutes). The Commission will, in its discretion, consider relevant factors, including (1) the reasonably *anticipated functions* of the proposed borough; (2) the reasonably *anticipated expenses* of the proposed borough; (3) the reasonably *anticipated income of the proposed borough*, and its ability to collect revenue; (4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation; (5) the *economic base* of the proposed borough; (6) *property valuations*; (7) *land use*; (8) existing and reasonably anticipated industrial, commercial, and resource development; (9) *personal income* of residents; (10) the need for and availability of employable skilled and unskilled people; and (11) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

Two factors listed in 3 AAC 110.055 relate to the human resources aspect of the standard at issue. The first concerns whether there is a sufficient availability of employable people to provide essential borough services. The second factor relates to the commitment and interest of the population in sustaining a borough government. Given that the Fairbanks North Star Borough has successfully operated for more than thirty-seven years and that the City of Fairbanks has operated effectively for ninety-eight years, the Commission finds that local residents have both the human resources and commitment to operate a consolidated borough government.

With regard to the human resources, the Fairbanks North Star Borough has a substantial population. It is home to the prime campus of the University of Alaska. The Borough and its residents have played a major roll in significant economic development in the past. They anticipate continuing to do so in the future.

Beyond the specific considerations noted here, DCED's analysis and conclusions in its Preliminary Report and Final Report offered additional evidence demonstrating satisfaction of the resources standard.

Based on the foregoing findings, the Commission concludes that the resources standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 are satisfied with respect to the pending Petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough.

F. Standards Relating to Permissible Borough Classifications.

1. Standards Established in Law.

AS 29.06.090(a) states that two or more municipalities may consolidate to form a single general law or home rule municipality, except a third class borough may not be formed through consolidation.

2. Application of the Standards to the Fairbanks Proposal.

The Petitioners have proposed the creation of a new second class borough. Based on that simple fact, it is evident that the standard set out in AS 29.06.090(a) concerning permissible borough classifications is satisfied by the pending proposal.

G. Standards Relating to Civil and Political Rights.

1. Standards Established in Law.

3 AAC 110.910 states 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.

The Federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973, prohibits political subdivisions from imposing or applying voting qualifications; prerequisites to voting; or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

2. Application of the Standards to the Fairbanks Proposal.

Consolidation will result in the dissolution of the Fairbanks North Star Borough. A new consolidated borough government will be formed in its place. The Commission notes that the composition of the proposed new borough's governing body (an eleven-member assembly) and its form of representation (election of assembly members at large by voters throughout the borough) is identical to the current composition and form of representation of the Assembly of the Fairbanks North Star Borough.

Consolidation will also result in the dissolution of the City of Fairbanks. Unlike the Borough, however, the City of Fairbanks will not be reconstituted in a form that has a governing body. Currently, a mayor and six-member city council govern the City of Fairbanks. The Commission underscores the fact that there is no guarantee or expectation that Alaskans will have multiple local governments to serve and represent them. In fact, Article X, § 1 of Alaska's Constitution

encourages consolidation of local governments. The Commission finds, therefore, that the dissolution of the City of Fairbanks and the elimination of seven elective positions is not pertinent with regard to this standard.

The Commission finds that there has been no assertion in this proceeding that the Petition will deny any civil or political right to any party for any of those reasons enumerated in the law.

Given the foregoing findings, the Commission concludes that no voting qualifications, prerequisites to voting, standards, practices, or procedures will be applied as a result of the proposed consolidation which would deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. The Commission concludes further that the proposed consolidation 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 standards set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 are served by the proposal to consolidate the City of Fairbanks and the Fairbanks North Star Borough.

H. Standards Relating to Transition.

1. Standards Established in Law.

3 AAC 110.900(a) states that a petition for borough consolidation must include a practical plan to demonstrate intent and capability of the consolidated borough to extend essential borough services in the shortest practicable time after the effective date of consolidation.

