

Acknowledgments

Since the current consolidation Petition is substantially similar to the 1998 proposal, it is fitting to generally acknowledge the significant efforts of the many local citizens that participated in the development and review of the proposal three years ago.

Additionally, DCED recognizes those listed below as having contributed to the consideration of the pending Petition. (Persons are listed in alphabetical order of last name. DCED does not imply that all persons listed below support the pending Petition. In fact, several of those listed have expressed opposition to the current proposal. Nonetheless, they have contributed to the debate of the merits of the proposal by expressing their views for consideration by others.)

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Table of Contents

Executive Summary and Introduction	1
A. Introduction	1
B. Comparison of 1998 and Current Proposals	3
C. Other Developments	19
D. Standards for Review	20
E. Recommendation	21
Chapter 1 - Background.....	23
A. Effects of Consolidation	23
B. Local Boundary Commission (LBC or Commission)	26
C. Communications with the LBC	27
D. Staff to the Commission.....	27
E. Legal Standards for Consolidation.....	28
Chapter 2 - Proceedings to Date and Future Proceedings.....	29
A. Consolidation Petition Accepted for Filing	29
B. Notice of Filing of the Petition	29
C. Responsive Brief and Public Comments Filed	30
D. City's Reply Brief Filed	30
E. DCED's Preliminary Report	30
F. DCED's Final Report	31
G. Pre-Hearing Requirements	31
H. LBC Public Hearing	31
I. LBC Decisional Meeting	33
J. Reconsideration	34
K. Election	34
L. Judicial Appeal	34
Chapter 3 - Evaluation of Haines Consolidation Proposal	35
A. Introduction	35
A. Introduction	35
B. Standards Relating to Community of Interests	35
C. Standards Relating To Population	42
F. Standards Relating to Permissible Borough Classifications	73
G. Standards Relating to Civil and Political Rights	73
H. Standards Relating to Transition	77
I. Standards Relating to Maximum Local Self-Government	82
J. Standards Established in Law Relating to Minimum of Local Governments	85

Continued on next page

Table of Contents

Chapter 3 - Evaluation of Haines Consolidation Proposal (continued)

K. Standards Concerning Constitutional Preference – City vs. Service Area	87
L. Standards Regarding Best Interests of the State	88
M. Other Considerations	91
N. Overall Conclusions and Recommendations.	102

Appendix A - Key Terms and Acronyms..... A-1

Appendix B - Biographical Information About the Current Members of the LBC B-1

Appendix C - Labor force statistics for the Haines Borough 1996 through April 2001 C-1

Appendix D - 1999 employment and payroll data for the Haines Borough D-1

Appendix E - History of Haines Borough Incorporation and Annexations E-1

Executive Summary & Introduction

A. Introduction

In 1998, the Haines Borough and City of Haines jointly prepared and filed a petition to consolidate the two local governments. The Local Boundary Commission unanimously approved the petition. However, voters subsequently rejected the proposal by a very narrow margin (see Figure 1).

State law precludes the filing of a new consolidation petition within two years of the rejection of a prior proposal. However, before the two-year ban had expired, officials of the City of Haines and the Haines Borough met in November 1999 and again in July 2000 to consider a new consolidation proposal. The following account of the second meeting appeared in the July 27,

2000 edition of the *Chilkat Valley News*.

City, borough endorse 2nd consolidation try

Voters may weigh in on proposal next year

Consolidation of the City of Haines and the Haines Borough may be on the ballot again as early as October 2001. That's the target date agreed to at a joint meeting Thursday of city council and borough assembly members called by city mayor Don Otis to gauge support for reintroducing the idea of combining the two governments.

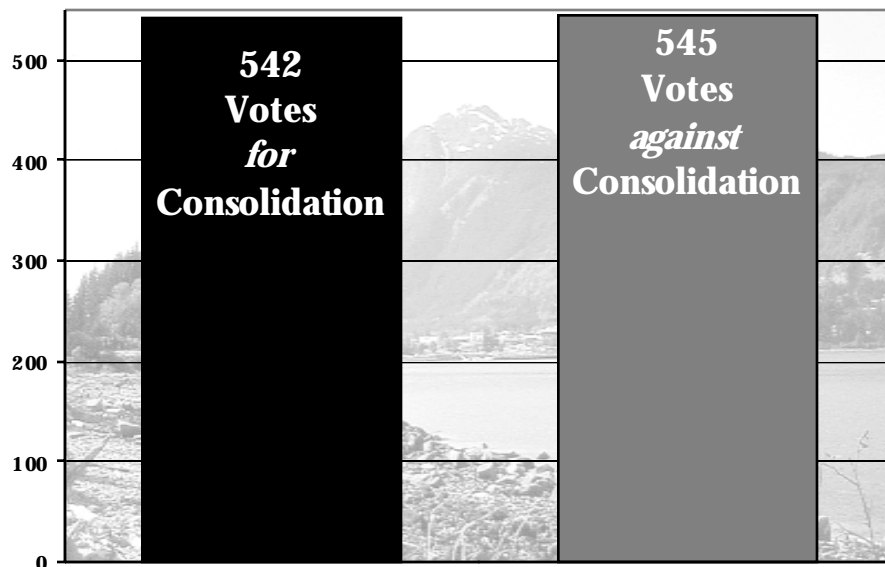
In November 1998, voters boroughwide rejected by just three votes a consolidation charter that would have dissolved the current municipal governing bodies, establishing a single areawide municipality.

Elected officials Thursday, including the entire city council and borough assembly representatives Jerry Lapp and Terry Pardee, agreed to support a second consolidation effort.

"I'm behind it. So is the majority of the assembly," said Lapp, who didn't take a stand for or against the previous measure.

City deputy mayor Chip Lende said the process should begin with a survey to find out what turned voters off last time. "We need to find out why the last charter didn't fly. We created something voters didn't buy. If there are two

Figure 1
1998 Haines Consolidation Election Results



or three things that would make this more palatable to voters, we need to find out what it is.”

Members Thursday suggested that the previous charter’s district representation scheme, that allocated seats to separate geographic locations, was a major stumbling block.

Otis said he favored areawide voting for areawide candidates. “We need to do away with districts and be one community...An areawide candidate has to convince the whole community instead of just their district.”

Four months later, however, the prospect for a new joint City/Borough consolidation proposal seemed unlikely. Relations between the City of Haines and the Haines Borough had reportedly become strained over litigation involving solid waste management in the region.¹ The following excerpt from the November 22, 2000 edition of the *Chilkat Valley News* reflected the discord between City and Borough officials and its

effects on the prospect for a joint consolidation proposal.

City pushes toward October charter vote

Borough leaders sit out meeting

The Haines City Council approved a handful of changes to the 1998 municipal consolidation charter Tuesday, starting it down a path toward a boroughwide vote in October.

The discussion took 20 minutes, less time than councilors have taken to decide on snowplowing some roads.

The council set Dec. 6 for the final public hearing on the charter, which is scheduled to go to the state’s Local Boundary Commission before Jan. 1 and be decided by voters boroughwide in the next municipal election.

The charter, a blueprint for a new municipality combining the City of Haines and Haines Borough, was rejected in November 1998 by a three-vote margin.

Although invited as a group and individually, members

of the Haines Borough Assembly and borough mayor Jerry Lapp were absent from the meeting planned by city mayor Don Otis as a joint gathering. Lapp and assembly members last week said they wouldn’t attend because of a legal dispute between the two municipalities over solid waste management.

“Decisions are made by the people who show up!” Otis wrote across the council chamber chalkboard before the meeting. “They’re not going to kill this idea by not participating,” he said after the meeting.

On December 19, 2000, the Haines Borough Assembly adopted Resolution #512 by a 5-1 vote² “asking the Local Boundary Commission to not proceed with the City’s consolidation petition.”

The following day, the Haines City Council adopted Resolution No. 2000 / 20001 - 18 authorizing the filing of the Petition. On December 27, 2000, the City of Haines formally

submitted the *Petition by the City of Haines for Consolidation of the City of Haines and the Haines Borough as a Home Rule Borough* (hereinafter “Petition”).

¹ In February of 2000, Haines Sanitation, Inc., filed a lawsuit to force the City of Haines to honor a 12-year garbage collection contract signed in 1998. The City asserted, in part, that the creation of the Haines Borough Solid Waste Management Service Area in 1999 eliminated the City’s authority to implement the contract. The City of Haines subsequently brought the Haines Borough into the litigation. On March 1, 2001, the City of Haines and Haines Sanitation, Inc., reached an out-of-court settlement. Alaska Superior Court Judge Patricia Collins signed the dismissal of the case on May 14, 2001.

² Assembly members Pardee, Hill, Harrell, Wilson, and Crupi voted for the resolution while Assembly member Willard voted against it.

Figure 2
Distinctions Between 1998 and Current Consolidation Proposals

Characteristic	1998 Proposal	Current Proposal
Name of proposed consolidated borough	Haines Borough	City and Borough of Haines
Composition of borough assembly	Eight members	Six members
Form of assembly representation	Assembly members elected from districts by areawide voters	Assembly members elected at large by areawide voters
Percentage of Haines residents served by two local governments	59.0 percent of the Haines Borough residents lived in the City of Haines	75.7 percent of the Haines Borough residents live in the City of Haines
Planning commission	Nine members, eight of whom would be appointed from districts and one of whom would be appointed at large	Seven members with no district residency requirement
Eligibility for AHFC rural housing loan program	All residents of the Haines Borough would have lost eligibility for new AHFC program loans if consolidation occurred.	Consolidation will have no effect on eligibility for the AHFC program per regulations adopted by the AHFC board of directors on May 3, 2001.
Petitioner	Haines Borough and City of Haines	City of Haines
Respondents in opposition	None	Haines Borough

[The City made] as few changes as possible to the joint Borough and City Consolidation Charter presented to the Commission in 1998. . . The minor changes will hopefully address some of the concerns, which caused the charter to fail the first time.

The table in Figure 2 summarizes the principal

On February 27, 2001, the Haines Borough took on the status of a respondent when it filed its *Brief of the Haines Borough in Opposition to the Proposed Consolidation* (hereinafter “Responsive Brief”).³ In addition to the

Responsive Brief from the Borough, eleven individuals or groups of individuals submitted written comments on the consolidation proposal.

The City of Haines subsequently submitted a reply brief in answer to the Borough’s Responsive Brief and the written comments from the individuals and groups.

B. Comparison of 1998 and Current Proposals

The current Petition is based largely on the previously noted 1998 consolidation proposal. The City stressed in its Reply Brief (pages 2 and 6) that:

distinctions between the 1998 proposal and the current Petition. Figure 2 also recaps significant changes in circumstances surrounding the two proposals. A discussion of those distinctions follows.

1. Relationship between the City of Haines and Haines Borough.

One significant variation between circumstances surrounding the 1998 proposal and the current Petition concerns the relationship between the City of Haines and the Haines Borough. As noted previously, the two governments jointly prepared and filed

³ Daniel L. Turner, Haines Borough Assessor/Land Manager, signed the Responsive Brief. Mr. Turner also signed a sworn affidavit that the information in the Responsive Brief was, to the best of his “knowledge, information, and belief, were formed after reasonable inquiry . . .” Thus, Mr. Turner is designated as the Respondent’s Representative in this matter.

At A Glance

1ST SIGNIFICANT CHANGE SINCE 1998: CITY & BOROUGH RELATIONS

Relations between the City & Borough have weakened since 1998. Three years ago, the Borough & City jointly petitioned for consolidation. Today, the two are at odds over the matter. The five reasons given by the Borough Assembly for its opposition to the proposal are addressed in this Executive Summary.

the 1998 consolidation proposal⁴ – today, the City of Haines and the Haines Borough are on opposite sides in this proceeding.

The following circumstances were cited by the Haines Borough as the basis

for its December 19, 2000 objection to the pending Petition.

- voters rejected consolidation in 1998;
- the consolidation process “does not allow for enough input by all borough residents;”
- the Petition eliminates assembly districts, creating the possibility that the assembly would be comprised entirely of City residents;
- the “combined vote called for under consolidation disenfranchises voters in the areas outside of the City;” and

⁴ The 1998 petition was initiated under authority of City of Haines Resolution No. 97/98 – 30, adopted on March 26, 1998, by a vote of 4-0 (Council members Lende, Lowden, Walker, and Otis); and Haines Borough Resolution # 442 adopted on March 30, 1998, by a vote of 4 – 2 (Assembly members Schnabel, Menaker, Willard, and Nelson voted for the resolution while Assembly members Koenig and Hill opposed it).

- “the process for unification would allow for more public involvement, allowing for a fairer and more representative government.”

Those concerns are explored below.

Prior Voter Rejection of Consolidation.

Voters of the Haines Borough indeed rejected consolidation in 1998. However, there is no legal barrier to the pursuit of the subsequent consolidation proposal. As noted previously, State law specifically allows the filing of a new consolidation proposal after an interval of two years following the rejection of a similar proposal.

Moreover, given the Borough’s expressed preference for the unification process over consolidation, there appears to be no ideological basis for the Borough to oppose consolidation on the grounds that voters previously rejected a similar proposal. Unlike consolidation, the unification process actually *mandates* that a second proposal be prepared and submitted to the voters *within one year* if the initial unification proposal is rejected.

It seems incongruous for the Borough to oppose the pending consolidation proposal because voters rejected a similar proposal in 1998, yet express a preference for the unification process which would have required a second proposal to be submitted to the voters within one year if the first one failed.

Moreover, the City of Haines indicates that Haines Borough officials in attendance at the joint City/Borough meetings on November 23, 1999 and July 20, 2000 “supported consolidation at that time.” (Reply

Brief, page 5). Only after relations between the two governments became strained, apparently due to the previously noted litigation, was the prior voter rejection of the proposal raised as a concern.

Further, based on formal representations made jointly by the Haines Borough and the City of Haines in 1998, there certainly seems to be ample reasons for pursuing the subsequent consolidation proposal (see Figure 3 on page 7).

City officials believe that a majority of the Borough

voters, including those in the City, currently support consolidation. The City modified the 1998 proposal by changing elements that City officials believe the voters found objectionable in 1998.

Public Input Allowed Under Consolidation Process.

DCED disagrees with the assertion that the consolidation process “does not allow for enough input by all borough residents.” There was a very substantial public effort to develop the 1998 consolidation proposal upon which the current Petition is based. The Mayors of the City of Haines and the Haines Borough appointed a twelve-member commission to oversee the development of the 1998 charter and the consolidation proposal.

Additionally, staff from the two local governments and the former Department of Community and Regional Affairs (DCRA) contributed extensive technical assistance to the effort. An internal DCRA staff report at

At A Glance

REASON #1 FOR BOROUGH OPPOSITION

The Borough objects to the current proposal because voters rejected a similar one in 1998. Yet, the Borough also expresses a preference for unification over consolidation. Unification actually *requires* the submission of a revised proposal if voters reject the first. Consolidation allows, but does not require a resubmission. Given the Borough’s preference for unification, it is unclear why it objects to the submission of a revised consolidation proposal to the voters.

At A Glance

REASON #2 FOR BOROUGH OPPOSITION

The Borough asserts that the consolidation process does not allow adequate public input. The record suggests otherwise. To begin with, the current Petition is substantially similar to the 1998 proposal that was formed after very considerable public participation. Further, City or Borough officials held at least six public meetings regarding consolidation before the current Petition was filed with the LBC. Once filed, twenty-two individuals & organizations submitted twelve sets of comments comprising 172 pages. The Borough alone submitted 155 pages of materials.

Furthermore, the consolidation process guarantees significant opportunities for public involvement. A number of important steps allowing public involvement remain in this proceeding. The Borough will have a prominent role during the public hearing on the proposal. Similar guarantees are lacking in the unification process favored by the Borough.

the time reflected the level of effort involved:⁵

The twelve member Haines Consolidation Commission is collectively spending an estimated 180 hours a week developing the charter and other key provisions of the consolidation proposal. A full-time staff person has been hired by the Commission. Numerous staff from the City and Borough are contributing the estimated equivalent of at least one full-time position to the effort. Additionally, between DCRA's LBC staff and regional office staff, at least one more full-time equivalent

position is providing technical assistance and support to the effort. Together, the equivalent of 7.5 full time positions are committed to the effort.

In addition to two regular meetings of the Commission each week, a number of committees are addressing particular issues. On February 16, LBC staff and staff from DCRA's Southeast Regional Office at-

tended a two-hour community workshop in Haines on consolidation. The following day LBC/DCRA staff met with the Commission's staff, the Commission Co-Chairs and a committee of the Consolidation dealing with service areas. Efforts to draft a petition for consolidation of the local governments in Haines, including a home rule charter, appear to be on track.

Further, DCRA commented in its Preliminary Report on the 1998 proposal regarding the level of communication and opportunity for public input.

KHNS conducted live broadcasts of each of the many meetings of the Charter Commission. Reporters from both newspapers covered the meetings as well. Additionally, the Haines Public Library established an Internet web site to provide information regarding the consolidation proposal.

Moreover, one of the critics of the pending consolidation proposal acknowledged the extensive opportunities for public input in the 1998 proceeding. Ms. Piggott wrote to the Local Boundary Commission on March 4 of this year that,

⁵ Local Boundary Commission staff, *Haines Consolidation Effort on Track*, February 18, 1998.

"We voted on this just a short time ago after *a lot of work was done on consolidation, with many open forums.*" (Emphasis added)

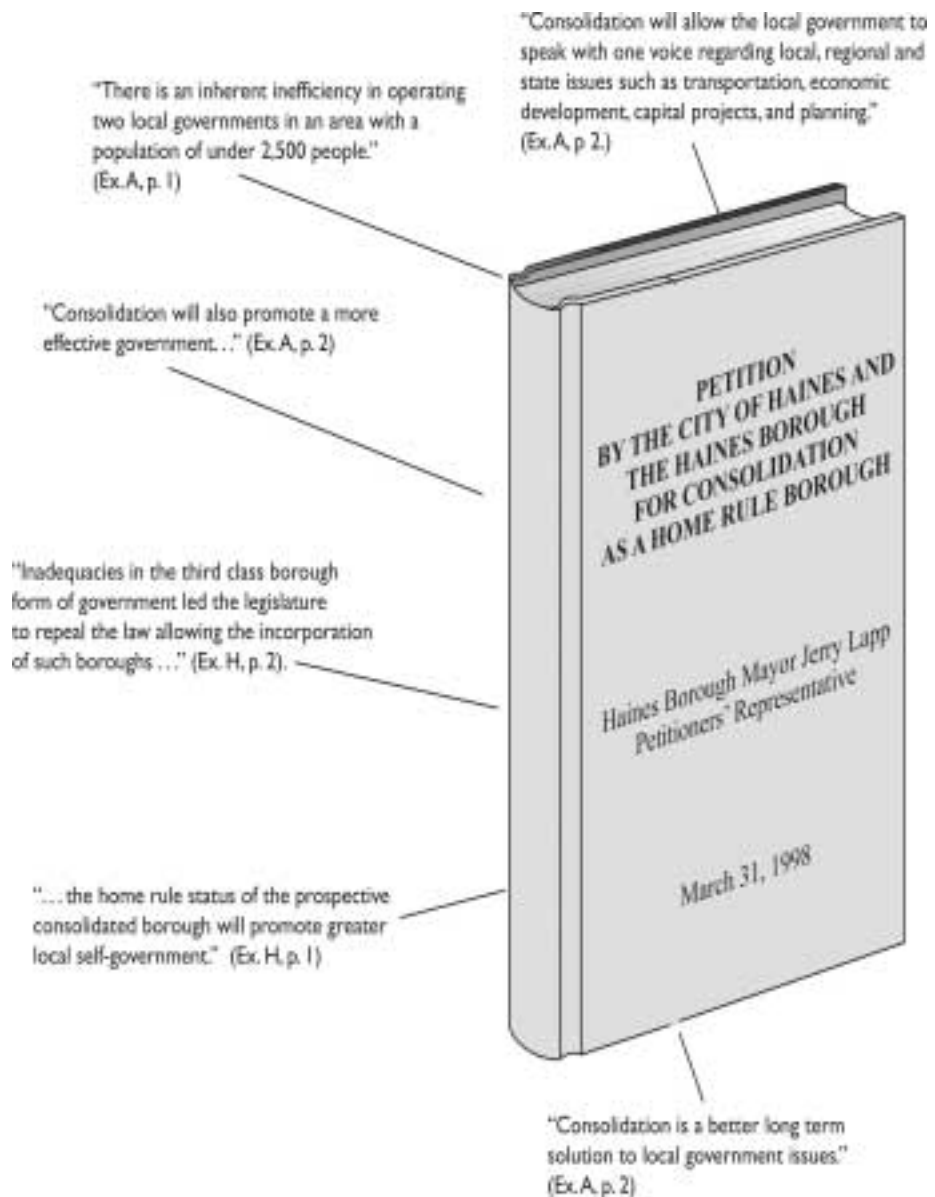
Furthermore, local officials and citizens discussed the prospect of the current consolidation proposal during at least six meetings spanning the course of more than one year. Those meetings included joint City/Borough meetings on November 23, 1999 and July 20, 2000. The City Council also met on November 21, 2000. Borough officials were invited to attend that meeting, but none did. The Haines City Council met again on the matter on December 6, 2000. The Haines Borough Assembly addressed consolidation at a meeting on December 19, 2000. Lastly, the Haines City Council met regarding consolidation on December 20, 2000.

Once the current Petition was filed, extensive public notice was provided. Individuals and organizations were given

more than eight weeks to prepare and submit written comments and responsive briefs to the Local Boundary Commission regarding the Petition. The Haines Borough's representative in this matter filed 155 pages of materials in opposition to the consolidation Petition (a nineteen-page opposition brief accompanied by 136 pages of supporting documents). Eleven other

individuals or groups submitted timely comments on the proposal.

Individuals and organizations are invited to submit written comments on DCED's Preliminary Report analyzing the pending consolidation Petition. In addition, local officials and other citizens of the Haines Borough will be permitted to testify and comment on





1998 Haines Charter Commission.

the proposal at one or more public hearings to be held by the Local Boundary Commission in Haines. As a respondent in this proceeding, the Haines Borough will be allowed to make an opening statement at the consolidation hearing, provide sworn testimony during the hearing, and make a closing statement at the conclusion of the hearing.

To address issues that arise during the course of consideration of the proposal, the Petitioner may amend the Petition. Moreover, the Local Boundary Commission may amend the Petition or impose conditions to address issues that arise during the course of the consideration of the proposal.⁶ Lastly, individuals and organizations have the right to seek reconsid-

eration of the decision ultimately rendered in this matter.

The unification process preferred by the Borough provides fewer guarantees for input. State law provides that a unification charter commission must conduct its initial meeting within thirty days after election of the commission. It requires charter commission meetings to be open to the public at all times. Outside of those requirements, the law provides only that the unification charter commission must hold a public hearing in each area represented on the assembly before and after drafting a charter. (See AS 29.06.290 and AS 29.06.330.)

In contrast to procedures for consolidation, there is no formal structure in the

unification process for the filing of written comments or briefs regarding the work of the charter commission. Further, there is no specific opportunity for independent analysis of the charter commission's proposal as there is in consolidation. Additionally, once the charter commission has adopted the

proposed charter, there is no opportunity for amendment prior to the election on the unification proposal. Moreover, there is no assurance that the Borough would have the rights at any unification charter commission hearing that it will enjoy at the consolidation hearing. Lastly, there is no express opportunity for reconsideration of decisions rendered by a unification charter commission.

The broad flexibility and ample opportunity for public input under the consolida-

⁶ Historically, the Commission has exercised its authority to amend a petition or to impose conditions only after carefully considering the views of petitioners, respondents, and others.

⁷ Following a hearing on April 21, 2001, the Local Boundary Commission unanimously approved the proposal for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. A proposition for consolidation will be placed before the voters of the Ketchikan Gateway Borough at an election on July 17, 2001.

⁸ After three unsuccessful attempts at unification of local governments in Ketchikan (1973, 1979, and 1986), the Ketchikan Chamber of Commerce initiated discussions on consolidation in 1990. The Chamber of Commerce formed a consolidation committee that met over a period of three years to examine issues relating to consolidation. In 1993, the Ketchikan City Council voted to pursue consolidation. In 1994, the Mayor of the City of Ketchikan appointed a charter commission to develop a home rule charter. The Commission met at least twelve times. It submitted its charter proposal to the City Council in 1995. From 1995 through 1999, the charter was further refined through ten meetings of the Ketchikan City Council (some of which were involved the Assembly of the Ketchikan Gateway Borough). The petition and charter were filed with the Local Boundary Commission in May of last year.

tion process were abundantly demonstrated in the recent proceedings for consolidation of local governments in Ketchikan.⁷ Ketchikan officials utilized an extensive public process for the development of a home rule charter for the proposed consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.⁸ Notwithstanding the extensive public process involved in developing the Ketchikan charter, the need for further refinement became evident during the public comment period utilized in the consolidation proceedings. Based on local input during that public comment period, DCED recommended six amendments to the proposed charter. With the concurrence of petitioner (City of Ketchikan), the Local Boundary Commission made the recommended amendments.

Assembly Apportionment.

The Borough argues that at large representation creates the possibility that the assembly would be comprised entirely of residents within the current boundaries of the City of Haines. Theoretically, at least, that is indeed a possibility. However, it is also a theoretical possibility that a

majority of the assembly or even the entire assembly would be comprised of residents outside the current boundaries of the City of Haines under an at large voting system. Non-City residents currently hold all of the at large elective offices of the Haines Borough (Borough Mayor/School Board Chairman and one Assembly/School Board member).

As an alternative to at large representation, the Haines Borough has expressed a preference for assembly members to be elected from districts by voters of the respective districts. Currently, the Borough Assembly is apportioned by electing three members from within the City of Haines, two members outside the City of Haines, and one member at large.

It is noteworthy that a number of organized boroughs in Alaska that (like Haines) have populations concentrated in one or two communities, utilize the at large form of assembly representation. These include the Bristol Bay Borough, Fairbanks North Star Borough, Ketchikan Gateway Borough, Kodiak Island Borough, City and Borough of Sitka, and City

At A Glance

REASON #3 FOR BOROUGH OPPOSITION

The Borough opposes the Petition because it provides for election of assembly & school board members at large. Nearly three-fourths of the borough school boards in Alaska are elected at large. The 1998 proposal co-sponsored by the Borough even provided for election of school board members at large. The election of assembly members at large is also the most popular form of representation among boroughs in Alaska.

