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# Final Report

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## On the Proposal to Consolidate the City of Ketchikan and the Ketchikan Gateway Borough

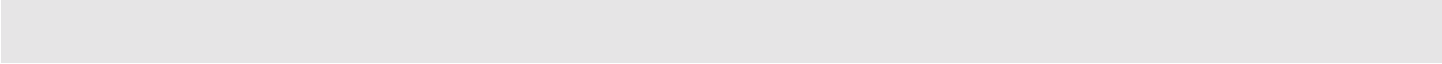
March 2001



**Deborah B. Sedwick**  
**Commissioner**

**Tony Knowles**  
**Governor**





This is the Final Report of the Department of Community and Economic Development (DCED) regarding the petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough. The report is also available on the Internet at:

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

DCED complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560.

# ACKNOWLEDGMENTS

The Department of Community and Economic Development (DCED) appreciates the thoughtful remarks of the following five correspondents who submitted timely comments on DCED's Preliminary Report concerning the Ketchikan consolidation proposal.

- Tom Fitzgerald, City Administrator, City of Saxman;
- Peter Gigante, CEO, Cape Fox Corporation;
- Wilber E. Fisher, resident of the City of Ketchikan;
- Dan Williams, Mayor, City of Saxman; and
- Karl R. Amylon, Ketchikan City Manager.

This Final Report was prepared under the policy direction of:

- Deborah Sedwick, Commissioner, DCED;
- Lamar Cotten, Rural Development Manager, DCED; and
- Patrick K. Poland, Director, Community & Business Development Division, DCED.

In addition to those who were previously recognized for their assistance in preparing DCED's Preliminary Report, the following individuals provided information or assistance in the development of this Final Report:

- Karl R. Amylon, Ketchikan City Manager;
- Linda Auger, Administrative Assistant, City of Ketchikan;
- Scott Brandt-Erichsen, Borough Attorney, Ketchikan Gateway Borough;
- Pam Crowe, Southeast Region Elections Supervisor, Office of the Lieutenant Governor;
- Gene Kane, Local Government Specialist, DCED;
- Steve Schweppe, City Attorney, City of Ketchikan;
- Steve Van Sant, State Assessor, DCED; and
- Jim Voetberg, Assistant City Manager, City of Ketchikan.

Page layout was performed by Jennie Morrison, Publications Technician, DCED.

This report was written by Dan Bockhorst, Local Government Specialist, DCED.



# Background

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## DCED Preliminary Report Issued

On February 5, 2001, DCED issued its *Preliminary Report on the Proposal to Consolidate the City of Ketchikan and the Ketchikan Gateway Borough* (hereinafter “Preliminary Report”). The Preliminary Report consisted of seventy-seven pages of background and analysis and eight pages of appendices. A separate four-page executive summary of the Preliminary Report was also prepared. The Preliminary Report and executive summary were distributed to fifty-seven individuals. Additionally, forty-five individuals received only the executive summary. Multiple copies of the Preliminary Report and executive summary were provided to the Ketchikan Public Library. Additionally, the report was made available for public review on the Internet.

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## Comments Received on Preliminary Report

Individuals and organizations were given until March 8, 2001, to comment on the Preliminary Report. Timely comments were received from the following five individuals:

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

A copy of the written comments on the Preliminary Report was provided to each member of the Local Boundary Commission. The comments were also made available for public review at the Ketchikan Public Library and on the LBC’s web site at:

<http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>

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## **Schedule of Local Boundary Commission Hearing and Other Proceedings**

The Local Boundary Commission has scheduled a public hearing on the Ketchikan consolidation to be held in the Cape Fox Lodge – Shaa Hit Room, beginning at 3 p.m., Saturday, April 21, 2001.

Appendix A of this Final Report includes the public notice of the April 21 hearing. Appendix B shows the April 21 hearing agenda. Appendix C offers guidelines for effective public comment to the Commission on the consolidation proposal during the April 21 hearing.

State Division of Elections officials have tentatively indicated that if the LBC approves the consolidation petition, an election on the consolidation proposal might be held as early as Tuesday, July 17, 2001. The election would likely be conducted by mail. Elections officials tentatively indicated further that if voters approve the consolidation proposition in July, the election of the Mayor and Assembly for the consolidated borough would likely occur in conjunction with the regular municipal election on Tuesday, October 2, 2001.

Appendix D of this Final Report summarizes the steps remaining in the consolidation process. A tentative schedule is included in Appendix D.

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# Consideration of Comments on Preliminary Report

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## Tom Fitzgerald, City Administrator, City of Saxman

Mr. Fitzgerald wrote a one-page letter dated March 6, 2001. His comments dealt with a single issue which is summarized below; DCED's response follows.

### Tom Fitzgerald Comment

The City of Saxman concurs with DCED's proposed amendment to Section 12.02 of the proposed Charter of the Municipality of Ketchikan. The proposed amendment ensures that the City of Saxman may exercise within its current boundaries any power that it exercised before consolidation. However, the City of Saxman requests consideration of a proposal to amend the Charter further to allow the City of Saxman to exercise any future power without a requirement for approval from the consolidated borough.

