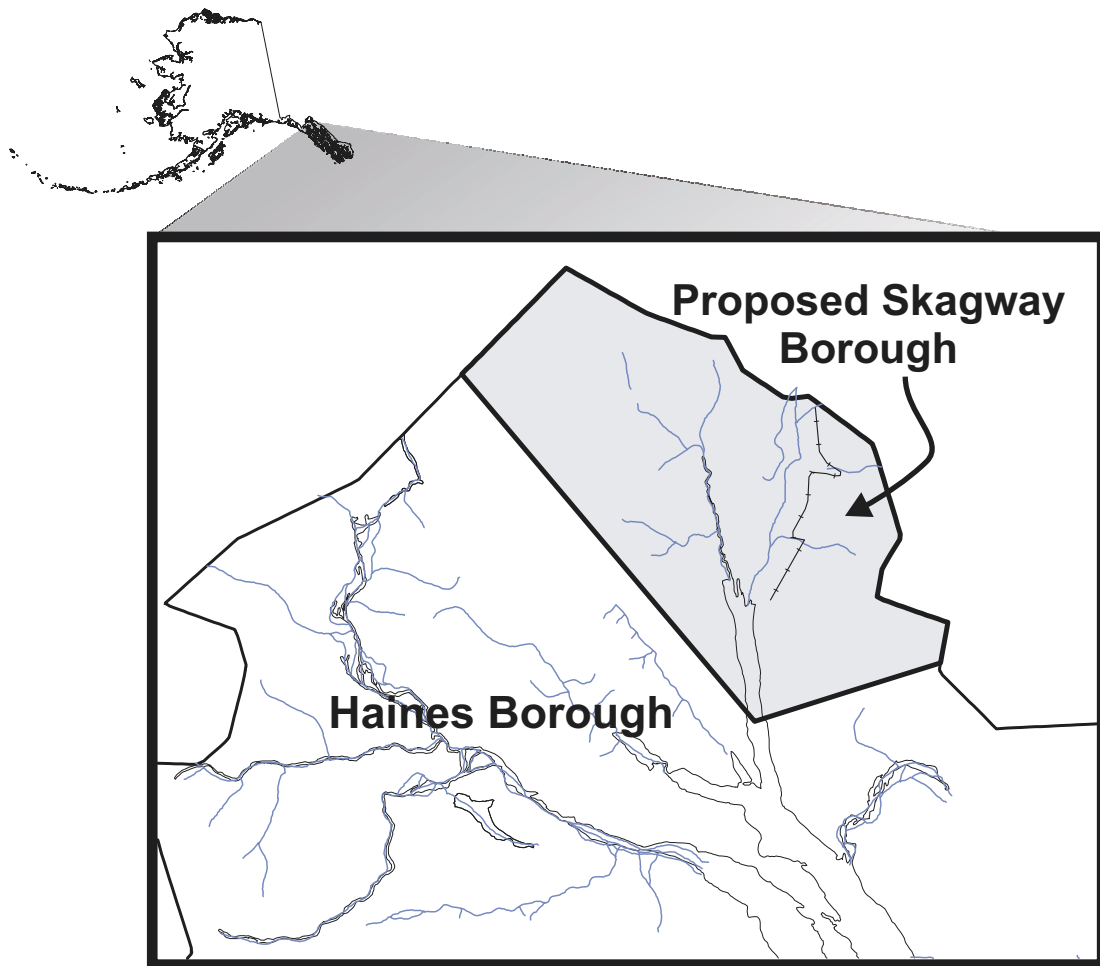


Final Report

Regarding the Skagway Borough Incorporation Proposal

August 2002



Deborah Sedwick
Commissioner



Tony Knowles
Governor

PREFACE

State law requires the Alaska Department of Community and Economic Development (DCED) to prepare both a preliminary report and a final report regarding petitions to incorporate local governments in Alaska.

DCED's Preliminary Report on the pending Skagway borough proposal was published in June 2002. The Preliminary Report examined details concerning the borough proposal in the context of the relevant standards set out in law. The Preliminary Report concluded that the standards had not been met.

The principle focus of this Final Report is examine any timely comments received regarding DCED's preliminary report and address any relevant developments that have occurred since the Preliminary Report was published.

Documents relating to the borough proposal have been made available for public review at the Skagway Public Library and the Skagway City Offices. Materials have also been available on the Internet at:

<http://www.dced.state.ak.us/cbd/lbc/lbc.htm>

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



Acknowledgements

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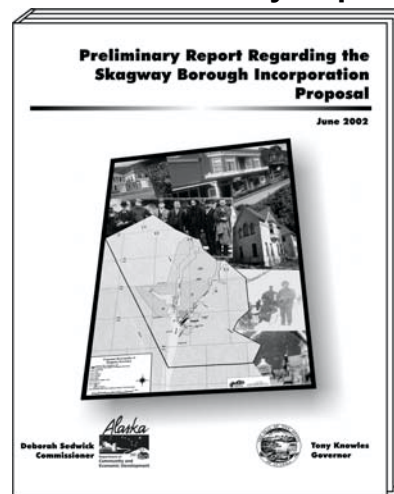
Introduction

On January 22, 2001, fifty-eight qualified Skagway voters petitioned the Local Boundary Commission to dissolve the City of Skagway and incorporate a Skagway borough. The Alaska Department of Community and Economic Development (DCED) accepted the Petition for filing on October 23, 2001.

In June 2002, DCED issued its *Preliminary Report on the Skagway Borough Proposal* (hereinafter “Preliminary Report”). It consisted of 226 pages of background, analysis, and supporting information. The Preliminary Report concluded that the Petition did not meet the standards for borough incorporation and recommended that the Local Boundary Commission deny the Petition.

DCED distributed its Preliminary Report to 108 individuals. It was also made available for public review on the Internet.

DCED Preliminary Report



Individuals and organizations were invited to comment on DCED's Preliminary Report. Under 3 AAC 110.640, the Chair of the Local Boundary Commission set July 31, 2002 as the deadline for receipt of written comments on DCED's Preliminary Report.

This Final Report reflects due consideration of the written comments on the Preliminary Report. It also reports on significant relevant developments that have occurred since the Preliminary Report was issued. Those developments are addressed in Part 2 of this Final Report.

PART
2

Significant Relevant Developments Since Publication of DCED's Preliminary Report


A. Appointment of Two New Members to the Local Boundary Commission.

On July 18, 2002, Governor Tony Knowles appointed two individuals to fill vacancies on the Local Boundary Commission. Myrna D. Gardner of Juneau and Robert C. Harcharek of Barrow join previously appointed Commission members Ardith Lynch of Fairbanks, Kevin Waring of Anchorage, and Allan Tesche of Anchorage. As noted in the Preliminary Report, one member of the Commission is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large. Biographical statements of all five Commission members are provided in Appendix A.

B. Scheduling of August 31 Hearing.

After DCED conferred with the Petitioner's Representative (Skagway City Manager) the Chair of the Local Boundary Commission scheduled a public hearing regarding the Skagway borough proposal. The hearing will be held on Saturday, August 31, 2002, beginning at 2:00 p.m. in the Skagway City Council Chambers in the McCabe Building.

Formal notice of the hearing has been given by DCED under 3 AAC 110.550. In that regard, notice was published in a display ad in the *Skagway News*, *Juneau Empire*, and *Eagle Eye News* (exceeding the minimum requirements of 3 AAC 110.550). The notice was also posted on the Internet through the State's *Online*



State of Alaska
Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-269-4539

HEARING AGENDA

Skagway Borough Proposal
Saturday, August 31, 2002 – 2:00 p.m.
City Council Chambers – McCabe Building
Skagway, Alaska

- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- IV. Comments by members of the Local Boundary Commission
- V. Comments by members of the public concerning matters not on the agenda
- VI. Public hearing on Petition to incorporate the Skagway borough and dissolve the City of Skagway.
 - A. Summary by DCED of its conclusions & recommendations
 - B. Petitioner's opening statement (limited to 10 minutes)
 - C. Sworn testimony of witnesses called by the Petitioner
 - D. Period of public comment by interested persons (limited to 3 minutes per person)
 - E. Petitioner's closing statement (limited to 10 minutes)
- VII. Decisional session (optional at this time)
- VIII. Comments from Commissioners and staff
- IX. Adjourn

Members: Kevin Waring, Chairperson, Myrna Gardner, First Judicial District, Robert Harcharek, Second Judicial District, Allan Tesche, Third Judicial District, Ardith Lynch, Fourth Judicial District

Public Notice system ¹ and on the LBC Web site.² Additionally, notice of the hearing was provided to the Petitioner's Representative who was asked to post the notice and place a copy of the notice with the Petition materials available for public review at the Skagway City Hall and the Skagway Public Library. DCED also submitted a request to KHNS for a public service announcement of the notice of the hearing. Further, DCED provided notice of the hearing to those who attended the informational meeting on July 25, 2002 (see Appendix B). Additionally, DCED provided the Petitioner's Representative with approximately 50 additional copies of the notice for discretionary distribution.

C. DCED informational meeting.

On July 25, 2002, DCED conducted a duly noticed public informational meeting concerning the Skagway borough proposal as required by AS 29.05.080(a) and 3 AAC 110.520.

The meeting began at approximately 7:00 p.m. in the Skagway City Council chambers. Approximately 20 – 25 persons attended the meeting. A copy of the materials provided by DCED to those present at the informational meeting is included in this Final Report as Appendix B. The meeting lasted just over two hours.



The July 25 informational meeting was held in the Skagway City Council Chambers in the McCabe Building

During the period of public comment at the informational meeting, seven individuals offered remarks. Four of the individuals are currently elected officials of the City of Skagway, one was mayor at the time that the Petition was filed, and the other two are employees of the City. While the comments are summarized in this portion of the Final Report, an in-depth account of the comments is included as Appendix C.

¹ <http://notes3.state.ak.us/pn/pubnotic.nsf>

² <ftp://ftp.dcbd.dced.state.ak.us/DCBD/Skogway/Hearing/083102hearing%20notice.pdf>

All seven persons who offered comments at the informational meeting expressed support for the proposed Skagway borough incorporation and were critical (to varying degrees) of the analysis and conclusions in DCED's Preliminary Report.

The first to comment was City of Skagway Tourism Director "Buckwheat" Donahue. He questioned the basis for DCED's conclusion that the proposed Skagway borough does not possess a regional character representative of a borough. He also spoke about the differences between Haines and Skagway.

Next, Skagway Mayor Tim Bourcy posed a number of questions to DCED LBC support staff supervisor Dan Bockhorst. He asked whether formation of a Skagway borough would permanently protect Skagway from inclusion in an adjoining borough. Mr. Bockhorst indicated that it would not. Mayor Bourcy indicated that he did not consider transportation links and election districts to reflect social and cultural ties. Subsequently, he described Skagway's historical ties to Canada and asked whether there was something within the purview of the relevant standards that does not allow consideration of social and cultural relationships on an international level. Mr. Bockhorst replied that the Alaska Local Boundary Commission's jurisdiction is limited to the area within the State of Alaska.

Mayor Bourcy challenged DCED's position that the proposed borough, with a 443 square mile jurisdiction identical to that of the City of Skagway, would not be truly regional in the context of organized borough governments. He suggested that the North Slope Borough could be considered too large. Mr. Bockhorst responded that the boundaries of the North Slope Borough had been subjected to legal challenge and that the Alaska Supreme Court had upheld the LBC's determination that the North Slope Borough satisfied the standards for borough incorporation.

Mayor Bourcy asked about DCED's conclusion that the Skagway borough proposal did not constitute a large area. Mr. Bockhorst responded that Alaska's constitution promotes minimum numbers of local governments and that there are only 16 organized boroughs in Alaska. He noted that the proposed Skagway borough encompasses only 3% of the average size of organized boroughs in Alaska and that it also represents only 4% of the median size of organized boroughs in Alaska.

Former Skagway Mayor John Mielke was the next to comment. Mr. Mielke indicated that concern of eventual annexation of Skagway to Haines is the impetus for the desire by Skagway residents to form a borough. He contrasted the close ties between Skagway and Whitehorse with the ties between Haines and Skagway.

Next, Skagway City Council Member Mike Korsmo expressed the view that creation of a Skagway borough would promote maximum local self-government. He suggested that even though fear of being annexed to the Haines Borough may be driving the Skagway borough Petition, “our motivation is the fact that we do take care of ourselves and we want to continue to take care of ourselves.” He stressed in that regard, “we are [already] a maximum local self-government – I don’t know if you could take us and change us [to improve the status quo].” He contended that denying the Skagway borough proposal would allow annexation of Skagway into another borough.

Mr. Bockhorst responded that when DCED concluded that creation of the proposed Skagway borough would not promote maximum local self-government, it was not a statement that the Skagway local government does not provide a full range of services. Rather, it was a statement that the effect of the creation of the proposed Skagway borough would be neutral in terms of services provided, numbers of citizens served, and territory within the jurisdiction of a local government operating a municipal school district. He noted that the Skagway borough proposal essentially entailed a change only in the name of the local government from the City of Skagway to the Skagway borough.

Mr. Bockhorst stressed that if the Petition were denied, it would maintain a status quo that has existed since 1961 (with the establishment of the unorganized borough). He also stressed, as is noted on page 6 of DCED’s Preliminary Report, that the matter before the LBC concerns only the proposed incorporation of a Skagway borough, not annexation of Skagway to another borough.

Skagway City Council Member Dan Henry indicated that DCED should use the City of Skagway as a model for other municipalities to emulate. He suggested that the Skagway borough incorporation petition should be approved, in spite of the concern for precedent or concern about the borough incorporation standards. He asserted that failure to approve the Petition could disrupt Skagway. He expressed the view that DCED’s failure to endorse the incorporation proposal was “extremely selfish” and “somewhat irresponsible”.

In terms of Mr. Henry’s charge that DCED’s position was “irresponsible,” Mr. Bockhorst noted that DCED considered its Preliminary Report to reflect a candid, honest, and objective analysis of the Skagway proposal. Given such, Mr. Bockhorst indicated that it would have been irresponsible for the agency to offer its support for the Skagway borough proposal.

Skagway City Manager Bob Ward was the next to comment. He indicated that concerns about precedent on the part of DCED were unwarranted because there is no other community exactly like Skagway. Mr. Ward followed with his assessment of the views of the delegates to the Alaska Constitutional Convention regarding boroughs.

After Mr. Ward spoke, Skagway City Council Member Stan Selmer commented on the discussion in DCED's Preliminary Report concerning the electrical intertie between Skagway and Haines. Regarding DCED's overall analysis and conclusions, Mr. Selmer indicated that he would reserve specific comment on DCED's conclusions for the August 31 hearing.

Mr. Selmer did ask, however, for an explanation of DCED's conclusion that approval of the Skagway borough would have adverse impacts on State resources with no corresponding relief to State government in terms of responsibility for providing local services.

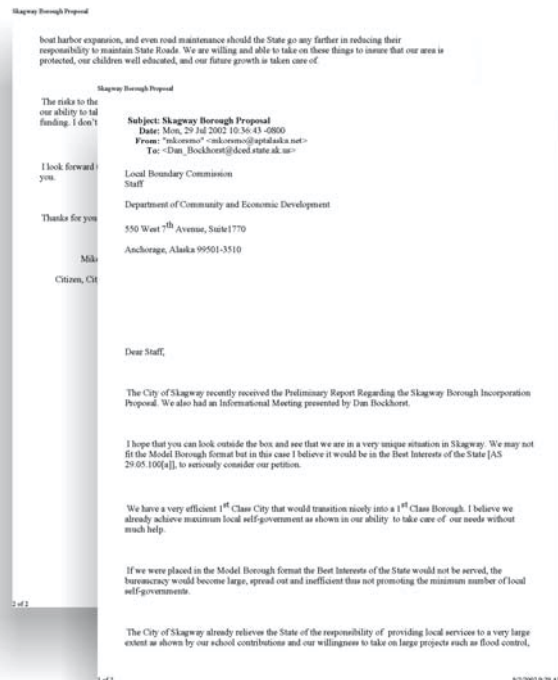
Mr. Bockhorst responded that the State would be compelled to pay a \$600,000 organizational grant to a Skagway borough, if it were formed. Additionally, Mr. Bockhorst noted that, although the Department of Natural Resources maintains that the municipal land entitlement of the City of Skagway would be credited against the municipal land entitlement of a Skagway borough – resulting in a zero entitlement for the borough – that view is based on an untested interpretation of the law. It is also unprecedented in its treatment of other boroughs in Alaska.

Further, Mr. Bockhorst noted that the Department of Education maintains that if the Skagway borough is formed, it would not be able to take advantage of the transitional mandatory local contribution requirements for newly formed municipal school districts without forfeiting the opportunity to make voluntary local contributions. The transition measures allow a newly formed municipal school district to save – over a three-year period – the equivalent of 7 mills applied to the full and true value of taxable property in the district. The savings to the local district come at the State's expense. Mr. Bockhorst noted that the Department of Education's position is also based on an interpretation of the law. Further, he noted that while the Skagway borough Petitioner has indicated that it would not take advantage of the 7-mill transition funding provisions, the Petitioner cannot commit a future assembly.

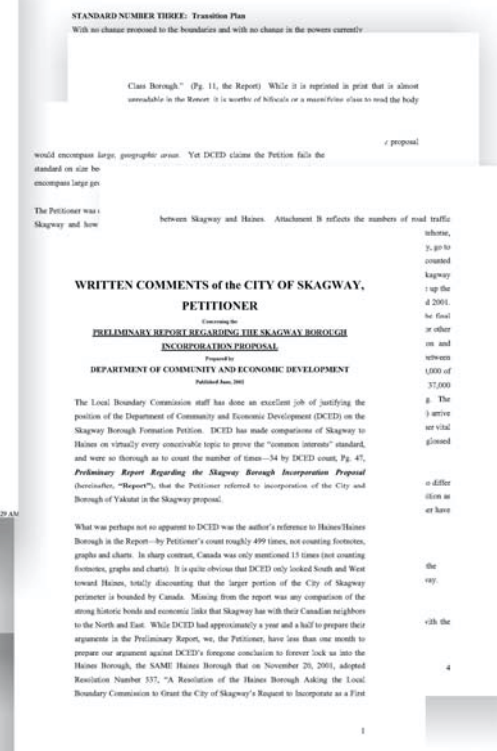
D. Written Comments on DCED's Preliminary Report

As noted earlier, the deadline for receipt of written comments on DCED's Preliminary Report was set for July 31, 2002. Two sets of written comments were submitted.

One was a thirty-page letter (with three pages of attachments) from the City of Skagway signed by Mayor Bourcy. The other was a two-page letter from City Council Member Mike Korsmo. DCED's review of the written comments follows in Part 3 of this Final Report.



Mike Korsmo comments regarding DCED's Preliminary Report – See Appendix D to read this document.



City of Skagway comments regarding DCED's Preliminary Report – See Appendix D to read this document.

Review of Written Comments on DCED's Preliminary Report

A. Review of the Written Comments from the City of Skagway.

The City of Skagway submitted a thirty-page letter dated July 29, 2002. It was signed by Mayor Tim Bourcy and included three pages of attachments. A copy of the letter and attachments is provided in Appendix D of this report. DCED's review of the City's comments follows.

Petitioner in this Proceeding. Repeatedly, the City incorrectly refers to itself as the Petitioner in this proceeding (p. 1 and most other pages of its June 29 comments). While the City of Skagway funded the preparation of the Petition at a reported cost of \$12,750, it is not the Petitioner. Instead, the Petitioner is the group of 58 qualified Skagway voters who signed the Petition.

Incongruous Views. The City remarks (p. 1) that, "The Local Boundary Commission staff has done an excellent job of justifying the position of the Department of Community and Economic Development (DCED) on the Skagway Borough Formation Petition." That position is contrary to the views expressed at the July 25 informational meeting by City employees, elected officials of the City, and the former mayor of the City. Moreover, it is inconsistent with the general tone of the remainder of the City's July 29 written comments.³ The comment cannot be reconciled with other views expressed by the City of Skagway.

References to Yakutat. The City notes (p. 1) that DCED's Preliminary Report observes that the Skagway borough proposal refers to the incorporation of the City and Borough of Yakutat 34 times. DCED made that observation on page 47 of its Preliminary Report to emphasize the fact that – local assurances notwithstanding

³ For example, on page 11 of its comments, the City comments that DCED's characterization that the model borough boundaries for the region are superior to the regional educational attendance area boundaries as "being particularly blatant, and not consistent with DCED's usual high quality analysis."

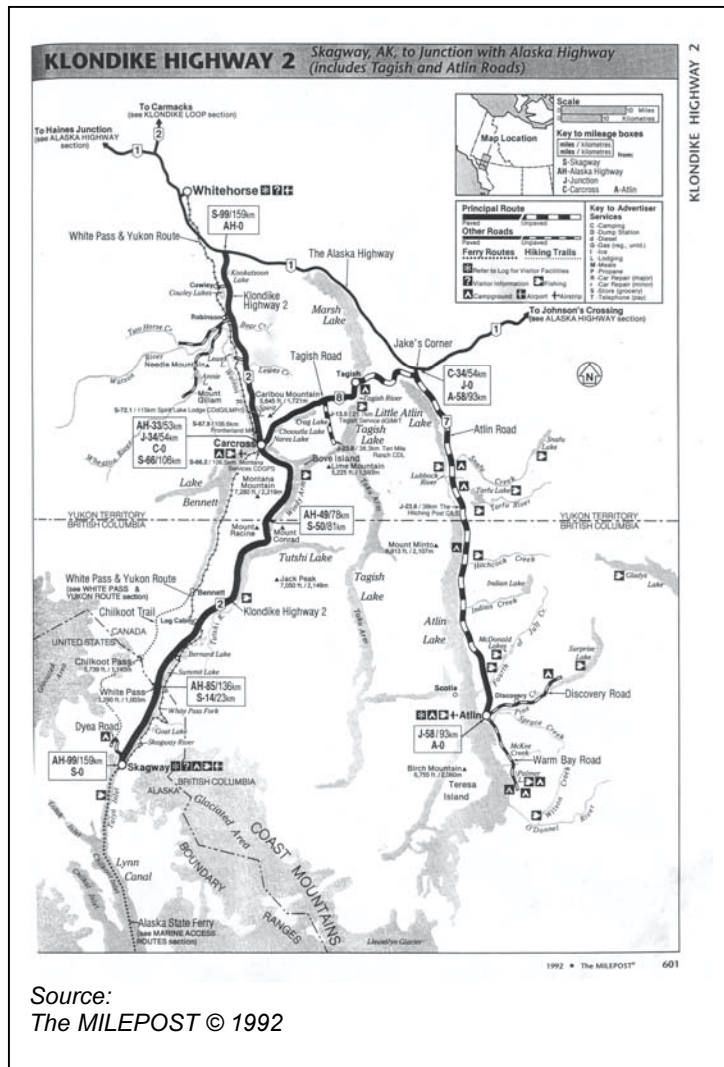
– others frequently present prior decisions of the Commission as precedence in support of pending or prospective proposals.

As DCED noted in its Preliminary Report, the Yakutat petitioner had repeatedly assured DCED⁴ and the LBC in 1991 – 1992 that approval of its borough incorporation petition would not set a precedent – just as Skagway is now offering similar assurances. Yet, despite the assurances by Yakutat, Skagway made 34

references to the incorporation of the Yakutat borough in support of its proposal.

Ties to Canada. The City observes that DCED referred to Haines or the Haines Borough 499 times in its Preliminary Report (not including footnotes or graphs). The City notes in that regard, “In sharp contrast, Canada was only mentioned 15 times.” (p. 1)

The City criticizes the Preliminary Report for failing to make “any comparison of the strong historic bonds and economic links that Skagway has with their Canadian neighbors to the North and East.” The City goes on at length about the ties between Skagway and Canada, particularly Whitehorse (p. 1, 3, 4, 8, 15 – 17, 19 – 20, 23, and 29).



Source:
The MILEPOST © 1992

DCED acknowledges that Skagway certainly has important ties to Canada.⁵ The U.S./Canada border is only about 15 miles from

⁴ At the time, DCED was constituted as the Department of Community and Regional Affairs (DCRA). References in this Final Report to DCED may also include its predecessor DCRA.

⁵ The same is true for Haines. Like Skagway, the Haines Borough borders Canada. The U.S./Canada border is approximately 41 miles from Haines. Whitehorse is approximately 251 miles from Haines. Residents of Haines also shop in Whitehorse, utilize its medical services, and

Skagway. Whitehorse, the capital of the Yukon Territory and its most populous community, is about 108 miles from Skagway via the Klondike Highway. Whitehorse has 22,545 residents – 74% of the total population of the Yukon Territory.

Given the population of Whitehorse and its proximity to Skagway, it is reasonable that a substantial number of residents of Skagway would patronize businesses in the Yukon's capital city. They also rely to an extent on medical services available in Whitehorse and engage in recreational pursuits in Canada. Further, residents of Whitehorse and other parts of the Yukon visit Skagway for recreation and commercial activities.

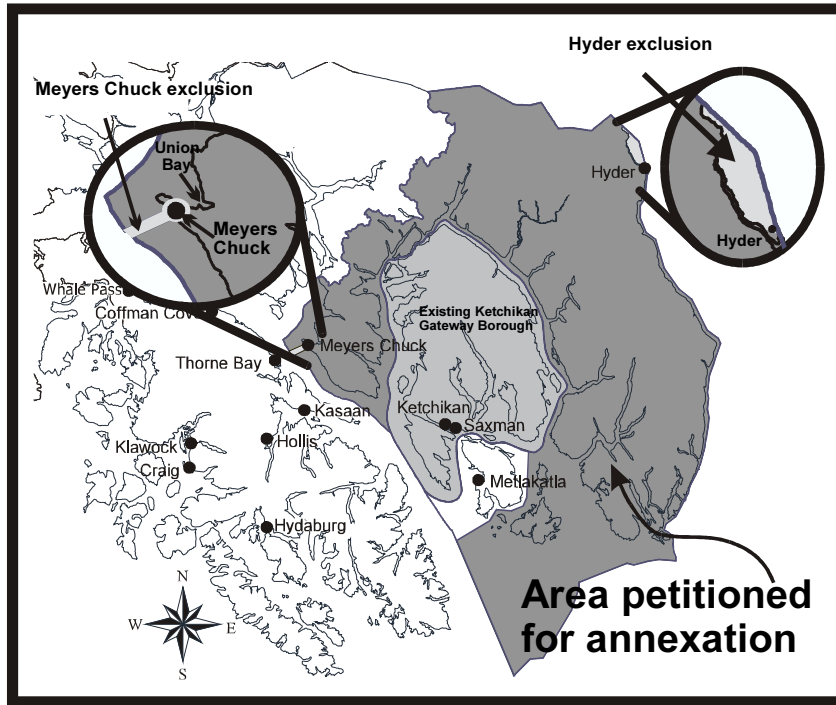
Notwithstanding the ties between Skagway and Canada, there is a legitimate basis for the minimal reference to such in DCED's Preliminary Report. While those ties are important to the community of Skagway in a general sense, in the context of the establishment of political subdivisions of the State of Alaska, the social, cultural, and economic ties between Skagway and Canada have no direct bearing on the merits of the Skagway borough proposal. If Whitehorse were part of Alaska, of course, links between Skagway and Whitehorse would be relevant to the issue at hand.

Three years ago, the Local Boundary Commission was faced with similar arguments from a petitioner that common ties between a community in Alaska and one in Canada should be given great weight in a borough boundary determination. In the prior case, the Ketchikan Gateway Borough had petitioned the Local Boundary Commission for annexation an estimated 5,524 square miles that was outside any local government jurisdiction.

