



State of Alaska  
Local Boundary Commission

# Statement of Decision

**Members**

Kevin Waring  
Chairperson  
At-Large

**IN THE MATTER OF THE  
DECEMBER 20, 2000 PETITION FOR  
CONSOLIDATION OF THE CITY OF  
HAINES AND THE HAINES  
BOROUGH**

---

First Judicial District

## SECTION I INTRODUCTION

In December 2000, the City of Haines, a first class city organized under the laws of the State of Alaska, petitioned the Local Boundary Commission for consolidation of the City of Haines and the Haines Borough. The Haines Borough is a third class borough organized under the laws of the State of Alaska.

---

Second Judicial District

Consolidation occurs when two or more municipalities dissolve and a new municipality is incorporated.<sup>1</sup> As proposed by the City of Haines (“Petitioner”), a new home rule borough would be incorporated through consolidation. Under the proposal, the area within the former City of Haines would become a service area of the consolidated borough.

Allan Tesche  
Member  
Third Judicial District

The City of Haines and Haines Borough had jointly proposed consolidation in March 1998. That proposal was unanimously approved by the Local Boundary Commission,<sup>2</sup> but was narrowly rejected in an areawide election.<sup>3</sup>

Ardith Lynch  
Member  
Fourth Judicial District

The December 2000 Petition was similar in most respects to the 1998 proposal. Notable differences included the following:

- composition of the assembly (changed from eight members to six members);
- form of assembly representation (changed from election of members within districts by areawide voters to election of members at large);
- composition of the planning commission (changed from nine members to seven members);
- apportionment of the planning commission (changed from appointment of eight members by districts to appointment of all members at large); and
- name of the proposed consolidated borough (changed from Haines Borough to City and Borough of Haines).



---

<sup>1</sup> See AS 29.71.800(6).

<sup>2</sup> Commission members present at the 1998 hearing were Kevin Waring, Allan Tesche, Nancy Cannington, William Walters, and Kathleen Wasserman.

<sup>3</sup> 542 votes (49.9%) voted in favor of consolidation while 545 voters (50.1%) voted in opposition to consolidation.

Like the 1998 proposal, the December 2000 Petition provided that the corporate boundaries of the proposed new home rule borough would be identical to those of the existing Haines Borough.

As originally submitted, the December 2000 Petition provided that service areas created to provide medical services, docks and harbors, Mud Bay land use, Lutak land use, and disaster emergency services would be dissolved. The Petition stipulated that the functions for which those service areas had been created would be extended throughout the borough by the exercise of areawide powers.

The Petition did not specifically address the effect of consolidation on the Haines Borough solid waste management service area or the service area created by Haines Borough Ordinance 01-15 to regulate commercial helicopter flights. The latter was created by voter initiative after the filing of the consolidation Petition.

DCED wrote a memorandum to the State Attorney General on February 26, 2002 seeking confirmation of the Commission's authority to amend the Petition to specify whether the commercial helicopter regulation service area would be dissolved or retained. The memorandum also expressed concerns about the manner in which the service area had been created. On March 7, 2002, B. Budd Simpson, Haines City Attorney, wrote a memorandum echoing the concerns expressed by DCED about the formation of the service area. Mr. Simpson's memorandum also addressed possible limitations on the authority of a local government to regulate commercial helicopter flights. On March 8, 2002, Assistant Attorney General Marjorie Vandor wrote a memorandum confirming that the Commission could amend the Petition to dissolve or retain the commercial helicopter regulation service area.<sup>4</sup>

Following a public hearing on the consolidation proposal in accordance with AS 29.06.120, the Local Boundary Commission amended the Petition to provide that the solid waste management service area and the commercial helicopter regulation service area would be dissolved upon consolidation.<sup>5</sup> The amendments were made with the concurrence of the Petitioner.

The Commission made other amendments to the Petition, again, following the public hearing and with the concurrence of the Petitioner. Those amendments included changing the name of the proposed consolidated borough to the "Haines Borough", providing for a manager form of government, and clarifying aspects of the Petition such as areawide and service area powers of the proposed consolidated borough. Details of those amendments are provided in Section IV of this Statement of Decision.

## **SECTION II PROCEEDINGS**

Information about the Haines consolidation proceeding set out in A-G of this Section is addressed only in summary fashion. Details are provided in reports by the Alaska Department of Community and Economic Development ("DCED") regarding the pending Petition.<sup>6</sup> However, this Statement of Decision provides details concerning the Commission's hearing which occurred after DCED's reports were issued.

### ***A. Consolidation Petition Submitted and Accepted For Filing.***

The City of Haines petitioned the Local Boundary Commission for consolidation on December 20, 2000. The Petition was submitted to DCED on December 27, 2000. On January 5, 2001, DCED accepted the Petition for filing following its technical review.

---

<sup>4</sup> Attorney General's Office file number 663-02-0140.

<sup>5</sup> The Commission has authority to amend a consolidation petition under AS 29.06.130 and 3 AAC 110.570.

<sup>6</sup> DCED provides staff support to the Local Boundary Commission in accordance with AS 44.33.020(4).

***B. Notice of Petition Provided.***

Notice of filing of the Petition was published, posted, served, mailed, and otherwise provided by the Petitioner and DCED as required by law.

***C. Haines Borough Responsive Brief and Public Comments Filed.***

On February 27, 2001, the Haines Borough (“Respondent”) filed a responsive brief entitled *Brief of the Haines Borough in Opposition to the Proposed Consolidation* (“Responsive Brief”). In addition to the Responsive Brief, eleven sets of timely written comments on the Petition were filed with the Commission.

***D. Petitioner’s Reply Brief Filed.***

On April 10, 2001, the City of Haines filed the *Petitioner’s Reply Brief to the Brief of the Haines Borough and Comments in Opposition to the Proposed Consolidation* (“Reply Brief”) in answer to the Borough’s Responsive Brief and the timely written comments on the Petition. A corrected version of the Reply Brief was filed on April 12, 2001.

***E. DCED’s Preliminary Report***

As required by 3 AAC 110.530, DCED prepared its *Preliminary Report on the Proposal to Consolidate the City of Haines and the Haines Borough* (“Preliminary Report”). The Preliminary Report consisted of 122 pages of background, analysis, and supporting materials. A separate twenty-six page executive summary of the Preliminary Report was also issued.

Timely comments on DCED’s Preliminary Report were received from eight individuals and organizations.

***F. Notice of Commission Hearing.***

Public notice of the Commission’s March 9, 2002 hearing was published, posted, served, mailed, broadcast, and otherwise provided in accordance with the requirements of law.

***G. DCED’s Final Report***

On February 15, 2002, DCED released its *Final Report Concerning the Petition to Consolidate the First Class City of Haines and the Haines Borough* (“Final Report”).

***H. Commission Hearing***

The Local Boundary Commission’s public hearing on the consolidation Petition was scheduled to be held in the City Council Chambers at the Haines Municipal Building. However, because City officials anticipated that the number of individuals who planned to attend the hearing might be greater than the capacity of the City Council Chambers, arrangements were made to hold the hearing at a larger facility.