However, district representation preferred by the Borough is also fundamentally sound and popular. The Borough is concerned that areawide representation may result in all assembly seats being filled by City residents. If present circumstances are any indication, that will not happen because the only two areawide elective offices of the Borough are both filled by non-City residents. Moreover, district representation preferred by the Borough would guarantee that City residents would heavily dominate the Assembly.

and Borough of Yakutat. However, there is also one borough (Municipality of Anchorage) with its population concentrated in a single community that utilizes a district form of apportionment.

Both options for assembly representation are fundamentally sound. There are legitimate arguments that favor either alternative. The at large form of representation included in the current Petition is the most popular option among

existing boroughs in Alaska. The district form of representation favored by the Haines Borough is the second-most popular option.

Either option would likely pass the requisite Federal Voting Rights Act review. However, given the population characteristics of the Haines Borough, at large voting might be favored under the Voting Rights Act guidelines for reasons outlined in DCED's Preliminary Report.

District representation would, of course, assure that some assembly members would be elected from the area outside the current City of Haines. However, it would also guarantee that the assembly would be heavily dominated by members elected from the current City of Haines. In fact, under district representation, assembly members elected from the City would outnumber representatives elected from the remainder of the Borough by a margin

of three to one. The equal protection clauses of the Alaska Constitution and U.S. Constitution require district representation to be based on population. Since the area within the current City of Haines contains just over 75% of the population of the Haines Borough, that area would be entitled to three-quarters of all assembly seats elected by districts. With an eight-member assembly, six members would have to be elected from the City of Haines.

Consolidation Voting Requirements.

Consolidation is subject to areawide voter approval. In contrast, unification of local governments in Haines would be subject to approval

by voters in the City of Haines and separately by voters outside the City of Haines. On the basis of those distinctions, the Haines Borough characterizes consolidation as a process that “disenfranchises voters in the areas outside of the City.”

Disenfranchisement occurs only if qualified voters are deprived of the right to vote. The consolidation process certainly does not disenfranchise any voter. Rather, it treats all voters uniformly. However, the same cannot be said about unification.

The unification process would create different classes of voters among the citizens of the Haines

Borough. Those living within the City of Haines would be treated as one class of voters and those living outside the City of Haines would be treated as a different class of voters. The distinction between the classes is arbitrary in two fundamental respects.

First, although unification would affect citizens inside the City of Haines differently than those outside the City of Haines, the degree of difference would be narrow (as is the case with consolidation).⁹ Moreover, there are many other groups of Haines Borough citizens in addition to just those inside and outside the City of Haines that would be affected by unification in different fashions. For example, residents of the Mud Bay Land Use Service Area and the Lutak Land Use Service Area would be uniquely affected by unification since the resulting unified borough would assume areawide responsibilities for planning, platting, and land use regulation. Yet, voters in the Mud Bay and Lutak land use service areas would not be entitled to separately decide

At A Glance

REASON #4 FOR BOROUGH OPPOSITION

The Borough objects to consolidation because it does not require voter approval both inside and outside the City. The Borough prefers unification, which requires such separate approval by voters. Consolidation is governed by majority rule; unification is not. Unification could be blocked in Haines even if it were supported by approximately 90% of the voters. Moreover, unification creates arbitrary classes of voters, whereas consolidation treats all voters equally.

⁹ DCED's full Preliminary Report lists the effects of consolidation.

the fate of unification. Based on the Borough's argument, the citizens of the Mud Bay and Lutak land use service areas would be "disenfranchised" by the unification process. The same would be true for many other groups of citizens of the Haines Borough. Again, unlike unification, consolidation treats all voters equally.

The second reason that the classifications created by unification are arbitrary is that they exist only if there are particular kinds of city governments involved. If the City of Haines were a second class city, the distinction would not apply. The City of Haines could reclassify as a second class city under AS 29.04.040. As a second class city, the City of Haines could exercise every power, provide every service, and operate every facility that it does now as a first class city.¹⁰ It would be essentially the same govern-

ment, but Haines would not be subject to the requirement for separate voter classifications in a unification election.

The creation of the different arbitrary classes of voters under the unification process would grant the ability to a small minority of voters to thwart the will of the majority of the Haines Borough citizens. It is theoretically possible that a Haines unification proposal could be defeated even if nearly ninety percent of the Borough voters favored it.¹¹

The City of Haines takes the view that consolidation of the two local governments is a matter of areawide importance. The City stresses in that regard, "If Haines is ever to truly become one community, then the community must act, think and vote as one community."

Unification.

The last objection formally noted in the December 19, 2000 communication from the Borough indicates that "unification would allow for more public involvement, allowing for a fairer and more representative government." This argument is redundant in terms of the second assertion made by the Borough (i.e., "consolidation does not allow for enough input by all borough residents").

In addition to distinctions between unification and consolidation previously addressed, there is one other fundamental point that seems to be incongruous with the perception that unification would guarantee non-City residents "more public involvement," that it would be "fairer," or that it would result in "more representative government" as compared to consolidation. Under State law,

residents of the City of Haines would dominate any unification charter commission. A unification charter commission must be comprised of eleven members, eight of whom would be elected in proportion to the population inside and outside home rule and first class cities

¹⁰ Some of Alaska's most populous and sophisticated city governments are second class cities. For example, the City of Bethel is a second class city that provides a broad range of public services to a population more than twice as large as that in the entire Haines Borough.

¹¹ The population of the City of Haines comprises 75.7% of the population of the Haines Borough. The area of the Haines Borough outside the City of Haines encompasses 24.3% of the population of the Haines Borough. If half of the voters outside the City of Haines (12.2%) rejected a unification proposal, it would be defeated even if the remaining 87.8% of the voters supported it.

At A Glance

REASON #5 FOR BOROUGH OPPOSITION

The Borough opposes consolidation because it believes that unification guarantees greater opportunity for public input, especially for non-City residents. This is not the case. As noted previously, the consolidation process has procedural guarantees not provided under unification. Furthermore, requirements of State law are such that City residents would dominate any unification charter commission in Haines.

(AS 29.06.240). In the case of Haines, six of those eight charter commission members would be elected from the City of Haines. The remaining three seats on the eleven-member commission would be elected at large. City residents could be elected to as few as none or as many as all of the three at large seats. Thus, a unification charter commission in Haines would be comprised of six to nine City residents, a majority in any case (potentially, an overwhelming majority).

In conclusion, assertions that consolidation (1) should not be pursued because voters previously rejected the 1998 consolidation proposal, (2) fails to

allow adequate public input, and (3) disenfranchises voters outside the City of Haines do not withstand careful examination. Debate over assembly apportionment is largely a matter of local concern. There are legitimate arguments favoring both at large representation and district representation. It must be recognized, however, that while district representation would ensure non-City representation, it would also ensure that City residents heavily dominate

the assembly. No systematic effort has yet been undertaken either by the City of Haines or the Haines Borough to determine the informed preferences of residents of the Haines Borough with respect to apportionment of the Borough assembly. Ample opportunity to do so remains before the Local Boundary Commission conducts a hearing on the matter. DCED is prepared to offer assistance to the City of Haines and/or the Haines Borough in any effort to determine which form of assembly representation is most desired by citizens of the Haines Borough.¹²

It has been indicated that the conflicting positions of the City and the Borough regarding the overall issue of consolidation stems, at least in large measure, from litigation involving regional solid waste management. The City of Haines notes in this regard:¹³

The Haines Sanitation lawsuit has been a significant factor in the deteriorating state of relations be-

¹² DCED has a role under both Article X, § 14 of the Constitution of the State of Alaska and AS 44.33.020(1) to "advise and assist local governments." Moreover, DCED has a particular role in matters involving apportionment of borough assemblies under AS 29.20.090 – 29.20.120.

¹³ City of Haines, *Reply Brief*, page 8.

tween the City and the Borough. It is indicative of the type of situations we find ourselves in, which are perhaps the strongest arguments **for** consolidation. (emphasis original)

It is easy to understand that litigation between the two parties would strain relations and make cooperation on other matters more difficult. However, the recent settlement of the Haines Sanitation litigation may create an opportunity for officials of the City of Haines and the Haines Borough to further consider their significant shared interests regarding consolidation. DCED encourages officials of the two local governments to make a further attempt to reconcile their differences concerning consolidation.

2. Number of Citizens Served by Two Local Governments.

Another noteworthy distinction between circumstances surrounding the prior and current proposals is the increase in the number of Haines citizens served by two local govern-

ments. The percentage of Haines Borough residents living within the City of Haines has increased by more than one-quarter over the level just three years ago.¹⁴ Today, more than 75% of all residents of the Haines Borough live within the City of Haines.

The increase in the number of City residents in the Haines Borough is

not just a recent occurrence. The trend has existed virtually since the creation of the Haines Borough in 1968. In 1970, two local governments served 50.6% of Haines Borough residents.¹⁵ Today, the figure stands at 75.7%. The pros-

At A Glance

2ND SIGNIFICANT CHANGE SINCE 1998: INCREASE IN CITIZENS SERVED BY OVERLAPPING GOVERNMENTS

Since 1998, the percentage of Haines Borough residents served by two governments has increased by more than one-quarter.

The trend in Haines is counter to the statewide movement. Since 1970, the percentage of borough residents statewide that are served by two municipal governments has *dropped* by nearly two-thirds. In contrast, the percentage of Haines Borough residents served by two municipal governments during the same time has *increased* by half.

¹⁴ This is due, in large part, to the annexation of 6.5 square miles to the City of Haines in 1999. That territory was estimated to be inhabited by 278 individuals.

¹⁵ In 1970, the population of the Haines Borough was 1,351. There were two city governments in the Haines Borough at that time – the City of Haines (population 463) and the City of Port Chilkoot (population 220). The City of Port Chilkoot was merged with the City of Haines in 1970.

pect for the trend to continue cannot be discounted.¹⁶

The trend over the past thirty years in Haines is in dramatic contrast to the statewide trend. As is shown in Figure 4, the number of people in the Haines Borough who also lived within a city government was representative of the statewide average in 1970. However, since then, the figure for Haines has *grown* by half (from 50.6% to 75.7%). In contrast, the statewide average has *dropped* by nearly two-thirds (from 49% to 18%).

At A Glance

3RD SIGNIFICANT CHANGE SINCE 1998: RURAL LOAN PROGRAM MODIFIED

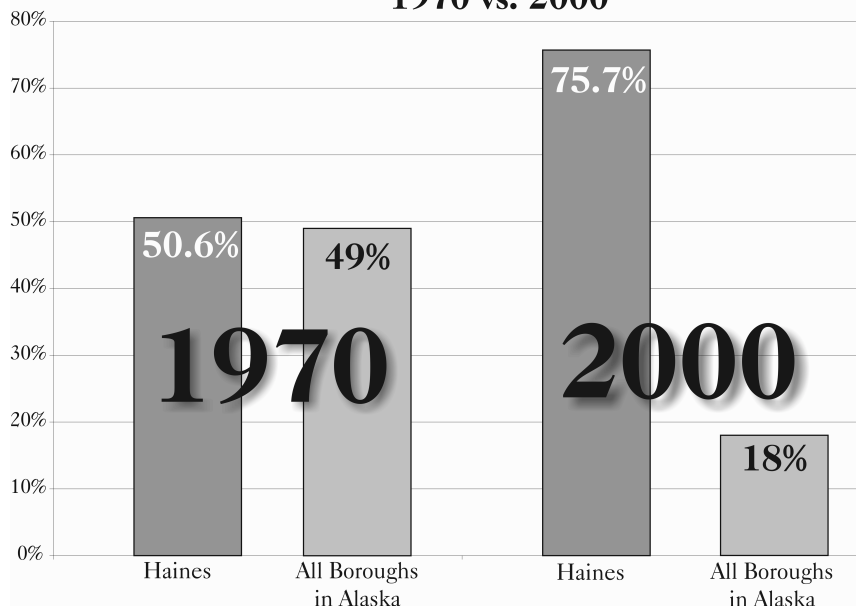
In 1998, consolidation of local governments in Haines would have rendered Borough residents ineligible for new AHFC rural housing loans. The AHFC program was modified on May 3, 2001 so that consolidation will no longer affect eligibility for rural housing loans.

3. Rural Housing Loan Program.

Another noteworthy change in the circumstances between 1998 and the current proceedings relates

to the rural housing loan program of the Alaska Housing Finance Corporation (AHFC). One opponent of the 1998 proposal placed a quarter-page advertisement in the *Chilkat Valley News* prior to the consolidation election, in part, urging voters to reject the consolidation proposal because "... all Borough residents inside and outside the City will

Figure 4
Borough Residents
Served by Two Local Governments
1970 vs. 2000



¹⁶ When the Local Boundary Commission approved the last annexation to the City of Haines, it formally stated that, "... the Commission recognizes that there *may* be additional territory outside the proposed new boundaries of the City of Haines that need essential city services. Such *may* include the area extending to Letnikof Cove ..." (Decisional statement, page 10)

lose their eligibility for rural financing if we consolidate.”

Subsequent to the Haines consolidation election, the Local Boundary Commission observed:¹⁷

Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is likely that consolidation would have been approved if the impacts on the housing loan program had been neutralized.

Because of the apparent adverse effect of AHFC’s rural housing loan program on the outcome of the Haines consolidation proposal and a number of other significant proposals that came before the Local Boundary Commission, the

Commission conferred with AHFC to address the issue. On May 3, 2001, the AHFC Board of Directors adopted regulations (15 AAC 152[b]) ensuring that communities would no longer lose eligibility to participate in the rural housing loan program as a result of municipal consolidation.

4. Planning Commission, School Board, and Assembly.

The last contrast of note between the 1998 proposal and current consolidation Petition relates to the planning commission, school board, and assembly of the proposed consolidated borough.

The 1998 proposal provided for a nine-member planning commission with one member appointed at large. The remaining eight members were to be appointed according to the same apportionment plan used for the assembly. In contrast, the current Petition proposes a seven-member planning commission to be appointed without regard to residency.

Planning commissions in other boroughs in Alaska range from nine to four members.¹⁸ Seven-member commissions (as proposed in the pending consolidation

At A Glance

4TH SIGNIFICANT CHANGE SINCE 1998: FORM OF REPRESENTATION

The City believes that voters rejected consolidation three years ago because of the assembly apportionment plan in the 1998 proposal. Accordingly, the apportionment plan was modified in the current Petition to provide for the election of the assembly at large.

The City has emphasized, however, that it is receptive to proposals to modify the apportionment plan if there is a legitimate basis for change.

¹⁷ *Report of the Local Boundary Commission to the Second Session of the Twenty-first Alaska State Legislature*, page 74, January 19, 2000.

¹⁸ State law provides that the planning commissions of first and second class boroughs shall consist of five members unless a greater number is required by ordinance. The law provides further that members of first and second class borough planning commissions shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities in the borough. (AS 29.40.020) Those provisions, however, are not binding on a home rule borough such as the proposed City and Borough of Haines. (AS 29.10.200)

Petition) are used by three existing organized boroughs. The Haines Borough raised no objection to the current proposal for appointment of the planning commission.

However, the Haines Borough does object to the method proposed in the current Petition for the election of the school board and the assembly. Provisions for the election of the school board in the current Petition are identical to those in the 1998 proposal. Both provided for a school board comprised of seven members elected at large. Eleven of the fifteen other organized boroughs in Alaska (73%) elect school board members at large by an areawide vote – the same form of representation proposed in both the 1998 and current Haines consolidation proposals.

Unlike provisions for the election of the school board, however, there were changes in the current proposal as it relates to the election of assembly members. This is ostensibly the most contentious issue surrounding the current consolidation proposal. The 1998 proposal provided for eight assembly members to be elected from districts by an areawide vote. The current Petition

proposes a six-member assembly elected at large by an areawide vote.

Controversy over assembly apportionment is not unique to the current proposal. Local officials at the November 23, 1999 meeting of the City Council and Borough Assembly (the first meeting to address the prospect of a new consolidation petition) were reminded of the lack of consensus in the 1998 proceeding regarding the best apportionment plan.¹⁹

One of the things that brought this to my mind was the articles in the paper by John Schnabel and Dan Turner, where John Schnabel was arguing all these people out the highway, the outskirt people, are going to control the city vote and Dan Turner arguing that the people in the city are going to control the vote for the outlying areas. And so they were using the same argument.

Some believe that voters rejected the 1998 Haines consolidation proposal because of the assembly apportionment plan. However, those same individuals do not agree as to the preferred alternative. The following comments by two local residents at the December 6, 2000 meeting of the Haines City Council

reflect the lack of consensus in the following comments.²⁰

Speaker 1 –

I can assure you that the previous charter would have passed – I can guarantee it would have passed had there been district voting with the districts.

Speaker 2 –

... the consolidation vote last lost because of city residents. . . . They are highly motivated and. . . really torpedoed it on the basis that the outlying areas would gain the voting powers . . . and it lost because of that.

While there are strong feelings on the topic, no one has yet come forward with documentation in support of claims about voter preferences. The election of assembly members at large by an areawide vote is the most popular form of representation among boroughs in

¹⁹ *Transcript of November 23, 1999 Haines City Council / Haines Borough Assembly Special Joint Consolidation Meeting*, page 11, Exhibit 4A, Haines Borough Responsive Brief.

²⁰ *Transcript of December 6, 2000 Haines City Council Meeting*, pages 5 - 7, Exhibit 3, Haines Borough Responsive Brief.

Alaska. The alternative of electing assembly members from districts by voters of those districts is the second most popular method in Alaska.

The question of the ideal composition and form of representation for the assembly of the proposed consolidated borough comes at a time when public officials and citizens of Haines must consider such matters for other reasons. The Haines Borough Assembly is required by State law (AS 29.20.080) to declare within two months of the adoption of a final redistricting plan for the State legislature whether its current apportionment is proper. The final redistricting plan was adopted on June 18, 2001. Thus, by August 18, the Haines Borough Assembly must declare whether its current apportionment conforms to the requirements of law.

Moreover, the Borough Assembly is required by AS 29.20.070 to submit to the voters at an election on or before October 2, 2001, one or more of the following forms of assembly representation:

- election of assembly members at large by the voters throughout the borough;

- election of assembly members by district by the voters throughout the borough;
- election of assembly members from districts by voters of the respective districts;
- election of assembly members both at large and by district.

In the case of the last three options, an apportionment plan must also be presented to the voters.

Although the Haines Borough's Responsive Brief expresses a preference for the election of assembly members on a district basis, it urges the Local Boundary Commission not to amend the Petition because it would "show bias."²¹

We ask that the Local Boundary Commission either deny the petition or approve the petition as submitted based on its (sic) merit or lack thereof and that no amendments be made by the LBC. Any amendments made by the LBC to gain a few votes on one side or the other would show bias by the LBC and staff towards one side or the other in this local issue. We hope that the LBC would stay neutral.

In response to the Borough's position, the City of Haines stated:²²

It is curious however, that the Haines Borough would ask the Local Boundary Commission to "either deny the petition or approve the petition as submitted" with no amendments. There has been an obvious neglect of representation by the Borough Assembly for the citizens living outside the City of Haines in this process. While the City of Haines has repeatedly asked for the Borough to participate in this endeavor, their absence from the process has potentially excluded valid points of view from consideration. The City Council did take public comment from individual citizens who reside outside the City of Haines but recognizes that some points may have not been fully represented due to the Borough's neglect towards their constituents.

The City made as few changes as possible to the joint Borough and City Consolidation Charter presented to the Commission in 1998. The City welcomes the oversight of the Local Boundary Commission and any input they would recommend. . . .

If Haines is ever to truly become one community, then the community must act, think and vote as one community. The City feels this system is the best to achieve the long-term sense of community. The

²¹ *Response Brief*, page 19.

²² *Reply Brief*, pages 2 and 5.

At A Glance

5TH SIGNIFICANT CHANGE SINCE 1998: ECONOMIC CHALLENGES

The Haines economy faces greater difficulties than it did three years ago. Some believe that a consolidated local government would be better able to assist the community in dealing with the significant economic challenges it now faces.

Borough Assembly itself must change its composition now that the census is complete. If the Borough wishes to put the issue to the voters as an amendment to the Charter, the City will not object.

To the extent such information is available prior to the Commission's decision in this proceeding, DCED recommends that the Commission consider any evidence relating to efforts of the City of Haines or the Haines Borough to determine the most suitable plan for assembly composition and apportionment. If that evidence demonstrates

a compelling basis for alteration of the apportionment plan presented in the pending Petition, the Commission should consider amending the Petition to include the more suitable plan.

C. Other Developments

Although not directly tied to consolidation, one other significant development in Haines since 1998 deserves comment. On December 7, 2000, Royal Caribbean International announced that it was canceling its fifty-two

annual cruise ship stops in Haines. The effects of the announcement were reported as follows:²³

A decision by Royal Caribbean International to bypass Haines next season leaves the city with a \$445,000 hole in its \$3.8 million budget and local businesses worried about their survival. . . .

The Royal Caribbean decision translates into a huge loss for Haines, which will have a single large ship call next year. According to the newly released McDowell report, the ships support 116 full-time, equivalent jobs with a payroll of \$2.4 million, \$8.8 million in passenger spending, \$1.2 million in cruise line purchases, \$278,000 in crew spending and \$445,000 in sales tax receipts and fees.

"My general reaction is it's devastating to our economy and devastating to our city," said City of Haines Mayor Don Otis. . .

The loss of four of five large cruise ships comes on the heels of three years of declining road traffic.

Some believe that a consolidated local government would be better able to assist the community in dealing with the significant economic challenges it now faces. The Haines Borough and the City of Haines, in 1998, stressed the advantages of a

²³ North West CruiseShip [spelling verbatim] Association web site at < <http://www.alaskacruises.org/165.cfm> > , article attributed to the *Chilkat Valley News*.

At A Glance

CONSOLIDATION STANDARDS

There are eleven legal standards that govern consolidation. In DCED's view, the pending Petition meets all of the standards. Moreover, there is a compelling public policy basis to approve the proposal.

consolidated local government in dealing with local issues and challenges:²⁴

Consolidation will also promote a more effective local government by eliminating the confusion that exists with separate City and Borough governments in intergovernmental affairs, as in cases involving interaction with state and federal agencies. Consolidation will allow the local government to speak with one voice regarding local, regional and state issues such as transportation, economic development, capital projects, and planning.

D. Standards for Review

Standards established in Alaska's Constitution, Statutes, and Administrative Code for the consolidation

of city and borough governments relate to the following eleven issues:

- community of interests,
- population,
- boundaries,
- resources,
- borough classification,
- civil and political rights,
- transition,
- maximum local self-government,
- minimum of local governments,
- constitutional provisions relating to cities and service areas, and

- best interests of the public.

Those are the same standards that were in place when the 1998 proposal for consolidation of the City of Haines and Haines Borough was considered.

It is noteworthy that the Local Boundary Commission unanimously approved the 1998 Haines consolidation proposal after concluding that all of the applicable legal standards were fully met.

DCED has examined the current Petition in the context of the applicable legal standards in Chapter 3 of the Preliminary Report. DCED also carefully considered comments by the Respondent Haines Borough and by the eleven correspondents in this matter. Based on the analysis in Chapter 3, DCED concludes that the pending consolidation Petition meets all of the applicable standards established in law. Further, DCED concludes that there is a compelling public policy basis to approve the proposal.

²⁴ 1998 consolidation petition, Exhibit A, page 2.

E. Recommendation

Given the number of fundamental developments since the unsuccessful 1998 consolidation effort, the merits of consolidation of local governments in Haines seem stronger today than before. These developments include:

- the significant increase in the number of Haines residents served by two local governments,
- discord between the City and the Borough,
- modification of the AHFC rural housing loan program to eliminate adverse impacts that previously would have resulted from consolidation, and
- challenges facing the Haines economy, such as the effects of the decision by Royal Caribbean International to bypass Haines.

For reasons summarized here and outlined more fully in the full Preliminary Report on this matter, DCED endorses the proposed consolidation of the City of Haines and the Haines Borough.

There are a few minor technical aspects of the Petition that warrant atten-

tion. For example, references to certain existing Haines Borough service areas were inadvertently omitted in some parts of the Petition. Additionally, the Petitioner's intention that the consolidated borough exercise solid waste management on an areawide basis is not formally reflected in the Petition. Moreover, there are minor inconsistencies in the Petition regarding economic development and promotion of tourism. Those would remain functions carried out only in the Townsite Service Area unless voters outside the current City of Haines authorize the extension of the services.

To address the technical issues outlined in the Preliminary Report, DCED specifically recommends that the Petition be amended as follows:

1. To remedy inadvertent omissions in some or all appropriate parts of the Petition by recognizing that the Haines Borough currently operates the Solid Waste Management Service Area, Letnikof Subdivision Road Maintenance Service Area, and Riverview Drive Road Maintenance Service Area.

At A Glance

DCED'S RECOMMENDATION

Given developments since 1998, consolidation of local governments in Haines is even more attractive than before. DCED recommends minor technical amendments to the Petition. DCED further recommends that the LBC consider possible amendments to the assembly apportionment plan if compelling reasons are offered for such. Following amendments, DCED recommends that the LBC approve the Petition and place the question of consolidation before the voters of the Haines Borough.

2. To provide that the Letnikof Subdivision Road Maintenance Service Area and Riverview Drive Road Maintenance Service Area will remain in place after consolidation.

3. To provide that the Solid Waste Management Service Area will be dissolved and solid waste management will become an areawide power of the consolidated borough.

4. To delete economic development and tourism promotion from the list of areawide powers of the consolidated borough

5. To add financing of capital improvements, along with economic development and tourism promotion to the list of powers to be exercised within the Townsite Service Area.

6. To add public works to the list of powers to be exercised in the Townsite Service Area.

In addition, DCED recommends that the Commission consider amending the Petition with regard to the composition and apportionment of the assembly of the proposed City and Borough of Haines if the Commission is provided with evidence that there is a compelling public policy basis for doing so.

Following the amendment of the Petition, DCED urges the Commission to approve the proposal and present it to the voters throughout the Haines Borough for their consideration.

Chapter 1

Background

Chapter 1 provides background information about the pending consolidation Petition. Included is an outline of the changes that consolidation would bring about if the proposal is approved by both the Local Boundary Commission and voters in the Haines Borough. Additionally, information is provided about the Local Boundary Commission and the legal standards that govern consolidation of city and borough governments in Alaska.

Appendix A presents a glossary of terms used in this report that have special meanings in the context of the Haines consolidation proposal.