### DCED Response

State law (AS 29.35.250) governs the powers that may be assumed by a city within an organized borough.<sup>1</sup> Applied to the instant proposal, it would allow the City of Saxman to exercise "any power not otherwise prohibited by law."

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<sup>1</sup> **Sec. 29.35.250. Cities inside boroughs.**

- (a) A city inside a borough may exercise any power not otherwise prohibited by law.
- (b) On adoption of a borough ordinance to provide for areawide exercise of a power, no city may exercise the power unless the borough ordinance provides otherwise or the borough by ordinance ceases to exercise the power.
- (c) A home rule city in a third class borough shall provide for planning, platting, and land use regulation as provided by AS 29.35.180(b) for home rule boroughs. A first class city in a third class borough shall provide for planning, platting, and land use regulation as provided by AS 29.35.180 (a) for first and second class boroughs. A second class city in a third class borough may provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs.
- (d) This section applies to home rule and general law cities.

However, the same law prohibits the exercise of a power by a city within the borough if the borough has adopted the power on an areawide basis, unless the borough delegates the power to the city by ordinance. AS 29.35.250 applies to both general law and home rule municipalities.

In 1982, the Alaska Supreme Court stressed that cities and boroughs “were not to be disparate and competing, but were intended to cooperate and collaborate.” (*City of Homer v. Gangl*, 650 P.2d 396, 400 [Alaska 1982].) In DCED’s view, an unqualified grant of authority by charter for a city within a borough to exercise any power it may choose to exercise in the future, as proposed by the City of Saxman, is not consistent with the constitutional principles addressed in *Homer v. Gangl*. Further, it seems that such a grant is not permitted by AS 29.35.250. The law requires delegations of areawide powers to be granted *by ordinance*. That seems to contemplate that the assembly would evaluate the merits of delegating areawide powers to cities on a case-by-case basis.

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## **Peter Gigante, CEO, Cape Fox Corporation**

Mr. Gigante wrote a two-page letter dated March 7, 2001. His comments dealt with a single issue which is summarized below; DCED’s response follows.

### **Peter Gigante Comment**

The Cape Fox Corporation requests the amendment of the proposed Charter to exempt from special assessments, Native corporation lands that are exempt from property taxes. Specifically, Cape Fox suggests to add the following language to Section 14.04 of the proposed Charter. “Notwithstanding anything in the foregoing paragraph to the contrary, lands and interests in land conveyed pursuant to the Alaska Claims Settlement Act (ANCSA) that are exempt from real property taxes under the provisions of ANCSA are specifically exempted from and shall not be liable for the cost of local improvements and local services.”

### **DCED Response**

Assessments for local improvement and service districts are distinct from property taxes. A 1966 opinion from the State Attorney General’s Office addressed distinctions between the two as follows:



Special assessments are levied for improvements which benefit particular individuals or property and are levied with reference to, and in proportion to, the special benefit conferred. General taxes, on the other hand, are imposed for the purpose of raising monies to be expended for governmental purposes without regard to special benefits conferred on a particular group or class of persons or property. It has been held, under constitutional provisions similar to Article IX, Section 4 of the Constitution of the State of Alaska, that a constitutional or statutory exemption from taxation will not exempt property from special assessments. Board of Education v. Town of Greenburgh, 13 N.E.2d, 768 (N.Y. 1933); Bensberg, et al v. Parker, 95 S.W.2d 892 (Ark. 1936); Blythe v. City of Tulsa, 46 P.2d 310 (Okla. 1935). In Bensberg, et al v. Parker the court approved the following language:

It is the well established rule that a constitutional or statutory exemption from taxation is to be taken as an exemption from ordinary taxes, for the general purposes of government – state, county, or municipal – and does not relieve those in whose favor such exemptions exists from the obligation to pay special assessments for local improvements which are charged upon property on the theory that such property is specially benefited thereby.

(1966 Opinions of the Attorney General No. 10)

It is noteworthy that AS 29.46.010(a) permits general law municipal governments to impose a special assessment against *all* real property, expressly including property owned by the state and federal governments if the property will benefit from an improvement funded by the special assessment.<sup>2</sup>

Moreover, AS 29.46.010(b) – which applies to both general law and home rule municipalities – exempts only one type of real property from municipal special assessments. That exemption is for real property associated with a “qualified project” that is subject to a contract approved by the legislature for

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<sup>2</sup> AS 29.46.010a) states:

A municipality may assess against the property of a state or federal governmental unit and private real property to be benefited by an improvement all or a portion of the cost of acquiring, installing, or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.46.020 (b). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

- (1) petition to the governing body of the owners of one-half in value of the property to be benefited; or
- (2) the governing body.

