

1 STATE OF ALASKA

2 LOCAL BOUNDARY COMMISSION

3 Before Commissioners:

Darroll Hargraves, Chair
Robert Hicks, Vice Chair
Robert Harcharek
Anthony Nakazawa
Georgianna Zimmerle

4
5
6
7 Upon Remand in the Matter of the)
8 Petition for Dissolution of the City of)
9 Skagway and Incorporation of a)
Skagway Borough)

10 STATEMENT OF DECISION

11 I. SUMMARY OF PROCEEDINGS

12 On January 22, 2001, a group of fifty-eight voters in Skagway (“Petitioner”)
13 petitioned the Local Boundary Commission (“LBC” or “Commission”) for dissolution of
14 the City of Skagway, a first-class city, and concurrent incorporation of the Municipality of
15 Skagway, a first-class borough. The boundaries, duties, powers, population, and other
16 fundamental characteristics of the proposed borough are identical to those of the exist-
17 ing city government.
18

19 In June 2002, the Alaska Department of Community and Economic Devel-
20 opment – renamed in 2004 as the Department of Commerce, Community, and Eco-
21 nomic Development (“DCCED”) – published its Preliminary Report on the proposal. The
22 report expressed DCCED’s preliminary findings and conclusions that the Petition did not
23 meet the applicable standards for borough incorporation. On August 9, 2002, DCCED
24 published its Final Report. The Final Report affirmed the preliminary conclusions that
25
26

1 the Petition did not meet all of the requisite standards. Therefore, DCCED recom-
2 mended that the LBC deny the Petition.

3 On August 31, 2002, all five members of the LBC as it was then consti-
4 tuted held a public hearing in Skagway and toured the area proposed for incorporation.
5 On September 1, 2002, the LBC denied the Petition by unanimous vote. On Septem-
6 ber 27, 2002, in a 3 to 2 vote, the LBC adopted its Statement of Decision rejecting the
7 Petition.

8
9 The Petitioner asked the LBC to reconsider its decision. The LBC denied
10 the request. The Petitioner then appealed to the Superior Court.

11 In March 2003, four new members of the LBC were appointed. Only one
12 of the five Commissioners who rendered the September 2002 decision (Robert Har-
13 charek) remained on the LBC.

14
15 On September 20, 2005, the Superior Court, Judge Patricia Collins presid-
16 ing, issued a 22-page Order on Appeal (“Court Order”). In a discussion of the back-
17 ground, the Court addressed the prior LBC’s consideration and application of ten
18 fundamental principles regarding boroughs. The Court focused on the prior LBC’s for-
19 mulation and application of the principle that “geographically boroughs were envisioned
20 as relatively large regional units while cities are intended to be relatively small units.”
21 Court Order at 10.

22
23 The Court found that “that portion of the ‘fundamental principles’ for bor-
24 ough formation set forth in the Statement of Decision that requires that boroughs en-
25 compass ‘relatively large’ geographic areas that are larger than the Skagway borough’s
26 proposed size is the equivalent of a new regulation.” *Id.* at 13. The Court then held that
27 “the Commission did not promulgate the ‘relatively large/larger than Skagway geo-
28

1 graphic size requirement' in accordance with the Administrative Procedures Act." *Id.* at
2 18.

3 The Court remanded the matter to the current LBC for reconsideration.
4 The Court Order contained three instructions to the LBC: (1) Minimum geographical size
5 requirements could not be imposed without first adopting such as a new standard ac-
6 cording to law. (2) The LBC was not required to hold a new hearing unless it intended
7 to apply new legal standards to its decision. (3) The LBC remained free to deny the Pe-
8 tition, provided any decision was based on standards adopted according to law.
9

10 The LBC asked the Court to reconsider; however, the request was denied.
11 The LBC did not appeal that ruling to the Supreme Court.

12 Although the Court did not require a new hearing, the current LBC decided
13 to hold a new hearing in Skagway. As noted above, all but one Commissioner was new
14 to the matter on remand. Further, more than four years had passed since the Petition
15 had been filed.
16

17 In November 2005, DCCED provided each member of the LBC with a
18 printed copy of the 1,326-page Record in the original proceedings. The LBC invited the
19 Petitioner, public, and DCCED to submit supplemental materials. The Petitioner, public,
20 and DCCED availed themselves of the opportunity to bring additional facts into the re-
21 cord by filing supplemental materials.
22
23
24
25
26
27
28
29

1 The Petitioner filed a Supplemental Brief dated December 28, 2005. Ap-
2 pended to the Petitioner's Supplemental Brief was a three-page letter of endorsement
3 dated December 14, 2005, from Thomas B. Stewart.¹

4 Additionally, in January 2006, written comments regarding the Skagway
5 borough proposal were received from the following individuals:

- 6 • Stuart Brown, President of the Skagway Development Corporation (three-page
7 letter supporting the Skagway proposal);
- 8 • State Senator Albert M. Kookesh and State Representative Bill Thomas, both of
9 whom represent Skagway (two-page letter endorsing the Skagway borough pro-
10 posal);
- 11 • Stan Selmer, Chairman of the Board of Alaska Power & Telephone Company
12 (one-page letter supporting for the proposed Skagway borough);
- 13 • Bernard H. Ruckardt, Cooper Landing resident (one-page note supporting the
14 Skagway borough proposal);
- 15 • Dr. Michael Dickens, Superintendent of the City of Skagway School District
16 (three-page letter with a one-page attachment supporting the proposal);
- 17 • Gene Kane, former Director of the State's local government agency and former
18 member of the LBC Staff (one-page letter opposing the incorporation of a Skag-
19 way borough);
- 20 • John R. Thronrud, owner and operator of a Skagway inn (one-page letter favor-
21 ing the Skagway borough proposal);
- 22 • Kevin Waring, LBC Chair at the time of the 2002 decision (eight-page letter op-
23 posing incorporation of a Skagway borough);
- 24 • State Senator Gary Wilken, an advocate of forming regional boroughs in unor-
25 ganized areas with the fiscal and administrative capacity to operate boroughs
26 (two-page letter opposing the proposed Skagway borough);
- 27 • Kathie Wasserman, then-Deputy Director of the Alaska Municipal League (one-
28 page letter favoring the Skagway borough proposal); and
- 29 • Chris Rideout, Homer resident (one-page letter expressing concern over the
30 prospect of the proliferation of small, single-community boroughs in Alaska).

31 On August 25, 2006, DCCED filed its Supplemental Report regarding the
32 Skagway borough proposal. That report presented the agency's supplemental findings

33 ¹ Mr. Stewart was a member of the Alaska Territorial House of Representatives and served as
34 Secretary to the Alaska Constitutional Convention in 1955 – 1956. From 1966 to 1981 he served as a
35 Superior Court Judge for the State of Alaska in the First Judicial District.

1 and conclusions that the Skagway borough proposal did not meet all of the requisite
2 borough incorporation standards. The LBC allowed the Petitioner to reply to DCCED's
3 Supplemental Report in a brief dated November 17, 2006.

4 The Petitioner, on February 13, 2006, requested that the public hearing be
5 held during the summer months of 2006. The LBC Chair granted that request and in-
6 vited the Petitioner to propose a two-week period of its choice. From February 21,
7 2006, the date of that invitation, until August 7, 2006, the Petitioner failed to propose
8 any dates for the hearing. On August 7, 2006, the Petitioner proposed that the hearing
9 be postponed until the summer of 2007. The full LBC decided that such an additional
10 delay was unwarranted. The Petitioner was informed on September 6 that the hearing
11 was scheduled to begin November 27, 2006.

12 Four members of the LBC traveled to Skagway on Sunday, November 26,
13 2006. Commissioner Nakazawa was unable to do so because of scheduling conflicts.
14 During the morning of November 26, Commissioners Hargraves and Zimmerle toured
15 portions of the area proposed for incorporation. During the afternoon of November 26,
16 Commissioner Hicks toured portions of the area proposed for incorporation. Commis-
17 sioner Harcharek had toured portions of the area proposed for incorporation during the
18 2002 proceedings.

19 In formal sessions lasting some 24 hours from Monday afternoon, No-
20 vember 27 through the evening of Wednesday, November 29, 2006, the LBC addressed
21 procedural issues relating to the Skagway proposal, heard the Petitioner's opening and
22 closing statements, and heard testimony in favor of the Petition from the following
23 22 witnesses presented by the Petitioner:
24
25
26
27
28
29

- 1 • Skip Elliott, Juneau resident, Dyea property owner, former Skagway City Man-
2 ager, and former Skagway City Mayor;
- 3 • Michael Dickens, Superintendent of the Skagway City School District;
- 4 • Clem Tillion, resident of Halibut Cove in the Kenai Peninsula Borough and former
5 State Senator at the time of the 1963 Mandatory Borough Act;
- 6 • Mary Nordale, Fairbanks attorney, former Commissioner of the Alaska Depart-
7 ment of Revenue, and daughter of Constitutional Convention Delegate Katherine
8 Nordale;
- 9 • Lew Williams, former newspaper publisher (Ketchikan Daily News, Wrangell Sen-
10 tinel, Sitka Sentinel, and Petersburg Press), former Mayor of the City of Peters-
11 burg, former member of the University of Alaska Board of Regents, former
12 member of the Wrangell School Board, and former member of the Alaska Judicial
13 Council;
- 14 • Barbara Kalen, longtime resident of Skagway;
- 15 • Thomas Stewart, retired Superior Court Judge, Secretary of the Alaska Constitu-
16 tional Convention, former Assistant Attorney General for the Territory of Alaska,
17 and former member of the Territorial House of Representatives;
- 18 • Gail Phillips, former Speaker of the Alaska State House of Representatives;
- 19 • Jack Coghill, former member of the Territorial House of Representatives, Dele-
20 gate to the Alaska Constitutional Convention, former State Senator, former Lieu-
21 tenant Governor, former Mayor of the City of Nenana, and current Nenana City
22 Councilmember;
- 23 • Lisa Cassidy, Dyea resident and Skagway City Councilmember;
- 24 • Carl Rose, Executive Director of the Association of Alaska School Boards and
25 former Skagway School Board member;
- 26 • Norman Gorsuch, former State Attorney General;
- 27 • Dennis Bousson, Dyea resident;
- 28 • Kathie Wasserman, Executive Director of the Alaska Municipal League, former
29 LBC member, and former paid advocate of the Skagway borough proposal;
- 30 • John Harris, Skagway resident;
- 31 • Stan Selmer, Skagway resident, former Skagway City Mayor, former Skagway
City Councilmember, and current Manager of Alaska Power and Telephone in
Skagway;
- James Van Altvorst, Ketchikan resident, former Ketchikan City Manager, and cur-
rent local government consultant;
- John Walsh, lobbyist for the Petitioner and City of Skagway;
- Nancy Galstad, former member of the LBC and former paid advocate of the
Skagway borough proposal;
- Jan Wrentmore, Skagway resident, Skagway businesswoman, and former City of
Skagway lobbyist;
- Tim Bourcy, City of Skagway Mayor; and
- Bob Ward, Skagway City Manager and Petitioner's Representative.

1 Additionally, the LBC, pursuant to its authority in 3 AAC 110.560(d), called
2 Victor Fischer to provide sworn testimony. Mr. Fischer, a Delegate to the Alaska Con-
3 stitutional Convention and member of the Committee on Local Government and the
4 Style and Drafting Committee, expressed the view that the Skagway proposal contra-
5 vened the intent of the framers of the Constitution.²
6

7 When the LBC adjourned its meeting in Skagway, the Chair announced
8 that the LBC would convene a decisional session regarding the Skagway proposal in
9 Anchorage on December 12, 2006.