The expanded corporate boundaries proposed by the Ketchikan Gateway Borough encompassed 99.6% of the area within its model borough boundaries that was not already within the corporate boundaries of the Borough. Only 21.4 square miles of the area within the Ketchikan model borough boundaries were excluded from the Ketchikan annexation proposal.

engage in recreation in the Yukon. A search on the Internet on August 2, 2002 using the search engine Google identified 7,000 Web sites that include the words "Whitehorse" and "Skagway". 8,350 Web sites were identified that include the words "Whitehorse" and "Haines". The number of references is not intended to represent proportionality with respect to the relationship between the various communities. However, it is intended to indicate that relationships exist between both Whitehorse and Skagway as well as Whitehorse and Haines. DCED also acknowledges that some of the Web sites including the words "Whitehorse" and "Haines" may include "Whitehorse" and "Haines Junction" without including just Haines. However, it is not practical to measure such.

The 21.4 square mile exclusion consisted of 17.9 square miles in and around Hyder, and 3.5 square miles in and around Meyers Chuck. The map on the following page shows the Borough's existing corporate boundaries, the territory proposed for annexation, and the Borough's model boundaries, including Hyder and Meyers Chuck.



As strong as the ties are between Skagway and Whitehorse, the links between Hyder, Alaska (population 97) and Stewart, British Columbia (population 696) were then, and are now, even stronger. Hyder is a short walk from Stewart – just 2.3 miles (Skagway is nearly 50 times more distant from Whitehorse). The ties between Hyder and Stewart are such that most Hyder students even attend public school in Stewart (Skagway and Whitehorse, of course, are in separate school districts). Residents of Hyder rely totally on Stewart for many other fundamental services and facilities.⁶

Notwithstanding the arguments by the petitioner that ties between Hyder and Stewart justified the exclusion of Hyder, the Local Boundary Commission denied the Ketchikan Gateway Borough's petition – by unanimous vote – because of the 21.4 square mile exclusion.⁷ In doing so, the Commission determined that the

⁶ Further, DCED is of the view that the ties between Hyder and Ketchikan (75 air miles apart) are substantially more attenuated than are the ties between Haines and Skagway.

⁷ At that time, members of the Commission consisted of Kevin Waring, Chairman; Kathleen Wasserman, Vice-Chairman, Nancy Galstad (nee Cannington), Allan Tesche, and William Walters.

exclusion of Hyder and Meyers Chuck barred the annexation proposal from meeting the applicable legal standards. The Commission gave no credence to argument that relatively stronger ties between Hyder and Steward as compared to Hyder and Ketchikan was a legitimate basis to allow the annexation to proceed as proposed by Ketchikan.

Throughout this proceeding, proponents of the Skagway borough have discounted DCED's concerns about precedence. Proponents either dismissing the concerns on the basis of the 'unique nature of Skagway'⁸ or by offering assurance that such matters can be overcome, for example, by 'finessing' the language in the LBC decisional statement.⁹

Opportunity to Address DCED's Policy Views Concerning the Skagway Borough Proposal. The City states that "While DCED had approximately a year and a half to prepare their arguments in the Preliminary Report, we, the Petitioner, have less than one month to prepare our argument against DCED's foregone conclusion to forever lock us into the Haines Borough" (p. 1). That comment differs greatly with DCED's view of the circumstances for a number of reasons.

First, Skagway officials have had many years – not "less than one month" – to prepare their arguments against DCED's policy stance in this matter. Extensive discussions between DCED and the City of Skagway leading to the filing of the pending Petition first began in July of 1997.

In January of 1998, officials of the City of Skagway advised DCED that – policy concerns notwithstanding – they planned to proceed with development of a proposal to incorporate a Skagway borough. In March 1998, DCED participated in a public meeting of the Skagway City Council regarding the prospective proposal to incorporate a Skagway-only borough. DCED again outlined its policy concerns about the prospective proposal during the March 1998 meeting.

In August 1998, the City of Skagway arranged for a Juneau consultant to provide professional services relating to the development of a Skagway borough proposal. DCED worked

⁸ Of course, every community in Alaska is unique in some respect.

⁹ As noted in Appendix C of this Final Report, one Skagway official commented at the July 25 informational meeting, "if you have to alter your standards and put asterisks by them to protect you from different arguments down the road by other small communities, so be it."

extensively with the consultant to provide both technical information and to discuss DCED's policy concerns relating to the prospective proposal.

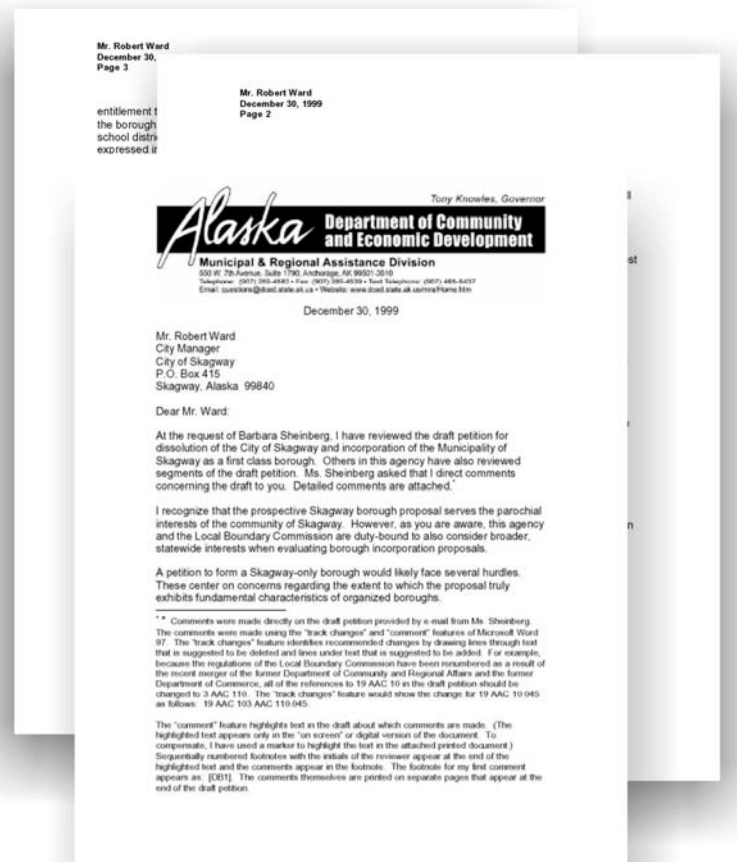
In August of 1999, DCED also provided information to a Juneau law firm that had been retained by the City of Skagway to assist in the development of the brief supporting the Skagway borough proposal. DCED provided the attorney with extensive materials relating to DCED's policy concerns regarding a prospective Skagway-only borough proposal. Those materials included documents relating to the incorporation of the Yakutat borough and materials concerning a prospective proposal for incorporation of a Wrangell borough. The latter included correspondence from DCED to Wrangell officials outlining policy concerns that DCED had expressed about a prospective Wrangell borough proposal.

In late 1999, DCED thoroughly reviewed a complete draft of the prospective Skagway borough proposal. Again, DCED outlined its comments, including policy concerns (this time in a letter dated December 30, 1999).

Ultimately, the Petition was submitted to DCED on January 22, 2001 – more than three and one-half years after discussions with DCED concerning the now-pending Skagway borough proposal were initiated.

It is noteworthy that the legal standards that would be used by the LBC to review of the Petition did not change during that time, except that the 1999

Legislature added an express requirement that the Commission could approve a borough proposal only if the Commission determined it to be in the best interests of the state. While the



December 30, 1999 Letter from DCED to Robert Ward

express requirement was new, the Commission had previously considered such a requirement to be implied by the other standards.

The borough incorporation standards were well known to officials of the City of Skagway from the beginning. The matter of the standards is significant because they serve the purpose of “guide[ing] local governments in making [boundary] decisions and in preparing proposals [to the] commission, and to objectify criteria of decision making and delineate battleground for public hearing.” *Port Valdez Co., Inc. v. City of Valdez*, 522 P.2d 1147, 1148 (Alaska 1974)

During the period from July 1997 to December 1999, DCED was forthcoming, candid, and consistent with officials of the City of Skagway regarding its policy concerns over a prospective Skagway borough proposal. The following remarks by the Skagway City Manager made to DCED staff at the July 25, 2002 public informational meeting reflect that fact:

... from the first time we met, your position has been consistently that we don't meet the standards ... so you have been consistent throughout this.

In October 2001, DCED met with Mayor Bourcy for several hours to discuss the Petition. DCED again spoke candidly about its policy concerns relating to the proposed Skagway borough.

In April of this year, the City of Skagway hired a consulting firm to assist in matters relating to the Skagway borough proposal. DCED met with and spoke to the consultants on a number of occasions during the preparation of the Preliminary Report. Here again, DCED was candid, forthcoming, and consistent regarding its policy concerns relating to the Skagway proposal.

Clearly, the City has had – and has taken – years (as opposed to less than one month) to develop its arguments to counter DCED policy views concerning the Skagway borough proposal.

It is also noteworthy that State law (3 AAC 110.640(b)(3)) presumes that 28 days from the date DCED mails its preliminary reports is sufficient for interested persons to comment on the report.¹⁰ Before the LBC Chair set July 31 as the deadline for comment on DCED's Preliminary Report, he directed DCED to confer with the Petitioner's Representative (Skagway City Manager) to ascertain how much time

¹⁰ The Alaska Court System allows three additional days for mailing. (Civil Rule 6(c), *Alaska Rules of Civil Procedure*). Thus, it might be reasonably argued that 3 AAC 110.640(b) actually presumes that 25 days from the date of receipt of DCED's preliminary report is sufficient to review and comment on the report.

he felt was necessary to allow adequate time for response. The Petitioner's Representative indicated that 28 days from the date of mailing of the report would be sufficient.

DCED made an electronic version of the Final Report available to the City of Skagway and its consultants via the Internet on June 28. The deadline for receipt of comments was 34 days later on July 31. Thus, even if one were to apply the narrowest possible construction to the City's comment that it had less than one month to comment, it still would be inaccurate. The City and its consultants had 34 days to comment. That time period is more than 20% greater than the period of time presumed to be adequate in the law.¹¹

More importantly, City officials specifically endorsed the particular pace of the proceedings following the release of DCED's Preliminary Report. In scheduling these proceedings, DCED repeatedly took measures to ensure that the Petitioner's Representative (the Skagway City Manager) felt that all interested individuals and organizations were given ample opportunity to fully and properly represent their views in the matter. However, if, for some reason, the Petitioner's Representative now feels that such is not the case, he should immediately advise DCED or the LBC. Under such circumstances, DCED would recommend that the Commission postpone the August 31 hearing to allow the City as much time as local officials considered to be necessary to allow them to prepare suitable arguments regarding their proposal.

While Skagway took more than three and one-half years to prepare and file its Petition, comments by the Mayor at the July 25 informational meeting and the City's written comments on the Preliminary Report seem to express the perception that DCED failed to process the January 22, 2001 Skagway borough incorporation Petition with sufficient alacrity.

DCED does not believe that Skagway has, in any sense, been slighted in terms of the pace at which its borough incorporation proposal has been considered. However, perceptions to the contrary seem to persist among certain Skagway officials. For those who may feel that Skagway has been slighted, DCED has prepared Appendix E, which outlines major activities of the LBC and its staff¹²

¹¹ If one accounts for the savings of mail time (by the immediate delivery via the Internet) in the manner addressed in the prior footnote, the City actually had 36% longer than the period of time presumed to be adequate under the law.

¹² The Commission's staff consists of two Local Government Specialists, one Publications Technician and one part-time Administrative Clerk. The Local Government Specialists and Publications Technician are not dedicated exclusively to LBC work. They often work on matters

from January 2001 – the date of submission of the Skagway borough petition – to the present. It demonstrates, DCED believes, the pressing nature of matters that come before the Local Boundary Commission and that DCED has carried out its duties with respect to the Skagway borough proposal in a reasonable fashion.

When DCED met with Mayor Bourcy in October of last year, DCED speculated, based on the facts known at the time, that the Commission might hold its hearing on the matter as early as May 2002. Although DCED never offered ironclad guarantees about the schedule, it might be argued that DCED missed the mark by three months. As addressed in the April 19, 2002 letter from DCED (which is also included in Appendix E), the DCED LBC support staff were faced with a number other time-urgent issues that were not anticipated when they met with Mayor Bourcy in October of 2001.

If, indeed, the City truly believes that it has not had adequate opportunity to respond to DCED's Preliminary Report, a delay in the hearing would not be inimical to the interests of Skagway borough proponents. Such might not be the case, for example, if a competing borough proposal proceeded while consideration of the Skagway proposal lagged.

Effect of DCED's Recommendation. As noted in the discussion of the previous point, the City indicated (p. 1) that DCED's conclusion would "forever lock us into the Haines Borough." DCED does not concur as addressed at some length in DCED's Preliminary Report (p. 6). The issue was also addressed extensively by DCED during the July 25 public informational meeting in Skagway. Denial of the Petition will simply continue the status quo that has existed since 1961. It will not "forever lock Skagway into the Haines Borough."

Haines Borough Resolution. The City stresses (p. 1-2) that the Haines Borough Assembly has endorsed its Petition. The City notes, in that regard that, "The Resolution speaks volumes about the two regions that have operated so independently for so long, and yet, DCED would have the Commission *force* the two regions to come under one rule!" Again, contrary to the City's repeated assertions, denial of the Petition will not "*force* the two regions to come under one rule!"

relating to local government in Alaska, but not specifically on matters before the LBC. Further, the list does not reflect day to day inquiries and activities.

HAINES BOROUGH
RESOLUTION #537

A RESOLUTION OF THE HAINES BOROUGH ASKING THE LOCAL BOUNDARY COMMISSION TO GRANT THE CITY OF SKAGWAY'S REQUEST TO INCORPORATE AS A FIRST CLASS BOROUGH.

WHEREAS, the Haines Borough Assembly does not agree with any proposal that would place Skagway in the Haines Borough against their will; and

WHEREAS, the people of Haines and Skagway are not dependant on each other either economically or politically; and

WHEREAS, Skagway has always been a separate fully functioning independent municipality; and

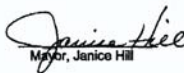
WHEREAS, the current system of separate independent governments works well; and

WHEREAS, the Haines Borough Assembly supports the citizens of Skagway's right to determine their own future.

NOW, THEREFORE, BE IT RESOLVED, that the Haines Borough Assembly asks the Local Boundary Commission to proceed with the City of Skagway petition for incorporation as a first class borough and allow the people of the Skagway to choose for themselves the form of government that best addresses their needs.

ADOPTED:

11/20/01


Mayor, Janice Hill

ATTEST:


Karen Harvey, Clerk

*Haines Borough Resolution supporting
Skagway's Borough Petition*

Skagway and Haines can be included in the same borough only if a proposal for such is formally initiated. No such proposal exists. Moreover, DCED is unaware of any contemporary interest on the part of any local government or group of private citizens to initiate such a proposal. If such a proposal is ever made, there will be ample opportunity for officials and other citizens of Skagway to express their views concerning the proposal.

Flexible Nature of Borough Boundaries.

The City addresses the common interests standard at length (p. 7-17). The City agrees with DCED that the founders intended boroughs to embrace

large and natural regions. It also says that such would be preferred, except, in their particular case, the City indicates that a borough encompassing a large and natural region in the Lynn Canal area cannot be achieved. The City notes in that regard (p. 7 – emphasis original):

Skagway is land-locked through no action of its own, but by the action of a previous Local Boundary Commission when that Commission voted to allow the formation of the Haines Borough!

The City's comments seem to reflect a misunderstanding about the flexible nature of local government boundaries in Alaska. The fact that Skagway is "land-locked" doesn't preclude the establishment of a borough with suitable characteristics. Nor does it compel the creation of a new borough that lacks suitable characteristics.

Intent of 1963 Legislature Regarding Boroughs. DCED's Preliminary Report noted that the Lynn Canal – Icy Straits Election District was originally included in legislation drafted by Representative John Rader to mandate formation of boroughs in particular regions of Alaska. DCED also noted that the bill was amended to exclude the Lynn Canal – Icy Straits Election District before it was passed by the 1963 Legislature. The City of Skagway

asserts that, by amending the Mandatory Borough Act to exclude the Lynn Canal – Icy Straits area, the 1963 Legislature intended that Skagway and Haines would be in different boroughs. Specifically, the City comments (p. 7):

From Brief History of the Third Class Haines Borough prepared by Karl Ward for the Haines Centennial Commission, January 30, 1980, Mr. Ward states: “In 1963 the new State Legislature passed the Mandatory Borough Act. This mandated that certain areas such as Juneau, Ketchikan, Anchorage, and Fairbanks form boroughs. In the original bill, Haines was included because of the Independent School District which included a large area outside the city limits. But because Petersburg, Wrangell, and Skagway were not required to form boroughs, our representative from Skagway was able to get us removed from the mandatory list.” This information communicates clearly that the legislature at that time was operating under the assumption that Skagway and Haines would be separate and distinct boroughs.

DCED finds nothing in the information cited by the City of Skagway that “communicates clearly” – or for that matter even remotely hints – “that the legislature at that time was operating under the assumption that Skagway and Haines would be separate and distinct boroughs.” The unfounded speculation begs the question whether the City of Skagway believes that the 1963 Legislature held the same view with respect to the other six communities in the 1963 Lynn Canal – Icy Straits Election District. That is, does the City of Skagway assert also that the 1963 Legislature intended Klukwan, Gustavus, Hoonah, Elfin Cove, Pelican, and Yakutat to each form separate boroughs? For that matter, would the City of Skagway also assert that the 1963 Legislature intended that every community not included in the 1963 Mandatory Borough Act would form a separate borough?

Differing Views and Rivalries Between Skagway and Haines. The City reiterates points raised earlier in this proceeding that there are rivalries and differing views between Haines and Skagway. Specifically, the City notes (p. 7):

Haines and Skagway clearly have differing views on any number of issues, as has been pointed out in Skagway's petition and in various quotes from people in Haines. Former Skagway Mayor Wallace, who now lives in Haines, expressed in personal communication with DCED that "there have long been rivalries between the two communities.... For that reason, in particular, he expressed personal support for the Skagway borough proposal." (Personal communication with DCED, May 16, 2002, Pg. F-25, the Report)

DCED maintains the position expressed in the Preliminary Report (p. 68) that it is incongruous to assert that Skagway and Haines have strong rivalries, but generally lack common interests. If the two communities had little in common, there would be no basis for strong rivalries.¹³

Regarding the assertion that Haines and Skagway residents "clearly have differing views on any number of issues," DCED rejects the premise that citizens within any community or region are universally like-minded on a broad range of public policy issues. Similarly, residents of adjoining communities or regions are universally opposite-minded. The January 2001 Skagway borough Petition asserts that (p. 38):

General attitudes toward municipal government are also quite different in the Haines and Skagway areas. . . . The [1998] Haines area vote on consolidation demonstrates the deep divisions within the Haines communities.

DCED notes that a subsequent vote in Haines (certified July 11, 2002) to consolidate local governments passed by an overwhelming margin. With an impressive voter turnout, 26% more voters favored consolidation compared to those who opposed it. The Petitioner's claim of divergent views between Skagway and Haines based on the "deep divisions" evidenced by the close 1998 Haines consolidation vote begs the question whether the Petitioner now considers the views of Skagway and Haines to be more similar as a result of the July 2002 consolidation vote.

¹³ The City incorrectly refers to Mr. Wallace as a former mayor of the City of Skagway – he is a former mayor of the City of Haines.

Medical Services in Skagway. The Preliminary Report addressed historical and current medical services in Haines and Skagway. The City noted with respect to that discussion that DCED did not report that the Skagway Clinic is staffed to handle the summer visitor and seasonal resident populations. Moreover, the City also indicated that prospect of constructing a new clinic in Skagway to replace the community's outdated clinic is currently being evaluated. (p. 8)

Service by State and Federal Agencies Based in Haines. The City of Skagway minimizes, as a measure of common interests, the significance of State and federal agencies based in Haines that serve Skagway. The City notes (p. 9) that such, "is not uncommon in any part of Alaska, and as State dollars continue to dwindle and agencies are required to cut their budgets, those support services will no doubt continue to come, but from Juneau or even further away."

DCED continues to view the location of agencies that serve Skagway as a relevant component of the aggregate measure of ties between Skagway and neighboring communities.

Daycare Assistance. The City attempts to clarify circumstances relating to the provision of daycare assistance in Skagway (p. 9). DCED's noted in its Preliminary Report that it compared a list of the Petitioner's proposed areawide borough powers to information concerning the current powers of the City of Skagway (Preliminary Report, p. 18). The comparison was relevant to satisfaction of the standard relating to the proposed dissolution of the Skagway city government. DCED noted that dissolution would occur only if the borough assumed all of the City's powers on an areawide basis.

In addressing the standard, DCED reviewed the 2002 *Alaska Municipal Officials Directory*, the Fiscal Year 2001-2002 budget of the City of Skagway (Ordinance 2001-15), and the *City of Skagway General Purpose Financial Statements* (June 30, 2001). DCED reported that the audit indicates that the City of Skagway provided daycare services in Fiscal Year 2001. However, daycare is not among the list of services to be carried out by the proposed borough as outlined on page 7 of the Petition. DCED questioned City officials about the apparent omission. City officials advised DCED on April 25, 2002, that the City of Skagway no longer provides daycare service. However, the City indicates in its July 29 comments on DCED's Preliminary Report that the City of Skagway has budgeted "\$10,500 plus utilities" in FY 2003 for daycare.

While State law provides for a broad construction of municipal powers (see AS 29.35.400 – 420 and Article X, Section 1 of Alaska's constitution), nothing in the list of powers on page 7 of the Skagway borough Petition could reasonably be construed to include daycare

assistance. It appears now that the list of proposed areawide borough powers set out in the Petition is not complete to allow satisfaction of the dissolution standard. DCED urges the Petitioner to review the list and to carefully compare it to functions currently carried out by the City of Skagway to ensure that it is accurate and compatible. Based on the foregoing, the Skagway borough proposal would meet the dissolution standard only if the borough assumes daycare assistance powers. The Petition should be amended accordingly if the Local Boundary Commission favorably considers it.

DCED also referenced daycare grant administration on page F-31 of the Preliminary Report. It was referred to as one of several examples of administration of public programs by service providers in a manner that involves both Haines and Skagway. DCED did not suggest that all daycare services provided in Skagway are administered in conjunction with delivery of daycare in Haines. The City's own statement in its July 29 comments that, "After the bookkeeper moved away, it simplified matters to have Haines handle this program," (p. 10) denotes the administrative practice that was the subject of DCED's previous statement.

Fisheries. The City indicated that DCED's analysis of the fisheries fails to show commonality between Haines and Skagway (p. 10). DCED concluded in its Preliminary Report (p. F-14) that

Skagway and Haines have common ties with respect to both recreational and commercial fishing. Commercial fishing, however, is a smaller part of the economy in Skagway compared to Haines.

DCED acknowledges, again, that commercial fishing is a relatively small component of the Skagway economy while it is an important part of the Haines economy. Still, a link exists between the few residents of Skagway engaged in commercial fishing activities and their counterparts in Haines. Additionally, DCED noted in its Preliminary Report that Haines and Skagway are in the same sport fish management area. The City limited its comments regarding fishing to commercial activities.

State Lands. The City of Skagway downplays any link between Skagway and Haines in terms of the Department of Natural Resource's *Northern Southeast Area Plan*. The plan, which was formally adopted in July of this year, is addressed in DCED's Preliminary Report on pages F-15 — F-16. DCED continues to maintain that elements in the plan contribute to the collective degree of ties between Skagway and neighboring communities.

The City notes correctly – as does DCED’s Preliminary Report – that the area covered by the plan as a whole is a large area. However, as DCED also pointed out in the Preliminary Report, the large planning area is divided into a number of smaller planning areas. These smaller areas include the “Skagway Area” and the “Haines Area.” The former encompasses a portion of the Haines Borough and the latter extends into the proposed Skagway borough.

Northern Southeast Local Emergency Preparedness Committee.

The City notes twice that “Skagway is the headquarters for the Northern Southeast Local Emergency Preparedness Committee” (p. 11 and 12). The City seems to suggest that such somehow demonstrates Skagway’s self-reliance and lack of ties to neighboring communities.

DCED takes the view that the Northern Southeast Local Emergency Planning Committee adds to the previously cited evidence of ties between Skagway and neighboring communities. Local Emergency Planning Districts and Local Emergency Planning Committees are established under AS 26.23.073.

According to the Alaska Division of Emergency Services, (ADES) website, the Northern Southeast Emergency Services Committee serves an area encompassing the City & Borough of Yakutat and extends south to a line from the Southern tip of Baranof Island east across Sumner Strait to the Stikine River; and west from the Alaska/British Columbia border to the Gulf of Alaska, excluding the unified home rule municipalities of Juneau and Sitka, the city of Petersburg, and the city of Kupreanof.¹⁴

According to the ADES website, “twelve communities actively participate with the LEPC; a regional plan has yet to be developed. Yakutat was the last to join the district in January 1997. The small logging communities of Cube Cove, Freshwater Bay, Hobart Bay, Rowan Bay and Whitestone; the religious community of Game Creek; and the Tlingit village of Klukwan, all unincorporated, are not actively participating with the LEPC. It is anticipated that with the evolutionary development of a district-wide, interjurisdictional disaster planning and service area, all communities will eventually receive local disaster emergency preparedness services on an area-wide basis, coordinated by the Northern Southeast LEPC. The Haines Borough and the City of Haines, Angoon, Hoonah, Port Alexander, Tenakee Springs and

¹⁴ <http://www.ak-prepared.com/serc/rep%2Dnse.htm>

Skagway have signed a local response agreement with DEC. This allows these municipalities to respond to a hazardous substance release with DEC support. Other local disaster emergency services will probably consist of mutual-aid agreements negotiated between individual communities based on proximity.”

Comparison of Model Borough Boundaries, REAA Boundaries, and Proposed Skagway Borough Boundaries. The City is particularly critical about DCED’s analysis and conclusions regarding the relative degree to which the areas within the Lynn Canal model borough boundaries, Chatham REAA boundaries, and proposed Skagway borough boundaries satisfy the standards for borough incorporation. DCED concluded in its Preliminary Report (p. 110 - 112) that, the area within the Lynn Canal model borough boundaries best satisfied those standards. The City responded (p. 11):

DCED appears to have taken liberal license to mold its own analysis of the proposed Skagway borough boundaries and Chatham REAA boundaries and make a determination contrary to the Alaska Department of Education in saying that the Lynn Canal model borough boundaries are superior to both!

It is not surprising that DCED has consistently stated its preference for the Haines Borough throughout the Report, but the Petitioner views that statement as being particularly blatant, and not consistent with DCED’s usual high quality analysis, particularly since DCED was tasked through legislation to determine the boundaries for REAA’s in conjunction with the Department of Education as set forth in **AS 14.08.031(a) and (b)**.

Similar statements were repeated on page 26 of the City’s comments. The City incorrectly indicates above that the Department of Education has made a determination that the Lynn Canal model borough boundaries are inferior to both the Skagway borough proposal and Chatham REAA boundaries in the context of suitable borough boundaries. DCED solicited the views of the Commissioner of the Department of Education concerning the issues at hand.¹⁵ However,

¹⁵ DCED solicited the views of the Commissioner of the Department of Education concerning the particular issues at hand. In a letter dated July 1, 2002, DCED wrote to the Commissioner as follows:

DCED and the Local Boundary Commission would welcome any thoughts you wish to share concerning the Skagway borough proposal and DCED’s analysis of it. Education-related issues are addressed throughout the report. However, there are three particular aspects of the proposal that I wish to call to your attention.

The first concerns the limitation set out in AS 14.12.025 regarding the formation of new school districts (as would occur if the Skagway borough

DCED is unaware of any such determination by the Department of Education. If the Department of Education has indeed made a determination regarding the matter, it is not part of the record of this proceeding.

DCED notes that regional educational attendance areas are, by definition, limited to the unorganized borough. In some cases, that limitation results in strained boundaries. Perhaps that is no more evident than in the case of the Chatham REAA. Its boundaries encompass three non-contiguous areas. In DCED's view, that does not reflect an ideal circumstance.

