

# Chapter 1 Background

## A. Introduction

On May 8, 2000, the City of Ketchikan (City or Petitioner) submitted its Petition to the Local Boundary Commission (LBC or Commission) to consolidate<sup>1</sup> the Ketchikan Gateway Borough (KGB or Borough) and City. The Petitioner offered the following seven principal reasons for its consolidation proposal:

1. Consolidation promotes maximum local self-government with a minimum of local government units.
2. Consolidation encourages efficiencies and economies of scale within local government.
3. Consolidation establishes a single provider of municipal services and results in a more effective and accountable government structure.
4. A consolidated government enhances the community's ability to determine areawide policies and priorities and to represent itself in a unified manner when dealing with state and federal agencies.
5. Consolidation provides for an equitable distribution of the management and cost of providing regional community services.
6. Consolidation enhances local government's ability to provide for effective economic development and long-term planning.
7. Consolidation provides for a single government entity to represent an area that is socially and economically unified.

During the eleven-week period allowed for public review and comment on the Petition, two letters were received. The Petitioner subsequently filed a reply brief in response to the written comments. Details about the views of the Petitioner and correspondents are provided in Chapters 2 and 3 of this report.

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

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<sup>1</sup> "Consolidation" is defined by AS 29.71.800(6) as "dissolution of two or more municipalities and their incorporation as a new municipality." The petition seeks to dissolve the home rule City of Ketchikan and the second class Ketchikan Gateway Borough and to incorporate the Municipality of Ketchikan, a new home rule borough.

## B. Effects of Consolidation

If approved by the Local Boundary Commission and voters of the Ketchikan Gateway Borough, the proposed consolidation would have the following effects:

- dissolution of the existing Ketchikan Gateway Borough, a second class borough;
- incorporation of the new “Municipality of Ketchikan”, a home rule borough;
- dissolution of the existing City of Ketchikan, a home rule city;
- creation of the 4.4 square mile “Ketchikan Service Area” with boundaries encompassing the City of Ketchikan as they existed at the time the Petition was filed, a portion (approximately 0.51 square miles) of the Shoreline Service Area as it existed at the time the Petition was filed, 27.4 acres in Bear Valley approved for annexation to the City by the Local Boundary Commission on November 17, 2000, and a small parcel of land known as the “JONSEA tract” adjacent to the 27.4 acres recently approved for annexation;
- creation of a new 0.41 square mile Shoreline Service Area (the Shoreline Service Area existing at the time the Petition was filed was abolished following its annexation into the City of Ketchikan on January 1, 2001);
- creation of the Greater Ketchikan EMS Service Area encompassing the Ketchikan Service Area; the Shoreline Service Area; South Tongass Volunteer Fire Department Service Area; the City of Saxman; Section 25 and a portion of Section 36 of T75S, R91E; CRM; and Section 8 and portions of Sections 17, 18, 19, and 30 of T75S, R92E, CRM;
- restructuring of municipal powers such that the following powers would be exercised by the Municipality of Ketchikan on an areawide basis:
  - Education;
  - Assessment and Collection of Property, Sales and Transient Occupancy Taxes;
  - Platting, Planning, and Land Use Regulation;
  - Parks and Recreation;
  - Transportation;
  - Animal Control;
  - Economic Development;
  - Emergency 911 Dispatch;
  - Library;

- Museum;
- Civic Center;
- Mental Health and Substance Abuse;
- Hospital;
- Public Health;
- Cemetery;
- Solid Waste Disposal; and
- Port and Harbors.
- restructuring of municipal powers such that the following powers would be exercised on a nonareawide basis:
  - wastewater collection, treatment, and discharge; and
  - building code enforcement.

If consolidation occurs as proposed in the Petition, the City of Saxman will remain in existence and would be part of the Municipality of Ketchikan, just as it is now part of the Ketchikan Gateway Borough (see Article X, Section 7, Alaska Constitution).

### C. Local Boundary Commission (LBC)

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

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

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

The LBC consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “. . . *on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.*” (AS 39.05.060) Members serve at the pleasure of the Governor. The Chairman is appointed from the state at-large and one member is appointed from each of Alaska’s four judicial districts. Members serve without compensation. Biographical information about the current members of the LBC is provided in Appendix B.

## D. Communications with the LBC

The LBC is a quasi-judicial board. To preserve the rights of petitioners and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the LBC regarding petitions pending before the Commission. The law prohibits such communication between the LBC and others, apart from the Commission’s staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains effective through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

## E. Staff to the Commission

The Alaska Department of Community and Economic Development (DCED) serves as staff to the LBC. However, the LBC is autonomous.

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

Alaska Department of Community and  
Economic Development  
550 West 7th Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

Telephone: 907-269-4559

Fax: 907-269-4539

E-mail: [Dan\\_Bockhorst@dced.state.ak.us](mailto:Dan_Bockhorst@dced.state.ak.us)

## F. Legal Standards for Consolidation

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

1. may amend the Petition;
2. may impose conditions for consolidation;
3. *may* approve the Petition if the LBC determines that the consolidation proposal, with or without amendments and conditions:
  - a. meets applicable standards under Alaska’s Constitution,
  - b. meets applicable standards under LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
  - c. meets standards for consolidation under AS 29.06.130(a) which, in this case, consist of the standards for borough incorporation under AS 29.05.031, *and*
  - d. is in the best interests of the state;
4. *shall* deny the Petition *if* the LBC determines that the consolidation proposal, with or without amendments and conditions:
  - a. does not meet applicable standards under the state constitution,
  - b. does not meet applicable standards under LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
  - c. does not meet standards for borough incorporation under AS 29.05.031, *or*
  - d. is not in the best interests of the state.

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

## Chapter 2 Proceedings to Date and Future Proceedings

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

## A. Consolidation Petition Accepted for Filing

The Petition was submitted to DCED on May 8, 2000. On May 31, 2000, DCED completed its technical review of the form and content of the Petition, at which time the Petition was formally accepted for filing.

## B. Notice of Filing of the Petition

The Chairman of the LBC set September 1, 2000, as the deadline for receipt of responsive briefs and comments on the consolidation proposal. Public notice of the filing of the Petition was published by DCED on the State of Alaska Online Public Notices web page from June 1, 2000, through September 2, 2000. The notice was also provided on the LBC Internet Web site. Additionally, the notice of filing was published by the Petitioner in the *Ketchikan Daily News*, a newspaper of general circulation in the territory, on June 21, June 28, and July 5, 2000.

In addition to publishing the notice, the Petitioner delivered requests for public service announcements of the filing of the Petition to the following radio stations serving the greater Ketchikan area:

- KFMJ-FM;
- KGTW-FM;
- KTKN-AM; and
- KRBD-FM.

Public notice of the filing of the Ketchikan consolidation Petition was posted by the Petitioner in the following locations on June 16, 2000:

- Office of the Ketchikan City Clerk;
- Office of the Ketchikan Borough Clerk;
- Ketchikan City Hall 2nd Floor Bulletin Board; and
- Ketchikan Public Library.

In addition to publishing and posting the notice, the Petitioner delivered a copy of the notice to the following parties on June 16, 2000:

1. Ketchikan Gateway Borough Manager;
2. Mayor of the City of Saxman;
3. Alaska Governor Tony Knowles;
4. State Senator Robin Taylor;
5. State Representative Bill Williams;
6. KGB Forest Park Service Area;
7. KGB Mud Bight Service Area;
8. KGB Waterfall Creek Service Area;
9. KGB Long Arm Service Area;
10. KGB Vallenar Bay Service Area;
11. KGB Gold Nugget Service Area;
12. KGB Shoup Street Service Area;

13. KGB Nichols View Service Area;
14. KGB Shoreline Service Area;
15. KGB Deep Bay Service Area;
16. KGB South Tongass Volunteer Fire Department Service Area;
17. KGB Mountain Point Service Area; and
18. Ernest Boyd.

The Petitioner provided a copy of the complete Petition to the Mayors of the Ketchikan Gateway Borough and the City of Saxman, as required by law.

On June 1, 2000, DCED provided notice of the filing to 64 agencies and individuals.

### C. Public Comments Filed

Two letters were filed with the LBC by the September 1, 2000 deadline for such set by the Local Boundary Commission Chairman.<sup>2</sup> These consisted of:

- a one-page letter Diane Raab supporting the Petition; and
- a six-page letter from the Ketchikan Gateway Borough outlining concerns and suggesting possible modifications to the Petition.

On September 8, 2000, the Petitioner filed a reply brief in response to the written comments.

### D. DCED's Preliminary Report

In accordance with 3 AAC 110.530, DCED prepared this preliminary report and provided copies to the Petitioner. Additionally, DCED has distributed the report to other interested individuals and organizations, including the three correspondents in this proceeding.

3 AAC 110.640 requires that at least 28 days be allowed for comment on the draft report from the date the report was mailed to the Petitioner. The deadline for the receipt of written comments on the draft report in this case has been set for March 8, 2001 at 5:00 p.m.

Comments may be submitted by mail, courier, facsimile, or e-mail. To be considered, comments must be received by the deadline at the following location:

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<sup>2</sup> In addition, Timothy E. Staebell wrote a one-page letter on behalf of the KGB Gold Nugget Service Area Board of Directors. Mr. Staebell's letter is critical of the consolidation proposal. The letter is dated August 31, 2000, but was not received until September 5, four days past the deadline. Notwithstanding the late filing, the City of Ketchikan responded to Mr. Staebell's criticisms in the City's reply brief.

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Anchorage, AK 99501-3510  
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## E. DCED's Final Report

After DCED has considered the written comments on its preliminary report, it will issue a final report on the matter. The final report must be mailed to the Petitioner at least three weeks prior to the Commission's hearing on the proposal.

## F. Pre-Hearing Requirements

As described in Section G, the Petitioner will be allowed to present sworn testimony during a public hearing on the consolidation proposal. The public hearing will be conducted by the Local Boundary Commission in Ketchikan.

Witnesses providing sworn testimony must have expertise in matters relevant to the pending consolidation proposal. At least fourteen days prior to the hearing, the Petitioner must submit to DCED a list of witnesses that the Petitioner intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness.

## G. LBC Public Hearing

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

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



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

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

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

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

A member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

Upon conclusion of the testimony, the Commission will receive public comment by any interested person, not to exceed three minutes for each person. A member of the Commission may question persons appearing for public comment.

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

The draft hearing agenda is shown at the right.

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

If anyone attending the hearing does not have a fluent understanding of English, the LBC will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator. Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.

## H. LBC Decisional Meeting

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to

properly judge the merits of the consolidation proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

After the Commission has rendered its decision, it will adopt a written statement explaining all major considerations leading to its decision concerning the Ketchikan consolidation Petition. A copy of the statement will be provided to the Petitioner and all others who request a copy.

## I. Reconsideration

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

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if:

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

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioner may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

## J. Election

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

If voters approve the proposition for consolidation, the Director of the Division of Elections must then conduct a subsequent election for the selection of officials of the consolidated borough as required by AS 29.06.140(c). It would be

appropriate in this instance to limit the election to the assembly of the consolidated borough.<sup>3</sup>

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

## K. Judicial Appeal

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

# Chapter 3 Evaluation of the Ketchikan Consolidation Proposal

As noted in Chapter 1, the LBC *may* approve the Petition *if* it determines that the consolidation proposal, with or without amendments and conditions:

1. meets applicable standards under Alaska's Constitution,
2. meets applicable standards under the LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),

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<sup>3</sup> AS 29.06.140(c) provides, in part, that "If merger or consolidation is approved, the director of elections shall, within 10 days, set a date for election of *officials* of the new municipality." (emphasis added) There would be two sets of elected "officials" of the proposed Municipality of Ketchikan: (1) the mayor and assembly and (2) the school board. DCED has conferred informally with the Attorney General's office concerning the requirements of AS 29.06.140(c). DCED maintains that absent a change in the composition, form of representation, or responsibilities of the school board; and absent a formal school board policy opposing consolidation, it would be appropriate to limit the election of new "officials" under AS 29.06.140(c) to the mayor and assembly. The Petitioner expresses this same view in its transition plan by stating, "Because consolidation will not result in any change in the composition, apportionment, powers, or duties of the school board, this consolidation proposal will not require the election of a new school board."

3. meets standards for consolidation under AS 29.06.130(a) which, in this case, consist of the standards for borough incorporation under AS 29.05.031, *and*
4. is in the best interests of the state.

This chapter provides DCED's analysis of the extent to which the Ketchikan consolidation proposal meets those four requirements.

## A. Whether the Consolidation Proposal Meets Applicable Standards Under the State Constitution.

Article X, Sections 1 and 5 of Alaska's Constitution contain provisions that are particularly applicable to the pending consolidation proposal. These are addressed in this section of the report.

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### 1. Article X, Section 1 of Alaska's Constitution – Purpose and Construction of the Local Government Article.

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The first Section of Article X sets out the purpose and construction of the Local Government Article of Alaska's Constitution as follows:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Two clauses of Article X, Section 1 are particularly pertinent to the proposed consolidation. These are the "maximum local self-government clause" and the "minimum of local government units clause". Analysis of these two fundamental principles of Article X, Section 1 follows.

#### a. Maximum Local Self-Government.

To gain a proper understanding of the maximum local self-government clause, it is appropriate to reflect on the circumstances prevalent in Alaska at the time Alaska's Constitution was written. There was a strong need and desire for self-government in terms of Alaska's affairs in general. Victor Fischer, delegate to Alaska's Constitutional Convention and Secretary to the Convention's Committee on Local Government, noted:

Alaskans had, at the time the constitution was being written, only such rights and privileges as were constitutionally granted to all citizens of the United States and as provided by the U.S. Congress for the Territory. Federal law thus served as Alaska's constitution prior to statehood. In some cases, Congress specified what rights and rules would apply to Alaska; in others, it permitted the territorial legislature to act (or prohibited it from acting).

One of the basic arguments for statehood was this lack of self determination and self governance under the federal administration . . .

[Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 69. ("Fischer I")]

It is also appropriate to address the state of affairs with respect to local government in Alaska during the mid-1950s. Again, Victor Fischer has provided a useful characterization of those circumstances:

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

(*Ibid.*, page 116.)

When Alaska's Constitutional Convention convened, Alaska had just thirty city governments and approximately fifteen independent school districts and public utility districts. All of those local governments were community-based entities; Alaska lacked regional governments. Mr. Fischer stated the following with regard to the views of the Committee on Local Government concerning maximum local self-government:

Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated *the general purpose was to provide a maximum of self-government to the people in all parts of Alaska. To meet this goal, two basic local government units were established – boroughs and cities.* (emphasis added) This framework was designed to accommodate today's needs and tomorrow's growth and development. The committee then set forth the principles underlying the proposed local government system:

1. **Self-Government.** The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure. . .

(*Ibid.*, page 117.)

DCED also considers it relevant to the issue of maximum local self-government that the Alaska Supreme Court has held that Article X, Section 1 of Alaska's Constitution encourages the creation of borough governments.<sup>4</sup> *Mobil Oil Company v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974). Moreover, the Court reads Article X, Section 1 "to favor upholding organization of

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<sup>4</sup> Although not stated, it seems reasonable to conclude that the determination reached by the Court that Article X, Section 1 encourages the creation of boroughs reflects both the maximum local self-government clause and the minimum of local government units clause found in Section 1.

boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.” (*Ibid.*, 99.)

From the foregoing – particularly the view of the Local Government Committee that boroughs and cities were established to ‘meet the goal of providing a maximum of self-government to the people in all parts of Alaska’ – DCED concludes that 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.<sup>5</sup> Upon incorporation of the KGB, overlapping structures for maximum local self-government were established in the areas encompassing the City of Ketchikan and the City of Saxman, while a single structure for maximum local self-government was established in the remainder of the Borough.

As noted, the Constitutional Convention’s Committee on Local Government took the view that, “The highest form of self-government is exercised under home rule.” The City of Ketchikan attained home rule status when voters adopted a charter at an election conducted October 4, 1960. The Ketchikan Gateway Borough has remained a general law borough since its incorporation in 1963.

The estimated 8,827 residents of the City of Ketchikan are served by two municipal governments – one home rule and the other general law.<sup>6</sup> The 370 residents of the City of Saxman are served by two general law municipal governments. The remaining 4,806 residents of the Ketchikan Gateway Borough are served by a single general law municipal government.

