



Local Boundary Commission

Statement of Decision

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IN THE MATTER OF THE PETITION FOR CONSOLIDATION OF THE CITY OF KETCHIKAN AND THE KETCHIKAN GATEWAY BOROUGH

SECTION I BACKGROUND

As allowed by 3 AAC 110.410(a)(4), the City of Ketchikan petitioned the Local Boundary Commission for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.¹ As proposed by the Petitioner, consolidation would:

1. dissolve the Ketchikan Gateway Borough, a second class borough;
2. dissolve the City of Ketchikan, a home rule city;
3. incorporate the Municipality of Ketchikan, a home rule borough with corporate boundaries identical to those of the existing Ketchikan Gateway Borough;
4. create a 4.4 square mile borough service area, the Ketchikan Service Area, with boundaries encompassing the following:
 - (a) the area within the City of Ketchikan as it existed at the time the Petition was filed,
 - (b) a 0.51 square mile portion of the Shoreline Service Area as it existed at the time the Petition was filed,
 - (c) 27.4 acres in Bear Valley approved for annexation to the City by the Local Boundary Commission on November 17, 2000, and
 - (d) a small parcel of land known as the “JONSEA tract” adjacent to the 27.4 acres approved for annexation on November 17, 2000;
5. create a new 0.41 square mile Shoreline Service Area;²
6. create the Greater Ketchikan EMS Service Area encompassing the following:
 - (a) the Ketchikan Service Area,
 - (b) the new Shoreline Service Area,
 - (c) South Tongass Volunteer Fire Department Service Area,
 - (d) the City of Saxman,
 - (e) Section 25 and a portion of Section 36 of T75S, R91E; CRM, and
 - (f) Section 8 and portions of Sections 17, 18, 19, and 30 of T75S, R92E, CRM;

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

² The Shoreline Service Area existing at the time the Petition was filed was abolished following the annexation of the Shoreline Service Area into the City of Ketchikan on January 1, 2001.

7. restructure municipal powers such that the following would be exercised by the Municipality of Ketchikan on an areawide basis:
 - (a) education,
 - (b) assessment and collection of property, sales, and transient occupancy taxes,
 - (c) platting, planning, and land use regulation,
 - (d) parks and recreation,
 - (e) transportation,
 - (f) animal control,
 - (g) economic development,
 - (h) emergency 911 dispatch,
 - (i) library,
 - (j) museum,
 - (k) civic center,
 - (l) mental health and substance abuse,
 - (m) hospital,
 - (n) public health,
 - (o) cemetery,
 - (p) solid waste disposal, and
 - (q) port and harbors;
8. restructure municipal powers such that the following would be exercised by the Municipality of Ketchikan on a nonareawide basis:
 - (a) wastewater collection, treatment, and discharge, and
 - (b) building code enforcement.

The Petition proposes that the City of Saxman remain in existence and be part of the Municipality of Ketchikan, just as it is now part of the Ketchikan Gateway Borough.

SECTION II

SUMMARY OF PROCEEDINGS

A. Consolidation effort initiated in 1990.

In August 1990, the Greater Ketchikan Chamber of Commerce formed an ad hoc committee to explore the merits of consolidating local governments in Ketchikan. In 1992, the City of Ketchikan and the Ketchikan Gateway Borough solicited and received proposals from consultants to conduct a consolidation study. The study was completed in March 1993. In July 1993, the Ketchikan City Council voted unanimously to initiate a petition for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.

In March 1994, the Ketchikan City Mayor appointed a commission to draft a charter for the proposed consolidated borough. The charter commission met twelve times and completed its work in August 1995. In February 1997, the City of Ketchikan contracted with a consultant to assist in the preparation of elements of the petition. Between 1997 and 1999, the Ketchikan City Council held ten meetings regarding the prospective consolidation proposal, including two joint meetings with the Ketchikan Gateway Borough Assembly. On March 16, 2000, the Ketchikan City Council adopted Resolution No. 00-1972 authorizing the City Manager to complete and file the pending Petition.

B. Petition submitted and accepted for filing.

On May 8, 2000, the City of Ketchikan filed the *Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan to the Municipality of Ketchikan, a Home Rule Borough*, (hereinafter "Petition"). On May 31, 2000, the Alaska Department of Community and Economic Development (hereinafter "DCED") completed its technical review of the form and content of the Petition. DCED accepted the Petition for filing on May 31, 2000.