3 AAC 110.900(b) states that a petition for borough consolidation must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by the existing city and borough. The plan must be prepared in consultation with the officials of each existing borough and city, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the consolidation.

3 AAC 110.900(c) states that a petition for consolidation must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of the existing borough and cities to be consolidated. The plan must be prepared in consultation with the officials of each existing borough and city to be consolidated, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of consolidation. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

3 AAC 110.900(d) states that before approving a proposed change, the Commission will, in its discretion, require that the affected borough and cities execute an agreement prescribed or approved by the Commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

2. Application of the Standards to the Fairbanks Proposal.

By its very nature, consolidation of Alaska's second-most populous borough government with the most populous city government in the state will likely present a broad range of challenges and complications. Consider, for example, the following portrayal of the transition to a unified municipal government in Anchorage. The account was written two years after voters approved the restructuring of local government:

It is fair to characterize the post-unification period as starting with chaos, and working on through sorting out, resolution, and the onset of institutionalization. The pluses, which worked in the favor of the officials responsible for getting the new government going, included a well-conceived Charter that provided guidelines without unnecessary details and a group of competent, dedicated officials. The minuses included the inability or unwillingness of some employees and officials to accept the new structure or the officials responsible for it.

(See: Paul H. Wangness, *A History of the Unification of the City of Anchorage and the Greater Anchorage Area Borough*, August 1977, p. 83.)

Twenty-five years ago, officials of the newly formed Municipality of Anchorage confronted challenges that were similar to those that would be faced by officials of the proposed Municipality of Fairbanks. For example, while officials of the Municipality of Fairbanks would

have to administer eight different collective bargaining agreements, officials of the Municipality of Anchorage had to deal with nine different labor agreements and “17 major items and 40 minor items of conflict concerning pay, fringes, etc.” *Ibid.*, p. 91. They also had to integrate municipal ordinances.

While transition to a unified municipal government in Anchorage was not easy, there is a strong sense among current and former officials of the Municipality of Anchorage, as well as those with the City and Borough of Juneau, and the City and Borough of Sitka that overcoming the difficulties of unification was worth the effort because it has resulted in a superior form of local government.¹¹

The Petition includes a nine-page transition plan. This transition plan notes that AS 29.06.150 provides that the proposed municipality will succeed to all powers, duties, rights, assets and liabilities of the municipalities to be dissolved by consolidation. Additionally, it notes that AS 29.06.160 provides that the ordinances, resolutions, regulations, procedures and orders of the municipalities dissolved through consolidation remain in force in their respective territories until superseded by the action of the new municipality.

The transition plan notes that the Petitioners consulted officials of the City of Fairbanks and the Fairbanks North Star Borough. The record indicates that the Borough offered a number of comments concerning a draft transition plan in August 1998.

The transition plan also reiterates and summarizes other parts of the Petition describing the nature of proposed consolidated borough (e.g., areawide, nonareawide, and service area functions). It also makes general observations about the effects of the proposed consolidation on employees and the organization of the proposed new government.

The transition plan calls for the City of Fairbanks permanent fund to be established as a trust fund for the benefit of and use by the proposed new City Service Area. It is the Commission’s view that AS 29.06.150(b) would grant or transfer to the Municipality of Fairbanks *for the area within the City Service Area* all rights, powers, duties, assets, and liabilities of the former City of Fairbanks. The grant or transfer of such assets would include, but not be limited to, the City of Fairbanks Permanent Fund and the so-called “Techite Pipe proceeds” which are to be used exclusively for the benefit of the City Service Area. Additionally, the grant or transfer of such powers includes the authority to levy within the City Service Area the 5% alcohol tax and 8% tobacco tax of the former City of Fairbanks for the exclusive benefit of the City Service Area.

Moreover, AS 29.06.160 provides that all ordinances, resolutions, regulations, procedures, and orders of the former City of Fairbanks shall be maintained in full force and effect by the Municipality of Fairbanks within the City Service Area (to the extent that they do not conflict with provisions in the approved consolidation Petition). The binding provisions would include, but not be limited to the terms of Section 8.8 of the Home Rule Charter of the former City of Fairbanks providing for the City of Fairbanks Permanent Fund.