The pending consolidation proposal would extend home rule status throughout the borough. Thirty-seven percent of the KGB’s population not presently served by a home rule municipal government would be so served under the proposed

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<sup>5</sup> The Ketchikan Gateway Borough was incorporated by a vote on September 6, 1963. The Borough was required to incorporate pursuant to Chapter 52, *Session Laws of Alaska* 1963 (commonly known as the 1963 Mandatory Borough Act). That law mandated the creation of certain boroughs, in part, to provide for maximum local self-government. (Section 1 of the 1963 Mandatory Borough Act expressly stated, “It is the intention of the legislature to provide for maximum local self-government . . .”)

<sup>6</sup> For purposes of this report, DCED estimates that the current population of the City of Ketchikan is 8,827. That figure is the sum of the July 1, 2000 population figures for the City of Ketchikan (8,295) and the KGB Shoreline Service Area (532). The KGB Shoreline Service Area was annexed to the City of Ketchikan effective January 1, 2001. The July 1, 2000 population of the entire KGB was 14,003.

Municipality of Ketchikan. Thus, DCED concludes that the pending consolidation proposal would, at least theoretically, further maximum local self-government.<sup>7</sup>

b. Minimum number of local government units.

As noted earlier, Article X, Section 1 of Alaska's Constitution provides, in part, that, "The purpose of this article is to provide for maximum local self-government *with a minimum of local government units*, and to prevent duplication of tax-levying jurisdictions. (emphasis added)

The pending consolidation proposal seeks to dissolve two existing local government units (City of Ketchikan and Ketchikan Gateway Borough) and to create four new local government units (Municipality of Ketchikan, Ketchikan Service Area, Greater Ketchikan EMS Service Area, and Shoreline Service Area).<sup>8</sup> Arithmetically, the consolidation proposal increases the number of local government units serving the greater Ketchikan area. However, it significantly reduces the number of local governments serving the area.

The Committee on Local Government at the Constitutional Convention considered that a borough with no city governments within the borough to be the ideal structure of municipal government in Alaska. The founders rejected a proposal for the *immediate* abolition of cities. However, the Committee anticipated that boroughs and cities within them would gradually evolve into single unit governments.

Conflicts between cities and boroughs in the 1960s led to the enactment of legislation in 1967 to authorize unification of local governments. Local government experts Jerome R. Saroff and Ronald C. Cease wrote the following

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<sup>7</sup> DCED recently examined the issue of home rule and general law municipal governments in the context of the constitutional principle of maximum local self-government. (See DCED's December 2000 *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* at 14 – 32). DCED took the position that while the Fairbanks consolidation proposal would dissolve the home rule City of Fairbanks and reconstitute it as a service area within a new general law borough, "six prominent factors would significantly limit the practical effects of any resulting diminution of maximum local self-government." Those include the fact that Alaska's judiciary and legislature have, to a large extent, equalized the capacity of home rule and general law municipalities to exercise powers. Additionally, DCED stressed that the loss of home rule status for residents of the City of Fairbanks was not a permanent condition – voters or the assembly could initiate steps to adopt a home rule charter.

<sup>8</sup> Borough service areas are not local governments. They lack legislative and executive powers. Instead they are simply areas in which boroughs exercise different powers or provide different levels of service as compared to other parts of the borough. Nonetheless, borough service areas are local government *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska's Constitution. (See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 (Alaska 1995). Also, 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.)

concerning the constitutional provisions involving city/borough relationships as well as efforts in the late 1960s to enact legislation to allow unification of local governments:

During the Constitutional Convention when Alaskans were considering the structure and organization of local government, the Committee on Local Government pondered several alternatives. One of these was “Abolition of cities and their reconstitution as special urban tax districts within the larger unites [i.e., the borough].”<sup>9</sup>

Though the committee seriously considered the possibility of a single unit of local government for urban areas, it rejected the idea as an immediate goal for

. . . it was the opinion of the Committee that while . . . [the abolition of cities] had very definite advantages of one completely unified government . . . it was too drastic a step to take at one point . . .to abolish these units altogether.<sup>10</sup>

As a practical solution, the committee proposed a dual system of local government – borough and city. Significantly, however, it “viewed the long-term relationships between the borough and the city as a gradual evolution to unified government.”<sup>11</sup> The committee hoped that there would be cooperation between the two units, and that “where functions overlapped, they would be integrated.”<sup>12</sup> It intended that those functions of government that could best be performed on an areawide basis would be handled by the larger unit, the borough. However, the relationship between boroughs and cities has been characterized more by conflict than by cooperation.

Conflict, in fact, has so often been the hallmark of the relationship that many people in the more urbanized parts of the State have begun to agitate for the unification of the two units. Accordingly, there is a recent interest in legislation which would bring about borough-city-integration, without waiting for the slow, gradual, and perhaps painful absorption of city functions by boroughs.

Late in 1965, the mayor of the City of Anchorage, who felt that the existence of two units of local government was wasteful and productive of needless conflict, discussed with various local leaders, including the Anchorage borough chairman, the desirability of merging or consolidating the city and borough.<sup>13</sup> The reception was favorable.

A prominent member of the House of Representatives, Ted Stevens of Anchorage, working closely with city and borough officials, provided a draft of a

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<sup>9</sup> (Footnote original) Minutes of the Committee on Local Government, No. 19.

<sup>10</sup> (Footnote original) John H. Rosswog, in Minutes, p. 2612.

<sup>11</sup> (Footnote original) Final Report on Borough Government, p. 17.

<sup>12</sup> (Footnote original) Minutes, p. 2625.

<sup>13</sup> (Footnote original) In this chapter “merger” and “consolidation” are used as they are colloquially, i.e., simply as catch-alls for unification. Actually, the two terms are not the same. “Merger” means dissolution of a municipality and its absorption by another municipality. “Consolidation” means dissolution of two or more municipalities and their incorporation as a new municipality.



bill designed to permit unification of city and borough. Before formally introducing the bill, he brought it to the House Local Government Committee for review and suggested changes. After some discussion and study, the bill was redrafted and introduced as House Bill No. 409. Mr. Stevens introduced the bill, which was cosponsored by John L. Rader (the original sponsor of the Mandatory Borough Act), the chairman of the House Local Government Committee from Kodiak, and a Juneau area legislator. The sponsorship indicated support from several major areas of the State. The news media gave House Bill No. 409 wide coverage. Editorial comment was almost uniformly favorable:

We believe local officials have taken a bold step in advancing the idea of a new form of local government. It demonstrates awareness of a problem too often ignored – the problem of conflicting boundaries, overlapping services and expensive conflicts of jurisdiction. . . . The proposal as it has been sketched could represent a pioneering form of local government that avoids mistakes made elsewhere.<sup>14</sup>

(Ronald C. Cease and Jerome R. Saroff, eds., *The Metropolitan Experiment in Alaska*, 1968, pp. 357 – 359.)

In 1971, Thomas Morehouse and Victor Fischer offered additional insights concerning the views of the Local Government Committee regarding the constitutional relationship between cities and boroughs.

Given the general direction and character of their thinking on boroughs, the Local Government Committee was faced with the question of what to do about existing and future cities. Consideration was given to the possibility of doing away with cities altogether, even through they were the only units of general local government then existing in Alaska.

Abolition of cities and their reconstitution as urban service areas under the borough was considered as one way of promoting joint use of facilities and services and avoiding duplication of taxing jurisdictions. But other ways of achieving these objectives were also considered: extension of city boundaries to cover entire urban areas, and eventual unification or consolidation of borough and city governments. It was also recognized that cities had over the years developed distinct corporate identities and a substantial array of facilities and services; any sudden change from municipal status to uncertainty under the borough was not likely to be acceptable to city residents.<sup>15</sup>

It was decided that the status of cities should not be changed directly by the constitution; they would continue to exist. It was stipulated, however, that the city be a “part” of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough,<sup>16</sup> joint performance of functions, and voluntary transfer of functions from the city to the borough.

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<sup>14</sup> (Footnote original) “What About the Merger?” Anchorage Daily News, February 14, 1966.

<sup>15</sup> (Footnote original) *Minutes*, 14th, 15th, and 19th Meetings.

<sup>16</sup> (Footnote by DCED) In 1972, Alaskans voted to amend Article X, § 4 to delete the requirement that “[e]ach city of the first class, and each city of any other class designated by

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>17</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.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 43-44.)

In 1971, the Alaska Supreme Court concluded that unification of local governments serves the minimum of local governments clause in Article X, Section 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.<sup>18</sup> 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. The Court stated in 1971:

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law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.” In a 1987 publication, Victor Fischer characterized the former constitutional provision as one that “caused constant friction between the two blocks representing city and non-city parts of most boroughs.” He noted further that the 1972 amendment “reduced dissention on borough assemblies and permitted them to deal more peacefully with areawide matters.” (Gerald A. McBeath and Thomas A. Morehouse, eds., *Alaska State Government and Politics*, 1987, p. 49.) DCED adds to Mr. Fischer’s insights that the repealed requirement for equal representation under the State and Federal constitutions also rendered the provision in Article X, § 4 impractical. For example, if the constitutional provision were in place today, the City of Seldovia (population 284) would be guaranteed at least one representative on the Kenai Peninsula Borough Assembly. The equal representation clauses of the State and Federal constitutions would then entitle the City of Homer (population 4,154) to fifteen representatives on the Assembly; while the Assembly for the whole Kenai Peninsula Borough (population 48,952) would have to be comprised of 172 members.

<sup>17</sup> (Footnote original) See *Minutes*, 12th, 35th, and 40th Meetings, *Proceedings*, pp. 2637-38.

<sup>18</sup> Section 16.10 of the *Charter of the City and Borough of Juneau, Alaska* provides, “FUNCTIONS TO CONTINUE. Subject to Article XI of this Charter, service areas in existence on June 30, 1970, shall continue to exist. The area of the former cities of Douglas and Juneau shall each comprise a service area. The functions of local governments and service areas being exercised immediately prior to July 1, 1970, may continue insofar as consistent with this Charter, except that the assembly may alter, consolidate, or abolish service areas and may add or eliminate services as provided by this Charter.”

Appellants further contend that unification is barred by an implied constitutional requirement that cities not be dissolved in favor of boroughs.<sup>19</sup> On this theory appellants challenge the constitutionality of AS 29.85.170, which provides that upon ratification of the unification charter, local government units within the unified area are dissolved. We think appellants' challenge is for the most part disposed of by our discussion pertaining to the constitutionality of AS 29.85.160(c). *Unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units.* (emphasis added by DCED) Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs. In view of the express constitutional policy of minimizing the number of local government units, the grant to the legislature of the power to decide on the manner of dissolution of cities, found in article X, section 7, and the absence of either an explicit ban against unification, or a persuasive basis for inferring such a prohibition, we hold AS 29.85.170 constitutional.

[*City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 (Alaska 1971).]

In 1991, at the request of the Alaska Municipal League, the State legislature established the Task Force on Governmental Roles to define optimum Federal, State, and local responsibilities in providing public services in Alaska. The Task Force was charged with three principal tasks, one of which was to review “the most efficient means of funding public services.” Governor’s Office of Management and Budget and the Alaska Municipal League, *Task Force of Governmental Roles – Final Report*, July 10, 1992, p. 5. The Task Force concluded with regard to local governmental efficiencies that:

Another main organizational thrust embodied in the state constitution is to develop a streamlined system of local government. There are four available means of unification. The first is conventional unification. Juneau, Sitka and Anchorage chose to unify and Fairbanks and Ketchikan have both considered and rejected this approach. The second is a merger in which one or more municipalities merge into an existing municipality with the latter becoming the surviving municipality. The third is consolidation, where one or more municipalities consolidate into a new unit of government with all of the former units disappearing. This is the method that was looked at by the City of Kodiak and Kodiak Island Borough and is currently being explored by the Ketchikan Gateway Borough and the City of Ketchikan. The fourth method involves cities within a borough dissolving under the procedures set out in Title 29 whereby the

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<sup>19</sup> (Footnote original) The Constitutional provisions from which appellants infer a bar against unification are art. X, §§ 1, 2, 4, 7, 9, and 13. These six sections provide, respectively, that (1) the purpose of the local government article is to “provide for maximum local self-government with a minimum of local government units”; (2) “[a]ll local government powers shall be vested in boroughs and cities”; (4) cities are to be represented on borough assemblies; (7) cities are to be incorporated, merged, consolidated, and dissolved as provided by law and shall be part of the boroughs in which they are located; (9) home rule charters may be repealed by the voters of the city or borough having the charter; (13) cities may transfer powers or functions to boroughs unless prohibited by law or charter and may revoke the transfers. Appellants’ argument is that these sections show that their draftsmen contemplated the continuation of cities within boroughs rather than the swallowing up of the former by the latter.

borough succeeds to the responsibilities of the dissolved cities. This is currently being examined by the Northwest Arctic Borough. The Task Force endorses all of these methods.

- Unification of borough and city administrations should be encouraged wherever possible for more efficient and cost-effective service delivery.

(*Ibid.*, p. 15.)

According to the National Association of Counties (NACo), there were just 31 “city/county consolidated governments” in the nation in 1998. A city/county consolidated government is defined by NACo as “a government in which there has been a formal joining of a city (or cities) with a county government. This consolidation creates one unified governing organization that assumes the responsibilities of both the city and the county.” (Peggy Beardslee, *Questions and Answers on Consolidation*, National Association of Counties, July 1998.)

City/county consolidated governments account for only one percent of the 3,069 county governments (or their equivalent) in the United States. Only seventeen of the fifty states have city/county consolidated governments. Virginia has the most (five), followed by Louisiana (four). Alaska and Georgia are tied for third place with three city/county consolidated governments each. Table 1 on the following page identifies the city/county consolidated governments recognized by NACo.

While Alaska and Georgia are tied for third with respect to the *absolute* number of city/county consolidations, Alaska surpasses all other states except Hawaii with respect to the *relative* number of city/county consolidations recognized by NACo. Table 2 on the following page compares the number of NACo-recognized city/county consolidations by state in 1998 in relation to the total number of counties for that state. It should be noted, however, that NACo lists the municipal governments in Anchorage, Juneau, and Sitka as the only city/county consolidated governments in Alaska. However, Alaska actually has two *de facto* consolidated organized boroughs. Those consist of the City and Borough of Yakutat and the Bristol Bay Borough. City governments do not exist in either of those organized boroughs. Thus, five of Alaska’s sixteen organized boroughs (31.25%) operate as consolidated governments. Moreover, a petition for consolidation of the City of Haines and the Haines Borough was accepted for filing by DCED on January 5, 2001. Further, a petition is pending for consolidation of the City of Fairbanks and the Fairbanks North Star Borough. If all three pending consolidation proposals are implemented, fifty percent of Alaska’s organized boroughs will be consolidated governments.

As noted earlier, the Ketchikan consolidation petition would leave the City of Saxman in place. However, it would “consolidate” 97.4% of the population of the present Ketchikan Gateway Borough under a single government.

Boroughs were first formed in Alaska during the 1960s. The 1970 census indicated that nearly fifty percent of Alaskans who lived in organized boroughs

also lived within city governments. Today, that figure stands at only eighteen percent. It is a testament to the effectiveness of Alaska's constitutional policy promoting city and borough consolidation that nearly one-third of all organized boroughs in Alaska have no city governments within them and that more than eighty percent of organized borough residents receive municipal services only from their borough government. Moreover, if all pending petitions for consolidation are approved, the number of borough residents served by two municipal governments in Alaska would drop to ten percent.