C. Public notice of filing of the Petition.

Public notice of the filing of the Petition was posted, published, and served by the Petitioner and DCED in accordance with 3 AAC 110.450. Additionally, notice of the filing was provided through the State of Alaska's *Online Public Notice System* and on the Internet web sites maintained by the City of Ketchikan and DCED.³

D. Service of the Petition.

The Petitioner served a copy of the Petition on the Ketchikan Gateway Borough and the City of Saxman as required by 3 AAC 110.460(a). The Petition documents were also made available for public review at the Office of the Ketchikan City Clerk and the Ketchikan Public Library in accordance with 3 AAC 110.460(b).

In addition, abridged versions of the Petition (excluding large maps and publications) were posted on Internet web sites maintained by the City of Ketchikan and DCED.

E. Proof of Notice and Service.

In accordance with 3 AAC 110.470, the Petitioner submitted proof to DCED dated July 18, 2000, that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 – 3 AAC 110.460 had been satisfied.

F. Comments on Petition.

Two timely letters offering comments on the Petition were filed with the Commission.⁴ The timely comments consisted of a one-page letter from Ketchikan resident Diane Raab supporting the Petition and a six-page letter from the Ketchikan Gateway Borough outlining concerns and suggesting possible amendments to the Petition.

The comments were made available for public review at the Ketchikan Public Library and the Office of the Ketchikan City Clerk. In addition, the comments were posted on the Internet web site maintained by DCED.

G. Petitioner's reply brief.

In response to the written comments and as allowed by 3 AAC 110.490, the Petitioner filed a fifteen-page reply brief accompanied by eleven pages of exhibits.⁵ The reply brief was filed on September 12, 2000.

The Petitioner's reply brief was made available for public review at the Ketchikan Public Library, Office of the Ketchikan City Clerk, and through DCED's Internet web site.

H. DCED's Preliminary Report.

On February 5, 2001, DCED released its *Preliminary Report on the Proposal to Consolidate the City of Ketchikan and the Ketchikan Gateway Borough* (hereinafter "Preliminary Report"). The Preliminary Report, which consisted of seventy-seven pages and eight pages of appendices, was prepared in accordance with 3 AAC 110.530.

A copy of the Preliminary Report was provided to fifty-seven individuals. A four-page executive summary of the report was provided to an additional forty-five individuals. The Preliminary Report was also made available for public review at the Ketchikan Public Library,

³ The State's *Online Public Notice System* is found at <<http://notes.state.ak.us/pn/pubnotic.nsf/?Open>>. The City of Ketchikan posted its consolidation materials at <<http://www.city.ketchikan.ak.us/wn/consol/consolp.html>>. DCED posted its consolidation materials at <<http://www.dced.state.ak.us/mra/LBC/lbactivities.htm>>.

⁴ In addition, Timothy E. Staebell wrote a one-page letter on behalf of the Board of Directors of the Ketchikan Gateway Borough Gold Nugget Service Area. Mr. Staebell's letter was critical of the consolidation proposal. The letter was dated August 31, 2000, but was not received until September 5, four days past the deadline.

⁵ The City of Ketchikan's reply brief also addressed the late-filed comments of Mr. Staebell.

Office of the City Clerk, and through DCED's Internet web site. The Chairman of the Commission set March 8, 2001 as the deadline for comments on the Preliminary Report.

I. Comments on Preliminary Report.

Timely comments on DCED's Preliminary Report were received from the following individuals:

1. Tom Fitzgerald, City Administrator, City of Saxman (one-page letter);
2. Peter Gigante, CEO, Cape Fox Corporation (two-page letter);
3. Wilber E. Fisher, resident of the City of Ketchikan (three-page letter);
4. Dan Williams, Mayor, City of Saxman (two-page letter); and
5. Karl R. Amylon, Ketchikan City Manager (one-page letter).

The comments were made available for public review at the Ketchikan Public Library, Office of the Ketchikan City Clerk, and through DCED's Internet web site.

J. DCED's Final Report.

On March 30, 2001, DCED issued its *Final Report on the Proposal to Consolidate the City of Ketchikan and the Ketchikan Gateway Borough* (hereinafter "Final Report"). The Final Report, which consisted of twenty pages and four pages of appendices, was prepared in accordance with 3 AAC 110.530.

The Final Report was distributed to 126 individuals and was also made available for public review at the Ketchikan Public Library, Office of the City Clerk, and on DCED's Internet web site.