10 By November 30, 2006, a copy of the audio recording of the November 27
11 – 29 proceedings had been provided to all five members of the LBC. Additionally, a
12 printed copy of all new materials accepted into the record during those proceedings had
13 been provided to all Commissioners by that date. By December 9, 2006, an 890-page
14 transcript of the November 27 – 29 proceedings had been provided to all five members
15 of the LBC.
16

17 The LBC convened a decisional session in Anchorage on December 12,
18 2006. Commissioners Hargraves, Hicks, and Zimmerle were present. Commissioner
19 Harcharek was unable to attend due to illness, and Commissioner Nakazawa was ab-
20 sent because of scheduling conflicts. The three Commissioners in attendance recessed
21 the decisional meeting until the following day in the hope that all Commissioners would
22 be available to participate.
23
24
25

26 ² Mr. Fischer is recognized by the Alaska Supreme Court as an authority on Alaska government
27 and has written or co-authored a number of books and publications concerning state and local govern-
28 ment in Alaska.

1 On December 13, 2006, all five members of the LBC participated in the
2 decisional session. Commissioner Harcharek did so telephonically. Commissioner Na-
3 kazawa advised his fellow Commissioners that he had thoroughly reviewed the entire
4 record of the November 27 – 29 proceedings.

5 At the December 13 decisional session, the Commission deliberated for
6 approximately five hours. At the end of those deliberations, the Commission approved
7 the Skagway Petition by a vote of three to two. Commissioners Hargraves, Harcharek,
8 and Zimmerle (“the Commission majority”) voted in favor of the Petition. Commission-
9 ers Hicks and Nakazawa (“the Commission minority”) voted to deny the Petition.
10

11 On January 11, 2007, over a period of approximately three hours, the
12 Commission engaged in further substantive discussions regarding the Skagway bor-
13 ough proposal, including discussions relating to the findings and conclusions of the
14 Commission in this matter.
15

16 The “Findings and Conclusions by the Commission Majority” is presented
17 below. Following that is the “Order of the Commission Majority Based on its Findings
18 and Conclusions.” Information about the opportunity to seek reconsideration and ap-
19 peal is also provided. Accompanying this Statement of Decision is a dissenting opinion
20 by Commissioners Hicks and Nakazawa.
21

22 **II. FINDINGS AND CONCLUSIONS BY THE COMMISSION MAJORITY**

23 **Section A. Introduction and Background**

24 We (Commissioners Hargraves, Harcharek, and Zimmerle) recognize that
25 our decision in this matter, like most LBC boundary determinations (except for mundane
26 local-action annexations), has statewide significance and the potential to profoundly in-
27
28
29

1 fluence future borough incorporations, detachments, and annexations.³ We recognize
2 the inevitability that future petitioners will cite our decision here as precedent. However,
3 we view the circumstances in and characteristics of Skagway as being so distinct from
4 other areas of Alaska that our decision is not readily applicable to other areas. We do
5 not share the view expressed in the December 2006 *AML Touchstone*:⁴ “[The LBC’s
6 Skagway] decision will have great bearing on other communities and their future plans
7 on borough formation decisions.”⁵

9 It is fitting that we offer background information that had an important
10 bearing on our decision. In doing so, we recognize that future Commissions may dis-
11 agree with us, just as we disagreed with the overall conclusion of the 2002 Commission.

12 For background, before applying the standards for decision to the Petition,
13 we first discuss the broad discretion that the LBC has to act in the unique circumstances
14

15 ³ We recognize that its decision regarding the Skagway borough proposal has a number of ex-
16 traordinary characteristics, including the following:

- 17 (1) The decision allows the creation of a borough that is just 2.5 percent of the average size of
18 Alaska’s 16 existing boroughs, 4.3 percent of the median size of those existing boroughs, and
19 approximately half the size of Alaska’s currently smallest borough.
- 20 (2) Granting the Petition allows the conversion of a first-class city government within the unorganized
21 borough into a borough government.
- 22 (3) For the first time, the LBC has not only cites, but places great weight on, the principles set out in
23 Art. I, sec. 2 of the Constitution of the State of Alaska as a basis for local government boundary
24 determinations.
- 25 (4) Approval of the Petition does not extend or reduce municipal jurisdiction over any area or popula-
26 tion, does not expand the powers or duties of a municipal government, and does not affect the
27 revenues of any local government. It does, however, reserve the substantial fiscal resources of
28 the City of Skagway for the exclusive benefit of the residents of the proposed borough. Addition-
29 ally, it preserves the local political autonomy of a first-class city in the unorganized borough by
30 granting it borough status.
- 31 (5) It treats the Administrative Code standards as tertiary-level guidelines in a hieratical order of the
constitutional, statutory, and regulatory standards applicable to borough incorporation (as op-
posed to viewing the Alaska Administrative Code standards as being critical to interpret and im-
plement broad constitutional and statutory standards).

⁴AML is the Alaska Municipal league, a voluntary, nonprofit, nonpartisan, statewide organization
of cities and boroughs.

1 presented by each petition and the existing political climate in which borough boundary
2 determinations are rendered.

3 Boards and commissions frequently are classified as quasi-legislative,
4 quasi-executive, or quasi-judicial, based on their functions within the separation-of-
5 powers scheme of the Constitution. The LBC has attributes of all three.

6 Art. X, sec. 12 of the Constitution of the State of Alaska provides that the
7 LBC, "shall be established by law in the *executive branch* of the state government."
8 (Emphasis added.) Members of the LBC are appointed by and serve at the pleasure of
9 the Governor. The duty of the LBC under AS 44.33.812(a)(1) to "make studies of local
10 government boundary problems" is one example of the quasi-executive nature of the
11 LBC.
12

13 In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that
14 the Constitution of the State of Alaska delegates legislative authority to the LBC to make
15 fundamental public policy decisions, thus conferring quasi-legislative status upon the
16 LBC. Specifically, the Court stated:
17

18 [T]he Local Boundary Commission has been given a broad power to de-
19 cide in the unique circumstances presented by each petition whether bor-
20 ough government is appropriate. *Necessarily, this is an exercise of*
21 *delegated legislative authority to reach basic policy decisions.* Accord-
22 ingly, acceptance of the incorporation petition should be affirmed if we
23 perceive in the record a reasonable basis of support for the Commission's
24 reading of the standards and its evaluation of the evidence.

24 *Mobil Oil Corp. v. Local Boundary Com'n*, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis
25 added). *See also Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976) and *Valleys*

26 _____
27 (. . . continued)
28 ⁵ *AML Touchstone*, December 2006, p. 7.

1 *Borough Support Committee v. Local Boundary Com'n*, 863 P.2d 232, 234 (Alaska
2 1993).

3 In addition to exercising quasi-legislative powers in making boundary de-
4 terminations, the LBC carries out a quasi-legislative duty under AS 44.33.812(a)(2),
5 when it adopts “regulations providing standards and procedures for municipal incorpora-
6 tion, annexation, detachment, merger, consolidation, reclassification, and dissolution.”
7

8 Although it is part of the executive branch and exercises delegated legisla-
9 tive authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a
10 mandate to apply pre-established standards to facts, to hold hearings, and to follow due
11 process in conducting hearings and ruling on petitions.

12 The quasi-judicial nature of the LBC requires that there be a reasonable
13 basis of support for the LBC’s reading of the standards and its evaluation of the evi-
14 dence, even though the quasi-legislative nature of the LBC provides it with considerable
15 discretion in the application of those standards and the weighing of evidence. See *U.S.*
16 *Smelting, Refining & Min. Co. v. Local Boundary Com'n*, 489 P.2d 140 (Alaska 1971),
17 discussing application of due process requirements in Commission proceedings.
18

19 We take the position that each member of the LBC is capable of “rea-
20 sonably interpreting” the applicable standards and “reasonably evaluating” the evidence
21 in some fashion that is distinct from that of all other Commissioners. That view recog-
22 nizes that Commissioners are individuals who are influenced by an infinite number of
23 circumstances, not the least of which is the varied experiences and knowledge of each
24 Commissioner. The statute providing for the appointment of members of the LBC calls
25 for appointments to be made on the basis of interest in public affairs, good judgment,
26
27
28
29

1 knowledge and ability in the field, and with a view to providing diversity of interest and
2 points of view in the membership.

3 At the decisional session on December 13, 2006, the LBC Chair ex-
4 pressed the sentiment that no “hotter hot-potato could have been handed to this Com-
5 mission.” We, particularly the Chair, observe further that actions of previous
6 Commissions (sometimes dating back decades), coupled with the State’s laissez-faire
7 policy of borough formation, and the lack of political will on the part of the current and
8 past Local Boundary Commissions have impeded formation of large regional boroughs
9 that some postulate were called for by the delegates to Alaska’s Constitutional Conven-
10 tion. This has put the Commission in an increasingly challenging position.

11 Art. X, sec. 3 of the Alaska Constitution requires that “The entire State
12 shall be divided into boroughs, organized or unorganized.” It provides further that or-
13 ganized and unorganized boroughs, “shall be established in a manner and according to
14 standards” enacted by the Legislature. In 1960, the LBC made the following observa-
15 tions regarding boroughs in its report to the First Alaska State Legislature:
16

17 One thing can be agreed upon: the borough is the intermediate unit of lo-
18 cal government between the City and the State. . . .

19 The Commission presently takes the position that a borough was de-
20 signed to be a form of regional government. . . .

21

22 Following this concept to the next logical phase, it supports the Commis-
23 sion’s present thinking that organized boroughs, particularly in Alaska,
24 were to be large in size – otherwise they would be duplicating the service
25 area’s jurisdiction. No opinion is expressed at this time as to just how
26 large the borough should be, for there are other considerations to be
27 weighed: for example, the population density would be an important factor
28 but, it is felt, in view of existing conditions in Alaska, the general rule
29 should be large boroughs, and the exception should be small boroughs.

1 State of Alaska Local Boundary Commission, *First Report to the Second Session of the*
2 *First Alaska State Legislature* (February 2, 1960), pp. I-7 – I-9.

3 To assist the Legislature in carrying out the constitutional requirement that
4 all of Alaska be divided into organized and unorganized boroughs, with each borough
5 embracing an area and population with common interests to the maximum degree pos-
6 sible, the 1960 LBC formally recommended as follows to the First Alaska State Legisla-
7 ture:
8

9 [T]hat the Legislature give the Commission a mandate by Resolution, di-
10 recting the Commission to divide the whole of Alaska into boroughs, or-
11 ganized or unorganized, and that such recommendation(s) be presented
12 to the next Legislature.

Id. at III- 4.

13 The Legislature rejected the LBC’s recommendation and, instead, enacted
14 a law in 1961 establishing a single unorganized borough encompassing all of Alaska not
15 within organized boroughs (at the time there were none; so the single unorganized bor-
16 ough initially encompassed the entire state). The 1961 Legislature also enacted laws
17 providing standards and procedures for voluntary incorporation of boroughs. This cre-
18 ated a structure in which borough boundary decisions would be made on a piecemeal
19 basis without an overall plan for the division of all of Alaska into organized and unorgan-
20 ized boroughs.

21 It is not surprising then, that despite expressing a clear predisposition to-
22 ward large regional boroughs, that first LBC approved the creation of the 850-square
23 mile Bristol Bay Borough in 1962. Alaska’s Secretary of State expressed immediate
24 and resounding criticism of the action. (See Memorandum from Hugh J. Wade to Gov-
25 ernor William A. Egan, July 9, 1962.) Over the ensuing years, the creation of the Bristol
26
27
28
29

1 Bay Borough has been repeatedly characterized as a poor public policy decision by the
2 LBC. For example, in 1991, former Constitutional Convention delegate Victor Fischer
3 wrote:

4 The first violation of the regional concept came with establishment of the
5 very first borough. In creating the Bristol Bay Borough, the Local Bound-
6 ary Commission took a tiny part of a real region and gave it borough
7 status under the constitution. This gross error was not rectified when the
Lake and Peninsula Borough was created.