Lastly, DCED notes with respect to minimum numbers of local government units that Victor Fischer, former Constitutional Convention delegate and expert on Alaska local government, 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.*" (emphasis added). [Victor Fischer, *Preliminary Report on Municipal Consolidation Petition*, August 11, 2000, p. 3. ("Fischer II")]

In summary, while the pending consolidation proposal will not reduce the number of local government *units* in the greater Ketchikan area, it will reduce the number of *local governments* serving that area. The founders "viewed the long-term relationship between the borough and the city as a gradual evolution to unified government." The pending consolidation proposal is a major step in that evolutionary process. The founders also considered "[a]bolition of cities and their reconstitution as urban service areas under the borough" to be one way to achieve minimum numbers of local governments. The pending consolidation proposal would achieve that result. The 1991 Task Force on Local Government established by the Alaska Legislature at the request of the Alaska Municipal League also concluded that "unification" (used colloquially to include consolidation) "should be encouraged wherever possible for more efficient and cost-effective service delivery." Lastly, the Alaska Supreme Court considers unification in which city governments are replaced with borough service areas as being "consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units." Again, the pending consolidation would achieve that end. Lastly, constitutional expert Victor Fischer considers the Ketchikan consolidation to meet the constitutional standard at issue. On the basis of these considerations, DCED concludes that the proposal before the Commission for the consolidation of certain local governments in the greater Ketchikan area serves the minimum of local government units clause found in Article X, § 1 of Alaska's Constitution.

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## 2. Article X, Section 5 of Alaska's Constitution – Service Areas.

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The Article X, § 5 of Alaska's Constitution provides for the establishment of service areas in organized boroughs:

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. 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. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

The Ketchikan consolidation Petition proposes the dissolution of the City of Ketchikan and its reconstitution (with boundary adjustments) as the “Ketchikan Service Area”, a multi-purpose service area of the Municipality of Ketchikan. Article X, § 5 favors a structure that is “consistent with the purposes” of Article X, § 1. In this context, it encourages a minimum of local government units. As noted in the preceding section of this report, DCED concludes that the Ketchikan consolidation proposal serves the minimum of local government units clause in Article X, § 1 of Alaska’s constitution. Therefore, DCED concludes that the constitutional principles of Article X, § 5 are served by the Ketchikan consolidation proposal.

## **B. Whether the Consolidation Proposal Meets Applicable Statutory and Related Regulatory Standards for City/Borough Consolidation.**

As noted previously, in order for the LBC to approve the pending Petition for consolidation, the Commission must determine that the proposed Municipality of Ketchikan meets the standards under AS 29.06.130(a) which, in this particular case, consist of the standards for borough incorporation under AS 29.05.031. The specific standards are set out below:

### **Sec. 29.06.130(a). Decision.**

The Local Boundary Commission may amend the Petition and may impose conditions for the merger or consolidation. If the commission determines that the merger or consolidation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, the municipality after the merger or consolidation would meet the standards for incorporation under AS 29.05.011 or 29.05.031, and the merger or consolidation is in the best interests of the state, it may accept the Petition. Otherwise, it shall reject the Petition.

### **Sec. 29.05.031. Incorporation of a borough or unified municipality.**

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.

In 1974, the Alaska Supreme Court held that the statutory standards for borough incorporation (which were then codified under AS 07) were designed to be used in a manner that was adaptable to Alaska's diverse characteristics.

The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as 'large enough', 'stable enough', 'conform generally', 'all areas necessary and proper', 'necessary or desirable', 'adequate level' and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska,<sup>20</sup> and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we

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<sup>20</sup> (Footnote original) A summary by the local government committee at the constitutional convention of the principles underlying the borough concept is preserved in T. Morehouse & V. Fischer, *Borough Government in Alaska* at 63-64 (1971). This relates:

*Self-government*-The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. . . .

*Flexibility*-The proposed article provides a local government framework adaptable to different areas of the state as well as to changes that occur with the passage of time. . . .

The authors describe how evolution of the borough has reflected this intended flexibility.

(T)wo recognizable types of organized boroughs now exist in Alaska: the *regional borough*, generally covering an extensive area including several widely dispersed small communities, incorporated and unincorporated, and the *urban borough*, having a population concentrated primarily in a single urban core area, characteristically overspilling the boundaries of a central city. It could be anticipated that the local governmental system will evolve in the two directions of unification and regionalism associated with these basic physical and socio-economic patterns.

*Id.* at 107-09 (emphasis in original).

perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

[*Mobil Oil Company v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974).]

The Local Boundary Commission has adopted regulations relating to consolidation. For the most part, those regulations implement, interpret, or make specific the statutory standards listed above. The regulations directly related to the statutory provisions are addressed in the context of these statutory standards in this part of the report. The remaining regulatory standards for consolidation are addressed in part C of this chapter of the report. A copy of the regulatory standards for consolidation is provided in Appendix C of this report.

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1. Social, Cultural, and Economic Interrelationships and Integration of population; Size and Stability of Population.

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The Petitioner describes the social, cultural, and economic interrelationships of the proposed consolidated borough as follows:

Having approximately sixty percent of the total Borough residents, the City of Ketchikan is the most densely populated area center within the Borough. Other smaller but well defined neighborhoods include Waterfall, North Point Higgins, South Point Higgins, Pond Reef, Shoreline, Forest Park, Shoup Street and Mountain Point. Connected by a highway road system of less than 30 miles, the City of Ketchikan and other defined neighborhoods are one and the same community, interconnected and interdependent. Whether one resides outside the City as a Borough resident or inside the City as a City and Borough resident, all identify themselves as being from "Ketchikan". The area is further united by areawide education, health and utility (telephone and electric) systems. Demographic and socio-economic data collected by both the federal and state governments display uniformity in the community.

(*Petition*, Ex. H, p. 6.)

The KGB has existed for more than thirty-seven years. The current jurisdictional boundaries of the KGB have never changed. Those circumstances create a strong presumption in favor of this standard, absent, of course, significant recent changes in the size and stability of the population, economic characteristics, social considerations, or the cultural nature of the area.

It is noteworthy that the Local Boundary Commission implicitly concluded in April 1999, that the area within the current boundaries of the KGB is socially, culturally, and economically interrelated and integrated. That implicit determination stemmed from a ruling by the Commission on the February 28,



1998 petition by the KGB for annexation of approximately 5,524 square miles inhabited by an estimated twenty-five residents.<sup>21</sup>

The expanded corporate boundaries proposed by the Borough in 1998 were nearly identical to its model boundaries as defined by the Commission in 1991. However, the proposed expanded corporate boundaries omitted a 17.9 square mile area in and around Hyder along with a 3.5 square mile area in and around Meyers Chuck. The model boundaries of the KGB included those 21.4 square miles. The map on the previous page shows the Borough's existing corporate boundaries and the territory proposed for annexation in 1998. The adjacent map shows the Borough's model boundaries, including Hyder and Meyers Chuck.

The Commission concluded as follows with regard to the compatibility of the area within the existing KGB and the territory proposed for annexation.

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.<sup>22</sup>

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<sup>21</sup> Following its December 12, 1998 hearing on the KGB annexation proposal, the LBC signaled that the proposal was flawed as a result of the exclusion of Hyder and Meyers Chuck. The Commission elected not to amend the petition to add Meyers Chuck and Hyder on its own initiative. The Commission was particularly concerned that additional steps might have been necessary to ensure that it had adequate information to make a fully informed decision concerning the addition of Hyder and Meyers Chuck. Such additional steps might include the opportunity for briefing by the Borough and respondents, staff analysis and recommendations, and public testimony directed at those options. Further, the Borough's transition plan did not address the prospect of service delivery to Hyder or Meyers Chuck. Rather than deny the Borough's petition outright, the Commission voted unanimously on December 12, 1998, to allow the Borough ninety days to amend its petition. The deadline for receipt of an amended petition was set for March 12, 1999. On March 12, 1999, Borough officials wrote to the Commission that, "the Borough wishes to proceed with the original petition submitted on March 2, 1998." The Commission reconvened its decisional session on March 31, 1999, at which time the Commission denied the petition.

<sup>22</sup> Former 19 AAC 10.160(a) has been renumbered as 3 AAC 110.160(a). It reads as follows:

(a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough or unified municipality. In this regard, the commission will, in its discretion, consider relevant factors, including the

(1) compatibility of urban and rural areas within the proposed borough or unified municipality boundaries;

(2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough or unified municipality boundaries;

[Local Boundary Commission, *Statement of Decision in the Matter of the February 28, 1998 Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, p. 10, April 16, 1999. (“Local Boundary Commission I”)]

Former 19 AAC 10.160(a) is similar to current 3 AAC 110.045(a).<sup>23</sup> 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 KGB plus 5,524 square miles proposed for annexation), given the virtually undeveloped nature of the territory formerly proposed for annexation, it is reasonable to conclude that the Commission implicitly determined that the standard was also met for the 1,751 square miles presently within the boundaries of the KGB.

3 AAC 110.045(b) establishes the rebuttable presumption that the statutory standard at issue requires the presence of at least two communities within a borough. That presumption is clearly met in this case. The KGB contains two city governments (Ketchikan and Saxman), each of which encompasses a separate community. The KGB contains no “census designated places” (CDPs) identified by the U.S. Bureau of the Census.<sup>24</sup>

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(3) existence of customary and simple transportation and communication patterns throughout the proposed borough or unified municipality boundaries; and

(4) extent and accommodation of spoken language differences throughout the proposed borough or unified municipality boundaries.

<sup>23</sup> 3 AAC 110.045(a) states

3 AAC 110.045 COMMUNITY OF INTERESTS.

(a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) the compatibility of urban and rural areas within the proposed borough;

(2) the compatibility of economic lifestyles, and industrial or commercial activities;

(3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and

(4) the extent and accommodation of spoken language differences throughout the proposed borough.

<sup>24</sup> The purpose of the CDP program is to identify and delineate boundaries for closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar sizes. The intent is for a CDP to differ from an incorporated city, town, village, or borough only in regard to legal status and recognition within its respective state.

3 AAC 110.050(a) provides that the Local Boundary Commission will consider census enumerations and other relevant factors in determining whether the size and stability of the population is sufficient to operate a borough. The Alaska Department of Labor and Workforce Development estimates that the July 1, 2000 population of the KGB was 14,003. The KGB ranks as the seventh most populous organized borough in Alaska. The population of the KGB is fourteen times greater than the presumed minimum population for borough governments established under 3 AAC 110.050(b). Table 3 compares the July 1, 2000 population of the KGB with that of other organized boroughs in Alaska.

DCED concludes from these factors that the population of the KGB is certainly large enough to operate a borough government.

The population of the Ketchikan Gateway Borough grew steadily until the 1990s. In 1970, the population of the Borough 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, as is shown in Table 4 on the following page, the population of the KGB 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 Corporation's operation at Ward Cove.

The population decline halted in 2000. The population of the KGB has grown 1.2% since 1990.

The Alaska Department of Labor projected in 1998 that the population of the KGB would continue to 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 KGB by 2018.

The historic and projected population data support a finding that the population of the KGB is stable enough for borough government.

Based on the foregoing analysis, DCED concludes that the proposed Municipality of Ketchikan has a population that is interrelated and integrated in terms of its social, cultural, and economic activities. Additionally, the population of the proposed consolidated borough is large and stable enough to operate the government. Thus, the standards set out in AS 29.05.031(a)(1), 3 AAC 110.045(a)-(b), and 3 AAC 110.050(a)-(b) are satisfied with regard to the proposed Municipality of Ketchikan.

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## 2. Conformance of Boundaries to Natural Geography and Inclusion of Areas Necessary for Municipal Services.

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In the late 1980s and early 1990s, the LBC undertook an extensive review of Alaska's unorganized borough to determine model boundaries for prospective and existing organized boroughs.<sup>25</sup> (See Department of Community and Regional Affairs, *Model Borough Boundaries*, revised 1997.) In setting model borough boundaries, the LBC considered the standard set out in AS 29.05.031(a)(2) regarding conformance with natural geography and inclusion of areas that are needed for municipal services. The boundary factors listed in 3 AAC 110.060(a) were also considered by the Commission in the course of setting model boundaries.

3 AAC 110.060(b) requires consideration of model borough boundaries with respect to the Ketchikan consolidation proposal. The KGB's present boundaries do not conform to the model boundaries established by the LBC in 1991. Those boundaries are depicted on the map on page 28. The Petitioner acknowledges that the boundaries of the proposed Municipality of Ketchikan do not conform to the model borough boundaries for the KGB. It addresses that issue as follows:

It is recognized that the boundaries of the proposed consolidated borough do not coincide with the model boundaries of the Ketchikan Gateway Borough as established by the Local Boundary Commission. Although the model boundaries are not incorporated within this petition for consolidation, the proposal is a further step in the right direction with respect to achieving a more efficient government with the maximum level of self-government. The proposed consolidation should be considered as significant progress towards meeting the goal of achieving an ideal municipal boundary.

(*Petition*, Ex. H, p. 95.)

The lack of conformity to model borough boundaries is not necessarily an impediment to consolidation. In 1998, the LBC concluded as follows regarding such matters with respect to the proposal for consolidation of local governments in Haines:

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

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<sup>25</sup> AS 29.03.010 provides that, "Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough."

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. (“Local Boundary Commission II”)]

3 AAC 110.060(c) establishes a rebuttable presumption that the boundaries of a proposed new borough 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 factor.

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

(*Ibid.*, p. 12.)

In summary, the territory proposed for consolidation conforms generally to natural geography and includes all areas necessary for full development of municipal services. The fact that the boundaries of the proposed Municipality of Ketchikan deviate from its model borough boundaries is not a barrier to consolidation. DCED concludes from its analysis that the standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060 are satisfied.

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### 3. Resources Needed to Provide Municipal Services.

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AS 29.05.031(a)(3) and 3 AAC 110.055 require the Local Boundary Commission to determine whether the area within the proposed consolidated borough possesses the human and financial resources needed to provide municipal services on an efficient and cost-effective basis.

Factors set out in 3 AAC 110.055 that are relevant to the financial resources aspect of the statutory standard include the anticipated functions, expenses, and income of the proposed borough, along with the feasibility and plausibility of the proposed budget. The Petitioner states as follows concerning the financial resources of the proposed Municipality of Ketchikan.

The three-year annual budget and the financial plan clearly demonstrate that the consolidation of the City and the Borough is financially feasible and beneficial to the residents of both the City and the Borough. The consolidation is projected to save approximately \$950,000 during the Municipality of Ketchikan's first year of operation. Sales taxes remain basically unchanged except for the modification of the one percent (1%) hospital sales tax from a City sales tax to an areawide sales tax. Property taxes will change. Residents living outside the current city limits will experience an increase in property taxes. Residents living inside the city limits will experience a decrease. As illustrated in Exhibit F-3, the areawide mill levy will be raised to 9.0 from 7.5. This increase is partially offset by the elimination of the non-areawide mill levy of .93. The increase in property taxes for residents living outside the city limits was not totally unexpected. One of the primary driving forces behind consolidation was to spread the costs of providing basic government services to all citizens enjoying the benefits of those services.

While the areawide mill rate will be increasing under consolidation, this should be viewed in light of the fact that the three-year annual budget compiled for the Municipality of Ketchikan is in balance. As was discussed earlier, the current budgets for the general funds of the City and the Borough were not in balance. Going from an unbalanced budget to a balanced budget would normally, assuming all service levels and all revenues except for property taxes remain the same, result in an increase in the mill rate. Since the starting point for the three-year annual budget for the general fund of the Municipality of Ketchikan was the unbalanced budgets of the general funds of the City and the Borough, and no changes in services were programmed, a mill rate increase was required in order to achieve a balance budget.

The increase in the mill rate was, however, partially mitigated as a result of the savings expected to occur from consolidation. Exhibit F-3 compares the present mill rates, the mill rates that would have been required if the City and the Borough had balanced their respective general funds for calendar year 1999 and fiscal year 2000, and the proposed consolidation mill rates. The purpose of showing the mill rates that would have been required to balance the current budgets of the general funds of the City and Borough in Exhibit F-3 is to provide a more meaningful comparison of the present local government budgets with the balanced budget of the Municipality of Ketchikan and to illustrate the impact of the consolidation savings on the mill rates.

*(Petition, Ex. F, p. 83.)*

The Ketchikan Gateway Borough noted its substantial interest and unique qualifications to comment on the effects of the proposed consolidation of the two local governments:

As the governmental entity representing all residents within the area proposed for inclusion within the boundaries of the Consolidated Borough, the existing Ketchikan Gateway Borough (the "Borough") is uniquely affected and uniquely qualified to comment on concerns raised by the impacts of the proposed consolidation Petition on the Borough as a whole.