The borough incorporation standards dictate, in this case, consideration of three boundary scenarios. Those are: (1) the boundaries proposed by the Petitioner, (2) model borough boundaries, and (3) REAA boundaries.

After arguing unwaveringly that a Skagway-only borough scenario alone makes sense, the City of Skagway challenges DCED's conclusion regarding the inferiority of a hypothetical borough conforming to Chatham REAA boundaries. If such a borough were formed, Klukwan, Gustavus, Cube Cove, Pelican, Elfin Cove, Hoonah, Angoon, and Tenakee Springs would join Skagway in a regional government. Notwithstanding the City's comments, DCED maintains

proposal were approved). Skagway has less than half the minimum number of students required to form a new district. Under AS 14.12.025, a Skagway borough school district could not be formed unless you determine that "formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district." This matter is addressed on pages 54 and 106 of the Preliminary Report.

The second issue concerns the suitability of regional educational attendance area boundaries as borough boundaries. 3 AAC 110.060(c) provides in this regard as follows:

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.

This second issue is addressed in the discussion of standard number fifteen on pages 110 – 112 and 126 of the report.

Lastly, DCED notes the atypical arrangements concerning delivery of educational services in the Lynn Canal area (where Klukwan is an enclave in the Haines Borough that is served by the Chatham REAA). This matter is addressed on page 108 of the report.

the view expressed in its Preliminary Report that the social, cultural, and economic ties between Skagway and communities as far away as Angoon are more attenuated than they are to the other communities within the boundaries of the Lynn Canal model borough.

While the Chatham REAA boundaries reflect a certain degree of social, cultural, and economic interrelationship, the Lynn Canal model borough boundaries reflect a determination by the Local Boundary Commission in 1992 that the area within those boundaries best meets the standards for borough incorporation. Given such circumstances, DCED concurs with the City of Skagway's comment (p. 11) that, "It is not surprising that DCED has consistently stated its preference for the [Lynn Canal Model Borough boundaries]."

Service by State Trooper. The City comments that while DCED notes in its Preliminary Report that a Haines-based Trooper serves Skagway, DCED neglected to report whether all the responses came from the Haines-based Trooper. The City also notes that "when the State Trooper in Haines is busy or unavailable, Skagway must call the Ketchikan State Trooper Office" (p. 11).

According to Captain Steve Garrett, Commander of the Trooper detachment in Ketchikan, Ketchikan serves as the "off-hours dispatch center for all of southeast Alaska." Calls to the Troopers from every community in southeast Alaska – including Juneau -- during times outside the routine working hours are routed to Ketchikan. The Ketchikan dispatchers then contact the nearest Trooper to respond.

Captain Garrett stressed that while the Department of Public Safety has one Trooper based in Haines to serve the Haines-Skogway area, it also has one Fish and Wildlife Protection Officer. If the Haines-based Trooper is unavailable, calls would likely be referred to the Fish and Wildlife Protection Officer based in Haines.

Recreation and Entertainment. The City expressed concern that DCED neglected to outline efforts of Skagway to serve the recreational and entertainment needs of its citizens. In that regard, the City refers to its library, museum, and new softball field (p. 11). The City also noted that it is "contributing \$120,000 to the construction of a new footbridge across the Skogway River, and continues to develop and maintain local hiking trails, ATV trails, picnic areas and parks—all built with strictly local construction funds." The information is offered by the City in an effort to bolster its views of a lack of common ties to Haines.

Extraterritorial Services. The City indicated that "Skogway routinely provides emergency service outside its municipal boundary, including search and rescue and emergency medical services" (p. 12). The City

did not provide details about the location of such extraterritorial activities. However, given the boundary configuration of the City of Skagway and the Haines Borough, DCED presumes that a considerable portion of routinely-provided extraterritorial emergency services occur within the Haines Borough.

Emergency Services, Health & Safety Codes, Utilities and Other Services. The City also describes details about its local emergency services capabilities along with health and safety codes, utility services, and other local capabilities. In this regard, the City states (p. 12):

A prime example of Skagway's capability to manage a borough was demonstrated on July 23, when the community of Dyea received flooding as a result of a 700-foot high moraine that slid into a nearby lake at the foot of the West Creek Glacier, causing a huge surge of water down the West Creek drainage into the Taiya River. The river crested at 21 feet before subsiding. Skagway's local emergency response teams immediately activated rescue efforts and rescued approximately 25 people from the small town. An emergency shelter was set up at the Skagway City School, and within a short period of time all residents had been accounted for. This emergency was handled without any help from other areas. The State Trooper based in Haines was notified, but did not respond to the call.

While the City of Skagway clearly played a vital role in responding to the recent flood, newspaper accounts report that the federal government helped significantly. The following account from the July 26, 2002 edition of the *Skagway News* describes the flooding based on an account by a geologist from Haines. It also describes the role of the National Park Service in evacuating people in the area:

Geologist Lance Pape of Haines evaluated the site from a Temsco Helicopter shortly after the state of emergency was issued. "The 700 feet high moraine on the west side of a lake at the base of West Creek Glacier collapsed," Pape said. "It sluffed into the lake and onto the toe of the glacier, which caused the lake to rise more or less six feet, and excess water surged down West Creek."

A large amount of the glacier in the form of ice blocks is now in the West Creek, Pape said. The lake has lowered, the front of the glacier broke off, and the creek from No Name Glacier is flowing directly through the crater where the moraine collapsed into the lake, he said. "All in all it was a pretty spectacular, geological event," Pape said.

"There was a lot of local flooding of the homes along West Creek and the Taiya River Valley," he said, however, from an aerial view, there didn't seem to be high water damage.

. . . The Bessettes said they and other campers and residents were told to leave their automobiles and trailers. They were evacuated by National Park Service rangers and brought to the evacuation center at Skagway School, where they were given food, showers and updates.

The rangers put everybody in the truck and said, “get out,” Darlene said.

Nature of the Pending Petition. The City of Skagway indicates that “DCED seems to have interpreted” Skagway’s pending proposal as a petition to merge the City of Skagway and the Haines Borough (p. 13). To the contrary, DCED has made concerted efforts throughout this proceeding to stress that denial of the pending Petition will maintain the status quo. On the other hand, the City has repeatedly made statements to the effect that DCED’s recommended action on the pending petition will “forever lock us into the Haines Borough.”

DCED has addressed common ties between Haines and Skagway only in the context of evaluating the regional nature of the proposed Skagway borough. If the links between Haines and Skagway are ignored, the Skagway borough proposal cannot be fairly evaluated in terms of the applicable standards.

Differential Tax Zones. The City of Skagway asserts that DCED made a faulty comparison of social, cultural, and economic characteristics of the community in terms of differential tax zones established by the City of Skagway. Specifically, the City stated (p. 13):

DCED’s comparison of Skagway’s Service Areas and how they equated to the diversity of interests by Census data was another area that appears to have missed DCED’s intended mark. Skagway is not separated into neighborhoods based on ethnicity, language, age, education or household incomes, as portrayed by DCED. Skagway is a “regional” government over as large an area as is possible, given our “enclave” status established by actions of a previous Local Boundary Commission.

The comment suggests an inaccurate reading of DCED’s Preliminary Report. DCED characterized the five differential tax zones as discrete areas within the corporate boundaries of the City of Skagway reflecting “distinct land use patterns and divergent needs for municipal services.” (Preliminary Report, p. 57). DCED never referred to the five areas in terms of distinctions based on ethnicity, language, age, education, or household income as alleged by the City. Census data for the differential tax zones do not even exist.

Moreover, the geographic size of the area within the corporate boundaries of the City of Skagway notwithstanding, DCED does not view the Skagway city government as a regional government. Skagway

residents and officials have played active roles in boundary determinations for both the City of Skagway and the Haines Borough.

Nature of the Skagway Economy. The City was critical of the manner in which DCED's Preliminary Report characterizes the Skagway economy. In that regard, the City offered the following comments (p. 14):

DCED chooses to stage tourism in Skagway as basicly (sic) its ONLY economy. Skagway is proud of its largest economic sector and has focused on development of that sector.

The City's characterization of DCED's report is inaccurate. DCED did note, however, on page 32 of its Preliminary Report, that Skagway Chamber of Commerce Director Tina Cyr had made remarks similar to those that the City attributes to DCED. The Alaska State Chamber of Commerce published an article authored by Ms. Cyr in November 2001, which characterized the Skagway economy as follows:

Today, Skagway's population is around 800 residents. Tourism is the economic mainstay of the town. In fact, tourism is basically the *only* (emphasis original) economy in this town besides other small commerce and businesses.

Paradoxically, the general misstatement about DCED's characterization of the Skagway economy being dependent on tourism is immediately followed by numerous references by the City to DCED's Preliminary Report as evidence of the diversity of the Skagway economy. The City states in that regard (p. 14):

Skagway has not, as a result, forgotten or forsaken the other facets of its economy as is evidenced in Figure F-6, Pg. F-9 the Report. This chart, PERCENTAGE OF EMPLOYED CIVILIANS 16 YEARS OF AGE AND OLDER BY OCCUPATION (source 2000 census), shows comparison of Haines and Skagway's employment in various sectors. This chart shows that Skagway has a larger percentage of service occupations, sales and office occupations, and construction, extraction and maintenance than does Haines. In contrast, Haines prevails with a larger percentage in management, professional and related, farming, fishing and forestry, and in production, transportation and material (but only by .30 of one percent in the latter category). This proves that Skagway has a spread of jobs equal to that of Haines that would continue to sustain our economy if our tourism industry was not sustained at the current levels. It is further proven by DCED's statement on Pg. F-9, the Report, that "The greatest disparity was in the transportation, warehousing, and utilities industries. The percentage of employment in those industries within the City of Skagway was 16.8 basis points higher than it was within the Haines Borough." DCED suggests in the same paragraph, "The disparity is largely due to the extensive operations of the White Pass & Yukon Route Railroad and other tourism-related transportation operation in Skagway. The fact electricity for Haines is generated in Skagway may also contribute to the disparity." Skagway's port is a very critical port to the

Yukon Territory and as such, moves large amounts of freight and supplies both in and out of Skagway that have no relation to tourism. For example, Whitehorse ships its recyclables South through Skagway's port except for scrap metal, which has only recently become more cost effective to truck down the Alcan Highway; Petro Marine ships an average of about 1.6 million gallons of fuel per month from Vancouver, B.C. across Skagway's port and on to Whitehorse by truck. Alaska Marine Lines reported shipping 24 containers of staple products and supplies per week between Skagway and the Yukon Territory, using the larger 53' containers as an efficiency measure.

The level of non-tourism related port activity is driven directly by the economic situation in the Yukon. The benefits Skagway currently enjoys are not insignificant, but are still a reflection of a Yukon economy in fairly extreme depression. The opening of a mine, the construction of a pipeline, or any other industrial development in the Yukon will automatically drive upward the freight transshipment activity in Skagway. This common interest with the Yukon Territory in development of our resources to maximize our economic growth and develop jobs was the impetus that prompted the Memorandum of Understanding with respect to a Commerce Development Plan between the Yukon Territory and Skagway. (Attachment A)

Media Serving Skagway. The City of Skagway takes the view that residents of the community have only "cursory interest in the news" pertaining to Haines (p. 16). The City noted in that regard that the *Chilkat Valley News* has minimal circulation in Skagway. Nonetheless, the *Chilkat Valley News* is listed among the "newspaper(s) serving the territory proposed for incorporation" in the Skagway Petition (p. 46).

A search by DCED of the *Chilkat Valley News* archives available on the Internet (from May 2000 to the present) revealed 85 stories in which Skagway is mentioned. Certain of the stories reflect the capacity of the two communities to work cooperatively in serving common interests. Consider, for example the following excerpts, each from a different story in the *Chilkat Valley News* archives:

Haines Volunteer Fire Department rescue squad members stood by Tuesday to help with recovery efforts. Member Roger Martinez said the Haines crew was ready to travel to the crash site via fishing boat, but wasn't needed by the Skagway crew, which led the rescue and recovery effort.

Both of Haines' water taxi services are looking to expand next summer, as the market for travel between Haines, Skagway and Juneau grows. . . . He said the company's existing catamaran will remain on its Haines-Skagway route next year. Haines-Skagway Water Taxi is finishing its 10th year in business. Jacobson said he believes the market for transportation in Lynn Canal will remain strong. "We had a very good year last year and our feeling is that this year is another good year."

A Haines man is being treated for head wounds and other injuries at Providence Hospital in Anchorage after a goat-hunting accident in Taiya Inlet last Thursday. Skagway Volunteer Fire Department members used

climbing gear to pluck hunter Dave Shackford from atop a cliff near Kasidaya Creek, about four miles south of Skagway, where Shackford laid semi-conscious after falling. Shackford, 46, suffered a concussion, a collapsed lung, broken ribs and collarbone, and received facial bruises in the accident. He was medevacked by jet from Whitehorse to Anchorage Friday morning after initial treatment at Whitehorse General Hospital.

More than 60 business and government leaders from Haines, Juneau and Skagway met in a day-long session Saturday to identify common opportunities, problems and solutions. The tri-city meeting, sponsored jointly by the three Chambers of Commerce, was capped by a pledge to continue and expand the collaboration, and creation of a mayoral task force to work on improved ferry service. Participants heralded the gathering held at the American Bald Eagle Foundation [in Haines] as a success.

Proximity and easy access to Skagway sold Holland America-Westours on Haines, city manager Marco Pignalberi said. The Seattle-based cruise line was the first bite in Haines' new campaign to sell itself as an auxiliary port for Skagway.

The [KHNS] board also unanimously voted to appoint Laura Moscatello to its ranks, filling an at-large seat vacated by the resignation of Cynthia Williams. Moscatello is a seasonal Skagway resident who has volunteered at the station's Skagway studio. Moscatello was the sole candidate after other Skagway residents withdrew their names. . . . The board set its annual fundraising drive for June 24-30. The board hopes to raise \$35,000 in the event this year, including increased participation from Skagway.

Reimer served as news director at KHNS in Haines from 1997 to 1999, before moving to Skagway last year to assume the radio station's Skagway news reporter job. He left news last spring to work as an actor at one of Skagway's most popular visitor attractions, the Gold Rush Trail camp.

After six mayors, five borough clerks, and 15 years on the job, [Haines] borough assessor and land manager Dan Turner is stepping down. . . . He said the move also will allow him to devote more time to developing the family's Skagway-based glacier dogsled tour. "We're not leaving. I'll still be around."

Talk about your mental health holiday. The director of Lynn Canal's counseling service left for vacation in November and never came back. . . . Her job duties included counseling clients in Haines and overseeing the corporation's office in Skagway. Another counselor has been handling Younger's clients.

Cranston worked in Skagway on the railroad and spent many years as a commercial gillnetter and seiner. . . . Cranston also worked a commercial setnet site off Letnikof Point [near Haines]. . . . Cranston spent most of his years in the Chilkat Valley, but also lived in Skagway.

Fourteen people have applied for the new job of City of Haines tourism coordinator. The position no longer includes administrative and planning responsibilities formerly held by the city tourism director. . . . Local

candidates are . . . former Skagway tour operations assistant Michelle Glass.

A rare "red flag warning" for fire danger from the National Weather Service and an indefinite valley-wide ban on open burning mark the driest spring on record. . . . Josephson said the valley is well-covered for forest fires. 18 new recruits recently completed a wildlands firefighting course, enlarging the ranks of a combined Haines-Skogway fire crew to 26.

[Yukon premier Pat] Duncan said the territory will still consider Haines and Skogway as potential shipping ports. "We believe through working with our Alaskan neighbors we can secure access to tidewater without purchasing the properties. We will continue to work with municipal governments and business to insure Yukon goods will get to market."

“Contrived” Boundaries. The City seems to take exception to DCED’s characterization that the proposed Skogway borough boundaries are contrived (p. 16). DCED used the term to convey a sense that the proposed boundaries encompass an artificially constrained area – as opposed to a natural region in the context of borough government.

Multiple Communities. The City notes that Vic Fischer expressed criticism over the standard relating to multiple communities. Specifically, the City states (p. 17)

As Vic Fischer pointed out in his October 11, 1991 memorandum to the LBC, both the constitution and state law relate these criteria to population and only population, not to cities or communities. He states: “The regulation requiring at least two communities to form a borough is based neither on the constitution nor on law. It lacks fundamental logic. To my mind, it gives rise to specious arguments that appears to have great significance. In fact, it should have no relevance to resolving questions of borough formation. Anchorage would have been appropriate to borough formation because there was, in addition to a large city, a hamlet with a small handful of residents, such as Basher or Glen Alps. Likewise, Sitka is essentially a one-city borough. The criteria for borough incorporation should be whether the proposal makes sense in the broader scheme of things and not some arbitrary and artificial standards, be they rigid or presumptive.” (emphasis added by Petitioner)

DCED notes, again, that the standard calling for multiple communities is flexible. If the Commission determines that a petitioner demonstrates that it meets the borough standards without embracing multiple communities, the Commission may waive the requirement.

Dyea as a Community. The City indicates that, “While Dyea may be a ghost town historically, there is substantial recent development around the area of ‘Dyea,’ and it is anticipated that development will only increase, particularly because of the Chilkoot Trailhead attraction” (p.

17). The City takes the view that Dyea is a separate community. In support of that view, the City makes the following statement (p. 18):

As is evidenced by Attachment C, the *Anchorage Daily News* referred to Dyea as a “small town” during the recent flood caused by a landslide into a nearby lake. Because Skagway does not have two defined “communities” by DCED’s standards, whatever they are, should have NO bearing on your decision regarding a Skagway borough. The Petitioner recognizes Dyea in the same context that Haines views Mud Bay and Lutak in relation to their City. It is a separate and distinct community dependent to a large degree on Skagway for shopping, entertainment, etc., just as Mud Bay and Lutak are dependent upon Haines.

The City refers, incorrectly, to “DCED’s standards” in judging whether Dyea is a community. The Local Boundary Commission, not DCED, adopted the standards in question. Moreover, while the City indicates ignorance of the standards (i.e., “DCED’s standards, whatever they are”), the standards established in law were carefully enumerated in DCED’s Preliminary Report (p. 81 and 82).

Among the factors established in the standard is that “Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if ... (2) the population is adjacent to a community and is dependent upon that community for its existence.” (3 AAC 110.920(b)(2)). Comments by the City above and elsewhere in its July 29 letter (e.g., response by Skagway to the flood in Dyea) support the conclusion in DCED’s Preliminary Report that Dyea is dependent upon Skagway for its existence.

Establishment of Standards by the LBC. The City asserts incorrectly that the legislature must approve standards established by the Local Boundary Commission under the provisions of AS 44.33.812(a)(2) (p. 18).

Standards established by the Commission under AS 44.33.812(a)(2) are not subject to legislative approval. However, in the previously cited *Port Valdez Company* case, the Alaska Supreme Court noted (at 1148) that one of the reasons that the legislature gave the Commission the broad power and duty to adopt regulations was “to expose basis decision-making processes of [the] local boundary commission to public view and thus subject commission action to broad corrective legislation.”

Highway Maintenance Funding. The City seems to suggest that DCED characterized Skagway as an isolated target for reductions in State highway maintenance funding. In that regard, the City states (p. 18):

DCED acknowledges that the Petitioner meets standard **3AAC 110.045(c)** “if narrowly applied”. (Pg. 89, the Report) DCED expresses concern about the Department of Transportation and Public Facilities’ (DOT&PF) ability to maintain state highways, roadways, and airports in Skagway. It points out that in the 1980’s, DOT&PF employed a substantially larger maintenance crew in Skagway than it does currently. The fact is that the concern expressed is true all over the State, although there was no mention of whether there were similar cuts within the Haines Borough.

DCED correctly noted on page 89 of its Preliminary Report that funding cuts were a statewide issue:

Maintenance of State highways, roadways, and airports in Alaska, including those in Skagway, is becoming increasingly difficult as a result of continuing budget cuts.

The City of Skagway made an impressive pledge indicating that it “has already made plans to make up for the loss of one full and one winter maintenance position when those cuts are made by DOT&PF by accepting additional road maintenance responsibility in specific areas.” (p. 19) DCED continues to acknowledge that the Skagway city government contributes substantially in support of fundamental local public services.

Ferry Service. The City of Skagway indicates that DCED failed to address the importance of ferry system transportation in comparison to other forms of transportation. The City notes in that regard (p. 19):

The Petitioner has demonstrated within these written comments that there is substantially larger numbers of people traveling over the Klondike Highway than there is by the Alaska Marine Highway System. The Petitioner was not able to obtain comparisons of air traffic, but suffice it to say, if available, those numbers would also reflect substantially less people than travel via the Klondike Highway.

DCED previously addressed in this Final Report the issue of ties between a community in Alaska and one in Canada in the context of setting municipal boundaries in Alaska. Moreover, as noted in the Preliminary Report (p. 64) the Alaska Supreme Court recognizes ferry links as evidence of regional social and economic links between communities. Further, the standards for borough formation also reference ferry transportation.

Boundaries’ Conformance with Natural Geography. The City objects to DCED’s reference to the model borough boundaries in the context of the examination of the extent to which the proposed Skagway borough boundaries conform generally to natural geography. The City notes (p. 21):

. . . the boundaries do not conform to the aged Model Borough Boundaries or Regional Education Attendance Areas, although the latter does not seem to weigh as heavily with DCED in its interpretation of the administrative standards. The proposed Skagway borough area is appropriately described on Pg. 92, the Report, and will not be repeated in this document. The proposed Skagway borough boundaries most certainly conform to natural geography, just as a previous commission determined that the Haines Borough boundaries conformed to natural geography when their petition to form a borough was approved.

DCED finds it appropriate to refer to model borough boundaries when considering the geography standard. After all, the Commission considered natural geography along with all other boundary standards when it defined model borough boundaries for the unorganized borough in the early 1990s. With regard to the City's reference above to "aged Model Borough Boundaries," DCED notes that age alone is not a significant factor in judging whether a particular boundary is outdated. For example, the boundaries of the City of Skagway are more than twice as old as the "aged Model Borough Boundary" for the Lynn Canal region.

"A Mere Paucity of the Present Borough Standards." The City attempts to reconcile its current characterization of the area proposed for incorporation as a region that meets all standards for borough incorporation with its characterization in 1979. As noted in DCED's Preliminary Report, twenty-three years ago, the City of Skagway stated that the identical area under consideration in the current proceeding represents "a mere paucity by present borough standards prevailing in the state." The City notes in its July 29 comments (p. 23):

. . . the Petitioner feels it is important to understand the context in which the "mere paucity" statement was made. Quoting from the 1979 petitioner's brief: "Lastly the Council acknowledges a legislative trend toward classification of all lands in the State and toward elimination of the unclassified borough. Enlargement of the City of Skagway's boundaries to 431 square miles might be considered large for a city, but it is a mere paucity by present borough standards prevailing in the state." The Petitioner wishes to point out that the writer was absolutely correct in 1979! There was no provision for Skagway to become a unified city/borough government at that time, and their ONLY independent option was to opt for expansion of the City of Skagway into the territory to protect their state land selection.

The City is correct that there was no option to become a "unified/city borough government at the time." The significance of such, however, is unclear since Skagway is not now proposing to become a unified city/borough. Instead, the community proposes concurrent city dissolution and borough incorporation. That option was available under Alaska law well before the City petitioned to expand its boundaries in the late 1970s.

Model Borough Boundaries. The City of Skagway seems to suggest that DCED misconstrues – intentionally or unintentionally – the degree to which the model borough boundaries are up-to-date. The City states in that regard (p. 24):

DCED refers to the (sic) “revised as of June, 1997 and adopted by reference” (Pg. 101, the Report), as if the Model Borough Boundaries were updated at that time. However, the update that is implied is only one change, made by the Local Boundary Commission in 1997 in its decision to approve an annexation petition by the City and Borough of Yakutat for additional land. The actual Model Borough Boundaries were drawn and adopted in 1992 and have suffered no comprehensive review since that time.

Any suggestion of error on the part of DCED regarding the characterization of the model borough boundaries is unfounded. The portion of DCED’s Preliminary Report to which the City refers is clearly identified by DCED as a citation of State law that provides the formal definition of “model borough boundaries.”

Consolidation of Coastal Management Districts and Platting Authorities. The City of Skagway questions DCED’s assertion that inclusion of multiple city-based coastal management districts and platting authorities into a single borough would result in the consolidation of those units. Specifically, the City states (p. 25):

DCED notes that the City of Haines and the City of Skagway operate independent coastal management districts (CMD), with the City of Haines’ CMD encompassing an estimated 20.9 sq. miles, while the City of Skagway’s CMD is an estimated 154 sq. miles. DCED notes that state standards apply to the portion of the area not within the two cities, and alludes to the fact that, were Skagway included in the Haines Borough, the Coastal Management Districts would be combined. Similarly DCED notes that the same theory applies to the platting authority. The Petitioner would note that if the City of Haines and the balance of the Haines Borough are not combined currently in the CMD and platting authority, then why does DCED assume that by the mere fact of inclusion of Skagway into the Haines Borough, all coastal management and platting functions would miraculously be combined? There is no basis for this assumption.

There is indeed a basis for DCED position. AS 46.40.210(2) makes no provision for city-based coastal management districts within an organized borough. The borough government alone is qualified to be the district. Likewise, AS 29.35.180 provides that the borough would be the areawide platting authority, although the platting function could be delegated by the borough to cities within the borough.

Education. The City of Skagway offers a number of comments regarding the discussion of education in DCED’s Preliminary Report. Specifically, the City states (p.25):

DCED purports that by forcing Skagway into the Haines Borough and the elimination of one school district, the education of the children in Skagway schools would be enhanced through reduction in costs through economies of scale. The Petitioner notes that first class cities such as Skagway are required to pay local contributions, while REAA's are not. Any benefit to the state, or more importantly, to our school children, is purely conjecture on DCED's part. There are no facts to show that children in borough schools are better educated. The fact that a student is educated in a borough school does not automatically make that education less expensive or better. Some boroughs in Alaska pay over \$11,000 per student, yet have scored poorly on the recent statewide test models.

When comparing the local contribution as a percentage of total school budget, the City of Skagway scores as one of the top 5 communities in the state. It is doubtful that one could find another community of 862 people that even approaches contributing 54% of their total school funding from local sources. This certainly demonstrates a strong commitment to our student population--the future leaders of our region.

The City of Skagway does not accurately reflect the comments made in DCED's Preliminary Report. DCED stated on page 108, that "Proponents of school district consolidation often cite reductions in costs and the opportunity to enhance instruction through economies of scale as important advantages of combining school districts." DCED also correctly noted on page 54 of its Preliminary Report that the State legislature has imposed student population limitations on the creation of new school districts and that Skagway's student population was less than half of the minimum standard. DCED also noted, however, that the Commissioner of the Department of Education could grant waivers if doing so were determined to be in the best interests of the State and the proposed district. Lastly, DCED correctly noted on page 105 of its Preliminary Report that the State legislature has imposed standards on the minimum percentage of education funding that must be spent for instruction. As noted on page 106 of the Preliminary Report, the City of Skagway school district has sought and received waivers of that standard from the State Board of Education every year since it was implemented.

Best Interest of the State. The City stresses that the Alaska Supreme Court has interpreted the maximum local self-government clause to 'favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.' Still, every standard established in law must be met.

The City claims that “Skagway is the first area to come forward with a petition to form a borough in OVER TEN YEARS” (p. 28). That is factually inaccurate.¹⁶

The implication seems to be that DCED and the LBC should embrace Skagway’s borough proposal because areas of the unorganized borough, except for Skagway, are universally unwilling to form boroughs. DCED notes that there has never been a lack of interest among communities in the unorganized borough to form single-community boroughs. Resistance arises only when prospective boroughs encompassing large and natural regions are considered. If single-community boroughs become routinely accepted, many more proposals to incorporate such boroughs will surely follow. For reasons outlined on pages 113 – 119 of DCED’s Preliminary Report, such is not in the broad public interest.