The Commission’s view concerning the allocation of assets of the former City of Fairbanks is consistent with the express or implicit provisions of State law that provide for the allocation of borough assets, including revenues and other property, on the basis of areawide, nonareawide, and service area jurisdictional interests. Examples of such are found in AS 20.35.110, AS 29.35.340(a), AS 29.45.010(a), AS 29.47.440(a), AS 29.47.450, AS 29.60.050(a), and 3 AAC 130.052.

While the transition plan presented with the Petition does indeed contain certain minor errors as cited by the Fairbanks North Star Borough, the Commission considers the errors to be of no overriding consequence.

A principal purpose for the requirement for a transition plan is to demonstrate a reasonable certainty that there is both intent and capability to provide essential services.

[3 AAC 110.900(a)] The requirement for a transition plan applies to every action that comes before the Local Boundary Commission. In addition to consolidations, these include municipal

¹¹ This conclusion is based on anecdotal accounts offered by DCED attributed to individuals including Vic Fischer, former Anchorage Mayor George Sullivan, former State Senator and former Anchorage Assembly member Arliss Sturgulewski, former Juneau Assembly member and former Juneau Attorney Lee Sharp, former Juneau Mayors Ernie Polley and Ginny Chitwood, Former Juneau Charter Commissioner Mike Grummett, former Greater Juneau Borough Attorney Billy G. Berrier, and former Sitka Mayor John Dapceovich.

incorporations, annexations, detachments, mergers, dissolutions, and city reclassifications. In certain instances, transition plans take on greater significance (e.g., unorganized areas in which there is no clearly demonstrated history of providing services, or cases where a local government is proposed to be dissolved and details must be carefully set out for provision of future services and distribution of assets and liabilities). There are several factors that make a transition plan less critical in this particular instance. These include the size and maturity of the community and region involved, the substantial capacity of the local governments involved, and the limited nature of the changes that would result from consolidation.

Based on the foregoing, the Commission concludes that the standards relating to transition set forth in 3 AAC 110.900(a)-(d) are satisfied with respect to the pending Petition.

I. Standards Relating to Maximum Local Self-Government.

1. Standards Established in Law.

Article X, § 1 of Alaska's Constitution states, in part, that, "The purpose of this article (Alaska's constitutional article on Local Government) is to provide for maximum local self-government."

2. Application of the Standards to the Fairbanks Proposal.

The Commission finds that, as a general rule, maximum local self-government is achieved first and foremost through the extension of city or borough government to a previously unincorporated area. The creation of a city or borough government in an unincorporated area establishes a political and a legal system which, to the maximum extent possible, allows local residents the flexibility to choose an appropriate structure of local government so they can handle local affairs in the manner that they see fit. Local residents have a variety of choices available to them. Those choices include home rule municipalities with very liberal powers, general law municipalities with liberal powers, and even home rule municipalities with restrictions pursuant to their own charters.

Alaska's Constitution and statutes provide tremendous flexibility and encourage creativity on the part of local residents as to the manner in which they fashion their local government.

Because the City of Fairbanks incorporated in 1903 and the City of North Pole incorporated in 1953, residents of those areas had structures in place at the time of statehood that served the constitutional principle of maximum local self-government. In January 1964, the Fairbanks North Star Borough was incorporated, creating overlapping structures for maximum local self-government within the City of Fairbanks and the City of North Pole.

The Constitutional Convention delegates envisioned that home rule would provide the most autonomous form of local self-government as local residents may elect. However, as carefully outlined by DCED in its reports in this matter, the judiciary and legislature in Alaska have eroded aspects of the powers of home rule municipalities as compared to the vision of the Constitutional Convention delegates. In contrast, the judiciary and legislature have significantly enhanced the powers of general law municipalities in Alaska. Today, general law municipalities can reasonably be described as having home rule-like powers.