The hearing was held at the Alaska Native Brotherhood/Alaska Native Sisterhood (“ANB/ANS”) Hall at 111 First Avenue South. In accordance with 3 AAC 110.550(d), notice that the hearing site was relocated to the ANB/ANS Hall was conspicuously posted at the Haines City Council Chambers prior to the time that the hearing was scheduled to convene. Additionally, KHNS also broadcast public service announcements before the hearing regarding the new location.

The Commission convened the hearing on March 9, 2002 at 10:00 a.m., as scheduled. Commissioners Waring, Lynch, and Tesche were present. Approximately seventy-five local residents attended the hearing.

Following introductory comments by the Commission Chairman, DCED staff summarized its reports and recommendations concerning the proposal. Next, Marco Pignalberi, Haines City Manager, made the opening statement on behalf of the Petitioner. Jerry Lapp, Acting-Mayor of the Haines Borough, made the opening statement on behalf of the Respondent. As part of the opening statement by the Borough, Acting-Mayor Lapp read a letter from Haines Borough Assembly Member Terry Pardee.<sup>7</sup>

The opening statements were followed by sworn testimony of witnesses called by the Petitioner and Respondent. Dave Black, Mayor of the City of Haines, testified on behalf of the Petitioner. Haines Borough Assembly Members Lucy Harrell, James A. Wilson, Lori Teel Crupi, and Richard Kaloostian provided sworn testimony on behalf of the Respondent.

Under the public comment portion of the hearing, the following thirty-three individuals commented on the consolidation proposal:

Louis O. Nelson;	Tim June;	Kathleen Menke;
Paul A.L. Nelson;	Lori Crupi on behalf of	Julie Cozzi;
John J. Schnabel;	Sally McGuire;	Lee Clayton;
Blaine Thomsen;	Debra Schnabel;	Leonard Dubber;
David Olerud;	Gary Wilkins;	Rich Tolles;
Ron Weishahn;	Mike Ward;	Norman Hughes;
Bob Andrews;	Raymond Menaker;	Chip Lende;
Carolyn Weishahn;	Stan Wood;	Mike Case;
Ned Rozbicki;	Bill Finlay;	Mark Cozzi; and
Vincent Hansen;	Jonathan D. Greene;	Patricia Blank.
Herb Van Cleve;	Fred Shields;	
Charles Paddock;	Jeff Stout;	

Following the period of public comment, the Petitioner and Respondent made closing statements. Haines City Mayor Dave Black and Haines City Manager Marco Pignalberi made the closing statement on behalf of the Petitioner. Haines Borough Assembly Member Lucy Harrell offered the closing statement on behalf of the Haines Borough. The Petitioner took the position that a rebuttal was unnecessary and, therefore, declined to make a reply statement.

At the conclusion of the hearing, the Commission convened a decisional meeting under 3 AAC 110.570. At the decisional meeting, the Commission concluded that each of the applicable legal standards governing consolidation of city and borough governments is satisfied with respect to the Haines consolidation proposal. By a unanimous vote, Commission members amended various aspects of the Petition as noted in Section IV of this Statement of Decision. The Commission then unanimously approved the amended Petition.

---

<sup>7</sup> Assembly Member Terry Pardee was unable to attend the hearing because he was on active duty status in the National Guard in Ketchikan.

## SECTION III FINDINGS AND CONCLUSIONS

AS 29.06.130(a) provides that the Local Boundary Commission may approve a petition for consolidation of a city government and a borough government, with or without amendments and conditions, if the Commission determines that the consolidation proposal:

1. meets standards for consolidation under the Commission's regulations (3 AAC 110.250, 3 AAC 110.045 – 3 AAC 110.060, and 3 AAC 110.900 – 3 AAC 110.910);
2. meets statutory standards for consolidation (AS 29.06.130(a) and AS 29.05.031);
3. meets applicable standards under the Constitution of the State of Alaska; and
4. is in the best interests of the state (AS 29.06.130(a)).

More specifically, the applicable constitutional, statutory, and regulatory standards require as follows.

1. The consolidated borough must embrace an area and population with common interests to the maximum degree possible.
2. The consolidated borough must include an area with transportation and communication facilities that allow communication and exchange necessary for development of integrated borough government.
3. The consolidated borough must include a population large and stable enough to support the proposed borough government.
4. The consolidated borough must have boundaries that conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level.
5. The proposed boundaries of the consolidated borough must not overlap the boundaries of another borough or extend beyond its model boundaries.
6. The consolidated borough must have sufficient human and financial resources to operate a borough government.
7. The consolidated borough must not be a third class borough.
8. The enjoyment of any civil or political right, including voting rights, may not be denied because of race, color, creed, sex, or national origin because of consolidation.
9. The consolidated borough must provide for an appropriate transition with respect to services, rights, powers, duties, assets, and liabilities of the former local governments.
10. Consolidation must promote maximum local self-government.
11. Consolidation must promote a minimum of local government units.
12. Consolidation must serve constitutional principles regarding preferred methods of service delivery (city governments vs. borough service areas).
13. Consolidation must serve the best interests of the State of Alaska.

The record in this proceeding includes the December 20, 2000 Petition of the City of Haines, the February 27, 2001 Responsive Brief of the Haines Borough, the eleven timely letters commenting on the Petition, the April 10, 2001 Reply Brief of the City of Haines (corrected April 12, 2001), DCED's July 2001 Preliminary Report, the eight letters from correspondents commenting on DCED's Preliminary Report, DCED's February 2002 Final Report, three memoranda concerning the commercial helicopter regulation service area (DCED's February 26, 2002 memorandum, B. Budd Simpson's March 7, 2002 memorandum, and Assistant Attorney General Marjorie Vandor's March 8, 2002 memorandum), a matrix prepared by DCED based on its Preliminary Report and Final Report recommending particular amendments to the Petition, testimony at the March 9, 2002 public hearing and public comments at the same hearing. Based on the evidence in the record, the Commission adopts the findings and conclusions set out in A – M of this Section of the Statement of Decision.

***A. The proposed consolidated borough embraces an area and population with common interests to the maximum degree possible.***

**1. Standards Established in Law.**

Article X, § 3 of the Constitution of the State of Alaska provides that,

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible

AS 29.05.031(a)(1) states, in 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 that the Commission may consider in making its determination on that point. It also allows the Commission to consider other relevant factors.<sup>8</sup>

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.

Collectively, the constitutional, statutory, and regulatory standards outlined above are referred to herein as the “community of interests standards.”

**2. Application of the Community of Interests Standards to the Pending Petition.**

The Commission determined in 1998 that the community of interests standards were met with regard to the prior consolidation proposal. The laws relating to those standards have not changed in the past four years.<sup>9</sup>

The Commission finds one notable change since 1998 in the facts relating to the application of the community of interests standards. In 1998, there were three “census designated places” (CDPs) in the Haines Borough. Two more were added during the 2000 census. The current CDPs consist of Mosquito Lake, Lutak, Covenant Life, Mud Bay, and Excursion Inlet.