K. Notice of public hearing.

Pursuant to AS 29.06.120 and 3 AAC 110.550, the Commission scheduled a public hearing on the Ketchikan consolidation proposal to begin at 3 p.m., Saturday, April 21, 2001, in Ketchikan at the Cape Fox Lodge – Shaa Hit Room. Notice of the hearing was published, posted, and served in accordance with 3 AAC 110.550. In addition, notice of the hearing was provided through the State of Alaska's *Online Public Notice System* and on Internet web site maintained by DCED.

L. Public hearing.

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

1. Bob Weinstein, Ketchikan City Mayor,
2. Karl Amylon, Ketchikan City Manager,
3. Robert Newell, Jr., Ketchikan City Finance Director, and
4. Steve Schweppe, Ketchikan City Attorney.

Public comment on the proposal was given by the following:

1. Richard Burton, Borough Assembly member (speaking as a citizen),
2. Joe Williams, resident of Saxman,
3. Nora Dewitt, Saxman City Clerk,
4. Alarie Stanton, former Mayor of the City of Ketchikan,
5. Daniel Williams, Mayor of the City of Saxman, and
6. Ms. K.A. Swiger.

M. Decisional session.

At the conclusion of the hearing, the Commission convened a decisional session pursuant to 3 AAC 110.570. The Commission deliberated for approximately forty minutes. At the conclusion of the deliberations, the Commission voted unanimously to approve the Petition with amendments to the Charter of the proposed Municipality of Ketchikan as recommended by DCED in its Preliminary Report and Final Report.

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

SECTION III FINDINGS AND CONCLUSIONS

A. Introduction.

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

1. that it satisfies the standards for consolidation under the Commission's regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
2. that it complies with the statutory standards for consolidation (AS 29.06.130(a) and AS 29.05.031),
3. that it serves the applicable principles set out in Alaska's Constitution, and
4. that it is in the best interests of the state.

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

The constitutional, statutory, and regulatory standards relate to the following eleven issues:

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

B. Standards Relating to Community of Interests.

1. Standards Established in Law.

Article X, § 3 of Alaska's Constitution requires that each borough embrace an area and population with common interests to the maximum degree possible. In addition, AS 29.05.031(a)(1) states, in relevant part, that the population of the proposed consolidated borough must be interrelated and integrated as to its social, cultural, and economic activities. 3 AAC 110.045(a) lists four factors which the Commission may consider in making its determination as to whether the population of the proposed borough is interrelated and integrated as to its social, cultural, and economic activities.⁶ 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 which the Commission may consider in making its determination on that point; it also allows the Commission to consider other

⁶ 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.

relevant factors.⁷ 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 Ketchikan Proposal.

The Commission notes that the Ketchikan Gateway Borough has existed since September 13, 1963, more than thirty-seven years. The constitutional standard in Article X, § 3 noted above has not changed since it went into effect in 1959. Moreover, the statutory standards in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) noted above are very similar to borough standards established in 1961, two years before the Ketchikan Gateway Borough was formed. Further, the standards set out in 3 AAC 110.045(a)-(d) have been in place since 1991. The jurisdictional boundaries of the Ketchikan Gateway Borough have never changed. Those boundaries are identical to the boundaries of the proposed consolidated borough. The Commission finds that these circumstances create a strong presumption that the referenced standards in the Constitution, statutes, and regulations are satisfied.

Moreover, the LBC implicitly determined in April 1999, that the area within the current boundaries of the Ketchikan Gateway Borough is socially, culturally, and economically interrelated and integrated when it concluded as follows with respect to the Borough's February 28, 1998 petition for annexation of approximately 5,524 square miles inhabited by an estimated twenty-five residents:

There appears to be compatibility between the residents of the Borough and the residents of the territory proposed for annexation even though most Borough residents live a somewhat urban lifestyle while the territory proposed for annexation is rural. The compatibility between the areas in question includes economic lifestyles, industrial and commercial activities, transportation facilities and patterns, language, and other social, cultural, and economic considerations.

Conclusion: The Commission concludes that the standard set out in 19 AAC 10.160(a) is satisfied.

19 AAC 10.160(a) has since been renumbered as 3 AAC 110.160(a). That standard applies to borough annexations and is largely equivalent to the standard at issue which is set out in 3 AAC 110.045(a).⁸

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

⁷ These are (1) transportation schedules and costs; (2) geographical and climatic impediments; (3) telephonic and teleconferencing facilities; and (4) public electronic media.