Moreover, the "maximum local self-government clause" of Article X, § 1 of the State Constitution does not necessarily create a presumption or preference for home rule government. The Commission finds no pervasive authority in State law for such a proposition.

Both types of local governments – home rule and general law – are allowed in Alaska. Residents of the City of Fairbanks receive essential services from both forms of government (home rule and general law), and seem to be content with either. The Petitioners' decision to propose a second class consolidated borough is reasonable on the grounds that citizens of the greater Fairbanks area are likely to prefer to deal with any proposal to adopt a home rule charter through democratically-elected representatives.

In this particular case, the Petition bore the signatures of more than 4,000 qualified voters of the City of Fairbanks and the Fairbanks North Star Borough. It was presented to the Local Boundary Commission with its own version of a consolidated government for the Fairbanks area. The Commission concludes that the Petition easily meets the maximum local self-government

standards of Article X, § 1 because it provides for, at least in the judgment of those who signed the Petition, the kind of local government that will meet the needs of Fairbanks residents.

Certain of the respondents in the proceeding expressed the view that residents of the City of Fairbanks would suffer some diminution of maximum local self-government if they would become part of a larger electorate rather than retaining access to a city government in which they alone voted. The provisions of Article X, § 1 discourage the proliferation of compact local governments. Maximum local self-government is not a matter of jurisdictional area. Instead, it is a matter of local residents having access to local government and an optionally broad range of powers to pursue local government as they wish.

Given the foregoing finding, the Commission concludes that the Petition serves the principle of maximum local self-government set out in Article X, § 1 of Alaska's Constitution.

J. Standards Established in Law Relating to Minimum of Local Governments.

1. Standards Established in Law.

Article X, § 1 of Alaska's Constitution states, in part, that, "The purpose of this article (Alaska's constitutional article on Local Government) is to provide for . . . a minimum of local government units."

2. Application of the Standards to the Fairbanks Proposal.

The Commission notes that in the context of Article X, § 1 of Alaska's Constitution, the phrase "local government unit" has been construed by the Alaska Supreme Court to include borough service areas. (*See Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 [Alaska 1995].) Moreover, Vic Fischer, an expert in Alaska local government and a former Constitutional Convention delegate, also construes borough service areas to be local government units in the context of Article X, §§ 1 and 5. (*See Final Report to the Local Boundary Commission Regarding the City of Haines' Petition to Annex 6.5 Square Miles*, Department of Community and Regional Affairs, October 1997.)

The Commission stresses, however, that borough service areas are very distinct from city and borough governments. A borough service area is not a municipal government in any sense. In fact, it is not an entity. A service area has no capacity to sue or be sued. It lacks legislative powers, executive powers, and the power to tax. A borough service area is merely a defined area of a borough in which the borough government exercises different powers or provides different levels of service as compared to other parts of the borough.

With that in mind, the Commission notes that the pending consolidation proposal seeks to dissolve two existing local government units (City of Fairbanks and Fairbanks North Star Borough) and also seeks to create two new local government units (Municipality of Fairbanks and the City Service Area). Arithmetically, the consolidation proposal neither increases nor decreases the number of local government units serving the greater Fairbanks area.

As applied in this instance, the question becomes, whether by reorganizing the City of Fairbanks as a service area within a consolidated borough, the constitutional policy favoring a minimum of local governmental units and taxing jurisdictions is furthered.

Certain of the respondents asserted that the Petition merely proposes a change in form and not a change in the number of local governmental units (i.e., the Petition merely substitutes one local governmental unit for another). The Commission does not concur.

The Petition proposes to reduce the number of local governments that operate in the affected area from two to one. The most pertinent feature of the Petition concerning this standard is that two large and populous municipalities – two taxing and legislative jurisdictions – are reduced to one. As noted, a service area does not have same status, powers, or standing as a municipal government. One way to make the point is to consider the converse. The Fairbanks North Star Borough has 117 service areas. The respondents' arguments would give credit to the notion that a borough with 117 cities within it would provide for a minimum of local governments equal to the status quo.