AS 29.46.010(a) is not a home rule limitation, however, it is a relevant consideration in that 87.5% of all municipal governments in Alaska (i.e., the general law cities and boroughs) are subject to its provisions.

development under the Alaska Stranded Gas Development Act (AS 43.82) is exempt.<sup>3</sup>

It may be significant that State law specifically exempts certain Native corporation lands from property taxes, but does not exempt the same lands from special assessments.<sup>4</sup>

It is also noteworthy that the exemption proposed by Cape Fox would prevent it from developing its land with the assistance of special assessments. According to officials of the City of Ketchikan, several of the major subdivisions in Ketchikan were developed through the use of special assessments. These included Bear Valley and Washington Park. The developers were able to pass on the cost and the risk involved in building roads, sewers, and other utilities through special assessments imposed on the property. As a major owner of undeveloped property, Cape Fox may wish to use special assessments as a tool to develop its property without making an up-front investment in improvements.

Further, special assessments are typically imposed as a result of a petition by the property owners. Characteristically, the owners of property that will bear at least fifty percent of the estimated cost of the improvements must agree to the assessment. Officials of the City of Ketchikan indicate that Cape Fox typically owns large tracts of land. Therefore, it is likely that Cape Fox will have veto power over any special assessment on its lands.

Given these circumstances, DCED does not endorse the Charter amendment proposed by Cape Fox.

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## **Wilber E. Fisher, Ketchikan Resident**

Mr. Fisher wrote a three-page letter dated March 7, 2001. His comments dealt with five distinct issues. Each of the five issues is summarized below. Following the summary of each issue is DCED's response.

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<sup>3</sup> AS 29.46.010(b) states:

Notwithstanding (a) of this section, a party to a contract approved by the legislature as a result of submission of a proposed contract developed under AS 43.82 or as a result of acts by the legislature in implementing the purposes of AS 43.82, is exempt, as specified in the contract, from assessment under this chapter against real property associated with the approved qualified project that is subject to the contract.

<sup>4</sup> AS 29.45.030(a)(7) expressly exempts from property taxes real property or an interest in real property conveyed under the Alaska Native Claims Settlement Act (ANCSA) to a Native individual, Native group, Village or Regional Corporation or corporation established under ANCSA which are not developed or leased to third parties.

## Wilber E. Fisher Comment # 1

The Preliminary Report details the origin and history of boroughs but fails to note that consolidation as a process is a “statutory after thought” (sic). Only after three failed attempts at unification in Ketchikan did the legislature provide for a new process called consolidation. Consolidation eliminated the requirement for dual majorities among voters for approval of what amounts to the same thing as unification. Consolidation was blatantly intended to disenfranchise the rural voters. DCED should provide the legislative history of unification and consolidation and the significance of the built in safe guards of unification.

## DCED Response

DCED does not concur with the characterization that current laws governing consolidation are a statutory afterthought and that they were intended to disenfranchise anyone.

The 1955 Territorial Legislature enacted laws to provide procedures for consolidation of city governments in Alaska (ch 119 SLA 1955). Those laws provided that separate elections must be held in each city proposed for consolidation. Approval by at least fifty-five percent of the votes cast at the election in each city was required for consolidation to occur.

In 1955 – 1956, Alaska’s Constitutional Convention delegates drafted provisions that expressly required the legislature to adopt laws providing procedures for consolidation of borough governments. Specifically, Article X, §3 states, in part, “[m]ethods by which boroughs may be organized, incorporated, merged, *consolidated*, reclassified, or dissolved *shall be prescribed by law*” (emphasis added). Article XII, § 11 defines the term “by law” as follows, “[a]s used in this constitution, the terms ‘by law’ and ‘by the legislature,’ or variations of these terms are used interchangeably when related to law-making powers.”

Article X, § 7 deals with city consolidation in a similar fashion. It states, in part, that cities “may be merged, *consolidated*, classified, reclassified, or dissolved *in the manner provided by law.*”

The 1955 laws governing consolidation of cities remained in place when Alaska became a state. Although laws dealing specifically with consolidation of cities and boroughs had not yet been enacted, a number of methods for consolidating cities and boroughs existed. The following is an account of such methods written during deliberations in the mid-1960s on legislation for municipal unification:

The brouhaha over borough and city unification has tended to obscure the fact that several methods are presently available which would accomplish the goal of one government. The Borough Act provides that “a borough is dissolved whenever its entire territory becomes included within a city or

cities.” In such an instance “all property and debts owing to the borough become the property of the government succeeding it.” It is possible for any area to actually have one unit of government by simply annexing to the city. Thus a remedy under the law already exists. This, in fact, was the way in which the cities of Anchorage and Fairbanks grew during the period of explosive population growth in the fifties and early sixties. However, it is unlikely at this time that the Local Boundary Commission would take the required initiative, as the matter is so highly charged politically.