⁸ Former 19 AAC 10.160(a) has been renumbered as 3 AAC 110.160(a). Former 19 AAC 10.160(a) is similar to current 3 AAC 110.045(a). Since the Commission concluded in 1999 that the standard set out in former 19 AAC 10.160(a) was met for the 7,267.6 square mile area in question (1,743.6 square miles within the existing Ketchikan Gateway Borough plus 5,524 square miles proposed for annexation), given the virtually undeveloped nature of the territory formerly proposed for annexation, the Commission considers that it implicitly determined that the standard was also met for the 1,751 square miles presently within the boundaries of the Borough.

Regarding the rebuttable presumption established by 3 AAC 110.045(b) that the statutory standard at issue requires the presence of at least two communities within a borough, the Commission finds that the presumption is clearly met in this case. The Ketchikan Gateway Borough contains two city governments (City of Ketchikan and City of Saxman), each of which encompasses a separate community. The Commission notes that the Ketchikan Gateway Borough contains no “census designated places” identified by the U.S. Bureau of the Census. However, there are a number of other unincorporated settlements along the thirty-mile Tongass Highway. These include North Point Higgins, South Point Higgins, Pond Reef, Waterfall, Mountain Point, Shoreline, Forest Park, and Shoup.

With respect to 3 AAC 110.045(c), the LBC concluded in 1999 with respect to the Ketchikan Gateway Borough’s proposal for the annexation that communication and exchange in the proposed expanded area were adequate to satisfy the similar standard for annexation. Lacking evidence to the contrary in this proceeding, the Commission finds that there is adequate communication and exchange in the existing boundaries of the Borough. Moreover, the Commission finds that the detailed description in the Petition of the region’s communication and transportation systems offers further evidence that the standard at issue is satisfied.

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

Based on the foregoing findings, the Commission concludes that all of the standards relating to community of interests set out in Article X, § 3 of the Constitution, AS 29.05.031(a)(1), AS 29.05.031(a)(4), and 3 AAC 110.045(a)-(b) are satisfied with respect to the proposed consolidation of the City of Ketchikan and the Ketchikan Gateway 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 which the Commission may consider in making its determination on that point; it also allows the Commission to consider other relevant factors.⁹

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

2. Application of the Standards to the Ketchikan Proposal.

The Commission notes that the Alaska Department of Labor and Workforce Development estimated that the July 1, 2000 population of the Ketchikan Gateway Borough was 14,003. The Ketchikan Gateway Borough ranks as the seventh most populous organized borough in Alaska. Its population is fourteen times greater than the presumed minimum population for borough governments established under 3 AAC 110.050(b). Given these facts, the Commission finds that the population of the area in question is large enough to support the proposed consolidated borough.

The population of the Ketchikan Gateway Borough grew steadily until the 1990s. In 1970, its population was 10,041. From 1970 to 1980, the population increased 12.7 percent to 11,316. The 1990 population stood at 13,828, an increase of 22.2 percent over the prior decade. However, the population of the Ketchikan Gateway Borough declined in each of the years from 1996 – 1999. The decline, which amounted to a drop of 5.4% from the peak in 1995, is attributed principally to the direct and indirect effects of the closure of the Ketchikan Pulp

⁹ The five factors listed consist of: (1) total census enumerations; (2) durations of residency; (3) historical population patterns; (4) seasonal population changes; and (5) age distributions.

Corporation's operation at Ward Cove. The population decline halted in 2000. Overall, the population of the Ketchikan Gateway Borough has grown 1.2% since 1990.

The Commission notes further that the Alaska Department of Labor projected in 1998 that the population of the Ketchikan Gateway Borough would show moderate growth over the following two decades. A low-range scenario projected that the population would grow at an annual average rate of 1.36%, resulting in 18,365 residents by 2018. A high-range scenario estimated an annual population growth rate of 2.3%, resulting in 22,045 residents in the Ketchikan Gateway Borough by 2018.

Given the facts above, the Commission finds that the historic and projected population data support a finding that the population of the Ketchikan Gateway Borough is stable enough for borough government.

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

D. Standards Relating to Boundaries.

1. Standards Established in Law.

AS 29.05.031(a)(2) provides that the boundaries of the proposed consolidated borough must conform generally to natural geography and include all areas necessary for full development of municipal services. 3 AAC 110.060(a) is similar to, but more specific than, AS 29.05.031(a)(2). It directs the Commission to examine the region's capability to provide "essential borough services" on an "efficient, cost-effective level." 3 AAC 110.060(a) lists six factors that the Commission may consider in making its determination on that point; it also allows the Commission to consider other relevant factors.¹⁰

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.