Views Expressed by Vic Fischer in 1991. The City of Skagway recites the following comments made to the LBC by Vic Fischer in 1991:

“Boroughs are still evolving creatures. Rigid criteria and a straightjacket are not called for. The need for flexibility and flexible standard is reflected in the constitutional record, the Final Report, The PAS report, Tom Morehouses’s and my writings, and other sources. This gives the LBC much room for exercising judgment, making its own sensible decisions, and structuring a logical borough system for Alaska.” He continues: “There is need now to adjust boundaries of some existing boroughs. The sooner the LBC starts using its authority to initiate boundary changes, the better its power to do so will be established. The borough creation process is a good time to accomplish this.”

DCED concurs with Mr. Fischer’s comments regarding the need for flexibility and sensibility. To the extent, however, that the City of Skagway infers support from Mr. Fischer for a prospective Skagway only borough, DCED notes, as indicated in the Preliminary Report (p. 48) that Mr. Fischer and Mr. Morehouse characterized the much larger Haines Borough as lacking the regional characteristics of a borough.

As noted in DCED’s Preliminary Report (p. 48), Mr. Fischer and Mr. Morehouse were not only critical of the Haines Borough, but were also critical of the Bristol Bay Borough, Lake and Peninsula Borough, and

¹⁶ A petition to incorporate a North Pole Borough encompassing parts of the Fairbanks North Star Borough and portions the unorganized borough was considered and rejected by the Local Boundary Commission in 1996. Additionally, a proposal to incorporate a Delta Greely borough was submitted to DCED in 2000. After conferring with the Local Boundary Commission Chair and the State Attorney General’s office, DCED rejected the proposal on technical grounds.

Denali Borough – all of which are substantially larger than the proposed Skagway borough – for the same reason. Thus, when Mr. Fischer referred in the 1991 memorandum to the need now to adjust boundaries of some existing boroughs, he was not likely referring to the division of larger boroughs into several smaller boroughs as the City of Skagway seems to suggest.

B. Review of the Written Comments from Mike Korsmo.

Skagway City Council Member Mike Korsmo submitted a two-page letter dated July 29, 2002. A copy of the letter is included in Appendix D of this report. DCED's review of Mr. Korsmo's comments follows.

Mr. Korsmo encourages DCED to “look outside the box and see that we are in a very unique situation in Skagway.” He indicates further that, “We may not fit the Model Boundary format but in this case I believe that it would be in the best interests of the State to seriously consider our petition.”

DCED has seriously considered the Skagway borough proposal. Moreover, DCED is confident that its analysis of the proposal is both thorough and fair. Moreover, the Local Boundary Commission – which is independent of DCED in matters involving policy determinations – will conduct its own impartial, comprehensive, and fair evaluation of the proposal.

DCED acknowledges that, to some degree, every neighborhood, community, and region in Alaska is unique. DCED continues to believe that its analysis and conclusions regarding the Skagway borough proposal reflects a proper application of the standards established in law.

Mr. Korsmo states that Skagway has a very efficient first class city that would transition well into a first class borough. He expressed the belief that “we already achieve maximum local self-government as shown in our ability to take care of our needs without much help.”

DCED has acknowledged that the City of Skagway is a sophisticated city government providing a broad range of essential municipal services to its residents. The issue at hand, however, is whether the area within the boundaries of the City meets the legal standards for borough formation. For reasons stated in DCED's Preliminary and Final Reports, DCED has concluded that the Skagway borough proposal does not meet those standards.

Mr. Korsmo indicates that if Skagway became part of a Lynn Canal borough based on model boundaries, the best interests of the state would be ill served. He indicates that “the bureaucracy would become large, spread out and inefficient thus not promoting the minimum number of local self-governments.”

Mr. Korsmo’s statement advances the premise that establishment of small localized boroughs would result in a minimum number of local government units. DCED does not concur with the premise. That theory would promote proliferation of local government units if other single-community boroughs emulated Skagway’s approach. Such would be contrary to the Constitutional policy promoting minimum numbers of local government units. As noted in the materials included in Appendix B of this Final Report, residents of many communities throughout the State have expressed interest in single city boroughs.

Mr. Korsmo notes that the City of Skagway already relieves the State of the substantial responsibility for providing local services. He cites Skagway’s school contributions and willingness to take on large projects such as flood control, boat harbor expansion, and road maintenance. He notes that, “We are willing and able to take on these things to insure that our area is protected, our children well educated, and our future growth is taken care of.”

DCED has not denigrated the City of Skagway’s record in terms of local service delivery. In fact, DCED has commended Skagway for the extent to which it shoulders responsibilities for provision of local services. However, again, the issue before the Local Boundary Commission is whether the City of Skagway meets the standards for borough incorporation. DCED believes that the facts in the record demonstrate that it does not.

Mr. Korsmo indicates that if Skagway were included with a borough based on the Lynn Canal model borough boundaries, it would eliminate Skagway’s ability to take on large projects. He notes that such would “force us to come to them with our hats in hand begging for funding.”

The argument advanced by Mr. Korsmo is often made in the full range of borough proposals that come before the Commission. For example, other proponents of single community boroughs typically make the same argument. Further, similar arguments have been offered by residents of large unincorporated communities in the unorganized borough as reasons to avoid borough government responsibilities altogether. Moreover, areas with relatively substantial tax bases within existing organized boroughs have offered similar views as a rationale for carving up those existing boroughs into smaller governments.

Lastly, existing small boroughs make the argument to resist being integrated into adjoining larger units.

Ultimately, again, the Commission's decision concerning the Skagway borough proposal will be based on the extent to which the proposal is determined to satisfy the applicable legal standards.



Summary of Final Conclusions and Recommendation

After due consideration of the comments provided at the July 25 informational meeting and timely written comments filed regarding DCED's Preliminary Report, DCED reaffirms the Preliminary Report conclusion that the Skagway borough proposal does not meet all applicable standards. A summation of DCED's views regarding the Skagway borough proposal and the Department's recommendation to the Local Boundary Commission follows.

Standard Number One - City Dissolution

The Skagway city government would dissolve, as the Petitioner intends, upon the areawide assumption by the proposed Skagway borough of all powers currently exercised by the City of Skagway. As noted in Part 3 of this Final Report, it appears now that the list of proposed areawide borough powers set out in the Petition is incomplete if the dissolution standard in AS 29.06.450(c) is to be met. Again, DCED urges the Petitioner to review the list and to carefully compare it to functions currently carried out by the City of Skagway to ensure that it is accurate and complete. Based on the foregoing, the dissolution standard would be met only if daycare assistance is added to the powers to be assumed by the borough. The Petition should be amended accordingly if it goes forward.

Standard Number Two - Borough Classification

The Petition consistently proposes incorporation of a first class borough. New first class boroughs are permitted under the law. Thus, the standard in AS 29.05.031 regarding permissible classes of borough incorporation is met.

Standard Number Three - Transition Plan

The Petitioner's one-page transition plan is terse. However, since the Petition proposes to just reconstitute the City of Skagway as the Skagway borough – with no change in jurisdictional boundaries or powers – the Petitioner has provided an adequate plan for the

“transition.” Local officials were consulted in the development of the transition plan. Therefore, the standard set forth in 3 AAC 110.900 is satisfied.

Standard Number Four - Effect on Civil and Political Rights

Given that the existing city government and proposed borough government are indistinguishable, except in name, the proposal would affect voting rights only in a nominal sense. It would not deny civil or political rights because of race, color, creed, sex, or national origin. Thus, the standard set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 is satisfied.

Standard Number Five - Budget Feasibility

Skagway is a community with substantial financial resources. The budget included in the Petition is feasible and plausible. As such, the Skagway borough proposal meets the standard set out in AS 29.05.031(a)(3) and 3 AAC 110.055.

Standard Number Six - Size and Stability of Population

Given the nature of the proposal (i.e., the simple reconstitution of the City of Skagway as the Skagway borough) the population of the City of Skagway is, by definition, large and stable enough to support the proposed Skagway borough. Thus, *narrowly applied*, the standard in 3 AAC 110.050(a) is met. However, that conclusion is not intended to be construed as an inference that the broader statutory standard relating to population size, stability, interrelation, and integration is also met.

Standard Number Seven – Presumption of 1,000+ Residents

Again, given the particular nature of the proposal, the presumption that there must be at least 1,000 residents is surmounted when the same narrow application is used as was the case regarding the preceding standard.

Standard Number Eight -Common Social, Cultural, and Economic Interests

Article X, Section 3 of Alaska’s constitution advances the principle that each borough will comprise a large region within which residents have common social, cultural, and economic interests. Moreover, Article X,

Section 1 calls for a minimum number of local governments. The proposed Skagway borough is not consistent with either of those fundamental constitutional provisions. Therefore, by definition, the population at issue cannot be socially, culturally, and economically interrelated and integrated *in the context of borough government*. In the same respect, the population of the proposed Skagway borough cannot be large and stable enough to support borough government as framed under the constitution. Consequently, the standards set out in AS 29.05.031(a)(1) and 3 AAC 110.045(a) are not satisfied by the Skagway borough proposal.

Standard Number Nine - Presumption of Multiple Communities

In the context of borough government, Skagway has no particular geographic, social, cultural, or economic characteristics that warrant a single-community borough. The Petitioner stresses that Skagway already provides “borough services,” however, many communities in the unorganized borough can claim that they provide or have the capacity to provide such services. Further, inferences by the Petitioner notwithstanding, the single-community borough standard is legitimately established in law. Moreover, other single-community boroughs are not comparable to Skagway. Lastly, Dyea is not a second community as the term is defined in law. Therefore, the Skagway borough proposal does not overcome the threshold requirement in 3 AAC 110.045(b) for multiple communities.

Standard Number Ten - Adequate Transportation and Communication Facilities and Services

Transportation and communications facilities and services are well developed on a community level. The standard set out in 3 AAC 110.045(c) is met if applied narrowly in the context of the proposal put forth by the Petitioner. However, the related standard in AS 29.05.031(a)(4) clearly calls for a broader application in the context of borough government as conceived by the founders. Therefore, the communications and exchange standard is not met.

Standard Number Eleven – Transportation and Communication Links with Other Communities

The law presumes that all communities within a proposed borough are connected to the seat of the proposed borough by road, scheduled airline flights, a charter flight service based in the proposed borough, regular ferry service, or sufficient electronic media communications.

The proposed Skagway borough has a well-developed intra-community transportation and communication system. However, the proposed Skagway borough lacks multiple communities and does not overcome the presumption in law for such. Consequently, by definition, it cannot meet the standard in 3 AAC 110.045(d).

Standard Number Twelve - General Conformance with Natural Geography

In a narrow sense, the proposed Skagway borough conforms generally to natural geography. However, the scale on which it does so is undersized by such magnitude as to render the proposal clearly wanting in terms of the standard at issue. The Skagway borough proposal does not satisfy the geography standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) when applied in the proper regional context.

Standard Number Thirteen - Inclusion of All Areas Needed for Efficient and Effective Delivery of Services on Regional Scale

The same area proposed for incorporation as a Skagway borough was portrayed by the City of Skagway in 1979 as “a mere paucity by present borough standards prevailing in the state.” DCED considers the 1979 description to be accurate to the degree that the Skagway borough proposal lacks of all necessary areas for efficient and effective delivery of services on a regional scale. Thus, the standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) is not satisfied with respect to the Skagway borough proposal.

Standard Number Fourteen—Suitability of Model Borough Boundaries

The Petitioner proposes to carve out a new borough from a tiny fraction of the area within what is already a relatively small model borough. Doing so would transform a small city school district – one that ranks in the tenth percentile in terms of enrollment into a borough.¹⁷ Such characteristics are neither consistent with constitutional policies nor fundamental public policies set by the legislature. For those reasons and others expressed in the analysis of standard number fourteen, the Skagway borough proposal does not make the requisite specific and persuasive showing that the model borough boundaries for the Lynn

¹⁷ Figure 30 on page 127 of DCED’s Preliminary Report provides detail of school district enrollment as of October 1, 2001.

Canal area are inappropriate. Therefore, the standard set out in 3 AAC 110.060(b) is not satisfied.

Standard Number Fifteen - Suitability of Regional Educational Attendance Area Boundaries

Neither the proposed Skagway borough boundaries nor the Chatham REAA boundaries are consistent with the broad public interest in a full balance of the borough incorporation standards. The Lynn Canal model borough boundaries are superior to both. Consequently, the Skagway borough proposal does not meet the standard set out in 3 AAC 110.060(c).

Standard Number -Sixteen – Contiguity and Inclusiveness

The tiny area proposed for incorporation is comprised of contiguous territory without enclaves. However, in a broader context, the proposed Skagway borough is an enclave within the Haines Borough. That circumstance is among several noted previously which render the proposed Skagway borough boundaries unsuitable.

Standard Number Seventeen – Overlapping Territory

The territory proposed for incorporation does not overlap any area currently within the boundaries of another existing organized borough. Consequently, the standard set out in 3 AAC 110.060(e) is satisfied.

Standard Number Eighteen - Best Interests of the State

Granting the Skagway borough proposal would do nothing to promote maximum local self-government. In fact, for reasons cited in the analysis in Chapter 3, it runs counter to the principles of local self-government. A Skagway borough would also contravene the constitutional principle of minimum numbers of local governments. Moreover, approval of a Skagway borough would set a “precedent” with far-reaching adverse consequences. Lastly, approval of the Skagway borough would have adverse impacts on State resources with no corresponding relief to State government in terms of responsibility for providing local services, as is typically the case with other boroughs. Consequently, the Skagway borough proposal does not serve the best interests of the State as required by AS 29.05.100(a).

Final Recommendation

The law provides that the Commission may approve a petition for borough incorporation only if it determines that every one of the eighteen standards is met. Because DCED has concluded that many of the borough incorporation standards are not met by the Skagway proposal, DCED is compelled to hereby reaffirm its preliminary recommendation that the Commission deny the Petition.

APPENDIX A

BIOGRAPHICAL INFORMATION - MEMBERS OF THE LOCAL BOUNDARY COMMISSION

APPENDIX A

BIOGRAPHICAL INFORMATION - MEMBERS OF THE LOCAL BOUNDARY COMMISSION

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership."

Information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978).

Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Myrna Gardner serves from the First Judicial District and is a resident of Juneau. She was appointed to the LBC on July 18, 2002. An Alaska Native, Commissioner Gardner is Tlingit and Haida Indian. Her Tlingit name is X'éishx'w (Bluejay) and is Yéil Moiety, Duk'tool, Wéix' coming from the Taakwaaneidi Hi't (Raven/Skulpin house) from the village of Sxwaan of the Hinyaa

Kwaan (Klawock) people. She is Chankweidi Yadi. (child of the Haida people on her father's side). She is presently a Business Development Specialist for an Alaska Tribe. Commissioner Gardner has been employed in the private business sector over 15 years and has served in leadership positions ranging from Chairman of Klawock Heenya Corporation, Vice-President of Klawock Island Dock Company, Klawock School Board, Private Lands Wildlife Management Vice-Chair and President of the Alaska Native Sisterhood Camp 14. Ms. Gardner's term on the Commission expires January 31, 2006



Bob Harcharek serves from the Second Judicial District. He was appointed to the LBC on July 18, 2002. Mr. Harcharek has lived and worked on the North Slope for more than 20 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is a Senior Planner and Social Science Researcher for the North Slope Borough Planning Department. Mr. Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Capital Improvement Projects and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Ukeagvik Inupiat Corporation and Dean of the Inupiat University of the Arctic. Mr. Harcharek served for two years as a Peace Corps Volunteer in Thailand was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska Municipal League Legislative Committee. His current term on the Commission expires on January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's current term on the Commission expires January 31, 2007.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the former Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her current term on the Commission expires December 21, 2004.

APPENDIX B

**JULY 25, 2002 SKAGWAY BOROUGH INFORMATIONAL
MEETING HANDOUTS**



AGENDA

SKAGWAY BOROUGH

INFORMATIONAL MEETING

Thursday, July 25, 2002 – 7:00 p.m.
Skagway City Council Chambers
700 Spring Street (McCabe Building)
Skagway, Alaska

I Introductory Comments by DCED

II “Seven Key Points Regarding the Skagway Borough Proposal and Boroughs in General”

- A. Summary by DCED
- B. Questions and Comments from the Public

III “Maximize the Effectiveness of Your Comments to the LBC Regarding the Skagway Borough Proposal”

- A. Summary by DCED
- B. Questions and Comments from the Public

IV “Future Proceedings Regarding the Skagway Borough Proposal”

- A. Summary by DCED
- B. Questions and Comments from the Public

V Opportunity for Other Relevant Questions and Comments from the Public

VI Opportunity for Public Comment on DCED Preliminary Report

VII Adjourn

Prepared by DCED for Public
Informational Meeting on Skagway
Borough Proposal

July 25, 2002 – 7:00 p.m. – City
Council Chambers, McCabe
Building, Skagway

(Citations of page numbers are made
with respect to DCED's Preliminary
Report – refer to those pages in the
report for further information)

The Seven Key Points:

- 1** Borough governments are distinctly different from city governments.
- 2** A borough proposal may be approved only if it meets all standards established in law.
- 3** Petitioners adopt local views, however, LBC must take a statewide and regional perspective.
- 4** DCED uses the same standards and perspective as LBC. DCED recommendations are not binding.
- 5** DCED's views here are consistent with its long-term views regarding similar proposals.
- 6** Denial of pending petition does not mean Skagway will be annexed to Haines Borough.
- 7** Approval of Petition would not provide "ironclad" guarantee that Haines will not annex Skagway.

Seven Key Points Regarding the Skagway Borough Proposal and Boroughs in General

**Borough governments are
1 distinctly different
from city
governments.**



- ❑ A borough government is a regional municipal government. (p. 2 – 3, 45, 59 – 64, 72, 74, 77, 79, 110, 122, A-1, B-4 – B-5).
- ❑ A city is a municipal government whose corporate boundaries are intended to be limited to a community. (p. 2, 59, 61, 99, 122, B-4 – B-5).

**A borough proposal
2 may be approved only
if it meets all
standards established in law.**

- ❑ The LBC may approve a borough proposal only if it meets all standards under the state constitution, statutes, administrative code, and is in the best interests of the state. (AS 29.05.100)
- ❑ Eighteen separate standards must be met in order for the Skagway Petition to be approved. (p. 7-8)

**Petitioners adopt local views,
3 however, LBC must
take a statewide and
regional perspective.**

- ❑ Petitioners invariably come to the LBC seeking to serve local interests. This is understandable since they are representing their local area.
- ❑ The LBC was created to view boundary proposals objectively from a statewide and regional perspective. (p 4, 122, B-5)

**DCED uses the same
4 standards and
perspective as LBC.
DCED recommendations are
not binding.**

- ❑ DCED serves as staff to the LBC; however, DCED & LBC are independent of each other in terms of policy views. (p. 5)
- ❑ DCED is required by law to examine petitions before the LBC acts on them. It does so by using the same standards that the LBC must use to evaluate the proposal. DCED also adopts

the same non-parochial viewpoint that the LBC must embrace when considering a petition. (p. 5)

- Occasionally, DCED and LBC differ in terms of their policy views concerning application of standards (just as members of the LBC sometimes have legitimate differences among themselves). DCED's recommendations to the LBC are not binding. (p. 5)

DCED's views here are

5 consistent with its long-term views regarding similar proposals.

- Skagway is not being "singled out" in terms of DCED's position regarding borough government.
- DCED, and its predecessor DCRA, have consistently supported borough proposals encompassing large and natural regions. However, they have also consistently opposed proposals to create boroughs encompassing small areas that lack the characteristics of a borough. The latter includes the following individual areas: Angoon, Unalaska, Nikiski, North Pole, Anchorage, Salcha, Valdez, Homer-Ninilchik, Wrangell, Girdwood, Tyonek, Twin Hills-Togiak, Tanana, Eagle-River, Nome, Bethel, Whittier, Petersburg, Nenana, Cordova, Dillingham, Tanana, and Pelican.

Denial of pending petition

6 does not mean Skagway will be annexed to Haines Borough.

Scope of pending Petition is limited to proposed creation of a Skagway borough. (p. 6).

- Denial of Petition maintains status quo, which has been in place for 41 years – Skagway has operated a first class city for 102 years, it has been in the unorganized borough since 1961. (p. 6)
- Haines Borough Assembly Resolution # 537 appears to indicate that, at least in November 2001, the Haines Borough had no interest in annexing Skagway. (p. 11)
- Any proposal to annex Skagway to an existing borough would require a separate petition. Historically, only local governments or residents seeking change have initiated petitions to the LBC.
- State's interest in promoting boroughs is greater in parts of the unorganized borough other than Skagway. DCED recognizes Skagway as a sophisticated city government. Skagway and the 17 other home rule or first class cities in unorganized borough already have the same duties and powers as boroughs. Moreover, DCED has consistently recognized that Skagway contributes substantially in support of local education and other fundamental public services.

Approval of Petition would

7 not provide "ironclad" guarantee that Haines will not annex Skagway.

- Municipal governments may be merged with, annexed to, or consolidated with other municipal governments through the "legislative review" process (which involves a petition to the LBC that is not subject to a local vote). The legislative review process has been utilized approximately 125 times since statehood, including twice by the City of Skagway and twice by the Haines Borough.
- In addition to the legislative review process, municipal governments may be merged with, annexed to, or consolidated with other municipal governments through a local option petition to the LBC which is subject to approval by a majority of the total votes cast.
- If the boundaries of the City of Skagway were not coterminous to those of the Haines Borough, it would no longer be subject to merger or consolidation (but would remain subject to annexation).

Maximize the Effectiveness of Your Comments to the LBC Regarding the Skagway Borough Proposal

Prepared by Department of Community & Economic Development for
Skagway Borough Informational Meeting – City Council Chambers, McCabe Building, 7:00 p.m., July 25, 2002

If you plan to offer remarks during the public comment portion of Local Boundary Commission (LBC) hearing concerning the Skagway borough proposal, the following tips are offered to make your comments more effective.

A. Come Prepared and Informed

Carefully plan your comments. Before the hearing, you may wish to review the following materials (available at the Skagway City Hall, Skagway Public Library, LBC Web site, and through DCED):

1. The standards established in State law for incorporation of boroughs (the eighteen standards are also summarized in part B, beginning in the adjoining column).
2. The Skagway borough incorporation Petition.
3. The Preliminary Report and Final Report of the Alaska Department of Community and Economic Development (DCED) regarding the Skagway borough proposal.

The Local Boundary Commission Public Hearing on the Skagway Borough proposal will be held:

August 31, 2002 – 2:00 p.m.
City Council Chambers
McCabe Building
Skagway, Alaska

For more information, please contact:

Dan Bockhorst, Local Government Specialist
Local Boundary Commission Staff
Department of Community & Economic Development
550 W. Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
Telephone: 907-269-4559 – Fax: 907-269-4539
Email: Dan_Bockhorst@dced.state.ak.us

B. Provide Relevant Comments

The LBC's decision on the pending proposal must be based on standards established in law that are applied to the particular facts of the proposal to dissolve the Skagway city government and incorporate a Skagway borough. Accordingly, comments that address those standards and facts will be most helpful to the LBC.

A summary of the eighteen standards is provided below. Endnotes summarizing DCED's conclusions regarding each of the eighteen standards are provided on pages 3 and 4 of this handout.

In summary, approval of the Petition may be granted only if the LBC determines in this case that:

1. The proposed borough would assume, on an areawide basis, all powers exercised by the City of Skagway (thereby effecting dissolution of the Skagway city government).¹
2. The proposed Skagway borough would not be a third class borough.²
3. The transition plan in the Petition is adequate.³
4. Incorporation of the proposed borough would not deny civil or political rights because of race, color, creed, sex, or national origin.⁴
5. The budget included in the Petition is feasible and plausible.⁵
6. The population is large and stable enough to support the proposed Skagway borough.⁶
7. It is demonstrated that a population of less than 1,000 residents is adequate to support the proposed Skagway borough.⁷
8. The social, cultural, and economic characteristics and activities of the residents of the proposed borough are interrelated and integrated.⁸

9. Either the proposed borough has multiple communities or it is demonstrated that a sufficient level of interrelationship exists with a single community.⁹
10. Communications and transportation facilities allow communication and exchange necessary to develop an integrated borough government.¹⁰
11. Communities in the proposed borough are connected to the borough seat by road, scheduled or locally-based charter flights, ferry service, or sufficient electronic media communication. Alternatively, it is demonstrated that the proposed borough has adequate communications and exchange.¹¹
12. The boundaries of the proposed borough conform generally to natural geography.¹²
13. The proposed borough includes all areas needed for delivery of services on an efficient, cost-effective level.¹³
14. The proposed borough boundaries do not extend beyond any model borough boundaries unless it is demonstrated that alternative boundaries are better suited.¹⁴
15. The boundaries of the proposed borough conform to existing regional educational attendance area boundaries unless it is demonstrated that alternative boundaries are better suited.¹⁵
16. The territory proposed for incorporation is contiguous and without enclaves unless it is demonstrated that a non-contiguous area or area with enclaves allows efficient and effective service.¹⁶
17. The territory proposed for incorporation does not overlap any area currently within the boundaries of another existing organized borough.¹⁷

18. Incorporation of the proposed Skagway borough is in the broad public interest.¹⁸

Even if the Commission determines that the Petition meets all of the standards, the LBC has discretion to amend the proposal or impose conditions. Therefore, comments to the Local Boundary Commission at the hearing may address the proposed amendments or imposition of conditions.

C. Observe the Rules

1. New written materials may not be filed at the hearing unless allowed by the LBC Chairman upon the showing of good cause.
2. To ensure that everyone who wishes to speak during the public comment phase of the hearing will have an opportunity to do so, individuals should plan to limit their comments to three minutes each. Different time limits will apply to the Petitioner.

D. Avoid Repetition

If another speaker has addressed points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and spend your allotted time on relevant topics that have not yet been addressed.

LBC WEB SITE

Skagway borough Petition materials, comments on the Petition, DCED's reports, and other information regarding the Petition are available on the Internet at:

<http://www.dced.state.ak.us/cbd/lbc/skagway.htm>

Endnotes (DCED's review of the 18 standards)

¹ DCED concluded in its Preliminary Report that the borough would likely assume, on an areawide basis, all powers exercised by the City of Skagway. Such assumption of powers would result in dissolution of the City of Skagway under AS 29.06.450(c).

² DCED's Preliminary Report indicates that the Petition consistently proposes incorporation of a first class borough. Consequently, DCED found that the standard for borough classification under AS 29.05.031 is met.

³ DCED noted in its Preliminary Report that since the Petition proposes merely to reconstitute the City of Skagway as the Skagway borough – with no change in jurisdictional boundaries or powers – the Petitioner's one-page transition plan is adequate. DCED also noted that the record indicates that local officials were consulted in the plan's development. Consequently, DCED determined that the standard set forth in 3 AAC 110.900 is satisfied.

⁴ DCED's Preliminary Report indicates that because the existing Skagway city government and proposed Skagway borough government are indistinguishable, except in name, the proposal would affect voting rights only in a nominal sense. Thus, DCED found that the standard set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 is satisfied.

⁵ DCED concluded in its Preliminary Report that Skagway is a community with substantial financial resources. Based on those resources, DCED determined that the budget included in the Petition is feasible and plausible. As such, DCED found that the Skagway borough proposal meets the standard set out in AS 29.05.031(a)(3) and 3 AAC 110.055.

⁶ The Preliminary Report prepared by DCED indicates that, given that the Petition merely proposes reconstitution of the City of Skagway as the Skagway borough, the population of the City of Skagway is, by definition, large and stable enough to support the proposed Skagway borough. Thus, DCED found that, narrowly applied, the standard in 3 AAC 110.050(a) is met. However, DCED stressed that the conclusion is not intended to be construed as an inference that the broader statutory standard relating to population size, stability, interrelation, and integration is also met.