The Census Bureau’s definition of a CDP is different from the legal definition of a community adopted by the Local Boundary Commission under 3 AAC 110.990(4) and 3 AAC 110.920.<sup>10</sup> Since the Commission’s definition requires a population of at least 25 permanent residents, Excursion Inlet (population 10) is not a community for purposes of the examination of the community of interests standard. Some or all of the other four CDPs, however, may meet the Commission’s definition of a community.<sup>11</sup>

---

<sup>8</sup> 3 AAC 110.045(a) provides further that the Commission will, in its discretion, consider relevant factors, including: (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.

<sup>9</sup> While the constitutional, statutory, and regulatory provisions have not changed, the Commission notes that the regulatory standards have been renumbered from 19 AAC 10 to 3 AAC 110 since 1998.

<sup>10</sup> 3 AAC 110.990(4) states that a “community” is a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920. 3 AAC 110.920 provides for consideration of characteristics of the population (permanent residency, geographical proximity frequency of personal contacts and population density). It also calls for consideration of whether the settlement appears to be a discrete and identifiable unit as indicated by such factors as 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. There is a rebuttable presumption that a settlement is not a community if (1) public access to or the right to reside at, the location of the population is restricted; (2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

<sup>11</sup> The former Alaska Department of Community and Regional Affairs (DCRA) commented on a 1997 draft petition for incorporation of Mud Bay as a second class city that the assertion in the draft that Mud Bay is a

To the extent that it has any effect on the application of the standards in this case, the increase in the number of CDPs only enhances the extent to which the standard in 3 AAC 110.045(b) is satisfied. Beyond that, the Commission finds no significant change in the facts relating to the community of interests within the proposed consolidated borough since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago.

Therefore, to the extent that the findings and conclusions reached concerning the community of interests standards on pages 5 – 8 of its August 21, 1998 *Statement of Decision in the Matter of the March 31, 1998 Petition for Consolidation of the City of Haines and the Haines Borough* (“1998 Decisional Statement”) are not inconsistent with findings and conclusions reached herein, the Commission hereby adopts the 1998 findings and conclusions regarding these standards by reference for this proceeding.

Further, the Commission finds no evidence that conflicts with the characterizations of the community of interests within the proposed consolidated borough offered in the current proceedings by the Petitioner and DCED. Both concluded that the community of interests standards were met. To the extent they do not conflict with other provisions of this Statement of Decision, the findings and conclusions reached regarding the community of interests standards on pages 35 – 42 of DCED’s Preliminary Report and Final Report are hereby adopted by reference.

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 of the State of Alaska, AS 29.05.031(a)(1), and 3 AAC 110.045(a) – (b) are satisfied with respect to the proposed consolidation of the City of Haines and the Haines Borough.

***B. The proposed consolidated Haines Borough includes an area with transportation and communication facilities that allow communication and exchange necessary for development of integrated borough government.***

**1. Standards Established in Law.**

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. In addition, 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.<sup>12</sup>

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.

Collectively, the statutory and regulatory standards outlined above are referred to herein as the “transportation and communications standards.”

---

community was not supported with detailed facts. Further, DCRA noted that the population density statistics for Mud Bay do not appear to be characteristic of neighborhood living. Moreover, DCRA advised the prospective petitioners that there was an appearance that Mud Bay is dependent upon Haines for its existence. (Letter from DCRA to Ms. Cecily Stern, April 18, 1997).

<sup>12</sup> 3 AAC 110.045(c) provides that the Commission will, in its discretion, consider relevant factors, including (1) transportation schedules and costs; (2) geographical and climatic impediments; (3) telephonic and teleconferencing facilities; and (4) public electronic media.

## **2. Application of the Transportation and Communications Standards to the Pending Petition.**

In 1998, the Commission determined that the transportation and communications standards were met with regard to the consolidation proposal pending at that time. The laws relating to those standards have not changed in the past four years.

Moreover, the Commission finds no significant change in the transportation and communications characteristics of the area within the proposed consolidated borough since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago.

Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the community of interests standards on pages 8 and 9 of its 1998 Decisional Statement, to the degree that those findings and conclusions are not inconsistent with others made in this Statement of Decision.

Further, the Commission finds that no evidence that conflicts with the characterizations of the transportation and communications within the proposed consolidated borough by the Petitioner and DCED. Both concluded that the standards were met. Therefore, the findings and conclusions reached regarding these standards on pages 35 – 42 of DCED’s Preliminary Report are adopted by reference to the degree such do not conflict with other provisions of this Statement of Decision.

Based on the foregoing findings, the Commission concludes that all of the transportation and communications standards in AS 29.05.031(a)(4) and 3 AAC 110.045(c) - (d) are met by the proposed consolidation.

### ***C. The proposed consolidated Haines Borough includes a population large and stable enough to support the proposed borough government.***

#### **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.<sup>13</sup>

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.

Collectively, the statutory and regulatory standards outlined above are referred to herein as the “population standards.”

#### **2. Application of the Population Standards.**

The Commission concluded four years ago that the population standards were met with regard to the previous consolidation proposal. The laws relating to those standards have not changed in the interval.

The Commission finds that the population of the Haines Borough recorded during the 2000 Census was 2,392. That represents a 13 percent increase over the previous decade. The 2000 population figure is 29 (1.2%) less than the estimated population in July 1997. The Commission also finds that the 2000 Census population of the Haines Borough is nearly 2.4 times greater than the presumptive minimum level set out in 3 AAC 110.050(b). Moreover, the Commission finds

---

<sup>13</sup> 3 AAC 110.050(a) provides that the Commission will, in its discretion, consider relevant factors, including: (1) total census enumerations; (2) durations of residency; (3) historical population patterns; (4) seasonal population changes; and (5) age distributions.



that the Haines Borough had a 2000 census population greater than that of four of Alaska's sixteen organized boroughs.

The Commission finds no significant change in the circumstances relating to the population characteristics within the proposed consolidated borough since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago. The slight decrease in the size of the population from 1997 to 2000 is considered insignificant.

Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the population standards on pages 9 and 10 of its 1998 Decisional Statement, to the extent that such are not inconsistent with other findings and conclusions made herein.

Moreover, the Commission finds no evidence that conflicts with the characterizations of the population within the proposed consolidated borough by the Petitioner and DCED. Both concluded that the population standards were met. The findings and conclusions reached regarding those standards on pages 42 – 46 of DCED's Preliminary Report are also adopted by reference.

Based on the foregoing findings, the Commission concludes that all of the population standards in AS 29.05.031(a)(1) and 3 AAC 110.050(a) - (b) are met by the proposed consolidation.

***D. The proposed consolidated borough has boundaries that conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level.***

**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 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.<sup>14</sup>

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(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.

---

<sup>14</sup> 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.

Collectively, the statutory and regulatory standards outlined above are referred to herein as the “natural geography and necessary areas standards.”

## **2. Application of the Natural Geography and Necessary Areas Standards.**

The Commission concluded four years ago that the standards at issue were met with regard to the 1998 consolidation proposal. The laws relating to those standards have not changed since the Commission considered the prior Haines consolidation proposal.

The Commission finds no significant change in the circumstances relating to the boundary characteristics within the proposed consolidated borough since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago.

Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the standards at issue on pages 12 and 13 of its 1998 Decisional Statement, to the extent that such are not inconsistent with other findings and conclusions made herein.