The Commission finds that there is a preference in Article X, § 1 for the gradual elimination of cities within boroughs. The Committee on Local Government at the Constitutional Convention considered a borough encompassing no city governments to be the ideal structure of municipal government in Alaska. The fact that new service areas are likely to be created in city-borough consolidations does not conflict with the minimum local governments clause of Article X, § 1.

In 1971, the Alaska Supreme Court concluded that unification of local governments serves the minimum of local governments clause in Article X, § 1. The ruling stemmed from a challenge by the former home rule City of Douglas regarding the unification of local governments in the greater Juneau area. While “unification” is technically distinct from “consolidation”, both result in the reduction of the number of local governments. When the City of Juneau and the City of Douglas were abolished through unification in 1970, each was reconstituted as a separate urban service area with boundaries identical to the respective former cities. Therefore, the Court’s holding in that case that “[u]nification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units” is relevant and applicable to the instant consolidation proposal. (*City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 [Alaska 1971].)

Lastly, the Commission notes that Vic Fischer was retained by the Ketchikan Gateway Borough to review the recently approved Ketchikan consolidation proposal. In that case, consolidation would dissolve two existing local government units (City of Ketchikan and Ketchikan Gateway Borough) and create four new local government units (Municipality of Ketchikan, Ketchikan Service Area, Greater Ketchikan EMS Service Area, and Shoreline Service Area). Arithmetically, the Ketchikan consolidation proposal increases the number of local government units serving the greater Ketchikan area. However, Mr. Fischer concluded that the Ketchikan consolidation proposal “meets the constitutional goal of maximizing self-government while *minimizing the number of government units.*” In that proceeding, the Commission found Mr. Fischer’s judgment on this issue to be noteworthy and concurred with his position.

Given the foregoing findings, the Commission concludes that the Petition serves the minimum of local governments principle set out in Article X, § 1 of Alaska’s Constitution.

K. Standards Concerning Constitutional Preference – City vs. Service Area.

1. Standards Established in Law.

Article X, § 5 of Alaska’s Constitution states 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.

AS 29.35.450(b) states that a new service area may not be established if, consistent with the purposes of Article X of the state constitution, “the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.”

2. Application of the Standards to the Fairbanks Proposal.

The Petition, in effect, proposes to dissolve the City of Fairbanks and reconstitute it as the City Service Area. On its face, Article X, § 5 of the Constitution and AS 29.35.450(b) seem to suggest a preference for avoiding the creation of service areas where there is an existing city. In ordinary circumstances, that is a plausible reading. However, in the case of municipal consolidation, Article X, § 5 and AS 29.35.450(b) must be considered in the context of Article X, Section 1 and the facts of the Petition.

The Commission finds in this case that there is a plausible basis for the creation of new service areas as a way to flexibly meet the service needs of the residents of the consolidated borough. Moreover, the Commission finds that Article X, § 5 and AS 29.35.450(b) favor a structure that is “consistent with the purposes” of Article X, § 1. In this context, Article X, § 1 encourages a minimum of local government units. The Commission concluded with respect to the preceding standard that the Fairbanks consolidation proposal serves the minimum of local government units clause in Article X, § 1 of Alaska’s Constitution.

Given the findings above, the Commission concludes that the Fairbanks consolidation proposal is consistent with the principles set out in Article X, § 5 of the Constitution of the State of Alaska.

L. Standards Regarding Best Interests of the State.

1. Standards Established in Law.

In order to approve any consolidation proposal, AS 29.06.130(a) requires the Local Boundary Commission to determine that the proposal serves the best interests of the State.

The Commission has yet to adopt regulations interpreting and implementing that statutory provision. However, it has formally proposed the adoption of the following provisions concerning borough incorporation (which apply to city-borough consolidation proposals).