⁷ DCED noted in its Preliminary Report that, given the particular nature of the proposal, the presumptive requirement that there must be at least 1,000 residents

is overcome when the same narrow application is used as was the case regarding the preceding standard.

⁸ DCED stressed in its Preliminary Report that Alaska's constitution (Article X, Section 3) advances the principle that each borough will comprise a large region within which residents have common social, cultural, and economic interests. Moreover, DCED emphasized that Article X, Section 1 of Alaska's constitution calls for a minimum number of local governments. DCED concluded in its Preliminary Report that the proposed Skagway borough is not consistent with either of those fundamental constitutional provisions. Therefore, by definition, DCED concluded that the population at issue cannot be socially, culturally, and economically interrelated and integrated in the context of borough government. In the same respect, DCED found that the population of the proposed Skagway borough cannot be large and stable enough to support borough government as framed under the constitution. Consequently, DCED took the view that the standards set out in AS 29.05.031(a)(1) and 3 AAC 110.045(a) are not satisfied by the Skagway borough proposal.

⁹ DCED indicated in its Preliminary Report that, in the context of borough government, Skagway has no particular geographic, social, cultural, or economic characteristics that warrant a single-community borough. DCED noted that the Petitioner stresses that Skagway already provides "borough services." However, many communities in the unorganized borough can claim that they provide or have the capacity to provide such services. DCED also addressed inferences by the Petitioner that the single-community borough standard is not legitimately established in law. DCED also addressed comparison between Skagway and other single-community boroughs. Lastly, DCED concluded that Dyea is not a community as the term is defined in law. Based on such, DCED concluded that the Skagway borough proposal does not overcome the threshold requirement in 3 AAC 110.045(b) for multiple communities.

¹⁰ DCED noted that transportation and communications facilities and services are well developed on a community level in Skagway. DCED found that the standard set out in 3 AAC 110.045(c) is met if applied narrowly in the context of the proposal put forth by the Petitioner. However, DCED also found that the related standard in AS 29.05.031(a)(4) clearly calls for a broader application in the context of borough government as conceived by the founders. Given the broader regional application called for by AS 29.05.031(a)(4), DCED concluded that the communications and exchange standard is not met.

¹¹ DCED noted that Skagway has a well-developed intra-community transportation and communication system. However, since the proposed Skagway

borough lacks multiple communities and does not overcome the presumption in law for such, DCED concluded that, by definition, it cannot meet the standard in 3 AAC 110.045(d).

¹² DCED indicated in its Preliminary Report that, in a narrow sense, the proposed Skagway borough conforms generally to natural geography. However, DCED indicated that the scale on which it does so is undersized by such magnitude as to render the proposal clearly wanting in terms of the standard at issue. Therefore, DCED found that the Skagway borough proposal does not satisfy the geography standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) when applied in the proper regional context.

¹³ DCED noted that the identical area proposed for incorporation as a Skagway borough was portrayed by the City of Skagway in 1979 as “a mere paucity by present borough standards prevailing in the state.” DCED considers the 1979 description to be accurate to the degree that the Skagway borough proposal lacks of all necessary areas for efficient and effective delivery of services on a regional scale. Thus, DCED concluded that the standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) is not satisfied with respect to the Skagway borough proposal.

¹⁴ DCED took the view in its Preliminary Report that the Petitioner proposes to carve out a new borough from a tiny fraction of the area within what is already a relatively small model borough. DCED indicated that doing so would transform a small city school district – one that ranks in the tenth percentile in terms of enrollment – into a borough. DCED concluded that such characteristics are neither consistent with constitutional policies nor fundamental public policies set by the legislature. For those reasons and others expressed in the analysis of standard number fourteen in the Preliminary Report, DCED found that the Skagway borough proposal does not make the requisite specific and persuasive showing that the model borough boundaries for the Lynn Canal area are inappropriate. Therefore, the standard set out in 3 AAC 110.060(b) is not satisfied.

¹⁵ DCED concluded in its Preliminary Report that neither the proposed Skagway borough boundaries nor the Chatham REAA boundaries are consistent with the broad public interest in a full balance of the borough incorporation standards. DCED found that the Lynn Canal model borough boundaries are superior to both. Consequently, DCED concluded that the Skagway borough proposal does not meet the standard set out in 3 AAC 110.060(c).

¹⁶ DCED reported that the small area proposed for incorporation is comprised of contiguous territory without enclaves. However, in a broader context, DCED observed that the proposed Skagway borough

is, in effect, an enclave within the Haines Borough. DCED concluded that such circumstances along with several others noted previously render the proposed Skagway borough boundaries unsuitable.

¹⁷ DCED found that the territory proposed for incorporation does not overlap any area currently within the boundaries of another existing organized borough. Consequently, DCED concluded that the standard set out in 3 AAC 110.060(e) is satisfied.

¹⁸ DCED noted in its Preliminary Report that granting the Skagway borough proposal would do nothing to advance maximum local self-government. In fact, for reasons cited in the analysis in Chapter 3 of the Preliminary Report, DCED concluded that incorporation of the proposed Skagway borough would run counter to the principles of local self-government. DCED concluded that a Skagway borough would also contravene the constitutional principle of minimum numbers of local governments. Moreover, DCED noted that approval of a Skagway borough would set a “precedent” which would likely have far-reaching adverse consequences. Lastly, approval of the Skagway borough would have adverse impacts on State resources with no corresponding relief to State government in terms of responsibility for providing local services, as is typically the case with other boroughs. Consequently, DCED concluded that the Skagway borough proposal does not serve the broad public interest as required by AS 29.05.100(a).

Future Proceedings Regarding the Skagway Borough Proposal

Prepared by DCED for Skagway Borough Informational Meeting
July 25, 2002, City Council Chambers, McCabe Building, Skagway

Date	Occurrence
5 p.m. July 31, 2002	<u>Deadline for comment on DCED Preliminary Report.</u> Comments must be received by 5 p.m., July 31, 2002 by mail, fax, or e-mail at: Local Boundary Commission Staff Department of Community and Economic Development 550 West 7th Avenue, Suite 1770 Anchorage, Alaska 99501-3510 Fax: 907-269-4539 E-mail: Dan_Bockhorst@dced.state.ak.us
August 1, 2002	<u>Public notice of LBC hearing.</u> Deadline for initial publication of notice of August 31, 2002 LBC hearing. Notice will also be posted and broadcast.
August 9, 2002	<u>Release of DCED Final Report.</u> Deadline for mailing of DCED's Final Report regarding the Skagway borough proposal.
August 16, 2002	<u>Petitioner's witness list.</u> Deadline for submission to DCED of list of witnesses that Petitioner plans to call to provide sworn testimony at the August 31 hearing before the LBC.
2:00 p.m. August 31, 2002	<u>LBC hearing.</u> LBC conducts public hearing on the Skagway borough proposal in the City Council Chambers, McCabe Building. Hearing components will consist of the following: 1. summary of DCED's conclusions and recommendation; 2. Petitioner's opening statement (limited to 10 minutes); 3. sworn testimony of witnesses called by the Petitioner; 4. period of public comment (limited to 3 minutes per person); 5. Petitioner's closing statement.
within 90 days of last hearing (LBC typically makes decision following conclusion of hearing)	<u>LBC decision.</u> LBC renders verbal decision to take one of the following actions: 1. approval of the Petition as submitted; 2. approval of the Petition with amendments and / or conditions; 3. denial of the Petition.
within 30 days of verbal decision (LBC typically issues written statement within 14 days of decision)	<u>Statement of decision.</u> LBC adopts a written statement of decision explaining the basis for its decision.

Date	Occurrence
within 18 days after the Commission's written statement of decision is mailed under 3 AAC 110.570(f)	<p><u>Opportunity to seek reconsideration.</u> A person or entity may request reconsideration in accordance with 3 AAC 110.580. LBC will grant reconsideration only if:</p> <ol style="list-style-type: none"> 1. a substantial procedural error occurred in the original proceeding; 2. the original vote was based on fraud or misrepresentation; 3. the LBC failed to address a material issue of fact or a controlling principle of law; or 4. new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.
within 20 days after the Commission's written statement of decision is mailed under 3 AAC 110.570(f)	<p><u>Action on requests for reconsideration.</u> LBC typically meets to address all requests for reconsideration. However, requests for reconsideration are automatically denied if not approved within the time noted.</p>
within 30 days after the last day on which reconsideration can be ordered	<p><u>Opportunity for court appeal.</u> An appeal of the LBC decision may be made to the Superior Court under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq.</p> <p>Note: The Alaska Supreme Court has consistently deferred to the LBC decisions involving expertise regarding either complex subject matter or fundamental policy formulation as long as the decision has a reasonable basis. See: <i>Mobil Oil Corporation v. Local Boundary Commission</i>, 518 P.2d 92, 98, 99 (Alaska 1974); <i>Valleys Borough Support v. Local Boundary Commission</i>, 863 P.2d 232, 234 (Alaska 1993); <i>Lake and Peninsula Borough v. Local Boundary Commission</i>, 885 P.2d 1059, 1062 (Alaska 1994); <i>Keane v. Local Boundary</i>, 893 P.2d. 1239, 1241 (Alaska 1995); <i>Yakutat v. Local Boundary Commission</i>, 900 P.2d 721, 728 (Alaska 1995).</p>
THE FOLLOWING WOULD OCCUR ONLY IF THE LBC GRANTS THE PETITION	
on the date that the opportunity for reconsideration expires	<p><u>Division of Elections notified.</u> If the LBC grants the Petition, the Director of the Division of Elections is notified.</p>
within 30 days of notice from LBC of approval of Petition	<p><u>Election ordered.</u> Director of the Division of Elections orders an election for the proposed incorporation of the Skagway borough and for the election of initial officials.</p>
within 30 to 90 days of the election order	<p><u>Election conducted.</u> State Division of Elections conducts the election on the incorporation proposition and the election of initial officials.</p>
upon certification of election results	<p><u>Borough incorporated if voters approve.</u> If a majority of voters approve incorporation, the borough is formed.</p>



**State of Alaska
Local Boundary Commission (LBC)**

**NOTICE OF PUBLIC HEARING
Skagway Borough Proposal
Saturday, August 31, 2002 – 2:00 p.m.
City Council Chambers – McCabe Building –
Skagway, Alaska**

The LBC will conduct a public hearing as noted above to consider and act upon the January 2001 Petition by Skagway voters for dissolution of the City of Skagway and incorporation of a Skagway borough.

The hearing will be conducted in accordance with 3 AAC 110.560. Immediately following the hearing, the LBC may convene a decisional meeting to act on the Petition under 3 AAC 110.570.

Individuals with disabilities who need reasonable accommodations to participate should contact LBC staff by August 26, 2002. Further information concerning the hearing is available from:

LBC Staff
Department of Community and Economic Development
550 W. 7th Avenue, Suite 1770,
Anchorage, Alaska 99501-3510

Telephone: (907) 269-4559
Fax: (907) 269-4539
Dan_Bockhorst@dced.state.ak.us

APPENDIX C

**DETAILED SUMMARY OF JULY 25, 2002
SKAGWAY BOROUGH INFORMATIONAL MEETING**

Appendix C

Detailed Summary of July 25, 2002

Skagway Borough Informational Meeting

On July 25, 2002, DCED conducted a duly-noticed public informational meeting concerning the Skagway borough proposal as required by AS 29.05.080(a) and 3 AAC 110.520.

The meeting began at approximately 7:00 p.m. in the Skagway City Council chambers. Approximately 20 – 25 persons were present. A copy of the materials made available to those present is included in this Final Report as Appendix B.

The meeting lasted just over two hours. During the period of public comment, seven individuals offered remarks. Those remarks are summarized below:

“Buckwheat” Donahue (City of Skagway Tourism Director)

Mr. Donahue questioned the basis for DCED’s conclusion that the proposed Skagway borough does not meet the regional characteristics of borough government. In response, DCED noted that details concerning the basis of its conclusion are provided in its Preliminary Report and are summarized in the handout “Maximize the Effectiveness of your Comments to the LBC.” These include factors listed in regulations adopted by the LBC, factors identified by the Alaska Supreme Court to define social, cultural, and economic interrelationships, the existence of multiple communities, the proximity of adjoining communities, and other factors.

Mr. Donahue expressed the view that the social, cultural, and economic differences between Skagway and Haines were acute.

DCED noted that it recognized distinctions between Skagway and Haines. However, its assessment of the interrelationship between the two communities reflected a regional context that is appropriate concerning borough government.

Tim Bourcy, Mayor City of Skagway

Mayor Bourcy began with interrogatories of DCED staff Dan Bockhorst. He asked whether it was correct that if a Skagway borough were formed, the community of Skagway “would not necessarily be protected” from later being included with an adjoining borough. Mr. Bockhorst indicated that such was correct.

Mayor Bourcy then asked whether DCED considered “the boroughization of the state to be a difficult process up to this point.” Mr. Bockhorst briefly recounted the history of borough formation in Alaska and expressed the view that establishment of organized boroughs has been difficult.

Mayor Bourcy asked Mr. Bockhorst whether his job at DCED was to “formalize boroughs.” Mr. Bockhorst responded that as LBC staff supervisor, he dealt with the full range of activities that come before the Commission. He noted that such activities include city incorporation, borough incorporation, city annexation, borough annexation, city detachment, borough detachment, merger of city and borough governments, consolidation of city and borough governments, city dissolution, borough dissolution, city reclassification, and studies of local government boundary problems.

Mayor Bourcy next asked if the decision of the 1963 Legislature to amend House Bill 90 (the 1963 Mandatory Borough Act) to exclude the Lynn Canal – Icy Straits area from the bill was not a reflection that Haines and Skagway lacked common interests. Mr. Bockhorst indicated that he did not believe that such was the case. He indicated, instead, that he believed that the amendment was the product of a political compromise that was necessary to gain legislative approval.

Mayor Bourcy asked Mr. Bockhorst whether he has served as Manager of the City of Haines. Mr. Bockhorst responded that he had been employed as Haines City Administrator from 1976 to 1980.

Mayor Bourcy asked Mr. Bockhorst whether he had been involved in the Haines Borough formation. Mr. Bockhorst indicated that he was not.

Mayor Bourcy asked Mr. Bockhorst to explain the cultural and social ties between Haines and Skagway during the period from 1976 – 1980. Mr. Bockhorst emphasized that, in the context of the pending Petition, it is relevant to consider current circumstances, not those that existed more than a quarter-century ago. Notwithstanding, Mr. Bockhorst noted the existence in the 1970s of transportation ties and a common election district (which in itself, by law, indicates common socio-economic ties).

Mayor Bourcy indicated that he did not consider transportation links and election districts to reflect social and cultural ties. He asked if Mr. Bockhorst considered them evidence of such. Mr. Bockhorst indicated that he did indeed.

Mr. Bourcy then asked whether it was “safe to say” that Skagway was “culturally and socially tied to Bellingham – Whitehorse.” Mr. Bockhorst responded that the ties between Skagway, Bellingham, and Whitehorse needed to be considered in the proper context. Whitehorse and Bellingham are more distant than Haines. Whitehorse is also in another country and Bellingham is in another state.

Mayor Bourcy indicated that after reading the DCED Preliminary Report, he was having difficulty ascertaining what constitutes social and economic ties. He stressed that Skagway has “over 100 years of cultural and social ties with Canada – in fact our life-blood in the relationship that we have had has been with Canada.”

Mr. Bockhorst noted that the Mayor was addressing social and cultural relationships in an international context, rather than in the context of the State of Alaska.

Mayor Bourcy next asked whether there was something within the purview of the relevant standards that does not allow consideration of social and cultural relationships on an international level. Mr. Bockhorst noted that the Alaska Local Boundary Commission has no jurisdiction over Canada.

Mayor Bourcy noted repeated references by DCED in the Preliminary Report to boroughs encompassing “large areas.” He asked, “What is a large area?” Mr. Bockhorst noted that Alaska’s constitution promotes minimum numbers of local governments and that there are only 16 organized boroughs in Alaska. He noted that the proposed Skagway borough encompasses only 3% of the average size of organized boroughs in Alaska and that it also represents only 4% of the median size of organized boroughs in Alaska.

Mayor Bourcy asked whether the term “large area” is subjective. Mr. Bockhorst acknowledged that it was.

Mayor Bourcy next asked whether the standards called for general conformance with natural geography. Mr. Bockhorst indicated that there is indeed such a requirement. He noted further that conformance with natural geography could be defined narrowly or broadly.

Mayor Bourcy asked whether one could “argue that the North Slope Borough at 99,000 square miles is an excessive borough.” Mr. Bockhorst noted that a legal challenge had been initiated over the incorporation of the North Slope Borough. In *Mobil Oil v. Local Boundary Commission*, the Alaska Supreme Court upheld the LBC’s determination that the North Slope Borough met the standards for borough incorporation.

Mr. Bourcy asked if the proposed Skagway borough could consolidate with the Haines Borough in the future. Mr. Bockhorst acknowledged that it could. He stressed, however, that the LBC will judge the pending proposal on the standards for borough incorporation – not on the hypothetical prospect for future consolidation of a Skagway borough and a Haines Borough.

Mr. Bourcy expressed concern over the time taken by DCED to prepare its Preliminary Report on the Skagway borough proposal. He asked when the

Haines consolidation effort began. Mr. Bockhorst replied that the Haines consolidation Petition was filed before the filing of the Skagway borough incorporation Petition. Mayor Bourcy asked whether any petitions filed after the filing of the Skagway Petition that had been dealt with. Mr. Bockhorst indicated that a local-action annexation Petition by the City of Wasilla was filed after the Skagway borough incorporation Petition and had already been addressed by the Commission. He stressed, however, that such local action annexation petitions (initiated by all voters and property owners in the area proposed for annexation) are straightforward and do not require the level of analysis by DCED or the LBC required of other matters that come before the LBC. Mayor Bourcy asked about the City of Homer's legislative review proposal for annexation. Mr. Bockhorst replied that the Homer annexation proposal had been filed before the filing of the Skagway borough incorporation Petition.

Mayor Bourcy next asked whether Mr. Bockhorst viewed his former employment as the Haines City Administrator as a conflict of interest in terms of Mr. Bockhorst's analysis of the Skagway borough proposal. Mr. Bockhorst indicated that it did not. He stated that he last worked for the City of Haines twenty-two years ago and that he has no financial interest in Haines. Mr. Bockhorst also emphasized that while he authored DCED's Preliminary Report concerning the Skagway borough proposal, the report reflects the policy views of the Department. Lastly, Mr. Bockhorst expressed the belief that the Haines City Council had not expressed any interest in annexation of Skagway to the Haines Borough.

Following Mr. Bockhorst's response to the inquiry about the potential for conflict of interest on his part, Mayor Bourcy declared that, "this is not about Haines."

Mayor Bourcy expressed concern over his perception that DCED exhibited a lack of diligence in analyzing the Skagway borough incorporation Petition. He noted that he had met with DCED in October of 2001 and had understood that the Skagway borough Petition would have been dealt with more quickly than it has been. Mayor Bourcy indicated that he is aware that Mr. Bockhorst was very busy at the time. Notwithstanding, he asserted (incorrectly¹) that Mr. Bockhorst was in Haines twice during the winter. Mayor Bourcy indicated that he is struggling with DCED's failure to contact him about revisions to the timeline while staff was in Haines since DCED concludes that there are ties between Haines and Skagway. Mayor Bourcy also noted that during the time in question, the LBC completed work on a 113-page regulation project. Mayor Bourcy indicated that he wanted Mr. Bockhorst and the community of Skagway to know that, in his opinion, Mr. Bockhorst "has not necessarily been playing straight with us."

¹ Mr. Bockhorst was in Haines once during the winter to provide staff support to the LBC at its March 9, 2002 hearing on the Haines consolidation proposal.

Mayor Bourcy expressed concern that the community of Skagway was “stepping forward and asking to be formed as a borough – we believe that we meet the standards – yet, DCED is throwing up the barrier saying ‘no you don’t’, even through in the future Skagway and Haines could consolidate at a time when it makes more sense.

Mr. Bockhorst addressed Mayor Bourcy’s assertion that DCED was throwing up barriers with the rejoinder that nothing in DCED’s Preliminary Report should come as a surprise to residents of Skagway. Mr. Bockhorst noted that he had met with Skagway officials and the public in 1998 to discuss local interest in a prospective Skagway borough proposal. The policy views of the agency (then the Department of Community and Regional Affairs) were candidly expressed at the time. Mr. Bockhorst noted that the agency’s views expressed then are consistent with the views expressed in DCED’s Preliminary Report concerning the pending Skagway borough proposal.

John Mielke (former Mayor of the City of Skagway – 10/1997 – 10/2001)

Mr. Mielke indicated that he “has some of the same concerns that the Mayor does.” He noted, however, that “one of the first things that troubles me when I open up this report and begin to read it is the statement that ‘a seven word headline appears from the Juneau Empire’.” He indicated that, “It is dangled out in front of me: ‘shame on you that shouldn’t be a reason to want to form a borough’.”

Mr. Mielke indicated that he was troubled that the report carefully notes how many times the Petition refers to Yakutat, yet it does not note the number of references to Haines in the Petition.

Mr. Mielke indicated that he believes that there are issues that have not been brought up that are important to the community in terms of a fair examination of the Skagway borough incorporation proposal. He stressed that Skagway provides a broad range of local services and capital facilities.

In addition to education services noted in DCED’s Preliminary Report, Mr. Mielke indicated that recognition should be given to other locally funded facilities and services. Those include the paving of Alaska Street, the renovations and expansion of the McCabe Building (City Hall, Museum, and Court).

He emphasized that during the past four years, Skagway contributed more than \$7 million in local capital projects “without one penny from the state because we could never get it.” Mr. Mielke continued that DCED’s Preliminary Report stresses the “best interests of the state, and the constitution, and the LBC, and everybody else” – but he wanted to know at what point the interests of the community are taken into consideration. Mr. Mielke stressed that the City of Skagway “does a wonderful job of taking care of this community in every aspect and meets the needs of the visitors in this community.”

Mr. Mielke indicated that he believed that borough incorporation standards can be interpreted differently by various individuals. Concerning cultural ties, he noted that he has lived in Skagway since 1967 and has been to Whitehorse more times this summer than he has been to Haines in 35 years. Mr. Mielke stressed that ties for shopping, dental, medical, and transportation are far greater between Skagway and Whitehorse than they are between Skagway and Haines.

Mr. Mielke noted that Yakutat had been allowed to form a single community borough, in part, because of its remoteness. Yet, Yakutat has daily jet service to neighboring communities.

Mr. Mielke continued:

What really bothers me is since this topic has come up, it's like the door gets slammed before it even gets open. It's like we don't even get to get the point on the table or share our concerns or desires and the reasons we feel that we must go this way before the brake goes on, the hand goes up and it's not going to happen.

Community and Regional Affairs, when they were here a few years ago – we didn't even get off the box. They just said, "It's not going to happen."

Mr. Mielke expressed concern over the characterization of Skagway as a de facto enclave within the Haines Borough. He indicated in that regard that, "The Local Boundary Commission made us [an enclave]."

He indicated that it appears DCED is motivated to stop the Skagway borough proposal because of concern that other communities will follow suit, including those listed in point number 5 of the informational meeting handout entitled "Seven Key Points Regarding the Skagway Borough Proposal and Boroughs in General" (see Appendix B of this Report). Mr. Mielke indicated that the ability of Skagway to take care of itself did not appear to be considered.

Mr. Mielke stressed that efforts to share medical services between Skagway and Haines in the post-Dr. Jones era noted in DCED's Preliminary Report were unsuccessful. He indicated it was a small example of what would happen if Skagway were forced to co-join a government with Haines.

He also expressed concern that Skagway would lose local control over matters such as schools if it were included within a borough with Haines because of its relatively smaller population. KHNS is a good example – the majority of the board is from Haines and casts votes that favor Haines.

Mr. Mielke noted that while the Haines Borough Assembly endorsed the Skagway borough proposal in November of 2001, the Assembly could change its position next month. He stressed that:

Skagway just wants a sense of peace – that this issue can be put behind us without always looking over our shoulder or waiting for an edict from the legislature that we have to go somewhere and that when that moment comes, we don't get to have any say . . . that's not ever going to go down very good here and I don't think it should. The constitution that is brought up 100 times in this [report] protects me just as much as it protects the Commission and what they need to do and govern by.

I get a sense from reading this that the writer takes the first page on this almost and brandishes the headline out of the Juneau paper – and almost admonishes that we want to form a borough because of our concern about being annexed. You're probably right, but you don't live here.

. . . . Businesses that operate in Skagway – you list how many there are from Haines. Well, there is at least one businessman that's up here that [complains] about Skagway Air flying too close to his house in Haines but has no problem coming up to Skagway and doing business. To me, that not a cultural or social tie – that's just a place to make a dollar.

I think we're different. You talk about tourism and you tie us all together, but I go to the Juneau salmon derby every year, so that means I have a cultural tie in Juneau. The ferry goes there too. I don't think that transportation should make it or break it. I don't think geographics should necessarily make it or break it. I just feel that if these points and these standards – 18 of them were looked at and we never got a chance as a community to sit down at the table and talk to somebody without getting shut up before we can get through the presentation, we'd sure feel better. I don't know that the decision will be any different, but I have never been through this process at any time in the last – I got elected to the Council in 1990 – from there until today, that ever felt like I never got to put my whole heart on the table without having been slapped before I could get done making my presentation. I think that there is some frustration and some aggravation in that. And, you've got to ask yourself "what is the motive behind the 'quick no'?" It's like jeez, don't take a chance, it might happen.

I know that in the report, it is referenced that there was a difference of opinion between you folks and the other folks . . . I don't think that Yakutat being a borough is what's driving this. I think that's just an example that we can show. You talk about population – you're here on a Thursday – Monday through Thursday there's probably 6, 7, 8-thousand people in this community. And if you really want to get accurate with the population in any community get a roll of who's getting Permanent Fund dividends – see how many are coming out of this town or any town.

I am extremely frustrated – I understand the constitution and we need to abide by it, but I don't like it when standards are applied and they are just defined to as needed to suit the individual situation. I just think that these standards are flexible and I think that they can be viewed that way. Skagway – while Haines had the Dalton Trail – you don't read much about the Dalton Trail in the gold rush. I know it's there, but you don't read it, you don't hear the tourists talk about the Dalton Trail or Haines when they come to Skagway. . . . Skagway has its own unique identity – flavor – pride – Haines has a right to be proud too, but as [Wallace] told you in this report, there is a tremendous amount of rivalry between the two communities and it existed when I went to high school.

With the differences between the two communities, it would be very hard to blend them together and make it work as successful as each by themselves.

Mr. Bockhorst noted that the Preliminary Report recognizes that Skagway is a sophisticated community with local government providing a full range of municipal services. The Preliminary Report also acknowledges that Skagway is contributing fairly in support of fundamental local services such as education.

Mr. Bockhorst indicated that he recognized that it can be frustrating for an agency to express a preliminary position concerning a proposal before it is even formally developed. He noted, however, that DCED and its predecessor DCRA, have consistently taken the view that it is best to be candid with prospective petitioners about the prospects for success before they expend the considerable time and other resources needed to petition. (It can be much more frustrating and aggravating if proponents of proposals with limited prospects for successful implementation develop unrealistic expectations and spend a great deal of time and other resources pursuing their ultimately unfulfilled objectives.)

Mr. Bockhorst indicated that there are sometimes conflicts between local interests, regional interests, and statewide interests. While residents of Skagway are predominantly concerned with local interests, the Local Boundary Commission was created to view proposals from a regional and statewide perspective. Mr. Bockhorst acknowledged that many of the standards to which the Skagway borough proposal is subject are indeed subjective and open to interpretation. He noted that DCED's Preliminary Report reflects DCED's view of the appropriate application of the standards. He also noted that it is conceivable that the LBC may disagree with some of DCED's conclusions, however, he stressed that he did not want to raise local expectations in that he believed that DCED had conducted a fair analysis of the proposal and properly applied the standards.