Moreover, the Commission finds no evidence that conflicts with the characterizations of the proposed boundaries by the Petitioner and DCED. Both concluded that the boundaries standards were met. The findings and conclusions reached regarding those standards on pages 47 – 51 of DCED’s Preliminary Report are also adopted by reference, to the extent that they do not conflict with other provisions in this Statement of Decision.

Given the foregoing findings, the Commission concludes that the standards set out in AS 29.05.031(a)(2), 3 AAC 110.060(a), and 3 AAC 110.060(c) are satisfied with respect to the pending petition for consolidation of the City of Haines and the Haines Borough.

***E. The boundaries of the proposed consolidated Haines Borough do not overlap the boundaries of another borough or extend beyond its model boundaries.***

### **1. Standards Established in Law.**

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(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 Overlapping and Model Borough Boundaries Standard.**

The Commission concluded four years ago that the overlapping and model boundaries standards were met with regard to the 1998 consolidation proposal. The laws relating to those standards have not changed since 1998.

The Commission finds no significant change in the circumstances relating to the boundary characteristics within the proposed consolidated borough since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago.

Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the boundaries standards on pages 12 and 13 of its 1998 Decisional Statement, to the extent that such are not inconsistent with other findings and conclusions made herein.

Moreover, the Commission finds no evidence that conflicts with the characterizations relating to the standards at issue by the Petitioner and DCED. Both concluded that the standards were met. The findings and conclusions reached regarding those standards on pages 47 – 51 of DCED’s Preliminary Report are also adopted by reference, to the extent that they do not conflict with other provisions in this Statement of Decision.

Given the foregoing findings, the Commission concludes that the standards set out in AS 29.05.031(a)(2), 3 AAC 110.060(b), and 3 AAC 110.060(d) are satisfied with respect to the Petition.

***F. The consolidated borough must have sufficient human and financial resources to operate a borough government.***

**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 capable of providing municipal services. It requires that evaluation of the economy of an area consider 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 earlier) 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 still other factors that it considers relevant.<sup>15</sup>

The statutory and regulatory provisions noted above are referred to herein as the “human and financial resources standards.”

**2. Application of the Human and Financial Resources Standards.**

The Petition, as amended by the Commission, provides for the exercise of the following functions on an areawide basis.

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. control of hazardous substances;
5. emergency medical services and other medical services;
6. emergency dispatch services;
7. ports and harbors;
8. funding capital improvement projects;
9. public parks and recreational facilities;
10. public libraries;
11. museums;
12. cemeteries;
13. economic development (including tourism promotion);
14. disaster planning and emergency response; and
15. solid waste management.

Moreover, as amended by the Commission, the Petition provides that the proposed consolidated borough will exercise the following powers on a service area basis within the Townsite Service Area.

1. police protection;
2. fire protection, prevention, and safety;

---

<sup>15</sup> 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.

3. animal control;
4. water and sewer utilities;
5. street and road maintenance;
6. public works;
7. funding for capital improvement projects; and
8. economic development and tourism promotion.

The budget in the Petition did not include projected expenditures for solid waste management. DCED noted in its Preliminary Report that the Haines Borough had budgeted \$26,900 for that function during Fiscal Year 2002.<sup>16</sup>

The Commission finds, based on projected areawide and service area expenditures and revenues outlined in DCED's Preliminary Report, that proposed expenditures and revenues are feasible and plausible. The record indicates that those estimates were prepared with due consideration to the current expenditures and revenues of the Haines Borough and the City of Haines for the various listed components.

Concerning economic base and employment, the Commission notes that 1,062 workers on average were employed within the Haines Borough from January through April 2001. The average labor force during that time was estimated to be 1,243, leaving 181 people unemployed (14.6% of the labor force). Labor force statistics for the Haines Borough from 1996 through April of 2001 were provided in DCED's Preliminary Report.

According to the *Annual Report on Assessment and Taxation* filed by the Haines Borough with the State Assessor in DCED on September 9, 2000, taxable real property in the Haines Borough was assessed during 2000 as shown in the following table.

<b>Assessed Value of Real Property in the Haines Borough 2000</b>						
<b>Property Type</b>	<b>Fire SA #1</b>	<b>Fire SA # 2</b>	<b>Fire SA # 3</b>	<b>Fire SA # 4</b>	<b>City</b>	<b>Remainder</b>
Residential	1,955,400	2,233,050	6,134,900	6,805,335	39,582,200	5,379,850
Unimproved	2,342,700	1,038,350	7,078,150	5,819,450	24,780,800	8,796,470
Farm	0	0	0	0	65,900	0
Commercial	34,750	95,000	334,350	0	21,141,000	627,000
Industrial	520,900	0	0	918,400	3,620,100	5,978,300
Apartments	0	0	0	0	3,494,750	0
Mobile Home Parks	0	0	0	0	1,294,850	0
<b>Total</b>	<b>4,853,750</b>	<b>3,366,400</b>	<b>13,547,400</b>	<b>13,543,185</b>	<b>93,979,600</b>	<b>20,781,620</b>

The total assessed value of taxable real property in the Haines Borough during 2000 was \$150,071,955. 62.6% of that value was within the City of Haines.

<sup>16</sup> City officials indicate that the Borough's solid waste management plan calls for a tax to generate \$170,000 annually for solid waste management services. However, the Assembly has reportedly shown no support for such a tax. Thus, expenses for solid waste management are estimated to be \$27,000 annually.

Taxable personal property in the Haines Borough was assessed during 2000 as shown in the following table.

<b>Assessed Value of Personal Property in the Haines Borough 2000</b>						
<b>Property Type</b>	<b>Fire SA # 1</b>	<b>Fire SA # 2</b>	<b>Fire SA # 3</b>	<b>Fire SA # 4</b>	<b>City</b>	<b>Remainder</b>
Mobile Homes	7,000	0	0	0	678,350	0
Machinery, Fixtures & Equipment	702,600	34,250	1,793,608	341,415	10,132,495	3,129,597
Aircraft	0	0	0	270,000	3,041,600	0
Boats & vessels	0	36,000	144,100	734,000	5,042,343	366,300
<b>Total</b>	<b>709,600</b>	<b>70,250</b>	<b>1,937,708</b>	<b>1,345,415</b>	<b>18,894,788</b>	<b>3,495,897</b>

The total assessed value of taxable personal property in the Haines Borough during 2000 was \$26,453,658. 71.4% of that value was within the City of Haines.

The State Assessor made the following determination of the 2000 full and true value of the Haines Borough:

<b>Full and True Value of the Haines Borough</b>			
<b>Item</b>	<b>City of Haines</b>	<b>Remainder of Borough</b>	<b>Borough Total</b>
Local assessment of real property	93,979,600	56,092,355	150,071,955
Local assessment of personal property	18,894,788	7,558,870	26,453,658
Local estimated value of optional real property exemptions	2,468,500	0	2,468,500
Local estimated value of optional personal property exemptions	2,500,000	107,000	2,607,000
State estimated value of motor vehicles	8,503,268	5,887,782	14,391,050
State adjustments to local assessments of real property and local estimated value of optional real property exemptions	5,076,200	2,952,245	8,028,445
State adjustments to local assessments of personal property and local estimated value of optional personal property exemptions	44	2,048	2,092
<b>Full and true value</b>	<b>131,422,400</b>	<b>72,600,300</b>	<b>204,022,700</b>

On a per capita basis, the full and true value of taxable property in the Haines Borough during 2000 was \$85,294. In comparison to the per capita full and true value of all sixteen organized boroughs in Alaska, Haines ranks as the fifth highest.