A. Effects of Consolidation

The following summarizes the effects of the proposed consolidation on the structure of local gov-

ernment in Haines if the Local Boundary Commission and the voters approve the proposal.

- The Haines city government will be dissolved. The area within the former City will be reconstituted as the Townsite Service Area of the new consolidated borough. The consolidated borough will provide the following services within the Townsite Service Area:
 - ◆ police;
 - ◆ fire protection, prevention, and safety;
 - ◆ animal control;
 - ◆ water utility service;
 - ◆ sewer utility service; and
 - ◆ street and road maintenance.
- The third class Haines Borough will be dissolved and reconstituted as a home rule borough.
- A separate seven-mem-

ber borough school board will be established (currently, the Haines Borough Assembly also serves as the school board).

- The new borough will exercise the following additional powers on an areawide basis:²⁵
 - ◆ planning, platting, and land use regulation (currently, approximately 85% of Haines Borough residents receive such services from one of three local governmental units

²⁵ Although the listed functions are described as “additional powers” many residents of the Haines Borough currently receive those services under the existing local governmental structure. The Responsive Brief of the Haines Borough even asserts that it currently exercises a number of the listed powers on an areawide basis (hazardous substances, library services, museum, elections, and community youth development areawide). However, as a third class borough, State law (AS 29.35.220[b]) prohibits the Haines Borough from exercising any areawide power except education and tax assessment/collection.

[City of Haines with 75.7% of the Borough's population, Mud Bay Land Use Service Area with 155 residents or 6.5% of the Borough's population, and Lutak Land Use Service Area with 65 residents or 2.7% of the Borough's population]);

- ◆ control of hazardous substances, disaster planning, and emergency response (currently all Haines Borough residents receive this service; the City provides it within its 20.9 square mile jurisdiction and the Borough provides it within the remainder of the Borough);
- ◆ emergency medical service (currently, an estimated 99.6% of the Haines Borough residents receive this



Emergency dispatch center in Haines.

- service which is exercised by the Haines Borough on a service area basis; the service area includes the City of Haines and other inhabited parts of the Haines Borough except Excursion Inlet);
- ◆ emergency dispatch service (currently an estimated 99.6% of the Haines Borough residents receive this service on the same basis as the emergency medical service);
- ◆ ports and harbors (currently, these powers are exercised only by the City of Haines, which is inhabited by 75.7% of the Borough residents; non-City residents of the Borough arguably benefit from the service either directly or indirectly to the same extent as City residents; the Haines Borough has established a ports and harbors service area but it has never been operational);
- ◆ financing capital improvement projects (currently 100% of the residents of the Haines Borough receive this

- service which is exercised both by the City of Haines and the Haines Borough);²⁶
- ◆ public parks and recreational facilities (currently 75.7% of the residents of the Haines Borough receive this service which is provided by the City of Haines; non-City residents arguably enjoy the benefits of this service to the extent that they utilize City parks and recreational facilities);
 - ◆ public libraries (currently 100% of the Haines Borough residents receive this service which, because of limitations
 - on the powers of a third class borough, must be characterized as being carried out under the Borough's education power);
 - ◆ public museums (currently 100% of the Haines Borough residents receive this service which, because of limitations on the powers of a third class borough, must be characterized as being carried out under the Borough's education power);
 - ◆ cemeteries (this service is provided by the City of Haines and is available without regard to place of residence);
 - ◆ economic development (currently, this power is exercised only by the City of Haines which is inhabited by 75.7% of the Borough residents – arguably, residents of the Borough outside the City benefit from the service as well); and
 - ◆ solid waste management (currently, the Haines Borough exercises this power on a service area basis, 100% of the Borough residents reside within the service area, the City of Haines also exercises certain solid waste management powers).²⁷

²⁶ DCED does not view “financing capital improvement projects” per se as a specific power. Rather it may be an element of other powers which the local government is authorized to provide. For example, the City of Haines can finance improvements to its parks, harbor, and utilities under those respective powers. It would seem improper, however, for the City to fund improvements to the Haines Public Library because it is regarded as a school facility operated by the Haines Borough. In that the City lacks the power to establish, operate, and maintain school facilities, it is difficult to conceive how it could finance improvements for such facilities.

²⁷ Reference to the Solid Waste Management Service Area was inadvertently omitted from the Petition. Solid waste is a matter of borough-wide interest and is currently dealt with on a service area basis only because of the restrictions placed on the third class borough. The existing Solid Waste Management Service Area serves all of the residents of the Haines Borough. Given these circumstances, DCED takes the view that the Commission should correct the inadvertent omission by adding solid waste to the list of areawide powers to be exercised by the proposed consolidated borough. Additionally, the Solid Waste Management Service Area should be added to the list of service areas that would be dissolved upon consolidation.

- The following existing borough service areas would be dissolved:
 - ◆ Docks and Harbors Service Area;
 - ◆ Medical Service Area;
 - ◆ Mud Bay Land Use Service Area;
 - ◆ Lutak Land Use Service Area;
 - ◆ Solid Waste Management Service Area; and
 - ◆ service areas created for the establishment of local improvement districts.²⁸
- The following existing borough service areas will remain in place:
 - ◆ Fire Service Area Number 1;
 - ◆ Fire Service Area Number 2;
 - ◆ Fire Service Area Number 3;
 - ◆ Four Winds Subdivision Road Maintenance Service Area;
 - ◆ Twenty-Five Mile Road Maintenance Service Area;
 - ◆ Chilkat State Park Road Maintenance Service Area;

- ◆ The Historic Dalton Trail Road Maintenance Service Area;
- ◆ Letnikof Subdivision Road Maintenance Service Area; and
- ◆ Riverview Drive Road Maintenance Service Area.

B. Local Boundary Commission (LBC or Commission)

Petitions for consolidation of local governments in

Alaska are subject to approval by the LBC. The Commission is a State board with jurisdiction throughout Alaska. (See Article X, § 12, Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, and AS 44.33.810 - 44.33.828.) In addition to petitions for consolidation of municipal governments, the LBC acts on petitions for the following:



- annexation to cities and boroughs;
- incorporation of cities and boroughs;
- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

Additionally, the LBC has the duty to make studies of local government boundary problems.

The Commission consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “... *on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.*” (AS 39.05.060)

²⁸ Existing local improvement districts would remain in place until the costs of the improvements for which they were formed are paid. However, it would no longer be necessary for the Borough to maintain service areas to administer a local improvement district.

Members serve at the pleasure of the Governor. The Chairman is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation.

Biographical information about the current members of the LBC is provided in Appendix B.

C. Communications with the LBC

The LBC is a quasi-judicial board. To protect the rights of petitioners and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the Commission regarding pending petitions. The law prohibits such

communication between the LBC and others, apart from the Commission's staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

D. Staff to the Commission

The Alaska Department of Community and Economic Development (DCED) serves as staff to



the LBC. The DCED staff to the Commission is required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the Commission concerning such. The DCED staff serving the Local Boundary Commission may be contacted at:

Local Boundary Commission
550 West 7th Avenue,
Suite 1770
Anchorage, Alaska 99501-3510
Telephone: 907-269-4559

Fax: 907-269-4539

E-mail:

Dan_Bockhorst@dced.state.ak.us

The Local Boundary Commission and the Alaska Department of Community and Economic Development are independent of one another with regard to policy matters.



Local Boundary Commission at a recent hearing.

Chapter 2

Proceedings to Date & Future Proceedings

This chapter summarizes the formal activities that have occurred to date with regard to the pending Haines consolidation proposal. Information about future proceedings is also provided.

A. Consolidation Petition Accepted for Filing

As allowed by 3 AAC 110.410(a)(4), the City of Haines petitioned the Local Boundary Commission for consolidation of the City of Haines and the Haines Borough.²⁹ The Petition was submitted to DCED on December 27, 2000. On January 5, 2001, DCED completed its technical review of the form and content of the Petition. Based on that review, the Petition was formally accepted for filing.

B. Notice of Filing of the Petition

The Chairman of the LBC set March 9, 2001, as the deadline for receipt of responsive briefs and comments on the Petition. Notice of filing of the Petition was published by the Petitioner in the *Chilkat Valley News*, a newspaper of general circulation in the territory, on January 11, January 18, January 25, and February 1, 2001.³⁰

Public notice of the filing of the Petition was also published by DCED on the *State of Alaska Online Public Notices* web page from January 16, 2001, through

March 9, 2001. The notice was also published on the LBC Internet web site maintained by DCED.

In addition to publishing the notice, the Petitioner delivered requests for public service announcements of the filing of the Petition to KHNS, the local public radio station. Further, the Petitioner also posted notice of the filing of the Petition at the following locations on January 10, 2001:

- Haines Municipal Building;
- Haines Borough Building;
- Haines Public Library;
- Haines Post Office;
- Howsers Supermarket;
- Mosquito Lake School; and
- Covenant Life Center.

²⁹ "Consolidation" is defined by AS 29.71.800(6) as "dissolution of two or more municipalities and their incorporation as a new municipality."

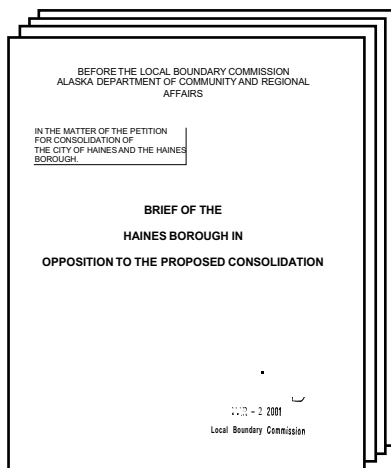
³⁰ The notice published in the *Chilkat Valley News* on January 11, 2001 was slightly smaller than the minimum size prescribed by 3 AAC 110.450(a)(1). The Petitioner subsequently fulfilled the requirements of 3 AAC 110.450(a)(1) through three consecutive weekly publications of the notice as a display advertisement of the proper size.

In addition to publishing and posting the notice, the Petitioner mailed or hand-delivered a copy of the notice to the Haines Borough on January 11, 2001.

On January 2, 2001, DCED provided notice of the filing of the Petition to 93 potentially interested individuals and organizations.

C. Responsive Brief and Public Comments Filed

One formal responsive brief was filed in this proceeding – the *Brief of the Haines Borough in Opposition to the Proposed Consolidation* (hereinafter, “Responsive Brief”). The Responsive Brief consists of 155 pages, including a nineteen-page brief and 136 pages of supporting documents.



Haines Borough Responsive Brief.

In addition to the Responsive Brief, eleven sets of written comments were filed with the LBC by the March 9, 2001 deadline. These consist of comments from:

- Louis O. Nelson and nine other individuals (one-page letter with two pages of attachments);
- Robert A. and Margaret E. Andrews (one-page letter);
- Margaret H. Piggott (one-page letter);
- Ron Weishahn (two-page letter);
- Richmond W. Tolles (one-page letter);
- Gene Kennedy (one-page letter);
- Laurie Dadourian (one-page letter);
- Carolyn Weishahn (one-page letter);
- Scott Carey (three-page letter);
- Michael D. Ward (two-page letter); and
- Ron Jackson (one-page letter).

D. City'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 (hereinafter “Reply Brief”) in answer to the Borough's Responsive Brief and written comments on its Petition. A corrected version of the Reply Brief was filed on April 12, 2001. The Reply Brief consists of eight pages.

E. DCED's Preliminary Report

In accordance with 3 AAC 110.530, DCED prepared this Preliminary Report examining the pending Petition. The Preliminary Report was provided to the Petitioner and Respondent as required by law. Additionally, DCED has distributed the report to other interested individuals and organizations, including the correspondents.

3 AAC 110.640 provides that at least 28 days must be allowed for comment on the Preliminary Report from the date that the report was mailed to the Petitioner. The deadline for the receipt by LBC staff of written comments on the Preliminary Report in this case has been set for August 10, 2001 at 5:00 p.m.

Comments may be submitted by mail, hand delivery, fax, or e-mail. To be considered, comments must be received by the previously noted deadline at the following location:

LBC Staff
Department of Community and
Economic Development
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501-3510
fax: (907) 269-4539
e-mail: Dan_Bockhorst@dced.state.ak.us

G. Pre-Hearing Requirements

As described in Section H, the Petitioner and Respondent will be allowed to present sworn testimony during a public hearing on the consolidation proposal to be conducted by the Local Boundary Commission in Haines.

testify, and the estimated time anticipated for the testimony of each witness.

H. LBC Public Hearing

The Local Boundary Commission will hold at least one public hearing on the consolidation proposal in Haines. No hearing has yet been scheduled. Formal notice of the hearing will be published at least three times. The initial publication will occur at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations and will be mailed to the Petitioner and Respondent as required by law.

The hearing will begin with a summary by DCED staff of its conclusions and recommendations concerning the pending proposal.

Following DCED's summary, the law allows the Petitioner to make an opening statement in support of its Petition. The Petitioner's opening statement will be limited to ten minutes.

Although the law does not expressly make provision for an opening statement by

F. DCED's Final Report

After DCED has considered timely written comments on its Preliminary Report, it will issue its Final Report on the matter. The Final Report will be mailed to the Petitioner and Respondent at least three weeks prior to the Commission's hearing on the proposal as required by law. The Final Report will also be distributed to the correspondents and other interested individuals and organizations in this proceeding.

Witnesses providing sworn testimony must have expertise in matters relevant to the pending consolidation proposal about which they will testify. Such might include, for example, long-standing community members who are directly familiar with social, cultural, economic, and other relevant characteristics of the region. At least fourteen days prior to the hearing, the Petitioner and Respondent must submit to DCED a list of witnesses that each intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will

respondents, the Commission invariably exercises its discretion to extend such courtesy to respondents. The Haines Borough should expect to be invited to make an opening statement not to exceed ten minutes.

Following the opening statements, the Commission will receive sworn testimony whether the pending consolidation proposal meets the legal standards for consolidation and whether the Petition should be granted.

The testimony phase of the hearing begins with sworn witnesses providing testimony on behalf of the Petitioner. Sworn witnesses providing testimony on behalf of the Respondent follow. The LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Because the Petitioner bears the burden of proving that its Petition meets the standards and should be approved, the Petitioner will have the opportunity to provide sworn responsive testimony to refute testimony of the Respondent. Again, the Petitioner's rebuttal witnesses must have expertise in matters



Members

*Kevin Waring
Chairperson
At-Large*

*Kathleen
Wasserman
Vice-Chairperson
First Judicial
District*

*Member
Second Judicial
District*

*Allan Tesche
Member
Third Judicial
District*

*Archie Lynch
Member
Fourth Judicial
District*



Agenda

Haines Consolidation Hearing

- I. Public hearing on the Haines consolidation petition
 - A. Summary of DCED's report & recommendations
 - B. Opening statement by the Petitioner (limited to 10 minutes)
 - C. Opening statement by the Respondent (limited to 10 minutes)
 - D. Sworn testimony of witnesses called by the Petitioner
 - E. Sworn testimony of witnesses called by the Respondent
 - F. Sworn responsive testimony of witnesses called by the Petitioner
 - G. Period of public comment by interested persons (limited to 3 minutes per person)
 - H. Closing statement by the Petitioner (limited to 10 minutes)
 - I. Closing statement by the Respondent (limited to 10 minutes)
 - J. Reply by the Petitioner (limited to 5 minutes)
- II. Decisional session (optional at time of hearing)

Draft hearing agenda.

relevant to the proposed consolidation about which they intend to testify.

The laws governing the Commission's hearing make no provision for cross-examination of witnesses by the Petitioner or Respondent. However, a member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

Upon conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to

exceed ten minutes. Next, the Respondent is allowed to make a closing statement.

Again, because the Petitioner bears the burden of demonstrating that its Petition should be granted, the City is allowed to make a five-minute reply to the closing statement of the Respondent.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by DCED and others.

The draft hearing agenda is shown on the previous page.

In compliance with Title II of the Americans with Disabilities Act of 1990, DCED will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact DCED's staff to the Commission at 269-4560 at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.

I. LBC Decisional Meeting

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the consolidation proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

Within thirty days after the Commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the Haines consolidation Petition. A copy of the statement will be provided to the Petitioner, Respondent, and any others who request a copy.



Public comment during a recent LBC hearing.

J. Reconsideration

Any interested person or organization may ask the Commission to reconsider its decision in this matter. A request for reconsideration may be filed within twenty days after the written decisional statement has been mailed to the Petitioner and Respondent.

A reconsideration 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 takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the

Commission grants a request for reconsideration, the Petitioner may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

K. Election

If the Commission approves the Petition for consolidation of local governments in Haines, the Director of the Division of Elections for the State of Alaska will be notified in accordance with AS 29.06.140 following the conclusion of the opportunity for reconsideration. The Director of the Division of Elections must then order a consolidation election within thirty days of the notice. The election must be conducted not less than thirty or more than ninety days after the election order.

If voters approve the proposition for consolidation, the Director of the Division of Elections must then conduct a subsequent election for the selection of officials of the consolidated borough as required by AS 29.06.140(c). As proposed in the Petition, the new officials would consist of one mayor, six assembly members, and seven school board members.

The Federal Voting Rights Act (43 U.S.C. 1973) applies to municipal consolidations and other municipal boundary changes in Alaska. The Voting Rights Act forbids any change affecting voting rights that has the purpose or effect of denying or abridging the right to vote based on race. If the consolidation proposal is approved by the LBC, the U.S. Department of Justice or U.S. District Court in Washington D.C. must review the consolidation proposal, method of the consolidation election, and the proposed date for the consolidation election. Review by the Justice Department typically takes about sixty-five to seventy days, although expedited review may be requested.

L. Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within thirty days after the last day on which the Commission may order reconsideration. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

E. Legal Standards for Consolidation

Applied to the Haines consolidation Petition, AS 29.06.130(a) provides that the Local Boundary Commission:

- 1) may amend the Petition;
- 2) may impose conditions for consolidation;
- 3) *may* approve the Petition *if* the LBC determines that the consolidation proposal, with or without amendments and conditions:
 - a) meets applicable standards under the Constitution of the State of Alaska,

- b) meets standards for consolidation under AS 29.06.130(a) which, in this case, require the satisfaction of the standards for borough incorporation under AS 29.05.031,
- c) meets applicable standards under the Alaska Administrative Code (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060), *and*
- d) is in the best interests of the state;
- 4) *shall* deny the Petition *if* the LBC determines that the consolidation proposal, with or without

amendments and conditions:

- a) does not meet applicable standards under the state constitution,
- b) does not meet standards for borough incorporation under AS 29.05.031,
- c) does not meet applicable standards under the Alaska Administrative Code; *or*
- d) is not in the best interests of the state.

Chapter 3 of this report deals with the specific criteria and principles summarized above.

Chapter 3

Evaluation of the Haines Consolidation Proposal

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:

- that it conforms to applicable principles of local government set out in Alaska's Constitution;
- that it complies with the statutory standards for consolidation;
- that it satisfies the standards for consolidation under the Commission's regulations; and
- 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 constitutional, statutory, and regulatory standards relate to the following eleven issues:

- community of interests;
- population;
- boundaries;
- resources;
- borough classification;
- civil and political rights;
- transition;
- maximum local self-government;
- minimum of local governments;
- constitutional provisions relating to cities and service areas; and
- best interests of the state.

These standards are examined in Sections B – L of this chapter.

B. Standards Relating to Community of Interests

1. Standards Established in Law.

Article X, § 3 of Alaska's Constitution provides in relevant part:

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...

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."



The Haines airport serves a vital role in the transportation and economic sectors of the community.

3 AAC 110.045(a) lists four factors that the Commission may consider in making its determination whether the population of the proposed borough is interrelated and integrated as to its social, cultural, and economic activities. 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. 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 concerning communication and exchange. These are (1) transportation schedules and costs; (2) geographical and climatic impediments; (3) telephonic and teleconferencing facilities; and (4) public electronic media. The regulation also allows the Commission to consider other relevant factors. 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 Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

There are four particular circumstances that create a strong presumption that the community of interests standards are met. These are addressed below.

(i) Many of the fundamental aspects of the community of interests standards were in place prior to the incorporation of the Haines Borough, others have been in place for many years since.

The constitutional standard in Article X, § 3 noted above has not changed since it went into effect January 3, 1959. Moreover, the statu-

tory standards in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) are substantially the same as borough incorporation standards first established in 1961.³¹

The Haines Borough was incorporated on August 29, 1968, nearly ten years after Alaska's Constitution took effect and more than seven years after statutory standards similar to those in place today in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) were first enacted by the Alaska State legislature.

In 1975, the Haines Borough extended its boundaries to the south by annexing approximately 420 square miles. In 1978, the Haines Borough annexed the former military petro-

leum distribution facility at Lutak Inlet. The current boundaries of the Haines Borough have remained unchanged for the past twenty-three years.

The twenty-three-year-old boundaries of the Haines Borough are identical to the boundaries of the proposed consolidated borough. Thus, the existing community of interests of the Haines Borough is identical to that of the proposed consolidated City and Borough of Haines.

The standards set out in 3 AAC 110.045(a)-(d) have been in place since 1991.³² While those standards were adopted subsequent to the incorporation of the Borough and also after its last boundary change, the standards have still been in place for ten years.

³¹ AS 07.10.030(1), enacted by Chapter 146, SLA 1961, provided in relevant part that, "The population of the area proposed for incorporation shall be interrelated and integrated as to its social, cultural, and economic activities." AS 07.10.030(4) provided in relevant part, "The transportation facilities in the area proposed for incorporation shall be of such a unified nature as to facilitate the communication and exchange necessary for the development of integrated local government and a community of interests. Means of transportation may include surface (both water and land) and air. Areas which are accessible to other parts of a proposed organized borough by water or air only may not be included within the organized borough unless access to them is reasonably inexpensive, readily available, and reasonably safe. In considering the sufficiency of means of transportation within a proposed organized borough, existing and planned roads and highways, air transport and landing facilities, boats and ferry systems, and railroads, shall be included."

³² The borough incorporation standards adopted as regulations by the Local Boundary Commission were renumbered from Title 19, Chapter 10 of the Alaska Administrative Code to Title 3, Chapter 110 in October 1999 in accordance with Chapter 58, SLA 1999.

The circumstances outlined here create a strong presumption that the referenced standards in the Constitution, statutes, and regulations are satisfied.

(ii) The Haines Borough Assembly and Council of the City of Haines affirmed that the community of interests standards were met in 1998.

Both the Haines Borough Assembly and the Haines City Council concluded in 1998 as follows:³³

...the area and population of the prospective consolidated home rule Haines Borough share common interests to the maximum degree possible...

...the social, cultural and economic characteristics and activities of the people in the prospective home rule Haines Borough are interrelated and integrated...

...the communications media and the land, water and air transportation facilities throughout the prospective consolidated home rule Haines Borough allow for the level of communica-

tions and exchange necessary for an integrated borough.

The declarations made three years ago by the local governing bodies build on the presumption that the referenced standards in the Constitution, statutes, and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the community of interests standards were met in 1998.

In the 1998 consolidation proceedings, the Local Boundary Commission concluded as follows regarding the community of interests standards:³⁴

...compatibility exists between urban and rural areas of the Haines Borough in matters which include economic lifestyles, and commercial activities. Further, there is extensive opportunity for communication and exchange among the residents of the Borough. In addition, while the Haines Borough may lack multiple communities, this should not be a barrier

to consolidation. The Commission concludes, therefore, that the proposal to consolidate the local governments in Haines satisfies the provisions and standards of Article X, Section 3 of the constitution, AS 29.05.031(a)(1), and 19 AAC 10.045(a) and (b).³⁵

...the Commission finds that the area within the Haines Borough has an impressive and effective system of transportation and communication. The Commission concludes, therefore, that the transportation facilities, media, and other communications facilities allow the exchange necessary for development of integrated borough government in Haines in full satisfaction of the standards set out in AS 29.05.031(a)(4) and 19 AAC 10.045(c) and (d).

There is no evidence in this proceeding that factors relating to the community of interests standards have changed in any substantive fashion so as to render the Commission's 1998 determination invalid today.

³³ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98-30.

³⁴ 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*, (hereinafter "1998 Haines Consolidation Decision") pages 8 and 9, August 21, 1998.

³⁵ 19 AAC 10.045 has since been renumbered as 3 AAC 110.045.

(iv) The Haines Borough does not assert that the Petition fails to satisfy the community of interests standards.

Lastly, the Respondent Haines Borough does not assert that the pending Petition fails to meet the community of interests standards 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).

•••••
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The written record in this proceeding provides further evidence that a strong community of interests exists within the proposed consolidated borough. The Petition states as follows regarding this standard:³⁶

With the exception of a few families who reside at Excursion Inlet, Mud Bay, and Chilkat Lake, almost the entire population of the Haines Borough resides on the road system within the Chilkat River Valley... While some social and lifestyle distinctions may be observed, and are expressed by residents, many other factors create common ties between residents.

The Haines Borough, like other regional governments, represents social, political and economic diversity within its boundaries. Overall, the borough can be characterized as rural. While some residents may note distinctions between the outlying areas of the borough and the City of Haines in terms of population density and levels of government regulation, for example, the large area and relatively low population of the borough underscores its predominantly rural character...

The City of Haines is the commercial, transportation and government center of the borough, where residents shop for goods and services, commute to their places of employment, educate their children, attend cultural and social events, participate in government activities, berth their small boats, and participate in other social, political, governmental and economic activities. Lifestyle distinctions tend to be overcome by much stronger and longer-term linkages based on these social and economic realities.

...A majority of residents are served by telephone, television (including a local cable channel), local public radio station KHNS and two weekly newspapers, the Chilkat Valley News and the Eagle Eye Journal.

...Approximately 13% of the borough is Alaska Native, exclusive of Klukwan, which is counted with the Skagway-Angoon-Yakutat Census Area. With possible, isolated exceptions among native elders, the English language is spoken throughout the borough. Borough elections do not require the printing of ballots in any language other than English.

...In addition to Haines, (other communities in the Haines Borough) arguably include Lutak, Mosquito Lake, Covenant Life Community, Excursion Inlet, and Mud Bay.

...The population has daily airline service by four airlines (LAB, Haines Airways, Wings of Alaska, and Skagway Air Service). Service is limited only by the normal weather constraints of a maritime climate. Direct access to Excursion Inlet is available by chartered air service, and by regularly scheduled seasonal flights from Juneau.

The Borough is served by the Alaska Marine Highway with regularly scheduled service. The community serves as an important year-round transportation hub with access to Interior Alaska, Canada and the contiguous United States.