8 Letter from Victor Fischer to the LBC, October 11, 1991.

9 In 1963, the Legislature made a significant reversal of its 1961 policy by
10 passing the Mandatory Borough Act. That landmark legislation, which was signed into
11 law by Governor Egan, mandated formation of boroughs in eight specific regions of
12 Alaska (the greater areas of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula,
13 Anchorage, Matanuska-Susitna valleys, and Fairbanks). Today, the eight boroughs
14 formed under the Mandatory Borough Act are inhabited by an estimated 558,059 Alas-
15 kans, just over 84 percent of the state's population.

16 It is particularly noteworthy that John Rader, who sponsored the 1963
17 Mandatory Borough Act, viewed the LBC, in a practical sense, as an institution that was
18 incapable of exercising the political leadership necessary to achieve the vision of the
19 framers of Alaska's Constitution regarding establishment of boroughs. In that regard,
20 Mr. Rader wrote as follows in his recount of the legislative history of the 1963 Manda-
21 tory Borough Act:
22

23 So far as I am aware, [the Local Boundary Commission] has no broad
24 view nor does it seek broad solutions. As a government tool, it is a small
25 one. I would judge that its usefulness in the future would, therefore, be
26 limited to smaller and more localized issues. The heat generated by an-

1 nexation or by incorporation, particularly when it is done by executive fiat,
2 is very intense.^[6]

3 Perhaps the commission could afford to make enemies one by one, bit by
4 bit, but it could never maintain itself in the face of a barrage of criticism
5 which was statewide. The legislature would destroy it.^[7] By the very na-
6 ture of the political organization, the commission is not in a position to de-
7 fend itself. The problems of annexation and incorporation of local
8 government are political decisions which should be made in a manner
9 permitting public political debate.

7 John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.),
8 *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A.
9 Praeger, Publishers, New York, 1968, p. 90.

11 After the 1963 Mandatory Borough Act, the State reverted to the 1961
12 laissez-faire policy of borough formation. Under that policy, the second borough pro-
13 posal approved by the LBC was that providing for the creation of the Haines Borough in
14 1968. The boundaries approved by that LBC resulted in three enclaves within the bor-
15 ough, including Klukwan and Skagway.⁸ In today's light, it is easy to criticize that prior
16 LBC and to conclude that it should have rejected the proposal because of the enclaves.
17 However, that Commission approved the locally preferred alternative and, in doing so,
18 resolved serious local and State policy concerns over the delivery of education services
19 to the greater Haines area. It is noteworthy that voters in Haines had rejected three
20 previous borough proposals. It is virtually certain that if Klukwan and Skagway had

22
23 ⁶ [Footnote 18 in original.] Executives and administrators may find the Boundary Commission to
24 be useful as a buffer between themselves and the public.

25 ⁷ [Footnote 19 in original.] This problem was foreseen by the Constitutional Convention which
26 gave the commission constitutional status (Art. X, sec. 12) to protect it. Despite this, the legislature could
27 effectively limit the commission, e.g., by statutory definitions and by withholding appropriate staff and
28 other necessary support.

29 ⁸ Those consisted of (1) the military installation at Lutak Inlet known as the "base proper to the
30 Petroleum Distribution Office, Haines Terminal and Pumping Station"; (2) a 1.4-square mile enclave in-
31 cluding Klukwan; and (3) the 443.1 square mile area comprising the proposed Skagway borough.

1 been included in the borough proposal, the collective electorate would have rejected
2 that fourth borough proposal encompassing Haines.

3 In the context of the laissez-faire policy of borough formation, it is notewor-
4 thy that only about 4 percent of Alaskans have voluntarily formed boroughs since state-
5 hood. Moreover, in the past 16 years, only one borough has been formed. That was
6 the City and Borough of Yakutat, a single-community borough presently inhabited by an
7 estimated 619 people, including just 135 students.

8
9 In the forty-three years since the 1963 Mandatory Borough Act, the Legis-
10 lature has debated numerous proposals to mandate further borough formation, to con-
11 solidate school districts, to impose taxes on unorganized borough residents, and to
12 create incentives for borough incorporation. However, few such proposals have been
13 enacted, and those that have been seem to have had little effect.

14
15 Since the 1980s, the LBC, especially the current Commission, has been a
16 strong advocate of reform. (See, in particular, *Report of the Alaska Local Boundary*
17 *Commission to the First Session of the Twenty-Fourth Alaska State Legislature* (Janu-
18 ary 19, 2005) pp. 83 – 164.) However, as anticipated by John Rader, the LBC may
19 have become somewhat of a target because of the Commission's advocacy for reform.
20 Further, in the general absence of locally initiated proposals for regional boroughs, the
21 Commission also seems to be the focus of increasing criticism and frustration over the
22 lack of borough formation. Such may be evident in the conclusions of the ad hoc Advi-
23 sory Commission on Local Government created by the Twenty-Fourth Alaska Legisla-
24 ture. That body, which was comprised of six legislators and three municipal officials,
25 reported as follows in 2006:
26

1 The [Advisory Commission on Local Government] received testimony that
2 rigid adherence by the Local Boundary Commission (LBC) to regulations
3 regarding borough boundaries have been a detriment to new borough
4 formation. The [members of the Advisory Commission on Local Govern-
5 ment] therefore state their intent that the LBC apply flexible rules when
6 reviewing local proposals. Priority should be given to the standards listed
7 in statute. Minor consideration will be given to the model borough bounda-
8 ries and other administrative boundaries.

6 Advisory Commission on Local Government, *Final Report* (January 20, 2006), p. 7.
7 (Emphasis added.)

8 We note further that the Twenty-Fourth Alaska State Legislature (2005 –
9 2006) considered various legislative proposals to curtail the powers of the LBC. Those
10 included, in particular, House Bill 133 and Senate Bill 128. Excerpts from the Sponsor
11 Statement regarding House Bill 133 follow:
12

13 Sponsor Substitute for House Bill 133 makes three changes in the way
14 the Local Boundary Commission deals with municipal incorporation, an-
15 nexation, detachment, merger, consolidation, reclassification, and disso-
16 lution.

16 This legislation protects the voters' right to incorporate, outline the
17 boundaries, and select the levels of service. The Local Boundary Com-
18 mission will no longer be able to amend the petition or impose conditions
19 on the incorporation.

19 Following amendment, *CSSSHB 133(JUD) AM* passed the House by a
20 vote of 35 in favor and only 1 opposed (with 3 members excused and 1 absent). The
21 Senate then approved the bill by a vote of 19 to 0 (with 1 member absent). The Gover-
22 nor signed the bill into law and issued a press release stating:

23 Governor Frank H. Murkowski has signed into law HB 133, which makes
24 changes in the way the Local Boundary Commission processes municipal
25 incorporations, annexations, detachments, mergers, consolidations, re-
26 classifications, and dissolutions.

26 The bill . . . also protects the voters' right to incorporate, outline the
27 boundaries of their municipality, and select the level of service they want.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

“This bill cleans up the process local citizens use to define their own community,” Murkowski said. “It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go.”

Frank H. Murkowski, Governor, *Press Release* (May 27, 2006)

As noted above, SB 128 is another example of legislative action to curtail the powers of the LBC. Excerpts from the Sponsor Statement regarding Senate Bill 128, including specific reference to the provisions in Art. I, sec. 2 of Alaska’s Constitution, follow:

[Petitions for borough incorporation] should originate with maximum local involvement. . . .

“The Alaska Constitution states, ‘All government is to originate with the people and is founded upon their will only.’ I interpret that to include boroughs governments. The role of the Local Boundary Commission is to review proposed changes, not to create boroughs. If we are to have a government by the people, those proposed changes should emanate from the local level up, not from the top of the government pyramid down.”

With amendments, *SB 128 AM* passed the Senate by a vote of 15 votes in favor and only 4 against (with 1 member excused). The House then passed *SB 128 AM* by a vote of 36 to 0 (with 4 members excused). That bill was also signed into law by the Governor.

The most recent example of the sentiments characterized above is reflected in a resolution adopted by the members of the Alaska Municipal League just 10 days before the LBC’s 2006 hearing on the Skagway borough proposal. That resolution urges further legislative action and states as follows:

WHEREAS, the Local Boundary Commission has assigned a disproportionate weight toward their administrative criteria for evaluating petitions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

for borough incorporation, known as the Model Borough Boundary requirement; and

WHEREAS, the Local Boundary Commission has been unsuccessful using the Model Borough Boundary criteria to promote new borough incorporations and even inhibits such incorporations through the use of this criteria; and

WHEREAS, the Local Boundary Commission's inflexible approach when considering petitions for borough incorporations that do not conform to the Model Borough Boundaries, unduly limits the ability of political subdivisions of the State to propose other viable borough boundaries;

Alaska Municipal League, *Resolution 2007-06* (November 17, 2006).

The circumstances above reflect a climate that often disfavors formation of regional boroughs. Meaningful reform of the current structure will require legislative attention.

Section B. Standards for borough incorporation are set out in the Constitution of the State of Alaska, Alaska Statutes, and Alaska Administrative Code. Alaska's Constitution is the preeminent law for establishment of boroughs. Further, the standards in the Alaska Statutes are intended to be flexibly applied to a wide range of regional conditions. The standards in the Alaska Administrative Code are, in a hierarchal sense, the least weighty among the three sets of borough incorporation standards.

The Constitution of the State of Alaska sets forth a system of laws and principles that defines and establishes the organization of state government and its political subdivisions. We place great weight on Art. I, sec. 2 of the Constitution of the State of Alaska, which states as follows:

Source of Government. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

We take the view that Art. X, the Local Government Article, sets up the structure for the establishment of boroughs under the principles set out in Art. I, sec. 2.

1 The Alaska Legislature has enacted statutory standards for the incorpora-
2 tion of boroughs. The Alaska Supreme Court has held with respect to those standards
3 that

4 A determination whether an area is cohesive and prosperous enough for
5 local self-government involves broad judgments of political and social pol-
6 icy. The standards for [borough] incorporation set out in [the Alaska Stat-
7 utes] were intended to be flexibly applied to a wide range of regional
8 conditions.

8 *Mobil Oil* at 98.