Unification may also be accomplished under present law by city dissolution, though the conditions for dissolution are rather restrictive. Perhaps more accessible and feasible as a tool of “near unification” is the spin-off of functions which can be accomplished by the acquisition of areawide borough powers either by petition and vote or by the voluntary transfer of a city’s powers to the borough.

(Jerome R. Saroff and Ronald C. Cease, Editors, *The Metropolitan Experiment in Alaska*, 1968, pages 369 – 370.)

In addition to the methods described above, the Local Boundary Commission has the power under Article X, § 12 of Alaska’s Constitution to consolidate local governments through the legislative review process. (See *Oseau v. City of Dillingham*, 439 P.2d 180 [Alaska 1968].)

Delegates to the Alaska Municipal League’s 1966 conference unanimously supported legislation “authorizing a borough and first class and home rule cities within the borough to form a single unit of local government upon approval by public referendum.” The legislation endorsed by the delegates provided that unification would occur upon approval by a “majority of the qualified voters voting on the question.” (Cease and Saroff, *supra*, p. 371)

Two competing legislative proposals for unification were considered by the 1967 Legislature – House Bill 297 and House Bill 409. The former required concurrent approval by: (1) all votes cast in first class and home rule cities of the borough and (2) all votes cast in the remainder of the borough. The latter provided for unification upon areawide voter approval. House Bill 297 am S prevailed and was enacted as Chapter 134, SLA 1967.

The 1955 laws concerning consolidation of cities, including the provision that required approval by fifty-five percent of the votes in each city, were still in place at the time of the 1967 enactment of laws governing unification.

In 1972, the Legislature repealed all of Title 7 (Boroughs) and all of former Title 29 (Municipal Corporations) and enacted new Title 29 (Municipal Government) in lieu of the repealed provisions (Chapter 118, SLA 1972.) The 1972 laws extended consolidation procedures to all municipalities (boroughs and cities). Significantly, the 1972 laws removed the prior requirement for separate voter approval in each municipality proposed for consolidation. In contrast, the 1972 Title 29 provisions carried forward the former laws relating to unification, including the requirement for concurrent majorities in: (1) all home rule and first class cities and (2) the remainder of the borough.

The first vote on unification of the City of Ketchikan, City of Saxman, and the Ketchikan Gateway Borough was held in 1973. Seventy-eight percent of the votes cast in the City of Ketchikan favored unification. However, the measure failed when only forty percent of the votes cast outside the City of Ketchikan endorsed unification.

In 1979, a second vote on unification of the three Ketchikan area local governments was held. Again, the proposition was approved within the City of Ketchikan (55%), but was rejected in the remainder of the borough (22%).

In 1986, a third vote on unification was held in Ketchikan. The proposition received overwhelming support from voters in the City of Ketchikan (70%). Additionally, it received endorsement from a majority of the total votes cast (56%). However, it also failed because less than a majority of the votes cast outside the City of Ketchikan (37%) favored unification.

The requirement for concurrent majority approval for unification treats voters disparately. There are organized boroughs in Alaska where 70% or more of the residents live within home rule and first class cities. The concurrent majority approval requirement allows a minority of the voters to dictate to the majority of the voters.

Principles in Article X of Alaska's Constitution discourage narrowing voter classifications for municipal consolidation elections. Those principles were addressed by the Alaska Supreme Court with respect to unification in City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, (Alaska 1971).

There is clearly a rational basis for an areawide vote on consolidation of cities and a borough. The circumstances noted above suggest that the difference in statutory language regarding voting procedures for unification and consolidation is purposeful and reflects differing legislative intent.

## **Wilber E. Fisher Comment # 2**

The choice of classification for the Ketchikan Gateway Borough (general law, second class) was the result of thoughtful deliberations. A committee comprised of city and rural residents met many times to consider the matter. The committee concluded that second class status afforded the "minimum additional layer of municipal government and the maximum level of protection for all residents against an unwanted expansion of that government." Each additional power to be added to the new local government unit beyond the three mandatory area wide powers of: 1.) education (replacing the old Independent School District), 2.) assessment and collection of taxes and 3.) planning and zoning (comprehensive planning and land use control), or a reclassification to a higher class borough would require a dual majority vote in order to be enacted. The classification committee also wanted to ensure that new taxes could not be imposed on the rural residents without their consent. Under a consolidated borough and city no such protection would exist.

## **DCED Response**

The correspondent seems to be critical of the Ketchikan consolidation petition because it proposes to create a home rule consolidated borough rather than a second class consolidated borough. State law (AS 29.06.090[a]) gives the petitioner discretion to propose a home rule, first class, or second class consolidated borough.

It is noteworthy that the multiple respondents and many of the correspondents in the pending proceedings for consolidation of the City of Fairbanks and the Fairbanks North Star Borough are critical of that proposal to form a consolidated second class borough rather than a home rule borough because they view home rule as the more appropriate form of borough government.

DCED concluded that the decision by the Fairbanks petitioners to propose a second class consolidated borough had a rational basis (See *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough*, pages 14 – 32). DCED also accepts the decision of the City of Ketchikan to propose a home rule consolidated borough.