...A vast majority of the borough is served by home telephones. Cellular phone service is available through-

³⁶ Petition, Exhibit H, pages 2 – 5.

Figure 5
Census Designated Places in the Haines Borough

Census Designated Place	1990 Population	2000 Population
Covenant Life CDP	47	102
Excursion Inlet CDP		10
Lutak CDP	45	39
Mosquito Lake CDP	80	221
Mud Bay CDP		137

out a wide area of the borough. Marine radio and citizens band (CB) radio are readily available and used to some extent in the borough.

DCED is aware of no evidence that conflicts with the Petitioner's characterization of the community of interests within the Haines Borough.

The City correctly notes on page 3 of its brief submitted with the Petition that there were three "census designated places" in the

Haines Borough during the 1990 Census. The U.S. Census Bureau characterizes a census designated place (CDP) as an unincorporated community. The basis for designating an area as a CDP is described as follows 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 borough³⁷ only in regard to legal status and recognition within its respective state.

While there were three CDPs in the Haines Borough designated during the 1990 census, two more were added for purposes of the 2000 census. The CDPs in the Haines Borough are listed in the table in Figure 5 and are shown on the map in Figure 6.

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 110.920.³⁸ Since the Commission's definition requires a population of at

³⁷ The term "borough" is used by the Census Bureau in a general sense as a place organized for local government; it is certainly not used in the sense as the term is uniquely applied to the borough form of municipal government in Alaska.

³⁸ 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.

least 25 permanent residents, Excursion Inlet 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.³⁹

During the 1998 Haines consolidation proceedings, the Commission noted as

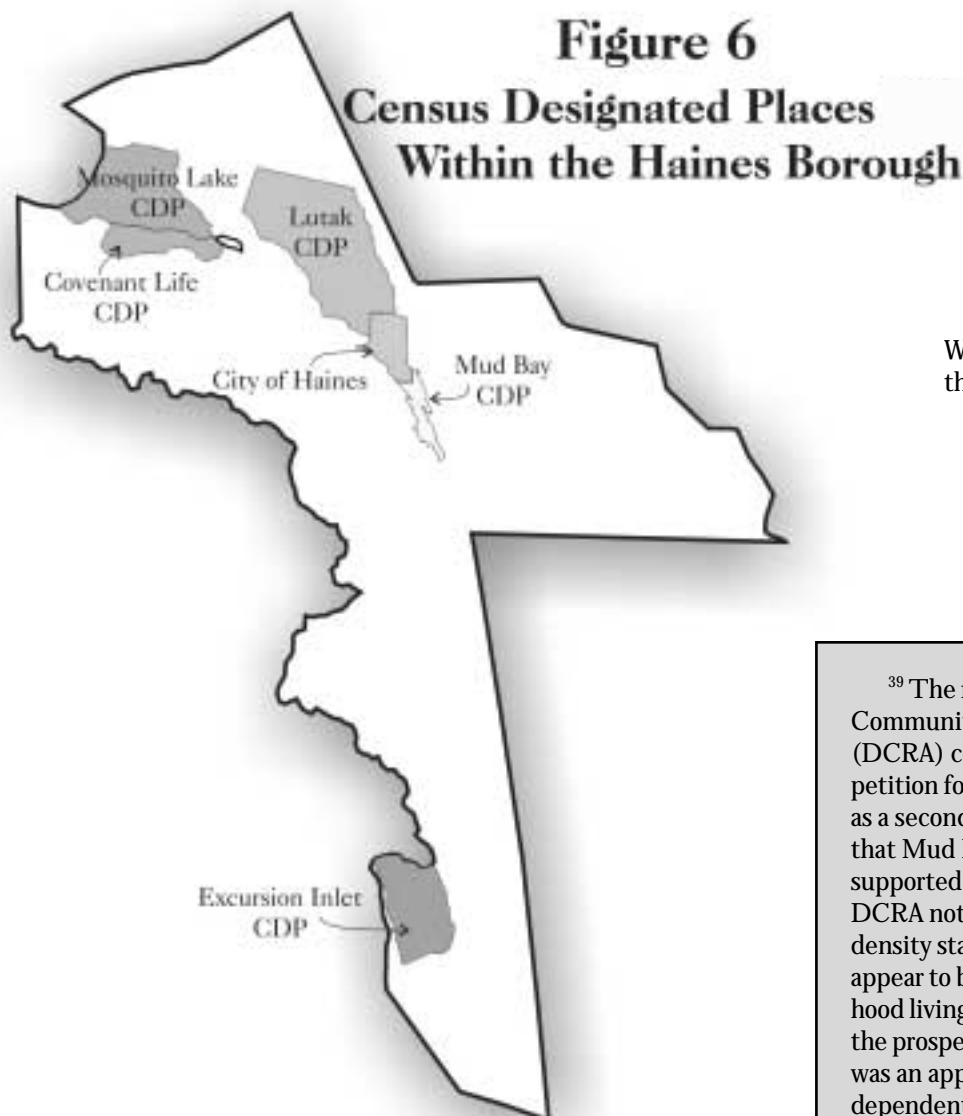
follows regarding the presumption relating to multiple communities:

The Commission concludes from the evidence that there are multiple communities within the Haines Borough. Even if there were not, the Commission finds that two aspects of the consolidation proposal offer ample specific and persuasive

reasons to overcome the presumption of 19 AAC 10.045(b).⁴⁰

The first is the simple but vital fact that the Haines Borough has existed for three decades.

While the configuration of the Haines Borough may not



³⁹ 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 that Mud Bay is a 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).

⁴⁰ 19 AAC 10.045(b) has since been renumbered to 3 AAC 110.045(b).

be ideal from a statewide perspective, the Commission finds that the Borough is entitled to deference with respect to the satisfaction of this standard because of its 30-year existence.⁴¹

The second point is that the Constitution of the State of Alaska strongly favors consolidation of the nature proposed in this case. As concluded earlier by the Commission, this particular proposal is favored by Article X, Section 1 in two ways: the extension of home rule and the reduction in the number of local government units serving the residents of the Haines Borough.

••••• c. Conclusion Regarding the Community of Interests Standards.

Based on the foregoing facts, DCED 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), AS 29.5.031(a)(4), and 3 AAC 110.045(a)-(d) are satisfied with respect to the proposed consolidation of the City of Haines and the Haines 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. The five factors consist of: (1) total census enumerations; (2) durations of residency; (3) historical population patterns; (4) seasonal population changes; and (5) age distributions. 3 AAC 110.050(a) also allows the Commission to consider other relevant factors.

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

⁴¹ (Footnote original) Thomas Morehouse and Victor Fischer wrote in 1971 that neither the Haines Borough nor the Bristol Bay Borough “conforms well to any consistent borough model, whether of the urban or regional type, nor even to the very general legal standards for boroughs set forth in the 1961 borough act.” Borough Government in Alaska, page 109.

The Haines Borough has had two annexations since 1971, although it is unlikely that such would have changed the above characterization of the Haines Borough by Mr. Morehouse and Mr. Fischer. DCRA also notes that the Haines Borough does not currently embrace all of the territory within its model boundaries, as is discussed in some detail in DCRA’s preliminary report. Finally, there is some speculation by DCRA that if unorganized areas of Alaska were compelled to organize, residents of Gustavus might prefer to join the Haines Borough as opposed to being part of the model Glacier Bay Borough previously defined by the LBC.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) A statutory population standard similar to the current standard was in place prior to the incorporation of the Haines Borough; standards in regulations have been in place for many years since.

The statutory standard in AS 29.05.031(a)(1) is substantially the same as a borough incorporation standard first established in 1961.⁴² As was the case with regard to the community of interests standard, the 1961 standard concerning population was in place more than seven years prior to the incorporation of the Haines Borough. At the time the Commission was considering the Haines Borough incorporation petition, the population of the area was estimated to be only 792.⁴³

The existing population characteristics of the Haines Borough are identical to those of the proposed consolidated City and Borough of Haines since the boundaries of the two are identical. Again, those boundaries have existed

under boundary standards that have been in place in the Alaska Administrative Code for more than ten years.

These circumstances create a strong presumption that the population standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The governing bodies of the Haines Borough and City of Haines declared that the population standards were met in 1998.

The Council of the City of Haines and the Haines Borough Assembly both adopted resolutions in March 1998 stating that, "... the population of the prospective consolidated home rule Haines Borough is large and stable enough to support a borough government."⁴⁴

The pronouncement by the Haines Borough Assembly and the Haines City Council three years ago adds further to DCED's contention that there is a strong presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the population standards were met in 1998.

The Local Boundary Commission stated as follows regarding the satisfaction of the population standards with respect to the 1998 Haines consolidation proposal:⁴⁵

...four [of Alaska's sixteen organized boroughs] had smaller populations [than the Haines Borough as of July 1, 1997]. The Commission notes that the population of the Haines Borough exceeds the 1,000 resident

⁴² AS 07.10.030(1), enacted by Chapter 146, SLA 1961, provided in relevant part that, "The population shall be . . . large enough and stable enough to warrant and support the operation of organized borough government."

⁴³ See: Local Affairs Agency, *Incorporation of the Haines Borough*, January 1968. The population was apparently grossly underestimated since the 1970 Census indicated that the Haines Borough had a population of 1,351.

⁴⁴ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 - 30.

⁴⁵ 1998 Haines Consolidation Decision, pages 9 - 10.

threshold set out in 19 AAC 10.050(b) by nearly 2.5 times.⁴⁶ Additionally, it is relevant to again stress that the residents of the Haines Borough have successfully operated a borough government for the past 30 years. When it was formed three decades ago, the population of the Haines Borough was approximately half of what it is today...

Since 1970, two years after the Haines Borough was incorporated, the population of the Borough has increased by 79.2 percent, an average of 2.73 percent annually...

Significant seasonal population changes are not a factor or issue relevant to the area, although the resident population increases slightly during the summer due to seasonal work in the construction, fishing and service sectors of the local economy.

1990 age distribution patterns within the City of Haines and the remainder of the Haines Borough are generally typical of those found throughout Alaska.

... the Commission concludes that the standards set out in AS 29.05.031(a)(1) and 19 AAC 10.050 are fully satisfied with respect to the pending petition. Accordingly, the Commission concludes that the population of the Haines Borough is sufficiently large and stable to support the proposed consolidated borough government.

(iv) The Haines Borough does not assert that the pending Petition fails to satisfy the population standards.

Nothing in the Response Brief of the Haines

Figure 7
Population of Organized Boroughs
2000

Municipality of Anchorage	260,283
Fairbanks North Star Borough	82,840
Matanuska-Susitna Borough	59,322
Kenai Peninsula Borough	49,691
City and Borough of Juneau	30,711
Ketchikan Gateway Borough	14,070
Kodiak Island Borough	13,913
City and Borough of Sitka	8,835
North Slope Borough	7,385
Northwest Arctic Borough	7,208
Aleutians East Borough	2,697
Haines Borough	2,392
Denali Borough	1,893
Lake and Peninsula Borough	1,823
Bristol Bay Borough	1,258
City and Borough of Yakutat	808

Borough claims that the Petition pending before the Local Boundary Commission fails to meet the population standards set out in AS 29.05.031(a)(1) or 3 AAC 110.050(a)-(b).

• • • • •
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The written record in this proceeding provides further evidence that the

population of Haines is sufficiently large and stable to support the proposed consolidated borough. Specifically, the Petition states as follows regarding this standard:⁴⁷

The Haines Borough is comprised of family-oriented, residential communities...

In the 1970 census, 1,351 residents were recorded in the Haines Borough. Ten years later, 1,680 were living in the Haines Borough.

⁴⁶ 19 AAC 10.050(b) has since been renumbered to 3 AAC 110.050(b).

⁴⁷ Petition, Exhibit H, pages 5 – 7.

At the time of the 1990 federal census 2,117 were recorded. DCED estimates that the current population of the Haines Borough is 2,516. . .

Decennial census data from the incorporation of the Haines Borough to the present demonstrates a pattern of steady population growth. The Haines Borough has grown 79% since 1970. . .

Significant seasonal population changes are not a factor or issue relevant to the area, although the resident population increases slightly during the summer due to seasonal work in the construction, fishing and service sectors of the local economy.

The Alaska Department of Labor recorded the median age of Haines Borough residents at 37.2 years in 1996. The statewide average was 30.9. . .

. . . indices demonstrate that the age distribution of the Haines Borough population, at least in terms of its youth, is consistent with that of other boroughs in Alaska.

The City correctly notes that DCED estimated the 2000 population of the Haines Borough to be 2,516. The 2000 Census, however, indicated that the population of the Haines Borough was 4.9% lower at 2,392.

The 2000 Census population of the Haines Borough is nearly 2.4 times the presumptive minimum level set out in 3 AAC 110.050(b).

According to the 2000 census, the Haines Borough had a population greater than that of four of Alaska's sixteen organized boroughs. The 2000 Census populations of the sixteen organized boroughs are shown in the table in Figure 7 on the previous page.

The population of the Haines Borough has grown steadily over the past three decades as shown in Figure 8 on the following page.

From 1970 to 1980, the population of the Haines

Borough increased 24.4 percent. The following decade, the population increased by 26.0 percent. Population growth in the past decade has slowed to 13.0 percent.

The Alaska Department of Labor projected in 1998 that the population of the Haines Bor-



Road construction in a subdivision within the City of Haines.

ough would continue to grow over the following two decades.⁴⁸ A low-range scenario predicted that the population would grow at an annual average rate of 0.19%, resulting in 2,667 residents by 2018. The low-range projected growth rate was considerably less than the comparable low-range growth figure of 0.70% projected for the state as a whole. The mid-range scenario for population growth in the Haines Borough projected an annual average growth rate of 1.21% resulting in 3,146 residents

by 2018. The growth rate for that scenario was slightly higher than the 1.13% mid-range growth rate projected for the entire state. A high-range scenario estimated an annual population growth rate for the Haines Borough of 2.24%, resulting in 3,934 residents by 2018. The percentage of growth in the high-range scenario was notably higher than the 1.53% projected high-range growth rate for all of Alaska.

The historic and projected population data support a finding that the

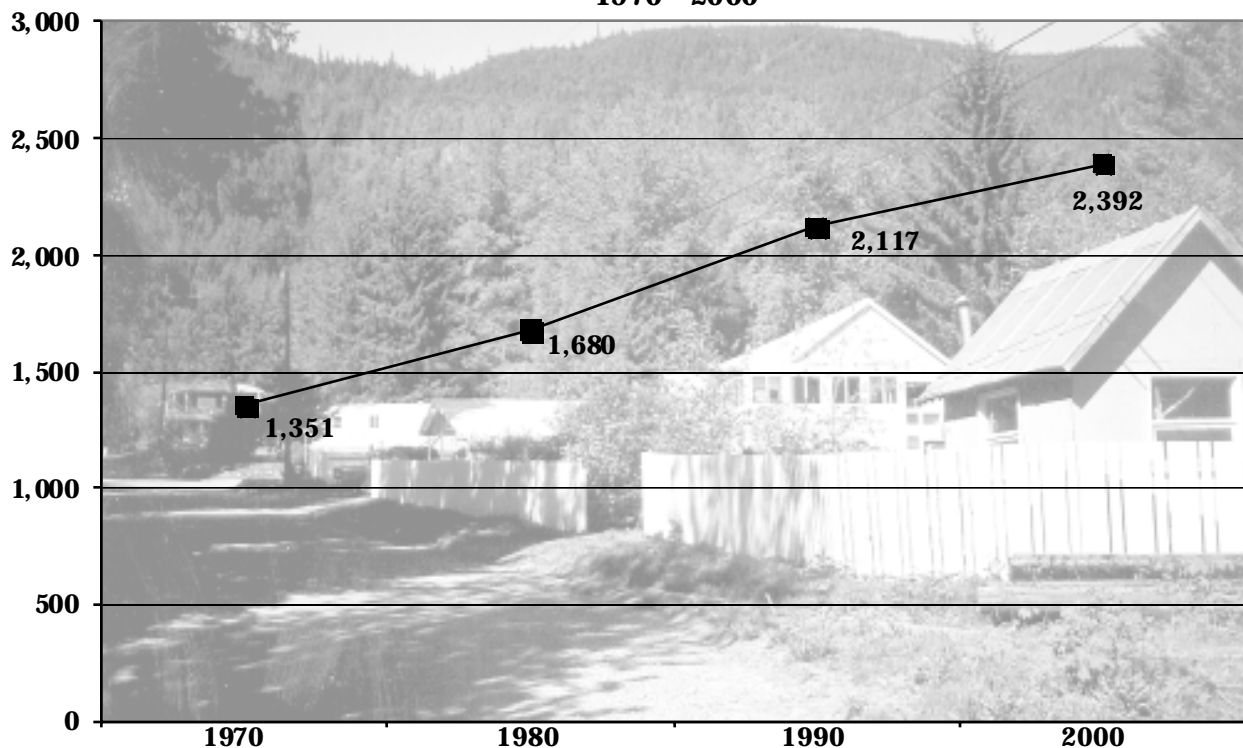
population of the Haines Borough is clearly stable enough to meet the standard.

••••• c. Conclusion Regarding the Population Standards.

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

⁴⁸ < <http://www.labor.state.ak.us/research/pop/pop-proj.pdf> >

Figure 8
Population of Haines Borough
1970 - 2000



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. Specifically, 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. 3 AAC 110.060(a)

also allows the Commission to consider other relevant factors.

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 Haines Consolidation Proposal.

••••• a. Presumptions that the standards are met.

(i) Statutory standards regarding boundaries were in place prior to the incorporation of the Haines Borough; additionally, the boundary standards in the Alaska Administrative Code have been in place for the past decade.

The statutory standards in AS 29.05.031(a)(2) are similar in most respects to the borough incorporation boundary standards first

established in 1961.⁴⁹ Here again, the 1961 standards were in place more than seven years prior to the incorporation of the Haines Borough. Further, the standards set out in 3 AAC 110.060 have been in place for a decade.

Since the existing boundaries of the Haines Borough are the same as the boundaries of the proposed City and Borough of Haines, the boundary characteristics of the former are identical to those of the latter.

Here again, these circumstances create a strong presumption that the boundary standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The Haines Borough and City of Haines affirmed that the standards were met in 1998.

The Haines Borough Assembly and the Haines City Council each formally stated as follows three

years ago regarding the prior consolidation proposal:

the territory within the prospective consolidated home rule Haines Borough conforms generally to natural geography and includes all land and water necessary to provide the full development of essential boroughs services on an efficient, cost-effective level.⁵⁰

The formal declaration by the Haines Borough and the Haines City Council in 1998 adds to the strength of the presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the standards were met in 1998.

The Commission concluded as follows regarding the boundary standards in the 1998 proceedings.⁵¹

The proposed boundaries for the consolidated Haines Borough are the same as the current third class Haines Borough boundaries. The Haines Borough originally encompassed approximately 2,200 square miles. Klukwan, located approximately 21 miles north of Haines along the Haines Highway, and the military petroleum distribution facility at Lutak Inlet were excluded from the Borough.

In 1975, the Haines Borough annexed approximately 420 square miles to the south. In 1978, the Haines Borough annexed the former military petroleum distribution facility at Lutak Inlet.

The current boundaries of the Haines Borough have been in place for over twenty years. It is particularly noteworthy with respect to the standard at issue that when the Commission approved the annexation of 420 square miles to the Haines Borough, it did so because, "inclusion of the territory within the Haines Borough would

⁴⁹ One major difference between the current law and the 1961 law was that the former prohibited the inclusion of "all areas such as military reservations, glaciers, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government." AS 07.10.030(2), enacted by Chapter 146, SLA 1961, provided that, "The boundaries of the proposed organized borough shall conform generally to the natural geography of the area proposed for incorporation, shall include all areas necessary and proper for full development of integrated local government services, but shall exclude all areas such as military reservations, glaciers, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government."

⁵⁰ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁵¹ 1998 Haines Consolidation Decision, pages 12 - 13.

more fully allow that municipality to meet standards for formation of a borough in that the new boundaries to be established would more closely approximate 'natural geography,' altering the geographical southern boundary of the Haines Borough, an arbitrary line extending east and west bisecting the Chilkat Peninsula, a natural geographic part of the Haines Borough." [Decisional Statement] in the Matter of the Petition for Annexation of Territory to the Haines Borough, Local Boundary Commission, page 3 (May 15, 1974).

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 sepa-

rate 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.

The presumption in the Commission's regulations at 19 AAC 10.060(c)⁵² that proposed borough boundaries must conform to existing regional educational attendance area boundaries does not apply in this instance since the area under consideration is wholly within an existing organized borough.

The Commission finds that the petition for consolidation does not propose boundaries that overlap the boundaries of an existing organized borough.

Based on the foregoing findings, the Commission concludes that the existing boundaries of the Haines Borough conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level. The Commission concludes that the standards set out in AS 29.05.031(a)(2) and 19 AAC 10.060 are fully satisfied with respect to the pending petition.

⁵² 19 AAC 10.060(c) has since been renumbered to 3 AAC 110.060(c).

As noted in subsection b, nothing concerning municipal boundaries has changed in the past three years to suggest that the Commission's 1998 conclusion is no longer accurate.

•••••
**b. Evidence in the
 Current Proceeding
 Demonstrates Satisfaction
 of the Standards.**

The Petition offers statements in support of the boundary standards that are similar to the previously noted conclusions reached by the Local Boundary Commission three years ago.

Additionally, the Petitioner provides the following explanation for the lack of conformance with the model borough boundaries (Petition, Exhibit H, page 16):

The proposed borough boundaries do not extend beyond the model boundaries established by the Local Boundary Commission. The petitioners recognize that the existing boundaries of the Haines Borough do not conform to the model borough boundaries for the Haines Borough established by the Local Boundary Commission on May 8, 1992. To attempt to modify the boundaries concurrent with

consolidation would be extremely cumbersome from a procedural standpoint. While consolidation involves an election within the proposed new municipality, annexation would require either legislative review or an election just in the territory proposed for annexation.

Moreover, any proposal to expand the boundaries of the Borough would likely be controversial and would distract attention and resources from the more significant issue of consolidation. For example, the community of Skagway is included in the model borough boundaries of the Haines Borough. The petitioners are aware that residents and municipal officials in Skagway are currently contemplating the incorporation of a borough encompassing just Skagway. The City of Skagway commented on the model borough boundaries in 1992 by stating its objection to being included in the Haines Borough.

The Respondent Haines Borough's Representative does not directly assert that the Petition fails to satisfy the boundary standards, however, he presents the

following question in the Borough's Responsive Brief (pages 5-6):

LBC Staff has stated that if the Haines Borough wishes to ever expand Borough boundaries to the suggested model boundaries, they would strongly suggest that the Village of Klukwan be included. The Borough is not suggesting that Klukwan be annexed, however, if the petitioner's intent is to minimize governmental units why isn't Klukwan included in this consolidation effort?

A careful reading of the comments above is warranted to avoid misunderstanding.⁵³ Neither DCED nor the Petitioner advocates annexation of Klukwan to the Haines Borough at this time. DCED believes that the Petitioner offers a legitimate public policy basis for the exclusion of Klukwan from the pending consolidation proposal.

Contrary to the implication from the Respondent's Representative, even if Klukwan were included in the consolidation proposal

⁵³ The Respondent's Representative did not cite the basis for the assertion that "LBC Staff has stated that if the Haines Borough wishes to ever expand Borough boundaries to the suggested model boundaries, they would strongly suggest that the Village of Klukwan be included." By definition, however, since Klukwan is within the model boundaries of the Haines Borough, it would have to be included if the Borough is ever to conform to those model boundaries.

the number of governmental units would not be reduced. As correctly noted by the Petitioner, Klukwan is under the jurisdiction of the Chatham Regional Educational Attendance Area. While annexation of Klukwan to the City and Borough of Haines would diminish the area within the jurisdiction of the Chatham Regional Educational Attendance Area, it would certainly not eliminate it.

The Commission's application of the model borough boundary standard (3 AAC 110.060[b]) and the regional educational attendance area standard (3 AAC 110.060[c]) to the 1998 Haines consolidation proposal was described in subsection D-2-a-(iii) of this chapter. It is noteworthy that the Commission utilized the same approach with respect to the recently approved petitions for consolidation of local governments in both the Ketchikan area and the Fairbanks area.

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. There is no overlapping area in this instance.

••••• **c. Conclusion Regarding the Boundary Standards.**

Based on the foregoing, DCED 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 Haines and the Haines 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 include "the human and financial resources capable of providing 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 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 three discretionary factors. Those relate to (1) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation; (2) the need for and availability of employable skilled and unskilled people; and (3) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation. 3 AAC 110.055 also allows the Commission to consider other relevant factors.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) A statutory standard similar to the current resources standard was in place prior to the incorporation of the Haines Borough; additionally, the resources standards in the Alaska Administrative Code have been in place for the past decade.

The statutory standard in AS 29.05.031(a)(3) is similar in most respects to the resources standard for borough incorporation first established in 1961.⁵⁴ Here again, the 1961 standard was in place more than seven years prior to the incorporation of the Haines Borough. Moreover, the standards set out in 3 AAC 110.055 have been in place for a decade.

Since the existing boundaries of the Haines Borough are the same as the boundaries of the

proposed City and Borough of Haines, the economic characteristics of the former are identical to the latter.

The Haines Borough has successfully operated a borough government for the past thirty-three years. That fact creates a strong presumption that the resources standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The Haines Borough Assembly and Haines City Council asserted the standards were met in 1998.

The governing bodies of the City of Haines and the Haines Borough each formally stated in 1998 that “the economy of the prospective home rule Haines Borough includes the human and financial resources necessary to provide essen-

tial borough services on an efficient and cost-effective level.”⁵⁵

The statement by the Assembly of the Haines Borough and the Council of the City of Haines three years ago reinforces the validity of the presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the resources standards were met in 1998.

The Commission concluded as follows regarding the application of the resources standards to the 1998 Haines consolidation proposal.⁵⁶

Based on the foregoing findings, the Commission concludes that the standards set out in AS 29.05.031(a)(3) and 19

⁵⁴ AS 07.10.030(3), enacted by Chapter 146, SLA 1961, provided that, “The economy of the proposed organized borough shall encompass a trading area with the human and financial resources capable of providing an adequate level of governmental services. In determining the sufficiency and stability of an area’s economy, land use, property valuations, total economic base, total personal income, present and potential resource or commercial development, anticipated functions, expenses, and income of the proposed organized borough shall be considered.”