9 The borough incorporation standards set out in the Alaska Administrative
10 Code were repeatedly characterized in the remand proceedings by the Commission mi-
11 nority as the “black letter law.” While recognizing that the Administrative Code stan-
12 dards are indeed the law, we view them in a hierarchal sense to be subordinate to the
13 Constitution and Statutes. Thus, in our view, the Administrative Code standards are the
14 least weighty among the three sets of borough incorporation standards. We stress that
15 the constitutional and statutory standards are intended to be flexibly applied. Moreover,
16 each of the five fundamental borough incorporation standards in the Alaska Administra-
17 tive Code expressly grants broad discretion to the LBC for consideration of factors
18 enumerated in those standards. For example, 3 AAC 110.045(a) states that “The so-
19 cial, cultural, and economic characteristics and activities of the people in a proposed
20 borough must be interrelated and integrated. In this regard, the commission *may* con-
21 sider relevant factors. . . .” (Emphasis added.) As noted in Section A above, each of
22 us is capable of reasonably applying an identical standard to identical evidence, yet
23 coming to a somewhat different conclusion than each of the other Commissioners.
24
25
26
27
28
29

1 **Section C. The Skagway borough proposal meets the Community of Interests**
2 **Standard.**

3 Subsection 1 below recites the applicable constitutional, statutory, and
4 regulatory provisions that relate to the Community of Interests Standard. Subsection 2
5 of Section C presents our findings and conclusions regarding the particular elements of
6 the Community of Interests Standard. Subsection 3 of Section C puts forward our over-
7 all conclusion regarding the Community of Interests Standard.
8

9 **Subsection 1. The Community of Interests Standard established in law.**

10 The Community of Interests Standard is set out in Art. X, sec. 3 of the
11 Constitution of the State of Alaska, AS 29.05.031, and 3 AAC 110.045, all of which are
12 recited below.
13

14 **Article X, Section 3. Boroughs.** The entire State shall be divided into
15 boroughs, organized or unorganized. They shall be established in a man-
16 ner and according to standards provided by law. The standards shall in-
17 clude population, geography, economy, transportation, and other factors.
18 Each borough shall embrace an area and population with common inter-
19 ests to the maximum degree possible. The legislature shall classify bor-
20 oughs and prescribe their powers and functions. Methods by which
21 boroughs may be organized, incorporated, merged, consolidated, reclassi-
22 fied, or dissolved shall be prescribed by law

23 **AS 29.05.031. Incorporation of a borough or unified municipality.** An
24 area that meets the following standards may incorporate as a home rule,
25 first class, or second class borough, or as a unified municipality:
26 (1) the population of the area is interrelated and integrated as to its social,
27 cultural, and economic activities . . .

28 **3 AAC 110.045. Community of Interests.** (a) The social, cultural, and
29 economic characteristics and activities of the people in a proposed bor-
30 ough must be interrelated and integrated. In this regard, the commission
31 may consider relevant factors, including the
(1) compatibility of urban and rural areas within the proposed borough;
(2) compatibility of economic lifestyles, and industrial or commercial activi-
ties;

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

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

5 (b) Absent a specific and persuasive showing to the contrary, the commis-
6 sion will presume that a sufficient level of interrelationship cannot exist
7 unless there are at least two communities in the proposed borough.

8 (c) The communications media and the land, water, and air transportation
9 facilities throughout the proposed borough must allow for the level of
10 communications and exchange necessary to develop an integrated bor-
11 ough government. In this regard, the commission may consider relevant
12 factors, including

13 (1) transportation schedules and costs;

14 (2) geographical and climatic impediments;

15 (3) telephonic and teleconferencing facilities; and

16 (4) electronic media for use by the public.

17 (d) Absent a specific and persuasive showing to the contrary, the commis-
18 sion will presume that communications and exchange patterns are insuffi-
19 cient unless all communities within a proposed borough are connected to
20 the seat of the proposed borough by a public roadway, regular scheduled
21 airline flights on at least a weekly basis, regular ferry service on at least a
22 weekly basis, a charter flight service based in the proposed borough, or
23 sufficient electronic media communications.

24 **Subsection 2. The findings and conclusions regarding the Community of
25 Interests Standard.**

26 Our findings and conclusions regarding the Community of Interests stan-
27 dard are set out below in Parts a - c.

28 **Part a. Multiple communities lie within the proposed Skagway bor-
29 ough.**

30 For reasons set out below in Subparts i – vi, we conclude that the pro-
31 posed Skagway borough encompasses two communities – Skagway and Dyea. Having
reached that conclusion regarding the evidentiary presumption set out in 3 AAC
110.045(b), no higher level of proof (“a specific and persuasive showing”) is required
that the proposed Skagway borough meets the Community of Interests Standard.

1 The term "community" is defined for LBC purposes by 3 AAC 110.990(5)
2 as "a social unit comprised of 25 or more permanent residents as determined under
3 3 AAC 110.920." The provisions of 3 AAC 110.920 are set out below:
4

5 **3 AAC 110.920. Determination of community.** (a) In determining
6 whether a settlement comprises a community, the commission may con-
7 sider relevant factors, including whether the
8 (1) settlement is inhabited by at least 25 individuals;
9 (2) inhabitants reside permanently in a close geographical proximity that
10 allows frequent personal contacts and comprise a population density that
11 is characteristic of neighborhood living; and
12 (3) inhabitants residing permanently at a location are a discrete and identi-
13 fiable social unit, as indicated by such factors as school enrollment, num-
14 ber of sources of employment, voter registration, precinct boundaries,
15 permanency of dwelling units, and the number of commercial establish-
16 ments and other service centers.
17 (b) Absent a specific and persuasive showing to the contrary, the commis-
18 sion will presume that a population does not constitute a community if
19 (1) public access to or the right to reside at the location of the population is
20 restricted;
21 (2) the population is adjacent to a community and is dependent upon that
22 community for its existence; or
23 (3) the location of the population is provided by an employer and is occu-
24 pied as a condition of employment primarily by persons who do not con-
25 sider the place to be their permanent residence.

26 We note further that the prior LBC had concluded during the 2002 pro-
27 ceedings that Dyea is a community. We concur with that conclusion based on the fol-
28 lowing findings of fact.
29

30 **Subpart i. Dyea is inhabited by more than 25 individuals.**

31 Sworn testimony during the hearing indicated that Dyea has a population
of 40 residents, more or less. Additionally, DCCED found that Dyea is inhabited by at
least 25 permanent residents.

**Subpart ii. Dyea residents live permanently in a close geo-
graphical proximity that allows frequent personal contacts and**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

comprise a population density that is characteristic of neighborhood living.

We consider it reasonable and appropriate to evaluate the “close geographical proximity,” “frequent personal contacts,” and “population density” characteristics of Dyea’s population in the context of the nature of the settlement. Dyea, like many communities in Alaska, is rural in nature. Residents in many of Alaska’s rural communities – and even some urban communities due to factors such as zoning – do not live in close geographical proximity that allows frequent personal contact. However, it is not fitting to conclude that such settlements are not communities. Evidence of frequent personal contact among residents of Dyea was provided in testimony concerning matters such as the cooperation among Dyea residents with respect to maintenance of Dyea roads.

We consider the phrase, “characteristic of neighborhood living” to be ambiguous. The concept of “neighborhood living” is an evolving one. Residents of an urban area might not even be acquainted with their neighbors next door, whereas all residents of a small rural community are likely to be acquainted with one another. Testimony provided in the remand proceedings demonstrated that residents of Dyea clearly interact among themselves and that they enjoy a strong sense of community that reflects a stronger sense of neighborhood than some urban areas that might be more densely settled.

Subpart iii. Inhabitants residing permanently at Dyea are a discrete and identifiable social unit.

We find that facts pertaining to school enrollment are not conclusive in terms of whether Dyea is a community. However, there are many of sources of employment in Dyea, particularly with respect to the tourism industry. Those include, for

1 example, employment relating to kayaking, horseback riding, river rafting, and the op-
2 eration of the National Park Service campground and facilities at Dyea (e.g., garbage
3 collection and park maintenance).

4 We find that voter registration and precinct boundaries are not reliable in-
5 dicators of a community. The State Division of Elections has long made it a policy to
6 consolidate voting precincts. For example, we cite that the Ketchikan Gateway Borough
7 once had fifteen precincts; however, that number has now been reduced to three.
8 Thus, it is not surprising that Dyea is part of the Skagway Precinct.
9

10 With regard to permanency of dwelling units, based on a tour of Dyea, we
11 find that homes in Dyea generally appear to be of a permanent nature. Dyea appears
12 to have few, if any, trailers or other types of dwelling units of a temporary nature.
13

14 In terms of commercial establishments, we find that Dyea has a number of
15 commercial establishments and other service centers. Those include a bed and break-
16 fast, gift shop at the bed and breakfast, and barter system among residents. Dyea does
17 not have a post office, school, or extensive commercial development; however, such
18 characteristics are not expressly required by law. We note that Dyea does have a his-
19 toric cemetery.
20

21 **Subpart iv. Public access and the right to reside are no more**
22 **restricted in Dyea than they are in many other communities in**
23 **Alaska.**

24 Portions of Dyea lie within areas governed by the Dyea Flats Management
25 Plan and the Klondike Gold Rush National Historical Park. Public access to and the
26 right to reside at those portions of Dyea are restricted. However, it is not uncommon for
27 such restrictions to exist in a number of communities, particularly those in southeast
28
29

1 Alaska. For example, we observe that Ketchikan has a number of parks and is bor-
2 dered by the Tongass National Forest.

3 Moreover, we place great significance on the recent conveyance of ap-
4 proximately 932 acres of State land in Dyea to the Skagway city government. The City
5 is in the process of subdividing that land and planning for its disposal for residential,
6 commercial, and public purposes. Such development will enhance the degree to which
7 Dyea is a community.

8 We find that one of the most compelling reasons to permit formation of a
9 Skagway borough is that such will allow Dyea to be established as a borough service
10 area. This will allow Dyea, as it continues to grow, to receive special services (including
11 services not provided by the borough on an areawide or nonareawide basis) or a higher
12 or different level of services than that provided on an areawide or nonareawide basis.
13 Creation of a Dyea service area will also better define the community.

14
15
16 **Subpart v. The population of Dyea is adjacent to Skagway and**
17 **is dependent upon Skagway for its existence. However, to**
18 **some degree, each community in Alaska is dependent upon**
19 **other communities for its existence.**

20 We consider a strict interpretation of the provisions of 3 AAC
21 110.920(b)(2) (whether “the population is adjacent to a community and is dependent
22 upon that community for its existence”) to be an unreasonable measure of a community.
23 While Dyea is dependent upon Skagway for many social, cultural, economic, and trans-
24 portation needs, there is probably not one community in the Alaska that is not depend-
25 ent upon another community to some degree for its existence. We note, for example,
26 that Ketchikan is dependent upon the Seattle area for much of Ketchikan’s goods and
27 other commerce. In turn, there are several other communities in the Ketchikan Gate-

1 way Borough that are dependent, to some degree, upon Ketchikan. Those include
2 Ward Cove (formerly Wacker City), Pennock Island, and Saxman.

3 **Subpart vi. Dyea is not a site provided by an employer; neither**
4 **is Dyea occupied as a condition of employment primarily by**
5 **persons who do not consider Dyea to be their permanent resi-**
6 **dence.**

6 Logging camps and other remote work sites are examples of settlements
7 that would not be properly considered a community under the provisions of 3 AAC
8 110.920(b)(3). The residences in Dyea are not provided by an employer. Further, there
9 is no evidence that any residence in Dyea is occupied as a condition of employment.

11 **Part b. The social, cultural, and economic characteristics and activi-**
12 **ties of the people in a proposed Skagway borough are interrelated**
13 **and integrated.**

13 The provisions of 3 AAC 110.045(a) require consideration of interrelation-
14 ships and integration among “*the people in a proposed borough.*” Those provisions do
15 not call for consideration of interrelationships that communities or people in a proposed
16 borough have with communities or people in areas adjacent to the proposed borough.

17 We find that there is strong evidence of compatibility among residents of
18 Skagway and Dyea in terms of economic lifestyles, industrial and commercial activities,
19 and other aspects of daily life. We find further that there exist well-developed transpor-
20 tation and communication patterns throughout the proposed borough. Moreover, we
21 find no evidence of spoken language differences within the proposed Skagway borough.

23 From the findings above, we conclude that the social, cultural, and eco-
24 nomic characteristics and activities of the people in the proposed Skagway borough are
25 interrelated and integrated.