¹⁰ 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.

2. Application of the Standards to the Ketchikan Proposal.

As the Commission noted with respect to the application of the community of interests standard in Section III B of this Decisional Statement, the boundaries of the Ketchikan Gateway Borough have remained unchanged since the Borough was incorporated in 1963. The Commission notes that statutory standard for borough boundaries in place at the time of incorporation of the Borough is similar to the current AS 29.05.031(a)(2). The Commission finds that these circumstances create a presumption that the statutory standard and 3 AAC 110.060(a), which interprets that statute and makes it more specific, are met.

The Commission notes further that it considered the standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a) when model boundaries were defined by the Commission for the Ketchikan Gateway Borough in 1991. 3 AAC 110.060(b) requires consideration of model borough boundaries in this instance. The proposed consolidated borough boundaries do not conform to its model boundaries. However, the Commission takes the view that the lack of conformity to model borough boundaries is not an impediment to consolidation. The Commission applied the same reasoning here as it did with respect to the 1998 proposal for consolidation of local governments in Haines. In that instance, the Commission concluded:

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

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

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

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

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

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

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

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

E. Standards Relating to Resources.

1. Standards Established in Law.

AS 29.05.031(a)(3) states that the economy of the proposed consolidated borough must contain the human and financial resources necessary to provide municipal services. That statutory standard provides that consideration must be given to land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed consolidated borough.

3 AAC 110.055 is similar to, but more specific than, AS 29.05.031(a)(3). It focuses on the human and financial resources necessary to provide “essential borough services” (defined in the discussion of the prior standard) on an “efficient, cost-effective level.” It allows consideration of the same eight standards that are listed under AS 29.05.031(a)(3), but adds four discretionary factors and allows the Commission to consider other relevant factors.¹¹

2. Application of the Standards to the Ketchikan Proposal.

In 1999, the Commission concluded with respect to the proposition to expand the boundaries of the Ketchikan Gateway Borough by adding 5,524 square miles and 25 residents, that the proposed new boundaries encompassed an economy with sufficient human and financial resources to provide essential borough services on an efficient, cost-effective level. In reaching that conclusion, the Commission considered the Borough’s tax base and budget. The Commission also considered the size and stability of the Borough’s population, and personal income of Borough residents. Since the annexation would have had little effect on the human and financial resources of the Borough, it is reasonable to conclude that the standard was also met for the existing boundaries.

The proposed consolidated borough would assume many of the responsibilities of the former City of Ketchikan. Therefore, it is relevant to note that the Commission concluded with regard to a November 2000 proposal for annexation to the City of Ketchikan that the economy within the proposed expanded boundaries of the City included the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

Taken together, those two recent conclusions of the Local Boundary Commission create a strong presumption that the proposed consolidated borough, including the proposed Ketchikan Service Area, meets the human and financial resources standards at issue.

The consolidation Petition indicates that there will be cost savings from the union of the two local governments involved. Even if the projected cost savings are exceeded by transition costs during the first years of consolidation, the proposed consolidated borough presently has an above-average tax base compared to most other organized boroughs. The Ketchikan Gateway Borough ranked as the sixth-highest among the sixteen organized boroughs in terms of the 2000 per capita full and true value of taxable property. At \$80,003, the per capita value of taxable property in the Ketchikan Gateway Borough is 18.6% above the median figure for all organized boroughs in Alaska.

Another factor set out in 3 AAC 110.055 concerning the financial capacity of a region is personal income. The Commission notes that in 1998, per capita personal income in the Ketchikan Gateway Borough was \$31,803 (\$3,887 or 13.9% more than the median figure for all organized boroughs). The Ketchikan Gateway Borough ranked as the fifth-highest among the sixteen organized boroughs in Alaska with respect to per capita personal income.

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

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

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

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

2. Application of the Standards to the Ketchikan Proposal.

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

Consolidation will also result in the dissolution of the City of Ketchikan. Unlike the borough, however, the City of Ketchikan will not be reconstituted in a form that has a governing body. Currently, the City of Ketchikan is governed by a mayor and seven member city council. The Commission underscores the fact that there is no guarantee or expectation that Alaskans will have multiple local governments to serve and represent them. In fact, Article X, § 1 of Alaska's Constitution encourages consolidation of local governments. The Commission finds, therefore, that the dissolution of the City of Ketchikan and the elimination of eight elected officials is not pertinent with regard to this standard.