⁵⁵ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁵⁶ 1998 Haines Consolidation Decision, page 12.

AAC 10.055 are satisfied with respect to the pending petition.⁵⁷ The Commission concludes that the Haines Borough has sufficient human and financial resources to operate a borough government.

Evidence outlined in subsection b regarding the contemporary economic characteristics of the greater Haines area indicate that the Commission's 1998 conclusions regarding the standard at issue remain valid today.

.....
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The statutory standards regarding resources expressly require consideration of specific economic characteristics. This section of the report examines such characteristics as well as other relevant factors.

(i) Anticipated functions of the proposed consolidated borough.

The Petition lists the following thirteen areawide functions of the proposed consolidated borough (Peti-

tion, page 3-4; also Exhibit H of the Petition, page 8):

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. control of hazardous substances;
5. emergency 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.

As noted previously, it is the Petitioner's intention that the consolidated borough will provide solid waste management on an areawide basis. Consequently, that function should be added to the list of areawide powers.

Further, the Petition indicates on page 10 of Exhibit H that economic development and the promotion of tourism will be carried out on a service area basis within the Townsite Service Area unless voters approve the assumption of such powers on an areawide basis. Thus, economic development should be deleted from the list of areawide powers.



Ambulance used to provide emergency medical services.

⁵⁷ 19 AAC 10.055 has since been renumbered to 3 AAC 110.055.



City police and fire facility in Haines.

The revised list of proposed areawide powers follows:

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. control of hazardous substances;
5. emergency 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. solid waste management.

The Petition (Exhibit E-3) indicates that the proposed consolidated borough will exercise the following five powers on a service area basis within the Townsite Service Area.

1. police protection;
2. fire protection, prevention, and safety;
3. animal control;
4. water and sewer utilities;
5. street and road maintenance

Page 9 of Exhibit H of the Petition also lists public works as a service area function to be carried out in the Townsite Service Area. Moreover, the Petition indicates on page 10 of Exhibit H that unless voters approve the extension of the current 1.5% City sales tax for capital improvement projects and the City's 1.0% sales tax for economic development/tourism promotion those functions will also be carried out on a service area basis in the Townsite Service Area.⁵⁸ Thus, those powers should be added to the list of service area powers to be exercised within the Townsite Service Area. The revised list of those powers follows:

1. police protection;
2. fire protection, prevention, and safety;
3. animal control;
4. water and sewer utilities;
5. street and road maintenance;
6. public works;
7. funding for capital improvement projects;
8. economic development and tourism promotion.

⁵⁸ The proposed authority to fund capital improvements on a service area basis would be distinct and separate from the proposed areawide authority to undertake areawide capital improvements. Such arrangements are permissible. That is, the law expressly allows a borough to provide a higher level of an areawide service within a service area.

Figure 9			
Estimated Areawide Expenditures Listed in the Petition			
Areawide Expense	Year One	Year Two	Year Three
Education (including preschool)	\$4,294,000	\$4,300,000	\$4,310,000
Tax assessment and collection	153,670	158,280	164,611
Planning, platting, and land use regulation	25,000	25,000	20,000
Control of hazardous substances	6,000	6,000	6,000
Emergency medical services	181,934	195,632	199,544
Emergency dispatch and jail	391,432	399,261	407,246
Ports and harbors	222,900	227,400	232,000
Public parks, recreation facilities, buildings	65,000	67,500	71,000
Public library	193,000	202,650	210,756
Museum	140,000	146,300	152,900
Cemeteries	6,000	6,000	6,000
Economic development & tourism promotion	298,207	304,171	310,254
Administration	539,725	518,136	528,499
Totals	\$6,516,868	\$6,556,330	\$6,618,810

(ii) Anticipated expenses of the proposed consolidated borough.

The Petition offers the estimate of *areawide* expenditures by the proposed home rule consolidated borough for the first three years of operation. This estimate is shown in Figure 9.

As noted previously, Page 10 of the Brief in support of the consolidation proposal (Petition, Exhibit H) indicates that economic development and tourism promotion will be exercised on

a service area basis within the Townsite Service Area, unless voters authorize the extension of the service areawide.

Moreover, the budget in the Petition does not include any projected expenditure for solid waste management. The Haines Borough has budgeted \$26,900 for the coming year for solid waste management functions.⁵⁹

DCED conferred with the Petitioner on these and other issues, including updated projected expenditures by the Haines Borough and the City of Haines for the upcoming fiscal year. Based on those discussions, adjustments to the areawide expenditures projected in the Petition are offered to the Commission for consideration. These adjustments are shown on Figure 10 (next page).

⁵⁹ 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.

Figure 10
Adjustments to Estimated Areawide Expenditures
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Reduce education expenses (including preschool)	(\$34,123)	(\$34,159)	(\$33,921)
Increase tax assessment and collection expenses	43,498	38,888	32,557
Increase planning, platting, and land use regulation expenses	4,000	4,000	9,000
Increase control of hazardous substances expenses	4,000	4,000	4,000
Reduce emergency medical services expenses	(18,049)	(19,407)	(19,795)
Reduce emergency dispatch and jail expenses	(10,906)	(11,000)	(11,005)
Increase public library expenses	26,000	16,350	8,244
Increase museum	15,000	8,700	2,100
Reduce cemeteries expenses	(3,900)	(3,900)	(3,900)
Eliminate areawide economic development & tourism promotion expenses	(298,207)	(304,171)	(310,254)
Add solid waste management expenses	27,000	27,000	27,000
Total adjustments	(\$245,687)	(\$273,699)	(\$295,974)

Incorporating the above noted adjustments into the budget documents included in the Petition results in the modified projections of areawide expenditures shown in Figure 11.

The Petition presented the estimated Townsite Service Area expenditures for the proposed home rule consolidated borough during the first three years of operation as shown in Figure 12.

As previously indicated, economic development and the promotion of tourism will, at least initially, be exercised on a service area basis within the Townsite Service Area. So too will funding for capital improvements.⁶⁰

DCED conferred with the Petitioner on these and other issues, including updated projected expenditures by the Haines Borough and the City of Haines for the upcoming fiscal year. Based on those discussions, the adjustments to the Townsite Service Area

⁶⁰ DCED understands the terms "economic development", "promotion of tourism", and "financing capital improvements" to include debt service such as the payment of principal and interest on the Port Chilkoot Dock General Obligation Bonds.

Figure 11
Modified Projections of Areawide Expenditures

Areawide Expense (Revised)	Year One	Year Two	Year Three
Education (incl. Preschool)	\$4,259,877	\$4,265,841	\$4,276,079
Tax assessment and collection	197,168	197,168	197,168
Planning, platting, and land use regulation	29,000	29,000	29,000
Control of hazardous substances	10,000	10,000	10,000
Emergency medical services	163,885	176,225	179,749
Emergency dispatch (includes jail)	380,526	388,261	396,241
Ports and harbors facilities	222,900	227,400	232,000
Funding capital improvement projects	0	0	0
Public parks, recreation facilities, buildings	65,000	67,500	71,000
Public libraries	219,000	219,000	219,000
Museums	155,000	155,000	155,000
Cemeteries	2,100	2,100	2,100
Solid Waste Management	27,000	27,000	27,000
Administration	539,725	518,136	528,499
Totals	\$6,271,181	\$6,282,631	\$6,322,836

Figure 12
Estimated Townsite Service Area Expenditures Listed in the Petition

Townsite Service Area Expense	Year One	Year Two	Year Three
Road maintenance	\$309,436	\$315,624	\$325,093
Police protection	326,134	352,657	339,310
Fire protection	185,828	189,544	193,335
Animal control	34,523	34,523	34,523
Public works	146,694	148,894	149,341
Water and sewer utilities	600,142	606,143	615,235
TOTALS	\$1,602,757	\$1,647,385	\$1,656,837

expenditures projected in the Petition are offered to the Commission for consideration. These adjustments are presented in Figure 13 on the following page.

Incorporating the above noted adjustments into the budget documents set out in the Petition results in the modified projections of Townsite Service Area expenditures during the first three years. These projections are listed in Figure 14 on the following page.

Figure 13
Adjustments to Estimated Townsite Service Area Expenditures
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Reduce police protection	(\$30,000)	(\$30,000)	(\$10,232)
Reduce fire protection	(5,000)	(5,000)	(5,000)
Reduce animal control	(5,005)	(5,005)	(5,005)
Reduce water and sewer utilities	(4,035)	(4,075)	(7,146)
Add economic development & tourism	296,906	304,171	310,254
Add capital improvement projects	894,000	906,850	921,500
Totals	\$1,146,866	\$1,166,941	\$1,204,371

Figure 14
Modified Projections of Townsite Service Area Expenditures

Service Area Expense (Revised)	Year One	Year Two	Year Three
Road maintenance	\$309,436	\$315,624	\$325,093
Police protection	296,134	322,657	329,078
Fire protection	180,828	184,544	188,335
Animal control	29,518	29,518	29,518
Public works	146,694	148,894	149,341
Water and sewer utilities	596,107	602,068	608,089
Economic Development & Tourism	296,906	304,171	310,254
Capital Improvement Projects	894,000	906,850	921,500
Totals	\$2,749,623	\$2,814,326	\$2,861,208

(iii) Anticipated revenues of the proposed consolidated borough.

The Petition (Exhibit H, page 10) projects areawide income during the first three years of operation⁶¹ as shown in Figure 15 on the following page.

DCED conferred with the Petitioner about a number of the specific

areawide revenue projections. Based on updated estimates of local, State, and federal funding available for local government in the greater Haines area, the adjustments to projected areawide revenues listed in Figure 16 are offered to the Commission for consideration.

⁶¹ The budget in the Petition grouped together the estimated revenues from the Alaska Department of Public Safety jail and dispatch contract and areawide State Revenue Sharing funding. City officials advised DCED that the jail contract provides for payments of approximately \$80,000 annually. Thus, the balance is attributed to estimated State Revenue Sharing payments (i.e., \$21,900 in the first year and \$23,000 in the second and third years).

Figure 15
Estimated Areawide Revenues in the Petition

Areawide Revenue Source	Year One	Year Two	Year Three
Property taxes	\$1,058,005	\$1,098,209	\$1,142,138
Sales taxes (1.5%)	450,000	460,000	470,000
State and federal education funding	2,598,400	2,611,400	2,615,000
State shared business fisheries taxes	198,000	198,000	198,000
National forest receipts	100,000	534,000	520,600
Federal payments in lieu of taxes	105,000	100,000	100,000
State revenue sharing	21,900	23,000	23,000
State jail contract	80,000	80,000	80,000
Safe communities program	22,970	22,970	22,970
Other (interest, rents, etc)	67,900	69,000	70,000
Ports and harbors fees	315,000	325,000	345,000
Public library fees	3,300	3,500	3,700
Museum fees	48,000	48,000	48,000
Cemetery fees	3,500	3,500	3,500
Lodging Tax	56,000	56,000	56,000
Tour & Charter Tax	50,000	50,000	50,000
Totals	\$5,177,975	\$5,682,579	\$5,747,908

Incorporating the above noted adjustments into the budget documents set out in the Petition results in the modified projections of areawide revenues during the first three years as shown in Figure 17.

The Petition (Exhibit H, page 10) estimates the service area income from the Haines Townsite Service Area during the first three years of operation as listed in Figure 18.

DCED conferred with the Petitioner about a number of the specific revenue projections for the Townsite Service Area. Based on updated estimates of local, State, and federal funding available for local government in the prospective Townsite Service Area, adjustments to projected service area revenues for the core of the community are offered to the Commission for consideration. These adjustments are found in Figure 19.

Incorporating the above noted adjustments into the budget documents set out in the Petition results in modified projections of areawide revenues during the first three years as shown in Figure 20.

(iv) Feasibility and plausibility of the proposed operating budget through the third full fiscal year.

With the adjustments made to the budgets in the two preceding subsections, the revised estimates of the areawide and Townsite

Figure 16
Adjustments to Estimated Areawide Revenues
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Increase in property tax revenues based on current assessments	\$101,172	\$105,017	\$106,810
Reduction in State and federal education funding	(27,228)	(27,372)	(27,354)
Increase in State shared business fisheries taxes	10,500	10,500	10,500
Adjustment in National Forest Receipts (increase in year 1, reductions in years 2 and 3)	392,000	(42,000)	(28,600)
Increase in federal payments in lieu of taxes	69,355	74,355	74,355
Increase in State jail & dispatch contract	9,389	9,389	9,389
Increase in State Revenue Sharing	2,600	1,500	1,500
Reduction in Safe Communities program	(6,520)	(6,520)	(6,520)
Increase in other revenues (interest, rents, etc)	222,600	226,206	229,406
Decrease in ports and harbors fees	(142,971)	(125,000)	(112,480)
Decrease in cemetery revenues	(1,400)	(1,400)	(1,400)
Increase in lodging tax	42,000	42,000	42,000
Tour & Charter Tax	24,000	24,000	24,000
Add transfer of Permanent Fund earnings (after "inflation proofing")	195,000	195,000	195,000
Add transfer of Land Fund	245,636	245,636	245,636
Total adjustments	\$1,136,133	\$731,311	\$762,242

Service Area expenditures and revenues appear to be feasible and plausible. It is DCED's understanding that those estimates were prepared with due consideration to the current and projected expenditures and revenues of the Haines

Borough and the City of Haines for the various listed components.

Revised areawide estimated revenues exceed revised areawide estimated expenditures as shown in Figures 21 and 22.

Although the Respondent Haines Borough did not dispute any of the specific projected revenues or expenditures in the Petition, the Respondent's Representative did express the following general concern about the budget (Responsive Brief, page 4).

Figure 17
Modified Projections of Areawide Revenues

Areawide Revenue (Revised)	Year One	Year Two	Year Three
Property taxes	\$1,159,177	\$1,203,226	\$1,248,948
Sales taxes (1.5%)	450,000	460,000	470,000
State and federal education funding	2,571,172	2,584,028	2,587,646
State shared business fisheries taxes	208,500	208,500	208,500
National forest receipts	492,000	492,000	492,000
Federal payments in lieu of taxes/Tongass	174,355	174,355	174,355
State revenue sharing	24,500	24,500	24,500
DPS Jail Contract and State Dispatch	89,389	89,389	89,389
Safe communities program	16,450	16,450	16,450
Other (interest, rents, penalties, etc)	290,500	295,206	299,406
Ports and harbors fees	172,029	200,000	232,520
Public library fees	3,300	3,500	3,700
Museum fees	48,000	48,000	48,000
Cemetery fees	2,100	2,100	2,100
Lodging Tax	98,000	98,000	98,000
Tour & Charter Tax	74,000	74,000	74,000
Transfer - Permanent Fund Earnings	195,000	195,000	195,000
Transfer - Land Fund Revenue	245,636	245,636	245,636
Totals	\$6,314,108	\$6,413,890	\$6,510,150

Figure 18
Estimated Townsite Service Area Revenues in the Petition

Service Area Revenue Source	Year One	Year Two	Year Three
Property taxes	\$636,738	\$649,536	\$662,527
Sales taxes (3%)	878,000	889,700	903,000
Animal control fees	3,000	3,000	3,000
Service area state revenue sharing	26,800	26,800	26,800
Liquor license tax	9,200	9,200	9,200
Water and sewer utilities revenues	600,929	606,337	611,794
Economic development (1% sales tax)	295,000	295,000	295,000
Capital improvement projects (grants)	455,000	462,000	470,000
Safe communities revenue	38,000	38,000	38,000
Totals	\$2,942,667	\$2,979,573	\$3,019,321

Figure 19
Adjustments to Estimated Townsite Service Area Revenues
Listed in the Petition

Service Area	Year One	Year Two	Year Three
Reduction in property tax revenues	(\$26,001)	(\$26,523)	(\$27,054)
Reduction in sales tax revenues (3%)	(62,327)	(63,097)	(63,998)
Reduction in animal control fees	(1,200)	(1,200)	(1,200)
Service area state revenue sharing	(10,815)	(10,675)	(10,525)
Reduction in water and sewer utilities revenues	(4,822)	(4,865)	(4,909)
Reduction in sales taxes for economic development (1% sales tax)	(23,109)	(19,466)	(15,333)
Increase Safe Communities revenue	4,870	4,870	4,870
Total adjustments	(\$123,404)	(\$120,956)	(\$118,149)

Figure 20
Modified Projections of Townsite Service Area Revenues

Service Area Revenue (Revised)	Year One	Year Two	Year Three
Property taxes	\$610,737	\$623,013	\$635,473
Sales taxes (3%)	815,673	826,603	839,002
Animal control fees	1,800	1,800	1,800
Service area State Revenue Sharing	15,985	16,125	16,275
Liquor license tax	9,200	9,200	9,200
Water and sewer utilities revenues	596,107	601,472	606,885
Economic development (1% sales tax)	271,891	275,534	279,667
Capital improvement projects	455,000	462,000	470,000
Safe communities revenue	42,870	42,870	42,870
Totals	\$2,819,263	\$2,858,617	\$2,901,172

Figure 21
Comparison Between Revised Projections for Areawide Revenues
and Expenditures

Areawide Projections (Revised)	Year One	Year Two	Year Three
Revenue	\$6,314,108	\$6,413,890	\$6,510,150
Expenditures	6,271,181	6,282,631	6,322,836
Surplus	\$42,927	\$131,259	\$187,314

Figure 22 Comparison Between Revised Projections for Townsite Service Area Revenues and Expenditures

Townsite Service Area Projections (Revised)		Year One	Year Two	Year Three
Revenues		\$2,819,263	\$2,858,617	\$2,901,172
Expenditures		2,749,623	2,814,326	2,861,208
Surplus		\$69,640	\$44,291	\$39,964

The costs of transition to a consolidated government were not provided by the petitioner. These costs could be substantial and should be included in any budget projection. The proposed consolidation costs in Fairbanks are estimated at \$5 million dollars.

The Respondent's Representative is either unaware or neglects to mention that the estimate of transition costs referred to above was made by a respondent opposed to the Fairbanks consolidation proposal. The petitioners for consolidation of local governments in Fairbanks vigorously contested the estimate of transition costs by that respondent.

The Fairbanks respondent's estimate of transition costs in the Fairbanks proceeding included millions of dollars for the cost of consolidating workspaces and equipment, including more than \$2.5 million for the relocation of City of Fairbanks Public

Works staff. An additional \$500,000 was allocated for consolidation of vehicle maintenance.

Even if the projection of transition costs in Fairbanks were accurate, it has little, if any, bearing on the likely transition costs for consolidation of local governments in Haines. Clearly, there will be some costs associated with transition, however, those costs are likely to be very limited given the characteristics of the two local governments involved. Moreover, local officials and other citizens of Haines should consider whether long-term savings from consolidation will more than offset any short-term transition costs.

For example, the City of Ketchikan estimates that consolidation of local governments in Ketchikan will reduce long-term operating costs by approximately \$1 million annually.

In the case of Ketchikan, the savings projections were based on a 1993 study conducted by independent consultants. The projected savings stemmed from the following:

- elimination of 8 elective local government offices;
- reduction in municipal manager's staff;
- reduction in municipal clerk's staff; and
- reduction in accounting staff.

Of course, in the case of Haines, any savings from the elimination of seven elective city positions will likely be offset by the addition of seven new elective positions for the school board of the consolidated borough that would then be separate from the assembly.

The Petitioner in this proceeding has offered no specific projections of potential savings. City

Figure 23
Assessed Value of Real Property in the Haines Borough 2000

Property Type	Fire SA #1	Fire SA #2	Fire SA #3	Fire SA #4	City	Remainder
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
Total	\$4,853,750	\$3,366,400	\$13,547,400	\$13,543,185	\$93,979,600	\$20,781,620

officials have indicated, however, that “a management study would very likely reflect staffing efficiencies, such as in the obvious areas of accounting and municipal clerk.”

After reviewing the Ketchikan consolidation proposal at the request of the Ketchikan Gateway Borough, local government expert Vic Fischer concluded,

“While one may argue about the specific efficiencies and savings that may be achieved, local government economics and effectiveness are bound to improve through consolidation.” (Victor Fischer, *Preliminary Report on Municipal Consolidation Petition*, August 11, 2000, p. 4.)

(v) Economic Base of the Proposed Borough.

The Petition (Exhibit H, page 11 –12) states as follows regarding the economic base of the area within the Haines Borough.

Government (Borough, school district, City, and State), retail trade, business and transportation services, fishing, and forestry provide the majority of employment in the Borough.

According to the Alaska Department of Labor, the economy of the Haines Borough has been in transition from dependence upon manufacturing to greater dependence upon services and retail trade. Most of the manufacturing jobs in the Haines Borough are in seafood processing. Many of the new retail and services jobs are tourism related. Tourism is flourish-

ing in the area because of Haines’ strategic location. Haines is a marine highway port with road access to other parts of Alaska, Canada and the contiguous U.S. The number of cruise ship passengers visiting Haines more than doubled during the period from 1994-1997.

The total number of jobs in Haines in 1999 was 1,034. Fish processing requires significant seasonal labor and fish harvesting provides an important contribution to the economy. In 1995, 117 Haines residents held commercial fishing permits, earning an estimated \$4.8 million.

Although wages in the Haines Borough were generally lower than the statewide average, the lower per capita income in Haines was higher in Haines than statewide during 1994. The Department of Labor attributes this to the fact



Commercial property in Haines.

that Haines residents received a significantly higher proportion of income from dividends, interest, rent and proprietor's income (including fish harvesting) and a lower proportion from wages and salaries.

Obviously, the description of the Haines economy predates the previously noted announcement by Royal Caribbean International that it had canceled its cruise ship stops in Haines. While the Royal Caribbean development will clearly impact the local tourism industry, it certainly does not mean that Haines lacks the economic base to support local government – either the current structure or a consolidated city/borough government.

Employment data from the Alaska Department of Labor are available through April of this year. Those data indicate 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).

In comparison, employment within the Haines Borough during the first four months of 2000 averaged 1,032. The labor force at that time was estimated to consist of 1,224. That meant that 192 individuals were unemployed (15.7% of the work force).



Residential property in Haines.

Labor force statistics for the Haines Borough from 1996 through April of this year are provided as Appendix C to this report. Those statistics include the number of individuals in the labor force, employment, unemployment, and rate of unemployment.

(vi) Property Valuations.

According to the *Annual Report on Assessment and Taxation* filed by the Haines Borough with the State Assessor on September 9, 2000, taxable real property in the Haines Borough was assessed during 2000 as shown in the table in Figure 23 located on the previous page.

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.

Figure 24
Assessed Value of Personal Property in the Haines Borough 2000

Property Type	Fire SA #1	Fire SA #2	Fire SA #3	Fire SA #4	City	Remainder
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
Total	\$709,600	\$70,250	\$1,937,708	\$1,345,415	\$18,894,788	\$3,495,897

Taxable personal property in the Haines Borough was assessed during 2000 as shown in the table in Figure 24.

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.

Of course, the assessed value figures exclude the value of property which is exempt from municipal property taxes under State law (see AS 29.45.030). For example, State law provides that municipal governments must exempt the first

\$150,000 in value of the primary residence of a person 65 years of age or older.

Also excluded from the assessment figures is the value of optional property tax exemptions granted by the Haines Borough.⁶² The Haines Borough has enacted optional property tax exemptions for senior citizens and disabled veterans (all value exceeding the mandatory \$150,000 exemption), inventories, recreational equipment, and property used for community purposes. The Borough estimates that the value of real property covered by the

optional exemptions during 2000 amounted to \$2,468,500, while the value of personal property covered by the optional exemptions amounted to \$2,607,000.

The assessed value figures also exclude the value of motor vehicles, since the Haines Borough has elected to have the State levy a biennial motor vehicle registration tax on its behalf pursuant to AS 28.10.431. The State Assessor estimated that the value of motor vehicles in the Haines Borough during 2000 was \$14,391,050.

In the course of making the annual full and true

⁶² State law gives local governments discretion in granting a number of optional property tax exemptions. For example, State law allows local governments to exempt value in excess of \$150,000 of the primary residence of a person 65 years of age or older. Voters must ratify that particular optional exemption.

Figure 25
Full and True Value of the Haines Borough

Item	City of Haines	Remainder of Borough	Borough Total
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
Full and true value	\$131,422,400	\$72,600,300	\$204,022,700

value determinations, the State Assessor also con-

cluded that assessed values of taxable real property in the Haines Borough were slightly below market value.⁶³

Based on the factors noted above and others, the State Assessor made the determination of the 2000 full and true value of the Haines Borough as shown in Figure 25.

On a per capita basis, the full and true value of taxable property in the Haines Borough during 2000 was \$85,294. Utilizing full and true value figures on a per capita basis allows uniform comparisons to the property values of other organized boroughs in Alaska. The table in Figure 26 compares the per capita full and true value of the Haines Borough and the other fifteen organized boroughs in Alaska.

As shown in Figure 26, the per capita full and true value of the Haines Borough

⁶³ Local assessments are required to be at 100% of fair market value. The Haines Borough assessments were determined to be at 95% of value. It is not uncommon for tax levying municipal governments in Alaska to have such slight discrepancies. The State Assessor has the duty under State law to determine the annual full and true value of taxable property in organized boroughs, home rule and first class cities in the unorganized borough, and second class cities in the unorganized borough with a population of 750 or more. (AS 29.60.030(e)(1)-(3)).

Figure 26
2000 Per Capita Full and True Value of Taxable Property in Organized Boroughs

Borough	Full and True Value	2000 Census Population	Per Capita Full and True Value
North Slope Borough	\$10,859,450,480	7,385	\$1,470,474
Bristol Bay Borough	\$204,802,200	1,258	\$162,800
City and Borough of Juneau	\$2,632,035,700	30,711	\$85,703
Kenai Peninsula Borough	\$4,249,142,910	49,691	\$85,511
Haines Borough	\$204,022,700	2,392	\$85,294
All organized boroughs	\$46,288,408,210	545,129	\$84,913
Ketchikan Gateway Borough	\$1,116,923,700	14,070	\$79,383
City and Borough of Sitka	\$658,298,100	8,835	\$74,510
Kodiak Island Borough	\$977,967,800	13,913	\$70,292
Denali Borough	\$121,643,100	1,893	\$64,259
Municipality of Anchorage	\$16,574,726,820	260,283	\$63,680
Fairbanks North Star Borough	\$4,840,563,260	82,840	\$58,433
City and Borough of Yakutat	\$44,561,300	808	\$55,150
Matanuska-Susitna Borough	\$3,256,885,340	59,322	\$54,902
Northwest Arctic Borough	\$381,186,000	7,208	\$52,884
Lake and Peninsula Borough	\$69,030,900	1,823	\$37,867
Aleutians East Borough	\$97,167,900	2,697	\$36,028

during 2000 was slightly higher than the statewide average for all organized boroughs. The statewide average, of course, 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 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. Moreover, the per capita value of taxable property in the Haines Borough during 2000 was 34 percent higher than that of the Municipality of Anchorage.