The per capita full and true value of the Haines Borough during 2000 was slightly higher than the statewide average for all organized boroughs. That average includes the figure for the North Slope Borough which, because of the substantial oil and gas properties there, accounted for nearly 25 percent of the assessed value in all organized boroughs in Alaska.

Because the North Slope Borough's assessed value is exceptionally large (more than 17 times the statewide average) it skews all comparisons. Thus, it is more fitting to make comparisons to the median per capita full and true value of taxable property within Alaska's organized boroughs. During 2000, that figure was \$67,276. The per capita full and true value of taxable property within the Haines Borough during 2000 was 26.8% greater than the median figure for organized boroughs in Alaska.

The Commission finds that the per capita value of taxable property in the Haines Borough was comparable to that of both the City and Borough of Juneau and the Kenai Peninsula Borough. It was also 34 percent higher than that of the Municipality of Anchorage.

Concerning land use, the Commission finds that the Haines Borough, like other regions of Alaska, includes relatively vast amounts of State and federal lands. There is also a significant amount of privately owned land. Privately owned commercial development is concentrated in the urban core of the Borough (the City of Haines. More than 95 percent of the commercial property in the Haines Borough is within the City of Haines.

In 1999, earnings from employment in the Haines Borough were reported to be \$23,314,718. That figure is equivalent to \$9,302 per resident of the Haines Borough. The comparison of per capita earnings from employment in the Haines Borough with figures from the other fifteen organized boroughs and eleven census areas in Alaska was provided on page 70 of DCED's Preliminary Report as Figure 27 and considered by the Commission. Haines ranked 19th among the 26 boroughs and census areas listed.

Although well ahead of the Matanuska-Susitna Borough and slightly ahead of the Lake and Peninsula Borough, the Haines Borough lagged behind thirteen other organized boroughs in terms of per capita earnings from employment.

The Commission notes, however, that commercial fishermen are not included in the employment and income data. Commercial fishing is an important segment of the Haines economy. Data provided by the Commercial Fisheries Entry Commission indicate that 91 residents of the Haines Borough were engaged in commercial fishing activity in 2000, generating slightly more than \$3,000,000 in gross earnings.

Perhaps another reason that the Haines Borough ranked relatively low in terms of earnings from employment may be that it has a high percentage of older residents. The 2000 Census indicated that 10.5% of the Haines Borough residents were 65 years of age or older. That figure compares to a statewide average of 5.7%.

When income from all sources is considered, the ranking of the Haines Borough moves up considerably. As illustrated in Figure 29 on page 72 of DCED's Preliminary Report, figures from the U.S. Department of Commerce - Bureau of Economic Analysis indicate that per capita personal income in the Haines Borough was \$30,681 during 1999. That figure was 7.2% higher than the statewide average. The Haines Borough ranked ahead of ten other organized boroughs with regard to 1999 per capita personal income.

With respect to the need for and availability of employable skilled and unskilled people, the Commission finds that the two existing local governments in Haines currently employ the individuals needed to carry out a full range of local government services. Consolidation will not change the availability of employable skilled and unskilled people.

Concerning the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation, the Commission finds that residents of Haines have maintained two local governments for the past thirty-four years. That provides ample demonstration of the commitment and interest in sustaining a municipal corporation.

Based on the foregoing findings, the Commission concludes that the human and financial resources standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 are fully met with respect to the pending Petition.

***G. The proposed consolidated borough would not be a third class borough.***

**1. Standard 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 Borough Classification Standard.**

The Petitioner has proposed the incorporation of a new home rule borough. Based on that simple fact, the Commission concludes that it is evident that the standard set out in AS 29.06.090(a) concerning permissible borough classifications is satisfied by the pending proposal.

***H. No person would be denied the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin because of consolidation.***

**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.

Collectively, the standards noted above are characterized as the “civil and political rights standards.”

**2. Application of the Civil and Political Rights Standards.**

The Commission concluded four years ago that the civil and political rights standards were met with regard to the 1998 consolidation proposal. The laws relating to those standards have not changed in the interval.

Moreover, the Commission notes that on October 23, 1998, the U.S. Justice Department granted preclearance under Section 5 of the Voting Rights Act for the 1998 consolidation proposal. (See October 23, 1998 letter from Elizabeth Johnson, Chief, Voting Section, Civil Rights Division, U.S. Justice Department.)

The composition of the proposed new borough’s governing body (a six-member assembly) is identical to the composition of the current Assembly. However, the proposed form of the assembly representation (election of assembly members at large by voters throughout the borough) is different from the current form of representation (three members elected from within the City of Haines by City voters, two members elected outside the City from non-City voters, and one member elected at-large by areawide voters).

The record demonstrates that the City of Haines is more racially diverse than the area of the Borough outside the City of Haines. As such, the proposed areawide form of representation would enhance minority voting strength in the Borough area outside the City of Haines. For example, Natives make up only 4.1% of the Haines Borough population outside the City of Haines, but comprise 11.5% of the areawide population. The areawide form of representation would nearly triple the voting strength of Natives in the area of the Borough outside the City of Haines.

Conversely, areawide representation would dilute minority voting strength inside the City of Haines. However, such dilution would be relatively minor because there is only a slight difference in the relative number of Natives inside the City of Haines (13.9%) as compared to the areawide Native population (11.5%). Areawide representation would dilute the Native voting

strength inside the City of Haines by a factor of less than 0.2, but would increase the Native voting strength of the Borough area outside the City of Haines by a factor of more than 2.8.

The following table depicts the racial composition of the City of Haines and the Haines Borough as of the 2000 Census.

Racial Composition of the City of Haines and the Haines Borough (based on 2000 Census)								
Area	Total	White	Black	Native	Asian	Pacific Islander	Other	Multi- Racial
City of Haines	1,811	1,442	3	251	12	2	8	93
	(100%)	(79.6%)	(0.2%)	(13.9%)	(0.7%)	(0.1%)	(0.4%)	(5.1%)
Portion of Haines Borough Outside City of Haines	581	532	0	24	5	0	2	18
	(100%)	(91.6%)	(0.0%)	(4.1%)	(0.9%)	(0.0%)	(0.3%)	(3.1%)
Total – Haines Borough	2,392	1,974	3	275	17	2	10	111
	(100%)	82.5%	(0.1%)	(11.5%)	(0.7%)	(0.1%)	(0.4%)	(4.7%)

In addition to changing the form of representation of the assembly, consolidation will eliminate the seven elective offices in the City of Haines (mayor and six-member city council). In recent decisions involving consolidation proposals in Ketchikan and Fairbanks, the Commission emphasized the fact that Article X, § 1 of Alaska’s Constitution encourages consolidation of local governments. The Commission concluded in those cases that the elimination of elective city council positions is not pertinent with regard to the civil and political rights standards.