27 **Part c. The communications media and the land, water, and air**
28 **transportation facilities throughout the proposed Skagway borough**

1 **allow for the level of communications and exchange necessary to**
2 **develop an integrated borough government.**

3 The provisions of 3 AAC 110.045(d) establish a rebuttable presumption
4 that “communications and exchange patterns are insufficient unless all communities
5 within a proposed borough are connected to the seat of the proposed borough by a pub-
6 lic roadway . . . or sufficient electronic media communications.” The communities of
7 Skagway and Dyea are linked by a public roadway. Thus, the evidentiary presumption
8 set out in 3 AAC 110.045(d) requires no higher level of proof (“a specific and persuasive
9 showing”) that the proposed Skagway borough meets the “communications and trans-
10 portation” part of the Community of Interests Standard.
11

12 We note further that 3 AAC 110.045(c) requires consideration of commu-
13 nication and transportation facilities “*throughout the proposed borough.*” Those provi-
14 sions do not call for consideration of communication and transportation facilities in a
15 proposed borough and areas adjacent to the proposed borough.
16

17 We find a well-developed and well-maintained network of roads and other
18 transportation facilities within the proposed Skagway borough. Moreover, there are no
19 geographical and climatic impediments to communication and exchange within the pro-
20 posed Skagway borough. Further, telephonic facilities, teleconferencing facilities, and
21 other electronic media for use by the public exist to serve the residents of the proposed
22 Skagway borough.
23

24 **Subsection 3. The overall conclusion regarding the Community of Inter-
25 ests Standard.**

26 The proposed Skagway borough, encompassing the bona fide communi-
27 ties of Skagway and Dyea, includes a population whose social, cultural, and economic
28 characteristics and activities are interrelated and integrated. Moreover, the communica-
29

1 tions media and the land, water, and air transportation facilities throughout the proposed
2 Skagway borough allow for the level of communications and exchange necessary to
3 develop an integrated borough government.

4 While the provisions of 3 AAC 11.045 call for consideration of the commu-
5 nity of interests *within or throughout* the proposed borough, we are not inclined at this
6 point to expand the boundaries of the Skagway borough to include adjacent areas such
7 as Haines. In our view, Skagway and Haines presently lack common interests, just as
8 the area and people within the City of Saxman, City of Ketchikan, and remainder of the
9 Ketchikan Gateway Borough lack common interests. There is antagonism between
10 Skagway and Haines. To push Skagway and Haines together into a single borough
11 would be wasteful of time, money, and other resources.

12 Based on the findings and conclusions in Subsection 2 above, we con-
13 clude that the Skagway borough proposal meets the Community of Interests Standards
14 in Art. X, sec. 3 of the Constitution of the State of Alaska, AS 29.05.031(a)(1), and
15 3 AAC 110.045.

16 **Section D. The Skagway borough proposal meets the Population Standard.**

17 Subsection 1 below recites the applicable statutory and regulatory provi-
18 sions that relate to the Population Standard. Subsection 2 of Section D presents our
19 findings and conclusions regarding the particular elements of the Population Standard.
20 Subsection 3 of Section D puts forward our overall conclusion regarding the Population
21 Standard.

22 **Subsection 1. The Population Standard established in law**

23 The Population Standard is set out in AS 29.05.031(a)(1) and 3 AAC
24 110.050 below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

AS 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: 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 large and stable enough to support borough government . . .

3 AAC 110.050. Population. (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission may consider relevant factors, including
(1) total census enumerations;
(2) durations of residency;
(3) historical population patterns;
(4) seasonal population changes; and
(5) age distributions.
(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

Subsection 2. The findings and conclusions regarding individual elements of the Population Standard

Our findings and conclusions regarding the Population Standard are set out below in Parts a - b.

Part a. Regarding the rebuttable presumption that a population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

For reasons set out below in Part b (particularly Subpart i and Subpart iv), we conclude that it is uncertain whether Skagway has 1,000 permanent residents. As such, we conclude further that the evidentiary presumption set out in 3 AAC 110.050(b), should not be invoked to impose a higher level of proof (“a specific and persuasive showing”) that the proposed Skagway borough meets the Population Standard.

Part b. The population of the proposed Skagway borough is sufficiently large and stable to support the proposed borough government.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Set out in Subpart i through Subpart v are our particular findings and conclusions regarding the factors set out in 3 AAC 110.050(a).

Subpart i. Total census enumerations reflect a population sufficiently large and stable to support the proposed Skagway borough government.

The last federal decennial census in Skagway was conducted in 2000, nearly seven years ago. At that time, Skagway recorded a population of 862. For each year between federal decennial censuses, population estimates for municipalities in Alaska are provided by DCCED. DCCED estimated that the 2005 population of Skagway was 834. However, we find that DCCED's estimates are not always reliable. We express regret that current housing figures for Skagway are not available so we could better estimate current population.

Testimony was provided that there are approximately 990 registered voters in Skagway. Because of legal restrictions on the purging of voter registration rolls, voter registration figures are not a precise indicator of all who are currently citizens of the United States, 18 years of age or older, and residents of the place in which they are registered to vote. Nonetheless, two of us (Commissioners Zimmerle and Harcharek) consider the number of registered voters in Skagway to be evidence that Skagway has a population that is large enough to support borough government. One of us (Commissioner Hargraves) expresses reservations about relying on voter registration data as a measure of current population, noting his experience of instances where voter registration rolls were inflated on the order of 20 percent or more.

We express an inclination to consider as residents those long-term business operators and property owners in Skagway who live in the community seasonally.

1 In that context, we speculate that those individuals might qualify for the property tax ex-
2 emption under AS 29.45.030(e) for certain primary residences and permanent places of
3 abode.⁹

4 We also take note of data for Permanent Fund Dividend (PFD) applica-
5 tions from Skagway. We recognize that in 2005, there were 818 PFD applications from
6 Skagway (854 in 2000). We stress that qualifications for PFDs are more stringent than
7 those for residency. The former includes requirements that the PFD applicant be a
8 resident on the date of application, was a state resident during the entire year immedi-
9 ately preceding January 1 of the current dividend year, and has been physically present
10 in the state for at least 72 consecutive hours at some time during the prior two years be-
11 fore the current dividend year.

12
13 Two of us (Commissioners Zimmerle and Harcharek) express particular
14 confidence that both the general population and student enrollment for Skagway will
15 grow in the foreseeable future. That confidence reflects the belief that the local tourism
16 industry will continue to prosper and that Skagway will be successful in adding diverse
17 industries to its economic base (e.g., shipment of coal and minerals). Moreover, two of
18 us (Commissioners Zimmerle and Harcharek) express expectations that the anticipated
19 sale of municipal lands in Dyea will draw even more residents to Skagway. Two of us
20 (Commissioners Zimmerle and Harcharek) also anticipate that the Skagway school dis-
21 trict will be successful in recruiting home-schooled students to enroll in the municipal
22 school district.
23
24

25
26 ⁹ AS 29.45.030(e) provides that the real property owned and occupied as the primary residence
27 and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; or (3) resi-
28 dent at least 60 years old who is the widow or widower of a person who qualified for an exemption under
29 (1) or (2) above, is exempt from taxation on the first \$150,000 of the assessed value of the real property.

1 One of us (Commissioner Hargraves) is more reserved in terms of expect-
2 tations regarding future population growth but concludes that it is reasonable to expect
3 that Skagway's population will remain stable for the foreseeable future.

4 We also address the student population in Skagway. We note that the
5 2006 Average Daily Membership (ADM) of the Skagway City School District was 98.75
6 (down from 136.75 in 2000, even though the 2006 figure was for a earlier counting pe-
7 riod [one that produced a more favorable count for Skagway] than that used in 2000 and
8 generally prescribed in statute).

9 We address limitations of AS 14.12.025 regarding establishment of new
10 school districts.¹⁰ That statute requires at least 250 students for any new school district,
11 absent a best interest determination by the Commissioner of the Department of Educa-
12 tion and Early Development. We conclude that the provisions of AS 14.12.025 do not
13 constrain the formation of a Skagway borough. We acknowledge that borough forma-
14 tion will technically result in the creation of a new school district (i.e., the existing Skag-
15 way city municipal corporation, of which the Skagway City School District is a division
16 without separate legal existence, will be dissolved upon incorporation of the borough).
17 However, we view such as a mere formality that should not inhibit formation of a Skag-
18 way borough. In considering this matter, we recognize that the Commissioner of Edu-
19 cation had been invited by LBC Staff in a letter dated July 1, 2002, to address the
20 matter of AS 14.12.025 in the context of the Skagway borough proposal. However, the
21

22 ¹⁰ AS 14.12.025 provides as follows:

23 **New school districts.** Notwithstanding any other provision of law, a new school district
24 may not be formed if the total number of pupils for the proposed school district is less
25 than 250 unless the commissioner of education and early development determines that

(continued . . .)

1 Commissioner elected not to do so. We conclude that the lack of response from the
2 Commissioner of Education reflects a lack of concern over the issue.

3 We conclude from the findings above that total census enumerations re-
4 flect a population sufficiently large and stable to support the proposed Skagway bor-
5 ough government.

6 **Subpart ii. Durations of residency indicate that the population**
7 **of the proposed Skagway borough is sufficiently large and**
8 **stable to support the proposed borough government.**

9 We find that there is no evidence to suggest that durational residency
10 characteristics of the Skagway population are insufficient to support borough govern-
11 ment. Here again, the City of Skagway, which has been in existence for 106 years, has
12 long provided an impressive level of municipal services. We conclude, therefore, that
13 this factor favors a determination that durations of residency among the Skagway popu-
14 lation are more than adequate to support borough government.

15 **Subpart iii. Historical population patterns are evidence of a**
16 **population that is large and stable enough to support the pro-**
17 **posed Skagway borough government.**

18 We recognize that Skagway and Dyea have experienced historical popula-
19 tion fluctuations. Over the past 110 years, those fluctuations have been, at times, sig-
20 nificant.

21 Despite those historical instabilities, the population of Skagway has man-
22 aged to operate a municipal government since 1900. In more recent years, the popula-
23 tion of Skagway and Dyea has been more stable. Here again, two of us
24

25
26 _____
27 (. . . continued)
28 formation of a new school district with less than 250 pupils would be in the best interest of
29 the state and the proposed school district.

1 (Commissioners Harcharek and Zimmerle) express the expectation that the population
2 of Skagway will grow in the foreseeable future.

3 For the reasons note above, we conclude that the historical population
4 patterns, particularly those in recent years, support the conclusion that the Skagway
5 population is large and stable enough to support the borough government.

6
7 **Subpart iv. Seasonal population changes reflect a population**
8 **that is sufficiently large and stable to support the proposed**
9 **Skagway borough government.**

10 Skagway is remarkable in terms of its substantial seasonal population
11 changes. In the winter, the population may be less than 1,000; however, during the
12 summer, the figure climbs to around 2,500. Including tourists, there may be upwards of
13 15,000 individuals in Skagway on any given day during the summer. On a relative
14 scale, few, if any, areas of Alaska experience such seasonal population changes.

15 We view the significant seasonal population changes as a positive charac-
16 teristic in terms of the Population Standard. The seasonal residents and visitors con-
17 tribute greatly to the tax base and support a level of essential municipal services that is
18 unavailable to most communities with a year-round population of 1,000 or so.

19 For the reasons listed, we conclude that the seasonal population changes
20 support the conclusion that the Skagway population is large and stable enough to sup-
21 port the borough government.

22
23 **Subpart v. Age distributions demonstrate that the population**
24 **of the proposed Skagway borough is sufficiently large and**
25 **stable to support the proposed government.**

26 Some evidence indicates that Skagway's population is disproportionately
27 older and is becoming increasingly so. However, as reflected in Subpart i above, we
28
29

1 conclude that the current population of Skagway is likely to remain stable or grow during
2 the foreseeable future.