(vii) Land Use.

The Petition (Exhibit H, page 12) states as follows regarding land use:

The Haines Borough, like other regions of Alaska, includes vast amounts of lands owned by the State and federal governments. 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 and the area immediately adjacent to the City). Details about property values and other characteristics with respect to land use are provided elsewhere in this brief.

That description is identical to the discussion of land use that appeared in the 1998 consolidation proposal. DCED considers that description to be accurate with the exception of the discussion concerning commercial property in the area immediately adjacent to the City.

As a result of the previously noted 1999 annexation to the City of Haines, much of the adjoining commercial property is now within the corporate boundaries of the City of Haines. As shown in Figure 23, the Haines Borough reported that more than 95 percent of the

commercial property in the Haines Borough is within the City of Haines.

(viii) Personal Income.

The Alaska Department of Labor recently provided DCED with yet unpublished 1999 employment and payroll data for Alaska. (See Appendix D for data for the Haines Borough.) The figures do not include employment or payroll data for the following components of the economy:

- self-employed individuals;
- commercial fishermen;
- unpaid family help;
- domestic employees; and
- most individuals engaged in agriculture.

Earnings are defined as “all remuneration paid to workers covering services performed during the year, including commissions, bonuses, and other gratuities when furnished in connection with the job.”

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.

Figure 27 on the next page, compares per capita earnings from employment in the Haines Borough to figures from the other fifteen organized boroughs and eleven census areas in Alaska.

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.

As noted above, however, commercial fishermen are not included in the employment and income data. Commercial fishing is an important segment of the Haines economy. As Figure 28 on page 49 shows, 91 residents of the Haines Borough were engaged in commercial fishing activity last year, 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

Figure 27
1999 Per Capita Earnings from Employment

Borough or Census Area	1999 Yearly Earnings	July 1, 1999 AK Dept. of Labor Provisional Population Estimates	Per Capita Earnings
North Slope Borough	\$455,041,910	7,413	\$61,384
Denali Borough	\$69,348,379	1,871	\$37,065
Bristol Bay Borough	\$32,166,048	1,258	\$25,569
Aleutian Islands West Census Area	\$122,271,405	5,285	\$23,136
Aleutians East Borough	\$43,784,755	2,151	\$20,356
Juneau Borough	\$537,587,335	30,189	\$17,807
Anchorage, Municipality of	\$4,554,521,269	259,391	\$17,559
Valdez-Cordova Census Area	\$166,735,926	10,333	\$16,136
Ketchikan Gateway Borough	\$224,235,927	13,961	\$16,062
Northwest Arctic Borough	\$100,807,787	6,873	\$14,667
Yakutat Borough	\$10,463,939	729	\$14,354
Dillingham Census Area	\$65,347,194	4,731	\$13,813
Sitka Borough	\$112,399,765	8,681	\$12,948
Fairbanks North Star Borough	\$1,017,088,199	83,773	\$12,141
Kodiak Island Borough	\$163,954,960	13,989	\$11,720
Wrangell-Petersburg Census Area	\$74,853,029	7,137	\$10,488
Skagway-Hoonah-Angoon Census Area	\$37,092,739	3,541	\$10,475
Nome Census Area	\$96,175,002	9,311	\$10,329
Kenai Peninsula Borough	\$498,768,856	48,952	\$10,189
Haines Borough	\$23,314,718	2,475	\$9,420
Prince of Wales-Outer Ketchikan Census Area	\$61,288,831	6,589	\$9,302
Bethel Census Area	\$138,140,201	16,167	\$8,545
Lake and Peninsula Borough	\$15,228,953	1,791	\$8,503
Yukon-Koyukuk Census Area	\$53,272,506	6,372	\$8,360
Southeast Fairbanks Census Area	\$47,066,018	6,283	\$7,491
Matanuska-Susitna Borough	\$315,420,873	55,694	\$5,663
Wade Hampton Census Area	\$36,132,437	7,060	\$5,118

Figure 28
Permit and Commercial Fishing Activity
Haines Borough
Calendar Year 2000 (Preliminary Data)

Fishery Group	Number of Permit Holders	Number of People Fishing	Estimated Gross Earnings
All fisheries combined	128	91	\$3,009,518

Source: Commercial Fisheries Entry Commission
 < <http://www.cfec.state.ak.us/gpbycen/2000/mnu.htm> >

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. 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. As is shown in Figure 29 on the next page, the Haines Borough ranked ahead of ten other organized boroughs with regard to 1999 per capita personal income.

(ix) The need for and availability of employable skilled and unskilled people.

The Petition (Exhibit H, page 14) states as follows

regarding the need for and availability of employable skilled and unskilled people.

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 extent to which this particular factor is satisfied.

DCED considers that description to be accurate.

(x) The reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

The Petition (Exhibit H, page 15) states as follows regarding the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

Residents of Haines have maintained the two local governments in Haines for

the past thirty years. This provides ample demonstration of the commitment and interest in sustaining a municipal corporation. Notwithstanding, the petitioners believe that voters will support a consolidation of the two local governments.

DCED considers that discussion to be accurate.

••••• c. Conclusion Regarding the Resources Standards.

Reasonably anticipated areawide revenues exceed reasonably anticipated areawide expenditures of the proposed consolidated borough by a small margin over the first three years of operation. Reasonably anticipated Townsite Service Area revenues also exceed reasonably anticipated Townsite Service Area expenditures by a small margin of over the first three years of operation.

Figure 29
1999 Per Capita Personal Income in Alaska

Area	Per capita personal income 1999
Bristol Bay Borough	\$43,996
Denali Borough	\$38,410
Juneau Borough	\$33,974
Anchorage Borough	\$33,813
Aleutians West Census Area	\$32,478
Ketchikan Gateway Borough	\$32,412
Haines Borough	\$30,681
Sitka Borough	\$29,895
North Slope Borough	\$29,025
Alaska	\$28,629
Valdez-Cordova Census Area	\$28,211
Aleutians East Borough	\$27,792
Wrangell-Petersburg Census Area	\$27,414
Yakutat Borough	\$26,478
Fairbanks North Star Borough	\$26,082
Dillingham Census Area	\$25,935
Skagway-Hoonah-Angoon Census Area	\$25,787
Kenai Peninsula Borough	\$25,478
Kodiak Island Borough	\$25,204
Southeast Fairbanks Census Area	\$22,629
Nome Census Area	\$21,258
Northwest Arctic Borough	\$21,090
Pr. of Wales-Outer Ketchikan Census Area	\$19,548
Lake and Peninsula Borough	\$19,533
Yukon-Koyukuk Census Area	\$19,126
Matanuska-Susitna Borough	\$18,615
Bethel Census Area	\$17,131
Wade Hampton Census Area	\$13,029

Source: U.S. Department of Commerce, Bureau of Economic Analysis
 < <http://www.bea.doc.gov/bea/regional/reis/drill.cfm> >

The value of taxable property in the Haines Borough during 2000 was \$85,294 per capita. That figure was 26.8% greater than the median figure for all boroughs in Alaska. Per capita personal income in the Haines Borough was \$30,681 during 1999. That figure was 7.2% higher than the statewide average.

These and other facts noted in this section of the report lead DCED to conclude 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 Haines and the Haines 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 Haines Consolidation Proposal.

The Petitioner has proposed the creation of a new home rule 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.

In addition, the Federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973, relates to this standard. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; 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 Haines Consolidation Proposal.

a. Presumptions that the standards are met.

(i) Voting Rights Act standards have applied to local governments in Alaska for nearly thirty years.

The Federal Voting Rights Act was passed in 1965, three years prior to the incorporation of the Haines Borough. Standards were established at that time to determine which jurisdictions nationwide would be required to



preclear changes in voting rights and practices under Section 5 of the Act. If the U.S. Justice Department determined that a state or political subdivision maintained a "test or device"⁶⁴ and if the Census Bureau determined that fewer than 50% of the voting-aged residents of the jurisdiction either were registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had both low voter registration and turnout. The U.S. Justice Department also

⁶⁴ "Test or device" was defined as "any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

determined that Alaska maintained a literacy test, which was a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Right Act, the State of Alaska immediately filed a lawsuit asserting that it had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position and Alaska was allowed to withdraw from the preclearance requirements.

The Federal Voting Rights Act was amended in 1970, at which time Alaska was again made subject to the preclearance requirements. With the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclear changes affecting voting.

In 1975, the Voting Rights Act was amended again. The amendments expanded the definition of "test or device" to apply to a jurisdiction that conducted elections only in English if

5% or more of the population were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have since remained subject to the Section 5 Voting Rights Act requirements.

Thus, the previously noted 1975 annexation of an estimated 420 square miles to the Haines Borough and the 1978 annexation of the petroleum distribution facility at Lutak Inlet were subject to the Voting Rights Act review. The fact that those actions were not rejected under the Voting Rights Act creates a presumption that the current structure of borough government in Haines is not in violation of the provisions of the Voting Rights Act.

(ii) The Haines Borough and City of Haines asserted the standards were met in 1998.

The Haines City Council and the Assembly of the Haines Borough each formally stated in 1998 that "the prospective consolidation of the Haines Borough and the City of Haines will not deny any person the enjoyment of any civil or political right because of race, color, creed, sex or national origin."⁶⁵

The declarations made three years ago by the local governing bodies build on the presumption that the referenced standards in federal law and the Alaska Administrative Code are satisfied.

(iii) The Local Boundary Commission concluded that the standards were met in 1998.

The Local Boundary Commission concluded as follows with respect to this

⁶⁵ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

standard during the 1998 consolidation proceedings:⁶⁶

The Commission finds no evidence to suggest that consolidation of the two local governments in Haines will result in any violation of the federal Voting Rights Act. The Commission stresses that consolidation will not change the corporate boundaries of the Haines Borough. Further, the consolidation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives.

(iv) The U.S. Justice Department granted preclearance to the 1998 consolidation proposal.

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.) Specifically, the Justice Department precleared the following:

1. procedures for conducting the consolidation election;
2. consolidation of the City of Haines and the Haines Borough;

3. creation of the home rule consolidated borough governed by an eight-member assembly elected at large by designated seats from four residency districts, the districting plan, and the implementation schedule for electing assembly members;
4. election of a seven-member school board at large by the areawide voters and the implementation schedule for electing school board members;
5. dissolution of the Docks and Harbors Service Area, Medical Service Area, Mud Bay Land Use Service Area, Lutak Land Use Service Area, the Beach Road Local Improvement District Service Area, and the River Road Local Improvement District Service Area; and
6. creation of the Townsite Service Area.

Except for the change in the assembly form of representation and the addition of the Solid Waste Management Service Area among the list of service areas to be dissolved, the actions precleared in 1998 are identical to those associated with the pending Petition. As noted in (b)

below, areawide representation would increase minority voting strength in the portion of the Haines Borough outside the City of Haines. Further, the inclusion of the Solid Waste Management Service area among the service areas to be dissolved is a nominal change in terms of the interests of the Justice Department.

(v) The Haines Borough does not Assert that the Pending Petition Fails to Satisfy the Standards.

Nothing in the Responsive Brief of the Haines Borough claims that the Petition pending before the Local Boundary Commission fails to meet the standards relating to civil and political rights.

•••••
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The composition of the proposed new borough's governing body (a six-member assembly) is identical to the composition of the current Assembly. However,

⁶⁶ 1998 Haines Consolidation Decision, page 13.

Figure 30
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 (100%)	1,442 (79.6%)	3 (0.2%)	251 (13.9%)	12 (0.7%)	2 (0.1%)	8 (0.4%)	93 (5.1%)
Portion of Haines Borough Outside City of Haines	581 (100%)	532 (91.6%)	0 (0.0%)	24 (4.1%)	5 (0.9%)	0 (0.0%)	2 (0.3%)	18 (3.1%)
Total – Haines Borough	2,392 (100%)	1,974 82.5%	3 (0.1%)	275 (11.5%)	17 (0.7%)	2 (0.1%)	10 (0.4%)	111 (4.7%)

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 1 member elected at-large by areawide voters).

As is shown in Figure 30, 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. For that reason, areawide representation might be preferred by some. However, DCED finds no evidence to conclude that the alternative of district representation would abridge the rights of minority voters, particularly since the current form of representation provides for a majority of the members of the Haines Borough Assembly to be elected on the basis of districts.

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 empha-

sized the fact that Article X, § 1 of Alaska's Constitution encourages consolidation of local governments. Therefore, the Commission concluded that the elimination of elective city council positions is not pertinent with regard to this standard.

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 earlier, 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.

••••• c. Conclusion Regarding the Civil and Political Rights Standards.

Given the foregoing, DCED concludes 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. DCED concludes further that the proposed consolida-

tion 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 by the proposal to consolidate the City of Haines and the Haines 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 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 occur 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 af-

fectured 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 Haines Consolidation Proposal.

a. Presumptions that the standards are met.

(i) The Local Boundary Commission concluded that the standards regarding the transition plan were met in 1998.

The Commission concluded as follows regarding the Haines consolidation proposal initiated three years ago:⁶⁷

The Commission finds that the 31-page transition plan prepared by the Haines Borough and the City of Haines provides an excellent blueprint for transition to home rule borough government. The plan offers evidence that appropriate local government officials participated in the development of the plan. It also provides detailed explanations about the effects of consolidation. Further, the transition plan sets out a schedule for integration of assets, powers and duties of

the two existing local governments. It also provides for a detailed plan for the integration of debts of the City of Haines and the Haines Borough.

The transition provisions in the current Petition are very similar to those contained in the 1998 proposal. The similarity and 1998 LBC determination create a strong presumption that this standard is met.

b. Evidence in the Current Proceeding Demonstrates Satisfaction of the 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).

The transition plan, in conjunction with other elements of the Petition, clearly demonstrates 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 transition plan anticipates that the proposition for consolidation will be placed before the voters on October 2, 2001. However,

if the Commission approves the Petition, it cannot be stated with certainty that the election will be held on that date. In fact, given all of the procedural steps that have yet to be undertaken in this proceeding, it may not be possible to conduct the election on that date. The Director of the Division of Elections will set the election in accordance with AS 29.06.140(a).

The transition plan also speculates that if the Commission and voters approve consolidation, the second election required by AS 29.06.140(c) for the election of a new mayor, assembly, and school board will be held by December 2, 2002. The Director of Elections will also schedule the second election if one is held in this case. The date of the second election must be set within ten days of the certification of the results of the first election. The second election itself must be held sixty to ninety days from the date of the order of the election. Thus, any second election would be held within approximately two to three months of the certification of the results of the first election.

⁶⁷ 1998 Haines Consolidation Decision, page 14.

The transition plan included with the Petition 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. These are the (1) Letnikof Subdivision Road Maintenance Service Area, (2) Riverview Drive Road Maintenance Service Area, and (3) Solid Waste Management Service Area. The first two service areas listed would remain in existence following consolidation. However, the Petitioner intends that solid waste management would be an areawide power of the consolidated borough and that the Solid Waste Management Service Area would be dissolved upon consolidation. DCED recommends that the Petition be amended to address the inadvertent omissions.

Section A of the transition plan indicates that current and former officials of the City of Haines and the Haines were consulted in the preparation of the transition plan. They include the Haines Borough Mayor, former Haines Borough Clerk, current Haines Borough Clerk,

Haines Borough Assessor/Land Manager, Haines Borough Planner, Haines Borough School Superintendent, Haines City Mayor, former Haines City Mayor, Haines City Administrator, former Haines City Administrator, Haines City Clerk, Haines City Treasurer, former Haines City Treasurer, and former Haines City Police Chief.

The current transition plan provides detailed explanations about the effects of consolidation. Further, it sets out a schedule for integration of assets, powers and duties of the two existing local governments.

Section I of the transition plan provides details for the integration of debts. It notes that the Haines Borough has no long-term debt outside of those obligations associated with a number of local improvement districts. Long-term debts of the City of Haines listed in the Petition and the City's Fiscal Year 2000 audit consist of the following:

1989 Water/Sewer Refunding Bonds. The City issued refunding bonds in 1989 in the amount of \$480,000 due in annual installments of \$15,000 to \$40,000 plus interest at varying rates from 7.3% to 7.9% until maturity in 2009. Bond proceeds were used to retire the City's 1974 bonds issues for water and sewer utility construction. The principal and interest on these bonds is currently paid from the 1.5% City sales tax dedicated to capital improvements. The Fiscal Year 2000 payment of principal and interest on these bonds amounted to \$48,638, or 9.4% of the \$515,422 proceeds from the 1.5% City sales tax for capital improvements during Fiscal Year 2000. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$275,000.



Water treatment plant located in the City of Haines.

Port Chilkoot Dock General Obligation Bonds.

The City issued general obligation bonds in 1995 in the amount of \$1,500,000 due in annual installments of \$50,000 to \$125,000 plus interest at varying rates from 4.5% to 5.5% until maturity in

2015. Bond proceeds were used for capital improvements to the Port Chilkoot Dock. The principal and interest on these bonds is currently paid from the 1.5% City sales tax dedicated to capital improvements and the 1% City sales tax dedicated for economic development and tourism. The Fiscal Year 2000 payment of principal and interest on these bonds amounted to \$129,608. That figure represents 15.1% of the proceeds of the 2.5% sales taxes from which the debt payments are made. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$1,300,000.



Port Chilkoot dock in Haines. Source: Alaska Office of Tourism.

Highland Estates Special Assessment Bonds.

The City issued special assessment bonds in 1986 in the amount of \$200,000 due in annual installments of \$3,300 plus interest at 9.625% until maturity in 2007. The principal and interest on these bonds is paid from proceeds through local improvement district assessments on the property owners. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$13,000.

Water System Revenue Bonds. The City issued water utility revenue bonds in 1993 in the amount of \$450,000. The principal and interest on these bonds is currently paid from the

City's Water Revenue Fund. The Fiscal Year 2000 balance due on these bonds was \$330,720.

Sewer System Revenue Bonds. The City issued sewer utility revenue bonds in the amount of \$1,700,000. The principal and interest on these bonds is currently paid from the City's Sewer Revenue Fund. The Fiscal Year 2000 balance due on these bonds was \$1,633,492.

Drinking Water Fund Loan. The Petition indicates that the City has borrowed \$150,000 to date from the Alaska Department of Environmental Conservation Drinking Water Loan Fund. The proceeds were

used in the construction of a 630,000-gallon water tank. The loan will be repaid through the Water Utility Enterprise Fund.

The Respondent's representative asserted on pages 4-5 of the Haines Borough's Reply Brief that "current City finances are in disarray" and that there has been "a pattern of budget problems and possible misrepresentations over the years by the City." The Respondent's representative also states, "We feel that because of the City's debt load and fiscal mistakes in the past that this petition is an attempt [to] obtain borough resources to pay down the City's debt."

The City of Haines responded to the assertions as follows in its Reply Brief (p. 3):

The City of Haines has an annual audit of its finances. While every government has its challenges (as the Borough has found out with their own tax software), the City of Haines is meeting those challenges and has met all accounting standards required. The City's General Fund Balance as of completion of the June 30, 2000 audit, was \$1,971,639. The City's financial position is sound. The Borough is misguided in its impression of their "resources" being used to pay down City debt. Under the pro-

posed Charter, use of the permanent fund for City debt would not be allowed. In fact, the Borough's permanent fund is better protected under the Proposed Charter than it is now.

DCED considers the Borough's assertion that the pending Petition is "an attempt [to] obtain borough resources to pay down the City's debt" to be unfounded and provocative.

The Respondent's Representative is perhaps unaware 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 previously noted 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).

Since the Highland Estates Special Assessment Bonds are paid by assessments on property in the Highland Estates Local Improvement District, there is no basis for suggesting that any property other than that within the Highland Estates Local Improvement District will be involved in the payment of the \$13,000 principal and interest for that local improvement district.

The only remaining long-term debt of the City of Haines is the \$1,300,000 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.

.....
c. Conclusion Regarding the Transition Plan Standards.

DCED considers the transition plan in the Petition and the transitional measures in the Charter to offer an excellent guide for the transition to a consolidated borough government. As such, DCED concludes that the standards relating to transition set forth in

3 AAC 110.900(a)-(d) are satisfied with respect to the pending Petition. Again, assertions that the consolidation proposal is an effort to use resources of the Haines Borough to pay debts of the City of Haines are unfounded.

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 (Article X, Alaska's constitutional article on local government) is to provide for maximum local self-government."

2. Application of the Standards to the Haines Consolidation Proposal.

.....
a. Presumptions that the standards are met.

(i) The maximum local self-government standard was in place for nine years prior to the creation of the Haines Borough.

The provision of Alaska's Constitution relating to maximum local self-government has been in place

since 1959. The incorporation of the Haines Borough in 1968 and boundary changes to the Borough in 1975 and 1978 warrant the presumption that those actions were consistent with the constitutional principle at issue.

(ii) The Haines Borough and City of Haines asserted the standard was met in 1998.

Both governing bodies formally stated in 1998 that "consolidation of the third class Haines Borough and the first class City of Haines into a single home rule borough will promote maximum local self-government."⁶⁸

⁶⁸ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.



Port Chilkoot in Haines. Source: Alaska Office of Tourism.

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

The affirmation by the Assembly of the Haines Borough and the Council of the City of Haines three years ago reinforces the validity of the presumption that the maximum local self-government standard is satisfied.

(iii) The Local Boundary Commission concluded that the standard was met in 1998.

Three years ago, the Commission concluded as follows concerning the constitutional principle of maximum local self-government as it relates to consolidation of local governments in Haines:⁶⁹

... consolidation of the City of Haines and the Haines Borough as a single *home rule* borough will promote maximum local self-government. For that reason, the Commission concludes that the consolidation of local governments in Haines is strongly favored by Article X, Section 1 of Alaska's constitution.

• • • • •
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

As a general rule, maximum local self-government in Alaska is achieved first and foremost through the extension of city or borough government to an unincorporated area. Doing so establishes a political and a

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, resi-

⁶⁹ 1998 Haines Consolidation Decision, page 3.



Local Government Committee meeting during the Constitutional Convention in 1954. Source: Anchorage Museum of History & Arts, Steve McCutcheon photographer.

dents 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 has been characterized by the Local Boundary Commission as an action that 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-govern-

ment. However, the Commission concluded in the recent 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's Representative wrote on behalf of the Haines Borough that "consolidation does not comply with the requirement for 'maximum local self-government.'" The Borough links 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 in Ketchikan. The issue of constitutional policies concerning cities versus service areas is addressed as a separate standard in Section K of this chapter.

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 achieved under the pending consolidation proposal.

••••• c. **Conclusion Regarding the Maximum Local Self- Government Standards.**

Based on the foregoing facts, DCED concludes that the Petition meets the maximum local self-government standards of Article X, § 1 because it provides the kind of local government

that has adequate flexibility to serve the needs of the residents of the greater Haines area in an efficient and effective manner.

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 Haines Consolidation Proposal.

••••• a. Presumptions that the standards are met.

(i) The Haines Borough and City of Haines asserted the standards were met in 1998.

The Haines Borough Assembly and the Haines City Council both stated in 1998 that "consolidation of the third class Haines Borough and the first class

City of Haines into a single home rule borough will promote . . . a minimum of local government units." ⁷⁰

The proclamation by the Haines Borough Assembly and the Haines City Council in 1998 establishes a presumption that the minimum local governments principle is served by the proposal.

(ii) The Local Boundary Commission concluded that the standards were met in 1998.

Three years ago, the Local Boundary Commission concluded as follows regarding the minimum of local government units principle:⁷¹

Consolidation of the local governments in Haines will: (1) reduce the number of municipal corporations within the boundaries of the Haines Borough by 50%, (2) achieve 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) remove the limitation on the Haines Borough that new services can only be provided on a service area basis. Given these circumstances, the Local Boundary Commission concludes that consolidation is strongly supported

by the principle in Article X, Section 1 of Alaska's constitution favoring a minimum of local government units.

••••• b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

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.)

⁷⁰ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁷¹ 1998 Haines Consolidation Decision, page 5.

The Haines Borough argues that “Merely changing the form of the City to a service area does not reduce the number of local government units or comply with Article X, Section 1 of the Alaska Constitution.”

However, 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.

The Haines Borough’s argument that the constitutional policy of a minimum of local government units can be met only if there is a net reduction in the number of local government units (again, including service areas) was unmistakably rejected in the recent Ketchikan consolidation proceeding. In that case, the number of local government units would actually increase if the voters approve consolidation. The

Ketchikan proposal 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).

Constitutional expert Vic Fischer was retained by the Ketchikan Gateway Borough to review the pending 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.*”

What was relevant to Mr. Fischer and to the Local Boundary Commission in the Ketchikan proceeding was that the Ketchikan petition 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 applies here.

Moreover, the Haines consolidation proposal results in a significant net decrease in the 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, Medi-



Victor Fischer, former constitutional convention member and Alaska local government expert.

cal Service Area, Mud Bay Land Use Service Area, Lutak Land Use Service Area, and the Solid Waste Management Service Area). The consolidation proposal would create two new local government units (City and Borough of Haines and the Townsite Service Area). Arithmetically, the consolidation proposal decreases the number of local government units serving the greater Haines area by five.

It is also noteworthy that the Local Boundary Commission found in the recent proceeding 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. The Local Boundary Commission also 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.”

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].)

••••• Conclusion Regarding the Minimum of Local Government Units Standard.

Based on the foregoing facts, DCED 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 Haines Consolidation Proposal.

..... a. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

This matter was not an issue in the 1998 consolidation proposal. However, in the current proceeding, the Haines Borough argues that Alaska's Constitution (Article X, § 5) and State statutes (AS 29.35.450[b]) create a preference for a city government over a service area.

The Petition, in effect, proposes to dissolve the City of Haines and reconstitute it as the Townsite Service Area, a service area of the consolidated borough government.