DCED views the Ketchikan consolidation petition as a carefully crafted and well thought out proposal. The decision to propose a home rule consolidated borough is reasonable. The proposed Charter of the Ketchikan consolidated borough offers many safeguards of the nature discussed by the correspondent. Readers are encouraged to review the September 8, 2000 Reply Brief of the City of Ketchikan addressing many of the safeguards. The Reply Brief is available at the Ketchikan Public Library and on the LBC Internet web site.

## **Wilber E. Fisher Comment # 3**

There is a long history of friction, distrust, and resentment between residents and officials of the City of Ketchikan and the residents of the remainder of the Borough. The desire of the City officials to inflict their will on rural residents continues to this day. Rural residents deserve better and a second class borough continues to protect them from an avaricious city council and administration.

## **DCED Response**

Conflicts between city residents and non-city residents are not unique to Ketchikan. They exist within many, if not most or all, of the non-unified and non-consolidated organized boroughs. The desire to eliminate such conflicts is typically cited among the principal reasons that citizens and local officials support unification or consolidation. Officials and residents of unified

boroughs suggest that consolidation has been effective in reducing conflicts and providing for a more effective and efficient governmental operation.

## **Wilber E. Fisher Comment # 4**

The argument that the City and Borough have duplicate services is a specious one. The proponents try to characterize the existence of the council and the assembly and the city and borough managers and administrations as duplicate services and by extension point vaguely toward other “duplicate services”. The council and the assembly have very different functions. The city is a home rule city and as such has very broad powers granted by the legislature. It cannot, however, have any power over the three mandatory areawide powers of the assembly nor any power that the legislature or the voters inside and outside the city have subsequently delegated or approved to be enacted on an area wide basis. DCED should address the differences between the City of Ketchikan and the Ketchikan Gateway Borough.

## **DCED Response**

DCED addressed the issue of existing overlapping functions and projected cost savings that would result from consolidation on pages 35 – 41 of its Preliminary Report. The Preliminary Report noted that a 1993 consolidation study completed by independent consultants concluded that consolidation could reasonably be projected to result in the elimination of 7.38 full-time-equivalent staff and 8 elected officials. In 1993, annual savings from consolidation were projected to be \$626,050. Based on the 1993 study, City officials today project that savings will amount to nearly \$1 million annually. The Preliminary Report stated regarding this matter:

DCED finds the Petitioner’s projections that operating costs of the proposed consolidated borough will decrease by more than \$950,000 annually to be reasonable on a long-term basis. The Petitioner’s credibility regarding the projected savings is enhanced by the success of the 1999 KPU/City management consolidation.

## **Wilber E. Fisher Comment # 5**

The City of Saxman is excluded from the consolidation proposal because that was the will of the Saxman voters. The rural voters have, on three separate occasions, expressed their will as well by turning down unification. DCED should examine the reasons for those failed attempts and should determine if there has been a change in sentiment of rural voters before it endorses the Ketchikan consolidation proposal. Furthermore, DCED should examine and perhaps recommend one of the alternatives to consolidation (i.e., unification or reclassification) which would preserve the rural voters’ rights as originally intended when the borough was formed.

## DCED Response

DCED notes that the issue of consolidation of local governments in the Ketchikan area has been under active consideration by local municipal officials and civic organizations since 1990. During that time, alternatives to consolidation have been identified and examined. Most recently, the Ketchikan Gateway Borough Attorney did so approximately four months prior to the filing of the pending petition. (See January 12, 2000 memorandum regarding consolidation options by Scott A. Brandt-Erichsen.)

Moreover, as noted in the Preliminary Report, the Local Boundary Commission recently encouraged local officials to pursue consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. The Commission did so during its 1999 deliberations on the Shoreline Service Area annexation, in part, to address what the Commission considered to be 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.

(Local Boundary Commission, *Statement of Decision in the of the 1999 Amended Petition of the City of Ketchikan for Annexation of Approximately 1.2 Square Miles*, p. 13, December 16, 1999.)

DCED has a responsibility under the law to review consolidation proposals and to make recommendations to the Local Boundary Commission for action on those proposals (AS 29.06.110; 3 AAC 110.530). DCED bases its examination and recommendations on standards set out in the law. Barring some legitimate public policy objection, the law intends that a consolidation petition will be placed before the voters if the Local Boundary Commission determines that it meets applicable standards. That is the only way to determine the true will of the voters on the matter.



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## Dan Williams, Mayor, City of Saxman

Mayor Williams wrote a two-page letter dated March 7, 2001. His comments dealt with one issue. The issue is summarized below; DCED's response follows.

### Mayor Williams Comment

The Preliminary Report recommended several changes to Article XIII and Section 12.02 of the proposed Charter that we believe may impair Saxman's ability to serve the community's needs on an ongoing, independent basis. Proposed amendments to those provisions are provided.