[Letter from Georgiana Zimmerle to Dan Bockhorst, August 22, 2000, at 1. ("KGB letter")]

Among the issues raised by the Borough were the projected financial impacts of consolidation. The Borough noted:

. . . it does not appear that the savings from consolidation claimed in the Petition is (sic) accurate and verifiable. If projected savings are not accurate or verifiable, they should not be given weight in the analysis. If the LBC staff cannot verify the accuracy of these projected savings, that point should be noted in the staff report.

(*Ibid.*, p. 5.)

The Petitioner responded to the Borough's concern about the projected savings as follows:

. . . the Borough asserts that the petition's projected cost savings are not either accurate or verifiable. The Borough offers no analysis to support this conclusion, which is contrary to the findings of its own consultant's report which states that "local government economics and effectiveness are bound to improve through consolidation." This conclusion has been confirmed by earlier consolidation studies referenced in the City's petition.

As the Petitioner notes, Vic Fischer, an independent consultant retained by the Borough to review the consolidation Petition, did indeed indicate that the consolidated government was likely to result in improved economics and effectiveness regarding governmental operations. Specifically, Mr. Fischer stated, "While one may argue about the specific efficiencies and savings that may be achieved, local government economics and effectiveness are bound to improve through consolidation." (Fischer II, *supra*, p. 4.)

DCED interprets Mr. Fischer's comments concerning the financial aspects of consolidation to be of a general nature. Mr. Fischer expressly noted that his report did not address specific financial matters concerning the consolidation proposal.

. . . this report does not go into financial, service area, and other specific matters with which you and your staff are much more familiar than an outside reviewer could be. Instead, what I attempt to do here is a policy oriented overview of the consolidation package and a focus on issues that may bear further discussion.

(*Ibid.*, p. 1.)

While Mr. Fischer's review did not examine specific financial implications of the pending consolidation proposal, the 1993 Ketchikan consolidation study to which the Petitioner referred above did examine the prospect of savings that might result from consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. That report noted:

. . . this report estimates that consolidation could, at a minimum, reduce the overall cost of Ketchikan's local government general fund operations by approximately \$626,010 annually. This is probably the minimum savings possible through the consolidation of those functions of the City of Ketchikan and the Ketchikan Gateway Borough which clearly overlap (i.e., City Council and Borough Assembly, City Clerk and Borough Clerk departments, City Manager and Borough Manager departments, City Attorney and Borough Attorney departments, and City Finance, Borough Revenue and Borough Accounting departments.)

Consolidation also offers significant potential to effect direct cost savings or general improvements in overall local government efficiency beyond just those which are the result of combining overlapping departments or functions. The list of possible opportunities to consolidate or otherwise reorganize various local government functions to promote increased efficiency and economy is quite long. Although a more complete discussion of these opportunities can be found in an earlier chapter of this report, this study does not estimate the possible range of those savings. They would, however, be in addition to the estimate of \$626,010 which is mentioned above.

(Ginny Chitwood, James Van Altvorst, and James Nordale, *Ketchikan Local Government Consolidation Study*, pp. 72-73, March 1993.)

Table 5 on the following page summarizes the basis of the projected minimum annual savings as outlined on pages 21-45 of the 1993 consolidation study.<sup>26</sup>

The 1993 study was conducted by Ginny Chitwood, James Van Altvorst, and James Nordale. Each of those individuals is experienced and knowledgeable about local government in Alaska. Ginny Chitwood is a former Mayor of Juneau and a long-time management and local government consultant. James Van Altvorst is a resident of Ketchikan and a former long-time Ketchikan City Manager. James Nordale is a former Alaska municipal attorney.

The 1993 study was undertaken through a joint effort of the City of Ketchikan and the Ketchikan Gateway Borough. In addition to funding the study, elected and appointed officials of the two governments provided information about matters relevant to local government in Ketchikan. The 1993 study notes that:

. . . the City and Borough contracted for this study. . . .

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<sup>26</sup> Although the study indicates that the projected savings amounted to \$626,010, the detail shows that projected savings amounted to actually \$626,050. The difference is attributed to a transposition in the numbers of the projected savings relating to elected officials. The detailed part of the study indicates that the projected savings are \$84,551, while a summary of the savings listed the figure at \$84,511.



The information in this report was generated by reviewing State laws and regulations, previous local government studies, home rule charters from Ketchikan and other Alaskan municipalities, and budgets for the Ketchikan Gateway Borough and the City of Ketchikan; by interviewing elected and administrative officials from Ketchikan, other Alaskan municipalities, and the State; by discussing the issue with the public in Ketchikan; by reviewing local government informational materials; and from personal experience.

*(Ibid., pp. 3-4.)*

The 1993 study notes that many of its conclusions are necessarily subjective. The following are excerpts from various parts of the 1993 study describing the character of the analysis:

Should Ketchikan consolidate its local governments? It would be wonderful if there was an easy “yes” or “no” answer to that question, but unfortunately, like most things in this world, the issue is not black and white – it’s gray. Some of the analysis can be objective, but much of it is subjective. Basically, what’s right for Ketchikan is what the people of Ketchikan want.

. . . In their desire to have government “make sense”, people frequently attempt to apply some form of business-related organization or bottom-line analysis to their review of government agencies. For example, at first blush, one might assume that a consolidated government would be more efficient and effective in Ketchikan than the present multiple-government situation. . . . Unfortunately, this business-based approach could bring with it certain biases which may be grossly misleading when analyzing local governments. Unlike business, governments, including local governments, do not exist to make a profit. Rather, they exist only to respond to certain identified public needs or desires. The fact that some of those constituent desires and needs may conflict does not make them any more or less legitimate, nor does it require that government choose between conflicting needs. In that sense, there is room under the government umbrella for almost any combination of interests and needs. Therefore, governments can and often do find themselves working at cross purposes. For example, subsidies for our nation’s tobacco farmers coexist with funding for the Surgeon General’s research into the health risks related to the use of tobacco in the federal budget.

This report relies heavily on a relatively simplistic snapshot view of City and Borough operations as they are reflected in those organizations’ adopted 1992 budgets, with the added perspective provided by reviews of statute, code, past studies, and other relevant documents, and through discussions with local government elected officials, administrators, and department managers in Ketchikan, and from other Alaskan municipalities. However, local government in Ketchikan or elsewhere is not static; and, as a result of the day-to-day decisions and actions of elected and appointed officials, such a snapshot quickly becomes dated, increasingly inaccurate and gradually irrelevant.

*(Ibid., pp. i, 6, and 9.)*

The Petitioner developed the financial projections associated with the pending consolidation proposal in large part on the basis of the 1993 study. The Petition projects that consolidation will result in sixteen fewer positions – eight elected officials and eight staff. That is virtually identical to the conclusions reached in the 1993 study.

In judging the reasonableness of the Petitioner's projections about the financial impacts of the proposed consolidation, it is important to consider the care and thoroughness with which the Petitioner developed the pending proposal. Steven Schweppe, Ketchikan City Attorney, recently outlined the effort that went into preparation of the pending Ketchikan consolidation proposal as follows:

. . . consolidation has been a ten year project with numerous people involved from time to time over that period. I have worked on consolidation year in and year out over this time period with most of my work occurring prior to 2000. I do not have a record of the time I spent on this project over all of these years. I can merely state that consolidation has been a major project in my office during most of these years. Other offices have had a more concentrated involvement. The City Finance Director estimates that he spent 500 hours on consolidation over the past year. The City Manager's office estimates that the three employees in that office spent 25% of their time during 1999 and 2000 on the consolidation petition. The City Clerk's office estimates that in 1999 and 2000 its two employees spent 5% of their time on consolidation. Borough employees have also spent considerable time on this issue.

The City and Borough has also spent money on outside consultants. The Chitwood Study in 1993 cost \$25,000, half of which was paid by the City and half by the Borough. In 1997 the City hired Gordon Lewis to assist in preparing its consolidation petition. The City spent \$19,736 on this effort. In addition, the Borough recently hired Vic Fischer.

(Letter from Steven Schweppe to Dan Bockhorst, September 19, 2000, p. 1.)

It is also relevant to the consideration of this issue that the City of Ketchikan has had recent experience with consolidation of significant governmental operations locally. In March 1999, the Ketchikan City Council consolidated the City Manager position with the position of General Manager of the Ketchikan Public Utilities (KPU).<sup>27</sup> That action was preceded by predictions from some critics that "the city and KPU are facing too many complex and controversial issues for one person to handle" . . ."it wouldn't save money" . . . and "you're going to have a bunch of folks come at you with lawsuits." [*Petition*, Ex. A-2 ("Council combines top manager posts").]

The *Ketchikan Daily News* heralded the action in an editorial appearing in its March 27-28, 1999 edition. The editorial stated, in part:

The city is getting its house in order before telling others how to do it by consolidating top management of the city with that of Ketchikan Public Utilities.

All City Council members believe if anyone can make the consolidation happen successfully, Karl Amylon is the man for the job.

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<sup>27</sup> Ketchikan Public Utilities is owned and operated by the City of Ketchikan. KPU provides telecommunications and electric service to the entire Borough with the exception of remote and unpopulated areas. KPU also provides water service to the area roughly corresponding to the area within the boundaries of the City of Ketchikan.

Amylon has done a wonderful job with the city. It's worth the time to give him an opportunity with KPU based on his success, especially because taxpayers can expect to realize savings. The consolidation of positions already has saved taxpayers more than \$100,000 in salary and benefits annually.

It will be to the manager's advantage to show the council and taxpayers the savings as the transition to the one-manager system takes effect. Its success will provide fuel to the city-borough consolidation proposal. If it fails, then it will provide experience and insight that can be used toward a successful city-borough consolidation.

....

Recently, it's been proposed to expand staff and quarters for the borough. That is something that should be looked at in light of possible consolidation. It is possible a consolidation might require additional space. It's at least as likely the opposite would be the case.

A community the size of Ketchikan doesn't require two governments. The borough and city should work together now to identify the needs and desires of residents within both governments, evaluate them and serve the public by planning how to provide them under one government. Serving the public is what government is all about.

....

Taxpayers are willing to pay for what government needs, building included. But first it wants government streamlined and cost effective. Many believe city-borough consolidation will help Ketchikan realize a cost-effective government. City Council members hope to prove it can be done with the city-KPU consolidation.

Elected officials of the City of Ketchikan were apparently well satisfied with the results of the City/KPU Manager consolidation. In September of 1999, six months after the initial consolidation effort, the City Council followed up by consolidating the positions of the Assistant City Manager and KPU Power Project/Assistant General Manager positions. The Manager's Secretary at KPU was also reduced from a full-time position to a half-time position. Collectively, the savings from those consolidation efforts exceed \$200,000 – twice the savings projected in March of 1999.

Reflecting on the events since March of 1999, City officials indicate that the KPU/City management transition has been smooth and successful. They indicate that KPU continues to provide dependable and high quality electrical, telecommunication and water services to the residents of Ketchikan. The Telecommunication Division of KPU has increased revenues and is undertaking efforts to expand into the Internet services field. KPU's Electric Division of KPU has completed a number of capital improvements and is successfully addressing a number of complex issues relating to future service provision (e.g., licensing for the Whitman Lake hydroelectric project, Four-Dam Pool divestiture process, securing Federal funding for the Swan Lake-Tyee Lake Intertie project). Major accomplishments in KPU's Water Division during the past year include a water rate study and the design of a number of capital improvements for the utility. (*KPU Quarterly Newsletter*, December 2000.)

DCED notes that during the first few years of operation, the savings projected in the Petition may be offset to some extent by transition costs. The 1993 study stressed that the projected savings were made for the period following transition. The 1993 study also noted that “transition costs would offset much of the initial savings in the first couple of years.” (Chitwood, *supra*, pp. iii - v.)

While transition to a combined municipal government can be challenging, there is a strong sense among current and former officials of the Municipality of Anchorage, City and Borough of Juneau, and City and Borough of Sitka that overcoming the difficulties of unification was worth the effort because it has resulted in a superior form of local government.<sup>28</sup>

Given the totality of the circumstances noted above, DCED concludes that the Petitioner’s projections of the financial effects of the consolidation proposal are reasonable on a long-term basis. Of course, DCED cannot offer the KGB the assurance it has asked for that the projections are “accurate and verifiable.” However, the standard at issue does not require the Local Boundary Commission to determine with certainty the financial effects of consolidation. Rather, the standard necessitates a determination by the Commission only whether the proposed consolidated borough has the “human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.” Factors set out in 3 AAC 110.055 that are relevant to the financial resources aspect of the statutory standard include the anticipated functions, expenses, and income of the proposed borough, along with the feasibility and plausibility of the proposed budget.

It is relevant to note here that the Local Boundary Commission concluded as follows with respect to the human and financial resources within the 1998 proposed post-annexation boundaries of the Ketchikan Gateway Borough.

For annexation to be approved, 19 AAC 10.180 provides that the Commission must determine that the economy of the proposed expanded borough includes the human and financial resources needed to provide borough services.

The Commission previously addressed aspects of the human resources issue, concluding that the size and stability of the population within the proposed expanded borough was sufficient to support borough government.

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<sup>28</sup> This conclusion is based on anecdotal accounts from individuals including local government expert Vic Fischer, former Anchorage Mayor George Sullivan, former State Senator and former Anchorage Assembly member Arliss Sturgulewski, former Juneau Assembly member and former Juneau Attorney Lee Sharp, former Juneau Mayors Ernie Polley and Ginny Chitwood, Former Juneau Charter Commissioner Mike Grummett, former Greater Juneau Borough Attorney Billy G. Berrier, and former Sitka Mayor John Dapcevich. Moreover, page 2 of Exhibit J-7 of the pending Ketchikan consolidation Petition describes a meeting in Ketchikan on March 15, 2000, during which then-Mayor of the City and Borough of Juneau Dennis Egan described Juneau’s unification. It was reported that Mayor Egan indicated that, “. . . it had overwhelming support because people were so frustrated over what was going (sic) between the city, the borough, and the City of Douglas.”

With respect to financial resources, the 1997 full and true value of taxable property in the Borough was \$1,138,128,200. That was equivalent to \$77,959 per resident. The Borough's per capita figure was higher than that of twelve of the other fifteen organized boroughs in Alaska. The per capita value for the Borough was twenty-three percent greater than the median figure for all organized boroughs in Alaska.

According to the most recent data published by the Alaska Department of Labor, \$253,880,759 was paid to workers in the Borough for services performed during 1996. That figure does not include income from workers who are excluded from unemployment insurance coverage (e.g., self-employed individuals, fishers, unpaid family help, domestics, and most individuals engaged in agriculture.) Earnings in the Borough in 1996 amounted to \$17,270 per capita. The comparable statewide figure was \$13,815. The Borough figure was nineteen percent greater than the median figure for all 16 organized boroughs.

The Borough's FY 1998 budget projected total revenues of \$15,010,131. Expenditures for the same period were projected to be \$13,977,251.

The Borough estimated that annexation would increase its annual revenues by a range of \$256,796 to \$1,052,681. The substantial variation (\$795,885) was attributed to fluctuations and uncertainty relating to the National Forest Receipts program. The Borough projected that expenditures resulting from the extension of services into the area proposed for annexation would amount to \$62,000 annually. Using the Borough's figures, revenues resulting from annexation would exceed expenditures resulting from annexation by a range of \$194,796 to \$990,681 annually.

DCRA indicated that the Borough's projections of nearly \$62,000 in annual expenditures to extend its boundaries appeared reasonable. However, DCRA projected that Borough revenues would increase by nearly \$348,000 as a result of the annexation. Thus, DCRA projected that annexation revenues would exceed annexation expenditures by roughly \$286,000 annually.

**Conclusion:** The size and stability of the Borough's population, tax base, its budget, and the income of Borough residents demonstrate that the proposed new boundaries of the Borough encompass an economy with sufficient human and financial resources to provide essential borough services on an efficient, cost-effective level.

(Local Boundary Commission I, *supra*, p. 7.)

The area proposed for annexation by the KGB in 1998 encompassed 5,524 square miles and an estimated twenty-five residents. The former Department of Community and Regional Affairs estimated that annexation would have resulted in an annual average net financial gain to the Borough of approximately \$286,000. Given the relatively insignificant impact that the 1998 annexation proposal would have had on the human and financial resources of the KGB if it were implemented, it is reasonable to conclude that the Local Boundary Commission implicitly determined that the standard at issue in that proceeding was also satisfied with respect to the existing boundaries of the KGB.