On its face, Article X, § 5 of the Constitution and AS 29.35.450(b) seem to suggest a preference for not creating 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 found in the recent cases involving consolidation in Ketchikan and Fairbanks 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 each of the proposed consolidated boroughs. Moreover, the Commission found in both cases 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 Ketchikan and Fairbanks consolidation proposals that both advanced the minimum of local government units clause in Article X, § 1 of Alaska's Constitution.

..... b. Conclusion Whether a Constitutional Preference Exists for a City Government Over a Service Area.

Based on the foregoing facts, DCED concludes that there is no constitutional preference for a city government over a service area when it comes to a municipal consolidation. DCED concludes further that the Haines consolidation pro-

posal serves 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 the consolidation proposal, AS 29.06.130(a) requires the Local Boundary Commission to determine that the proposal serves the "best interests of the state".

DCED views the "best interests of the state" to mean the broad policy benefit to the citizens of Alaska. In this case, "the state" does not refer to the corporation, the State of Alaska.

In this context, the best interests of the state is a concept applied by the Local Boundary Commission on a case-by-case basis. A determination of the best interests of the state is substantially guided by the applicable provisions of the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code. It reflects the exigencies of any petition as is necessary to develop appropriate local

government boundaries which, in turn, serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests which the Local Boundary Commission, in its discretion, considers to be relevant.

The Commission has proposed the following regulations interpreting and implementing the best interests of the state standard.

Proposed 3 AAC 110.065
BEST INTERESTS OF
STATE. In determining
whether incorporation of a
borough is in the best inter-
ests of the state under AS
29.05.100(a), the commis-
sion will, in its discretion,
consider relevant factors,
including whether incorpora-
tion

(1) promotes maxi-
mum local self-govern-
ment;

(2) promotes a mini-
mum number of local gov-
ernment units;

(3) will relieve the
state government of the re-
sponsibility of providing lo-
cal services; and

(4) is reasonably likely
to expose the state govern-
ment to unusual and sub-
stantial risks as the pro-
spective successor to the
borough in the event of its
dissolution.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) The Haines Borough
and City of Haines asserted
that the 1998 proposal
served the best interests of
the state and others.

The Haines Borough
Assembly and the Haines
City Council both stated in
1998 that “consolidation of
the Haines Borough and the
City of Haines will serve the
balanced best interests of
the State of Alaska, the
territory proposed for con-
solidation, and the munici-
pal governments to be
consolidated into a single
home rule borough.”⁷²

The declaration by the
Borough Assembly and the
Haines City Council in 1998
establishes a presumption
that consolidation serves the
broad public interests.

..... b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The City of Haines states
in its Petition that since its
proposal meets all of the
other standards regarding
consolidation, it also meets

the best interests standard.
In contrast, the responsive
brief of the Haines Borough
asserts that, “We feel the
proposed consolidation is
contrary to the best inter-
ests of the Borough, the
City, and the residents.”

DCED concluded earlier
in this chapter that the
Haines consolidation pro-
posal serves the maximum
local self-government clause
in Article X, § 1 of Alaska’s
Constitution. Moreover,
DCED concluded that the
Haines consolidation pro-
posal fulfills the minimum
of local governments prin-
ciple set out in Article X, § 1
of the Constitution. Addi-
tionally, DCED concluded
that the consolidation
proposal serves the prin-
ciples relating to service
areas set out in Article X, § 5
of the Constitution. Thus,
the consolidation proposal is
beneficial to the interests of
the State.

In addition to the consti-
tutional principles ad-
dressed above, it is relevant
to note with regard to this
standard that consolidation
of the City of Haines and

⁷² Haines Borough
Resolution # 442 and City of
Haines Resolution No. 97/98
– 30.

the Haines Borough would 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. (See Appendix E for a history of the incorporation of the Haines Borough.) In 1985, however, the legislature precluded the formation of new third class boroughs. For example, AS 29.06.090(a) states (emphasis added):

Two or more municipalities may merge or consolidate to form a single general law or home rule municipality, except a third class borough may not be formed through merger or consolidation.

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 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.

From DCED's perspective, the following editorial from the January 19, 2001 edition of the *Chilkat Valley News* reflects the importance of areawide planning capability in the Haines area.

If you're interested in the way land is used in the Chilkat Valley, speak now or forever hold your peace.

Six separate but related planning efforts are under way. To work, they'll need

to incorporate comments from a broad spectrum of residents that accurately represent community sentiment.

In review, the planning projects are: rewriting City of Haines land use code, developing a plan for the Chilkoot River Corridor, writing a tourism plan, creating a city waterfront public use plan, reviewing uses and land designations on Department of Natural Resources property and rewriting the Alaska Chilkat Bald Eagle Preserve management plan.

Although interrelated, the plans are moving ahead separately and to avoid developments that are contradictory or counterproductive, some central oversight may be necessary.

Ideally, the plans will provide a blueprint for using the valley and sharing it in a fair and friendly manner. But for that to happen, residents have to participate in their creation, then abide by the guidelines they establish.

As noted previously, approximately 85% of Haines Borough residents already receive planning, platting, and land use regulation services from a local government. However, it is carried out within three different 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 an excessively liberal expansion of the definition of “education powers” of a third class borough. For example, under its areawide “education powers”, the Haines Borough operates the Haines Public Library, the Sheldon museum, and the Chilkat Center for the Performing Arts.

Over time, the concept of a third class borough as a school district with taxing powers has changed. Today, a third class borough is authorized to exercise one

non-areawide power (hazardous substance control under AS 29.35.220[e]). It may also exercise the full range of municipal services on a service area basis (AS 29.35.220[d]). The Respondent’s Representative commented in the Haines Borough’s Responsive Brief as follows regarding the contemporary functions of the Haines Borough:

The Borough provides many local government services. These include education, taxation, hazardous substances, library services, museum, elections, and community youth development areawide. Solid waste management, planning, platting and land use regulation, fire service, emergency medical service, road maintenance, docks & harbors and local improvement districts, and disaster emergency services are provided by service area.

The City of Haines offers the following comments in its Reply Brief regarding the capabilities of the third class Haines Borough:

. . . there comes a time where such a classification can be “outgrown” and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfac-

tion with the Third Class Borough in October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

• • • • • c. **Conclusion Regarding the Best Interests Standards.**

Based on the foregoing facts, DCED 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.

M. Other Considerations

As noted in Chapter 1, the Local Boundary Commission has the discretion to approve or deny a petition even if it determines that the proposal meets all applicable standards. This discretion reflects the fact that the Commission was, in the words of the Alaska Supreme Court, created under Alaska’s Constitution to “undertake a broad inquiry into the desirability

of creating a political subdivision.” (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 97 [Alaska 1974]) The Supreme Court noted further that the work of the Commission “involves broad judgments of political and social policy.” (*Ibid.*, p 98)

Of course, the Commission must have a rational and reasonable basis for whatever action it takes on the pending Petition. If the Commission concurs with DCED’s assessment in Sections B – L of this chapter that the pending Haines consolidation proposal meets the applicable standards, the Petition is likely to be approved unless the Commission finds a clear and compelling basis rooted in broad public policy interests to reject the proposal.

This section of the report examines issues and concerns raised by the Respondent and correspondents that have not been addressed under the preceding examination of the standards. It gauges whether there are other relevant factors that the Local Boundary Commission should consider in this proceeding.

1. Comments from the Respondent and correspondents.

..... a. Perception that consolidation means “more government.”

Louis Nelson wrote a one-page letter concerning the consolidation proposal on February 5, 2001. Nine others signed the letter. The letter predicts that consolidation will be rejected by the voters because it promotes “too much more big government” and that it will result in “more costs, more taxes, and more control on people.” The letter indicates that “we seem to be losing our democracy.” It states that “We need less government and more education.”

Mr. Nelson’s letter also makes reference to Haines Borough Resolution # 512 adopted December 19, 2000 in opposition to consolidation. That resolution was addressed in the Executive Summary. Additionally, Mr. Nelson’s letter included a copy of a form letter from the Center for Arts in the Basic Curriculum, headquartered in Washington, D.C. The form letter stresses the

benefit of music in the core curriculum of schools.

The City of Haines responded as follows to Mr. Nelson’s letter in its Reply Brief:

Mr. Nelson fears “too much more big government”. To the contrary, this petition will streamline many governmental functions and eliminate some units altogether. The consolidated government will also separate the school board from the legislative body. This could improve responsiveness regarding his desire to see more music teachers in the schools.

Mr. Nelson and the others who signed the February 5th letter perceive that consolidation means an expansion of government. In contrast, the Petitioner asserts that consolidation will streamline many governmental functions and eliminate some units altogether. Both are correct in a sense.

As indicated in Section A of Chapter 1, consolidation would bring about a number of changes in local government. For example, the consolidated borough government would extend planning, platting, and land use regulation to that 15% of the Haines Borough popula-

tion presently outside the City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area. Some segment of that 15% of the population may perceive the change as “more government” in the sense that consolidation would extend certain local governmental functions to areas where such services have not been previously provided.

For others, however, the change in planning can be legitimately perceived as “less government.” If consolidation occurs, planning would be provided on an areawide basis by a single entity. In contrast, local planning is currently delivered on a piecemeal basis by multiple governmental units.⁷³

In a sense, the proposed extension of planning and other functions to those areas of the Haines Borough presently outside any local planning jurisdiction is analogous to the extension of local government to an unincorporated area as

discussed regarding the maximum local self-government principles. Such would establish a political and a legal system that, to the maximum extent possible, allows local residents the flexibility to choose an appropriate structure for planning, platting, and land use regulation so they can manage local affairs in the manner they deem appropriate.

State law provides tremendous flexibility and encourages creativity on the part of local residents as to the manner in which they exercise local planning and other responsibilities. This is particularly the case with home rule local governments such as the proposed City and Borough of Haines.

For the most part, however, the changes brought about by the pending consolidation Petition would be identical to those proposed in 1998. Both the Haines Borough and the City of Haines viewed the 1998 proposal as a way to provide more efficient and effective

local government. Readers are encouraged to review the characteristics ascribed to the 1998 proposal by the Haines Borough and the City of Haines summarized in Figure 3 of the Executive Summary.

•••••
b. Lack of a joint City-Borough consolidation effort.

Ron Jackson wrote on February 12, 2001 that he believes that there may be advantages to combining some aspects of local government. However, Mr. Jackson does not support a proposal initiated solely by the City of Haines. Robert and Margaret Andrews wrote on February 27 to express concern that the pending consolidation Petition is “completely unilateral” and that the consolidation efforts “lack the crucial elements of cooperation, camaraderie and trust, without which, little of consequence can be accomplished.” Additionally, Laurie Dadourian states in her March 2, 2001 letter

⁷³ Planning, platting, and land use regulation in the Haines Borough is currently undertaken by or on behalf of three different local government units –City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area. Additionally, the State of Alaska has planning responsibilities in the area of the Borough outside those three units. For example, under AS 40.15.070(b), the State of Alaska is the platting authority in all areas of the Haines Borough outside the City of Haines, the Mud Bay Land Use Service Area, and the Lutak Land Use Service Area.

that, “I am strongly against consolidation the way the city is pushing for it. There are other alternatives that much better suit this community and I think it’s well worth the wait to do this for the good of all Borough and City residents.”

The City responds in its Reply Brief that the law allows it to independently petition for consolidation.

The City is correct that State law permits a single municipal government to petition for consolidation. In fact, unilateral petitions to the Local Boundary Commission are the custom. Indeed, DCED staff who have served the Commission since 1980 recall the 1998 Haines consolidation petition as the only joint petition received by the Commission in the past 21 years.

Additionally, for those consolidation critics who assert that unification is a superior process, it is fitting to note that unification may also be initiated unilaterally by a borough assembly.

Lastly, it is noted that the Haines Borough itself has filed unilateral petitions with the Local Boundary Commission. Those petitions resulted in annexations

to the Haines Borough in 1975 and 1978. The issue of prior annexations by the Haines Borough is addressed later in this section of the report (see subsection M-1-l, “Perception that ‘the City’ is deceitful, scheming and unjust”.)

All of this notwithstanding, DCED believes that it would be ideal if the pending Petition were a joint effort of the Haines Borough and the City of Haines.

Opposition to the proposal by the Borough, however, should not preclude the City of Haines from bringing forward a proposal that City officials believe will serve the best interests of all residents in the Haines Borough. There is ample opportunity during the remaining steps in the consolidation process to address any legitimate concerns of the Haines Borough.

••••• c. Perceptions about the manner in which the Petition was prepared.

Margaret Piggott wrote on March 4, 2001 indicating that she is strongly opposed to consolidation. She expresses resentment over “the way this has been pushed over us by City

councilors who do not represent me.” She also expresses the view that there has been little public input on the proposal. Ms. Piggott seems to regard the current Petition as being wholly unrelated to the 1998 proposal in that she also notes in her letter that “We voted on this just a short time ago *after a lot of work was done on consolidation, with many open forums.*” (Emphasis added)

Robert and Margaret Andrews also comment on this matter. Their letter describes the pending consolidation effort as “rushed and haphazard.” Scott Carey expressed the view in his March 9, 2001 letter that the current Petition was prepared with “little or no public debate – unlike the first effort – and seems to be driven by the personal agenda of a few people on the Haines city council.” Michael D. Ward also indicates in a letter received March 9, 2001, that he was a supporter of consolidation in the past, but “After watching Mayor Otis and the council run roughshod over the community, [he does] not support consolidation.” Lastly, Mr. Weishahn comments on this matter in his letter of March 5, 2001 as follows:

There is little respect for the city's slipshod consolidation petition and its continued efforts, not unlike the past repeated efforts of would-be capital movers on the state level...to vote and revote when consolidation has been voted down by voters previously. What part of NO does the city not understand?

The City stresses in its Reply Brief, however, that the current Petition is similar in most respects to the 1998 proposal prepared jointly by the Haines Borough and the City of Haines.

The City takes the view that the current Petition is an extension of the 1998 proposal. In that respect, the City states that when voters consider the pending consolidation proposal it will represent the "culmination of over 3 years of public discourse and debate."

The City also emphasizes that consolidation cannot be forced on residents since it requires approval by Borough voters areawide.

d. Solid waste litigation.

Robert and Margaret Andrews express the view that the City of Haines went "after the 'deep pockets' [of the Haines Borough]" in the solid waste management litigation. Additionally, Michael Ward and others also convey critical comments about the manner in which the City of Haines dealt with the previously noted solid waste litigation.

Whether the dispute between Haines Sanitation, Inc., and the City of Haines should have been resolved without bringing the Haines Borough into the litigation is a matter best left to the judgment of local officials and citizens. However, assertions that the City of Haines went after the deep pockets of the Haines Borough appear unfounded.

From a public policy standpoint, solid waste management seems to be a legitimate areawide concern rather than a matter of interest limited strictly to

the City of Haines. Moreover, valid questions existed at the time the litigation was filed as to the respective roles of the City of Haines and the Haines Borough regarding solid waste management. Approximately three months before Haines Sanitation initiated litigation against the City of Haines, the Haines Borough had created the Solid Waste Management Service Area encompassing nearly all of the Haines Borough, including the City of Haines.⁷⁴ State law (AS 29.35.330[d]) provides that:

If a majority of the votes cast on the question of adding . . . a power to be exercised in a service area in a third class borough if favorable, the borough shall assume the added power within 30 days after certification of the election results. (emphasis added)

Legitimate questions existed at the time whether the creation of the Solid Waste Management Service Area legally obligated the Borough to assume pre-existing waste management contractual obligations between the City of Haines and Haines Sanitation.⁷⁵ The Superior Court later determined that the Haines Borough did not have such an obligation. However, the Court also recognized that

⁷⁴ The Haines Borough Solid Waste Management Service Area was created by Ordinance Number 99-18 on November 16, 1999. It encompasses all of the Haines Borough except one square mile in the Katzeihin River drainage

⁷⁵ See March 21, 2000 memorandum from Simpson, Tillinghast, Sorensen & Lorensen regarding basis for asserting that the Haines Borough had a legal responsibility to assume solid waste management functions of the City of Haines.

other key issues involving the respective roles of the City and Borough regarding solid waste were unresolved. (See *Haines Sanitation, Inc., v. City of Haines, et al.*, Order Denying Motion to Dismiss Third-Party Complaint, 1JU-00-361 CI.) Ultimately, the City of Haines settled the matter out of court.⁷⁶

DCED recognizes that the solid waste litigation is the ostensible reason that relations between the City of Haines and the Haines Borough seem to have become increasingly strained. DCED further recognizes that chances for a smooth and successful consolidation would likely be enhanced if both governments supported consolidation. However, unfortunately, conflicts between city and borough governments are often present throughout Alaska. Indeed, conflicts between local governments are typically listed among the fundamental reasons for consolidation.

.....
e. Perceived motives for the proposal.

A few of the consolidation critics suggest that the consolidation Petition is motivated by financial considerations designed to benefit City residents.

Robert and Margaret Andrews indicate that the “City of Haines seems to have some grand plan that includes the resources of the Borough of Haines.” Margaret Piggott states that she feels “strongly that the reason for a united government is to tax the valley residents to enrich the City.” Richmond W. Tolles states in his March 6, 2001 letter that, “I do not believe that this consolidation will do any of the residents, city or rural any good, the only very apparent thing it will clear up is the [city’s] debt.” Carolyn Weishahn states in her March 9, 2001 letter that, “This latest attempt at consolidation clearly points to a power play by the city to gain access to the borough assets and a broader tax base to fund its projects.”

To the extent that those comments imply that City officials are scheming to somehow take unfair advantage of the Borough residents outside the City of

Haines, DCED considers such comments to be unfounded. The Representative of the Respondent Haines Borough made similar assertions that were dispelled in Section H of this Chapter of the report. Such concerns are addressed further in Section M-1-l.

.....
f. Repeated efforts to consolidate.

The letter from Robert and Margaret Andrews indicates that there should be a limit on the number of times that a consolidation proposal may come forward. Ms. Piggott also expressed alarm “at these constant attempts to unify the City and Borough.” She indicates that, “. . . it’s beginning to look as if we continue to vote on consolidation until people vote ‘yes.’ Then the issue will go away.”

As also noted earlier, there are indeed limits on the resubmission of consolidation proposals. The

⁷⁶ The result, it appears, has been the creation of a circumstance in which two local governments now have some ill-defined overlapping jurisdiction for solid waste management in an area of the Haines Borough in which more than three-quarters of the population lives. This seems to be not at all what was intended when the Constitutional Convention delegates wrote in Article X, § 1 of the State Constitution that, “The purpose of this article is to . . . prevent duplication of tax-levying jurisdictions.”

pending Petition fully complies with those limitations.

It is important to keep in mind that nearly as many people voted for consolidation in 1998 as voted against it. The fact that there have been a number of significant changes in circumstances associated with the prospect for consolidation of local governments in Haines since 1998 creates a legitimate basis for further consideration of the proposal. These changes include (1) a substantial increase in the number of residents of the Haines Borough that are now served by two local governments, (2) conflicts between the City of Haines and the Haines Borough, (3) favorable changes to AHFC's rural housing loan program in the context of consolidation, and (4) economic challenges facing the greater Haines area.

•••••
g. Changes in services resulting from consolidation

Ms. Piggott indicates that "I cannot see us getting any extra services, and I fear we will lose representation." Gene Kennedy states in his March 2, 2001 letter that, "I cannot believe I would benefit from services which would become required.

And I believe the tax burden to finance such services would become onerous."

Clearly, there will be changes in the level of services if consolidation occurs. These were carefully outlined in Chapter 1, Section A.

•••••
h. Effects on Assembly representation.

Ms. Piggott, Scott Carey, and others worry that consolidation will bring about City domination of the Assembly and that the Assembly will then disregard the interests of the non-City residents.

If City residents were truly intent on dominating the Borough Assembly and showing indifference or disregard when it comes to the interests of the non-City residents, maintaining the current city-borough structure of local government certainly will do nothing to shelter non-City residents.

As is addressed in Section B of the Executive Summary and also in Section G of Chapter 3, the Haines Borough Assembly is required to take up the issue of apportionment irrespective of the consolidation proceedings.

The current Haines Borough Assembly is clearly malapportioned. Five members of the current Assembly are elected from districts (three from within the City and two from the area outside the City). Based on the 2000 Census population of 2,392, the statistical ideal level of representation is 478 residents for each assembly member elected by district (2,392 divided by 5 equals 478.4).

However, each of the three Assembly members elected from the "City district" represents 604 residents (1,811 divided by 3 equals 603.7). Assembly representation in the City district deviates from the ideal by 126 *more* residents per Assembly member or + 26.4%.

In contrast, the 581 non-City residents of the Haines Borough have the equivalent of one assembly member per 291 residents. Assembly representation in the non-City district deviates from the ideal by 187 *fewer* residents or -39.1%.

The overall deviation between the citizens of the Haines Borough that are under-represented (i.e., those living within the City of Haines) and those citi-

zens of the Haines Borough that are over-represented (i.e., those living outside the City of Haines) amounts to 65.5% (26.4% plus 39.1%).

The Alaska and U.S. Supreme Courts presume that any deviation in excess of 10% violates the equal protection clauses of the respective constitutions. If there is some rational policy to support a slightly smaller deviation, such might be allowed. A deviation in excess of 10% has been allowed only in three instances at the federal level. In each case, the deviation was not excessively greater than the 10% threshold. In the case of the Haines Borough, the deviation amounts to 6.5 times that threshold.

Thus, concerns over apportionment of the assembly are by no means limited to the pending consolidation proposal.

⁷⁷ Mr. Carey alleges that “LBC staff have stated at public meetings in Haines that consolidation will not be cheaper.” LBC staff has no recollection of such statements and believes that there are opportunities for cost savings in a consolidated local government for Haines.

i. Effect on cost of operations of local government.

Ms. Piggott indicates that she does not anticipate cost savings to result from consolidation. Scott Carey also asserts that consolidation will not be cheaper than the current structure.⁷⁷

The City responds to such concerns in its Reply Brief by stating:

The status quo is perhaps the most harmful scenario for Haines. The cost of lost opportunity and inefficiency has been enormous.

j. Opposition to consolidation regardless of variables.

Ron Weishahn wrote that he would oppose consolidation of the City of Haines and the Haines Borough regardless of the following fundamental variables:

- (1) the form of assembly representation (areawide or district representation, although he prefers the latter);
- (2) “whether or not the consolidation Petition was submitted after a careful and exhaustive public involvement process” (which he indicates it was not); and

- (3) “whether or not the city has proven its good faith relationship with the borough in the recent Haines Sanitation lawsuit fiasco” (which he indicates it has not).

The City notes in its Reply Brief that, “Mr. Weishahn admits to being opposed regardless of steps taken to appease his concerns.”

Mr. Weishahn also asserts that consolidation has not been successful in Alaska because it is an “inauthentic attempt for one aspect of a populated segment to dominate and manipulate a less populated governmental segment of a community by allowing, requiring, area-wide voting where the dominant population city centers can disregard the needs of the outlying citizens.” He states further that, “If Haines governments are ever going to be joined at the hip, it must be at the desire of both city and rural residents, wherein a vote so indicates that preference by each would-be segment separately as Unification and not Consolidation promotes.”

Mr. Weishahn expresses the view that the voting procedures associated with consolidation allow one

segment of the population to dominate another. In essence, he finds the concept of majority rule, at least as applied to consolidation, to be objectionable. As is addressed in the Executive Summary, voting procedures for consolidation treat every voter identically – they favor none.

In contrast, the unification voting procedures allow one segment of the population to dominate another. As noted in the Executive Summary, procedures used in unification would theoretically permit roughly 10% of the voters of the Haines Borough to block unification even if the remaining 90% of the voters favored it.

Moreover, as also noted in the Executive Summary, the unification voting procedures make distinctions between certain arbitrary classes of voters, but fail to treat a myriad of other groups in a similar fashion. In the case of Haines, for example, residents of the Mud Bay Land Use Service Area could claim they, too, should have veto power over the majority of the voters in the Borough.

••••• k. Perception that the City of Haines is “apart from” rather than “a part of” the Haines Borough.

Some correspondents seem to lose sight of the fact that the City of Haines is part of the Haines Borough. They appear to disregard the fact that citizens of the City of Haines are full-fledged citizens of the Haines Borough. For example, Mr. Weishahn states as follows:

Governments and the Local Boundary Commission need to learn the lesson taught by business mergers. Good business mergers happen when the majority of shareholders of each separate company approve of the merger. When governments follow that model there is a beneficial enhancement that leads to a cohesive participatory citizenry.

To apply his own analogy to the pending proposal, what Mr. Weishahn actually advocates is that “shareholders” of the City of Haines should be allowed to vote on the “merger”, but that more than three-quarters of the “shareholders” of the Haines Borough should be

blocked from voting on the proposal. Mr. Weishahn wants to limit the right to vote by the Borough “shareholders” to just those 24% who are not also “shareholders” of the City of Haines.⁷⁸

••••• l. Perception that “the City” is deceitful, scheming, and unjust.

A small number of the correspondents assert that the City of Haines is untrustworthy, conniving, and that it initiated the Petition to somehow take unfair advantage of the ‘resources of the Haines Borough.’

Mr. Weishahn states that “it is imperative that the checks and balances of a borough government over and against the often inauthentic and deceptive attitude of the city government ... be promoted for the necessary true efficiency of an ideal that holds the best aspects of the Alaskan Spirit.”

⁷⁸ The 24% of the Borough “shareholders” are those who are not also “shareholders” of the City of Haines (i.e., those who are not City residents).

DCED finds such views to be unsupported by the record.⁷⁹ Perhaps the few critics who exhibit such rancor toward the City fail to perceive that consolidation will actually eliminate the Haines city government altogether. If they do realize such, then it seems that their distrust and antagonism is actually directed, unreasonably so, at the citizens of the City of Haines.

Those who exhibit or promote a “City versus Borough” mindset seem to overlook commonality of interests among all residents of the Haines Borough. The local governmental interests of the citizens of the Haines Borough extend well beyond education and taxation. For

many, those interests likely include public libraries, museums, and cultural facilities centers – none of which may legally be provided by a third class borough on an areawide basis.⁸⁰

Moreover, many citizens of the Haines Borough are likely to consider jobs (economic development), docks, boat harbors, planning, platting, land use regulation, control of hazardous substances, disaster planning, emergency response, emergency medical service, public parks, recreational facilities, cemeteries, and solid waste management as legitimate areawide local governmental interests. Most of those services are or have been provided in the past by the City of Haines.

The pending consolidation Petition provides that all of these functions would become areawide powers of the consolidated borough.