Proposed 3 AAC 110.065 BEST INTERESTS OF STATE. In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission will, in its discretion, consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services;

and

(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of its dissolution.

2. Application of the Standards to the Fairbanks Proposal.

While the regulations concerning the best interests of the State are not in place, the Commission has proposed formal regulations relating to the determination of the best interests of the State. Those proposed regulations serve as a guideline in this case. Of particular relevance here are the factors relating to the constitutional principles concerning maximum local self-government and a minimum number of local government units.

The Commission concluded in Section III-I of this Decisional Statement that the Fairbanks consolidation proposal serves the maximum local self-government clause in Article X, § 1 of Alaska's Constitution. Moreover, the Commission concluded in Section III-J of this Decisional Statement that the Fairbanks consolidation proposal fulfills the minimum of local governments principle set out in Article X, § 1 of the Constitution. Further, the Commission concluded in Section III-K of this Decisional Statement that the consolidation proposal before the Commission serves the principles relating to service areas set out in Article X, § 5 of the Constitution. The Commission finds from these circumstances that the Fairbanks consolidation proposal is beneficial to the interests of the State.

The Commission concludes from the foregoing findings that the Fairbanks consolidation proposal serves the best interests of the State in satisfaction of the requirements set out in AS 29.06.130(a).

M. Recommended Amendments to the Petition.

After reviewing the Petition, responsive briefs, comments on the Petition, and the Petitioners' reply brief, DCED recommended that certain amendments be made to the Petition. DCED's recommended amendments are set out below.

1. That the Local Boundary Commission formally clarify that the bed tax levy of the Municipality of Fairbanks would be exclusively an 8% areawide levy and that the Commission amend Section 7 on page two of the Petition to add the following powers to be exercised on an areawide basis by the Municipality of Fairbanks:

- ◆ Economic Development;
- ◆ Fairbanks Health Center; and
- ◆ Cemeteries.

2. That the Local Boundary Commission amend Section C of Exhibit D of the Petition concerning the election of the initial assembly members by substituting the following text:

C. Election.

Candidates for the assembly shall not be required to identify a specific seat by name in designating the office for which the candidate seeks election. The initial elected members of the assembly shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year.

3. That the Local Boundary Commission amend the following components of the Transition Plan, Exhibit I of the Petition, to read as follows (proposed new text is underlined in bold type and proposed deleted text is capitalized and bracketed):

Municipal ordinances

The City of Fairbanks and the Fairbanks North Star Borough each have municipal laws or codes[,] which govern the activities of the two separate governments. All ordinances, resolutions, regulations, procedures, orders and rules of the former municipalities remain in force in their respective territories [EFFECT IN THE FORMER GOVERNMENTS WILL CONTINUE IN FULL FORCE AND EFFECT] until superseded by the new municipality. [THERE ARE] Several areas of duplication or conflict [OVERLAP] may [THAT WILL] need to be addressed [ELIMINATED] immediately, including the rules of the governing body, the personnel ordinances, and ordinances relating to purchasing, finance and elections. [THE MAYOR, IN CONSULTATION WITH THE LAW DEPARTMENT, WILL REVIEW BOTH MUNICIPAL CODES AND DESIGNATE WHICH CODE OR INTERPRETATION APPLIES. THE DESIGNATION IS EFFECTIVE IMMEDIATELY AND WILL BE COMMUNICATED TO THE ASSEMBLY. THE DESIGNATION IS APPROVED UNLESS THE ASSEMBLY, WITHIN 21 DAYS, ADOPTS A CONTRARY INTERPRETATION BY RESOLUTION. THE NEW MUNICIPAL ASSEMBLY MAY ADOPT A NEW ORDINANCE TO ADDRESS SPECIFIC NEEDS OR CONFLICTS.]