Further, the Commission concluded in November of 2000 as follows with respect to the human and financial resources of the area within proposed expanded boundaries of the City of Ketchikan:

As was noted with respect to the previous standard, the territory proposed for annexation would represent a very modest increase in the size of the area that will be under the jurisdiction of the City of Ketchikan at the beginning of next year. In terms of tax base, the character of the territory proposed for annexation, again, exhibits a modest relationship to the area within the existing City. The territory carries an assessed value of \$200,000. That figure is 0.04 percent of the \$491,550,200 assessed value of the City. When the \$62,880,600 taxable value of the Shoreline Service Area (1999 figure) is factored in, the relative taxable value of the territory drops to 0.036 percent of the value of the area to be within the City on January 1, 2001.

**Conclusion.** Based on the foregoing, the Local Boundary Commission finds that the economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard at 3 AAC 110.110 is met.

[Local Boundary Commission, *Statement of Decision in the Matter of the Petition by the City Of Ketchikan for Annexation of 27.41 Acres in Bear Valley*, p. 5, November 17, 2000. (“Local Boundary Commission III”)]

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.

Further evidence of the financial capacity of the proposed Municipality of Ketchikan is found in a comparison of the current per capita value of Alaska’s sixteen organized boroughs. Such a comparison is expressly called for in the factors set out in 3 AAC 110.055. The per capita values in Alaska’s organized boroughs range from a high of \$1,126,597 to a low of \$38,013. The median figure is \$67,463; the mean among all sixteen organized boroughs is \$85,104. The highest-ranking borough (North Slope) has an extraordinarily high per capita value. If the highest and lowest ranking boroughs are excluded, the average among the remaining fourteen organized boroughs in Alaska drops just below the median to \$66,419.

The KGB ranks sixth among the sixteen organized boroughs in terms of per capita values. At \$80,003, the per capita value of taxable property in the KGB is 18.6% above the median figure for all organized boroughs in Alaska, and 20.5% above the average of the fourteen boroughs in the middle range. Table 6 on the following page compares the per capita value of all sixteen organized boroughs in Alaska.

The January 1, 2000 per capita value of taxable property in the City of Ketchikan was \$71,070. The comparable figure for the remainder of the KGB was 31.1% higher, at \$93,179. Those figures do not reflect annexation of the Shoreline Service Area or the 27.4 acres in Bear Valley to the City of Ketchikan that occurred after January 1, 2000.

Figures for the per capita value of taxable property in city governments exist only for 76 of Alaska's 145 cities. They range from a high of \$236,844 to a low of \$4,765. The median is \$35,290; the mean is \$61,522. If the five highest and lowest ranking cities are excluded, the mean drops to \$54,426. The per capita value of taxable property in the City of Ketchikan is 15.5% more than the average of all 76 cities for which figures exist; it is also 30.6% more than the average of the middle 66 cities for which data are available.

Table 7 lists the per capita values for the KGB, City of Ketchikan, and that portion of the KGB outside of the City of Ketchikan. Comparisons are made to data concerning other organized boroughs and cities in Alaska.

The per capita assessed values of the KGB and the City of Ketchikan compare favorably to their counterparts in other parts of Alaska. The greater Ketchikan area has substantial financial resources.

Another fundamental factor set out in 3 AAC 110.055 concerning the financial capacity of a region is personal income. In 1998, per capita personal income in Alaska's sixteen organized boroughs ranged from a high of \$43,439 to a low of \$18,419. The median figure for Alaska's sixteen organized boroughs was \$27,916. The 1998 per capita personal income of the KGB was \$31,803. That figure is \$3,887 or 13.9% more than the median figure. The KGB ranked fifth among the sixteen organized boroughs in Alaska with respect to per capita personal income. The KGB held that same rank among all regions in Alaska (sixteen organized boroughs and eleven census areas in the unorganized borough).

Table 8 shows the 1998 per capita incomes of the sixteen organized boroughs along with the eleven census areas in Alaska's unorganized borough.

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 KGB has operated successfully for more than thirty-seven years and the City of Ketchikan has operated effectively for just over a century, it is reasonable to conclude that local residents have both the human resources and commitment to operate a consolidated borough government.

In conclusion, 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. Upon examination of the proposed functions, expenses, and income of the proposed consolidated borough; property valuations, and personal income, DCED also finds that the proposed consolidated borough possesses the financial resources needed to provide

municipal services on an efficient and cost-effective basis. Moreover, upon consideration of the availability of skilled workers to operate a consolidated borough and the commitment of local residents to sustain a consolidated government, DCED concludes that the proposed consolidated borough possesses the human resources needed to provide municipal services on an efficient and cost-effective basis. Thus, the standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 are satisfied.

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#### 4. Communication and Exchange Necessary for Integrated Borough Government.

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AS 29.05.031(a)(4) requires that land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government. 3 AAC 110.045(c) lists a number of factors that may be considered by the Local Boundary Commission in judging the satisfaction of that standard. These include transportation schedules and costs, geographic and climatic impediments, telephonic facilities, and public electronic media.

Additionally,

3 AAC 110.045(d) establishes the rebuttable presumption that all communities within the proposed consolidated borough must be connected by roadway or air service.

In the previously noted 1998-1999 proceedings for annexation of 5,524 square miles to the KGB, the Commission concluded as follows with respect to the communications and exchange standard for annexation, which is similar to the consolidation standard at hand:

19 AAC 10.160(b) provides that, "The communications media and the land, water, and air transportation facilities throughout the proposed borough or unified municipality boundaries must allow for the level of communications and exchange necessary to develop an integrated borough." The term "the proposed borough" used here and elsewhere refers, of course, to the area proposed for annexation *plus the area within the Borough's current boundaries*.

The territory proposed for annexation is a sparsely-populated rural area. As is typical of such areas in Alaska, transportation and communication facilities in the territory are limited. Virtually all organized boroughs include areas of similar character. It is noteworthy that in 1974, the Alaska Supreme Court concluded that the North Slope Borough satisfied similar standards concerning communication and exchange. At the time, the North Slope Borough encompassed 97,121 square miles and was inhabited by 3,384 residents.

One of the ways to access the northwestern portion of the territory proposed for annexation is to travel through Meyers Chuck. Similarly, Hyder serves as a point of access to the northeastern portion of the territory proposed for annexation.

Further, Hyder and Meyers Chuck appear to be integrated into the transportation and communication system centered in Ketchikan. For example, DCRA reported that there were 249 commercial passenger enplanements in Meyers Chuck during 1996 (equivalent to eight enplanements per resident, which is higher than that found in many communities in Southeast Alaska). According to DCRA, an



official from the Alaska Department of Transportation stated that it was reasonable to assume that virtually all of the 249 passengers were destined for Ketchikan. Regarding communications, DCRA reported that approximately 40% of the occupied homes in Meyers Chuck subscribe to the *Ketchikan Daily News*.

Transportation and communication ties between Ketchikan and Hyder are more attenuated, but do exist. For example, it was reported that residents of Hyder rely on Ketchikan-based Pond Reef EMS for emergency medical transport. It was also reported that a proposal had been advanced for a municipally owned and operated day-ferry be developed for service between Saxman and Hyder. The proposed ferry between Ketchikan (Saxman) and Hyder was included among the Borough's legislative priorities. It is also among the Borough's recommendations for funding under the Statewide Transportation Improvement Program.

Hyder (located approximately 75 air miles from Ketchikan) and Meyers Chuck (located approximately 40 air miles from Ketchikan) may be considered by some to be distant from Ketchikan. However, communities in many other organized boroughs in Alaska are separated by far greater distances. For example, Kaktovik and Point Hope are each more than 300 miles from the seat of the borough government in which they are both located.

**Conclusion:** The Commission concludes from the foregoing that the communication and exchange standard set out in 19 AAC 10.160(b) is satisfied, albeit minimally. The exclusion of Hyder and Meyers Chuck from the annexation proposal significantly diminishes the extent to which this standard is met.

(Local Boundary Commission I, *supra*, pp. 4-5.)

The Petitioner notes with respect to this standard that:

The community's communication systems are fully integrated and well developed. Telecommunication services are provided throughout the primary roaded system of the Borough. Telephone is provided by the City owned Ketchikan Public Utilities operating as KPU Telecommunications. Cable television is furnished by Alaska Cable Network with local television provided by Fox Broadcasting affiliate KJMW. Ketchikan Daily News is the local newspaper of general circulation in the area. Four radio stations serve the area: KRBD-105.9 FM, the local public broadcasting station, and the private stations of KFMJ-99.9 FM, KGTW-106.7 FM and KTKN-930 AM.

The community has a well developed transportation network that includes roads, air and ferry systems. Tongass Highway, a State constructed and maintained highway, is the backbone of the community's roaded system. Daily, year round, jet airline service is provided by Alaska Airlines and several smaller floatplane companies provide air transportation to and from the community. The Ketchikan International Airport is owned by the State of Alaska, but operated by the Ketchikan Gateway Borough. Ferry service is provided by the State of Alaska which owns and operates the Alaska Marine Highway System.

The Ketchikan Gateway Borough currently possesses the communication media and the land, water and air transportation facilities throughout its boundaries to allow the level of communication and exchange necessary for an integrated borough government. Given the fact that the proposed boundaries of the existing Ketchikan Gateway Borough will not be altered through consolidation of the Borough and City of Ketchikan, the newly formed home rule borough will continue to possess these facilities.

(*Petition*, Ex. H, pp. 98-99.)

Based on the foregoing, DCED concludes that the proposed Municipality of Ketchikan has the facilities to allow the communication and exchange necessary for the development of integrated borough government. Thus, in DCED's view, the standards set out in AS 29.05.031(a)(4), 3 AAC 110.045(c), and 3 AAC 110.045(d) are satisfied.

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## 5. Borough Classification.

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AS 29.06.090(a) prohibits the formation of a third class borough through consolidation. 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.

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## 6. Best Interests of the State.

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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.

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.

While the proposed regulations concerning the best interests of the state are not formally in place, they do provide unofficial guidelines for analysis of the interests of the state. 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 Petitioner addresses practical aspects of those principles as follows:

Although the seventh largest political subdivision in the state, the population of the Ketchikan Gateway Borough is relatively small. Given the fact that sixty percent of the Borough's population resides within the City of Ketchikan and that the social and economic ties of all Borough residents, whether they reside inside

or outside the City, are integrated and strong, it is inefficient to maintain the City of Ketchikan and the Ketchikan Gateway Borough as two separate governmental structures. The inefficiency is readily apparent when one considers the overlapping responsibilities and costs necessary to operate these two independent governments. Currently, for example, there exist two governing bodies and four departments within the City of Ketchikan and the Ketchikan Gateway Borough that are analogous to one another and which require a redundant investment of community resources:

- City Council and Borough Assembly;
- City Clerk and Borough Clerk;
- City Manager and Borough Manager;
- City Attorney and Borough Attorney; and
- City Finance and Borough Administrative Services.

Consolidation will provide for the amalgamation of these governing bodies and departments. The government structure resulting from consolidation will be significantly smaller and less costly to the community as a whole. As is discussed in the Transition Plan, the consolidated government is initially expected to have 8 less elected officials and 8 less middle and upper management positions than are currently retained by the City and Borough. The elimination of these positions will result in annual savings to the community in excess of \$950,000. It is anticipated that additional savings will accrue to the consolidated government as further efficiencies are identified in the future.

Separate City and Borough governments often lead to confusion and frustration among the citizenry of Ketchikan. Both the City and Borough are responsible for separate and distinct services that benefit the entire community of Ketchikan. Residents of the community often become perplexed and frustrated when attempting to determine which government is responsible for what service. The Borough is, for example, responsible for land use regulation on an areawide basis, while the City is charged with enforcement of building codes within its boundaries. Often the two are at odds and the local resident finds himself or herself shuffling back and forth between the two entities for answers. Depending on the issue, constituents may find themselves in the position of not only having to deal with two government staffs, but two elected boards as well.

A consolidated government by its very nature will provide for a higher degree of accountability. One elected board and management staff will be responsible for exercising and providing all areawide and non-areawide powers and services within the community in as an efficient and cost-effective manner as possible. Issues of "turf" will be eliminated and residents of the community will have direct knowledge of who is responsible for satisfying constituent concerns.

The inefficiency of two governmental entities representing Ketchikan is further apparent in the community's dealings with State and Federal agencies. While the community has formed the Ketchikan Community Legislative Liaison Committee, a non-binding organization comprised of representatives from the City of Ketchikan, City of Saxman, Ketchikan Gateway Borough and other community groups, countless issues arise which position the City's interests in opposition to those of the Borough. One need only look to the Shoreline annexation petition submitted by the City, as well as the Borough's subsequent response, to understand the inefficiencies and conflict of two governmental agencies representing essentially the same population. Given the decline of Southeast Alaska's natural resource based economy and the State's current fiscal gap, it is incumbent upon elected and appointed officials to encourage as efficient a local government as possible and to speak with one voice when seeking State and Federal assistance.

(*Petition*, Ex. H, pp. 93 – 94.)

The constitutional principles at issue were examined extensively by DCED in part A of this chapter. DCED concluded that the constitutional principles are indeed served by the pending consolidation proposal. Moreover, Vic Fischer concluded as follows with respect to the Ketchikan proposal:

. . . it is my opinion that the City's petition clearly meets the requirements of state law and regulations governing municipal consolidation. The state constitution and regulations favor maximum local self-government with a minimum of local government units, and a Ketchikan city-borough consolidation would further that goal. Other fundamental state criteria are based on meeting standards for borough incorporation, and since the Ketchikan Gateway Borough already exists, those standards are essentially met.

(Fischer II, *supra* p. 1.)

In addition to the constitutional principles addressed above, 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.

Timothy E. Staebell's late-filed comments on behalf of the Gold Nugget Service Area raised concerns of equity in regard to the pending consolidation proposal. Specifically, Mr. Staebell stated:

This plan seems to be a self serving attempt by the City of Ketchikan to relieve themselves of much of their self inflicted debt, at the expense of the Borough residents. Under this plan, the City would become another Service Area, but would retain their police, fire, and public works departments to service only the areas that are currently in the City. The remainder of the new Municipality of Ketchikan would have to fend for themselves for these services.

The rationale (sic) for this is alleged to be to spread the cost of the running the hospital, museum, library, ports, and a variety of other expensive services currently operated by the City to all members of the greater Ketchikan community because the City claims that these services (sic) are provided to the Borough residents without any reimbursement. It appears to me that the City continues to ignore the fact that the residents of the Borough do reimburse the City for these services through the sales tax paid on all items purchased with the City limits.

Under the proposed consolidation plan, Gold Nugget residents would be charged additional property tax and sales tax with no increase of service. In fact, when the State withdraws the State Troopers, residents outside the city limits will have an additional cost of providing Police protection.

As the spokesman for the Gold Nugget Service Area, I think this plan has many weaknesses and is not in the best interest of the residents of the Service Area. As a private citizen, I will do everything in my power to see that this unfair petition is defeated and will urge all other Borough residents to vote against this plan.

(Letter from Timothy E. Staebell to LBC Staff, August 31, 2000.)

The Petitioner addressed Mr. Staebell's concerns as follows:

Although filed late, the Gold Nugget Service Area submitted comments to the Local Boundary Commission expressing concern regarding potential additional expenses that could be assessed against service area residents if consolidation occurs. The City does not dispute this assertion. As was indicated in Exhibit A, Statement of Principal Reasons for the Proposal to Consolidate, the City was forthright as to its intent that consolidation should provide for an equitable distribution of the management and cost of providing regional community services. Specifically, Exhibit A states:

These areawide services will be provided by a governmental entity that represents the entire area served rather than by a sub-jurisdiction representing City residents only. All residents will become enfranchised regarding the management of these regional services and infrastructure, and subsequently pay their proportionate share of the costs.