Saxman, which is inhabited predominantly by Natives, will retain its second class city government under the consolidation proposal. The Mayor of the City of Saxman wrote on March 7, 2001 that "Saxman has consistently expressed its desire to retain its independent status as a separate municipal entity and to preserve its Native culture, the former being viewed as a means to the latter." The Commission notes that the Petition actually enhances the City of Saxman's autonomy. These circumstances notwithstanding, the Commission stresses that it

would be improper to infer that this standard would not be satisfied if the City of Saxman were included in the consolidation proposal.

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

Given the foregoing findings, the Commission concludes that no voting qualifications, prerequisites to voting, standards, practices, or procedures will be applied as a result of the proposed consolidation which would deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. The Commission concludes further that the proposed consolidation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Thus, the standards set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 are served by the proposal to consolidate the City of Ketchikan and the Ketchikan Gateway Borough.

H. Standards Relating to Transition.

1. Standards Established in Law.

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

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

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

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

2. Application of the Standards to the Ketchikan Proposal.

The Commission notes that the Petition includes a thirty-seven-page transition plan (Exhibit J). The transition plan is also accompanied by nine exhibits (Exhibits J-1 through J-9) that provide documentation and further details about transition matters. Moreover, Article XVI of the proposed Charter of the Municipality of Ketchikan contains a number of provisions relating to transition.

The transition plan provides evidence that officials of the City of Ketchikan consulted with officials of the Ketchikan Gateway Borough regarding the proposed consolidation. The plan describes in detail the powers and duties currently exercised by the City of Ketchikan and the Ketchikan Gateway Borough. It also explains how those existing services will be affected by consolidation. It describes new service areas to be formed through consolidation. The transition plan also sets out a schedule for integration of assets, powers, and duties by the proposed consolidated borough. Further, the transition plan identifies current long-term debts of the City and Borough and describes how those debts would be integrated into the proposed consolidated borough. Lastly, the transition plan addresses integration of assets of the existing City and Borough by the proposed Municipality of Ketchikan.

Richard Burton asserted during the consolidation hearing that certain transitional issues had not been addressed in the Petition. The Commission notes, however, that a principal purpose underlying the requirement for a transition plan is to demonstrate to a reasonable certainty that there is both intent and capability to provide essential services and to facilitate an orderly transition. The plan in the Ketchikan consolidation Petition satisfies those goals. It is not reasonable to suggest that the transition plan will be so detailed as to anticipate every issue that might arise in the consolidation of two mature and sophisticated full-service municipal governments.

The Commission observed that questions and concerns over transitional issues relating to the unification of local governments in Anchorage seemed endless at the time.¹² Contingencies are impossible to fully predict and no transition plan will answer all of the questions. If consolidation occurs, transition will likely be challenging for the community, particularly during the first two years. However, over a longer period of time -- ten or twenty years -- it will likely seem as though the transition went very quickly and that the transition plan will most likely have proven itself to have been adequate.

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

I. Standards Relating to Maximum Local Self-Government.

1. Standards Established in Law.

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

2. Application of the Standards to the Ketchikan Proposal.

The Commission finds that, as a general rule, maximum local self-government is achieved first and foremost through the extension of city or borough government to a previously unincorporated area. Since the City of Ketchikan incorporated in 1900 and the City of Saxman incorporated in 1929, residents of those areas had structures in place at the time of statehood that served the constitutional principle of maximum local self-government. In September of 1963, the Ketchikan Gateway Borough was incorporated, creating overlapping structures for maximum local self-government within the City of Ketchikan and the City of Saxman.

As noted in DCED's Preliminary Report, the Constitutional Convention's Committee on Local Government took the view that, "The highest form of self-government is exercised under home rule." The Petition would extend home rule to those citizens of the borough residing outside the City of Ketchikan. One hundred percent of the borough residents would then be served by a home rule government -- 37 percent of the borough's population is currently served only by general law municipalities.

While the State legislature and courts have, over time, greatly enhanced the powers of general law municipalities, the Commission finds that the proposed Charter of the Municipality of Ketchikan further enhances the extent to which maximum local self-government presently is achieved in the area of the Borough outside the City of Ketchikan. For example, the Charter offers important protections to residents of service areas and other parts of the borough over the encroachment of unwanted services and facilities. It also ensures a more equitable structure for the delivery of municipal services.

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

¹² Commissioner Tesche related his first hand experience regarding this issue when he had served as an attorney for the Greater Anchorage Area Borough in the 1970s and continued to work as an attorney for the Municipality of Anchorage when it unified in 1975.