Consolidation will also create a school board that is separate from the borough assembly. As proposed in the Petition, the school board would be comprised of seven members elected at-large. As noted in DCED’s Preliminary Report, 73% of the borough school boards in Alaska are elected on an at large basis by an areawide vote. Again, the 1998 Haines consolidation proposal and the current proposal are identical with regard to the election of the school board.

The Commission concludes from the foregoing that that no voting qualifications, prerequisites, standards, practices, or procedures will result from consolidation that 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 satisfied with respect to the pending Petition.

***I. The Petition, as amended, provides for an appropriate transition with respect to services, rights, powers, duties, assets, and liabilities of the former local governments.***

**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 or 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 an existing borough or city 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 all affected boroughs 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.

Collectively, the regulatory provisions are referred to herein as the “transition standards.”

## **2. Application of the Transition Standards.**

Four years ago, the Commission concluded that the transition plan included with the 1998 consolidation proposal satisfied the applicable standards. The pending proposal includes a thirty-one-page transition plan (Exhibit J) and specific transition measures in the proposed home rule charter (Article XIX). Those transition provisions are similar to the ones contained in the 1998 proposal.

The Commission finds that the transition plan, in conjunction with other elements of the current Petition, clearly demonstrate the intent and capability of the proposed consolidated borough to extend essential borough services in the shortest practicable time after the effective date of consolidation.

The current transition plan serves as a realistic proposal for the assumption of relevant and appropriate powers, duties, rights, and functions presently exercised by the City of Haines and the Haines Borough. However, the transition plan inadvertently omitted reference to three existing service areas. Those are the (1) Letnikof Subdivision Road Maintenance Service Area; (2) Riverview Drive Road Maintenance Service Area, and (3) Solid Waste Management Service Area. In addition, the transition plan did not address the service area created after the filing of the Petition by Haines Borough Ordinance 01-15 to regulate commercial helicopter flights.

As outlined in Section IV of this Statement of Decision, the Commission amended the Petition, including the transition plan, to address those service areas. The Letnikof Subdivision Road Maintenance Service Area and the Riverview Drive Road Maintenance Service Area will remain in existence following consolidation. Solid waste management will become an areawide power of the consolidated borough and the Solid Waste Management Service Area will be dissolved. The commercial helicopter regulation service area will also be dissolved and the authority to regulate commercial helicopter flights (within the confines of federal law) will be available to the consolidated borough under its areawide duty for planning, land use regulation, and other home rule powers.

The transition plan indicates that officials of the City of Haines and the Haines Borough were consulted in the preparation of the transition plan. The transition plan also provides detailed explanations about the effects of consolidation. Further, it sets out a schedule for integration of assets, liabilities, powers and duties of the two existing local governments.

The Commission notes that Section 19.11(b)-(c) of the proposed home rule charter provides as follows regarding pre-consolidation debt:

(b) Not later than 180 days after the effective date of the consolidation, the assembly shall determine which assets of a former government provided benefit to an area larger than the former government prior to consolidation, or will provide such a benefit after consolidation. The tax obligation for bonded indebtedness, or other debt, incurred prior to consolidation with respect to such an asset shall be spread to such area not later than 18 months after the effective date of the consolidation. However, if sales tax provides revenue to meet such bonded indebtedness obligations, or if the debt is a general obligation of the municipality, the extension of any tax levy or general obligation for that purpose shall not become effective in new areas until an ordinance

extending that tax levy or obligation is approved by voters of the area into which the tax levy or obligation is proposed to extend.

(c) Pre-consolidation bonded indebtedness or other debt for sewage collection systems, water distribution systems and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area that incurred the debt.

Thus, under the provisions of Section 19.11(c) of the proposed Charter, the debts for the 1989 Water/Sewer Refunding Bonds, Water System Revenue Bonds, Sewer System Revenue Bonds, and Drinking Water Fund Loan must remain with the Townsite Service Area (former City of Haines). Moreover, the Highland Estates Special Assessment Bonds are paid by assessments levied only the property within the Highland Estates Local Improvement District.

The only remaining long-term debt of the City of Haines is the principal due on the Port Chilkoot Dock General Obligation Bonds. It is conceivable that, as outlined under Section 19.11(b) of the proposed Charter, the assembly of the consolidated borough may determine that (1) the Port Chilkoot Dock is an areawide facility, (2) that the debt should be assumed on an areawide basis, and (3) that the debt should be paid with areawide revenues. However, because sales taxes are used to fund those bonds, Section 19.11(b) of the proposed Charter specifically prohibits the extension of the debt or the sales tax to the area beyond the former City of Haines unless the voters outside the former City of Haines vote in favor of such.

Based on the foregoing, the Commission finds that the transition plan in the Petition and the transitional measures in the Charter offer a suitable guide for the transition to a consolidated borough government. As such, 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.

***J. Consolidation of the City of Haines and Haines Borough will promote maximum local self-government.***

**1. Standard Established in Law.**

Article X, Section 1 of the Constitution of the State of Alaska provides, 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 Maximum Local Self-Government Standard.**

Four years ago, the Commission concluded that consolidation of the City of Haines and the Haines Borough as a single home rule borough would have promoted maximum local self-government. The constitutional provisions relating to that standard have not changed in the interval.

Furthermore, the Commission finds no significant change in the circumstances relating to the principle of maximum local self-government since 1998 that would warrant a conclusion in these proceedings that is different from the one reached four years ago.

Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the standard at issue on pages 2 and 3 of its 1998 Decisional Statement, to the extent that such are not inconsistent with other findings and conclusions made herein.

Moreover, the Commission finds no evidence that conflicts with the characterizations relating to the principle of maximum local self-government expressed by the Petitioner and DCED. Both concluded that the standard was met by the pending proposal. The findings and conclusions reached regarding that standard on pages 82 – 85 of DCED’s Preliminary Report are also adopted by reference, to the extent that they do not conflict with other provisions in this Statement of Decision.

Generally, maximum local self-government in Alaska is achieved primarily through the extension of city or borough government to an unincorporated area. Doing so establishes a political and a legal system that, to the maximum extent possible, allows local residents the flexibility to choose an appropriate structure of local government so they can address local

affairs in the manner that they deem appropriate. Local residents have a broad range of choices available to them. The principle of maximum local self-government is further supported by the broad powers given to city and borough governments under Alaska's Constitution and in the Alaska Statutes. All of these factors provide flexibility and encourage creativity on the part of local residents as to the manner in which they fashion their local government.

Since the City of Haines incorporated in 1910 and the City of Port Chilkoot incorporated in 1956, residents of those two cities had structures in place at the time of statehood that served the constitutional principle of maximum local self-government. In August 1968, the Haines Borough was incorporated.

The incorporation of a borough that overlaps city governments creates redundant structures for local self-government within the overlapping areas. The Constitutional Convention delegates envisioned that home rule would provide the highest form of local self-government.<sup>17</sup>

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

***K. Consolidation of the City of Haines and the Haines Borough will promote a minimum of local government units.***

**1. Standard Established in Law.**

Article X, Section 1 of the Constitution of the State of Alaska provides, 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." The constitutional principle is referred to herein as the "minimum of local government units standard."