### DCED Response

The correspondent suggested that Article XIII of the proposed Charter be amended to read as shown below.

This Charter shall not limit in any way the jurisdiction, rights, powers, or autonomy of the City of Saxman. The Municipality shall take no action to initiate or support the dissolution, merger, or consolidation of the City of Saxman. Unless permitted by the City of Saxman, the Municipality shall not exercise any power or function within the boundaries of the City of Saxman except such power or function as the Municipality is required to exercise under state law, with the power to tax being limited solely to levy of property, sales, and transient occupancy taxes on an areawide basis. Subject to the limitations set forth herein, 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.

The following compares the text suggested by the City of Saxman to the text recommended by DCED in the Preliminary Report (additions suggested by Saxman are shown in bold, underlined type; deletions suggested by Saxman are shown in capitalizing, bracketed type.)

**This Charter shall not limit in any way the jurisdiction, rights, powers, or autonomy of the City of Saxman.** The Municipality shall take no action to initiate or support the dissolution, merger, or consolidation of the City of Saxman. **Unless permitted by the City of Saxman, the Municipality shall not exercise any power or function within the boundaries of the City of Saxman except such power or function as the Municipality is required to exercise under state law, with the power to tax being limited solely to levy of property, sales, and transient occupancy taxes on an areawide basis. Subject to the limitations set forth herein, until** [WITHIN ITS BOUNDARIES AS OF THE DATE OF CONSOLIDATION, THE CITY OF SAXMAN MAY, TO THE EXTENT PERMITTED BY LAW, EXERCISE THOSE

POWERS WHICH 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.

As far as DCED is aware, the nature of the proposal by the City of Saxman is unprecedented in Alaska. The language suggested by the City of Saxman would impose drastic limits on the authority of the Municipality of Ketchikan. It would prohibit the Municipality from presently exercising within the corporate boundaries of the City of Saxman any power or function except those set out in AS 29.35.150 – 29.35.180, unless otherwise authorized by the City of Saxman. More specifically, the limitations would apply to any function except: (1) operation of a public school system; (2) assessment and collection of property, sales, and use taxes; and (3) planning, platting, and land use regulation.

The language suggested by the City of Saxman is not in harmony with AS 29.35.250. (See footnote number 1.) AS 29.35.250, which applies to home rule and general law municipal governments, prohibits cities from exercising areawide borough powers unless exempted by the borough assembly. The language suggested by the City of Saxman would prohibit the consolidated borough from exercising many areawide powers, unless exempted by the Saxman City Council.

DCED notes that the proposed Charter of the consolidated borough offers greater autonomy to the City of Saxman than is allowed under the present structure. For example, the Ketchikan Gateway Borough presently exercises the “power to provide for economic development on an areawide basis.” As permitted by AS 29.35.250(b), the Borough has authorized the City of Saxman to exercise that same power “in a manner that does not conflict with or duplicate the exercise of areawide economic development powers by the borough.” (See Section 10.10.005(d) of the Ketchikan Gateway Code).

The Borough could theoretically rescind its authorization for the exercise of economic development powers by the City of Saxman. Alternatively, it could apparently prohibit the City of Saxman from continuing current economic development activities by expanding the scope of the Borough’s economic development activities in a manner that duplicated or conflicted with those presently undertaken by the City of Saxman. The Borough could also determine that the City’s current economic development activities “conflict with or duplicate” those of the Borough. However, under the proposed Charter, the City would be guaranteed the authority to continue to exercise current powers, including those relating to current economic development activities.

The Saxman proposal would also prohibit the consolidated borough from levying any tax within the City of Saxman except for areawide property, sales, and transient occupancy taxes. In a general sense, such limitations would be an untenable restriction of the authority of the consolidated borough to levy taxes levied by other boroughs in Alaska.

Moreover, Saxman is included in the proposed Greater Ketchikan EMS Service Area. As such, the consolidated borough would be obligated to provide EMS services to Saxman, but would be prohibited from collecting taxes in Saxman for those services if the Saxman proposal were implemented.

The City of Saxman's proposal runs counter to constitutional and other principles of local government in Alaska. As noted earlier in this Final Report, the Alaska Supreme Court stressed in 1982 that cities and boroughs "were not to be disparate and competing, but were intended to cooperate and collaborate."

The Preliminary Report noted the following comments from Victor Fischer and Thomas Morehouse on the relationship between cities and boroughs:

While designing an ideal model, delegates were not unaware of the potential for local government conflict. Indeed, the Alaska local political scene at the time was highlighted by disagreements between cities and school districts, battles over annexation, and troubles between cities and public utility districts.<sup>5</sup> Delegates were also aware of interjurisdictional problems existing among cities, counties, and special districts in the larger urban areas of other states. They thus sought to create a system in which conflict would be minimized.