Contrary to Mr. Staebell's contention, not all City provided services are currently funded through sales taxes. Consequently, the assertion that all residents currently pay for areawide services provided by the City is not totally accurate. City residents do pay a disproportionate share for regional services that benefit the entire community. While the City recognizes the concern of the residents of the Gold Nugget Service Area, it also believes that the potential savings and governmental efficiencies resulting from consolidation are not given comparable consideration. The City's transition plan and three year budget reflect that while some residents may pay more, there will be substantial savings to the community as a whole if consolidation occurs. The City maintains that the overall result is equitable and fair to all residents of what would become the consolidated home rule borough. A less costly, united and more efficient form of government is the ultimate goal of the City's petition.

Lastly, the comments filed by the Gold Nugget Service Area provide no supporting documentation for the assertion that the State Troopers will be withdrawn from Ketchikan following consolidation. The proposed charter is specific in that police powers will be limited to service areas. It is not the intent of the petition or charter to have police powers exercised on an areawide basis. Consequently, the City does not anticipate the State Troopers being withdrawn from the community if consolidation occurs. Discussions with the Department of Public Safety have confirmed that consolidation in and of itself would not result in a decision by the State to withdraw the Troopers (see Exhibit A).

(*Reply Brief*, pp. 1-2.)

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 part, to address significant inequities in the delivery of municipal services to the residents of Ketchikan.

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. (“Local Boundary Commission IV”)]

Based on the foregoing, DCED concludes that the Ketchikan consolidation proposal serves the political interests of the State in that it promotes constitutional policies favoring minimum numbers of local governments and provides for the remedy of inequities found in the current structure for delivery of municipal services in Ketchikan. Moreover, the Petitioner presents a compelling case that consolidation will provide for significant long-term savings in the operations of local government in Ketchikan. Based on its analysis of this issue, DCED concludes that the pending proposal for consolidation of the City of Ketchikan and the KGB serves the best interests of the State as outlined in proposed 3 AAC 110.065.

### **C. Whether the Consolidation Proposal Satisfies Other Applicable Regulatory Standards and Requirements for City/Borough Consolidation.**

The regulatory standards concerning city/borough consolidation set out in 3 AAC 110.045 – 3 AAC 110.060 and proposed 3 AAC 110.065 were addressed in the Section B of this chapter. However, there are two other principal regulatory standards that apply to the pending consolidation proposal. Those relate to transition planning (3 AAC 110.900) and whether the consolidation proposal would deny any person the enjoyment of any civil or political right, including

voting rights, because of race, color, creed, sex, or national origin (3 AAC 110.910).

Those regulatory provisions are addressed below.

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## 1. Transition Plan

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By its very nature, consolidation of local governments in Alaska can present a broad range of challenges and complications. Consider, for example, the following portrayal of the transition to a unified municipal government in Anchorage. The account was written two years after voters in Anchorage approved the restructuring of local government:

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

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

The Ketchikan consolidation Petition also notes that Dennis Egan, the former mayor of the City of Borough of Juneau, characterized the transition to a unified municipal government as a difficult endeavor.

. . . he explained that the transition period was very difficult. He said the primary reason was that there were two mayors who had very dynamic personalities, but expressed that it probably couldn't have been done differently.

(*Petition*, Exhibit J-7, p. 1.)

The Petition for consolidation of the City of Ketchikan and the KGB includes a thirty-seven-page transition plan (Exhibit J). The transition plan is also accompanied by nine exhibits (Exhibits J-1 through J-9) providing 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 Petitioner characterizes the transition plan included as Exhibit J of the Petition as follows:

This transition plan demonstrates the intent and capability to provide for an orderly, efficient and economic consolidation process within the shortest practical time following constituent approval of consolidation of the Ketchikan Gateway Borough, a second class borough, and the City of Ketchikan, a home rule city. The consolidated Home Rule Borough shall be designated as the "Municipality of Ketchikan." The transition plan addresses how the powers currently exercised by

the Ketchikan Gateway Borough and the City of Ketchikan can be assumed by and delegated to the consolidated home rule borough.

The plan also provides details concerning the manner in which the consolidated home rule borough will assume all relevant and appropriate powers, duties, rights, and functions presently exercised by the entities to be dissolved through consolidation. Additionally, it provides details concerning the manner in which the new home rule borough will assume and integrate all relevant and appropriate assets and liabilities of the City of Ketchikan and the Ketchikan Gateway Borough.

In accordance with AS 29.06.150 and except as provided for within this petition, the proposed consolidated Borough will succeed to all powers, duties, rights, assets and liabilities of the entities to be dissolved by consolidation. Additionally, in accordance with AS 29.06.160 and except as provided for within this petition, the ordinances, resolutions, regulations, procedures and orders of the entities dissolved through consolidation remain in force within their respective territories until superseded by the action of the consolidated home rule borough.

*(Petition, Ex. J, p. 1.)*

The transition plan depicts a series of efforts wherein officials of the City of Ketchikan consulted with officials of the KGB regarding 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 would 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 KGB 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 KGB by the proposed Municipality of Ketchikan.

A principal purpose for the requirement by the LBC for a transition plan is to demonstrate a reasonable certainty that there is both intent and capability to provide essential services. [3 AAC 110.900(a)] The requirement for a transition plan applies to every action that comes before the Local Boundary Commission. In addition to consolidations, these include municipal incorporations, annexations, detachments, mergers, dissolutions, and city reclassifications. In certain instances, transition plans take on greater significance than in other instances. In this case, the transition plan takes on great significance because § 16.09 of the proposed *Charter of the Municipality of Ketchikan, Alaska* provides that, "Other provisions concerning the transition shall be governed by the transition plan as approved by the Local Boundary Commission and any changes made thereto by the Assembly."<sup>29</sup>

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<sup>29</sup> The proposed consolidation would, of course, be subject to the general transition provisions set out in AS 29.06.150 - .160.



DCED concludes that the transition plan included as Exhibit J of the Petition and the transition provisions included in Article XVI of the proposed Charter provide a thorough and well-constructed guide for the transition to a consolidated municipal government for the greater Ketchikan area. As such, DCED considers the standard set out in 3 AAC 110.900 to be satisfied.

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## 2. Impact of Consolidation on Equal Rights

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Federal law (43 U.S.C. 1973) subjects municipal consolidations in Alaska to review under the federal Voting Rights Act. This federal requirement ensures that changes in voting rights, practices and procedures (including those brought about by consolidation) will not result in “*a denial or abridgement of the right of any citizen of the United States to vote on account of race or color*” or because a citizen is a “*member of a language minority group.*” (42 U.S.C. 1973) Additionally, State law provides 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.*” 3 AAC 110.910.

The Petitioner states as follows regarding the impact of consolidation on the civil and political rights of its citizens.

The City of Saxman was intentionally excluded from the proposed consolidation of the City of Ketchikan and the Ketchikan Gateway Borough into a home rule borough. The City of Saxman has long believed that retaining its status as a second class city within the consolidated borough will preserve its native culture and enhance its ability to secure state and federal funding.

(*Petition*, Ex. H, p. 92.)

At a later point in the Petition, the Petitioner also states:

Incorporation of the proposed borough through consolidation will not deny any person the enjoyment of any civil or political right because of race, color, creed, sex or national origin in accordance with 3 AAC 110.910.

The City of Ketchikan and the Ketchikan Gateway Borough, independent municipalities governed under Alaska State Statutes, currently do not deny any person the enjoyment of any civil or political right, including voting rights, based on race, color, creed, sex, or national origin. Consolidation of the two independent entities into one home rule borough, containing the same boundaries and population as the current Borough, will not alter or deny any person the enjoyment of their civil or political rights.

(*Petition*, Ex. H, p. 99.)

No one in this proceeding has alleged that consolidation would deny civil or political rights to anyone because of race, color, creed, sex, or national origin. Moreover, there is no evidence to suggest that consolidation of the two local governments in Ketchikan will result in any violation of the federal Voting Rights Act. Consolidation will not alter the boundaries of the Ketchikan Gateway Borough. Further, the consolidation has been proposed to serve legitimate

needs and to accomplish legitimate public policy objectives. Therefore, DCED concludes that the standard set out in 3 AAC 110.910 is satisfied.

## D. Issues Raised by the Ketchikan Gateway Borough Regarding the Charter and Other Aspects of the Consolidation Proposal.

This part of the report examines issues raised by the Ketchikan Gateway Borough regarding the proposed Charter and other aspects of the consolidation proposal.

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### 1. Proposed Charter §§ 11.01, 11.02, and 11.04 — Borrowing.

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The Borough suggests the amendment of §§ 11.01, 11.02, and 11.04 of the proposed Charter to eliminate the requirement for voter approval of revenue bonds. The Borough is particularly concerned about such requirements with respect to water and sewer utility line extensions and “enterprise operation capital improvements for either ports or the airport.” *KGB Letter*, at 2.

The Petitioner acknowledged the concerns of the Borough and concurred with the assessment that the majority of municipalities in Alaska are not required to obtain voter approval for the issuance of revenue bonds. However, the Petitioner does not support the Borough’s proposal to eliminate the requirement for voter approval of the issuance of revenue bonds. Specifically, the Petitioner states:

This issue was discussed at length by the City Council’s Charter Review subcommittee, which concluded that the issuance of revenue bonds may potentially impact utility rates just as the sale of general obligation bonds can affect property taxes. The subcommittee concluded that residents should have input as to how their utility rates are likely to be impacted by the use of revenue bonds and that the existing provisions of the City Charter requiring voter approval of revenue bonds be extended to all residents of the consolidated home rule borough.

Additionally, Exhibit A of the City’s petition, Statement of Principal Reasons for the Proposal to Consolidate, noted that all residents, particularly those living outside the City, will, as a result of consolidation, “become enfranchised regarding the management of . . . regional services and infrastructure . . .” Abolition of voter approval of revenue bonds, particularly as it relates to hospital, electric and telecommunication services & infrastructure, is contrary to this underlying premise of the City’s petition.

The requirement of a vote on the issuance of both revenue bonds and general obligation bonds is an important restraint on the government’s ability to expend revenues without the approval of the people who must pay for municipal services. It deters government from using rates and fees to expand services, which residents are opposed to paying for. The Local Boundary Commission

need only consider the debt issues approved in 1996, including KPU's diesel generator acquisition, the Ketchikan General Hospital Renovations and Additions Project and the procurement of City firefighting apparatus, to see that Ketchikan residents are capable of rationally assessing the implications of incurring debt for legitimately required municipal improvements.

The Borough's proposal appears to be primarily the result of concern over ongoing airport improvements. The City does not believe that this issue should warrant elimination of public approval to issue revenue bonds. Among all of the projects potentially financed by revenue bonds, the petitioner believes that airport improvements would be among the easiest for which to secure voter approval. Airport revenue bonds are likely to have the least impact on residents, which would make it more likely for the public to approve revenue bonding. The debt would be repaid either through landing fees or by passenger facility charges. Unlike revenue bonds for utilities, these fees and charges are paid not only by residents but by visitors as well. Visitors would pay a large portion of the bonding obligation. Lastly, airport projects are also more likely to receive federal and state funding assistance compared to other utility projects.

It is acknowledged that specific water and sewer projects may be more difficult to finance if voter approval is required on an areawide basis to secure the full faith and credit of the consolidated home rule borough. Conversely, doing away with such approval would greatly increase the consolidated home rule borough's ability to extend services and assess their costs to those areas of the Borough which do not desire them. One alternative would be to package such water and sewer improvements into multiple project bond issues, in order to attract broad based voter support.

The City does not believe that the Borough's concern is significant enough to warrant complete elimination of voter approval to issue revenue bonds. If there is, however, sufficient anxiety on the part of the Local Boundary Commission that the consolidated home rule borough's ability to undertake certain public improvements could be jeopardized, the State may wish to consider an alternative to the draft charter by authorizing a separate ballot proposition that would allow the Borough to issue revenue bonds without voter approval under specific circumstances:

- revenue bond issues under a certain dollar amount, established by ordinance;
- limited to specific type of public improvements; or
- a requirement that any utility rate/user fee impacts be determined and published prior to issuance of the bonds.

Although the City is cognizant of the rationale for such an approach, the petitioner does not believe it justifies disenfranchisement of Ketchikan residents.

*(Reply Brief, pp. 7-8.)*

DCED considers the question of requiring voter approval for the issuance of revenue bonds to be strictly a political judgement of a local matter. AS 29.47.250 provides, with respect to *general law* municipalities, that "An election is not required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance." Therefore, State statutes provide discretion for the governing body of a general law municipality to decide whether voter approval should be obtained for the issuance of revenue bonds.

It is noteworthy that AS 29.47.250 is not a home rule limitation set out in AS 29.10.200. Therefore, home rule municipalities are certainly free to require voter approval for the issuance of all revenue bonds. DCED finds that the Petitioner has carefully considered the concerns regarding this issue expressed by the Borough.

Moreover, DCED finds no compelling State interest to dictate the terms of issuance of revenue bonds for the proposed Municipality of Ketchikan. The State legislature has implicitly taken the same view since, as noted, it has imposed no home rule limitation on the matter. Given these circumstances, DCED considers that it would be incongruous with the principles of home rule in Alaska for the State to substitute its political judgment in this matter for that of the Petitioner.

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## 2. Proposed Charter § 12.01 – Areawide and Non-areawide Powers

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Section 12.01 of the proposed charter currently states in its entirety:

**Section 12.01 Areawide and Non-areawide 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, or service area basis.

The Borough suggested in its August 22, 2000 letter that §12.01 of the proposed Charter be revised by deleting the words “Except as otherwise required by this Charter or by applicable state law” so that it would then read “All powers of the Municipality may be exercised on an areawide, non-areawide, or service area basis.” After considering the Borough’s suggestion, the Petitioner expresses opposition to the proposed change. The Petitioner states in this regard:

Although not specifically detailed why, the Borough asserts there is some disadvantage to including the phrase “except as otherwise required by this charter or by applicable state law.” Although the deletion may not appear to be a material change, it is significant when considered in conjunction with proposals to delete Sections 12.02 and 12.03. The result is a charter that could essentially become silent as to what powers will be exercised on an areawide or non-areawide basis, other than those mandated by statute, i.e., education; assessment and collection of property, sales and transient occupancy taxes; and platting, planning and land use regulation.

Under such a change the revised charter would not distinguish other powers and on what basis they would be exercised. Consequently, Section 1.04 of the charter could potentially become the governing provision in that powers, other than those mandated by statute, would be exercised in “**such a manner as the Assembly or other authority may prescribe.**” This clearly is contrary to the underlying premises of the City’s petition: (1) to retain as much of the status quo as possible; and (2) providing residents, in advance of the vote on consolidation, with a clear understanding of the structure of the consolidated government and how it will affect them. The City recommends that Section 12.01 be retained as drafted.

*(Reply Brief, pp. 3-4.)*

At a later point in its Reply Brief, the Petitioner emphasizes that §12.01 of the proposed Charter is intended to be a general grant of power, not a restriction of power. The Petitioner then urges the Commission to modify the proposed Charter to provide greater clarity of this point. Specifically, the Petitioner states in this regard:

As a result of staff's review of the Borough's comments regarding the petition, an additional change is proposed to Section 12.01 of the proposed charter. The change arises from apparent confusion over the definition of "non-areawide." Under Alaska Statutes "non-areawide" is defined to mean all of the borough outside any city. Within the consolidated government this definition would include everyone outside of the City of Saxman. Section 12.01 was intended as a general grant of power, not as a restriction. Staff did not intend to have Section 12.01 restrict powers to solely areawide, service area, or non-areawide as defined by state law.

*(Reply Brief, p. 14.)*

Accordingly, the Petitioner recommends the amendment of §12.01 of the proposed Charter to read: "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, [OR ]service area, or other basis." (Here and in subsequent discussions of amendments to the proposed Charter, proposed new text is underlined in bold type and proposed deleted text is capitalized and bracketed.)

DCED concurs with the Petitioner's analysis and recommendation. This and other recommended changes are set out formally in part E of this chapter.

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### 3. Proposed Charter §12.02 – Mandatory Areawide Powers.

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Section 12.02 of the proposed charter currently states in its entirety:

**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), air-taxi, and public mass transit;
- (i) The power to provide animal control; and
- (j) The power to provide economic development.