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 Ketchikan Proposal.

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

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

With that in mind, the Commission notes that the pending consolidation proposal seeks to dissolve two existing local government units (City of Ketchikan and Ketchikan Gateway Borough) and create four new local government units (Municipality of Ketchikan, Ketchikan Service Area, Greater Ketchikan EMS Service Area, and Shoreline Service Area). Arithmetically, the consolidation proposal increases the number of local government units serving the greater Ketchikan area. However, the Commission finds that it significantly reduces the number of local governments serving the area. The most pertinent feature of the Petition concerning this standard is that two large and populous municipalities – two taxing and legislative jurisdictions – are reduced to one.

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

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

Lastly, the Commission notes that Vic Fischer was retained by the Ketchikan Gateway Borough to review the pending Ketchikan consolidation proposal. Mr. Fischer concluded that the pending Ketchikan consolidation proposal "meets the constitutional goal of maximizing self-government while *minimizing the number of government units*." Given his recognized expertise, the Commission finds Mr. Fischer's judgment on this issue to be noteworthy.

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

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

1. Standards Established in Law.

Article X, § 5 of Alaska's Constitution states that a new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

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

2. Application of the Standards to the Ketchikan Proposal.

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

Given the findings above, the Commission concludes that the Ketchikan consolidation proposal 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 any consolidation proposal, AS 29.06.130(a) requires the Local Boundary Commission to determine that the proposal serves the best interests of the state.

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

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

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

and

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

2. Application of the Standards to the Ketchikan Proposal.

While the regulations concerning the best interests of the state are not in place, the Commission has proposed formal regulations relating to the determination of the best interests of the State. Those proposed regulations serve as a guideline in this case. Of particular relevance here are the

factors relating to the constitutional principles concerning maximum local self-government and a minimum number of local government units.

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

In addition to the constitutional principles, the Commission finds that it is reasonable to consider that the State also has an interest in promoting equity in the delivery of municipal services. The Commission most often faces such issues of equity in the course of annexation proceedings. For example, the best interests standard concerning city annexation (3 AAC 110.140) expressly provides for consideration of whether

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

During the 1999 proceedings for the annexation of the Shoreline Service Area to the City of Ketchikan, the Local Boundary Commission strongly encouraged local officials to pursue consolidation of the two local governments, in large part, to address significant inequities in the delivery of municipal services to the residents of Ketchikan. Specifically, the Commission stated as follows:

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

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

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

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

(Decisional Statement in the Matter of the 1999 Amended Petition of the City of Ketchikan for Annexation of Approximately 1.2 Square Miles, Local Boundary Commission, page 13, December 16, 1999)

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

M. Recommended Amendments to the Proposed Charter of the Municipality of Ketchikan.

After reviewing the Petition, comments on the Petition, and the City's reply brief, DCED recommended in its Preliminary Report that six amendments be made to the proposed Charter of the Municipality of Ketchikan. Those same recommendations were carried forward in DCED's Final Report. DCED's recommended amendments are set out below (new text is underlined in bold type and deleted text is capitalized and bracketed).

Amendment Number 1

Amend the title of ARTICLE XII to read:

[SERVICE AREAS AND]AREAWIDE, NONAREAWIDE, AND SERVICE AREA POWERS

Amendment Number 2

Amend Section 12.01 to read:

Section 12.01 Areawide[AND NON-AREAWIDE], **Nonareawide, and Service Area** Powers.
Except as otherwise required by this Charter or by applicable state law, all powers of the Municipality may be exercised on an areawide, [NON-AREAWIDE] nonareawide, [OR]service area, **or other basis.**

Amendment Number 3

Amend Section 12.02 to read:

Section 12.02 Mandatory Areawide Powers.

In addition to all other powers that the Municipality may exercise on an areawide basis, the following powers shall be exercised on an areawide basis:

- (a) The power to dispose of solid waste, whether through recycling, landfilling, shipping, or any other means, and the power to operate, maintain, monitor, remediate, repair, or remove landfills, including those previously owned or operated by the City of Ketchikan, whether or not such landfills were in operation or were closed on the effective date of this Charter;
- (b) The power to provide public libraries, civic centers, museums, and associated services;
- (c) The power to provide for hospital and public health services, including, but not limited to, those services formerly provided by the City of Ketchikan's Gateway Center for Human Services. The power to provide emergency medical services shall be exercised as provided in Section 12.07;
- (d) The power to provide public parks and recreation facilities and to provide recreational activities;
- (e) The power to provide port and harbor facilities and services;
- (f) The power to provide cemetery and mausoleum services;
- (g) The power to provide 911 emergency dispatch services;
- (h) The power to provide public transportation systems, including, but not limited to, airports (including airport police, **firefighting, and other auxiliary services**), air-taxi, and public mass transit;
- (i) The power to provide animal control; and
- (j) The power to provide economic development.