Employees

The approval of the consolidation petition by the voters creates the new consolidated municipality. The election of the assembly and mayor will constitute the new municipal government. Employees of the former city and borough governments become employees of the new Municipality of Fairbanks. The Petitioners anticipate that most employee positions will be retained by the consolidated borough [UNAFFECTED BY THE CONSOLIDATION]. The Petitioners believe that the city and borough will have a few overlapping or duplicate services and positions. Most all the duplication occurs at the upper administrative level of government. Any employees whose positions are eliminated by the plan of organization should [WILL] be eligible for reassignment to available positions for which they are qualified.

Except where otherwise necessitated by law (e.g., the automatic termination of the "218 Agreements" that provide for Social Security coverage for employees of the Borough, including the school district, the Petitioners intend that pension plans, retirement plans and other benefits for current employees under collective bargaining agreements, personnel rules, or other legal or contractual provisions, in effect on the date of ratification of the consolidation [WILL] not be changed nor diminished. Regarding Social Security coverage, the new Municipality of Fairbanks would have the option of enrolling in the

Social Security system or “an alternate qualified plan.” The new Municipality will inherit the existing union contracts. **The Petitioners intend that the new Municipality**[AND] shall continue to be governed under the Public Employees Relations Act, AS 23.40. Unionized employees in the city and borough are represented by different collective bargaining organizations. The re-negotiation of new union contracts or employee votes to change representation is not necessary for consolidation.

Executive Plan

The Petitioners urge the Mayor to submit to the new assembly, not later than thirty days after the new assembly and mayor are elected, [THE MAYOR WILL SUBMIT TO THE ASSEMBLY] a detailed plan or organization of the executive branch **combining**[. THE PLAN WILL COMBINE] the overlapping services of the former separate borough and city administrations. **The Petitioners also urge the assembly to consider the Mayor’s plan within 20 days of submittal.** [PROPOSED PLAN WILL BECOME LAW 20 DAYS AFTER SUBMITTED UNLESS SOONER ADOPTED WITH OR WITHOUT AMENDMENT OR REJECTED BY THE ASSEMBLY. IF THE PROPOSED PLAN IS REJECTED, THE MAYOR SHALL SUBMIT AN ALTERNATE PLAN TO THE ASSEMBLY WITHIN 15 DAYS OF THE REJECTION. IF, WITHIN 20 DAYS OF SUBMISSION OF THE ALTERNATE PLAN, NO PLAN OF ORGANIZATION HAS BEEN ADOPTED BY THE ASSEMBLY, THE ALTERNATE PROPOSAL SUBMITTED BY THE MAYOR BECOMES LAW. ALL PREEXISTING EXECUTIVE DEPARTMENTS WILL REMAIN IN EXISTENCE, EXCEPT FOR THE CITY MAYOR’S OFFICE, UNTIL THE MAYOR’S EXECUTIVE PLAN TAKES EFFECT.]

The Commission notes that the Petitioners endorsed DCED’s recommended amendments. In addition, the Petitioners requested that the Commission amend the Petition to change the name of the Urban Service Area to the City Service Area.

Having carefully examined the basis for DCED’s recommended amendments and the Petitioners’ requested amendment, the Commission finds them to be warranted.

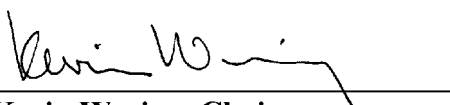
SECTION IV ORDER OF THE COMMISSION

Based on the findings and conclusions in Section III of this Decisional Statement, the Commission amended the Petition in the manner recommended by DCED and requested by the Petitioners as set out in Section III M of this Decisional Session.

Following the amendments, the Local Boundary Commission unanimously approved the *Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough*.

Approved in writing this 7th day of June, 2001.

LOCAL BOUNDARY COMMISSION

BY: 
Kevin Waring, Chairperson

Attest: 
Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

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

Typically, the LBC will reconsider a decision only if

- (1) there was a substantial procedural error in the original proceeding;
- (2) the original vote was based on fraud, misrepresentation, or material error of fact or law; or
- (3) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

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

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

JUDICIAL APPEAL

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