Mr. Mielke concluded his remarks with the following statement:

When I walk away from this process, all I want to be able to say is that "these folks worked with me, they tried their best to help us." I just do not want to walk away from this process frustrated like I am today and see the negativity in the report because, quite honestly, there's negativity.

If you're a resident of Skagway – and I got this [report] three weeks ago and have had time to look through it – that's how I read it, I can't help that – because Yakutat was mentioned no less than 34 times – so what? I didn't count the times that you guys mentioned Haines in the report. If we're comparing apples to apples and oranges to oranges that's fine.

Mr. Bockhorst explained that DCED cited the number of times that the Skagway Petition refers to Yakutat because it is relevant to the issue of precedent. Residents and local officials in Yakutat had repeatedly stressed to DCRA and the LBC in 1991 – 1992 that approval of the Yakutat borough petition would not set a precedent. Yet, the contrary has proven to be the case. Prospective petitioners commonly cite Yakutat in terms of their interest in borough government. Mr.

Bockhorst noted that Skagway residents and officials also frequently cited approval of a Yakutat borough in support of the Skagway borough proposal, including 34 references to Yakutat in the brief filed with the Skagway borough incorporation Petition.

Mike Korsmo, Council Member, City of Skagway

Mr. Korsmo indicated that he took exception to the conclusion in DCED's Preliminary Report that creation of a Skagway borough would do nothing to promote maximum local self-government. He questioned whether there is a better example than Skagway of a local government that takes care of itself.

He questioned how it would serve the best interests of the state to deny the Skagway borough proposal, thereby leaving the door open to the annexation of Skagway into another borough.

Mr. Bockhorst responded that when DCED concluded that creation of the proposed Skagway borough would not promote maximum local self-government, it was not a statement that the Skagway local government does not provide a full range of services. Rather, it was a statement that the effect of the creation of the proposed Skagway borough would be neutral in terms of services provided, numbers of citizens served, and territory within the jurisdiction of a local government operating a municipal school district. He noted that the Skagway borough proposal essentially entailed a mere change in the name of the local government from the City of Skagway to the Skagway borough.

Mr. Korsmo asked whether it was DCED's preference that Skagway develop into a community that is "more needy" with a "government that would actually have to come to the State for more stuff."

Mr. Bockhorst indicated that such was not DCED's preference. DCED acknowledged that the City of Skagway provides a broad level of local governmental services. He noted that Skagway (as a first class city in the unorganized borough), unlike many communities in the unorganized borough, contributes to the support of fundamental services such as education.

Mr. Korsmo reiterated that he could not accept DCED's conclusion that a Skagway borough would do nothing to promote maximum local self-government. He stressed in that regard, "we are [already] a maximum local self-government – I don't know if you could take us and change us [to improve the status quo]."

Mr. Korsmo indicated that while fear of being annexed to the Haines Borough may be driving the Skagway borough Petition, "our motivation is the fact that we do take care of ourselves and we want to continue to take care of ourselves." Mr. Korsmo noted that approval of the Skagway borough proposal would offer comfort to citizens of Skagway.

Mr. Bockhorst noted that if the Petition were denied, it would maintain a status quo that has existed since 1961 (with the establishment of the unorganized borough). He also stressed, as is noted on page 6 of DCED's Preliminary Report, that the matter before the LBC concerns only the proposed incorporation of a Skagway borough, not annexation of Skagway to another borough.

Mr. Bockhorst indicated that DCED did not encourage the filing of the Skagway borough Petition. He also stressed that DCED's position regarding the proposal is based strictly on its application of relevant standards. He indicated that he considered DCED's review as fair, honest, objective, and candid. He noted that community officials and residents would soon have a fair opportunity to convince the independent LBC that their interpretation of the application of the standards is correct and that the Petition should be granted.

Dan Henry, Council Member, City of Skagway

Mr. Henry also took exception to DCED's conclusion that creation of a Skagway borough would not promote maximum local self-government. He indicated in that regard:

Though you may say this statement is neutral, the connotation, by choice of words, is, in fact, that the government would be stymied, would not grow, would not advance, when in fact, as has been stated by the present mayor and previous mayor, council members, our city government is probably, I would say at this point, to be envied by most other communities within the state.

Mr. Henry also expressed the view that DCED had failed to support its conclusions that various standards are not satisfied by the Skagway borough proposal. Specifically, he indicated:

I don't think in the points that you've made – talking about standards that are not met – I don't think that there's really much in there – there's really not a lot of meat in there. The statements being made in the areas of standards not being met is very subjective.

I would get back to the point of social, cultural, and economic ties to Haines – there are little, if any. We are drastically different in our infrastructure, in economic base, and in what drives our engine and what drives theirs. So economically, there is no tie. The dollar exchange between the two communities are minimal. Culturally, there are not a measurable exchange, so that would not hold water in a debate . . . Socially, we have great differences in our views. And where I feel that is very important is that when you bring this back full circle in reference to what Mike Korsmo was talking about – the advancement of government – it, in fact, would take away from Skagway's ability as a community, because ultimately, I feel that certainly your motives and the Local Boundary Commission – the State for that matter – their motives should be the best situation possible to be created for every community.

The least amount of subsidies that would come from the State, certainly is their optimum goal. We certainly fill that bill as former mayor Mielke stated, the amount of capital projects relative to size of community, it's phenomenal what this town has done. I don't think that there is another community in this state that could measure up dollar for dollar. And certainly there is not an incorporated [local government] that could match up in duration of being self-sufficient.

So I really find this entire discussion curious from the DCED's position – I would want to model Skagway as a borough if I was in your position. The things that are being done here need to be mimicked. There needs to be a mirror image of the way we handle government, the way we handle our tax base, the way that we handle our educational system. I would think, ultimately, that's what your motive would be – to actually promote us to become a borough of our own.

Yes, what would change, if, in fact, in name we change from "City of Skagway" to "Municipality" i.e., a borough, would be that we would not have to wait for the other shoe to drop. And I think that is what has been the driving force for this Petition to begin with, number one. Number two, once that door closes – and I certainly hope and pray that is what happens – that we incorporate as our own borough – once that door closes, it then becomes that much more difficult from a political position for Haines to annex us, if that, in fact, did come up again. If we are just sitting out here as a little satellite then it would be much easier. . . . So there would be some security for the citizens of this community.

Mr. Henry questioned the advantages to the State if Skagway were incorporated into a borough with Haines.

Mr. Bockhorst responded that the Skagway borough proposal will be judged on the standards established in law. He indicated that, in DCED's view, creation of a Skagway borough would result in a radical interpretation of those standards that would likely lead to the incorporation of similar boroughs by communities in the unorganized borough and division of existing boroughs into smaller boroughs.

Mr. Henry indicated that it appeared that DCED is motivated to prevent the incorporation of the Skagway borough at all costs because it will create problems elsewhere because of the precedent it will set. He noted, that he sees Skagway "suffering, politically, as a motive for the things that [Mr. Bockhorst] is speculating may or may not happen down the road, and I feel that is extremely unfortunate."

Mr. Bockhorst reiterated that the pending Skagway borough Petition must be judged based on the 18 relevant standards in the law. He noted that it is DCED's view that the Skagway borough proposal does not meet the standards. He suggested that approval of a petition that does not meet the standards would not serve the State's interests. Part of that involves the precedent that would be set. He reiterated his belief that approval of the Skagway borough does have the potential for destabilizing long-standing borough boundaries.

Mr. Bockhorst stressed that DCED firmly maintains that there is a distinction between a city government and a borough government. He noted that the Skagway borough proposal “erases that distinction.” He noted that this issue represents the fundamental point of disagreement between DCED and proponents of the Skagway borough proposal.

Mr. Henry asked for specific information about the 1963 political amendment to the Mandatory Borough Act. Mr. Bockhorst noted that the Mandatory Borough Act passed the Senate by one vote. A legislative aide to Representative John Rader (author of the Mandatory Borough Act) had expressed the view that the Lynn Canal – Icy Strait region was excluded from the Act to ensure passage of the bill. He noted that other information in DCED’s records support that conclusion – that Representative Morgan Reed from Skagway – facilitated the amendment to exclude the Lynn Canal - Icy Strait area from the Act.

Mr. Henry asked which local official in Haines had initiated discussion about annexation of Skagway to the Haines Borough. Mr. Bockhorst noted that it was Terry Pardee. Mr. Henry asked whether Mr. Pardee was still an elected official in Haines. Mr. Bockhorst indicated that he was.

Mr. Henry reiterated his dissatisfaction with the DCED Preliminary Report. He indicated that the tone of the report was negative. He said that he did not consider the report to be “fit.”

Mr. Bockhorst stressed that the LBC and DCED are independent of one another in terms of policy. He noted that Mr. Henry could view DCED’s report as an opportunity for him and others in the community to hone their arguments before the LBC in support of the Skagway borough proposal. He stressed that DCED believes that its Preliminary Report reflects a legitimate, objective application of the standards.

Mr. Henry responded, in closing, that:

Really, the only thing that I am taking away from this meeting at the moment – unless I am enlightened later on somewhere down the line here – is that the motive for the DCED is to disrupt or – leave the potential for – the community of Skagway to be tremendously disrupted from a government standpoint, and ultimately an economic standpoint, for the sake of not being a borough in the future so it can be cited as case law and for other situations that may blow up in your face, and I find that an extremely selfish position to take and somewhat also irresponsible. . . .

Ultimately, it is paramount that the approaches of the DCED, the Local Boundary Commission, the State for that matter, should be the welfare and the good well being of a community. And, again, I see the City of Skagway as a model for others. Now, if you have to alter your standards and put asterisks by them to protect you from different arguments down the road by other small communities, so be it. I think that would be a small price to pay as opposed to disrupting this community tremendously, or certainly even the potential for it to be disrupted.

In terms of Mr. Henry's charge that DCED's position was "irresponsible", Mr. Bockhorst noted that DCED considered its Preliminary Report to reflect a candid, honest, and objective analysis of the Skagway proposal. As such, he noted it would have been irresponsible for DCED to offer any recommendation other than the one presented in the Preliminary Report.

Mr. Bockhorst acknowledged that there are distinctions between Haines and Skagway. He also acknowledged that denial of the Skagway borough proposal could cause disruption. However, he noted that DCED did nothing to hasten consideration of a Skagway borough proposal or a proposal for annexation to the Haines borough – the status quo with respect to Skagway's local government structure has existed for 41 years.

Mr. Henry acknowledged that while there is no difference in the status quo from 1961 to 2002, the community of Skagway is being "pro active." He noted in that respect that:

[Being pro active] is more important to us because that's the way this community lives its life. That's the way the government has been handled in this community and that's the way we wish to see our future. Again, I would – if I was wearing your hat – would certainly let that carry a great deal more weight than to say that, "well, jeez, if the border had been out at Whitehorse instead of only a few miles up the road, we would have a next community 110 miles away as opposed to Juneau being 90, yet we interact with them more, so we would annex Whitehorse into our borough and then it would become acceptable to you because then we would be having a couple of communities within a larger geographic area. I don't find that to be a real strong point to hang my hat on. I would, again, look for the history, the consistency of a community to do its daily business and to promote itself and to take care of its social, cultural, and economic growth and government growth over that period of time.

Bob Ward, Skagway City Manager

Mr. Ward began his comments by noting:

I would start by saying that my response to your report has been that it was disappointing, but not surprising. I agree that from the first time we met, your position has been consistently that we don't meet the standards . . . so you have been consistent throughout this and it certainly is not my objective here to try to influence a significant enough change in your report to make it favorable for our position to the LBC. But, I do have to disagree that while other communities may use Skagway as a precedent – should we be successful in forming our own borough – I think it's going to be a very difficult comparison to draw.

Mr. Ward followed with his assessment of the views of the delegates to the Alaska Constitutional Convention regarding boroughs:

I think that – this is only speculation because I was not very old in 1959 when we became a state – I think that when the founding fathers envisioned boroughs in Alaska they had two images in mind. One is probably a large community taking

other smaller surrounding enclaves under its wing, as it were, to provide them services that they cannot provide themselves. The other image would be that a lot of similar communities or a number of similar communities would form together to provide services collectively that they cannot provide themselves.

And I would submit that in Skagway, neither of those images apply. We do not have a larger community to take us under its wing and we are certainly capable of providing all the services necessary in our community without joining together with somebody else to try to do that collectively to provide services that we can't already provide. In fact, the situation that we have here – and I don't mean to be at all disparaging about Haines – but we do have a larger community that needs to be taken under somebody else's wing to help it provide services that it can't provide itself.

When Mr. Pardee made his somewhat ill-fated suggestion that Haines annex us, it was strictly an "economic development annexation" whereby the gold mine which is Skagway would be used to support some of the economic woes that Haines is currently suffering. So, I don't think that you will find many other communities in that position.

Were we indeed simply a gold mine in Skagway, like a Red Dog mine out of Kotzebue or a Quartz Hill mine out of Ketchikan, it would certainly be the first thing that any smart borough would do would be to annex that industrial development in order to be able to tax them. In this case, annexation by the Haines Borough would give them the ability to tax us, but you're not just taxing infrastructure, you're taxing 800 hard working citizens that have done a tremendous job for the last 100 years to be self-supporting.

I will conclude by saying that if we are successful in becoming our own borough, anybody else would be hard pressed – any other community in Alaska – would be hard pressed to say that their situation is exactly like ours.

Stan Selmer, Skagway resident (Skagway City Council Member, also former Mayor of the City of Skagway – 10/1989 – 10/1995)

Mr. Selmer first commented on the discussion in DCED's Preliminary Report concerning the electrical intertie between Skagway and Haines.

I work for the company that put that cable in. Currently, the power that goes to Haines comes from Skagway, obviously. But, Haines cannot power Skagway. Haines does not have the installed capacity at this time to have it be a reciprocal thing. When we put the power line in 1998, the decision was made by people who don't know what they're doing that we would take and run one power line crew between Haines and Skagway. If we have an emergency in Skagway, Haines would respond. If we have an emergency in Haines, Skagway would respond. Well, for anybody that's lived in Skagway any length of time – or Haines for that matter – we don't have power outages on a clear blue-sky-day when it's 80 degrees. It's usually 20 below zero – snow that you can't get through – so we have power crews in Skagway and Haines – we'll continue to do that.

Following his comments about the intertie, Mr. Selmer offered the following comments about DCED's Preliminary Report:

I could sit here tonight and, I think, do an adequate job of debating what I think is – whether it's yours or your staff's bias – on the comparisons of the social, cultural, and economic interrelation and integration. I don't want to do that because if I won, I only win one point and there's eleven more to go.

I intend to reserve my attack – and hopefully destruction of the report – when the Commission is here.

Mr. Selmer then asked Mr. Bockhorst to address a statement in DCED's information meeting handout entitled *Maximize the Effectiveness of Your Comments to the LBC Regarding the Skagway Borough Proposal*.

There is one statement in this handout that I would ask you to help me understand. It's under number 18. And this covers the precedent that other people spoke of. But the wording – it starts with 'lastly'. 'Lastly, approval of the Skagway borough would have adverse impacts on State resources with no corresponding relief to State government in terms of responsibility for providing local services.' **What in the world is that?**

As outlined on pages 116 – 119 of DCED's Preliminary Report, Mr. Bockhorst noted that the State would be compelled to pay a \$600,000 organizational grant to a Skagway borough, if it were formed. The funds are intended for transition to borough government.

Additionally, Mr. Bockhorst noted that, while the Department of Natural Resources maintains that the municipal land entitlement of the City of Skagway would be credited against the municipal land entitlement of a Skagway borough – resulting in a zero entitlement for the borough – that view is based on an untested interpretation of the law. It is also unprecedented in its treatment of other boroughs in Alaska.

Further, Mr. Bockhorst noted that the Department of Education maintains that if the Skagway borough is formed, it would not be able to take advantage of the transitional mandatory local contribution requirements for newly formed municipal school districts without forfeiting the opportunity to make voluntary local contributions. The transition measures allow a newly formed municipal school district to save – over a three-year period – the equivalent of 7 mills applied to the full and true value of taxable property in the district. The savings to the local district come at the expense to the State. Mr. Bockhorst noted that the Department of Education's position is also based on an interpretation of the law. Further, he noted that while the Skagway borough Petitioner has indicated that it would not take advantage of the 7-mill transition funding provisions, the Petitioner cannot commit a future assembly.

The following exchange ensued between Mr. Selmer and Mr. Bockhorst:

Mr. Selmer: Then what I'm hearing from you – if I am correct – is that one of the overriding reasons why we have had this Petition not meet standards by your understanding and your interpretation is because it's going to cost the State too much money.

Mr. Bockhorst: No, you're not hearing that [interrupted]

Mr. Selmer: That is what I'm hearing.

Mr. Bockhorst: Well, that's not what I'm intending to say. The word "lastly" suggests that there are other provisions that argue with respect to that standard and those are discussed in the previous paragraphs – but that is one point.

Mr. Selmer: Right. . . . The State of Alaska has really not done a good job by Skagway in the entire years since statehood. Whether it's DNR interfering with our ability to protect ourselves from flood protection. Whether it's DEC's regulations that impact us. DOT has certainly done a good job, but Fish and Game has made some unusual rulings in Skagway. Our school has not been supported I don't think adequately by the State. You know, there's probably a whole bunch of good reasons that we should be petitioning to become our own country.

No other member of the audience came forward to offer comments.

Mr. Bockhorst concluded the discussion by reiterating his position that DCED's analysis of the Skagway borough proposal is fair and objective. He stressed that those who disagree will have ample opportunity on August 31 to convince the independent Local Boundary Commission that the Skagway borough proposal has merit.

Mr. Bockhorst next turned to a summary of future proceedings as summarized in the handout entitled *Future Proceedings Regarding the Skagway Borough Proposal*.

The meeting concluded at approximately 9:10 p.m.

APPENDIX D

WRITTEN COMMENTS ON DCED'S PRELIMINARY REPORT REGARDING THE SKAGWAY BOROUGH PROPOSAL

WRITTEN COMMENTS of the CITY OF SKAGWAY, PETITIONER

Concerning the

PRELIMINARY REPORT REGARDING THE SKAGWAY BOROUGH INCORPORATION PROPOSAL

Prepared by

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Published June, 2002

The Local Boundary Commission staff has done an excellent job of justifying the position of the Department of Community and Economic Development (DCED) on the Skagway Borough Formation Petition. DCED has made comparisons of Skagway to Haines on virtually every conceivable topic to prove the “common interests” standard, and were so thorough as to count the number of times—34 by DCED count, Pg. 47, *Preliminary Report Regarding the Skagway Borough Incorporation Proposal* (hereinafter, “**Report**”), that the Petitioner referred to incorporation of the City and Borough of Yakutat in the Skagway proposal.

What was perhaps not so apparent to DCED was the author’s reference to Haines/Haines Borough in the Report—by Petitioner’s count roughly 499 times, not counting footnotes, graphs and charts. In sharp contrast, Canada was only mentioned 15 times (not counting footnotes, graphs and charts). It is quite obvious that DCED only looked South and West toward Haines, totally discounting that the larger portion of the City of Skagway perimeter is bounded by Canada. Missing from the report was any comparison of the strong historic bonds and economic links that Skagway has with their Canadian neighbors to the North and East. While DCED had approximately a year and a half to prepare their arguments in the Preliminary Report, we, the Petitioner, have less than one month to prepare our argument against DCED’s foregone conclusion to forever lock us into the Haines Borough, the SAME Haines Borough that on November 20, 2001, adopted Resolution Number 537, “A Resolution of the Haines Borough Asking the Local Boundary Commission to Grant the City of Skagway’s Request to Incorporate as a First

Class Borough.” (Pg. 11, the Report) While it is reprinted in print that is almost unreadable in the Report, it is worthy of bifocals or a magnifying glass to read the body of the Resolution, which states:

“WHEREAS, the Haines Borough Assembly does not agree with any proposal that would place Skagway in the Haines Borough against their will; and

WHEREAS, the people of Haines and Skagway are not dependent on each other either economically or politically; and

WHEREAS, Skagway has always been a separate, fully functioning, independent municipality; and

WHEREAS, the current system of separate, independent governments works well, and

WHEREAS, the Haines Borough Assembly supports the citizens of Skagway’s right to determine their own future.

NOW THEREFORE BE IT RESOLVED that the Haines Borough Assembly asks the Local Boundary Commission to proceed with the City of Skagway petition for incorporation as a first class borough and allow the people of the City Skagway to choose for themselves the form of government that best addresses their needs.”

The Resolution speaks volumes about the two regions that have operated so independently for so long, and yet, DCED would have the Commission *force* the two regions to come under one rule! It is difficult to fathom that the founders of the Constitution could have possibly dreamed up such a scenario—the Local Boundary Commission allowing the Haines Borough to be formed, blocking any access Skagway would have to additional territory for which they could petition to form a borough that

would encompass *large, geographic areas*. Yet DCED claims the Petition fails the standard on size because “the constitutional convention delegates intended boroughs to encompass large geographic areas.” (Pg. 92, the Report)

The Petitioner was of the impression that our petition to form a borough should be about Skagway and how we meet the standards to form a borough rather than so much emphasis being placed on our neighbors. DCED certainly covered Haines/Haines Borough thoroughly in the Report, so we will herein address our close association and proximity to our neighbors in Whitehorse and the Yukon Territory.

Skagway is situated just 110 miles from Whitehorse via road, and 359 miles from Haines via road. Skagway has very close ties with our neighbors to the North in Canada. The port in Skagway is a key element in providing tidewater access to export markets for the Yukon industrial sector. Should the discussions regarding a pipeline through Canada ever materialize, Skagway would be a major transshipment port. It is mutually beneficial for both parties to maximize investments to develop commercial relationships between the respective communities that enhance economic development and create jobs. In keeping with that vision, a copy of the Memorandum of Understanding between the City of Skagway and the Minister of Economic Development, YT, dated September 28, 2001, is provided as Attachment A with these written comments.

DCED apparently did not look at the Port of Entry records for road traffic to Skagway, although implying on Pg. F-3: “The Petitioner makes only a fleeting reference to the transportation ties between Skagway and Haines. The Petitioner views those links as lacking in terms of significant common interests.” Apparently DCED took the same view of road traffic between Whitehorse and Skagway. The Petitioner made equal reference to the Klondike Highway as to the other transportation ties, including the ferry system. Those items are bulleted in the Report, Pg. 88.

The Petitioner has gathered the information to show the LBC that Skagway receives tremendous numbers of traffic from routes OTHER THAN the waterways and airways

between Skagway and Haines. Attachment B reflects the numbers of road traffic ENTERING into Skagway only. “Thru buses” are those that originated in Whitehorse, bringing people to Skagway as their destination. “Tour buses” leave from Skagway, go to the Yukon and return. They carry people that originated in Skagway and are not counted as arrivals. With a resident population of 862 (Report, Pg. 49), each resident of Skagway would have had to make 1,046 trips INTO Skagway via the road system to make up the 901,658 people counted as entering Skagway in the four years between 1998 and 2001. Obviously, those figures account for a large number of visitors to Skagway. The final “People Totals” on Attachment B show the breakdown of US Citizen, Canadian or other Foreign not requiring documentation, Foreign visitors requiring documentation and Foreign residents residing in the US with greencards. Skagway receives between 750,000 and 800,000 visitors from May to September. Between 500,000 and 600,000 of that number are cruise ship passengers. The marine highway has 33,000 to 37,000 passengers that disembark in Skagway, with about the same amount reimbarking. The remaining majority of Skagway’s visitors (between 170,000 and 200,000 persons) arrive by the Klondike Highway. The point to be made here is that the highway is another vital transportation link that shows “common interests” with Canada. That point was glossed over by DCED in the Report.

We urge the Commissioners to remember that you are an independent body, free to differ with DCED on its analysis and conclusions. We urge you to weigh fairly our position as Petitioner, as we further address the standards that DCED has determined we either have met, have “in a narrow sense” met, or have not met.

STANDARD NUMBER ONE: City Dissolution

DCED determined that AS 29.06.450(c) is satisfied upon areawide assumption by the proposed Skagway borough of all powers currently exercised by the City of Skagway.

STANDARD NUMBER TWO: Borough Classification

AS 29.05.031 regarding permissible classes of borough incorporation is met with the Petitioner’s proposal to form a *first class borough*.

STANDARD NUMBER THREE: Transition Plan

With no change proposed to the boundaries and with no change in the powers currently exercised by the City of Skagway and those to be exercised by the proposed Skagway borough, DCED has determined that the standard in **3 AAC 110.900** is satisfied.

STANDARD NUMBER FOUR: Effect on Civil and Political Rights

DCED has determined that incorporation of a Skagway borough would not deny civil or political rights because of race, color, creed, sex, or national origin. The standard set forth in **U.S.C. Section 1973** and **3 AAC 110.910** is satisfied.

STANDARD NUMBER FIVE: Budget Feasibility

DCED recognizes that Skagway has substantial financial resources, and the proposed budget is feasible and plausible. Therefore, the Skagway borough proposal meets the standard set out in **AS 29.05.031(a)(3)** and **3 AAC 110.055**.

STANDARD NUMBER SIX: Size and Stability of Population

DCED grudgingly agrees that the population size and stability standard in **3 AAC 110.050(a)** is met, although they choose to examine population within the context of other relevant standards such as “common interests”. Common interests will be addressed under Standard Eight.

The **Article X, Section 3** of the **Alaska Constitution** states in part: “Each borough shall embrace an area and population with common interests to the maximum degree possible.” **AS 29.05.031(a)(1)** addresses population for borough incorporation as “the population of the area is interrelated and integrated as to its social, cultural and economic activities...” As Vic Fisher, noted authority on local government in Alaska, so clearly pointed out in a four-page memorandum to the Local Boundary Commission (LBC) in 1991: **“Both the constitution and state law relate these criteria to population. There is no reference, actual or implied or intended, that terms such as “common**

interest”, “interrelated”, or “integrated” refer to cities or to communities. Again – these terms refer to population and only population.” (emphasis added by highlighting) And further in his memorandum Mr. Fischer states: **“Without belaboring the point...the 1,000-minimum population criterion, which appears to have not (sic) relation whatsoever to feasibility. That, too, needs to be related to a given issue. Thus, South Anchorage could have 40,000 people and still not make sense as a borough. Conversely, a population under one thousand might be appropriate for a small borough.”** (emphasis added by highlighting)

The Petitioner certainly has a population that is large enough and stable enough to support the proposed borough government. The Petitioner has chosen to maximize the rich history of the area through development of its infrastructure to promote Skagway as one of Alaska’s premier tourism destinations. Skagway has developed an infrastructure that supports a summer population approaching 2,500 residents PLUS another 1,000 to 8,000 visitors on any given summer day. During the winter months when usage is substantially decreased, the basic infrastructure (i.e. water, sewer, solid waste, roads, etc.) must still be maintained, and Skagway does a very credible job. Most communities facing downsizing for seasonal or economic effects have a very difficult time grappling with the issue. Skagway has factored seasonal downsizing considerations into the planning stages of development and expansion of existing facilities.

STANDARD NUMBER SEVEN: Rebuttable Presumption Concerning Minimum of 1,000 Residents

DCED concludes that the rebuttable presumption standard concerning the less-than-1000 population size and stability standard in **3 AAC 110.050(b)** is met, but reserves the opportunity to compare it in the context of other standards, principally the “common interests” standard. Mr. Fischer addressed the “common interests” point very candidly and is quoted under STANDARD NUMBER SIX above. Moreover, the City of Yakutat had a population between 720 and 780 persons when the Local Boundary Commission approved their formation of a borough, and the Yakutat Borough was allowed to expand their boundaries in 1997 beyond the Model Borough Boundaries. This action

certainly proves that the Local Boundary Commission is an independent body, free to weigh all facts and make decisions contrary to DCED's interpretation and opinion. It further proves that the Model Borough Boundaries are arbitrary and capricious.