This Section shall not prohibit the City of Saxman from also exercising, within its boundaries as of the effective date of consolidation, any power which it exercised prior to consolidation.

Amendment Number 4

Amend Section 12.03 to read:

Section 12.03 Services Provided by Service Area.

- (a) The following powers shall be exercised only through service areas:
 - (1) The establishment and operation of police departments, the hiring of police officers, or the contracting for the services of police officers;
 - (2) The establishment and operation of fire departments, the hiring of firefighters, and the contracting for firefighting services;
 - (3) The collection, but not disposal, of solid waste.

However, nothing in this Charter prohibits the Municipality from providing police, firefighting, solid waste collection, or other auxiliary functions incidental to the exercise of an authorized areawide power at areawide expense when necessary to operate facilities used for areawide services; or to respond to a disaster as defined by state law.

Nothing in this Charter, except Section 12.02, prohibits the Municipality from exercising any other power on a non-areawide basis or through services areas. No areawide power shall be interpreted to include or authorize any of the powers described in (1) through (3) above. Dispatching services for fire and law enforcement may, however, be provided areawide and shall be provided areawide for emergency 911 dispatching.

- (b) Until otherwise changed, that area described in the consolidation petition as the Ketchikan Service Area shall be a service area for each and all of the powers described in (a) (1) - (3) above and for the power to build, operate, maintain, and replace roads, bridges, sidewalks, culverts, storm sewers, and drainage ways, and other public works. Except for the Shoreline Service Area, all other service areas in existence on the date this Charter becomes effective shall continue in effect until such time as changed as provided in this Article and the Municipality shall exercise the same powers within those service areas as were exercised by the former Ketchikan Gateway Borough. A new Shoreline Service Area with such territory, taxation, and services as are described in the consolidation petition shall be created on the date this Charter becomes effective and shall continue in existence until such time as changed as provided in this Article. By consolidation petition is meant that petition filed by the City of Ketchikan for the consolidation of the City of Ketchikan and the Ketchikan Gateway Borough with all exhibits and amendments.

Amendment Number 5

Amend Article XIII to read:

Article XIII Saxman

The **Municipality shall take no action to initiate or support the dissolution, merger, or consolidation of the** City of Saxman [SHALL REMAIN A SEPARATE MUNICIPAL ENTITY]. Within its boundaries **as of the date of consolidation,** the City of Saxman may, **to the extent permitted by law,** exercise **those powers which** [MUSEUM, PORTS, HARBORS, PARKS, RECREATION, SANITARY SEWER POWERS, ECONOMIC DEVELOPMENT POWERS AND OTHER POWERS] it exercised prior to consolidation even though the Municipality exercises those same powers. Until otherwise provided by law, the City of Saxman shall continue to receive such areawide municipal services as it previously received from the Ketchikan Gateway Borough and services under this Charter or authorized by the Assembly pursuant to law.

Amendment Number 6

Amend the Charter to spell the word “non-areawide” as “nonareawide” throughout the proposed Charter.

The City of Ketchikan has endorsed DCED’s recommended amendments. Having carefully examined the basis for DCED’s recommended amendments, the Commission finds them to be warranted for the reasons given by DCED in its Preliminary Report.

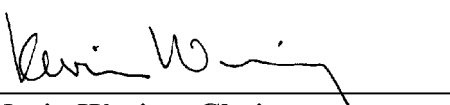
SECTION IV ORDER OF THE COMMISSION

Based on the findings and conclusions in Section III of this Decisional Statement, the Commission amended the Petition by modifying the proposed Charter of the Municipality of Ketchikan to reflect the changes recommended by DCED as set out in Section III M of this Decisional Session.

Following the amendment, the Local Boundary Commission unanimously approved the *Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan to the Municipality of Ketchikan, a Home Rule Borough.*

Approved in writing this 27th day of April, 2001.

LOCAL BOUNDARY COMMISSION

BY: 
Kevin Waring, Chairperson

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

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

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

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

JUDICIAL APPEAL

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