**2. Application of the Minimum of Local Government Units Standard.**

Four years ago, the Local Boundary Commission concluded that consolidation of the local governments in Haines would satisfy the standard at issue by: (1) reducing the number of municipal corporations within the boundaries of the Haines Borough by 50%, (2) achieving greater equity, efficiency, and effectiveness in the delivery of local governmental services by in part, reducing the number of service areas and by offering additional opportunities for consolidation of service areas in the future, and (3) removing the limitation on the Haines Borough that new services can only be provided on a service area basis.

The Local Boundary Commission finds that consolidation of the City of Haines and the Haines Borough will promote the constitutional policy of minimizing the number of local government units in the same manner outlined in the Commission's 1998 decision. Therefore, the Commission hereby adopts by reference for this proceeding, the findings and conclusions reached concerning the minimum of local government units standard on pages 3 – 5 of its 1998 Decisional Statement, to the degree that those findings and conclusions are not inconsistent with others made in this Statement of Decision.

Further, the Commission finds that no evidence that conflicts with the characterizations by the Petitioner and DCED concerning satisfaction of the standard. Both concluded that the standard was met. Therefore, the findings and conclusions reached regarding that standard on pages 85 – 87 of DCED's Preliminary Report are adopted by reference to the degree such do not conflict with other provisions of this Statement of Decision.

The Commission stresses that it found in the recent proceedings for consolidation of local governments in Ketchikan and Fairbanks 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.

---

<sup>17</sup> The Commission concluded, however, in the 2001 Fairbanks consolidation proceedings that the maximum local self-government clause of Article X, § 1 of the State Constitution is not necessarily a presumption or preference for home rule municipalities.

The Respondent in this proceeding argued that there is no reduction in the number of local government units because the elimination of the City of Haines would be offset by the creation of the Townsite Service Area.

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.<sup>18</sup>

Of course, borough service areas are quite distinct from city and borough governments. A borough service area is not a municipal government in any sense. It lacks legislative powers, executive powers, and the power to tax. In fact, a borough service area is not even a legal entity - it has no capacity to sue or be sued. 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.

In the 2001 Ketchikan consolidation proceeding, the Commission rejected the argument that satisfaction of this standard is determined by a mere arithmetic determination regarding the overall number of local government units. In the Ketchikan case, the number of local government units would have actually increased if the voters had approved consolidation. The Ketchikan proposal would have dissolved two existing local government units (City of Ketchikan and Ketchikan Gateway Borough) and created four new local government units (Municipality of Ketchikan, Ketchikan Service Area, Greater Ketchikan EMS Service Area, and Shoreline Service Area).

Constitutional expert Vic Fischer had been retained by the Ketchikan Gateway Borough to review the Ketchikan consolidation proposal filed by the City of Ketchikan. Despite the arithmetic increase in the number of local government units, Mr. Fischer concluded that the pending Ketchikan consolidation proposal "meets the constitutional goal of maximizing self-government while *minimizing the number of government units.*" The Commission agreed.

What was relevant to Mr. Fischer and to the Local Boundary Commission in the Ketchikan proceeding was that consolidation would reduce the number of local governments (municipal corporations) that operate in the affected area from two to one. The most pertinent feature of that petition as it related to the standard at issue was that two local governments – two taxing and legislative jurisdictions – would be reduced to one. The same situation would result with respect to the pending Haines consolidation petition. The Local Boundary Commission concluded with regard to both the recent Fairbanks and Ketchikan consolidation proposals that, "[t]he 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."

Statewide, the percentage of Alaskans who live in organized boroughs who also live within city governments declined by about two-thirds from 1970. In contrast, over the same period, the figure for the Haines Borough has increased by half. More than seventy-five percent of the residents of the Haines Borough live within the boundaries of the City of Haines. The current comparable statewide figure is only eighteen percent.

In addition to reducing the number of municipal corporations by half, the Haines consolidation proposal would result in a significant net decrease in the overall number of local government units. The pending consolidation proposal seeks to dissolve seven existing local government units (City of Haines, Haines Borough, Docks and Harbors Service Area, Medical Service Area, Mud Bay Land Use Service Area, Lutak Land Use Service Area, and the Disaster Emergency Services Service Area). The Commission, with the concurrence of the Petitioner, amended the Petition to provide for the dissolution of two additional service areas (Solid Waste Management Service Area and commercial helicopter regulation service area). The consolidation proposal

---

<sup>18</sup> 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.

would create two new local government units (the consolidated Haines Borough and the Townsite Service Area). Arithmetically, the consolidation proposal decreases the number of local government units serving the greater Haines area by seven.

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].)

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

***L. Consolidation of the City of Haines and the Haines Borough will serve constitutional principles regarding preferred methods of service delivery (city governments vs. borough service areas).***

### **1. Standards Established in Law.**

Article X, Section 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) provides similar limitations.

### **2. Application of the Preferred Service Delivery Method Standard.**

The Respondent in this proceeding argued that “consolidation does not comply with the requirement for ‘maximum local self-government.’” The Respondent linked its argument to the assertion that there is a constitutional and statutory preference for the City of Haines over the proposed Townsite Service Area.

The Local Boundary Commission rejected similar arguments in recent decisions concerning proposals for consolidation of local governments in both Fairbanks and Ketchikan. The issue of constitutional policies concerning cities versus service areas is addressed in the preceding standard.

Dissolution of the Haines city government as a result of consolidation would not bring about any diminution of maximum local self-government for residents of the City of Haines. Maximum local self-government is not a matter of multiple local jurisdictions, but rather 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. That result would be clearly achieved under the pending consolidation proposal.

The proposed home rule borough would have authority to provide the level of services now being provided by the two local governments. In contrast, significant questions persist about the authority of the third class Haines Borough to provide facilities and services such as the public library, museum, cultural facility center, performing arts center, community youth development program, development of a community action plan, operation of a small business center, coordination of economic development, preparation of an industrial park marketing plan, and publication of tourism brochures.<sup>19</sup> Again, the proposed home rule borough would have unquestioned authority to provide such facilities and services.

---

<sup>19</sup> The Commission recognizes that both Article X, Section 1 of the Alaska Constitution and AS 29.35.400 provide for a liberal construction of municipal powers. Moreover, the Commission recognizes that there is

***M. Consolidation of the City of Haines and the Haines Borough will serve the best interests of the State of Alaska.***

**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.

Since the standard at issue was enacted by the legislature in 1999, it did not exist at the time of the prior Haines consolidation proceeding. The Commission adopted the following regulation interpreting and implementing the statutory provision.

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 Best Interests of the State Standard.**

The Commission concluded earlier in this Statement of Decision that the Haines consolidation proposal serves the maximum local self-government clause in Article X, § 1 of Alaska's Constitution. Moreover, the Commission concluded that the consolidation proposal fulfills the minimum of local governments principle set out in Article X, § 1 of the Constitution. Additionally, the Commission concluded that the consolidation proposal served the principles relating to service areas set out in Article X, § 5 of the Constitution.

In addition to the constitutional principles addressed above, it is relevant to note with regard to this standard that consolidation of the City of Haines and the Haines Borough will result in the reconstitution of the Haines Borough, Alaska's only third class borough, as a home rule borough.