The Borough suggests on page 2 of its August 22, 2000 letter that §12.02 be deleted because it viewed the provision to be unduly limiting. The Petitioner disagrees. The Petitioner indicates that §12.02 is necessary to ensure the equitable funding of services on an areawide basis. The Petitioner states in this regard:

As was noted in Exhibit A of the City's petition, Statement of Principal Reasons for the Proposal to Consolidate, a major rationale for consolidation is that "areawide services will be provided by a government entity that represents the entire area served rather than a sub-jurisdiction . . ." and that "All residents will become enfranchised regarding management of these regional services and infrastructure, and subsequently pay their proportionate share of the costs." Although this premise is clearly specified in the transition and financial plans, the City believes it is desirable that the proposed charter reflect this intent as well. The proposed language within Section 12.02 accomplishes this purpose and the petitioner recommends that it be retained as drafted.

*(Reply Brief, p. 5.)*

The Petitioner takes the view that the basic provisions of §12.02 of the proposed Charter are essential to maintaining unambiguous and non-discretionary provisions in law concerning what powers, beyond those mandated by State law, would be exercised by the consolidated borough on an areawide basis. Section 12.02 of the proposed Charter reflects a carefully considered political judgment by the Petitioner. On that basis, DCED agrees with the Petitioner that §12.02 should remain in the Charter.

The Borough also expressed concern on page 4 of its August 22, 2000 letter that particular wording in §12.02 may prohibit the Borough from effectively operating the Ketchikan International Airport without express authority for areawide police, fire-fighting and solid waste collection powers at the Borough-operated Ketchikan International Airport.

The Petitioner responded to those concerns by expressing the view that the exercise of police, fire-fighting, and solid waste collection functions at the Airport by the Borough are "ancillary to operation of the airport under the exercise of legitimate areawide transportation powers." The Petitioner goes on to state:

If the consolidated home rule borough desired, for example, to contract with the Ketchikan Service Area to provide police and firefighting services to the airport, it would not be precluded from doing so. The cost of such services would be

assessed, however, on an areawide basis as part of operating the airport under the exercise of areawide transportation powers. Similarly, the exercising of Parks & Recreation, Port & Harbors, Library, etc. powers on an areawide basis would not prohibit providing solid waste collection on a contractual basis either by the Ketchikan Service Area or a private operator.

Although not directly applicable, Sections 29.35.400 and 29.35.410 of Alaska Statute Title 29, Municipal Government, implicitly appear to support the City's position:

Section 29.35.400. General Construction.

A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Section 29.35.410. Extent of Powers.

Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title (emphasis added).

These statutes would seem to affirm that the charter need not be revised to address this issue.

*(Reply Brief, p. 9 - 10.)*

Notwithstanding, to address the Borough's concern, the Petitioner suggests that §12.02(h) of the proposed Charter be amended to read "(h) The power to provide public transportation systems, including, but not limited to, airports (including airport police **and firefighting**), air-taxi, and public mass transit;"

DCED concurs with the Petitioner's characterization that police, fire-fighting, solid waste collection, and other secondary functions undertaken by the Borough in the operation and maintenance of the Ketchikan International Airport are incidental to the exercise of the Borough's transportation power and need not be formally recognized as separate Borough powers. In addition to the arguments offered in support of that view by the Petitioner, DCED notes that the Borough itself took the same view in its previously noted 1998 petition for annexation of 5,524 square miles.

Among the areawide powers listed by the Borough in Section 17 of its 1998 annexation petition was the power to "provide transportation system, composed of airport, ferry and transit." Nowhere did the Borough's petition state that it has areawide powers to provide police, fire-fighting, and solid waste collection. In fact, Section 17 of the Borough's 1998 petition stated "Except for specified fire service areas, the KGB does not provide [fire, rescue, and EMS] services." With regard to solid waste services, Section 17 of the Borough's petition stated, "Garbage and waste services, not presently offered areawide." Moreover, the Brief included with the Borough's 1998 annexation petition stated, "The KGB does not have a police department yet, although the City of Ketchikan does."

The liberal construction of local government powers clause in Article X, Section 1 buttresses the Petitioner's view that the proposed Municipality of Ketchikan has

the authority to provide police, fire-fighting, solid waste collection and other such ancillary functions necessary for the operation of the Airport under the proposed Municipality's authority to provide public transportation systems, including, but not limited to, airports. In 1978, the Alaska Supreme Court ruled as follows with regard to the clause:

The constitutional rule of liberal construction was intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.<sup>30</sup>

[*Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).]

Returning to the Petitioner's suggested revision of §12.02(h), DCED observes that if the words "and firefighting" are added as suggested by the Petitioner, it could simply shift the KGB's argument to other ancillary activities at the Airport such as solid waste collection or engineering. After conferring with the Petitioner on that point, it was agreed that one way to clearly end the argument raised by the KGB would be to revise §12.02(h) to read: "The power to provide public

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<sup>30</sup> (Footnote original) The rule, called Dillon's rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

*Merriam v. Moody's Executors*, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Helleenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called "Dillon's Rule", or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

....

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.



transportation systems, including but not limited to, airports (including airport police, **firefighting, and other auxiliary services**), air-taxi and public mass transit;”

In another part of its August 22, 2000 letter, the KGB urges consideration of a change to the proposed Charter to ensure that the Assembly has the authority to respond to “emergency law enforcement needs” on an areawide basis. The KGB indicated that it recognizes “the legitimate concerns of the City of Ketchikan and of those residents outside of the City of Ketchikan regarding imposition of the costs of a full blown police department areawide when there are other law enforcement agencies available, such as the State Troopers.” The KGB went on to explain, however:

The Borough also recognizes that public safety and order may dictate that a Consolidated Borough Assembly have the authority to respond to emergency situations created by reductions in State law enforcement or persistent criminal activity outside of the city service area. Therefore, the Borough suggests that the Local Boundary Commission condition approval of the Petition on inclusion of a method under the Charter which would enable the Consolidated Borough to address emergency law enforcement needs as they arise. An approach similar to Charter Section 12.07 could be one possible solution.

*(KGB letter, p. 5.)*

The Petitioner considered the KGB’s arguments, but rejected the proposed change on the basis of what DCED considers to be political judgments of a local nature. Specifically, the Petitioner states:

The Borough proposes to seek police powers (the authority to adopt and enforce laws) on an areawide basis, in order to address emergency situations “created by reductions in State law enforcement or persistent criminal activity outside of the city service area.” Residents of the outlying areas have made it perfectly clear that they do not want police service and wish to retain law enforcement coverage through the State Troopers. If the Borough proposal were to be accepted, it may provide the State with the justification to withdraw its law enforcement coverage from the Ketchikan community.

The draft charter seeks to retain the status quo regarding police powers outside the Ketchikan Service Area. Unless the Borough can demonstrate that there is strong public sentiment to extend police services on an areawide basis, the City believes the concept should not be endorsed. Lastly, Section 12.07 of the draft charter regarding emergency medical services is not applicable. Such services are currently provided by the City to those areas with road access outside of the City of Ketchikan with the exception of Pond Reef. Conversely, police powers, other than those provided by the State Troopers, are not provided by the Ketchikan Gateway Borough or the City on either a non-areawide or areawide basis.

As was the case with the proposed revisions to §§ 11.01, 11.02, and 11.04, DCED considers the question of the exercise of police powers to be a political judgement of a local matter. No municipal government in Alaska is required by State law to exercise police powers. DCED finds that the Petitioner has carefully considered the concerns regarding this issue expressed by the Borough.

Moreover, DCED finds no compelling State interest to dictate the terms of the Charter regarding this matter. The State legislature has implicitly taken the same view since it does not require the exercise of police powers by either general law or home rule municipal governments. Given these circumstances, DCED concurs with the Petitioner's judgement in this matter.

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#### 4. Proposed Charter §12.03 – Services Provided by Service Area

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Section 12.03 of the proposed charter currently states in its entirety:

**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.

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.

The Borough requested that §12.03 be deleted from the proposed Charter and portions moved to the transition plan. The Petitioner accurately summarizes and responds to the Borough's concerns in this respect as follows:

Expressing two sets of concerns, the Borough proposes to delete Section 12.03 in its entirety. First, and as it pertains to paragraph (a) of this section, the Borough cites the need to provide police and fire services as part of airport operations, as well as the need to provide solid waste collection in connection with operations of the Parks & Recreation and Port & Harbors Divisions. Although these issues will be further discussed and addressed below, public

comments expressed earlier this year during community meetings regarding consolidation were abundantly clear, i.e., outlying residents do not wish to have police, fire protection and solid waste collection services extended beyond the City of Ketchikan as areawide powers. Additionally, adopting police protection as an areawide power could provide the State, if it is deemed desirable, the justification for removing the State Troopers from Ketchikan.

Secondly, the Borough proposes to move the provisions of paragraph (b) of Section 12.03 to the Transition Plan. This paragraph specifically addresses the powers and services to be exercised within the Ketchikan Service Area. As previously noted, the Transition Plan is not legally binding on the Assembly and management of the consolidated Borough. If and when approved by the voters, the draft charter is the means by which voters determine what powers are exercised and how new powers may be assumed.

The City reiterates its concern that the charter, not the transition and financial plans, is the binding document through which residents will consider consolidation. In order to protect the interest of both non-City and City residents alike, as well as to insure that the public recognizes what powers will be exercised and on what basis, the petitioner recommends that Section 12.03 not be substantially modified or deleted as the Borough proposes. Minor changes, which will be discussed later in this brief, are recommended to address the Borough's concerns regarding solid waste collection and police & fire suppression services at the Airport.

*(Reply Brief, p. 6.)*

The Petitioner expresses the view that §12.03 of the proposed Charter is essential to maintain the status quo and prohibit, without a vote of the residents, the exercise of municipal police, fire-fighting, and solid waste collection powers in those areas of the proposed Municipality of Ketchikan outside of the Ketchikan Service Area.

Here again, the Petitioner stresses that the proposed Charter does not prohibit such ancillary police, fire-fighting, and solid waste collection at the airport, parks and recreation facilities, ports and harbors, library, and other areawide municipal facilities. To address the KGB's concern, however, the Petitioner proposes that §12.03 of the proposed Charter be amended to add the following text as a separate paragraph following "(3) The collection, but not disposal, of solid waste." in §12.03.

However, nothing in this charter will prevent the Municipality from providing police, firefighting or solid waste collection services at areawide expense when necessary to operate facilities used for areawide services; or to respond to a disaster as defined by state law.

For the same reason addressed with regard to §12.02 of the proposed Charter, DCED suggests a slight revision to the amendment proposed by the Petitioner. The language recommended by DCED reads, (with emphasis on DCED's suggested changes to Petitioner's proposed amendment), "However, nothing in this charter will prevent the Municipality from providing police, firefighting, [OR] solid waste collection, **or other auxiliary functions incidental to the exercise of an authorized areawide power** [SERVICES] at areawide expense when

necessary to operate facilities used for areawide services; or to respond to a disaster as defined by state law.”

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5. Proposed Charter §12.04 – Creation, Expansion, Reduction, Consolidation, Alteration, and Termination of Service Areas

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The KGB notes that §12.04(f) of the proposed Charter provides that the requirements relating to the creation, expansion, reduction, consolidation, alteration, and termination of service areas set out in §12.04 of the proposed Charter do not apply to sanitary sewage service areas. The Borough suggests that similar provisions be made for water utility service areas. (*KGB letter*, pp. 3-4.)

The Petitioner appears to have fully considered the concerns of the Borough regarding this matter. The Petitioner takes the position that there are political reasons for the distinction in the way that the Charter deals with sewer services as compared to water services. The Petitioner stresses that, “The petition filed by the City mandates the status quo regarding KPU’s Water Division.” (*Reply Brief*, p. 8.)

Karl Amylon, Petitioner’s Representative, explained that the KGB currently holds nonareawide powers for “sewerage and collection/disposal of septic system waste.” Mr. Amylon stressed, however, that voters have denied nonareawide powers to the KGB for water utilities. Additionally, Mr. Amylon emphasized that the distinction in the treatment of water and sewer services reflects the fact that it is more critical from a public health standpoint that the consolidated borough have greater flexibility for the extension of sewer systems. (Personal communication, January 2001.)

DCED considers the Petitioner’s explanation of this matter to serve as a reasonable basis for §12.04 of the proposed Charter as presently written.

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6. Proposed Charter Article XIII - Saxman

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Article XIII of the proposed Charter reads as follows in its entirety:

**Article XIII Saxman**

The City of Saxman shall remain a separate municipal entity. Within its boundaries the City of Saxman may exercise 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.

The Borough notes that the list of powers enumerated for the City of Saxman in Article XIII does not include the authority to provide a water utility, a power presently enjoyed by the City of Saxman. The Borough encourages the substitution of a general reference to the powers of the City of Saxman to avoid such omissions. Moreover, the Borough believes that a general reference to powers would “reduce confusion as to the interaction between exercise of a power by Saxman and exercise of the same power by the Consolidated Borough.” (*KGB letter*, p 2.) Accordingly, the Borough proposed the following changes to Article XIII:

The City of Saxman shall remain a separate municipal entity. Within its boundaries the City of Saxman may 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** [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** [CHARTER] or authorized by the Assembly pursuant to law.

The Petitioner conferred with the City of Saxman regarding the Borough’s proposal and determined that the proposed revisions are acceptable to the City of Saxman. On that basis, the Petitioner recommends that the proposed Charter be modified as requested by the Borough.

DCED recognizes that the purpose of Article XIII is to provide assurances to officials and residents of the City of Saxman with respect to the continued existence of the City of Saxman and its authority to exercise certain powers. DCED notes, however, that the dissolution of city governments is controlled by State law (AS 29.06.450 – AS 29.06.530) and that such provisions are limitations on home rule powers [AS 29.10.200(6)]. Although not currently contemplated, the time may come when officials and residents of the City of Saxman wish to dissolve their city government. They certainly would not be precluded from initiating dissolution proceedings under State law, despite the language in the proposed Charter that, “The City of Saxman shall remain a separate municipal entity.” Therefore, DCED recommends that the first sentence of Article XIII be rewritten to read: “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].”

Moreover, Article XIII of the proposed Charter conflicts with Section 12.02 of the proposed Charter. The Petitioner’s proposed revision to Article XIII allows the City of Saxman to exercise “those powers which it exercised prior to consolidation even though the municipality exercises those same powers.” Those powers, as characterized by the original proposed Charter, include parks, recreation, ports, harbors, economic development, and museum. Yet, Section 12.02 of the proposed Charter dictates that the Municipality of Ketchikan shall exercise certain areawide powers including, parks, recreation, ports, harbors, economic development, and museum.

To address the conflict between Article XIII and §12.02, DCED suggests two changes. The first is to modify the second sentence in Article XIII of the proposed Charter as follows:

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.

The second suggested change is to add the following language at the end of §12.02:

**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.**

DCED believes that its recommended revisions will provide officials of the City of Saxman and the Municipality of Ketchikan with the full range of desired flexibility to carry out their respective municipal powers and duties while adhering to the principles of local government in Alaska and the requirements of law.<sup>31</sup>

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## 7. Minor Issues of Style.

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Beyond the technical issues relating to the proposed Charter, DCED suggests the following changes in titles and spelling:

- Change the title of Article XII to read “Areawide, Nonareawide, and Service Area Powers”. Such a change more accurately describes the content of the Article.
- Change the title of Section 12.01 of the proposed Charter to read, “Areawide, Nonareawide, and Service Area Powers.” Again, such a change more accurately describes the content of the Section.
- Throughout the proposed Charter, change the spelling of “non-areawide” to “nonareawide”.

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<sup>31</sup> Article X of Alaska’s Constitution is designed to promote efficient, effective, and strong local governments. Warran A. Taylor, Constitutional Convention Delegate (although not a member of the Local Government Committee), described the purpose of Article X during floor debate at the convention as follows: “I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions.” *Proceedings of the Alaska Constitutional Convention*, p. 2699. Among the provisions that relate to this issue is Article X, § 1 which states in part that, “The purpose of this article is to . . . prevent duplication of tax-levying jurisdictions.”

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## 8. Concern Over Prospective Loss of Village Safe Water and Alaska Housing Finance Corporation Rural Mortgage Programs.

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The KGB expressed concern that consolidation may result in the loss of eligibility for certain State programs. Two programs were specifically cited by the Borough. The first is the Village Safe Water Program administered by the Alaska Department of Environmental Conservation (ADEC). The second is the Rural Mortgage Program administered by the Alaska Housing Finance Corporation.