STANDARD NUMBER EIGHT: Social, Cultural, and Economic Interrelation and Integration (Common Interests)

DCED goes to great lengths to discuss the historic merits of this Standard. **Article X, Section 3** of **Alaska's Constitution** promotes boroughs that encompass large and natural regions. The Petitioner does not disagree with the *intent* of the founders who drafted the language. Large, natural regions would certainly be preferred. However, **Skagway is land-locked through no action of its own, but by the action of a previous Local Boundary Commission when that Commission voted to allow the formation of the Haines Borough!**

From Brief History of the Third Class Haines Borough prepared by Karl Ward for the Haines Centennial Commission, January 30, 1980, Mr. Ward states: "In 1963 the new State Legislature passed the Mandatory Borough Act. This mandated that certain areas such as Juneau, Ketchikan, Anchorage, and Fairbanks form boroughs. In the original bill, Haines was included because of the Independent School District which included a large area outside the city limits. But because Petersburg, Wrangell, and Skagway were not required to form boroughs, our representative from Skagway was able to get us removed from the mandatory list." This information communicates clearly that the legislature at that time was operating under the assumption that Skagway and Haines would be separate and distinct boroughs.

The **Alaska Constitution**, in **Article X, Section 3, Boroughs**, states (in part) "Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified or dissolved shall be prescribed by law." We assume the drafters of this language realized that the economics of areas would be the predominant factor in the formation of borough government, and that the economics of those boroughs may change, causing a need to

reform the very structure of the borough government. (emphasis added by underlining). Hence, it was obviously anticipated that the makeup of boroughs would change over time, to consolidate, merge, reclassify or dissolve. While a Skagway borough *today* is viewed by DCED to be too small in land mass, one cannot predict what the Skagway borough, or, for that matter, any other borough will be in 10, 20 or 50 years in the future. Neither can DCED predict what the Haines Borough may experience either positively or negatively in the future that may alter its makeup.

Haines and Skagway clearly have differing views on any number of issues, as has been pointed out in Skagway's petition and in various quotes from people in Haines. Former Skagway Mayor Wallace, who now lives in Haines, expressed in personal communication with DCED that "there have long been rivalries between the two communities.... For that reason, in particular, he expressed personal support for the Skagway borough proposal." (Personal communication with DCED, May 16, 2002, Pg. F-25, the Report)

DCED also notes a doctor who lived in Haines and provided regular medical services to the residents of Skagway from the 1960's to the 1980's. His reason for providing the service to Skagway was because he liked to fish the waters in between the two communities. DCED viewed this as a strong tie between Skagway and Haines. The Petitioner wishes to point out the strong historical ties between Skagway and the Klondike during the Gold Rush, and the significance of Skagway during World War II to the effort of construction of the Alaska/Canada Highway that school teachers across the nation have drilled into youngsters in history classes over several decades.

The Report accurately represented the communication difficulties in Appendix F in the discussion regarding the Lynn Canal Medical Corporation that was formed to run clinics in both Haines and Skagway. Skagway had only two representatives on the 9-member Board, the Board met in Haines and the two Skagway Board Members had to participate via teleconference. It failed, and now major medical needs are met in either Juneau or Whitehorse for the two communities. What was not noted, however, is that the Skagway

Clinic is staffed to handle the summer visitor and seasonal resident populations, and Skagway is currently investigating the construction of a new clinic facility to replace the outdated clinic that is operated through contract with the Skagway Medical Corporation.

DCED points to some State and federal agencies that service Skagway from Haines on an occasional or as-needed basis. That is not uncommon in any part of Alaska, and as State dollars continue to dwindle and agencies are required to cut their budgets, those support services will no doubt continue to come, but from Juneau or even further away. Would that still prove a “common interest”?

DCED was incorrect in its analysis that the City of Skagway had previously administered daycare program funds, but noted daycare service is now provided long-distance from Haines. The Petitioner wishes to set the record straight.

In the early 1990’s the Skagway Child Care Council, a private, non-profit daycare provider, was forced out of their leased facility in the old American Legion Hall, because the building had been sold to a private entrepreneur. The City of Skagway rented the group 900 sq. ft. of space in its recreation center for \$500/mo., which also allowed them nearly unlimited use of the gymnasium as well as the grounds. Additionally, the City gave them an annual grant of \$5,000.

In 1997 the City of Skagway built a temporary city hall for use while the McCabe building was undergoing renovation. When the McCabe building was completed in September of 2,000, the City of Skagway moved back into the McCabe building, and relocated the Child Care Council into the 1,500 sq. ft. facility. Construction costs to the City of Skagway were \$185,000. This building is rented for \$500/mo., as well, with all utilities included.

Last year concerns were raised that the City of Skagway was supporting the private, non-profit daycare provider to the expense of another private provider. Consequently, Skagway offers a subsidy to that private provider also, based on their enrollment. The

City's budget for these programs in FY03, including winter seasonal use of the temporary city offices as a teen center, is \$10,500 plus utilities.

The grant program that DCED alludes to on Pg. F-31, the Report, was an administrative situation that was administered locally for local individuals involved in daycare. A local bookkeeper handled the grant reporting, and funds were distributed through the City Office. After the bookkeeper moved away, it simplified matters to have Haines handle this program. It is a minor component of daycare provision in Skagway.

In its comparison of fisheries, DCED did a thorough analysis of permit holders in both sport and commercial fishing which proved to the reader that most of the fishing activity is not within Skagway, nor does Skagway rely on the fishing industry for revenues. By DCED's own figures, Skagway's share of fisheries taxes in 2002 was \$2,163.86, while in contrast, the City of Haines and Haines Borough received \$201,993.14 in business fisheries tax revenues and fisheries taxes for the same year. The Petitioner hardly sees commonality! Three permit holders that hold 5 permits in Skagway vs. 255 permit holders that hold 356 permits in Haines/Haines Borough does NOT exhibit common interest between the areas. (Pgs. F-13 and F14, the Report)

The Common Interest In Management of State Lands section of the Report showing the new ***draft*** plan of the Alaska Department of Natural Resources for the Skagway/Haines region left the Petitioner confused as to what point DCED was trying to make. The new ***draft*** plan encompasses huge areas from Yakutat Borough to Admiralty Island on the East, to Port Alexander to the South! To superimpose the proposed Skagway Borough over the area does NOT prove common interest. Nor does the fact that Haines and Skagway are in the "Northern Region " of the *Northern Southeast Area Plan*, because Gustavus is also a part of that "Northern Region". Should we presume that DCED's assumption is that Gustavus should also be a part of the Haines Borough? Regardless of the lack of persuasive argument from DCED, it is safe to say that Skagway, Haines, Gustavus and every other area of the State has an interest in the management of state lands around their areas.

In the Report, DCED failed to mention that Skagway is the headquarters for the Northern Southeast Local Emergency Preparedness Committee. As demonstrated in the recent Dyea flood, this is yet another area where Skagway is not reliant upon Haines.

DCED appears to have taken liberal license to mold its own analysis of the proposed Skagway borough boundaries and Chatham REAA boundaries and make a determination contrary to the Alaska Department of Education in saying that the Lynn Canal model borough boundaries are superior to both! It is not surprising that DCED has consistently stated its preference for the Haines Borough throughout the Report, but the Petitioner views that statement as being particularly blatant, and not consistent with DCED's usual high quality analysis, particularly since DCED was tasked through legislation to determine the boundaries for REAA's in conjunction with the Department of Education as set forth in **AS 14.08.031(a)** and **(b)**.

Pages F-29 and F-30 of the Report notes that one State Trooper is stationed in Haines and Skagway had 14 cases responded to within a one year and four month period. DCED lists the reasons for the calls but does not bother to say whether all the responses came from the Haines-based Trooper or whether they came from elsewhere. Not noted in the report is that when the State Trooper in Haines is busy or unavailable, Skagway must call the Ketchikan State Trooper Office. Also, there was no comparison made to the number of calls Haines/Haines Borough had during the same period of time.

The Report (Pg. F-32) discusses entertainment, but fails to discuss what Skagway has accomplished within its boundaries. Instead DCED has implied that HAINES has hiking, boating, hunting and fishing, and because Skagway has those same things, we have "common interests!" There was no mention of Skagway's library, museum, or new softball field just recently completed at a cost of about \$200,000. Skagway is contributing \$120,000 to the construction of a new footbridge across the Skagway River, and continues to develop and maintain local hiking trails, ATV trails, picnic areas and parks—all built with strictly local construction funds. The only State money received

was a small amount for planning. Skagway has a very active planning and zoning commission. Because of our growth in the business sector Skagway must ensure that appropriate entertainment and recreational facilities are balanced with that growth. Skagway has a separate Historic District Commission that recommends standards for, and monitors issues related to activities within the historic district. Such attention to detail has benefited the Skagway economy tremendously.

To protect our entertainment infrastructure and meet the emergency needs of those who visit or reside in Skagway, the City of Skagway has two ambulances, four fire trucks and a very large amount of ancillary equipment. There is a paid staff of five persons in the Fire Department and a volunteer staff of approximately 70 persons. Skagway routinely provides emergency service outside its municipal boundary, including search and rescue and emergency medical services. Not noted by DCED in the Report is that Skagway is the headquarters for the Northern Southeast Local Emergency Preparedness Committee. Skagway has enacted strong health and safety regulations, animal control (currently building a \$70,000 impound facility with local money), and building and construction regulations monitored by our own building official in addition to the State Fire Marshall's review. Our building sprinkler requirements exceed building codes, yet we also have a grant program to pay 70% of the cost of retrofitting older buildings with fire suppression systems. Our police department has 4 full time officers and 2 seasonal officers, which most likely exceeds the police departments of similar size cities, but is sized to meet the public safety needs of 10,000 people on any given day. We also provide traffic control because of the congestion brought about by tour vehicles, private visitor vehicles (including motorhomes), and vehicles owned by permanent and seasonal residents. Skagway also has a contracted public transportation system.

A prime example of Skagway's capability to manage a borough was demonstrated on July 23, when the community of Dyea received flooding as a result of a 700-foot high moraine that slid into a nearby lake at the foot of the West Creek Glacier, causing a huge surge of water down the West Creek drainage into the Taiya River. The river crested at 21 feet before subsiding. Skagway's local emergency response teams immediately

activated rescue efforts and rescued approximately 25 people from the small town. An emergency shelter was set up at the Skagway City School, and within a short period of time all residents had been accounted for. This emergency was handled without any help from other areas. The State Trooper based in Haines was notified, but did not respond to the call. This crisis was also handled without interruption to our summer tourism. Skagway had four large cruise ships in port at the time. (See Attachment C, *Anchorage Daily News* Article entitled “Dyea Evacuated After Landslide, Flood”, July 23, 2002) Ironically, Skagway is currently finalizing plans for a \$2 million dollar flood control project!

To address the protection of both residents and the large number of tourists, Skagway provides water, sewer and solid waste services for a daily population of up to 10,000 people flushing toilets, washing hands, throwing away their hotdog wrappers, etc. Our utility rates are among the lowest in Alaska, though the rates will continue to be adjusted as necessary to cover costs.

Skagway takes an avid interest in management of our waterfront property, although much of it is secured by a tidelands lease with White Pass Railroad. Like other cities around the State, the City of Skagway has entered into an agreement with the State to take over our small boat harbor once the issue of deferred maintenance is settled.

The City of Skagway submitted a petition to the LBC to become a borough, not to merge with the Haines Borough, as DCED seems to have interpreted from our petition. We ask that the Commission judge us according to whether we meet the appropriate standards for formation of a Skagway borough.

DCED’s comparison of Skagway’s Service Areas and how they equated to the diversity of interests by Census data was another area that appears to have missed DCED’s intended mark. Skagway is not separated into neighborhoods based on ethnicity, language, age, education or household incomes, as portrayed by DCED. Skagway is a

“regional” government over as large an area as is possible, given our “enclave” status established by actions of a previous Local Boundary Commission.

While Skagway strives to be conservative in the size of local government, we provide services that exceed general expectations virtually anywhere in Alaska, yet manage to keep our sales and property taxes at very modest levels while maintaining reserves in the \$7 million dollar range. Remarks were made about Skagway’s five tax zones (footnote 35, Pg. 57, the Report), in comparison with two other cities, Cordova and Wrangell, who had less tax zones. Both communities are much *smaller* in landmass than Skagway—is it not a reasonable assumption that those two cities would have less tax zones? It is baffling that somehow DCED then equated the number of tax zones to greater diversity among residents! Further, DCED noted that there was 455% difference in the lowest to highest zone comparison. What DCED failed to demonstrate in the Report was that the HIGHEST mil rate in Skagway is only 8.3 mil!

Regarding “Common Major Economic Activity”, on Pg. F-4 through F-10 of the Report, DCED expounds upon the importance of tourism in Haines, while acknowledging that it is not on the same level as Skagway’s tourism industry. As noted in the Petition, Skagway’s economy is based on transportation, tourism and governmental employment. Haines Borough’s top three industry employers were retail trade, durable manufacturing, and the fishing/forestry sectors. DCED chooses to stage tourism in Skagway as basically its ONLY economy. Skagway is proud of its largest economic sector and has focused on development of that sector. However, Skagway has not, as a result, forgotten or forsaken the other facets of its economy as is evidenced in Figure F-6, Pg. F-9 the Report. This chart, PERCENTAGE OF EMPLOYED CIVILIANS 16 YEARS OF AGE AND OLDER BY OCCUPATION (source 2000 census), shows comparison of Haines and Skagway’s employment in various sectors. This chart shows that Skagway has a larger percentage of service occupations, sales and office occupations, and construction, extraction and maintenance than does Haines. In contrast, Haines prevails with a larger percentage in management, professional and related, farming, fishing and forestry, and in production, transportation and material (but only by .30 of one percent in the latter

category). This proves that Skagway has a spread of jobs equal to that of Haines that would continue to sustain our economy if our tourism industry was not sustained at the current levels. It is further proven by DCED's statement on Pg. F-9, the Report, that "The greatest disparity was in the transportation, warehousing, and utilities industries. The percentage of employment in those industries within the City of Skagway was 16.8 basis points higher than it was within the Haines Borough." DCED suggests in the same paragraph, "The disparity is largely due to the extensive operations of the White Pass & Yukon Route Railroad and other tourism-related transportation operation in Skagway. The fact electricity for Haines is generated in Skagway may also contribute to the disparity." Skagway's port is a very critical port to the Yukon Territory and as such, moves large amounts of freight and supplies both in and out of Skagway that have no relation to tourism. For example, Whitehorse ships its recyclables South through Skagway's port except for scrap metal, which has only recently become more cost effective to truck down the Alcan Highway; Petro Marine ships an average of about 1.6 million gallons of fuel per month from Vancouver, B.C. across Skagway's port and on to Whitehorse by truck. Alaska Marine Lines reported shipping 24 containers of staple products and supplies per week between Skagway and the Yukon Territory, using the larger 53' containers as an efficiency measure.

The level of non-tourism related port activity is driven directly by the economic situation in the Yukon. The benefits Skagway currently enjoys are not insignificant, but are still a reflection of a Yukon economy in fairly extreme depression. The opening of a mine, the construction of a pipeline, or any other industrial development in the Yukon will automatically drive upward the freight transshipment activity in Skagway. This common interest with the Yukon Territory in development of our resources to maximize our economic growth and develop jobs was the impetus that prompted the Memorandum of Understanding with respect to a Commerce Development Plan between the Yukon Territory and Skagway. (Attachment A)

The Skagway School has more competitive sports activity with Whitehorse on a non-conference level than it does with Haines. This includes wrestling, volleyball and

basketball on the junior high and varsity levels. Because we are in a different school conference division, our varsity basketball plays Haines' junior varsity. The disparity is largely due to the distance between Skagway and Haines and the cost of transportation. Having the ability to *drive* to Whitehorse in a relatively short time compared to Haines which is an eight-hour drive away lends itself to less costly travel and less impact on the time students are away from the classroom.

DCED was very thorough on reporting the various newspapers available to Skagway, even quoting the number of copies distributed in Skagway of the Haines-based *Eagle Eye News*. DCED did say that the *Eagle Eye News* is a FREE newspaper, but reported it as being “currently circulated on a wide basis in Skagway” The *Chilkat Valley News* is Haines' paid paper. It is the Petitioner's understanding that there are 6 or 7 subscriptions in Skagway, two of which belong to the City of Skagway. In contrast, there are approximately 400 subscriptions in Haines. There are perhaps another 10 copies sold weekly within Skagway on average. In comparison, the Skagway-based *Skagway News* reports approximately 200 subscriptions in Skagway plus approximately 200 additional copies sold at newsstands in Skagway, while there are 11 subscriptions in Haines and perhaps another 10 copies sold of each publication. Again, DCED looked to Haines rather than the Petitioner's own locale for information, and the numbers of papers sold in Haines and Skagway speak only to cursory interest in the news within the other community, certainly not “common interest”.

On Pg. 74, the Report, DCED concludes “that the area within the boundaries of the proposed Skagway borough represents an undersized and contrived territory.” The Petitioner wishes to point out that Webster's Dictionary defines **contrive** as *1. to think up; devise; scheme; plan 2. to construct skillfully or ingeniously; fabricate 3. to bring about, as by a scheme; manage*. The Petitioner did not *contrive* our boundaries. We received them by default—the boundaries came about as a result of a decision by a former Local Boundary Commission when it approved the Haines Borough. Skagway contends that it does encompass a population that is interrelated and integrated as to its social, cultural and economic activities and we do have a population large and stable

enough to support borough government. AS 29.05.031(a)(1) and 3AAC 110.045(a) are satisfied.

STANDARD NUMBER NINE: Rebuttable Presumption concerning a Minimum of Two Communities

Article X, Section 3 of the Alaska Constitution states (in part): “Each borough shall embrace an area and population with common interests to the maximum degree possible.” The Petitioner believes our “common interests” with Whitehorse and the Yukon Territory have been clearly demonstrated to be greater than our “common interests” with Haines under STANDARD EIGHT of these written comments. AS 29.05.031(a)(1) states: the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government.” As Vic Fischer pointed out in his October 11, 1991 memorandum to the LBC, both the constitution and state law relate these criteria to population and only population, not to cities or communities. He states: **“The regulation requiring at least two communities to form a borough is based neither on the constitution nor on law. It lacks fundamental logic. To my mind, it gives rise to specious arguments that appears to have great significance. In fact, it should have no relevance to resolving questions of borough formation. Anchorage would have been appropriate to borough formation because there was, in addition to a large city, a hamlet with a small handful of residents, such as Basher or Glen Alps. Likewise, Sitka is essentially a one-city borough. The criteria for borough incorporation should be whether the proposal makes sense in the broader scheme of things and not some arbitrary and artificial standards, be they rigid or presumptive.”** (emphasis added by Petitioner)

DCED addressed Dyea as a “ghost town”, quoting from articles from 1898 and 1900 and from researching websites. While Dyea may be a ghost town historically, there is substantial recent development around the area of “Dyea,” and it is anticipated that development will only increase, particularly because of the Chilkoot Trailhead attraction. Vic Fischer noted that Anchorage became a borough not because it had hamlets with a

small handful of residents, and specifically names Basher and Glen Alps as examples. Compare what Anchorage looked like 30 years ago to today, and you realize the growth and development that has changed the face of the Municipality of Anchorage within the last 20 years—does the majority of the Anchorage populous today recognize Basher or Glen Alps? Communities are arbitrary. Therefore, the Petitioner maintains that the proposed Skagway borough has one very large community and a smaller community in the Dyea area that is developing and growing. As is evidenced by Attachment C, the *Anchorage Daily News* referred to Dyea as a “small town” during the recent flood caused by a landslide into a nearby lake. Because Skagway does not have two defined “communities” by DCED’s standards, whatever they are, should have NO bearing on your decision regarding a Skagway borough. The Petitioner recognizes Dyea in the same context that Haines views Mud Bay and Lutak in relation to their City. It is a separate and distinct community dependent to a large degree on Skagway for shopping, entertainment, etc., just as Mud Bay and Lutak are dependent upon Haines.

In relation to single-community boroughs, DCED does acknowledge, (Pg. 79, the Report), “The Commission must judge each proposal on its individual merits.” **AS 44.33.812(a)(2)** is the authority that DCED uses to develop standards beyond the Alaska Constitution and the Alaska Statutes, yet those standards must be approved first by the Local Boundary Commission and then by the legislature. This is a large responsibility. The LBC must carefully weigh each proposed standard to ascertain that it does not alter the intent of the original Local Government Committee of the Constitutional Convention, as pointed out above by Vic Fisher, a Constitutional Convention delegate and participant on the Local Government Committee. The Petitioner believes that Skagway and Dyea represent two separate and distinct communities, though it is not *imperative* that we have two, as noted above; therefore, we feel this standard is adequately met.

STANDARD NUMBER TEN: Communications and Exchange

DCED acknowledges that the Petitioner meets standard **3AAC 110.045(c)** “if narrowly applied”. (Pg. 89, the Report) DCED expresses concern about the Department of Transportation and Public Facilities’ (DOT&PF) ability to maintain state highways,

roadways, and airports in Skagway. It points out that in the 1980's, DOT&PF employed a substantially larger maintenance crew in Skagway than it does currently. The fact is that the concern expressed is true all over the State, although there was no mention of whether there were similar cuts within the Haines Borough. What is important for the Commission to know is that the City of Skagway has already made plans to make up for the loss of one full and one winter maintenance position when those cuts are made by DOT&PF by accepting additional road maintenance responsibility in specific areas. DCED goes on to say that the Petitioner has only addressed the standard in a "community context", and refers to its more "regional" analysis in **Parts A, B and I** of Appendix F of the Report. The Petitioner will respond accordingly:

Parts A & B. Service by State Ferry System; Daily Local Air Taxi Service

DCED comprehensively addresses the Alaska Marine Highway and air service connections between Haines and Skagway, showing schedules and costs. What DCED fails to report is the *relative* importance of these transportation venues to other forms of transportation coming into or out of Skagway. The Petitioner has demonstrated within these written comments that there is substantially larger numbers of people traveling over the Klondike Highway than there is by the Alaska Marine Highway System. The Petitioner was not able to obtain comparisons of air traffic, but suffice it to say, if available, those numbers would also reflect substantially less people than travel via the Klondike Highway. On Pg. 88, the Report, the Petitioner listed the various forms of transportation facilities both in **a regional and community level context**. They include:

- The paved Klondike Highway connecting Skagway to Canada (**REGIONAL**)
- The Dyea Road-**BETWEEN PROPOSED BOROUGH COMMUNITIES**
- Scheduled and charter air service connecting Skagway with Juneau, Haines, and Whitehorse (**REGIONAL**)
- The Port of Skagway, which includes year-round transshipment and transportation hub between Alaska and Canada; the White Pass and Yukon Route Railroad connecting Skagway to Canada; the **Alaska Marine Highway**

Ferry Terminal and barge landing area, and a small boat harbor.
(REGIONAL)

- The Alaska Marine Lines, providing weekly barge service to and through Skagway from Seattle. **(REGIONAL)**

Part I. Dependence on a Community for Transportation, Entertainment, News and Professional Services

DCED addresses in this section transportation, medical services, news media, Alaska State Troopers, health and daycare issues, etc. between Haines and Skagway. The Petitioner responded to these in other areas of the report (primarily under STANDARD EIGHT-common interests), and will not repeat them here. Petitioner maintains that **AS 29.05.031(a)(4)** is met when the LBC looks at the relationship, not only with Haines, but also with Whitehorse and the Yukon Territory, which was overlooked by DCED.

STANDARD NUMBER ELEVEN: Adequacy of Electronic Media and Land, Air and Marine Transportation Links

DCED applied the same analysis as STANDARDS EIGHT AND TEN. The Petitioner believes we have addressed those adequately in these written comments, giving the LBC the 360 degree view from Skagway of the standards set forth in **AS 29.05.031(a)(1-4)** which are:

Sec. 29.05.031. Incorporation of a borough or unified municipality

- (a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:
 - (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
 - (2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;
 - (3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's

- economy includes land use, property values, total expenses, and income of the proposed borough or unified municipality;
- (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The Petitioner believes that the Commission will recognize that the Skagway region is sufficiently accommodated to become a stand-alone borough. [3AAC 110.045(d)]

STANDARD NUMBER TWELVE: Boundaries' Conformance with Natural Geography

DCED recognizes that the Skagway borough proposal conforms to natural geography “in a narrow sense” when viewed in the context of AS 29.05.031(a)(2) which states: “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;” and 3AAC 110.060(a) which states: “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 will, in its discretion, consider relevant factors including

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

DCED continues to extrude the Model Borough Boundary administrative standard, although it is not specifically called for to prove the standard of whether the proposed Skagway borough boundary conforms with natural geography. As stated earlier in these written comments, the boundaries do not conform to the aged Model Borough

Boundaries or Regional Education Attendance Areas, although the latter does not seem to weigh as heavily with DCED in its interpretation of the administrative standards. The proposed Skagway borough area is appropriately described on Pg. 92, the Report, and will not be repeated in this document. The proposed Skagway borough boundaries most certainly conform to natural geography, just as a previous commission determined that the Haines Borough boundaries conformed to natural geography when their petition to form a borough was approved.

STANDARD NUMBER THIRTEEN: Inclusion of All Land and Water Necessary to Provide Essential Services on an Efficient, Cost-Effective Level

DCED gives a very thorough history in the evolution of the City of Skagway, Pgs. 93-101 and in Appendix G where it added the Key Components of 1979 Skagway Annexation Record, including appropriate excerpts from Pgs. 9-11 of the City's Brief; DCRA's Report; and LBC Statement of Decision. In the City's 1979 Brief, the author appropriately pointed out that Skagway was the commercial and industrial center of the area, and was providing substantial services and benefits upon property owners outside Skagway's City limits without receiving tax contributions. Also noted on Pg. 10 of the City's Brief, (Pg. G-2 of the Report), "And, most importantly, there is the transportation corridor through the White Pass. These are the areas which must be made available and developed in order that the City may accommodate ongoing and foreseen increased population and industrial growth." It was further noted that the City was entitled to 500 acres under the State municipal land selection program, and there was not 500 acres of land presently available within the City's boundaries suitable for selection. In conjunction and with the assistance of the State Division of Lands, the City chose lands outside their boundaries with the understanding that they would have until 1986 to extend their boundaries. The legislature then set a deadline of October 1, 1980 for municipal land selection. The City's Brief states: "To facilitate annexation, it is considered to be entirely appropriate as well as both more practical and more economical that the area to be annexed be encompassed by established survey monuments. Accordingly, the City Council reached a decision to petition for annexation of all of the area within the unorganized borough encompassed by the Haines Borough boundary and the U.S.-

Canada boundary. Given the confines established by the Haines Borough boundary and the U.S.-Canada boundary, it is self-evident that any further enlargement of the City of Skagway's boundaries will be impossible. The question becomes which form of government is most appropriate. The Skagway Council rejected establishment of a borough as being an overlapping, expensive, and largely unnecessary layer of government; better that the City should expand in the "gap". Further, **there was no legal method under the State statutes for the City to transform into a unified city-borough in a single step.**" (emphasis added by Petitioner)

DCED notes on Pg. 100 of the Report, "while there was no express limitation on the inclusion of large unpopulated areas within a city at the time [as there is now in 3AAC 110.130(c)-(d)], the record reflects that the question of whether it was appropriate to include such a large area within a city was raised by both the petitioner and DCRA (see Appendix G)."

The Petitioner contends that because **there was no legal method for the City of Skagway to become a unified city-borough in 1979**, the City Council made the appropriate decision to request extension of the boundaries of the City as opposed to petitioning to form a borough over the area, providing an additional level of government which would contravene the "minimum number of local government units" standard of the **Alaska Constitution, Article X, Section 1**. For the Petitioner to now petition the Commission to dissolve the City of Skagway and simultaneously incorporate a **first class borough** is entirely appropriate.