Third class boroughs were authorized by the legislature in 1968 after voters in Haines rejected three prior proposals for incorporation of first or second class boroughs. In 1985, however, the legislature precluded the formation of new third class boroughs.

The third class borough was originally conceived principally as a regional municipal school district with taxing powers. Hence, its areawide powers were limited to only two functions – education and taxation. That restriction remains in place today.

In contrast, all other organized boroughs in Alaska are required by law to exercise areawide planning, platting, and land use regulation in addition to education and taxation. In a third class borough, State law shifts the duty for planning, platting, and land use regulation to first class cities like the City of Haines. The City of Haines is the only city government within an organized borough in Alaska that is required by State law to exercise planning, platting, and land use regulation powers.

However, the ability of the City of Haines to effectively exercise planning powers is limited to the area within its corporate boundaries. Municipal planning, platting, and land use regulation

---

educational value in public libraries, museums, cultural facility centers, performing arts centers, youth development programs, and, for that matter, a multitude of other activities not yet undertaken by the Haines Borough. However, the Commission has reservations whether such functions can legitimately be construed to be within the scope of the Borough's education functions.

within third class boroughs outside of first class cities can only occur on a piecemeal basis through service areas. As noted previously, two such service areas exist in the Haines Borough.

All Haines Borough residents receive some degree of local government land use regulation. However, it is carried out within four different jurisdictions (City of Haines, Mud Bay Land Use Service Area, Lutak Land Use Service Area, and commercial helicopter regulation service area). Moreover, approximately 85% of the residents of the Haines Borough receive higher levels of planning, platting, and land use regulation services from a local government. Again, the higher level of planning, platting, and land use regulation is carried out within three different local jurisdictions (City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area).

Another broad public policy concern regarding third class boroughs is the lack of authority to exercise areawide powers other than education and taxation. All other organized boroughs in Alaska have the discretion, typically subject to voter approval, to exercise a full range of municipal services on an areawide basis (any power not otherwise prohibited by law or charter). In many cases, boroughs must obtain voter approval to exercise additional areawide powers. Voters in the Haines Borough lack that option. Consequently, there has been what some might construe to be a tenuous expansion of the definition of “education powers” of a third class borough.

Based on the foregoing facts, the Commission concludes that the proposed consolidation of the City of Haines and the Haines Borough is in the broad public interest. As such, the public interests standard set out in AS 29.06.130(a) is satisfied in this case.

## SECTION IV ORDER OF THE COMMISSION

Based on the record in this proceeding and with the concurrence of the Petitioner, the Local Boundary Commission amended the Petition, including the proposed home rule charter and other exhibits, as follows:

**Letnikof Subdivision Road Maintenance Service Area.** As indicated in Section 11 of the Petition, this current service area shall remain in existence following consolidation. All express or implied indications in the Petition to the contrary, including the inadvertent omission in Section 20.19.08 of the proposed home rule charter and the transition plan that the service area will continue to exist, are amended to provide for the continuation of the service area following consolidation.

**Riverview Drive Road Maintenance Service Area.** As indicated in Section 11 of the Petition, this current service area shall remain in existence following consolidation. All express or implied indications in the Petition to the contrary, including the inadvertent omission in Section 20.19.08 of the proposed home rule charter and the transition plan that the service area will continue to exist, are amended to provide for the continuation of the service area following consolidation.

**Townsite Service Area.** Notwithstanding conflicting provisions in the Petition, the service area powers available to the Haines Borough to be exercised within the Townsite Service Area shall include police services; fire protection, prevention, and safety; animal control; water utility service; sewer utility service; street and road maintenance; public works; economic development (including tourism promotion); and funding for capital improvement projects.

**Medical Services.** As indicated in Section 11 of the Petition, the existing service area for medical services shall be dissolved upon consolidation and the power to provide medical services on an areawide basis shall be granted to the consolidated borough. All express or implied indications in the Petition to the contrary, including the inadvertent omission of medical services from the list of areawide powers in Section 6.01 of the proposed home rule charter and the inadvertent omission in Section 19.08 of the proposed home rule charter that the service area will be dissolved, are amended to provide for such.

**Docks and Harbors.** As indicated in Section 11 of the Petition, the current docks and harbors service area shall be dissolved upon consolidation. All express or implied indications in the Petition to the contrary, including the inadvertent omission in Section 19.08 of the proposed home rule charter that the service area will be dissolved, are amended to provide for such. The consolidated borough will have the authority to provide docks and harbors through its areawide ports and harbors facilities power.

**Disaster Emergency Services.** As indicated in Section 11 of the Petition, the current disaster emergency services service area shall be dissolved upon consolidation and the power to provide disaster planning and emergency response on an areawide basis shall be granted to the consolidated borough. All express or implied indications in the Petition to the contrary, including the inadvertent omission of disaster planning and emergency response from the list of areawide powers in Section 6.01 of the proposed home rule charter and the inadvertent omission in Section 19.08 of the proposed home rule charter that the service area will be dissolved, are amended to provide for such.

**Solid Waste Management.** The current solid waste management service area shall be dissolved upon consolidation and the power to provide solid waste management on an areawide basis shall be granted to the consolidated borough. All express or implied indications in the Petition to the contrary, including the inadvertent omission of solid waste management from the list of areawide powers in Section 6.01 of the proposed home rule charter and the transition plan, and the inadvertent omission in Section 11 of the Petition, Sections 19.08 and 29.19.08 of the proposed home rule charter, and the transition plan that the service area will be dissolved, are amended to provide for such.

**Regulation of Commercial Helicopter Flights.** The service area created by Haines Borough Ordinance 01-15 to regulate commercial helicopter flights shall be dissolved upon consolidation. All express or implied indications in the Petition to the contrary, including the absence of any statement in Section 11 of the Petition, Sections 19.08 and 29.19.08 of the proposed home rule charter, and the transition plan that the service area will be dissolved, are amended to provide for such. The power to regulate commercial helicopter flights (within the confines of federal law) shall be available to the consolidated borough under its areawide authority for planning and land use regulation and other home rule powers.

**Borough Name.** The name of the proposed consolidated borough set out in the Petition was the "City and Borough of Haines". The name is amended to be "Haines Borough".

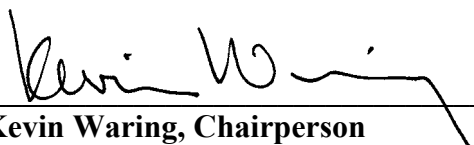
**Form of Government.** The form of government of the proposed consolidated borough set out in the Petition was characterized as a "mayor-administrator form of government". The form is amended to be a manager form of government.

The amended proposed Charter of the Haines Borough is attached to this Statement of Decision.

Based on the findings and conclusions in Section III of this Decisional Statement, the Commission unanimously approved the amended Petition. DCED is directed to implement this decision of the Commission in accordance with AS 29.06.140 and other applicable provisions of law.

Approved in writing this 20th day of March, 2002.

**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 in accordance with 3 AAC 110.580. The request must describe in detail the facts and analyses that support the request for reconsideration.

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

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

## **JUDICIAL APPEAL**

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

---

---