The Village Safe Water program provides grants and engineering assistance to municipalities and unincorporated communities for water, sewer, and solid waste projects in certain “villages”. For purposes of the program, “villages” are defined by AS 46.07.080(2) as “an unincorporated community that has between 25 and 600 people residing within a two-mile radius, a second class city, or a first class city with not more than 600 residents.”<sup>32</sup>

The Petitioner had requested a determination from ADEC regarding the effect that the proposed consolidation might have on eligibility for the Village Safe Water program. Subsequent to the filing of the City’s Reply Brief, the Petitioner forwarded a copy of ADEC’s determination. In a letter dated October 11, 2000, Dan Easton, Director of ADEC’s Division of Facility Construction & Operation, advised the Petitioner that:<sup>33</sup>

. . . communities within the home rule borough that meet the statutory definition of a “village” under AS 46.07 (unincorporated with a population of 25 to 600 within a two-mile radius) would continue to qualify for Village Safe Water assistance. Mountain Point, for example, has qualified for assistance in the past, and would continue to qualify for assistance under the proposed new form of local government.

The AHFC loan program at issue provides financing for the purchase, construction, or rehabilitation of a primary residence to qualified borrowers who live in “small communities” in rural Alaska. A “small community” is defined for that program by AS 18.56.600(2) as “a community with a population of 6,500 or less that is not connected by road or rail to Anchorage or Fairbanks, or with a population of 1,600 or less that is connected by road or rail to Anchorage or Fairbanks; in this paragraph, ‘connected by road’ does not include a connection by the Alaska marine highway system.” Residents of the KGB who presently live outside the City of Ketchikan are eligible to participate in the AHFC program. At

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<sup>32</sup> A list of prospective projects and further information about the program is available on the Internet at <http://www.state.ak.us/local/akpages/ENV.CONSERV/dfco/vsw2002cip.pdf>

<sup>33</sup> Mr. Easton’s letter focused on unincorporated communities, citing Mountain Point as an example. There was no reference made in the letter to second class cities such as the City of Saxman. DCED confirmed with Mr. Easton in a telephone conversation on January 9, 2001, the City of Saxman would also continue to be eligible to participate in the program following consolidation.

this point, it is unclear whether consolidation will impact the eligibility for new loans under the rural housing program on the part of residents of the territory proposed for consolidation. AHFC officials are exploring administrative options to mitigate any effects of consolidation in terms of eligibility to participate in the AHFC program. Additionally, Representative Bill Williams has introduced HB 78 to also address the issue. DCED is optimistic that the administrative and legislative efforts will be fruitful.

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## 9. Public Works Engineering.

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The KGB indicates that there is a “significant need for engineering services on an areawide basis. The Borough expresses the belief that the public works engineering function should be areawide, with services provided to the city service area on the reimbursed basis rather than the other way around” as proposed in the Petition. (*KGB letter*, pp. 5-6.)

The Petitioner responded as follows to the concern.

The draft charter and petition specify that the City's public works engineering function will be provided by the Ketchikan Service Area. This is intended to retain the status quo and to prevent the cost of City streets, storm sewers, bridges, etc. from being assessed against the outlying residents of the Borough. The City recognizes the need for engineering services on an areawide basis and has provided for the Ketchikan Service Area to provide such services to the consolidated home rule borough on a contractual basis. The City provided, for example, such services to the Borough in administering the Mile 4 North Subdivision. While the City's petition documents the need for public works engineering services in the Ketchikan Service Area, the Borough's brief does not justify providing such services on an areawide basis. Until such time until as it can be demonstrated that there is a need to assess the cost of the City's nine (9) person engineering division on an areawide basis, the petitioner believes it is more equitable to retain this function as a Ketchikan Service Area responsibility and to assess specific costs incurred for areawide services on a case by case basis.

(*Reply Brief*, p. 13.)

Here again, it is evident that the Petitioner has carefully considered the suggestion of the Borough. DCED concurs with the Petitioner's view regarding the matter.

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## 10. Impact of Consolidation on Future Borough Boundary Proposals.

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The KGB expresses concern that consolidation might impact any future expansion of the boundaries of the proposed consolidated borough. The KGB states in this regard:

Approximately two years ago, the Borough filed a petition for expansion of the Borough boundaries to include the majority of that area identified in the Local Boundary Commission's model borough boundaries. The annexation petition



was rejected due to an exclusion of Myers Chuck and Hyder. Regardless of whether exclusion of Saxman from this proposed consolidated government is appropriate, the Borough is concerned about the impact that the consolidation of the City of Ketchikan and the Ketchikan Gateway Borough might have on any future expansion of borough boundaries to include some or all of the area within those model borough boundaries. Specifically, the Borough wonders whether those areas should be eligible for special treatment like Saxman; particularly after a charter is adopted which is silent on this issue.

*(KGB letter, p. 6.)*

The Petitioner does not share the Borough's concern, noting:

In the absence of the City's petition conforming with the Local Boundary Commission's model borough boundaries, the Borough's brief apparently seeks to have Hyder and Myers Chuck conferred special status similar to the language suggested for the City of Saxman. Inclusion of Hyder and Myers Chuck within the boundaries of the consolidated home rule borough was not considered in the preparation of the original petition. Consequently, the Borough's proposal to confer special status to these areas represents a significant departure from the status quo.

Additionally, unlike the City of Saxman, Hyder and Myers Chuck are not municipalities. They have no "corporate" existence. Special status cannot be conferred because they do not have the powers or legal existence that Saxman has. Hyder and Myers Chuck are more comparable to the unincorporated areas of Herring Cove or North Point Higgins. If the petition sought to extend the borough boundaries to conform with the State's model borough boundaries, one could plausibly argue that the residents of Hyder and Myers Chuck would share similar concerns to residents of Herring Cove or North Point Higgins. As was evident when the Borough attempted to annex these areas, residents strongly voiced their opposition and argued to preserve the status quo. The draft petition meets this intent and the City contends that special status is not warranted.

*(Reply Brief, p.13.)*

Alaska's Constitution encourages the extension of borough government to unorganized areas – whether through incorporation or annexation – provided such extension meets the standards established in law. DCED cannot conceive how the pending consolidation of the City of Ketchikan and the Ketchikan Gateway Borough might affect the success of any future proposal to expand the boundaries of the consolidated borough.

Moreover, DCED does not consider it appropriate or even possible for "special treatment like Saxman" to be given to Hyder, Meyers Chuck, or any other area outside the current boundaries of the KGB that might be included in a future annexation proposal. DCED concurs with the analysis of the Petitioner on this point. In addition, DCED adds the obvious note that since Hyder and Meyers Chuck are not within the boundaries of the proposed consolidated borough, it seems inappropriate to suggest that the proposed Charter provide some sort of "special treatment" for those communities. Further, as DCED pointed out previously with respect to Article XIII of the proposed Charter, State law, not municipal charters, govern the creation and dissolution of city governments.

Lastly, DCED notes that the KGB expressed a policy in its 1998 annexation proposal that it would do everything it could to prevent [incorporation of new cities in the territory proposed for annexation to the KGB], mostly by providing the services needed.

The Constitution clearly wants local governments that are both robust and few in number. The reason is obvious enough - to hold down the administrative cost of government. On Prince of Wales Island, with three first class cities and several second class cities, there are four separate school districts, one each for the three first class cities and the Southeast Islands REAA which provides school service for the second class cities, other parts of the island, the area to be annexed by the KGB, and other parts of southern Southeast Alaska. If this annexation is approved, if Wrangell forms a borough, as is now expected, and if POW forms a borough, the four systems on POW can be merged into one. If the proposed KGB annexation goes forward, this multiplicity of governmental organizations will be avoided for the annexed territory. Moreover, the opportunity for citizens of the proposed territory to participate in borough government is provided. Admittedly, there are few such citizens now but there are development potentials that could cause significant growth in the territory. Without annexation, these settlements could turn into second class cities whose citizens would have no role in borough government.

The KGB is not “unified” although it and the City of Ketchikan are exploring a consolidation proposal that would unite those two governments into one. The City of Saxman would continue to exist separately. It is conceivable that second class cities could be proposed in the newly annexed area under development and transportation scenarios discussed below. It is the position of the KGB that this should not happen and the Borough would do everything it could to prevent such formation, mostly by providing the services needed. However, *without* the annexation, there could indeed be new cities proposed and thus a repeat of the POW situation.

The Alaska Department of Community and Regional Affairs generally takes the view that borough governments are better than a multiplicity of individual cities when it comes to the allocation of taxable resources:

One principle which has generally guided the establishment and alteration of municipal boundaries in Alaska is that regional resources should not be “locked up” for the benefit of only a few communities. Rather, regional resources should be used to help fund the delivery of services throughout the entire region. While one or two communities may serve as the commercial hub of a region, the natural resources of a region — which belong to all residents — are the basis of that commercial development.<sup>34</sup>

The proposed annexation will incorporate territory that is entirely unincorporated now, and will not create any new local governments. The Preferred Territory consists largely of federally owned land but there are at least a dozen inholdings, potentially hundreds of mining claims, and apparently more state-owned land than had been generally understood. There is one rather large Native Corporation holding on the Cleveland Peninsula below Meyers Chuck that could eventually be logged as well as Forest Service logging potential elsewhere. Any of these holdings or claims could expand into communities either to support

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<sup>34</sup> See *Greater Bristol Bay Region Borough Options*, DCRA, May, 1992.

mining operations or as a result of logging or tourism activities. By virtue of annexation, any such community would be a part of the KGB and would thus minimize the potential of forming a separate local government.

It is not inconceivable that such satellite communities could eventually grow large enough to form local governments. An example is Thorne Bay on Prince of Wales Island. That community is now a city of over 600 people that incorporated in 1982. Years earlier, there were virtually no inhabitants in the area. Thorne Bay came into existence because of the logging activity in the vicinity. Mining provides another example. The Greens Creek Mine on Admiralty Island has a work force of about 250. With dependents and support services, a total mine related population of a thousand persons could be imagined if a city had been founded near the mine site. Of course, that never happened because the mine is close enough to the urban area of Juneau (a 30 minute boat ride) to allow workers to live in Juneau and commute to the mine. Had things been different, a new community of a thousand or more could have developed on the Mansfield Peninsula, adjacent to the mine.

Mining and logging operations could arise in many different locations in the territory proposed for annexation and most of the locations would be considerably farther from the roaded area of the KGB than is the Greens Creek Mine from the Juneau road system. Thus, the potential for new communities is higher in the case of an expanded KGB. Again, with the proposed annexation, the likelihood that these potential communities will organize independently is reduced because they would already be part of the KGB.

There is another potential event that could give rise to new communities. The Alaska Department of Transportation and Public Facilities (DOT/PF) is currently developing a transportation plan for the entire Southeast Alaska region. One of the options under study is a road/ferry link to provide access between Petersburg, Wrangell, and Ketchikan. The concept is to develop a road from Petersburg to a point on the south side of Mitkov Island that would be about 12 miles, by water, from Wrangell. A short haul ferry would be used to connect Wrangell with the new ferry terminal on Mitkov Island. From Wrangell, the road would run south and east to another ferry crossing of Earnest Sound to reach the Cleveland Peninsula. From there, the route crosses the Peninsula and connects to Revillagigedo Island and the KGB road system by means of another ferry across the Behm Canal. This route is under study by DOT/PF now and appears, on a preliminary basis, to be cost-effective when compared to the existing ferry connections or other ferry-only options.<sup>35</sup>

The Petersburg/Wrangell/Ketchikan connector would open up a large amount of territory for development and settlement. As above, any new settlements within the area annexed would be less likely to become independent local governments because their sites would already be part of the KGB. This route would not connect Meyers Chuck, although a spur, running down the Cleveland Peninsula could do so. Such a spur might have merit if its purpose was to serve a ferry terminal to provide a short-haul ferry to Prince of Wales Island. The distance from Meyers Chuck to Thorne Bay, over water, is only about 12 miles and is one of the shortest routes between POW and the mainland. Should such a spur be built, the effect would be to connect Meyers Chuck with highway to Ketchikan. In such a case, the economic and cultural ties between Meyers Chuck and POW might weaken in favor of stronger ties to Ketchikan. The Cleveland Peninsula

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<sup>35</sup> Personal communication, Walsh with Jeff Ottesen, DOT/PF Statewide Planning Division, 1/8/98

spur is an extremely distant scenario, however, and is not even on DOT/PF's most long term planning horizon.

A transportation link, such as much more frequent ferry service, might make a difference in the case of Hyder if such service occurred in tandem with the Petersburg/Wrangell/Ketchikan connector. In that case, the ties with Ketchikan would become much more significant and Hyder would then be a likely addition to the KGB rather than becoming an independent city.

(Ketchikan Gateway Borough, *Borough Petition for Annexation by Legislative Review*, Brief, pp. 2-4, February 28, 1998.)

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## 11. Continuation of Public Employees Retirement System Agreement Through Transition Period.

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The KGB suggests that the LBC assign responsibility to the Petitioner for negotiation and execution of an agreement with the State of Alaska concerning participation in the Public Employees Retirement System (PERS). *KGB letter*, p. 6.

The Petitioner responds that:

The City's petition intends that such an agreement would be approved by both governments during the interim period between the time that consolidation is approved by the voters and the time the first elected officers assume their seats. Both governments will be able to address this issue during the interim period. As the only alternative would be to immediately vest all employees with less than five years of service or to terminate their employment, no reason exists not to approve a newly negotiated agreement. Neither alternative would be equitable to the taxpayer or the employees of either government. Although the City has no objection to assuming the lead role in this effort, a specific revision to the charter or petition is not required.

(*Reply Brief*, p. 14.)

DCED staff discussed this matter with Katherine Gouyton, Division Auditor, with the Alaska Department of Administration, Division of Retirement and Benefits. Ms. Gouyton indicated that since the pending consolidation proposal would dissolve the existing City of Ketchikan and Ketchikan Gateway Borough, and create a new municipality (Municipality of Ketchikan), the current agreements for PERS coverage with the two existing governments would terminate upon the effective date of consolidation. The new Municipality of Ketchikan would assume any outstanding obligations under the terminated agreements of the former City of Ketchikan and the Ketchikan Gateway Borough. The new Municipality of Ketchikan would also have the option of signing a new Participation Agreement for PERS coverage. Ms. Gouyton indicated that the agreement could be executed after consolidation occurs and could be made retroactive to ensure that there is no lapse in coverage. However, she indicated that the Division of Retirement and Benefits would expect to continue to receive PERS contributions during the interim until the new agreement (with retroactive provisions) is implemented.

Ms. Gouyton also pointed out that consolidation of the City of Ketchikan and the Ketchikan Gateway Borough would result in termination of the “218 Agreements” that provided for Social Security coverage for the two former municipalities and the Ketchikan school district. The new Municipality of Ketchikan would have the option of enrolling in the Social Security system or “an alternate qualified plan.”

Procedurally, it appears that the Division of Retirement and Benefits has the capacity to address PERS and Social Security coverage for the prospective Municipality of Ketchikan in a flexible manner that need not result in any interruption of coverage. (Personal communication, January 10, 2001.)

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## 12. State Tax Cap Initiative.

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Both the City and Borough acknowledged that the 2000 statewide initiative to impose a 10-mill property tax cap on municipalities might have impacts on the consolidation proposal. Any such concerns, however, are now moot because voters rejected the proposed statewide tax cap on November 7, 2000, by the overwhelming margin of seven to three.

## E. Overall Conclusions and Recommendations.

In summary, DCED has concluded that all applicable standards for consolidation of the home rule City of Ketchikan and the second class Ketchikan Gateway Borough are satisfied by this proposal and that the proposal is in the best interests of the State. Based on the discussion in part D of this chapter, 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*.

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### 1. Recommended Amendment Number 1

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Amend the title of ARTICLE XII to read:

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

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### 2. Recommended Amendment Number 2

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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.**

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### 3. Recommended Amendment Number 3

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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.**

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### 4. Recommended Amendment Number 4

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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.

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## 5. Recommended Amendment Number 5

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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.

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## 6. Recommended Amendment Number 6

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