Messrs. Morehouse and Fischer further stated:

The intended relationship was probably best described in the following words:

Our whole concept has been based, not upon a separation of the two basic units of government, the borough and the city, but as close an integration of functions between the two as is possible. It was felt, for instance, that we should not, definitely not follow the pattern that you find in most stateside counties where you have the exactly same functions being carried out separately at these two levels of government with their own hierarchy of officialdom and separate capital investment. It was our thought that whenever functions overlap that they should be integrated, and from that standpoint it was the Committee's feeling that if we can get the coordination between the city council and the borough assembly we would be able to achieve the maximum amount of cooperation because then each would best know what the other had to offer, they would realize what the problems of the other were, and you would force them, almost, into the cooperation that we hope to achieve in our local government.

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<sup>5</sup> (Footnote original) See *Minutes*, 12th, 35th, and 40th Meetings, *Proceedings*, pp. 2637-38.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 44-45.)

Based on the foregoing, DCED does not support the amendment suggested by the City of Saxman. The City of Saxman also suggested the following text as a substitution for DCED's recommended changes to Section 12.02 of the Charter:

This Section is subject to the limitations set forth in Article XIII. This Section shall not prohibit the City of Saxman from also exercising, within its boundaries, any power not prohibited by law.

DCED's recommended text stated that

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.

After considering the correspondent's suggested alternative, DCED affirms the recommendation in the Preliminary Report regarding the text in question.

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## **Karl R. Amylon, City Manager, City of Ketchikan**

Mr. Amylon wrote a one-page letter dated March 8, 2001. Mr. Amylon made three principal points in his letter as summarized below.

### **Karl Amylon Comment # 1**

The City of Ketchikan concurs with DCED's conclusion that all of the applicable standards for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough have been met. The City further concurs with DCED's conclusion that the consolidation proposal is in the best interests of the state.

### **DCED Response**

No response is necessary.

### **Karl Amylon Comment # 2**

The City of Ketchikan concurs with DCED's six recommended amendments to the proposed Charter and believes that, if accepted by the Local Boundary Commission, they will further strengthen the conclusions reached in the Preliminary Report.

## **DCED Response**

No response is necessary.

## **Karl Amylon Comment # 3**

Prior to preparing its own comments on DCED's Preliminary Report, the City did not have the opportunity to review comments made by the other correspondents. If a response to those comments is warranted, the City will do so at the Local Boundary Commission's public hearing on the matter.

## **DCED Response**

The April 21 hearing will provide correspondents, interested citizens, local officials, and the City the opportunity to offer further comment on the proposal. As noted earlier, the appendices to this report provide important details about that hearing.

Part  
**3**

# Recommendations to the Local Boundary Commission

Having carefully considered the comments on its Preliminary Report in this matter, DCED affirms its preliminary conclusion that all applicable standards for consolidation of the home rule City of Ketchikan and the second class Ketchikan Gateway Borough are satisfied by the pending proposal and that the proposal is in the best interests of the State.

Based on the analysis and conclusions in the Preliminary Report and this Final Report, DCED affirms the recommendation to the Local Boundary Commission as presented in Preliminary Report as follows:

DCED recommends that the six amendments listed below be made to the proposed Charter. Following consideration of the proposed amendments, DCED recommends that the Local Boundary Commission approve the *Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan to the Municipality of Ketchikan, a Home Rule Borough*.

## 1. Recommended Amendment Number 1

Amend the title of ARTICLE XII to read:

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

## 2. Recommended 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**.

## 3. Recommended 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.**

#### **4. Recommended 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.

## **5. Recommended 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.

## **6. Recommended Amendment Number 6**

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





**Members**

*Kevin Waring  
Chairperson*

*Kathleen  
Wasserman  
Vice-Chairperson  
First Judicial  
District*

*Nancy Galstad  
Member  
Second Judicial  
District*

*Allan Tesche  
Member  
Third Judicial  
District*

*Ardith Lynch  
Member  
Fourth Judicial  
District*



# Appendix A

## State of Alaska Local Boundary Commission (LBC)

### NOTICE OF PUBLIC HEARING ON PROPOSAL TO CONSOLIDATE THE HOME RULE CITY OF KETCHIKAN AND THE 2ND CLASS KETCHIKAN GATEWAY BOROUGH AS A HOME RULE BOROUGH

The LBC will conduct a public hearing as noted below to consider the May 5, 2000 consolidation petition of the City of Ketchikan. If the LBC approves the petition, consolidation of the City of Ketchikan and the Ketchikan Gateway Borough will be subject to an areawide election among Ketchikan Gateway Borough voters.

**3:00 p.m., Saturday, April 21, 2001  
Cape Fox Lodge – Shaa Hit Room  
800 Venetia Avenue  
Ketchikan, Alaska**

The hearing will be conducted in accordance with 3 AAC 110.560. Immediately following the hearing, the LBC may conduct a decisional session on the matter in accordance with 3 AAC 110.570.