DCED repeatedly quotes the way the area was portrayed by the City of Skagway in their 1979 petitioner's brief as "a mere paucity by present borough standards prevailing in the state", the Petitioner feels it is important to understand the context in which the "mere paucity" statement was made. Quoting from the 1979 petitioner's brief: "Lastly the Council acknowledges a legislative trend toward classification of all lands in the State and toward elimination of the unclassified borough. Enlargement of the City of Skagway's boundaries to 431 square miles might be considered large for a city, but it is a

mere paucity by present borough standards prevailing in the state.” The Petitioner wishes to point out that the writer was absolutely correct in 1979! **There was no provision for Skagway to become a unified city/borough government at that time, and their ONLY independent option was to opt for expansion of the City of Skagway into the territory to protect their state land selection.** DCED appropriately pointed out that there was no mention of the capabilities of another borough to serve the area, and even if they had, “circumstances can certainly change over an interval of twenty-three years.” (Pg. 96, the Report) Exactly. The average size of a city in Alaska is 28 square miles. The City of Skagway is 466 square miles. If it is deemed a “mere paucity of a borough by today’s standards”, then it can likewise be called a “monstrosity of a city” by today’s standards! Skagway has grown exponentially during the century plus, expanding local growth and development and merging local efforts to increase resource development with the Yukon Territory to benefit both regions. Skagway performs all the functions of a borough.

The Petitioner contends that if the Commission will consider all the relevant factors in the proper context, **AS 29.05031** and **3AAC 110.060(a)** are appropriately met.

STANDARD NUMBER FOURTEEN: Relation of Proposed Borough Boundaries to the Model Borough Boundaries

DCED refers to the “revised as of June, 1997 and adopted by reference” (Pg. 101, the Report), as if the Model Borough Boundaries were updated at that time. However, the update that is implied is only one change, made by the Local Boundary Commission in 1997 in its decision to approve an annexation petition by the City and Borough of Yakutat for additional land. The actual Model Borough Boundaries were drawn and adopted in 1992 and have suffered no comprehensive review since that time. As stated by DCED on Pg. 96, the Report. “...circumstances can certainly change over an interval of twenty-three years.” The Petitioner maintains that circumstances can, and have, certainly changed in the 10+ years since the Model Borough Boundaries were embraced by a former LBC.

Skagway is a homogenous area with more demonstrated “common interests” with its neighbor to the North, the Yukon Territory, than with its neighbor to the South, Haines. DCED notes that the City of Haines and the City of Skagway operate independent coastal management districts (CMD), with the City of Haines’ CMD encompassing an estimated 20.9 sq. miles, while the City of Skagway’s CMD is an estimated 154 sq. miles. DCED notes that state standards apply to the portion of the area not within the two cities, and alludes to the fact that, were Skagway included in the Haines Borough, the Coastal Management Districts would be combined. Similarly DCED notes that the same theory applies to the platting authority. The Petitioner would note that if the City of Haines and the balance of the Haines Borough are not combined currently in the CMD and platting authority, then why does DCED assume that by the mere fact of inclusion of Skagway into the Haines Borough, all coastal management and platting functions would miraculously be combined? There is no basis for this assumption.

Likewise, DCED purports that by forcing Skagway into the Haines Borough and the elimination of one school district, the education of the children in Skagway schools would be enhanced through reduction in costs through economies of scale. The Petitioner notes that first class cities such as Skagway are required to pay local contributions, while REAA’s are not. Any benefit to the state, or more importantly, to our school children, is purely conjecture on DCED’s part. There are no facts to show that children in borough schools are better educated. The fact that a student is educated in a borough school does not automatically make that education less expensive or better. Some boroughs in Alaska pay over \$11,000 per student, yet have scored poorly on the recent statewide test models.

When comparing the local contribution as a percentage of total school budget, the City of Skagway scores as one of the top 5 communities in the state. It is doubtful that one could find another community of 862 people that even approaches contributing 54% of their total school funding from local sources. This certainly demonstrates a strong commitment to our student population--the future leaders of our region.

The Skagway petition pointed out that very likely NO administrative cost savings would result in lumping Skagway into the Haines Borough; yet travel, communications and administrative costs would be increased because of distance. This would likely create an environment of confusion and frustration for all, and could end much like the demise of the Lynn Canal Medical Corporation discussed under STANDARD NUMBER SEVEN and in Appendix F of the Report. The difference is that in the demise of a medical corporation, patients can be referred to another medical facility, but the slow demise of a school district is at the expense of the children's education, and they only get one chance to go through the system.

STANDARD NUMBER FIFTEEN: Relation of Proposed Borough Boundaries to REAA Boundaries

Worthy of noting is, as stated under STANDARD NUMBER FOURTEEN, DCED and the Department of Education and Early Development, based on consultation with local communities and using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, were tasked under **AS 14.08.031(a)**, to divide the unorganized borough into REAAs. **Section 14.08.031(b)** which states in part: “As far as practicable, each regional education attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the regional education attendance areas, consideration shall be given to the transportation and communication network to facilitate the administration of education and communications between communities that comprise the area. Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins, and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas.” (emphasis added by Petitioner)

Ironically, DCED was involved with the Department of Education in setting up the REAAs according to the above criteria, yet the same DCED now proposes that the existing REAA boundaries of the Chatham REAA are not appropriate in context with our petition and has reached an independent conclusion that the Lynn Canal Model Borough Boundary is “superior”.

The Petitioner would presume that the REAAs were drawn according to AS 14.08.031(a) and (b), and query why DCED would choose this venue to announce its preference rather than revisiting the issue with the Department of Education? Skagway maintains that it meets this standard.

STANDARD NUMBER SIXTEEN: Contiguity of Territory Proposed for Incorporation

Once again, DCED finds that the Petition satisfies this standard “in a narrow context.” One need only to look at the map to determine that this area is indeed contiguous. One need only make the appropriate comparisons to our neighbors to the South *and* North to determine that Skagway has more in common with the Yukon Territories than with Haines. The previous LBC that allowed Haines to form a borough did not address Skagway as an “enclave” of the Haines Borough, nor is there any indication that they expected anything other than that Skagway would someday form its own borough.

STANDARD NUMBER SEVENTEEN: Extent of any Overlapping Boundaries

DCED concludes that this standard is fully met.

STANDARD NUMBER EIGHTEEN: Best Interest of the State

“Borough defined. – The borough in Alaska is a political subdivision of the state for governmental purposes and corresponds generally to the county in other states. *Walters v. Cease*, 388P.2d 263 (Alaska 1964).” Just as size and financial efficiency of REAAs have no proven positive effect on the education of a child, neither does size and financial efficiency have any proven positive effect on the delivery of services to areas within boroughs. The City of Skagway is already successfully providing services within the area proposed to become the Skagway borough. As the Petitioner pointed out in its Petition, had the City of Skagway not annexed the full territory available to it, this petition would have been viewed much differently. There would have been adjacent territory that was a part of the *unorganized borough* for which the Petitioner could have requested annexation. As quoted in *Mobil Oil v Local boundary Commission*, “The

Court interpreted the maximum local self-government clause to ‘favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been **minimally** met.’ (at 99)” (emphasis added by Petitioner) It does not use terms such as DCED’s favorite throughout the Report of “narrowly” met, or “in a narrow sense”.

DCED also noted (Pg. 115, the Report) “that the Alaska Supreme Court viewed boroughs as a means to achieve regional consistency and standardization in terms of government policy and responsibility for fundamental government services. *City of Homer v Gangl.id.*, That vision can only be achieved if there is adherence to the minimum of local government units clause.” DCED states in its conclusion on Pg. 119, the Report, “Creating a Skagway borough would do nothing to promote maximum local self-government. In fact, by effectively freezing the evolution of local government in the Lynn Canal area, creation of a Skagway borough runs counter to the principals of local self-government as addressed in *City of Homer v Gangl.*” The Petitioner maintains that there would be no change in the number of local government units because it would be dissolving the City of Skagway and forming the Municipality of Skagway, in essence, trading a City for a Borough. If the City of Skagway was forced into the Haines Borough, there would likewise be no change to the number of local governments, only the cumbersome burden of an additional level of government for both Haines Borough and Skagway to attempt to surmount. Both areas have indicated they wish to remain independent of the other. Skagway has both the ability and resources to efficiently and effectively manage a borough government, and has a proven record of doing so.

Skagway is the first area to come forward with a petition to form a borough in OVER TEN YEARS. DCED and the legislature have both expressed frustrations that areas that have the financial resources have not taken the initiative to do so. Yet Skagway has come forward voluntarily to form a borough to encompass all the territory that is available to it, has all the resources and capability to provide the highest and best level of services available to the area, has stated that **the City would NOT request or take transition relief** from the State **so that Skagway can preserve its ability to make**

voluntary local contributions in support of education as permitted by AS 14.17.410(c) . DCED notes that the commitment by the Petitioner is not binding on a future Skagway borough assembly. The Petitioner reminds the Commission that future assemblies would also represent the same Skagway School District as the present Council, with the same level of commitment to the education of the children. If the Local Boundary Commission can ascertain a way to accomplish a more binding commitment, the Petitioner would welcome it.

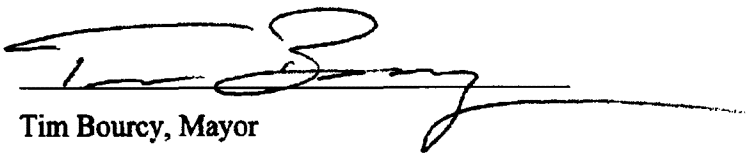
The real crux of DCED's concern lies on Pg. 116, the Report. "The 'precedent' that would result from approval of a Skagway borough would not only affect future proposals to create new boroughs from the unorganized borough. It would also influence future proposals to carve up existing organized boroughs." DCED is well aware that *any* petition coming before the LBC must be judged by the LBC on its own merits. There is no other city within the State of Alaska that compares to the size of the City of Skagway, and more specifically, there is no area of comparable size that has been land-locked (surrounded by the borders of Canada and Haines Borough) by the actions of a previous Local Boundary Commission. If Skagway were in a position to annex adjacent territory from the unorganized borough, yet did not petition to do so, then the Commission could exercise its authority to amend the Petition and impose conditions to do so as cited in **AS 29.05.100(a)**.

DCED quotes from *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d. 92, 98 (Alaska, 1974); and *Valley Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232, 234 (Alaska 1993) as follows: A determination whether an area is cohesive and prosperous enough for local self-government involved broad judgments of political and social policy...The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition...Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions." (Pg. 3, the report)

Regarding "precedent" and "flexibility", Vic Fischer, noted authority on Alaska's Constitution regarding local government issues, states in his 1991 memorandum to the LBC: "Boroughs are still evolving creatures. Rigid criteria and a straightjacket are not called for. The need for flexibility and flexible standard is reflected in the constitutional record, the Final Report, The PAS report, Tom Morehouses's and my writings, and other sources. This gives the LBC much room for exercising judgment, making its own sensible decisions, and structuring a logical borough system for Alaska." He continues: "There is need now to adjust boundaries of some existing boroughs. The sooner the LBC starts using its authority to initiate boundary changes, the better its power to do so will be established. The borough creation process is a good time to accomplish this."

The Petitioner hopes the Local Boundary Commission will judge this petition on its own unique circumstances, and not allow the unwarranted concerns both expressed and implied by DCED in its Preliminary Report Regarding the Skagway Borough Incorporation Proposal to mold your decision.

Submitted this 29th day of July, 2002



Tim Bourcy, Mayor
City of Skagway

Attachment R

Memorandum of Understanding
with respect to
A Commerce Development Plan

September 28, 2001

The Government of Yukon, Canada and the City of Skagway, Alaska,
(hereinafter referred to as "the Parties");

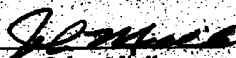
RECOGNIZING Skagway's strategic importance as a port in
providing tidewater access to export markets for Yukon's existing
and emerging industrial sectors;

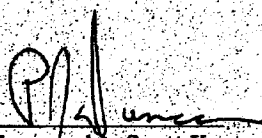
RECOGNIZING the historical relationship between Yukon and
Skagway as northern neighbours linked by the White Pass and
Yukon Route (WP&YR) Railway and the South Klondike Highway;
and

RECOGNIZING that active trade and investment linkages between
Yukon and Skagway are mutually beneficial for economic growth
and the creation of employment;

HAVE REACHED the following understandings:

1. The parties will work together on a port development plan with private sector stakeholders to address their existing and future infrastructure needs and opportunities. The support and co-operation of other agencies will be sought where appropriate.
2. The parties will establish regular contact between appropriate officials in order to facilitate the sharing of information.
3. The parties will endeavour to establish a formal partnership to create a positive investment climate, including the identification of specific opportunities for co-operation, maximizing mutual benefits regarding all types of commerce, and developing direct commercial relationships between their respective business communities.
4. The parties agree to implement this Memorandum in accordance with a jointly developed action plan, which will be reviewed quarterly.
5. The parties agree that any media releases concerning their mutual endeavours must be jointly approved prior to their issuance.
6. This Memorandum comes into effect when signed by both parties and will remain in effect until one of the parties notifies the other with written notice of termination.


John Mielke
Mayor of Skagway
Alaska


Honourable Scott Kent
Minister of Economic Development
Yukon

Skagway, Alaska Arrivals
Port of Entry

1998-2001
Vehicle Totals

Year	Trucks	Thru Buses*	Tour Buses**	Privately Owned Vehicles (POV)	Total
1998	3,147	1,520	6,734	40,684	52,085
1999	2,282	1,242	7,758	39,696	50,978
2000	2,080	1,146	7,433	39,061	49,720
2001	1,639	989	7,156	37,343	47,127
TOTAL					199,910

People by Vehicle Arrivals

Year	Trucks	Thru Buses	Tour Buses	Privately Owned Vehicles (POV)	Total
1998	3,298	11,618	111,015	98,140	224,071
1999	2,385	7,714	129,485	93,532	233,116
2000	2,180	6,762	130,416	91,401	230,759
2001	1,711	5,248	119,922	86,831	213,712
TOTAL					901,668

People Totals	US Citizen	Canadian or other Foreign not requiring documentation	Foreign Visitors requiring documentation	Foreign Residents residing in US with greencards	Total
Year					
1998	147,684	63,456	12,496	435	224,071
1999	159,624	55,018	17,893	581	233,116
2000	157,096	56,370	16,811	482	230,759
2001	146,462	50,492	16,225	533	213,712***
TOTAL					901,668

*Thru Buses - originate in Whitehorse, bringing people to Skagway as their destination.

**Tour Buses - leave from Skagway, go to the Yukon and return; passengers are not counted in above as arrivals.

***These figures show decline that reflects loss of the Alaska Marine Highway System ferry dedicated to the Juneau/Skagway corridor for month of June, 2001.

Attachment C



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TOP ALASKA STORIES

Dyea evacuated after landslide, flood

Residents safe at shelter in Skagway

The Associated Press

(Published: July 23, 2002)

Juneau -- A landslide triggered a flood that forced the evacuation of at least 25 people from the small town of Dyea near Skagway on Tuesday.

News Alert

ALASKA HERE TO HELP
CHILDREN IN NEED

No one was injured in the town, which has a year-round population of about 20 people, and the water had begun to recede by mid-afternoon, officials said.

But an emergency shelter was set up at the Skagway City School and vans were sent to pick up people left in Dyea, said Skagway City Manager Bob Ward.

"We have declared a local emergency and are working on a risk assessment," Ward said. "All the residents have been accounted for."

The landslide occurred early Tuesday when a 700-foot high moraine fell into an unnamed lake at the base of the West Creek Glacier.

Lance Pape, a geologist who flew over the area, said a sudden surge sent a volume of water down the West Creek drainage. It caused the Taiya River to rise, cresting at 21 feet by 7 a.m. Tuesday before subsiding, Ward said.

Eric Hosford, who was staying in his family's cabin near the river, said he was awakened by a friend at about 6 a.m. and noticed water rising around them.

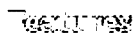
"When we got out, everything was submerged, there was no land to walk on," Hosford said. In some areas the water was above waist-deep and the two escaped by driving their Blazer on the uphill side the road, he said.

The road from Skagway to Dyea is closed and tours into the area have been canceled until further notice, Ward said.

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Subject: Skagway Borough Proposal

Date: Mon, 29 Jul 2002 10:36:43 -0800

From: "mkorsmo" <mkorsmo@aptalaska.net>

To: <Dan_Bockhorst@dcad.state.ak.us>

Local Boundary Commission
Staff

Department of Community and Economic Development

550 West 7th Avenue, Suite 1770

Anchorage, Alaska 99501-3510

Dear Staff,

The City of Skagway recently received the Preliminary Report Regarding the Skagway Borough Incorporation Proposal. We also had an Informational Meeting presented by Dan Bockhorst.

I hope that you can look outside the box and see that we are in a very unique situation in Skagway. We may not fit the Model Borough format but in this case I believe it would be in the Best Interests of the State [AS 29.05.100(a)], to seriously consider our petition.

We have a very efficient 1st Class City that would transition nicely into a 1st Class Borough. I believe we already achieve maximum local self-government as shown in our ability to take care of our needs without much help.

If we were placed in the Model Borough format the Best Interests of the State would not be served, the bureaucracy would become large, spread out and inefficient thus not promoting the minimum number of local self-governments.

The City of Skagway already relieves the State of the responsibility of providing local services to a very large extent as shown by our school contributions and our willingness to take on large projects such as flood control,

boat harbor expansion, and even road maintenance should the State go any farther in reducing their responsibility to maintain State Roads. We are willing and able to take on these things to insure that our area is protected, our children well educated, and our future growth is taken care of.

The risks to the State if they spread us thin, as would be the case in the Model Borough format, is to take away our ability to take on large projects and thus force us to come to them with our hats in hand begging for funding. I don't see how this would benefit the State as a whole.

I look forward to your visit on August 31st and I will reserve more comments that can be addressed directly to you.

Thanks for you time,

Mike Korsmo

Citizen, City Councilman

APPENDIX E

**SUMMARY OF MAJOR PROJECTS AND ACTIVITIES ADDRESSED BY THE
LBC AND STAFF FROM JANUARY 2001 TO THE PRESENT**

APPENDIX E
SUMMARY OF MAJOR PROJECTS AND ACTIVITIES ADDRESSED BY THE
LBC AND STAFF FROM JANUARY 2001 TO THE PRESENT*

1/5/2001	Petition for consolidation of the City of Haines and the Haines Borough accepted for filing.
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1/22/2001	Petition for incorporation of Skagway borough and concurrent dissolution of the City of Skagway received.
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2/5/2001	DCED staff completes and publishes preliminary report regarding consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.
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3/5/2001	DCED staff travels to Fairbanks to participate in public forum on pending proposal to consolidate the City of Fairbanks and the Fairbanks North Star Borough.
----------	---

3/16/2001	DCED completes and publishes final report concerning the proposed consolidation of local governments in the Fairbanks area.
-----------	---

3/30/2001	DCED completes and publishes its final report concerning Ketchikan consolidation.
-----------	---

04/05/01	DCED completes and publishes its preliminary report regarding the amended petition to incorporate the City of Talkeetna
----------	---

4/7/2001	LBC conducts public hearing in Fairbanks regarding consolidation.
----------	---

4/16/2001	City of Wasilla local-action annexation petition accepted for filing.
-----------	---

* Only specific events relating to major activities involving DCED's LBC support staff are listed here. Not listed are activities leading up to those events. For example, prior to the reported 3/16/2001 publication of DCED's final report on consolidation of Fairbanks area local governments and the reported 3/30/2001 publication of DCED's final report on consolidation of Ketchikan area local governments, DCED staff spent considerable time evaluating comments on the respective preliminary reports. Also not listed here are the substantial number of routine activities (e.g., responding to requests for technical assistance from prospective petitioners, petitioners, prospective respondents, respondents, and others).

4/21/2001	LBC conducts Ketchikan consolidation hearing.
4/27/2001	LBC meets to adopt written statement of decision concerning Ketchikan consolidation.
5/23/2001	LBC conducts second public hearing in Fairbanks regarding consolidation.
6/7/2001	LBC meets to adopt statement of decision regarding Fairbanks consolidation.
6/27/2001	LBC conducts public hearing on proposed extensive revisions to procedural regulations.
6/29/2001	LBC meets to address requests for reconsideration regarding statement of decision in Fairbanks consolidation proceedings.
7/6/2001	DCED issues final report on Talkeetna incorporation proposal.
7/9/2001	DCED issues preliminary report on Haines consolidation.
7/31/2001	DCED conducts two public informational meetings in Homer regarding Homer annexation petition.
8/09/2001	DCED staff travels to Fairbanks to participate in a public forum concerning the proposed consolidation local governments in Fairbanks.
8/10/2001	LBC meets to address possible recusal of a Commission member regarding Palmer annexation proceedings.
8/25/2001	LBC conducts hearing in Talkeetna regarding incorporation proposal.
10/3/2001	DCED issues preliminary report on Homer annexation proposal.
10/23/2001	Skagway borough incorporation petition accepted for filing.

10/25/2001	LBC meets to amend Talkeetna incorporation proposal; address relaxation of regulatory procedures for local action annexation to Wasilla; annual report policy issues; and scheduling of Haines consolidation hearing.
11/15/2001	LBC meets to adopt statement of decision regarding Talkeetna incorporation; addresses annual report policy issues.
11/21/2001	DCED completes and publishes final report regarding Homer annexation proposal.
12/13/01-12/15/01	LBC holds hearing in Homer regarding annexation.
12/26/2001	LBC meets to adopt statement of decision concerning Homer annexation.
1/17/2002	LBC meets to consider six requests for reconsideration of the Homer annexation decision The subsequent legislative debate over the Commission's action concerning Homer was of unprecedented duration for such matters.
1/23/2002	DCED staff testified at the Superior Court trial regarding legislative redistricting. Before the trial, plaintiffs deposed DCED staff. At the request of the Attorney General's Office, DCED staff provided extensive information and documentation regarding legislative redistricting matters. In addition, DCED staff provided information to the Redistricting Board staff following the Superior Court rejection of the Board's plan.
2/06/2002	Kachemak Area Coalition, Inc. files lawsuit concerning Homer annexation proposal. The record subsequently prepared by the Commission staff for the court weighs more than thirty-five pounds.

2/06/02-2/07/2002	LBC and DCED participate at hearings before the House and Senate CRA Committees regarding Homer annexation.
2/09/2002	DCED issues final report regarding Haines consolidation.
2/15/2002	DCED staff travels to Juneau to provide staff support to the Local Boundary Commission during a joint meeting of the House and Senate regarding annexation to the City of Homer.
2/15/2002	DCED issues Wasilla local-action annexation report (combined preliminary and final report).
2/19/2002	DCED staff provides training on local government at Alaska Municipal League Clerks' training.
2/25/2002	DCED staff travels to Juneau to participate in meeting with legislator and officials from various REAAs concerning SB 48 and SB 323.
3/9/2002	LBC conducts hearing in Haines regarding consolidation.
3/19/2002	LBC conducts hearing regarding Wasilla local-action annexation.
3/20/2002	LBC meets to adopt statements of decision concerning Haines consolidation and Wasilla annexation.
4/17/2002	LBC meets to address requests for reconsideration regarding decision relating to Haines consolidation.
4/23/2002	Alaskans Opposed to Annexation files lawsuit concerning Homer annexation proposal.
4/29/2002	LBC meets to adopt 113 pages of regulation changes.

5/19/2002 Palmer legislative review annexation petition accepted for filing.

7/1/2002 DCED issues preliminary report regarding Skagway borough incorporation proposal.

7/18/2002 LBC meets regarding prospective regulation changes (Legislative Resolve No. 58); discussion of unorganized borough report (Ch. 53, SLA 2002).

7/26/2002 DCED staff travels to Skagway and conducts public informational meeting.

8/9/2002 DCED issues Final Report regarding Skagway Borough incorporation proposal.

April 19, 2002

The Honorable Tim Bourcy
Mayor
City of Skagway
P.O. Box 415
Skagway, Alaska 99840

Dear Mayor Bourcy:

This is in response to your request for an updated schedule regarding consideration of the Skagway Borough incorporation proposal by the Local Boundary Commission. I also wish to respond to apparent concerns that Mr. Bockhorst may be neglecting Skagway's petition and that the Department might recommend that the Commission act on the pending Skagway petition by annexing Skagway to the Haines Borough.

I am aware that you when you met with Dan Bockhorst last October, he anticipated, based on the facts known at the time, that the Commission might hold its hearing on the matter as early as May of this year. However, several unanticipated circumstances have resulted in some delay.

Among the fundamental reasons for the delay is that the proceedings in the Homer annexation proposal (petition filed March 2000) proved to be much more protracted than contemplated last October. The Commission did not complete its review of that matter until December 26, 2001. Following the Commission's December 26 determination, six requests for reconsideration were filed with the Commission. The subsequent legislative debate over the Commission's action concerning Homer was of unprecedented length for such matters. Tacit legislative approval of the Commission's action occurred on March 9, 2002. Two separate lawsuits were filed concerning the matter. The record subsequently prepared by the Commission staff for the court in those proceedings weighs more than thirty-five pounds.

Litigation involving legislative redistricting is another matter that was not anticipated last fall to take up Mr. Bockhorst's time. He was deposed by the plaintiffs, asked by the Attorney General's Office to provide extensive information and documentation, and he also testified at the Superior Court trial. In addition, he provided information to the Redistricting Board staff following the Superior Court rejection of the Board's plan.

"Promoting a healthy economy and strong communities"

Unanticipated litigation involving the representative of the petitioners for consolidation of local governments in Fairbanks and the City of Fairbanks has also placed demands on the Local Boundary Commission staff.

Additionally, an effort initiated in December of 1997 to make much needed comprehensive revisions to the Commission's regulations was thought to be substantially complete in July of last year. However, a subsequent review of the matter by the Attorney General's office necessitated a significant additional commitment of time on the part of Mr. Bockhorst. That project was completed and the regulations were filed by the Attorney General's Office with the Lieutenant Governor today.

Moreover, the numbers of legislative proposals dealing with matters involving the Local Boundary Commission are exceptionally numerous this session. They include HB 16, HB 296, HB 518, HCR 27, HJR 18, SB 48, SB 323, SB 359, SJR 16 and SJR 34. Mr. Bockhorst has spent a great deal of time dealing with the particulars of those legislative proposals. In February and March, Mr. Bockhorst had to travel to Juneau four times to deal with matters.

The Haines consolidation proceedings also were more protracted than contemplated last October. The Commission completed its work on that petition (filed in December of 2000) last week (April 10, 2002) when it addressed seven requests for reconsideration. That matter has now been scheduled for an election to be conducted by the State Division of Elections.

At this point, Mr. Bockhorst has made the Skagway borough incorporation petition his foremost priority. He anticipates that the Department's Preliminary Report on the matter will be completed within the next three weeks. The law requires a four-week period of public review on the Preliminary Report. If the comments on the final report do not require protracted analysis and research, the Department's Final Report on the matter could be completed within ten days. The Local Boundary Commission could then conduct its hearing on the matter three weeks later.

I want to stress, however, that scheduling of the hearing is the prerogative of the Local Boundary Commission, which is independent of this agency. The Commission is keenly aware of your desire for action on the proposal at the earliest opportunity. I expect that the Commission will accommodate your desires in terms of its schedule.

I hope that any perception that Mr. Bockhorst is neglecting the Skagway petition has been dispelled by the foregoing discussion. Mr. Bockhorst routinely works many hours beyond the "prescribed work week." This agency's technical staff support to the Local Boundary Commission is comprised of only two local government specialists.

I wish to conclude by addressing the apparent perception that this agency might recommend that the Commission respond to the pending petition by annexing Skagway to the Haines Borough. I am aware that Mr. Bockhorst gave you a candid assessment of this agency's preliminary views concerning the proposal when he met with you in October. I do not believe that he has ever suggested to you that the Department is likely to recommend that the Commission act on the pending petition by approving annexation of Skagway to the Haines Borough.

If you have questions or wish to discuss this matter, please call me at 269-4580.

Cordially,

A handwritten signature in black ink, appearing to read "P. Poland", written in a cursive style.

Patrick K. Poland
Director