3 Moreover, we find that the proposed Skagway borough has financial re-
4 sources such that it could continue to fund essential borough services even if the
5 younger population of Skagway continues to decline. For example, we express particu-
6 lar confidence that Skagway’s ample financial resources will allow it to continue to offer
7 academically excellent educational facilities and programs even if enrollment dropped to
8 just 50 students, roughly half the current level.

10 For the reasons listed here, we conclude that age distributions of the
11 Skagway population support the conclusion that the Skagway population is large and
12 stable enough to support the borough government.

13 **Subsection 3. The overall conclusion regarding the Population Standard.**

14 The provisions of 3 AAC 110.050(a) state that “The population of a pro-
15 posed borough must be sufficiently large and stable to support *the proposed borough*
16 *government.*” (Emphasis added.) Here, “the proposed borough government” is identi-
17 cal in every fundamental respect – revenues, tax differentials, duties, powers, jurisdic-
18 tional boundaries, and population – to the existing City of Skagway. History has shown
19 that the population of Skagway has been “large and stable enough” to support the City
20 of Skagway, Alaska’s oldest incorporated city government, for the past 106 years (to
21 which Dyea was added more than a quarter-century ago).

22 We stress that the number of residents alone is not a full and fair measure
23 of the capacity of a population to sustain a borough government. Consideration should
24 also be given to the level of commitment among those residents in sustaining a bor-
25 ough. We observe in that regard, for example, that voters in the City of Fairbanks, a
26
27
28
29

1 community with a population nearly 40 times greater than Skagway (31,832), recently
2 seemed to exhibit a shaky commitment to sustaining their local government. Specifi-
3 cally, in October of last year, City of Fairbanks voters slashed the City's authority to levy
4 property taxes to just 0.5 mills. Simultaneously, voters imposed limits on the City's au-
5 thority to levy a sales tax, leaving the City of Fairbanks facing an estimated \$13 million
6 budget gap. In contrast, the residents of Skagway and Dyea have exhibited an impres-
7 sive level of commitment toward their local government.
8

9 As a first-class city in the unorganized borough, the City of Skagway is re-
10 quired to provide the same services required of organized boroughs. It has done so
11 successfully for many years. We conclude that such is proof that the population of the
12 proposed Skagway borough is large and stable enough to support a borough.
13

14 Based on the findings and conclusions in Subsection 2 above, we con-
15 clude that the Skagway borough proposal meets the Population Standard in
16 AS 29.05.031(a)(1) and 3 AAC 110.050.

17 **Section E. The Skagway borough proposal meets the Resources Standard.**

18 Subsection 1 below lists the applicable statutory and regulatory provisions
19 that prescribe the Resources Standard. Subsection 2 presents our findings and conclu-
20 sions regarding the particular elements of the Resources Standard. Subsection 3 pre-
21 sents our overall conclusion regarding the Resources Standard.
22

23 **Subsection 1. The Resources Standard established in law.**

24 The Resources Standard is set out in AS 29.05.031(a)(3) and 3 AAC
25 110.055. Those provisions prescribe as follows.

26 **AS 29.05.031. Incorporation of a borough or unified municipality.** (a)
27 An area that meets the following standards may incorporate as a home
28 rule, first class, or second class borough, or as a unified municipality:

1 . . .
2 3) the economy of the area includes the human and financial resources
3 capable of providing municipal services; evaluation of an area's economy
4 includes land use, property values, total economic base, total personal in-
5 come, resource and commercial development, anticipated functions, ex-
6 penses, and income of the proposed borough or unified municipality.

7 **3 AAC 110.055. Resources.** The economy of a proposed borough must
8 include the human and financial resources necessary to provide essential
9 borough services on an efficient, cost-effective level. In this regard, the
10 commission

- 11 (1) will consider
12 (A) the reasonably anticipated functions of the proposed borough;
13 (B) the reasonably anticipated expenses of the proposed borough;
14 (C) the ability of the proposed borough to generate and collect local reve-
15 nue, and the reasonably anticipated income of the proposed borough;
16 (D) the feasibility and plausibility of the anticipated operating and capital
17 budgets through the third full fiscal year of operation;
18 (E) the economic base of the proposed borough;
19 (F) property valuations for the proposed borough;
20 (G) land use for the proposed borough;
21 (H) existing and reasonably anticipated industrial, commercial, and re-
22 source development for the proposed borough; and
23 (I) personal income of residents of the proposed borough; and
24 (2) may consider other relevant factors, including
25 (A) the need for and availability of employable skilled and unskilled per-
26 sons to serve the proposed borough; and
27 (B) a reasonably predictable level of commitment and interest of the popu-
28 lation in sustaining a borough government.

29 **Subsection 2. The findings and conclusions regarding the Resources
30 Standard**

31 Our findings and conclusions regarding the Resources Standard are set
out below in Parts a through k below.

**Part a. Incorporation of a Skagway borough will result in no
fundamental change in municipal functions.**

As a first-class city in the unorganized borough, the duties imposed by
State law upon the City of Skagway are identical to those that would be imposed upon
the proposed Skagway borough. Moreover, we find that all of the additional functions

1 currently carried out by the City of Skagway on a discretionary basis are planned to be
2 exercised by the proposed Skagway borough.

3 We conclude from the findings above that the municipal services currently
4 provided to residents of Skagway and Dyea will continue to be provided if the proposed
5 Skagway borough is incorporated.

6
7 **Part b. The reasonably anticipated expenses of the proposed**
8 **borough are no different from those of the existing City of**
9 **Skagway.**

10 Based on the findings and conclusion in Part a above, we conclude that the
11 reasonably anticipated functions of the proposed Skagway borough would be identical
12 to those of the existing City of Skagway.

13 **Part c. The ability of the proposed borough to generate and**
14 **collect local revenue and the reasonably anticipated income of**
15 **the proposed borough are identical to those of the existing**
16 **City of Skagway.**

17 We find that the City of Skagway currently has in place the laws, person-
18 nel, and other elements necessary to generate and collect the local revenue needed to
19 sustain municipal operations and facilities (e.g., municipal code provisions for the levy,
20 assessment, and collection of sales and property taxes; and personnel to carry out
21 revenue collection functions). The City of Skagway has a history that demonstrates its
22 capability to generate and collect income needed to sustain the existing city govern-
23 ment. As noted above, the proposed borough government would be identical in all fun-
24 damental respects to the existing City of Skagway. The seasonal nature of the
25 Skagway economy does not detract from the fiscal viability of the local government.

1 Based on the findings above, we conclude that the proposed Skagway
2 Borough will be able to generate and collect local revenue and that it will have sufficient
3 income to meet local government needs.

4 **Part d. The anticipated operating and capital budgets through**
5 **the third full fiscal year of operation are feasible and plausible.**

6 We find the operating and capital budgets of the proposed Skagway bor-
7 ough through the third full fiscal year of operation to be complete, reasonable, and prac-
8 tical.

9 **Part e. The economic base of the proposed borough is suffi-**
10 **cient to sustain a borough government.**

11 Although the existing Skagway economy lacks diversity, we find that
12 Skagway is capable of sustaining the proposed borough government. Furthermore,
13 there is potential for expansion and development of other industries such as shipment of
14 coal and copper ore from Canada.

15 **Part f. Property valuations for the proposed borough are sub-**
16 **stantial.**

17 We find that the proposed Skagway borough has a significant property tax
18 base. DCCED noted in its August 2006 Supplemental Report that the 2005 full and true
19 value of taxable property in the City of Skagway was \$113,743 per resident, more than
20 2.6 times the comparable figure for the City and Borough of Juneau. The strength of
21 the Skagway property tax base is increasing in relation to that of the City and Borough
22 of Juneau. In the 2002 decisional statement by the prior Commission, it was noted that
23 Skagway's property tax base was 2.3 times greater than that of Juneau.
24

25 **Part g. Municipal land use controls are already in place within**
26 **the proposed Skagway borough.**

1 We find that the City of Skagway exercises platting and land use regula-
2 tion through a municipal department that is governed by statutes, local ordinances, and
3 regulations.

4 **Part h. Existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough is sufficient to sustain a borough government.**

5
6 We find that the area within the proposed Skagway borough has a strong
7 commercial base relating to tourism. Industrial development in the form of coal and/or
8 copper ore shipment may soon be realized.

9
10 **Part i. Personal income of residents of the proposed borough is significant.**

11
12 We find that residents of Skagway and Dyea enjoy significant personal in-
13 come. DCCED stated in its 2002 Preliminary Report that the median household income
14 in Skagway recorded in the 2000 census was \$49,375. The comparable figure for the
15 state as a whole was \$51,571 (\$2,196 or 4.4 percent higher than that of Skagway).

16
17 **Part j. The need for and availability of employable skilled and unskilled persons to serve the local government will not change as a result of borough incorporation.**

18
19 This factor relates to the employees that are needed to operate the pro-
20 posed borough. We stress that the City of Skagway currently operates successfully.
21 We presume that, generally, the employees of the City of Skagway will become em-
22 ployees of the Skagway borough. Thus, we find no reason to conclude that the pro-
23 posed Skagway borough will lack the employees needed to operate a borough
24 successfully.

25
26 **Part k. A strong level of commitment and interest of the population in sustaining the proposed Skagway borough is evident.**

1 The record in the remand proceedings, particularly the many hours of tes-
2 timony from residents of Skagway and Dyea, is evidence of a strong level of local com-
3 mitment in sustaining a borough government.

4 **Subsection 3. The overall conclusion regarding the Resources Standard.**

5 In 2002, the prior Commission expressed the following findings and con-
6 clusions regarding this particular standard:
7

8 The City of Skagway clearly provides a broad range of municipal services.
9 The City of Skagway is a relatively sophisticated municipal government.
10 The Commission found from these circumstances that the residents of
11 Skagway have a strong commitment and interest in local government.

12 Moreover, the evidence in this matter conclusively demonstrates that
13 Skagway is a community with substantial financial resources. Among
14 Alaska's 162 municipal governments, the City of Skagway ranks as third
15 highest in terms of per capita value of taxable property. The 2001 per
16 capita full and true value of taxable property in the City of Skagway was
17 2.3 times greater than the comparable figure for Juneau. Moreover, the
18 City of Skagway ranks far above all other municipal governments in
19 Alaska in terms of its capacity to generate sales tax revenues. In 2001,
20 the City of Skagway generated, on a per capita basis, \$883 in general
21 sales tax revenues for each 1% of tax levied.

22 We concur with those views of the prior Commission. Those views are re-
23 flective of our findings and conclusions in Subsection 2 above.

24 Based on the foregoing, we conclude that the Skagway borough proposal
25 meets the Resources Standard in AS 29.05.031(a)(3) and 3 AAC 110.055.

26 **Section F. The Skagway borough proposal meets the Boundaries Standard.**

27 Subsection 1 below lists the applicable statutory and regulatory provisions
28 that define the Boundaries Standard. Subsection 2 presents our findings and conclu-
29 sions regarding the particular elements of the Boundaries Standard. Subsection 3 pre-
30 sents our overall conclusion regarding the Boundaries Standard.

31 **Subsection 1. The Boundaries Standard established in law.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Boundaries Standard is set out in AS 29.05.031(a)(2) and 3 AAC 110.060. Those provisions prescribe as follows.

AS 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:

...
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 AAC 110.060. Boundaries. (a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of education and early development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough. The commission will consider and treat that petition for incorporation as also being a detachment petition.

Subsection 2. The findings and conclusions regarding the Boundaries Standard.