The few critics who express the view that the City is somehow taking advantage of others seem to selectively apply facts to fit their particular view. For example, the heavy preponderance of locally generated areawide revenues of the Haines Borough comes from “the City.” In fact, nearly two-thirds of the Borough’s areawide property tax revenues⁸¹ and approximately 95% of its sales tax revenues⁸² are derived from “the City” – an area comprising less than eight-tenths of one percent of the geographic area of the Haines Borough.

⁷⁹ The assertions are either readily refuted (as was the case with the assertion by the Respondent’s Representative that the City petitioned for consolidation in order to shift its debts to the Borough) or so nebulous as to preclude analysis.

⁸⁰ Relying on a liberal interpretation of the law, the Haines Borough provides such facilities under the guise of its power under AS 29.35.160 to establish, maintain, and operate “a system of public schools on an areawide basis as provided in AS 14.14.060.”

⁸¹ The area within the City of Haines accounted for 63.9% of the assessed value of the Haines Borough in 2000. That figure is approximately two-thirds of all taxable property in the Haines Borough.

⁸² From July 2000 to May of this year, the Borough collected \$565,912 in revenues from its 1.5% sales tax, 4% bed tax, and 4% tour tax. The Haines Borough Clerk roughly estimated on June 14, 2001 that about \$20,000 had been collected during the fiscal year from the Borough’s 4% bed tax and 4% tour tax. That leaves sales tax collections at \$545,912, which is equivalent to \$363,941 per 1% of Borough sales tax levied. During the same time, the Borough collected on behalf of the City of Haines \$1,369,757 from the City’s 4% sales tax levy. That is equivalent to \$342,439 per 1% of City sales tax levied. Since, with very minor exceptions, both local government levy sales taxes on the same items, 94% of the sales tax revenues of the Haines Borough come from sales within the corporate boundaries of the City of Haines.

Any characterization that such circumstances represent 'the Haines Borough taking unfair advantage of City resources' would, of course, be just as unfounded as the allegations leveled against the City of Haines by a few of the consolidation critics. The Haines Borough utilizes the revenues from its areawide property tax and sales taxes for areawide purposes that benefit all of the residents of the Haines Borough, including those living within the City of Haines.

Another example of the selective application of facts by a few of the critics exists with regard to the condemnation of the City both for its recent annexation and for the unilateral nature of the pending consolidation Petition. Critics who disparage the City of Haines for the 1999 legislative review annexation appear oblivious to the fact that the Haines Borough has also annexed areas in the past utilizing the legislative review method initiated by a unilateral petition (as have many of the 162 municipal governments in Alaska).

The Respondent Haines Borough's

Representative recently indicated that the Borough is strongly opposed to legislative review annexation. (See Gustavus Community Association, Meeting Minutes, February 1, 2001). That policy stance appears to be disingenuous, however, since the Haines Borough has undertaken legislative review annexations in the past.

Moreover, the Haines Borough continues today to reap very significant economic benefits for its past unilateral annexation efforts. The extension of the Borough's boundaries in 1975 to include Excursion Inlet and Tongass National Forest lands has resulted in several millions of dollars in national forest receipts, business fisheries tax payments, and property tax revenues for the Haines

Borough. It has enabled the Haines Borough to maintain fundamental services, keep taxes low, and create its permanent fund.

When asked earlier this year by residents of Gustavus, Hoonah, and Pelican why Excursion Inlet shouldn't be detached from the Haines Borough and included in a Icy Straits/Cross Borough, the representative from the Haines Borough offered the terse explanation "Because!"⁸³ (See Gustavus Community Association, Meeting Minutes, February 1, 2001.)

•••••
m. Consolidation does not preclude new cities from forming.

Both Scott Carey and the Haines Borough argue that consolidation does not

⁸³ There has been a long-standing desire on the part of a number of those in Excursion Inlet, Gustavus, Hoonah, and adjacent communities to include Excursion Inlet in an Icy Straits/Cross Sound region borough if one is ever organized. A study of the feasibility of such a borough, funded by the City of Hoonah states:

While a compelling argument can be made that the social, cultural and economic ties between Excursion Inlet and other Glacier Bay Borough communities are much stronger than those between Excursion Inlet and Haines Borough, it is obvious that Haines Borough would mount a fight before the Local Boundary Commission to keep Excursion Inlet within its boundaries.

In February of this year, residents of the Icy Straits/Cross Sound area met in Gustavus to discuss borough formation and annexation.

preclude the formation of new city governments. That is correct. However, contrary to assertions, no structure “guarantees” that there will never be a new city government created within an organized borough, including a unified municipality. As a case in point, Port Alexander was once within the corporate boundaries of the unified City and Borough of Sitka. In 1974, however, Port Alexander was detached from the City and Borough of Sitka and was incorporated as a new city government.

Of course, it is impossible to accurately foresee the long-term nature of communities in the Haines Borough. However, DCED

maintains that consolidation provides far greater flexibility in addressing the long-term local governmental needs of a region as compared to unification.

2. Conclusions regarding the comments of the respondent and correspondents addressed here.

DCED finds no clear and compelling public policy arguments offered by the Respondent or correspondents that would serve as a legitimate basis for denial of the Petition.

N. Overall Conclusions and Recommendations.

In summary, DCED has concluded that the pending Petition for consolidation of the City of Haines and the Haines Borough satisfies all applicable legal standards. Moreover, there are fundamental public policy reasons that favor consolidation of the City of Haines and the Haines Borough.

Accordingly, DCED endorses consolidation of the City of Haines and the Haines Borough. To address technical issues outlined in the Preliminary Report, DCED recommends that the Petition be amended as follows:

1. To remedy inadvertent omissions in some or all appropriate parts of the Petition by recognizing that the Haines Borough currently operates the Solid Waste Management Service Area, Letnikof Subdivision Road Maintenance Service Area, and Riverview Drive Road Maintenance Service Area.
2. To provide that the Letnikof Subdivision Road Maintenance



Aerial view of Haines.

- | | | |
|--|--|---|
| Service Area and Riverview Drive Road Maintenance Service Area will remain in place after consolidation. | tourism promotion to the list of powers to be exercised within the Townsite Service Area. | Following the amendment of the Petition, DCED urges the Commission to approve the Petition and submit the matter to the voters of the Haines Borough for their consideration. |
| 3. To provide that the Solid Waste Management Service Area will be dissolved and solid waste management will become an areawide power of the consolidated borough. | 6. To add public works to the list of powers to be exercised in the Townsite Service Area. | |
| 4. To delete economic development and tourism promotion from the list of areawide powers of the consolidated borough | In addition, DCED recommends that the Commission consider amending the Petition with regard to the composition and apportionment of the assembly of the proposed City and Borough of Haines if the Commission is provided with evidence that there is a compelling public policy basis for doing so. | |
| 5. To add financing of capital improvements, along with economic development and | | |

Appendix A

Key Terms and Acronyms

Unless the context in which the terms and acronyms listed below are used in this report suggests otherwise, they are defined as follows:

“areawide” means the area throughout the existing Haines Borough or the area throughout the proposed City and Borough of Haines;

“Borough” means the Haines Borough, a third class borough incorporated on August 29, 1968, or the proposed City and Borough of Haines;

“City” means the City of Haines, a first class city incorporated in 1910;

“Commission” means the Alaska Local Boundary Commission;

“consolidation” means the concurrent (1) dissolution the Haines Borough and its reconstitution as the City and Borough of Haines, and (2) dissolution of the City of Haines and its reconstitution as the Townsite Service Area;

“correspondents” means the eleven individuals or groups who submitted timely letters to the Local Boundary Commission concerning the consolidation proposal. The correspondents consist of Louis O. Nelson, et al.; Robert A. and Margaret E. Andrews; Margaret H. Piggott; Ron Weishahn; Richmond W. Tolles; Gene Kennedy; Laurie Dadourian; Carolyn Weishahn; Scott Carey; Michael D. Ward; and Ron Jackson.

“DCED” means the Alaska Department of Community and Economic Development;

“general law municipality” means a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first class borough, second class borough, third class borough, first class city, or second class city organized under the laws of the State of Alaska;

“home rule municipality” means a municipal corporation and political subdivision of the State of Alaska that has all legislative powers not prohibited by law or charter; it may be a city or a borough (including a unified municipality) that has adopted a home rule charter;

“Townsite Service Area” means the proposed service area of the City and Borough of Haines comprising 20.9 square miles with boundaries identical to the existing boundaries of the City of Haines.

“LBC” means the Alaska Local Boundary Commission;

“Petition” means the December 20, 2000 proposal for consolidation entitled *Petition by the City of Haines for Consolidation of the City of Haines and the Haines Borough as a Home Rule Borough*;

“Petitioner” means the City of Haines;

“Petitioner’s Representative” means Donald E. Otis, designated representative of the City of Haines for matters relating to the pending consolidation proceedings;

“nonareawide” means the current area of the Haines Borough outside City of Haines;

“Reply Brief” means the reply brief filed by the Petitioner with the Local Boundary Commission pursuant to 3 AAC 110.490 on April 10, 2001, as corrected on April 12, 2001;

“Respondent” means the Haines Borough who gained the status of a respondent by filing a responsive brief.

“Respondent’s Representative” means Daniel L. Turner, Haines Borough Assessor and Land Manager, who signed the Responsive Brief on behalf of the Borough.

“Responsive Brief” means the *Brief of the Haines Borough in Opposition to the Proposed Consolidation* filed by the Haines Borough with the Local Boundary Commission pursuant to 3 AAC 110.480 on March 2, 2001;

“service area” means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided; borough service areas are not local governments, they lack legislative and executive powers; nonetheless, borough service areas are local government *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska’s Constitution;

“State” means the State of Alaska government; and

“territory” means the estimated 2,620 square miles within the current boundaries of the Haines Borough.

Appendix B

Biographical Information About the Current Members of the LBC

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Information about current Commissioners follows.

Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996.



He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission.



She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. She is currently serves as the District 1 representative on the Alaska Municipal League Board of Directors and as Secretary/Treasurer for the Alaska Conference of Mayors. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.

Vacant Seat. On June 30, 2001, Nancy Galstad, who was appointed to the Local Boundary Commission from the Second Judicial District, resigned from the Commission. The appointment of a replacement has not yet been announced by the Governor.

Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.



Appendix C

Labor Force Statistics for the Haines Borough 1996 through April 2001

2001													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
	(r)	(r)	(r)	(p)	Data not available								
Labor Force	1,224	1,247	1,250	1,249									
Employment	1031	1,048	1,076	1,091									
Unemployment	193	199	174	158									
Rate	15.8	16	13.9	12.7									
(r) denotes revised estimate (p) denotes preliminary estimate													

2000													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Labor Force	1,211	1,225	1,247	1,211	1,217	1,234	1,277	1,259	1,226	1,198	1,199	1,200	1,225
Employment	1,002	1,021	1,042	1,064	1,128	1,169	1,232	1,227	1,187	1,107	1,082	1,062	1,110
Unemployment	209	204	205	147	89	65	45	32	39	91	117	138	115
Rate	17.3	16.7	16.4	12.1	7.3	5.3	3.5	2.5	3.2	7.6	9.8	11.5	9.4

1999													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Labor Force	1,200	1,238	1,241	1,256	1,270	1,274	1,309	1,287	1,235	1,225	1,231	1,222	1,249
Employment	1,011	1,020	1,033	1,072	1,140	1,179	1,249	1,234	1,195	1,110	1,078	1,054	1,115
Unemployment	189	218	208	184	130	95	60	53	40	115	153	168	134
Rate	15.8	17.6	16.8	14.6	10.2	7.5	4.6	4.1	3.2	9.4	12.4	13.7	10.7

Continued on next page



Continued from previous page

1998													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Labor Force	1,222	1,203	1,230	1,215	1,238	1,262	1,303	1,303	1,253	1,215	1,193	1,203	1,236
Employment	1,015	1,020	1,052	1,083	1,138	1,170	1,238	1,253	1,190	1,121	1,099	1,064	1,120
Unemployment	207	183	178	132	100	92	65	50	63	94	94	139	116
Rate	16.9	15.2	14.5	10.9	8.1	7.3	5	3.8	5	7.7	7.9	11.6	9.4

1997													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Labor Force	1,255	1,254	1,217	1,199	1,185	1,213	1,235	1,243	1,223	1,167	1,183	1,166	1,212
Employment	983	985	1,011	1,035	1,082	1,114	1,168	1,187	1,142	1,058	1,035	1,016	1,068
Unemployment	272	269	206	164	103	99	67	56	81	109	148	150	144
Rate	21.7	21.5	16.9	13.7	8.7	8.2	5.4	4.5	6.6	9.3	12.5	12.9	11.9

1996													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Labor Force	1,165	1,160	1,174	1,189	1,158	1,172	1,260	1,255	1,216	1,215	1,185	1,203	1,196
Employment	960	964	985	1,037	1,077	1,100	1,174	1,176	1,128	1,051	1,015	1,000	1,056
Unemployment	205	196	189	152	79	72	86	79	88	164	170	203	140
Rate	17.6	16.9	16.1	12.8	6.8	6.1	6.8	6.3	7.2	13.5	14.3	16.9	11.7

Appendix D

1999 Employment and Payroll Data for the Haines Borough

INDUSTRIAL CLASSIFICATION	Haines Borough												YEARLY EARNINGS (\$)	ANNUAL NO EMP	ANNUAL EARN (\$)
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC			
EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP	EMP			
TOTAL INDUSTRIES	803	803	823	801	840	1,050	1,134	1,275	1,450	875	775	887	\$ 23,314,715	848	\$ 2,193
PRIVATE OWNERSHIP	417	400	426	458	734	895	896	1,121	1,225	685	533	492	\$ 17,443,407	899	\$ 2,072
TOTAL GOVERNMENT	386	190	197	195	206	155	148	154	225	215	192	195	\$ 5,871,311	189	\$ 2,583
CONSTRUCTION	10	12	15	23	46	43	96	71	62	68	34	18	\$ 1,875,070	33	\$ 4,164
15 General building contractors	-	-	2	3	4	9	15	28	25	23	8	11	\$ 273,973	12	\$ 1,877
16 Heavy construction contractors, ex building	9	9	11	17	37	26	35	40	34	38	23	4	-	24	-
17 Special trade contractors	1	1	1	2	3	7	3	3	3	5	3	1	-	2	-
MANUFACTURING	8	8	8	7	9	14	46	140	402	30	8	8	\$ 4,434,063	57	\$ 5,511
NONDURABLE GOODS	8	8	8	7	9	14	46	140	402	30	8	8	\$ 4,434,063	57	\$ 5,511
20 Food & kindred products	2	1	1	3	5	10	39	133	394	25	2	2	-	51	-
24 Lumber & wood products	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
27 Printing & publishing	4	4	4	4	4	4	7	7	7	5	8	7	-	5	-
TRANSP., COMM. & UTILITIES	82	80	89	111	139	161	171	173	149	108	106	187	\$ 2,805,863	123	\$ 3,891
41 Local & interurban passenger transit	4	4	6	4	10	11	11	13	9	5	5	4	-	7	-
42 Trucking & warehousing	5	5	5	5	5	5	5	5	5	5	5	5	-	5	-
44 Water transportation	1	1	1	1	1	1	1	1	1	1	1	1	-	1	-
45 Transportation by air	94	51	45	82	74	89	97	91	79	59	59	64	\$ 1,632,177	64	\$ 1,859
47 Transportation services	3	3	6	13	11	9	10	14	11	11	9	3	\$ 130,623	8	\$ 1,244
48 Communication	18	18	18	19	19	19	21	20	17	16	13	14	\$ 644,488	18	\$ 2,583
49 Electric, gas & sanitary services	8	8	8	7	9	10	8	10	9	11	8	7	\$ 269,763	9	\$ 2,545
TOTAL TRADE	107	131	180	184	259	321	338	345	286	268	301	187	\$ 3,788,533	234	\$ 1,390
WHOLESALE TRADE	8	8	9	9	9	9	13	13	13	8	8	7	\$ 303,213	10	\$ 2,837
51 Wholesale trade-nondurable goods	8	8	9	9	9	9	13	13	13	8	8	7	\$ 303,213	10	\$ 2,837
RETAIL TRADE	148	143	151	175	250	312	325	332	273	200	193	160	\$ 3,485,320	224	\$ 1,295
52 Building materials & garden supplies	13	13	14	14	13	22	21	22	16	13	14	16	\$ 312,884	16	\$ 1,637
54 Food stores	51	48	55	50	70	75	84	89	73	72	70	71	\$ 1,007,998	68	\$ 1,235
55 Automotive dealers & service stations	1	1	1	4	4	4	3	3	4	4	4	4	-	3	-
56 Apparel & accessory stores	1	1	1	1	1	1	1	1	1	1	1	1	-	1	-
57 Furniture & home-furnishings stores	1	1	1	1	1	1	2	2	2	2	2	2	-	2	-
58 Eating & drinking places	42	41	40	49	83	113	114	108	89	59	58	48	\$ 917,305	70	\$ 1,155
59 Miscellaneous retail	39	38	39	50	78	85	100	107	96	50	47	49	\$ 1,098,780	65	\$ 1,406
FINANCE, INS. & REAL ESTATE	17	19	23	20	21	22	23	29	29	18	19	20	\$ 519,106	26	\$ 2,145
60 Depository institutions	11	11	11	12	12	14	13	12	13	12	12	11	-	12	-
64 Insurance agents, brokers & service	3	3	3	3	3	3	4	4	4	4	4	4	-	4	-
65 Real estate	3	5	9	5	6	5	6	4	3	2	3	5	\$ 31,287	5	\$ 569
SERVICES	135	129	134	161	257	334	342	372	367	239	171	153	\$ 3,886,143	227	\$ 1,419
70 Hotels & other lodging places	12	11	10	20	40	71	75	70	50	37	31	21	\$ 477,930	40	\$ 1,009
72 Personal services	2	2	2	2	2	2	2	2	2	2	2	2	-	2	-
73 Business services	2	3	1	1	1	1	1	1	1	1	1	1	-	1	-
75 Auto repair, services & parking	14	11	13	10	13	12	11	11	12	16	14	13	\$ 249,391	13	\$ 1,609
78 Motion pictures	7	6	6	5	4	7	8	8	7	7	7	5	-	6	-
79 Amusement & recreation services	23	23	22	23	94	187	182	199	143	82	27	27	\$ 1,460,981	45	\$ 1,434
80 Health services	25	23	25	26	25	26	23	28	28	26	25	23	\$ 840,430	26	\$ 2,711
81 Legal services	1	-	-	-	-	1	-	1	1	1	-	-	-	-	-
83 Social services	16	18	21	18	26	40	6	9	15	18	18	10	\$ 399,731	18	\$ 1,062
86 Membership organizations	26	25	26	27	29	27	31	31	32	29	31	29	\$ 249,526	29	\$ 737
87 Engineering & management services	5	5	5	8	7	8	6	6	6	5	9	7	\$ 190,263	6	\$ 2,471
89 Private households	2	2	2	3	2	2	2	3	3	3	3	3	\$ 24,012	3	\$ 633
Federal Government	11	11	10	11	13	12	12	12	13	11	10	11	\$ 583,737	11	\$ 4,307
State Government	29	25	25	36	40	49	49	48	51	38	29	29	\$ 1,482,731	37	\$ 3,316
Local Government	148	140	162	148	104	94	87	84	101	108	153	159	\$ 3,802,843	140	\$ 3,264

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Appendix E

History of Haines Borough Incorporation and Annexations

While Alaska was a territory, residents of Haines formed a school district with taxing powers known as the Haines Independent School District. Eight other areas of Alaska had also formed independent school districts (Ketchikan, Sitka, Juneau, Kodiak, Kenai, Anchorage, Palmer, and Fairbanks).

Although permitted under Territorial law, independent school districts were not recognized under the Constitution of the State of Alaska, which became effective on January 3, 1959. The Constitution provided that the legislature must enact measures for the transition of independent school districts into governmental forms that were recognized under the Constitution.

Two years later, the legislature adopted the Borough Act of 1961 establishing standards and procedures for borough formation. The Act also provided that independent school districts would be dissolved and their functions integrated into newly formed boroughs by July 1, 1963.

However, when the 1963 Legislature convened, none of the nine independent school districts had been dissolved in favor of borough governments. Less than six months remained before the July 1 deadline for dissolution of independent school districts.

Representative John L. Rader (D-Anchorage) considered the lack of progress on the issue of dissolution of special districts and formation of boroughs to be the “greatest unresolved political problem of the State.” (See *The Metropolitan Experiment in Alaska – a Study of Borough Government*, edited by Ronald C. Cease and Jerome R. Saroff, page 93 [1968].)

Consequently, Representative Rader drafted and introduced House Bill No. 90 extending the deadline for dissolution of independent school districts by one year to July 1, 1964. House Bill No. 90 also provided that nine areas of the state encompassing independent school districts would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs prior to January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90

- | | |
|--|--|
| (1) Anchorage Election District | (6) Sitka Election District |
| (2) Lynn Canal – Icy Straits Election District | (7) Fairbanks – Fort Yukon Election District |
| (3) Ketchikan – Prince of Wales Election District | (8) Juneau Election District |
| (4) Kodiak Election District | (9) Kenai – Cook Inlet Election District. |
| (5) Palmer – Wasilla – Talkeetna Election District | |

The Lynn Canal – Icy Straits Election District was defined in the December 7, 1961 proclamation of the governor as follows:

That part of the mainland, not included in District No. 4,^{E-1} drained by streams flowing into Lynn Canal, Glacier Bay, Icy Strait, Cross Sound, and their tributaries, and the Pacific Ocean, to and including the area drained into Icy Bay to the west; those parts of Admiralty and Chichagof Island drained by streams flowing into Icy Strait, Cross Sound, and their tributaries; and Yakobi, Lemesurier, and Pleasant Islands, and other smaller adjacent islands.

Ultimately, House Bill No. 90 was amended to exclude the Lynn Canal – Icy Straits Election District, apparently in an attempt to win passage. Following the amendment, House Bill No. 90 (commonly referred to as the Mandatory Borough Act) passed by one vote in the Senate. Governor Egan signed House Bill No. 90 into law.

While Haines and other communities in the Lynn Canal – Icy Straits Election District were excluded from the areas required to form boroughs under the Mandatory Borough Act, the general provisions of the new law still required the Haines Independent School District to transition to a constitutionally recognized form of government by July 1, 1964.

In March 1964, the Local Boundary Commission approved a proposal to form a first class borough in Haines. However, voters rejected the proposal. The Haines Independent School District was dissolved on July 1, 1964, in accordance with the general provisions of the Mandatory Borough Act.

In August 1964, the Commissioner of the Alaska Department of Education formed the Haines-Port Chilkoot Special School District under an obscure statutory provision. Apparently disappointed by the action taken by the Commissioner of the Department of Education, the 1966 Legislature repealed authority for such special school districts. Even though it lacked legal authority to carry on, the Haines-Port Chilkoot Special School District continued to operate.

^{E-1} (Footnote by DCED) District No. 4 was the Juneau Election District defined as:

The mainland north of District No. 2 (Wrangell Petersburg) up to and including the area drained by streams flowing into Berners Bay on the north; and that area of Admiralty Island north of District No. 2 and drained by streams flowing into Stephens Passage, Seymour Canal, Lynn Canal, and their tributaries; and including Douglas, Shelter, and Benjamin Islands, and other small adjacent islands.

In the Spring of 1967, the LBC approved a second petition to incorporate a borough in Haines, this time as a second class borough. However, voters also rejected that proposal. In October 1967, the State Attorney General advised the Department of Education to discontinue funding for the Haines-Port Chilkoot Special School District because it had no legal basis.

Following the action by the State Attorney General's office, the City of Haines and second class City of Port Chilkoot each organized city school districts. The State school district served students outside the two cities. Thus, three school districts served a total of 346 students in the Haines area in 1967.

A third proposal to form a borough – again, a second class borough – was prepared shortly after voters rejected the second proposal in October of 1967.

It is particularly noteworthy in the context of the pending consolidation proposal that the record shows that residents of Haines had strong interest in consolidation of the city and prospective borough governments even before the Haines Borough was formed. Specifically, it was reported more than thirty-three years ago that:^{E-2}

The Local Affairs Agency has participated with the citizens in the Haines Area in various community discussions concerning municipal government in the area. . . . There has been considerable discussion of the desirability of dissolving the [City of Haines and the City of Port Chilkoot] and creating a service area within the proposed borough.

Like the two preceding borough proposals, the third proposal to form a borough in Haines was also rejected by the voters.

Subsequently, residents of the Haines area successfully lobbied the legislature to create a new class of borough –essentially a municipal school district with taxing powers. Unlike other organized boroughs, a third class borough has no mandatory areawide planning, platting, and land use regulation powers.

On May 28, 1968, voters in Haines petitioned to incorporate a third class borough. The Local Boundary Commission subsequently approved the proposal. On August 28, 1968, voters in Haines approved incorporation of the Borough by a vote of 180 to 61. The Borough was incorporated following certification of the election results on August 29, 1968.

The original boundaries of the Borough encompassed approximately 2,200 square miles. Klukwan, located about 21 miles north of Haines along the Haines Highway, and the military petroleum distribution facility at Lutak Inlet were excluded from the Borough.

^{E-2} See *Incorporation of the Haines Borough, Report to the Local Boundary Commission on a proposal to incorporate an organized borough in the Haines-Port Chilkoot area*, Local Affairs Agency, page 10 (January 1968).

In 1974, the Haines Borough petitioned for annexation of approximately 420 square miles to the south. The area proposed for annexation encompassed the commercial fish processing facility at Excursion Inlet as well as an estimated 442,354 acres of Tongass National Forest lands.^{E-3} The annexation was approved by the LBC and took effect following review by the Legislature in 1975.

In 1976, the Haines Borough petitioned for annexation of the former military petroleum distribution facility at Lutak Inlet. That annexation proposal was approved by the LBC in 1977 and took effect in 1978 following review by the legislature.

The corporate boundaries of the Haines Borough have remained unchanged since 1978.

^{E-3} The January 1968 Local Affairs Agency's report on the Haines Borough incorporation estimated that there were 474,000 acres of National Forest lands within the area proposed for incorporation. There are currently 916,354 acres of National Forest lands within the Haines Borough according to Community Financial Assistance, DCRA, (Fiscal Year 1998). Thus, it is estimated that the 1975 annexation added 442,354 acres of National Forest lands to the Haines Borough, an increase of 93.3% of such lands within the Borough.