Individuals with disabilities who need reasonable accommodations to participate at the hearing should contact LBC staff at (907) 269-4559 or TDD (907) 465-5437 by April 13, 2001. Questions regarding the consolidation proposal or the hearing may be directed to:

LBC Staff  
Department of Community and Economic Development  
550 W. 7th Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Telephone: (907) 269-4559  
Fax: (907) 269-4539  
e-mail: [Dan\\_Bockhorst@dced.state.ak.us](mailto:Dan_Bockhorst@dced.state.ak.us)



### Members

Kevin Waring  
Chairperson  
At-Large

Kathleen  
Wasserman  
Vice-  
Chairperson  
First Judicial  
District

Nancy Galstad  
Member  
Second Judicial  
District

Allan Tesche  
Member  
Third Judicial  
District

Ardith Lynch  
Member  
Fourth Judicial  
District



# Appendix B

## Agenda Public Hearing Ketchikan Consolidation Proposal

3:00 p.m., April 21, 2001  
Cape Fox Lodge – Shaa Hit Room

- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- IV. Comments by members of the Local Boundary Commission
- V. Comments by members of the public concerning matters **not** on the agenda
- VI. Public hearing on petition for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough
  - A. Summary of DCED's conclusions & recommendations
  - B. Petitioners' opening statement (limited to 10 minutes)
  - C. Sworn testimony of witnesses with relevant expertise called by the Petitioners
  - D. Period of public comment by interested persons (limited to 3 minutes per person)
  - E. Petitioners' closing statement (limited to 10 minutes)
- VII. Decisional session concerning the Ketchikan consolidation petition (optional)
- VIII. Comments from Commissioners and staff
- IX. Recess or Adjourn



# Appendix C

## TIPS FOR EFFECTIVE PUBLIC COMMENT

If you plan to offer comments at the public hearing before the Local Boundary Commission (LBC) on the proposed consolidation of the City of Ketchikan and the Ketchikan Gateway Borough, the following tips are offered to make your comments more effective.

### **Members**

*Kevin Waring  
Chairperson  
At-Large*

*Kathleen Wasserman  
Vice-Chairperson  
First Judicial District*

*Nancy Galstad  
Member  
Second Judicial District*

*Allan Tesche  
Member  
Third Judicial District*

*Ardith Lynch  
Member  
Fourth Judicial District*

**1. Come prepared and informed.** Plan your comments in advance. Prior to the hearing you may wish to review:

- ◆ the consolidation standards and procedures established in State law (see summary below);
- ◆ the consolidation petition; written comments, and reply brief on the petition,
- ◆ DCED's Preliminary Report, public comments on the Preliminary Report, and DCED's Final Report.

The above materials are available at the Ketchikan Public Library. The documents are also available on the LBC web site at

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

**2. Provide relevant comments or testimony.** The LBC's decision on the consolidation proposal will be based on standards established in law and applied to the facts of the proposal. Comments that address those standards will be most helpful to the LBC. In summary, the relevant standards relate to whether the proposed consolidated borough:

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 preference – city v. service area;
- Best interests of the state.

**3. Observe the rules.**

- ◆ New written materials may not be filed at the hearing unless good cause for such is shown.
- ◆ Public comment will be limited to 3 minutes per speaker to ensure that the LBC will be able to hear from all persons who wish to speak. Please honor the time limits.

**4. Avoid repetition.** If an earlier speaker has addressed certain points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and then spend your allotted time on topics that have not yet been addressed.



# Appendix D

## TENTATIVE SCHEDULE FOR KETCHIKAN CONSOLIDATION PROCEEDINGS

Date	Interval Between Prior Step	Action
04/21/01	NA	LBC conducts hearing on consolidation proposal
04/27/01	6 days	LBC adopts written decision on consolidation proposal
04/27/01 to 05/17/01	20 days	Opportunity for reconsideration of LBC decision
05/18/01	1 day	LBC meets to review any timely requests for reconsideration
05/18/01	0 days	If consolidation petition is granted, LBC notifies Division of Elections and provides ballot language
05/18/01	0 days	Director of the Division of Elections orders consolidation election
05/18/01	0 days	DCED submits preclearance request to Justice Department
06/22/01	35 days	Advance Election Notice sent to each voter
06/25/01	3 days	Ballots mailed to voters
07/02/01	7 days	Absentee voting in person begins
07/17/01	60 days	Election Day - Consolidation election held
08/01/01	15 days	Last day to receive overseas absentee ballots
08/2/01	1 days	Certification of election results by the Director of the Division of Elections
08/3/01	1 days	If voters approve consolidation, Director of the Division of Elections order an election of officials of the consolidated borough
08/6/01	3 days	Filing for candidacy begins
08/17/01	12 days	Filing for candidacy ends at 5 p.m.
9/17/01	7 days	Absentee voting in person begins
10/02/01	15 days	Election of officials for the consolidated municipality
10/17/01	15 days	Last day to receive overseas absentee ballots
10/18/01	1 days	Certification of election results by the Director of the Division of Elections; effective date of consolidation.