1 Our findings and conclusions regarding the Boundaries Standard are set
2 out below in Parts a - c below.

3 **Part a. The rebuttable presumptions set out in 3 AAC 110.060 do not**
4 **require a higher level of proof that the Boundaries Standard is satis-**
5 **fied.**

6 For reasons set out below in Subparts i and ii, we conclude that the pro-
7 posed Skagway borough does not extend beyond any model borough boundary and
8 that the proposed borough does not include any enclaves or area that is non-
9 contiguous. Having reached those conclusions regarding the evidentiary presumptions
10 set out in 3 AAC 110.060(b) and (d), no higher level of proof (“a specific and persuasive
11 showing”) is required that the proposed Skagway borough meets the Boundaries Stan-
12 dard.

13 **Subpart i. The proposed Skagway borough does not extend**
14 **beyond any model borough boundary.**

15 The proposed Skagway borough lies entirely within the boundaries of the
16 Upper Lynn Canal Model Borough.

17 **Subpart ii. The proposed Skagway borough does not include**
18 **any enclave or area that is non-contiguous.**

19 We find that there are no enclaves within the proposed Skagway borough
20 and that there are no non-contiguous areas within proposed Skagway borough.

21 **Part b. The proposed Skagway borough conforms generally to natu-**
22 **ral geography, and includes all land and water necessary to provide**
23 **the full development of essential borough services on an efficient,**
24 **cost-effective level.**

25 Subpart i below addresses the extent to which the proposed Skagway
26 borough conforms generally to natural geography. Subsection ii addresses whether the

1 proposed borough includes all necessary land and water to meet the boundaries stan-
2 dard.

3 **Subpart i. The boundaries of the proposed Skagway**
4 **borough conform generally to natural geography.**

5 We note that in the 2002 decision regarding this matter, the prior Commis-
6 sion concluded as follows:

7 The straight-line western boundary of the proposed Skagway borough
8 generally follows the ridgeline dividing the Ferebee River drainage on the
9 west and the Taiya River drainage on the east. Moreover, the straight-line
10 southern boundary of the proposed Skagway borough generally follows
11 the divide between the Kasidaya Creek watershed on the north and Katze-
hin River watershed on the south. The proposed eastern and northern
boundaries are coterminous with the international boundary between
Alaska and Canada.

12 Additionally, we take note of the following comments by Judge Thomas
13 Stewart in his previously cited letter of December 14, 2005:

14 In the case of Skagway bordered on the west and south by the Haines
15 Borough and on the east and north by the U.S. Canada International bor-
16 der, geography is determinative. *There isn't any question.*

17 The framers of the Alaska Constitution envisioned that boroughs would
18 encompass the geographic area actually used by the people of a particu-
19 lar area. The governments of Haines and Skagway are separate and dis-
20 tinct and the residents of Haines and Skagway use separate and distinct
geographic areas for commerce and recreation. The communities are not
reliant upon each other . . .

21 Moreover, we place significant weight on the fact that the boundaries of
22 the proposed Skagway borough conform generally to those of the "Taiya Inlet - Klondike
23 Highway" weather forecast zone (Zone 18) as defined by the National Oceanic and At-
24 mospheric Administration's National Weather Service. We find those zones to be reflec-
25 tive of natural geography.
26

1 Based on the foregoing, we conclude that the proposed Skagway borough
2 conforms generally to natural geography.

3 **Subpart ii. The boundaries of the proposed Skagway**
4 **borough include all land and water necessary to provide**
5 **the full development of essential borough services on**
6 **an efficient, cost-effective level.**

7 In terms of this element of the standard, we place significance on the con-
8 clusion in Subpart i above that the boundaries of the proposed borough conform gener-
9 ally to natural geography. Those boundaries encompass as much area as possible
10 without overlapping another borough government. That is, the proposed boundaries
11 extend as far as is feasible and practicable at this time.

12 We do not concur with the implicit view of some that combining Haines
13 and Skagway into a single borough would necessarily result in more efficient and more
14 cost-effective services. We readily foresee that delivery of essential borough services
15 such as education, planning, platting, land use regulation, tax assessment, tax collec-
16 tion, and others could be more expensive and less efficient if delivered on an areawide
17 basis by a single government to the greater Haines and Skagway areas.

18 In reaching its conclusions, we consider relevant factors such as land use
19 and ownership patterns; ethnicity and cultures; population density patterns; existing and
20 reasonably anticipated transportation patterns and facilities; and extraterritorial powers
21 of boroughs.

22 **Part c. The boundaries of the Chatham REAA are not suitable for a**
23 **Skagway borough.**

24 The proposed Skagway borough boundaries do not conform to boundaries
25 of the existing Chatham Regional Educational Attendance Area boundaries. Here
26 again, we acknowledge that the Commissioner of Education had been invited by LBC
27
28

1 Staff in a letter dated July 1, 2002, to specifically address the matter of the proposed
2 Skagway borough boundaries in the context of the requirements of 3 AAC 110.060(c).
3 However, as was the case with regard to the 250-student requirement in AS 14.12.025,
4 the Commissioner elected not to do so. We conclude that the lack of response from the
5 Commissioner of Education reflects an absence of concern over the issue. Further, we
6 determine that an area of different size (i.e., the proposed Skagway borough) is better
7 suited to the public interest in a full balance of the standards for incorporation of a bor-
8 ough.

10 **Subsection 3. The overall conclusion regarding the Boundaries Standard.**

11 We recognize that “professional planners” and those who are knowledge-
12 able about and fascinated by the constitutional framework of borough government can
13 offer Jesuitical arguments to promote alternative (larger) boundaries in this case and in
14 future proceedings. However, we take the view that others can offer equally appealing
15 arguments to the contrary. In that respect, Judge Thomas Stewart stated as follows in
16 his letter of December 14, 2005:

18 In my view, there is no “large” size requirement in the Constitution. In my
19 experience with the constitutional convention, I am comfortable that there
20 was no intent to create an arbitrary size requirement for boroughs.

21 The theory that size was or is a requirement for borough formation cannot
22 and should not be founded on either the Constitution or “intent” of the
23 delegates. I personally do not believe the Constitutional framers envi-
24 sioned the “very large” boroughs that we see in Alaska today.

25 We concur with the sentiments of Judge Stewart that a number of existing
26 boroughs in Alaska may actually be too large. From our perspective, the quality of local
27 government efforts in some boroughs is diminished because of the large geographical
28 jurisdictions involved.

1 The Commission Chair notes his deep respect for Victor Fischer. The
2 Chair cites an example in a prior case where Mr. Fischer had asked a fundamental
3 question that the Chair had also contemplated at the time. That question was, ‘If not the
4 proposal by the Petitioner then what?’¹¹ In the final analysis with respect to the pro-
5 posal before this Commission, it became a question of, “Why not approve the Skagway
6 borough proposal?” We have no satisfactory answer to that question. In that respect,
7 we again recognize the public policy difficulties presented by the Skagway borough Pe-
8 tition.
9

10 Based on the findings and conclusions set out above, we conclude that
11 the Skagway borough proposal meets the Boundaries Standard in AS 29.05.031(a)(2)
12 and 3 AAC 110.060.

13 **Section G. The Skagway borough proposal meets the Best Interests of the State**
14 **Standard.**

15
16 Subsection 1 below lists the applicable provisions that recite and define
17 the Best Interests of the State Standard. The Administrative Code provisions cite ele-
18 ments of the Local Government Article of Alaska’s Constitution (Art. X, sec. 1), and be-
19 cause we cite and rely heavily upon Art. I, sec. 2 of the Constitution, those provisions
20 are included. Subsection 2 presents our findings and conclusions regarding the particu-
21

22
23 ¹¹ In the proceedings leading to the incorporation of the Yakutat borough, Mr. Fischer
wrote to the Commission as follows in his previously cited letter of October 11, 1991:

24 The Yakutat area, which obviously is not an integral part of Prince William Sound, is a dif-
25 ferent case. While not a large region in the North Slope Borough sense, it does consti-
tute an identifiable and functional region, though a small one.

26 It seems to me that so long as the LBC allows small boroughs such as Bristol Bay and
27 Denali to exist and be created, there is no strong rationale not to establish a separate
borough for Yakutat.

lar elements of the Best Interests of the State Standard. Subsection 3 presents our overall conclusion regarding the Best Interests of the State Standard.

Subsection 1. The Best Interests of the State Standard established in law.

The constitutional provisions noted above provide as follows:

Art. I, sec. 2. Source of Government. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

Art. X, sec.1. Purpose and Construction. 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.

The Best Interests of the State Standard is set out in AS 29.05.100(a) and 3 AAC 110.065. Those provisions prescribe as follows.

Sec. 29.05.100. Decision. (a) The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

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 may 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 ser-vices; 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 the borough's dissolution.

Moreover, the provisions of 3 AAC 110.980 guide the LBC in determining the best interests of the state.

1 **3 AAC 110.980. Determination of best interests of the state** If
2 a provision of AS 29 or this chapter requires the commission to determine
3 whether a proposed municipal boundary change or other commission ac-
4 tion is in the best interests of the state, the commission will make that de-
5 termination on a case-by-case basis, in accordance with applicable
6 provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05,
7 AS 29.06, and this chapter, and based on a review of
8 (1) the broad policy benefit to the public statewide; and
9 (2) whether the municipal government boundaries that are developed
10 serve
11 (A) the balanced interests of citizens in the area proposed for change;
12 (B) affected local governments; and
13 (C) other public interests that the commission considers relevant.

9 **Subsection 2. The findings and conclusions regarding the Best Interests of
10 the State Standard.**

11 In determining whether the Skagway borough proposal serves the best in-
12 terests of the state, 3 AAC 110.065 provides that the LBC *may* consider various factors.
13 These discretionary considerations are addressed in Parts a – d.

14 **Part a. Whether the Skagway borough proposal promotes maximum
15 local self-government.**

16 We recognize that the Skagway borough proposal will neither extend nor
17 reduce municipal jurisdiction over any area or population. Neither will it expand the
18 powers and duties of the Skagway municipal government. Moreover, it will not affect
19 the revenues of the Skagway local government.

20 However, the Skagway borough proposal will reserve the sizeable fiscal
21 resources of the existing City of Skagway for the exclusive benefit of the residents of the
22 proposed Skagway borough. Additionally, it will preserve the local political autonomy of
23 a first-class city in the unorganized borough by granting it borough status. In that re-
24 gard, we candidly observe that the Petition is motivated by a desire to prevent annexa-
25 tion of Skagway into an adjacent borough. To that end, we conclude that the Skagway
26 borough proposal fosters maximum local self-government.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Regarding the issue of maximum local self-government, Judge Thomas Stewart commented as follows in his letter of December 14, 2005:

Skagway is responsible for all local services and contributes above minimum requirements for state education funding. The proposed borough boundaries are unique to Skagway and do not infringe upon other established governments. The borough petition is entirely consistent with the intent of the framers of Alaska's Constitution that local governments exercise the "maximum self-governance with a minimum of local government units."

We note further that the first-class Skagway borough could advance achievement of maximum local self-government by adopting a home-rule charter. It could also do so by expanding its boundaries if circumstances warrant.

Part b. Whether the Skagway borough proposal promotes a minimum number of local government units.

Incorporation of a Skagway borough and concurrent dissolution of the City of Skagway will neither increase nor decrease the total number of local government units.

We discount concerns that approval of the Skagway borough proposal will result in the proliferation of small boroughs throughout today's unorganized borough. Similarly, we disregard concerns that approval of a Skagway borough proposal will foster the subdivision of existing organized boroughs into smaller organized boroughs.

Part c. Whether the Skagway borough will relieve the state government of the responsibility of providing local services.

We find that the State of Alaska does not provide significant services to the area proposed for incorporation.

Part d. Whether the Skagway borough proposal is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.

1 We recognize that the City of Skagway has worked effectively since 1900.
2 Converting the City of Skagway into a Skagway borough will have no effect on the po-
3 tential exposure of the State government to unusual and substantial risks as the pro-
4 spective successor to the local government in the event of its dissolution.

5 **Subsection 3. The overall conclusion regarding the Best Interests of the**
6 **State Standard.**

7 We concur with the eloquently stated views of Gail Phillips, former
8 Speaker of the Alaska State House of Representative, when she said that “the State’s
9 best interest is served by creating local governments that work.” In our view, creating a
10 Skagway borough is a good way to make local government work in the upper Lynn Ca-
11 nal area.

12
13 Moreover, as noted in Section 3 of Findings and Conclusions portion of
14 this Statement of Decision, we place great weight on Art. I, sec. 2 of the Constitution of
15 the State of Alaska. That key provision of the Constitution states that

16 All political power is inherent in the people. All government originates with
17 the people, is founded upon their will only, and is instituted solely for the
18 good of the people as a whole.

19 Further, we cite the following comments by Judge Thomas Stewart in his
20 letter of December 14, 2005:

21 Based upon my review of [the Skagway borough petition], as well as my
22 observations during the proceedings of the Alaska Constitutional Conven-
23 tion, I am unable to posit one reason that formation of the Skagway Bor-
24 ough is not in the State of Alaska’s best interest. Rather, I find it evident
25 that formation of a Skagway Borough is in the best interests of the state
26 and entirely consistent with constitutional framers directives in Arti-
27 cle X

28 In reaching our conclusion regarding this standard, we do not disagree
29 with the general concept that boroughs as units of local government should embrace a
30

1 large natural region. However, we do not consider that model to work well in southeast
2 Alaska given the rugged terrain and diverse population in that part of the state. That is
3 particularly the case in Skagway. Therefore, we conclude that it is in the best interests
4 of the State to allow Skagway to form a borough.

5 Based on the findings and conclusions set out above, we conclude that
6 the Skagway borough proposal meets the Best Interests of the State Standard in
7 AS 29.05.031(a)(2) and 3 AAC 110.065.
8

9 **Section H. The Skagway borough proposal meets the Standard Relating to Disso-**
10 **lution of the City of Skagway.**

11 We considered this standard during the course of the extensive remand
12 proceedings. Those proceedings were not limited just to the hearing of November 27 –
13 29, 2006, and the decisional session of December 13, 2006, but also included a review
14 by Commissioners of the entire record in the 2002 proceedings and further discussion
15 at the Commission’s meeting of January 11, 2007.
16

17 **Subsection 1. The City Dissolution Standard established in law.**

18 AS 29.06.450(c) states in relevant part that “A city is dissolved when all its
19 powers become areawide borough powers.”
20

21 **Subsection 2. The findings regarding the City Dissolution Standard.**

22 We find that all of the powers of the City of Skagway will become areawide
23 powers of the proposed Skagway borough.

24 **Subsection 3. The overall conclusions regarding the City Dissolution**
25 **Standard.**

1 Based on the finding above, we conclude that the Petition for dissolution
2 of the City of Skagway and concurrent incorporation of the Skagway borough satisfies
3 the City Dissolution Standard set out in AS 29.06.450(c).

4 **Section I. The Skagway borough proposal meets the Transition Standard.**

5 We considered this standard during the course of the extensive remand
6 proceedings. Those proceedings were not limited just to the hearing of November 27 –
7 29, 2006, and the decisional session of December 13, 2006, but also included a review
8 by Commissioners of the entire record in the 2002 proceedings and further discussion
9 at the Commission’s meeting of January 11, 2007.

11 **Subsection 1. The Transition Standard established in law.**

12 The provisions of 3 AAC 110.900 require the Petitioner to provide a transi-
13 tion plan addressing the proposed change. The standards for the transition plan are
14 written in a broad fashion to pertain to any proposal that comes before the Commission
15 from an existing or prospective city or borough government. Specifically, the law pro-
16 vides as follows:

18 **3 AAC 110.900. TRANSITION.** (a) A petition for incorporation, annexa-
19 tion, merger, or consolidation must include a practical plan that demon-
20 strates the capacity of the municipal government to extend essential city
21 or essential borough services into the territory proposed for change in the
22 shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment
23 or dissolution under AS 29.06, must include a practical plan demonstrating
24 the transition or termination of municipal services in the shortest practica-
25 ble time after city reclassification, detachment, or dissolution.

26 (b) Each petition must include a practical plan for the assumption of all
27 relevant and appropriate powers, duties, rights, and functions presently
28 exercised by an existing borough, city, unorganized borough service area,
29 and other appropriate entity located in the territory proposed for change.
30 The plan must be prepared in consultation with the officials of each exist-
31 ing borough, city, and unorganized borough service area, and must be de-
signed to effect an orderly, efficient, and economical transfer within the

1 shortest practicable time, not to exceed two years after the effective date
2 of the proposed change.

3 (c) Each petition must include a practical plan for the transfer and inte-
4 gration of all relevant and appropriate assets and liabilities of an existing
5 borough, city, unorganized borough service area, and other entity located
6 in the territory proposed for change. The plan must be prepared in consul-
7 tation with the officials of each existing borough, city, and unorganized
8 borough service area wholly or partially included in the area proposed for
9 the change, and must be designed to effect an orderly, efficient, and eco-
10 nomical transfer within the shortest practicable time, not to exceed two
11 years after the date of the proposed change. The plan must specifically
12 address procedures that ensure that the transfer and integration occur
13 without loss of value in assets, loss of credit reputation, or a reduced bond
14 rating for liabilities.

15 (d) Before approving a proposed change, the commission may require
16 that all boroughs, cities, unorganized borough service areas, or other enti-
17 ties wholly or partially included in the area of the proposed change exe-
18 cute an agreement prescribed or approved by the commission for the
19 assumption of powers, duties, rights, and functions, and for the transfer
20 and integration of assets and liabilities.

21 **Subsection 2. The findings regarding the Transition Standard.**

22 We find that the City of Skagway and the proposed Skagway borough are
23 indistinguishable in terms of powers, duties, obligations, jurisdictional territory, and
24 number of residents served. Thus, the one-page transition plan presented in the Peti-
25 tion adequately sets out a plan for “transition” from city status to borough status.

26 **Subsection 3. The overall conclusions regarding the Transition Standard.**

27 Based on the foregoing, we conclude that the standard relating to transi-
28 tion planning set forth in 3 AAC 110.900 is satisfied with respect to the pending Petition.

29 **Section J. The Skagway borough proposal meets the Civil and Political Rights 30 Standard.**

31 We considered this standard during the course of the extensive remand
proceedings. Those proceedings were not limited just to the hearing of November 27 –
29, 2006, and the decisional session of December 13, 2006, but also included a review

1 by Commissioners of the entire record in the 2002 proceedings and further discussion
2 at the Commission's meeting of January 11, 2007.

3 **Subsection 1. The Civil and Political Rights Standard established in law.**

4 The provisions of 3 AAC 110.910 state that a petition will not be approved
5 by the Commission if the effect of the proposed change denies any person the enjoy-
6 ment of any civil or political right, including voting rights, because of race, color, creed,
7 sex, or national origin. Specifically, the State law provides as follows:

9 **3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION.** A petition will
10 not be approved by the commission if the effect of the proposed change
11 denies any person the enjoyment of any civil or political right, including
12 voting rights, because of race, color, creed, sex, or national origin.

13 In addition to the provisions in State law, the federal Voting Rights Act of
14 1965, codified as amended at 42 U.S.C. Section 1973, establishes standards relating to
15 the effects that incorporation will have upon civil and political rights of minorities. The
16 Voting Rights Act prohibits political subdivisions from imposing or applying voting quali-
17 fications, voting prerequisites, standards, practices, or procedures to deny or abridge
18 the right to vote on account of race or color or because a person is a member of a lan-
19 guage minority group.

20 **Subsection 2. The findings regarding the Civil and Political Rights Stan-**
21 **dard.**

22 The existing and proposed Skagway municipal governments are indistin-
23 guishable in terms of powers, duties, obligations, jurisdictional territory, number of resi-
24 dents served, composition of the governing body, apportionment of the governing body,
25 and form of representation. Therefore, changes to voting rights and practices are, in
26 effect, in name only.

1 **Subsection 3. The overall conclusions regarding the Civil and Political**
2 **Rights Standard.**

3 Based on the foregoing, we conclude that the standard relating to civil and
4 political rights set forth in 3 AAC 110.910 and 42 U.S.C. Section 1973 is satisfied with
5 respect to the pending Petition.

6 **III. ORDER OF THE COMMISSION MAJORITY BASED ON ITS FINDINGS AND**
7 **CONCLUSIONS.**

8 On the basis set out in the above “Findings and Conclusions by the Com-
9 mission Majority” portion of this Statement of Decision, we, upon remand, determine
10 that the Petition meets all applicable standards under the State Constitution and Com-
11 mission regulations, meets the standards for incorporation under AS 29.05.031, and is
12 in the best interests of the State. Accordingly, we approve the Petition for Dissolution of
13 the City of Skagway and Incorporation of a Skagway Borough.

14 Unless a timely request for reconsideration is granted under 3 AAC
15 110.580 or the Commission, on its own motion, orders reconsideration under 3 AAC
16 110.580, the Commission Chair shall immediately notify the Director of Elections for the
17 State of Alaska of our acceptance of the Petition. Under AS 29.05.110, within 30 days
18 after such notification, the Director of Elections shall order an election in the area of the
19 proposed borough to determine whether the voters desire borough incorporation and, if
20 so, to elect the initial borough officials. The election shall be held not less than 30 or
21 more than 90 days after the date of the election order. The election order must specify
22 the dates during which nomination petitions for election of initial officials may be filed.

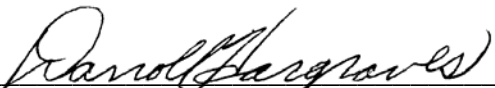
23 The initial elected officials shall consist of one borough mayor, six borough
24 assembly members, and five borough school board members. All twelve of those initial
25 elected officials shall be elected at large. Nominations for initial municipal officials are
26
27
28
29

1 made by petition. The petition shall be in the form prescribed by the Director of Elec-
2 tions and must include the name and address of the nominee and a statement of the
3 nominee that the nominee is qualified under the provisions of the Alaska Statutes for the
4 office that is sought. A person may file for and occupy more than one office but may not
5 serve simultaneously as borough mayor and as a member of the assembly. If the vot-
6 ers approve the proposition to incorporate, the initial elected officials take office on the
7 first Monday following certification of their election. The initial elected members of the
8 governing body shall determine by lot the length of their terms of office so that a propor-
9 tionate number of terms expire each year, resulting in staggered terms of office for
10 members subsequently elected.

12 A qualified voter who is registered to vote within the proposed Skagway
13 borough at least 30 days before the date of the election order may vote. Areawide bor-
14 ough powers included in the incorporation petition are considered to be part of the in-
15 corporation question. The Director of Elections shall supervise the election in the
16 general manner prescribed by AS 15 (Election Code). The State of Alaska shall pay all
17 election costs.

19 Approved in writing this 11th day of January 2007 by Commissioners Har-
20 graves, Harcharek, and Zimmerle. Commissioners Hicks and Nakazawa dissent, with
21 separate statement following.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31


By: Darroll Hargraves, Chair

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within eighteen days after this decision becomes final under 3 AAC 110.570(g), any person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration. If the Commission has taken no action on a request for reconsideration within twenty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, a party opposing the reconsideration has ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

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